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Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 21 August 2015

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

MONITORING REPORT FOR JULY 2015

Monitor:
Ms. Elsy C. Sainna

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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 Elsy. C Sainna, Monitor appointed by the Mechanism ("Monitor") with various stakeholders during the month of July 2015 ("the Reporting Period").
3. During the Reporting Period, the Monitor undertook three missions to Rwanda on 7 to 10 July 2015, 14 to 16 July 2015 and 30 to 31 July 2015 to monitor the Bernard Munyagishari case.
4. The report contains information on the meetings and discussions held between the Monitor and Lead Prosecutor, Mr. Jean Bosco Mutangana Mr. Munyagishari, the Prison Director, Mr. James Mugisha, the newly assigned Defence Counsel for the accused person, Mr. Bruce Bitokwa and Ms. Jean d'Arc Umutesi ("New Defence Counsel"), Mrs. Isabelle Kalihangabo, the Permanent Secretary Ministry of Justice and the President of the Rwanda Bar Association Mr. Jean Vianney
5. In July 2015, there were four Court hearings held before the High Court, on the 8 and 15 July, 28th and 31st July 2015 respectively. The Monitor attended three hearings namely 8th July, 15th and 31st but did not attend the 28 July 2015, hearing following failure to receive notification regarding the 28th July 2015 scheduled hearing. However, the proceedings of the 28th July hearings are captured in the report as obtained from the court transcripts and further supplemented by subsequent discussions between the Monitor, the Accused and relevant stakeholders.
6. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring mission held on 8 – 9 July 2015

1. High Court hearing on 8th July 2015

7. The Hearing was held before Presiding Judge Alice Ngendakuriyo, Judge Fidele Nsanzimana and Judge Timothee Kanyegezi. The Accused was present in Court and the Prosecution was represented by Mr. Jean Bosco Mutagana and Mr. Bonaventure Ruberwa. Defence Counsel were absent.
8. The Court asked the Accused to confirm whether he would appear unrepresented. The Accused responded that he had a right to a defence. The Court then reminded the Accused that in its last decision, it had ruled that a competent authority would appoint defense lawyers to represent him.
9. At the invitation of the court, the Prosecution submitted that the Court following court's decision rendered on the 9th June 2015, letters had been sent to the Bar Association requesting a that a lawyer be assigned for the Accused and that on the 28th June 2015, the Bar Association assigned Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi to replace the Accused former defence Counsel.
10. The Prosecution further stated that on the 2nd July 2015 the New Defence Counsel wrote to the Bar association indicating that they had been unable take instructions from the Accused and therefore were not in a position to assist or represent him. They indicated that the Accused had informed them that he already had legal representation and his team included Counsel Jean Baptiste Niyibizi.
11. The Prosecution maintained that even if the Accused had a right to be assisted by Counsel, he had no right to refuse or decline lawyers assigned to him because he was considered indigent.

12. The prosecution submitted that since the Accused refused to accept lawyers assigned by the Bar association, he had waived his right to legal representation. It was therefore in the interest of justice that the court should not adjourn the matter and proceed on the basis that Counsel Bruce Bitokwa and Jean d'Arc Umutesi be allowed to assist the accused. This would serve to advance the interest of justice
13. In response to the Accused request to adjourn the hearing on basis of his lodged appeal regarding 9th June 2015 decision, the Prosecution submitted that could not stop the hearing and submitted that the matter should proceed as defence lawyers were assigned by the bar association being the competent authority.
14. At the invitation of the court, the Accused asserted that the Prosecution was frustrating his case. He reiterated that he had already informed the Court that he had appealed the decision rendered on the 9th June 2015 and as far has he was concerned, the contractual issues between his former Defence Counsel and the Ministry of justice remained outstanding.
15. He confirmed that indeed the newly assigned counsel had visited him in prison and after initial discussions with them, they concluded that they would wait until his appeal was finalized.
16. In relation to the issue of his indigent status, the Accused stated that this did not mean that he had no right to choose or refuse Counsel as provided by Article 39 the Rwandan Criminal Procedure.
17. Having heard from all the Parties the Court decided that it could not rule on the question of representation without hearing the views of the Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi, particularly on whether they were ready to represent the Accused.
18. The Court Ordered that the New Defence Counsel should appear in court on the 15 July 2015 when the hearing would resume.

