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Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 8 May 2015

Original: English

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**PROSECUTOR**

v.

**BERNARD MUNYAGISHARI**

**PUBLIC**

**MONITORING REPORT FOR MARCH 2015**

**Monitor:**  
Ms. Stella Ndirangu

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A handwritten signature in black ink, appearing to read 'Ms. Stella Ndirangu', written over the printed text of the receipt box.

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## I. INTRODUCTION

1. Pursuant to the Terms of Reference for the Monitors, particularly part "C" of Annex II to the MOU between the Mechanism for International Criminal Tribunals ("MICT" or "Mechanism") and the Kenya Section of the International Commission of Jurists ("ICJ Kenya"), I respectfully submit this Report to the President of the MICT through the Registrar.
2. This Monitoring report pertains to the activities in the case of Bernard Munyagishari before the High Court of Rwanda ("Court") and of interactions of Ms. Stella Ndirangu, a Monitor appointed by the Mechanism ("Monitor"), with various stakeholders during the month of March ("the Reporting Period"). This is the first report by the newly appointed Monitors, appointed by the Mechanism in furtherance of the MOU between MICT and ICJ Kenya.<sup>1</sup>
3. During the Reporting Period, the Monitor undertook three missions to Rwanda on 8 to 12 March 2015, 15 to 19 March 2015 and 30 March to 2 April 2015 to monitor the Bernard Munyagishari case. In addition to the objective of monitoring the case, the 15 to 19 March mission doubled up as a monitoring mission for the Monitor as well as a formal introduction mission for all the new Monitors with key interlocutors in Kigali.<sup>2</sup>
4. During the reporting period, no Court hearings were held. The next pre-trial hearing was scheduled for 1 April 2015.<sup>3</sup>
5. During the Reporting Period, the Monitor met with the Prison Director and Mr. Munyagishari.
6. A detailed report on all activities during the Reporting Period is provided below.

## II. DETAILED REPORT

### A. *Monitoring Mission from 8 to 12 March 2015*

*Meeting with Prison Director, Mr. James Mugisha on 10 March 2015*

7. On 10 March 2015, the Monitor met with Mr. Mugisha, the Director of the Kigali Central Prison to formally introduce herself and to follow up on some of the concerns raised by Mr. Munyagishari and Mr. Uwinkindi during previous meetings.

<sup>1</sup> See *In the Matters of Jean Uwinkindi and Bernard Munyagishari*, Case Nos. MICT-12-25 and MICT-12-20, Order Appointing Monitors, 18 February 2015.

<sup>2</sup> The five monitors appointed on 18 February 2015, accompanied by an MICT staff member, participated in a joint introduction mission to Rwanda, where they were formally introduced to key stakeholders involved in the Jean Uwinkindi and Bernard Munyagishari cases.

<sup>3</sup> The Monitor attended the hearing with Judge Imani Aboud, the Monitor for the month of April as part of a practical introduction to the monitoring.

8. With respect to the concern raised relating to visitors not being allowed to access, the Prison Director indicated all visitors were allowed to access the accused during the designated visiting days and times.
9. Mr. Mugisha informed the Monitor that one of the common complaints raised by the accused persons with his office and with previous monitors was the availability of printing papers and functional printers. Mr. Mugisha informed the Monitor that supplies are availed to the accused in accordance with existing guidelines. According to the guidelines, the supplies are obtained from the Prosecutor General's office periodically. The Prison Director's office prepares a requisition which after he signs is submitted to the Prosecutor General's office. The supplies are supposed to last a specified time before new requisitions can be made and supplies replenished. The Prosecutor General's office had in the past questioned the use of the supplies, when they ran out before the projected timeline.
10. The Director further informed that his office assists the accused persons with the prison printing facilities in situations where the accused need to print urgently and they had depleted the supplies from the Prosecutor General's office.
11. In reference to the issue of the accused not being allowed to worship on Sunday's, the Director indicated that everyone was allowed to go to church on Sunday. The prison has no activities on Sunday other than worship. He explained that some of the detainees even participated in choirs.

