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Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 20th August, 2016

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

V.

BERNARD MUNYAGISHARI

PUBLIC

MONITORING REPORT FOR JULY, 2016

Monitors:
Imani Aboud
Stella Ndirangu

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I. CONTENTS

I.	CONTENTS.....	2
I.	INTRODUCTION.....	3
II.	DETAILED REPORT.....	3
A.	Monitoring Mission from 11 th July 2016 to 16 th July 2016.....	3
	Meeting with Munyagishari held on 12th July, 2016.....	3
	High Court hearing of 14 th July, 2016.....	4
	Meeting with Lead Defence Counsel Mr. Bruce Bikotwa, held on 14 July, 2016.....	4
	Supreme Court Hearing of 15 th July, 2016.....	5
B.	Monitoring Mission from 18 th July, 2016 to 21 st July, 2016.....	5
	High Court Hearing of 19 July 2016.....	5
C.	Monitoring Mission 25 th July, 2016 to 30 th July, 2016.....	7
	High Court Hearing of 26 th July, 2016.....	7
	High Court Hearing of 27 th June, 2016.....	8
	Meeting with Mr. Munyagishari on 29 th July, 2016.....	9
III.	CONCLUSION.....	10

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 interactions of Mrs. Imani Aboud and Ms. Stella Ndirangu Monitor's appointed by the Mechanism ("Monitor's"), with Mr. B. Munyagishari and Defence Counsel Bruce Bikotwa, during the month of July 2016, ("the Reporting Period").
3. During the Reporting Period, the Monitor's undertook three missions to Rwanda on 11th July 2016 to 16th July 2016, 18th July 2016 to 21st July 2016 and 25th July, 30th July, 2016 to monitor the Bernard Munyagishari case.
4. During the reporting period, the High Court held four sessions, while the Supreme Court held one hearing.
5. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 11th July 2016 to 16th July 2016.

Meeting with Munyagishari held on 12th July, 2016

1. The Monitor met Mr. Bernad Munyagishari at Kigali Central Prison in the presence of an interpreter.
2. Mr. Munyagishari strongly expressed his dissatisfaction with the service of Mr. Bruce Bikotwa learned Counsel. He insisted that he is not his lawyer because he is not properly representing him in Court.
3. Mr. Munyagishari informed the Monitor that he did not refuse to give Mr. Bikotwa the list of defence witness, as it was reported in March 2016 Monitoring Report.¹ He stated that he was not in possession of such a defence witness list as submitted by Counsel Bikotwa, in Court.

¹ See *Prosecutor vs Bernard Munyagishari*, Case No. MICT-12-20, Public Monitoring Report for March 2016 ("March 2016 Monitoring Report"), 3 May 2016, para139

4. Mr. Munyagishari further informed the Monitor that when he confronted Mr. Bikotwa he denied that he submitted in Court what was reported in paragraph 139 of the March, 2016 Monitoring Report, and that the interpreter wrongly interpreted his submission to the Court. Mr. Munyagishari then requested the Monitor to meet Mr. Bikotwa and discuss his submission in Court as captured by paragraph 139 of the March 2016, Monitoring report.
5. On the detention conditions, Mr. Munyagishari praised the Prison Director, Mr. John Mukono for his good service to the detainees.
6. He restates his long view that Rwandan Courts are not fairly conducting his case, particularly on the issue of his right to get lawyers of his own choice, who are Mr. Niyibizi and John Hakizimana.

High Court hearing of 14th July, 2016

7. The hearing held was before Presiding Judge Alice Ngendakviyo, Judge Fichele Nsanzimana and Judge Timotheo Kanyegeni. On Prosecution side was Mr. Jean Bosco Mutangana, while on Defence was Jean d'Arc Umutesi. The Accused person, Mr. Bernard Munyagishari did not appear in Court.
8. The Presiding Judge informed Counsel's for both Parties that the hearing could not proceed because Prosecution witness MDB had been taken ill. The hearing was adjourned to 18th July, 2016 at 9.00 am.