2. Meeting with the Lead Prosecutor, Mr. Jean Bosco Mutangana on 8th July 2015

19. The monitor met with Jean Bosco Mutangana at his office where he stated that Prosecution was keen to see the matter proceed and wondered why an indigent accused would not only refuse to sign the legal aid form but also not accept the newly assigned defence lawyers.
20. He observed that the stalemate on the question whether the accused persons would either accept the newly assigned counsels or decline was significant and extremely crucial at this stages of proceedings as in the present case, no plea has been entered.
21. Mr. Mutangana indicated that from the Prosecutions' perspective, the need for defence counsel for purposes of ensuring fair trial and equality of arms in the trial process was increasingly proving necessary.

3. Meeting with Bernard Munyagishari on 9th July 2015

22. The Monitor met with the Accused at the prison in the presence of an interpreter.
23. At the meeting, Mr. Munyagishari expressed concerned at the composition of the Bench handling his matter and was apprehensive about presiding Judge. He raised instances where the previous bench assigned to his matter had ruled that court proceedings should be translated into French and in particular, that on the 19th march 2014, the then Presiding Judge ruled that he should be allowed to plead in French.
24. In Mr. Munyagishari's view, the question of translated proceedings directly touched on his fair trial rights and to date this issue has still not been addressed.
25. Mr. Munyagishari observed that the previous bench conducted itself more proactively; they all asked probing questions. In the current bench, only the presiding judge posed questions.

26. With respect to the question of his legal representation, Mr. Munyagishari explained that he had appealed the decision of the court rendered on the 9th June 2015. Immediately after the hearing, he drafted the appeal without legal assistance and had wanted the issue addressed at the 8th July hearing but the presiding judge dismissed his question and instead indicated that the hearing could proceed irrespective of whether he was represented.
27. Mr. Munyagishari reiterated he did not find the Prosecutions submissions regarding the question of his legal representation and New Defence Counsel unacceptable, thus his vehement submissions in court that he as an indigent, he had a right to either refuse or choose counsel of his choice. Mr. Munyagishari expressed concern that he did not agree with the decision of 9th June was because it touched on the contractual dispute between his former counsel and Ministry of Justice, an issue he raised at the 3rd June 2015 hearing.
28. Mr. Munyagishari wondered why the court would summon the New Defence Counsel without also inviting other parties namely Ministry of Justice, his former counsel and the Bar association. The Accused found the courts response indicated that the contractual dispute between his former assigned counsel and the Bar association was an administrative matter puzzling.
29. Mr. Munyagishari remained adamant that if the New Defence Counsel appeared in court, he would not accept them for two reasons: his pending appeal and the fact that the New Defence Counsel had written to the Bar association indicating that they would not be able to represent him until his appeal was resolved¹
30. Mr. Munyagishari indicated that pursuant to Article 18 of the Transfer Law, the provision allowed him to appeal a decision on a question of law and that although he had sent notification of his intention to appeal to the Supreme Court, and was still awaiting feedback on his request for translated court proceedings which would enable him prepare a substantive appeal. To date, he had only managed to prepare summary of

¹ This is in reference to letter dated 2nd July 2015 addressed to the Rwanda Bar Association and copied to the Accused, Prosecution and Defense

facts yet as far as he was concerned and as per Article 180 of the Criminal Procedure Code, he could stay the proceedings at the High Court until his appeal was heard and determined

31. In response to the Prosecution's question posed as to why he had not signed the legal aid form, he indicated that by assigning him a defence Counsel, the Bar association recognized he was an indigent client and he should therefore not formally sign the forms. In any case, compared to the Uwinkindi case, the Accused therein did not sign any legal aid assistance form. The last correspondence received from the Bar association was dated 3rd July 2015 in which he noted the content of the letters with reservation and indicated that he had a pending appeal. This was in spite of a further letter sent to the Bar Association dated 19th June 2015 in which he requested the president of the bar association not to assign him new counsel which instead went

