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Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 7 August 2015

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

JOINT MONITORING REPORT FOR MAY & JUNE 2015

Monitor:

Dr. Ken Nyaundi
Ms. Stella Ndirangu

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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"), we 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 Dr. Ken Nyaundi and Ms. Stella Ndirangu, Monitors appointed by the Mechanism ("Monitors"), with various stakeholders during the month of May and June 2015 ("the Reporting Period").
3. During the Reporting Period, the Monitors undertook three missions to Rwanda on 27 to 29 May 2015, 1 to 5 June 2015 and 8 to 9 June 2015 to monitor the Bernard Munyagishari case.
4. During the month of May 2015, there was no court appearance for the accused person. The report therefore communicates information on the meetings and discussions between Dr. Ken Nyaundi ("Monitor") and Mr. Munyagishari, the Prison Director, Defence Counsel Mr. John Hakizimana.
5. In June 2015, there were two Court hearings before the High Court on 3 June 2015 and 9 June 2015 and Stella Ndirangu ("Monitor") attended the hearings and held a meeting with Mr. Munyagishari at the Kigali Central Prison.
6. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 27 to 29 May 2015

Meeting with the Prison Director, Mr. James Mugisha on 28 May 2015

7. On 29 May 2015 at 10.00 am the Monitor met with Mr. Mugisha, the Director of the Kigali Central Prison to discuss any arising issues.
8. It was the view of the Director of Prisons that the prison living conditions continue to be fair and the atmosphere conducive to the accused person's preparations for their trial.
9. The Director informed the Monitor that he had not received any complaints from the accused persons that needed to be attended to and therefore he believed that they were satisfied with the services offered.

Meeting with Mr. Bernard Munyagishari on 28 May 2015

10. After holding a meeting with the Director of Prisons, the Monitor requested to meet with Mr. Munyagishari, the meeting took place in the presence of an interpreter.
11. Mr. Munyagishari stated that he looked forward to attending the Court proceedings on 3 June 2015. However, in the preceding week his Counsel had visited him and told him that the Minister of Justice had written to the Rwanda Bar Association (“RBA”) and informed them that Mr. Munyagishari had not requested for Legal Aid.
12. The Bar President then wrote to Mr. Munyagishari’s lawyers asking them to request him to apply for Legal Aid. Since then, he had lost contact with the lawyers. In the meantime, Mr. Munyagishari had written to the RBA inquiring why he should apply for Legal Aid and yet he has Counsel on record. In his view, what remains is payment for the lawyers, not a fresh application.
13. It is Mr. Munyagishari’s contention that before his transfer to Rwanda, the ICTR was paying his lawyer’s legal fees. The Mechanism is aware that he is indigent. The Mechanism and the Rwanda Government should permit him to continue in the present arrangement. He is happy with his present Counsel. They should be paid to continue providing him with legal representation. As of the time of the interview, Mr. Munyagishari considered himself as having no legal representation.
14. Mr. Munyagishari contended that he had received information from his Counsel that they would not continue representing him until they were fully paid for the services already offered. Unless he has legal representation on 3 June 2015, when the hearing resumes, he would not participate in the proceedings. The last adjournment had been given to allow the Ministry and his Counsel to negotiate on the payments.
15. Mr. Munyagishari asserted that the hearing scheduled for 3 June 2015, should be adjourned because no decision had been reached on the dispute on fees. It is his view that by refusing to pay his Counsel fees the Government of Rwanda was violating his right to representation. Before the cases were transferred to Kigali, the Government had given a commitment to pay for his legal representation. That commitment was now being abused and infringed.
16. In Mr. Munyagishari’s opinion, the Rwanda Bar is in joint and mutual understanding with the Government of Rwanda in the contravention of the commitment to guarantee legal representation. The Bar president has not been co-operative in the accused person’s efforts to settle the matter. He states that things may be better if the Bar was managing the Indigent Fund, which is now in the hands of the Ministry of Justice.

17. On the conditions of detention Mr. Munyagishari complained about the cleanliness of the Special Enclosure. He indicated that the cleaning of the Enclosure had deteriorated and the environment was dirty.
18. Another complaint that was communicated to the Monitor by both Mr. Munyagishari and Mr Uwinkindi was the limited time given for Sunday worship. They both asserted that the time is limited to a nominal and insignificant period. Sometimes, they are taken out for the service only to arrive and find it finalized.

