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Tribunal Pénal International pour le Rwanda**

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Through: The Registrar  
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The Registrar  
International Criminal Tribunal for Rwanda ("ICTR")

From: Anees Ahmed  
ICTR / MICT Monitor for the Munyagishari Case

**Monitoring Report for the Munyagishari Case  
(July-August 2013)**

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## I. INTRODUCTION

1. I submit this first monitoring report (“Report”)<sup>1</sup> pursuant to my appointment as an ICTR / MICT monitor to observe the transferred case of Mr. Bernard Munyagishari (“Mr. Munyagishari”) in the courts of the Republic of Rwanda.<sup>2</sup>
2. Mr. Munyagishari was transferred to Rwanda on 24 July 2013. The transfer was made pursuant to the decision of the Referral Chamber on 6 June 2012, as confirmed by the decision of the Appeals Chamber on 3 May 2013.
3. This Report pertains to the activities in the *Munyagishari* case before the Rwandan judiciary and the interactions of the ICTR / MICT monitors (Messrs. Anees Ahmed and Constant Hometowu) with various stakeholders during July-August 2013 (“Reporting Period”).
4. During the Reporting Period, the monitors made three visits to Rwanda.<sup>3</sup>

## II. DETAILED REPORT

### A. Preparations in Rwanda to Receive Mr. Munyagishari

5. The ICTR / MICT monitor Mr. Constant Hometowu travelled to Rwanda on 21 July 2013 to observe the preparations by the ICTR, MICT, and the Rwandan authorities to receive Mr. Munyagishari upon his scheduled transfer by the ICTR on 24 July 2013.<sup>4</sup>
6. On 23 July 2013, Mr. Hometowu attended two separate meetings in the office of the Prosecutor-General of Rwanda in which officials of the ICTR and the National Public Prosecution Authority (“NPPA”) discussed the modalities of the transfer and handover of Mr. Munyagishari at Kigali International Airport.
7. On 24 July 2013, Mr. Hometowu attended another meeting in the office of the NPPA in which security officials briefed him about the security and transportation arrangements that had been made in preparation for the arrival and handover of Mr. Munyagishari.

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<sup>1</sup> To ensure the completeness of information, the reports for the months of July and August are being issued in a combined document. The MICT President granted leave to the monitors to do so on 30 August 2013.

<sup>2</sup> The appointment was made pursuant to the memorandum dated 29 May 2013 from the MICT Registrar to the ICTR Registrar. The ICTR Registrar agreed with this appointment by his memorandum dated 31 May 2013 addressed to the MICT Registrar.

<sup>3</sup> These visits also included activities pertaining to the monitoring of the case of Mr. Jean Uwinkindi, whose trial is scheduled to commence before the High Court on 11 October 2013.

<sup>4</sup> This section is based on comments provided by Mr. Hometowu.

**B. Preparation for Mr. Munyagishari's Departure to Rwanda**

8. On 24 July 2013, before departing from the United Nations Detention Facility ("UNDF") in Arusha, Mr. Munyagishari's personal effects and files were sealed in three boxes in his presence to accompany him on the flight to Rwanda. Before his departure for Kilimanjaro International Airport, Mr. Munyagishari and I had a meeting at the ICTR headquarters where I introduced myself as an ICTR / MICT monitor appointed to observe and report on the progress of his case once he was handed over to Rwandan authorities. I advised Mr. Munyagishari that upon his arrival in Kigali he would be met, amongst others, by Mr. Hometowu. I also briefed Mr. Munyagishari about the mandate of the monitoring mechanism. Finally, I advised Mr. Munyagishari that I would travel to Rwanda shortly and visit him at his detention facility on or about 27 July 2013.
9. Upon Mr. Munyagishari's request, ICTR officials provided him with a copy of the basic documents of the ICTR in French to take with him to Rwanda.
10. After my meeting with Mr. Munyagishari, Mr. Saidou Guindo, the Chief of Security of the ICTR and the Commandant of the UNDF, advised me that the ICTR Medical Officer, Dr. Nadine Ufitinema, had conducted a thorough medical check-up of Mr. Munyagishari. Mr. Guindo informed me that the result of that medical examination would be included amongst the documents that would be given to the Rwandan authorities when Mr. Munyagishari reached Kigali.
11. Mr. Guindo also advised me that he would personally travel with Mr. Munyagishari to Rwanda to oversee the handover.

**C. Mr. Munyagishari's Arrival in Rwanda**

12. At about 17:20 hours (Central Africa Time) on 24 July 2013, Mr. Munyagishari arrived at the Kigali International Airport on a RwandAir flight from Kilimanjaro International Airport. Mr. Guindo and two ICTR security officers accompanied Mr. Munyagishari on the flight. Upon arrival, he was received by an ICTR / United Nations delegation comprised, *inter alia*, of Messrs. Roland Amoussouga, ICTR Spokesperson, Constant Hometowu, ICTR / MICT monitor, Jonadab Codjoe, Acting Chief of Security, ICTR Kigali, and Edouard Tossou, United Nations Department of Safety and Security-Rwanda Advisor.<sup>5</sup>
13. At the Kigali International Airport, Mr. Amoussouga, representing the Registrar of the ICTR, formally handed over the custody of Mr. Munyagishari to officials from the NPPA. Mr. Hometowu and Mr. Vincent Lyimo, the monitor appointed by the MICT Prosecutor, witnessed this transfer. At the airport, ICTR officials also handed over to the Rwandan authorities Mr. Munyagishari's personal effects and files, as well as the ICTR medical file prepared by Dr. Ufitinema.

