

**UNITED  
NATIONS**

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Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 4 July 2014

Original: English

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**Before: Judge Theodor Meron, President**

**Registrar: Mr John Hocking**

**PROSECUTOR**

**v.**

**BERNARD MUNYAGISHARI**

**PUBLIC**

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**MONITORING REPORT FOR MAY 2014**

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## I. INTRODUCTION

1. This monitoring report pertains to the activities in the *Munyagishari* case before the Rwandan judiciary and the interactions of the monitors appointed by the Mechanism for International Criminal Tribunals (“Mechanism”) with various stakeholders during the month of May 2014 (“Reporting Period”).
2. During the Reporting Period, the appointed monitors Mr Anees Ahmed and Ms Jelena Gudurić made one visit to Rwanda. Aside from monitoring the two cases referred to Rwandan judiciary – *Munyagishari* and *Uwinkindi* – the purpose of the visit was for Mr Ahmed to introduce Ms Gudurić (“Reporting Monitor”) as a new interim monitor to various stakeholders.<sup>1</sup>
3. The Reporting Monitor met with Mr Munyagishari as well as with the Head of the Witness Protection Unit of the Supreme Court, the Deputy Prison Director, the Registrar in the *Uwinkindi* and *Munyagishari* cases and the Prison Director. The Reporting Monitor also visited the Special Enclosure, a separate section of the Kigali Central Prison (Nyarugenge Prison) (“Special Enclosure” and “Prison”, respectively) where Mr Munyagishari and Mr Uwinkindi are held.
4. There were no hearings during the Reporting Period. As previously reported,<sup>2</sup> the next court hearing in the *Munyagishari* case is scheduled for 4 June 2014.
5. A detailed report on all activities during the Reporting Period is provided below.

<sup>1</sup> See *In the Matters of Jean Bosco [sic] Uwinkindi and Bernard Munyagishari*, Case Nos. MICT-12-25 and MICT-12-20, “Order Appointing a Monitor” (public), filed on 4 April 2014.

<sup>2</sup> *Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20 (“*Munyagishari*”), “Monitoring Report for the Munyagishari Case (April 2014)” (public), filed on 6 June 2014, para. 7.  
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## II. DETAILED REPORT

### A. Judicial Activity

#### Court Hearings

6. There have been no court hearings in *Munyagishari* during the Reporting Period. The next hearing will be held on 4 June 2014. The Prosecution were ordered to provide Mr Munyagishari with a French translation of the indictment one week in advance of this date.<sup>3</sup>

#### Court Filings

7. On 27 May 2014, the Prosecution filed a French version of the indictment.<sup>4</sup>

### B. Meetings with Mr Munyagishari

8. The Reporting Monitor met Mr Munyagishari on 14 and 15 May 2014.
9. On 14 May 2014, the Reporting Monitor visited Mr Munyagishari together with Mr Ahmed. The meeting was conducted with the assistance of an interpreter. This was a courteous, non-substantive meeting for Mr Ahmed to introduce the Reporting Monitor. Mr Ahmed also informed Mr Munyagishari that he is leaving the International Criminal Tribunal for Rwanda ("ICTR") and that he will no longer serve as a monitor in the case.
10. On 15 May 2014, the Reporting Monitor met with Mr Munyagishari again. The meeting was conducted with the assistance of an interpreter. During the meeting, Mr Munyagishari raised several issues concerning his conditions of detention and fair trial rights.
11. As a preliminary matter, Mr Munyagishari enquired about the Reporting Monitor's knowledge of the case. The Reporting Monitor assured him that she is fully familiar with all relevant decisions and filings, including those concerning Mr Munyagishari's referral and the terms for monitoring, as well as all previous monitoring reports and relevant national legislation.