Meeting with Mr. John Hakizimana on 28 May 2015

19. On the same day, the Monitor met with Mr. John Hakizimana, co-defence Counsel for Mr. Munyagishari. Mr. Hakizimana confirmed to the Monitor that they had received a letter from the Ministry of Justice dated 22 May 2015 stating that the Ministry would only pay a total sum of 15 Million RWF. The letter further stated that if they were unhappy with the offer, the Rwanda Bar Association would appoint different Counsel for Mr. Munyagishari. Counsel also informed the Monitor that on 25 May 2015, Defence Counsel had attended a meeting with the Ministry where no agreement was reached on the issue of their contract and their professional fees.
20. Counsel maintained that they will not accept the RWF 15 Million contract. Mr. Hakizimana informed the Monitor that in the meantime, they did not intend to attend the Court hearing scheduled for 3 June 2015, unless the outstanding matter on their contract was settled.

Meeting with the Prison Director, Mr. James Mugisha on 29 May 2015

21. On 29 May 2015, the Monitor held a meeting with the Director of Prison, Mr. James Mugisha at the Kigali Central Prison.
22. The Monitor invited Mr. Mugisha to respond to the three issues that had been raised by both Mr. Uwinkindi and Mr. Munyagishari. These were:
 - i. Curtailment of worship hours on Sunday
 - ii. The refusal to permit Mr. Gashabana, counsel for Mr. Uwinkindi to meet him.
 - iii. State of cleanliness of the Special Enclosure where the accused are detained.
23. In response to the first issue, Mr. Mugisha responded that Sunday worship is available to everyone. In fact, he said, the accused are allowed to attend church as soon as they request. He informed the Monitor that this particular complaint had not been brought to

his attention. Mr. Mugisha indicated to the Monitor that he would address the complaint.

24. On Mr. Gashabana's visits, Mr. Mugisha stated that there were no instructions barring the Lawyer from visiting his client. Indeed Mr. Gashabana comes often to visit other clients, other than Mr. Uwinkindi.
25. On the state of cleanliness of the Special Enclosure, the Director informed the Monitor that the cleaner who had been appointed to clean the premises had been replaced by another and he would consider having the previous cleaner return to his duties.

B. Monitoring Mission from 1 – 5 June 2015

High Court Hearing of 3 June 2015

26. The hearing was held before the full Chamber, in the presence of the Accused, Mr. Munyagishari and Mr. Bonaventure Ruberwa who appeared for the Prosecution. Defence Counsel were not in attendance.
27. The Court invited Mr. Munyagishari's comments on the absence of his Defence Counsel. Mr. Munyagishari submitted that he was anxious because he had no Counsel to assist him in Court.
28. The Court invited Mr. Munyagishari to explain if he knew why Defence Counsel were absent, to which he responded that he had no information.
29. The Court requested Mr. Munyagishari to indicate if he was ready to plead without his Counsel since Defence Counsel had not notified the Court about their intended absence.
30. Mr. Munyagishari informed the Court that on 25 May 2015, he had been informed that Defence Counsel were scheduled to meet the Minister of Justice but he had no information on the decisions reached at that meeting. Mr. Munyagishari then requested the Court to invite all concerned parties; the Minister of Justice, the Bar president and Defence Counsel to Court and explain why he was not assisted.
31. The Court informed Mr. Munyagishari that it had taken note that he was not represented but the Court wanted him to confirm if he was prepared to appear without his Counsel so that the hearing could proceed. Mr. Munyagishari submitted that he has a right to be assisted and he was not prepared to plead without assistance.
32. Having noted that this was the second hearing where Defence Counsel had not appeared, the Court invited the Prosecution to submit on the issue.