Meeting with Lead Defence Counsel Mr. Bruce Bikotwa, held on 14 July, 2016

9. Mr. Bruce Bikotwa learned Counsel informed the Monitor that Mr. Bernard Munyagishari had refused to cooperate with his lawyers. Mr. Bruce insisted that Mr. Muganyishari did not want to be represented by him.
10. Mr. Bruce Bikotwa expressed that Mr. Muganyishari had informed him and Counsel Jean d'Arc Umutesi, about a list of 16 defence witness but did not disclose it to them.
11. Mr. Bruce Bikotwa informed the Monitor that what he submitted in Court about a list of 16 defence witnesses² was precise and correct. He stated that he wrote to Court on the issue in his letter dated 29th December 2015 addressed to the Presiding Judge and the Chamber sitting in this case. He further stated that the High Court Registrar received the relevant letter on 30th December, 2015.

² See *Prosecutor vs Bernard Munyagishari*, March 2016 Monitoring Report, para139

12. Mr. Bruce Bikotwa, defence Counsel restated the long outstanding concern for Defence Counsel relating to funding for conducting defence investigations that they had requested the Court to decide on but to date they had no any response. This he expressed was affecting the quality of defence.

Supreme Court Hearing of 15th July, 2016

13. The hearing was before the full the chamber comprising of Judge Fedilite Kanyange, Judge Alphonse Hitiyarenye and Judge Agnes Nyirandabaruta. The Prosecution represented by Mr. Jean Bosco Mutangana, while the Accused, Mr. Munyagishari and his lawyer were absent.
14. The Supreme Court was to deliver it's decision on the appeal filed by Mr. Munyagishari.
15. The Supreme Court did not issue its ruling but adjourned the matter to 3rd October, 2016 indicating it would hear Prosecution submission on the notice of appeal filed by Bernard Munyagishari.

Meeting with Mr. Bernard Munyagishari on 15th July, 2016

16. The Monitor met with Mr. Munyagishari at the Kigali Central Prison in the presence of an interpreter.

17. [REDACTED]

18. [REDACTED]

B. Monitoring Mission from 18th July, 2016 to 21st July, 2016

High Court Hearing of 19 July 2016

19. The hearing was conducted before the full Chamber comprising of Presiding Judge Alice Ngendakuriyo, Judge Fidele Nsanzimana and Judge Timothee Kanyegeri. The Prosecution was represented by Mr. Jean Bosco Mutangana and Mr. Bonaventure Ruberwa. Defence

3 [REDACTED]

Counsel Mr. Bruce Bikotwa and Ms. Jeanne d'arc Umutesi were present. The Accused Mr. Bernard Munyagishari was absent.

20. The Court explained that it had delayed starting the hearing because the Prosecution witness was not available at the scheduled time.
21. After the Parties had acknowledged their presence and identified themselves, the Court proceeded to administer oath to the Prosecution witness identified as MDC.
22. The Court invited the Prosecution to introduce the witness testimony. The Prosecution submitted that witness MDC knew Mr. Munyagishari and was aware of his actions that contributed to the genocide in 1994.
23. After the introduction by the Prosecution, witness MDC was invited to testify.
24. The witness testified on how Mr. Munyagishari and he were involved in the 1994 genocide, he specifically testified about incidences where Mr. Munyagishari had killed people in his presence.
25. After the witness had finished testifying, the Court explained to the witness that the Prosecution and the Defence would ask questions, which he was required to answer. The Court also directed the Parties to avoid disclosing the identity of the witness.
26. The Prosecution examined the witness, when they had finished the Court took a break for 30 minutes.
27. After the session had resumed, the Court invited the Defence to cross-examine the witness.
28. After the cross examination, the Court adjourned the hearing indicating that so far it had listened to the testimonies of four Prosecution witnesses, including witness MDB who had partly testified and had since fallen sick. The Court indicated that they had decided to re-assign witness MDB as the last Prosecution witness.
29. The Court indicated that the hearing would resume on 26 July 2016, with witness MDD testifying. The hearing would start promptly at 8.30 am.
30. Defence Counsel, Bruce Bikotwa at this point rose to request the Court to consider beginning the hearing earlier on 26 July 2016, he explained that they had another hearing scheduled on the same day before the Supreme Court, that was to begin at 11.30 am.
31. The Court indicated that it could not start the hearing earlier they would begin at 8.30 am, advising Counsel to plan and share roles whereby, one Counsel would attend to the Supreme Court hearing, while the other attended the High Court hearing for Bernard Munyagishari.

