

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-18-116-T

Date: 25 June 2021

Original: English

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**BEFORE A SINGLE JUDGE**

**Before:** Judge Vagn Joensen

**Registrar:** Mr. Abubacarr Tambadou

**Judgement of:** 25 June 2021

**PROSECUTOR**

v.

**ANSELME NZABONIMPA  
JEAN DE DIEU NDAGIJIMANA  
MARIE ROSE FATUMA  
DICK PRUDENCE MUNYESHULI  
AUGUSTIN NGIRABATWARE**

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**JUDGEMENT**

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**Office of the Prosecutor:**

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Mr. Rashid S. Rashid

**Counsel for the Defence:**

**Mr. Anselme Nzabonimpa**  
Mr. Geoffrey Roberts  
**Mr. Jean de Dieu Ndagijimana**  
Mr. Philippe Larochelle  
**Ms. Marie Rose Fatuma**  
Mr. Gatera Gashabana  
**Mr. Dick Prudence Munyeshuli**  
Mr. Kurt Kerns  
**Mr. Augustin Ngirabatware**  
Mr. David Hooper

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1. I, Vagn Joensen, Judge of the International Residual Mechanism for Criminal Tribunals<sup>1</sup> (“Mechanism”) pronounced the Judgement in the case of *Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware* on 25 June 2021 pursuant to Rule 122(A) of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup> The written reasons for the Judgement are provided below in accordance with Rule 122(C) of the Rules. These written reasons are now the only authoritative version of the Judgement.<sup>3</sup>

## I. INTRODUCTION

### A. Background

2. The Prosecution’s case against the Accused – Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware – is principally based on allegations of interference from 2015 to 2018 with key protected Prosecution witnesses from Ngirabatware’s trial before the ICTR. To understand these charges, a basic understanding of Ngirabatware’s trial proceedings before the ICTR and his appeal and review proceedings before the Mechanism is necessary.<sup>4</sup>

3. On 20 December 2012, Trial Chamber II convicted Ngirabatware of genocide and direct and public incitement to commit genocide.<sup>5</sup> The incitement conviction was based primarily on the direct evidence of two protected Prosecution Witnesses – Witnesses ANAN and ANAT – that

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<sup>1</sup> The Mechanism was established pursuant to United Nations Security Council Resolution 1966 (2010) and continues the material, territorial, temporal, and personal jurisdiction of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”). I am bound to interpret the Statute and the Rules of the Mechanism and instances where the respective Statutes and Rules of the ICTY or the ICTR are at issue in a manner consistent with the jurisprudence of the ICTY and the ICTR. I am also guided by the principle that, in the interests of legal certainty and predictability, I should follow previous decisions of the ICTY and the ICTR Appeals Chambers and depart from them only for cogent reasons in the interests of justice. *See generally Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Judgement, 8 June 2021, paras. 13, 14; *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. 4-6.

<sup>2</sup> *See* T. 25 June 2021 (Judgement) pp. 1-14. *See also* Order Assigning a Single Judge, 11 September 2018, p. 1. *See also Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121-I, Order Assigning a Single Judge, 11 October 2019; *Prosecutor v. Maximilien Turinabo et al.* and *Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT and MICT-19-121-PT, Decision on Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 10 December 2019, pp. 14, 15. The case name has changed following the termination of proceedings against Maximilien Turinabo. *See* Decision Terminating Proceedings Against Maximilien Turinabo, 19 April 2021 (“Decision of 19 April 2021”), p. 2.

<sup>3</sup> *See* T. 25 June 2021 (Judgement) p. 3.

<sup>4</sup> *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Review Judgement, 27 September 2019 (“Review Judgement”), para. 3; *Augustin Ngirabatware v. Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014 (“Appeal Judgement”), para. 2; *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgement and Sentence, pronounced on 20 December 2012 and issued in writing on 21 February 2013 (“Trial Judgement”).

<sup>5</sup> Trial Judgement, para. 1394.

Ngirabatware went to the Cyanika-Gisa roadblock and urged a large group of people to kill Tutsis in February 1994.<sup>6</sup> With respect to the genocide conviction, the Trial Chamber relied principally on the direct evidence of an additional two protected Prosecution Witnesses – Witnesses ANAE and ANAM – to find that Ngirabatware distributed weapons and made statements at roadblocks in Nyamyumba Commune on 7 April 1994.<sup>7</sup> The Trial Chamber found that the testimony of a fifth protected Prosecution Witness – Witness ANAL – offered circumstantial corroboration to the evidence of Witnesses ANAE and ANAM.<sup>8</sup>

4. Ngirabatware appealed these convictions. On 18 December 2014, and after the closure of the ICTR and the transfer of its jurisdiction to the Mechanism, the Appeals Chamber of the Mechanism affirmed both convictions and imposed a sentence of 30 years of imprisonment.<sup>9</sup> During the trial and appeal proceedings, the credibility of the four main witnesses was heavily contested.<sup>10</sup> A judge of the Appeals Chamber dissented from the Appeals Chamber’s affirmation of the genocide conviction based on his consideration of Ngirabatware’s alibi.<sup>11</sup>

5. On 8 July 2016, Ngirabatware filed a motion seeking the review of his convictions based on the purported recantations of Witnesses ANAT, ANAN, ANAM, and ANAE (“Recanting Witnesses”) indicating that they lied during Ngirabatware’s trial.<sup>12</sup> On 19 June 2017, the Appeals Chamber of the Mechanism granted Ngirabatware’s request for a review hearing.<sup>13</sup> During the review proceedings that were held in September 2019,<sup>14</sup> Witnesses ANAT and ANAN testified before the Appeals Chamber that they had lied at Ngirabatware’s trial.<sup>15</sup> Witnesses ANAE and ANAM testified that their recantations made in prior statements and interviews were not truthful.<sup>16</sup>

6. Ultimately, the Appeals Chamber expressed doubts about the truthfulness of Witnesses ANAT’s and ANAN’s testimony recanting their trial evidence.<sup>17</sup> The Appeals Chamber also did not accept prior letters or statements made by Witnesses ANAE and ANAM between 2015 and 2018 recanting their trial testimony in view of their live testimony before the Appeals Chamber

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<sup>6</sup> Review Judgement, para. 25. *See also* Trial Judgement, paras. 300-319, 1366-1370.

<sup>7</sup> Review Judgement, para. 45.

<sup>8</sup> Review Judgement, para. 45.

<sup>9</sup> Appeal Judgement, paras. 252, 278, 279.

<sup>10</sup> Review Judgement, paras. 27, 28, 48, 50.

<sup>11</sup> Appeal Judgement, para. 279. *See also* Appeal Judgement, Section X (Dissenting Opinion of Judge Bakone Justice Moloto).

<sup>12</sup> Review Judgement, para. 6.

<sup>13</sup> Review Judgement, para. 7.

<sup>14</sup> Review Judgement, para. 23.

<sup>15</sup> Review Judgement, paras. 29, 33.

<sup>16</sup> Review Judgement, paras. 52, 54.

<sup>17</sup> Review Judgement, para. 44.

withdrawing their recantations and affirming their trial testimony.<sup>18</sup> On 27 September 2019, the Appeals Chamber considered that Ngirabatware had not presented sufficient evidence capable of belief at the review hearing to prove the existence of a new fact in relation to his convictions and decided that the Appeal Judgement remains in force in all respects.<sup>19</sup>

### **B. Pre-Trial**

7. On 24 August 2018, and in the midst of preparations for Ngirabatware's review proceedings, the Prosecution obtained confirmation of an indictment against Nzabonimpa, Ndagijimana, and Fatuma alleging interference related to the Recanting Witnesses who testified during Ngirabatware's review proceedings, Witness ANAL, and intermediaries – Laurent Maniraguha, Vincent Twagirayezu, Vedaste Mbarimo, and Valentine Mukamisha (“Intermediaries”) – used to contact these witnesses. Specifically, the indictment charges them with contempt based on witness interference (Count 1) and incitement to commit contempt (Count 2).<sup>20</sup> The same indictment charges Munyeshuli, who served as Ngirabatware's investigator in the early stages of his request for review, with knowing violations of and failure to comply with court orders (Count 3) in relation to the witnesses who ultimately testified at Ngirabatware's review hearing.

8. Nzabonimpa, Ndagijimana, Fatuma, and Munyeshuli were arrested in Rwanda on 3 September 2018 and transferred to the United Nations Detention Facility in Arusha, Tanzania (“UNDF”) on 11 September 2018.<sup>21</sup> Each pleaded not guilty to the count or counts charged against him or her during the initial appearances on 13 September 2018.<sup>22</sup> Ndagijimana, Nzabonimpa, and Fatuma were provisionally released to Rwanda in accordance with decisions issued on 29 March 2019, 19 June 2019, and 29 July 2019<sup>23</sup> and unconditionally released on 11 September 2020.<sup>24</sup> I ordered the unconditional release of Munyeshuli on 1 October 2019.<sup>25</sup>

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<sup>18</sup> Review Judgement, para. 57.

<sup>19</sup> Review Judgement, para. 65.

<sup>20</sup> Order on Confirmation of Indictment, 24 August 2018 (strictly confidential and *ex parte*; made public on 18 September 2018), pp. 1, 2; Indictment, 5 June 2018 (strictly confidential; public redacted version filed on 5 September 2018). *See also* Prosecution Notice of Compliance with Decisions Concerning the Indictment, 26 March 2019 (confidential) (“Prosecution Notice of 26 March 2019”); Prosecution Notice of Compliance with Decision on Motions Challenging the Amended Indictment, 17 June 2019 (confidential, with confidential Annex A and confidential and *ex parte* Annex B) (“Prosecution Notice of 17 June 2019”); Prosecution Notice of Compliance with Further Decision on Second Amended Indictment, 11 July 2019 (public, with public Annex A and confidential Annex B) (“Prosecution Notice of 11 July 2019”).

<sup>21</sup> T. 13 September 2018 p. 4.

<sup>22</sup> T. 13 September 2018 pp. 24-27.

<sup>23</sup> *See* Decision on Jean de Dieu Ndagijimana's Motion for Provisional Release, 29 March 2019 (confidential; made public on 3 July 2019); Decision on Anselme Nzabonimpa's Second Motion for Provisional Release, 19 June 2019 (confidential; made public on 3 July 2019); Decision on Marie Rose Fatuma's Second Motion for Provisional Release to Rwanda, 29 July 2019; *Prosecutor v. Maximilien Turinabo et al.*, Case Nos. MICT-18-116-AR68.2 & MICT-18-116-AR68.3, Decision on Prosecution Appeals Against the Decisions Granting Turinabo and Ndagijimana Provisional

9. Pursuant to judicial orders following challenges to the form of the indictment and jurisdictional challenges to, *inter alia*, the applicability of joint criminal enterprise liability to the crime of contempt,<sup>26</sup> the indictment was amended on 26 March 2019, 17 June 2019, and 11 July 2019.<sup>27</sup> On 17 October 2019, I granted a Prosecution motion to amend the indictment to include new allegations of pressure, influence, and bribery of protected witnesses and intermediaries reflecting new evidence obtained since the arrest of the *Nzabonimpa et al.* Accused,<sup>28</sup> and a third amended indictment was subsequently filed on 21 October 2019.<sup>29</sup> On 12 May 2021, following the death of and termination of proceedings against Maximilien Turinabo,<sup>30</sup> initially indicted with the *Nzabonimpa et al.* Accused, the Prosecution filed the operative indictment, which removed Turinabo as an accused in this case (“*Nzabonimpa et al.* Indictment”).<sup>31</sup>

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Release, 5 August 2019 (confidential; made public on 26 August 2019); *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-AR68.4, Decision on Prosecution Appeal Against the Decision Granting Nzabonimpa Provisional Release, 5 August 2019 (confidential; made public on 26 August 2019); *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-AR68.5, Decision on Prosecution Appeal Against the Decision Granting Fatuma Provisional Release, 9 August 2019 (confidential; made public in accordance with Decision dated 3 July 2019). *See also* Registrar’s Submission in Relation to Provisional Release, 23 August 2019 (confidential), paras. 1, 2.

<sup>24</sup> *See* Decision on Order to Show Cause, 11 September 2020 (“Decision of 11 September 2020”), para. 14.

<sup>25</sup> *See* Decision on Order to Show Cause, 1 October 2019 (“Decision of 1 October 2019”), p. 6. *See also* Registrar’s Submission in Relation to the “Decision on Order to Show Cause” of 1 October 2019, 8 October 2019, para. 2.

<sup>26</sup> Decision on Maximilien Turinabo’s, Anselme Nzabonimpa’s, and Marie Rose Fatuma’s Motions Challenging the Form of the Indictment, 12 March 2019 (confidential; public redacted version filed on the same day), paras. 6, 20, 46; Decision on Dick Prudence Munyeshuli’s Motion Alleging Defects in the Indictment, 12 March 2019 (“*Munyeshuli* Decision of 12 March 2019”), para. 16; Decision on Challenges to Jurisdiction, 12 March 2019 (confidential; public redacted version filed on the same day), paras. 31, 33; Decision on Maximilien Turinabo’s, Anselme Nzabonimpa’s, and Marie Rose Fatuma’s Motions Challenging the Amended Indictment, 3 June 2019 (confidential), para. 37; Decision on Prosecution Appeal Against Decision on Challenges to Jurisdiction, 28 June 2019, para. 23; Further Decision on Second Amended Indictment, 5 July 2019 (confidential), p. 5.

<sup>27</sup> *See* Prosecution Notice of 26 March 2019; Prosecution Notice of 17 June 2019; Prosecution Notice of 11 July 2019.

<sup>28</sup> Decision on the Prosecution Motion to Amend the Indictment, 17 October 2019, para. 35, p. 17. *See also* Prosecution Motion for Leave to Amend the Indictment, dated 23 August 2019 and distributed on 26 August 2019 (confidential, with confidential annexes A to G), para. 1.

<sup>29</sup> *See* Prosecution Notice of Filing Third Amended Indictment, 21 October 2019, Annex A, Registry Pagination (“RP.”) 10450-10437. On 30 January 2020, I dismissed Nzabonimpa’s and Ndagijimana’s challenges to the form of the Indictment. *See* Decision on the Nzabonimpa and Ndagijimana Defence Challenges to the Form of the Third Amended Indictment, 30 January 2020, p. 19.

<sup>30</sup> In view of the Decision of 19 April 2021 terminating proceedings against Turinabo, the Motion on Behalf of Maximilien Turinabo Requesting an Order Compelling the Government of Rwanda to Provide Call Data Records, which was filed confidentially on 11 March 2021 with confidential annexes A-G, is dismissed. However, I grant in the interest of public proceedings the First Request for Reclassification of Confidential Filings filed on 25 May 2021 (“Request for Reclassification”) by Turinabo’s counsel, which seeks to change the status from confidential to public of 25 filings listed therein, with the exception of certain confidential annexes thereto. I note that the Prosecution on 9 June 2021 filed a submission indicating that it did not oppose the request and in addition that one document was misdated and an additional annex to one of the filings should remain confidential. *See* Response to Request for Reclassification of Confidential Filings, 6 June 2021. Accordingly, I order the Registry to lift the confidential status of the 25 documents listed in the Request for Reclassification, with the exception of the annexes to documents 6-8, 21, 22, 24, and 25. A separate order will not be issued.

<sup>31</sup> *See* Prosecution’s Notice of Compliance with Order to Amend the Indictment Due to Termination of Proceedings Against Maximilien Turinabo, 12 May 2021, Annex, RP. 20720-20707. *See also* Decision of 19 April 2021, p. 2; Order to Amend the Indictment Due to Termination of Proceedings Against Maximilien Turinabo, 7 May 2021, pp. 1, 2.

10. On 10 October 2019, just two weeks after his review proceedings ended, I confirmed an indictment against Ngirabatware charging him with interference with, *inter alia*, Witnesses ANAN, ANAT, ANAM, ANAE, and ANAL in connection with the *Ngirabatware* review proceedings and for violating court orders (“*Ngirabatware* Indictment”).<sup>32</sup> On 17 October 2019, Ngirabatware made his initial appearance and pleaded not guilty to all charges.<sup>33</sup>

11. On 10 December 2019, Ngirabatware’s case was joined with the case against Nzabonimpa, Ndagijimana, Fatuma, and Munyeshuli.<sup>34</sup> In essence, the indictments place Ngirabatware at the key of an alleged interference campaign from 2015 through 2018 aimed at obtaining recantations from Witnesses ANAN, ANAT, ANAM, ANAE, and ANAL that was carried out by him directly or through Nzabonimpa, Ndagijimana, Fatuma, and Turinabo. Nzabonimpa, Ndagijimana, and Fatuma are also charged with using intermediaries who had direct access to these witnesses in committing contempt.

12. Status conferences were held in-person on 13 December 2018, 14 March 2019, 4 June 2019, 2 October 2019, and 30 January 2020.<sup>35</sup> In view of the global COVID-19 pandemic and resulting travel and movement restrictions, status conferences held through written exchanges were concluded by orders dated 30 June 2020 and 7 October 2020.<sup>36</sup>

### C. Trial

13. The trial, initially scheduled for October 2019, was first postponed to June 2020 in view of the joinder of proceedings, and it was subsequently postponed again to October 2020 due to travel restrictions and risks related to the global COVID-19 pandemic.<sup>37</sup>

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<sup>32</sup> *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121, Decision on Confirmation of Indictment, 10 October 2019, pp. 1, 2. *See also Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121-I, Notice of Filing Indictment, 10 October 2019, Annex, RP. 18-5.

<sup>33</sup> *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121-I, T. 17 October 2019 p. 20; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121-I, Order Scheduling Initial Appearance, 14 October 2019, p. 1.

<sup>34</sup> *See supra* n. 2.

<sup>35</sup> *See* T. 13 December 2018; T. 14 March 2019; T. 4 June 2019; T. 2 October 2019; T. 30 January 2020.

<sup>36</sup> Order Concluding Written Exchanges In Lieu of the Status Conference and Order for Submissions, 30 June 2020 (“Order of 30 June 2020”), pp. 1, 2; Order Concluding the Written Exchanges Procedure and Scheduling the Pre-Trial Conference and Trial Proceedings, 7 October 2020 (“Order of 7 October 2020”), pp. 1-4.

<sup>37</sup> *See, e.g.*, Order Establishing a Pre-Trial Work Plan, 14 June 2019, p. 1, Annex; Order in Relation to the Pre-Trial Work Plan and Scheduling a Status Conference, 29 August 2019, pp. 1-3; Order of 30 June 2020, pp. 1, 2; Order on Trial Preparations, 31 August 2020, pp. 1-3; Order of 7 October 2020, pp. 3, 4. *See also* T. 2 October 2019 pp. 5, 6; T. 30 January 2020 pp. 6, 7.



## 1. Prosecution Case

14. The Prosecution filed its pre-trial briefs and witness and exhibit lists in conjunction with the *Nzabonimpa et al.* Indictment on 8 November 2019 and with the *Ngirabatware* Indictment on 24 January 2020.<sup>38</sup> The witness and exhibit lists were amended in the course of the presentation of the Prosecution case.<sup>39</sup> The Pre-Trial Conference was held on 21 October 2020<sup>40</sup> and the trial proceedings commenced with opening statements on 22 October 2020 at the Mechanism's branch in Arusha.<sup>41</sup>

15. Between 26 October 2020 and 24 November 2020, I heard the evidence of Prosecution Witnesses ANAL/TNN6, TNN9, TNN11, TNN12, ANAE/TNN30, ANAM/TNN31, Tomasz Blaszczyk, and of Expert Witnesses Ryszard Olejniczak and Michael Murphy.<sup>42</sup> I further admitted the written evidence of Prosecution Witnesses TNN3, TNN18, TNN19, TNN20, and TNN27,<sup>43</sup> as well as evidence from the bar table, including material seized from the Accused, intercepted communications evidence, and financial records.<sup>44</sup> A status conference was held at the end of the

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<sup>38</sup> Prosecution Revised Pre-Trial Brief and Witness and Exhibit Lists, 8 November 2019 (confidential, with confidential Annexes A to G) ("*Nzabonimpa et al.* Pre-Trial Brief"); Prosecution Pre-Trial Brief and Witness and Exhibit Lists, 24 January 2020 (confidential, with confidential annexes A to G) ("*Ngirabatware* Pre-Trial Brief"). See also *Nzabonimpa et al.* Pre-Trial Brief, Annex A, RP. 10854, Annex C, RP. 10842-10671; *Ngirabatware* Pre-Trial Brief, Annex A, RP. 12021, Annex C, RP. 12008-11848.

<sup>39</sup> On 11 March 2020, I granted leave to the Prosecution to harmonize its witness lists. See Decision on Prosecution Motion for Leave to Add Witnesses to Its Rule 70(E)(ii) Witness List, 11 March 2020 (confidential), pp. 1, 2. The Prosecution further filed operative amended witness and exhibit lists on 28 September 2020 and 21 October 2020, respectively. See Prosecution Submissions in Compliance with Order Regarding the Status Conference and Submission on Any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E), 28 September 2020 (confidential, with confidential Annex A), Annex A, RP. 16262; Prosecution Notice of Filing Amended Exhibit List Pursuant to Rule 70(E)(iii), 21 October 2020 (confidential, with confidential annexes A-B), Annex A, RP. 16947-16672.

<sup>40</sup> See T. 21 October 2020 (Pre-Trial Conference).

<sup>41</sup> See T. 22 October 2020.

<sup>42</sup> See T. 26 October 2020 to T. 24 November 2020.

<sup>43</sup> Decision on Prosecution Motion to Admit Evidence of Witness TNN27 Pursuant to Rule 110, 22 September 2020 (confidential) ("Decision of 22 September 2020"), pp. 1-8; Decision on Prosecution Motion for Admission of Witness TNN18's Evidence Pursuant to Rule 110, 17 November 2020 (confidential), pp. 1-9; Decision on Prosecution Motion for Admission of Evidence of Witnesses TNN19 and TNN20 Pursuant to Rule 110, 23 November 2020 (confidential), pp. 1-6; Decision on Prosecution Motion for Admission of Witness TNN3's Evidence Pursuant to rule 110, 26 November 2020 (confidential) ("Decision of 26 November 2020"), pp. 1-6. I dismissed the Prosecution's motion for admission of the evidence of Witness TNN10. See Decision on Prosecution Motion for Admission of Evidence of TNN10 Pursuant to Rule 110, 5 November 2019 (confidential), pp. 1-5.

<sup>44</sup> Decision on Prosecution Second Motion for Admission of Evidence from the Bar Table (Material Obtained from Registry and Seizures from Augustin Ngirabatware at the UNDF), 15 January 2021 ("Decision on Second Bar Table Motion"); Decision on Prosecution Third Motion for Admission of Evidence from the Bar Table (Financial Records) and Motion to Amend Its Exhibit List, 15 January 2021 (confidential) ("Decision on Third Bar Table Motion"); Decision on Prosecution First Bar Table Motion for Admission of Evidence (Material Seized from the Accused on 3 September 2018), 22 January 2021 (confidential) ("Decision on First Bar Table Motion"); Decision on Prosecution Fourth Motion for Admission of Evidence from the Bar Table (Intercepted Communications and Call Logs), 3 February 2021 (confidential) ("Decision on Fourth Bar Table Motion").

hearing of the Prosecution witnesses on 24 November 2020,<sup>45</sup> and the Prosecution case closed on 2 March 2021.<sup>46</sup>

## 2. Rule 121 Hearing

16. In accordance with my Orders of 15 December 2020 and 12 February 2021,<sup>47</sup> the parties made oral submissions pursuant to Rule 121 of the Rules on 8 and 9 March 2021.<sup>48</sup> On 12 March 2021, I dismissed Munyeshuli's and Fatuma's motions for a judgement of acquittal pursuant to Rule 121 of the Rules.<sup>49</sup> With the agreement of the parties, the Rule 121 hearing was coordinated to correspond with the Pre-Defence Conference in order to avoid unnecessary travel during the global COVID-19 pandemic.<sup>50</sup>

## 3. Defence Case

17. Pursuant to my order on preparations for the Defence case<sup>51</sup> and Rule 70(M) of the Rules, the Defence filed their exhibit and witness lists on 5 February 2021.<sup>52</sup> Ndagijimana, Fatuma, and Munyeshuli subsequently amended their witness lists in accordance with instructions to reduce time in court for in-person testimony.<sup>53</sup>

18. The Pre-Defence Conference was held on 12 March 2021,<sup>54</sup> and the testimonial part of the Defence case was heard at the Arusha Branch of the Mechanism between 15 March 2021 and

<sup>45</sup> See T. 24 November 2020 (Status Conference).

<sup>46</sup> See Order in Relation to Documents Marked for Identification and Close of Prosecution Case, 2 March 2021, pp. 1-4.

<sup>47</sup> Order on Preparations for the Commencement of the Defence Case, 15 December 2020 ("Order of 15 December 2020"), p. 2; Further Order on Preparations for the Defence Case and Notification on Prospective Decisions that May Be Taken Under Rules 82(B), (C), and/or (E), 12 February 2021 ("Order of 12 February 2021"), p. 2.

<sup>48</sup> See T. 8 March 2021; T. 9 March 2021.

<sup>49</sup> See T. 12 March 2021 (Pre-Defence Conference) pp. 1-10.

<sup>50</sup> See T. 24 November 2020 (Status Conference) p. 2.

<sup>51</sup> See also Order of 15 December 2020, pp. 1, 2.

<sup>52</sup> See Nzabonimpa Defence Notice Pursuant to Rule 70(M), 5 February 2021 (confidential, with confidential annexes A and B); Ndagijimana Pre-Defence Submissions under Rule 70(M), 5 February 2021 (public, with confidential annexes A to C); Munyeshuli's Defence Submissions Pursuant to Rule 70(M) RPE, 5 February 2021 (confidential, with confidential annexes A and B); Ngirabatware's Pre-Defence Submissions Pursuant to Rule 70(M), 5 February 2021 (public, with confidential annexes A to C); Notice from Defence for Marie Rose Fatuma Regarding Its List of Defence Witnesses and Exhibits Pursuant to Rule 70(M) of the Rules, 15 February 2021 (original French version filed on 5 February 2021; public, with confidential annexes A and B).

<sup>53</sup> Amendment to "Ndagijimana Pre-Defence Submissions Under Rule 70(M)", 2 March 2021 (public, with confidential Annex A); Amended Notice from Defence for Marie Rose Fatuma Regarding Its List of Defence Witnesses and Exhibits Pursuant to Rule 70(M)(i) of the Rules, 11 March 2021 (original French version filed on 9 March 2021; public, with confidential Annex A); Munyeshuli's Revised Witness List, 15 March 2021 (confidential, with confidential Annex A). See also Order of 12 February 2021, p. 2, Annex, paras. 1-11; T. 12 March 2021 (Pre-Defence Conference) pp. 2-5.

<sup>54</sup> See T. 12 March 2021 (Pre-Defence Conference).

9 April 2021. I heard the evidence of Defence Witnesses MT1, ANAN, ANAT, and Augustin Kanyabituro, as well as the testimonies of Ndagijimana and Munyeshuli.<sup>55</sup>

19. I further admitted the written evidence of Defence Expert Witness Duncan Brown<sup>56</sup> and of Defence Witnesses MT4, JD13, JD23, JD30, JD34, JD47, JD55, JD56, JD78, JD101, JD104, Wilhelmus Mensink, Pierre Célestin Buhuru, Edith Uwamahoro, Innocent Habimana, Anastase Maniriho, Jean Marie Vianney Nyandwi, Jean-Baptiste Gasominari, Scott Lauer, Melanie Morgan, Peter Zaduk, Alun Jones, Richard McLeod, Deborah Manning, Patrick Atkins, Nicola Palmer, Phil Clark, Alphonse Simpunga, Victor Uwamahoro, Fidèle Bujuyanamari, and Dative Ntagisanimana.<sup>57</sup> I also admitted Defence evidence from the bar table, including communications evidence and documents related to Nzabonimpa.<sup>58</sup>

20. The evidentiary phase of the Defence case closed on 6 May 2021.<sup>59</sup>

#### 4. Final Submissions and the Judgement

21. On 31 May 2021, pursuant to scheduling orders of 27 April 2021 and 7 May 2021,<sup>60</sup> the parties filed their final trial briefs.<sup>61</sup> Oral closing arguments were held at the Arusha Branch of the Mechanism on 21, 22, and 23 June 2021.<sup>62</sup> On 25 June 2021, I pronounced the Judgement. This was done just two days after closing arguments in the interest of facilitating the fair and expeditious closure of the case as well as to avoid any further risks associated with additional travel in the context of the global COVID-19 pandemic. The written reasons for the Judgement were filed on

<sup>55</sup> See T. 15 March 2021 to T. 9 April 2021.

<sup>56</sup> See T. 16 March 2021 pp. 24-26.

<sup>57</sup> Decision on Defence Requests for Admission of Witness Evidence Pursuant to Rule 110, 29 April 2021 (confidential), pp. 1-8.

<sup>58</sup> Decision on Anselme Nzabonimpa’s Motion for Admission of Evidence from the Bar Table and Motion to Amend Exhibit List, 20 April 2021 (confidential) (“Decision of 29 April 2021”), pp. 1-3; Decision on Augustin Ngirabatware’s First Motion for Admission of Evidence from the Bar Table (Intercepted and Downloaded Communications), 29 April 2021, pp. 1-4. I, however, dismissed Munyeshuli’s motion for admission of a seizure record and Gacaca attestations from the bar table and Ngirabatware’s motion for admission of, *inter alia*, Recanting Witnesses’ transcripts, documents, and related judicial records. See Decision on Dick Prudence Munyeshuli’s Motion for Admission of Evidence from the Bar Table, 27 April 2021, pp. 1, 2; Decision on Augustin Ngirabatware’s Second Motion for Admission of Evidence from the Bar Table, 6 May 2021 (“Decision of 6 May 2021”), pp. 1-3.

<sup>59</sup> See Decision of 6 May 2021, p. 3.

<sup>60</sup> Order Scheduling Closing Submissions, 27 April 2021, pp. 1, 2; Order Amending Order Scheduling Closing Submissions Dated 27 April 2021, 7 May 2021, p. 1.

<sup>61</sup> Prosecution’s Notice of Filing Final Trial Brief, 31 May 2021 (confidential, with confidential annexes A to G), Annex A, RP. 21045-20937 (“Prosecution Final Trial Brief”); Nzabonimpa Defence Final Trial Brief, 31 May 2021 (confidential) (“Nzabonimpa Final Trial Brief”); Mr Ndagijimana’s Final Trial Brief, 31 May 2021 (confidential, with confidential annexes A and B) (“Ndagijimana Final Trial Brief”); Marie Rose Fatuma Defence Final Trial Brief, 6 September 2021 (original French version filed on 31 May 2021; confidential, with confidential Annex A) (“Fatuma Final Trial Brief”); Munyeshuli’s Final Trial Brief, 31 May 2021 (confidential) (“Munyeshuli Final Trial Brief”); Ngirabatware’s Final Trial Brief, 31 May 2021 (confidential, with confidential Annex A and *ex parte* Annex B) (“Ngirabatware Final Trial Brief”).

<sup>62</sup> See T. 21 June 2021; T. 22 June 2021; T. 23 June 2021.

20 September 2021. This procedure is provided for under Rules 122(A) and (C) of the Rules. This Judgement is dated 25 June 2021 in order to correspond with the date of its pronouncement, which is the date on which the verdict was rendered and became operative.

#### **D. Evidentiary Issues**

22. This case involves an extensive body of electronic evidence deriving from devices seized from the Accused, communications evidence provided by the Rwandan authorities consisting of call logs, intercepted calls, and intercepted text messages, as well as evidence documenting money transfers via bank and Mobile Money transfers. This section canvases the evidence and main arguments of the Defence concerning its authenticity and reliability. This section also discusses the attribution of code names and telephone numbers to key figures in this case that were used in connection with the electronic exchanges.

##### 1. Evidence Deriving from Electronic Seized Devices

23. The Prosecution led electronic evidence deriving from devices seized incident to the arrests of the *Nzabonimpa et al.* Accused and Turinabo on 3 September 2018, including documents used to procure recantations extracted from Nzabonimpa's external hard drive,<sup>63</sup> forensics reports, and other documents extracted from Ndagijimana's and Fatuma's electronic devices,<sup>64</sup> as well as text and WhatsApp messages, and emails extracted from Turinabo's and Nzabonimpa's electronic devices.<sup>65</sup> The electronic evidence led at trial also includes evidence deriving from devices seized from Ngirabatware at the UNDF on 31 May 2018 and 7 February 2019, including documents extracted from his two laptops as well as forensics reports, WhatsApp messages, and emails extracted from two mobile telephones.<sup>66</sup>

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<sup>63</sup> See Exhibits P212 to P233 extracted from Nzabonimpa's external hard drive. See also generally Decision on First Bar Table Motion.

<sup>64</sup> See Exhibits P210, P413, and P414 extracted from Ndagijimana's Acer laptop; Exhibit P211 extracted from Ndagijimana's X-Tigi Mini mobile telephone; Exhibit P775 extracted from Ndagijimana's Tecno tablet; Exhibits P773 and P774 extracted from Fatuma's Tecno mobile telephone. See also generally Decision on First Bar Table Motion.

<sup>65</sup> See Exhibit P203 extracted from Turinabo's Nokia mobile telephone; Exhibits P142, P143, P146, P151, P155, P159, P161, P163, P167, P171, P175, P182, P187 to P202, P234 to P412, P415 to P596, P600 to P703, and P1703 extracted from Nzabonimpa's iPhone 4 mobile telephone; Exhibits P597 to P599, P704 to P772, and P790 to P795 extracted from Nzabonimpa's iPhone 5 mobile telephone. See also generally Decision on First Bar Table Motion; Decision on Third Bar Table Motion. See also Decision of 29 April 2021; Exhibits 6D9 to 6D12, 6D24 to 6D33, 6D44, 6D47, 6D58 to 6D107.

<sup>66</sup> See Exhibits P32 to P53 extracted from Ngirabatware's Dell laptop; Exhibits P54 to P75 extracted from Ngirabatware's Samsung laptop; Exhibits P122 to P125, P129, and P131 to P139 extracted from Ngirabatware's Samsung Galaxy A3 mobile telephone; Exhibits P126 to P128, and P1705 extracted from Ngirabatware's Samsung Galaxy Grand Prime+ mobile telephone. See also generally Decision on Second Bar Table Motion.

24. The Prosecution presented evidence to authenticate the seizure of the electronic devices, chain of custody, and extraction process by the Netherlands Forensic Institute (“NFI”) and CCL-Forensic Limited (“CCL”), including the evidence of Witnesses TNN18, TNN19, TNN20, Blaszczyk, and the expert evidence of Murphy and Olejniczak.<sup>67</sup> The Prosecution stresses that the Defence relied extensively on this evidence, that none of the Accused dispute the authenticity of any single document or communication, and that the allegation that Rwandan authorities might have deliberately tampered with documents extracted from the devices is rank speculation in light of the experts’ evidence.<sup>68</sup>

25. The Defence for Nzabonimpa seeks to raise doubt as to the authenticity and reliability of the electronic evidence,<sup>69</sup> and submits that caution must be exercised when relying on evidence extracted in violation of domestic law.<sup>70</sup> Nzabonimpa contends that Murphy, who provided an expert opinion on evidence extracted from his mobile telephones, did not have access to the original devices and lacked knowledge of gaps in the chain of custody of the seized items.<sup>71</sup> Nzabonimpa also submits that Olejniczak’s expert report regarding forensic extractions from, *inter alia*, the hard drive seized from him does not address serious gaps with respect to the integrity of the device prior to the NFI’s examination<sup>72</sup> and is inconclusive with regard to the identity of the users prior to

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<sup>67</sup> See Exhibits P76 to P79, P81, P83, P103 to P111, P115; T. 16 November 2020; T. 17 November 2020; T. 18 November 2020; T. 23 November 2020; T. 24 November 2020. See also Prosecution Final Trial Brief, Annex E, paras. 2-9, 12; T. 21 June 2021 pp. 29-32.

<sup>68</sup> See T. 21 June 2021 pp. 29, 30. The Prosecution also submits that the evidence shows that Nzabonimpa was the ordinary user of the devices seized from him. See T. 21 June 2021 pp. 30-32.

<sup>69</sup> See Nzabonimpa Final Trial Brief, paras. 39, 100-135. Fatuma, Ndagijimana, Munyeshuli, and Ngirabatware do not challenge the authenticity and reliability of the electronic evidence. See generally Fatuma Final Trial Brief; Ndagijimana Final Trial Brief; Munyeshuli Final Trial Brief; Ngirabatware Final Trial Brief. See also Fatuma Final Trial Brief, Annex A, RP. 21503-21498. I note that Ngirabatware relies on forensic extractions and on Olejniczak’s evidence to support his contentions regarding, *inter alia*, documents of interest to the case extracted from his laptop and from Nzabonimpa’s hard drive. See, e.g., Ngirabatware Final Trial Brief, paras. 76, 77, 134-136, 139, 142-145, 148, 151, 189, 190, 202, 203, 249, 251, 262-265, 272.

<sup>70</sup> Nzabonimpa Final Trial Brief, paras. 102, 103. Nzabonimpa notably challenges the legal basis for the Rwandan authorities to retain and examine the evidence extracted from the seized devices. See Nzabonimpa Final Trial Brief, para. 102. Nzabonimpa points to the forensically unsound actions undertaken by the Rwandan authorities when conducting the initial analysis of the seized devices and underlines that Murphy’s evidence leaves “a certain amount of doubt” as to the ultimate reliability of the original user data present on the devices. See Nzabonimpa Final Trial Brief, para. 104.

<sup>71</sup> Nzabonimpa Final Trial Brief, paras. 105, 106. Nzabonimpa also challenges the reliability of the spreadsheet of verified messages extracted from, *inter alia*, his mobile telephones. See Nzabonimpa Final Trial Brief, para. 107. See also Exhibit P105 (Murphy Spreadsheet of Verified Material). Nzabonimpa further generally submits that the Prosecution failed to tender or even use any of the messages extracted from his seized telephones with witnesses who were involved or directly concerned by them. See Nzabonimpa Final Trial Brief, paras. 108-111.

<sup>72</sup> Nzabonimpa Final Trial Brief, paras. 112-117. Nzabonimpa submits that the possibility of manipulation of data was not ruled out following the withdrawal of Witness TNN17 and subsequent tendering of Witness TNN18’s evidence without cross-examination. See Nzabonimpa Final Trial Brief, para. 115. Nzabonimpa also underlines that Olejniczak did not have the “full picture” regarding how the Rwandan authorities handled the device and acknowledged that metadata can be removed or edited, although he found no evidence that any of the reference files were created or modified after the date of seizure. See Nzabonimpa Final Trial Brief, paras. 114, 117.

seizure, to the metadata of the documents extracted from it, as well as to whether he authored and/or modified the files of interest to the case.<sup>73</sup>

(a) Prosecution Witness TNN18

26. Witness TNN18 executed the arrest of the *Nzabonimpa et al.* Accused and Turinabo, pursuant to the Mechanism's orders of 24 August 2018, with teams of investigators of the Rwanda Investigative Bureau ("RIB") who arrested the Accused on 3 September 2018.<sup>74</sup> Witness TNN18 describes the search of the residences and offices of Nzabonimpa, Fatuma, Ndagijimana, and Turinabo, which led to the seizure of Nzabonimpa's external hard drive, iPhone 4 and iPhone 5 mobile telephones,<sup>75</sup> Fatuma's Tecno mobile telephone,<sup>76</sup> Ndagijimana's Acer laptop, X-Tigi Mini mobile telephone, and Tecno tablet,<sup>77</sup> and Turinabo's Nokia mobile telephone.<sup>78</sup> Statements of seizure were completed and signed by the four Accused at the RIB Office in Rubavu.<sup>79</sup>

27. Witness TNN18 travelled on the same day with the four Accused and the seized material to the RIB headquarters in Kigali,<sup>80</sup> where the seized electronic devices were safeguarded in his office and inventories were made.<sup>81</sup> On 4 September 2018, Witness TNN18 submitted the seized electronic devices to Witness TNN17 for extractions by the RIB Digital Forensic Lab.<sup>82</sup> On 20 September 2018, the electronic seized devices were returned to Witness TNN18 and, on the same day, were handed to the National Public Prosecution Authority.<sup>83</sup> Witness TNN18 certified that the Rwandan Prosecutor General's letter dated 20 September 2018 transferring the seized electronic devices to the Prosecutor of the Mechanism, together with extracted files on a hard drive, accurately reflects the items he transferred.<sup>84</sup>

<sup>73</sup> Nzabonimpa Final Trial Brief, paras. 118-135. *See also* Nzabonimpa Final Trial Brief, para. 252. *See also* Exhibits P212 to P233. Nzabonimpa contends that the Prosecution has not adduced any reliable evidence which would demonstrate that the extracted files of interest were either created by the user of his hard drive or derived from it, knowing that the value 'user' is the default entry on Microsoft Word and would remain the same if the document is created from another template. *See* Nzabonimpa Final Trial Brief, paras. 121-124. Nzabonimpa emphasizes that no other investigation was conducted in relation to other files present on the hard drive. *See* Nzabonimpa Final Trial Brief, para. 125. Nzabonimpa also submits that the Prosecution failed to call any evidence to contextualize the spreadsheet recording his alleged payments. *See* Nzabonimpa Final Trial Brief, paras. 129, 131-135. *See also* Exhibit P229.

<sup>74</sup> Exhibit P83, paras. 3, 4, 6, 7, 9-33. *See also* Exhibit P83, para. 8; Exhibits P76 to P79, P84 to P92, P94, P115. *See also* T. 16 November 2020 p. 28; Exhibits 5D11, 5D14.

<sup>75</sup> Exhibit P83, paras. 9-12, 15, 18; Exhibit P77. *See also* T. 16 November 2020 pp. 29, 30; Exhibit 5D14.

<sup>76</sup> Exhibit P83, paras. 17, 18, 20; Exhibit P79. *See also* T. 16 November 2020 p. 30; Exhibit 5D14.

<sup>77</sup> Exhibit P83, paras. 22-24; Exhibit P78. *See also* T. 16 November 2020 p. 30; Exhibit 5D14.

<sup>78</sup> Exhibit P83, paras. 26, 28, 29; Exhibit P76. *See also* T. 16 November 2020 p. 29; Exhibit 5D14.

<sup>79</sup> Exhibit P83, paras. 7, 9, 11, 12, 17, 18, 22, 23, 26, 28, 34. *See also* Exhibits P76 to P79, P115; Exhibit 5D14.

<sup>80</sup> Exhibit P83, paras. 34, 35; Exhibit 5D14.

<sup>81</sup> Exhibit P83, para. 36. *See also* Exhibit 5D14.

<sup>82</sup> Exhibit P83, para. 37. *See also* Exhibits 5D12, 5D14.

<sup>83</sup> Exhibit P83, para. 38. *See also* Exhibits 5D13, 5D14.

<sup>84</sup> Exhibit P83, para. 38; Exhibit P80. *See also* T. 16 November 2020 pp. 32, 33; Exhibit 5D14.

(b) Prosecution Witness Tomasz Blaszczyk

28. On 20 September 2018, Blaszczyk, an investigator working with the Prosecutor of the Mechanism,<sup>85</sup> took custody of the material seized from the Accused with the RIB hard drive containing extracted files.<sup>86</sup> The electronic devices were sealed at the Mechanism's Kigali Field Office and later transported by Blaszczyk's colleague to Arusha and The Hague.<sup>87</sup> Blaszczyk then transported the devices to the NFI laboratory, which produced forensic images, and to the CCL with the request to review the forensic images of the devices.<sup>88</sup>

29. Blaszczyk also personally submitted Ngirabatware's Samsung Galaxy mobile telephones, which were seized at the UNDF on 31 May 2018 and 7 February 2019,<sup>89</sup> to the United Kingdom Metropolitan Police, which created a forensic image of the devices, and then to the CCL experts for forensic examination.<sup>90</sup> The Prosecution further received files from the laptops seized from Ngirabatware on 7 February 2019<sup>91</sup> and identified about 40 files relevant to the case, which Blaszczyk submitted to the CCL for forensic expertise.<sup>92</sup>

(c) Prosecution Witness TNN19

30. On 14 January 2019, pursuant to the Mechanism Prosecutor's request for assistance ("RFA"), the NFI received the seized electronic devices with the RIB hard drive for investigation and acquisition pursuant to the NFI's methodology.<sup>93</sup> Witness TNN19 provided reports outlining and authenticating forensic extractions by the NFI from, *inter alia*, Turinabo's Nokia mobile telephone,<sup>94</sup> Nzabonimpa's iPhone 4<sup>95</sup> and iPhone 5<sup>96</sup> mobile telephones, Ndagijimana's X-Tigi Mini mobile telephone<sup>97</sup> and Tecno tablet,<sup>98</sup> and Fatuma's Tecno mobile telephone.<sup>99</sup>

<sup>85</sup> T. 16 November 2020 p. 9. *See also* Exhibits 2D1, 3D2, 4D6, 5D9.

<sup>86</sup> T. 16 November 2020 pp. 32, 33. *See also* T. 16 November 2020 pp. 77, 78; T. 17 November 2020 pp. 52-58; T. 18 November 2020 pp. 18, 19, 34-37. *See also* Exhibit 2D3. Blaszczyk does not know whether the Rwandan authorities kept a copy. *See* T. 17 November 2020 pp. 59-61.

<sup>87</sup> T. 16 November 2020 pp. 34, 35; T. 17 November 2020 p. 56; T. 18 November 2020 pp. 38-41. One diplomatic pouch containing seized devices did not arrive on the flight that it was checked-in for and instead arrived a day later, with its seal intact. *See* T. 18 November 2020 pp. 39-41; Exhibit 2D5.

<sup>88</sup> T. 16 November 2020 pp. 35-37. *See also* Exhibit P81.

<sup>89</sup> T. 16 November 2020 pp. 19, 20, 26. *See also* Exhibit P104 (Murphy Report), para. 82; Exhibit P130.

<sup>90</sup> T. 16 November 2020 pp. 26-28.

<sup>91</sup> T. 16 November 2020 p. 20. *See also* Exhibit P130. *See also* Decision on Prosecution Motions Related to Augustin Ngirabatware's Laptops, 20 December 2019, pp. 7-9.

<sup>92</sup> T. 16 November 2020 pp. 20-24; Exhibit P31.

<sup>93</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), p. 2, paras. 2-4; Exhibit P107 (Witness TNN20 Report of 12 August 2019), p. 2, paras. 2-4.

<sup>94</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), paras. 1, 4, 5.13, 5.14, 6.

<sup>95</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), paras. 1, 4, 5.1, 5.2, 6; Exhibit P106 (Witness TNN19 Report of 5 October 2020), paras. 1-3.

(d) Prosecution Witness TNN20

31. Witness TNN20 provided reports authenticating forensic extractions by the NFI from, *inter alia*, Nzabonimpa's external hard drive<sup>100</sup> and Ndagijimana's Acer laptop.<sup>101</sup>

(e) Prosecution Expert Witness Michael Murphy

32. The CCL was commissioned by the Mechanism Prosecutor to examine, *inter alia*, the extractions made by the RIB and the NFI from electronic devices seized from Nzabonimpa, Ndagijimana, Turinabo, and Fatuma and to extract data from the devices seized from Ngirabatware previously processed by the United Kingdom Metropolitan Police.<sup>102</sup>

33. Murphy, a digital forensics principal analyst within the CCL specializing in mobile device analysis,<sup>103</sup> provided a report examining and authenticating the extractions made by the RIB and the NFI<sup>104</sup> from Turinabo's Nokia mobile telephone,<sup>105</sup> Nzabonimpa's iPhone 4<sup>106</sup> and iPhone 5<sup>107</sup> mobile telephones, Ndagijimana's X-Tigi Mini mobile telephone<sup>108</sup> and Tecno tablet,<sup>109</sup> and Fatuma's Tecno mobile telephone.<sup>110</sup> While the examination of the devices by the RIB did not follow best forensic practice and populated the devices with data following the date of seizure,<sup>111</sup> it

<sup>96</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), paras. 1, 4, 5.3, 5.4, 6; Exhibit P106 (Witness TNN19 Report of 5 October 2020), paras. 1-3.

