



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-18-116-PT

Date: 7 December 2018

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Vagn Joensen

Registrar: Mr. Olufemi Elias

Decision of: 7 December 2018

PROSECUTOR

v.

MAXIMILIEN TURINABO  
ANSELME NZABONIMPA  
JEAN DE DIEU NDAGIJIMANA  
MARIE ROSE FATUMA  
DICK PRUDENCE MUNYESHULI

*PUBLIC*

DECISION ON SUITABILITY OF REFERRAL OF THE CASE

Office of the Prosecutor:

Mr. Serge Brammertz  
Mr. Rashid S. Rashid

Counsel for the Defence:

Mr. Maximilien Turinabo  
Mr. Stéphane Bourgon  
Mr. Anselme Nzabonimpa  
Mr. Geoffrey Roberts  
Mr. Jean de Dieu Ndagijimana  
Mr. Wilfred Nderitu  
Ms. Marie Rose Fatuma  
Mr. Gatera Gashabana  
Mr. Dick Prudence Munyeshuli  
Mr. Kurt Kerns

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*Mwaipopo*

I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the Single Judge in this case:<sup>1</sup>

NOTING that, on 24 August 2018, Judge Seon Ki Park confirmed an indictment against Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli, charging the Accused with crimes under Article 1(4)(a) of the Statute and Rule 90 of the Rules of Procedure and Evidence (“Rules”);<sup>2</sup>

NOTING that the Accused were arrested in the Republic of Rwanda on 3 September 2018 and were transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania, on 11 September 2018;

NOTING the initial appearances of the Accused on 13 September 2018, during which each Accused pleaded not guilty to the respective counts or count charged against him or her in the Indictment;<sup>3</sup>

RECALLING the order issued on 18 September 2018, wherein I invited the Government of Rwanda to provide written submissions on its jurisdiction, willingness, and preparedness to accept this case for trial and provided a briefing schedule for the Prosecution of the Mechanism and the Accused to file submissions on the suitability of transfer of this case pursuant to Articles 1(4) and 6 of the Statute;<sup>4</sup>

NOTING the submissions of the Government of Rwanda filed on 2 October 2018, wherein it submits that it has jurisdiction and is willing to prosecute the Accused but considers that the interests of justice will be better served by the prosecution of this case before the Mechanism because: (i) the case has a close nexus with the ongoing review proceedings in the case of *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R (“*Ngirabatware* case”) before the

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<sup>1</sup> Order Assigning a Single Judge, 11 September 2018, p. 1.

<sup>2</sup> Order on Confirmation of Indictment, 24 August 2018, pp. 1, 2 (strictly confidential and *ex parte*; made public on 18 September 2018). See also Indictment, 5 June 2018 (strictly confidential; public redacted version filed on 5 September 2018) (“Indictment”).

<sup>3</sup> See Transcript 13 September 2018 pp. 24-27.

<sup>4</sup> Order for Submissions, 18 September 2018, pp. 1, 2. In response to a motion filed by Turinabo, each Accused was granted an extension of the word limit in a decision issued on 19 October 2018. See Decision on Maximilien Turinabo’s Request for Extension of Word Limit, 19 October 2018, p. 2. Consequently, motions for extensions of the word limit filed by Nzabonimpa and Munyeshuli on 19 October 2018 are dismissed as moot. See Request for Extension of Word Limit, 19 October 2018; Joinder and Additional Submissions of Defence of Dick Prudence Munyeshuli as to Filings of Co-Accused Turinabo Seeking Enlargement of Word Limit for Submissions on the Suitability of Transfer to Rwanda, 19 October 2018 (confidential).

