

MICT-12-20
27-01-2015
(344 - 337)

344
ZS

UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 17 December 2014

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

SECOND MONITORING REPORT FOR NOVEMBER 2014

Monitors:

Ms. Jelena Gudurić
Prof. Zbigniew Lasocik
Ms. Xheni Shehu

Received by the Registry
Mechanism for International Criminal Tribunals
27/01/2015 08:55

A handwritten signature in black ink, appearing to read 'McCall Gutter', is written over the bottom portion of the rectangular stamp box.

CONTENTS

| | | |
|------|---|---|
| I. | INTRODUCTION..... | 3 |
| II. | DETAILED REPORT | 3 |
| | <i>A. Monitoring Mission from 10 to 13 November 2014</i> | 3 |
| | <u><i>Meeting with the Prison Director on 11 November 2014</i></u> | 3 |
| | <u><i>Meeting with Mr. Munyagishari on 13 November 2014</i></u> | 5 |
| | <u><i>Meeting with Lead Counsel for the Prosecution on 13 November 2014</i></u> | 6 |
| | <i>B. Monitoring Mission from 26 to 28 November 2014</i> | 6 |
| | <u><i>Meeting with Mr. Munyagishari on 26 November 2014</i></u> | 6 |
| | <u><i>Visit to Block 1 on 27 November 2014</i></u> | 7 |
| III. | CONCLUSION | 8 |

I. INTRODUCTION

1. This monitoring report pertains to the activities in the *Munyagishari* case before the Rwandan judiciary and the interactions of the monitors appointed by the Mechanism for International Criminal Tribunals with various stakeholders.
2. In the month of November 2014, the appointed monitors – Ms. Jelena Gudurić, Prof. Zbigniew Lasocik and Ms. Xheni Shehu (individually “Monitor”, collectively “Monitors”) each made one visit to Rwanda. This report pertains to Ms. Gudurić’s and Ms. Shehu’s mission (“Reporting Period”).¹
3. No court hearings were held in the Reporting Period. The next hearing is scheduled on 10 December 2014.
4. During the Reporting Period, the Monitors (with the assistance of the interpreter) met with Mr. Munyagishari, and visited the Special Enclosure of the Kigali Central Prison, also known as Block 1, where detainees in the referred cases are held (“Block 1” and “Prison”, respectively).
5. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 10 to 13 November 2014

Meeting with the Prison Director on 11 November 2014

6. Mr. Mugisha, new Prison Director, provided information concerning several detention-related issues.
7. Concerning the food available in Block 1, Mr. Mugisha explained that all meals are prepared at the Prison canteen, including breakfast, and brought to the detainees ready-made. He noted that the food regime at Block 1 differs from the one applicable in the remaining part of the Prison in that the detainees in Block 1 receive three meals a day, which are all prepared in line with the established menu. Due to safety reasons, the detainees of Block 1 are not allowed to share food with other detainees. While meals are provided at specific times, the Prison administration takes into account the court schedule. As an example, Mr. Mugisha noted that if a court hearing starts at 8 a.m., breakfast is ready and served at 6 a.m. so that enough time remains for the detainee to leave the Prison by 7:30 a.m.
8. In addition to food prepared at the Prison canteen, ailing detainees are permitted to have their visitors bring them cooked food. The Prison guards check such food to ensure no contraband is imported. In addition, the detainees (as well as their visitors) can buy fruit at the Prison shop. For security reasons, it is not permitted for visitors to bring fruit and produce; they are permitted to import only cooked food.

¹ Ms. Gudurić and Ms. Shehu prepared the part of this report corresponding to their respective mission. Prof. Lasocik filed a separate report on his mission. See *Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20, Monitoring Report November 2014, public, dated 19 November 2014, received by the Registry on 13 December 2014.

