

MICT-12-20
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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 16 July 2014

Original: English

Before:

Judge Theodor Meron, President

Registrar:

Mr John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC REDACTED

MONITORING REPORT FOR JUNE 2014

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I. INTRODUCTION

1. This monitoring report pertains to the activities in the *Munyagishari* case before the Rwandan judiciary and the interactions of the reporting monitor of the Mechanism for International Criminal Tribunals (“Mechanism”) with various stakeholders during the month of June 2014 (“Reporting Period”).
2. During the Reporting Period, the reporting monitor (Jelena Gudurić - “Monitor”), made one visit to Rwanda.
3. The Monitor met with Mr Munyagishari and his Lead Counsel, as well as with the Lead Counsel for the Prosecution, the Head of the Witness Protection Unit of the Supreme Court, and the Prison Director.
4. One pre-trial hearing was held during the Reporting Period at which the Chamber dealt with the issue of translation of materials supporting the indictment into a language the accused understands. The next hearing is scheduled for 5 November 2014.
5. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Meeting with the Prosecution

1. The Monitor met Mr Jean-Bosco Mutangana, Lead Counsel for the Prosecution, on 3 June 2014.
2. Mr Mutangana informed the Monitor that, on 27 May 2014, the Prosecution filed a French translation of the indictment for the accused. Mr Munyagishari sent a letter on 2 June 2014 seeking translation of the supporting material to the indictment. The Prosecution does not object to this request. Mr Mutangana added that the Prosecution considered translating the supporting material on its own initiative, noting that the court order required the Prosecution to translate only the indictment into French. Mr Mutangana anticipated that this issue of translation of the supporting material would be discussed at the next hearing,

scheduled for 4 June 2014.

B. Judicial Activity

6. The Chamber held a hearing on 4 June 2014.¹ The Prosecution was represented by Mr Jean-Bosco Mutangana and Mr Bonaventure Ruberwa (“Prosecution”). Mr Bernard Munyagishari, in attendance, was represented by his counsel Mr Jean-Baptiste Niyibizi and Mr John Hakizimana (“Defence Counsel”). The court interpreter, Mr Faustin Murangwa, provided interpretation from Kinyarwanda into French, and *vice versa*, for Mr Munyagishari.
7. The Chamber enquired if Mr Munyagishari had received a French translation of the indictment. Mr Munyagishari responded that he had not received it.
8. The Prosecution submitted that Mr Munyagishari had received the translation on 27 May 2014 and that he had signed the receipt.
9. Mr Munyagishari clarified that receiving only a translated indictment of 57 pages does not amount to being informed in detail of the nature and cause of the charges against him as required under Article 14 of the International Covenant on Civil and Political Rights. The Defence Counsel added that the order requiring the Prosecution to produce a translation of the indictment refers to all supporting materials. Accordingly, the entire case file has to be translated for Mr Munyagishari.
10. The Court enquired as to the grounds on which the Defence Counsel was basing this submission. The Defence responded that it was based on Article 19 of the Constitution and Article 14 of the International Covenant on Civil and Political Rights.
11. The Prosecution objected to the Defence’s interpretation of the Court order and submitted that the Chamber had never ordered the Prosecution to translate the supporting material. The Prosecution suggested that if the Defence was not satisfied with the Court’s order, they could have appealed it. If, on the other hand, the Defence is making a new request to

¹ The Monitor followed the hearing with the assistance of an interpreter.
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have a translation of other materials, they should identify which materials they wish to have translated.

12. The Court reminded the parties that on 3 April 2014, the Court had ordered that the hearing would resume on 4 June 2014 and that one week prior to that date, the Prosecution was to serve on the accused a translation of the indictment and summaries of the witnesses' evidence. The Court observed that translation of the entire file was a new request.
13. The Court enquired if the Defence had received a translation of summaries of the witnesses' evidence. The Defence responded that they had received a document of 57 pages entitled "indictment", without any annexes. Because they did not receive summaries of the witnesses' evidence, the Defence believed that the translation was incomplete.
14. The Prosecution accepted that the accused should be informed of the charges in detail in a language he understands. They reiterated, however, that the Court had not ordered the entire file to be translated. The Prosecution informed the Court that the translation was done by external translators, not by the Prosecution, and that based on the Court's order, they had received appropriations only for translation of the indictment. If the Court were to order the entire case file to be translated, the Prosecution could then seek additional funds for that purpose. If the Chamber grants the Defence request, the Prosecution asked that a written decision be issued so that they can request additional funds. The Prosecution also asked Mr Munyagishari to identify all documents that he does not have in French. They noted that once witnesses start appearing before the court to testify, their evidence will be interpreted. The Prosecution further submitted that all relevant summaries of the witnesses' evidence were included in the indictment and, accordingly, were translated into French. Hence, there were no obstacles to Mr Munyagishari responding to the indictment. The Prosecution requested that any Court decision ordering additional translations specify which documents need to be translated. The Prosecution noted that the number of documents to be translated will determine the time needed for translation.
15. The Chamber specified that there is no need to translate the entire case file. It noted, in

relation to the Prosecution's request for a written decision, that everything said in court is written down. The Chamber also observed that the Prosecution should know which documents are available in French.