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<sup>5</sup> This section is based on comments provided by Mr. Hometowu.

14. Mr. Munyagishari did not respond to questioning in Kinyarwanda by Rwandan officials. He replied in French that he did not understand Kinyarwanda. Mr. Munyagishari also stated that he was not a Rwandan citizen, but a citizen of the Democratic Republic of Congo.

**D. Initial Meeting with Mr. Munyagishari in Rwanda**

15. On 25 July 2013, Mr. Hometowu met Mr. Munyagishari at the Kigali Central Prison (“Prison”). Mr. Amoussouga and Mr. Guindo also attended this meeting. Mr. Munyagishari informed Mr. Hometowu that upon his arrival at the Prison on 24 July 2013 he had met a Prison physician who informed him of a plan to take him to the King Faisal Hospital in Kigali for a medical check-up.<sup>6</sup>
16. Mr. Munyagishari also informed Mr. Hometowu that he had not chosen a counsel yet, and that he would claim indigence and would seek a counsel of his choice to be remunerated by legal aid. Mr. Munyagishari also acknowledged that he had received a list of 57 advocates from the Kigali Bar Association (“KBA”) from which he could choose a counsel.
17. Mr. Hometowu visited the cell within the special enclosure of the Prison where Mr. Munyagishari was detained. This special enclosure, often also referred as the “VIP Enclosure”, was built to house male detainees whose cases have been transferred from the ICTR, MICT, and national jurisdictions. This enclosure has an independent entrance and is separated by a wall from the general section of the Prison, which houses all other categories of prisoners.

**E. Meeting with Mr. Munyagishari on 27 July 2013**

18. Subsequent to Mr. Hometowu’s initial meeting with Mr. Munyagishari on 25 July 2013, I had four detailed meetings with Mr. Munyagishari in the Prison and three brief meetings during judicial proceedings.
19. On 27 July 2013, I met Mr. Munyagishari, along with Mr. Hometowu, at the Prison. In this meeting, Mr. Munyagishari raised certain grievances about the proceedings of his case before the ICTR. He stated, *inter alia*: 1) that the ICTR Appeals Chamber did not consider whether the indictment against him was defective, as it had done in the case of Mr. Jean Uwinkindi; 2) that the Appeals Chamber did not consider that Mr. Munyagishari had lost confidence in Mr. Philippe Moriceau, his Counsel before the ICTR, who he claimed had failed to communicate with and advise him, and that Mr. Munyagishari had sought representation by a different counsel; 3) that the ICTR Registrar did not decide on Mr. Munyagishari’s request for a change of counsel; and 4) that the ICTR transferred him to Rwanda “in haste” even as his last motion was being considered by the Appeals Chamber.<sup>7</sup>

<sup>6</sup> This section is based on comments provided by Mr. Hometowu.

<sup>7</sup> I informed Mr. Munyagishari that it is not part of the mandate of the monitors to discuss the proceedings that took place at the ICTR before Mr. Munyagishari was physically transferred to Rwanda.

20. Mr. Munyagishari stated that he was unable to choose suitable counsel in Rwanda as the list of counsel provided to him by the KBA was, in his opinion, incomplete.
21. Finally, Mr. Munyagishari said that, without the presence of a counsel, a team of prosecutors from the NPPA had met with him and had obtained a statement in which he was made to provide information about the whereabouts of his family members. He stated that, although he refused to sign the statement, he feared that his family members, whose identifying information he had revealed, would be victimized.

*F. Meeting with the Prison Director on 27 July 2013*

22. On 27 July 2013, Mr. Hometowu and I had a preliminary meeting with Mr. Rusa Gahima, Director of the Prison, concerning the arrival and the conditions of detention of Mr. Munyagishari.
23. Mr. Gahima informed us that Mr. Munyagishari was handed over to the Prison authorities at around 19:00 hours on 24 July 2013 by officials of the Rwandan National Police (“RNP”). Mr. Gahima stated that, to his awareness, Mr. Munyagishari landed at Kigali International Airport at about 17:20 hours, at which time he was transferred to the custody of the NPPA. According to Mr. Gahima, after being interviewed by NPPA officials, the RNP brought Mr. Munyagishari to the Prison. Mr. Gahima stated that the Prison also received the personal effects and files belonging to Mr. Munyagishari that had been sealed in boxes at the UNDF. In addition, the Prison received three envelopes, two pertaining to Mr. Munyagishari’s medical records, which were duly handed over to the Prison physician, and the third envelope containing 30 United States Dollars that belonged to Mr. Munyagishari.
24. Mr. Gahima informed me that the Prison physician had examined Mr. Munyagishari the night of his arrival and that a general check-up was scheduled for 10:00 hours on 29 July 2013 at King Faisal Hospital. Mr. Gahima stated that, as of our meeting, Mr. Munyagishari had not asked for any special medical assistance.
25. Mr. Gahima added that Mr. Munyagishari had asked to be provided with religious services. According to Mr. Gahima, Mr. Munyagishari would be allowed to attend religious services beginning on 29 July 2013.
26. Regarding a consular visit, Mr. Gahima stated that the Rwanda Correctional Services would determine whether consular assistance should be facilitated for Mr. Munyagishari. Mr. Gahima acknowledged that, as of 27 July 2013, consular services had not been provided to Mr. Munyagishari by the Democratic Republic of Congo, but that the NPPA, which is handling his case, could also take a position on this matter. Mr. Gahima confirmed that Mr. Munyagishari was taken to the offices of the NPPA on 25 July 2013 for an interview.