9. Mr. Mugisha noted that Block 1 detainees had been provided with the assistance for chores: another detainee had been appointed to perform these tasks. This arrangement was offered on an exceptional basis, and did not amount to an entitlement. However, according to Mr. Mugisha, Block 1 detainees used the assistant to send messages to the other part of the Prison. The Prison management then replaced the assistant and warned Block 1 detainees that the assistance will be abolished should they continue to send messages in this manner. As the second assistant was also caught with messages on three occasions, the Prison management decided to abolish the assistance.
10. Mr. Mugisha was pleased to inform the Monitor that an alarm has been installed within Block 1 which the detainees can now use to call the attention of guards 24 hours a day. He also reported that the Prison administration is in the process of replacing the lights and painting the premises of Block 1.
11. Mr. Mugisha noted that, in line with the regulations, all detainees are allowed to have visits by friends and family of up to 10 minutes, every Friday. The Prison houses more than 3,000 detainees and the time limitation is necessary to ensure all visitors can receive visits. Visits take place in the communal, open-air area of the Prison and occur at the same time and place for a number of detainees. One-on-one visits are allowed only with lawyers. Due to this rule, the detainees are also not allowed to have private conversations with the Priest. As an exception to the general 10-minute limit for visits, the detainees of Block 1 are allowed to have longer visits because there are only six of them and there is no time-pressure. In practice, their visits last no less than 30 minutes.
12. Turning to the procedure for the admission of visitors, Mr. Mugisha explained that each visitor is required to show an identification document at the entrance to the Prison, and is searched before entering the Prison compound. Only persons with a valid identification document are allowed entry. They then proceed to the reception point, where they are required to fill in the visitor form *i.e.* provide information on the detainee and their own personal information. The visitor then awaits until the detainee is informed of the visit and brought to the visiting area.
13. According to Mr. Mugisha, none of Mr. Munyagishari's visitors were denied entry to the Prison. He noted that a person would be denied entry only if not in possession of a valid identification document.
14. Mr. Mugisha explained that the Prison Administration is endeavouring to accommodate the Block 1 detainees as much as possible. For example, he noted that they have been facilitating visits of another Block 1 detainee (Mr. Uwinkindi) outside the visiting day, and that Mr. Mugisha himself had a number of meetings with him and his wife in order to assist them with a private matter.
15. With regard to medical care, Mr. Mugisha explained that nurses are present at the Prison infirmary every day. In cases of emergency, they can provide first aid. In addition, a medical doctor visits the Prison every week. The Rwandan Correctional Service signed a contract providing for weekly visits by a medical doctor. However, since the appointed doctor was unable to attend to the Prison since September 2014 due to a course he has been attending, the Prison administration is in the process of replacing him.

Meeting with Mr. Munyagishari on 13 November 2014

16. During the meeting, Mr. Munyagishari discussed only fair trial issues and made no observations concerning his conditions of detention.
17. Mr. Munyagishari handed a letter to the Monitor dated 13 November 2014, which summarised all issues that he discussed at the meeting. On 16 November 2014, Mr. Munyagishari sent another letter to the Monitor in which he indicated that he retracts the 13 November 2014 letter and that the 16 November 2014 letter, which includes additional information, replaces it.² Paragraphs 18 to 23 *infra* report both on issues discussed at the meeting and on additional information provided in the 16 November 2014 letter.
18. In Mr. Munyagishari's view, all assurances in the *Amicus Curiae* Brief of the Kigali Bar³ were presented only to mislead the International Criminal Tribunal for Rwanda ("ICTR") in its decision to transfer his case to Rwandan courts. He particularly pointed to paragraph 141 of the ICTR Decision,⁴ which relied on the submissions of both the Prosecution and the Kigali Bar Association that "the right to legal representation is guaranteed by Rwandan law and secured by a sufficiently funded legal aid system". He noted that none of this is true as his lawyers have not been provided with any funds since their appointment on 30 August 2013. Referring further to paragraphs 141, 143, 153, 167, and 170 of the ICTR Decision,⁵ Mr. Munyagishari added that the ICTR was similarly misled to rely on other assurances, and observed that these were given under oath.
19. Mr. Munyagishari also discussed the new contract that the Ministry of Justice proposed to his lawyers. Article 4 of this draft contract regulates Counsel's fees. It provides that irrespective of the number of lawyers in the case they shall receive a lump sum of 15 million Rwandan Francs ("RWF") for all stages of the proceedings. The draft contract specifies that 3.5 million RWF will be paid at the signature of the contract, 4 million RWF at the presentation of the copy of the judgement, 2.5 million RWF after the filing of the appeal, and 5 million RWF at the presentation of the copy of the appeals judgement.
20. Mr. Munyagishari is gravely concerned with Article 6 of the new proposed contract as it provides that the contract can be terminated if Counsel, in the context of legal services that he provides, makes remarks that are likely to discredit the Government of Rwanda or the Ministry of Justice, either before the press or during trial.
21. He added that the Prosecution supports the new contract. According to Mr. Munyagishari, at the hearing of 5 November 2014, Mr. Ruberwa, Counsel for the Prosecution, asked for the resignation of Counsel for the Defence if they do not accept the offered fees. Mr. Munyagishari expressed concern that, at the same hearing, the Chamber declared itself incompetent to deal with the issue of remuneration of Defence Counsel despite the supremacy of the judicial function. In his view, this is a violation

