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**Before:** Mr Theodor Meron, President

**Registrar:** Mr John Hocking

**INITIAL MONITORING REPORT ON THE *BUYIBARUTA*  
CASE**

**Laetitia Husson**

**Officer in Charge of the Initial Monitoring Mission in the *Bucyibaruta* Case for  
the MICT**

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1. This report is submitted in my capacity as the officer in charge of the initial monitoring mission appointed by the Mechanism for International Criminal Tribunals (“MICT”) in the case of *The Prosecutor v. Laurent Bucyibaruta* referred to the French authorities on 20 November 2007, pursuant to Article 11 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“Rules” and “ICTR”).

### **Introduction and Background**

2. The ICTR Prosecutor brought an indictment against Mr Bucyibaruta on charges of genocide, complicity in genocide, direct and public incitement to commit genocide, and charges of rape, extermination and murder as crimes against humanity committed in Rwanda in 1994, which was confirmed by a Judge of the ICTR on 17 June 2005.<sup>1</sup> On 12 June 2007, the ICTR Prosecutor filed a Request for the referral of the indictment to the French judiciary, pursuant to Rule 11 *bis* of the ICTR Rules. The Prosecutor amended the Request on 27 June 2007.<sup>2</sup>

3. Mr Bucyibaruta was arrested in France on 20 July 2007 in accordance with the arrest warrant issued by the ICTR on 21 June 2007<sup>3</sup> and detained in accordance with the detention order of the Public Prosecutor of Troyes before he was released on 1 August 2007 by the French judicial authorities.<sup>4</sup> Mr Bucyibaruta was again arrested on 5 September 2007 in accordance with the second arrest warrant issued by the ICTR,<sup>5</sup> remanded in custody pending extradition by the Public Prosecutor of Troyes and released under court supervision by the French judicial authorities on 19 September 2007.<sup>6</sup> Since then, Mr Bucyibaruta has been released under court supervision.

4. On 20 November 2007, the Trial Chamber designated under Rule 11 *bis* of the ICTR Rules determined that the conditions for referral were met and consequently ordered that the case of *The Prosecutor v. Laurent Bucyibaruta* be referred to the French authorities, so that they might immediately assign it to the appropriate court in their State. The Chamber also ordered the Prosecutor to submit an initial report to it on the conduct of the proceedings instituted by the French Public Prosecutor against

<sup>1</sup>*The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Confirmation of Indictment and Other Related Orders, 17 June 2005; *The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Indictment, 20 July 2005 (unsealed on 14 June 2007).

<sup>2</sup>*The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Prosecutor’s Request for the Referral of Laurent Bucyibaruta’s Indictment to France Pursuant to Rule 11 *bis* of the Tribunal’s Rules of Procedure and Evidence, confidential, 27 June 2007.

<sup>3</sup>*The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Warrant of Arrest, 21 June 2007.

<sup>4</sup> *Arrêt donnant avis sur le mandat d’arrêt délivré par le Tribunal pénal international pour le Rwanda aux autorités françaises aux fins d’arrestation et de détention*, /Decision on the Arrest Warrant Issued by the International Criminal Tribunal for Rwanda to France for Arrest and Detention/, Paris Court of Appeal, Eighth Examining Chamber, Case No. 2007/04254, 25 July 2007.

<sup>5</sup>*The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Arrest Warrant and Order for Transfer and Detention, 13 August 2007 (unsealed on 11 September 2007).

<sup>6</sup> *Arrêt sur demande de liberté – Mandat d’arrestation aux fins de remise au TPIR* /Decision on Motion for Release – Arrest Warrant for Transfer to the ICTR/, Paris Court of Appeal, First Examining Chamber, Case No. 2007/05296, 19 September 2007.