27. Mr. Gahima stated that the Prison would provide Mr. Munyagishari with a laptop computer. He added that all inmates of the special enclosure of the Prison were provided with a laptop and access to a common printer.
28. Finally, Mr. Gahima stated that he was aware that Mr. Munyagishari's daughter resided in Kigali and that she could visit Mr. Munyagishari as per Prison procedure.

***G. Meeting with Mr. Munyagishari on 30 July 2013***

29. On 30 July 2013, I met with Mr. Munyagishari in the special enclosure of the Prison where he is lodged along with Mr. Jean Uwinkindi and other accused who had been transferred from international or other national jurisdictions. Mr. Munyagishari reiterated that he had received a list of 57 advocates from the KBA, who the KBA claimed had ten or more years of experience. He stated that he would prefer a "complete list" of counsel to make an informed choice.
30. Mr. Munyagishari stated that he had sought a telephone in order to contact the counsel on the KBA list and accordingly to select a counsel of his choice. He said, however, that this request had been denied, and that he had been told by the Prison authorities that he first had to choose a counsel from the KBA list and that only thereafter would he be able to contact the chosen counsel.
31. Mr. Munyagishari stated that, as of the day of our meeting on 30 July 2013, he had been interviewed three times by NPPA officials (24 July 2013, 25 July 2013, and 29 July 2013). He stated that all these interviews had happened without the presence of a counsel representing him.
32. Concerning the food at the Prison, Mr. Munyagishari stated that it was substandard, and that as a consequence he had lost 3 kilograms within one week of his arrival in Kigali. He stated that in Arusha he weighed 96 kilograms, while after a week in Kigali he weighed 93 kilograms.
33. Mr. Munyagishari stated that, to his awareness, the conditions at the Mpanga Prison were far better than the conditions at the Prison where he was detained.

***H. Meeting with Mr. Munyagishari on 1 August 2013***

34. On 1 August 2013, I had another meeting with Mr. Munyagishari. During that meeting he stated that he still did not have access to a telephone in order to contact potential counsel, potential Defence witnesses, or family members. He confirmed that on 31 July 2013 he was taken to the King Faisal Hospital for a medical check-up.
35. Mr. Munyagishari stated that unknown persons in plainclothes and armed police officers regularly visited the special enclosure of the Prison, and that this gave him a sense of insecurity. He stated that, based on his understanding of international standards applicable to prisons, no armed guards or police other than uniformed prison personnel should be allowed within the Prison premises.

36. Thereafter, Mr. Munyagishari raised certain grievances about his legal situation, pursuant to his transfer to Rwanda, which, according to him, had already prejudiced, and would continue to jeopardise, his fair trial rights. The grievances, as narrated by Mr. Munyagishari, are described in the following paragraphs.

(i) Prejudicial amendment to the Transfer Law

37. Mr. Munyagishari stated that Rwanda breached a material condition of his transfer by amending the Transfer Law. According to Mr. Munyagishari, the ICTR's transfer decisions of the Referral and Appeals Chambers were issued subject to the condition that Rwanda apply the un-amended Transfer Law extant at the time of the referral decision. However, according to Mr. Munyagishari, by unilaterally and substantively amending the Transfer Law on 16 June 2013, Rwanda had fundamentally altered the conditions governing his trial and, in doing so, undermined the letter and spirit of the ICTR transfer decisions.

38. Mr. Munyagishari further argued that the un-amended Transfer Law was an "organic law," while the amended Transfer Law is an "ordinary law."

39. Mr. Munyagishari further argued that both the decisions of the Referral and Appeals Chambers clearly stated that his case should be tried before the High Court of Rwanda. However, by promulgating the Organic Law No. 2/2013/OL of 16 June 2013, whereby all pre-trial proceedings in his case are held before the Primary Court and the Intermediate Court, from which there is no recourse to the High Court or the Supreme Court, Rwanda had breached a fundamental condition of transfer. This alone should be a ground, he contended, for revocation of his transfer.

40. Mr. Munyagishari stated that all the pre-trial proceedings in the case of Mr. Uwinkindi took place (or are taking place) before the High Court and / or the Supreme Court while he (Mr. Munyagishari) is being prejudiced by his pre-trial proceedings being conducted solely before the Primary Court and the Intermediate Court. He claimed that this is unfair discrimination amongst persons transferred by the ICTR.

(ii) Right to consular visit

41. Mr. Munyagishari stated that he was born in, and is a citizen of, the Democratic Republic of Congo. He emphasized that he is not a citizen of Rwanda. He stated that he is neither a Hutu nor a Tutsi.

42. Mr. Munyagishari stated that, despite having informed the Prison and NPPA authorities of his Congolese citizenship, he had not had the benefit of a consular visit from the Kigali embassy of the Democratic Republic of Congo. He claimed that international minimum standards for the treatment of detainees required that a consular visit be facilitated to a non-citizen detainee within 48 hours of his / her detention, which he stated had not been done as of the time of this interview.



## (iii) Interrogation without an advocate

43. Mr. Munyagishari stated that he had met with NPPA three times, and that material identifying information had been obtained from him without the presence of a counsel. He feared that this information could be used against him at trial and in order to harm the individuals he identified during those interviews.

