

MICT-12-25
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UNITED
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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: August 31, 2014

Original: English

Before:

Judge Theodor Meron,
MICT President

Registrar:

Mr John Hocking

Monitor:

Zbigniew Lasocik, prof.

PROSECUTOR

v.

JEAN UWINKINDI

MONITORING REPORT
JULY 2014

PUBLIC

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INTRODUCTION

1. Pursuant to the Terms of Reference for the Monitors, particularly part "C" of the Annex II to the MOU between MICT and ISLP (Europe), I respectfully submit this Report to the President of the MICT through the Registrar.
2. This Monitoring Report pertains to the activities in the *Uwinkindi* case before the Judiciary in the Republic of Rwanda and the interactions of the Monitor of the Mechanism for International Criminal Tribunals (MICT) with various stakeholders during the months of July and August 2014. During the Reporting Period, I made two trips to Rwanda. In both cases I was accompanied by Ms. Jelena Guduric from ICTY.

COURT HEARING ON JULY 2ND, 2014

3. On July 2, 2014 there was a hearing before the High Court of Rwanda. Mr. Jean Uwinkindi was present, as were his Lead Counsels Mr. Gatera Gashabana and Co-Counsel Mr. Jean Baptiste Nyibizi. The Prosecution was represented by Mr. Jean Bosco Mutangana and Mr. Bonaventura Ruberwa.
4. The Presiding Judge informed all present that the matter of protective measures for the prosecution witnesses would be preceded.
5. To protect identity of the witnesses, the Presiding Judge informed that the hearing would be held *in camera*. The Presiding Judge ruled that everybody, except the Parties and the Counsels of Mr. Uwinkindi must leave the court room. Following order of the Presiding Judge we left the court room.
6. The hearing was finished at 15.00. The Court decided that the next hearing would be held on July 16th, 2014.

MINUTES OF THE HEARING ON JULY 2ND, 2014

7. On July 2014 with the assistance of an interpreter we reviewed the Court minutes of the hearing of 2 July 2014.
8. The Chamber decided that it would not deal with the protective measures granted by the ICTR (continuation) but only with protective measures for new witnesses identified by the prosecution.
9. The Accused objected to protective measures claiming that Rwanda is a peaceful country and that witnesses have no reasons to be afraid. They have to testify in public. The Prosecution responded that the testimony will be heard in public but that the identity of the witnesses would not be known.

10. Referring to Article 69 of the Code of Criminal Procedure the Defense Counsel submitted that protective measures can be granted only in special circumstances. According to him the Chamber has to consider the real risk and danger towards the witness.
11. Referring to Article 29 (2) the Defense Counsel suggested, that the Chamber should invite the ICTR/MICT Monitors to be present at the hearing. He submitted that according to Article 21 of the Transfer Law, the Monitors have to participate in the proceedings to guarantee a fair trial. He further indicated that the decision of the Court to exclude the Monitors would be appealed.
12. The Chamber refused to consider this issue and proceeded to hear prosecution witnesses who requested protective measures.
13. Prosecution presented three witness wanted protection. The Chamber reviewed all of them. Each case was discussed. The Defense opposed to grant protection to the witnesses as there was no real threat from Mr. Uwinkindi and his family, as they claimed. (*Nota bene*: to protect identity of witnesses a detailed analysis of the hearing could be provided on confidential basis).
14. The Chamber granted the request of the prosecution and ordered that the three witnesses would benefit from protective measures.
15. The Chamber continued to hear the witnesses identified by the ICTR who had previously been granted protective measures which would remain in force.
16. REDACTED
17. The Chamber scheduled the next hearing for 16 July, at 8:30.
18. We also examined other documents in the file of this case. On June 11th, 2014 the Prosecution filed list of 19 ICTR witnesses (of which 5 were deceased and 2 lived abroad) and the list 5 new witnesses. According to this document 3 witnesses requested protective measures but 2 did not.