B. Monitoring Mission from 15th – 16th July 2015

1. High Court Hearing of 15th July 2015

32. The Hearing was held before Presiding Judge Alice Ngendakuriyo, Judge Fidele Nsanzimana and Judge Timothee Kanyegeri. The Accused was present in court and Prosecution was represented by Counsel Jean Bosco Mutangana. The Newly Defence Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi were also present in court.
33. The Court in summary stated that at the 8th July 2015 hearing it had adjourned, so that the New Defence Counsel could explain whether they were willing to represent the Accused
34. The Accused immediately raised an objection and asked that the hearing be adjourned and stated that as far as he was concerned, he had no legal representation. At this point, he Court asked the Accused whether he had lawyers that he could pay but the Accused responded by stating that he wished to remind the court again that he had lodged an appeal regarding the same issue.

35. The Presiding Judge ruled that the appeal would not suspend hearings at the High Court and again asked the Accused if he was going to represent himself and if not, the court would acknowledge the lawyers assigned by the Bar association
36. The Accused responded by stating the decision of the court regarding the question of his representation was the subject matter of his appeal thus at this juncture, the Accused requested the Presiding Judge to recuse herself and that if the hearing proceeded, he would consider the hearing a hostility.
37. At the invitation of the Court, the Prosecution responded by submitting that the Accused was merely applying delaying tactics as evidenced by his present oral request for presiding judge's recusal and said that the Accused's motives were not genuine but simply a strategy to delay the proceedings. The Prosecution further argued that the Accused had not provided reasons for requesting the presiding judge's recusal which as a matter of procedure, was required in writing.
38. The Prosecution further submitted that the hearing should therefore continue until the Accused brings the request in writing. The prosecution further submitted that this was not the first time the accused had made such a recusal request and thus Prosecution was ready to hear from the New Defence Counsel.
39. Having heard from both parties, the Court ruled and that the procedure required that the hearing be suspended until recusal request was decided by the court. In that regard, the court asked the Accused to put his recusal request in writing and file on 16th July by 2pm. Further hearing dates would be communicated. The Accused then refused to sign the court proceedings and the court noted as much.

2. Meeting with Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi on 15th July 2015

40. The Monitor met with the newly assigned Defence Counsel at 3pm in the presence of an interpreter at law offices of Counsel Bruce Bitokwa.

41. The counsels confirmed that as members of the Rwanda Bar association, they were professionally obligated to assist indigent accused persons. As such by a letter dated 29th June 2015, they were appointed by the association to represent the Accused, Bernard Munyangishari.
42. Furthermore, the president of the bar association had asked them to meet the Accused even before the contractual issues between the Ministry of Justice and Bar association were either settled or finalized
43. On 30th June 2015, both counsels met with the accused in prison and during the discussions Mr. Munyangishari informed them that he had his own lawyers with whom he had no problem with. He also indicated that he had lodged an appeal regarding the decision of the court to appoint/ assign him new counsel. He therefore asked them not to appear on record as his defence counsel until his appeal was heard and determined.
44. After the meeting with the accused and on the 2nd July 2015, Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi submitted a report to the Bar association in which they indicated that they were unable to begin contractual negotiations because the accused did not want them as defence counsel.
45. Shortly after the 8th July hearing, they were informed that the court had summoned them to explain whether they would represent the Accused. Being officers of the court, they felt obligated to honour the summons. Both Counsel expressed the view that as a matter of professional ethics, they were not in a position to appear in a matter where a client did not recognize them as counsel.
46. Counsel indicated that by attending the hearing on 15th July, they had hoped to clarify the contents of the report they had submitted to the bar association but the accused raised a separate objection and did not therefore get an opportunity to explain themselves in court.
47. On the matter of legally representing the Accused, both Counsel retained the position that as members of the bar association, they were professionally obligated to represent

an indigent accused and would be ready to proceed and willing in representing Mr. Munyangishari provided the accused was agreeable.

