

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-18-116-T

Date: 20 September 2021

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Vagn Joensen
Registrar: Mr. Abubacarr Tambadou
Order of: 20 September 2021

PROSECUTOR

v.

**ANSELME NZABONIMPA
JEAN DE DIEU NDAGIJIMANA
MARIE ROSE FATUMA
DICK PRUDENCE MUNYESHULI
AUGUSTIN NGIRABATWARE**

PUBLIC

ORDER REFERRING A MATTER TO THE PRESIDENT

Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Rashid S. Rashid

Counsel for the Defence:

Mr. Anselme Nzabonimpa
Mr. Geoffrey Roberts
Mr. Jean de Dieu Ndagijimana
Mr. Philippe Larochelle
Ms. Marie Rose Fatuma
Mr. Gatera Gashabana
Mr. Dick Prudence Munyeshuli
Mr. Kurt Kerns
Mr. Augustin Ngirabatware
Mr. David Hooper

I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the Single Judge in this case;¹

RECALLING the Judgement pronounced on 25 June 2021 and the written reasons for the now authoritative version of the Judgement issued today,² in which Dick Prudence Munyeshuli was found in violation of the relevant protective measures for having prohibited indirect contact with witnesses;³

RECALLING FURTHER that, in lieu of a conviction in the specific circumstances of this case, Munyeshuli was issued a warning “to closely scrutinize applicable witness protection measures in future cases and to adhere to his independent duty to uphold such measures even if his lead counsel, as [Peter] Robinson appears to have done in this instance, instructs him to violate them”;⁴

CONSIDERING that, on 5 May 2016, the Appeals Chamber: (i) found that Robinson violated witness protection orders while acting as Ngirabatware’s *pro bono* counsel by having direct contact with Prosecution Witness ANAH; and (ii) admonished him that “[c]ontact with the witnesses may therefore take place with their consent and in accordance with other terms of the Protective Measures Decision [of 7 May 2009]”;⁵

OBSERVING that, notwithstanding this admonishment, evidence in this proceeding reflects that Robinson offered a witness subject to the Protective Measures Decision of 7 May 2009 Munyeshuli’s phone number in a July 2016 interview shortly thereafter and encouraged the witness

¹ Order Assigning a Single Judge, 11 September 2018, p. 1. *See also* *Prosecutor v. Maximilien Turinabo et al.* and *Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT and MICT-19-121-PT, Decision on Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 10 December 2019, pp. 14, 15; Decision Terminating Proceedings Against Maximilien Turinabo, 19 April 2021, pp. 1, 2.

² T. 25 June 2021 (Judgement) pp. 1-14; Judgement, dated 25 June 2021, filed on 20 September 2021 (“Judgement”).

³ Judgement, para. 363.

⁴ Judgement, para. 366. *See also* Judgement, paras. 364-368.

⁵ *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Decision on Prosecution’s Motion Regarding Protected Witnesses and Ngirabatware’s Motion for Assignment of Counsel, 5 May 2016 (confidential; declassified on 25 September 2019) (“*Ngirabatware* Appeal Decision of 5 May 2016”), paras. 24, 26, 27. *See also* *Ngirabatware* Appeal Decision of 5 May 2016, para. 24, referring to *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution’s Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009 (“Protective Measures Decision of 7 May 2009”).

to contact Munyeshuli directly⁶ even though such contact with Munyeshuli as proposed would have been in violation of the letter and spirit of the relevant protective measures;⁷

CONSIDERING that, on 5 August 2016, the Appeals Chamber subsequently modified the applicable protective measures so that any contact with, *inter alia*, Witnesses ANAE, ANAM, ANAN, and ANAT, first required the Witness Support and Protection Unit (“WISP”) to ascertain their consent and required the WISP to be present during any resulting interview and allowed the other party to be present as well;⁸

NOTING that these exceptional and additional measures provided in the Protective Measures Decision of 5 August 2016 were instituted given the specific circumstances of Ngirabatware’s case, because the Appeals Chamber determined that it was “appropriate that the Defence and the Prosecution be aware of the other party’s contact with the Protected Witnesses and for the WISP to seek consent of the witnesses prior to any such contact and to be present during any resulting meeting between the parties and the witnesses”, and in order “to safeguard the integrity of any such statements by the Protected Witnesses and to ensure that there is no interference with the course of justice”;⁹