<sup>97</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), paras. 1, 4, 5.9, 5.10, 5.11, 5.12, 6.

<sup>98</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), paras. 1, 4, 5.5, 5.6, 5.7, 5.8, 6.

<sup>99</sup> Exhibit P106 (Witness TNN19 Report of 26 July 2019), paras. 1, 4, 5.15, 5.16, 5.17, 6.

<sup>100</sup> Exhibit P107 (Witness TNN20 Report of 12 August 2019), paras. 1, 5.2, 6; Exhibit P107 (Witness TNN20 Report of 24 April 2020), paras. 1-5, Appendix 1.

<sup>101</sup> Exhibit P107 (Witness TNN20 Report of 12 August 2019), paras. 1, 5.9.

<sup>102</sup> Exhibit P104 (Murphy Report), paras. 3, 4; Exhibit P109 (Olejniczak Report), paras. 3, 4; Exhibit P110 (Olejniczak Supplemental Report), paras. 3-6. *See also* Exhibit P111 (Olejniczak Second Supplemental Report), paras. 3-6. *See also* T. 23 November 2020 pp. 9-15.

<sup>103</sup> Exhibit P103; Exhibit P104 (Murphy Report), paras. 1, 2, 225-227; T. 23 November 2020 pp. 5, 7, 8.

<sup>104</sup> I am aware that the expert did not have physical access to the electronic seized devices, in order to maintain their integrity, and examined the data present on the hard drives provided by the RIB and the NFI, which he did not re-process. *See* Exhibit P104 (Murphy Report), paras. 5-7, 10-14; T. 23 November 2020 pp. 19, 28-30, 48.

<sup>105</sup> Exhibit P104 (Murphy Report), paras. 10, 22, 29, 72-75. *See also* Exhibit P105 (Murphy Spreadsheet of Verified Material), p. 1; T. 23 November 2020 pp. 20-22.

<sup>106</sup> Exhibit P104 (Murphy Report), paras. 5, 20, 44-51, 65, 71. *See also* Exhibit P105 (Murphy Spreadsheet of Verified Material), pp. 2-64; T. 23 November 2020 pp. 20-22.

<sup>107</sup> Exhibit P104 (Murphy Report), paras. 5, 20, 52-54, 65, 68. *See also* Exhibit P105 (Murphy Spreadsheet of Verified Material), pp. 65-78; T. 23 November 2020 pp. 20-22.

<sup>108</sup> Exhibit P104 (Murphy Report), paras. 5, 10-13, 30, 76-81. *See also* Exhibit P105 (Murphy Spreadsheet of Verified Material), p. 2; T. 23 November 2020 pp. 20-22.

<sup>109</sup> Exhibit P104 (Murphy Report), paras. 5, 20(a), 65, 115-126. *See also* Exhibit P105 (Murphy Spreadsheet of Verified Material), p. 1; T. 23 November 2020 pp. 20-22.

<sup>110</sup> Exhibit P104 (Murphy Report), paras. 5, 55-60. *See also* Exhibit P105 (Murphy Spreadsheet of Verified Material), p. 2; T. 23 November 2020 pp. 20-22.

<sup>111</sup> Exhibit P104 (Murphy Report), paras. 27, 44-60, 114-126; T. 23 November 2020 pp. 20, 38-45.



is unlikely that such practices affected the original user data present on these devices and communication data such as call logs and third parties messages would not have been changed.<sup>112</sup>

34. Murphy also personally extracted and authenticated data from Ngirabatware's two Samsung mobile telephones, which were provided to him on 16 July 2019,<sup>113</sup> and confirmed the presence of files of interest on the devices.<sup>114</sup>

(f) Prosecution Expert Witness Ryszard Olejniczak

35. Olejniczak, a digital forensics analyst within the CCL majoring in the field of computer analysis,<sup>115</sup> provided a report authenticating the extractions made by the NFI<sup>116</sup> from Ndagijimana's Acer laptop<sup>117</sup> and Nzabonimpa's external hard drive,<sup>118</sup> of which he confirmed the attribution<sup>119</sup> and on which he confirmed the presence of a number of reference files.<sup>120</sup> He found during his examination of the forensic images of the devices that the original exhibits had been interacted with following their seizure, but he found no evidence that any of the reference files extracted from Nzabonimpa's external hard drive were created or modified after seizure.<sup>121</sup>

36. Olejniczak also examined the files extracted from Ngirabatware's two laptops and established a relationship between some of them and the reference files extracted from

<sup>112</sup> Exhibit P104 (Murphy Report), paras. 27, 63. *See also* Exhibit P104 (Murphy Report), paras. 37-41; T. 23 November 2020 pp. 19, 20, 48, 49. Murphy affirmed that, following the transfer of the devices to the NFI, good forensic practice was followed and appropriate extraction methods were conducted. *See* Exhibit P104 (Murphy Report), paras. 28, 64.

<sup>113</sup> Exhibit P104 (Murphy Report), paras. 15, 17, 18, 23, 24, 31, 32, 82-108, 127-218; T. 23 November 2020 pp. 14, 17, 18. Murphy specified that the statements clarifying that there was an attempt to unlock Ngirabatware's mobile devices after their seizure do not affect his expert conclusions and findings. *See* T. 23 November 2020 pp. 17, 18.

<sup>114</sup> Exhibit P104 (Murphy Report), paras. 127-218; T. 23 November 2020 pp. 14-17.

<sup>115</sup> Exhibit P108 (Olejniczak Curriculum Vitae); Exhibit P109 (Olejniczak Report), paras. 1, 2, 77-79; Exhibit P110 (Olejniczak Supplemental Report), paras. 1, 2, 84-86; Exhibit P111 (Olejniczak Second Supplemental Report), paras. 1, 2, 48-50; T. 24 November 2020 pp. 4, 5.

<sup>116</sup> Olejniczak has been provided with imaging and verification logs by the NFI and states that there is no reason to doubt that the forensic images are reliable. *See* Exhibit P109 (Olejniczak Report), para. 44, Appendix 4. *See also* T. 24 November 2020 pp. 8, 9, 47. Part of the process included looking at the handling of the exhibits by the RIB, although Olejniczak was not provided with contemporaneous notes. *See* T. 24 November 2020 pp. 48-50.

<sup>117</sup> Exhibit P109 (Olejniczak Report), paras. 5, 14, 46, 63. *See also* Exhibit P113. *See also* T. 24 November 2020 p. 25.

<sup>118</sup> Exhibit P109 (Olejniczak Report), paras. 5, 8, 9, 13, 14, 17-20, 46, 49-70; T. 24 November 2020 pp. 10-12. *See also* Exhibit P112 (Olejniczak Verified Supplement of Extractions).

<sup>119</sup> Exhibit P110 (Olejniczak Supplemental Report), paras. 53-61; T. 24 November 2020 pp. 38-40. Olejniczak was not asked to examine whether Nzabonimpa's external hard drive was, for example, used for business or personal usage. *See* T. 24 November 2020 p. 40.

<sup>120</sup> Exhibit P109 (Olejniczak Report), paras. 63, 64; T. 24 November 2020 pp. 13, 14.

<sup>121</sup> Exhibit P109 (Olejniczak Report), paras. 17, 46, 49-51, Appendix 2; T. 24 November 2020 pp. 15-21, 77-81. Olejniczak indicated that he came to this conclusion after looking at the file system and document data and at the change log within the file system. *See* T. 24 November 2020 pp. 16-18, 20. Olejniczak acknowledged the possibility that the reference files could have been modified after seizure without leaving any imprint but that such manipulation would require a certain amount of planning and skills. *See* T. 24 November 2020 pp. 21, 22. Olejniczak identified five system or application files, distinct from the document files, which were created or modified after seizure and indicate

Nzabonimpa's external hard drive.<sup>122</sup> He, however, could not be conclusive by examining the metadata as to whether the files extracted from Ngirabatware's laptops were derived from the reference files extracted from Nzabonimpa's external hard drive, or the opposite, or whether both files were derived from a common ancestor.<sup>123</sup>

(g) Deliberations

37. Nzabonimpa maintains his objections regarding the integrity and reliability of the evidence extracted from the seized electronic devices.<sup>124</sup> The other co-Accused essentially accept the Prosecution expert evidence and/or do not challenge the authenticity of extracted files or that any of the extracted text communications happened.<sup>125</sup> Notably, Ndagijimana accepted, during his testimony, that messages extracted from the seized devices reflect the discussions between him, Nzabonimpa, Turinabo, and Ngirabatware regarding their involvement with the recanting witnesses.<sup>126</sup>

38. At the outset, I recall that none of the evidence admitted at trial derives from digital extractions performed by the RIB and that I have already rejected submissions regarding alleged violations of domestic law.<sup>127</sup> I also recall that the seizure forms prepared by the RIB and signed by the Accused have been admitted and are not challenged,<sup>128</sup> and that the chain of custody of the electronic devices has been well documented.<sup>129</sup>

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that the drive had been at some point connected to another computer. *See* Exhibit P109 (Olejniczak Report), paras. 49-51; T. 24 November 2020 pp. 23-25. *See also* T. 24 November 2020 pp. 50-52.

<sup>122</sup> Exhibit P110 (Olejniczak Supplemental Report), paras. 5, 6, 8, 10-12, 34-51, Appendix 2, 3, 5; T. 24 November 2020 pp. 28-32, 52-55. The task given to the expert was to look at the metadata of the reference files – which, in his opinion, was sufficient – and not at other metadata located on Nzabonimpa's external drive. *See* T. 24 November 2020 pp. 53-55. Olejniczak indicated that "User" was the Windows operating system account name on this particular device taken by default by Microsoft Office applications to be the author of a file or a document created on this device. *See* T. 24 November 2020 pp. 54, 55. Olejniczak, however, acknowledged that it is not uncommon for user accounts to have this generic name and not a specific name, that it is fairly common for people to share or reuse Microsoft Word templates, and that the metadata, including the author field, would remain essentially the same if the document was transferred to a different device. *See* T. 24 November 2020 pp. 55-59, 68, 69.

<sup>123</sup> Exhibit P111 (Olejniczak Second Supplemental Report), paras. 5-42; Exhibit 2D6; T. 24 November 2020 pp. 32-34, 59-61.

<sup>124</sup> *See* Nzabonimpa Final Trial Brief, paras. 39, 100-135.

<sup>125</sup> *See, e.g.*, Fatuma Final Trial Brief, Annex A, RP. 21503-21498; Ngirabatware Final Trial Brief, paras. 76, 77, 134-136, 139, 142-145, 148, 151, 189, 190, 202, 203, 249, 251, 262-265, 272.

<sup>126</sup> T. 17 March 2021 pp. 34, 35. Ndagijimana was shown a number of messages extracted from Nzabonimpa's and Ngirabatware's mobile telephones and essentially authenticated them and/or did not challenge that these communications happened. *See* T. 16 March 2021 pp. 27-53; T. 17 March 2021 pp. 64-66, 68-71, 74. *See also* Exhibits 6D9 to 6D12, P138, P139, P441 to P444, P476, P578, P587, P602, P605, P615, P749, P767.

<sup>127</sup> *See* Decision on First Bar Table Motion, para. 29. *See also* Decision on First Bar Table Motion, paras. 30-33. I already determined that nothing in the plain language of the warrants of arrest prohibited the RIB from conducting extractions from the seized device. *See* Decision on First Bar Table Motion, para. 30.

<sup>128</sup> *See* Exhibits P76 to P79, P130.

<sup>129</sup> *See also supra* n. 86.

39. Turning to the reliability of the original user data present on the devices, I have considered Nzabonimpa's general contentions regarding the possibility of manipulation of electronic data after seizure, in view of the experts' opinions.<sup>130</sup> I, however, accept the Prosecution expert evidence that, while forensically unsound prior extractions may potentially have left traces on the devices, these practices have not likely affected any of the original user data and that no evidence of such interaction with the pre-existing data has been found.<sup>131</sup> I therefore consider the Defence submissions insufficient to raise a doubt as to the general authenticity and reliability of the electronic evidence.<sup>132</sup>

40. Nonetheless, I accept Olejniczak's expert report that the metadata in some cases is inconclusive as to the exact origins of and modifications to documents extracted from Nzabonimpa's and Ngirabatware's devices.<sup>133</sup> This issue will be addressed below in relation to specific documents as necessary.

## 2. Intercepts and Communications Evidence

41. Communications evidence in this case includes text messages and audio recordings/transcripts of telephone calls between the Accused and other individuals as intercepted by the Rwanda Criminal Investigation Department,<sup>134</sup> as well as call logs,<sup>135</sup> Mobile Money records,<sup>136</sup> and subscriber data<sup>137</sup> provided by telecommunications companies MTN and Airtel.

42. The Prosecution tendered evidence to establish the authenticity and reliability of the communications evidence,<sup>138</sup> including evidence from Witnesses TNN3, TNN9, TNN27, and Blaszczyk<sup>139</sup> and the Defence presented expert evidence from Brown.<sup>140</sup> The parties also tendered

<sup>130</sup> See Nzabonimpa Final Trial Brief, paras. 104, 115.

<sup>131</sup> See Exhibit P104 (Murphy Report), paras. 27, 44-60, 63, 114-126; Exhibit P109 (Olejniczak Report), paras. 17, 46, 49-51; T. 23 November 2020 pp. 19, 20, 38-45, 48, 49; T. 24 November 2020 pp. 15-21, 21-25, 77-81.

<sup>132</sup> Likewise, I have carefully reviewed Nzabonimpa's challenges to the reliability of the spreadsheet of verified messages extracted from his devices and find them insufficient to raise a doubt as to Murphy's expert opinion that the content of the messages matches that of the extractions. See Nzabonimpa Final Trial Brief, para. 107. See also Exhibit P105 (Murphy Spreadsheet of Verified Material); T. 23 November 2020 pp. 45-48.

<sup>133</sup> Exhibit P111 (Olejniczak Second Supplemental Report), paras. 5-42; Exhibit 2D6; T. 24 November 2020 pp. 32-34, 59-61.

<sup>134</sup> See Exhibits P7, P11, P15 to P21, P23 to P25, P776 to P789, P796 to P1683, P1701, P1702. See also Exhibits 3D23, 3D24, 3D25, 3D32, 5D4 to 5D6, 5D18, 5D19, 6D4, 6D34 to 6D43, 6D45, 6D46, 6D48 to 6D57, 6D108 to 6D111.

<sup>135</sup> See Exhibits P1684 to P1700. See also Exhibits 3D11, 3D30, 6D1.

<sup>136</sup> See Exhibits P140, P147, P149, P154, P157, P162, P165, P170, P172, P174.

<sup>137</sup> See Exhibits P82 (MTN), P1720, P1721 (Airtel).

<sup>138</sup> See also Prosecution Final Trial Brief, Annex E, paras. 10, 11, 13, 15-18; T. 21 June 2021 p. 29.

<sup>139</sup> Exhibits P96, P97, P114, P186; T. 16 November 2020; T. 17 November 2020; T. 18 November 2020; T. 19 November 2020. See also Exhibits 2D1, 3D2, 4D6, 5D9.

<sup>140</sup> Exhibits 1D6, 1D10, 6D13 to 6D15.

<sup>140</sup> Exhibits 1D13, 6D15.

the five compact discs (“CDs”) from the RIB containing the intercepted communications,<sup>141</sup> as well as the related RFAs and correspondence pertaining to the interceptions and collection of the MTN material.<sup>142</sup> The Prosecution underlines that at least one of the Accused was a participant in the vast majority of intercepted telecommunications and that the Defence did not dispute the authenticity of any single communication.<sup>143</sup>

43. The Defence submits that the intercept evidence lacks probative value and should be attributed limited weight.<sup>144</sup> The Defence contends that the Prosecution failed to establish definite proof of authentication of individual intercepted files, stressing that Witness TNN9 refused to provide technical details regarding the collection process and that the source of the metadata remains unknown.<sup>145</sup> The Defence also generally challenges the lack of neutrality and transparency of the Rwandan authorities in executing the requests for interceptions, considering that only 120 of 1400 intercepts were initially provided and the bulk of them delivered only in February 2020.<sup>146</sup> The Defence further suggests that the collection of electronic evidence is incomplete and that missing conversations involving the recanting witnesses “undoubtedly contain[] exculpatory material”, which prevent any adverse finding based on this partial evidence.<sup>147</sup>

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<sup>141</sup> Exhibits P98 to P102. *See also* Exhibit 1D5.

<sup>142</sup> Exhibits P164, P169, P180, 3D3 (RFA 0029.1), 3D4 (RFA 0029.6), 3D5 (RFA 0029.8), 3D9 (RFA 0029.11). *See also* Exhibits 3D7, 3D8, 3D10, 3D33, 6D7. The Defence also tendered into evidence the report summaries of intercepted communications as provided by the National Public Prosecution Authority. *See* Exhibits 3D6, 5D20, 6D6.

<sup>143</sup> *See* T. 21 June 2021 p. 29.

<sup>144</sup> *See, e.g.*, Nzabonimpa Final Trial Brief, para. 61; Ndagijimana Final Trial Brief, para. 372; Munyeshuli Final Trial Brief, paras. 107-110. Nzabonimpa submits that he has been denied the opportunity to challenge the veracity of this evidence. *See* Nzabonimpa Final Trial Brief, para. 43. Fatuma and Ngirabatware do not challenge the authenticity and reliability of the intercepts. *See generally* Fatuma Final Trial Brief; Ngirabatware Final Trial Brief.

<sup>145</sup> Nzabonimpa Final Trial Brief, paras. 39, 63-70, 86; Ndagijimana Final Trial Brief, paras. 25, 360; Munyeshuli Final Trial Brief, paras. 103, 108, 109, 121. Nzabonimpa submits that the reliability of the intercepts is neither corroborated by the call logs, which are likely the source of the metadata used by the RIB, nor by the forensic extracted messages, the transcripts, key events, subscriber details, and/or witness testimony (stressing, *inter alia*, that only 15 out of 920 intercepts were led by the Prosecution with witnesses in court). *See* Nzabonimpa Final Trial Brief, paras. 71-89. The Defence also underlines discrepancies regarding times and duration of communications between the intercepts, the call logs, and the forensic extracted messages. *See* Nzabonimpa Final Trial Brief, paras. 75, 78; Munyeshuli Final Trial Brief, para. 108.

<sup>146</sup> Nzabonimpa Final Trial Brief, para. 62; Ndagijimana Final Trial Brief, paras. 57, 326, 329, 372; Munyeshuli Final Trial Brief, paras. 79, 85, 100-102; T. 21 June 2021 p. 114. *See also* Ndagijimana Final Trial Brief, para. 265. Nzabonimpa suggests that the RIB “suppress[ed] potentially exculpatory material and/or ignor[ed] requests to assist Defence investigations”. *See* Nzabonimpa Final Trial Brief, para. 62. Ndagijimana submits that the Prosecution was negligent in securing the relevant evidence, improperly delegated its investigative powers to Rwanda for the purpose of intercepting private communications, and failed to oversee the interception process, entirely abandoning the capturing of exculpatory material. *See* Ndagijimana Final Trial Brief, paras. 326, 329-360, 364, 365, 372; T. 21 June 2021 p. 114. Ndagijimana states that numbers not requested and not authorized for interception were also monitored and recorded. *See* Ndagijimana Final Trial Brief, para. 359.

<sup>147</sup> Ndagijimana Final Trial Brief, paras. 13, 62, 326-328, 361, 372; T. 21 June 2021 pp. 114, 115. Ndagijimana suggests that a substantial percentage of the conversations involving him and conversations between Witnesses ANAE/TNN30 and ANAM/TNN31 are missing, which has impaired the Defence’s ability to cross-examine the related witnesses and thus prevents a complete and fair assessment of their credibility. *See* Ndagijimana Final Trial Brief, paras. 13, 328, 330, 361-364, 372, n. 803, Annex B, RP. 21333, 21332; T. 21 June 2021 p. 114. *Cf.* Ngirabatware Final

44. The Defence for Nzabonimpa also argues that significant questions remain as to the authenticity and reliability of the call logs and Mobile Money records provided by MTN, which have been produced at the specific request of the Prosecution and the Rwandan Prosecutor General, and of the data contained therein.<sup>148</sup> Nzabonimpa highlights omissions and inconsistencies throughout the call data, which he submits were insufficiently explained by Witness TNN3, as well as the lack of direct evidence regarding the cell site information,<sup>149</sup> and he raises concerns in relation to the legality of the collection of the Mobile Money records.<sup>150</sup> He further submits that the process and procedure by which the subscriber databases were created remain vague.<sup>151</sup>

(a) Prosecution Witness TNN9

45. Witness TNN9 supervised and coordinated the RIB's interception of telecommunications involving five targeted individuals between 9 July 2017 and 11 October 2017, as requested by the Prosecutor of the Mechanism and in accordance with Rwandan criminal procedures.<sup>152</sup> All of the conversations for each telephone number within the specified timeframe were automatically recorded, and a review team then manually selected the material considered relevant pursuant to the mandate provided by the Rwandan Prosecutor General and prepared reports containing translation and summary of the intercepts.<sup>153</sup>

46. Following subsequent requests for additional intercepts, the RIB retrieved the intercepts that had initially been deemed not relevant to the case and provided all the records to the Prosecutor of the Mechanism in February 2020.<sup>154</sup> The RIB did not intercept any numbers except those provided

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Trial Brief, paras. 222 (suggesting that it is "suspicious" that only one intercept between Witnesses ANAE/TNN30 and ANAM/TNN31 was provided by the Rwandan authorities), 311, n. 662. *See also* Exhibits 1D10, 3D9.

<sup>148</sup> Nzabonimpa Final Trial Brief, paras. 39, 90-96, 97-99. *See also* Munyeshuli Final Trial Brief, para. 110. Nzabonimpa argues that he has been denied the opportunity to challenge the veracity of this evidence. *See* Nzabonimpa Final Trial Brief, para. 43. Nzabonimpa also suggests that this evidence could potentially have been shaped or manipulated, which is compounded by the fact that the data for the period of 22 to 26 January 2016 had been missing across the call logs. *See* Nzabonimpa Final Trial Brief, paras. 92, 93, 95.

<sup>149</sup> Nzabonimpa Final Trial Brief, paras. 90, 92-94, 96.

<sup>150</sup> Nzabonimpa Final Trial Brief, para. 99.

<sup>151</sup> Nzabonimpa Final Trial Brief, para. 140.

<sup>152</sup> Exhibit P96, paras. 1-6; Exhibit P97, paras. 1-4, 6, 10; T. 18 November 2020 pp. 65-66, 78, 81, 91, 108-111, 119-123; T. 19 November 2020 pp. 1-5, 8-11, 24, 25, 76, 77, 82, 92-94. *See also* Exhibits 3D3 (RFA 0029.1), 3D33. The targeted numbers are attributed to Turinabo, Ndagijimana, Nzabonimpa, Twagirayezu, and Maniraguha. *See* Exhibit P96, para. 2. The initial requested interception period was 5 to 26 July 2017 and was thereafter extended until 11 October 2017, but due to administrative procedures to be followed, the RIB began intercepting the communications on 9 July 2017 and completed the operation on 11 October 2017. *See* Exhibit P96, paras. 2, 4-6; Exhibit P97, para. 10. Although the RFA initially requested that the recordings for each day of interception be provided on a daily basis, this did not take place. *Compare* Exhibit 3D3 with T. 19 November 2020 pp. 26-28.

<sup>153</sup> Exhibit P96, paras. 7, 8; Exhibit P97, paras. 4, 5, 9; T. 18 November 2020 pp. 91, 100, 103, 104, 111-115; T. 19 November 2020 pp. 5-11, 13-19, 30-32. *See also* Exhibits 3D6, 5D20, 6D6.

<sup>154</sup> Exhibit P97, para. 9; T. 18 November 2020 pp. 100-102, 112, 115-117; T. 19 November 2020 pp. 6, 13, 18, 21, 22, 30-32, 37-39, 86, 87, 91. *See also* Exhibit 3D8. The material that was initially deemed not relevant was kept in the RIB's records until it was submitted to the Prosecutor of the Mechanism. *See* T. 19 November 2020 p. 6.

by the Prosecutor of the Mechanism and does not have any additional intercept that was captured and not submitted.<sup>155</sup> The recorded conversations were placed on five CDs, which Witness TNN9 reviewed and authenticated in court, and handed to the Rwandan Prosecutor General for onwards transmission to the Mechanism.<sup>156</sup> Titles of the audio files contain information on the date, time, and identity of speakers based on telephone numbers provided by the Prosecution and on information from the Rwandan national records.<sup>157</sup> Witness TNN9 does not have any reason to believe that the intercepts or CDs handled by his office were tampered with in any way or that there was any loss of data.<sup>158</sup>

(b) Prosecution Witness TNN3

47. Witness TNN3 provided evidence<sup>159</sup> regarding the collection, storage, and comprehension of the MTN call logs, Mobile Money records, and subscriber data collected under his supervision.<sup>160</sup> He authenticated the call logs provided to the Prosecutor of the Mechanism by MTN in August 2019<sup>161</sup> and detailed their content fields,<sup>162</sup> including information regarding the cell

<sup>155</sup> Exhibit P97, para. 12; T. 18 November 2020 pp. 117, 118; T. 19 November 2020 pp. 13, 86, 87. Witness TNN9 does not recall any request to conduct interceptions for telephone numbers associated with the intermediaries from 8 to 18 June 2018 or any request for interceptions from the Defence. *See* T. 18 November 2020 pp. 118, 119, 124-128; T. 19 November 2020 pp. 77-83. *See also* Exhibits 3D10 (RFA 0061), 6D7.

<sup>156</sup> Exhibit P96, paras. 8-11, 13; Exhibit P97, paras. 4, 7, 8; T. 18 November 2020 pp. 67-69, 91, 93, 108, 109; T. 19 November 2020 pp. 32-36, 98, 99. *See also* Exhibits P98 to P102, 1D5. The two CDs provided in February 2020, comprising approximately 1,400 intercepts, were prepared after Witness TNN9 had been informed by the Rwandan Prosecutor General that the first three CDs, comprising 116 intercepts, did not contain some material that the RIB had summarized in its reports related to the interception operation. *See* Exhibit P96, para. 11; T. 19 November 2020 pp. 35-40. Witness TNN9 confirmed that the CDs he was shown when signing his statements and in the courtroom are the ones that the RIB submitted through the Rwandan Prosecutor General's Office. *See, e.g.*, T. 18 November 2020 pp. 68, 69, 108. He personally did not listen to the audio files. *See* T. 18 November 2020 pp. 108, 109.

<sup>157</sup> Exhibit P96, para. 12; Exhibit P97, para. 12; T. 18 November 2020 pp. 93, 94, 104-106; T. 19 November 2020 pp. 47, 48, 74. Witness TNN9 could not exclude human error in labelling the files but believes that there was no error in attributing the intercepts to a subject and that any anomalies of call durations compared to the call data records are technical. *See* Exhibit P96, para. 12; T. 18 November 2020 pp. 93, 96, 98, 99, 107. *See also* T. 19 November 2020 pp. 59-66, 95. Witness TNN9 declined to discuss technical details for reasons of confidentiality and national security. *See* Exhibit P96, para. 7. *See also, e.g.*, T. 18 November 2020 pp. 80, 86-88, 92, 106, 107; T. 19 November 2020 pp. 31, 81, 94. *See also* Decision on Prosecution Motions for Admission of Witness TNN9's Evidence Pursuant to Rule 111 and for Protective Measures, 6 November 2020 (confidential); Order to Unseal the Closed Session Testimony of Witness TNN9, 6 May 2021 (confidential).

<sup>158</sup> Exhibit P97, para. 11; T. 18 November 2020 pp. 69, 91-93, 96-98.

<sup>159</sup> I note that Exhibit P114, admitted pursuant to Rule 110 of the Rules, comprises Witness TNN3's statement dated 2-4 July 2019 ("Statement of July 2019") and his statement dated 1, 18 September and 9, 16 October 2020 ("Statement of October 2020"). *See also* Decision of 26 November 2020.

<sup>160</sup> Exhibit P114 (Statement of July 2019), paras. 1-3. Call data records are raw data automatically generated when a call or text is made using a MTN SIM card and it is impossible to modify its content. *See* Exhibit P114 (Statement of July 2019), paras. 9, 10. The raw data is then processed by MTN into a readable and writeable format, known as call logs, for business purposes such as billing and taxes. *See* Exhibit P114 (Statement of July 2019), para. 9. Call data records and call logs are stored in the MTN warehouse system. *See* Exhibit P114 (Statement of July 2019), para. 10. Witness TNN3 indicated that MTN extracted call logs several times from its regularly maintained records for the National Public Prosecution Authority. *See* Exhibit P114 (Statement of July 2019), paras. 11, 13.

<sup>161</sup> *See also* Exhibit P114 (Statement of July 2019), paras. 11, 12; Exhibit P114 (Statement of October 2020), paras. 2-5. *See also* Exhibits P1684 to P1700.

towers and location of a caller<sup>163</sup> and the reflection of Mobile Money transfers as notification text messages.<sup>164</sup> Witness TNN3 further indicated that missing call data for, *inter alia*, the period between 22 and 26 January 2016, which was included in previous transmissions in October 2016 but not in the call logs submitted in August 2019, had been provided to the Prosecution in October 2020.<sup>165</sup>

48. Witness TNN3 also authenticated the Mobile Money records provided to the Prosecutor of the Mechanism,<sup>166</sup> as well as the subscriber data for 65 MTN telephone numbers and associated Mobile Money accounts.<sup>167</sup>

(c) Prosecution Witness TNN27

49. Witness TNN27 provided evidence regarding Airtel's business practices that generate, *inter alia*, subscriber identification information for the purposes of criminal investigations.<sup>168</sup> He authenticated the subscriber data for eight Airtel telephone numbers, as provided to the Prosecutor of the Mechanism in August 2019.<sup>169</sup>

(d) Prosecution Witness Tomasz Blaszczyk

50. Blaszczyk, in the course of his investigations, obtained evidence from telecommunications companies MTN and Tigo/Airtel via official RFAs to Rwandan authorities, including telephone logs, Mobile Money records, and subscriber information for particular telephone numbers.<sup>170</sup> Blaszczyk ascertained that, while the Prosecution relied extensively on Rwanda for the evidence seized or intercepted in this case, he is convinced that this evidence is reliable.<sup>171</sup>

<sup>162</sup> Exhibit P114 (Statement of July 2019), paras. 14-22. I note that Witness TNN3 could not provide an explanation for, *inter alia*, inconsistencies regarding call durations between the call logs provided in August 2019 and the corresponding records provided before that date. *See* Exhibit P114 (Statement of October 2020), para. 8.

<sup>163</sup> Exhibit P114 (Statement of July 2019), paras. 10, 14, 23-25. *See also* Exhibit P114 (Statement of July 2019), paras. 6-8, 18. The telephone will connect to the cell tower with the strongest signal, also when outside Rwanda. *See* Exhibit P114 (Statement of July 2019), para. 23.

<sup>164</sup> Exhibit P114 (Statement of July 2019), para. 22.

<sup>165</sup> Exhibit P114 (Statement of October 2020), paras. 7, 9, 14.

<sup>166</sup> Exhibit P114 (Statement of July 2019), paras. 40-45; Exhibit P114 (Statement of October 2020), para. 3. *See also* Exhibit P114 (Statement of July 2019), paras. 38, 39. *See also* Exhibits P140, P147, P149, P154, P157, P162, P165, P170, P172, P174.

<sup>167</sup> Exhibit P114 (Statement of July 2019), paras. 31-37. *See also* Exhibit P82. Registration for a MTN SIM card and Mobile Money account requires proper identification and is done through a MTN service center or an authorized agent. *See* Exhibit P114 (Statement of July 2019), paras. 26-30.

<sup>168</sup> Exhibit P186, paras. 1-8. *See also* Exhibit P186, para. 12. *See also* Decision of 22 September 2020.

<sup>169</sup> Exhibit P186, paras. 10, 11. *See also* Exhibits P1719 to P1721.

<sup>170</sup> T. 16 November 2020 pp. 37-39. This includes the MTN subscriber list. *See* T. 16 November 2020 pp. 38, 39; Exhibit P82. *See also* Exhibits 2D1, 3D2, 4D6, 5D9.

<sup>171</sup> T. 18 November 2020 pp. 42, 44, 45.

51. Blaszczyk was involved in, *inter alia*, selecting the telephone numbers targeted by RFA 0029.1 requesting interceptions until 26 July 2017, followed by RFA 0029.6 and RFA 0029.8 extending the period of interceptions up until 16 August 2017 and 11 October 2017, respectively.<sup>172</sup> The initial request was to have the intercepts provided by the Rwandan authorities on a daily basis but this was not done, and the Prosecution only started to receive summary reports in August 2017, followed by transcripts and audiotapes until February 2020.<sup>173</sup> The Prosecution sent letters to the Rwandan Prosecutor General in October and November 2017 requesting the transmission of the outstanding intercepts and recordings,<sup>174</sup> as well as RFA 0029.11 in April 2019 requesting missing intercepts identified after a review of the corresponding call logs.<sup>175</sup> The Prosecution also requested the transmission of any additional intercepts for the period 8 to 18 June 2018 that would have been collected in furtherance of RFA 0061, but the Rwandan authorities had nothing else to disclose.<sup>176</sup> Blaszczyk does not know whether the Prosecution has received all intercepts, which could be checked by comparing them with the call logs.<sup>177</sup>

52. Blaszczyk also confirmed that the Prosecution requested call data for the period June 2015 to April 2016, July 2017 to October 2017, and November 2017 to February 2018,<sup>178</sup> and stated that it was probably his fault if the call data for the period from May 2016 to June 2017 had not been requested.<sup>179</sup> Blaszczyk was in contact with Witness TNN3, who helped him in understanding the call data for the purpose of, *inter alia*, preparing and reviewing his statements.<sup>180</sup> Blaszczyk

<sup>172</sup> T. 17 November 2020 pp. 5, 6, 107. *See also* T. 16 November 2020 pp. 65, 66. While Counsel for Ndagijimana refers to RFA 0029.7, the correct RFA reference appears to be 0029.8. *See* T. 17 November 2020 p. 6. *See also* Exhibits 3D3 to 3D5. Blaszczyk clarified that the Prosecution requested communications involving the people targeted in the RFAs, including other telephone numbers associated to them and including communications with third parties, and that it did not limit the request to the communications between these people. *See* T. 17 November 2020 pp. 7, 9-13, 104, 105. Blaszczyk is not aware on what criteria the Rwandan authorities selected the conversations. *See* T. 17 November 2020 p. 12. He does not know whether Rwandan law authorizes such electronic surveillance. *See* T. 17 November 2020 pp. 62, 63. *See also* T. 18 November 2020 p. 45.

<sup>173</sup> T. 17 November 2020 pp. 6, 7, 16, 17, 21, 22, 99-103. *See also* Exhibit 3D6. Blaszczyk believes that everything the Prosecution requested in relation to intercepting was received in February 2020. *See* T. 17 November 2020 p. 103.

<sup>174</sup> T. 17 November 2020 pp. 16-22. *See also* Exhibits 3D7, 3D8.

<sup>175</sup> T. 17 November 2020 pp. 22-25. *See also* Exhibit 3D9. Witnesses ANAE/TNN30 and ANAM/TNN31 were not targeted by the requests for interceptions because they were protected witnesses. *See* T. 17 November 2020 pp. 98, 106. In this regard, Blaszczyk indicated that he must have listed by mistake in RFA 0029.11 the three calls between Witnesses ANAE/TNN30 and ANAM/TNN31 that can be found for the period of the interceptions. *See* T. 17 November 2020 pp. 29, 30, 50. *See also* Exhibit 3D11.

<sup>176</sup> T. 17 November 2020 pp. 26-28. *See also* Exhibit 3D10; Decision on Jean de Dieu Ndagijimana’s Renewed Motion and Augustin Ngirabatware’s Motion for State Production of Documents, 28 February 2020.

<sup>177</sup> T. 18 November 2020 pp. 42-44.

<sup>178</sup> T. 17 November 2020 pp. 69, 70, 72, 73.

<sup>179</sup> T. 17 November 2020 p. 73.

<sup>180</sup> T. 17 November 2020 pp. 64-70; T. 18 November 2020 pp. 13-17, 19-21, 23-25. *See also* Exhibit 2D2.



identified in May 2020 only, which he explains by his inattention, that the call data for the period 22 to 26 January 2016 was missing from the regenerated call logs received in August 2019.<sup>181</sup>

(e) Defence Expert Witness Duncan Brown

53. Brown, a director and expert witness for Forensic Partners Limited specialising in cell-site analysis and telephone attribution,<sup>182</sup> provided a report for the Defence addressing, *inter alia*, the reliability of the MTN call data initially provided in multiple formats and of the most recently regenerated call data provided in a standardised Excel format,<sup>183</sup> as well as a call table using raw call data records for certain telephone numbers.<sup>184</sup>

54. In general, Brown considered that the regenerated call data is valid, that it shows the integrity expected of call data records generated by a network operator, and that it is a better representation of the call records than the data originally provided.<sup>185</sup> Brown did not identify any indicators that the original call data records are unreliable, although he could not eliminate the possibility of manipulation.<sup>186</sup> He also confirmed the validity of the roamed and/or standard call data and considered unlikely that it had been fabricated.<sup>187</sup> He compared a sample of intercepts to the call data records and generally found them to correspond, although he identified some difference in call durations which may be due to the method used for recording start and end times.<sup>188</sup>

(f) Deliberations

55. I note that Nzabonimpa and Munyeshuli maintain that the intercepts lack probative value and that Witness TNN9's evidence failed to establish definitive proof of their authenticity.<sup>189</sup> Nzabonimpa further maintains his objection regarding the reliability of the MTN evidence.<sup>190</sup> Ndagijimana mostly challenges the incomplete collection of the intercepts.<sup>191</sup> I note, however, that

<sup>181</sup> T. 17 November 2020 pp. 70-72. *See also* T. 18 November 2020 p. 43. Blaszczyk acknowledged that the period from 22 to 26 January 2016 is important in the present case. *See* T. 17 November 2020 p. 72.

<sup>182</sup> Exhibit 6D13, paras. 2.1.1-2.17.

<sup>183</sup> Exhibit 6D13, paras. 1.1.5, 1.1.7, 2.3.1. *See also* Exhibits 1D6, 6D14. Brown also provided comments on the statements of Witnesses TNN3 and TNN27. *See* Exhibit 6D13, paras. 7.3.1-7.4.3.

<sup>184</sup> Exhibits 1D13, 6D15.

<sup>185</sup> Exhibit 6D13, paras. 5.2.21, 5.3.11. *See also* Exhibit 6D13, paras. 5.2.11-5.2.20 (identifying issues in relation to the call data originally provided).

<sup>186</sup> Exhibit 6D13, para. 5.2.21.

<sup>187</sup> Exhibit 6D13, para. 5.4.8; Exhibit 1D6, paras. 15-19.

<sup>188</sup> Exhibit 6D13, paras. 1.1.12, 6.2.5, 6.2.6.

<sup>189</sup> *See* Nzabonimpa Final Trial Brief, paras. 39, 61, 63-89; Ndagijimana Final Trial Brief, paras. 25, 360; Munyeshuli Final Trial Brief, paras. 103, 107-110, 121.

<sup>190</sup> *See* Nzabonimpa Final Trial Brief, paras. 39, 90-99, 140.

<sup>191</sup> *See* Ndagijimana Final Trial Brief, paras. 62, 326-328, 330, 361-364, 372.

the Accused accepted during Ndagijimana's testimony that the existing intercepts and call data reflect the actual discussions between him, Nzabonimpa, Turinabo, and Ngirabatware.<sup>192</sup>

56. Having carefully reviewed the material before me, I am satisfied that the evidence of Witnesses TNN3, TNN9, and TNN27 – together with the relevant RFAs tendered in this case and the evidence of investigator Blaszczyk – sufficiently authenticates the interceptions provided by the Rwandan authorities and the evidence generated by national telecommunication companies.

57. While I am aware that some aspects of the collection of this evidence may raise concerns, including the late disclosure of most original intercepts in February 2020 and the fact that some data may still be missing, the Defence's general contentions related to the neutrality of the investigation fail to demonstrate that any of the existing evidence has been tampered with.<sup>193</sup> In this respect, I take note of Blaszczyk's explanations regarding how the Prosecution selected telephone numbers for interception and how some MTN call logs were identified as missing and later provided.<sup>194</sup> I also accept Defence expert Brown's evidence that the regenerated call data shows the integrity expected from records generated by a network operator, that he did not find any evidence of manipulation or fabrication,<sup>195</sup> and that differences in call durations between the intercepts and call data may be due to the recording method.<sup>196</sup>

58. Finally, I reiterate that the Defence has not shown that the purported incompleteness of the intercepts renders them wholly unreliable or demonstrates any violation of the Prosecution's obligation to provide exculpatory material.<sup>197</sup> Whether any gap in the information provided may be sufficient to raise a reasonable doubt with regard to the Prosecution case will be addressed in the factual findings whenever the need arises.

### 3. Evidence Concerning Bank Transfers

59. In addition to the Mobile Money records and bank notification text messages, which have been addressed above, the Prosecution tendered selected bank information and bank records,<sup>198</sup> as

<sup>192</sup> T. 17 March 2021 pp. 34, 35. *See also* T. 17 March 2021 pp. 6, 7, 13, 14 (reflecting that Ndagijimana and his co-Accused read all the documents disclosed to them).

<sup>193</sup> *See, e.g.*, Nzabonimpa Final Trial Brief, para. 62; Ndagijimana Final Trial Brief, paras. 57, 265, 326, 329, 359, 364, 365, 372; Munyeshuli Final Trial Brief, paras. 79, 85, 100-102.

<sup>194</sup> *See, e.g.*, T. 17 November 2020 pp. 29, 30, 50, 70-73, 98, 106.

<sup>195</sup> Exhibit 6D13, paras. 5.2.21, 5.3.11, 5.4.8; Exhibit 1D6, paras. 15-19.

<sup>196</sup> Exhibit 6D13, paras. 1.1.12, 6.2.5, 6.2.6. *See also* Nzabonimpa Final Trial Brief, paras. 75, 78; Munyeshuli Final Trial Brief, para. 108.

<sup>197</sup> *See* Decision on Fourth Bar Table Motion, pp. 7, 8. *See also, e.g.*, Ndagijimana Final Trial Brief, paras. 13, 62, 326-328, 361, 372.

<sup>198</sup> *See* Exhibits P145, P148, P152, P153, P156, P158, P160, P166, P168, P176, P178, P179, P183 to P185.

well as the RFAs<sup>199</sup> by which they were obtained. The Defence has not challenged them and I am satisfied of their reliability in view of their provenance and inherent indicia of authenticity.

#### 4. Attribution

60. Subject to specific findings throughout the Judgement, and after having reviewed the body of communications evidence, I am satisfied that the Prosecution's attribution of code names as well as telephone numbers and email addresses as reflected in the communications evidence discussed in this Judgement are correct.<sup>200</sup> Indeed, only one Defendant continues to dispute this, while the submissions of the remaining Defendants largely rely on these attributions. I am mindful that in some cases certain code names are used for two different people, are derivative of code names on the Prosecution's list, or are not expressly contained on the list. In such cases, I have made attributions bearing in mind the context, including the content and timing of the communications. In addition, it bears noting that, save for limited instances, I have preserved the original phrasing, spelling, and punctuation of the electronic exchanges without correcting for grammar and spelling. I have also inserted references to the person after code names or in place thereof where witness protection is an issue.

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<sup>199</sup> See Exhibits P141, P144, P150, P173, P177, P181.

<sup>200</sup> For the purposes of this Judgement, and having considered the communications and Mobile Money evidence as well as Exhibit P229 in context, I consider that the code name, telephone number, and email attributions – as reflected in Annexes A.1 and B.1 and as supported by references to the record in Annexes A.2 and B.2 of the Prosecution Final Trial Brief – are correct. *Contra* Nzabonimpa Final Trial Brief, paras. 136-148. Certain transcript references in Annexes A.2 and B.2 are off by a page or two, likely as a result of the Prosecution referring to draft rather than final transcripts. See, e.g., Annexes A.2 and B.2 (*referring to* Witness ANAN, T. 6 April 2021 p. 45 for his telephone numbers and code names, which are contained at T. 6 April 2021 p. 46). This, however, does not undermine the evidentiary support for the conclusions, which are demonstrated beyond reasonable doubt in the record.

## II. CRIMES: COUNTS 1 AND 2

61. Nzabonimpa, Ndagijimana, Fatuma, and Ngirabatware are charged with interfering with the administration of justice in violation of Article 1(4)(a) of the Statute and Rule 90(A)(iv) of the Rules under Counts 1 of their respective Indictments.<sup>201</sup> They are also charged with incitement to commit any of the acts punishable under Rule 90(A) of the Rules pursuant to Rule 90(B) of the Rules under Count 2 of their respective Indictments on the basis of the same conduct charged under Count 1.

### A. Payments Made by Ngirabatware

62. Paragraph 23 of the *Ngirabatware* Indictment alleges that, from approximately June 2015 to August 2018, Ngirabatware offered and paid bribes through Turinabo, Nzabonimpa, Ndagijimana, and/or Fatuma to the Recanting Witnesses and Intermediaries in exchange for their cooperation with the Ngirabatware Defence and to influence their prospective evidence. This section of the Judgement addresses the chapeau portions of paragraphs 23(i)-(iv) and 23(vi) of the *Ngirabatware* Indictment that allege specific transfers of money from Ngirabatware to Nzabonimpa. The underlying payments to the Recanting Witnesses and/or Intermediaries that are alleged to have been made from these funds, as well as the allegations of instructions to pay or offers of payments contained in paragraphs 23(v) and 23(vii)-(ix) of this indictment, are assessed elsewhere and in conjunction with the parallel allegations pleaded in the *Nzabonimpa et al.* Indictment.

63. The Prosecution submits that – using contraband communication devices in the UNDF – Ngirabatware coordinated with his supporters to route money from bank accounts outside Rwanda to Nzabonimpa’s son Hippolyte Hirwa, who in turn forwarded the funds to Nzabonimpa, either by bank transfers or through contacts travelling to Rwanda, as needed to arrange for payments to the Recanting Witnesses and Intermediaries in order to secure and maintain their cooperation.<sup>202</sup> The Prosecution relies principally on bank records, contemporaneous communications, and financial

<sup>201</sup> See *infra* Section II.G (for a discussion of the applicable law).

