



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

APPEALS CHAMBER

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

Arusha, 29 June 2022

Appeal Judgement Summary for *Prosecutor v. Marie Rose Fatuma et al.*

Please find below the summary of the Judgement read out today by Judge Carmel Agius

1. The Appeals Chamber pronounces today the judgement in the case of *Prosecutor v. Marie Rose Fatuma et al.* pursuant to Rules 144(D) of the Rules of Procedure and Evidence of the Mechanism (“Rules”). This summary contains an overview of the essential issues on appeal and the central findings of the Appeals Chamber and does not constitute any part of the official and authoritative Judgement.

A. Background

2. On 20 December 2012, Trial Chamber II of the International Criminal Tribunal for Rwanda (“ICTR”) convicted Augustin Ngirabatware of direct and public incitement to commit genocide, relying primarily on the direct evidence of Prosecution Witnesses ANAN and ANAT. It further found Ngirabatware guilty of instigating and aiding and abetting genocide, principally on the basis of the direct evidence of Prosecution Witnesses ANAE and ANAM, which was corroborated by the evidence of Prosecution Witness ANAL. On 18 December 2014, the Appeals Chamber affirmed Ngirabatware’s conviction for committing direct and public incitement to commit genocide and, by majority, his conviction for instigating and aiding and abetting genocide. The Appeals Chamber imposed on Ngirabatware a sentence of 30 years of imprisonment.

3. On 8 July 2016, Ngirabatware filed a motion before the Appeals Chamber, seeking review of his convictions on the basis that, following the rendering of the appeal judgement, Witnesses ANAN, ANAT, ANAE, and ANAM had recanted their trial testimonies (collectively, “Recanting Witnesses”). On 27 September 2019, the Appeals Chamber issued a review judgement, in which it found that Ngirabatware



had failed to prove that the Recanting Witnesses had truthfully recanted their trial testimonies. Consequently, the appeal judgement was affirmed in all respects.

4. While the *Ngirabatware* review proceedings were still ongoing, Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli were charged with contempt and/or incitement to commit contempt, on the basis of allegations of interference with, *inter alios*, the Recanting Witnesses and/or Witness ANAL, or violation of court orders (“*Nzabonimpa et al.* Indictment”). Shortly after the conclusion of the review proceedings, an indictment was confirmed against Ngirabatware, charging him with contempt and incitement to commit contempt, on the basis of allegations of interference with, *inter alios*, the Recanting Witnesses and Witness ANAL, and violation of court orders (“*Ngirabatware* Indictment”). The proceedings against Turinabo were terminated on 19 April 2021, following his death.

5. On 25 June 2021, the Single Judge found Nzabonimpa, Ndagijimana, and Fatuma guilty of contempt for having interfered with the administration of justice and acquitted them of incitement to commit contempt. The Single Judge sentenced each of them to “time served”. The Single Judge acquitted Munyeshuli of contempt and issued a warning to him. The Single Judge found Ngirabatware guilty of contempt for having interfered with the administration of justice and for having violated court orders, and acquitted him of incitement to commit contempt. The Single Judge sentenced Ngirabatware to two years of imprisonment, to run concurrently with the sentence of 30 years of imprisonment that he is already serving.

6. Fatuma filed an appeal, challenging her conviction and sentence. She requests that the Appeals Chamber vacate her conviction and quash her sentence or, in the event her conviction remains undisturbed, impose either a significantly lesser sentence of imprisonment or a fine, deemed paid by virtue of the time she had spent in detention.

7. The Prosecution filed an appeal, challenging Munyeshuli’s acquittal and the sentence imposed on Ngirabatware. It requests that the Appeals Chamber convict Munyeshuli of contempt and sentence him accordingly. With respect to Ngirabatware, the Prosecution requests that the Appeals Chamber order that he serve his sentence of two years of imprisonment for contempt consecutively with the sentence of 30 years of imprisonment that he is already serving.



8. On 4 February 2022, the Appeals Chamber found that the information before it enabled it to reach an informed decision on the appeals and that, balancing all interests involved, holding an oral hearing was not necessary.

