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Mechanism for International Criminal Tribunals

Date: 25 July 2014

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Before: Mr Theodor Meron, President

Registrar: Mr John Hocking

Wenceslas Munyeshyaka, Case No. MICT-13-45

FIFTH MONITORING REPORT

Laetitia Husson:

**Officer in Charge of the Monitoring Mission in the *Munyeshyaka* Case for the
MICT**

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Am. M. Husson

1. This report is submitted in my capacity as the officer in charge of the monitoring mission for the Mechanism for International Criminal Tribunals (“MICT”) in the case of *The Prosecutor v. Wenceslas Munyeshyaka*, referred to the French authorities pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“Rules” and “ICTR”). It covers the period from April to June 2014.

Introduction and Background

2. The ICTR Prosecutor brought an indictment against Mr Munyeshyaka on charges of genocide and rape, extermination and murder as crimes against humanity committed in Rwanda in 1994. The indictment was confirmed by a Judge of the ICTR on 22 July 2005.¹ On 12 June 2007, the ICTR Prosecutor filed a request for referral of the indictment to the French judiciary, pursuant to Rule 11 *bis* of the Rules of the ICTR.²

3. On 20 November 2007, the Trial Chamber designated under Rule 11 *bis* of the Rules of the ICTR, determined that the requirements for referral were met and accordingly ordered that the case of *The Prosecutor v. Wenceslas Munyeshyaka* be referred to the French authorities so that they might immediately assign the case to the appropriate national court.³

4. Mr Munyeshyaka was already under judicial investigation in France following his indictment by a French investigating judge after a complaint with civil party petition was filed in 1995. At the request of the Prosecutor’s Office, the case referred by the ICTR was joined to the judicial investigation opened in France in 1995.

¹ *The Prosecutor v. Wenceslas Munyeshyaka*, Case No. ICTR-2005-87-I, Decision on Confirmation of an Indictment against Wenceslas Munyeshyaka, 22 July 2005 (unsealed on 20 June 2007); *The Prosecutor v. Wenceslas Munyeshyaka*, Case No. ICTR-2005-87-I, Indictment, 20 July 2005 (unsealed on 20 June 2007).

² The Prosecutor amended this request on 19 and 27 June 2007. See *The Prosecutor v. Wenceslas Munyeshyaka*, Case No. ICTR-2005-87-I, Prosecutor’s Request for the Referral of Wenceslas Munyeshyaka’s Indictment to France Pursuant to Rule 11 *bis* of the Tribunal’s Rules of Procedure and Evidence of 12 June 2007, confidential, 27 June 2007.

Consequently, the *Munyeshyaka* case is now the subject of a single judicial investigation in France. Mr Munyeshyaka has been on release under court supervision since September 2007

Monitoring Mission

5. I conducted an initial monitoring mission in the *Munyeshyaka* case in June and July 2013, and a second mission in September and October 2013. The two subsequent monitoring missions were conducted in January and April 2014. The reports on these four missions were submitted to the President of the MICT through the Registrar on 12 July 2013, 5 November 2013, 24 January 2014 and 24 April 2014, respectively, and made public by the latter on the MICT website on 15 July 2013, 7 November 2013, 28 January 2014 and 28 April 2014, respectively.⁴

Wenceslas Munyeshyaka

6. Attorney Jean-Yves Dupeux, Mr Munyeshyaka's legal representative, stated via e-mail that he had no particular observations or comments to make at this stage in the proceedings.

Civil Parties

7. The legal representatives of the Human Rights League (LDH), the International League against Racism and Anti-Semitism (LICRA) and *Survie* stated that they had no observations to make.

³ *The Prosecutor v. Wenceslas Munyeshyaka*, Case No. ICTR-2005-87-I, Decision on the Prosecutor's Request for Referral of Wenceslas Munyeshyaka's Indictment to France, 20 November 2007.

⁴ *Wenceslas Munyeshyaka*, Case No. MICT-13-45, Initial Monitoring Report on the *Munyeshyaka* Case, dated 12 July 2013, filed on 15 July 2013; *Wenceslas Munyeshyaka*, Case No. MICT-13-45, Second Monitoring Report, dated 5 November 2013, filed on 7 November 2013; *Wenceslas Munyeshyaka*, Case No. MICT-13-45, Third Monitoring Report, dated 24 January 2014, filed on 28 January 2014; *Wenceslas Munyeshyaka*, Case No. MICT-13-45, Fourth Monitoring Report, dated 24 April 2014, filed on 28 April 2014.

8. Attorney Safya Akorri, the legal representative of the International Federation for Human Rights (IFHR), pointed out by phone that the investigation file had grown notably due to the return of letters rogatory. She felt that tangible progress was being made in the case and that the judicial investigation could conclude by the end of 2014. She also noted that the new technical organisation of the evidence in the investigation file allowed for easier consultation.

9. Attorney Alain Ottan, the legal representative of the victims and those with rights to civil party petition, stated by email that the judicial investigation in the case was progressing and that there were no longer any concerns in that respect. Nevertheless, he pointed out that the issue regarding the financial circumstances would soon become “a crucial one” for the civil parties in case of a lengthy trial and “that they will not be able to bear them”, notably referring to the costs of transportation and accommodation in Paris and attorney fees. Attorney Ottan specified that this “was not a minor detail but a fundamental issue of the equality of arms and effective access to an independent and impartial court, which must be dealt with by the relevant authorities without delay”.

Prosecutor’s Office

10. I spoke on the telephone with Mr Nicolas Peron, Deputy Prosecutor at the AC5 Section, Unit for Crimes against Humanity and War Crimes of the Tribunal de Grande Instance de Paris (“Unit”) on 17 July 2014 as part of this new monitoring mission.

11. Mr Peron indicated that the investigating judges conducted an interview with a civil party in May 2014. He also informed me that investigators from the Central Office for Combating Crimes against Humanity, Genocide and War Crimes (“Central Office”) and one of the investigating judges had again travelled to Rwanda between 8 June and 20 June 2014. He indicated that, during this trip, the investigators and the investigating judge conducted new witness interviews and visited the sites.

12. Mr Peron also indicated that the creation of the Central Office for Combating Crimes against Humanity, Genocide and War Crimes, established in November 2013⁵ and operating since February 2014, would facilitate the future work of the investigating judges on cases entrusted to the Unit. The Central Office, attached to the criminal police subdivision of the directorate-general of the national gendarmerie and presently consisting of a dozen gendarmerie investigators, has taken over from the Paris Investigation Division in the *Munyeshyaka* case. Mr Peron explained that the Central Office aims to expand in the near future.

13. In regard to the issue of Mr Munyeshyaka accessing his investigation file, Mr Peron stated that the investigating judges were opposed to handing over copies of the evidence from the file to Mr Munyeshyaka due to the risk of witness intimidation and to ensure respect of the guarantees of confidentiality notably accorded to the exhibits disclosed by the ICTR. Mr Peron pointed out that, in line with French law, Mr Munyeshyaka was nevertheless able to consult the investigation file at the office of the investigating judges, or the copy of the file at the office of his attorneys.

14. Mr Peron confirmed that the judicial investigation against Mr Munyeshyaka was in its final stage and that, as things stand, the investigations should be concluded by the end of 2014.

Done on 25 July 2014

The Hague (Netherlands)

/signed/

Laetitia Husson

Officer in Charge of the Monitoring Mission in the *Munyeshyaka* Case

⁵ See Decree no. 2013-987 of 5 November 2013 creating a central office for combating crimes against humanity, genocide and war crimes, *Official Gazette of the Republic of France* no. 0259 of 7 November 2013.



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