² The original letter is kept in the case correspondence file.

³ See *Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-I, *Amicus Curiae* Brief of the Kigali Bar, public, 23 January 2012.

⁴ See *Prosecutor v. Bernard Munyagishari*, Case No. ICTR-2005-89-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, public, 6 June 2012 ("ICTR Decision").

⁵ *Id.*, paras. 141, 143, 153, 167, and 170.

of Article 14, paragraph 4 of the Law No. 47/2013 of 16/06/2013 Relating [sic] Transfer of Cases to the Republic of Rwanda (“Transfer Law”) which provides that the accused person in the transferred case “shall be guaranteed [...] adequate time and facilities to prepare his/her defense”.

22. Mr. Munyagishari informed the Monitor that in October 2014 his lawyers met with representatives of the Ministry of Justice who delivered an ultimatum: the lawyers could either sign the contract or resign, as the Ministry cannot provide for more than 15 million RWF in legal aid funds per case.
23. Mr. Munyagishari concluded that since Rwandan courts are not protecting his right to legally aided representation, it is not premature to consider the lack of funds for the Defence as grounds for the revocation of the decision referring his case to Rwandan courts.

Meeting with Lead Counsel for the Prosecution on 13 November 2014

24. The meeting with Mr. Mutangana, Lead Counsel for the Prosecution, was brief and focused on the *Uwinkindi* case due to its recent courtroom activity. No matters concerning the *Munyagishari* case were discussed.

B. Monitoring Mission from 26 to 28 November 2014

Meeting with Mr. Munyagishari on 26 November 2014

25. Through his Lead Counsel, Mr. Munyagishari requested an urgent meeting with the Monitor concerning his conditions of detention. The meeting was held in a meeting room at the Prison. Mr. Munyagishari handed over two letters to the Monitor, which briefly summarised the issues he intended to raise at the meeting.⁶
26. Mr. Munyagishari reiterated that the conditions of detention in Block 1 have deteriorated upon recent changes in the management of the Prison. Noting that he had discussed many detention issues with the other Monitors, Mr. Munyagishari wished to raise only recent developments.
27. First, in Mr. Munyagishari’s view, the detainees of Block 1 are wrongfully being punished by the Prison authorities. Mr. Munyagishari explained that on 18 November 2014, the detainees of Block 1 had a meeting with the Prison Director and the General Director of Operations of the Rwandan Correctional Services, wherein the detainees were informed that they were under sanctions for engaging in prohibited conduct of exchanging letters with the other prisoners. Mr. Munyagishari claimed that the detainees had not engaged in any prohibited conduct. Further, by reference to Principle 30 of the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment,⁷ he observed that the Prison authorities are not

⁶ The original letters are kept in the case correspondence file.