Meeting with Mr. Munyagishari held on 20 July 2016.

32. The Monitor met with Mr. Munyagishari at the Kigali Central Prison in the presence of an interpreter.
33. Mr. Munyagishari informed the Monitor he had been unwell, but had since healed. He explained that he was deeply troubled by the representation offered by Counsel Bruce Bikotwa and appeared dejected.
34. Mr. Munyagishari informed the Monitor that he was deeply pained by all the injustice being meted on him. He asserted was transferred be tried in an unjust system, his lawyers who valued his rights were stopped from representing him. Counsel Bruce Bikotwa was then forced to represent him and since he took over, Counsel Bikotwa had undermined and scuttled his case, which according to Mr. Munyagishari continues to cause him deep anguish and pain.
35. Mr. Munyagishari alleged that Counsel Bikotwa was part of the scheme to chase his former Counsel. Counsel Bikotwa had signed the agreement with the Ministry of Justice, agreeing to be paid 15 Million Francs, this was the reward he was given in participating in the scheme to get rid of his former Counsel.
36. Mr. Munyagishari opined that Counsel Bruce Bikotwa was not an experienced lawyer in handling serious crime cases. As a result of the lack of proper experience, Counsel Bikotwa was perpetrating an injustice against Mr. Munyagishari by under representing him.
37. Turning to the Court, Mr. Munyagishari expressed that the High Court had developed an attitude of not listening to the accused, and more recently the Supreme Court was also taking on a similar trajectory by showing a lack of interest on his plight. Mr. Munyagishari wondered how he was expected to present a case before the Supreme Court, when he is not provided with documents in a language that allows him to make use of the documents.
38. [REDACTED]

C. Monitoring Mission 25th July, 2016 to 30th July, 2016

High Court Hearing of 26th July, 2016

39. The hearing was held before the full Chamber. Mr. Jean Bosco Mutangana assisted by Mr. Bonaventure Ruberwa appeared for the Prosecution, while Mr. Bruce Bikotwa and Jean d'Arc Umutesi appeared for the Defence. The Accused, Mr. Munyagishari was absent.

40. The Court pronounced that hearing was to continue with Prosecution witness MDD who was a protected witness and warned Counsel to avoid submitting anything that would reveal witness name or identity.
41. Upon invitation of the Court, Mr. Jean Bosco submitted in Court that MDD lives at Gisenyi and he personally knew Mr. Munyagishari.
42. Prosecution witness, MDD took an oath and testified that he knew Mr. Bernard Munyagishari personally. He testified to have known Munyagishari and that after he completed studies he became a teacher at Nyundo Primary School. Mr. Munyagishari had moved to Gisenyi in 1992 to lead the Interahamwe Youth Wing in Gisenyi town, near Goma area.
43. The Prosecution witness testified that he was a leader of the Cell thus, he was aware of Mr. Munyagishari creating Interahamwe Youth Wing in that area. The witness explained how he witnessed Mr. Munyagishari killing a lady at his Cell.
44. He continued to testify that Munyagishari and his Interahamwe killed one gentleman and took his car which Munyagishari used to collect Tutsi's from road blocks to the place called Commune Rouge where they were killed and buried.
45. He further testified that at one time he had a chance to drink with Mr. Munyagishari.
46. Prosecution closed its examination in chief, which followed with Defence cross-examination of witness MDD that was conducted by the two Defence Counsels.
47. There was no re-examination from Prosecution, and the hearing was adjourned to the 27th July, 2016.