16. The Prosecution explained that all witnesses it intends to call at trial are ICTR² witnesses and that each statement from the ICTR was available in all three languages – French, Kinyarwanda and English. They added that for certain of the witnesses, the Rwandan Prosecution had taken a new statement which was not available in French. Accordingly, the Prosecution proposed removing from the file any new statement taken by the Rwandan Prosecution that was available only in Kinyarwanda, so that only ICTR statements remain. This would allow the hearings to continue without any delays. The Prosecution, however, specified that they preferred that no statements be removed.
17. The Chamber asked the accused if he had received the entire ICTR file with witness statements. Mr Munyagishari indicated that his lawyer Mr Niyibizi received the file. Mr Niyibizi stated that they had received a file of more than 3,000 pages. In response to the Court's enquiry if they had received witness statements, Mr Niyibizi submitted that they had received them in Kinyarwanda, English and French.
18. Having heard the parties' arguments, the Chamber ordered the Prosecution to translate only those additional statements taken by the Rwandan Prosecution, as the remaining ones from the ICTR exist in French.
19. As a separate matter, the Defence Counsel indicated that they had only one copy of the case file and that they did not have financial means to make additional copies for both counsel and the accused. The Chamber ruled that such issues must be resolved by the Defence, as the Court cannot make copies for the Defence.
20. To determine further scheduling in the case, the Chamber asked the Prosecution how much time they would need to translate the additional statements into French for the accused. The Prosecution estimated they would need 30 days.

² International Criminal Tribunal for Rwanda ("ICTR").
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21. The Chamber then turned to the Defence to enquire how much time they would need to prepare after receiving the translations. The Defence Counsel responded that in their previous submission they had asked for three years, as they need to undertake an investigation, both in Rwanda and abroad. The Prosecution argued that the Defence Counsel had had the case file since the case was transferred to Rwanda and that, accordingly and given that they were under a contract, they should have been concentrating only on the *Munyagishari* case. Asking for three years to prepare, in the Prosecution's view, meant that the Defence was delaying the trial. The Defence Counsel responded that their contract did not bind them only to the *Munyagishari* case and that they were waiting for a response from the Ministry of Justice regarding legal aid.
22. The Chamber further enquired if the Defence had asked for three years to prepare so that they could be assigned to other cases at the same time. The Defence responded that they had raised the issue because of the anticipated deadlines for submissions and because they wanted the Chamber to take into consideration, in setting those deadlines, that the Defence had no financial means. The Defence clarified that if the issue of legal aid was put aside, they would need one year to read all disclosed materials, one year to investigate and one year to gather all materials and prepare the case.
23. Mr Munyagishari submitted that it took the ICTR and Rwandan Prosecution 20 years to prepare the case. He added that the principle of equality of arms required that he be allowed as much time to prepare as necessary.
24. The Chamber enquired if the parties wished to address the issue of protective measures for witnesses. The Prosecution responded that all witnesses had been granted protective measures.
25. The Chamber adjourned then for a break. Upon the resumption of the hearing, the Chamber decided to schedule the next hearing for 5 November 2014. The Chamber ordered the Prosecution to translate the statements taken by the Rwandan Prosecution into French and to serve the translations on the accused no later than 30 days before the next hearing. The Chamber further ordered the Defence to reply to the Prosecution and submit

its comments two weeks before the next hearing.

C. Contact with Mr Munyagishari

26. The Monitor met Mr Munyagishari on 6 June 2014 at the Kigali Central Prison (“Prison”). The meeting was conducted with the assistance of an interpreter.

27. Mr Munyagishari expressed concern about the interpreter. The Monitor explained that the interpreter has taken an oath before the Mechanism to perform functions impartially and to respect the duty of confidentiality.