3. Meeting with Mrs. Isabelle Kalihangabo Permanent Secretary Ministry of Justice on 16th July 2015

48. The monitor met Mrs. Kalihangabo at 10.00am in her office in the presence of an interpreter.
49. Mrs. Kalihangabo confirmed that the Ministry had recently signed a Memorandum of Understanding (MOU) with the Rwanda Bar Association in which the Bar association' terms of reference included the mandate to appoint legal counsel for indigent accused persons.
50. This was a departure from previous practice where the Ministry of Justice had directly contracted legal counsel. The law and Ministry policy required that:
- i. an indigent persons demonstrates inability to engage counsel
 - ii. subsequently filled a legal aid assistance form
51. Mrs. Kalihangabo further confirmed that the Ministry had set aside 15 Million RWF to cater for the transfer cases of which the amount was exclusive of tax and only covered in country witnesses
52. Mrs. Kalihangabo expressed the view that in Uwinkindi case, counsel needed to abide by court decision which had provided the requisite guidelines on the question of legal representation.
53. Mrs. Kalihangabo further confirmed that the allocated legal fees would be directed to Bar association tasked with the responsibility to handle contractual issues.

4. Meeting with Bernard Munyagishari on 16th July 2015

54. The monitor met with the Accused at the prison in the presence of an interpreter.
55. Mr. Munyagishari confirmed that he had prepared and submitted his written request for presiding Judge's recusal as required by court but wondered why the Prosecution would insist that his request should be in writing yet he was self-representing.
56. In the discussions, Mr. Munyagishari stated that he felt incapacitated and unable to adequately prepare for his appeal because he was unable not able to reach his former Counsel Mr Jean Baptiste Niyibizi and co-counsel Mr. John Hakizimana. He expressed his desire to either speak with them or is permitted at the very least to communicate with his former counsel Natasha to assist him in drafting the court documents for his appeal and any other related court matters.
57. Mr. Munyagishari indicated that on the 10th July 2015, Counsel John Hakizimana come to prison but he was not allowed to see him. Yet on 13th July 2015, the New Defence Counsel Bruce Bikotwa were allowed to see him despite expressly stating that he did not acknowledge them as his defence counsel. Thus, by denying him access to a lawyer of his choice, it clearly hindered his ability to prepare for defence.
58. On inquiring with Mr. Munyagishari further on the reasons why he refused to sign court transcripts at the 15th July hearing, he explained that this was because the names of the newly assigned counsel were contained in the transcript which in his interpretation indicated that he had been represented yet he had vehemently protested that they were not his legal representatives. He explained that in the past, he has signed the court transcripts for the purposes of demonstrating that he was present in court but did not necessarily agree with its content. Only until the transcripts would be translated into French would he then sign to confirm that he understood the proceedings.
59. Mr. Munyagishari expressed concern that the New Defence Counsel were ready to accept their appointment just to demonstrate to the international community that the Accused and former counsel were the trouble makers and the reason for the delay in

proceedings moving forward. He was clear that the question on the cost of his legal representation should not affect his case as the Rwandese authority had made representations to the Mechanism that it would provide adequate legal aid.

60. With regard to detention conditions, Mr. Munyagishari raised the concern and wondered why he was prevented from contacting his former defence counsel Mr. Munyagishari was however expressed his satisfaction with the quality of food provided by the prison facilities.

5. Meeting with the Prison Director, James Mugisha on 16th July 2015

61. At the meeting held with Mr. Mugisha, the Monitor raised Mr. Munyagishari's concern regarding denial of access or contact his former Counsel Mr. Jean Baptiste Niyibizi and co-counsel Mr. John Hakizimana

62. Mr. Mugisha responded that the Accused had refused to accept and recognized his New Defence Team recently assigned yet, the prison procedure required that only assigned lawyers were permitted access to accused persons. He reiterated that that as per procedure and upon notification from the Prosecution and the Judiciary, the prison was obligated to the register the names of Accused Defence lawyers

63. Because Counsel Mr. Jean Baptiste Niyibizi and Co-counsel Mr. John Hakizimana were not representation Mr. Munyagishari, the Prison facilities could not grant them access to meet with Mr. Munyagishari.

6. Meeting with the President of the Rwanda Bar Association Jean Vianney on 16th July 2015

64. At 5pm, the Monitor met with the newly appointed Rwanda Bar association president at the association officers in the presence of an Interpreter.

65. Mr. Vianney explained that since he took over the presidency in July 2015, the relationship between the bar association and the Ministry of Justice remains cordial and

of the view that rejection by both accused persons of newly assigned counsel was highly regrettable.