Mechanism; and (ii) allegations of contempt of the International Criminal Tribunal for Rwanda (“ICTR”) have a closer connection with the Mechanism than Rwandan courts;<sup>5</sup>

NOTING the submissions of the Prosecution filed on 9 October 2018, which contend that the conditions for referral under Articles 6(2) and 6(4) of the Statute are satisfied and that referring the case to Rwanda may serve the interests of justice and expediency pursuant to Article 1(4) of the Statute, but that I may, in the exercise of my discretion and in light of the submissions of the Government of Rwanda, determine that the interests of justice would be better served by trying the Accused before the Mechanism;<sup>6</sup>

NOTING the submissions filed on 24 October 2018 by Turinabo,<sup>7</sup> Nzabonimpa,<sup>8</sup> Ndagijimana,<sup>9</sup> Fatuma,<sup>10</sup> and Munyeshuli,<sup>11</sup> opposing the transfer of the case to Rwanda;<sup>12</sup>

NOTING that the Accused, *inter alia*, dispute that: (i) Rwanda has jurisdiction over the crimes charged in the Indictment;<sup>13</sup> (ii) the alleged criminal conduct occurred exclusively in Rwanda;<sup>14</sup>

<sup>5</sup> Response from the Government of Rwanda to IRMCT on Order for Submissions Dated 18<sup>th</sup> September 2018, 2 October 2018, Registry Pagination (“RP.”) 194, 193.

<sup>6</sup> Prosecution Submissions on the Suitability of Transfer of the Case, 9 October 2018 (“Prosecution Submissions”), paras. 1-5. In support of referring the case to Rwanda, the Prosecution submits that: (i) the Accused were arrested in Rwanda; (ii) Rwanda has jurisdiction and expressed its willingness and preparedness to accept the case; (iii) past referral litigation before the ICTR and the Mechanism demonstrates that Rwanda will adhere to the necessary fair trial standards and will not impose the death penalty; (iv) referring the case to Rwanda would be in the interests of justice as it may, *inter alia*, bolster faith in international justice, promote visibility of the criminal process for witness interference, and deter similar offences; and (v) referring the case to Rwanda would be more expedient as evidence related to the case has been and continues to be collected in Rwanda, would serve the interests of judicial economy in view of the reduced size and functions of the Mechanism, and would be more cost-effective. Prosecution Submissions, paras. 2, 3.

<sup>7</sup> Submissions on Behalf of Maximilien Turinabo on the Suitability of Transfer of This Case to the Republic of Rwanda Pursuant to Articles 1(4) and 6 of the Statute, 24 October 2018 (confidential; public redacted version filed on 31 October 2018) (“Turinabo Submissions”).

<sup>8</sup> Response to Submissions by the Government of Rwanda and by the Prosecution Regarding the Suitability of Transfer of the Case, 24 October 2018 (“Nzabonimpa Submissions”).

<sup>9</sup> Submissions by Jean de Dieu Ndagijimana on the Question Whether it is Proper to Transfer the Case to Rwanda (Including Replies to the Submissions Made by the Government of the Republic of Rwanda and by the Prosecutor of the Mechanism), 24 October 2018 (“Ndagijimana Submissions”).

<sup>10</sup> Reply for Marie Rose Fatuma to the Submissions on the Suitability of Transfer of the Case, 20 November 2018 (original French version filed on 24 October 2018) (confidential; public redacted version with corrections filed on 24 November 2018) (“Fatuma Submissions”).

<sup>11</sup> Submissions of the Defence of Dick Prudence Munyeshuli Objecting to the Suitability of Referral of These Proceedings to Rwanda, 24 October 2018 (“Munyeshuli Submissions”).

<sup>12</sup> See Turinabo Submissions, paras. 2, 90, 91; Nzabonimpa Submissions, paras. 1, 68; Ndagijimana Submissions, para. 26; Fatuma Submissions, paras. 4, 33; Munyeshuli Submissions, paras. 6, 74.

<sup>13</sup> See Fatuma Submissions, paras. 13-23; Nzabonimpa Submissions, paras. 14-24; Turinabo Submissions, paras. 30, 61. Nzabonimpa further argues that joint criminal enterprise liability as charged in the Indictment is not recognized in Rwandan law and that his prosecution there would not reflect the nature of his involvement in the crimes charged in the Indictment. Nzabonimpa Submissions, paras. 25-30.

<sup>14</sup> Turinabo Submissions, para. 59.

