

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-12-09

Date: 16 December 2022

Original: English

BEFORE A SINGLE JUDGE

Before: Judge William H. Sekule
Registrar: Mr. Abubacarr M. Tambadou
Decision of: 16 December 2022

PROSECUTOR

v.

PHÉNÉAS MUNYARUGARAMA

PUBLIC

DECISION ON MOTION TO TERMINATE PROCEEDINGS

The Office of the Prosecutor

Mr. Serge Brammertz

Government of the Republic of Rwanda

I, WILLIAM H. SEKULE, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING that, in my capacity of Judge of the International Criminal Tribunal for Rwanda (“ICTR”), I confirmed the initial indictment against Mr. Phénéas Munyarugarama (“Munyarugarama”) on 4 March 2002² and the operative indictment against him on 13 June 2012,³ charging Munyarugarama with genocide, complicity in genocide, direct and public incitement to commit genocide, as well as crimes against humanity committed in Rwanda in April and May 1994;⁴

RECALLING that, on 28 June 2012, pursuant to Rule 11*bis* of the ICTR Rules of Procedure and Evidence, a Chamber of the ICTR ordered that the proceedings concerning Munyarugarama be referred to the authorities of the Republic of Rwanda⁵ and that, on 7 May 2014, a Single Judge of the Mechanism vacated the previous ICTR warrant of arrest and order for transfer of Munyarugarama and issued a new warrant of arrest and an order for his transfer to the Republic of Rwanda;⁶

BEING SEISED OF a motion filed by the Office of the Prosecutor of the Mechanism (“Prosecution”) on 31 August 2022, requesting that the proceedings in the present case be terminated on account of the death of Munyarugarama;⁷

NOTING the Prosecution’s submission that its investigation provides sufficient information to establish that Munyarugarama is deceased, as further set out in confidential Annex A to the Motion, and that the Mechanism retains certain functions in connection with the case, notwithstanding its referral to the Republic of Rwanda;⁸

¹ Order Assigning a Single Judge, 9 September 2022, p. 1.

² *The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-I, Decision on the Prosecutor’s *Ex Parte* Motion for Review and Confirmation of the Indictment and Other Related Orders, 4 March 2002, p. 3.

³ *The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-I, Decision on the Prosecutor’s *Ex Parte* and Confidential Request for Leave to File an Amended Indictment, 13 June 2012 (confidential and *ex parte*), p. 6.

⁴ *The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-I, Amended Indictment, 13 June 2012.

⁵ *The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-R11*bis*, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda, 28 June 2012, p. 15. *See also Phénéas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal Against the Referral of Phénéas Munyarugarama’s Case to Rwanda and Prosecution Motion to Strike, 5 October 2012, para. 27.

⁶ *Prosecutor v. Phénéas Munyarugarama*, Case No. MICT-12-09-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 7 May 2014, pp. 1, 2. *See also The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-I, Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 4 March 2002; *The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-R11*bis*, Warrant of Arrest and Order for Transfer, 28 June 2012.

⁷ Motion to Terminate Proceedings, 31 August 2022 (public with confidential annex) (“Motion”), para. 1.

⁸ Motion, paras. 1-3, *referring to* Annex A, Article 6 of the Statute of the Mechanism (“Statute”).

NOTING that, on 16 November 2022, the Prosecutor General – on behalf of the National Public Prosecution Authority – of the Republic of Rwanda (“Rwandan Prosecution Authority”) filed submissions in response to the Motion, stating that, while the Rwandan Prosecution Authority is not in possession of any credible evidence contradicting the information provided by the Prosecution, any motion to terminate the proceedings against Munyarugarama should be submitted to the Government of Rwanda since, upon the referral, the case is under the jurisdiction of the courts of the Republic of Rwanda;⁹

NOTING that, on 25 November 2022, the Prosecution filed submissions in reply, stating, *inter alia*, that the referral of a case to a national jurisdiction does not fully divest the Mechanism of jurisdiction and that the proceedings against Munyarugarama must be terminated before the Mechanism, regardless of whether termination before a national court may also be required;¹⁰

CONSIDERING that the Mechanism retains certain powers following the referral of a case to a national jurisdiction and prior to the accused being found guilty or acquitted by a national court;¹¹

CONSIDERING that, while it may be necessary for the domestic proceedings against Munyarugarama to be terminated under the Republic of Rwanda’s legal framework, in circumstances where the Prosecution has presented sufficient information to establish that an accused at large is deceased, a judicial order closing the case before the Mechanism is warranted;¹²

CONSIDERING that the Prosecution has presented sufficient information – including on Munyarugarama’s illness, death, and burial – to establish that Munyarugarama is deceased,¹³ and that the Government of Rwanda has indicated that it is not in possession of any credible evidence contradicting this information;¹⁴

⁹ Submissions in Response [to] the Prosecutor’s Motion to Terminate Proceedings, dated 14 October 2022, filed on 16 November 2022 (“Response”), paras. 1, 5. *See* Order for Submissions, 20 September 2022, p. 2 (instructing the Prosecution to share with the Government of Rwanda the information contained in confidential Annex A to the Motion, redacted as necessary, and inviting the Government of Rwanda to file submissions in response to the Motion).

¹⁰ Prosecution Further Submission in Support of Motion to Terminate Proceedings, 25 November 2022, paras. 2, 3. *See* Further Order for Submissions, 18 November 2022, p. 2.

¹¹ *See* Article 6(5) of the Statute (“The Mechanism shall monitor cases referred to national courts by [...] the ICTR, and those referred in accordance with this Article, with the assistance of international and regional organisations and bodies); Article 6(6) of the Statute (“After an order referring a case has been issued by [...] the ICTR or the Mechanism and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may [...] revoke the order and make a formal request for deferral”). *See also* Rule 14(C) of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

¹² *See Prosecutor v. Protais Mpiranya*, Case No. MICT-12-02, Decision on Motion to Terminate Proceedings, 14 September 2022, pp. 1, 2; *Prosecutor v. Augustin Bizimana*, Case No. MICT-13-39, Decision on Request to Terminate the Proceedings, 4 November 2020, pp. 1, 2; *Prosecutor v. Janko Bobetko*, Case No. IT-02-62-I, Order Terminating Proceedings Against Janko Bobetko, 24 June 2003, p. 1.

¹³ *See* Motion, Annex A.

¹⁴ *See* Response, para. 1.

FINDING therefore that, notwithstanding any possible termination of the case against Munyarugarama before a court in the Republic of Rwanda,¹⁵ a judicial order closing Munyarugarama's proceedings before the Mechanism is warranted;

FOR THE FOREGOING REASONS,

GRANT the Motion; and

TERMINATE the proceedings with respect to Munyarugarama before the Mechanism.

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

Done this 16th day of December 2022,
At Arusha,
Tanzania



Judge William H. Sekule
Single Judge

[Seal of the Mechanism]

¹⁵ See Rule 15 of the Rules (which provides that, subject to Article 7(2) of the Statute, determinations of a State's courts are not binding on the Mechanism). See also *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Judgement, 30 June 2016, para. 598; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015, para. 1674.



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