



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.

JUDGEMENT SUMMARY

APPEALS CHAMBER

(Exclusively for the use of the media. Not an official document)

Arusha, The Hague, 27 September 2019

Review Judgement Summary in the Case of *Prosecutor v. Augustin Ngirabatware*

Please find below the summary of the Judgement read out today by Judge Theodor Meron

A. Introduction

1. This case concerns Mr. Ngirabatware's request for review of his convictions on the basis that Prosecution Witnesses ANAT, ANAN, ANAM, and ANAE, who are the key witnesses underpinning his convictions, recanted their trial testimony.
2. Mr. Ngirabatware served as Minister of Planning, as part of the Interim Government, in April 1994. On 18 December 2014, the Appeals Chamber of the Mechanism affirmed Mr. Ngirabatware's convictions for direct and public incitement to commit genocide and for instigating and aiding and abetting genocide entered by Trial Chamber II of the International Criminal Tribunal for Rwanda on 20 December 2012. The Appeals Chamber imposed a sentence of 30 years of imprisonment.
3. Mr. Ngirabatware's conviction for direct and public incitement to commit genocide was based primarily on the direct evidence of Prosecution Witnesses ANAN and ANAT that, in February 1994, he went to the Cyanika-Gisa roadblock and urged a large group of people to kill Tutsis.
4. Mr. Ngirabatware's conviction for instigating and aiding and abetting genocide was based principally on the direct evidence of Prosecution Witnesses ANAE and ANAM, which supported the finding that he distributed weapons and made statements at the Bruxelles and Gitsimbi/Cotagirwa roadblocks in Nyamyumba Commune on 7 April 1994.
5. On 8 July 2016, Mr. Ngirabatware filed a motion, seeking the review of his convictions. On 19 June 2017, the Appeals Chamber found that the purported recantations of Witnesses ANAT, ANAN, ANAM, and ANAE constitute a new fact, which, if proved, could have been a decisive factor in reaching the original decision. Accordingly, the Appeals Chamber granted review and determined that a hearing was necessary to allow the parties to present supporting and rebuttal evidence concerning the new fact.
6. The review hearing took place from 16 September 2019 until 24 September 2019. Mr. Ngirabatware called six witnesses. At the conclusion of the presentation of evidence by Mr. Ngirabatware, the Appeals Chamber heard oral submissions by the parties for the purpose of determining whether Mr. Ngirabatware had presented sufficient evidence capable of belief to establish the new fact. On 24 September 2019, the Appeals Chamber decided that Mr. Ngirabatware had not presented such evidence and that it was not necessary to hear Prosecution evidence in rebuttal.

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B. Recantation of Prosecution Witnesses ANAT and ANAN

7. I turn first to the evidence presented by Mr. Ngirabatware in relation to his conviction for direct and public incitement to commit genocide.
8. In a letter dated 11 November 2015, Witness ANAT recanted his trial testimony and explained that his testimony concerning Ngirabatware's role in inciting the killing of Tutsis in February 1994 was false. In his testimony at the review hearing, Witness ANAT confirmed that he wrote the recantation letter and admitted to falsely accusing Mr. Ngirabatware. Witness ANAT explained that he did so at the behest of authorities while in prison in Rwanda, in order to obtain leniency.
9. In a letter, dated 25 November 2015, Witness ANAN also recanted his trial testimony and explained that he falsely accused Mr. Ngirabatware. In his testimony at the review hearing, Witness ANAN confirmed that he wrote the recantation letter and maintained that his testimony at trial against Mr. Ngirabatware was false. Witness ANAN explained that he testified falsely because he was mistreated while in prison in Rwanda and wanted to obtain more favourable treatment.
10. In his oral submissions at the review hearing, Mr. Ngirabatware submitted that Witnesses ANAT and ANAN truthfully recanted their testimonies and provided clear explanations why their original evidence was false. Mr. Ngirabatware acknowledged that the witnesses may have been assisted by others in sending their recantation letters to the Tribunal, but maintained that the witnesses were never asked to lie. Mr. Ngirabatware also accepted that the witnesses received money, but contended that this was never their motivation for coming forward. In the alternative, Mr. Ngirabatware argued that their willingness to accept money thoroughly discredits them and irreparably impacts their credibility to the point that, had the Trial Chamber known that they would do this, it would not have placed any weight on their evidence.
11. The Prosecution argued that Witnesses ANAT and ANAN only recanted because they were bribed and coached in a coordinated effort, and that their recantations cannot be believed in view of the circumstances surrounding them and the implausibility and numerous inconsistencies permeating their evidence at the review hearing.
12. The Appeals Chamber considers that the circumstances surrounding the recantations of Witnesses ANAT and ANAN raise considerable suspicion in relation to the veracity and genuineness of their testimony at the review hearing. In particular, the Appeals Chamber finds it striking that their crises of conscience, so many years after their initial testimonies at trial in 2010, resulted in recantation letters being written within two weeks of each other.
13. In addition, both witnesses stated that they discussed their decisions to recant with others, prior to writing the recantation letters, and acknowledged that these individuals paid them comparatively large sums of money in instalments between 2015 and 2018. The witnesses suggested that these payments were altruistic and unrelated to their recantations. However, both witnesses acknowledged that the individuals with whom they spoke made references to their respective recantations and their decisions to maintain them. The fact that the witnesses acknowledged receiving money, at the approximate time that they signed their recantation letters and in the period prior to their testimony at the review hearing, casts a considerable shadow over the sincerity of their respective decisions to recant and their evidence in relation to the recantations.
14. Moreover, the Appeals Chamber observes that, as protected witnesses, the witnesses could have contacted the Witness Support and Protection Unit to seek assistance in communicating with Mechanism officials rather than rely on the assistance of others with a seeming interest in the content of their evidence.