66. Mr. Vianney stated that the Bar association is mandated to examine requests from the Ministry of Justice in relation to representation of indigent accused persons. Furthermore, the Rwandan constitution provides that every person has a right to be assisted by Counsel. Bar associations thus, both Mr. Uwinkindi and Mr. Munyangishari were indigent accused persons. However, if they opted to choose their own counsel, they needed to demonstrate that they had the financial means to pay for lawyers of their choice and would be conferred on them as a matter of right.
67. Mr. Vianney clarified that according to the current law that regulated legal aid, the remuneration order provided for a minimum of 500,000 and maximum of 15 RWF. Additionally, the regulations provided that lawyers could discuss with client on mode of payments. Thus, the association is of the view that the accused persons seem to be under the false impression that the lawyers should be paid more money in excess of what is already provided for by law.
68. Mr. Vianney explained that new counsel have been assigned to both cases on pro bono basis based on the Memorandum of Understanding between the Ministry of Justice and the Bar association. The Ministry of Justice would pay a maximum of 15million RWF which would cover the entire trial process from hearing to appeal.
69. Mr. Vianney stated that the Bar association, as a matter of principle, assigned Defence lawyers to the accused persons on the basis of their indigent status and questioned why the accused persons would raise the issue of appointed counsel's competence by terming them inexperienced and incompetent. The associations reading of the situation is that, all the factors considered, the accused persons are simply delaying the trial process. The role and mandate of the association remained clear, to assist in the administration of justice and remain true to principle that an accused person must be represented; all their internal process have been conducted within the confines of the law. Thus the position of the Bar association was that matters should proceed irrespective of whether the lawyers in the cases of the accused change.

70. The President confirmed that, the contracts between the newly assigned lawyers had been concluded but the accused persons had refused to accept or acknowledge these lawyers.

C. Monitoring Mission from 30th - 31st July 2015

1. High Court Hearing on 28th July 2015 - Record of proceedings as obtained from the translated script

71. Although the Monitor was not present in court at the hearing, details of proceedings as obtained from the translated court transcripts were as follows:

72. The Hearing was held before a full bench which consisted of Presiding Judge Alice Ngendakuriyo, Judge Fidele Nsanzimana and Judge Timothee Kanyegeri. The Accused was present in court and assisted by Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi, Prosecution was represented by Counsel Mr. Bonaventure Ruberwa

73. The Court made reference to letters it had been received that morning at 8.00am and stated that it would not tolerate such gestures in future. Any letters would need to be filed at least a day before the hearing.

74. The Court stated that when the matter was last in court, they had expected the newly assigned counsel to explain why they have been unable to represent Mr. Munyangishari. Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi addressed the court that they had been present in court on the 15th July and intended to provide their perspective but were unable to but confirmed that they had indeed been appointed on the 26th June 2015 by the President of the Bar association to represent the Accused.

75. They proceeded to make arrangements to visit the accused in prison but on arrival, the Accused categorically maintained that he had his own defence counsel with whom he had no problem with and he did not want them to be represent him. Counsel Bruce Bikotwa submitted that the accused informed them that he had already appealed the decision of the court at the Supreme Court hence why they were not present in Court on the 8th July 2015

76. The Court then asked both counsel's whether they accepted the assignment or would await the decision of the Supreme Court. Counsel responded by indicated that since they were appointed by the Bar association, they would not decline to take up the assignment to represent the Accused, however they would nonetheless abide by the decision of the court.
77. The court ruled that the hearing would proceed because interlocutory appeals are only permissible when lodged contemporaneously with the appeal.
78. The court then asked the New Defence Counsel how much time they would require prepare for the defence and counsel upon further consultation requested for five months.
79. Mr. Munyagishari was granted opportunity to address the court and stated that the delay in filing letters was not his fault, the prison service should have delivered his letter in good time.
80. He reminded the court that as far as he was concerned, he was not assisted by Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi; his defence team were Jean Baptiste Niyibizi, and Co-counsel John Hakizimana and Counsel Natasha. He indicated that he would not signed the court transcripts as a protest to demonstrate that he is no represented; also he requested the court to separate the question of his representation by newly assigned counsel from that of his former Counsel. He further asserted that that the question of his legal representation was before the Supreme Court and he had recently been notified that hearing would be on 28th September, 2015
81. Mr. Munyagishari asked that the proceedings should be stayed until the Supreme Court issued a decision on the appeal. He stated that on numerous occasions, he had requested that Counsel Natasha be accredited by the Bar association so that she could assist him but the Bar association has, to date, not responded to his requests.

