

MICT-12-29  
17-02-2016  
(3584 - 3582)

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UNITED  
NATIONS



Mechanism for International Criminal Tribunals

Case No. MICT-12-29  
Date: 17 February 2016  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Bakone Justice Moloto  
Judge Christoph Flügge  
Judge Burton Hall  
Judge Liu Daqun

**Registrar:** Mr. John Hocking

**Order of:** 17 February 2016

**PROSECUTOR**

v.

**AUGUSTIN NGIRABATWARE**

***PUBLIC***

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**ORDER TO RE-FILE MOTION FOR ASSIGNMENT OF  
COUNSEL**

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**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow

**Counsel for Augustin Ngirabatware:**

Mr. Peter Robinson

**Received by the Registry  
Mechanism for International Criminal Tribunals  
17/02/2016 12:31**

A handwritten signature in black ink, appearing to be 'P. Robinson', written over the stamp.

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);

**RECALLING** that, on 18 December 2014, the Appeals Chamber (i) affirmed Augustin Ngirabatware’s convictions for committing direct and public incitement to commit genocide, and, Judge Moloto dissenting, instigating and aiding and abetting genocide; (ii) reversed his conviction for rape as a crime against humanity; and (iii) imposed a sentence of 30 years of imprisonment;<sup>1</sup>

**BEING SEISED OF** the “Motion for Assignment of Counsel”, filed confidentially and *ex parte* by Ngirabatware on 22 January 2016 (“Motion”), in which he requests that the Appeals Chamber direct the Registrar to assign him counsel, at the expense of the Mechanism, for the purpose of assisting him in relation to the preparation of a request for review;<sup>2</sup>

**NOTING** that Ngirabatware filed the Motion confidentially and *ex parte* because, in his view: (i) it relates to a matter in relation to which the Prosecution has no standing; (ii) the release of the information contained in the Motion may result in interference with witnesses; and (iii) the contents of the Motion reveal defence strategy and work product;<sup>3</sup>

**CONSIDERING** that, before a review has been authorized, an applicant is only entitled to assigned counsel at the expense of the Mechanism if the Appeals Chamber deems it necessary to ensure the fairness of the proceedings, which is, to a great extent, assessed in light of the potential grounds for review put forward by the applicant;<sup>4</sup>

**CONSIDERING** that, in general, the Appeals Chamber only authorizes the assignment of counsel at the expense of the Mechanism where it cannot exclude the likelihood of success of a potential ground of review;<sup>5</sup>

**CONSIDERING** that such a determination necessarily relates to the potential merits of the request for review and as corollary the Prosecution should have the opportunity to respond;<sup>6</sup>

<sup>1</sup> *Augustin Ngirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014, para. 279.

<sup>2</sup> Motion, paras. 1, 14, 23.

<sup>3</sup> Motion, n. 1.

<sup>4</sup> *Eliézer Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka’s Request for Review and Assignment of Counsel, 13 July 2015 (“*Niyitegeka* Decision of 13 July 2015”), para. 8. *See also* *Aloys Ntabakuze v. The Prosecutor*, Case No. MICT-14-77-R, Decision on Ntabakuze’s *Pro Se* Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review, 19 January 2015, para. 9; *Eliézer Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka’s Request for Assignment of Counsel, 6 November 2014, para. 7; *François Karera v. Prosecutor*, Case No. MICT-12-24-R, Decision on Request for Assignment of Counsel, 4 December 2012, para. 10.

<sup>5</sup> *See, e.g., Niyitegeka* Decision of 13 July 2015, para. 12; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R, Decision on Motion for Legal Assistance, 21 July 2009, para. 18.

**CONSIDERING** that, while witness protection concerns warrant maintaining the Motion as confidential, Ngirabatware fails to show that there is a risk that the Prosecution may interfere with the witnesses in order to justify its *ex parte* status;

**CONSIDERING** that, in limited circumstances, particularly sensitive material could be included in an *ex parte* annex so long as the motion is prepared in such a way to allow for a meaningful response;<sup>7</sup>

**CONSIDERING** that, in view of Ngirabatware's submissions, prior to lifting the *ex parte* status of the Motion, Ngirabatware should have the opportunity to review his Motion in light of the foregoing considerations;

**HEREBY ORDERS** Ngirabatware to re-file the Motion in conformity with this Order no later than seven days from the filing of this Order;

**ORDERS** the Prosecution to file a response to the Motion, if any, within 10 days of the re-filing of the Motion; and

**ORDERS** Ngirabatware to file a reply, if any, within four days of the filing of the Prosecution's response.

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

Done this 17th day of February 2016,  
At The Hague,  
The Netherlands

  
Judge Theodor Meron, Presiding

[Seal of the Mechanism]



<sup>6</sup> In this respect, the Appeals Chamber further notes that, at the review stage, the assignment of counsel under the legal aid system has never been authorized on an *ex parte* basis by the Mechanism or the International Criminal Tribunal for Rwanda.

<sup>7</sup> The Appeals Chamber notes that the requirement that an applicant provide information as to the potential grounds for review in the context of a request for the assignment of counsel at the expense of the Mechanism necessarily involves revealing certain aspects of the applicant's strategy in connection with the eventual request for review.



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<b>Case Name/ Affaire :</b>	Prosecutor v. Augustin Ngirabatware		<b>Case Number/ Affaire n° :</b> MICT-12-29
<b>Date Created/ Daté du :</b>	17 February 2016	<b>Date transmitted/ Transmis le :</b>	17 February 2016
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