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<sup>3</sup> *Id.*

<sup>4</sup> With the assistance of an interpreter, the Reporting Monitor examined the official case file in *Munyagishari* (Case No. RP0012/13/HCCI) during her visit to Rwanda in June 2014.  
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12. Mr Munyagishari turned to conditions of detention in the Prison. Overall, he had no complaints about his medical care, despite minor issues. Nor did he have any complaints regarding food, although at times, he did not receive fruit as provided for in the menu that had been established together with the Prison Director.
13. Mr Munyagishari praised the Prison Directorate for their efforts in ensuring good conditions of detention.
14. Mr Munyagishari explained that there are two types of guards: prison guards, who wear uniforms, and secret police officers, who wear civilian clothes. He submitted that the regulations on correction services require that prison guards always wear uniform. Furthermore, both the prison guards and the secret police prevent him from talking and shaking hands with other detainees, despite the Deputy Director's instruction to allow such contact.
15. Mr Munyagishari also informed the Reporting Monitor that he had written to the Prison Director in April 2014 seeking access to his file. When he accessed the file, he was surprised to see a report by a nurse that alleged misconduct on his part. He explained that on 11 August 2013, a nurse came to examine him and insisted that he spoke Kinyarwanda. She had brought him medication with two prison guards. Since nurse-patient consultations are private, Mr Munyagishari was surprised to see the two guards. The nurse said that Mr Munyagishari was refusing to speak Kinyarwanda. Subsequently, she wrote a report in which she stated that Mr Munyagishari engaged in improper conduct. Mr Munyagishari asked his lawyer to look into the report, as the report was in Kinyarwanda, and to intervene with the Prison Director. Mr Munyagishari noted that, in line with the regulations on correction services, it is forbidden for nurses to write reports without the patient's knowledge because they have privileged information on their patients. He further added that doctors should act only in the interest of their patients and cannot take any other interests into consideration. He concluded that, before any report to the administration is written, medical staff need to inform the patient and obtain his consent.
16. In relation to the issue of adequate space for detainees to meet their counsel, Mr

Munyagishari stated that there are plans to build a meeting room in the courtyard of the Special Enclosure. He is concerned that the new meeting room, once constructed, will reduce the space in the courtyard.

17. Mr Munyagishari pointed out a number of legislative and other changes that have been introduced since his transfer to Rwanda.
18. Mr Munyagishari noted that in the monitoring report for January and February 2014,<sup>5</sup> the Prison Director indicated that new regulations will be issued. Mr Munyagishari opined that this is contrary to the agreement between the Government of Rwanda and the ICTR concerning the referred cases. He referred to the *amicus curiae* report of the Government of Rwanda from January 2012 which provides, in paragraph 23, that the referred accused will receive the same treatment as persons convicted by the Special Court for Sierra Leone who serve their sentences in Rwanda.<sup>6</sup>
19. Mr Munyagishari also noted that the Rwanda Bar has replaced the Kigali Bar, which existed prior to his referral. Mr Munyagishari submitted that the Rwanda Bar is less powerful than the previous Kigali Bar. This is a concern to him regarding the guarantees referred to in paragraph 167 of the 6 June 2012 decision<sup>7</sup> which, he suspects, are no longer valid. In this regard, Mr Munyagishari noted that legal aid funds had been previously administered by the Ministry of Justice through the Bar. Nowadays, lawyers need to negotiate remuneration directly with the Ministry of Justice. Accordingly, and with reference to paragraph 29 of the March Report,<sup>8</sup> Mr Munyagishari concluded that the lawyers no longer have the protection of the Bar.
20. Mr Munyagishari noted that the Law on the Transfer of Cases to the Republic of Rwanda ("Transfer Law") has also been changed. Before his transfer, the law used to be an organic law, whereas it is now an ordinary law.

<sup>5</sup> See *Munyagishari*, "Monitoring Report for the Munyagishari Case (January and February 2014)" (public), filed on 11 March 2014, para. 35.

<sup>6</sup> See *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-I, "Brief for the Republic of Rwanda as *Amicus Curiae*" (public), filed on 19 January 2012.

<sup>7</sup> See *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-2005-89-R11bis, "Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda" (public), filed on 6 June 2012, para. 167.

<sup>8</sup> See *Munyagishari*, "Monitoring Report for the Munyagishari Case (March 2014)" (public), filed on 27 March 2014 ("March Report").