CONSIDERING that the evidence in this case indicates that Robinson nonetheless instructed Munyeshuli on 14 July 2017 to contact Maximilian Turinabo and have prohibited indirect contact with protected prosecution witnesses in violation of the Protective Measures Decision of 5 August 2016 notwithstanding the exceptional measures put in place to prohibit such conduct;¹⁰

CONSIDERING FURTHER that there is additional evidence admitted in this proceeding that raises concerns that Robinson was having unauthorized communication with Ngirabatware through

⁶ See Munyeshuli, T. 7 April 2021 pp. 35, 36 (“Q. The very bottom of that page, the last sentence of the first page of that transcript, does Peter Robinson give any information to ANAN and, if so, what does he say? A. Yes, you are right. He told the witness the following, ‘You are still a protected witness, you are protected by the WISP. That’s the witness and victims protection section. I will give you Dick’s -- Dick Prudence’s phone number in Kigali and you can contact him if there’s any need to do so,’ and here he’s talking about me, Dick Prudence.”); T. 8 April 2021 pp. 64-67. See also Exhibit 5D22 (Robinson Interview of Witness ANAN on 5 July 2016).

⁷ Protective Measures Decision of 7 May 2009, pp. 6, 7, para. (v) (requiring that “[t]he Defence team in this case and any representative acting on its behalf shall notify the Prosecution in writing if it wishes to contact any protected witness and/or his or her family. If the person concerned consents, the Prosecution shall facilitate such contact together with the WVSS.”).

⁸ *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on a Motion for Modification of Protective Measures, 5 August 2016 (confidential) (“Protective Order of 5 August 2016”), pp. 3, 4.

⁹ Protective Measures Decision of 5 August 2016, p. 3.

¹⁰ Judgement, paras. 351, 352, 356, 363-365.

contraband communication devices and through means prohibited by the regulations of the United Nations Detention Facility (“UNDF”);¹¹

CONSIDERING that, in the course of my final deliberations and the preparation of the written Judgement in this case, the record before me raises grave concerns of repeated professional and ethical lapses on the part of Robinson while acting as Ngirabatware’s counsel as well as reason to believe that he may be in contempt of the Mechanism;

RECALLING that, pursuant to Rule 90(C) of the Rules of Procedure and Evidence (“Rules”), when a Single Judge has reason to believe that a person may be in contempt of the Mechanism, he or she shall refer the matter to the President;

FINDING that I am compelled to refer this matter to the President so that another Single Judge can independently assess whether or not further proceedings under Rule 90 of the Rules or other appropriate disciplinary action against Robinson, including denial of audience before the Mechanism, is warranted;

CONSIDERING that, because Robinson is not a party to this case, the Registrar should serve this Order on him;

FOR THE FOREGOING REASONS,


REFER this matter to the President in accordance with Rule 90(C) of the Rules; and

INSTRUCT the Registrar to serve this Order on Peter Robinson.

¹¹ See Munyeshuli, T. 8 April 2021 p. 40 (“Q. All right. And Peter Robinson was also in communication with Mr. Ngirabatware via these other manners, right, by email, you know that? A. I was not aware at the time but today I am. Q. Right. And you are aware that emailing a person that’s in the UNDF, an accused, is in contravention of the rules and regulations of the UNDF; right? A. I did not know that at the time. I only got to know that when I myself -- or when I found myself at the detention facility.”). *See generally* Regulations to Govern the Supervision of Visits and Communications with Detainees (ICTR May 1996), pp. 411-415 (regulations governing phone calls, including calls with counsel, at the UNDF); Regulations on the Supervision of Visits to and Communications with Detainees, MICT/23, 5 December 2018, Regulation 2(A)(iii) (noting it shall be an offence under these regulations to import contraband “such as mobile telephones and other communications devices or breaching these Regulations, the Rules of Detention or any other regulations rules, or guidelines relating to detention matters issued by the Mechanism”).

Done in English and French, the English version being authoritative.

Done this 20th day of September 2021,
At Arusha,
Tanzania



Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]



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