B. The Appeal of Marie Rose Fatuma

9. The Single Judge found Fatuma guilty, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(iv) of the Rules, for having interfered with the administration of justice by: (i) prompting relatives of Witness ANAL/TNN6 to persuade and offer a financial incentive to the witness in exchange for recanting the testimony she had given during Ngirabatware's ICTR trial; (ii) instructing Witness ANAL/TNN6 on what to say when interviewed by Ngirabatware's Defence; and (iii) offering Witness ANAL/TNN6 a financial incentive to cooperate and recant.

10. Under the First and Third Grounds of her appeal, Fatuma submits that the Single Judge erred in accepting Witness ANAL/TNN6's evidence that Fatuma had offered the witness a financial incentive to recant her prior testimony given during Ngirabatware's ICTR trial. Fatuma contests, *inter alia*, the Single Judge's reliance on a contemporaneous statement given by the witness to the Witness Support and Protection Unit of the Mechanism ("WISP") in 2016. The Appeals Chamber concludes that the Single Judge erred in finding that this statement corroborated the witness's later testimony, as prior consistent statements cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony. Nevertheless, the Appeals Chamber finds that, in view of the other evidence relied on by the Single Judge as corroborating Witness ANAL/TNN6's testimony, this error does not invalidate the Single Judge's conclusion that Fatuma had offered the witness a financial incentive in exchange for her recantation. Therefore, the Appeals Chamber dismisses Fatuma's First and Third Grounds of Appeal.

11. Under her Second Ground of Appeal, Fatuma submits that the Single Judge erred in failing to take into consideration certain aspects of Witness ANAL/TNN6's testimony that were untruthful, thus minimizing the extent to which her evidence should have been treated with caution. For the reasons stated in the Judgement, the Appeals Chamber finds that Fatuma fails to demonstrate that the Single Judge committed any error in this respect and dismisses Fatuma's Second Ground of Appeal.

12. Under her Fourth Ground of Appeal, Fatuma argues that the Single Judge erred in finding that she sent relatives of Witness ANAL/TNN6 to convince the witness to recant her testimony given during Ngirabatware's ICTR trial. As detailed in the Judgement, the Appeals Chamber finds that the Single



Judge erred in concluding that Fatuma encouraged “M” and “F” to speak with Witness ANAL/TNN6 for the purpose of having the witness recant her prior testimony. However, the Appeals Chamber finds no error in the Single Judge’s assessment of the evidence that Fatuma prompted Witness ANAL/TNN6’s younger sister to persuade the witness to change her prior testimony. Similarly, Fatuma fails to show that the Single Judge erred in finding that, during a meeting at the Stella Marris Church, Fatuma provided the witness with the questions that she would be asked by Ngirabatware’s Defence, instructed the witness what to say, and offered the witness a financial incentive for cooperating and recanting her prior testimony. The Appeals Chamber, therefore, finds that the Single Judge’s error in finding that Fatuma encouraged “M” and “F” to speak with Witness ANAL/TNN6 did not undermine the conclusion that Fatuma interfered with the administration of justice. The Appeals Chamber, therefore, dismisses Fatuma’s Fourth Ground of Appeal.

13. For the reasons set out in the Judgement, the Appeals Chamber dismisses Fatuma’s Fifth Ground of Appeal, under which she argues that the Single Judge erred in failing to provide a reasoned opinion for rejecting her defence theory of the case. The Appeals Chamber also dismisses Fatuma’s Sixth Ground of Appeal as she fails to demonstrate that the Single Judge erred in failing to consider her final trial brief submissions in a language that he understood.

14. Under her Seventh and Eighth Grounds of Appeal, Fatuma argues that, in sentencing her to “time served”, the Single Judge imposed a manifestly excessive sentence. The Appeals Chamber recalls that, pursuant to Article 22(1) of the Statute and Rule 90(G) of the Rules, the penalties that may be imposed on a person found guilty of contempt are a term of imprisonment not exceeding seven years and/or a fine not exceeding 50,000 euros. Considering that “time served” is not among the penalties provided in the Statute and the Rules that may be imposed on a person found guilty of contempt, the Appeals Chamber finds that, by sentencing Fatuma to “time served”, the Single Judge did not impose a permissible sentence.