<sup>202</sup> Prosecution Final Trial Brief, paras. 15-20. Hirwa’s initials “HH” were often used as code to reference “money” or “payments”. See, e.g., Exhibit P722 (text from Ngirabatware to Nzabonimpa on 21 May 2018) (“[...] So, our person [Ngirabatware] is preparing to measure the hh plots for the unedibles /utotalibw/ [make payments to the Recanting Witnesses] before meeting the Totaux [Defence]. Therefore Vum [Nzabonimpa] can tell him when at the latest. The unedibles /Tutalibw/ [Recanting Witnesses] to know that it will be measured again for them [they will be paid] before they go in September.”); Exhibit P568 (text from Ngirabatware to Nzabonimpa on 28 May 2018) (“Oh! Before June 11, hh [money/payments] will take the minimum measures and then in September the maximum measures.”); Exhibit P573 (text from Ngirabatware to Nzabonimpa on 30 May 2018) (“[...] Barack [Ndagijimana] and Vum [Nzabonimpa] have done everything. 2000 hh [money/payments] measured for tutalib (all) [the Recanting Witnesses] available.”). Ngirabatware then coordinated with his wife to send 2,000 euros to Nzabonimpa. See Exhibit P131 (text from Ngirabatware to his wife on 31 May 2018) (“It is already necessary to see how 2000/can be sent/ to Vumb [Nzabonimpa] and company”).

spreadsheets maintained in parallel by Ngirabatware and Nzabonimpa to track funds and payments made as part of the interference scheme.<sup>203</sup>

### 1. Financial Spreadsheets Extracted from Ngirabatware's and Nzabonimpa's Devices

64. Before turning to the specific allegations of payments from Ngirabatware to Nzabonimpa, the Prosecution relies heavily on spreadsheets that were extracted from Ngirabatware's and Nzabonimpa's devices to prove charged as well as uncharged payments.<sup>204</sup> Ngirabatware makes no submission as to the probative value or weight to be attributed to the spreadsheet extracted from his computer (Exhibit P46).<sup>205</sup> Nzabonimpa submits that the spreadsheet extracted from his external hard drive (Exhibit P229) has no evidentiary weight in establishing monies received or payments made because the Prosecution failed to: (i) prove that the contents of the external hard drive were exclusively attributable to him and that he created or modified the spreadsheet; (ii) lead witness evidence to contextualize the spreadsheet; and (iii) provide evidence corroborating the vast majority of the entries on the spreadsheet, which are not self-explanatory.<sup>206</sup>

65. At the outset, I note that the Prosecution has demonstrated that the financial spreadsheet admitted as Exhibit P46 was extracted from one of Ngirabatware's laptops and has not been modified during the seizure or extraction process.<sup>207</sup> Furthermore, Ngirabatware does not contest the Prosecution's allegations that it reflects a record keeping document that he maintained for the purpose of tracking payments related to his anticipated review proceedings. The spreadsheet – entitled “*Révision – Assistance juridique*” and when read alongside contemporaneous evidence – reflects Ngirabatware's efforts to track payments made by him to facilitate the review of his convictions. There is, for example, remarkable consistency with the spreadsheet's notations of the payment amount and through whom the money was channelled to Hirwa – Nzabonimpa's son – and transactions listed in Hirwa's bank account, with variances principally related to dates.<sup>208</sup> In this

<sup>203</sup> Prosecution Final Trial Brief, paras. 17, 18. *See also* Exhibits P46 (Ngirabatware spreadsheet), P229 (Nzabonimpa spreadsheet). *See also* Prosecution Final Trial Brief, Annex E; T. 21 June 2021 pp. 29-32.

<sup>204</sup> *See, e.g.*, Prosecution Final Trial Brief, Annex D.

<sup>205</sup> Ngirabatware's final trial brief contains only one reference to Exhibit P46 and does not address the probative value or evidentiary weight that should be attributed to it. *See* Ngirabatware Final Trial Brief, para. 196, n. 343.

<sup>206</sup> *See* Nzabonimpa Final Trial Brief, paras. 129-135. *See also* Nzabonimpa Final Trial Brief, paras. 431, 432, 436, 445, 453. Nzabonimpa argues that inconsistencies in referencing within the spreadsheet suggest the possibility of more than one user maintaining it. *See* Nzabonimpa Final Trial Brief, para. 134.

<sup>207</sup> Exhibit P46 (with ERN number KA15-1528-1532) was extracted from Ngirabatware's Dell laptop and an identical document was also found on his Samsung laptop, both of which were last modified on 19 April 2018. *See* Exhibit P110 (Olejniczak Supplemental Report), para. 61. Similarly, a document with the same file name was saved on one of Ngirabatware's contraband cellular phones. *See* Exhibit P104 (Murphy Report), paras. 127, 128, 131-144.

<sup>208</sup> *Compare* Exhibit P46, p. 2, row 10 *with* Exhibit P179 (Hirwa's Bank Records, 1-30 November 2015), p. 1, entry 2; *compare* Exhibit P46, p. 2, row 23 *with* Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 2, entry 3; *compare* Exhibit P46, p. 3, row 2 *with* Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 4, entry 1; *compare* Exhibit P46, p. 3, row 3 *with* Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 3, entry 2; *compare*

context, and when viewing the record as a whole, Exhibit P46 functions as a highly reliable piece of evidence in terms of tracking monies made available to Hirwa – *i.e.* Nzabonimpa – as Ngirabatware sought to have his convictions overturned.

66. Turning to Exhibit P229 – the spreadsheet extracted from Nzabonimpa’s external hard drive<sup>209</sup> – I do not find Nzabonimpa’s suggestion that it has no evidentiary value rooted in a reasonable interpretation of the record. The evidence demonstrates that the document was extracted from Nzabonimpa’s external hard drive – obtained at the time of his arrest – with no evidence of modification to the document after its seizure.<sup>210</sup> The document is entitled “aaaafffeeeee”,<sup>211</sup> which corresponds almost identically to the name under which Nzabonimpa saved Ngirabatware’s telephone number on his mobile telephone device.<sup>212</sup> In several respects, entries in Exhibit P229 correspond to entries of payments to Hirwa – *i.e.* Nzabonimpa – as reflected on Ngirabatware’s financial spreadsheet.<sup>213</sup> As reflected in the Judgement, there is also a considerable body of, for example, electronically recorded financial transactions that correspond to entries in Exhibit P229 as well as other circumstantial corroboration demonstrating that Exhibit P229 was used to track incoming and outgoing payments directly related to facilitating Ngirabatware’s efforts at overturning his convictions.<sup>214</sup>

67. Nzabonimpa points to no evidence that might reasonably suggest that Exhibit P229 bears no relevance to financial transactions occurring in the context of obtaining a review of Ngirabatware’s convictions. To the contrary, the dates in the spreadsheet and the code names used for the Recanting

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Exhibit P46, p. 4, row 1 (via “Merin”) *with* Exhibit P168 (Hirwa Bank Records, 1-31 December 2016), p. 1, entry 8 (from Dodzi Sossou Kwami).

<sup>209</sup> See Exhibit P109 (Olejniczak Report), paras. 53-58 (assessing the external hard drive’s attributions, and identifying certain application user names that are undeniably attributable to Nzabonimpa). See also Exhibit P77 (Statement of Seizure: Nzabonimpa).

<sup>210</sup> See Exhibit P229 (with ERN number KA15-1226-1228); Exhibit P77 (Statement of Seizure: Nzabonimpa); Exhibit P109 (Olejniczak Report), paras. 64, 65 (noting that the document was created on 15 August 2015, last edited on 9 February 2018, with the author and last editor marked as “user”). Notably, I previously relied upon Witness Olejniczak’s findings that “no evidence that any of the Reference Files present [on the hard drive seized from Nzabonimpa] were created or modified after the date of seizure” in finding unpersuasive Defence arguments related to purported irregularities in the handling of seized devices by the Rwandan authorities and gaps in information in relation to documents that were obtained from Nzabonimpa’s external hard drive. See Decision on First Bar Table Motion, para. 38, n. 98. No new evidence or arguments have been presented that raise any questions as to the validity of this conclusion.

<sup>211</sup> See Exhibit P112 (Olejniczak Verified Supplement of Extractions), p. 3.

<sup>212</sup> See, *e.g.*, Exhibit P200 (text from “aaaaffrrreeeee” to Nzabonimpa on 19 December 2017) (“The decision allowing PR to resign is out. The Chamber ordered that I have a new lawyer, and the dates from 8/2 to 16 / which were scheduled for the hearing have been cancelled, to allow the new one to prepare him/herself and that a new scheduling order will be issued.”). The message’s timing and content – concerning the Appeals Chamber’s decision on Peter Robinson’s withdrawal – as well as the telephone number’s location of Tanzania – where Ngirabatware was detained in the UNDF – without any doubt demonstrate that “aaaaffrrreeeee” is Ngirabatware. See also Exhibit P571 (text from Nzabonimpa to “aaaaffrrreeeee” on 30 May 2018); Prosecution Final Trial Brief, Annexes B.1 and B.2.

<sup>213</sup> Compare, *e.g.*, Exhibit P229, p. 1, row 2 *with* Exhibit P46, p. 1, row 4.

<sup>214</sup> See Section II.B.1; Section II.C.1, 2, 4, 5, 6; Section II.D.1, 2.

Witnesses, Intermediaries, and Accused that are employed throughout it belie this position.<sup>215</sup> The spreadsheet – when considered within the context of the relevant evidence – demonstrates beyond reasonable doubt that: (i) column A purports to represent the dates or approximate dates of payments made by Nzabonimpa; (ii) column B purports to list the payees; (iii) column C purports to detail amounts paid to payees in Rwandan francs; (iv) column I purports to indicate the amount in euros received by Nzabonimpa (or by Hirwa on Nzabonimpa’s behalf) from Ngirabatware (and intermediaries used by him); and (v) column J purports to represent the anticipated, actual, or approximate date such amounts were either paid by Ngirabatware or received from him by Nzabonimpa or Hirwa.

68. Finally, Nzabonimpa’s suggestion that there is a reasonable possibility that the spreadsheet was maintained by someone other than himself is not rooted in evidence and not supported by reasonable inference. To the contrary, the record demonstrates that Nzabonimpa maintained the spreadsheet as a record of monies received and paid in the context of Ngirabatware’s anticipated review proceedings. That fact that different code names were not always used consistently or dates may have been recorded in different manners does not reasonably suggest that this document was maintained by someone other than Nzabonimpa. Rather it reflects the working nature of the document, maintained by an individual, who was busy with other obligations during periods charged in his indictment.<sup>216</sup> Whether, in fact, the transactions listed in Exhibit P229 occurred and for what specific purposes will be determined as necessary and on a case-by-case basis.

## 2. Payment: June 2015

69. Paragraph 23(i) of the *Ngirabatware* Indictment alleges that, on or about 25 June 2015, Ngirabatware gave Nzabonimpa 2,000 euros, which Nzabonimpa used towards bribing the Recanting Witnesses and Intermediaries.<sup>217</sup> The Prosecution underlines that Ngirabatware made this amount available to Nzabonimpa for such purpose shortly after contacting Robinson to initiate a review of his convictions and relies on the spreadsheets extracted from Nzabonimpa’s and Ngirabatware’s devices to establish the allegation.<sup>218</sup>

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<sup>215</sup> For the purpose of Exhibit P229, I am satisfied that the record as a whole demonstrates that the diminutives or code names employed within the exhibit correspond to the persons identified in Annex A.1 and are supported with references in Annex A.2 of the Prosecution Final Trial Brief. *See* Section I.D.4.

<sup>216</sup> *See, e.g.*, T. 21 June 2021 p. 88.

<sup>217</sup> The specific payments allegedly made from these funds are also set forth in paragraphs 25(i) to 25(iv) of the *Nzabonimpa et al.* Indictment.

<sup>218</sup> Prosecution Final Trial Brief, paras. 44, 167, 174, n. 167. *See also* Prosecution Final Trial Brief, paras. 46, 52, 53, 63.

70. Ngirabatware does not contest that money was sent to Nzabonimpa as alleged in paragraph 23(i) of the *Ngirabatware* Indictment but contends that any monies paid by Nzabonimpa from funds provided by Ngirabatware were not illegal.<sup>219</sup> Nzabonimpa does not specifically address the allegation that he received money from Ngirabatware in June 2015 but generally argues that related payments allegedly made from such funds are not criminal.<sup>220</sup>

71. Having addressed these threshold considerations, I have no doubt that Exhibits P229 and P46, when considered in the context of the record as a whole, demonstrate that Ngirabatware made 2,000 euros available to Nzabonimpa in June 2015. This allocation of funds has corresponding entries in both spreadsheets,<sup>221</sup> and precedes organized activity aimed at initiating Ngirabatware's review of his convictions.<sup>222</sup> Furthermore, I find that this payment – a substantial sum and made in the shadows of any official defence activity – was used for the purpose of inducing the eventual cooperation from the Recanting Witnesses and Intermediaries in order to overturn Ngirabatware's convictions. This practice was repeated over the next three years and, although at the time of this payment Ngirabatware's Defence team may not have been formally recognized by the Mechanism,<sup>223</sup> the payment corresponds to a practice of paying informal supporters to assist shadow efforts aimed at drumming up evidence and cooperation throughout the charged period.

### 3. Payment: October/November 2015 and February/March 2016

72. Paragraph 23(ii) of the *Ngirabatware* Indictment alleges that, on or about 29 and 30 October 2015, Ngirabatware gave Nzabonimpa 5,000 euros through Hirwa and that Nzabonimpa used this money towards bribing the Recanting Witnesses and Intermediaries in exchange for their cooperation with the Ngirabatware Defence and to influence their prospective evidence.<sup>224</sup> Paragraphs 23(iii) and (iv) of this indictment also allege that, for the same purpose: (i) on or about 15 February 2016, Ngirabatware gave Nzabonimpa 2,000 euros through Hirwa; and (ii) between on

<sup>219</sup> See, e.g., Ngirabatware Final Trial Brief, paras. 93-96, 160-180, 216; T. 22 June 2021 pp. 56, 57, 69.

<sup>220</sup> See Nzabonimpa Final Trial Brief, paras. 419-455.

<sup>221</sup> See Exhibit P229, p. 1, row 2 (recording "2000" in column I, and "juin 2015" in column J); Exhibit P46, p. 1, row 4 (recording "25.06.2015", "Vumbi" [Nzabonimpa], and "€ 2000" in the "Dates", "Bénéficiaire/Utilisation", and "Montant" columns, respectively).

<sup>222</sup> There is evidence that shortly after, in July 2015, Turinabo started contacting Intermediaries who were used as conduits in relation to the Recanting Witnesses. See Exhibit 1D10, call reference numbers 8282 and 8283, 8316 and 8317, 8343 and 8344, 8356 and 8357, 8400 and 1 [sic], 11280 and 2 [sic]. Furthermore, Maniraguha and Turinabo met with Witness MT1 in Kampala, Uganda in July 2015. See Witness MT1, 18 March 2021 p. 36; Exhibit P46, p. 1, rows 1, 2.

<sup>223</sup> Munyeshuli's testimony reflects that Robinson was in touch with him about assisting Ngirabatware in a request for review in June 2015. See Munyeshuli, T. 8 April 2021 p. 69. Ngirabatware signed a power of attorney allowing Robinson to represent him with respect to a prospective request for review in mid-August 2015. See Munyeshuli, T. 8 April 2021 pp. 69, 70; Exhibits P1708, P1712.

<sup>224</sup> The specific payments allegedly made from these funds are also set forth in paragraphs 25(v) and 25(vi) of the *Nzabonimpa et al.* Indictment.



or about 26 February and 16 March 2016, Ngirabatware gave Nzabonimpa a total amount of 6,000 euros through Hirwa.<sup>225</sup> The Prosecution principally relies on bank records, communications evidence, and the spreadsheets extracted from Ngirabatware's and Nzabonimpa's devices in support of these allegations.<sup>226</sup>

73. Ngirabatware does not specifically dispute that these payments were made to Nzabonimpa but generally contends that no money was provided by him with criminal intent.<sup>227</sup> Nzabonimpa argues that it is inappropriate to rely on Hirwa's bank records in the absence of cross-examination and that the Prosecution has not proven, *inter alia*, that any payments made to Hirwa were criminal.<sup>228</sup> Nzabonimpa also generally submits that related payments allegedly made from these funds cannot be deemed as bribes.<sup>229</sup>

74. The Prosecution has established beyond reasonable doubt that, using Hirwa as an intermediary, Ngirabatware made 5,000 euros available to Nzabonimpa in early November 2015. Specifically, Ngirabatware's spreadsheet records a payment of 5,000 euros to Hirwa through "Bosenibamwe" dated for 29 through 30 October 2015.<sup>230</sup> This notation is corroborated by Hirwa's bank records, which reflect a deposit for the same amount from the same individual on 6 November 2015 with the caption "*Message de Ngirabatware Aug*".<sup>231</sup> Furthermore, the spreadsheet extracted from Nzabonimpa's external hard drive also records that a sum of 5,000 euros was received in November 2015.<sup>232</sup>

75. As it relates to the alleged later payments in February and March 2016, the spreadsheet extracted from Ngirabatware's computer shows a payment of 2,000 euros to "HH (via Nadine)" on 15 February 2016<sup>233</sup> and Hirwa's bank records reflect receipt of the same amount from Nadine Dushimiyimana on 17 February 2016.<sup>234</sup> Furthermore, Nzabonimpa's financial spreadsheet

<sup>225</sup> The specific payments allegedly made from these funds are also set forth in paragraphs 25(vii) to 25(xii) of the *Nzabonimpa et al.* Indictment.

<sup>226</sup> See Prosecution Final Trial Brief, paras. 15-20, 44, 71, 72, 76, 77, 87, 90, 95, 167, 174, 181.

<sup>227</sup> See generally Ngirabatware Final Trial Brief, paras. 94-96, 160-180, 215-232, 234, 295-299, pp. 17, 33, 56, 82; T. 22 June 2021 pp. 56, 57, 69.

<sup>228</sup> See Nzabonimpa Final Trial Brief, paras. 496-500.

<sup>229</sup> See Nzabonimpa Final Trial Brief, paras. 419-429, 456-491.

<sup>230</sup> See Exhibit P46, p. 2, row 10 (recording "29.10-30.2015", "Bosenibamwe- Hirwa H.", and "€ 5000" in the "*Dates*", "*Bénéficiaire/Utilisation*", and "*Montant*" columns, respectively).

<sup>231</sup> See Exhibit P179 (Hirwa's Bank Records, 1-30 November 2015), p. 1, entry 2 (reflecting a payment on 6 November 2015 of 5,000 euros from Aimable Bosenibamwe). See also Exhibit P184, p. 7.

<sup>232</sup> See Exhibit P229, row 26 (recording "5000" and "Nov-15" in columns I and J).

<sup>233</sup> Exhibit P46, p. 2, row 23 (recording "15.02.2016" and "€ 2000" in the "*Dates*" and "*Montant*" columns, respectively).

<sup>234</sup> Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 2, entry 3 (reflecting a payment on 17 February 2016 of 2,000 euros from Nadine Dushimiyimana). See also Exhibit P184, p. 8.

reflects a credit of 2,000 euros on 17 February 2016.<sup>235</sup> Likewise, entries in Ngirabatware’s spreadsheet reflect payments of 3,000 euros to Hirwa on 26 and 29 February 2016 “via Nadine” and “via Nkezabera”, respectively.<sup>236</sup> These notations again correspond to bank records reflecting payments of 3,000 euros received by Hirwa from Oscar Nkezabera on 29 February 2016 and Nadine Dushimiyimana on 1 March 2016.<sup>237</sup> The spreadsheet extracted from Nzabonimpa’s external hard drive further corroborates payments received of 3,000 euros each on 29 February and 1 March 2016.<sup>238</sup>

76. Furthermore, the record demonstrates that payments to Hirwa were followed by immediate or delayed payments to Nzabonimpa. Hirwa’s bank records reflect the deposit of 2,000 euros into Nzabonimpa’s account on 16 February 2016,<sup>239</sup> and Nzabonimpa’s bank notified him the next day of a roughly equivalent deposit in Rwandan francs.<sup>240</sup> Hirwa’s bank records further reflect that he transferred 1,990 euros to Nzabonimpa on 24 February 2016,<sup>241</sup> which corresponds to a bank alert received by Nzabonimpa the next day.<sup>242</sup>

77. Likewise, Hirwa’s bank records show a 2,000 euro transfer to Nzabonimpa on 3 June 2016,<sup>243</sup> as well as transfers of 850 euros on 16 August 2016, 2,500 euros on 23 August 2016, and 2,000 euros on 29 August 2016.<sup>244</sup> Finally, and consistent with later payments directed at Nzabonimpa – and referred to as “home” – Hirwa also funnelled 3,000 euros to

<sup>235</sup> Exhibit P229, row 65 (recording “2000” and “17 fev 2016” in columns I and J).

<sup>236</sup> Exhibit P46, p. 3, rows 2 and 3 (recording “26.02.2016” and “29.02.2016”, “€. 3’000”, and “HH (via Nadine)” and “HH (via Nkezabera)” in the “*Dates*”, “*Montant*”, and “*Dates et OBJETS*” columns, respectively).

<sup>237</sup> Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 3, entry 2 (reflecting a payment on 29 February 2016 of 3,000 euros from “Oscar Nkezabera”); (Hirwa Bank Records, 1-31 March 2016), p. 4, entry 1 (reflecting a payment on 1 March 2016 of 3,000 euros from “Dushimiyimana Nadine”). *See also* Exhibit P184, pp. 9, 10.

<sup>238</sup> *See* Exhibit P229, rows 71, 72 (recording “3000” in column I and “29 fev” and “01 mars” in column J).

<sup>239</sup> Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 2, entry 1 (reflecting a payment on 16 February 2016 of 2,000 euros to Nzabonimpa).

<sup>240</sup> Exhibit P161 (text message from Bke Bank to Nzabonimpa on 17 February 2016) (notifying of a credit of 1,529,070 Rwandan francs).

<sup>241</sup> Exhibit P156 (Hirwa Bank Records, 1-29 February 2016), p. 2, entry 7 (reflecting a payment on 24 February 2016 of 1,990 euros to Nzabonimpa).

<sup>242</sup> Exhibit P171 (text message from Bke Bank to Nzabonimpa on 25 February 2016) (notifying of a credit of 1,521,220 Rwandan francs).

<sup>243</sup> Exhibit P160 (Hirwa Bank records, 1-30 June 2016), p. 1, entry 1.

<sup>244</sup> Exhibit P176 (Hirwa Bank Records, 1 July through 31 August 2016), p. 3, entries 1 (reflecting a payment on 16 August 2016 of 850 euros to Nzabonimpa), 3 (reflecting a payment on 23 August 2016 of 2,500 euros to Nzabonimpa), 5 (reflecting a payment on 29 August 2016 of 2,000 euros to Nzabonimpa); Exhibit P146 (text message from Bke Bank to Nzabonimpa on 23 August 2016) (notifying of a credit of 2,104,700 Rwandan francs with the same message – “*ngayo yamafaranga*” – that was contained in Hirwa’s bank transfers on 16 and 23 August 2016). These later payments roughly correspond with an additional 3,500 euros that Hirwa received in June and July 2016 that are also reflected in the spreadsheet extracted from Nzabonimpa’s external hard drive. *Compare* Exhibit P229, p. 2, row 98 (recording “2000” and “27 juin” in columns I and J) *with* Exhibit P160 (Hirwa Bank records, 1-30 June 2016), p. 2, entry 6 (reflecting a payment on 27 June 2016 of 2,000 euros from Dozi Sossou Kwami) *and* Exhibit P184, p. 11; *compare* Exhibit P229, p. 2, row 109 (recording “1500” and “27 juillet” in columns I and J) *with* Exhibit P176 (Hirwa Bank Records, 1 July through 31 August 2016), p. 1, entry 7 (reflecting a payment on 25 July 2016 of 1,500 euros from Dozi Sossou Kwami) *and* Exhibit P184, p. 12.

Nzabonimpa through Marie Büttner-Mukantagara with payments made to her on 30 and 31 August 2016.<sup>245</sup> Money continued to flow into Hirwa’s account in mid-July 2017<sup>246</sup> and at the end of July 2017,<sup>247</sup> with corresponding amounts then funnelled to Nzabonimpa through bank transfer<sup>248</sup> or by delivery through a third party.<sup>249</sup>

78. In light of all of the above, the record raises the reasonable possibility that not all money Ngirabatware provided to Hirwa necessarily made it to Nzabonimpa, or made it immediately.<sup>250</sup> However, the only reasonable conclusion is that the charged payments of money that Ngirabatware transferred to Hirwa – collectively reflected in Ngirabatware’s and Nzabonimpa’s spreadsheets and corresponding bank transfers to Hirwa – were intended to infuse financial support to Nzabonimpa that he could direct for the purpose of obtaining cooperation with the Ngirabatware Defence from the Recanting Witnesses and Intermediaries and of influencing their prospective evidence by ensuring that it remained favourable as Ngirabatware sought to have his convictions overturned. That the money was intended to be used to pay the Recanting Witnesses is underscored, in part, by the notation in Ngirabatware’s spreadsheet that the October/November 2015 payment was for the “4 colis” in the “*Dates et Objet*” column.<sup>251</sup>

<sup>245</sup> See Exhibit P176 (Hirwa Bank Records, 1 July through 31 August 2016), p. 3, entry 6 (reflecting a transfer of 2,500 euros from Hirwa to Marie Büttner-Mukantagara on 30 August 2016 with the notation “*Amafaranga yo nohereje mu rugo*”), p. 4, entry 1 (reflecting a transfer of 500 euros from Hirwa to Marie Büttner-Mukantagara on 31 August 2016 with the notation “*Igice cyari gisigaye ku ma faranga nzohereza mu rugo*”). See also Exhibit P184, pp. 14, 15.

<sup>246</sup> See Exhibit P152 (Hirwa Bank Records, 1-31 July 2017), p. 1, entry 6 (reflecting a deposit of 490 euros from Dodzi Sossou Kwami to Hirwa on 17 July 2017); Exhibit P184, p. 19. This deposit was far below the expected amount of 5,000 euros, which was rectified through the following deposit of 4,230 euros in Hirwa’s account on 28 July 2017. See, e.g., Exhibit P641 (text from Hirwa to Nzabonimpa on 17 July 2017 at 12:12:55) (“I see they sent 490 Euros”); Exhibit P650 (text from Nzabonimpa to Hirwa on 17 July 2017 at 12:16:53) (“They were supposed to send 5000 euros. But now you are saying 490 or 4900? Send it to the bank immediately”); Exhibit P642 (text from Hirwa to Nzabonimpa on 17 July 2017 at 12:38:04) (“It is 490 it is what I can see”); Exhibit P201 (text from Hirwa to Nzabonimpa on 17 July 2017 at 12:38:30) (“Maybe they’ll send it in instal[l]ments”). See also Exhibits P643, P644, and P645.

<sup>247</sup> Exhibit P152 (Hirwa Bank Records, 1-31 July 2017), p. 2, entry 2 (reflecting a deposit of 4,230 euros from Dodzi Sossou Kwami to Hirwa on 28 July 2017); Exhibit P184, p. 20.

<sup>248</sup> Exhibit P152 (Hirwa Bank Records, 1-31 July 2017), p. 2, entry 5 (reflecting a transfer of 2,500 euros from Hirwa to Nzabonimpa on 31 July 2017).

<sup>249</sup> See Exhibit P152 (Hirwa Bank Records, 1-31 July 2017), p. 3, entry 6 (reflecting a transfer of 2,500 euros from Hirwa to Marie Büttner-Mukantagara on 2 August 2017); Exhibit P184, p. 21. See also Exhibit P657 (text from Hirwa to Nzabonimpa on 31 July 2017 at 6:23:18) (“If it was not so urgent I would have given it to Madeleine next week. I heard her say that she is coming next week”); Exhibit P658 (text from Nzabonimpa to Hirwa on 31 July 2017 at 12:19:18) (“Ok, give the one you were supposed to send tomorrow to Madeleine. I’ll arrange the rest. If she is coming next week let me wait”); Exhibit P653 (text from Hirwa to Nzabonimpa on 2 August 2017 at 8:28:09) (“I sent the money to Madeleine, so it will reach you next week”); Exhibit P702 (text from Nzabonimpa to Nzabonimpa on 11 August 2017 at 11:54:18) (“So, mado has 2500 euros. There is 2200 for the other man’s affairs [*i.e.* Ngirabatware], 200 for Ariane’s laptop and 80 for Jules to utilise in the purchase of the legs for his machine.”).

<sup>250</sup> See Prosecution Final Trial Brief, n. 38.

<sup>251</sup> The record is replete with the Accused using the term “plots” – the translation of “*colis*” – in reference to the Recanting Witnesses in October and November 2015. See, e.g., Exhibit P234 (text from Turinabo to Nzabonimpa on 18 October 2015) (“[...] The other lady is arriving on Wednesday, Twagira [Twagirayezu] from Gisa also called, when are we going to meet to plan about the management of plots?”); Exhibit P245 (text from Turinabo to Nzabonimpa on 22 October 2015) (“[...] the training has started, on the plots they found a lot of couch grass but there is hope. The

79. Similarly, the timing of Ngirabatware's transfers to Hirwa in late October 2015 and February and March 2016 track watershed moments in the efforts to obtain recantations and secure continued cooperation. Specifically, the transfer in October 2015 tracked with efforts aimed at obtaining the recantations letters from the Recanting Witnesses and the payments in February and March 2016 followed the mailing of recantation and consent letters obtained from them. The ensuing sections reflect that these transfers corresponded with payments in Rwanda to Recanting Witnesses and Intermediaries for the purpose of securing their cooperation with the Ngirabatware Defence. Furthermore, the same is true for the uncharged money transfers in July and August 2016 and July and August 2017 discussed above. As addressed in the sections below, they track critical periods where the Recanting Witnesses were expected to be interviewed by the Defence and Prosecution and corresponding payments were made.

80. Furthermore, I have carefully considered contentions that Ngirabatware did not have a funded Defence team and that his provision of funds to Nzabonimpa as well as amounts paid to the Recanting Witnesses and the Intermediaries are comparable to payments made by investigators working at the behest of the Mechanism. However, Ngirabatware made substantial amounts of money available to informal supporters – who were hidden from and not directly accountable to the Mechanism and the professional and ethical obligations it imposes on persons working for the Defence – at a time when Ngirabatware had recognized Defence assistance with respect to his proceedings before the Mechanism.<sup>252</sup> As discussed in the sections below, the charged payments correspond to the ongoing practice of paying informal supporters to assist shadow efforts aimed at securing and maintaining cooperation of persons who could give favourable evidence throughout the charged period.

81. Based on the foregoing, I find that Ngirabatware, through payments to Hirwa, made available to Nzabonimpa: (i) 5,000 euros on or about 29 and 30 October 2015; (ii) 2,000 euros on or about 15 February 2016; and (iii) a total of 6,000 euros on or about 26 February and 16 March 2016. I further find that Ngirabatware made these payments for the purpose of securing the Recanting Witnesses' and Intermediaries continued cooperation and to ensure that the Recanting Witnesses maintained their recantations as inquiries into Ngirabatware's anticipated review proceedings continued.

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owner of the plot asked for more on top of the gifts and Friday is the final because Tot [Defence] is returning on Saturday. [...]"); Exhibit P203 (text from Ndagijimana to Turinabo on 8 November 2015) (referring to Witness ANAM/TNN31 as a "plot"). *See also* Exhibit P372 (text from Turinabo to Nzabonimpa on 28 January 2016) (discussing the consent letters and referring to Witnesses ANAE/TNN30 and ANAM/TNN31 as "the 2 plots").

<sup>252</sup> The record reflects that Ngirabatware signed a power of attorney allowing Robinson to represent him with respect to a prospective request for review in mid-August 2015. *See* Exhibits P1708, P1712.

#### 4. Payment: December 2017

82. Paragraph 23(vi) of the *Ngirabatware* Indictment alleges that, between 12 and 21 December 2017, Ngirabatware coordinated with Nzabonimpa the transfer of money into the bank account of Hirwa with the intention of providing that money to Nzabonimpa for the purposes of paying the Recanting Witnesses.<sup>253</sup> The Prosecution principally relies on bank records and communications evidence in support of this allegation, contending that this transfer took place in the context of a series of bribes paid at the end of 2017 as the timing of the review hearing was delayed.<sup>254</sup>

83. Ngirabatware does not specifically dispute that the transfer of funds and related payment to Witness ANAN occurred in December 2017 but contends that they cannot be construed as criminal.<sup>255</sup> Nzabonimpa also argues that the allegation that he is responsible for the coordination of funds to Hirwa for the purposes of paying protected witnesses does not amount to criminal conduct and that the Prosecution failed to establish that Nzabonimpa was the one coordinating payments as well as the source of the funds, the means by which they were transferred to Hirwa and onwards to Nzabonimpa, and the purpose of such transfer of funds.<sup>256</sup> Nzabonimpa also disputes that any payment to Witness ANAN allegedly made from those funds was criminal.<sup>257</sup>

84. I note that communications evidence reflects multiple exchanges between Ngirabatware and Nzabonimpa during the relevant period coordinating the transfer of money into the bank account of Hirwa, as well as messages between Hirwa and Nzabonimpa discussing the provision of that money to Nzabonimpa.<sup>258</sup> Hirwa's bank records reflect a deposit of 2,490 euros on 15 December 2017,<sup>259</sup> after Hirwa was able to travel with the money.<sup>260</sup>

<sup>253</sup> The specific payments allegedly made from these funds are also set forth in in paragraph 25(xv) of the *Nzabonimpa et al.* Indictment.

<sup>254</sup> See Prosecution Final Trial Brief, paras. 116, 167, 174, n. 453.

<sup>255</sup> See Ngirabatware Final Trial Brief, paras. 160-174, p. 33.

<sup>256</sup> See Nzabonimpa Final Trial Brief, paras. 496-500.

<sup>257</sup> See Nzabonimpa Final Trial Brief, paras. 419-429, 501-505.

<sup>258</sup> See, e.g., Exhibit P621 (text from Nzabonimpa to Hirwa on 12 December 2017 at 6:59:44) (“Has the other man pass on the money through you? He wishes that you bring it”); Exhibit P625 (text from Hirwa to Nzabonimpa on 12 December 2017 at 8:16:31) (“It would help if he sent it and I bring it with me but then he would have to get it to me by Thursday”); Exhibit P689 (email from [Ngirabatware] to [Nzabonimpa] on 12 December 2017 at 20:15:14) (“[...] *Uwacu [Ngirabatware] a parlé de 2 500 000 pour la parcelle [witness] de chez nous et les autres ont compris 2 500 pour la parcelle de chez eux. Dans ce cas, c’est cela que hh [Hirwa] fera parvenir à Vum [Nzabonimpa] [...]*”); Exhibit P622 (text from Nzabonimpa to Hirwa on 14 December 2017 at 5:58:15) (“[...] The other man told me that you will bring me 2500. Check if it has come”); Exhibit P626 (text from Hirwa to Nzabonimpa on 14 December 2017 at 8:31:18) (“It has not yet arrived here”); Exhibit P513 (text from Nzabonimpa to Ngirabatware on 14 December 2017 at 8:34:12) (“Hh [Hirwa] wants the things to be completed today”); Exhibit P627 (text from Ngirabatware to Nzabonimpa on 14 December 2017 at 11:08:02) (“[...] did hh [Hirwa] last night, I hope on time!”); Exhibit P630 (text from

85. Notwithstanding, on 21 December 2017, Ndagijimana, Nzabonimpa, and Turinabo discussed how much money was needed for Witness ANAM/TNN31 and Twagirayezu,<sup>261</sup> and Nzabonimpa later confirmed to Ngirabatware on 21 December 2017 that: “2, 4 has reached its destination.”<sup>262</sup> I have also determined that the alleged payment to Witness ANAN was made on 28 December 2017.<sup>263</sup>

86. In view of the above, I find that the record establishes beyond reasonable doubt that, between 12 and 21 December 2017, Ngirabatware coordinated the transfer of funds to Nzabonimpa, through Hirwa, and instructed Nzabonimpa to make the payments as alleged, with the intention of providing that money to Nzabonimpa for the purposes of paying protected witnesses.

### **B. Interference Related to Witnesses ANAE/TNN30 and ANAM/TNN31**

87. Ngirabatware, Nzabonimpa, and Ndagijimana are charged with interference related to Witnesses ANAE/TNN30 and ANAM/TNN31, the two main Prosecution witnesses underpinning Ngirabatware’s conviction for genocide. Their indictments allege that the Accused directly or through others, including Maniraguha and Mukamisha, interfered with the administration of justice by: (i) pressuring or inducing Witness ANAE/TNN30 and Witness ANAM/TNN31 to recant their trial testimonies and cooperate with the Defence; (ii) directing them on what to say when requested to meet with the Prosecution or during interviews with Defence counsel; and (iii) offering or paying them money in exchange for their cooperation and to influence their prospective evidence.

#### **1. Pressure and/or Inducement**

88. The Prosecution charges that: (i) Witness ANAE/TNN30 was pressured to cooperate with the Defence in Kampala, Uganda in mid-August 2015; (ii) Witness ANAM/TNN31 was pressured or induced to sign a recantation letter between October and November 2015; and (iii) both witnesses were pressured in January 2016 at Mahoko market in Gisenyi to consent to meet with the

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Nzabonimpa to Hirwa on 14 December 2017 at 12:31:14 (“But he has informed me that he sent it in the evening. It is not yet too late. Check later whether they have sent it”).

<sup>259</sup> Exhibit P166 (Hirwa Bank Records, 1-31 December 2017), p. 1, entry 3 (reflecting a payment from Kwami Sossou of 2,490 euros on 15 December 2017). *See also* Exhibit P184, p. 22.

<sup>260</sup> Exhibit P631 (text from Nzabonimpa to Hirwa on 14 December 2017) (“Ok. We have to look for a way to get it to those it is supposed to go to when you get here”); Exhibit P517 (text from Nzabonimpa to Turinabo on 19 December 2017) (“He/she will let me know if there’s anything that has been deposited on Thursday”).

<sup>261</sup> Exhibit P520 (text from Ndagijimana to Nzabonimpa on 21 December 2017 at 7:01:46); Exhibit P522 (text from Nzabonimpa to Ndagijimana on 21 December 2017 at 7:09:38); Exhibit P521 (text from Turinabo to Nzabonimpa on 21 December 2017 at 17:55:42); Exhibit P523 (text from Nzabonimpa to Turinabo on 21 December 2017 at 18:13:44).

<sup>262</sup> Exhibit P632 (text from Nzabonimpa to Ngirabatware on 21 December 2017).

<sup>263</sup> *See* Section II.C.6.

Defence.<sup>264</sup> Ngirabatware, Nzabonimpa, and Ndagijimana challenge the credibility of the witness, dispute that any pressure was applied or their involvement in it, and contend that the witnesses genuinely recanted.<sup>265</sup>

89. It is not reasonably disputed, and I accept, that Witness ANAE/TNN30 travelled on an overnight bus to Kampala, Uganda, with Maniraguha, that, on arrival, she was greeted by Witness MT1, that Maniraguha met with Ngirabatware's Defence counsel, Peter Robinson, and that the two returned to Rwanda the next day. Certain basic facts concerning the recantation of Witness ANAM/TNN31 are also not in dispute, namely: (i) Ndagijimana phoned her on 21 October 2015, met with her at Mahoko market in Gisenyi on 22 October 2015 and again at Mukashima's home on 23 October 2015; and (ii) a recantation letter was prepared and Ndagijimana met with Witness ANAM/TNN31 in Remera, Kigali on 16 November 2015 where she signed the letter recanting her Ngirabatware trial testimony. I also accept Ndagijimana's testimony, which was candid and given against interest, that, after she signed, he provided her with 300,000 Rwandan francs with the promise of more.<sup>266</sup>

90. Turning to the Ngirabatware Defence's efforts to meet with these witnesses, there is also no dispute that Witnesses ANAE/TNN30 and ANAM/TNN31 initially refused to consent to meet with the Defence and that, on 27 January 2016, the witnesses signed pre-prepared consent letters provided by Ndagijimana in the presence of Maniraguha at Mahoko market in Gisenyi. The consent letters and Witness ANAM/TNN31's recantation letter were sent in February 2016 to the Mechanism via DHL.

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<sup>264</sup> *Nzabonimpa et al.* Indictment, paras. 21(i), 21(ii), 21(iv); *Ngirabatware* Indictment, paras. 20(i), 20(ii), 20(iv). *See also* Prosecution Final Trial Brief, paras. 26, 27, 29, 32, 45-50, 57-62, 73, 164, 171, 177. Although paragraph 21(iv) of the *Nzabonimpa et al.* Indictment and paragraph 20(iv) of the *Ngirabatware* Indictment stated that Witnesses ANAE/TNN30 and ANAM/TNN31 were pressured and/or *induced* to sign the consent letters at Mahoko market on 27 January 2016, the Prosecution Final Trial Brief makes clear that this allegation is being pursued solely on the basis of pressure. *See* Prosecution Final Trial Brief, paras. 32 (“[Witness ANAM/TNN31]’s evidence that she *was forced* to sign a pre-prepared Consent Letter at Mahoko Market is consistent with both [Witness ANAE/TNN30]’s and Ndagijimana’s testimony”), 73 (“On 27 January 2016, Ndagijimana and Maniraguha met [Witnesses ANAE/TNN30 and ANAM/TNN31] at Mahoko Market, where Ndagijimana *pressured* them to sign the Consent Letters”), 177 (“Ndagijimana, in particular: [...] was involved in actions *to pressure* [Witnesses ANAE/TNN30 and ANAM/TNN31] to meet with the Defence to discuss their recantations, including providing [Witnesses ANAE/TNN30 and ANAM/TNN31] with pre-written letters authored by Ngirabatware in which [Witnesses ANAE/TNN30 and ANAM/TNN31] purportedly agreed to meet with the Defence; and meeting with [Witnesses ANAE/TNN30 and ANAM/TNN31], with Maniraguha, at Mahoko Market on or about 27 January 2016, and *pressuring* [Witnesses ANAE/TNN30 and ANAM/TNN31] to sign these letters”) (emphasis added).

<sup>265</sup> Ngirabatware Final Trial Brief, paras. 181-199, 240-260; Nzabonimpa Final Trial Brief, paras. 196-271; Ndagijimana Final Trial Brief, paras. 4-15, 197-243, 388. *See also* Ndagijimana Final Trial Brief, paras. 118, 120-181, 245-270.

<sup>266</sup> Ndagijimana, T. 15 March 2021 pp. 54, 55.

91. A central tenet of the Prosecution's case is that Ngirabatware, Nzabonimpa, and Ndagijimana paid Witnesses ANAE/TNN30 and ANAM/TNN31 for their cooperation with the Ngirabatware Defence in connection with the review proceedings in amounts exceeding millions of Rwandan francs. The Accused acknowledge that payments were made over the course of several years, and, as discussed elsewhere in this Section, there is indeed ample evidence on the record to support this. The evidence also tends to show that this money was sought by Witnesses ANAE/TNN30 and ANAM/TNN31 as a condition precedent for their cooperation.

92. Against this backdrop, I find it highly problematic that Witnesses ANAE/TNN30<sup>267</sup> and ANAM/TNN31<sup>268</sup> both essentially denied receiving any money from the Accused other than perhaps periodic expenses for transport to various meetings. This raises very serious concerns about their credibility and their motivations for originally cooperating with the Ngirabatware Defence. The evidence strongly indicates that they cooperated for financial reasons and this raises considerable doubt with respect to the Prosecution's case, and the evidence of the two witnesses, that pressure was brought to bear on them and that they only cooperated based on fear. In this respect, I am also mindful of the transcript of an intercepted conversation from 3 August 2017 between Witnesses ANAE/TNN30 and ANAM/TNN31 wherein they appear to discuss the possible consequences of being charged based on their recantations and seemingly agree it would be preferable to maintain their original testimony and insist that they were instructed to recant.<sup>269</sup>

93. There are also examples where Witness ANAE/TNN30 denied at the review hearing that she was in contact with Witness ANAM/TNN31 at key points during the events.<sup>270</sup> However, there is extensive documentation of their contacts, concentrated around, for example, periods where the Witness Support and Protection Unit of the Mechanism ("WISP") was in contact with them or they were to meet with a party.<sup>271</sup> Witness ANAE/TNN30 also denied at the review hearing that she had the ability to write a SMS, and yet the record is replete with text messages from her to others.<sup>272</sup> These aspects of their testimony go to the core of their credibility in relation to the allegations

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<sup>267</sup> See, e.g., Witness ANAE/TNN30, T. 30 October 2020 pp. 18-20 ("Nobody ever gave me money. It is true that my ticket was paid for. That, I recognise. If I had needed money, I would have been given a lot of money, because those people do have money. [...] And if they have given me money, I would have said so. But I am not for sale and if that had been the case, I would have been given money. [...] Are you trying to say that I did not recant because they did not give me money? They do have money. But I have just told you that I am not for sale and I am incorruptible.").

<sup>268</sup> See, e.g., Witness ANAM/TNN31, T. 2 November 2020 p. 79 ("I explained wherefore I received the money that I received. It was for me to pay for my transportation fare. I did not receive any other amounts for any other reason.").

<sup>269</sup> See Exhibit 3D23 (intercept of Witness ANAE/TNN30 calling Witness ANAM/TNN31 on 3 August 2017), pp. 4-6.

<sup>270</sup> Witness ANAE/TNN30, T. 30 October 2020 pp. 15-18.

<sup>271</sup> Witness ANAE/TNN30, T. 27 October 2020 pp. 30-39, 81-88.

<sup>272</sup> Witness ANAE/TNN30, T. 30 October 2020 pp. 85-87.



against the Accused that are otherwise not disputed by the parties or corroborated by reliable evidence.

(a) Kampala, Uganda

94. Specifically, with respect to the trip to Uganda, as noted above, there is no dispute that Witness ANAE/TNN30 travelled to Kampala with Maniraguha in mid-August 2015, where they saw Witness MT1 and Maniraguha met with Robinson. However, Witness ANAE/TNN30's attempt to corroborate her purported fear of going to Kampala in August 2015<sup>273</sup> by pointing to a contemporaneous letter that she wrote to her parents on 15 August 2015<sup>274</sup> – the insisted date of departure – leaves the impression of a recent fabrication. The existence of this letter first came to light in her statement to the Prosecution of 20 January 2020, wherein she insists that she left for the two day trip with Maniraguha on a Thursday, 15 August 2015 and dated the letter that day before giving it to her parents prior to departure.<sup>275</sup> The problem with this statement is that there is documentary evidence placing Maniraguha's interview, and therefore her, in Kampala on 15 August 2015,<sup>276</sup> and immigration records show a return on 16 August 2015,<sup>277</sup> which means that she in fact left on 14 August 2015 in view of the overnight journey.<sup>278</sup>

95. As such, while I have no doubt that Witness ANAE/TNN30 travelled to Kampala, Uganda, the Prosecution has not proven beyond reasonable doubt that it was the result of fear or pressure. The more likely explanation is that there was a financial incentive, as discussed below. Given my concerns with her credibility, I can also not accept her uncorroborated assertion that she spoke by telephone directly with Ngirabatware. No Accused is charged with inducing Witness ANAE/TNN30 in relation to her trip to Kampala, Uganda, and I find that the Prosecution has not proven that any of them pressured her in connection with it.

96. Turning to a related allegation that Ngirabatware and Nzabonimpa paid a bribe of 350,000 Rwandan francs allegedly to Maniraguha in August 2015,<sup>279</sup> it is not disputed that the subject of Maniraguha's interview with Robinson in Kampala was the anticipated recantation of Witness

<sup>273</sup> Witness ANAE/TNN30, T. 26 October 2020 pp. 22, 23, 26-31; T. 30 October 2020 pp. 57, 58.

<sup>274</sup> Witness ANAE/TNN30, T. 26 October 2020 pp. 21-26; T. 27 October 2020 pp. 10-12; T. 30 October 2020 pp. 74, 87, 88; Exhibit P2.

<sup>275</sup> T. 27 October 2020 pp. 18, 19. *See also* Exhibit 1D1, paras. 5, 7.

<sup>276</sup> Exhibit 1D4, p. 1.

<sup>277</sup> Exhibit 1D2, p. 2.

<sup>278</sup> Moreover, 15 August 2015 was a Thursday only in 2019, which suggest that this letter and the information for her 20 January 2020 statement may have been produced with the assistance of a recent calendar.