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15. The Appeals Chamber notes that documents obtained from a laptop belonging to Anselme Nzabonimpa appear to be identical or overlap in material respects with the recantation letters of Witnesses ANAT and ANAN. The Appeals Chamber need not comment on the reliability, origin, and forensic accuracy of these documents or their purported author beyond noting that the admission of these documents was not objected to by the Defence. No reasons have been advanced in these proceedings to doubt the reliability of this evidence, and there of course may be reasonable explanations why this material was found there. In addition, the fact that Mr. Ngirabatware is listed in the author column of the metadata reports exhibited in court is not, as the Defence noted, in and of itself definitive proof that this was indeed the case. Nonetheless, bearing in mind the above considerations, this evidence raises further concerns that the witnesses' respective decisions to recant and their accounts may not in fact have been entirely their own.
16. The Appeals Chamber also considers that other aspects of Witnesses ANAT and ANAN's evidence raise additional concern. In particular, the Appeals Chamber noted that Witness ANAT implicated pressure from a Rwandan prosecutor, as the reason he testified falsely at trial, for the first time at the review hearing. Yet in a prior interview he rejected the suggestion from Defence counsel that he had been pressured by Rwandan authorities.
17. In addition, Witness ANAT's explanation of handwriting his recantation letter paragraph by paragraph over a period of three months seems both exaggerated and unbelievable. In this respect, the Appeals Chamber further notes that this carefully crafted letter references that he repeatedly attempted "in vain" to contact the ICTR to share his decision to recant, yet his testimony contains no indication that he did so.
18. In relation to Witness ANAN, the Appeals Chamber observes that the suggestion that he testified falsely in relation to Ngirabatware as a direct result of mistreatment and the possibility of leniency is not entirely convincing. While such circumstances, if true, would indeed raise legitimate questions about his motivations for implicating Ngirabatware while in prison, it does not account for his decision to continue to do so after a lapse of three years from his release until his testimony in 2010.
19. In addition, the Appeals Chamber notes that Witness ANAN's explanation that the destruction of his home prompted the sums of money he received is not at all convincing, particularly given that he began receiving the money in 2015 and his home was only destroyed in 2016. Moreover, Witness ANAN's reluctance to fully cooperate to the best of his ability during Prosecution interviews indicates that he is less than forthcoming.
20. Finally, the Appeals Chamber notes that, in assessing Witnesses ANAT and ANAN, the Trial Chamber was mindful of the circumstances concerning their convictions and the inherent risks that their incarceration might have had on the credibility of their evidence. The Appeals Chamber does not consider it necessary or appropriate to re-examine their credibility at trial on the basis of the new or additional information provided by them in this respect at the review hearing.
21. In sum, Mr. Ngirabatware has not presented sufficient evidence capable of belief to prove the existence of a new fact in relation to his conviction for direct and public incitement to commit genocide.

C. Recantation of Prosecution Witnesses ANAM and ANAE

22. I turn next to the evidence presented by Mr. Ngirabatware in relation to his conviction for instigating and aiding and abetting genocide.
23. In a letter dated 26 October 2015 and addressed to Ngirabatware's trial counsel, Witness ANAM recanted her trial testimony, stating that she did not see Ngirabatware in 1994. She confirmed her recantation in several subsequent statements and interviews with the Prosecution and the Defence.

