



Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 21 September 2015

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

MONITORING REPORT FOR AUGUST 2015

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Monitor:
Ms. Stella Ndirangu

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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 activities of interactions of Ms. Stella Ndirangu a Monitor appointed by the Mechanism ("Monitor"), with Mr. Munyangishari and the Director of the Kigali Prison during the month of August 2015 ("the Reporting Period").
3. During the Reporting Period, the Monitor undertook one mission to Rwanda on 30 August 2015 to 1 September 2015 to monitor the Bernard Munyagishari case.
4. During the month of August 2015, there was no court appearance for the Accused person. The report therefore communicates information on the meetings and discussions between Ms. Stella Ndirangu, the Prison Director and Mr. Munyagishari at the Kigali Central Prison.
5. During the monitoring mission the Monitor experienced challenges in meeting the Accused, the area provided for the meeting was not acceptable to the Accused person, who feared a confidential meeting could not be held in allocated area.
6. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 30 August to 1 September 2015

Meeting with Mr. Bernard Munyagishari on 31 August 2015

7. On 30 August 2015 at 2.00 pm the Monitor accompanied by an interpreter arrived at the Kigali Central Prison as scheduled to meet the Accused.
8. Both Mr. Munyagishari and Mr. Uwinkindi were brought from the special enclosure to the reception area at the Prisons main office block. The Prison staff informed the Monitor that the meeting would take place at the reception area because the room that was ordinarily allocated for meetings was occupied at the time.
9. Mr. Munyagishari on hearing this refused to hold the meeting in the area and demanded that a more private space be availed for his meeting with the Monitor.
10. The Monitor requested the Prison staff to provide to a more private space where there would be minimal interruptions during the meeting with the Accused. The Prison staff indicated the

meeting would have to take place at the reception area or the gazebo facility¹ adjacent to the special enclosure.²

11. Mr. Munyagishari protested the suggestion to use the gazebo facility indicating the area was open and he could not have a confidential meeting there. In reference to previous monitoring reports³ he asserted that the area had been reported on as not conducive for confidential discussions.⁴
12. The Monitor requested to be allowed to meet the Accused in the open space inside the special enclosure. The Prison Staff advised this would have to be approved by the Prison Director.
13. At this point the Monitor placed a call to the Prison Director's mobile phone, explained the situation and requested to access the special enclosure. The Director indicated he was on his way to his office and that the Monitor should wait for him to discuss the issues raised in person.
14. After meeting with the Prison Director the Monitor went back to Mr. Munyagishari and Mr. Uwinkindi and explained that the Director had emphasized that the available areas for the meeting would have to be the reception area or the gazebo facility. Further the Prison Director had given an undertaking that he would ensure passersby did not come near the facility during the meeting.
15. Mr. Munyagishari informed the Monitor that he was not willing to use the facility, emphasizing that previous Monitors had reported that the facility lacked privacy.
16. In Mr. Munyagishari's opinion the reassurances given by the Prison Director, that no one would be allowed to come close to the facility during the meeting, served to reinforce his concern that the area was not conducive to have a private meeting.
17. Mr. Munyagishari asked the Monitor to ensure the record reflects that he did not refuse to meet the Monitor but he requested for a closed room which guarantees a confidential environment for the meeting.

Meeting with the Prison Director, Mr. James Mugisha on 31 August 2015

18. The Monitor had called the Prison Director in the morning, informing him she would be visiting the Accused persons in prison that afternoon at 2.00 pm.

¹ See *The Prosecutor v. B. Munyagishari*, Case No. MICT-12-20, Public Monitoring Report for October 2014 ("October 2014 Monitoring Report") para. 11 and *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for October 2014 ("October 2014 Report"), para. 78. Where the Monitor in describing the facility noted that the new facility was a roofed, but open, gazebo-type structure with no fitted doors and windows, located right outside the Special Enclosure in a communal area within the Prison compound. It provides neither sound insulation nor visual cover from passers-by i.e. other prisoners, guards and visitors.