<sup>279</sup> *Nzabonimpa et al.* Indictment, para. 25(i); *Ngirabatware* Indictment, para. 23(i)(a). *See also* Prosecution Final Trial Brief, paras. 46, 167, 174; Nzabonimpa Final Trial Brief, paras. 536, 537 (arguing that the evidence for this allegation is “negligible” and does not demonstrate that the payment was intended to improperly influence Witness ANAE/TNN30).

ANAE/TNN30.<sup>280</sup> Support for this payment to Maniraguha comes from the spreadsheets retrieved from Nzabonimpa's external hard drive and Ngirabatware's computer which shows that Ngirabatware made 2,000 euros available to Nzabonimpa around 25 June 2015<sup>281</sup> and that Nzabonimpa received that money the same month.<sup>282</sup> The spreadsheet retrieved from Nzabonimpa's external hard drive further suggests that he paid a portion of these funds, specifically 350,000 Rwandan francs, to Maniraguha.<sup>283</sup>

97. Although there is no other evidence that this payment was made, such as Mobile Money records, I am convinced given the pattern of payments in this case that the entry on the spreadsheet indicates that a payment was indeed made and done so with the purpose of securing Maniraguha's cooperation with the Ngirabatware Defence. In this respect, Witness MT1 acknowledged paying for Maniraguha's and Witness ANAE/TNN30's lodging, but he did not pay for their travel.<sup>284</sup> There simply is no other explanation for how Maniraguha and Witness ANAE/TNN30 would have been able to travel to Kampala, Uganda or why they would have done so without some form of financial incentive from the Accused.

(b) Witness ANAM/TNN31's Recantation

98. Along the same lines as with Witness ANAE/TNN30, I have considerable doubt that Witness ANAM/TNN31 agreed to recant in October and November 2015 based on her account of threats from Ndagijimana.<sup>285</sup> I am mindful that there is some corroboration to her account in the form of testimony from Witness TNN11.<sup>286</sup> The other evidence, including from Ndagijimana who testified about paying Witness ANAM/TNN31 300,000 Rwandan francs after she signed her recantation letter,<sup>287</sup> and the other evidence of payments made discussed in this Judgement, however, strongly indicate that the motive was financial, and I accept that this is the more reasonable explanation for her cooperation based on the record as a whole.

99. In this respect, the evidence does show that Witness ANAM/TNN31 was induced to sign the recantation letter in November 2015 by the payment or promise of payment of an extensive

<sup>280</sup> Exhibit 1D4, pp. 1-3.

<sup>281</sup> See Exhibit P46, p. 1, row 4 (recording "25.06.2015", "Vumbi", and "€ 2000" in the "Dates", "Bénéficiaire/Utilisation", and "Montant" columns, respectively). In the context of this specific transaction and in light of the considerable evidence reflecting Nzabonimpa was referred to as "Vumbi", there is no doubt that "Vumbi" is a reference to Nzabonimpa on Ngirabatware's spreadsheet.

<sup>282</sup> See Exhibit P229, p. 1, row 2 (recording "2000" in column I, and "juin 2015" in column J).

<sup>283</sup> Exhibit P229, p. 1, row 3 (recording "L" [Maniraguha] in column B and "350,000" in column C).

<sup>284</sup> Witness MT1, T. 18 March 2021 pp. 52, 53.

<sup>285</sup> Witness ANAM/TNN31, T. 2 November 2020 pp. 10-17.

<sup>286</sup> See, e.g., Witness TNN11, T. 9 November 2020 pp. 45-51. In this respect, I am also mindful of Witness TNN11's status in this case and view her evidence with caution.

amount of money. Ndagijimana testified that Witness ANAM/TNN31 sought 1,500,000 Rwandan francs during his meeting with her at Mukamisha's house on 23 October 2015 and that he paid her 300,000 Rwandan francs as an initial payment on 16 November 2015 after she signed the letter.<sup>288</sup> Ndagijimana's testimony also extensively discusses other payments he made to the witness, which he believed totalled 1,500,000 Rwandan francs,<sup>289</sup> and as discussed below there is clear evidence of continued payments until 2018. Even if Ndagijimana may have sincerely believed that Witness ANAM/TNN31 was genuinely recanting, these payments were made to ensure her cooperation with the Defence. There is also no other reasonable explanation than that this was done at the behalf of Ngirabatware.

100. Turning to the recantation letter, it is alleged that it was prepared by Ngirabatware and transmitted to Nzabonimpa for Witness ANAM/TNN31 to sign and later transmitted to the Mechanism by Nzabonimpa by DHL.<sup>290</sup> The Prosecution submits that similarities in the three recantation letters sent to the Mechanism as well as draft versions of Witness ANAM/TNN31's recantation letter extracted from electronic devices belonging to Nzabonimpa and Ngirabatware prove that Ngirabatware prepared the letter.<sup>291</sup> Ngirabatware disputes that he prepared Witness ANAM/TNN31's letter pointing to forensic evidence that he possessed a copy only on 16 November 2015, the date of signing, and that the metadata suggests that the first copy is the same in terms of content as the version that Nzabonimpa saved and printed on 14 November 2015.<sup>292</sup> Nzabonimpa submits that the metadata is unreliable in showing the transmission of the document to Witness ANAM/TNN31 and also that mailing the letter cannot amount to contempt.<sup>293</sup> Ndagijimana testified that the letter was printed and given to him by Nzabonimpa, who asked him to have Witness ANAM/TNN31 sign it.<sup>294</sup>

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<sup>287</sup> Ndagijimana, T. 15 March 2021 pp. 54, 55.

<sup>288</sup> Ndagijimana, T. 15 March 2021 pp. 50-59. I am mindful that Ndagijimana's testimony indicates that, in his view, the witness did not know that she was going to receive the money until after she signed. In my view, this does not alter the fact that it would have been expected and that the Accused knew that was the price to pay for her cooperation. *See* Ndagijimana, T. 15 March 2021 p. 54 ("We explained to [Nzabonimpa] the details regarding my meeting with Witness [ANAM/TNN31] in the home of [Mukamisha], and I added the fact that after my meeting with her, she had asked for 1.5 million Rwandan francs for the testimony she was going to give. [Nzabonimpa] was, in turn, surprised. However, he added that if Witness [ANAM/TNN31] is asking, as compensation for her testimony, 1.5 million Rwandan francs, well, if she indeed wants to recant her testimony, we can look for that amount of money and give her. If she's asking for that amount of money to tell the truth, to recant her testimony, we can find the wherewithal to give her the amount she's asking for.").

<sup>289</sup> Ndagijimana, T. 15 March 2021 pp. 58, 59.

<sup>290</sup> *Nzabonimpa et al.* Indictment, para. 21(iv); *Ngirabatware* Indictment, para. 20(iv). *See also* Prosecution Final Trial Brief, paras. 61, 62, 74, 164, 171.

<sup>291</sup> Prosecution Final Trial Brief, paras. 32, 61.

<sup>292</sup> Ngirabatware Final Trial Brief, paras. 248, 249.

<sup>293</sup> Nzabonimpa Final Trial Brief, paras. 252, 260, 261.

<sup>294</sup> Ndagijimana, T. 15 March 2021 p. 54.

101. For the purpose of this allegation, which bases criminal liability on the Accused pressuring and/or inducing Witness ANAM/TNN31 to recant her testimony, I find it unnecessary to delve into the finer points of who authored the recantation letter and its mailing. In my view, such actions could not amount to acts of pressure or inducement in the context of this case and are only background. The same is true for the allegations with respect to the preparation and mailing of the consent letters.<sup>295</sup>

(c) Mahoko market

102. For the concerns expressed above, I also do not accept the aspects of Witnesses ANAE/TNN30's and ANAM/TNN31's accounts of being pressured to meet with the Ngirabatware Defence at Mahoko market on 27 January 2016.

103. The Prosecution also charges a payment made to Witness ANAM/TNN31 on 25 January 2016 coordinated by Nzabonimpa and Ndagijimana in relation to the alleged pressure applied to her at Mahoko market in order to have her sign a letter consenting to meet Ngirabatware's counsel.<sup>296</sup> Ngirabatware argues that he had no knowledge of any specific payments to Witness ANAM/TNN31 and it was only intended that she be reimbursed for reasonable expenses, such as travel.<sup>297</sup> Nzabonimpa contends that the record fails to establish this payment occurred as alleged,<sup>298</sup> or, alternatively, that the payment is criminal.<sup>299</sup>

104. I have no doubt that Nzabonimpa, with the funds provided for by Ngirabatware and with the help of Ndagijimana, initiated a payment of approximately 30,000 Rwandan francs to Witness ANAM/TNN31 on 25 January 2016. Notably, that morning, Nzabonimpa withdrew 150,000 Rwandan francs from his bank.<sup>300</sup> Later that day Ndagijimana sent Nzabonimpa Witness ANAM/TNN31's phone number<sup>301</sup> and the two exchanged further texts with Nzabonimpa asking if "he/she has received it"<sup>302</sup> and Ndagijimana replying that "[h]e/she immediately informed me that

<sup>295</sup> See *Nzabonimpa et al.* Indictment, para. 21(iv); *Ngirabatware* Indictment, para. 20(iv).

<sup>296</sup> See *Nzabonimpa et al.* Indictment, para. 25(v); *Ngirabatware* Indictment, para. 23(ii)(a). See also Prosecution Final Trial Brief, paras. 72, 174, 181. The Prosecution points to un-pleaded payments around the time of the 19 January 2016 meeting with the WISP to, *inter alia*, Witnesses ANAE/TNN30 (through Maniraguha) and ANAM/TNN31. See Prosecution Final Trial Brief, para. 71, n. 271. I have considered this evidence but find it unnecessary to make any findings on it.

<sup>297</sup> See *Ngirabatware* Final Trial Brief, paras. 295, 296, 298.

<sup>298</sup> See *Nzabonimpa* Final Trial Brief, paras. 456, 457. See also *Nzabonimpa* Final Trial Brief, para. 133.

<sup>299</sup> See *Nzabonimpa* Final Trial Brief, paras. 458, 459. See also *Nzabonimpa* Final Trial Brief, para. 200.

<sup>300</sup> See Exhibit P182 (text from Bke Bank to Nzabonimpa on 25 January 2016 at 8:19:59).

<sup>301</sup> Exhibit P367 (text from Ndagijimana to Nzabonimpa on 25 January 2016 at 11:20:56) (sending Witness ANAM/TNN31's phone number). See also Exhibit P82.

<sup>302</sup> Exhibit P368 (text from Nzabonimpa to Ndagijimana on 25 January 2016 at 12:19:01).

he/she received it”.<sup>303</sup> That day, Witness ANAM/TNN31 received 29,750 Rwandan francs from a Mobile Money merchant<sup>304</sup> and a corresponding entry is found in Nzabonimpa’s payment sheet extracted from his external hard drive.<sup>305</sup>

(d) Conclusion

105. In sum, with respect to the allegations in the Indictment, I find established that Ngirabatware and Nzabonimpa paid Maniraguha 350,000 Rwandan francs in August 2015 to secure his cooperation with the Defence. I also find proven beyond reasonable doubt that Ngirabatware and Ndagijimana induced Witness ANAM/TNN31 to recant her testimony and that they paid her approximately 30,000 Rwandan francs on 25 January 2016 with the intent to secure her continued cooperation with the Defence. However, I do not find that the Prosecution has proven beyond reasonable doubt that Ngirabatware, Nzabonimpa, or Ndagijimana pressured Witnesses ANAE/TNN30 and ANAM/TNN31 to recant their testimony or to cooperate with the Defence.

2. Payments: February 2016

106. The *Nzabonimpa et al.* and *Ngirabatware* Indictments allege that, on 2 February 2016, Nzabonimpa, with money given from Ngirabatware, paid a “bribe” of 99,450 Rwandan francs each to Witnesses ANAE/TNN30 and ANAM/TNN31 in exchange for their cooperation with the Ngirabatware Defence and to influence their prospective evidence.<sup>306</sup> The Prosecution points to transaction and communications evidence as well as to the financial spreadsheet extracted from Nzabonimpa’s external hard drive in support of these allegations.<sup>307</sup>

107. Nzabonimpa argues that: (i) the evidence from the witnesses contradicts the allegation; (ii) the communications evidence, Mobile Money records, and spreadsheet relied upon by the Prosecution fail to establish the allegations beyond reasonable doubt; and (iii) the Prosecution takes inconsistent positions as to what this evidence demonstrates.<sup>308</sup> He contends, alternatively, that the

<sup>303</sup> Exhibit P370 (text from Ndagijimana to Nzabonimpa on 25 January 2016 at 12:20:58).

<sup>304</sup> See Exhibit P147, p. 1, row 25 (reflecting a payment on 25 January 2016 at 13:46 from a MTNR Merchant). In this respect, Witness ANAM/TNN31 testified that at this time she had a number ending in “68” and the number on this record corresponds with the telephone number attributed to her on her recantation letter. See Witness ANAM/TNN31, T. 2 November 2020 p. 8; Exhibit P9 (Witness ANAM/TNN31’s Recantation Letter).

<sup>305</sup> See Exhibit P229, p. 1, row 50 (reflecting a payment after 18 January 2015 to an individual identified by the first three letters of Witness ANAM/TNN31’s name with an amount of “30,000”).

<sup>306</sup> See *Nzabonimpa et al.* Indictment, para. 25(vi); *Ngirabatware* Indictment, para. 23(ii)(b). See also Prosecution Final Trial Brief, paras. 76, 174.

<sup>307</sup> Prosecution Final Trial Brief, para. 76, n. 298. The Prosecution alternates as to whether the bribe was paid to Witness ANAE/TNN30 (Prosecution Final Trial Brief, para. 174) or to Maniraguha (Prosecution Final Trial Brief, para. 76).

<sup>308</sup> See Nzabonimpa Final Trial Brief, paras. 460-464.

Prosecution has not established that the payments are criminal.<sup>309</sup> Ngirabatware generally argues that it is not disputed that money was paid to Witness ANAE/TNN30, although the Prosecution has not established they were criminal.<sup>310</sup> He further contends that he had no knowledge of specific sums of money being paid to Witness ANAM/TNN31 until he became aware of her demands for money in 2017 and that, in any event, payments made were not criminal.<sup>311</sup>

108. At the outset, I note that Witness ANAE/TNN30 testified that she had no recollection of receiving 99,450 Rwandan francs on 2 February 2016 or knowledge that Witness ANAM/TNN31 received the same amount on the same day.<sup>312</sup> Likewise, Witness ANAM/TNN31 did not testify to receiving the alleged payments from Nzabonimpa.

109. Notwithstanding, the record undeniably establishes that Nzabonimpa paid Witnesses ANAE/TNN30 and ANAM/TNN31 as alleged. Communications evidence reflects that, on 29 January 2016, Turinabo messaged Nzabonimpa that “means should be freed” in relation to the Recanting Witnesses,<sup>313</sup> just days after Witnesses ANAE/TNN30 and ANAM/TNN31 signed their letters at Mahoko market on 27 January 2019 consenting to meet with the Ngirabatware Defence.<sup>314</sup> Communications evidence further reflects that, on 1 February 2016, Nzabonimpa withdrew 320,000 Rwandan francs<sup>315</sup> and that, on 2 February 2016, the mobile phones attributable to Witnesses ANAM/TNN31 and ANAE/TNN30 each received the 99,450 Rwandan francs from the same MTNR Agent and two minutes apart.<sup>316</sup> Notably, the mobile phone attributable to Twagirayezu – Witness ANAT’s intermediary – was paid the same amount on the same day.<sup>317</sup>

110. Furthermore, the entries in the spreadsheet extracted from Nzabonimpa’s external hard drive corroborate these payments.<sup>318</sup> While one entry appears to correspond to Maniraguha rather than

<sup>309</sup> See Nzabonimpa Final Trial Brief, paras. 465, 466.

<sup>310</sup> See Ngirabatware Final Trial Brief, paras. 215-218, p. 56. Ngirabatware notably argues that Witness ANAE/TNN30 lied about money she received and was engaged in an extortion scheme. See Ngirabatware Final Trial Brief, paras. 220-226, 231, 234.

<sup>311</sup> See Ngirabatware Final Trial Brief, paras. 295-299, p. 82. Ngirabatware further argues that Witness ANAM/TNN31 lied about money that she received and was also engaged in an extortion scheme. See Ngirabatware Final Trial Brief, paras. 300-303, 309.

<sup>312</sup> Witness ANAE/TNN30, T. 27 October 2020 pp. 42-44.

<sup>313</sup> See Exhibit P373 (text from Turinabo to Nzabonimpa on 29 January 2016) (“Due to the front we are expecting next week that will converge those 4 plots of ours [Recanting Witnesses], I think means should be freed equivalent to the 4 [Recanting Witnesses] as a motivation to stay strong in front [...]”).

<sup>314</sup> See *supra* Section II.B.1.

<sup>315</sup> See Exhibit P142 (text from Bke Bank to Nzabonimpa on 1 February 2016).

<sup>316</sup> See Exhibit P147, p. 1, row 29 (reflecting a payment of 99,450 Rwandan francs on 2 February 2016 at 11:46 from a MTNR Merchant); Exhibit P170, p. 4, row 160 (reflecting a payment of 99,450 Rwandan francs on 2 February 2016 at 11:44 from the same MTNR Merchant who paid Witness ANAM/TNN31 minutes later).

<sup>317</sup> See Section II.D.2.

<sup>318</sup> See Exhibit P229, p. 1, rows 60-62 (reflecting payments on “02-Feb” of “100,000” to “L” [Maniraguha], the first three letters of Witness ANAM/TNN31’s name, and a code name attributable to Twagirayezu). In this context, I have

Witness ANAE/TNN30, when considering the proximity of the witness to Maniraguha and the specific phone records related to this transaction, I have no doubt that the reference to “L” in the spreadsheet is a reference to Witness ANAE/TNN30. Further circumstantial support that this payment was received by, *inter alia*, Witnesses ANAE/TNN30 and ANAM/TNN31 is found in the message sent by Turinabo later that day to Nzabonimpa that the “message [*i.e.* money] reached all the 3 and it had a very good effect”.<sup>319</sup> In view of the above, I find beyond reasonable doubt that Nzabonimpa paid Witnesses ANAE/TNN30 and ANAM/TNN31 99,450 Rwandan francs each.<sup>320</sup>

111. Turning to the purpose of these payments to Witnesses ANAE/TNN30 and ANAM/TNN31, I find that the denials of both witnesses that they were paid in relation to their willingness to recant are unbelievable. These payments, made shortly after both witnesses signed letters consenting to meet with the Ngirabatware Defence, were undoubtedly made to reward them for their cooperation and to secure their continued cooperation as preparations for the review of Ngirabatware’s convictions continued.<sup>321</sup> This conclusion is undeniable, given the credible evidence that both witnesses had already made substantial financial demands as a precondition for their cooperation,<sup>322</sup> and in view of the considerable demands for payments made subsequently that served as pre-conditions for their cooperation.<sup>323</sup>

112. I further find that this payment undeniably derived from funds made available by Ngirabatware and that Ngirabatware provided them for the purpose of ensuring cooperation from the Recanting Witnesses.<sup>324</sup> Again, there is simply no other reasonable explanation as to why Ngirabatware provided this money to Nzabonimpa. Indeed, attempts to argue that these funds were made available to cover reasonable Defence expenses associated with investigations are belied by their surreptitious nature, as they did not originate from Ngirabatware’s *pro bono* counsel or

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no doubt, when viewing the record as a whole and the specific phone records related to this transaction that “L” is a reference to Witness ANAE/TNN30.

<sup>319</sup> See Exhibit P374 (text from Turinabo to Nzabonimpa on 2 February 2016 at 15:53:36).

<sup>320</sup> In reaching this finding, I have considered Witness ANAE/TNN30’s evidence that Maniraguha occasionally used the same Mobile Money account this payment was made to; however, the witness had no knowledge of money being sent to this number for Maniraguha’s benefit. See Witness ANAE/TNN30, T. 26 October 2020 pp. 17, 55, 56, 61.

<sup>321</sup> Defence suggestions that these were aimed at covering reasonable expenses related to the investigation are undermined by the clandestine manner in which this occurred.

<sup>322</sup> Ndagijimana credibly testified that Witness ANAM/TNN31 asked for between 1,000,000 and 1,500,000 Rwandan francs as compensation for her agreement to sign the recantation letter, and that he later paid her 300,000 Rwandan francs as a first installment of this request when she signed the letter in Remera. See Ndagijimana, T. 15 March 2021 pp. 51, 55-57. Ndagijimana also credibly testified that, after Witness ANAE/TNN30 signed her consent letter to meet with Ngirabatware’s Defence, she told him that she should receive 3,000,000 Rwandan francs from those who were working on Ngirabatware’s case. See Ndagijimana, T. 15 March 2021 p. 68; T. 17 March 2021 p. 38. Ndagijimana acknowledged that he only first mentioned that Witness ANAM/TNN31 asked for money while testifying on 15 March 2021 and that he omitted this information from prior statements to conceal that her desire to recant was linked with her money issues. See Ndagijimana, T. 17 March 2021 pp. 39, 40, 41, 43-45.

<sup>323</sup> See Section II.B.4.

<sup>324</sup> See Section II.A.

recognized members of his Defence team,<sup>325</sup> who were conducting investigations in parallel. Furthermore, while Ngirabatware may not have known the specific circumstances surrounding the payments, the only reasonable inference is that he knew that the money given to Nzabonimpa would be used to pay the Recanting Witnesses, Intermediaries, and/or their supporters for the purpose of furthering his attempts to obtain their recantations and secure their cooperation in support of an anticipated request for review.

### 3. Training: June 2016

113. The *Nzabonimpa et al.* Indictment alleges that, in June 2016, Nzabonimpa used information prepared by Ngirabatware in instructing Witnesses ANAE/TNN30 and ANAM/TNN31 on what to say during their interviews with Ngirabatware's then Defence counsel, which took place on 5 July 2016.<sup>326</sup> The *Ngirabatware* Indictment alleges that, in June 2016, Ngirabatware prepared information that he intended Witnesses ANAE/TNN30 and ANAM/TNN31 to provide during interviews with his counsel that he sent to Nzabonimpa to instruct the witness, which Nzabonimpa did.<sup>327</sup>

114. The Prosecution principally relies on question and answer documents that were created in June 2016 and relate to the anticipated recantations of Witnesses ANAE/TNN30 and ANAM/TNN31 that were retrieved from Ngirabatware's laptops and Nzabonimpa's external hard drive as well as contemporaneous communications evidence, which it contends shows that Witnesses ANAE/TNN30 and ANAM/TNN31 were trained by Turinabo and Ndagijimana.<sup>328</sup> It further points to the training document authenticated by Witness ANAE/TNN30, which is similar to the question and answer document prepared by Ngirabatware.<sup>329</sup>

115. Ngirabatware contends that the forensic evidence reasonably demonstrates that he provided question only documents to Nzabonimpa, that Nzabonimpa filled in answers after the witnesses provided them, and that Witness ANAE/TNN30's testimony related to the training document she provided (Exhibit P5) is unreliable.<sup>330</sup> Nzabonimpa argues that testimonial and communications

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<sup>325</sup> See Exhibit P1708 (email exchanges reflecting that, at least by 17 August 2015, Ngirabatware had signed a power of attorney for Robinson); Exhibit P1712 (declaration of Robinson dated 19 February 2016), para. 2.

<sup>326</sup> *Nzabonimpa et al.* Indictment, para. 23(i). See also Prosecution Final Trial Brief, paras. 81, 82, 84, 173.

<sup>327</sup> *Ngirabatware* Indictment, para. 21(i). See also Prosecution Final Trial Brief, paras. 81-84, 165.

<sup>328</sup> Prosecution Final Trial Brief, paras. 81, 82.

<sup>329</sup> Prosecution Final Trial Brief, para. 82.

<sup>330</sup> Ngirabatware Final Trial Brief, paras. 200-206, 261-268.



evidence, as well as evidence deriving from extractions from his and Ngirabatware's devices, fail to establish that he trained Witnesses ANAE/TNN30 and ANAM/TNN31 as alleged.<sup>331</sup>

116. I note that Witness ANAE/TNN30 testified that, not long after the meeting at Mahoko market, Maniraguha and Ndagijimana presented her a document with questions but no answers that Maniraguha asked her to memorize.<sup>332</sup> When she asked how to answer, Maniraguha said that he would talk to "Uganga" – or "Maxi" Turinabo – for help,<sup>333</sup> and Maniraguha subsequently returned with handwritten answers to the questions.<sup>334</sup> Witness ANAE/TNN30 authenticated Exhibit P5 as the document, which she provided to the Prosecution in August 2020.<sup>335</sup> During the witness's subsequent meeting on 5 July 2016, Ngirabatware's lawyer, Robinson, read a document to her and the witness realized that it had the same questions and answers.<sup>336</sup> With respect to Witness ANAM/TNN31, she generally testified that, prior to attending meetings with the Defence, the Prosecution, and the WISP, Ndagijimana would prepare her on why she was going, what questions would be asked, and the answers to give.<sup>337</sup>

117. Additionally, communications evidence starting in June 2016 between Nzabonimpa and Turinabo reveals the two discussing preparations and issues related to anticipated interviews with Ngirabatware's counsel.<sup>338</sup> I further observe that textually identical documents containing questions

<sup>331</sup> Nzabonimpa Final Trial Brief, paras. 330-343.

<sup>332</sup> Witness ANAE/TNN30, T. 26 October 2020 p. 43.

<sup>333</sup> Witness ANAE/TNN30, T. 26 October 2020 pp. 43-45.

<sup>334</sup> Witness ANAE/TNN30, T. 26 October 2020 pp. 45, 46, 48-52; T. 27 October 2020 pp. 68, 69; T. 30 October 2020 pp. 31-36, 39-43, 53-55.

<sup>335</sup> Witness ANAE/TNN30, T. 26 October 2020 pp. 48-51; T. 30 October 2020 pp. 32-37, 42, 43.

<sup>336</sup> Witness ANAE/TNN30, T. 26 October 2020 pp. 42, 44-46, 48; T. 30 October 2020 pp. 28-31, 37-39.

<sup>337</sup> See Witness ANAM/TNN31, T. 2 November 2020 pp. 24, 27-29 (discussing a meeting the witness had with Ndagijimana after her first meeting with Ngirabatware's Defence where she asked Ndagijimana how he knew the questions that would be posed and the answers). The Prosecution's references to training Witness ANAM/TNN31 allegedly received concern a different meeting with the Prosecution in September 2017. See Prosecution Final Trial Brief, para. 82, n. 321, *referring to, inter alia*, Witness ANAM/TNN31, T. 2 November 2020 pp. 67-70. I note that Ndagijimana disputes that this meeting occurred after the witness's first interview and the aspect of it that relates to an alleged letter Ndagijimana had the witness sign. See Ndagijimana Final Trial Brief, paras. 242, 243. I find it unnecessary to assess these challenges to peripheral aspects of the witness's evidence.

<sup>338</sup> See, e.g., Exhibit P409 (text from Turinabo to Nzabonimpa on 7 June 2016) ("Gisa [Twagirayezu] suggests a budget the day before for his plot [Witness ANAT] but ditto for the remaining ones. Bye"); Exhibit P410 (text from Turinabo to Nzabonimpa on 9 June 2016) ("Hello, what was L's [Maniraguha's] response about meeting this weekend in RBV and not in Kgl? I guess in the program it's him and [Witness ANAE/TNN30] that Tot [Ngirabatware's counsel] will begin with because Umurera [Munyeshuli] would like to meet L [Maniraguha] before July according to information. Find a way to compress it so that [Witness ANAN] can be incorporated in the system as soon as possible. Bye"); Exhibit P411 (text from Turinabo to Nzabonimpa on 25 June 2016) ("*Bonjour! Je viens d'informer L [Maniraguha], Gatumba [Mbarimo] et Gisa [Twagirayezu] à propos de la rencontre avec Tot [Ngirabatware's counsel] le 30 juin. [...]*"); Exhibit P412 (text from Turinabo to Nzabonimpa on 25 June 2016) ("*Voici le SMS que Barak [Ndagijimana] m'a envoyé à 20:46:19: '[Witness ANAM/TNN31] et moi venons de nous convenir de nous rencontrer demain matin avant qu'elle n'aille à la messe. Parle à Ans [Nzabonimpa] [...] que je suis torturé par la gestion de trois éléments à consciences diversifiées. Toutefois, je ne suis pas de ceux qui posent des exigences; un geste minimum suffirait (rien qu'à votre niveau malgré les moyens limités que je n'ignore pas). Barak [Ndagijimana]. Réfléchis-y. Je viens de le lire tard, bonne nuit.*"); Exhibit P235 (text from Turinabo to Nzabonimpa on 30 June 2016) ("Hello, I don't know what the

and answers related to the recantations of Witnesses ANAE/TNN30 and ANAM/TNN31 were retrieved from Ngirabatware’s laptops (Exhibit P33 for Witness ANAE/TNN30 and Exhibit P56 for Witness ANAM/TNN31) and Nzabonimpa’s external hard drive (Exhibit P228 for Witness ANAE/TNN30 and Exhibit P215 for Witness ANAM/TNN31). These question and answer documents for Witness ANAE/TNN30 share the same content and metadata and, notably, list “Ngirabatware” as the author and indicate that they were created and last saved on 2 and 7 June 2016, respectively.<sup>339</sup> Indeed, what appears to be the earliest version of these documents (Exhibit P64) was extracted from Ngirabatware’s Samsung laptop, created on 9 May 2016, last saved on 30 May 2016, and lists “Ngirabatware” as the author.<sup>340</sup>

118. The expert initially concluded that the question and answer documents for Witness ANAM/TNN31 likely derived from Nzabonimpa’s external hard drive given that Exhibit P56 found on Ngirabatware’s Samsung laptop was last saved on 15 June 2016 and eight days after the same document (Exhibit P215) was saved on Nzabonimpa’s external hard drive.<sup>341</sup> However, the expert later concluded that the opposite might be possible given that the author in the metadata field for both documents – “Ngirabatware” – is not found on Nzabonimpa’s external hard drive but is present in Ngirabatware’s Dell laptop.<sup>342</sup>

119. To the extent the forensic picture as to exact origins of these documents is imprecise, it nonetheless reflects that the question and answer documents were created in early June 2016, shortly before anticipated interviews with Ngirabatware’s counsel. The question and answer documents contain pointed questions and detailed responses related to, for example: (i) the circumstances surrounding the witnesses’ decision to recant; (ii) their initial refusal to meet with Defence counsel and the circumstances related to subsequent sending of their consent letters; and (iii) questions about their false testimony and why they lied during Ngirabatware’s trial. In this context, the only reasonable conclusion is that they were initially prepared by Ngirabatware and shared in June 2016 as a basis to train Witnesses ANAE/TNN30 and ANAM/TNN31 in anticipation

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Tot’s [Ngirabatware’s Defence] are calling a transport ticket as far as [Witness ANAN] is concerned. If they do not get to Gisa [Twagirayezu], think about balancing them. [Witness ANAN] already left when he/she came to see me while Umurera [Munyeshuli] had not yet left.”); Exhibit P239 (text from Turinabo to Nzabonimpa on 3 July 2016) (“The misfortune is that [Witness ANAE/TNN30] will meet [Witness ANAM/TNN31] there and deceive her again whereby we will not get the intended result. Tell Barak [Ndagijimana] to remind [Witness ANAM/TNN31] to be aware of [Witness ANAE/TNN30’s] deception, there is no trust.”) (the codename typically used for Maniraguha in the context of this message is a clear reference to Witness ANAE/TNN30 given her proximity to Maniraguha and that her interview fell on the same date as Witness ANAM/TNN31’s interview); Exhibit P240 (text from Turinabo to Nzabonimpa on 4 July 2016) (“[...] all the 4 plots [Recanting Witnesses] have been given until tomorrow. I don’t know, we should pray for this frequent changes. [...])”).

<sup>339</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 44, pp. 42-44.

<sup>340</sup> See Exhibit P110 (Olejniczak Supplemental Report), p. 42.

<sup>341</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 46, pp. 45, 46.

of their meeting with his counsel. That they were to be used to train the witnesses finds circumstantial corroboration from communications evidence reflecting that on the day Exhibit P228 was last saved on Nzabonimpa's external hard drive – 7 June 2016 – Turinabo was in touch with Nzabonimpa about coming to his office so that he did not need to “take [Turinabo's] internet machine” in order to access the “messages”.<sup>343</sup> In this context, the only reasonable conclusion is that Ngirabatware, the person who was seeking to have his conviction overturned, was the driving force in the creation of these question and answer documents found on all devices and that he shared them with Nzabonimpa for the purpose of instructing Witnesses ANAE/TNN30 and ANAM/TNN31 as to how they should answer questions in their upcoming interviews with Ngirabatware's counsel.<sup>344</sup>

120. Furthermore, and notwithstanding issues related to Witness ANAE/TNN30's credibility, I find her evidence that she was provided information as to the questions to be asked and the answers to provide prior to her interview with the Ngirabatware Defence on 5 July 2016 corroborates the notion that she was trained in anticipation of it. In particular, while different in terms of syntax and thematic order, a substantive comparison between the question and answer documents retrieved from Nzabonimpa's and Ngirabatware's devices related to Witness ANAE/TNN30 (Exhibits P33 and P228) and the question and answer document that the witness explained she was given to prepare for her meeting with Robinson in July 2016 (Exhibit P5) are materially similar in content.<sup>345</sup> The comparison, when viewed in the context of all the relevant evidence, demonstrates beyond reasonable doubt that Exhibit P5 is a distillation of the question and answer documents extracted from Nzabonimpa's and Ngirabatware's devices (Exhibits P33 and P228) in a simplified form that could more easily be digested and remembered by the witness as she prepared for her interview. I further accept Witness ANAE/TNN30's evidence that Maniraguha gave the witness

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<sup>342</sup> See Exhibit P111 (Olejniczak Second Supplemental Report), paras. 38-42.

<sup>343</sup> Exhibit P674 (text from Turinabo to Nzabonimpa on 7 June 2016) (“Are you in the office so that I don't take my internet machine and I can read messages?”).

<sup>344</sup> In reaching this finding, I have further considered the question only documents extracted from Ngirabatware's devices related to Witness ANAE/TNN30 (Exhibits P41 and P65) and Witness ANAM/TNN31 (Exhibit P42). Bearing in mind the forensic evaluation of these documents, which reflects that they were created and saved on 15 and 20 June 2016 and after the question and answer documents were created, this evidence does not raise reasonable doubt as to why and for what purpose the question and answer documents were created. See Exhibit P110 (Olejniczak Supplemental Report), pp. 42, 43, 45, 46. Indeed, the ostensibly related document (Exhibit P64) was created on 9 May 2016 and includes questions and proposed responses to all but one question. See Exhibit P110 (Olejniczak Supplemental Report), p. 42.

<sup>345</sup> For example, a comparison of Exhibit P5 with Exhibits P33 and P228 reveals that all start by introducing Robinson as Ngirabatware's counsel and indicating that a member of the Prosecution will be present. All documents then contain, for example, questions and proposed answers related to: (i) Witness ANAE/TNN30's January 2016 consent letter and whether she did this on her own (and answers reflecting that Maniraguha helped her); (ii) whether she knew that Maniraguha liaised with Ngirabatware's defence related to her false testimony; (iii) whether she lied when she testified to seeing Ngirabatware in “Bruxelles” or “Buruseri” after Habyarimana's death and proposed answers that she had lied

Exhibit P5 for the purpose of instructing her how to answer questions during her anticipated interview.

121. Likewise, given the purpose and nature of the question and answer documents that relate to Witness ANAM/TNN31, I also find that her evidence that Ndagijimana informed her of the questions and knew the answers to give in anticipation of this meeting with the Defence compelling. Indeed, communications evidence corroborates Witness ANAM/TNN31's testimony that Ndagijimana was her principal point of contact among the Accused and Turinabo and that he intended to be in contact with her around this time.<sup>346</sup> Given the mutually corroborating evidence, and when viewed among the pattern of training as a whole, I find that Ndagijimana informed Witness ANAM/TNN31 of what questions to anticipate and how to respond during her interview and that this training was done on the basis of the question and answer documents that were created and shared with Nzabonimpa for this purpose.<sup>347</sup>

122. However, in accordance with the language of the Indictments, the Prosecution seeks to establish liability for these allegations on the basis that Nzabonimpa specifically instructed Witnesses ANAE/TNN30 and ANAM/TNN31 on what to say during their interviews with Ngirabatware's Defence counsel.<sup>348</sup> The Prosecution points to no evidence that concretely suggests that Nzabonimpa was in contact with these witnesses and indeed argues that the training was done by Turinabo and Ndagijimana.<sup>349</sup> While Witness ANAE/TNN30 received instructions through Maniraguha, the record reasonably allows for the possibility that the question and answer document was provided to him by, for example, Turinabo or Ndagijimana. Likewise, Ndagijimana is the one who instructed Witness ANAM/TNN31. Notwithstanding their pivotal role in the creation and transmission of the question and answer documents that served as the basis for instructing the witnesses, the manner in which the allegations are pleaded would not allow Nzabonimpa or Ngirabatware to be convicted based on these findings. Likewise, the allegation, even when read in conjunction with the relevant pre-trial brief, does not give clear and consistent notice to

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and did so because she was asked or instructed to do so; (iv) whether she had been contacted or interviewed by the Prosecution about or before this interview; and (v) had she been influenced to recant.

<sup>346</sup> See, e.g., Exhibit P412 (text from Turinabo to Nzabonimpa on 25 June 2016); Exhibit P239 (text from Turinabo to Nzabonimpa on 3 July 2016).

<sup>347</sup> Ndagijimana denied coaching Witnesses ANAE/TNN30 and ANAM/TNN31 and testified that both witnesses were anxious to meet Ngirabatware's counsel in order to prepare them on what to say when recanting before the Judges. See Ndagijimana, T. 16 March 2021 pp. 6, 7. He also denied training Witnesses ANAE/TNN30 and ANAM/TNN31 subsequently. See Ndagijimana, T. 17 March 2021 pp. 62-71.

<sup>348</sup> See *Nzabonimpa et al.* Indictment, para. 23(i); *Ngirabatware* Indictment, para. 21(i).

<sup>349</sup> See Prosecution Final Trial Brief, para. 82 ("Before meeting Robinson, [Witnesses ANAE/TNN30 and ANAM/TNN31], for example, were trained by Turinabo and Ndagijimana, respectively.").

Ndagijimana that he could be convicted on this basis.<sup>350</sup> Therefore, my findings here will only be considered for context.

#### 4. Training and Payments: August 2016

123. The *Nzabonimpa et al.* Indictment alleges that, in August 2016, Nzabonimpa and/or Ndagijimana, through telecommunications and/or in person meetings in Gisenyi, directed Witness ANAM/TNN31 on what to say or do if requested to meet with the Prosecution.<sup>351</sup> The *Nzabonimpa et al.* and *Ngirabatware* Indictments further allege that, between 20 and 24 August 2016 and based on money provided by Ngirabatware, Nzabonimpa and/or Ndagijimana paid a “bribe” of 300,000 Rwandan francs to Maniraguha, 1,000,000 Rwandan francs to Witness ANAE/TNN30, and 500,000 Rwandan francs to Witness ANAM/TNN31 in exchange for their cooperation with the Ngirabatware Defence and to influence their prospective evidence.<sup>352</sup> The Prosecution principally relies on communications evidence, Mobile Money records, and the spreadsheet extracted from Nzabonimpa’s external hard drive to prove these allegations.<sup>353</sup>

124. Ndagijimana generally concedes that the Accused paid, and, for example, assisted the Recanting Witnesses in deciding whether or not to, *inter alia*, meet with the Prosecution; however, he contends that this conduct is not criminal and he argues that Witness ANAM/TNN31’s evidence of training is “difficult” to accept given that WISP meetings do not involve question and answer sessions.<sup>354</sup> Nzabonimpa argues that the testimonial and communications evidence does not demonstrate that he instructed Witness ANAM/TNN31.<sup>355</sup> He further contends that the Prosecution’s case related to payments is not supported by the testimonial evidence and spreadsheet extracted from his external hard drive, and that Mobile Money records and communications evidence related to the payment to Witness ANAM/TNN31 do not demonstrate that he paid the alleged amount or would have known the purpose of any such payment.<sup>356</sup> Ngirabatware concedes that payments were made to Maniraguha and Witnesses ANAE/TNN30 and ANAM/TNN31 but

<sup>350</sup> See, e.g., *Nzabonimpa et al.* Pre-Trial Brief, paras. 61, 62, 133, 138.

<sup>351</sup> *Nzabonimpa et al.* Indictment, para. 22(i). See also Prosecution Final Trial Brief, paras. 85-89, 172, 178. The Prosecution is not pursuing this allegation against Nzabonimpa. See Prosecution Final Trial Brief, para. 172 (omitting reference to this allegation as it relates to Witness ANAM/TNN31). No corresponding allegation is contained in the *Ngirabatware* Indictment.

<sup>352</sup> *Nzabonimpa et al.* Indictment, para. 25(ix); *Ngirabatware* Indictment, para. 23(iv)(b). See also Prosecution Final Trial Brief, paras. 87, 167, 174, 181.

<sup>353</sup> See Prosecution Final Trial Brief, paras. 85-89.

<sup>354</sup> See Ndagijimana Final Trial Brief, paras. 182, 233, 373-390.

<sup>355</sup> See Nzabonimpa Final Trial Brief, paras. 315-326.

<sup>356</sup> See Nzabonimpa Final Trial Brief, paras. 476-480.

argues that they were not criminal and contends, in particular, that the evidence does not support the payment of 1,000,000 Rwandan francs to Witness ANAE/TNN30, who disputed receiving it.<sup>357</sup>

125. Following the Recanting Witnesses' interviews with Ngirabatware's counsel on 5 July 2016, communications evidence reflects that, at least by 12 August 2016, information that the Recanting Witnesses were being summoned to Kigali was being shared among the Accused,<sup>358</sup> and communications predating this reflected growing urgency in relation to handling them.<sup>359</sup> Communications evidence also shows consensus that the Accused and Turinabo wanted the Recanting Witnesses to respond to inquiries from the WISP to agree to meet with the Prosecution so long as Ngirabatware's counsel was present.<sup>360</sup> In addition, a text from Ndagijimana to Nzabonimpa on 13 August 2016 reflects a clear intention for him to meet with Witness ANAM/TNN31 in Remera.<sup>361</sup> Notably, Witness ANAM/TNN31 generally testified that, prior to attending meetings with, *inter alia*, the WISP, Ndagijimana would prepare her on why she was going, what questions would be asked, and the answers to give.<sup>362</sup> It is undisputed that Witness ANAM/TNN31 met with the WISP in Kigali on 15 August 2016 and agreed to meet with the Prosecution.<sup>363</sup> Viewed in this context, I have no doubt that Ndagijimana communicated with Witness ANAM/TNN31 prior to meeting with the WISP and instructed her to agree to meet with the Prosecution on the condition that Ngirabatware's counsel would be present. This instruction, given in the shadows of Ngirabatware's appointed Defence team, necessarily interferes with the proper administration of justice.

<sup>357</sup> See Ngirabatware Final Trial Brief, paras. 215-219, 295-299, p. 56, 82. See also Ngirabatware Final Trial Brief, paras. 220-226. Ngirabatware notably argues that the alleged payment on 24 August 2016 comes solely from Nzabonimpa's spreadsheet, without any other supporting evidence, and that Witness ANAE/TNN30 denied receiving it. See Ngirabatware Final Trial Brief, para. 219.

<sup>358</sup> See Exhibit P252 (text from Turinabo to Nzabonimpa on 12 August 2016) (“[Witness ANAM/TNN31, Witness ANAT, and Witness ANAE/TNN30] have been summoned for Monday. What about [Witness ANAN], did he get the message? No delays.”).

<sup>359</sup> See Exhibit P247 (text from Turinabo to Nzabonimpa on 22 July 2016) (“There is a big problem in the cage. Our meeting of the three is very imminent to see what to do. THAT IS A MESSAGE VIA BARAK”); Exhibit P249 (text from Ndagijimana to Nzabonimpa on 9 August 2016) (“Max [Turinabo] has informed me that there is urgency regarding the 4 elements [Recanting Witnesses] + me. How will we match them when we still have these conflicts?”); Exhibit P250 (text from Turinabo to Nzabonimpa on 10 August 2016) (“The calls via Barak [Ndagijimana] have continued, you did not talk to him/her at eleven as promised. But the case is not to be left to Barak [Ndagijimana] alone, it requires that he gets support because it exceeds him and he cannot provide a solution when he is called by the 2 ladies [Witnesses ANAE/TNN30 and ANAM/TNN31] and Misha [Mukamisha] who activates them. Look for a way to meet him without delay.”).

<sup>360</sup> See, e.g., Exhibit P251 (text from Turinabo to Nzabonimpa on 11 August 2016) (“[Witness ANAM/TNN31] has been called for tomorrow but she was not prepared by your call as I did with [Witness ANAN]! [...] be courageous with the message asking Mukeba [Prosecution] to meet with defense present. [...]”); Exhibit P187 (text from Nzabonimpa to Witness ANAN on 12 August 2016) (“[...] If they call you, you can say that you'll speak if Ngira's [Ngirabatware's] Counsel is also present.”).

<sup>361</sup> See Exhibit P255 (text from Ndagijimana to Nzabonimpa on 13 August 2016) (“Good morning, that girl [Witness ANAM/TNN31] yesterday went to the other side to see her husband, and she is returning today. Once she sets off she will inform me and I will set off so that we meet in Remera. [...]”).

126. As it relates to payments, I note that communications evidence reflects that, on 13 August 2016, Nzabonimpa asked for Ndagijimana’s account information<sup>364</sup> and that Ndagijimana responded the same day with this information and linked it to his anticipated meeting with Witness ANAM/TNN31 and to cover expenses.<sup>365</sup> Ndagijimana’s bank account was credited with a 300,000 Rwandan francs deposit from Nzabonimpa on 13 August 2016, and Ndagijimana withdrew 250,000 Rwandan francs the next day.<sup>366</sup> The same records indicate that Nzabonimpa made two additional deposits of 490,000 and 200,000 Rwandan francs in the same account on 20 August 2016 and that Ndagijimana withdrew 490,000 Rwanda francs the same day.<sup>367</sup>

127. Furthermore, communications evidence from 19 August 2016 reflects that Ndagijimana intended to meet Mukamisha – Witness ANAM/TNN31’s intermediary – and Witness ANAM/TNN31 the next day,<sup>368</sup> and that he would withdraw money in anticipation of those meetings.<sup>369</sup> The next morning, he informed Nzabonimpa that he had found the “490 in one account”,<sup>370</sup> and Nzabonimpa instructed Ndagijimana that 150,000 would be for Mukamisha, 40,000 for travel, and 500,000 for Witness ANAM/TNN31.<sup>371</sup> Mobile Money records reflect a payment of 303,000 Rwandan francs from Ndagijimana to Witness ANAM/TNN31 on 20 August 2016,<sup>372</sup> which is corroborated by the spreadsheet extracted from Nzabonimpa’s external hard drive, which reflects a payment of “500,000” to an individual bearing the same first three letters of Witness ANAM/TNN31’s first name with the date “20/8/2016”.<sup>373</sup> Notably, Ndagijimana testified

<sup>362</sup> See Witness ANAM/TNN31, T. 2 November 2020 pp. 27-29.

<sup>363</sup> See Exhibit 3D20, p. 6. See also Ndagijimana Final Trial Brief, para. 76.

<sup>364</sup> Exhibit P254 (text from Nzabonimpa to Ndagijimana on 13 August 2016) (“Send me the account number if they surprise us I will deposit the money”).

<sup>365</sup> See Exhibit P255 (text from Ndagijimana to Nzabonimpa on 13 August 2016) (“Good morning, that girl [Witness ANAM/TNN31] yesterday went to the other side to see her husband, and she is returning today. Once she sets off she will inform me and I will set off so that we meet in Remera. Please remember the tickets. The account is in UNGUKA Bank Ltd. The number is [account number]”).