33. The Prosecution noted that at the previous hearing where Defence Counsel were also absent, they had sent a letter indicating that they would not appear in Court until an agreement was reached with the Ministry of Justice on their professional fees. During that hearing the Court had adjourned to allow for the negotiations to be concluded. Despite the time given, Defence Counsel were absent from the day's hearing. The Prosecutor submitted that this was a problem related to professionalism. Defence Counsel were not operating ethically because they had abandoned their client without informing the Court and requested the Court to sanction Defence Counsel for such behavior.
34. The Prosecution submitted that the impasse on the contract was occasioned by Defence Counsel refusing to accept the proposed 15 Million RWF lump sum payment offered by the Ministry of Justice. If Defence Counsel were not ready to accept the money offered they should let other Counsel who are ready to accept the terms represent the accused.
35. The Prosecution requested the Court to set an appropriate timeline by which by which problem a definitive decision should be made by the concerned parties on the representation of Mr. Munyagishari.
36. In addition Mr. Ruberwa submitted that on 25 May 2015 a meeting had been held between the Ministry of Justice, the RBA and Defence Counsel to discuss the pending issue of Defence fees. The minutes of the meeting indicate there was no agreement between the parties regarding the lawyers' fees. Counsel walked out of the meeting room when they could not agree. He further submitted that based on this meeting the Prosecution believed the Court should take a decision by setting a date requiring all competent organs to find a solution to the impasse by ordering the appointment of other Counsel to represent Mr. Munyagishari and this should be respected by all Parties.
37. At the invitation of the Court, Mr. Munyagishari responded by reiterating that he was unable to plead without Counsel. He also responded to the assertion by the Prosecution that Defence Counsel were unprofessional by requesting that the Prosecution withdraws that assertion because his Counsel were professional.
38. The Court invited Mr. Munyagishari to submit on whether the Court could conclude he was unrepresented since in the letter sent to communicate intent to be absent at the previous hearing, Counsel had indicated they would not appear in Court unless the issue of fees had been resolved.
39. Mr. Munyagishari submitted that he was not prepared to respond to the question and asked the Court to allow him to address those issues once he had legal representation. He reiterated that the Court should call all the concerned Parties to come and explain what the current position on the negotiations was.

40. The Court informed Mr. Munyagishari that every time he addressed the Court he was pleading, if his opinion he was not participating in the hearing because he was not assisted that was erroneous on his part. On Mr. Munyagishari's request that all the concerned Parties be summoned to come to Court, the Court indicated that Mr. Munyagishari was the only person appearing before them as an accused person and despite the need to be assisted, the Court could not summon people to Court if they are not accused persons.
41. The Court invited Mr. Munyagishari's comments in relation to the request by the Prosecution for competent organs to find Counsel for him because he is unassisted. Mr. Munyagishari indicated that he still trusts his Counsel.
42. The Court adjourned the hearing indicating it would deliberate on the issues submitted on and issue its decision on 9 June 2015.

Meeting with Mr. Munyagishari on 4 June 2015

43. With the assistance of an interpreter, the Monitor met Mr. Munyagishari at the Kigali Central Prison.
44. Mr. Munyagishari shared with the Monitor a letter he had written to the President of the Rwanda Bar Association dated 22 May 2015.
45. Turning to the 3 June 2015 hearing, Mr. Munyagishari opined that the National Prosecutor had taken up the role of speaking on behalf of the Ministry of Justice during the hearing. He made reference to the November monitoring report,¹ where the Prosecution had submitted in Court that defence Counsel should be dismissed comparing this to the submissions in the previous day's hearing.
46. Recalling the submission by the Prosecution during the hearing on 3 June 2015 that defence Counsel were not professional, Mr. Munyagishari observed that this was aimed at advancing the position of the Ministry of Justice which wants to dictate to accused person's advocates who are their puppets and who can accept the insufficient resources suggested by the Ministry.
47. In addition, Mr. Munyagishari asserted that the suggested advocates contracts would ensure Defence Counsel were not independent. He specifically referred to the contracts of Mr. Jean Uwinkindi's Counsel and the affidavit of Mr. Athanase Rutabingwa the

¹ See *The Prosecutor v. Bernard Munyagishari*, Case No. MICT – 12-20, Public Monitoring Report for November 2014 (“November 2014 Monitoring Report”) para 14.

President of the RBA to the Mechanism dated 13 March 2015 annexed to the filing by the Prosecution opposing his request for revocation of the referral order.²