Mr Bucyibaruta, six weeks after disclosure of the evidence by the ICTR and, thereafter, to submit a report every three months.<sup>7</sup>

### **Monitoring Mission**

5. On 1 July 2012, the section of the MICT that has been assigned the residual functions of the ICTR assumed its responsibilities. Under Article 6 (5) of its Statute, the MICT is responsible for monitoring cases referred to national courts by the ICTR, with the assistance of international and regional organisations and bodies. In this connection, it gave me a mandate to conduct an initial monitoring mission in the *Bucyibaruta* case in order to gather information on the status of the case, especially with the Public Prosecutor's Office and the relevant judicial authorities, and submit a preliminary progress report to the MICT President, who supervises the monitoring.

6. As the *Bucyibaruta* case was in the investigation (or judicial investigation) phase in France, contact was made in May 2013 with public prosecutors and investigating judges in charge of the case and with Mr Bucyibaruta's lawyer to gather the necessary information.

7. Mr Bucyibaruta's lawyer, attorney Philippe Greciano, declined my request to talk with him, saying that he could not comment on his client's case considering that it was in the investigation phase. Nevertheless, attorney Greciano denounced in writing the fact that he is forbidden to carry out investigation for his client and that, as assigned counsel, he had no logistical, human or financial means of working on this case, which is highly complex and very large, despite the delegation of the case by the ICTR "which had to make a series of practical arrangements for the conduct of the trial." Attorney Greciano saw no point in talking to the MICT observer considering that the latter was not able to ensure that the Defence enjoyed the same means as the prosecution and worked in dignified conditions.

8. On 11 June 2013, I went to Paris, France, to speak with Mr Jean Quintard, Deputy Public Prosecutor at the Tribunal de Grande Instance of Paris, and Ms Aurélie Devos, Deputy Prosecutor and Chief of Section AC5, Unit for Crimes against Humanity and War Crimes of the Tribunal de Grande Instance of Paris ("Unit").

9. I went to Paris again on 21 June 2013 to meet the investigating judges in charge of the *Bucyibaruta* case in the Unit, Ms Emmanuelle Ducos, Vice-President in charge of the investigation and Mr David De Pas, Vice-President in charge of the investigation. The meeting was held in the presence of Ms Leïla Bourguiba, special legal assistant, and the registrar of the two investigating judges.

### **Procedural history before the French judiciary**

10. Ms Devos, Public Prosecutor in the Unit, explained that Mr Bucyibaruta had already been the subject of a judicial investigation in France, following his indictment by a French investigating judge after a civil suit for damages in 2000. Ms Devos said

<sup>7</sup> *The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Decision on Prosecutor's Request for Referral of Laurent Bucyibaruta's Indictment to France, 20 November 2007.

that after a thorough study of the file sent by the ICTR Prosecutor in 2007, the Prosecutor's Office decided to seek joinder of the case referred by the ICTR and the investigation opened in France in 1995. A very detailed application to extend the investigation because of the discovery of new facts was filed in this regard on 11 December 2009. Hence the *Bucyibaruta* case is now the subject of a single criminal investigation.

11. Mr Quintard, Deputy Public Prosecutor, and Ms Devos reported a number of problems faced by the French authorities in this case in the first few years after the referral ordered by the ICTR. They explained that the severance of diplomatic relations between France and Rwanda between November 2006 and November 2009 made it impossible to carry out investigations during that period. They added that the evidence gathered by the ICTR Prosecutor could not be used as such in French law, which meant that many witnesses had to be heard again. In addition to the problem of physically reaching the scene and examining witnesses scattered around the world, they informed me that they had to go through lengthy procedures to be able to access information in the possession of the ICTR that was protected by the seal of confidentiality.

12. After mentioning the problems of the resources of the French judiciary and the very heavy workload of the various investigating judges in charge of the *Bucyibaruta* case from 2007 to 2012, Mr Quintard stressed that the establishment of the Unit for Crimes against Humanity and War Crimes of the Tribunal de Grande Instance of Paris in January 2012 was an important step forward. Ms Devos said that they were two public prosecutors assigned to this special court unit. Assisted by two specialist assistants, the two prosecutors assigned to the Unit are in charge of 25 cases regarding crimes committed in Rwanda.