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24. Similarly, in a declaration dated 5 July 2016 and provided to the Defence, Witness ANAE recanted her trial testimony, explaining that she was “trained” to testify falsely against Ngirabatware. The witness confirmed her recantation in subsequent interviews with the Prosecution and the Defence.
25. In his oral submissions at the review hearing, Mr. Ngirabatware argued that Witnesses ANAM and ANAE did not give truthful testimony during the hearing. He asserted, in particular, that both witnesses lied in claiming that they did not receive money, from Mr. Ngirabatware’s supporters, in exchange for their recantations. Mr. Ngirabatware argued that this aspect of Witnesses ANAM’s and ANAE’s evidence thoroughly undermines the witnesses’ overall credibility and, by extension, the reliability of their trial testimony against him. In its response, the Prosecution argued that the circumstances of the recantations indicate that they were the result of a concerted effort, and that the purpose of the review is limited to assessing whether the witnesses’ recantations were truthful.
26. In sworn testimony at the review hearing, Witnesses ANAM and ANAE affirmed the truth of their prior testimonies before the Trial Chamber and renounced the assertion that they had genuinely recanted. In such circumstances, the Appeals Chamber is not satisfied that their written letters, declarations, or interviews with the Prosecution and the Defence alone constitute sufficiently reliable proof of recantation. The consistency of such statements over a period of several years is, of course, relevant to whether they are true, but mere consistency is not in and of itself sufficient proof that they are, especially where that proposition is renounced under oath and a reasonable explanation is provided for it.
27. Indeed, the Appeals Chamber accepts as reasonable that the witnesses may have recanted due to the outside pressures described in their testimony at the review hearing. Even if the decision to recant had been for other reasons, such as financial benefits, it would only further undermine the reliability of the recantations, which were expressly renounced at the review hearing.
28. Furthermore, the Appeals Chamber has considered the recantations of Witnesses ANAM and ANAE in context with those provided by Witnesses ANAT and ANAN. Notably, the recantation letter signed by Witness ANAM is dated within one month of the two recantation letters provided by Witnesses ANAT and ANAN. That three of the four key witnesses underpinning Ngirabatware’s convictions would recant, of their own volition, within this short time period seems implausible. Moreover, there are striking similarities between the consent letters that Witnesses ANAM and ANAE purportedly wrote and signed, one day apart, in order to meet with the Defence. This lends further credence to the witnesses’ evidence that they simply signed pre-prepared letters or statements to recant, and did not do so of their own initiative and in their own words. When viewed together, these circumstances lead to the impression that the recantations were orchestrated.
29. Finally, bearing the foregoing in mind, the Appeals Chamber places little weight on the evidence of Witness DWAN-147 concerning the circumstances of Witness ANAE’s recantation.

D. Conclusion

30. In sum, the Appeals Chamber considers that Mr. Ngirabatware has not advanced sufficient evidence capable of belief to prove the existence of a new fact in relation to his conviction for instigating and aiding and abetting genocide.
31. The Appeals Chamber recalls that the review proceedings were authorized in order to test the veracity of the purported recantations. For the reasons stated above, the Appeals Chamber has found that Mr. Ngirabatware has not proven the new fact that the witnesses have truthfully recanted their trial testimonies. The Appeals Chamber has noted the shift in Mr. Ngirabatware’s argument on review, which has evolved to include that the witnesses may have been paid or otherwise influenced and that their lack of credibility as a result should

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render the original verdict unsafe. This of course is a different argument than originally put before the Appeals Chamber in the Motion for Review that the recantations were genuine.

32. Notwithstanding this shift, the Appeals Chamber has fully considered this argument in assessing the impact of the evidence presented on the convictions. The Appeals Chamber is mindful that Witnesses ANAT, ANAN, ANAM, and ANAE were in vulnerable economic situations at the time of their recantations and accepts that they may have been susceptible to financial incentives (either offered or sought) and influence. Indeed, the evidence presented at the review hearing raises many questions about their credibility.

33. The Appeals Chamber emphasizes, however, that it will not lightly disturb on review a trial chamber's credibility assessment, which was subjected to appellate review, based on a witness's subsequent conduct occurring more than five years after their original testimony. To do so, would in fact provide incentives to convicted persons, or individuals close to them, to interfere with susceptible witnesses with the hope that it will not be discovered and the convicted person will be released or, if discovered, that the witnesses will then be so thoroughly discredited that their original testimony cannot be trusted and the convicted person will be released. To put it simply, an applicant bears a heavy burden in showing that the conduct of a witness, occurring significantly post trial testimony, taints their original testimony. This burden has not been met in this case.

34. Finally, the Appeals Chamber recalls that the purpose of these proceedings was not to determine the full extent and responsibility for possible witness interference in this case. That is for other proceedings, if necessary, in accordance with Rule 90 of the Rules. The purpose of the review proceedings was simply to test the evidence advanced in support of the new fact, which the Appeals Chamber in its judgement has found not credible.

35. The full text of the disposition contained in the review judgement reads as follows:

E. Disposition

36. For the foregoing reasons, **THE APPEALS CHAMBER,**

PURSUANT to Article 24 of the Statute and Rule 147 of the Rules;

NOTING the evidence presented by the parties and their oral arguments presented at the review hearing;

SITTING in open session;

CONSIDERING that Ngirabatware has not presented sufficient evidence capable of belief at the review hearing to prove the existence of the new fact in relation to his convictions for direct and public incitement to commit genocide and instigating and aiding and abetting genocide;

DECIDES, unanimously, that the Appeal Judgement remains in force in all respects.