<sup>366</sup> See Exhibit P178 (Ndagijimana Bank Statement, 1 July 2015 through 30 September 2018), p. 2.

<sup>367</sup> See Exhibit P178 (Ndagijimana Bank Statement, 1 July 2015 through 30 September 2018), p. 2. See also Exhibit P175 (text from Bke Bank to Nzabonimpa on 20 August 2016 notifying of a debit of 490,000 Rwandan francs on 16 August 2016).

<sup>368</sup> See Exhibit P271 (text from Ndagijimana to Nzabonimpa on 19 August 2016) (“Remember the appointment I have tomorrow with Mukamisha and [Witness ANAM/TNN31] in order to avoid a second postponement.”).

<sup>369</sup> See Exhibit P275 (text from Ndagijimana to Nzabonimpa on 19 August 2016) (“I will leave early in the morning, and withdraw it from Remera because that is where we will meet. This time add the tickets for the two of us. I will therefore tell Mukamisha to meet tomorrow towards 1700 hrs, I will be back by then.”).

<sup>370</sup> See Exhibit P280 (text from Ndagijimana to Nzabonimpa on 20 August 2016).

<sup>371</sup> See Exhibit P282 (text from Nzabonimpa to Ndagijimana on 20 August 2016) (“They are done. Musha [Mukamisha] 150 travel 40 [Witness ANAM/TNN31] 500”). Nzabonimpa’s contentions as to the reliability of this Exhibit P282 on the basis that it appears to be a duplicate of Exhibit P276 but does not correspond to the latter are unsubstantiated. See Nzabonimpa Final Trial Brief, para. 480, n. 890.

<sup>372</sup> See Exhibit P154, p. 7, row 304 and Exhibit P147, p. 2, row 51 (reflecting a mobile payment of 303,000 Rwandan francs from Ndagijimana’s phone to Witness ANAM/TNN31’s phone on 20 August 2016).

<sup>373</sup> See Exhibit P229, p. 2, row 114. The total of 500,000 Rwandan francs is a rough reflection of the costs of this trip, including the payment to Mukamisha and the travel expenses on top of the 303,000 Rwandan francs to be paid to Witness ANAM/TNN31.

that, after deciding with Turinabo and Nzabonimpa, he paid Witness ANAM/TNN31 303,000 Rwandan francs on 20 August 2016 in order to assist the witness, who was poor and famine stricken.<sup>374</sup> Witness ANAM/TNN31 did not testify about this payment; however, she generally disputed that she was bribed, said the money she received was only for transportation, and denied asking for money for the purpose of having her recant her trial testimony.<sup>375</sup> The evidence above demonstrates beyond reasonable doubt that Nzabonimpa and Ndagijimana jointly paid Witness ANAM/TNN31 303,000 Rwandan francs.

128. As it relates to the alleged payments to Maniraguha and Witness ANAE/TNN30, the spreadsheet extracted from Nzabonimpa's hard drive reflects a payment of 300,000 Rwandan francs to a code name for Maniraguha on "24/8/2016",<sup>376</sup> followed by a payment of 1,000,000 Rwandan francs to an individual bearing the first three letters of Witness ANAE/TNN30's first name.<sup>377</sup> In this respect, Ndagijimana's evidence reflects that, after the Mahoko market meeting where Witness ANAE/TNN30 signed her consent letter, he was summoned to the witness's house where she demanded to receive 3,000,000 Rwandan francs.<sup>378</sup> After discussions with Turinabo and Nzabonimpa, Nzabonimpa gave Ndagijimana 800,000 and 200,000 Rwandan francs for the purpose of paying Witness ANAE/TNN30.<sup>379</sup> Ndagijimana testified that this was the first instalment of 3,000,000 Rwandan francs that they intended to give the witness.<sup>380</sup> In this context, I have no doubt that the evidence establishes that Nzabonimpa, together with Ndagijimana, jointly paid Witness ANAE/TNN30 1,000,000 Rwandan francs as alleged.

129. With respect to the payment to Maniraguha, the notation in the spreadsheet does not find corroboration.<sup>381</sup> While I have no doubt that Maniraguha had already and later received money from the Accused, I do not consider the evidentiary record in support of this particular payment convincing beyond reasonable doubt.

<sup>374</sup> See Ndagijimana, T. 17 March 2021 pp. 38, 39; Exhibit P1704, para. 72.

<sup>375</sup> Witness ANAM/TNN31, T. 2 November 2020 pp. 78-80, 84 (stating that she "never asked [Ndagijimana] to give [her] money.").

<sup>376</sup> See Exhibit P229, p. 2, row 120.

<sup>377</sup> See Exhibit P229, p. 2, row 123.

<sup>378</sup> Ndagijimana, T. 15 March 2021 p. 68.

<sup>379</sup> Ndagijimana, T. 15 March 2021 pp. 69, 70.

<sup>380</sup> Ndagijimana, T. 15 March 2021 p. 70.

<sup>381</sup> I note that earlier payments in January and June 2016 are corroborated by Mobile Money records. *Compare, e.g.*, Exhibit P229, p. 1, row 48, p. 2, row 95 (reflecting payments to "L" or "L Moto" of 30,000 and 50,000 Rwandan francs between 18 and 24 January 2016 and 18 and 24 June 2016, respectively) *with* Exhibit P157, pp. 4, 7, rows 169, 292 (reflecting payments from Mobile Money merchants to the Mobile Money account attributable to Maniraguha of 30,600 Rwandan francs on 18 January 2016 and of 51,000 Rwandan francs on 17 June 2016). While I do not consider Mobile Money records a necessary element to corroborate payments listed in Exhibit P229 – particularly given that Maniraguha, Nzabonimpa, Ndagijimana, and Turinabo lived in close geographic proximity and could give cash payments – I nonetheless find the evidentiary record lacking in this particular instance.



130. Furthermore, I have previously found that Nzabonimpa had already started receiving substantial payments from Ngirabatware,<sup>382</sup> which, when viewed in context, were necessarily aimed at maintaining cooperation from the Recanting Witnesses after their interviews with Ngirabatware’s counsel and as they faced the prospect of their recantations being challenged through Prosecution interviews. In this context, I have no doubt that the proven payments to Witnesses ANAE/TNN30 and ANAM/TNN31 were made to ensure their continued cooperation with the Ngirabatware Defence and to influence them to maintain their recantations. The denials from Witnesses ANAE/TNN30 and ANAM/TNN31 that they were paid in relation to their willingness to recant are unbelievable,<sup>383</sup> and I consider that they do not raise reasonable doubt in this context either. Prosecution and Defence evidence uniformly establishes that the cooperation of these two witnesses with the Ngirabatware Defence was motivated by money, a fact that was evident among all the Accused and Turinabo, and which they leveraged to ensure the witnesses’ continued cooperation.

131. Finally, attempts to argue that these funds were made available to cover reasonable Defence expenses associated with investigations are belied by their surreptitious nature, as they did not originate from Ngirabatware’s counsel, who at that point had been appointed to assist Ngirabatware at the expense of the Mechanism,<sup>384</sup> or recognized members of his Defence team who were conducting investigations in parallel. Rather, Ngirabatware provided this money, and Nzabonimpa and Ndagijimana paid Witnesses ANAE/TNN30 and ANAM/TNN31, in order to ensure complete cooperation with the Ngirabatware Defence, and to maintain their recantations in the face of prospective Prosecution investigations that sought to challenge them.

5. Training and Payments: July and August 2017

132. The *Nzabonimpa et al.* Indictment alleges that Ndagijimana, through telecommunications and/or in person meetings in Gisenyi between 15 July 2017 and 2 August 2017, directed Mukamisha, Maniraguha and Witness ANAE/TNN30 and/or Witness ANAM/TNN31 – directly and/or through Maniraguha – on what to say if requested to meet with the Prosecution.<sup>385</sup> The *Nzabonimpa et al.* and *Ngirabatware* Indictments further allege that, on 1 August 2017, Turinabo and Nzabonimpa, with money made available from Ngirabatware, paid bribes to Maniraguha and

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<sup>382</sup> See Section II.A.

<sup>383</sup> See Section II.B.1.

<sup>384</sup> See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Decision on Prosecution’s Motion Regarding Protected Witnesses and Ngirabatware’s Motion for Assignment of Counsel, 5 May 2016 (confidential) (“Decision on Assignment of Counsel of 5 May 2016”), p. 11.

<sup>385</sup> *Nzabonimpa et al.* Indictment, para. 22(iii). See also Prosecution Final Trial Brief, paras. 92, 94, 96, 178. Paragraph 22(ii) of the *Nzabonimpa et al.* Indictment is no longer operative after the termination of the case against Turinabo. There is no corresponding allegation in the *Ngirabatware* Indictment.

Witness ANAE/TNN30 using Mobile Money in exchange for their cooperation with the Ngirabatware Defence and to influence their prospective evidence.<sup>386</sup> The Prosecution principally relies on testimonial evidence, communications and Mobile Money records, as well as the spreadsheet extracted from Nzabonimpa's external hard drive in support of these allegations.<sup>387</sup>

133. Ndagijimana generally concedes that the Accused assisted the Recanting Witnesses in deciding whether or not to, *inter alia*, meet with the Prosecution but contends that this conduct is not criminal and that he never "coached" them to get them to recant.<sup>388</sup> Nzabonimpa argues that the Prosecution failed to lead testimonial evidence in support of the alleged payments and that the Mobile Money records and electronic evidence are insufficient to establish them beyond reasonable doubt.<sup>389</sup> He further argues that the evidence fails to demonstrate that it was a "bribe" in exchange for Maniraguha's and Witness ANAE/TNN30's cooperation and to influence their prospective evidence instead of, for example, a reasonable expense to cover travel costs.<sup>390</sup> Ngirabatware concedes that payments were made to Maniraguha and Witness ANAE/TNN30 but argues that some are not sufficiently supported and that, in any event, none was criminal.<sup>391</sup>

134. An intercepted conversation at 4.22 p.m. on 15 July 2017 reveals that, a short time after speaking with Munyeshuli, Turinabo informed Ndagijimana that the Prosecution wanted to meet with nine witnesses, including the four Recanting Witnesses.<sup>392</sup> In the conversation, Turinabo and Ndagijimana discussed meeting beforehand to formulate a plan, potentially summoning the witnesses before informing them about the requests, and preparing and paying them.<sup>393</sup> Two days later, on 17 July 2017, Ndagijimana called Witness ANAM/TNN31 and told her that she would be contacted about meeting with the Prosecution and that she should refuse:

So, if they do call you, they should be told that you haven't got time to meet the Prosecutor, as you have nothing to add to what you have already told him.<sup>394</sup>

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<sup>386</sup> *Nzabonimpa et al.* Indictment, para. 25(xii); *Ngirabatware* Indictment, para. 23(iv)(e). *See also* Prosecution Final Trial Brief, paras. 95, 167, 174.

<sup>387</sup> Prosecution Final Trial Brief, paras. 91-96.

<sup>388</sup> Ndagijimana Final Trial Brief, paras. 182-184, 373-390.

<sup>389</sup> Nzabonimpa Final Trial Brief, paras. 486, 487, 490.

<sup>390</sup> Nzabonimpa Final Trial Brief, paras. 488-491.

<sup>391</sup> Ngirabatware Final Trial Brief, paras. 215-226, p. 56.

<sup>392</sup> Exhibit P1588 (intercept of Ndagijimana calling Turinabo on 15 July 2017), pp. 1, 2.

<sup>393</sup> Exhibit P1588, pp. 3-6.

<sup>394</sup> Exhibit 3D24 (intercept of Ndagijimana calling Witness ANAM/TNN31 on 17 July 2017), p. 2. *See also* Exhibit P1050 (intercept of Ndagijimana calling Witness ANAM/TNN31 on 26 July 2017), pp. 1, 2 (the witness notes that she was contacted by a representative of the WISP about meeting with people "from the other place" and that she informed her that she is not available); Exhibit P1061 (intercept from Ndagijimana calling Turinabo on 26 July 2017) (Ndagijimana reporting to Turinabo the conversation he had with Witness ANAM/TNN31).

135. On 18 July 2016, Ndagijimana provided Maniraguha with the same instruction, making it clear that “our people” should refuse to talk to the “Prosecutor”.<sup>395</sup> He also instructed Mukamisha not to agree to meet with the Prosecutor.<sup>396</sup> There is considerable other evidence that this message was being circulated among the other Recanting Witnesses and Intermediaries.<sup>397</sup>

136. Later, after Ndagijimana met with the WISP on 28 July 2017,<sup>398</sup> the Accused and Turinabo devised a new plan to instruct the Recanting Witnesses and Intermediaries to agree to meet with the Prosecution in the presence of the Defence.<sup>399</sup> Evidence reflects that, on 28 July 2017, Ndagijimana told Turinabo that he had “already spoken to [Witness ANAM/TNN31]” and “just explained to him/her” that she should agree to meet with the Prosecution but that the Defence should be present.<sup>400</sup> On 2 August 2017, Ndagijimana gave Maniraguha the same instruction that he would agree to meet with the Prosecution but “impose” the condition that the Defence be present.<sup>401</sup> He also gave Twagirayezu the same instruction on 31 July 2017.<sup>402</sup> There is evidence of Turinabo providing the same message to Witness ANAN and Mbarimo.<sup>403</sup> In light of the foregoing, I find

<sup>395</sup> See Exhibit P958 (intercept of Maniraguha calling Ndagijimana on 18 July 2017), pp. 2, 3. Further communications reflect that this message was clearly intended to be passed on from Maniraguha to Witness ANAE/TNN30. See Exhibits P1241, P1242 (text from Turinabo to Ndagijimana on 18 July 2017) (“Good evening try to see how to contact [Witness ANAE/TNN30] to find out if she received the message because I doubt. [...]”).

<sup>396</sup> See Exhibit P23 (intercept of Ndagijimana calling Mukamisha on 17 July 2017), p. 4 (“They should be told that you are not available to travel and that you have nothing to say to the Prosecutor. [...] And then you keep quiet. You don’t say anything.”). See also Witness TNN11, T. 9 November 2020 pp. 67-70.

<sup>397</sup> See, e.g., Exhibit P819 (intercept of Twagirayezu calling Turinabo on 26 July 2017), pp. 1, 2 (Turinabo telling Twagirayezu to inform Witness ANAT not to agree to meet with the Prosecutor); Exhibits P1239, P1240 (text from Turinabo to Nzabonimpa on 18 July 2017); Exhibit P859 (intercept of Turinabo calling Twagirayezu on 17 July 2017 at 15:10), pp. 1, 2 (arranging a location to meet); Exhibit P886 (intercept of Ndagijimana calling Turinabo on 17 July 2017 at 18:07), pp. 1, 2 (Turinabo informing Ndagijimana that he has “passed the message on” to Twagirayezu and noting that “after everything that we have told them, they will refuse to meet with those people [the Prosecution] because it’s not necessary”); Exhibit P1233 (text from Turinabo to Nzabonimpa on 17 July 2017 at 19:49:11) (“Good evening, I spoke to L [Maniraguha] and Twagira [Twagirayezu], they accepted the message as it is. I just asked Barak [Ndagijimana] to check by Wednesday if L [Maniraguha] conveyed the message. [...]”); Exhibit P15 (intercept of Turinabo calling Mbarimo on 17 July 2017 at 13:27), pp. 2-4 (Turinabo giving Mbarimo instructions that he is on the side of the Ngirabatware Defence and that if the Prosecutor wants to meet he must ask Ngirabatware’s counsel, who would call him); Exhibit P820 (intercept of Nzabonimpa calling Turinabo on 27 July 2017), p. 3 (Turinabo confirming that he told Twagirayezu that “once he is there, he should only concentrate on the passport issue only, but if they tell him that it is an issue of meeting the prosecutor to try and refuse”). See also Witness TNN12, T. 5 November 2020 pp. 36, 39, 40.

<sup>398</sup> See Exhibit P1589 (intercept of WISP calling Ndagijimana on 26 July 2017), pp. 1, 2; Exhibit 3D20, p. 12.

<sup>399</sup> Turinabo and Ndagijimana first decided that the witnesses and intermediaries should meet with the WISP on the Monday following Ndagijimana’s Friday meeting with them. See Exhibit P1600 (intercept of Ndagijimana calling Turinabo on 26 July 2017), pp. 1, 2; Exhibit P1187 (intercept of Ndagijimana calling Turinabo on 28 July 2017), pp. 1-4.

<sup>400</sup> See Exhibit P1187 (intercept of Ndagijimana calling Turinabo on 28 July 2017), p. 4.

<sup>401</sup> See Exhibit P1297 (intercept of Maniraguha calling Ndagijimana on 2 August 2017), pp. 1-3. See also Exhibits P1303, P1304 (text from Turinabo to Ndagijimana on 29 July 2017) (instructing Ndagijimana to tell Witness ANAE/TNN30 to agree to meet the “adversaries” in the presence of the Defence).

<sup>402</sup> See Exhibit P862 (intercept of Ndagijimana calling Twagirayezu on 31 July 2017), p. 2.

<sup>403</sup> See Exhibit P1207 (intercept of Witness ANAN calling Nzabonimpa and Turinabo on 28 July 2017), pp. 1-4; Exhibit P20 (intercept of Mbarimo calling Turinabo on 30 July 2017), pp. 1-6. Cf. Exhibit P1309 (text from Turinabo to Nzabonimpa on 30 July 2017) (instructing Nzabonimpa that Witness ANAN “will meet the opponent in the presence of tot [Ngirabatware’s counsel].”).

beyond reasonable doubt that, between 15 July and 2 August 2017, Ndagijimana instructed Mukamisha, Maniraguha, and Witness ANAM/TNN31 directly, and Witness ANAE/TNN30 indirectly and through Maniraguha, on what they should say if requested to meet with the Prosecution. These instructions, given in the shadows of Ngirabatware's appointed Defence team, necessarily interfere with the proper administration of justice.

137. Turning to the alleged payments, Mobile Money records reflect that on 1 August 2017, Nzabonimpa transferred 31,000 Rwandan francs to Maniraguha.<sup>404</sup> This is documented in the spreadsheet extracted from Nzabonimpa's external hard drive as 15,000 Rwandan franc payments to Maniraguha and Witness ANAE/TNN30.<sup>405</sup> Furthermore, on 1 August 2017, Nzabonimpa called Maniraguha and instructed him that he "sent [Maniraguha] some money", Maniraguha confirmed he received it, and Nzabonimpa instructed Maniraguha that 15,000 Rwandan francs was for him and another 15,000 Rwandan francs was "for the other".<sup>406</sup> The only reasonable inference to be drawn from the record was that the "other" referred to was Witness ANAE/TNN30 and that Nzabonimpa was instructing Maniraguha to provide the witness with 15,000 Rwandan francs.

138. Turning to the purpose of these payments, I consider that the only reasonable conclusion was that they were made to ensure Maniraguha's and Witness ANAE/TNN30's continued cooperation with the Ngirabatware Defence as they faced the prospect of further questioning from the Prosecution. Witness ANAE/TNN30's general denials that she received money to recant or other evidence that may suggest that this payment was to facilitate travel costs<sup>407</sup> do not raise reasonable doubt in relation to this conclusion. By this time, Ngirabatware had a Defence team appointed by the Mechanism<sup>408</sup> and it was apparent that costs related to travel would be borne by

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<sup>404</sup> See Exhibit P172, p. 12, row 489. See also Exhibit P352 (text from M-Money to Nzabonimpa on 1 August 2017) ("You have transferred 31000 RWF to Laurent Maniraguha [...] from your mobile money account [...] at 2017-08-01 12:17:13.").

<sup>405</sup> See Exhibit P229, p. 2, rows 163, 164 (reflecting payments to the first three letters of Witness ANAE/TNN30's first name and a code name attributable to Maniraguha with the date "01 aguste 2017").

<sup>406</sup> See Exhibit P1286 (intercept of Nzabonimpa calling Maniraguha on 1 August 2017 at 12:49), p. 1. See also Exhibit P1264 (intercept of Nzabonimpa calling Turinabo on 1 August 2017 at 7:41), p. 2 (Turinabo instructing Nzabonimpa to send the money to Maniraguha but to call in advance and explain that "15" is for him and "15" for Witness ANAE/TNN30); Exhibit P1327 (text from Turinabo to Maniraguha on 1 August 2017 at 7:46:35) (noting that "[i]t will be done in a few moments" and that "15" was for Maniraguha and "15" for Witness ANAE/TNN30).

<sup>407</sup> See, e.g., Exhibit P350 (text from Turinabo to Nzabonimpa on 1 August 2017) (informing Nzabonimpa that Maniraguha "denies that [Witness ANAE/TNN30] was given a transport ticket"). Read in context, this is a clear reference to a prior payment of 14,750 Rwandan francs that Nzabonimpa, not the WISP, made days earlier. See Exhibit P170, p. 13, row 512 (payment from MTNR Merchant to Witness ANAE/TNN30's phone number on 27 July 2017 at 14:32). A phone call about three hours later that day reflects Nzabonimpa stating to Maniraguha that he sent Witness ANAE/TNN30 "transportation money" to her phone. See Exhibit P842 (intercept of Nzabonimpa calling Maniraguha on 27 July 2017 at 17:24), p. 1.

<sup>408</sup> Ngirabatware had counsel assigned at the expense of the Mechanism from 5 May 2016. See Decision on Assignment of Counsel of 5 May 2016, p. 11.

the institution if being summoned to it.<sup>409</sup> Rather, these payments were intended to generate further goodwill to ensure continued cooperation with the Ngirabatware Defence and to influence Maniraguha and Witness ANAE/TNN30 to ensure they provided information that would further Ngirabatware's request for review of his convictions. Finally, I have no doubt that Nzabonimpa made these payments from funds made available by Ngirabatware, which were provided for the purpose of ensuring the continued cooperation of the Recanting Witnesses and Intermediaries.

#### 6. Training: July through September 2017

139. The *Nzabonimpa et al.* Indictment charges that, from 28 July 2017 through September 2017, Ndagijimana, through telecommunications and/or in person meetings in Gisenyi, provided instructions to Witnesses ANAM/TNN31 and/or ANAE/TNN30, directly and/or through Maniraguha, regarding what to say about the circumstances of their recantations.<sup>410</sup> It further alleges that, in September 2017, Nzabonimpa forwarded to Turinabo and Ndagijimana information prepared by Ngirabatware which was used to instruct Witnesses ANAM/TNN31 and ANAE/TNN30 on what to say during interviews with the Prosecution.<sup>411</sup>

140. The *Ngirabatware* Indictment alleges that the training of Witnesses ANAM/TNN31 and/or ANAE/TNN30 occurred on Ngirabatware's behalf and on the basis of information he prepared in September 2017 together with information he prepared in June 2016, which he sent to Nzabonimpa for onward transmission to Turinabo and Ndagijimana and that he intended the Recanting Witnesses to provide during interviews with the Prosecution, which Nzabonimpa did.<sup>412</sup> The Prosecution principally relies on communications evidence in support of Ndagijimana instructing these witnesses in late July 2017 and communications, forensic, and testimonial evidence in support of alleged training in September 2017.<sup>413</sup>

141. Ndagijimana disputes that he trained Witnesses ANAE/TNN30 and ANAM/TNN31 and contends that the witnesses' testimonies do not support the allegation and are unreliable.<sup>414</sup> Ngirabatware argues that the evidence does not demonstrate allegations that Witnesses

<sup>409</sup> See also Exhibit P19 (intercept of Mbarimo calling Turinabo on 27 July 2017), p. 1 (Turinabo confirming that "Gahigiro", or Nzabonimpa, sent Mbarimo 15,000 Rwandan francs but that "it should not deter" him from asking "the other" – or, in this particular case, the WISP who is calling to meet him – for "transport money"); Exhibit P1129 (intercept of Maniraguha calling Turinabo on 26 July 2017), p. 4 (Turinabo informing Maniraguha that even if he is given "return tickets, on departure, one should leave a little something for [Witness ANAE/TNN30]").

<sup>410</sup> *Nzabonimpa et al.* Indictment, para. 23(iii). See also Prosecution Final Trial Brief, paras. 100, 105, 109, 110, 179.

<sup>411</sup> *Nzabonimpa et al.* Indictment, para. 23(v). See also Prosecution Final Trial Brief, paras. 100, 107-110, 173.

<sup>412</sup> *Ngirabatware* Indictment, para. 21(ii)(a). See also Prosecution Final Trial Brief, paras. 105, 107-110, 165.

<sup>413</sup> See Prosecution Final Trial Brief, paras. 100, 101, 105, 107-110.

<sup>414</sup> See, e.g., Ndagijimana Final Trial Brief, paras. 182-186, 226, 233, 362. See also Ndagijimana Final Trial Brief, para. 15.

ANAM/TNN31 and/or ANAE/TNN30 were trained on the basis of the documents extracted from his devices.<sup>415</sup> Nzabonimpa argues that it is not alleged nor does the evidence demonstrate that he had any role in training either witness.<sup>416</sup>

142. During a telephone call on 28 July 2017, Turinabo told Ndagijimana that he will need to explain to Witness ANAM/TNN31 that, in light of pressure brought on Witness ANAT during his meeting, she must explain that “it’s her conscience that prompted her” to recant.<sup>417</sup> A communication from Turinabo to Ndagijimana on 29 July 2017, in anticipation of Witness ANAE/TNN30’s meeting with the WISP, reflects the clear intention for Ndagijimana to prepare her as she may be asked about her recantation and to “remind her of the importance of conscience and that she should be ready to say it before the Judge”.<sup>418</sup> This message was followed by another from Turinabo on the same day, telling Ndagijimana: “[t]he same for Misha [Mukamisha], but concerning her, there is no terror except that it is necessary to emphasize on proving her discussion with [Witness ANAM/TNN31], who confessed to her the origin of the lie she was taught and advised her to confess and be free. Bye”.<sup>419</sup> Ndagijimana responded to this message, saying: “Ok”.<sup>420</sup> Other communications around this time reflect a clear intention for other Recanting Witnesses to give particular answers should they be questioned.<sup>421</sup>

143. While this raises the distinct possibility that Ndagijimana would instruct both Witness ANAM/TNN31 and Witness ANAE/TNN30, directly or through Maniraguha, the evidentiary basis is lacking, particularly in view of the extensive communications records that were retrieved around this time. Indeed, subsequent conversations between Ndagijimana and Witness ANAM/TNN31 on 30 and 31 July 2017 do not contain an express instruction related to the circumstances of her recantation, including instructions on how to explain why she recanted.<sup>422</sup> Likewise, the Prosecution does not provide sufficient support as this allegation relates to Witness ANAE/TNN30

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<sup>415</sup> Ngirabatware Final Trial Brief, paras. 207-214, 269-283, p. 82.

<sup>416</sup> Nzabonimpa Final Trial Brief, paras. 381-391. As it relates to Witness ANAM/TNN31, Nzabonimpa argues that sharing the notes related to her that were extracted from Ngirabatware’s computers would not be improper and cannot constitute contempt. *See, e.g.*, Nzabonimpa Final Trial Brief, paras. 388-390.

<sup>417</sup> *See* Exhibit P1217 (intercept of Ndagijimana calling Turinabo on 28 July 2017), pp. 1, 2.

<sup>418</sup> *See* Exhibits P1303, P1304 (text from Turinabo to Ndagijimana on 29 July 2017 at 17:31:38) (“Prepare [Witness ANAE/TNN30] by emphasizing on terror as she may be asked about the recantation and remind her of the importance of conscience and that she should be ready to say it before the Judge. Remember to accept to meet adversaries in presence of the defense.”).

<sup>419</sup> *See* Exhibits P1305, 1306 (text from Turinabo to Ndagijimana on 29 July 2017 at 19:53:27).

<sup>420</sup> *See* Exhibit P1307 (text from Ndagijimana to Turinabo on 29 July 2017 at 19:54:44).

<sup>421</sup> *See, e.g.*, Exhibits P1308, 1309 (text from Turinabo to Nzabonimpa on 30 July 2017).

<sup>422</sup> *See* Exhibit P857 (intercept of Witness ANAM/TNN31 calling Ndagijimana on 30 July 2017); Exhibit 6D4 (intercept of Ndagijimana calling Witness ANAM/TNN31 on 31 July 2017). *See also* Witness ANAM/TNN31, T. 3 November 2020 pp. 57-59 (discussing Exhibit 6D4).

in late July 2017. Indeed, conversations between the two witnesses in early August 2017 suggest that they were waiting to be trained.<sup>423</sup>

144. As to evidence of later training, I note that Ndagijimana was arrested in possession of a series of documents that concern information on the recantations of Witnesses ANAE/TNN30 and ANAM/TNN31, which were identical to documents extracted from Nzabonimpa's and/or Ngirabatware's devices.<sup>424</sup> Ndagijimana conceded that all the documents derived from Nzabonimpa and authenticated a series of exchanges between Nzabonimpa and him on 19 September 2017 reflecting Nzabonimpa forwarding "things" sent by "our person" – *i.e.* Ngirabatware – that Nzabonimpa wanted Ndagijimana to read.<sup>425</sup>

145. In this respect, and particularly as it relates to Exhibit P208, which is entitled "conversation between [Witness ANAM/TNN31] and the Prosecutor of the IRMCT on 29.8.2017", the versions extracted from Ngirabatware's devices were created on 15 September 2017,<sup>426</sup> and they contain *italicised* text. Notably, Ndagijimana's final message after having reviewed the material Nzabonimpa sent him in the 19 September 2017 says: "I have seen it. It is important that they see it and read it and master all those things in italics. They are among the most difficult."<sup>427</sup> Indeed, a later call from Ndagijimana to Nzabonimpa reflects that at least one of the documents Nzabonimpa sent to him related to Witness ANAM/TNN31, who he refers to as the "female villager", and that the purpose of it is for Ndagijimana "to read for her what she said so that she doesn't make a mistake and deviate."<sup>428</sup>

<sup>423</sup> See, e.g., Exhibits P7, P11 (intercepts of Maniraguha calling Witness ANAM/TNN31 on 3 August 2017). See also Witness ANAM/TNN31, T. 2 November 2020 pp. 34-37, 42-47.

<sup>424</sup> See Ndagijimana, T. 17 March 2021 pp. 61-67; compare Exhibit P206 (seized from Ndagijimana) with Exhibits P224, P230 (extracted from Nzabonimpa's external hard drive) and Exhibits P40, P62, P63 (extracted from Ngirabatware's devices); compare Exhibit P207 (seized from Ndagijimana) with Exhibits P47, P58, P74 (extracted from Ngirabatware's devices); compare P208 (seized from Ndagijimana) with Exhibits P44, P71 (extracted from Ngirabatware's devices). See also Exhibit P78 (Statement of Seizure: Ndagijimana).

<sup>425</sup> See Ndagijimana, T. 17 March 2021 pp. 64-66 (authenticating texts exhibited as P441, P442, P443, P444, and P445).

<sup>426</sup> See Exhibit P110 (Olejniczak Supplemental Report), pp. 63, 64 (relating to Exhibits P44 and P71).

<sup>427</sup> See Exhibit P445 (text from Ndagijimana to Nzabonimpa on 19 September 2017). See also Exhibit P1548 (Rwandan intercept of the same text).

<sup>428</sup> Exhibit P1089 (intercept of Ndagijimana calling Nzabonimpa on 19 September 2017), pp. 1, 2. See also Exhibit P1092 (intercept of Ndagijimana calling Turinabo on 21 September 2017), pp. 3, 4, 7 (noting that the Recanting Witnesses are not supposed to see the documents, which are confidential, but that Ndagijimana should call Witness ANAM/TNN31 to "remind" her on the basis of the document, and, in particular, that she tore up the papers after having the type-written ones); Exhibit P1100 (intercept of Turinabo calling Ndagijimana on 21 September 2017), pp. 5, 6 (Ndagijimana explaining that he will call Witness ANAM/TNN31 and instruct her to say that she wrote the letter – double-checking it was sent to "Mylene" – and that she should not be asked anything else, that the Prosecution should read her what she said last time, and that she should be brief); Exhibit P1102 (intercept of Ndagijimana calling Turinabo on 22 September 2017), pp. 1, 2 (Ndagijimana explaining that Witness ANAM/TNN31 informed him that she had been called to meet the Prosecution on Tuesday 26 September; Turinabo telling Ndagijimana that he should "start briefing her about the other things", and Ndagijimana explaining that he told the witness that he would call her again in the afternoon).

146. Notably, the italicized text in these exhibits are instructions to Witness ANAM/TNN31 to recall certain aspects related to the recantation process, including: (i) the date of her recantation letter; and (ii) that she confided in Ndagijimana and Maniraguha and that she had approached them about her “serious problem because of the fact that she had given false testimony against Ngirabatware, as stated in her letter of 2015”. Likewise, italicised text focuses on the content of her recantation letter and subsequent consent letter and the explanation as to why she initially refused to meet with the Defence. Furthermore, the statement contains the fabricated account of how her recantation letter was produced with the assistance of and then sent by Maniraguha. In this context, the only reasonable conclusion is that Ngirabatware created this document and shared it with Ndagijimana through Nzabonimpa in the middle of September 2017 so that Witness ANAM/TNN31 could be prepared for her forthcoming interview with the Prosecution on the basis of it.

147. I note that Witness ANAM/TNN31 testified that Ndagijimana trained her over the phone prior to this interview and that Ndagijimana had emphasized that everything she had “told Robinson [she had] to repeat to the Prosecutor”.<sup>429</sup> The witness could not recall if Ndagijimana told her anything else ahead of the interview.<sup>430</sup> Communications evidence reflects that, around this time, Witness ANAM/TNN31 wanted instructions from Ndagijimana.<sup>431</sup>

148. Ndagijimana, on the other hand, denied training Witness ANAM/TNN31 and, in particular, on the basis of this document and other documents seized from him.<sup>432</sup> This testimony, however, is belied by his own contemporaneous remarks, made on 25 September 2017 and the day before Witness ANAM/TNN31 was to meet with the Prosecution<sup>433</sup> – that he “went to [Witness ANAM/TNN31] and actually found that he/she knows it better than me” and that he “taught her that it is good, you are on the ... good line but be brief”.<sup>434</sup> In view of the foregoing, I have no doubt that Ndagijimana instructed Witness ANAM/TNN31 on what to say during her interview

<sup>429</sup> See Witness ANAM/TNN31, T. 2 November 2020 pp. 66-72. I have also considered Witness ANAM/TNN31’s general response that she, *inter alia*, did not dispute counsel’s suggestion that she did not receive training from Ndagijimana. See Witness ANAM/TNN31, T. 2 November 2020 p. 76. This general remark, after reviewing an unrelated telephone conversation, does not amount to a contradiction when viewed in context. See Witness ANAM/TNN31, T. 2 November 2020 pp. 72-76.

<sup>430</sup> See Witness ANAM/TNN31, T. 2 November 2020 p. 70.

<sup>431</sup> See Exhibit 6D4 (intercept of Ndagijimana calling Witness ANAM/TNN31 on 31 July 2017), pp. 1, 2 (reflecting Witness ANAM/TNN31’s anxiety that she is supposed to speak with the “other man” – *i.e.* the Prosecution – but “What’s with [the Defence]? Why don’t you tell him/her to talk to us? What will we say afterwards?” and Ndagijimana reassuring her that he will talk to them and get back to her). Cf. Exhibit 6D48 (intercept of Nzabonimpa calling Ndagijimana on 12 September 2017) (Ndagijimana informing Nzabonimpa that Witness ANAM/TNN31 wants to meet with him in Kigali). Call records reflect that Witness ANAM/TNN31 and Ndagijimana spoke on the phone on 21 and 24 September 2017. See Exhibit 1D10, call reference numbers 162414, 162415, 163392.

<sup>432</sup> See Ndagijimana, T. 17 March 2021 pp. 66-71.

<sup>433</sup> See Exhibit 3D20, p. 6. See also Ndagijimana Final Trial Brief, para. 80.



with the Prosecution and that he did so on the basis of the document provided by Ngirabatware through Nzabonimpa.

149. Turning to Witness ANAE/TNN30, I note that textually identical documents entitled “Declaration of [Witness ANAE/TNN30] to the Prosecutor, done 31 August 2016”, which share the same metadata and were created on 12 September 2017, were found on Ngirabatware’s laptops (Exhibits P47, P58, P74).<sup>435</sup> A textually identical document was also found in Ndagijimana’s possession upon his arrest (Exhibit P207).<sup>436</sup> The document appears to be a summary of a statement and largely concerns the circumstances surrounding the witness’s initial refusal to meet with Ngirabatware’s counsel, followed by the circumstances surrounding the consent letter she later sent agreeing to meet with him.

150. Communications evidence demonstrates that Nzabonimpa sent documents related to Witness ANAE/TNN30 to Turinabo and Ndagijimana.<sup>437</sup> Likewise, conversations reflect that Ndagijimana intended to and made plans with the witness to train her,<sup>438</sup> and later communications reflect that Turinabo would share instructions for the witness through Maniraguha.<sup>439</sup> These exchanges further reflect that training was based on the information shared as well as on the basis of the consent letter that they assisted in preparing for Witness ANAE/TNN30. Witness ANAE/TNN30 generally testified that Maniraguha trained her to say that she had lied while

<sup>434</sup> See Exhibit P1126 (intercept of Ndagijimana calling Nzabonimpa on 25 September 2017), pp. 4, 5.

<sup>435</sup> See Exhibit P110 (Olejniczak Supplemental Report), pp. 57, 58; Exhibits P58 and P74 (extracted from Ngirabatware’s Samsung laptop); Exhibit P47 (extracted from Ngirabatware’s Dell laptop).

<sup>436</sup> See Exhibit P207 (seized from Ndagijimana). See also Exhibit P78 (Statement of Seizure: Ndagijimana).

<sup>437</sup> See Exhibits P1536 (text from Nzabonimpa to Turinabo on 19 September 2017); Exhibit P1537 (text from Nzabonimpa to Ndagijimana on 19 September 2017); Exhibit P1092 (intercept of Ndagijimana calling Turinabo on 21 September 2017), pp. 1, 3, 4. See also Ndagijimana, T. 17 March 2021 pp. 64-66 (authenticating texts as exhibited as P441, P442, P443, P444, and P445).

<sup>438</sup> Exhibit P1092 (intercept of Ndagijimana calling Turinabo on 21 September 2017), pp. 3-6; Exhibit P1100 (intercept of Turinabo calling Ndagijimana on 21 September 2017), pp. 1-4, 6; Exhibit P1126 (intercept of Ndagijimana calling Nzabonimpa on 25 September 2017), pp. 1-4; Exhibit P1137 (intercept of Ndagijimana calling Witness ANAE/TNN30 on 27 September 2017) (telling her that he will come to her home).

<sup>439</sup> See Exhibit P1142 (intercept of Turinabo calling Ndagijimana on 27 September 2017), pp. 1, 2 (Turinabo asking for a copy of Witness ANAE/TNN30’s consent letter and because he is meeting “that man” – *i.e.* Maniraguha – for “coaching him on the other matter”); Exhibit P1144 (intercept of Nzabonimpa calling Turinabo on 27 September 2017), pp. 1-6 (Nzabonimpa stresses the importance of Witness ANAE/TNN30 recalling the date of the consent letter as 26 January 2016 or just mentioning the month and Turinabo informing him that he plans to see that “little man” – *i.e.* Maniraguha – tomorrow and “[i]f we get lucky and he/she gets there and remembers it!”); Exhibit P1145 (intercept of Turinabo calling Ndagijimana on 27 September 2017), p. 1 (discussing the dates of the consent letter of 26 January 2016 and Turinabo indicating “[a]s for the rest, when I go to see that guy I will try to...today...I will instill it in him/her today and Thursday.”); Exhibit P1623 (text from Turinabo to Nzabonimpa on 28 September 2017) (“[...] I am going to train L [Maniraguha], his person [Witness ANAE/TNN30] there is no hope but we will try, that the questionnaire has difficulties which can get confusing. [...]”). See also Exhibits P1616-P1620.

testifying in the *Ngirabatware* trial and he collaborated with Ndagijimana, and that she needed advice from them, given the situation she was put in.<sup>440</sup>

151. In light of the record as a whole, I have no doubt that both Ndagijimana and Turinabo trained the witness, using the document that was seized from Ndagijimana at the time of his arrest, which corresponds to those extracted from Ngirabatware's devices. I also have no doubt that Ngirabatware shared this document with Nzabonimpa, who then provided the document to Ndagijimana and Turinabo, for the basis of preparing Witness ANAE/TNN30 for her upcoming interview with the Prosecution. This training was conducted on Ngirabatware's behalf.

### 7. Training: October and November 2017

152. The *Nzabonimpa et al.* Indictment alleges that, in October and November 2017, Ndagijimana trained Witness ANAE/TNN30 on what testimony to give during the review hearing.<sup>441</sup> The Prosecution relies on communications and forensic evidence.<sup>442</sup> Ndagijimana generally disputes that he trained Witness ANAE/TNN30 and argues that her testimony is unreliable.<sup>443</sup>

153. Communications evidence reflects that in early October 2017, Turinabo contacted Nzabonimpa about actions to be taken as November approached and it was anticipated that the review hearing might take place then.<sup>444</sup> In particular, on 13 October 2017, Turinabo messaged Nzabonimpa asking that Ngirabatware share Witness ANAE/TNN30's "full interview".<sup>445</sup>

154. Furthermore, textually identical documents entitled "Testimony given by [Witness ANAE/TNN30] to the Prosecutor on 29.09.2017", which were created on 14 October 2017 and last

<sup>440</sup> T. 30 October 2020 pp. 12, 57, 58, 63, 64, 83, 84.

<sup>441</sup> *Nzabonimpa et al.* Indictment, para. 23(vi). See also Prosecution Final Trial Brief, paras. 112, 113, 179. The Prosecution submissions reflect that it is not pursuing this allegation against Nzabonimpa. See Prosecution Final Trial Brief, para. 173 (omitting reference to this allegation as it relates to Witness ANAE/TNN30). No corresponding allegation is contained in the *Ngirabatware* Indictment.

<sup>442</sup> Prosecution Final Trial Brief, paras. 112, 113.

<sup>443</sup> Ndagijimana Final Trial Brief, paras. 182-186, 362. See also Ndagijimana Final Trial Brief, para. 15.

<sup>444</sup> See Exhibit P1680 (text from Turinabo to Nzabonimpa on 11 October 2017); Exhibit P1682 (text from Turinabo to Nzabonimpa on 15 October 2017). See also Exhibit P474 (text from Turinabo to Nzabonimpa on 15 November 2017) ("Good morning. In fact, I think the powerful people [Appeals Chamber Judges] had planned for November but it was not possible because the building [the court] that was supposed to be used was not in good condition and it is being fixed now. There is greater certainty for January. The date will be known in the coming days.")

<sup>445</sup> Exhibit P461 (text from Turinabo to Nzabonimpa on 13 October 2017) ("Man, why does L [Maniraguha] keep playing games with us at every turn due to our naivety? A moment ago he told me that [Witness ANAE/TNN30] was removed from Kgl because of a letter! That all the rest have been removed by that same paper. Please ask our person [Ngirabatware] to give us a copy of [Witness ANAE/TNN30's] full interview so that he can read it on the computer, then you people can begin to prevent the intrigues emanating from his place. It's hard for me to tolerate.")

saved on 16 October 2017, were found on Ngirabatware’s laptops.<sup>446</sup> A textually identical document was also extracted from Nzabonimpa’s external hard drive, which was created, last saved, and printed on 18 October 2017.<sup>447</sup>

155. This document was also retrieved from Ndagijimana upon his arrest, and he testified that Nzabonimpa gave it to him.<sup>448</sup> The document itself appears to be a summary of a statement given by Witness ANAE/TNN30 but also contains italicized text that appears to offer explanations that, notwithstanding not having mentioned it before, Maniraguha had in the past travelled to Uganda but that he does not always tell the witness this and she does not always ask. Notably, this would align with information already known by the Prosecution that Maniraguha had, in fact, met with Robinson in Uganda in 2015.<sup>449</sup>

156. In this context, I have no doubt that instructions were given to Maniraguha on the basis of the summary of Witness ANAE/TNN30’s interview that Ngirabatware provided to Nzabonimpa and shared with Ndagijimana. Notwithstanding, the evidentiary record allows for the reasonable possibility that Turinabo provided the instructions to Maniraguha rather than Ndagijimana. Given the manner in which this allegation is pleaded, this finding cannot be a basis for liability for Ndagijimana, and this conclusion will only be considered for context.

#### 8. Payment: December 2017

157. The *Nzabonimpa et al.* Indictment alleges that, based on funds received from Ngirabatware, Nzabonimpa and Turinabo paid in December 2017 a “bribe” of 400,000 Rwandan francs to Maniraguha and Witness ANAE/TNN30.<sup>450</sup> The *Ngirabatware* Indictment alleges that, on or about 5 or 6 December 2017, through Nzabonimpa, Ngirabatware instructed Turinabo to pay Maniraguha and Witness ANAE/TNN30 500,000 Rwandan francs in “bribes” and that Turinabo paid them

<sup>446</sup> See Exhibit P110 (Olejniczak Supplemental Report), p. 53; Exhibits P62 and P63 (extracted from Ngirabatware’s Samsung laptop); Exhibit P40 (extracted from Ngirabatware’s Dell laptop).

<sup>447</sup> See Exhibit P110 (Olejniczak Supplemental Report), pp. 52, 53; Exhibit P224. Another version of this document, which was saved on 10 December 2017, was also found on Nzabonimpa’s external hard drive. See Exhibit P110 (Olejniczak Supplemental Report), p. 52; Exhibit P230. See also Exhibit P77 (Statement of Seizure: Nzabonimpa). The expert was unable to show a conclusive relationship between the documents retrieved from Nzabonimpa’s external hard drive with those extracted from Ngirabatware’s devices based on the metadata alone. See Exhibit P110 (Olejniczak Supplemental Report), para. 52.

<sup>448</sup> See Exhibit P206 (seized from Ndagijimana); Ndagijimana, T. 17 March 2021 pp. 62-64. See also Exhibit P78 (Statement of Seizure: Ndagijimana).

<sup>449</sup> See Exhibit 1D4. See also, e.g., *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Motion for Assignment of Counsel, 19 February 2016 (confidential), para. 8.

<sup>450</sup> *Nzabonimpa et al.* Indictment, para. 25(xiii). See also *Nzabonimpa et al.* Pre-Trial Brief, paras. 100, 128, 134 (reflecting that Turinabo coordinated with Nzabonimpa but that Nzabonimpa paid Maniraguha 400,000 Rwandan francs).

400,000 Rwandan francs.<sup>451</sup> The Prosecution, relying largely on communications evidence and on the spreadsheet extracted from Nzabonimpa’s external hard drive, argues both that Nzabonimpa and Turinabo paid Maniraguha 400,000 Rwandan francs.<sup>452</sup>

158. Nzabonimpa contends that the evidentiary record fails to establish that Maniraguha was paid this amount and that it was done as a “bribe” for the purpose of securing Maniraguha’s and Witness ANAE/TNN30’s cooperation with Ngirabatware’s defence or influence their prospective evidence.<sup>453</sup> Ngirabatware does not dispute that money was paid to Witness ANAE/TNN30 and Maniraguha but generally argues that some alleged payments lack sufficient evidentiary support and that, in any event, none was criminal.<sup>454</sup>

159. Witness ANAE/TNN30 denied that she received any money for the purpose of securing her recantation<sup>455</sup> and rejected asking Ndagijimana in November 2017 to send Maniraguha 400,000 Rwandan francs to help him reimburse his debts.<sup>456</sup> However, communications evidence reflects that, in November 2017, Maniraguha and Witness ANAE/TNN30 asked the Accused and Turinabo for 400,000 to 500,000 Rwandan francs to pay off a specific debt Maniraguha had with a cooperative<sup>457</sup> and that their continued cooperation would be contingent on such payment.<sup>458</sup> This constituted an issue of concern among Turinabo and the Accused in Rwanda.<sup>459</sup>

<sup>451</sup> *Ngirabatware* Indictment, para. 23(v). See also *Ngirabatware* Pre-Trial Brief, paras. 95, 125 (suggesting, alternatively that Nzabonimpa or Turinabo paid Maniraguha 400,000 Rwandan francs).