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

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

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

23. Mr. Mutangana stated that there was no debate on the Court decision to proceed *in camera*. He added that *in camera* hearing is not common practice in Rwanda. The Chamber acting *proprio motu* ordered that to protect identity of the witnesses.
24. Mr. Mutangana informed us that protective measures mean only concealment of identity; no pseudonyms have been assigned yet. The witnesses would testify publically but they would not be seen by the public. There will be no voice distortion.
25. The Court confirmed that the protection granted by the ICTR would be continued. The Prosecution was asked to produce death certificates for those ICTR witnesses who died.
26. All ICTR witnesses appeared before the Chamber together. The 3 new witnesses, however, appeared one-by-one.
27. REDACTED
28. Mr. Mutangana stated that at the hearing of July 16th, the Prosecution will conclude its opening statement. This will give Defense an opportunity to present its oral submissions.
29. Regarding court calendar Mr. Mutangana explained that in general there is no hearing during summer recess. The Chamber can make an exception though.

MEETING WITH MR. UWINKINDI, JULY 3RD, 2014 (held with an interpreter)

30. The meeting was held in the Kigali Central Prison.
31. REDACTED
32. Mr. Uwinkindi complained that some of the previous monitoring reports did not include what he said. By this he questioned quality and independence of interpreters.
33. REDACTED
34. REDACTED
35. Mr. Uwinkindi stated that the Rwandan government is making difficulties to finance his lawyers. He needed the team of investigators to identify witnesses but this request was refused. Mr. Uwinkindi noted that at the ICTR, defense teams had investigators.
36. To continue this issue Mr. Uwinkindi made a reference to paragraph 153 of the Decision of the Referral Chamber in the *Munyagishari* case dated June 6th and to para. 84 of the Decision of the Appeals Chamber in the *Munyagishari* case dated May 3rd, 2013 but noted that nothing has been done thus far.

37. REDACTED

38. As far as conditions of detention are concerned Mr. Uwinkindi stated that these conditions are far from what was promised. First of all he mentioned that he was not allowed to have conjugal visits. This raises his concern since he was promised to have the same conditions as he had at the ICTR and the same as the SCSL prisoners have. According to Mr. Uwinkindi the SCSL prisoners can have private visits by their wives. According to Mr. Uwinkindi another prisoner from the Special Unit – Mr. Mugesera wrote to the Commissioner General on this issue but so far there was no response.

39. As to normal visits Mr. Uwinkindi sees his wife in the general visitor's area, where a lot of other prisoners gather and it is not very comfortable.

40. Mr. Uwinkindi made also reference to signing minutes of the hearing. He informed that the minutes are signed by the parties in the courtroom just after the session.

41. REDACTED

COURT HEARING ON JULY 16TH, 2014

42. On July 16th, 2014 there was a hearing before the High Court of Rwanda. Mr. Jean Uwinkindi was present, as were his Counsel Mr. Gatera Gashabana and Mr. Jean Baptiste Nyibizi. The Prosecution was represented by Mr. Jean Bosco Mutangana.

43. The Presiding Judge informed all present that two judges of the Chamber had been given new appointments and would leave the Chamber. For this reason, the Chamber decided to adjourn the hearing until September 17th.

44. REDACTED

MEETING WITH MR. FAUSTIN MURANGWA, LEGAL ADVISER TO THE SUPREME COURT, JULY 16TH

45. Explaining consequences of the change of two judges in the Chamber Mr. Murangwa stated that according to Rwandan laws there are two options. The trial can either restart from the beginning or it could be continued. In the latter case the new judges would be briefed by the remaining one. The briefing would take place at a public hearing in the presence of the parties.