## (iv) Proceedings in a language he does not understand

44. Mr. Munyagishari stated that every document served on him and every interview conducted with him had been in Kinyarwanda, a language he does not understand.
45. He noted that, to the contrary, ICTR judicial organs had ensured that all material documents were served on him in French, a language he does understand. He added that all proceedings at the ICTR were also interpreted into French.
46. He stated that, despite this precedent, his request for an interpreter in Rwanda had been denied.

## (v) Right to religious services

47. Mr. Munyagishari stated that by prohibiting or significantly restricting his ability to participate in religious services, Prison authorities had undermined his freedom to practice his religion, which he argued is guaranteed both under Rwandan and international laws.

***I. Meeting with the President of the KBA***

48. On 1 August 2013, I met with Mr. Athanase Rutabingwa, the President of the KBA. Mr. Victor Mugabe, the Executive Secretary of the KBA, accompanied Mr. Rutabingwa. In this meeting, I discussed the issues pertaining to the two transferred cases from ICTR—those of Messrs. Uwinkindi and Munyagishari.
49. Concerning the *Munyagishari* case, Mr. Rutabingwa informed me that the KBA was duty-bound to assign an advocate to an unrepresented, indigent accused like Mr. Munyagishari. Mr. Rutabingwa further stated that he had received a letter from the head of Criminal Investigations Department indicating that Mr. Munyagishari had claimed indigence and, as such, a lawyer should be appointed to assist him. Accordingly, Mr. Rutabingwa informed me that he had appointed Mr. Donatien Mucyo, a Kigali-based advocate with more than ten years of experience, to represent Mr. Munyagishari as a Duty Counsel.
50. Mr. Rutabingwa stated that if Mr. Munyagishari wished, the KBA could provide him a longer list of counsel than the one containing 57 names. Mr. Rutabingwa continued that the law was unequivocal and that the KBA could appoint any of its members whom Mr. Munyagishari chooses, subject to a conflict of interest or moral objection by the counsel. Mr. Rutabingwa also stated that if Mr.

Munyagishari requested the services of a foreign lawyer, the KBA would have to discuss the matter with the Rwandan Ministry of Justice (“MiniJust”).

***J. Meeting with the Duty Counsel***

51. On 1 August 2013, I met with Mr. Donatien Mucyo, who had been assigned earlier that day by the KBA as a Duty Counsel for Mr. Munyagishari.
52. Mr. Mucyo informed me that he would make an immediate effort to visit Mr. Munyagishari at the Prison to seek instructions regarding his imminent initial appearance. Mr. Mucyo said that he had wide experience as a litigator, including in criminal matters, and that he was confident that he would be able to assist Mr. Munyagishari to the latter’s satisfaction.

***K. Mr. Munyagishari’s Initial Appearance before the Primary Court***

53. On 5 August 2013, Mr. Munyagishari was brought for an initial appearance before Judge Felix Ndahigwa, the President of the Primary Court of Nyarugenge. The Prosecution was represented by Mr. Rugambwa Ndibwami, while the designated Duty Counsel Mr. Mucyo was also present. Judge Ndahigwa opened the proceedings with the reading of the charges by a court registrar in Kinyarwanda. After the reading of the charges, Mr. Munyagishari responded in French that given his language abilities he should be heard in French.
54. Mr. Munyagishari further stated in French that he had not received any document or summons from the Primary Court, and that the RNP had brought him before the Primary Court without valid authority.
55. Mr. Ndibwami for the Prosecution, speaking in Kinyarwanda, responded that Mr. Munyagishari should plead in Kinyarwanda as he understands that language and that the Prosecution would provide evidence to that effect. The Prosecution cited Article 23 of the Transfer Law, which states that the arrest and detention of an accused transferred by the ICTR would be regulated by the Rwandan Code of Criminal Procedure (“CCP”). Accordingly, the Prosecution claimed that all proceedings must be in Kinyarwanda.
56. The Prosecution added that it had evidence that Mr. Munyagishari: 1) was born in Rwanda; 2) had Rwandan citizenship; 3) studied in Rwanda; 4) taught in Rwanda; 5) appeared and testified before courts in Rwanda; and 6) understood Kinyarwanda. In particular, the Prosecution relied upon a judgment of 1982 of the Ruhengeri Appeals Court in which Mr. Munyagishari had allegedly testified in Kinyarwanda. The Prosecution argued that the documents of those appellate proceedings indicated that in that case Mr. Munyagishari testified in Kinyarwanda and that he had spoken more Kinyarwanda than French during those proceedings. The Prosecution also cited Article 5 of the Constitution of Rwanda, which provides that the national language of Rwanda is Kinyarwanda.<sup>8</sup>

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<sup>8</sup> “The national language is Kinyarwanda. The official languages are Kinyarwanda, French and English.” Constitution of the Republic of Rwanda, 26 May 2003, Art. 5.

The Prosecution added that even the ICTR Statute requires that the proceedings of the court should be in a language that the accused understood, and not in the language that he preferred. The Prosecution concluded that, in the name of all Rwandans, the proceedings should be in Kinyarwanda.

