



*The International Residual Mechanism for Criminal Tribunals ("Mechanism") was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY") after the completion of their respective mandates.*

## CASE INFORMATION SHEET

*Pursuant to Article 3 of the Transitional Arrangements, the Mechanism has competence over review proceedings of ICTR judgements for which the application for review was filed on or after 1 July 2012.*

**MICT-12-29**

# AUGUSTIN NGIRABATWARE



In July 1990, Ndirakobuca was appointed Minister of Planning, a position he retained as part of the Interim Rwandan Government in April 1994. He was also a member of the Préfecture Committee of the National Republican Movement for Democracy and Development ("MRND") political party in Gisenyi Préfecture, the National Committee of the MRND, and the technical committee of Nyamyumba Commune.

<b>Indictment</b>	Initial indictment filed on 28 September 1999. Operational indictment filed on 14 April 2009.
<b>Arrest</b>	Arrested on 17 September 2007 in Germany. Transferred to the ICTR on 8 October 2009.
<b>ICTR Trial Chamber Judgement</b>	<p>Delivered on 20 December 2012.</p> <p>Judge William H. Sekule (Presiding) Judge Solomy Balungi Bossa Judge Mparany Mamy Richard Rajohnson</p> <p>The Trial Chamber convicted Ndirakobuca of direct and public incitement to commit genocide, instigating and aiding and abetting genocide and, under the extended form of joint criminal enterprise ("JCE"), rape as a crime against humanity. He was sentenced to 35 years of imprisonment.</p>
<b>Mechanism Appeals Chamber</b>	<p>Judge Theodor Meron (Presiding) Judge Bakone Justice Moloto Judge Christoph Flügge Judge Burton Hall Judge Liu Daqun</p>
<b>Mechanism Appeals Chamber Judgement</b>	<p>Delivered on 18 December 2014.</p> <p>The Appeals Chamber reversed Ndirakobuca's conviction for rape as a crime against humanity under the extended form of JCE and affirmed his remaining convictions. In light of the reversal, the Appeals Chamber reduced Ndirakobuca's sentence to 30 years of imprisonment.</p>
<b>Request for Review of Appeal Judgement</b>	<p>Granted on 19 June 2017.</p> <p>On 8 July 2016, Ndirakobuca requested the Mechanism to review the Appeal Judgement. On 25 July 2016, the President assigned a bench of the Appeals Chamber to consider the request for review.</p>
<b>Mechanism Appeals Chamber assigned to Review of Judgement</b>	<p>Judge Theodor Meron (Presiding) Judge Joseph E. Chiondo Masanche Judge Lee G. Muthoga Judge Aminatta Lois Runeni N'gum Judge Gberdao Gustave Kam</p>
<b>Status of the Case</b>	Review of the Appeal Judgement is ongoing.



## REVIEW PROCEEDINGS (ONGOING)

On 8 July 2016, Augustin Ngirabatware filed before the Mechanism a request for review of the Appeal Judgement. On 25 July 2016, Judge Theodor Meron, President of the Mechanism, assigned a bench of the Appeals Chamber of the Mechanism to consider the request for review.

On or around 21 September 2016, Judge Aydin Sefa Akay, a member of the bench of the Appeals Chamber in the *Ngirabatware* case, was detained in Turkey in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey. On 31 January 2017, Judge Meron, as the Pre-Review Judge in the *Ngirabatware* case, ordered the Government of Turkey to cease all legal proceedings against Judge Akay and to take all necessary measures to ensure his release from detention no later than 14 February 2017, so that he could resume his judicial functions in this case.

On 6 March 2017, having determined that the Government of Turkey had failed to comply with the order of 31 January 2017, the Pre-Review Judge issued a decision on the Government of Turkey's non-compliance with the 31 January 2017 order. On 9 March 2017, the President of the Mechanism notified the United Nations Security Council of the failure of the Government of Turkey to comply with the 31 January 2017 order and release Judge Akay.

On 26 April 2017, the Pre-Review Judge dismissed Ngirabatware's request to initiate contempt proceedings against the President and the Minister of Justice of the Republic of Turkey, in part, because the Mechanism had taken appropriate measures to address the Republic of Turkey's non-compliance by referring the matter to the United Nations Security Council. Despite the formal assertion of diplomatic immunity by the United Nations, Judge Akay was convicted and sentenced to a term of seven years and six months of imprisonment by a Turkish criminal court in Ankara on 14 June 2017. Following Judge Akay's provisional release from detention pending his appeal, Judge Akay confirmed to the Mechanism his ability and willingness to exercise his judicial functions in this case.

On 19 June 2017, the Appeals Chamber in its full capacity issued a decision granting Ngirabatware's request for review of the Appeal Judgement.