46. According to Mr. Murangwa the Decision on the Chamber to change two judges can be found at the website of the Supreme Court of Rwanda. (*Nota bene: I have not found it as of yet*)

MEETING WITH LEAD COUNSEL MR. G. GASHABANA, JULY 16TH

47. Mr. Gashabana referred to difficulties to find witnesses in Rwanda that would testify for the defense. Some of them are afraid to speak in favor of Mr. Uwinkindi before the court or even give declarations. The general opinion, also demonstrated in media, is that J. Uwinkindi is guilty so it is difficult to have different opinion and express it publicly. Even if witnesses are informed on possibility to be granted protective measures they refuse to testify.
48. When the Counsel was appointed to represent the Accused, he proposed to appoint also co-counsels and a team of investigators. The Court refused to approve this proposal and decided that, the Counsels should undertake investigation themselves.
49. Regarding resources for witnesses (i.e. transportation), the Counsel noted that they have to be requested from the Ministry of Justice. However, the Ministry approved financial means for transportation only within Rwanda. As for witnesses who reside outside Rwanda there is no solution as of yet. The Court decided that the Defense should first identify and convince witnesses who are in Rwanda. This process has not yet been finished and will continue in August.
50. As far as remuneration is concern basic problems had been solved. The Ministry of Justice has paid all amounts due in May or June, 2014. As for work performed from March 2014 the Defense has to wait for new budget to be approved in the Parliament. In case if happens the Defense will submit new invoice for period from March to July 2014.
51. The Counsel noted that since the Fall of 2013 there has been a change in cooperation with both Ministry of Justice and Prosecution. According to Mr. Gashabana this was due to personal changes in these two important institutions.
52. The Counsel noted that he received some support from local Bar Association also in negotiations with the Ministry of Justice. But the Bar in not the one who provides funds to support the activities of lawyers.

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

53. Mr. Murenzi informed the Monitors that Special Unit was constructed in 2009. According to international standards each cell has 4 square meters. As the Unit is relatively small lawyers were complaining for not having room for meetings with Accused. That was why it was decided to build such rooms very close to the Special Unit. They are to be ready by the end of this month. I had chance to note that construction process has started in mid-July.
54. According to Mr. Murenzi there are no problems with Mr. J. Uwinkindi. As all other detainees placed in the Special Unit he has a nutrition regime which is completely different from that of other detainees.
55. There are no special procedures for prisoners like him. He knows the prison rules and obeys them. On the other hand there are prison officers who are selected specifically

to deal with the Special Unit. They are not specially trained but they are trained in effective management of prisons in line with national laws and international standards. They are subject to rotation from time to time.

56. Mr. Uwinkindi can communicate any complaints to those officers who convey them further to leadership of this institution or to the higher level. As an example Mr. Murenzi mentioned conjugal visits which Mr. Uwinkindi was mentioning at many occasions but according to Mr. Murenzi, he never formally requested such a visit. Prison regulations in Rwanda do not allowed that. Special enquiry on that issue was sent to Central Administration by another prisoner from this Special Unit Mr. Mugesera. So far there was no replay.
57. Mr. Murenzi meets Mr. Uwinkindi on regular basis, at least twice a month or upon the request; if not him his deputy does it. He also visits the Special Unit twice a week to inspect the cells, toilets and other rooms, always using this opportunity to talk with Mr. Uwinkindi.
58. The Monitors were informed by Prison Director that Mr. Uwinkindi being still on trial is not attending rehabilitation programs and production activities but he can participate in religious programs, recreation activities and discussions with other detainees on topics such as genocide, discrimination and reconciliation.
59. Mr. Murenzi commented also on the issue of shortage of shelves for documents in the cell. Even if this this true the administration has to consider the size of the cells and avoid situation when such limited space is overcrowded.
60. REDACTED

**MEETING WITH MR. UWINKINDI AND HIS COUNSEL MR. GASHABANA,
JULY 17TH** (held with an interpreter)

61. I informed Mr. Uwinkindi, that new system of handing over documents was agreed with prison administration. As a rule each case of such a transfer would be registered by the prison staff. Confidential documents will be sealed in special envelopes.
62. Due to reservations of Mr. Uwinkindi to reporting system and quality of interpretation I proposed that after each meeting I would present (in brief) what would be reported. Mr. Uwinkindi would keep the right to ask for some issues to be reported confidentially.
63. Mr. Uwinkindi complained receiving documents in other languages than Kinyarwanda (the only one he understands). As an example: Monitoring Report for April 2014 was the only one he received translated. From now on he would like to receive documents only in Kinyarwanda and he asked us personally to make sure that this message is passed to MICT. Additionally to that, Mr. Uwinkindi claimed that April Report contradicted what he talked about.
64. Mr. Uwinkindi repeated that he did not trust interpreters for that he would ask the Monitors to come and see him with his lawyers.

