

**UNITED
NATIONS**

**MICT-12-20
30-11-2015
(555 - 550)**

**555
ZS**



Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 26 November 2015

Original: English

Before:

Judge Theodor Meron, President

Registrar:

Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

MONITORING REPORT FOR OCTOBER 2015

Monitor:

Nzamba Kitonga (S.C.)
Ms. Stella Ndirangu
Ms. Elsy Sainna

**Received by the Registry
Mechanism for International Criminal Tribunals**

30/11/2015 16:58

A handwritten signature in black ink, appearing to be 'John Hocking', written over a white background within a black rectangular box.

CONTENTS

I. INTRODUCTION.....	3
II. DETAILED REPORT	3
A. Monitoring Mission from 19 October 2015 to 23 October 2015.....	3
<i>Meeting with Mr. Bernard Munyagishari on 21 October 2015</i>	<i>3</i>
B. Monitoring Mission for from 27 – 29 October 2015.....	5
<i>Meeting with Bernard Munyagishari on 29 October 2015</i>	<i>5</i>
III. CONCLUSION.....	6

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"), we respectfully submit this Report to the President of the MICT through the Registrar.
2. This Monitoring report pertains to the interactions of Ms. Elsy Sainna and Ms. Stella Ndirangu, Monitor's appointed by the Mechanism ("Monitor"), with the Accused during the month of October ("the Reporting Period").
3. During the Reporting Period, the Monitor's undertook two missions to Rwanda on 19 October 2015 to 23 October 2015 and on 26 October 2015 to 29 October 2015, to monitor the Bernard Munyagishari case.
4. No Court session was held during the Reporting Period.
5. During the Reporting period the Monitor's held two meetings with Mr. Munyagishari at the Kigali Central Prison with the assistance of an interpreter.
6. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 19 October 2015 to 23 October 2015.

Meeting with Mr. Bernard Munyagishari on 21 October 2015

1. Mr. Munyagishari informed the Monitor that the decision taken by the President on 28 September 2015 in response to the request filed on 10 August 2015, had partly referenced the July 2015, monitoring report. He expressed that his report had not included concerns he had raised with the Monitor.
2. Mr. Munyagishari indicated that the document of 20 July 2015 addressed to Counsel Natacha Ivanovic about his concerns was the basis upon which Counsel Natacha had filed a request to the President of the mechanism. Mr. Munyagishari informed that the same concerns had been raised with the monitor in July but were not included in the July report. This according to Mr. Munyagishari had contributed to the President not having the full picture about his situation.
3. Mr. Munyagishari expressed concern about the paragraphs of the decision that seemed to vilify Counsel Natacha for not consulting Mr. Munyagishari. He re-emphasized that if the

his concerns had been reflected in the July 2015 monitoring report then the President would have understood why Counsel Natacha had to make the filing without consulting him.

4. Mr. Munyagishari asserted that only a few people were authorised to access him in prison and that is why communication with outsiders was nearly impossible. Mr. Munyagishari informed the Monitor that since July 2015, he had not been allowed to communicate with Counsel Natacha. Previously, he could reach out to her by telephone but the prison authorities did not allow him to call her anymore.
5. Mr. Munyagishari further informed that while preparing for the Supreme Court hearing both Counsel John Hakizimana and Jean Baptiste Niyibizi were allowed to contact him but Counsel Natacha was denied access to him. When the Supreme Court registrar had intervened and asked that he be allowed to contact Counsel to assist him with the Supreme Court application, he had requested to contact Counsel Natacha over and above reaching out to Counsel Niyibizi and Hakizimana, but he was denied permission to call Natacha. He indicated that he was informed he could only contact Rwandan Lawyers and not foreign lawyers.
6. Mr. Munyagishari informed the Monitor that he had managed to send Counsel Natacha a confidential report through a friend, whereby he had confidentially informed her about threats he was experiencing in prison.
7. Turning to the Supreme Court hearing, Mr. Munyagishari shared with the Monitor the response dated 30 September 2015, to the Prosecution brief filed by Counsel Hakizimana.
8. Mr. Munyagishari expressed disappointment that the President of the Mechanism in his decisions against the revocation requests kept referring to progressing negotiations for the remuneration of counsel, while in reality there were no negotiations going on in Rwanda. He asserted that under the pretext of ongoing negotiations, the Ministry was looking for ways to fire Defence Counsel.
9. To illustrate that there were no genuine negotiations going on, Mr. Munyagishari referred to paragraph 29 of the March 2014 Monitoring report, where Counsel Hakizimana had indicated that the Permanent Secretary in the Ministry of Justice had informed them that they would be removed from the case of Munyagishari, if they did not agree with the proposed lump sum payment by the Ministry. Further, during the hearing of 5 November 2014¹ the prosecution repeated the same position, indicating that if Defence Counsel would have to sign the contract provided by the Ministry of Justice and in the event they did not, then they would have to leave the case. In Mr. Munyagishari's opinion this showed there were no genuine negotiations.