82. He further asserted that his file should not be handed over to Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi and submitted that it had taken him time to build trust with former counsel and also counsel Natasha.
83. At the invitation of the court, the Prosecution responded that the New Defence Counsel had been selected because they were members of the Bar association. Their appointment was on the basis of their professional competence. Therefore, the question of accused's appeal, did not impact on the hearing from proceedings. Even though the Accused was still adamant that he was represented by his former counsel, the Counsel themselves walked out of the case because they could not reach an agreement on legal fees regarding his presentation with the Ministry of Justice.
84. The Prosecution further submitted that if the Accused had means to pay, then he should advise court and would be allowed to retain them. As long as he was considered an indigent, the Accused did not have a choice but to accept new defence counsel. Even if he declined their assistance, in the interest of justice, the lawyers were duty bound to assist him despite. The Prosecution requested that former counsel formally hand over the accused's file to Counsel Bruce Bikotwa and Jeanne d'Arc Umutesi.
85. At the invitation of the court, Mr. Munyagishari responded that on 1st April 2015, the Court ruled that his former defense counsel should continue negotiations with the Ministry of Justice and as of 3rd June 2015, Prosecution counsel indicated that former lawyers had not reached an agreement. Hence without granting his former defence counsel and opportunity to explain themselves, the court proceeded to rule unilaterally, yet the government of Rwanda had given guarantees to the Mechanism that his defence lawyers would be paid to represent him.
86. The court then sought the views of Counsel Bruce Bitokwa and Jeanne d'Arc Umutesi regarding declined representation by the accused. Counsel responded that they stood by their earlier submissions and requested court to rule on the matter.
87. Having heard all the parties, the court indicated that it would issue its ruling on 31st July 2015.

2. High Court delivery of Ruling on 31st July 2015

88. The monitor and the interpreter were present in court.
89. There was a full bench composed of Presiding Judge Alice Ngendakuriyo, Judge Fidele Nsanzimana and Judge Timothee Kanyegeri. The Accused was present in court but the Prosecution and Counsel Bruce Bikotwa and Jeanne d’Arc Umutesi were absent.
90. The court recalled the Prosecution’s submissions that assigned Counsel should be retained even if the Accused was not willing to work with them. The New Defence Counsel confirmed that the Accused did not want them to represent him.
91. The court recalled that on the 5th May 2015 Counsel Hakizimana had written to the Bar association that no funds had been provided to defend the Accused and at the time, no agreement had been reached between the former assigned counsel and the Ministry of Justice. Despite this, the court gave the defence lawyers time to work out the contractual issues and on the 3rd June 2015, the hearing resumed
92. At the hearing on the 3rd June, the defence counsel were not present in court and they did not provide a reason and as a result, the court proceeded to issue ruling on 9th June 2015 that a competent organ should assign counsel to represent the Accused.
93. The court further recalled that on the 26th June 2015, the Bar association assigned Counsel Bruce Bikotwa and Jeanne d’Arc Umutesi to represent the accused because the court was of the view that the accused had to be represented and provided with means to prepare his defence as provided for under articles 18 and 19 of the Rwandan Constitution. The court reasoned that this would also serve the interest of justice, since the parties would enjoy equal rights. Thus the Court found that the Accused was represented despite the fact that he did not accept the New Defence Counsel.
94. The court reasons for arriving at its decision were as follows:
- i. The Accused had stated that he could not appear in court without defence counsel

- ii. That he had not proved that he could pay lawyers of his choice
- iii. Even if he did not want the assigned counsel, court was of the view that the assigned lawyers are professional and experienced to advance justice, In that respect Counsels Bruce Bikotwa and Jeanne d'Arc Umutesi would assist the Accused

95. With respect to request for time to prepare defense and assist the Accused, the court granted the New Defence Counsel 3 three (3) instead of five (5) and the next hearing would resume on the 3rd November 2015

96. Mr. Munyagishari drew the attention of the court by raising his hands but the court reiterated that this was not a hearing but merely a day to issue its ruling. However, at the invitation of the Court, Mr. Munyagishari stated the ruling of the court did not surprise him, that he had the right to either accept or reject it and notified the court of his intention to appeal the ruling.