<sup>452</sup> Prosecution Final Trial Brief, paras. 116, 167, 174, n. 451.

<sup>453</sup> Nzabonimpa Final Trial Brief, paras. 492-495. Nzabonimpa also contends that the allegation that he directly paid this bribe is at odds with the pleading in the *Ngirabatware* Indictment that Turinabo did. See Nzabonimpa Final Trial Brief, para. 494.

<sup>454</sup> Ngirabatware Final Trial Brief, paras. 215-226, p. 56.

<sup>455</sup> Witness ANAE/TNN30, T. 27 October 2020 pp. 43, 44; T. 30 October 2020 pp. 18-22, 24, 59, 60.

<sup>456</sup> See Witness ANAE/TNN30, T. 30 October 2020 p. 21.

<sup>457</sup> Several exhibits reflect Maniraguha directly soliciting assistance from Nzabonimpa. See Exhibit 6D59 (text from Maniraguha to Nzabonimpa on 7 November 2017) (“Hello. Please try to assist me so that I can solve my problems. Please respond, thank you”); Exhibit 6D60 (text from Maniraguha to Nzabonimpa on 8 November 2017) (“Good afternoon. I’ve been waiting for you in vain. Are you still in Kgl? I have serious problems and need your assistance. Thank you, please respond”); Exhibit P479 (text from Maniraguha to Nzabonimpa on 27 November 2017) (“Hello. I told you about the problem I have. It is a problem related to the cooperatives that I represent. I have a deficit of 500000 and on 20 December, I have to present the annual financial report. Please assist me. I don’t want to look ridiculous. I beg you. You can help me because I know that you, too, will need me for sure. Would it look good if I disappoint you, too? Please assist me. I am worried. Thanks, respond”).

<sup>458</sup> See Exhibit P476 (text from Turinabo to Nzabonimpa on 20 November 2017) (“[Witness ANAE/TNN30] confronted Barak [Ndagijimana] when he passed by their house without talking to them saying that he should not make noise when the dossier comes up again because the problem regarding L’s [Maniraguha’s] 400 was not resolved...! She should be told that everything else was honored but there was no contract to pay for the loss to the Co-operative.”); Exhibit P479 (text from Maniraguha to Nzabonimpa on 27 November 2017) (“[...] You can help me because I know that you, too, will need me for sure. Would it look good if I disappoint you, too? [...]”).

<sup>459</sup> See Exhibits P468-P471 (text exchanges between Turinabo and Nzabonimpa from 8 through 10 November 2017); Exhibit P477 (text from Turinabo to Nzabonimpa on 20 November 2017); Exhibits 6D61-6D68, 6D70 (text exchanges between Turinabo and Nzabonimpa from 10 through 30 November 2017). See also Ndagijimana, T. 16 March 2021 pp. 28-32.

160. Subsequent texts from Turinabo to Nzabonimpa on 5 and 6 December 2017 demonstrate that a decision was made that Maniraguha and Witness ANAE/TNN30 would be paid in line with instructions received from Ngirabatware, or “our person,”<sup>460</sup> but that the amount would not be more than 400,000 Rwandan francs.<sup>461</sup> I further observe a notation in the spreadsheet extracted from Nzabonimpa’s external hard drive reflects a payment of “400,000” to “1 moto”, or Maniraguha, after other documented payments in December 2017.<sup>462</sup>

161. In this context, I have no doubt that Maniraguha was paid 400,000 Rwandan francs from funds made available to Nzabonimpa by Ngirabatware and based on Ngirabatware’s instructions.<sup>463</sup> The purpose of the payment was to ensure Maniraguha’s and Witness ANAE/TNN30’s continued cooperation with the Ngirabatware Defence as the review hearing approached. This is the only reasonable conclusion in view of the importance of Witness ANAE/TNN30’s cooperation with the Ngirabatware Defence to the success of Ngirabatware’s request for review and in light of the clear threats that the witness would refuse to do so should the Accused not acceded to it.

#### 9. Payment: February 2018

162. The *Nzabonimpa et al.* Indictment alleges that, on 8 February 2018, Ndagijimana used Mobile Money to pay a “bribe” of at least 10,200 Rwandan francs to Witness ANAM/TNN31 from funds Nzabonimpa received from Ngirabatware and in exchange for her cooperation and to influence her prospective evidence.<sup>464</sup> The *Ngirabatware* Indictment alleges that, on 8 and 9 February 2018, Ngirabatware instructed Ndagijimana, through Nzabonimpa, to offer a bribe to Witness ANAM/TNN31.<sup>465</sup> The Prosecution relies on Mobile Money and communications evidence as well as the spreadsheet extracted from Nzabonimpa’s external hard drive in support of these allegations.<sup>466</sup>

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<sup>460</sup> See Exhibit P501 (text from Turinabo to Nzabonimpa on 5 December 2017) (“But we will come out with our heads held high. [Maniraguha’s] ultimatum will be respected. Our person”); Exhibit P502 (text from Turinabo to Nzabonimpa on 6 December 2017) (“Inform [Maniraguha] and [Witness ANAE/TNN30] that their ultimatum of the 20 will be adhered to in two phases. Our person.”).

<sup>461</sup> See Exhibit P504 (text from Turinabo to Nzabonimpa on 11 December 2017) (“For [Maniraguha] the utmost possibility is 400, no whims about 500. [...]”).

<sup>462</sup> See Exhibit P229, p. 3, row 201. I note that, in view of the entire record, Exhibit P229 refers to Maniraguha interchangeably as “L” and “L moto”.

<sup>463</sup> The absence of specific bank or Mobile Money records in support of this payment does not raise reasonable doubt in my mind that it was made.

<sup>464</sup> *Nzabonimpa et al.* Indictment, para. 25(xvi). See also Prosecution Final Trial Brief, paras. 116, 181.

<sup>465</sup> *Ngirabatware* Indictment, para. 23(vii). See also Prosecution Final Trial Brief, paras. 116, 167.

<sup>466</sup> See also Prosecution Final Trial Brief, para. 116.

163. Ndagijimana generally concedes that the Accused paid the Recanting Witnesses, including Witness ANAM/TNN31, but argues that this conduct is not criminal.<sup>467</sup> Ngirabatware contends that, by the end of 2017, he was informed of Witness ANAM/TNN31's demands for money but that the payments made were not criminal.<sup>468</sup>

164. Mobile money records demonstrate that Ndagijimana paid Witness ANAM/TNN31 10,200 Rwandan francs on 8 February 2018.<sup>469</sup> Ndagijimana confirmed that he paid Witness ANAM/TNN31, and, in particular, would send amounts between 10,000 and 30,000 Rwandan francs to cover her expenses when she had to travel.<sup>470</sup> In view of the above, I have no doubt that Ndagijimana made this payment and that the purpose was to secure the witness's continued cooperation with the Ngirabatware Defence. In this respect, the payment was surreptitious and made after Ngirabatware had a Defence team appointed by the Mechanism, demonstrating the highly irregular nature of the payment.<sup>471</sup>

165. In addition, email communications between Nzabonimpa and Ngirabatware on 9 February 2018 confirm that Ngirabatware told Nzabonimpa that Ndagijimana should pay Witness ANAM/TNN31.<sup>472</sup> On the same day, Ndagijimana sent a message to Nzabonimpa that Witness ANAM/TNN31's circumstances were bad and she was suffering.<sup>473</sup> Turinabo messaged Nzabonimpa the following day about the precarious situation the witness was in.<sup>474</sup>

166. Viewed in this context, I have no doubt that Ndagijimana offered the witness money based on instructions given to him by Ngirabatware and through Nzabonimpa. Indeed, later in April 2018,

<sup>467</sup> Ndagijimana Final Trial Brief, paras. 232, 373-390.

<sup>468</sup> Ngirabatware Final Trial Brief, paras. 295-299, p. 82.

<sup>469</sup> See Exhibit P147, p. 3, row 104.

<sup>470</sup> See, e.g., Ndagijimana, T. 15 March 2021 p. 59.

<sup>471</sup> See Decision on Assignment of Counsel of 5 May 2016, p. 11. Indeed, Turinabo and the Accused were well aware of the financial support that extended by the WISP to witnesses and Witness ANAM/TNN31, specifically. See, e.g., Exhibit P744 (text from Turinabo to Nzabonimpa on 14 May 2018) ("Barak [Ndagijimana] has called me saying that [Witness ANAM/TNN31] has requested a ticket to go for treatment. I think it cannot exceed 10 because I reminded Barak [Ndagijimana] that [Witness ANAM/TNN31] has to go through Protection [the WISP] and always be taken of. That support should be granted quickly because of the June project [*i.e.* anticipated interviews of the Recanting Witnesses with Ngirabatware's new Defence counsel.]). The benefits received from the WISP, including well-being support, is one of the reasons Ndagijimana did not waive his protective measures entirely. See T. 15 March 2021 pp. 13-15.

<sup>472</sup> See Exhibit P693 (email from [Ngirabatware] to [Nzabonimpa] on 9 February 2018) ("*Fais alors une proposition concernant hh [money] en faveur de [Witness ANAM/TNN31] qui est en deuil, en sachant qu'Uwacu [Ngirabatware] a déjà commencé à fournir des efforts concernant hh [money]; avant que les tutalibwa [Recanting Witnesses] ne partent, Mais Mwalimu [Ndagijimana] doit déjà se munir de cela à son départ.*").

<sup>473</sup> Exhibit P535 (text from Ndagijimana to Nzabonimpa on 9 February 2018) ("I got here around nine o'clock under heavy rain. The child has diarrhoea. The other one also is suffering from the same disease. There is also another one who is on the drip due to malaria. [...]. Life in general is bad. Details at our meeting.")

<sup>474</sup> Exhibit P536 (text from Turinabo to Nzabonimpa on 10 February 2018) ("Hello, the situation at [Witness ANAM/TNN31's] is not good, after Barak [Ndagijimana]. If he/she dies it is a loss because he/she does not have health insurance, is weak and malnourished.")

Ndagijimana messaged Nzabonimpa that the witness had notified the former that the health insurance drive in her area was ending and “remind[ed him] of the promise [they] made to her.”<sup>475</sup> While Ndagijimana may have had genuine concern as to the witness’s wellbeing, the purpose of the offer of money, which followed the instruction given by Ngirabatware on 9 February 2018 to Nzabonimpa, was to secure the witness’s continued availability and cooperation with the Ngirabatware Defence and to leverage the financial power at his disposal given the precarious circumstances in which the witness found herself.

#### 10. Training and Offer of Payments: May and June 2018

167. The *Nzabonimpa et al.* Indictment alleges that, between 15 May 2018 and 11 June 2018, Nzabonimpa, Ndagijimana, and Ngirabatware directed Witnesses ANAE/TNN30 and ANAM/TNN31 on what to say during the interviews with Ngirabatware’s Defence counsel, scheduled for 12 and 13 June 2018.<sup>476</sup> The *Ngirabatware* Indictment includes the same allegation, specifying that Ngirabatware acted through Turinabo, Nzabonimpa, and Ndagijimana in directing these witnesses on what to say.<sup>477</sup>

168. The *Nzabonimpa et al.* Indictment further alleges that, between 28 and 30 May 2018, Ndagijimana, on the instructions of Ngirabatware through Nzabonimpa, offered bribes to Maniraguha and Witness ANAE/TNN30.<sup>478</sup> The *Ngirabatware* Indictment specifies that Ngirabatware used digital communications from the UNDF in instructing Ndagijimana through Nzabonimpa.<sup>479</sup> The Prosecution relies principally on communications evidence in support of these allegations.<sup>480</sup>

169. Ndagijimana generally concedes that the Accused paid and assisted the Recanting Witnesses, but disputes that the payments were criminal or that he trained or coached them.<sup>481</sup> Nzabonimpa submits that the evidence fails to establish that he actually directed any of the witnesses on what to say during their interviews with Ngirabatware’s counsel<sup>482</sup> or that he offered any bribe to Maniraguha or Witness ANAE/TNN30 in May 2018.<sup>483</sup> Ngirabatware concedes that

<sup>475</sup> Exhibit P543 (text from Ndagijimana to Nzabonimpa on 20 April 2018) (“Hello, [Witness ANAM/TNN31] has told me that the health insurance drive in their region is ending. In that regard she was reminding me of the promise we made to her.”).

<sup>476</sup> *Nzabonimpa et al.* Indictment, para. 23(vii). See also Prosecution Final Trial Brief, paras. 117-121, 173, 179.

<sup>477</sup> *Ngirabatware* Indictment, para. 21(iv). See also Prosecution Final Trial Brief, paras. 117-121, 165.

<sup>478</sup> *Nzabonimpa et al.* Indictment, para. 25(xvii). See also Prosecution Final Trial Brief, paras. 120, 174, 181.

<sup>479</sup> *Ngirabatware* Indictment, para. 23(viii). See also Prosecution Final Trial Brief, paras. 120, 167.

<sup>480</sup> Prosecution Final Trial Brief, paras. 117-121.

<sup>481</sup> Ndagijimana Final Trial Brief, paras. 182-184, 233, 373-390.

<sup>482</sup> Nzabonimpa Final Trial Brief, paras. 410-418.

<sup>483</sup> Nzabonimpa Final Trial Brief, paras. 506-510.

payments were made to Witness ANAE/TNN30 but disputes that they were criminal and generally argues that he did not instruct Witnesses ANAM/TNN31 and/or ANAE/TNN30 on what to say during interviews.<sup>484</sup>

170. Communications evidence reflects that, by 7 May 2018, Turinabo shared with Nzabonimpa that Ngirabatware's new Defence counsel would be arriving in Kigali on 8 May 2018 and intended to interview the intermediaries starting the following day.<sup>485</sup> On 11 May 2018, Ngirabatware informed Nzabonimpa that his new Defence counsel intended to interview the Recanting Witnesses and Ndagijimana around 11 June 2018,<sup>486</sup> and Nzabonimpa assured Ngirabatware that he, Turinabo, and Ndagijimana would be preparing the Recanting Witnesses.<sup>487</sup> On 15 May 2018, Turinabo stressed the need to "sharpen" the Recanting Witnesses before 11 June 2018 in connection with any payments to be made to them<sup>488</sup> and, on 16 May 2018, Turinabo contacted Nzabonimpa regarding an accelerated strategy in relation to the Recanting Witnesses.<sup>489</sup> On 20 May 2018, it is clear that Turinabo, Ndagijimana, and Nzabonimpa intended to meet to discuss a way forward.<sup>490</sup> The next

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<sup>484</sup> Ngirabatware Final Trial Brief, paras. 215-226, 278-283, 295-299, pp. 56, 82. *See also* Ngirabatware Final Trial Brief, paras. 156, 157. *See also* Ngirabatware Final Trial Brief, paras. 201-214.

<sup>485</sup> *See* Exhibit P739 (text from Turinabo to Nzabonimpa on 7 May 2018) ("The version that L [Maniraguha] gave you remains exact. Totaux [Defence counsel] will arrive in Kgl on 08 May. [Twagirayezu, Maniraguha, and Mukamisha] have an appointment on 09 May. Mbar [Mbarimo] and Bwanav have an appointment on 10 May, but if Mbar [Mbarimo] arrives early, Misha and I from Gisa [Mukamisha and Twagirayezu] will be rescheduled. Let it remain that way tonight.").

<sup>486</sup> *See* Exhibit P549 (text from Ngirabatware to Nzabonimpa on 11 May 2018) ("Good evening. Does Vum [Nzabonimpa] have 2 numbers? On the other one, I posted what the Totaux [new Defence counsel] told me. On the 11th of June, they will go to meet Ututalibw [the Recanting Witnesses] and Barak [Ndagijimana].").

<sup>487</sup> Exhibit P550 (text from Nzabonimpa to Ngirabatware on 12 May 2018) ("He/she has 2 numbers and he/she received the things. Rub, Vum and Barak [Turinabo, Nzabonimpa and Ndagijimana] are preparing the ututaribwa [Recanting Witnesses]. [...]").

<sup>488</sup> *See* Exhibit P553 (text from Turinabo to Nzabonimpa on 15 May 2018 at 16:49:54) ("[...] Regarding the measurements of the plots [Recanting Witnesses] in September, it is fine but without forgetting to sharpen ututaribwa [the Recanting Witnesses] before 11th June, such that they will all meet when they are very sharp."); Exhibit P747 (text from Turinabo to Nzabonimpa on 15 May 2018 at 17:02:59) ("The 4 plots [Recanting Witnesses] and Barak [Ndagijimana] will meet our people in the presence of Mkeba [Prosecution] but he will not ask any questions on 11 June. It requires sharpening of our pawns well before that date. I think we should meet without delay with Kayove [Nzabonimpa] to plan the final.").

<sup>489</sup> Exhibit P554 (text from Turinabo to Nzabonimpa on 16 May 2018) ("Hello, it will be good if you remember because we have a short time due to preparation of Muler [Munyeshuli], Vumbi [Nzabonimpa], [Witness ANAN] and L [Maniraguha], Barak [Ndagijimana], [Witnesses ANAM/TNN31 and ANAT]. Accelerated strategy [*sic*] because 11th June is very close."). I note that the code name used for Witness ANAM/TNN31 is not listed in Annex A.1 of the Prosecution Final Trial Brief but, however, is an obvious and clear variation of the three others that are listed and, when read in context, is clearly a reference to this witness. *See, e.g.*, Exhibits P745 and P746 (texts from Turinabo to Nzabonimpa on 14 May 2018) (where the variation of the code name used in Exhibits P554 and P745 is expressly tied to a listed code name and Witness ANAM/TNN31's full name).

<sup>490</sup> *See* Exhibit P555 (text from Turinabo to Nzabonimpa on 20 May 2018) ("[...] Details later during the appointment with Barak and Vumb [Ndagijimana and Nzabonimpa] to plan the contemplated projects in progress and the ad hoc parameters. Bye.").



day, Ngirabatware informed Nzabonimpa and Ndagijimana that the interviews of the Recanting Witnesses would occur on 12 and 13 June 2018.<sup>491</sup>

171. Critically, as of mid-May 2018, Ngirabatware informed Nzabonimpa that money should be made available *again* to the Recanting Witnesses before they leave for the review proceedings in September.<sup>492</sup> Nzabonimpa immediately shared this message with Turinabo and Ndagijimana.<sup>493</sup> Viewed in context, the only reasonable conclusion is that Nzabonimpa was sharing instructions received from Ngirabatware at the UNDF, which made it clear to Turinabo and Ndagijimana that the Recanting Witnesses would be paid in connection with their cooperation with the Defence in relation to their interviews and the ultimate review hearing.

172. Moreover, communications of 26 and 28 May 2018 reflect that, as the Accused learned the witnesses were being contacted by the WISP to ascertain whether they would agree to these prospective interviews, concerns were raised that Witness ANAM/TNN31 was being pressured by Witness ANAE/TNN30 to refuse,<sup>494</sup> that Witness ANAE/TNN30 and Maniraguha became unreachable, and that Witness ANAE/TNN30 also would not cooperate unless further payments were made.<sup>495</sup> On 28 May 2018, Nzabonimpa reassured Ngirabatware that the situation was being

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<sup>491</sup> See Exhibit P659 (text from Ngirabatware to Nzabonimpa on 21 May 2018) (“Today our person [Ngirabatware] spoke with the Totaux [Defence counsel], they will meet the totalib [Recanting Witnesses] on the 12th and 13th of June. In the coming days they will ask if they agree to meet with the Totaux [the Defence]. In that regard if Vum [Nzabonimpa] and his people were to be notified upfront it would be good so that it does not come as a surprise to them.”); Exhibit P563 (text from Ngirabatware to Nzabonimpa on 28 May 2018) (“Also on the 12th and 13th, because the Tots [Defence] will be together with mkeb [Prosecution], they will ask one main question; If he/she lied. If he/she says no, he/she will not be summoned to where our person [Ngirabatware] is, in September. It will be the end.”). See also Exhibits P556, P557 (text from Ndagijimana to Nzabonimpa on 22 May 2018) (“Good morning, these are the messages that our person [Ngirabatware] sent me last night on WhatsApp : [...]”).

<sup>492</sup> See Exhibit P635 (text from Ngirabatware to Nzabonimpa on 15 May 2018) (“Since the totalib [Recanting Witnesses] will meet the Tots [Defence counsel] in the presence of Mkeb [Prosecution] on the 11th of June, I was of the opinion that Vum [Nzabonimpa] should measure the plots [make payments to the Recanting Witnesses] once again shortly before they leave, meaning in September.”).

<sup>493</sup> See Exhibit P551 (text from Nzabonimpa to Turinabo on 15 May 2018 at 9:40:52); Exhibit P552 (text from Nzabonimpa to Ndagijimana on 15 May 2018 at 9:41:25).

<sup>494</sup> Exhibit P561 (text from Ndagijimana to Nzabonimpa on 26 May 2018) (“Good evening. [Witness ANAM/TNN31] told me that [Witness ANAE/TNN30] told her that De was called for Wednesday but that he/she will not honor that invitation. I called him/her 3 times but he/she refused to answer the phone. Early tomorrow morning, I will go to his/her home and see him/her.”); Exhibit P609 (text from Nzabonimpa to Ngirabatware on 28 May 2018) (“They have been summoned tomorrow on Tuesday. [Witness ANAE/TNN30] called [Witness ANAM/TNN31] telling her that she will not go there. [...]”).

<sup>495</sup> Exhibit P564 (text from Ndagijimana to Nzabonimpa on 28 May 2018 at 10:40:33) (“Hello, since yesterday [Maniraguha and Witness ANAE/TNN30] have been hiding from me both physically and on the phone. I am there even now and I can’t trace them even though we had an appointment.”); Exhibit P751 (text from Turinabo to Nzabonimpa on 28 May 2018 at 10:53:18) (“Hello, for information and despite the efforts that the subject in Tz /...Tanzania/ [Ngirabatware] has deployed to satisfy Laurent’s camp [Maniraguha and Witness ANAE/TNN30], the latter has given our relatives that live in the Shengen zone a very hard time at the last minute, asking for enormous amounts. [Witness ANAE/TNN30] refused to meet those who are preparing the project and in addition [Maniraguha and Witness ANAE/TNN30] switched off both of their phones. That is our L [Maniraguha] who believes he is a hero because of greed. Discreet bye.”); Exhibit P609 (text from Nzabonimpa to Ngirabatware on 28 May 2018 at 11:04:59) (“They have been summoned tomorrow on Tuesday. [Witness ANAE/TNN30] called [Witness ANAM/TNN31] telling her that she

“managed” and that Ndagijimana would look for the witness,<sup>496</sup> and later confirmed “[g]ood management now” and that Witness ANAE/TNN30’s conditions had been “honoured” and that she “will go there”.<sup>497</sup> In this context, Ngirabatware stressed in messages to Nzabonimpa on 28 May 2018 that money would be available for the Recanting Witnesses prior to the prospective interviews with a substantial payment to follow in September.<sup>498</sup>

173. On 30 May 2018, however, Witness ANAE/TNN30 did not go to her meeting and for reasons the Accused deemed to be dubious.<sup>499</sup> Ngirabatware responded by reminding that money for the Recanting Witnesses was available and later emphasized that Nzabonimpa and Ndagijimana should work hard and that he was waiting on instructions related to the payments.<sup>500</sup> Ndagijimana confirmed later that day that he spoke with Witness ANAE/TNN30<sup>501</sup> and, on 2 June 2018, Nzabonimpa confirmed with Ngirabatware that Ndagijimana spoke with the witness, who agreed to

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will not go there. Barak [Ndagijimana] looked for L [Maniraguha] and [Witness ANAE/TNN30] and they switched off their phones. It is information. They think that they have gotten a chance to hike prices. Kip did not show his/her face. Protection will do its job”).

<sup>496</sup> Exhibit P566 (text from Nzabonimpa to Ngirabatware on 28 May 2018 at 13:32:35) (“Management continues. Barak [Ndagijimana] to look up and down, find him/her [Witness ANAE/TNN30] and tell him/her what he/she agreed. Then he/she goes there by all means. Vum [Nzabonimpa] and Barak [Ndagijimana] to assure our person [Ngirabatware] that they are handling the situation. He will finally communicate in the evening or tomorrow morning”).

<sup>497</sup> Exhibit P567 (text from Nzabonimpa to Ngirabatware on 28 May 2018 at 15:03:18) (“Good management now. Conditions required by [Witness ANAE/TNN30] have been honoured. She will go there”). Ndagijimana also spoke with Witness ANAM/TNN31. *See* Exhibit P752 (text from Turinabo to Nzabonimpa on 29 May 2018) (“Barak [Ndagijimana] arrived safe and sound at home and he spoke to [Witness ANAM/TNN31] whom he could not find a way to talk to because Protection was always nearby since she arrived there. But the 3 are ok. Details tomorrow.”).

<sup>498</sup> Exhibit P568 (text from Ngirabatware to Nzabonimpa on 28 May 2018 at 17:03:31) (“Oh! Before June 11, hh [money/payments] will take the minimum measures and then in September the maximum measures.”). *See also* Exhibit P664 (text from Ngirabatware to Nzabonimpa on 28 May 2018 at 14:14:41) (“In fact, this is the only question that will be put to them. Therefore [Maniraguha and Witness ANAE/TNN30] are increasing Uwacu’s [Ngirabatware’s] tension! You can’t even imagine.”).

<sup>499</sup> Exhibit P668 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 5:06:05) (“In fact, the main questions that will be put to the four [the Recanting Witnesses] is the following: Did you or didn’t you tell the truth at the Tribunal? The answer they give at that point must be clear because it will determine whether the person in question will be summoned or not. They must know this before the 12<sup>th</sup> – 13<sup>th</sup> of next month. [...]”); Exhibit P570 (text from Nzabonimpa to Ngirabatware on 30 May 2018 at 6:31:25) (“The 3 have said yes. We do not know whether [Witness ANAE/TNN30] has boarded the bus. Let’s wait and see”); Exhibit P571 (text from Nzabonimpa to Ngirabatware on 30 May 2018 at 8:53:06) (“Verification carried out shows that [Witness ANAE/TNN30] did not go on the assignment. Her excuse is that the people from Kigali will find her here where she is. Barak [Ndagijimana] thinks she is lying. How to know if they will come here? That’s the question.”).

<sup>500</sup> Exhibit P573 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 11:12:10) (“Our person [Ngirabatware] cannot wait for the day he will be relieved of the pressure caused by [Witness ANAE/TNN30]. Barack [Ndagijimana] and Vum [Nzabonimpa] have done everything. 2000 hh [money/payment in euros] measured for tatalib (all) [the Recanting Witnesses] available.”).

<sup>501</sup> Exhibit P574 (text from Ndagijimana to Nzabonimpa on 30 May 2018 at 14:33:27) (“I have talked to [Witness ANAE/TNN30].”); Exhibit P572 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 19:50:42) (“The problem is that if he/she has not gone there and yet correctly answers that one essential question, there will be no turning back from that /...it will be irreversible./.”); Exhibit P669 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 19:50:54) (“Barak [Ndagijimana] and Vum [Nzabonimpa] should step it up a notch! Uwacu [Ngirabatware] is waiting for instructions about the measurements of the parcels [payments]!”).

maintain her 12 June appointment and her recantation, although they remained to be “convinced of the truthfulness of the statement”.<sup>502</sup>

174. In view of the evidence summarized above, the only reasonable conclusion is that Ndagijimana, acting on Ngirabatware’s behalf and based on instructions Ngirabatware provided to Nzabonimpa, contacted Witness ANAE/TNN30 – either directly or through Maniraguha – between 28 May and 30 May 2018 and he offered her payment to ensure that she would agree to the interview with Ngirabatware’s Defence later in June 2018 and continue to cooperate with it as Ngirabatware sought to have his convictions overturned. This is also corroborated by later communication from Ndagijimana on 10 June 2018 stating that he was with Witness ANAE/TNN30 and that money should be sent to another phone<sup>503</sup> and from a subsequent message from Nzabonimpa telling Ngirabatware that, *inter alia*, Witness ANAE/TNN30 was applying pressure for the payment and asking if the money would soon be available.<sup>504</sup>

175. Furthermore, I am satisfied that the record demonstrates that during his conversations with Witnesses ANAE/TNN30 and ANAM/TNN31, Ndagijimana made it apparent that the payments were contingent on their continued cooperation, both by agreeing to meet with Ngirabatware’s Defence and maintaining their recantations when doing so. Turinabo and the Accused in Rwanda had earlier discussed the need to “sharpen” the witnesses as the meetings approached.<sup>505</sup> Moreover, Ngirabatware’s messages were very clear as to what the witnesses would be asked, what they needed to answer, and that they be told so.<sup>506</sup> Furthermore, communications evidence reflects that

<sup>502</sup> Exhibit P586 (text from Nzabonimpa to Ngirabatware on 2 June 2018) (“Barak [Ndagijimana] has met face to face with [Witness ANAE/TNN30]. [Witness ANAE/TNN30] claimed that she maintained the Musenyi assignment. They have fixed an appointment on the 12th. The team is to be convinced of the truthfulness of the statement”). In this context, the “Musenyi assignment” is undeniably a reference to Witness ANAE/TNN30’s agreement to recant, the origins of which stem from her and Maniraguha’s trip to Kampala, Uganda in August 2015. The Accused occasionally refer Uganda as “Museveni”. See Annexes A.1 and A.2 of the Prosecution Final Trial Brief.

<sup>503</sup> Exhibit P533 (text from Ndagijimana to Nzabonimpa on 10 June 2018) (“I am together with [Witness ANAE/TNN30] send me the other money on [phone number]”).

<sup>504</sup> See Exhibit P749 (text from Nzabonimpa to Ngirabatware on 22 June 2018) (“They are really pressurizing. Is 3,000,000 per plot of the two women [Witnesses ANAE/TNN30 and ANAM/TNN31] going to be available? They need it soon.”).

<sup>505</sup> See, e.g., Exhibit P553 (text from Turinabo to Nzabonimpa on 15 May 2018 at 16:49:54) (“[...] Regarding the measurements of the plots [Recanting Witnesses] in September, it is fine but without forgetting to sharpen ututaribwa [the Recanting Witnesses] before 11th June, such that they will all meet when they are very sharp.”); Exhibit P747 (text from Turinabo to Nzabonimpa on 15 May 2018 at 17:02:59) (“The 4 plots [Recanting Witnesses] and Barak [Ndagijimana] will meet our people in the presence of Mkeba [Prosecution] but he will not ask any questions on 11 June. It requires sharpening of our pawns well before that date. I think we should meet without delay with Kayove [Nzabonimpa] to plan the final.”).

<sup>506</sup> See, in particular, Exhibit P736 (text from Nzabonimpa to Turinabo on 4 May 2018) (“What they would mainly like to know is whether Ututalibwa [the Recanting Witnesses] ever told them that they lied”). Read in context of surrounding messages related to upcoming interviews (see, e.g., Exhibits P664, P668, P734, P735, P739, and P740), Exhibit P736 is a message from Ngirabatware that Nzabonimpa is sharing with Turinabo. See also Exhibit P668 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 5:06:05) (“In fact, the main questions that will be put to the four [the Recanting Witnesses] is the following: Did you or didn’t you tell the truth at the Tribunal? The answer they give at

Ndagijimana met with Witness ANAE/TNN30 on 10 June 2018 for the purpose of providing her clarification.<sup>507</sup> Notwithstanding the brevity and simplicity of the direction, I have no doubt that the record demonstrates that Ndagijimana directed Witnesses ANAE/TNN30 and ANAM/TNN31 to maintain their recantations during their interviews with Ngirabatware's Defence counsel, scheduled for 12 and 13 June 2018, and that this was in line with Ngirabatware's instructions. In this respect, I find that Ngirabatware acted through Ndagijimana.

#### 11. Offer of Payment: August 2018

176. The *Nzabonimpa et al.* Indictment alleges that, between 27 and 31 August 2018, Nzabonimpa, on the instruction of Ngirabatware, offered bribes to Witnesses ANAE/TNN30 and ANAM/TNN31.<sup>508</sup> The *Ngirabatware* Indictment charges that Ngirabatware gave these instructions using digital communications from the UNDF and that Nzabonimpa offered to pay the witnesses.<sup>509</sup>

177. The Prosecution relies on communications evidence in support of this allegation.<sup>510</sup> Nzabonimpa responds that the evidence fails to establish that he offered a bribe to, *inter alia*, Witnesses ANAE/TNN30 and ANAM/TNN31.<sup>511</sup> Ngirabatware generally does not dispute that money was paid to Witness ANAE/TNN30 and Witness ANAM/TNN31 but submits that the Prosecution has not established that they were criminal.<sup>512</sup>

178. The record firmly reflects that, after participating in interviews with the Defence, discussions of payments between Ndagijimana and Witness ANAE/TNN30 as well as Witness ANAM/TNN31 continued. Ndagijimana testified that starting in May and June 2018, and after discussing the matter with Nzabonimpa and Turinabo, he negotiated with Witnesses ANAM/TNN31 and ANAE/TNN30 to get them to reduce their financial demands and to accept 2,000,000 and 3,000,000 Rwanda francs, respectively, in order to ensure their participation in

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that point must be clear because it will determine whether the person in question will be summoned or not. They must know this before the 12<sup>th</sup> – 13<sup>th</sup> of next month. [...]”; Exhibit P572 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 19:50:42) (“The problem is that if he/she has not gone there and yet correctly answers that one essential question, there will be no turning back from that /...it will be irreversible/.”).

<sup>507</sup> Exhibit P575 (text from Ndagijimana to Nzabonimpa on 10 June 2018 at 6:12:30) (“He/she says that he/she wants to meet me again at ten. He/she says that there is an aspect about which he/she needs clarification.”); Exhibit P533 (text from Ndagijimana to Nzabonimpa on 10 June 2018 at 9:14:31) (“I am together with [Witness ANAE/TNN30] send me the other money on [phone number]”); Exhibit P661 (text from Ndagijimana to Nzabonimpa at 9:55:25) (“I have received the message”). Notably, the timing of these messages is expressed in Greenwich Mean Time.

<sup>508</sup> *Nzabonimpa et al.* Indictment, para. 25(xviii). *See also* Prosecution Final Trial Brief, paras. 136, 174.

<sup>509</sup> *Ngirabatware* Indictment, para. 23(ix). *See also* Prosecution Final Trial Brief, paras. 136, 167.

<sup>510</sup> Prosecution Final Trial Brief, paras. 136, 167, 174.

<sup>511</sup> Nzabonimpa Final Trial Brief, paras. 511-518.

<sup>512</sup> Ngirabatware Final Trial Brief, paras. 215-218, 295-299, pp. 56, 82. Ngirabatware further points to communications between Nzabonimpa and Ngirabatware on 27 and 31 August 2018 showing that the witnesses applied pressure to the Accused to extort money. *See* Ngirabatware Final Trial Brief, para. 220.

Ngirabatware's review proceedings.<sup>513</sup> Contemporaneous communications evidence suggests that these discussions happened later in June and into July and August 2018 and reflect that payments to these two witnesses were essential to securing their continued cooperation.<sup>514</sup>

179. Furthermore, and directly around the charged time period, relevant communications evidence shows that, by 27 August 2018, Nzabonimpa communicated to Ngirabatware that, in particular, Witnesses ANAM/TNN31 and ANAE/TNN30 were making further payment demands and that he “[o]n the 10th, everything should be available to vum [Nzabonimpa], or there will be damage by [Witnesses ANAM/TNN31, ANAN, and ANAE/TNN30]”.<sup>515</sup> The next day, Ngirabatware informed Nzabonimpa that certain demands could not be met but that those asking for payments should be told that Ngirabatware will be “capable later, because his assets have been frozen and will be unfrozen later”.<sup>516</sup>

<sup>513</sup> See Ndagijimana, T. 16 March 2021 pp. 8-11, 36-42.

<sup>514</sup> Compare Ndagijimana, T. 16 March 2021 pp. 36-42 with Exhibits 6D11 (text from Ndagijimana to Nzabonimpa on 10 June 2018); Exhibit P749 (text from Nzabonimpa to Ngirabatware on 22 June 2018) (“They are really pressurizing. Is 3,000,000 per plot of the two women [Witnesses ANAE/TNN30 and ANAM/TNN31] going to be available? They need it soon.”); Exhibit P587 (text from Ndagijimana to Nzabonimpa on 1 July 2018) (“[Witness ANAM/TNN31] has refused to call [Witness ANAE/TNN30] saying that she cannot gather the nerves to tell her 1,000,000, while they had agreed on 5,000,000 when they were together. Misha [Mukamisha] has made things worse for us, with [Witness ANAE/TNN30] supporting it. Should I try to convince her to take 2,000,000 and hear her out?”). See also Exhibit P577 (text from Ndagijimana to Nzabonimpa on 13 June 2018) (“Ooh! Umuler [Munyeshuli] has confirmed the good results from the 4 plots [Recanting Witnesses]. Despite the obstacles posed by the [Maniraguha and Witness ANAE/TNN30] they went there but the three of us are required to meet to discuss how we can prevent [Maniraguha and Witness ANAE/TNN30, given the subsequent plural pronoun “they”] because they have started to close in on Barak with new attacks. Bye”); Exhibit P578 (text from Ndagijimana to Nzabonimpa on 23 June 2018) (“The three trees [*i.e.* 3,000,000 Rwandan francs] that [Witness ANAE/TNN30] wants to plant in the garden of her plot [*i.e.* to be paid] are too many. Barak [Ndagijimana] can suggest to her that she should plant only one [*i.e.* receive 1,000,000 Rwandan francs]. Otherwise it would be very cumbersome.”); Exhibit P579 (text from Nzabonimpa to Ngirabatware on 24 June 2018) (“1 tree [*i.e.* 1,000,000 Rwandan francs] on an area like this one is a loss to the expected productivity. Rub [Turinabo] and others discussed and concluded 1.5 for each squared meter [*i.e.* 1,500,000 Rwandan francs per witness]”); Exhibit P767 (text from Turinabo to Nzabonimpa on 31 July 2018) (“Good morning, this message in brackets is what [Witness ANAE/TNN30] sent me this morning at 08h43’. It’s a whole novel: (Good morning. It’s [Witness ANAE/TNN30]. I want you to tell those people to send me one and a half [*i.e.* 1,500,000 Rwandan francs] this week, and prepare the remaining one and give it to me not later than 5 September. Also tell them to channel it through you and not through where they did with Laurent [Maniraguha] last time. I don’t want that”); Exhibit P710 (text from Ndagijimana to Nzabonimpa on 21 August 2018) (“Hello, [Witness ANAE/TNN30] has called, pressurizing me. I have told her that the things are available, that I will go and check them tomorrow”). See also Ndagijimana, T. 16 March 2021 pp. 12, 13 (“Now, when those two persons [Witnesses ANAM/TNN31 and ANAE/TNN30] raised the issue of a payment of certain amounts of money, we tried to find the ways and means to satisfy their requests, in order not to discourage them from recanting in the trial, because they themselves had decided to participate in that trial to recant. So we thought that by accepting all their requests, we would have them appear before the Tribunal in order to recant their testimonies. That is the reason why we accepted all their requests.”). See also Exhibits 6D86-6D99.

<sup>515</sup> See Exhibit P606 (text from Nzabonimpa to Ngirabatware on 27 August 2018) (“Other complications: the price asked for [by Witness ANAE/TNN30] and others. [Witness ANAE/TNN30] is too mechanical and [Witness ANAM/TNN31] is asking for five before the sale [*i.e.* 5,000,000 Rwandan francs before the hearing] and five immediately afterwards [*i.e.* 5,000,000 Rwandan francs after the hearing]. This is on [Witness ANAE/TNN30] and Misha’s [Mukamisha’s] encouragement. On the 10th, everything should be available to vum [Nzabonimpa], or there will be damage by [Witnesses ANAM/TNN31, ANAN, and ANAE/TNN30]”).

<sup>516</sup> See Exhibit P607 (text from Ngirabatware to Nzabonimpa on 28 August 2018) (“Our person [Ngirabatware] told me that he does only what he is able to do. As for those prices of the land plots, I’m sure that he will not meet them. Those

180. In light of all of the above, I have no doubt that, based on Ngirabatware's instructions to Nzabonimpa on 28 August 2018 to inform the Recanting Witnesses that he will be able to pay them later, Witnesses ANAM/TNN31 and ANAE/TNN30 were reassured that they would be paid to secure their continued cooperation with the Ngirabatware Defence in the recantation process. However, the record raises the reasonable possibility that Ndagijimana, and not Nzabonimpa, had this discussion with both witnesses during the specific time frame, in view of the fact that Ndagijimana's testimony and relevant communications evidence reflects that he spoke to both witnesses on 30 and/or 31 August 2018,<sup>517</sup> and there is little evidence directly suggesting Nzabonimpa communicated with either of them around this time. Given the manner in which this allegation is pleaded in the *Nzabonimpa et al.* Indictment, neither Nzabonimpa, Ndagijimana, nor Ngirabatware can be convicted on this basis and my conclusion will only be considered for context.

### C. Interference Related to Witness ANAN

181. The Prosecution charges Ngirabatware and Nzabonimpa – and Ndagijimana to a lesser extent – with engaging in a campaign of interference related to Witness ANAN from November 2015 through August 2018. This allegedly started with inducing the witness to recant his testimony from the *Ngirabatware* trial in November 2015. The campaign continued with the Accused allegedly giving the witness directions on what he should say and do throughout the investigation process, or when testifying in Ngirabatware's anticipated review hearing, as well as paying and offering "bribes" to him.

#### 1. Payments and Recantation Letter: September and November 2015

182. The *Nzabonimpa et al.* and *Ngirabatware* Indictments allege that, in September 2015 and from money made available by Ngirabatware, Nzabonimpa paid "bribes" to Mbarimo – an intermediary used to contact Witness ANAN<sup>518</sup> – and Witness ANAN in exchange for their cooperation with the Ngirabatware Defence and to influence their prospective evidence.<sup>519</sup>

183. The *Ngirabatware* Indictment alleges that, in November 2015, Ngirabatware prepared a letter in which Witness ANAN purportedly recanted his trial testimony and transmitted it to

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selling should be told that our person [Ngirabatware] will be capable later, because his assets have been frozen and will be unfrozen later.”).

<sup>517</sup> See Exhibit 6D105 (text from Ndagijimana to Nzabonimpa on 31 August 2018) (“Hello. I met [Witness ANAE/TNN30] yesterday and she asked me about the current situation. I answered that there was nothing new. I told her/him that I will see her/him next week. [Witness ANAM/TNN31] also called me and I told her that I will go and see her not later than 5 September. That is because I think that the meeting scheduled on Monday 3 September is maintained. We will come after the elections at around 11.00.”).

<sup>518</sup> See *Nzabonimpa et al.* Indictment, para. 13 (“[...] Vedaste Mbarimo was used to contact [Witness] ANAN; [...]”).

Nzabonimpa with the intention that Witness ANAN be pressured and/or induced to signing it and that Nzabonimpa did this on Ngirabatware's behalf.<sup>520</sup> The *Nzabonimpa et al.* Indictment further charges that, in November 2015, Nzabonimpa, through telecommunications or in person meetings in Gisenyi, pressured and/or induced Witness ANAN to sign a letter prepared by Ngirabatware and transmitted to Nzabonimpa in which the witness purportedly recanted his trial testimony and that Nzabonimpa, on 16 February 2016, sent the signed recantation letter to the Mechanism via DHL Kigali.<sup>521</sup>

184. The Prosecution relies principally on the testimony of Witness TNN12, contemporaneous communications, and forensic evidence, to prove that: (i) improper payments were made to Mbarimo and Witness ANAN for the purpose of obtaining the latter's recantation; and (ii) Witness ANAN was pressured and induced to sign the recantation letter that was prepared by Ngirabatware and subsequently sent to the Mechanism.<sup>522</sup>

185. Nzabonimpa disputes that the evidence demonstrates that he paid the amounts in September 2015 as alleged as it conflicts with the evidence of Witnesses TNN12 and ANAN and that the electronic data is insufficient to support the allegations beyond a reasonable doubt.<sup>523</sup> Alternatively, he argues that, even if proven, the Prosecution does not establish that the alleged payments are criminal.<sup>524</sup> Nzabonimpa also contends that the Prosecution fails to provide convincing evidence that he pressured or induced Witness ANAN to sign the recantation letter,<sup>525</sup> and he submits that sending the recantation letter is not a separate act capable of constituting pressure and/or inducement of Witness ANAN.<sup>526</sup>

<sup>519</sup> *Nzabonimpa et al.* Indictment, paras. 25(ii), 25(iii); *Ngirabatware* Indictment, paras. 23(i)(b), 23(i)(c).

<sup>520</sup> *Ngirabatware* Indictment, para. 20(iii). See also T. 21 June 2021 pp. 22, 27, 28.

<sup>521</sup> *Nzabonimpa et al.* Indictment, para. 21(iii). See also T. 21 June 2021 p. 26. Although named in the relevant indictment paragraph, this allegation is not being pursued against Ndagijimana. See Prosecution Final Trial Brief, para. 177.

<sup>522</sup> Prosecution Final Trial Brief, paras. 51-56, 164, 171; T. 21 June 2021 pp. 8, 33, 47, 48.

<sup>523</sup> Nzabonimpa Final Trial Brief, paras. 435, 436, 443-445; T. 21 June 2021 p. 91.

<sup>524</sup> Nzabonimpa Final Trial Brief, paras. 437-442, 446-450.

<sup>525</sup> Nzabonimpa Final Trial Brief, paras. 282-292. Nzabonimpa also challenges the sufficiency of the pleading of paragraph 21(iii) of his indictment arguing that: (i) it lacks sufficient notice as to any pressure applied to Witness ANAN; (ii) the only pleaded allegation of inducement is the payment alleged in paragraph 25(iii) and inducement on the basis of the un-pleaded payments to Witness ANAN alleged to have occurred on 26 September 2015 or 6 November 2015 cannot serve as a basis for conviction; and (iii) any pleaded payments to Mbarimo cannot be a basis for liability as Nzabonimpa is only alleged to have interfered with witnesses through Maniraguha and is not alleged to have interfered with Witness ANAN through Mbarimo. See Nzabonimpa Final Trial Brief, paras. 274, 276, 277. He further argues that the indictment limits the pressure and/or inducement to occurring in November 2015 and that any acts before or after cannot be a basis for liability. See Nzabonimpa Final Trial Brief, para. 275; T. 23 June 2021 pp. 14, 15, 19.

<sup>526</sup> Nzabonimpa Final Trial Brief, para. 277.