57. On the question of the lawfulness of the initial appearance, the Prosecution added that, according to Article 99 of the CCP, a prosecutor could provisionally detain a suspect and take him / her for an initial appearance in the court nearest to the place of arrest. The Prosecution added that Mr. Munyagishari had been rightly brought before the Primary Court, as it was closest to the Kigali International Airport where Mr. Munyagishari was formally arrested upon his transfer from the ICTR.
58. After the conclusion of submissions by the Prosecution, Judge Ndahigwa, speaking in Kinyarwanda, asked Mr. Munyagishari to respond to the submissions of the Prosecution.
59. Before the Duty Counsel could respond to the direction of the Judge, Mr. Munyagishari addressed the Court in French, and stated that Mr. Mucyo was not the lawyer of his choice, and that he did not wish to be represented by him. Upon this submission by Mr. Munyagishari, Mr. Mucyo did not participate in the proceedings further.
60. Thereafter, Judge Ndahigwa asked Mr. Munyagishari again to plead in Kinyarwanda. Mr. Munyagishari responded that he could not understand what the Judge had said and that he would proceed to plead in French. Upon further attempts by Mr. Munyagishari to speak in French, Judge Ndahigwa stated that he had decided that the proceedings would continue only in Kinyarwanda, and if Mr. Munyagishari wished to continue, he could do so in Kinyarwanda. Judge Ndahigwa asked the Duty Counsel to assist Mr. Munyagishari. Mr. Mucyo replied that he was an advocate and not an interpreter, and that if Mr. Munyagishari had decided not to avail his services, he did not wish to participate in the proceedings.
61. Judge Ndahigwa then asked the Prosecution for submissions on other issues. The Prosecution responded that Mr. Munyagishari was before the Primary Court for the examination of his provisional detention. The Prosecution submitted that the date of his initial appearance was within the permissible number of days within which a prosecutor must bring an accused before a judicial authority. The Prosecution asked the Court to extend Mr. Munyagishari's detention on remand for a period of 30 days.
62. Judge Ndahigwa, speaking in Kinyarwanda, asked Mr. Munyagishari if he had anything to say. Mr. Munyagishari, again speaking in French, stated that he could not understand what the Judge had said.
63. At this stage, the Judge adjourned the proceedings until 6 August 2013 for a written decision.

64. Mr. Munyagishari refused to sign the record of proceedings, stating that he could not understand its content.

**L. Remand Decision of the Primary Court**

65. On 6 August 2013, Judge Ndahigwa delivered the Primary Court's decision on the question of detention on remand of Mr. Munyagishari (Case No. 0036/DP/13/Nyarugenge). Mr. Ndibwami represented the Prosecution, while Mr. Munyagishari was not represented by counsel.
66. In his decision, Judge Ndahigwa stated that he had found that Mr. Munyagishari was Rwandan and that there was sufficient evidence that he had lived and worked in Rwanda. On the question of detention, Judge Ndahigwa noted that there were many witnesses who had testified about Mr. Munyagishari's role in the genocide, and that there was reasonable suspicion that Mr. Munyagishari had participated in the crimes of which he was accused. Judge Ndahigwa noted that the ICTR had also detained Mr. Munyagishari pending the disposal of the transfer application. Accordingly, he remanded Mr. Munyagishari to detention for 30 days.
67. On the question of language, Judge Ndahigwa ruled that he had already decided to conduct the trial in Kinyarwanda, as was done in the cases of other persons transferred from foreign jurisdictions, including Mr. Leon Mugesera.<sup>9</sup> Judge Ndahigwa stated that there was evidence that Mr. Munyagishari understood Kinyarwanda and that the only requirement was that the accused be tried in a language he understood and not the language he chose.
68. Upon the delivery of the decision, Mr. Munyagishari, speaking in French, stated that he would appeal the decision.

**M. Meeting with the Prison Director on 7 August 2013**

69. On 7 August 2013, I met with Mr. Gahima, the Prison Director, regarding the conditions of detention of Mr. Munyagishari. Mr. Gahima stated that after the remand order of the Primary Court on 6 August 2013, Mr. Munyagishari had formally come under the custody of the Prison authorities under judicial supervision.<sup>10</sup>
70. Concerning the use of a telephone, Mr. Gahima stated that Mr. Munyagishari could make two telephone calls per week, while his Defence Counsel could call him at any reasonable time.<sup>11</sup> Mr. Gahima also stated he would look into granting

<sup>9</sup> Mr. Mugesera was transferred from Canada to face trial before the Rwandan judiciary, *inter alia*, for inciting genocide. Upon his transfer, Mr. Mugesera unsuccessfully pleaded that the proceedings in his trial in Rwanda should take place in French, a language he understands. Mr. Mugesera is also detained in the special enclosure for the transferred accused in the Kigali Central Prison.

<sup>10</sup> As distinguished from the custody of the police or the prosecution.

<sup>11</sup> The term "Defence Counsel" is used both in its singular and plural sense.

- Mr. Munyagishari more telephone time in order to allow him to make an informed choice of counsel from the list provided to him by the KBA.
71. Mr. Gahima further informed me that he would ensure the provision of a desk and a chair in Mr. Munyagishari's cell.
  72. Concerning the issue of food, Mr. Gahima stated that the Prison had outsourced the cooking to a canteen and that the menu was set with input from the detainees in the special enclosure. He stated that the Prison Social Service Officer, who deals with the canteen and other amenities for the detainees, works under the supervision of the Prison Director and would instruct the canteen to ensure that the food is of good quality. He stated that Mr. Munyagishari preferred to eat *sombe* and *ugali* and the canteen provided him this food.
  73. Mr. Gahima stated that no armed guards or plainclothesmen enter the special enclosure, and that only uniformed unarmed prison officers were permitted entry.
  74. He further stated that there are officers within the Prison who speak French and Kiswahili, the two languages that Mr. Munyagishari has routinely chosen to communicate in.
  75. Mr. Gahima stated that Mr. Munyagishari could file with the Prison Director any documents addressed to any judicial or other authority, and that he would then transmit them to the addressee. Similarly, any correspondence addressed to Mr. Munyagishari that was received by the Prison Director would be transmitted to him expeditiously.