***B. Monitoring Mission from 15 to 19 March 2015***

*Meeting with Mr. Munyagishari on 26 February 2015*

12. With the assistance of an interpreter, the Monitor met Mr. Munyagishari in the company of two other Monitors, Judge Imani Aboud and Ms. Elsy Sainna who were in Rwanda to attend the formal introduction mission. When introduced to the other monitors Mr. Munyagishari welcomed them.
13. Concerning his case, Mr. Munyagishari expressed disappointment with the response filed by the MICT Prosecutor to his request for the revocation of the order transferring him to Rwanda. He opined that the response filed by the MICT Prosecutor contained inaccurate information. He particularly singled out the affidavit sworn by the President of the Rwanda Bar Association,<sup>4</sup> attached to the Prosecution's application. According to Mr. Munyagishari, the President of the Bar had misrepresented on the status of his case in the affidavit. Mr. Munyagishari indicated he was concerned that the inclusion of

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<sup>4</sup> See Prosecutor's Opposition to Bernard Munyagishari Request for Revocation of a Referral Order, ("Prosecutors Opposition to Request for Referral") 17 March 2015, Annex A.

inaccurate information was deliberate, whose objective was to ensure that the MICT President did not understand the real situation of his case.

14. Explaining further, Mr. Munyagishari expressed that the affidavit sworn by the President of the Bar was meant to save a dire situation, giving the chronology of events Mr. Munyagishari informed that the revocation request had been filed on 3 March 2015, the MICT Prosecutor had responded on 17 March 2015 and attached the affidavit of the President of the Rwanda Bar Association dated 13 March 2015.
15. Mr. Munyagishari wondered why the President of the Bar had to wait until there was a revocation request before making his views known. He recalled that his Counsel had written to the President of the Bar on 6 October 2014 requesting his intervention in his ongoing trial and with the negotiations with the Ministry of Justice, having failed to reach an agreement. According to Mr. Munyagishari, the President of the Bar did not respond but after he became aware of the request for revocation filed with the MICT President, the President of the Bar took a position on the issue as documented in his affidavit of 13 March 2015.
16. Turning to addressing the information in the affidavit Mr. Munyagishari referring to the assertion that the clause infringing on the independence of Defence Counsel had been removed stressed that even if that “offensive” clause had been removed, the funds provided were not sufficient to conduct an effective defence.
17. Recalling submissions made at the ICTR during his transfer proceedings, Mr. Munyagishari indicated that the President of the Rwanda Bar Association had contributed to the decision for his transfer to Rwanda by providing inaccurate information to the ICTR at the time. Mr. Munyagishari opined that the President of the Bar was like a “politician not a lawyer and was serving the interests of the Government having served previously as a soldier”.
18. Mr. Munyagishari asserted that previous monitoring reports had reported on the numerous promises made by the Prosecution and the President of the Bar that he would have a fair trial in Rwanda and that legal aid was available and sufficient, yet his Counsel had represented him for more than eighteen months without pay.
19. In reference to the November 2014 monitoring report,<sup>5</sup> Mr. Munyagishari recalled how the Court had interrupted him asking him to focus his submission on the hearing as that was what concerned the Court, not the contract and payment of his Counsel. Mr. Munyagishari indicated that he was seriously concerned because the institution that was supposed to defend his rights ignored challenges faced by his Defence and progressed as if all was well.

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<sup>5</sup> See *The Prosecutor v. B. Munyagishari*, Case No. MICT-12-20, Public Monitoring Report for November 2014 (“November 2014 Monitoring Report”) para. 7 - 13.

20. Mr. Munyagishari also expressed concern that his counsel were growing weary and will soon not be able to continue representing him if the circumstances prevail, adding that he was fearful that if they remained consistent in pushing for the rights of the defence they would eventually be sent away by the Court as had happened in the Jean Uwinkindi case.
21. With regard to the last court session, Mr. Munyagishari expressed concern that he had been ordered to avail his final submissions on prejudicial or procedural objections yet the Defence had not even filed the final submissions on the indictment which according to him should precede the prejudicial objections.
22. Turning to the conditions of detention, Mr. Munyagishari requested the monitors to try and visit the prison where Sierra Leonean detainees were held to compare the conditions with the Central Kigali Prison.
23. Mr. Munyagishari confirmed that the food provided by the Prison was good and adequate. He complained about the cleaning of the special enclosure indicating that it was cleaned occasionally, particularly when the monitors were scheduled to visit the accused persons in Prison.
24. With regard to receiving visitors in prison Mr. Munyagishari expressed concern over the decision by the Prison authorities to deny entry to some of his visitors. He asserted that visitors who were genocide survivors were denied entry when they came to visit him.<sup>6</sup> Mr. Munyagishari also complained about the time given to spend with his visitors saying it was highly restricted as they were given five to ten minutes to meet and talk.
25. Further, Mr. Munyagishari indicated that the Prison Director did not assist with the printing of urgent documents even though he had promised to do so.