186. Ngirabatware argues that the testimonial and electronic evidence demonstrates that Witness ANAN prepared his own recantation letter, which Nzabonimpa then typed and shared with Ngirabatware, and that Ngirabatware played no role in its preparation or transmission to Nzabonimpa.<sup>527</sup> He further contends that no payment made to Mbarimo amounts to a bribe<sup>528</sup> and argues that, while Witness ANAN conceded to receiving 700,000 Rwandan francs from Nzabonimpa by way of financial assistance and lied at Nzabonimpa's behest in relation to Nzabonimpa's role in sending his recantation letter,<sup>529</sup> Witness ANAN willingly recanted in view of the falsity of his testimony during Ngirabatware's trial, and the record fails to demonstrate that he was pressured or induced to recant.<sup>530</sup>

187. The record reflects that Nzabonimpa met with: (i) Mbarimo and Turinabo in Gisenyi around the end of August or beginning of September 2015 and discussed the possibility of Witness ANAN recanting his evidence;<sup>531</sup> (ii) Mbarimo and Witness ANAN in Muhanga (formerly Gitarama) at the end of September 2015 where Nzabonimpa and Witness ANAN discussed Witness ANAN recanting his trial testimony;<sup>532</sup> and (iii) Witness ANAN in late November 2015 where the witness signed his recantation letter (Exhibit P26).<sup>533</sup> The occurrence of these meetings is not disputed.<sup>534</sup> In addition, Nzabonimpa does not dispute,<sup>535</sup> and the record demonstrates that, on 16 February 2016, Nzabonimpa sent the signed recantation letter via DHL to the Mechanism.<sup>536</sup>

188. Communications evidence demonstrates that, on 24 August 2015 and only days prior to the first meeting with Mbarimo, Turinabo reminded Nzabonimpa to pay Mbarimo's fee and provided Nzabonimpa with Mbarimo's phone number.<sup>537</sup> Mobile Money records reflect that Nzabonimpa

<sup>527</sup> Ngirabatware Final Trial Brief, paras. 129-140; T. 22 June 2021 pp. 57, 58.

<sup>528</sup> Ngirabatware Final Trial Brief, paras. 175-179.

<sup>529</sup> Ngirabatware Final Trial Brief, para. 100.

<sup>530</sup> Ngirabatware Final Trial Brief, pp. 32, 33, paras. 98-128.

<sup>531</sup> See Witness TNN12, T. 5 November 2020 pp. 30, 31, 47, 74; T. 6 November 2020 pp. 14, 19, 20, 28, 30-32, 36, 50-52, 60, 65; T. 9 November 2020 pp. 12, 14, 15, 17-20, 24, 25, 28, 30.

<sup>532</sup> See Witness TNN12, T. 5 November 2020 pp. 32-35, 55; T. 6 November 2020 pp. 14-16, 18, 20, 22, 48, 49; T. 9 November 2020 pp. 12, 13; Witness ANAN, T. 1 April 2021 pp. 38, 45-48; T. 6 April 2021 pp. 51-54, 63, 65.

<sup>533</sup> See Witness ANAN, T. 1 April 2021 pp. 15-18, 51; T. 6 April 2021 pp. 55, 56, 77-78.

<sup>534</sup> See Nzabonimpa Final Trial Brief, para. 278.

<sup>535</sup> See Nzabonimpa Final Trial Brief, para. 277.

<sup>536</sup> See, e.g., Witness ANAN, T. 1 April 2021 pp. 15-17, 51; T. 6 April 2021 pp. 51, 76, 77; Exhibit P26; Exhibit P29, p. K0496322; Exhibit P897 (intercept of Turinabo calling Nzabonimpa on 8 August 2017 at 11:30) (Nzabonimpa speaks of posting "the letters" in the "names of the owners" and that he did not use his telephone number at the time when the Accused were seeking to conceal Nzabonimpa's involvement in sending, *inter alia*, Witness ANAN's recantation letter to the Mechanism). See also Exhibit P380; Exhibit P381; Exhibit P382. Cf. Ndagijimana, T. 16 March 2021 pp. 2, 3, 65 (explaining that Nzabonimpa sent letters obtained from other witnesses through DHL and how Ndagijimana, Nzabonimpa, and Turinabo tried to conceal that Nzabonimpa had done this in 2017).

<sup>537</sup> See Exhibit P377 (text from Turinabo to Nzabonimpa on 24 August 2015 at 5:11:35) ("Good morning? Remember Mbarimo Vedaste from Gatumba's fee via [Mbarimo's phone number]").



paid Mbarimo 30,600 Rwandan francs on 1 September 2015<sup>538</sup> and 50,000 Rwandan francs on 29 September 2015.<sup>539</sup> These transactions are also reflected in the spreadsheet used to track payments in relation to Ngirabatware’s review proceedings that was extracted from Nzabonimpa’s external hard drive.<sup>540</sup>

189. Furthermore, Mobile Money records reflect that Nzabonimpa paid Witness ANAN 100,000 Rwandan francs on 29 September 2015,<sup>541</sup> and the payment is further documented by a text message receipt extracted from one of Nzabonimpa’s mobile telephones.<sup>542</sup> This transaction, although undated, is also recorded on Nzabonimpa’s financial spreadsheet.<sup>543</sup> Nzabonimpa’s references to select portions of Witness ANAN’s evidence to suggest that this money was not paid to him do not raise reasonable doubt.<sup>544</sup> To the extent that Witness ANAN’s testimony in this trial suggests that he did not receive any money from Nzabonimpa in late September 2015,<sup>545</sup> it lacks credibility and is contradicted by his testimony in the *Ngirabatware* review proceedings affirming that he received 100,000 Rwandan francs from Nzabonimpa on 29 September 2015.<sup>546</sup> Moreover, this payment is proximate in time to Nzabonimpa’s first meeting with the witness.

190. I am also convinced that Nzabonimpa paid an additional 200,000 Rwandan francs to Witness ANAN in November 2015 after the September 2015 meeting wherein the witness informed Nzabonimpa of his willingness to recant and agreed to sign a letter to this effect. Nzabonimpa does not dispute that he met with Witness ANAN again in November 2015.<sup>547</sup> The financial spreadsheet extracted from Nzabonimpa’s external hard drive contains notation of a payment of 200,000 Rwandan francs to an individual identified by the first three letters of Witness ANAN’s code name

<sup>538</sup> See Exhibit P149, p. 1, row 37; Exhibit P172, p. 1, row 11.

<sup>539</sup> See Exhibit P149, p. 1, row 41; Exhibit P172, p. 1, row 22.

<sup>540</sup> See Exhibit P229, rows 11 and 15 (noting “Mbarimo” in column B and the amounts of 30,600 and 50,000, respectively, in column C). I have considered the purported inconsistencies highlighted by Nzabonimpa that Witness TNN12’s testimony – regarding payments received by Mbarimo in September 2015 – conflicts with the Mobile Money and documentary evidence. See Nzabonimpa Final Trial Brief, para. 436 and references cited therein. However, I do not find that this testimony raises reasonable doubt with respect to these conclusions, particularly in view of the self-authenticating nature of the Mobile Money payment records admitted and the corroborating elements of the spreadsheet extracted from Nzabonimpa’s external hard drive.

<sup>541</sup> See Exhibit P172, p. 1, row 23; Exhibit P174, p. 5, row 184.

<sup>542</sup> See Exhibit P388 (text from M-Money to Nzabonimpa on 29 September 2015 at 13:37:52).

<sup>543</sup> See Exhibit P229, p. 1, row 10 (noting [Witness ANAN] in column B and the amount of 100,000 in column C).

<sup>544</sup> See Nzabonimpa Final Trial Brief, para. 445, nn. 816, 817 and references contained therein.

<sup>545</sup> See, e.g., Witness ANAN, T. 6 April 2021 pp. 61, 62, 64.

<sup>546</sup> See Exhibit P1711, pp. 34, 42. I note that Witness ANAN testified before the Appeals Chamber that this payment was not for the purpose of having him falsely recant. See Exhibit P1711, p. 42.

<sup>547</sup> Nzabonimpa was undeniably the point of contact for Witness ANAN in November 2015. See Exhibit P269 (text from Turinabo to Nzabonimpa on 5 November 2015 at 17:41:18) (“Please let me know after you have talked to [Witness ANAN] and remember that we have to meet before the auction, which is only allowed on Sunday. It would be better for us to plan in the two remaining days. Rbna [Turinabo]”); Exhibit P279 (text from Nzabonimpa to Turinabo on 5 November 2015 at 18:18:33) (“I will call him/her [Witness ANAN] in the morning. I was busy the whole day”). Cell

with the date “11/06/2015”.<sup>548</sup> Witness TNN12 also testified that Witness ANAN informed him that, during the latter’s subsequent meeting with Nzabonimpa, Nzabonimpa paid Witness ANAN.<sup>549</sup> To assess the purpose of this payment as well as the September 2015 payment, I must first assess the preparation and signing of the recantation letter.

191. It is outside of the purview of this trial to make findings as to the truth or falsity of any witness’s evidence in Ngirabatware’s trial.<sup>550</sup> Notwithstanding, I have considered the extensive evidence on the record suggesting that Witness ANAN lied while testifying in Ngirabatware’s trial, including his own testimony to this effect. The record as a whole raises the reasonable possibility that, from their first interactions with Witness ANAN in 2015, the Accused and Turinabo, and Nzabonimpa in particular, believed that Witness ANAN lied during Ngirabatware’s trial.<sup>551</sup>

192. Bearing this in mind, I note that Witness ANAN provided the only direct evidence as to the preparation of his recantation letter.<sup>552</sup> He testified that he desired to recant his prior false testimony because of feelings of guilt,<sup>553</sup> handwrote the letter after meeting with Nzabonimpa in September 2015, and received no instructions as to its contents.<sup>554</sup> He further claimed that, at his meeting with Nzabonimpa on 25 November 2015,<sup>555</sup> he gave the handwritten letter to Nzabonimpa, who then typed and printed it in the witness’s presence.<sup>556</sup> Witness ANAN stated that he then

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tower data further indicates that Nzabonimpa’s and Witness ANAN’s mobile phones linked to the same cell tower in Muhanga (formerly Gitarama) on 29 November 2015. *See* Exhibit 1D10, call reference numbers 53905, 53907.

<sup>548</sup> *See* Exhibit P229, p. 1, row 26. Witness ANAN’s evidence that the references in Exhibit P229 to the code name used by him do not pertain to him, and that others have this code name, does not raise reasonable doubt with respect to this interpretation of Exhibit P229. *See* Witness ANAN, T. 6 April 2021 pp. 57-60, 66-69.

<sup>549</sup> *See* Witness TNN12, T. 5 November 2020 p. 34; T. 6 November 2020 pp. 16, 20, 22. I am mindful that Witness TNN12 has been a “suspect” since his first Prosecution interview in September 2018, and I have treated his evidence with sufficient caution. *See* Witness TNN12, T. 6 November 2020 pp. 2-8. While this status may have incentivized him to cooperate with the Prosecution, I have no concern that this aspect of his evidence is a fabrication as a result of it.

<sup>550</sup> *See, e.g.*, Order of 12 February 2021, Annex, para. 4; Order of 7 October 2020, Annex, para. 13.

<sup>551</sup> To the extent that Witness TNN12’s evidence suggests that Witness ANAN did not inform him – and by extension the Accused – that he had testified falsely in Ngirabatware’s trial, Witness TNN12’s prior statements, particularly to the Prosecution in 2018 and 2019, contradict his evidence in both extensive and reasonable detail, and Witness TNN12’s explanations for these contradictions do not eliminate reasonable doubt as to this aspect of his testimony. *See* Witness TNN12, T. 5 November 2020 p. 69; T. 6 November 2020 pp. 2-4, 10-14, 19, 20, 48, 49; T. 9 November 2020 pp. 19, 20, 25, 26, 38, 39. *See also* Witness TNN12, T. 6 November 2020 pp. 38, 39, 59-66; T. 9 November 2020 pp. 31, 32 (confronting Witness TNN12, on the basis of a statement given to Robinson, that Witness ANAN had informed him that he had lied while testifying in Ngirabatware’s trial because he had wanted to get out of prison, and that he felt bad in his heart and that he was prepared to tell the truth).

<sup>552</sup> *See, e.g.*, Witness ANAN, T. 1 April 2021 pp. 16-18, 43, 51; T. 6 April 2020 pp. 51, 55, 76, 77.

<sup>553</sup> *See, e.g.*, Witness ANAN, T. 1 April 2021 pp. 37, 38, 40-43; T. 6 April 2021 pp. 51, 52, 79.

<sup>554</sup> Witness ANAN, T. 1 April 2021 pp. 16-18, 43, 51; T. 6 April 2020 pp. 51, 55, 76, 77. Witness ANAN explained that at the time of the September 2015 meeting, he had not yet drafted the letter. *See* Witness ANAN, T. 1 April 2021 p. 47.

<sup>555</sup> Witness ANAN, T. 1 April 2021 pp. 15-17, 51; T. 6 April 2021 pp. 55, 56.

<sup>556</sup> Witness ANAN, T. 1 April 2021 pp. 17, 51; T. 6 April 2021 pp. 55, 56, 77, 78.

confirmed that the typed letter corresponded to what he had written, signed it, and gave it to Nzabonimpa to forward to the Mechanism.<sup>557</sup>

193. Witness ANAN’s description of this process is not believable when viewed alongside the forensic and circumstantial evidence in this case. Forensic analysis reveals that early versions of Witness ANAN’s recantation letter recovered from Ngirabatware’s Dell laptop (Exhibit P32) and Samsung laptop (Exhibit P54) contain the same content and metadata from a version extracted from Nzabonimpa’s external hard drive (Exhibit P222),<sup>558</sup> or closely correspond to another version found on Nzabonimpa’s external hard drive (Exhibit P220).<sup>559</sup> Notably, metadata related to these documents reveal that they were last printed on 9 November 2015,<sup>560</sup> which conflicts with Witness ANAN’s account as to the letter’s creation and that he observed Nzabonimpa type it when they met again in late November 2015. Furthermore, the early versions whose metadata match completely have “Ngirabatware” listed in the “author” field, strongly suggesting they originated from Ngirabatware on the basis of available metadata.<sup>561</sup> While the expert analysis also suggests that the closely corresponding early versions retrieved from Ngirabatware’s laptops likely derive from the document saved from Nzabonimpa’s external hard drive,<sup>562</sup> the metadata again identify “Ngirabatware” as the author,<sup>563</sup> which also supports the assertion that reference files with this author “were created elsewhere and arrived onto [Nzabonimpa’s external hard drive] by some undetermined means.”<sup>564</sup>

194. This evidence does not conclusively identify the initial author of the letter, but it undeniably reflects close coordination between Ngirabatware and Nzabonimpa early in the preparation of Witness ANAN’s recantation letter. This evidence, alongside circumstantial evidence, undermines the reasonableness of Witness ANAN’s testimony that a handwritten version emanated from him

<sup>557</sup> Witness ANAN, T. 1 April 2021 pp. 15-17, 51; T. 6 April 2021 pp. 51, 76, 77.

<sup>558</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 36, pp. 23, 24.

<sup>559</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 37, p. 24. For complete analysis as to the earliest versions of Witness ANAN’s recantation letters – in light of timestamps – see Exhibit P110 (Olejniczak Supplemental Report), paras. 36, 37, pp. 19-24 and Exhibit P111 (Olejniczak Second Supplemental Report), paras. 23-28; T. 21 June 2021 p. 23.

<sup>560</sup> See Exhibit P110 (Olejniczak Supplemental Report), pp. 19, 20, 22-24.

<sup>561</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 36, pp. 23, 24. “Ngirabatware” is the Windows User Account name on the hard drive of Ngirabatware’s Dell laptop and Microsoft Office uses the Windows User Name to populate the “Author” file by default. See Exhibit P110 (Olejniczak Supplemental Report), paras. 74-77. Notably, “Ngirabatware” is not a current user account on Nzabonimpa’s external hard drive. See Exhibit P109 (Olejniczak Report), para. 67.

<sup>562</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 37; Exhibit P111 (Olejniczak Second Supplemental Report), paras. 23, 24.

<sup>563</sup> See Exhibit P110 (Olejniczak Supplemental Report), pp. 19-24.

<sup>564</sup> See Exhibit P111 (Olejniczak Second Supplemental Report), para. 27. See also Exhibit P109 (Olejniczak Report), para. 67. Forensic analysis reveals that “Ngirabatware” is the Windows User Account name on the hard drive of Ngirabatware’s Dell laptop and that MS Office uses the Windows User Name to populate the “Author” file by default. See Exhibit P110 (Olejniczak Supplemental Report), paras. 74-77.

and that Nzabonimpa typed it in his presence on 25 November 2015. There are also obvious similarities in his recantation letter with those of Witnesses ANAM/TNN31 and ANAT, which were also finalized in immediate proximity to Witness ANAN's.<sup>565</sup> Furthermore, the highly coordinated and largely simultaneous efforts towards obtaining recantation letters undermine the evidence that Ngirabatware – and by extension, Nzabonimpa – would simply leave it to Witness ANAN to prepare his letter and without any input from them.

195. While the record reasonably allows for the possibility that the recantation letter may have been created with input from Witness ANAN as to the falsity of his trial testimony, the only reasonable conclusion based on the entirety of the record is that it was prepared under Ngirabatware's direction and with his input. Furthermore, I have no doubt that Nzabonimpa presented the witness with his recantation letter as a *fait accompli*. I do not consider, however, that these findings demonstrate that inappropriate "pressure" was placed on the witness.

196. Based on the foregoing, I find that the evidence demonstrates beyond reasonable doubt that Witness ANAN's recantation letter was prepared by or under the express direction of Ngirabatware. Furthermore, I find that Witness ANAN was induced to sign this letter based on the payment of 100,000 Rwanda francs he received from Nzabonimpa via Mobile Money on 29 September 2015 and the additional payment of 200,000 Rwandan francs he received in November 2015 after he had agreed to recant his trial testimony and to sign and send a letter to the Mechanism to this effect.<sup>566</sup> As determined earlier, the record firmly reflects that this money was made available to Nzabonimpa in June 2015 from Ngirabatware for the purpose of obtaining and encouraging Witness ANAN's and others' recantations.<sup>567</sup>

197. In reaching this conclusion, I have given due consideration to Witness ANAN's testimony and other evidence that he testified falsely in Ngirabatware's trial, that he was not induced to recant during his initial encounter with Nzabonimpa, and that Nzabonimpa did not pay him before or after signing his recantation letter.<sup>568</sup> I have also considered his evidence, generally, that his recantation

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<sup>565</sup> Compare Exhibit P26 (Witness ANAN Recantation Letter) with Exhibit P9 (Witness ANAE/TNN30 Recantation Letter) with Exhibit P27 (Witness ANAT Recantation Letter).

<sup>566</sup> While the payment of 200,000 Rwandan francs is not expressly pleaded in the *Nzabonimpa et al.* Indictment, an indictment need not have the degree of specificity of the evidence underpinning it and the express allegation that Witness ANAN was "induced" in paragraph 21(iii) of the *Nzabonimpa et al.* Indictment provides sufficient notice in this respect. See *Munyeshuli* Decision of 12 March 2019, para. 5. Furthermore, the relevant Prosecution Pre-Trial Brief provides express notice of the allegation that Nzabonimpa paid Witness ANAN 200,000 Rwandan francs in November 2015 and gives timely, clear, and consistent notice that it would be relying on this evidence in support of *Nzabonimpa et al.* Indictment paragraph 21(iii). See *Nzabonimpa et al.* Pre-Trial Brief, paras. 35, 131, n. 436. Nzabonimpa's contentions to the contrary are dismissed.

<sup>567</sup> See Section II.A.2.

<sup>568</sup> See, e.g., Witness ANAN, T. 6 April 2021 pp. 53, 54, 57; T. 21 June 2021 pp. 27, 28, 73.

was unrelated to any payments he received.<sup>569</sup> However, the evidence that he was not induced to recant is not credible in view of the earlier payment he received in September 2015, the repeated payments he received throughout the recantation process, and later communications reflecting the transactional nature underlying Witness ANAN's willingness to recant and how he leveraged his position with the Accused accordingly.<sup>570</sup>

## 2. Payments: February and March 2016

198. The *Nzabonimpa et al.* and *Ngirabatware* Indictments allege that on 22 February 2016 and again on 5 March 2016, Nzabonimpa, with money provided by Ngirabatware, paid Witness ANAN 1,000,000 Rwandan francs on each occasion in exchange for his cooperation with the Ngirabatware Defence and to influence his prospective evidence.<sup>571</sup>

199. The Prosecution, relying principally on bank records and the spreadsheet extracted from Nzabonimpa's external hard drive, argues that around the time Nzabonimpa sent Witness ANAN's recantation to the Mechanism he also paid a "bribe" to the witness of 2,000,000 Rwandan francs.<sup>572</sup> Nzabonimpa argues that the spreadsheet extracted from his external hard drive lacks probative value, that evidence of withdrawals from his bank fail to establish that he paid Witness ANAN as alleged, and contends that there is no reason that he would have paid the witness at this time.<sup>573</sup> Ngirabatware contends that there is an insufficient evidentiary basis to conclude that these payments were made to Witness ANAN.<sup>574</sup>

<sup>569</sup> See, e.g., Witness ANAN, T. 6 April 2021 pp. 61-64.

<sup>570</sup> See, e.g., Exhibit P287 (text from Turinabo to Nzabonimpa on 29 August 2016 at 10:28:05) ("They prescribed Rx for me because I have difficulties breathing at night. [Witness ANAN] sent me 1 sms saying that he is going to totally refuse to them, please remind that he needs our protection."); Exhibit P537 (text from Witness ANAN to Nzabonimpa on 27 February 2018 at 2:50:24) ("Hello, what happened? I notice that there is no cooperation anymore, things might have changed and you decided not to inform me. How can a person request a meeting for three months and it becomes impossible to meet? I guess what we have to discuss is not deemed valuable, so I am going to abandon this thing because this does not make sense."); Exhibit P539 (text from Witness ANAN to Nzabonimpa on 25 March 2018 at 5:13:24) ("Good morning. I've realized that I'm being treated like a domestic animal. So, I've now decided to withdraw from the deal"); Exhibit P692 (email from Nzabonimpa to Ngirabatware on 27 March 2018 at 6:43:29) ("[...] To meet [Witness ANAN] tomorrow to cement relations. Threat 'I will abandon these things'."). Witness ANAN's explanation that his statements as reflected in Exhibit P539 and Exhibit P692 were not threats to withdraw his cooperation because payments had stopped lacks any credibility. See Witness ANAN, T. 6 April 2021 pp. 69-75. Other communications reflect the Accused's fears of insufficient funds to pay Witness ANAN. See also Exhibit P947 (intercept of Nzabonimpa calling Turinabo on 18 July 2017 at 12:04), p. 75 (Nzabonimpa noting that he had only received "500, 490" euros and Turinabo responding that this amount has "not even taken into account [Witness ANAN]").

<sup>571</sup> See *Nzabonimpa et al.* Indictment, paras. 25(vii), 25(viii); *Ngirabatware* Indictment, paras. 23(iii), 24(iv)(a).

<sup>572</sup> Prosecution Final Trial Brief, paras. 77, 167, 173.

<sup>573</sup> Nzabonimpa Final Trial Brief, paras. 467-475. See also T. 21 June 2021 p. 74.

<sup>574</sup> Ngirabatware Final Trial Brief, para. 164.

200. Text alerts from Nzabonimpa’s bank reflect withdrawals of 1,200,000 Rwandan francs on 23 February 2016<sup>575</sup> and 5 March 2016.<sup>576</sup> Furthermore the spreadsheet extracted from Nzabonimpa’s external hard drive indicates a payment of “1,000,000” Rwandan francs to the code name employed for Witness ANAN with the date “22/2/2016”<sup>577</sup> and another payment of the same amount on “3/5/2016” to the same individual.<sup>578</sup> This evidence provides considerable circumstantial support for the conclusion that Nzabonimpa made two payments to Witness ANAN of 1,000,000 Rwandan francs around the time of the withdrawals and dates noted in the spreadsheet. Furthermore, I have previously found that, in late February 2016, Ngirabatware had 5,000 euros transferred to Hirwa, and that Hirwa transferred 2,000 euros on 16 February 2016 to Nzabonimpa and an additional 1,990 euros to Nzabonimpa on 24 February 2016.<sup>579</sup>

201. Having carefully considered the probative value of the spreadsheet extracted from Nzabonimpa’s external hard drive<sup>580</sup> and the bank withdrawals he made in light of funds made available by Hirwa, the only reasonable inference is that Nzabonimpa paid Witness ANAN 1,000,000 Rwandan francs on or around 22 February 2016 and again on 5 March 2016 as alleged. In reaching this finding, I have considered Witness ANAN’s evidence that he received far less than this amount of money from Nzabonimpa and that the payments from him were unrelated to his agreement to recant his trial testimony.<sup>581</sup> This testimony lacks credibility for the reasons explained above.<sup>582</sup> I further find that these payments were made on the basis of funds provided by Ngirabatware and for the purpose of ensuring Witness ANAN’s continued cooperation with the recantation process.

3. Training: June and July 2016

202. The *Nzabonimpa et al.* Indictment alleges that, in June 2016, Nzabonimpa used information prepared by Ngirabatware in instructing Witness ANAN on what to say during his interview with Ngirabatware’s then Defence counsel, which took place on 5 July 2016.<sup>583</sup> The *Ngirabatware*

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<sup>575</sup> See Exhibit P662 (text from Bke Bank to Nzabonimpa on 23 February 2016 notifying a debit of 1,200,000 Rwandan francs).

<sup>576</sup> See Exhibit P663 (text from Bke Bank to Nzabonimpa on 5 March 2016 notifying a debit of 1,200,000 Rwandan francs).

<sup>577</sup> See Exhibit P229, p. 1, row 70.

<sup>578</sup> See Exhibit P229, p. 1, row 72.

<sup>579</sup> See *supra* Section II.A.3.

<sup>580</sup> See *supra* Section II.A.1.

<sup>581</sup> Witness ANAN testified that Nzabonimpa gave Witness ANAN money for travel to meet with him in Musanze or Nyaruguru, and 100,000 Rwandan francs when the witness fell ill; he estimated receiving about 700,000 Rwandan francs but denied that he received 4,900,000 Rwandan francs from Nzabonimpa or that any payments were related to his recantation. See Witness ANAN, T. 1 April 2021 pp. 39, 40; T. 6 April 2021 pp. 62-65.

<sup>582</sup> See *supra* Section II.C.1.

<sup>583</sup> *Nzabonimpa et al.* Indictment, para. 23(i).

Indictment alleges that, in June 2016, Ngirabatware prepared information that he intended Witness ANAN to provide during interviews with his counsel that he sent to Nzabonimpa to instruct the witness, which Nzabonimpa did.<sup>584</sup> The Prosecution principally relies on forensic and communications evidence in support of this allegation.<sup>585</sup>

203. Nzabonimpa disputes the probative value of the question and answer documents obtained from his and Ngirabatware's devices in support of this allegation.<sup>586</sup> He further argues that the communications evidence from 5 July 2016 between him and Witness ANAN, wherein Nzabonimpa explains the nature of DHL services, does not demonstrate that Nzabonimpa gave instructions to the witness to provide certain answers during subsequent interviews with the Defence.<sup>587</sup>

204. Ngirabatware contends that there is no evidence that the question and answer documents extracted from his laptops and Nzabonimpa's external hard drive were provided to Witness ANAN and the forensic evidence raises doubts that such documents were created by Ngirabatware.<sup>588</sup> He further argues that other reasonable alternatives are available – *e.g.* Witness ANAN was asked questions and the documents reflect the answers he provided, which Nzabonimpa then sent to Ngirabatware – in view of the detailed nature of the responses and the existence of other question only versions of this document on Ngirabatware's laptop.<sup>589</sup>

205. I observe that what appear to be textually identical question and answer documents directly relating to Witness ANAN's anticipated recantation were extracted from Nzabonimpa's external hard drive (Exhibit P218), Ngirabatware's Dell laptop (Exhibit P36), and Samsung laptop (Exhibit P57).<sup>590</sup> Initially, the forensic expert considered that the versions saved on Ngirabatware's laptops "likely" derived from the version on Nzabonimpa's external hard drive,<sup>591</sup> however, he later noted that the opposite is possible, highlighting, in particular, the relevant author metadata indicated "Ngirabatware".<sup>592</sup>

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<sup>584</sup> *Ngirabatware* Indictment, para. 21(i).

<sup>585</sup> See Prosecution Final Trial Brief, paras. 81-83, 165, 173; T. 21 June 2021 pp. 20, 24.

<sup>586</sup> See Nzabonimpa Final Trial Brief, para. 338. See also Nzabonimpa Final Trial Brief, paras. 112-128.

<sup>587</sup> Nzabonimpa Final Trial Brief, paras. 345-347. Nzabonimpa also argues that the Prosecution may not rely on communications evidence between him and Witness ANAN on 5 July 2016 to prove this allegation. See Nzabonimpa Final Trial Brief, paras. 344, 345.

<sup>588</sup> Ngirabatware Final Trial Brief, paras. 141-145.

<sup>589</sup> Ngirabatware Final Trial Brief, paras. 144, 146-148; T. 22 June 2021 pp. 58, 59.

<sup>590</sup> Another version, in which the answers were deleted, was also retrieved from Ngirabatware's Samsung laptop. See Exhibit P67; Exhibit P110 (Olejniczak Supplemental Report), para. 49, p. 47.

<sup>591</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 48.

<sup>592</sup> See Exhibit P111 (Olejniczak Second Supplemental Report), paras. 38-42. The "Author" metadata for Exhibits P218, P36, and P57 lists "Ngirabatware", which is the Windows User Account name on the hard drive of

206. Notwithstanding the uncertain forensic picture as to the origin of the documents, there is no question that Ngirabatware, the person who was seeking to have his conviction overturned, was the driving force in the creation of these question and answer documents found on all devices. While the documents may have contained information that Nzabonimpa obtained from Witness ANAN as well as input from Nzabonimpa, their surreptitious creation in June 2016, as Ngirabatware's counsel was preparing to interview the witness for the first time, would serve no other purpose than to train Witness ANAN as to what questions to expect and how to answer them.<sup>593</sup> Furthermore, the document contains information that Witness ANAN obviously did not provide – particularly as it relates to how his recantation letter was sent to the Mechanism – which tracks with the fabricated evidence the Accused and Turinabo later shared with intermediaries and, in particular, Witness ANAN as to how the various letters were posted.<sup>594</sup> I find beyond reasonable doubt that Ngirabatware played a material role in preparing the question and answer document and that he did so for the purpose that Nzabonimpa use it to instruct Witness ANAN on how to answer questions that may be posed by his Defence counsel.

207. There is no direct evidence that Nzabonimpa met with Witness ANAN or provided him with a version of the question and answer documents that are in evidence. I do not, however, find that the absence of contemporaneous communications evidence on this point raises reasonable doubt that Nzabonimpa did in fact instruct Witness ANAN on the basis of the document created for this purpose. After their initial introduction, Nzabonimpa was the main point of contact for Witness ANAN. The process of training that simultaneously occurred with other witnesses eliminates any reasonable doubt with respect to the conclusion that Nzabonimpa instructed Witness ANAN on how to answer questions that may be asked during his anticipated meeting with Ngirabatware's Defence counsel on 5 July 2016 based on the question and answer documents.

208. Indeed, Nzabonimpa's communications with Witness ANAN on 5 July 2016 demonstrate that Witness ANAN sought clarification from Nzabonimpa as to the specific content of the question and answer document related to "DHL". Specifically, Nzabonimpa does not dispute that he sent three text messages to Witness ANAN on the morning of 5 July 2016, the day the witness was

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Ngirabatware's Dell laptop. Microsoft Office uses the Windows User Name to populate the "Author" field by default. Furthermore, "Ngirabatware" is not a current user account on Nzabonimpa's external hard drive. *See* Exhibit P111 (Olejniczak Second Supplemental Report), para. 41, *referring to* Exhibit P109 (Olejniczak Report), para. 67; Exhibit P110 (Olejniczak Supplemental Report), paras. 74-77; T. 21 June 2021 p. 26.

<sup>593</sup> Ngirabatware's contention as to the existence of a question only document having been extracted from his Samsung laptop, which was created on 15 June 2016 and last edited on 21 June 2016, does not raise reasonable doubt that Witness ANAN was instructed on the basis of the question and answer documents also extracted from his computer.

<sup>594</sup> These observations fundamentally undermine Nzabonimpa's contentions as to the probative value of the reference files and his contentions that reference files extracted from his hard drive cannot be attributed to him. *See* Nzabonimpa Final Trial Brief, paras. 112-128.



ultimately interviewed by Defence counsel.<sup>595</sup> The messages, sent in rapid succession, state: “It is a company called DHL. They say DHL company”;<sup>596</sup> “It is not a post office but DHL company”;<sup>597</sup> “It deals with sending people’s mail to other countries”.<sup>598</sup>

209. Given that the interview was going to be the first occasion Witness ANAN was to meet with Ngirabatware’s counsel, these communications are clearly aimed at directing Witness ANAN on what to say should he be asked about how his recantation letter was sent to the Mechanism. As noted above, that Witness ANAN sought clarification from Nzabonimpa about “DHL” arises naturally out of the content of the question and answer documents retrieved from Ngirabatware’s and Nzabonimpa’s devices.<sup>599</sup> How the recantation letter was sent was an issue of central concern to the Accused, who later went to extraordinary lengths to attempt to conceal Nzabonimpa’s involvement in the sending of, *inter alia*, Witness ANAN’s recantation letter.<sup>600</sup>

210. In light of the foregoing, I find beyond reasonable doubt that Ngirabatware played a material role in preparing the question and answer documents as reflected in Exhibits P218, P36, and P57 and that he sent them to Nzabonimpa to train Witness ANAN as to their contents for his anticipated interview with Ngirabatware’s counsel in early July 2016. I have no doubt that Nzabonimpa used the information contained in these documents as a basis to instruct Witness ANAN on how to answer questions posed by Ngirabatware’s counsel and that Nzabonimpa did this in June 2016. I further find that Nzabonimpa’s messages to Witness ANAN on 5 July 2016 not only reinforce this conclusion, but are further evidence that Nzabonimpa provided instructions to the witness on what to say should he be asked about the mailing of his recantation letter during his interview with Ngirabatware’s counsel.<sup>601</sup>

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<sup>595</sup> See Exhibit 5D22 (Witness ANAN Interview), p. 1.

<sup>596</sup> Exhibit P241 (text from Nzabonimpa to Witness ANAN on 5 July 2016 at 7:09:58).

<sup>597</sup> Exhibit P242 (text from Nzabonimpa to Witness ANAN on 5 July 2016 at 7:10:47).

<sup>598</sup> Exhibit P243 (text from Nzabonimpa to Witness ANAN on 5 July 2016 at 7:11:47).

<sup>599</sup> See, e.g., Exhibit P218, p. 1.

<sup>600</sup> See Section II.C.5.

<sup>601</sup> To the extent Nzabonimpa argues that he did not receive adequate notice that the Prosecution would rely on evidence related to 5 July 2016 communications in support of the allegation in *Nzabonimpa et al.* Indictment paragraph 23(i) with respect to Witness ANAN, or that such evidence falls outside the scope of the allegation, he has not substantiated these claims. While the indictment generally alleges events in June 2016, the charge concerns instructions given to, *inter alia*, Witness ANAN in relation to interviews with the Ngirabatware Defence that occurred on 5 July 2016. Furthermore, the Prosecution provided timely, clear, and consistent notice that it intended to rely on communications between Nzabonimpa and Witness ANAN from 5 July 2016 in support of the allegation and as a basis for Nzabonimpa’s liability. See *Nzabonimpa et al.* Pre-Trial Brief, paras. 60-62, 133. Nzabonimpa has shown no material variance between the allegation as charged in his indictment and the evidence led at trial or that he lacked sufficient notice to adequately prepare his defence. Furthermore, Nzabonimpa has presented no argument that he was prejudiced by any such variance. See *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003, para. 306. These challenges are dismissed.

4. Training and Payments: August 2016

211. The *Nzabonimpa et al.* Indictment alleges that, in August 2016, Nzabonimpa and/or Ndagijimana, through telecommunications and/or in person meetings in Gisenyi, directed Witness ANAN on what to say or do if requested to meet with the Prosecution.<sup>602</sup> The *Nzabonimpa et al.* and *Ngirabatware* Indictments also allege that, between 20 and 24 August 2016 and based on money provided by Ngirabatware, Nzabonimpa and/or Ndagijimana paid a “bribe” of 200,000 Rwandan francs to Witness ANAN in exchange for his cooperation with the Ngirabatware Defence and to influence his prospective evidence.<sup>603</sup> The Prosecution principally relies on communications evidence and the financial spreadsheet extracted from Nzabonimpa’s external hard drive in support of these allegations.<sup>604</sup>

212. Nzabonimpa argues that Witness ANAN provided no evidence in support of the allegation that Nzabonimpa trained him<sup>605</sup> and that relevant communications evidence also fails to demonstrate this.<sup>606</sup> He further contends that the spreadsheet extracted from his external hard drive cannot be relied upon to establish beyond reasonable doubt that he paid Witness ANAN 200,000 Rwandan francs between 20 and 24 August 2016 and emphasizes the absence of corroborating evidence from the witness or any other financial records.<sup>607</sup> Ngirabatware argues that the evidence fails to establish this allegation.<sup>608</sup>

213. Ndagijimana generally concedes that the Accused paid, and, for example, assisted the Recanting Witnesses in deciding whether or not to, *inter alia*, meet with the Prosecution; however, he contends that the evidence does not establish that any of this conduct amounts to contempt given Ndagijimana’s sincerely held belief in the truthfulness of the recantations and the absence of any indication that he sought to affect the substance or availability of the Recanting Witnesses’ evidence.<sup>609</sup>

214. Communications evidence reflects that, at least as of 12 August 2016, information that the Recanting Witnesses were being summoned to Kigali was being shared among the Accused, and

<sup>602</sup> *Nzabonimpa et al.* Indictment, para. 22(i).

<sup>603</sup> *Nzabonimpa et al.* Indictment, para. 25(ix). *See also Ngirabatware* Indictment, para. 23(iv)(b).

<sup>604</sup> Prosecution Final Trial Brief, paras. 85-87, 89, 172, 174, 178.

<sup>605</sup> Nzabonimpa Final Trial Brief, paras. 315-321, 324-326. Nzabonimpa highlights that the Prosecution did not cross-examine Witness ANAN on the basis of this allegation and that none of the communications evidence was put to the witness. *See Nzabonimpa Final Trial Brief*, paras. 318, 326.

<sup>606</sup> Nzabonimpa Final Trial Brief, para. 326.

<sup>607</sup> Nzabonimpa Final Trial Brief, paras. 476, 477. Nzabonimpa further emphasizes that the notation in Exhibit P229 – that the Prosecution suggests demonstrates this payment is not dated – further diminishing any weight attributable to the spreadsheet as proof of any payments made. *See Nzabonimpa Final Trial Brief*, para. 477.

<sup>608</sup> Ngirabatware Final Trial Brief, para. 164. *See also Ngirabatware Final Trial Brief*, paras. 160-174.

Turinabo prompted Nzabonimpa to determine if this occurred with respect to Witness ANAN.<sup>610</sup> Subsequently, a text message from Nzabonimpa to Witness ANAN contains the instruction: “[i]f they call you, you can say that you’ll speak if Ngira’s Counsel is also present.”<sup>611</sup> Furthermore, it is undisputed that Ndagijimana met with the WISP in Kigali on 17 August 2018, that Witness ANAN was to meet with the WISP on 18 August 2017, and that both were summoned for the purpose of ascertaining their willingness to meet with the Prosecution in the presence of the Defence for an interview.<sup>612</sup>

215. Read in context, the only reasonable conclusion is that the messages exchanged among the Accused starting on 16 August 2016 reflect plans for Ndagijimana to meet with Witness ANAN in conjunction with their meetings with the WISP,<sup>613</sup> that Nzabonimpa instructed Ndagijimana to allay the witness’s concerns about the meeting,<sup>614</sup> and that Ndagijimana confirmed that he met with the witness at length and instructed him accordingly.<sup>615</sup> Notably, Ndagijimana testified that, although he had very limited interaction with Witness ANAN, he did meet the witness “at the very most, twice”.<sup>616</sup>

216. Turning to the alleged payment, the financial spreadsheet extracted from Nzabonimpa’s external hard drive reflects a payment entry of 200,000 Rwandan francs to an individual with the code name used for Witness ANAN between entries dated “24/8/2016” and “09/06/2016”.<sup>617</sup> This entry is in addition to nearby entries in the same document reflecting sizeable payments around the same date to Witnesses ANAM/TNN31 and ANAE/TNN30 as well as Maniraguha.<sup>618</sup>

217. Notably, I have previously found that Nzabonimpa had already started receiving substantial payments from Ngirabatware which, when viewed in context, were necessarily aimed at maintaining cooperation from the Recanting Witnesses – including Witness ANAN – as they faced

<sup>609</sup> Ndagijimana Final Trial Brief, paras. 373-390.

<sup>610</sup> See Exhibit P252 (text from Turinabo to Nzabonimpa on 12 August 2016 at 6:52:47) (“[Witness ANAM/TNN31, Witness ANAT, and Witness ANAE/TNN30] have been summoned for Monday. What about [Witness ANAN], did he get the message? No delays.”).

<sup>611</sup> See Exhibit P187 (text from Nzabonimpa to Witness ANAN on 12 August 2016 at 8:43:51).

<sup>612</sup> See Exhibit 3D20, pp. 11, 12.

<sup>613</sup> See Exhibit P267 (text from Turinabo to Nzabonimpa on 16 August 2016 at 14:31:07) (“Hello, Protection has just summoned Jean De Dieu [Ndagijimana] for tomorrow. He will meet [Witness ANAN] there.”); Exhibit P268 (text from Nzabonimpa to Ndagijimana on 17 August 2016 at 8:13:33) (“I spoke to [Witness ANAN] and we agreed to meet at one o’clock. It would be good if you were also present.”).

<sup>614</sup> See Exhibit P188 (text from Nzabonimpa to Witness ANAN on 17 August 2016 at 11:03:59) (“I am still in the meeting. If you see him/her allay his/her fear so that he/she can go there. I will meet him/her upon their return”).

<sup>615</sup> See Exhibit P270 (text from Ndagijimana to Nzabonimpa on 17 August 2016 at 12:17:53) (“We have met. We have discussed at length.”).

<sup>616</sup> See Ndagijimana, T. 16 March 2021 p. 49. *But see* Exhibit P1704 (statement of Ndagijimana), para. 86.

<sup>617</sup> See Exhibit P229, p. 2, row 126.

<sup>618</sup> See Section II.B.4.

the prospect of their recantations being challenged through Prosecution interviews. Indeed, Nzabonimpa's and Turinabo's concern as to whether Witness ANAN would continue to maintain his recantation is reflected through contemporaneous communications before and after the witness's interview with the Prosecution in August 2016. They show – in Nzabonimpa's own words – that he met with Witness ANAN on 29 August 2016 before his “interview”.<sup>619</sup> Notwithstanding concerns expressed the same day that Witness ANAN might not follow through,<sup>620</sup> Nzabonimpa confirmed on 31 August 2016 that the result of Witness ANAN's Prosecution interview was “very good”.<sup>621</sup>

218. In light of the foregoing, I find as the only reasonable conclusion that, in August 2016, both Nzabonimpa and Ndagijimana instructed Witness ANAN to agree to meet with the Prosecution in the presence of Ngirabatware's counsel in anticipation of queries being conducted by the WISP as to the witness's willingness to meet with the Prosecution. I further find as the only reasonable conclusion that subsequently, in August 2016, Nzabonimpa paid Witness ANAN 200,000 Rwandan francs from funds derived from Ngirabatware and that the purpose of the payment was to reward Witness ANAN and to secure his continued cooperation by attending and affirming his recantation during the subsequently held Prosecution interview on 29 August 2016. Indeed, and as discussed earlier, Witness ANAN generally confirmed that he received payments from Nzabonimpa and, as I have already concluded, his testimony that any payments were unrelated to his willingness to recant is unbelievable.<sup>622</sup>

##### 5. Payments and Training: May through September 2017

219. The *Nzabonimpa et al.* and *Ngirabatware* Indictments allege that, between 22 and 25 May 2017, Nzabonimpa, based on money received from Ngirabatware, paid Witness ANAN “bribes” amounting to 110,000 Rwandan francs in exchange for his cooperation with the Ngirabatware Defence and to influence his prospective evidence.<sup>623</sup>

220. The *Nzabonimpa et al.* Indictment further charges that, from 28 July 2017 through September 2017, Nzabonimpa, through telecommunications and/or in person meetings in Gisenyi,

<sup>619</sup> See Exhibit P286 (text from Nzabonimpa to Turinabo on 29 August 2016 at 9:47:39) (“We are together /can also be translated as good bye in modern day Kinyarwanda/. I have met [Witness ANAN] before he goes for the interview at one o'clock”). See also Exhibit 3D20, p. 11 (reflecting Witness ANAN's attendance at the WISP Kigali Office on 29 August 2016).

<sup>620</sup> See Exhibit P287 (text from Turinabo to Nzabonimpa on 29 August 2016 at 10:28:05) (“[...] [Witness ANAN] sent me 1 sms saying that he is going to totally refuse to them, please remind that he needs our protection.”).

<sup>621</sup> See Exhibit P288 (text from Nzabonimpa to Turinabo on 31 August 2016 at 6:43:05) (“I have read about [Witnesses ANAM/TNN31 and ANAN]. I think its very good.Tot [Robinson] thinks that the letters they wrote are going to complicate things. We will come back to this.”).

<sup>622</sup> See Section II.C.1.

<sup>623</sup> *Nzabonimpa et al.* Indictment, para. 25(xi); *Ngirabatware* Indictment, para. 23(iv)(d).

provided instructions to Witness ANAN regarding what to say about the circumstances of the recantations.<sup>624</sup> The *Ngirabatware* Indictment alleges that, in September 2017, Ngirabatware prepared information that, together with the information he prepared in June 2016, he intended Witness ANAN to provide during interviews with the Prosecution and sent the information to Nzabonimpa, which, between 28 July 2017 and the end of September 2017, Nzabonimpa used to provide instructions to Witness ANAN regarding what to say about the circumstances of the recantations on Ngirabatware's behalf.<sup>625</sup>

221. The Prosecution points to communications and Mobile Money evidence as well as the financial spreadsheet extracted from Nzabonimpa's external hard drive in support of the alleged payments from Nzabonimpa to Witness ANAN.<sup>626</sup> It further argues that communications evidence reflects that, on 14 August 2017, Nzabonimpa instructed Witness ANAN to lie about who mailed his recantation letter and conceal that Nzabonimpa had done it.<sup>627</sup> It contends that the instructions provided to Witness ANAN flowed from the June 2016 question and answer documents that Ngirabatware prepared and provided to Nzabonimpa.<sup>628</sup> It further contends that Nzabonimpa trained Witness ANAN in September 2017 based on documents extracted from Ngirabatware's computer as well as communications evidence.<sup>629</sup>

222. Nzabonimpa disputes that the evidence relied upon by the Prosecution proves that he paid Witness ANAN or, alternatively, that any such payments are criminal.<sup>630</sup> Nzabonimpa argues that the 14 August 2017 conversation between him and Witness ANAN is ambiguous and does not demonstrate that he provided a clear and definite instruction to Witness ANAN that could support a charge of contempt and that other evidence does not support the allegation.<sup>631</sup> He further contends that the evidence does not demonstrate that he trained Witness ANAN in September 2017.<sup>632</sup>

223. Ngirabatware disputes that evidence of money paid to Witness ANAN demonstrates criminality on his part.<sup>633</sup> He further contends that the record fails to establish that any instructions given to Witness ANAN relating to how his recantation letter was sent to the Mechanism derived from him, given that he had no role in mailing the letter and the false narrative surrounding this

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<sup>624</sup> *Nzabonimpa et al.* Indictment, para. 23(iv).

<sup>625</sup> *Ngirabatware* Indictment, para. 21(ii)(b).

<sup>626</sup> Prosecution Final Trial Brief, paras. 90, 167, 173.

<sup>627</sup> Prosecution Final Trial Brief, paras. 104, 173, n. 408.

<sup>628</sup> Prosecution Final Trial Brief, paras. 104, 105, 165, nn. 408, 418.

<sup>629</sup> Prosecution Final Trial Brief, paras. 107, 108, 165, 173.