On 19 December 2017, the Appeals Chamber: (i) granted Peter Robinson's request to withdraw as Ngirabatware's counsel; (ii) instructed the Registrar to replace Robinson; and (iii) adjourned the review hearing, previously scheduled for February 2018, until further order of the Appeals Chamber in order to provide the new counsel with adequate time to prepare. On 19 January 2018, the Registrar assigned Diana Ellis and Sam Blom-Cooper as Counsel and Co-Counsel, respectively, to represent Ngirabatware in the review proceedings before the Mechanism.

On 23 July 2018, Judge Meron, as the President of the Mechanism, assigned Judge Lee G. Muthoga to replace Judge Akay on the Appeals Bench, following the UN Secretary-General's decision not to renew the appointment of Judge Akay on the Mechanism's roster of Judges.

A review hearing, scheduled to take place between 24 September and 28 September 2018 was adjourned, following Ngirabatware's request for additional time to review the voluminous material disclosed by the Prosecution in the *Turinabo et al.* contempt case, taking into consideration its direct relevance to the review proceedings.

The review hearing will be scheduled in due course.



## CASE BACKGROUND INFORMATION

### INDICTMENT

Augustin Ngirabatware was charged by the ICTR with the crimes of **conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, and extermination and rape as crimes against humanity** in Gisenyi prefecture, Rwanda, between 1 January and 17 July 1994.

Ngirabatware was alleged to bear individual criminal responsibility pursuant to Article 6(1) of the ICTR Statute for instigating, ordering, committing, including through participation in a JCE, or otherwise aiding and abetting various persons to plan or commit the crimes charged.

The indictment also alleged that Ngirabatware was responsible as a superior pursuant to Article 6(3) of the ICTR Statute for the crimes of genocide or complicity in genocide.

**One count of conspiracy to commit genocide\***

**One count of genocide**

**One count of complicity in genocide**

**One count of direct and public incitement to commit genocide**

**Two counts of crimes against humanity**

- Extermination (Count 5)
- Rape (Count 6)

*\*The ICTR Prosecution later dropped this count.*

### ICTR TRIAL CHAMBER JUDGEMENT

On 20 December 2012, Trial Chamber II of the ICTR convicted Augustin Ngirabatware of committing direct and public incitement to commit genocide based on his speech at a roadblock on the Cyanika-Gisa road in Nyamyumba Commune.

It also found him guilty of instigating and aiding and abetting genocide based on his role in distributing weapons and his statements at two roadblocks in Nyamyumba Commune on 7 April 1994. Ngirabatware was also convicted, under the extended form of JCE, of rape as a crime against humanity based on the rape of a Tutsi woman by members of the Interahamwe.

The Trial Chamber sentenced Ngirabatware to 35 years of imprisonment.

<b>Start of ICTR Trial</b>	23 September 2009			
<b>Prosecution Case</b>	<b>Started</b>	23 September 2009	<b>Closed</b>	31 August 2010
<b>Defence Case</b>	<b>Started</b>	16 November 2010	<b>Closed</b>	22 February 2012
<b>Closing Arguments</b>	<b>Started</b>	23 July 2012	<b>Closed</b>	25 July 2012
<b>ICTR Trial Chamber Judgement</b>	20 December 2012		<b>Verdict</b>	35 years of imprisonment



## MECHANISM APPEALS CHAMBER JUDGEMENT

Augustin Ngirabatware filed an appeal before the Mechanism challenging his convictions and sentence.

On 18 December 2014, the Appeals Chamber of the Mechanism unanimously affirmed Ngirabatware's conviction for direct and public incitement to commit genocide.

A majority of the Appeals Chamber also affirmed his conviction for instigating and aiding and abetting genocide. However, the Appeals Chamber found that the ICTR Trial Chamber erred in expanding the charges regarding Ngirabatware's contribution to a JCE to exterminate the Tutsis. The Appeals Chamber found that, since the Prosecution failed to prove at trial Ngirabatware's contribution to the common purpose of exterminating the Tutsi civilian population pleaded under the count of extermination, Ngirabatware's conviction for rape pursuant to the extended form of JCE could not be sustained. As a consequence, the Appeals Chamber unanimously reversed Ngirabatware's conviction for rape as a crime against humanity under the extended form of JCE.

In light of this reversal, the Appeals Chamber reduced Ngirabatware's sentence to a term of 30 years of imprisonment.

## STATISTICS

<b>ICTR trial days</b>	<b>154</b>						
<b>Total exhibits admitted at trial</b>	<b>310</b>	<b>Prosecution</b>	<b>93</b>	<b>Defence</b>	<b>216</b>	<b>Chamber</b>	<b>1</b>
<b>Total witnesses called at trial</b>	<b>62</b>	<b>Prosecution</b>	<b>27</b>	<b>Defence</b>	<b>35</b>	<b>Chamber</b>	<b>0</b>

For more information please visit the Mechanism website [www.irmct.org](http://www.irmct.org).

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