65. Mr. Uwinkindi commented on last decision of the Chamber to change two judges. According to him it was against Article 19 (2) of the Constitution. He was against new judges just to join the Chamber. He stated that in case the Court would bring new judges to the Chamber the procedure should start again. Otherwise it would be serious violation of fair trial rules, according to him.
66. REDACTED
67. REDACTED
68. REDACTED
69. REDACTED
70. According to Mr. Uwinkindi there were threats to his son, who is serving sentence in prison in Bugasera.
71. REDACTED
72. Mr. Uwinkindi once again complained about lack of conjugal visits. According to him the prison conditions are to be the same as the ones for "Sierra Leone prisoners" who enjoy such visits. Mr. Uwinkindi suggested that Monitors should check the prison conditions in other institutions.
73. Mr. Uwinkindi complained that there was no fire alarm system in the Unit. There is no distinguisher and special alert device to draw attention of the guard, as well.
74. According to Mr. Uwinkindi menu foresees chicken on Saturday but except probably one case there was no chicken on Saturdays.

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

75. According to Mr. Bayingana WPU is supporting the Court in genocide cases since 2012. It was created in response to critical comments on the security of witnesses in Rwanda. WPU is a part of the Judiciary.
76. WPU protects witnesses of the Prosecution and the Defense. There are two aims of the WPU: 1/ to protect witnesses and 2/ to make sure that the equality of arms rule is respected. By this the Unit does not serve parties, it serves Justice.
77. The Team of the Unit consists of 9 persons, mostly lawyers, but they all do everything what is necessary to protect witnesses. They also offer training for witnesses being protected.

78. As far as procedure is concerned the decision on protective measures is always taken by the court but it is up to the Unit to decide how protection is being implemented. Obviously the court could always give instructions to the Unit, but there was no instruction in *Uwinkindi* case.
79. According to Mr. Bayingana protective measures mean: 1/that the identity of the witness is protected, she/he can be given pseudonym, 2/ it means also that the witness leaves in her/his place but nobody knows that she/he is a witness, 3/ if there are real threats to the witness security she/he is also protected in more direct way, 4/ if such need arises Unit can also change witness identity.
80. During the hearing special curtains and special equipment for voice distortion could be used. I was given opportunity to see the system of such curtains but only briefly as another hearing was in progress there.
81. During the hearing, both prosecution and defense witness will stay in Kigali – all costs will be covered by the state.
82. REDACTED
83. Mr. Bayingana confirmed that all ICTR witnesses were in the courtroom at the same time.
84. REDACTED
85. The three prosecution witnesses identified recently, who required protection, were called by the Chamber one-by-one.

FINAL VISIT TO PRISON, JULY 18TH

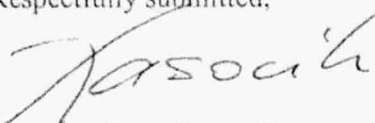
86. The aim of this visit was to present to the Accused, in brief, what would be reported to the President of the Mechanism.
87. REDACTED
88. Mr. Uwinkindi handed over documents (also confidential) to me. According to the rules I informed immediately prison administration about the transfer of the documents. Original of the documents were deposited in UN Office in Kigali.

CONCLUSIONS

89. The next hearing is scheduled for September 17th.

90. Preparations for my trip to Rwanda have already been finalized.

Respectfully submitted,



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

Dated: August 31st 2014
Warsaw, Poland



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