

**UNITED
NATIONS**

MICT-12-20
26-06-2015
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Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: [22 June 2015]

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

MONITORING REPORT FOR APRIL 2015

Monitors:
Judge Imani About

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I. INTRODUCTION

1. Pursuant to the term 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 Judge Imani Aboud, a Monitor appointed by the Mechanism (“Monitor”), with various stakeholders during the month of April (“the Reporting Period”).
3. During the reporting period the Monitor undertook two missions to Rwanda on 1 to 2 April 2015 and 23 to 25 of April 2015 to monitor the Bernard Munyagishari case.
4. During the reporting period there was one pre-trial hearing held on 1 April 2015.¹
5. The Monitor met with the Prison Director, two officers of the Ministry of Justice, the Executive Secretary of the Rwanda Bar Association (“RBA”), Mr. Jean Bosco Mutangana, Lead Counsel for Prosecution (“Prosecution”) and Mr. Bernard Munyagishari.
6. A detailed report on all activities during the reporting period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 1 to 2 April 2015.

High Court hearing of 1 April 2015.

7. On 1 April 2015, a pre-trial hearing was held before the full Chamber of the High Court, in the presence of the accused, Mr. Munyangishari. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. Mr. Munyangishari’s Defence Counsel, Mr. Jean Baptiste Niyibizi and Mr. John Hakizimana were not present in Court.
8. The Court begun by noting that Mr. Munyagishari was not represented and asked him to explain why he was not represented and if he wanted to appear before the Court unassisted.

¹ The Monitor attended the hearing with Ms. Stella Ndirangu, the Monitor for the month of March 2015 who assisted with practical introduction to the monitoring.

9. Mr. Munyagishari proceeded to first inform the Court that when he signs the last page of the minutes of the proceedings, usually given at the end of the hearing, it does not mean he agrees to how the proceedings are conducted, it just means he was present in the courtroom.
10. On representation Mr. Munyagishari informed the Court that there was a letter written by his Counsel² to the President of the Bar Association explaining the challenges they were facing in defending Mr. Munyangishari because of the lack of financial and material means to conduct his defence and that they would not be available to attend the next court session until the issues were dealt with. He indicated he had received a copy and was of the opinion the Court should have also received its copy. Mr. Munyagishari further explained that the Prosecution has been availed with means not equal to the Defence to prepare their case. He asserted that his Counsel were still representing him, he trusted them and everything they did was in his best interest.
11. Mr. Munyagishari concluded by stating that if the Court needed to know more about the absence of his Counsel in Court, then the Court should summon all the concerned parties so as to ascertain why his Counsel had opted to first handle the outstanding issue of resources before continuing to attend Court.
12. The Court informed Mr. Munyagishari that he had not answered the question on whether he would plead without assistance or if he would choose not to plead at all.
13. In responding Mr. Munyagishari indicated that he was used to the tactics being employed by the Court. He stated that if his response was that he would plead without assistance, the Court would force on him other lawyers to represent him, yet he was confident of his Counsel's representation. He said he could not accept to plead without assistance from his Counsel and he would wait until they were available to represent him in the Court proceedings.
14. The Court addressed Mr. Munyagishari telling him that even if he was frustrated, he was not allowed to insult judicial institutions.
15. At the invitation of the Court the Prosecution indicated that they were in receipt of the letter written by lawyer John Hakizimana to the President of the Bar. The letter indicated that Mr. Hakizimana would not appear in any of the Court's proceedings before the pending issues relating to the contract with the Ministry of Justice were resolved. Observing that the lead Counsel Mr. Jean Baptiste Niyibizi was not in Court, the Prosecution indicated they noted that they had not received any communication from him, therefore were not aware if he had written a similar letter.

² Counsel Jean Baptiste Niyibizi and John Hakizimana.