(iii) Rwanda is willing and prepared to try the case;<sup>15</sup> (iv) they will receive a fair trial in Rwanda;<sup>16</sup> and (v) the interests of justice and expediency are served by trying the case in Rwanda;<sup>17</sup>

NOTING the consolidated reply of the Prosecution filed on 9 November 2018,<sup>18</sup> in which it contends that the Accused fail to show that the requirements under Articles 6(2) and 6(4) of the Statute are not satisfied<sup>19</sup> and argues that, while certain interests of justice factors weigh against referral of the case to Rwanda, there are a number of factors that suggest the interests of justice and expediency support referral to Rwanda and that all should be considered;<sup>20</sup>

CONSIDERING that Article 1(4) of the Statute provides, in relevant part, that before proceeding to try persons for contempt, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the Statute, taking into account the interests of justice and expediency;

<sup>15</sup> Turinabo Submissions, paras. 32, 62, 63; Ndagijimana Submissions, paras. 5-9, 12-14; Nzabonimpa Submissions, paras. 31-35; Fatuma Submissions, paras. 10-12.

<sup>16</sup> The Accused argue that they will not receive a fair trial in Rwanda because, *inter alia*: (i) the conduct of the Rwandan government undermines due process, the presumption of innocence, and the independence and impartiality of the judiciary (*see* Nzabonimpa Submissions, paras. 37, 39-41; Munyeshuli Submissions, paras. 40-55, 58-60, 65, 71-74; Turinabo Submissions, paras. 39, 65, 76-78; *see also* Munyeshuli Submissions, paras. 17-27, 66, 67; Fatuma Submissions, paras. 19-21; Turinabo Submissions, para. 7); (ii) the Accused will not receive adequate legal assistance due to lack of resources, interference, or intimidation (*see* Nzabonimpa Submissions, paras. 42-50; Munyeshuli Submissions, paras. 28-31, 39, 57, 64, 68-70); (iii) the difficulties in obtaining the cooperation and attendance of defence witnesses will undermine the Accused's right to obtain the attendance and examine witnesses on their behalf under the same conditions as Prosecution witnesses (*see* Nzabonimpa Submissions, paras. 37, 51-54; Turinabo Submissions, paras. 65-75, 80-82; Fatuma Submissions, paras. 25, 26; Munyeshuli Submissions, para. 63); and (iv) the conditions of detention violate human rights and due process standards (*see* Munyeshuli Submissions, paras. 32-38, 53; *see also* Munyeshuli Submissions, paras. 43, 44, 51, 52).

<sup>17</sup> Fatuma Submissions, paras. 4, 30-32; Turinabo Submissions, paras. 3, 9, 10, 16, 17, 28, 29, 79-90. *See also* Munyeshuli Submissions, para. 2. Certain Accused argue that the nexus between the charges in the Indictment and the on-going review proceedings in the *Ngirabatware* case weigh in favour of the case being tried before the Mechanism. Turinabo Submissions, paras. 4, 33-38, 90; Ndagijimana Submissions, para. 8; Nzabonimpa Submissions, 56-58; Fatuma Submissions, paras. 24, 27, 28.

<sup>18</sup> Prosecution Consolidated Reply to Accused Submissions on the Suitability of Transfer, 9 November 2018 (confidential with confidential Annexes A and B and confidential and *ex parte* Annex C; public redacted and corrected version filed on 22 November 2018) ("Prosecution Reply"). On 9 November 2018, the Prosecution sought leave for the Prosecution Reply to be considered as validly filed noting that the time difference between The Hague branch and the Arusha branch led the Prosecution Reply to be mistakenly filed in Arusha after midnight on 8 November 2018. *See* Prosecution Request to Accept Consolidated Reply as Validly Filed, 9 November 2018 (confidential), paras. 1, 2, 6. No Accused has opposed the request and there is no indication that any of the Accused has been prejudiced by the late filing. I therefore accept the Prosecution Reply as validly filed. In addition, Fatuma's request for access to the confidential and *ex parte* Annex C of the Prosecution Reply, which has since been disclosed by the Prosecution, is dismissed as moot. *See Requête pour Marie Rose Fatuma aux fins de communication de l'annexe C confidentielle et ex parte à la « Prosecution Consolidated Reply to Accused Submissions on the Suitability of Transfer » datée du 8 novembre 2018*, 13 November 2018 (confidential); Prosecution Response to « Requête pour Marie Rose Fatuma aux fins de communication de l'annexe C confidentielle et ex parte à la Prosecution Consolidated Reply », 23 November 2018 (confidential). *See also* Prosecution Reply (public redacted version), RP. 1552.