15. Therefore, the Appeals Chamber, *proprio motu*, sets aside the sentence of “time served” imposed by the Single Judge and dismisses Fatuma’s Seventh and Eighth Grounds of Appeal as moot.

C. The Appeal of the Prosecution

16. Under Count 3 of the *Nzabonimpa et al.* Indictment, the Prosecution alleged that, on 15 July 2017, Munyeshuli revealed to Maximilien Turinabo the identities of the Recanting Witnesses in knowing violation of the protective measures ordered in the *Ngirabatware* case. In the Trial Judgement, the Single



Judge noted that Turinabo was a resource person for the Defence during Ngirabatware's ICTR trial and review proceedings, and that the Recanting Witnesses' identities had been previously revealed to Turinabo by Nzabonimpa. In this regard, the Single Judge found that "[i]t cannot be reasonably said that Munyeshuli revealed any identifying information to Turinabo that was somehow new or secret to Turinabo or that, in doing so in a private conversation, Munyeshuli made this information openly known". The Single Judge further found that, even if Munyeshuli's conversation with Turinabo could be construed as prohibited disclosure of protected information, he was not satisfied beyond reasonable doubt that Munyeshuli had the requisite *mens rea* for a violation of Rule 90(A)(ii) of the Rules. The Single Judge, therefore, acquitted Munyeshuli of contempt under Count 3 of the *Nzabonimpa et al.* Indictment in relation to this allegation.

17. Under its First Ground of Appeal, the Prosecution submits that the Single Judge erred in failing to convict Munyeshuli of contempt by: (i) applying an incorrect definition of disclosure and finding that Munyeshuli did not disclose protected information in violation of court orders; and (ii) finding that Munyeshuli did not possess the *mens rea* for contempt when disclosing protected information.

18. The Appeals Chamber notes that there is no requirement in the jurisprudence that unauthorised disclosure of protected information must take place in a public domain or be accessible to the general public in order to amount to an interference with the administration of justice under Rule 90(A)(ii) of the Rules. In addition, the Rules and jurisprudence do not sustain the proposition that release of protected information does not amount to disclosure in circumstances where the recipient is already in possession of such information. The Appeals Chamber considers that the *Jović* Contempt Appeal Judgement and the *Nshogoza* Contempt Appeal Judgement both support the principle that release, whether in a public or private domain, of protected information may constitute unauthorised disclosure, irrespective of whether the intended recipient of such information was already aware of it due to previous disclosure by another person.

19. Accordingly, the Appeals Chamber finds that the Single Judge erred in law in considering that Munyeshuli did not disclose protected information in violation of the relevant protective measures decisions. The Appeals Chamber notes that the relevant protective measures decisions prohibit disclosure of information identifying the Recanting Witnesses, directly or indirectly, to any person or entity outside of the Defence and Prosecution teams, and provide no conditions that would permit release of such information beyond these terms, including on the basis of prior disclosure. Having reviewed the evidence



in relation to the conversation that took place between Munyeshuli and Turinabo on 15 July 2017, the Appeals Chamber agrees with the Single Judge's finding that there is no doubt that Munyeshuli mentioned the names of the Recanting Witnesses to Turinabo.

20. The Appeals Chamber further notes that, although Turinabo was a resource person for the Defence during Ngirabatware's ICTR trial and review proceedings, Munyeshuli confirmed in his testimony that Turinabo was not officially part of the Defence team in the review proceedings. The Appeals Chamber is therefore convinced beyond reasonable doubt that, by mentioning the names of the Recanting Witnesses to Turinabo, who was not a member of the Defence team, Munyeshuli disclosed protected information in violation of the relevant protective measures decision. The Appeals Chamber further finds that the Single Judge erred in concluding that Munyeshuli did not have the requisite *mens rea* for contempt in this regard.

21. The Appeals Chamber, therefore, grants the Prosecution's First Ground of Appeal and finds Munyeshuli guilty of contempt, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(ii) of the Rules, by disclosing the identities of the Recanting Witnesses in knowing violation of a court order.

