

MICT-12-20
19-09-2014
(283 - 277)

283
JN

UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: August 28, 2014

Original: English

Before: Judge Theodor Meron,
MICT President

Registrar: Mr John Hocking

Monitor: Zbigniew Lasocik, prof.

PROSECUTOR

v.

BERNARD MUNYAGISHARI

MONITORING REPORT
JULY 2014

PUBLIC

Received by the Registry
Mechanism for International Criminal Tribunals
19/09/2014 11:58

A handwritten signature in cursive script, appearing to read "McCall Carter".

INTRODUCTION

1. Pursuant to the Terms of Reference for the Monitors, particularly part “C” of the Annex II to the MOU between MICT and ISLP (Europe), I respectfully submit this Report to the President of the MICT through the Registrar.
2. This Monitoring Report pertains to the activities in the *Munyagishari* case before the Judiciary in the Republic of Rwanda and the interactions of the Monitor of the Mechanism for International Criminal Tribunals (MICT) with various stakeholders during the month of July 2014.

BRIEF VISIT TO PRISON, JULY 2ND, 2014 AND PRISON CONDITIONS

3. With permission of Prison Administration I visited the Special Unit of Kigali Central Prison. With permission of the Accused I also briefly visited his cell.
4. The cell is around 4 square meters with very basic furniture. Building is constructed in such a way that there is no window in the cell, which means that there is no natural light. It is impossible to read without artificial light.
5. Mr. Munyagishari has a lot of documents and papers in his cell. He complained having not had enough shelves and folders to keep all these in order.
6. There was no water in two taps located nearby the cells of the Accused. They all complained as to take water they have to go to the toilet or to the bathroom.

MEETING WITH PROSECUTOR MR. MUTANGANA , July 3rd, 2014

7. Mr. Mutangana stated that on June 27th, the Accused received indictment translated into French. In November, the Prosecution plans to start with its opening statements.
8. Mr. Mutangana confirmed that the Accused demanded all new documents obtained by the Rwandan Prosecution to be translated into French. This translation, totaling 360 pages, (400 pages with the indictment) was already done by a former ICTR cooperator. There have been no financial difficulties related to this task because the Prosecution has foreseen this cost in its budget.

EXAMINATION OF THE COURT FILES, JULY 16TH

(with the assistance of an interpreter).

9. We reviewed the file noting that there were not many new documents.
10. The Registrar informed us that at present there is no indication as to what will happen at the next hearing in the Munyagishari case scheduled for November 2014 (whether there will be an opening statement or not).

MEETING WITH MR. MURENZI, PRISON DIRECTOR, JULY 16TH

11. Mr. Murenzi informed the Monitors that Special Unit was constructed in 2009. According to international standards each cell has 4 square meters. As the Unit is relatively small lawyers were complaining for not having room for meetings with Accused. That was why it was decided to build such rooms very close to the Special Unit. They are to be ready by the end of this month. I had chance to note that construction process has started in mid-July.
12. According to Mr. Murenzi there are no problems with Mr. Munyagishari. As all other detainees placed in the Special Unit he has a nutrition regime which is completely different from that of other detainees.
13. There are no special procedures for prisoners like him. He knows the prison rules and obeys them. On the other hand there are prison officers who are selected specifically to deal with the Special Unit. They are not specially trained but they are trained in effective management of prisons in line with national laws and international standards. They are subject to rotation from time to time.
14. Mr. Munyagishari can communicate any complaints to those officers who convey them further to leadership of this institution or to the higher level. As an example Mr. Murenzi mentioned conjugal visits which Mr. Munyagishari was mentioning at many occasions but according to Mr. Murenzi, he never formally requested such a visit. Prison regulations in Rwanda do not allowed that. Special enquiry on that issue was sent to Central Administration by another prisoner from this Special Unit Mr. Mugesera. So far there was no replay.
15. Mr. Murenzi meets Mr. Munyagishari on regular basis, at least twice a month or upon the request; if not him his deputy does it. He also visits the Special Unit twice a week to inspect the cells, toilets and other rooms, always using this opportunity to talk with Mr. Munyagishari.
16. The Monitors were informed by Prison Director that Mr. Munyagishari being still on trial is not attending rehabilitation programs and production activities but he can participate in religious programs, recreation activities and discussions with other detainees on topics such as genocide, discrimination and reconciliation.
17. Mr. Murenzi commented also on the issue of shortage of shelves for documents in the cell. Even if this this true the administration has to consider the size of the cells and avoid situation when such limited space is overcrowded.
18. REDUCTED

MEETING WITH MR. BAYINGANA, HEAD OF THE WITNESS PROTECTION UNIT OF THE SUPREME COURT (WPU), JULY 16TH AND 18TH

19. According to Mr. Bayingana WPU is supporting the Court in genocide cases since 2012. It was created in response to critical comments on the security of witnesses in Rwanda. WPU is a part of the Judiciary.
20. WPU protects witnesses of the prosecution and the defense. There are two aims of the WPU: 1/ to protect witnesses and 2/ to make sure that the equality of arms rule is respected. By this the Unit does not serve parties, it serves Justice.
21. The Team of the Unit consists of 9 persons, mostly lawyers, but they all do everything what is necessary to protect witnesses. They also offer training for witnesses being protected. At this stage there are no witnesses to be protected in *Munyagishari* case.
22. As far as procedure is concerned the decision on protective measures is always taken by the court but it is up the Unit to decide how protection is being implemented.
23. According to Mr. Bayingana protective measures mean: 1/that the identity of the witness is protected, she/he can be given pseudonym, 2/ it means also that the witness leaves in her/his place but nobody knows that she/he is a witness, 3/ if there are real threats to the witness security she/he is also protected in more direct way, 4/ if such need arises Unit can also change witness identity.
24. During the hearing special curtains and special equipment for voice distortion could be used. I was given opportunity to see the system of such curtains but only briefly as another hearing was in progress there.
25. During the hearing, both prosecution and defense witness will stay in Kigali – all costs will be covered by the state.