**N. Meeting with Mr. Munyagishari on 7 August 2013**

76. On 7 August 2013, I had a short meeting with Mr. Munyagishari when I visited the Prison to meet the Director. During that meeting Mr. Munyagishari stated that he did not have a copy of the dossier in his case and that he had not been served any other document from the Primary Court. He also stated that all the documents from the Prosecution, the courts, and other authorities were in Kinyarwanda, which he did not understand. He also informed me that he had not yet chosen a counsel, as he had not been able to make any meaningful contact with those on the KBA counsel list. Furthermore, Mr. Munyagishari stated that the KBA had not yet provided him a copy of the entire list of advocates on its rolls.

**O. Appeal Hearings before the Intermediate Court**

77. On 12 August 2013, Mr. Munyagishari's appeal against the 6 August 2013 decision of the Primary Court came up for consideration before Judge Yvette Uwantege of the Intermediate Court at Nyamirambo, Kigali. However, the matter was adjourned to 14 August 2013, as the Prosecution sought time to respond to the appeal brief filed by Mr. Munyagishari.

78. On 14 August 2013, the appeal came up for hearing a second time before the Intermediate Court. Mr. Ndibwami represented the Prosecution, while Mr. Munyagishari appeared alone; Mr. Mucyo, the Duty Counsel, was also present in the Court.
79. After making her opening remarks, Judge Uwantege, speaking in Kinyarwanda, called upon Mr. Munyagishari to argue his appeal. Mr. Munyagishari started to argue his appeal in French. Judge Uwantege, speaking in Kinyarwanda, ordered Mr. Munyagishari to respond in Kinyarwanda in order for the proceedings to continue. The Judge, speaking in Kinyarwanda, stated that the Court had already decided that the proceedings would be conducted in Kinyarwanda.
80. As Judge Uwantege turned to the Duty Counsel, Mr. Munyagishari stated that Mr. Mucyo was not the counsel of his choice, and, therefore, would not represent him. In response, Mr. Mucyo stated that he was only doing his duty, as he had been appointed by the KBA. However, he continued, if Mr. Munyagishari chose not to be represented by him, he could not impose himself on Mr. Munyagishari. The Intermediate Court, accordingly, discharged Mr. Mucyo from the proceedings.
81. The Prosecution responded that under Article 39 of the CCP, an accused like Mr. Munyagishari has the right to accept or refuse to be represented by a counsel appointed by the KBA. In addition, if Mr. Munyagishari continued to speak in French, the Court must consider the question of language.
82. After hearing these arguments, Judge Uwantege concluded that there was sufficient evidence to establish that Mr. Munyagishari understood Kinyarwanda. In addition, Judge Uwantege noted that in similar cases Rwandan courts had decided that proceedings should be conducted in Kinyarwanda. The Intermediate Court, therefore, in an oral decision, ruled that the appeal hearing would continue in Kinyarwanda.
83. On the question of the appointment of counsel, the Prosecution submitted that under Article 39 of the CCP, the KBA should assign a lawyer, and that Mr. Munyagishari could accept or refuse him / her then. The Prosecution, therefore, sought an adjournment so that it could contact the KBA to allow the KBA to assign a counsel to Mr. Munyagishari. The Intermediate Court accordingly adjourned the matter to 21 August 2013 to allow the Prosecution to contact the KBA.
84. On 21 August 2013, the appeal hearing was resumed before the Intermediate Court. Mr. Ndibwami represented the Prosecution, while Mr. Munyagishari was present along with Mr. Jean-Baptiste Niyibizi and Mr. John Hakizimana, two counsel registered with the KBA.<sup>12</sup> Upon commencement of the proceedings,

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<sup>12</sup> Mr. Niyibizi is also the Defence Co-Counsel in the case of Jean Uwinkindi, whose case is pending before the High Court of Rwanda upon transfer by the ICTR. Mr. Hakizimana is a Kigali-based member of the KBA.

Judge Uwantege, speaking in Kinyarwanda, stated that the Intermediate Court had previously decided that the proceedings would continue in Kinyarwanda. She added that it was time for the Defence to argue its appeal on substance, i.e. the matter of detention.