¹ See *The Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20, Public Monitoring Report for November 2014 ("November 2014 Report"), 19 November 2014, para. 14.

10. Mr. Munyagishari noted that Paragraph 50 of the July monitoring report highlighted a departure from previous practice where the Ministry of Justice had directly contracted defence Counsel. A new arrangement had been proposed by the Ministry.
11. According to Mr. Munyagishari, during the supposed negotiation period, the Ministry of Justice and Prosecution were busy trying to identify other Counsel who could be appointed to represent the transferred Accused while frustrating the Defence Counsel handling the cases.
12. Mr. Munyagishari asserted that the Bar Association was just an offshoot office of the Ministry of Justice and the Prosecution and was not an independent association. In Paragraph 22 of the April 2015, Monitoring Report, the Bar Association had asserted that if Counsel found the money offered by the ministry for the defence of the Accused was little then they could return the brief to the President of the Bar for reassignment. This position was the same as that of the Ministry of Justice and the Prosecution.
13. Mr. Munyagishari emphasized that the position the Bar was taking now was different from that taken by the Kigali Bar Association, in paragraph 52 of its Amicus Curiae before the ICTR, dated 27 January 2012. Where it had attested that there was no obstacle regarding fair representation in Court and access to defence Counsel including through the legal aid programme for persons without means and vulnerable persons and regarding the work conditions of lawyers.
14. Mr. Munyagishari requested the President of the mechanism to intervene so that he can access Counsel Natacha, since he had been stopped from communicating with her from 9 July 2015.

B. Monitoring Mission for from 27 – 29 October 2015

Meeting with Bernard Munyagishari on 29 October 2015

15. The Monitor met Mr. Munyagishari at the Kigali Central prison in the presence of the interpreter.
16. Mr. Munyagishari was adamant that the confidential issues raised in the September monitoring should also reflect in the October monitoring report as had been shared with the monitor during the previous monitoring mission.
17. Mr. Munyagishari informed the Monitor that at the time of his transfer into Rwanda, he had provided additional contacts for Counsel he could reach who included Bernard Munyazizi and Counsel Natacha. He wondered why he was now being prevented from contacting them yet they were included in his initial list of contacts. He was of the view that he was being unreasonably prevented from contacting them and firmly believed that his rights were being infringed.

18. With respect the detention facilities, Mr. Munyagishari reiterated the issues raised at the last monitoring visit that the situation had not improved; the special enclosure remained dirty and that cleaning was rarely done in the enclosure.

III. CONCLUSION

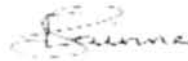
1. The Monitor's remain available to provide any additional information, at the President's direction.

Dated this 26 day of November 2015

Respectfully submitted



Stella Ndirangu
Monitor for the Uwinkindi case
Nairobi, Kenya



Elsy Sainna
Monitor for the Uwinkindi case
Nairobi, Kenya