⁷ Principle 30 of the “United Nations Body of Principles for the Protection of all persons under any Form of Detention or Imprisonment” adopted by General Assembly resolution 43/173 of 9 December 1998, provides: “1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly

- respecting the minimum standards of detention stipulated in this fundamental document and in Article 26 of the Transfer Law.⁸ Mr. Munyagishari reported that, on the same day, the detainees of Block 1 wrote a letter to the Prison Director seeking a meeting to clarify the issue and address other detention concerns. According to Mr. Munyagishari, the Prison Director had not responded as of 26 November 2014.
28. Additionally, Mr. Munyagishari reiterated his concern over the lack of lighting in Block 1, both in the bathroom where the showers are located and in the hallways. According to Mr. Munyagishari, the light bulbs in the bathroom have not been working since July 2014.
29. In Mr. Munyagishari's view, the handling of these issues and the continued deterioration of conditions of detention exemplify that "the system" is no longer committed to the guarantees made before the ICTR. He expressed his strong belief that the referral decisions and the Transfer Law no longer have any value as far as the conditions of detention are concerned.
30. The Monitor observed Mr. Munyagishari limping and enquired as to his health. Mr. Munyagishari informed that he twisted his ankle on 25 November 2014. He indicated that he had seen a nurse who had prescribed an oral medication. He expressed concern for not having been visited by a doctor and for lack of proper medical treatment, such as bandages and creams. According to Mr. Munyagishari, a doctor has not visited the facilities since June 2014.
31. With respect to his proceedings, Mr. Munyagishari only wished to note that he is very concerned with the uncertainty surrounding the status of his Counsel. In this connection, Mr. Munyagishari indicated that a provision in the current draft contract on remuneration of Counsel prohibits Counsel from criticising the Government of Rwanda. He believes this provision would endanger the independence of Counsel and represent a flagrant violation of fundamental constitutional principles, including freedom of expression. According to Mr. Munyagishari, because of provisions such as this, his Kigali Counsel are afraid to communicate with his counsel in Paris, Ms. Natacha Fauveau Ivanovic.
32. Last, Mr. Munyagishari indicated that he does not receive any minutes from the proceedings at the High Court. On 20 November 2014, Mr. Munyagishari's Counsel filed a request with the High Court of Rwanda requesting copies of the minutes of the proceedings. Mr. Munyagishari handed a copy of the letter to the Monitor.⁹

Visit to Block 1 on 27 November 2014

33. The Monitor visited Block 1 accompanied by the Deputy Director of the Prison, Ms.

published. 2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review."

⁸ Article 26 of the Transfer Law, in paragraph 1 provides: "Any person who is transferred to Rwanda by the ICTR, the Mechanism or any other State for trial shall be detained in accordance with the minimum standards of detention stipulated in the United Nations Body of Principles for the Protection of all persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December, 1998."

⁹ The copy is kept in the case correspondence file.

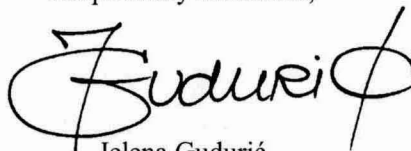
Olive Mukantabana.¹⁰ The Monitor observed that the facility was under construction, including the surrounding grounds. The premises appeared not to have been cleaned. The hallways and the bathroom with showers did not have any lighting. The Deputy Director stated that the light bulbs had not been replaced because of the construction.

III. CONCLUSION

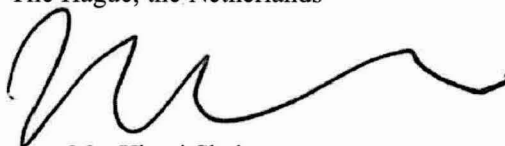
34. The Monitors remain available to provide any additional information, at the President's direction.

Dated this 17th day of December 2014

Respectfully submitted,



Jelena Gudurić
Monitor for the *Munyagishari* case
The Hague, the Netherlands



Ms. Xheni Shehu
Monitor for the *Munyagishari* case
Arusha, Tanzania

¹⁰ The Prison Director was unavailable for a meeting during the Monitor's mission.