



UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

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") which closed in 2015 and 2017, respectively.

JUDGEMENT SUMMARY

SINGLE JUDGE

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

Arusha, Tanzania 25 June 2021

Judgement Summary of *Prosecutor v. Anselme Nzabonimpa et al.*

Please find below the Judgement Summary read out today by Judge Vagn Joensen, the Single Judge

Introduction

Today I will provide an oral summary of the Judgement. In the interest of facilitating the fair and expeditious closure of the case as well as in order to avoid risks associated with travel in the context of the COVID-19 pandemic, I have opted to pronounce the Judgement orally shortly after the closing arguments. The written reasons for the Judgement will follow later. This procedure is provided for under Rules 122(A) and (C) and has precedent in prior contempt proceedings before the Mechanism's predecessor Tribunals. The written Judgement, when filed, will be the only authoritative version of the Judgement.

Before turning to the substance of the case, it bears noting the extraordinary circumstances in which it has been conducted. The COVID-19 pandemic brought judicial proceedings to a halt worldwide by March 2020, months before this trial was supposed to commence. *Force majeure*, however, did not prevent us from commencing and completing the trial in the midst of it. This is due to the extraordinary contributions of the court support staff.

I extend my profound thanks to the General Services Section who modified this space, creating a socially distanced and continuously sanitized courtroom. I also thank the Information Technology Services Section, whose ingenuity and dedication led to the creation of a virtual courtroom allowing

International Residual Mechanism for Criminal Tribunals

Arusha Tel.: +255 (0)27 256 5376

The Hague Tel.: +31 (0)70 512 5691

Email: mict-press@un.orgFollow us on [Facebook](#), [Twitter](#), [YouTube](#), [LinkedIn](#)www.irmct.org



simultaneous participation from Arusha, The Hague, and Kigali. I thank the Registrar, his immediate office, the administration, security, and witness protection unit for all the behind the scenes support.

Our interpreters and court reporters have demonstrated exemplary commitment, repeatedly travelling internationally for trial sessions. You have also proven to be extremely professional and patient, interpreting and transcribing remarks and questions from counsel, who I would politely describe as “highly animated” at times. Finally, the court management unit and the language services section have provided essential and excellent support in and out of the courtroom. All of you have played a key role in supporting my statutory obligation to ensure a fair and expeditious trial.

Turning to the Accused and counsel, your flexibility and agreement to forego in-person pre-trial proceedings early in the pandemic ensured trial preparation continued. The advocacy of the Prosecution and the Defence has been excellent and vigorous. Your collegial, professional, and no-nonsense approach to the case is equally commendable. I thank you all.

Background

The Prosecution’s case against the Accused – Mr. Anselme Nzabonimpa, Mr. Jean de Dieu Ndagijimana, Ms. Marie Rose Fatuma, Mr. Dick Prudence Munyeshuli, and Mr. Augustin Ngirabatware – is principally based on allegations of interference from 2015 into 2018 with key protected Prosecution witnesses from Mr. Ngirabatware’s trial before the International Criminal Tribunal for Rwanda, or the ICTR. To understand these charges, a basic understanding of Mr. Ngirabatware’s proceedings before the ICTR, and its successor court, the Mechanism, is necessary.

On 20 December 2012, Trial Chamber II convicted Mr. Ngirabatware of genocide and direct and public incitement to commit genocide. The incitement conviction was based primarily on the direct evidence of two protected Prosecution Witnesses – Witnesses ANAN and ANAT – that Mr. Ngirabatware went to the Cyanika-Gisa roadblock and urged a large group of people to kill Tutsis in February 1994. With respect to the genocide conviction, the Trial Chamber relied principally on the direct evidence of an additional two protected Prosecution Witnesses – Witnesses ANAE and ANAM – to find that Mr. Ngirabatware distributed weapons and made statements at roadblocks in Nyamyumba Commune on 7 April 1994. The Trial Chamber found that the testimony of a fifth protected Prosecution Witness – Witness ANAL – offered circumstantial corroboration to the evidence of Witnesses ANAE and ANAM.