16. Noting that from Mr. Hakizimana's letter it was evident that the issue of the contract with the Ministry of Justice had been pending for a long time because Counsel had all along expressed that they were not pleased with the contract proposed by the Ministry of Justice. The Prosecution was of the opinion that if Counsel did not agree with the terms of reference proposed by the Ministry which were within the capacity that the Ministry could offer, it was the right of the Counsel not to accept the proposed terms as they had done by failing to appear in Court. The Prosecution requested the Court to take note of the fact that Munyagishari's Counsel had declined to represent him and formally issue a decision underscoring that the manner in which Mr. Munyagishari's Counsel chose to withdraw their representation was not procedural. Further the Court should find that the accused was not represented and order the relevant institutions to appoint new Counsel to assist him.
17. The Prosecution indicated that in their opinion, the new Counsel would accept the contract by the Ministry of Justice. In addition the Prosecution reaffirmed that an indigent accused had no right to choose his Counsel and this position applied beyond Rwanda's jurisdiction and the prosecution had previously provided the Court with examples of similar jurisprudence even from the ICTR.
18. After hearing both parties the Court acknowledged that it was in receipt of letters from Mr. Niyibizi and Mr. Hakizimana, in the letters Counsel did not indicate that they no longer represented Mr. Munyagishari, they indicated, they were still negotiating the outstanding issues relating to their contract with the Ministry for Justice. The Court further observed that Mr. Munyagishari had indicated that he could not plead without assistance, for these two reasons the Court found it necessary to adjourn the hearing to 3 June 2015 at 8.30 am, believing the time it had given to Counsel was sufficient to resolve the pending contract issues so that the accused could appear in Court with legal assistance.

B. Monitoring Mission of 23 to 25 April 2015

Meeting with Mr. Victor Mugabe, the Executive Secretary of the Rwanda Bar Association on 23 April 2015.

19. On 23 April 2015 the Monitor met Mr. Victor Mugabe the Executive Secretary of the RBA to discuss the Munyagishari case.
20. Mr. Mugabe informed the Monitor that Mr. Munyagishari had refused to accept assistance from a lawyer that was appointed by the RBA at the beginning of his case. Instead, he chose Counsel Jean Baptist Niyibizi and John Hakizimana and the RBA officially nominated them. Mr. Mugabe indicated that the RBA did not give Mr. Munyagishari a list of lawyers to choose his lawyers from. Mr. Mugabe further stated the

law does not compel the RBA to give the list of lawyers to the accused person to choose counsel from.

21. Mr. Mugabe informed the Monitor that no contract had been signed between Mr. Munyagishari's Counsel and the Ministry of Justice because Mr. Niyibizi had refused to accept the amount proposed by the Ministry of 15 million Rwandan francs, contending that it was very minimal for Counsel. He further stated that the RBA once facilitated a meeting between the Ministry and Defence Counsel for Mr. Munyagishari on the costs involved in the investigation. Mr. Mugabe admitted that the 15 million Rwandan francs cannot be considered enough for defence lawyers but is acceptable depending on the lawyers' assessment of the workload before them. He informed the Monitor that the RBA records available regarding the case of Munyagishari showed that Counsel had not received any payment.
22. Mr. Mugabe narrated that in the event there was any complaint from the defence lawyers appointed by the RBA that the amount paid is too low, if the RBA sees the need it can negotiate with the government authority responsible for the payment. However he said the good practise is, if a lawyer feels that he cannot handle the case assigned to him because of low pay, he can return back the mandate to the President of the Bar for re-assignment.

Meeting with the Lead Counsel for the Prosecution Mr. Jean Bosco Mutangana on 23 April 2015

23. The Monitor met with Mr. Jean Bosco Mutangana, Lead Counsel for Prosecution on the 23 April 2015. He informed that since the case was initiated in the High Court there had been no progress and even opening statements had not been made. Mr. Jean Bosco further informed the Monitor that Mr. Munyagishari had raised concerns about the language used by the Court and the issue was eventually resolved by a decision that the proceedings in Court should be translated into French.
24. Mr. Jean Bosco also informed the monitor that Mr. Munyagishari had not filled the indigent forms and in the result nothing had been done to facilitate the payment of his Defence Counsel.
25. Mr. Jean Bosco indicated that when Munyagishari arrived in Rwanda he informed that he could not afford to pay lawyers to represent him. A request was then made to the RBA immediately asking them to assist him. The RBA approved lawyers to work on *pro bono* basis, then the Ministry of Justice also got involved as they administer the legal aid scheme. The Ministry asked Mr. Munyagishari to fill the indigent application form but to date Mr. Munyagishari has refused to do so. Despite the situation Counsel Niyibizi and Hakizimana continued to represent Mr. Munyagishari in Court until the 1 April 2015,

when they wrote to the High Court that they were holding off their assistance because they did not have the means to conduct the case.