² The special enclosure is the block where detainees in the referred cases are held at the Kigali Central Prison.

³ See *The Prosecutor v. B. Munyagishari*, Case No. MICT-12-20, Public Monitoring Report for October 2014 ("October 2014 Monitoring Report") para. 10 -11.

⁴ See *The Prosecutor v. B. Munyagishari* October 2014 Monitoring Report para. 10.

19. At 2.45 pm the Monitor met with Mr. Mugisha, the Director of the Kigali Central Prison in his office. To discuss the possibility of holding the meeting with the Accused in a confidential space.
20. The Director informed the Monitor that the room that was availed in the past for meetings with the Accused was occupied and that the only available area to meet would be the reception and or the gazebo facility adjacent to the enclosure.
21. The Monitor informed the Director that Mr. Munyagishari had refused to meet in the areas suggested and because of concerns on confidentiality raised by the Accused previously, the Monitor preferred to hold the meeting in a more private area. The Monitor proposed to meet the Accused in the special enclosure since the room usually availed was occupied.
22. The Director advised that it was not a guarantee that the room that had been used previously would always be availed and the accused should not take it as a right or a privilege.
23. It was the view of the Director that the Monitor could not access the enclosure, to meet the Accused persons unless accompanied by Prison staff.
24. The Director indicated that if the Accused were not willing to meet at the reception area then they should meet at the semi-open gazebo facility next to the enclosure. The Director committed that he would ensure an atmosphere of privacy existed by asking that people do not idle around near the booths.
25. The Monitor returned to meet the Director at 3.30 pm, after communicating to the Accused the options available for the setting of the meeting and the Accused remaining resolute that they wanted a closed space.
26. After informing the Director of the Accused had remained adamant that he needed a closed space, the Director indicated that the open booths were built to be used by the Accused, their Counsel and Monitors. Further the Director stated that MICT staff had visited and approved the booths when they were built, it was therefore unreasonable for the Accused to refuse to hold meetings there.
27. When the Monitor enquired why previous Monitors had been allowed to meet the Accused in the enclosure yet the Director was refusing to allow the meeting to take place in the enclosure.⁵ The Director repudiated that previous Monitors were allowed to meet in the enclosure and maintained that any meeting in the enclosure would have to be in the presence of Prison staff.
28. At 4.00 pm the Monitor left the prison having not held the meeting with the Accused.

⁵ See *The Prosecutor v. B. Munyagishari* October 2014 Monitoring Report para. 6. The Monitor had held the meeting with the Accused in the Special Enclosure.

B. Amendments to the July 2015 Report to reflect new information received via email from the Ministry of Justice.

29. Through email communication, Mrs. Kalihangabo, Permanent Secretary in the Ministry of Justice clarified that that the Ministry had signed an Agreement on provision of legal assistance to minors, needy persons and cases transferred to Rwanda with the Rwanda Bar Association (RBA) but not a Memorandum of Understanding (MOU) as indicated in July 2015 Monitoring Report.
30. The Agreement differed from previous practice where the Ministry of Justice had directly contracted legal counsel designated by the Rwanda Bar Association.
31. Mrs. Kalihangabo further clarified that the process for awarding the contract is the responsibility of the Rwanda Bar Association. In relation to this the legal fees would be channelled through the RBA as part of its responsibility in handling contractual issues with Counsel.
32. Mrs. Kalihangabo further confirmed that the Ministry had set aside 15 Million RWF to cater for the transfer cases, of which the amount was exclusive of tax and only covered in country witnesses while fees for witnesses from outside will be transferred to RBA after the Court has established the list of witnesses.

III. CONCLUSION

33. In light of the challenges faced by the Monitor during her August monitoring Mission, the Mechanism needs to clearly communicate on the standards of facilities that are required to be made available for the meetings with the Accused to avoid a similar impasse to that experienced during the monitoring mission in August

Dated this 21st day of September 2015

Respectfully submitted



Stella Ndirangu
Monitor for the Uwinkindi case
Nairobi, Kenya