### ***C. Monitoring Mission from 30 March to 2 April 2015***

#### *Meeting with Mr. Munyagishari on 31 March 2015*

26. Mr. Munyagishari begun by enquiring whether the monitoring report for February 2015 had been submitted indicating he had not received a copy. The monitor informed Mr. Munyagishari that the report had been submitted and he would receive his copy soon. Mr. Munyagishari proceeded to inform the Monitor that he intended to respond to the filing by the MICT Prosecutor objecting to his request for revocation of the referral order and he needed the February 2015 monitoring report because there were components of the report which could assist the President of the Mechanism in assessing the actual status of his case.

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<sup>6</sup> For additional information see *The Prosecutor v. B. Munyagishari*, Case No. MICT-12-20, Public Monitoring Report for February 2015 ("February 2015 Monitoring Report) para. 76

27. Mr. Munyagishari wondered why the grounds used to oppose his request for revocation had been based on the experience of Counsel in the Bandora case<sup>7</sup> and not the Uwinkindi case. He added that until September 2014 Bandora had been paying his Counsel and therefore it was feasible for his lawyers to accept the 15 million RWF because they were almost completing the trial.<sup>8</sup> He further asserted that the 15 million RWF was used to complement the final activities of the Bandora defence since the trial was in its final stages.
28. Mr. Munyagishari asserted that the Government through the Ministry of Justice was determined to suppress the Defence by depriving them of their right to defend themselves. He informed that that all documents prepared by the transferred accused relating to their cases had to go through the Prison office, yet they had a printer in the special enclosure but they were not provided with cartridge or printing paper. He stressed that the arrangement of having to go through the prison office while printing ensured that all the defence strategies were known by the prison authorities and the Government.
29. Mr. Munyagishari was of the opinion the Government was ashamed to acknowledge that it was not capable of funding its legal aid and therefore had opted to offer Counsel little money. He asserted that the position taken by the Ministry of Justice regarding the contracts for defence Counsel was making the operating environment of defence counsel difficult and the intention was to force them to stop representing the accused.
30. Mr. Munyagishari informed the Monitor that he had sent a letter to the President of the Bar on 26 March 2015 emphasizing his confidence in his Counsel and their commitment to represent him. The letter also emphasized that the issue in contention was the facilitation of the Counsel and not their commitment as his Counsel.
31. Expressing concern over the decisions taken by the Court, Mr. Munyagishari questioned how a fair trial can be ensured if one of the parties is greatly disadvantaged, he revisited the issue of the Court's pronouncement that it was only concerned about the progress of the trial and not the facilitation of his Counsel.<sup>9</sup>
32. Mr. Munyagishari informed the Monitor of a letter written by co-Counsel John Hakizimana dated 25 March 2015 to the President of the Bar explaining the difficulties Counsel had faced in the prolonged discussions with the Ministry of Justice on their contact. The letter was categorical that Mr. Hakizimana would not continue appearing in Court until the pending issues were solved. In the letter Mr. Hakizimana had requested the President of the Bar to intervene fast so that Mr. Hakizimana and lead counsel, Mr. Niyibizi could continue assisting Mr. Munyagishari in the proceedings in

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<sup>7</sup> See Prosecutors Opposition to Request for Referral, para. 11.

<sup>8</sup> See February 2015 Monitoring Report, para. 66

<sup>9</sup> See para. 19 *supra*

fulfilment of their appointment. The Monitor was also informed that Mr. Niyibizi had written a similar letter to the President of the Bar on 20 March 2013.

33. Mr. Munyagishari further informed the Monitor that he had written to the President of the Bar on 26 March 2015, requesting him to stop presenting inaccurate information to the Mechanism, to reconsider his position as documented in his affidavit of 13 March 2015 as it encourages unfair administration of justice in Rwanda, and to declare Rwanda was not capable of delivering a fair trial to the accused.

### III. CONCLUSION

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

Dated this 8<sup>th</sup> day of May 2015

Respectfully submitted,



Stella Ndirangu  
Monitoring for the *Munyagishari* case  
Nairobi, Kenya