85. Mr. Niyibizi, arguing on behalf of Mr. Munyagishari, submitted that even if the Intermediate Court had determined that it would proceed only in Kinyarwanda it could consider the appointment of an interpreter to assist Mr. Munyagishari, as he could not understand Kinyarwanda. Mr. Hakizimana, also arguing on behalf of Mr. Munyagishari, further submitted that as he and Mr. Niyibizi had only just been provisionally chosen by Mr. Munyagishari and that as they did not have access to the dossier, the Defence needed more time to prepare its submissions. Mr. Hakizimana stated that he and Mr. Niyibizi could only assist Mr. Munyagishari if they had access to the dossier and enough time to prepare the case in consultation with Mr. Munyagishari. Citing a precedent, Mr. Hakizimana stated that a similarly-situated transferred accused, Mr. Mugesera, who was arrested in February 2012 was granted additional time until May 2012 to prepare his case.
86. The Prosecution, speaking in Kinyarwanda, argued that Mr. Munyagishari should be deemed to have received his file, as he had refused to accept it when officials of the NPPA visited him in the Prison. Furthermore, Mr. Ndibwami argued that Mr. Mucyo, the previous Duty Counsel, had been given a copy of the file, which should have been handed over to Mr. Munyagishari upon his withdrawal. The Prosecution submitted that, as the hearing was limited to the question of detention and was not substantive in nature, the Defence Counsel should be able to prepare their case expeditiously.
87. In response, Mr. Niyibizi reiterated that as Mr. Mucyo had never been Mr. Munyagishari's counsel, Mr. Munyagishari could not have received the file from him. Mr. Niyibizi and Mr. Hakizimana jointly submitted that they had not had access to the filings of the Prosecution and had no reasonable opportunity to seek instructions from Mr. Munyagishari. Mr. Hakizimana also alleged that the Prison authorities had not allowed him and Mr. Niyibizi sufficient time to meet with Mr. Munyagishari. At times, he argued, permission to meet Mr. Munyagishari was flatly denied.
88. Upon hearing the parties, the Intermediate Court adjourned the matter to 23 August 2013 to deliver its decision.
89. On 23 August 2013, in its written decision, the Intermediate Court refused the services of an interpreter to Mr. Munyagishari, again ruling that there was evidence that Mr. Munyagishari could understand and speak Kinyarwanda. On the question of permitting meetings between Mr. Munyagishari and his Defence Counsel within the Prison, the Intermediate Court held that it had no supervisory authority over the Prison administration to direct that Messrs. Niyibizi and Hakizimana be allowed to enter the Prison to meet Mr. Munyagishari. However,

the Intermediate Court adjourned the matter to 2 September 2013 to allow the Defence Counsel to prepare their case.

90. On 2 September 2013, the case again came up for consideration of Mr. Munyagishari's detention appeal. Mr. Niyibizi and Mr. Hakizimana represented Mr. Munyagishari. Proceedings were conducted in Kinyarwanda. Mr. Hakizimana submitted that Mr. Munyagishari had chosen him and Mr. Niyibizi on a provisional basis pending Mr. Munyagishari's negotiations with the KBA.
91. Judge Uwantege asked the provisional Defence Counsel to argue the appeal. Mr. Niyibizi submitted that Judge Uwantege had presumptively decided that the appeal should be heard in Kinyarwanda without considering the arguments of the parties. Mr. Niyibizi also stated that this was a violation of paragraphs 3 and 4 of Article 50 of the CCP. Mr. Niyibizi argued that Judge Uwantege had made this decision before the dossier and other filings were served on the Defence Counsel, who were the only ones who could meaningfully respond to the Prosecution case.
92. In response to the Defence's submissions, Judge Uwantege noted that, as the Defence had expressed a lack of faith in her, she would refer the file to the President of the Intermediate Court to determine whether the proceedings should continue before her.
93. The President of the Intermediate Court subsequently dismissed the Defence challenge and directed that the proceedings resume on 10 September 2013 before Judge Uwantege.<sup>13</sup>
94. On 10 September 2013, the Intermediate Court further adjourned the matter until 23 September 2013 for arguments on Mr. Munyagishari's detention appeal.<sup>14</sup>

***P. Meeting with Mr. Munyagishari on 21 August 2013***

95. On 21 August 2013, I had a brief meeting with Mr. Munyagishari at the Prison. Mr. Munyagishari informed me that, as the KBA had not been able to assign him a counsel of his choice, he had chosen Mr. Niyibizi and Mr. Hakizimana as his provisional counsel pending negotiations with the KBA.
96. Mr. Munyagishari also stated that he had filed a request for basic amenities with the Prison authorities on 6 August 2013. However, as of that day, he had received no response to the letter, and the requested amenities had not been provided. He stated that, among other requested items, he had not received a chair, a table, or a television decoder.
97. Mr. Munyagishari reiterated that the quality and the quantity of the food he received were harmful to his health. He had been told by the Prison Social

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<sup>13</sup> The monitors have not yet been able to obtain a written record of these proceedings from the Intermediate Court. These proceedings will be further addressed in the future monitoring reports.

<sup>14</sup> *Id.*



Service Officer that the cost of food should not exceed 1,500 Rwandan Francs per meal. On that basis, according to Mr. Munyagishari, at times he and his fellow inmates skipped lunch in order to get a “filling meal” worth 3,000 Rwandan Francs for dinner.

98. Finally, Mr. Munyagishari stated that there had been delays in the transmission of his letters and judicial filings through the Prison office to their intended recipients.

***Q. Appointment of Defence Counsel by the KBA***

99. On 30 August 2013, the President of KBA informed Mr. Munyagishari that the KBA had no objection to designating Mr. Niyibizi and Mr. Hakizimana as Defence Counsel for Mr. Munyagishari. The President of the KBA also informed Mr. Munyagishari that a complete list of advocates registered at the KBA was available on the KBA website. This letter was sent in response to Mr. Munyagishari’s letter of 21 August 2013 requesting the KBA to appoint Mr. Niyibizi and Mr. Hakizimana as his counsel on “a provisional basis”.