28. Mr Munyagishari noted that, at the hearing of 4 June 2014, his counsel had indicated that the Defence needed three years to prepare for trial, and that the Prosecution had responded that that amounted to a delay in trial. [REDACTED] Mr Munyagishari also noted that his lawyers had not been paid for nine months. In his view, the lack of resources significantly affected his ability to prepare his defence, as his lawyers did not have financial means even for simple tasks. As an example, he explained that he had asked his Defence Counsel to transmit certain files to his lawyer who represented him at the ICTR but that the Defence Counsel had responded that they had no means to transmit the files. Mr Munyagishari stated that the Prosecution, on the other hand, was well equipped. They had means to contact witnesses and had been working on the case since its transfer in July 2013. Given the lack of resources, Mr Munyagishari was sceptical that his Defence Counsel would be able to meet the deadline to submit their comments, as ordered at the hearing on 4 June 2014.³

29. Mr Munyagishari further noted that the Prosecution said in Court that the Defence was trying to delay the process by asking for more time to prepare. In Mr Munyagishari’s view, however, the process has been delayed by other factors, including the initial assignment of the case to another court and the issue of translation of the indictment and supporting material.

³ See para. 25 *supra*.
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30. Mr Munyagishari indicated that he wished to receive oral decisions in written form and in the language he understands – French. He opined that he was disadvantaged whenever the Prosecution, in its oral arguments, referred to a previous oral decision because he did not have those decisions in the language he understands.
31. With regard to conditions of detention, Mr Munyagishari informed the Monitor that the detainees in the Special Enclosure of the Prison⁴ had asked for a fire alarm, fire extinguishers and an emergency exit from the Special Enclosure, as well as a lightning conductor to be put in place. Mr Munyagishari also asked for an alarm so that he can reach prison guards. He noted that such an alarm had been installed but that it was malfunctioning.
32. Lastly, Mr Munyagishari mentioned that the detainees of the Special Enclosure were not allowed to share food with other detainees. He noted that they were not receiving more food than they needed, but they felt like sharing no matter how much food they had. The guards, however, prohibited this.
33. [REDACTED]
34. [REDACTED]

D. Meeting with the Head of the Witness Protection Unit

35. The Monitor met Mr Janvier Bayingana, Head of the Witness Protection Unit of the Supreme Court, on 9 June 2014. The meeting was focused on the *Uwinkindi* case, which is in the trial stage of proceedings. No substantive matters concerning the *Munyagishari* case were discussed.

E. Meeting with the Prison Director

36. The Monitor met with Mr Alex Murenzi, Prison Director, on 11 June 2014.

⁴ The Special Enclosure houses two accused transferred by the ICTR – Mr Munyagishari and Mr Jean Uwinkindi – and two other detainees referred by national courts of other states.
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37. Regarding the transmission of documents, Mr Murenzi explained that for security reasons all documents sent to or by detainees must be transmitted through the Prison Administration. If a document originating from or addressed to the Mechanism is confidential, Mr Murenzi stated that such document can be handed over in a sealed envelope and marked as confidential. The Prison Administration will not open confidential sealed documents; they will only register the date of transmission and pass the document on to the recipient. Mr Murenzi specified that monitors are allowed to exchange documents directly with Mr Uwinkindi and Mr Munyagishari after registering the document with the Prison Administration.
38. Mr Murenzi explained that the detainees of the Special Enclosure of the Prison have a special food regime that differs from that available to other Prison detainees. It is for this reason that the detainees of the Special Enclosure are not allowed to share food with others.

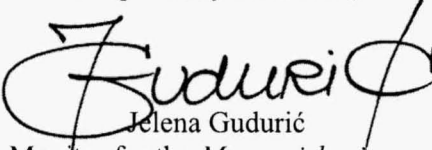
F. Meeting with the Lead Counsel

39. The Monitor met Mr Niyibizi, Mr Munyagishari's Lead Counsel, on 12 June 2014. As Mr Niyibizi is also Co-Counsel for Mr Uwinkindi, he discussed both cases. He noted that the *Uwinkindi* case is in a more advanced stage of the proceedings than the *Munyagishari* case, which is in the pre-trial stage.
40. Mr Niyibizi submitted that the Defence in the *Munyagishari* case had not been paid for more than nine months and that no payment regime had been agreed with the Ministry of Justice. The Defence had proposed to the Ministry of Justice the same payment scheme as the one agreed for the *Uwinkindi* case, but the Ministry of Justice rejected this proposal. The lack of resources is a grave concern according to Mr Niyibizi, as the Defence cannot undertake an investigation. Mr Niyibizi noted that the negotiations concerning the remuneration of the Defence were ongoing but that no progress had been achieved. He added that the Defence needed to continue pursuing the matter with the Ministry of Justice.

III. CONCLUSION

41. The Reporting Monitor remains available to provide any additional information at the President's direction.

Respectfully submitted,



Jelena Gudurić
Monitor for the *Munyagishari* case

Dated this 16th day of July 2014
At Kigali,
Republic of Rwanda.



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