26. Mr Jean Bosco wondered why the Defence Counsel did not want to sign a contract with the Ministry of Justice, so that they can be facilitated to conduct the case. He was of the view that may be Counsel were not happy with the contract because the lead Counsel Mr. Niyibizi was also Counsel in Mr. Uwinkindi case.³

Meeting with Mr. Twahirwa Gervais, Director General of Corporate Services, Ministry of Justice on 24 April 2015

27. The Monitor met Mr. Twahirwa Gervais, Director General of Corporate Services in the Ministry of Justice on 24 April 2015. Mr. Twahirwa represented the Permanent Secretary who was away on official business at the time. Mr Twahirwa informed the Monitor that the Defence Counsel for Mr. Munyagishari were complaining that they had not been paid for assisting the accused, but such a complaint had no basis because no single invoice had been presented at by Counsel to the Ministry of Justice for payment. He assured the Monitor that the Ministry has never defaulted to pay any Defence Counsel.

Meeting with Mr. James Mugisha, Prison Director on the 24 April 2015

28. On 24 April 2015, the Monitor met with Mr. James Mugisha, the Director of the Kigali Central Prison. Mr. Mugisha informed the Monitor that there was no complaint by the accused received in his office. He further informed that accused persons go to Court whenever they are summoned, they receive proper food and are given other facilities, but they were not satisfied by the provisions of papers, ink, pens and others such requests. Mr. Mugisha said they had introduced a new system where any accused who requested for supplies was required to write in a book that keeps a record of what he has taken and for how long they use it. The purpose of such a recording system, he said, was to hold the accused person accountable for the supplies.
29. Regarding medical facilities, Mr. Mugisha said defendants are treated at the King Faisal Hospital where the prison pays the costs 100%.

Meeting with Mr. Munyagishari on 24 April 2015

30. The Monitor met with Mr. Munyagishari on the 24 April 2015 at the Kigali Central Prison. The meeting was held with the assistance of an interpreter.

³ In the matter of Jean Uwinkindi, Case no. MICT - 12- 25

31. Mr. Munyagishari raised the concern about paragraph 53 (ii) of the February 2015 Monitoring report, indicating that what was contained in court file, as documented was a lie and requested the Monitor to examine the file again.⁴ He reiterated that the concern he had raised in Court was, if the Court records are not translated in French he would not be able to follow the proceedings and prepare his defence effectively. He further stated that a good example was when he filed his appeal because he failed to get an investigator as he was not able to follow the court proceedings.

32. [REDACTED]

33. [REDACTED]

⁴ See February 2015 Monitoring Report, paragraph 53 (i) (ii) and 69, concerning Mr. Munyagishari’s request for the translation of Court proceedings into French.

⁵ Article 19 of the Rwandan Constitution provides that every person accused of crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and a fair trial, in which all the necessary guarantees for defence have been made available.

⁶ Article 14 of the Rwandan Constitution provides that the Judiciary is independent and separate.

[REDACTED]

Meeting with Mr. Theophile Mbonera, Head of Legal Service, Ministry of Justice on 25 April 2015

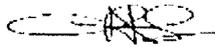
34. The Monitor met Mr. Theophile Mbonera, Head of Legal Service in the Ministry of Justice on 25 April 2015. Mr. Theophile represented the Permanent Secretary who was out of the country at the time. He informed the Monitor that Mr. Munyagishari did not want to apply for legal aid in line with the applicable rules. He said the Ministry informed Mr. Munyagishari about the legal requirements and gave him a copy of instructions for legal aid assistance that require him to fill application forms for legal aid like other indigents.
35. Mr. Theophile informed the Monitor that the Ministry of Justice had recently responded to Mr. Munyagishari's Counsel's letter to the RBA and copied to the Ministry of Justice which had indicated that the accused had followed the relevant procedures required to apply for legal aid. He stated that there was no application for legal assistance from Mr. Munyagishari and therefore the assertion that he had applied for legal aid was not true. Mr. Theophile told the Monitor that the Ministry was ready to assist the indigent as it had done in Mr. Bandora's case, where the case was heard in court very smoothly.
36. Mr. Theophile informed the Monitor that the amount of 15 million Rwandan francs that was set aside by the Ministry after formal consultations with the RBA. He explained the Ministry set fees of 400,000 Rwandan francs for counsel involved in other normal cases. This reflects the importance the Ministry has given to the transferred cases. He also indicated that the Ministry expects in the course of time the set fee will change but that will not affect the existing contracts. He further said the Ministry is treating the two cases of Mr. Munyagishari and Mr. Uwinkindi like any other transferred cases.

III. CONCLUSION

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

Dated this 22nd day of June 2015

Respectfully submitted,



Imani Aboud
Monitor for the Munyagishari case
Dar-es-Salaam, Tanzania