***R. Witness Protection***

100. On 31 July 2013, I met with Mr. Janvier Bayingana, the Witness Protection Expert engaged by the Supreme Court of Rwanda to head its Witness Protection Unit (“WPU”). Mr. Bayingana is a former staff member of the Witnesses and Victims Support Section of the ICTR, where he worked for a decade in both Arusha and Kigali.
101. Mr. Bayingana showed me the organigram of the WPU and also took me around the facilities created within the premises of the Supreme Court dedicated to handling protected witnesses during their appearances before the Court. Mr. Bayingana stated that he reports administratively and substantively to the Chief Registrar and the Secretary-General of the Supreme Court, under the overall supervision of the Chief Justice of Rwanda.
102. Mr. Bayingana stated that the WPU budget is sufficient for further modification and refurbishment of the facilities within the Supreme Court to handle protected witnesses. He informed me that procurement procedures have been initiated for further improvement of these facilities.
103. According to Mr. Bayingana, the WPU will address issues of general and judicially ordered protection of witnesses, witness support, security, health, and transportation. He stated that arrangements have been made with a public hospital in Kigali to provide fully confidential medical and psychological treatment to protected witnesses, as required.
104. Mr. Bayingana further stated that the WPU has the means and the infrastructure to access and support protected witnesses anywhere in Rwanda and that provision had been made in the WPU budget for a safe-house where protected witnesses can be accommodated. Mr. Bayingana added that the WPU also

proposed to maintain a database of witnesses in order to provide protective measures even after the conclusion of the trial, if so ordered by the Court.

105. Mr. Bayingana stated that the WPU is aware of the specific requirements of the cases transferred from the ICTR and other national jurisdictions to Rwanda, which are subject to the *sui generis* Transfer Law. He said that the WPU would continue to prepare for and meet the specific requirements of witnesses who would testify from abroad via video-link. Mr. Bayingana added that arrangements would be made in consonance with Article 15 of the Transfer Law to ensure the protection from search and seizure or arrest of witnesses arriving from abroad to testify in the transferred cases.
106. Mr. Bayingana advised me that the WPU budget is of a hybrid nature having two components. The first component of the budget is drawn from the regular budget of the Supreme Court and the second component comes from external donors.

#### ***S. Meetings and Interactions with Government Authorities***

107. On 7 August 2013, I met with Mr. Pascal Ruganintwali, the Permanent Secretary of MiniJust and the Deputy Attorney-General of Rwanda. Mr. Ruganintwali assured me that MiniJust was committed to providing legal aid expenses through the KBA to indigent transferred accused, like Mr. Munyagishari, according to existing procedure.
108. On 28 August 2013, I was invited to a meeting between Mr. Bongani Majola, Registrar of the ICTR, and Mr. Alphonse Hitiyaremye, Deputy Prosecutor-General of Rwanda. During this meeting, officials of the NPPA apprised Mr. Majola of the progress of the transferred cases of Messrs. Munyagishari and Uwinkindi.<sup>15</sup> The NPPA officials expressed their satisfaction with the progress in the *Munyagishari* case, and the cooperation between the ICTR and the Rwandan authorities in effectuating Mr. Munyagishari's transfer.
109. Mr. Hitiyaremye, *inter alia*, advised Mr. Majola that the NPPA had recruited two staff members from the Office of the Prosecutor of the ICTR—Ms. Florida Kabasinga and Ms. Aisha Kagabo—to assist and advise the NPPA on matters pertaining to the transferred cases.
110. On 29 August 2013, I was invited to a meeting at MiniJust between Mr. Majola and Mr. Johnston Busingye, Minister of Justice and Attorney-General of Rwanda.

#### ***T. Other Meetings, Activities, and Observations***

111. During their visits to Rwanda, the monitors meet with various stakeholders of the transferred cases. These stakeholders include, but are not limited to, judicial

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<sup>15</sup> Discussions concerning the case of Mr. Uwinkindi will be described separately in the monitoring report concerning that transferee.

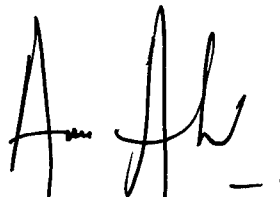
officers, prosecuting and defence attorneys, court officials, prison authorities, and members of the diplomatic corps and the civil society.

112. In their reporting, the monitors have been governed by the guidelines issued by the ICTR and the MICT concerning the monitoring programme. In particular, the monitors have been cognisant of Article 3.3 of the *Guidelines on Monitoring Trials Referred to National Jurisdictions under Rule 11bis by ICTR Staff Monitors*, which states as follows: "ICTR monitors shall express no personal opinion regarding the merits of transferred cases, other cases occurring in the national courts, or on the larger justice system."<sup>16</sup> This article is reproduced *mutatis mutandis* in clause C-6 of the *Terms of Reference for the Interim Monitors in the Case of Bernard Munyagishari* issued by the MICT on 10 September 2013.
113. Officials of the ICTR and the MICT provide logistical support to the monitors on mission in Rwanda.
114. Former staff members of the ICTR are engaged on a contractual basis to provide interpretation and translation services to the monitors.
115. Officials of the MICT based in Kigali facilitate the transmission and receipt of documents between Mr. Munyagishari and the MICT. They have also provided Mr. Munyagishari a copy of the basic documents of the MICT in French.

### III. CONCLUSION

116. The pre-trial proceedings in the *Munyagishari* case are ongoing. Currently, the Intermediate Court is hearing a detention appeal in which Mr. Munyagishari has raised a number of fair trial issues. There is no date fixed yet for the commencement of the substantive trial.

Respectfully submitted,



Anees Ahmed

ICTR / MICT Monitor for the Munyagishari Case

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<sup>16</sup>*Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-2001-75-AR/11bis, Order on the ICTR Monitoring Arrangements, 29 June 2012, Annex A, Art. 3.3.



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
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