Mr. Ngirabatware appealed these convictions. On 18 December 2014, and after the closure of the ICTR and the transfer of its jurisdiction to the Mechanism, the Appeals Chamber of the Mechanism affirmed both convictions. During the trial and appeal proceedings, the credibility of the four main witnesses was heavily contested. A judge of the Appeals Chamber dissented from the Appeals Chamber's affirmation of the genocide conviction based on his consideration of Mr. Ngirabatware's alibi.

On 8 July 2016, Mr. Ngirabatware filed a motion seeking the review of his convictions based on the purported recantations of Witnesses ANAT, ANAN, ANAM, and ANAE indicating that they lied during Mr. Ngirabatware's trial. On 19 June 2017, the Appeals Chamber of the Mechanism granted Mr. Ngirabatware's request for a review hearing. During the review proceedings that were held in September 2019, Witnesses ANAT and ANAN testified before the Appeals Chamber that they had lied at Ngirabatware's trial. Witnesses ANAE and ANAM testified that their recantations made in prior statements and interviews were not truthful.

Ultimately, the Appeals Chamber expressed doubts about the truthfulness of Witnesses ANAT's and ANAN's testimony recanting their trial evidence. The Appeals Chamber also did not accept prior letters or statements made by Witnesses ANAE and ANAM between 2015 and 2018 recanting their trial testimony in view of their live testimony before the Appeals Chamber withdrawing their recantations and affirming their trial testimony. On 27 September 2019, the Appeals Chamber dismissed the review of Mr. Ngirabatware's Judgement.

On 24 August 2018, and in the midst of preparations for Mr. Ngirabatware's review proceedings, the Prosecution obtained confirmation of an indictment against Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma alleging interference with witnesses who testified during Mr. Ngirabatware's review proceedings, Witness ANAL, and intermediaries used to contact these witnesses. Specifically, the indictment charges them with contempt based on witness interference (Count 1) and incitement to commit contempt (Count 2). The same indictment charges Mr. Munyeshuli, who served as Mr. Ngirabatware's investigator in the early stages of his request for review, with knowing violations of and failure to comply with court orders (Count 3) in relation to the witnesses who ultimately testified at Ngirabatware's review hearing. Mr. Maximilien Turinabo was also charged under all three counts of this



indictment. However, he passed away on 18 April 2021 during the Defence case, and the proceedings against him have since been terminated.

On 10 October 2019, weeks after Mr. Ngirabatware's review proceedings ended, an additional indictment was confirmed charging Mr. Ngirabatware with contempt based on related witness interference (Count 1) and knowing violations of and failure to comply with court orders (Count 3). It also charges him with one count of incitement to commit contempt (Count 2).

On 10 December 2019, the case against Mr. Nzabonimpa and his co-defendants and Mr. Ngirabatware's case were joined on the bases of the indictment against Mr. Nzabonimpa and his co-defendants, referred to as the "Nzabonimpa Indictment", and the indictment against Mr. Ngirabatware, also referred to as the "Ngirabatware Indictment".

In essence, the indictments place Mr. Ngirabatware at the key of an alleged interference campaign from 2015 through 2018 aimed at obtaining recantations from Witnesses ANAN, ANAT, ANAM, ANAE, and ANAL that was carried out by him directly or through Mr. Nzabonimpa, Mr. Ndagijimana, Ms. Fatuma, and Mr. Turinabo. Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma are charged with using intermediaries who had direct access to these witnesses in committing contempt.

Charges and Findings: Count 1

I will commence with Count 1 in both indictments, which charge Mr. Ngirabatware, Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma of committing contempt on the basis of interfering with witnesses. Specifically, the indictments plead factual allegations that these Accused influenced Witnesses ANAN, ANAM, ANAE, and/or ANAL to recant their trial testimony through pressure and/or inducement and/or persuasion. They are alleged to have directed these witnesses and Witness ANAT on what information to provide in interviews with Mr. Ngirabatware's counsel and/or the Prosecution, and/or what testimony to give at the review hearing. They are also alleged to have offered and paid what are described as "bribes" to these witnesses and intermediaries to obtain their cooperation and to influence prospective evidence.