22. Under Count 3 of the *Nzabonimpa et al.* Indictment, Munyeshuli was also charged with contempt for having had prohibited indirect contact with the Recanting Witnesses, in knowing violation of a court order. The Single Judge found that, through his conversation with Turinabo on 15 July 2017, Munyeshuli initiated indirect contact with protected witnesses, which amounted to a violation of the relevant protective measures decisions. Nevertheless, the Single Judge acquitted Munyeshuli under Count 3 of the *Nzabonimpa et al.* Indictment of contempt in relation to this allegation and, instead, issued him a warning to closely scrutinize applicable witness protection measures in future cases.

23. Under its Second Ground of Appeal, the Prosecution submits that the Single Judge erred in declining to enter a conviction against Munyeshuli for contempt through having had prohibited indirect contact with protected witnesses.

24. As explained in the Judgement, the Appeals Chamber considers that the textual and contextual interpretation of the Rules supports the principle that once a charge is proven beyond reasonable doubt, a finding of guilt follows. Considering that the Rules apply *mutatis mutandis* to proceedings under Rule 90 of the Rules, this principle similarly applies to contempt proceedings. In addition, a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the



criminality of the convicted person. For the reasons elaborated in the Judgement, the Appeals Chamber finds that the Single Judge erred in law in concluding that Munyeshuli's proven violation of the relevant protective measures decisions should not result in criminal responsibility and, consequently, in declining to enter a conviction against him under Count 3 of the *Nzabonimpa et al.* Indictment.

25. Consequently, the Appeals Chamber grants the Prosecution's Second Ground of Appeal and finds Munyeshuli guilty of contempt, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(iii) of the Rules, by having had prohibited indirect contact with the Recanting Witnesses in knowing violation of a court order.

26. Under its Third Ground of Appeal, the Prosecution submits that the Single Judge erred in law in ordering that Ngirabatware's two-year sentence for contempt be served concurrently with the 30-year sentence that he is already serving.

27. The Appeals Chamber recalls that, pursuant to Rule 104(C) of the Rules, if the single judge finds an accused guilty on one or more of the charges contained in an indictment, he shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently. Neither the Statute nor the Rules vest in the single judge the power to order that a sentence for contempt be served concurrently with a previous sentence imposed on the same accused in separate proceedings under a different indictment before the International Criminal Tribunal for the former Yugoslavia, the ICTR, or the Mechanism.

28. The Appeals Chamber, therefore, finds that the Single Judge erred in law in ordering that Ngirabatware's sentence of two years of imprisonment for contempt be served concurrently with the sentence of 30 years of imprisonment that he is already serving in relation to his convictions for genocide and direct and public incitement to commit genocide. Accordingly, the Appeals Chamber grants the Prosecution's Third Ground of Appeal and sets aside the concurrent sentence of two years of imprisonment imposed on Ngirabatware by the Single Judge.

D. Disposition

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

PURSUANT to Article 23 of the Statute and Rule 144 of the Rules;



NOTING the written submissions of the parties;

SITTING in open session;

DISMISSES Fatuma’s appeal in its entirety;

SETS ASIDE, *proprio motu*, Fatuma’s sentence of “time served” and **IMPOSES** a sentence of 11 months of imprisonment;

DECLARES, in accordance with Rule 125(C) of the Rules, that Fatuma’s sentence has been served in view of the credit for her detention in the custody of the Mechanism pending trial;

GRANTS the Prosecution’s First and Second Grounds of Appeal and **REVERSES** Munyeshuli’s acquittal under Count 3 of the *Nzabonimpa et al.* Indictment;

FINDS Munyeshuli guilty pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(ii) and (iii) of the Rules and **ENTERS** a conviction under Count 3 of the *Nzabonimpa et al.* Indictment for contempt through knowingly and wilfully interfering with the administration of justice;

IMPOSES on Munyeshuli a sentence of five months of imprisonment;

DECLARES, in accordance with Rule 125(C) of the Rules, that Munyeshuli’s sentence has been served in view of the credit for his detention in the custody of the Mechanism pending trial;

GRANTS the Prosecution’s Third Ground of Appeal;

SETS ASIDE Ngirabatware’s concurrent sentence of two years of imprisonment and **IMPOSES**, Judge Orié dissenting, a sentence of two years of imprisonment to be served consecutively to his sentence of 30 years of imprisonment that he is already serving; and

RULES that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules.

Judge Alphons Orié appends a partially dissenting opinion.