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21. Mr Munyagishari further raised the issue of legal aid and noted that his lawyers have not been paid for nine months.
22. Mr Munyagishari noted that, on 19 March 2014, the court decided that he can plead in French. The court issued another decision on 3 April 2014. These were oral decisions rendered during a hearing. Until today, Mr Munyagishari has not received a written French translation of these decisions. Mr Munyagishari noted that the court held that it is his lawyer's duty to inform him of the content of the decisions but his concern is that, without a written translation, he cannot appeal a decision.
23. The court, according to Mr Munyagishari, also held that the lawyers should bears costs of investigation. Mr Munyagishari stated that fair trial rights, however, require that he be provided with counsel, legal assistant and investigator. Even the Transfer Law provides that a defence team must have supporting personnel. Mr Munyagishari concluded that funds must be made available for his defence.
24. During the meeting of 15 May 2014, Mr Munyagishari handed over three documents to the Reporting Monitor. The first document titled "*Audience avec l'Observateur du monitoring (15/05/2014)*" summarises issues that Mr Munyagishari raised during the meeting of 15 May 2014. The second document titled "*Réplique aux conditions de détention (nouvelle réglementation envisage par la direction de prison de Nyarugenge pour les détenus transférés)*", dated 29 April 2014, concerns the issue of the new prison regulations which was also raised at the meeting. The third, undated document titled "*Les piliers de la justice (les juges, l'accusation et l'accusé)*", addresses some issues, amongst others, that Mr Munyagishari discussed on 15 May 2014, including his concerns over legal aid.<sup>9</sup>

### ***C. Correspondence from Mr Munyagishari***

25. On 21 May 2014, the Reporting Monitor received a copy of Mr Munyagishari letter's to Ms Natacha Fauveau Ivanovic, titled "Power of Attorney for Ms Natacha Fauveau

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<sup>9</sup> The three documents are kept in the case correspondence file.  
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Ivanovic to file the request of 16 May 2014 before the President of the MICT”,<sup>10</sup> dated 19 May 2014.<sup>11</sup>

26. On 28 May 2014, the Reporting Monitor received a letter from Mr Munyagishari dated 26 May 2014. Attached to the letter, Mr Munyagishari provided a copy of the “Ministerial Order N°001/08.11 of 11/02/2014 on Court Fees for Criminal Matters” (“Order”). Referring to paragraphs 6 to 8 of the Order (which paragraphs regulate the duty of parties to remunerate the fees and allowances for medical doctors, interpreters, experts, specialists, witnesses and parties in a criminal case), Mr Munyagishari submitted that the Order violates his right to a fair trial due to the disparity between the means available to the Defence and those available to the Prosecution.<sup>12</sup>

#### ***D. Meetings with the Head of the Witness Protection Unit***

27. The Reporting Monitor, together with Mr Ahmed, met Mr Janvier Bayingana, Head of the Witness Protection Unit of the Supreme Court on 13 May 2014. The purpose of the meeting was for Mr Ahmed to introduce the Reporting Monitor as the new monitor. No substantive matters were discussed.
28. On 16 May, the Reporting Monitor had a second meeting with Mr Bayingana. The focus of this meeting was the *Uwinkindi* case, which is in the trial stage. Concerning the *Munyagishari* case, Mr Bayingana noted that the case is in the stage of preliminary hearings. At present, there is no indication on the number of witnesses the parties may call. However, Mr Bayingana added that his unit stands ready to provide all the necessary support once the case moves to the trial stage.

#### ***E. Meeting with the Deputy Prison Director***

29. The Reporting Monitor met with Ms Janet Bugingo, Deputy Prison Director, on 15 May 2014. The purpose of this informal meeting was to allow the Reporting Monitor to introduce herself. The Reporting Monitor took the opportunity to ask if she could see the

<sup>10</sup> Title in original language: *Mandat à Me Natacha Fauveau Ivanovic de déposer la requête du 16 mai 2014 au Président du MICT.*

<sup>11</sup> The letter is kept in the case correspondence file.

<sup>12</sup> The letter is kept in the case correspondence file.



Special Enclosure, for orientation purposes. Ms Bugingo organised an impromptu tour of this separate section of the Prison where Mr Uwinkindi and Mr Munyagishari, along with two other accused referred by national courts of other states, are held.