In further support of the charge of interference with witnesses pleaded in Count 1, the indictments contain factual allegations that Mr. Ngirabatware and Mr. Ndagijimana took steps to



procure false evidence from intermediaries to corroborate the recantations of Witnesses ANAN, ANAT, ANAM, and ANAE. Mr. Nzabonimpa and Mr. Ndagijimana are also alleged under Count 1 of the Nzabonimpa Indictment to have directed Witnesses ANAN, ANAT, ANAM, and/or ANAE on what to say and do if requested to meet with the Prosecution.

I will now turn to my findings.

Having carefully considered the record in its entirety, I do not find that the Prosecution has established beyond reasonable doubt that the relevant Accused improperly brought pressure – in the form of, for example, express or implied threats or intimidation – to bear on Witnesses ANAM, ANAE, ANAN, and ANAT as argued by the Prosecution or charged. In this regard, I have carefully considered all the relevant Prosecution evidence and, in particular, the direct evidence of Witnesses ANAM/TNN31 and ANAE/TNN30 to this effect. Generally speaking, their evidence is ambiguous on key points and lacking credibility to establish a case of interference on these grounds. There is also evidence suggesting that financial incentives to cooperate were present and were sought by certain witnesses from certain Accused. This raises further doubt. Circumstantial evidence does not offer sufficient support to eliminate reasonable doubt as to whether pressure was brought to bear on these witnesses to obtain their recantations. I further do not find established beyond reasonable doubt that Ms. Fatuma paid Witness ANAT 3000 US dollars given concerns about the credibility of her evidence on this point and the absence of sufficient corroboration.

Notwithstanding, the record firmly establishes that Mr. Ndirakobuca made thousands of euros available to Mr. Nzabonimpa. Monies provided by Mr. Ndirakobuca served as the backbone of a highly organized effort aimed at obtaining the recantations of, in particular, Witnesses ANAM, ANAE, ANAN, and ANAT in anticipation of review proceedings. Bank records, contemporaneous communications evidence, and testimonial evidence without any doubt demonstrate that money was paid or offered to witnesses – including Witness ANAT – as well as to intermediaries and was used to facilitate the recantation process. Furthermore, the record firmly establishes that actions taken by the Accused, including actions to conceal their role in these events, concretely sought to manipulate and improperly influence potential witness evidence in the context of Mr. Ndirakobuca's anticipated review proceedings.



Defence efforts to explain payments and the direct or indirect contact the Accused had with witnesses through analogy to normal investigative practices of the Prosecution or the Defence as a type of affirmative defence lack a reasonable factual or legal basis in the context of this case. The main Ngirabatware proceeding is a genocide case that relied on a witness protection regime to regulate contact with witnesses, judicially determined to require protection. The actions of Mr. Ngirabatware, Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma circumvented all accountability and judicial oversight that would normally apply in any sanctioned investigation. Their actions interfered with the administration of justice. Defence arguments and evidence that the Accused acted with the genuine belief that Mr. Ngirabatware was innocent have not raised reasonable doubt in relation to their liability under Count 1. The proper process for challenging a conviction perceived as unjust is through the review proceedings provided for in law and by doing so transparently in accordance with the law.

In the specific context of this case, the clandestine communications with key witnesses subject to protective measures, the instructions provided on what to say to judicially accountable agents investigating the case and/or to the Judges who might review Mr. Ngirabatware's convictions, and secretly paying them or offering to pay them to ensure their cooperation is a crime. This is no less true in a situation where the Accused felt they were being extorted by the witnesses. This is simply not how to legitimately and legally conduct a defence. This is common sense.

For the reasons set forth in the Judgement, I find Mr. Ngirabatware, Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma **GUILTY** under Count 1 of their respective indictments.

Charges and Findings: Count 2

Count 2 of the Nzabonimpa Indictment charges Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma with incitement to commit contempt based on the same factual allegations that support the charges of committing contempt through intermediaries pleaded in Count 1. Count 2 of the Ngirabatware Indictment charges him with the same factual allegations used to support committing contempt through the Accused and Mr. Turinabo under Count 1. For the reasons explained in the Judgement, I will not enter a conviction on this basis and find that the Accused are **NOT GUILTY** under Count 2 of their respective indictments.



