

UNITED
NATIONS

MICT-12-16-R
13-04-2018
(2955 - 2953)

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Mechanism for International Criminal Tribunals

Case No.: MICT-12-16-R

Date: 13 April 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Aminatta Lois Runeni N'gum
Judge Gberdao Gustave Kam
Judge Ben Emmerson
Judge Ivo Nelson de Caires Batista Rosa

Registrar: Mr. Olufemi Elias

Decision of: 13 April 2018

ELIÉZER NIYTEGEKA

v.

PROSECUTOR

PUBLIC

DECISION DISMISSING A REQUEST

Counsel for Mr. Eliézer Niyitegeka

Mr. Philippe Larochelle
Mr. Sébastien Chartrand

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Thembile Segoete
Ms. Sunkarie Ballah-Conteh

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THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING the “Judgement and Sentence” issued on 16 May 2003 in the case of *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T (“Trial Judgement”), wherein Trial Chamber I of the International Criminal Tribunal for Rwanda (“ICTR”) convicted Mr. Eliézer Niyitegeka (“Niyitegeka”) of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and murder, extermination, and other inhumane acts as crimes against humanity and sentenced him to life imprisonment;²

NOTING the “Judgement” rendered on 9 July 2004 in the case of *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A (“Appeal Judgement”), wherein the Appeals Chamber of the ICTR dismissed Niyitegeka’s appeal against his convictions and upheld his sentence;³

BEING SEISED OF a request for review, filed by Niyitegeka on 27 June 2017;⁴

NOTING that Niyitegeka passed away on 28 March 2018, while serving his sentence in the Republic of Mali;⁵

RECALLING that the Mechanism continues the personal jurisdiction of the ICTR as set out in Article 5 of the Statute of the ICTR (“ICTR Statute”);⁶

OBSERVING that Article 5 of the ICTR Statute stipulates that the ICTR “shall have jurisdiction over natural persons”;

CONSIDERING that, when read in the context of the object and purpose of the ICTR Statute, “natural persons” is understood as limited to those who are alive;⁷

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 21 June 2017, p. 2.

² Trial Judgement, paras. 480, 502.

³ Appeal Judgement, para. 270.

⁴ Request for Review, 27 June 2017 (confidential; French original filed on 7 June 2017) (“Request”). See also Prosecution’s Response to Niyitegeka’s Request for Review, 1 August 2017 (confidential); Reply to Prosecutor’s Response to Niyitegeka’s Request for Review, 15 August 2017 (confidential).

⁵ See Registrar’s Submission Pursuant to Rule 31(B), 6 April 2018 (confidential), para. 2, Annex A. See also *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Decision on the Enforcement of Sentence, 4 December 2008, p. 3. See also Request, para. 1.

⁶ Article 1 of the Statute of the Mechanism.

⁷ See, *mutatis mutandis*, *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on the Outcome of the Proceedings, 29 June 2010 (“*Delić Decision of 29 June 2010*”), para. 6 (interpreting “natural persons” in Article 6 of the Statute of the International Criminal Tribunal for the former Yugoslavia (“ICTY”).

RECALLING that appeal proceedings before the ICTY and trial proceedings before the ICTY and the ICTR have been terminated following the death of the appellant or the accused for lack of personal jurisdiction;⁸

CONSIDERING that, to uphold principles of due process and fundamental fairness, the Mechanism's jurisdiction *ratione personae*, consistent with that of the ICTR and the ICTY, is limited to living persons;⁹

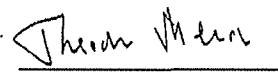
FINDING that, in light of Niyitegeka's death, the Appeals Chamber no longer has jurisdiction to consider the Request;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Request in its entirety.

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

Done this 13th day of April 2018,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]



⁸ See *Delić* Decision of 29 June 2010, paras. 5, 6, 8, 16, n. 16 and references cited therein. See also *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Order Terminating Proceedings, 22 July 2016, p. 1; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision Relating to Registrar's Submission Notifying the Demise of Accused Joseph Nzirorera, 12 August 2010, para. 2. Cf. *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR91.3, Decision on Joseph Nzirorera's Appeal of Decision Not to Investigate Witnesses GAP and BDW for False Testimony, 26 August 2010, p. 1 (dismissing Joseph Nzirorera's pending interlocutory appeal after his death for lack of jurisdiction).

⁹ See *supra* n. 8. 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, paras. 5, 6.



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