#### ***F. Visit to the Special Enclosure***

30. The Reporting Monitor observed that the Special Enclosure includes a small building, consisting of several individual cells and a bathroom, as well as a separate adjacent yard to which only detainees of the Special Enclosure have access. The Reporting Monitor also accessed cells of Mr Munyagishari and Mr Uwinkindi. Each cell included a bed with a mosquito net, a working desk and storage space for the detainee's personal belongings. The Reporting Monitor observed that, while in the Special Enclosure, the detainees can wear their personal clothes whereas they are required to wear a prison uniform at all times while outside the Special Enclosure.<sup>13</sup>

#### ***G. Meeting with the Registrar***

31. On 16 May 2014, in the presence of Mr Janvier Bayingana, Head of the Witness Protection Unit of the Supreme Court, the Reporting Monitor met Mr Hypax Nyamutama, Registrar in the *Uwinkindi* and *Munyagishari* cases. The purpose of the meeting was for the Reporting Monitor to introduce herself. No substantive matters were discussed.

32. Mr Nyamutama noted that the next hearing in both cases – *Munyagishari* and *Uwinkindi* – has been scheduled for 4 June 2014 and that the same Chamber is assigned to both cases. Accordingly, there can be no conflict of schedule in the two cases.

#### ***H. Meeting with the Prison Director***

33. The Reporting Monitor met with Mr Alex Murenzi, Prison Director on 16 May 2014. Mr Murenzi addressed several issues that had been previously raised by Mr Munyagishari and Mr Uwinkindi.

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<sup>13</sup> Remandees, including Mr Munyagishari and Mr Uwinkindi, wear light pink uniforms. Convicts at the Prison wear orange uniforms.  
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34. Mr Murenzi explained that there is only one type of guard in the Prison and that there are no secret police officers. Mr Murenzi added that he gives daily orders to prison guards, including orders for prison guards to wear civilian clothes. According to Mr Murenzi, such orders are issued exclusively for security reasons.
35. Mr Murenzi noted that Mr Uwinkindi and Mr Munyagishari reside in the Special Enclosure where other prisoners (excluding the two other transferred detainees) are not allowed access to. Mr Uwinkindi and Mr Munyagishari are allowed to have visitors and can socialise with other detainees during sport activities and religious services. Mr Uwinkindi and Mr Munyagishari, unlike other detainees for whom Friday is a general visitors day, can receive legal visits every working day. Exceptionally, they are also allowed family visits on working days other than Fridays if the family is travelling from abroad and the detainee has made a request to that effect. They can also have access to the open space on designated days.
36. Mr Murenzi confirmed that there are plans to build two additional rooms for meetings between lawyers and the detainees of the Special Enclosure.
37. Mr Murenzi reiterated that new prison regulations are being developed. He specified that the regulations concern the disciplinary regime and the "house rules". They do not prescribe or amend rights of detainees or conditions of detention.
38. With regard to Mr Munyagishari's complaint of a nurse's report on his alleged misbehaviour, Mr Murenzi submitted that he has never seen such a report. On the contrary, he noted that Mr Munyagishari behaves well.
39. In relation to conjugal visits, Mr Murenzi noted that such visits are not a right and that it is within the Commissioner-General's authority to decide on those matters.
40. Mr Murenzi also noted that the television has been loaded with a voucher so that the detainees can watch different channels.
41. The detainees, according to Mr Murenzi, can also attend various activities, including religious services, sport, meetings and open debates. In relation to open debates, Mr

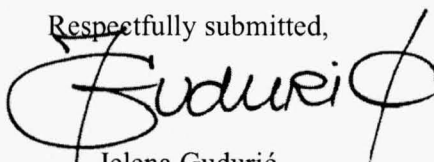
Murenzi explained that he occasionally asks the Commissioner-General to invite an official of the Ministry of Justice, local Government or another institution to lead a discussion on a certain topic with prisoners. All prisoners and prison staff gather in the main hall and then discuss issues such as justice, reconciliation and Gacaca courts. Both Mr Uwinkindi and Mr Munyagishari can attend these discussions.

42. Mr Murenzi stated that Mr Uwinkindi and Mr Munyagishari have access to a computer (without access to internet) and printer at the Special Enclosure.
43. Lastly, Mr Murenzi noted that Mr Uwinkindi and Mr Munyagishari have three meals a day, in accordance with the menu developed in cooperation with a nutritionist, whereas all other detainees in the Prison (excluding the two other transferred detainees) have two meals per day.

### III. CONCLUSION

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

Respectfully submitted,



Jelena Gudurić  
Monitor for the *Munyagishari* case

Dated this 4 day of July 2014  
The Hague,  
The Netherlands.



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