MEETING WITH MR. MUNYAGISHARI, JULY 17TH (held with the assistance of an interpreter)

26. REDACTED

27. I informed Mr. Munyagishari that new system of handing over documents was been agreed with prison administration. As a rule each case of such a transfer would be registered by the prison staff. Confidential documents will be sealed in special envelopes.
28. I also proposed that after each meeting I would present (in brief) what would be reported. Mr. Munyagishari would keep the right to ask for some issues to be reported confidentially.

29. Mr. Munyagishari referred to his issue. First of all he found the new arrangements for transfer of documents as very important achievement. He stated that in such a case he would like to prepare written documents to avoid any modifications in oral communication by interpreters. He also mentioned his letter to the President complaining about interpreters and showed us President's response.
30. Mr. Munyagishari mentioned also his difficulties with sending letter to Ms. Natasha (lawyer) from The Hague. According to Mr. Munyagishari the prison director refused to transmit this letter to here.
31. Mr. Munyagishari suggested that the meetings with Monitors take place together with Mr. Uwinkindi. In response to that I explained that in general it very much possible but such meetings should be held separately in case some sensitive matters are to be discussed.
32. REDACTED
33. Mr. Munyagishari confirmed receiving the indictment and some other court materials translated into French (in total around 400 pages). But he said he would first verify with his lawyers whether the translations comply with the Court's order.
34. On the other hand Mr. Munyagishari stated that the whole file had not yet been translated into French. According to Mr. Munyagishari the file is a mix of English, French and Kinyarwanda documents. His lawyer is to check whether each document is translated into French.
35. Mr. Munyagishari also informed that he asked his lawyer for an electronic copy of file so he could have in prison. Having the file in electronic version would allow both lawyers and him to have the entire file because they don't have the means to make many hard copies of 400 pages. However, he has not received it yet.
36. Mr. Munyagishari made reference to Monitoring Report for April 2014. Among other things the Author of the Report Anees Ahmed reported that Mr. Munyagishari's lawyers "were not correctly paid" and the President referred to this statement in his decision on MU's request for referral back to the Mechanism. MU concluded that the President's decision denying the request was a consequence of bad reporting.
37. Due to last fire incidents in Kigali Mr. Munyagishari stated that there is no special fire procedure in the Unit. There was no distinguisher as well as alarm device and there was no evacuation exit. Some time ago he suggested opening the door to the yard but nothing has been done. He also mentioned that this issue was already reported in para. 55 of the January/February Report.
38. REDACTED
39. Mr. Munyagishari made reference to Article 26 of the Transfer Law which regulates conditions of detention. The Transfer Law requires that ICTR prisoners in Kigali would have the same conditions as prisoners of the Special Court in Sierra Leone. He

also suggested that monitors should visit this prison and compare their conditions of detention with those in Kigali.

40. REDACTED

41. Mr. Munyagishari has asked about the legal grounds of the activities of Monitors in Rwanda. After I explained that there was an agreement between MICT and ISLP he has requested a copy of Memorandum of Understanding.

42. Mr. Munyagishari asked whether it would be possible to support their request for higher table for meals. (Nota bene: indeed we noticed that one they are using was relatively low but the prisoners use regular chairs.)

43. Mr. Munyagishari handed over to us the menu which was consulted with the restaurant. He informed that in general the menu was respected except for Saturdays when it was respected only once (chicken). He also stated that prisoners would propose that lunch be moved from 13.00 to 12:30 as to better accommodate it the needs of diabetes.

44. At the end we recapitulated issues that were discussed and reviewed briefly the contents of the report.

FINAL VISIT TO PRISON, JULY 18TH

45. Mr. Munyagishari handed over to me two documents. According to the rules I informed immediately prison administration about the transfer of the documents.

46. REDACTED

47. REDACTED

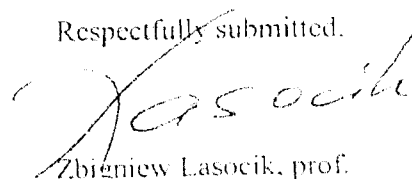
CONCLUSION

48. REDACTED

49. The first hearing in this case is scheduled for November 2014 but it is not certain what will happen then.

50. I will continue Monitoring of this case during my next mission to Rwanda in mid-September 2014.

Respectfully submitted,



Zbigniew Lasocik, prof.
Monitor for the *Munyagishuri* case

Dated: August 28th, 2014
Warsaw, Poland



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Grefe du MTPi</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
Case Name/ Affaire :	Prosecutor v. MUNYAGISHARI		Case Number/ Affaire n° : MICT-12-20
Date Created/ Daté du :	29 August 2014	Date transmitted/ Transmis le : 11 Sept. 2014	No. of Pages/ Nombre de pages : 7
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	MONITORING REPORT		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :	<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
	<input type="checkbox"/> Decision/ <i>Décision</i>	<input checked="" type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input checked="" type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*
JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014