3. Meeting with Bernard Munyagishari on 31st July 2015

97. The monitor met with the Accused at the prison in the presence of an interpreter to obtain perspectives on the 31st July court ruling.

98. Mr. Munyagishari was deeply distressed and asked the Monitor why had not been present at the 28th July hearing yet he passed on the information that a further hearing had been scheduled for the 28th July 2015.

99. The Monitor assured Mr. Munyagishari that this information did not reach the Monitor hence why was not present in court on 28th July 2015 The Monitor further assured Mr. Munyagishari that the President of the Mechanism had been notified of the situation The Monitor also confirmed receipt of Mr. Munyagishari letter dated 29th July 2015.

100. Mr. Munyagishari expressed concern that the decision rendered today heavily relied on the arguments posed by the Prosecution. In any event, Mr. Munyagishari indicated that he had expected the court to instead dwell on the motion he had filed on the 24th

July 2015 following the decision that was delivered on the 22nd July 2015 regarding recusal of Presiding Judge

101. Mr. Munyangishari indicated that he received the hearing notice on the 23rd July regarding a further hearing that would take place on the 28th July 2015 .He was served by the court clerk and the lawyers assigned to his case were also asked to attend the hearing.

102. He immediately filed an objection on the basis that the matter of his legal representation was subject to an appeal. At the 28th July 2015 hearing, Mr.Munyangishari stated that when the he had attempted to immediately raise his hand before the matter proceed, he was ignored and instead, the court proceeded to address itself on why it was starting late and apologized that had urgent matters to attend to

103. Counsels Bruce Bikotwa and Jeanne d'Arc Umutesi were also present in court and the Presiding Judge said would listen to him after the Prosecution and New Defence Counsel had made their submissions. At this point, he raised a further objection because he wanted to demonstrate that he was not being given an opportunity to be heard. He felt he was being denied justice because the court had failed to give equal opportunity to his former counsel to also explain themselves as to why they had been unable to represent him and was concerned at the differential treatment. Mr. Munyangishari explained this in a letter dated 29th July 2015 but the court responded by stating that that this was an administrative matter.

104. He wondered why the newly assigned counsel have now changed approach and proceeded to ask for 5 months to prepare his defence yet they had indicated earlier that they would not represent the accused without his prior consent or co-operation.

105. Mr. Munyangishari discussed with the monitor that at the 28th July 2015 hearing, he raised the following objections in court:

- i. That he would not append his signature near the signatures of the New Defence Counsel as he did not recognize them as his lawyers
- ii. That he wanted the court transcripts to be translated into French being a language he understood

- iii. That he asked the court to instruct the Bar association to finalize accreditation of his former ICTR lawyer Natasha who would form part of his defence team
- iv. That he would prefer to consult with Counsel Natasha because she has in-depth knowledge of his case as was involved right from the beginning

106. Mr. Munyagishari wondered why the court would ground its decision on Article 18 and 19 yet but among the guarantees of fair trial standards included the legal representation which to date still remains unsettled. He still maintains that the Presiding Judge is still hostile because she had not acted on his request for translated court transcripts despite his written requests to the High Court President.

107. Mr. Munyagishari reiterated the concerns raised with the Monitor's at the 16th July visit regarding his inability to prepare for his defense. With regard to prison conditions, Mr. Munyagishari remained concerned that he is still denied access to his former defense Counsel Jean Hakizimana and that on the 30th July 2015, Counsel was refused to see the Accused. This marked the third time the counsel had been denied access to speak with the accused yet he would have liked to discuss the question or upcoming Supreme Court appeal.

III. CONCLUSION

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

Dated this 21th day of August 2015

Respectfully submitted,

//Elsy C. Sainna//

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Monitoring for the *Munyagishari* case
Nairobi, Kenya