13. The investigating judges, Ms Ducos and Mr De Pas, confirmed that the Unit is composed of three full-time investigating judges who are in charge of about thirty cases of crimes against humanity and war crimes. Ms Ducos and Mr De Pas are co-seized of the *Bucyibaruta* case. Ms Ducos said that being co-seized allows faster investigation and the investigating judges of the Unit are assisted in their work by two special assistants who have strong expertise because of their experience at the International Criminal Court. Ms Ducos also explained that a special "genocide division," composed of nine investigators since September 2012, had been established in the Investigations Section of the Gendarmerie Nationale attached to the Paris Court of Appeal.

14. Ms. Ducos explained that since she had been in charge of the judicial investigation opened against Mr Bucyibaruta, she had cooperated with the ICTR Prosecutor in his task of monitoring the cases referred to France and that she had therefore sent him the information on the status of the procedure that was disclosable to him, considering the limitations imposed on her under French law with regard to respect for the confidentiality of investigation.

#### **Status of the procedure**

15. The investigating judges and public prosecutors confirmed that an investigation is under way in the *Bucyibaruta* case. Mr Bucyibaruta has the status of an indictee<sup>8</sup> and he has been released under court supervision. The investigating judges and public prosecutors noted that they are sworn to secrecy of investigation under Article 11 of the French Code of Criminal Procedure and that they are therefore limited as to the information they may disclose.

16. The public prosecutors insisted that the *Bucyibaruta* case, with the case of Mr Wenceslas Munyeshyaka referred by the ICTR in 2007 and two Rwandan cases where the indictees were remanded in custody,<sup>9</sup> is one of the Unit's top priorities. In their view, the judicial investigation in the *Bucyibaruta* case is in an active phase. With regard to that, Mr Quintard and Ms Devos explained that:

- the investigating judges and investigators went to Rwanda in March and April 2010, June 2011 and May 2012 for on-site investigations, collection of evidence and questioning of witnesses;
- the investigators of the Investigation Section went to Rwanda for investigation and questioning under letters rogatory in October 2012 and April 2013, as well as to other countries to hear witnesses;
- the investigators the Investigation Section went to Rwanda for investigation and questioning under letters rogatory accompanied by the public prosecutors in April 2013, and to other countries to hear witnesses;
- the investigating judges heard many witnesses on the French territory, particularly by means of video link;
- Mr Bucyibaruta was questioned by the investigating judges on 22 and 24 May 2013; and
- requests for mutual legal assistance have been sent to several countries.

17. Ms Ducos and Mr De Pas confirmed that the *Bucyibaruta* case was one of the Unit's priorities and that they were now making steady progress in this case.

### **Prospects**

18. Mr Quintard said that the judicial investigation in this case could be closed in early 2015. The parties will then have three months to file their submissions and request to carry out additional investigation. During the same three-month period, the Public Prosecutor will file his final brief. The investigating judges will then issue an

<sup>8</sup> Under Article 80-1 of the French Code of Criminal Procedure, indictment is brought against persons against whom there is strong and concordant evidence making it probable that they may have participated, as perpetrators or accomplices, in the commission of an offence.

<sup>9</sup> Pascal Simbikangwa and Octavien Ngenzi.

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order. Ms Devos explained that eventually if the case is not dismissed but rather referred to the Assize Court, the trial should be held in 2015 or 2016. They noted that the trial phase in France lasts only a few weeks.

19. Mr Quintard and Ms Devos insisted that the diligence and care put into the investigation phase of this case would now make it possible to have a very short judgement phase if there is a trial. They stated that everything was being done to close the judicial investigation as soon as possible. In that regard they referred to the forthcoming establishment of a central mixed Gendarmerie/Police office specialising in the crimes of which the Unit is seized and equipped with independent means which will make it possible to expedite the investigation phase even more.

12 July 2013  
The Hague (Netherlands)

**Laetitia Husson**  
Officer in Charge of the Monitoring Mission in the *Bucyibaruta* Case



**TRANSMISSION SHEET FOR FILING OF TRANSLATIONS  
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