<sup>19</sup> Prosecution Reply, paras. 1, 2, 6-39, 48.

<sup>20</sup> Prosecution Reply, paras. 3, 40-48.

CONSIDERING that Article 6(2) of the Statute provides, in relevant part, that the Trial Chamber shall determine whether the case should be referred to the authorities of a State: (i) in whose territory the crime was committed; or (ii) in which the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case;

CONSIDERING that Article 6(4) of the Statute provides that a Trial Chamber may order the referral of a case after having given to the Prosecutor, and where, applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out;

CONSIDERING that the decision on whether or not to refer the case to Rwanda falls within my discretion;<sup>21</sup>

CONSIDERING that the principal position of the Government of Rwanda is that the interests of justice are better served by trying this case before the Mechanism;<sup>22</sup>

CONSIDERING that the Prosecution acknowledges that the interests of justice could weigh in favour of the Mechanism retaining the case and that this consideration could be dispositive;<sup>23</sup>

CONSIDERING that the Prosecution submissions, namely that referring the case to Rwanda would be in the interests of justice because it may, *inter alia*, bolster faith in international justice, promote visibility of the criminal process for witness interference, and deter similar offences, are general and unpersuasive in view of the submissions from the Government of Rwanda as to why the interests of justice are better served by trying the case before the Mechanism;<sup>24</sup>

NOTING the Prosecution's contentions that trying the case in Rwanda serves the interests of judicial economy and expediency in view of the reduced size and functions of the Mechanism as well as the fact that evidence related to the case has been and continues to be collected in Rwanda;<sup>25</sup>

CONSIDERING, however, the strong likelihood that this trial will commence and conclude more expeditiously if retained by the Mechanism,<sup>26</sup> which is a highly relevant consideration in cases of

<sup>21</sup> See *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, paras. 5, 19.

<sup>22</sup> See *supra* n. 5.

<sup>23</sup> Prosecution Submissions, paras. 1, 4, 5; Prosecution Reply, paras. 3, 40, 48.

<sup>24</sup> I consider that the fair and efficient prosecution of witness interference before the Mechanism would equally bolster faith in international justice, promote visibility of the criminal process for witness interference, and deter similar offences. See *supra* n. 6.

<sup>25</sup> See *supra* n. 6.

<sup>26</sup> In particular, given the Accused's strong opposition to referral, it is likely that any decision referring the case to Rwanda will be appealed and necessarily delay the commencement of the case.

contempt where the accused are detained and because contempt cases are generally of short duration and carry lower terms of imprisonment, if any, in the event of conviction;

CONSIDERING FURTHER that the case has a close nexus to on-going review proceedings in the *Ngirabatware* case and maintaining jurisdiction will greatly facilitate access of the parties to relevant information in these related cases;

FINDING that, in light of the foregoing, the interests of justice and expediency weigh in favour of the Mechanism trying the case;<sup>27</sup>

FOR THE FOREGOING REASONS,

HEREBY ORDER that the trial of the case of *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116, shall be conducted by the Mechanism; and

REMAIN SEISED of the case.

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



Done this 7th day of December 2018,  
At Arusha,  
Tanzania

\_\_\_\_\_  
Judge Vagn Joensen  
Single Judge

[Seal of the Mechanism]



<sup>27</sup> In light of this conclusion, I: (i) dismiss as moot the requests of Turinabo and Nzabonimpa seeking leave to file further submissions; and (ii) shall not consider Munyeshuli's filing of further submissions. *See* Motion on Behalf of Maximilien Turinabo Seeking Leave to Submit Additional Observations on the Suitability of this Case for Transfer to the Republic of Rwanda and Additional Submissions on Behalf of Maximilien Turinabo, 16 November 2018 (confidential); Request for Leave to File Further Submissions by the Defence for Anselme Nzabonimpa Regarding the Suitability of Transfer of the Case, 15 November 2018; Additional Submissions of the Defence of Dick Prudence Munyeshuli Objecting to the Suitability of Referral of These Proceedings to Rwanda, 15 November 2018 (confidential). *See also* Prosecution Consolidated Response to Accused's Additional Referral Submissions, 30 November 2018 (confidential).



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