Charges and Findings: Count 3

Turning to Count 3 in the Nzabonimpa Indictment, Mr. Munyeshuli is charged with committing contempt on the basis of violating court orders in relation to revealing the identities of protected Prosecution Witnesses ANAE, ANAM, ANAN, and ANAT on 15 July 2017 to Mr. Turinabo. He is also charged with, from at least 15 July 2017 through the second half of August 2017, repeatedly having prohibited indirect contact with protected Prosecution Witnesses ANAE, ANAM, ANAN, ANAT, and ANAL through telecommunications with Mr. Turinabo, who contacted these witnesses directly and/or through Mr. Ndagijimana, Mr. Nzabonimpa, and/or a specified intermediary.

For the reasons set forth in the written Judgement, the Prosecution has not proven beyond reasonable doubt that Mr. Munyeshuli can be convicted based on the evidence presented in support of the alleged disclosure violation charged under Count 3 of the Nzabonimpa Indictment.

With respect to the second prong of the Prosecution's case that Mr. Munyeshuli had prohibited indirect contact with witnesses, I dismiss this allegation.

I have considered the evidence and arguments of the Prosecution and examined the same from the Defence. The evidence presented by the Defence reflects that Mr. Munyeshuli's Lead Counsel, Mr. Peter Robinson, instructed him to commit the violation at the heart of this charge. Mr. Munyeshuli deserves a warning for his conduct in these circumstances and not a criminal conviction. I am entering a finding of **NOT GUILTY** for Mr. Munyeshuli under Count 3 of the Nzabonimpa Indictment.

Mr. Munyeshuli, I warn you to closely scrutinize applicable witness protection measures in future cases. You have an independent duty to uphold such measures even if your Lead Counsel instructs you to violate them. This concludes the case against you Mr. Munyeshuli, and you are free to leave at the conclusion of this hearing.

Turning to Count 3 in the Ngirabatware Indictment, it charges Mr. Ngirabatware with violations of court orders in relation to improper contact with Witness ANAE as well as violating protective measures through disclosing confidential witness information and contents of confidential filings. I have found that the evidence does not establish beyond reasonable doubt that Mr. Ngirabatware had improper contact with Witness ANAE. However, Mr. Ngirabatware does not contest most of the



remaining allegations in support of Count 3. For the reasons set forth in the Judgement, I find Mr. Ngirabatware **GUILTY** of Count 3 of the Ngirabatware Indictment.

Sentencing

As reflected above, I have found Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma **GUILTY** of Contempt under Count 1 of the Nzabonimpa Indictment. Each has spent more than eleven months in pre-trial detention prior to their provisional release on 22 August 2019. They were subsequently unconditionally released on 11 September 2020 before the commencement of trial. Having considered the gravity of the crimes for which they have been convicted as well as any relevant aggravating and mitigating circumstances in relation to these three Accused, I consider that the appropriate sentences for **MR. ANSELME NZABONIMPA, MR. JEAN DE DIEU NDAGIJIMANA, and MS. MARIE ROSE FATUMA** are **TIME SERVED** for each. Having served your respective sentences, Mr. Nzabonimpa, Mr. Ndagijimana, and Ms. Fatuma, you are free to leave at the conclusion of this hearing.

I have found Mr. Ngirabatware **GUILTY** of Contempt under Counts 1 and 3 of the Ngirabatware Indictment. Mr. Ngirabatware's detention up until this point has not been on the basis of the Ngirabatware Indictment but the sentence of 30 years' imprisonment imposed by the Appeals Chamber after affirming his genocide convictions. Having considered the gravity of the crimes as well as any relevant aggravating and mitigating circumstances, I sentence **MR. AUGUSTIN NGIRABATWARE** to **2 YEARS OF IMPRISONMENT**. The sentence shall run concurrently with the sentence of 30 years of imprisonment that he is already serving. Mr. Ngirabatware shall continue to remain in the custody of the Mechanism pending transfer to the state where he will serve his both sentences.

The trial of *Prosecutor v. Anselme Nzabonimpa and others* has come to an end. The written reasons for this Judgement will be filed as soon as possible. Court is adjourned.