High Court Hearing of 27th June, 2016

48. The hearing continued and coram was as it was 26th July, 2016. The Accused did not attend the hearing.
49. The Court invited Prosecution witness MDF reminding Counsel not to ask questions to the protected witness that would reveal his identity.
50. At the invitation of the Court, Mr. Bonaventura Ruberwa for the Prosecution submitted that witness MDF was only focusing on the issue of identification of Mr. Munyagishari including his nationality.
51. Prosecution witness MDF testified that he had no any knowledge about Munyagishari involvement in genocide, but he schooled with him in between 1973 to 1976 at a school where Munyagishari was enrolled as Rwandan citizen. He further testified that in the next

two years Munyagishari moved to a teaching school at Mibilizi in former Changugu, which is currently within western province.

52. Prosecution witness stated that Munyagishari joined Nyundo Primary School as a teacher and he conducted his lessons in Kinyarwanda. He further testified that he heard that Munyagishari was in trouble at Nyundo Primary School and he later moved to Kigali where he got a job as a football Referee.
53. Once the Prosecution had closed its examination in chief, the Defence was invited by the Court to cross-examine the witness.
54. During cross-examination by Defence Counsel Bikotwa, the witness stated that he knew Mr. Munyagishari and explained about the Cell where Mr. Munyagishari was living. He further testified that Munyagishari's parents live in Gisenyi town at Gisa Cell.
55. Witness added that while they were at school with Munyagishari in between 1973 to 1976 they conversed in Kinyarwanda while in school and the language of instruction was Kinyarwanda.
56. The witness told the Court that he was informed by other people that Munyagishari was a very influential person. However, when asked who had given him such information, the witness stated their names by writing in a piece of paper as directed by the Court.
57. The Court adjourned the hearing to September, 2016 the dates would be communicated to both Parties. Presiding Judge explained to Counsel that the Court would be on vacation in August, 2016 and asked them to spend that time to prepare for the hearing of Prosecution witnesses, MDB, MDG, MDH, MDI, MDJ and a non-protected witness called Philippe.

Meeting with Mr. Munyagishari on 29th July, 2016

58. The Monitor met with Mr. Munyagishari on the 29th July, 2016 at the Kigali Central Prison, with the assistance of an interpreter.
59. Mr. Munyagishari restated his position that his case had not yet started but what was prevailing now in Court was a case between the Prosecutions against Counsel Bruce Bikotwa. He informed the Monitor that his position was explained in his letters to the High Court dated 28 January 2016 and 23 February 2016.
60. Mr. Munyagishari explained to the Monitor that he had brought to the attention of the Presiding Judge, the fact that Mr. Bruce Bikotwa was frustrating his case and should not proceed with his case as his Defence Counsel.⁵ He was of the view that Mr. Bikotwa does not represent him well in his case, as he had shown no interest in developing effective defence strategies as had his former Counsel.

⁵ Mr. Munyagishari referred to his letter dated 16th March 2016, to the Court detailing his dissatisfaction with Counsel Bikotwa. He had also articulated his concern in Court on 10th March, 2016.

61. Mr. Munyagishari expressed in plain terms to the Monitor that he would not appear in Court until when he was availed with Court proceedings in a language he understands, which is French.

III. CONCLUSION

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

Dated this 20th day of August, 2016

Respectfully submitted

—



Imani Aboud
Monitor for the Munyagishari case
Tanga, Tanzania

//Stella Ndirangu//

Stella Ndirangu
Monitor for the Munyagishari case
Nairobi, Kenya



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