48. Mr. Munyagishari observed that the Court's refusal to summon the all the Parties involved in the delay of his case to Court, on the basis that the issue of Defence Counsel's fees was an administrative one and that it could only summon an accused person, amounted to denying him justice, which was unfortunate for a tribunal with jurisdiction on international crimes and Article 150 (2) (3) and (4) of the Criminal Procedure Code on the respect of principles guiding a criminal fair trial had been disregarded.
49. Further, Mr. Munyagishari asserted it was a shame for a country like Rwanda which had accepted to govern within the limits of the Rule of Law, to be renegeing on the commitments it had made in Arusha during his transfer proceedings, particularly to ensure that he was accorded a fair trial and they were now bent on paralyzing his defence. The Government of Rwanda through the Ministry of Justice was disorganizing his trial so that he did not get a fair trial.
50. Mr. Munyagishari questioned why the High Court was not using its powers to stop the delays the Ministry of Justice was occasioning on his case. He asserted that the High Court pretends that the challenges posed by the contracting of his Defence Counsel is an administrative issue despite the impasse that was affecting the right to a fair trial. All these maneuvers from the Ministry were designed to delay his trial.
51. Mr. Munyagishari emphasized that he did not understand why the Court did not want to summon all the concerned Parties in his case because if it did, he might find an opportunity to get to the root of the challenges in his defence, by confronting all the concerned Parties on the promises they made in Arusha during the proceedings for his transfer.
52. Mr. Munyagishari opined that the RBA President has been dishonest and was not able to fulfil his duties since he is a puppet of the executive. He expounded further that all the promises made to the ICTR by the RBA to protect Defence Counsel were not being fulfilled, yet the transfer decision is very clear that the RBA has a duty to offer such protection.³
53. In Mr. Munyagishari's opinion, if the President of the Bar Association had played his role in the Jean Uwinkindi case he could have intervened in the High Court and

² See *The Prosecutor V. Bernard Munyagishari*, Case No. MICT -12-20, Prosecutor's Opposition to Bernard Munyagishari's Request for Revocation of a Referral Order ("Prosecutors Opposition to Request for Referral") 17 March 2015, Annex A.

³ *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, 6 June 2012 ("Munyagishari referral decision") para.167.

Supreme Court process when Mr. Uwinkindi's Counsel were treated unfairly but the RBA President had chosen to act as an accomplice of the Prosecution.

54. Mr. Munyagishari observed that if the RBA President performed the obligations expected of him accused persons would not experience the current challenges.
55. Emphasizing on the violation of his right to a fair and expeditious trial in Rwanda, Mr. Munyagishari noted that all the action by the Ministry of Justice and the RBA violate the promises made in Arusha during the transfer proceedings and the Rwanda Constitution especially Articles 18 and 19, as well as Articles 14.1, 14.3 (c), 14.3 (d), and 14.5 of the International Covenant on Civil and political Rights.
56. Explaining his previous assertion, Mr. Munyagishari noted that while appearing before the ICTR in the transfer proceedings, the Government had asserted that it had enough funds to pay Defence Counsel. In the February 2015 report, the Permanent Secretary in the Ministry of Justice claims the Government was ready to provide assistance in Court but the Ministry does not have unlimited funds for the trials.⁴ This development according to Mr. Munyagishari was a contradiction of promises made in Arusha.

C. Monitoring Mission from 8 to 9 June 2015

High Court Hearing of 9 June 2015.

57. The hearing was held before the full Chamber, in the presence of the Accused. Counsel for Mr. Munyagishari were absent. The Prosecution was represented by Mr. Bonaventure Ruberwa and Mr. Jean Bosco Mutangana.
58. The Monitor followed most of the proceedings without the assistance of the interpreter as the interpreter arrived when the session had progressed significantly. After the Court adjourned, the interpreter assisted the monitor to translate the abridged version of the written decision that was available in the Court file.
59. The Court delivered its decision where it confirmed that Mr. Munyagishari was not assisted by Defence Counsel at the hearing on 3 June 2015. The Court ordered the relevant authorities to appoint Defence Counsel for Mr. Munyagishari. The hearing was adjourned the hearing until 8 July 2015.
60. Mr. Munyagishari requested the Court to ensure that the record reflects that he intends to appeal the decision and that a French version of the decision be made available to him.

⁴ See *The Prosecutor v. Bernard Munyagishari*, Case No. MICT – 12-20, Public Monitoring Report for January 2015 (“January 2015 Monitoring Report”) para 7.

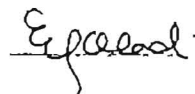
61. The Court informed Mr. Munyagishari that the record had taken note of his intention to appeal but no decision was given on the request for a French Version of the decision.

III. CONCLUSION

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

Dated this 7th day of August 2015

Respectfully submitted,



Ken Nyaundi

Monitoring for the *Munyagishari* case
Nairobi, Kenya



Stella Ndirangu

Monitoring for the *Munyagishari* case
Nairobi, Kenya