<sup>630</sup> Nzabonimpa Final Trial Brief, paras. 481-483.

<sup>631</sup> Nzabonimpa Final Trial Brief, paras. 350-368.

<sup>632</sup> Nzabonimpa Final Trial Brief, paras. 369-380.

<sup>633</sup> Ngirabatware Final Trial Brief, paras. 160-174.

originated from Nzabonimpa’s fears.<sup>634</sup> Ngirabatware also contends that the record does not demonstrate that any comments he is alleged to have prepared in September 2017 were in fact sent to Nzabonimpa and, in any event, such comments only reflect remarks Witness ANAN gave during his interview.<sup>635</sup>

224. I note that Mobile Money records reflect that, on 22 and 25 May 2017, Nzabonimpa transferred 10,000 and 100,000 Rwandan francs, respectively, to Witness ANAN.<sup>636</sup> These are corroborated by the spreadsheet extracted from Nzabonimpa’s external hard drive, which reflects that 110,000 Rwandan francs were paid to an individual with the code name attributable to Witness ANAN on “25/5/2017”.<sup>637</sup>

225. Indeed, Nzabonimpa and Witness ANAN exchanged messages confirming that Witness ANAN’s number was registered to a Mobile Money account on 22 May 2017,<sup>638</sup> before the first payment was made.<sup>639</sup> Furthermore, communications between Nzabonimpa and Witness ANAN on 25 May 2017 reflect Witness ANAN’s frustration with what he had received,<sup>640</sup> and Nzabonimpa asking him to be patient.<sup>641</sup> Less than an hour later, Mobile Money records reflect that Nzabonimpa transferred an additional 100,000 Rwandan francs to the witness.<sup>642</sup>

226. In light of the foregoing, I find that Nzabonimpa paid Witness ANAN a total of 110,000 Rwandan francs through two separate payments on 22 and 25 May 2017. The only reasonable purpose behind these payments was to secure Witness ANAN’s continued cooperation and to maintain his recantation as preparations for Ngirabatware’s anticipated review hearing continued.<sup>643</sup> In this respect, I have no doubt that these payments derived from funds made

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<sup>634</sup> Ngirabatware Final Trial Brief, paras. 152-155.

<sup>635</sup> Ngirabatware Final Trial Brief, paras. 149-152.

<sup>636</sup> See Exhibit P172, p. 11, rows 415, 422; Exhibit P328 (text from M-Money to Nzabonimpa on 22 May 2017); Exhibit P331 (text from M-Money to Nzabonimpa on 25 May 2017).

<sup>637</sup> See Exhibit P229, p. 2, row 144.

<sup>638</sup> See Exhibit P325 (text from Nzabonimpa to Witness ANAN on 22 May 2017 at 12:45:53) (“Hello. Is this telephone number registered in mobile money?”); Exhibit P326 (text from Witness ANAN to Nzabonimpa on 22 May 2017 at 12:47:38) (“Yes it is [gives phone number]”).

<sup>639</sup> See Exhibit P328 (text from M-Money to Nzabonimpa on 22 May 2017).

<sup>640</sup> See Exhibit P329 (text from Witness ANAN to Nzabonimpa on 25 May 2017 at 3:53:35) (“Good morning. Have you forgotten about the iron sheets you promised me?”).

<sup>641</sup> See Exhibit P330 (text from Nzabonimpa to Witness ANAN on 25 May 2017 at 4:51:37) (“I’ve not forgotten. Just be a little bit patient”).

<sup>642</sup> See Exhibit P331 (text from M-Money to Nzabonimpa on 25 May 2017).

<sup>643</sup> In reaching these conclusions, I have given due consideration to Witness ANAN’s evidence that he was not paid by Nzabonimpa for the purpose of recanting his evidence. See Witness ANAN, T. 6 April 2021 pp. 62, 63. I have also considered Witness ANAN’s evidence that Nzabonimpa paid him 100,000 Rwandan francs when he fell ill and that the message Witness ANAN received along with the transfer of 100,000 Rwandan francs on 25 May 2017 was for “Medicine”. See, e.g., Witness ANAN, T. 1 April 2021 pp. 39, 40; Exhibit P331. This evidence, however, does not raise any reasonable doubt that the intention behind the payment was to secure Witness ANAN’s continued cooperation with the Ngirabatware Defence.

available by Ngirabatware and that Ngirabatware provided these funds to ensure, *inter alia*, Witness ANAN's continued cooperation with the Ngirabatware Defence as preparations for the anticipated review proceedings continued. Witness ANAN's general evidence that payments received from Nzabonimpa were unrelated to his recantation is unbelievable for the reasons expressed previously.<sup>644</sup>

227. I now turn to the allegation that, from 28 July 2017 through September 2017, Nzabonimpa provided instructions to Witness ANAN regarding what to say about the circumstances of the recantations. Conversations in late July 2017 between Turinabo and Nzabonimpa demonstrate their heightened concern that Nzabonimpa's role in facilitating the recantations might be revealed.<sup>645</sup> Notably, Ndagijimana testified that he, Nzabonimpa, and Turinabo created a false narrative to obscure Nzabonimpa's involvement in sending the consent and recantation letters.<sup>646</sup> Likewise, Witness ANAN, when cross-examined by Nzabonimpa's counsel, testified that Nzabonimpa told him not to reveal his involvement in sending his letter when appearing before the "Tribunal" and that he subsequently did not divulge Nzabonimpa's involvement when he did appear.<sup>647</sup>

228. In this context, there is no dispute that Nzabonimpa spoke with Witness ANAN on 14 August 2017 as reflected in Exhibit P1369. In this intercepted telephone conversation, Nzabonimpa acknowledges that Witness ANAN knows that Nzabonimpa delivered the "letters" but instructs the witness that he – *i.e.* Nzabonimpa – "shouldn't appear anywhere because nobody knows [Nzabonimpa]" and that Witness ANAN "should not reveal in anything [he says that he has]

<sup>644</sup> See Section II.C.1.

<sup>645</sup> See, e.g., Exhibit P1308 (text from Turinabo to Nzabonimpa on 30 July 2017 at 8:45:23) ("Hello, did you remember to prepare [Witness ANAN] that he talked to Mbarimo? He must avoid talking about you because tot [Robinson] says it was Mbarimo who told him [Witness ANAN's] position because they were part of the same political group."); Exhibit P1358 (text from Turinabo to Nzabonimpa on 6 August 2017 at 18:05:07) ("[...] Concerning the mail, [Witness ANAN], L [Maniraguha], and Twagira [Twagirayezu] have to study the answers because they are the ones linked with the post via DHL and they have to know how"); P1359 (text from Turinabo to Nzabonimpa on 6 August 2017 at 18:05:09) ("they got the address. We are coming to critical point; see you tomorrow"); Exhibit P1373 (text from Nzabonimpa to Turinabo on 8 August 2017 at 10:37:36) ("Tot [Robinson] gave Muler [Munyeshuli] elements and instructions for conducting investigations on DHL. Did Vumbi [Nzabonimpa] leave there his/her number? [Witness ANAN] should always say that he she/spoke with Mbar [Mbarimo] because they have known each other for a long time."). See also Exhibit P415 (text from Turinabo to Nzabonimpa on 10 August 2017 at 4:51:41) ("Did you meet Barak [Ndagijimana] for the funds for the meeting that is about to start? If it ends urgently before Umuler [Munyeshuli] can give Tot [Robinson] a report on DHL it is going to be another problem. [...]").

<sup>646</sup> See Ndagijimana, T. 16 March 2021 pp. 3-5, 65, 66.

<sup>647</sup> Witness ANAN, T. 1 April 2021 p. 50 (testifying that Nzabonimpa told the witness to "not to say that [Nzabonimpa] was the one who had forwarded [Witness ANAN's recantation] letter" and that, when the witness appeared before the "Tribunal, [he] was asked who conveyed the letter and [he] did not give [Nzabonimpa's] identity because [Nzabonimpa] had asked [Witness ANAN] not to divulge it. [Nzabonimpa] had told [Witness ANAN] he was going to send the letter and that I should say that I had sent the letter without pointing out that [Nzabonimpa] was the one who conveyed the letter, whereas [Nzabonimpa] was the one who had indeed conveyed the letter."). See also Witness ANAN, T. 6 April 2021 p. 76.

ever seen [Nzabonimpa]” because it risks “ruining everything”.<sup>648</sup> Later conversations with Turinabo reveal him feeding Witness ANAN and Maniraguha details as to how the witness’s recantation letter was sent should they be questioned on this.<sup>649</sup>

229. Turning to Ngirabatware’s involvement, I note that the fabricated account of how Witness ANAN’s recantation letter was sent is in line with the prepared remarks that were given to Witness ANAN in anticipation of his initial meeting with Ngirabatware’s Defence team in July 2016 – *i.e.* that Witness ANAN gave the letter “to a friend who took it to the DHL with the money to send it.”<sup>650</sup> Notably, after his interview with the Prosecution in late August 2016, Ngirabatware shared with Nzabonimpa his counsel’s concerns specifically about how Witness ANAN’s recantation was sent.<sup>651</sup> By 19 September 2017, Ngirabatware had concerns that Munyeshuli might be able to visually identify Nzabonimpa as having sent the letters through surveillance footage from DHL through his investigations.<sup>652</sup> Mindful of the specific concerns held by the Accused in Rwanda,<sup>653</sup> the only reasonable inference is that the instructions to Witness ANAN flowed directly from the narrative that Ngirabatware sought to create with respect to the circumstances surrounding Witness ANAN’s recantation and that Nzabonimpa, in instructing Witness ANAN to lie when questioned about this, was acting on Ngirabatware’s behalf as well.

<sup>648</sup> See Exhibit P1369 (intercept of Nzabonimpa calling Witness ANAN on 14 August 2017), pp. 2, 3. The initial narrative proposed by Nzabonimpa was that the letter was dispatched through “Vincent”. See Exhibit P1369 (intercept of Nzabonimpa calling Witness ANAN on 14 August 2017), p. 3; T. 23 June 2021 pp. 6, 7.

<sup>649</sup> See Exhibit P1433 (intercept of Turinabo calling Maniraguha on 3 September 2017 at 11:06), pp. 1, 2; Exhibit P1443 (intercept of Turinabo calling Maniraguha on 3 September 2017 at 11:10), pp. 1, 2; Exhibit P1446 (text from Turinabo to Maniraguha on 3 September 2017 at 11:26:56); Exhibit P1447 (text from Turinabo to Maniraguha on 3 September 2017 at 11:26:59); Exhibit P1490 (intercept of Maniraguha calling Turinabo on 3 September 2017 at 12:39), pp. 2, 3. Viewed in context, the references to an individual with Witness ANAN’s first name are undeniably references to the witness. See Exhibit 1460 (intercept of Turinabo calling Witness ANAN on 3 September 2017 at 11:33). See also Exhibit P355 (text from Nzabonimpa to Ndagijimana on 7 August 2017 at 11:52:38) (explaining that the narrative would be that Witness ANAN’s letter was “posted by L [Maniraguha]” and that Witness ANAN is “the only one who will change” in relation to the posting of the letters); Exhibit P1125 (intercept of Nzabonimpa calling Turinabo on 25 September 2017), pp. 2, 3 (Turinabo notes that he forgot to tell Witness ANAN the day before that Witness ANAN was to say that he gave Mbarimo 25,000 Rwandan francs in Kibirira to post his recantation letter).

<sup>650</sup> See, *e.g.*, Exhibit P218, p. 1.

<sup>651</sup> Exhibit P288 (text from Nzabonimpa to Turinabo on 31 August 2016 at 6:43:05) (“I have read about [Witnesses ANAM/TNN31 and ANAN]. I think its very good.Tot [Robinson] thinks that the letters they wrote are going to complicate things. We will come back to this.”). In view of the record and Nzabonimpa’s direct contact with Ngirabatware, there is no other reasonable conclusion that, in this message, Nzabonimpa is sharing with Turinabo information obtained from Ngirabatware.

<sup>652</sup> See Exhibit P687; Exhibit P688 (emails from Ngirabatware forwarded between Nzabonimpa’s email addresses on 19 September 2017) (“Tot [Robinson] wrote to muler [Munyeshuli] that he should go to dhl Kigali to look for addresses, names of those who sent the letters, the owners of the phones they left there, whether there are surveillance camers etc. Does muler [Munyeshuli] know vumb [Nzabonimpa]?”). Both the context of the message and the attributions for the email addresses establish beyond reasonable doubt that Ngirabatware provided this information to Nzabonimpa. See Prosecution Final Trial Brief, Annexes B.1 and B.2.

<sup>653</sup> See, *e.g.*, Ndagijimana, T. 16 March 2021 pp. 3-5. Nzabonimpa’s concerns are directly reflected in a later conversation he had with Witness ANAN about questions that were asked of the witness related to Nzabonimpa, who indicated that he had only heard of him as being a mayor. See Exhibit P1148 (intercept of Nzabonimpa calling Witness ANAN on 28 September 2017 at 7:12).



230. Based on the foregoing, I find beyond reasonable doubt that, in August 2017, Nzabonimpa instructed Witness ANAN to lie in the context of Ngirabatware’s anticipated review proceedings about the circumstances of his recantation, and specifically Nzabonimpa’s role in assisting the witness, including the mailing of his recantation letter. This was done in line with and on the basis of the earlier question and answer document that Ngirabatware played a central role in creating and sharing with Nzabonimpa. Furthermore, I find that, in instructing Witness ANAN, Nzabonimpa was acting on Ngirabatware’s behalf.

231. Turning to the alleged instructing of Witness ANAN in September 2017 based on information prepared by Ngirabatware, identical documents – entitled “[Witness ANAN] The Interview Given to Prosecutor on 29.8.2017” and created on 17 September 2017 – were extracted from Ngirabatware’s laptops (Exhibits P43 and P70).<sup>654</sup> No corresponding document was retrieved from Nzabonimpa’s external hard drive. The document appears to be a summary of the witness’s August 2016 interview with the Prosecution but contains italicized text, with instructions for the witness that: (i) direct him to recall that he had in fact discussed his testimony in 2010 and his decision to recant with Mbarimo even though his prior statement reflects he had not discussed these issues with anyone; (ii) his recantation letter was dated 25 November 2016; and (iii) remind him of the fabricated account of having given his recantation letter to Maniraguha. In this context, the only reasonable conclusion is that Ngirabatware prepared this document in September 2017 in anticipation of the witness’s meeting with the Prosecution at the end of that month, in part, to ensure that Witness ANAN was sufficiently prepared to maintain his recantation as well as repeat fabricated evidence that had been used to conceal Nzabonimpa’s involvement in the recantation process.

232. While there is no direct evidence of Nzabonimpa being in possession of this particular document, considerable circumstantial evidence eliminates any reasonable doubt that Ngirabatware sent this document to Nzabonimpa along with the other documents in relation to, *inter alia*, Witnesses ANAE/TNN30 and ANAM/TNN31, which he then shared with Ndagijimana and Turinabo.<sup>655</sup> A conversation between Ndagijimana and Turinabo reflect both having reviewed Witness ANAN’s interview notes, with Turinabo noting that the witness was “hesitant [...] Because he wants to avoid [...] Mbarimo”, a clear reference to the italicized instructions embedded in

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<sup>654</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 55, pp. 59, 60; Exhibit P43 (extracted from Ngirabatware’s Samsung laptop); Exhibit P70 (extracted from Ngirabatware’s Dell laptop).

<sup>655</sup> See Section II.B.6.

Exhibits P43 and P70.<sup>656</sup> This is also reflected in a message from Ndagijimana, wherein he says to Nzabonimpa that “[Witness ANAN’s] interview has loopholes, take it with you.”<sup>657</sup>

233. Similarly, exchanges between the Accused from 21 through 24 September 2017 unequivocally reflect their desire to meet with Witness ANAN in Musanze (formerly Ruhengeri) and train him on the basis of the interview,<sup>658</sup> which Nzabonimpa scheduled with the witness directly on 21 September 2017.<sup>659</sup> Furthermore, on 24 September 2017, Nzabonimpa called the witness asking if he had arrived and directing him to the precise meeting location.<sup>660</sup>

234. Based on the foregoing, I have no doubt that in the end of September 2017, Nzabonimpa, with Ndagijimana and Turinabo, met with Witness ANAN, and Nzabonimpa, individually or jointly with Ndagijimana, instructed Witness ANAN on the basis of the document Ngirabatware prepared and had shared with him, for the purpose of ensuring that Witness ANAN was sufficiently prepared to maintain his recantation during his anticipated interview with the Prosecution at the end of the month as well as repeat fabricated evidence that had been used to conceal Nzabonimpa’s involvement in the recantation process.

#### 6. Training and Payment: October through December 2017

235. The *Nzabonimpa et al.* Indictment alleges that, in October and November 2017, Nzabonimpa directed Witness ANAN on what testimony to give during the review hearing.<sup>661</sup> The *Nzabonimpa et al.* and *Ngirabatware* Indictments also allege that, on 28 December 2017, Nzabonimpa, based on money made available by Ngirabatware, paid a “bribe” of 102,000 Rwandan francs to Witness ANAN using Mobile Money for the purpose of ensuring his cooperation with the Ngirabatware Defence and to influence his prospective evidence.<sup>662</sup>

236. The Prosecution relies on notes related to Witness ANAN’s interview extracted from Nzabonimpa’s external hard drive and Ngirabatware’s laptops as well as communications evidence

<sup>656</sup> Exhibit P1092 (intercept of Ndagijimana calling Turinabo on 21 September 2017 at 8:46), pp. 1, 2.

<sup>657</sup> Exhibit P1587 (text from Ndagijimana to Nzabonimpa on 24 September 2017 at 11:09:49).

<sup>658</sup> Exhibit P1469 (intercept of Nzabonimpa calling Turinabo on 21 September 2017 at 8:45), pp. 2-6; Exhibit P1092 (intercept of Ndagijimana calling Turinabao on 21 September 2017 at 8:46), pp. 1, 2; Exhibit P1096 (intercept of Nzabonimpa calling Ndagijimana on 21 September 2017 at 9:04), p. 1; Exhibit P1109 (intercept of Turinabo calling Ndagijimana on 24 September 2017 at 10:55), pp. 1, 2; Exhibit P1587 (text from Ndagijimana to Nzabonimpa on 24 September 2017 at 11:09:49).

<sup>659</sup> Exhibit P1095 (intercept of Nzabonimpa calling Witness ANAN on 21 September 2017 at 9:02), pp. 1, 2.

<sup>660</sup> Exhibit P1114 (intercept of Nzabonimpa calling Witness ANAN on 24 September 2017 at 13:28), p. 1.

<sup>661</sup> *Nzabonimpa et al.* Indictment, para. 23(vi). The Prosecution is not pursuing this allegation against Ndagijimana. See Prosecution Final Trial Brief, para. 179 (omitting reference to this allegation as it relates to Witness ANAN). There is also no corresponding allegation in the *Ngirabatware* Indictment.

<sup>662</sup> *Nzabonimpa et al.* Indictment, para. 25(xv); *Ngirabatware* Indictment, para. 23(vi)(a).

in support of the allegation that Nzabonimpa trained Witness ANAN in late November 2017.<sup>663</sup> It further relies on Mobile Money records and communications evidence in support of the alleged payment to Witness ANAN on 28 December 2017.<sup>664</sup>

237. Nzabonimpa argues that the communications evidence and the notes related to Witness ANAN's interview extracted from his and Ngirabatware's devices fail to establish that he trained the witness as alleged.<sup>665</sup> He further argues that the evidentiary record fails to establish that he paid Witness ANAN or that any such payment was criminal.<sup>666</sup> Ngirabatware disputes that evidence of money paid to Witness ANAN demonstrates criminality on his part.<sup>667</sup>

238. Text messages sent from Turinabo to Nzabonimpa in the middle third of October 2017 reflect a clear desire that Witness ANAN be trained, given the understanding that the witness may be heard by the Appeals Chamber in November 2017.<sup>668</sup> By mid-November, the Accused were made aware that the hearing would be postponed.<sup>669</sup> Nonetheless, documents retrieved from Nzabonimpa's external hard drive and Ngirabatware's laptops suggest preparations to train Witness ANAN remained a priority.

239. Specifically, what appear to be textually identical documents were retrieved from Nzabonimpa's external hard drive (Exhibit P232) as well as Ngirabatware's Dell laptop (Exhibit P38) and Samsung laptop (Exhibit P60). A title written across the documents indicates Witness ANAN's interview with the Prosecution from 27 September 2017 and the text contained therein demonstrates that they contain a summary of Witness ANAN's responses during that interview. The forensic evidence suggests that this information first appeared on Ngirabatware's laptop in October 2017 and that it was then saved on Nzabonimpa's external hard drive on

<sup>663</sup> Prosecution Final Trial Brief, paras. 112-114, 173.

<sup>664</sup> Prosecution Final Trial Brief, paras. 116, 167, 174.

<sup>665</sup> Nzabonimpa Final Trial Brief, paras. 402-409. Nzabonimpa further argues that communications evidence prior to October 2017 falls outside the scope of the allegation and is irrelevant to it. *See* Nzabonimpa Final Trial Brief, para. 401.

<sup>666</sup> Nzabonimpa Final Trial Brief, paras. 501-505.

<sup>667</sup> Ngirabatware Final Trial Brief, paras. 160-174; T. 22 June 2021 p. 69.

<sup>668</sup> *See* Exhibit P460 (text from Turinabo to Nzabonimpa on 11 October 2017 at 7:04:32) ("There are some things that [Witness ANAN] needs to be trained on before November, so ask him for an appointment soon so that we meet. Very important."); Exhibit P462 (text from Turinabo to Nzabonimpa on 14 October 2017 at 14:25:21) ("[Witness ANAN] called on Wednesday, will you be available so that we can meet him? Our person [Ngirabatware] will have to respond because November has been confirmed. Bye"); Exhibit P464 (text from Turinabo to Nzabonimpa on 17 October 2017 at 18:57:03) ("Good afternoon. The appointment to meet [Witness ANAN] tomorrow is complicated. I received the 3 million this afternoon, additionally I spent some of the 54,000 Francs meant to pay for the visa at the Belgian Embassy buying drinks for those who gave me the money. I will leave early in the morning to look for that money and tickets for both of us. I have little hope of meeting [Witness ANAN] unless there is a miracle from God. Bye").

<sup>669</sup> Exhibit P474 (text from Turinabo to Nzabonimpa on 15 November 2017 at 17:26:59) ("Good morning. In fact, I think the powerful people [Appeals Chamber Judges] had planned for November but it was not possible because the

27 November 2017.<sup>670</sup> I find that both the documents' content and the forensic information demonstrate beyond reasonable doubt that Ngirabatware shared the information necessary to create the document extracted from Nzabonimpa's external hard drive.<sup>671</sup> Furthermore, I find that this information was shared in order to train Witness ANAN in anticipation of participation in Ngirabatware's review proceedings to ensure that he retain his recantation, and so that his memory would be refreshed with respect to the fabricated account of how his recantation letter was sent should this issue come up.

240. While the information contained in the documents largely appears to be a summary of the witness's responses to questions posed to him by the Prosecution, it does, as Nzabonimpa concedes, contain a suggestion for Witness ANAN to recall that he had informed Mbarimo that he had falsely testified against Ngirabatware.<sup>672</sup> Moreover, the information contained in the documents provides a detailed account of the fabricated story as to how Witness ANAN's recantation letter was sent, conceals that the witness informed, *inter alia*, Nzabonimpa about his false testimony, and even suggests that he did not know Nzabonimpa.<sup>673</sup> Read in context, and particularly in view of the 28 November 2017 text message – *i.e.* the day after this document was last saved to Nzabonimpa's external hard drive – wherein Nzabonimpa tells Turinabo to inform Ndagijimana that he has “started the training”,<sup>674</sup> the only reasonable conclusion is that Nzabonimpa met with Witness ANAN and used the information contained in the document extracted from his device as a basis for directing him on what to say.<sup>675</sup>

241. Turning to the alleged payment, Mobile Money records reflect that around 10:41 a.m. on 28 December 2017, Witness ANAN received 102,000 Rwandan francs from a MTNR Mobile Money merchant.<sup>676</sup> An entry in the spreadsheet extracted from Nzabonimpa's external hard drive

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building that was supposed to be used was not in good condition and it is being fixed now. There is greater certainty for January. The date will be known in the coming days”).

<sup>670</sup> See Exhibit P110 (Olejniczak Supplemental Report), para. 53, pp. 55, 56.

<sup>671</sup> The examination of selected metadata fields alone could not conclusively show a relationship between the document retrieved from Nzabonimpa's external hard drive with those retrieved from Ngirabatware's devices. See Exhibit P110 (Olejniczak Supplemental Report), para. 53. However, the documents retrieved from Ngirabatware's laptops were not taken from the Microsoft Word application but an OpenOffice application and, consequently, author and last editor metadata could not therefore be identified. See Exhibit P110 (Olejniczak Supplemental Report), p. 56. In this context, the fact that the author of the document retrieved from Nzabonimpa's external hard drive is identified “User” – a Windows and Microsoft Office username present on Nzabonimpa's external hard drive – is not determinative as to the information's source. See, e.g., Exhibit P109 (Olejniczak Report), paras. 38, 65.

<sup>672</sup> See Nzabonimpa Final Trial Brief, para. 405, quoting Exhibit P232, p. 3.

<sup>673</sup> See Exhibit P232, pp. 3, 4.

<sup>674</sup> Exhibit P485 (text from Nzabonimpa to Turinabo on 28 November 2017 at 8:28:01) (“Convey to Barak [Ndagijimana] that I have started the training. If I find him/her on the road I will bring him/her”).

<sup>675</sup> In this regard, the absence of metadata as to when Exhibit P232 was last printed raises no reasonable doubt that Nzabonimpa met with Witness ANAN and trained him based on the information contained therein. See Exhibit P110 (Olejniczak Supplemental Report), p. 55.

<sup>676</sup> See Exhibit P174, p. 27, row 1176 (transaction at 10:41).

includes a notation for a payment of 103,000 Rwandan francs to Witness ANAN, which is recorded between entries of 22 December 2017 and 9 February 2018.<sup>677</sup> Furthermore, hours before the transaction on 28 December 2017, Witness ANAN texted Nzabonimpa that he had “not yet received the sms”<sup>678</sup> to which Nzabonimpa responded “[y]ou’ll see it very soon.”<sup>679</sup> Subsequent to these exchanges but a little more than two hours prior to the transaction, Witness ANAN complained to Nzabonimpa that “[t]here is no money in the account”.<sup>680</sup> Less than two hours after the transfer, Witness ANAN texted Nzabonimpa “[t]hat money was stolen from me just after I had withdrawn it”.<sup>681</sup> Viewed in context, the record establishes without any doubt that Nzabonimpa made this payment to Witness ANAN.<sup>682</sup>

242. Furthermore, I have no doubt that this payment was made from funds derived from Ngirabatware. I have previously found that Ngirabatware made money available to Nzabonimpa in December 2017 shortly before these payments.<sup>683</sup> The record firmly establishes that this money was made available to secure the continued cooperation of the Recanting Witnesses, including Witness ANAN, with Ngirabatware’s Defence.

243. In light of the foregoing, the record demonstrates without any doubt that Nzabonimpa directed Witness ANAN in late November 2017 on what to say during the review hearing. The training was conducted by Nzabonimpa with the aim of affirming the witness’s willingness to recant and providing information to facilitate that process. The training, without any doubt, also sought to refresh the witness as to the fabricated story of how his recantation letter was sent and to further ensure that Nzabonimpa’s involvement would not be revealed.

244. Furthermore, I find that the record demonstrates that Nzabonimpa paid Witness ANAN 102,000 Rwandan francs via Mobile Money on 28 December 2017. This payment was made by Nzabonimpa based on funds provided by Ngirabatware and both Nzabonimpa and Ngirabatware facilitated the payment with the intent that Witness ANAN continue to cooperate with the

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<sup>677</sup> See Exhibit P229, p. 3, row 205. See also Exhibit P229, p. 3, rows 199, 206.

<sup>678</sup> See Exhibit P677 (text from Witness ANAN to Nzabonimpa on 28 December 2017 at 6:42:08).

<sup>679</sup> See Exhibit P529 (text from Nzabonimpa to Witness ANAN on 28 December 2017 at 6:51:20).

<sup>680</sup> See Exhibit P530 (text from Witness ANAN to Nzabonimpa on 28 December 2017 at 8:34:58).

<sup>681</sup> See Exhibit P678 (text from Witness ANAN to Nzabonimpa on 28 December 2017 at 12:05:15). In this regard, a subsequent message further confirms that Nzabonimpa had paid Witness ANAN around 100,000 Rwandan francs as Witness ANAN complained that an additional 150,000 Rwandan francs was taken from him, resulting in a loss of “250,000 in total”. See Exhibit P629 (text from Witness ANAN to Nzabonimpa on 28 December 2017 at 12:23:41).

<sup>682</sup> Months later, Nzabonimpa confirmed a message from Witness ANAN that he had paid him 100,000 Rwandan francs and that he intended to pay him an additional 100,000 Rwandan francs. See Exhibit P559 (text from Witness ANAN to Nzabonimpa on 25 May 2018 at 9:53:01) (“There was 200000 left and you’ve only given me 100000”); Exhibit P560 (text from Nzabonimpa to Witness ANAN on 25 May 2018 at 9:56:54) (“Yes, I remember. I will give you the rest on Saturday next week”).

<sup>683</sup> See Section II.A.4.

Ngirabatware Defence in anticipation of the review hearing. In this respect, Witness ANAN's general evidence that payments received from Nzabonimpa were unrelated to his recantation is unbelievable for the reasons expressed previously.<sup>684</sup>

7. Training: May through June 2018

245. The *Ngirabatware* Indictment alleges that, between 15 May 2018 and 11 June 2018, Ngirabatware acting through Nzabonimpa, Ndagijimana, and Turinabo, directed Witness ANAN on what to say during his interview with Ngirabatware's counsel in June 2018.<sup>685</sup> The *Nzabonimpa et al.* Indictment alleges that, between 15 May 2018 and 11 June 2018, Nzabonimpa directed Witness ANAN on what to say during his interview with Ngirabatware's Defence counsel scheduled for 12 and 13 June 2018.<sup>686</sup> The Prosecution relies on communications evidence in support of this charge,<sup>687</sup> while Nzabonimpa and Ngirabatware contend that the evidence fails to establish the allegation.<sup>688</sup>

246. Communications evidence reflects that, by 7 May 2018, Turinabo shared with Nzabonimpa that Ngirabatware's new Defence counsel would be arriving in Kigali on 8 May 2018 and intended to interview the intermediaries starting the following day.<sup>689</sup> On 11 May 2018, Ngirabatware informed Nzabonimpa that his new Defence counsel intended to interview the Recanting Witnesses and Ndagijimana around 11 June 2018,<sup>690</sup> and Nzabonimpa assured Ngirabatware that he, Turinabo, and Ndagijimana would be preparing the Recanting Witnesses.<sup>691</sup> On 15 May 2018, Turinabo

<sup>684</sup> See Section II.C.1.

<sup>685</sup> *Ngirabatware* Indictment, para. 21(iv).

<sup>686</sup> *Nzabonimpa et al.* Indictment, para. 23(vii). The Prosecution has not pointed to evidence of Ndagijimana instructing Witness ANAN in the context of this allegation. See Prosecution Final Trial Brief, paras. 117-121, 179.

<sup>687</sup> See Prosecution Final Trial Brief, paras. 117-121, 165, 173.

<sup>688</sup> See Nzabonimpa Final Trial Brief, paras. 412-418; Ngirabatware Final Trial Brief, paras. 156, 157. Nzabonimpa stresses that the allegation is limited to training the Recanting Witnesses. See Nzabonimpa Final Trial Brief, paras. 410, 411.

<sup>689</sup> See Exhibit P739 (text from Turinabo to Nzabonimpa on 7 May 2018 at 17:50:03) ("The version that L [Maniraguha] gave you remains exact. Totaux [Defence counsel] will arrive in Kgl on 08 May. [Twagirayezu, Maniraguha, and Mukamisha] have an appointment on 09 May. Mbar [Mbarimo] and Bwanav have an appointment on 10 May, but if Mbar [Mbarimo] arrives early, Misha [Mukamisha] and 1 from Gisa [Twagirayezu] will be rescheduled. Let it remain that way tonight.").

<sup>690</sup> See Exhibit P549 (text from Ngirabatware to Nzabonimpa on 11 May 2018 at 21:05:10) ("Good evening. Does Vum [Nzabonimpa] have 2 numbers? On the other one, I posted what the Totaux [new Defence counsel] told me. On the 11th of June, they will go to meet Ututalibw [the Recanting Witnesses] and Barak [Ndagijimana].") By 21 May 2018, Ngirabatware had informed Nzabonimpa that his counsel would meet with the Recanting Witnesses on 12 and 13 June 2018 and that they should be notified so it does not come as a surprise to them. See Exhibit P659 (text from Ngirabatware to Nzabonimpa on 21 May 2018 at 20:25:03). See also Exhibits P556 and P557 (reflecting Ngirabatware sharing the same information with Ndagijimana but that his counsel would not need to meet with Ndagijimana; read together, Exhibit P557 reflects Ndagijimana forwarding to Nzabonimpa a message he received from Ngirabatware the night before).

<sup>691</sup> Exhibit P550 (text from Nzabonimpa to Ngirabatware on 12 May 2018 at 3:46:35) ("He/she has 2 numbers and he/she received the things. Rub [Turinabo], Vum [Nzabonimpa] and Barak [Ndagijimana] are preparing the ututaribwa [Recanting Witnesses].").

stressed the need to “sharpen” the Recanting Witnesses before 11 June 2018 in connection with any payments to be made to them,<sup>692</sup> and on, 16 May 2018, Turinabo contacted Nzabonimpa regarding an accelerated strategy to train the Recanting Witnesses.<sup>693</sup> On 20 May 2018, it is clear that Turinabo, Ndagijimana, and Nzabonimpa intended to meet to discuss a way forward.<sup>694</sup>

247. As reflected elsewhere in the Judgement, the weeks that preceded the meetings between Ngirabatware’s new Defence counsel and the Recanting Witnesses in June 2018 involved intense discussion among the Accused and Turinabo aimed at ensuring that the Recanting Witnesses’ continued to cooperate in light of increasing demands for money to do so.<sup>695</sup> Ngirabatware made money available to pay the Recanting Witnesses in connection with these interviews, and provided instructions in May 2018 that the Recanting Witnesses be informed that more sizeable payments would be made in September in connection with the hearing itself.<sup>696</sup> Ngirabatware’s communications at the same time also reflect instructions that the Recanting Witnesses maintain

<sup>692</sup> See Exhibit P553 (text from Turinabo to Nzabonimpa on 15 May 2018 at 16:49:54) (“Regarding the measurements of the plots in September, it is fine but without forgetting to sharpen ututaribwa [the Recanting Witnesses] before 11th June, such that they will all meet when they are very sharp.”). See also Exhibit P635 and P551 (wherein Turinabo is informed that Ngirabatware has instructed that payments will be made to the Recanting Witnesses in connection with their upcoming interviews and the review hearing).

<sup>693</sup> Exhibit P554 (text from Turinabo to Nzabonimpa on 16 May 2018 at 16:34:21) (“Hello, it will be good if you remember because we have a short time due to preparation of Muler [Munyeshuli], Vumbi, [Witness ANAN] and L [Maniraguha], Barak [Ndagijimana], [Witnesses ANAT and ANAM/TNN31]. Accelerated startegy [sic] because 11th June is very close.”). I note that the code name attributed to Witness ANAM/TNN31 is not listed in Annex A.1 of the Prosecution Final Trial Brief. The code name used, however, is an obvious and clear variation of the three others that are listed and, when read in context, is clearly a reference to this witness. See, e.g., Exhibits P745 and P746 (where the variation of the code name used in Exhibits P554 and P745 is expressly tied to a listed code name and Witness ANAM/TNN31’s full name).

<sup>694</sup> See Exhibit P555 (text from Turinabo to Nzabonimpa on 20 May 2018 at 18:54:21) (“[...] Details later during the appointment with Barak [Ndagijimana] and Vumb [Nzabonimpa] to plan the contemplated projects in progress and the ad hoc parameters. Bye.”).

<sup>695</sup> See Section II.B.10.

<sup>696</sup> See, e.g., Exhibit P635 (text from Ngirabatware to Nzabonimpa on 15 May 2018 at 8:32:35) (“Since the Tatalibw [Recanting Witnesses] will meet the Tots [Defence] with Mkeb [Prosecution] present on the 11/6, I think that Vum [Nzabonimpa] should [...] once again measure the plots [make payments to the Recanting Witnesses] when they are about to go, meaning in September.”). This message was then forwarded by Nzabonimpa to Turinabo and Ndagijimana. See Exhibit P551 (text from Nzabonimpa to Turinabo on 15 May 2018 at 9:40:52); Exhibit P552 (text from Nzabonimpa to Ndagijimana on 15 May 2018 at 9:41:25). See also Exhibit P722 (text from Ngirabatware to Nzabonimpa on 21 May 2018 at 22:25:03) (“Good evening. So, our person is preparing to measure the hh plots [*i.e.* make payments] for the unedibles /utatalibw/ [Recanting Witnesses] before meeting the Totaux [Defence]. Therefore Vum [Nzabonimpa] can tell him when at the latest. The unedibles /Tatalibw/ [Recanting Witnesses] to know that it will be measured again for them [they will be paid] before they go in September.”); Exhibit P568 (text from Ngirabatware to Nzabonimpa on 28 May 2018 at 17:03:31) (“Oh! Before June 11, hh [money/payments] will take the minimum measures and then in September the maximum measures.”); Exhibit P573 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 11:12:10 (“[...] Barack [Ndagijimana] and Vum [Nzabonimpa] have done everything. 2000 hh [money/payments] measured for tatalib (all) [the Recanting Witnesses] available.”). These discussions were followed by Ngirabatware arranging payments to Hirwa, and, in turn, Nzabonimpa. This is demonstrated through exchanges between Ngirabatware and his wife on 31 May 2018 that reflect him directing her that it is necessary to see how to send “2000” to “Vumb [Nzabonimpa] and company” and that this should be done by “10 June”. See Exhibit P131 (text from Ngirabatware to his wife on 31 May 2018 at 7:37:47); Exhibit P135 (text from Ngirabatware to his wife on 31 May 2018 at 8:43:56). Hirwa’s bank records reflect a deposit of 2,000 euros on 11 June 2018. See Exhibit P148, row 8 (a deposit of 2,000 euros from M. Kwami Sossou on 11.06.18).

their recantations and be made aware of this before the prospective Defence interviews in June 2018.<sup>697</sup>

248. In this respect, communications evidence from late May 2018 suggests that Nzabonimpa and Witness ANAN might meet as Witness ANAN was asking for more money.<sup>698</sup> Furthermore, Ngirabatware made clear to Nzabonimpa that money should be given to the Recanting Witnesses prior to their meeting with his new Defence counsel.<sup>699</sup> Later, on 10 June 2018, days before the Recanting Witnesses were to meet with Ngirabatware's new Defence Counsel, Turinabo asked Nzabonimpa "to stay in touch with [Witness ANAN] at all times".<sup>700</sup>

249. In this context, the only reasonable inference is that Nzabonimpa was in contact with Witness ANAN and that he provided instructions on what to say in his upcoming interviews with Ngirabatware's new Defence counsel in June 2018. There is no question that, by this time, the Recanting Witnesses were demanding financial incentives to continue their cooperation and, as noted previously, Witness ANAN took a very transactional approach to his cooperation, particularly by 2018. Consequently, I find that the evidence establishes beyond reasonable doubt that Nzabonimpa paid Witness ANAN as he requested and there is no doubt that such a payment would only be made with Nzabonimpa securing an agreement that the witness continue to cooperate and repeat information to Ngirabatware's new Defence counsel that had previously been provided and in line with prior instructions. Furthermore, the record undoubtedly establishes that the instructions provided by Nzabonimpa were the direct result of Ngirabatware's insistent and repeated direction, and that Nzabonimpa acted as a direct conduit between Ngirabatware and Witness ANAN in this regard.

250. Based on the foregoing I find that, sometime between 15 May 2018 and 11 June 2018, Nzabonimpa directed Witness ANAN on what to say during his interview with Ngirabatware's Defence counsel scheduled for 12 and 13 June 2018. I further find that Ngirabatware acted through

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<sup>697</sup> See Exhibit P668 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 19:50:54) ("In fact, the essential question they will ask the 4 is: In Court, did you tell the truth or not? Their answer will then have to be clear because it will be the basis of their decision to call him/her or not.").

<sup>698</sup> See Exhibit P559 (text from Witness ANAN to Nzabonimpa on 25 May 2018 at 9:52:01) ("There was 200000 left and you've only given me 100000"); Exhibit P560 (text from Nzabonimpa to Witness ANAN on 25 May 2018 at 9:56:54) ("Yes, I remember. I will give you the rest on Saturday next week").

<sup>699</sup> See Exhibit P722 (text from Ngirabatware to Nzabonimpa on 21 May 2018 at 22:25:03) ("Good evening. So, our person [Ngirabatware] is preparing to measure the hh plots for the unedibles /ututalibw/ [make payments to the Recanting Witnesses] before meeting the Totaux [Defence]. Therefore Vum [Nzabonimpa] can tell him when at the latest. The unedibles /Tutalibw/ [Recanting Witnesses] to know that it will be measured again for them [they will be paid] before they go in September.").

<sup>700</sup> Exhibit P760 (text from Turinabo to Nzabonimpa on 10 June 2018 at 08:10:07) ("Recall to stay in touch with [Witness ANAN] at all times and he should check the exact version of [Witness ANAE/TNN30's] in these troublesome



Nzabonimpa in this regard in providing instructions to Witness ANAN on what to say during this interview.

#### 8. Offer of Payment: August 2018

251. The *Nzabonimpa et al.* Indictment alleges that, between 27 and 31 August 2018, Nzabonimpa, on the instruction of Ngirabatware, offered bribes to Witness ANAN.<sup>701</sup> The *Ngirabatware* Indictment charges that Ngirabatware gave these instructions using digital communications from the UNDF.<sup>702</sup>

252. The Prosecution relies on communications evidence in support of this allegation.<sup>703</sup> Nzabonimpa responds that the evidence fails to establish that he offered a bribe to, *inter alia*, Witness ANAN.<sup>704</sup> Ngirabatware does not address this allegation in relation to Witness ANAN.

253. The relevant communications evidence shows that, by 27 August 2018, Nzabonimpa communicated to Ngirabatware that, in particular, Witnesses ANAM/TNN31 and ANAE/TNN30 were making further payment demands and that he “should have everything by the 10th otherwise there will be havoc from [Witnesses ANAM/TNN31, ANAN, and ANAE/TNN30]”.<sup>705</sup> The next day, Ngirabatware informed Nzabonimpa that certain demands could not be met but that those asking for payments should be told that Ngirabatware will be “capable later because his assets have been frozen and will be unfrozen later”.<sup>706</sup>

254. In this context, I note that Mobile Money records reflect a payment from a MTNR merchant to Witness ANAN’s mobile telephone of 149,450 Rwandan francs on 30 August 2018.<sup>707</sup> Furthermore, the next day, Nzabonimpa sent a message to Ngirabatware that he had given

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exercises. By the way, did [Witness ANAN] tell you about sleeping over and how [Witness ANAE/TNN30] is using it as a trump card?”).

<sup>701</sup> See *Nzabonimpa et al.* Indictment, para. 25(xviii).

<sup>702</sup> *Ngirabatware* Indictment, para. 23(ix).

<sup>703</sup> See Prosecution Final Trial Brief, para. 136.

<sup>704</sup> See Nzabonimpa Final Trial Brief, paras. 511-518.

<sup>705</sup> See Exhibit P606 (text from Nzabonimpa to Ngirabatware on 27 August 2018 at 14:59:43) (“Other complications: the price asked for [by Witness ANAE/TNN30] and others. [Witness ANAE/TNN30] is too mechanical and [Witness ANAM/TNN31] is asking for 5 before the sale and 5 immediately afterwards. This is on [Witness ANAE/TNN30] and Misha’s encouragement. On the 10th, everything should be available to [Nzabonimpa] or there will be damage from [Witnesses ANAM/TNN31, ANAN, and ANAE/TNN30]”).

<sup>706</sup> See Exhibit P607 (text from Ngirabatware to Nzabonimpa on 28 August 2018 at 15:50:25) (“Our person [Ngirabatware] told me that he does only what he is able to do. As for those prices of the land plots, I’m sure that he will not meet them. Those selling should be told that our person [Ngirabatware] will be capable later, because his assets have been frozen and will be unfrozen later.”).

<sup>707</sup> See Exhibit P174, p. 34, row 1485.

“[Witness ANAN] what is needed to get a passport”.<sup>708</sup> In this context, I have no doubt that the 30 August 2018 payment to Witness ANAN was sent from Nzabonimpa. Furthermore, his comment to Ngirabatware that this was “needed to get a passport” is without question a statement that this payment was aimed at securing Witness ANAN’s continued cooperation with the recantation process rather than a legitimate Defence expense that would either be borne by Ngirabatware’s recognized Defence team or the Mechanism who would be facilitating the witness’s travel. This is the only reasonable conclusion when viewed in light of the anticipated start date of Ngirabatware’s review proceedings, the need for the witness to travel from Rwanda to Tanzania to testify, and taking into account that this and previous messages highlight the financial demands that were being placed on him by the Recanting Witnesses.

255. In light of all of the above, I have no doubt that, based on Ngirabatware’s instructions to Nzabonimpa on 28 August 2018 to inform the Recanting Witnesses that he will be able to pay them later, Nzabonimpa offered to pay Witness ANAN to secure his continued cooperation with the recantation process and then, in fact, paid him 149,450 Rwandan francs on 30 August 2018.<sup>709</sup>

**D. Interference Related to Witness ANAT**

256. The Prosecution charges Ngirabatware, Nzabonimpa, and Ndagijimana with engaging in a campaign of interference related to Witness ANAT from October 2015 through June 2018. While the conduct in procuring his recantation is not charged, it is alleged that the Accused paid bribes to Witness ANAT’s intermediary, Vincent Twagirayezu, in exchange for his cooperation and that they gave Witness ANAT directions on what he should say and do throughout the investigation process and when testifying in Ngirabatware’s anticipated review hearing.

**1. Payment: October 2015**

257. The *Nzabonimpa et al.* and *Ngirabatware* Indictments allege that, on 26 October 2015, Nzabonimpa, from money made available by Ngirabatware, paid a “bribe” of 49,600 Rwandan francs to Twagirayezu – an intermediary used to contact Witness ANAT<sup>710</sup> – in exchange for his cooperation with the Ngirabatware Defence and to influence his prospective evidence.<sup>711</sup> The

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<sup>708</sup> See Exhibit P615 (text from Nzabonimpa to Ngirabatware on 31 August 2018 at 5:55:56) (“Vum [Nzabonimpa] is pushed against the wall. Apart from [Witness ANAT’s] land plot, the others have set the ultimatum on the 5. They said that they will pull out of the deal. Vum [Nzabonimpa] gave [Witness ANAN] what is needed to get a passport”).

<sup>709</sup> Neither Ngirabatware nor Nzabonimpa is charged with paying 149,450 Rwandan francs to Witness ANAN’s phone on 30 August 2018 and this conclusion is only considered for the context.

<sup>710</sup> See *Nzabonimpa et al.* Indictment, para. 13 (“[...] Vincent Twagirayezu was used to contact [Witness] ANAT [...]”).

<sup>711</sup> *Nzabonimpa et al.* Indictment, para. 25(iv); *Ngirabatware* Indictment, para. 23(i)(d).

Prosecution principally relies on transaction and communications evidence as well as the spreadsheet extracted from Nzabonimpa's external hard drive in support of this allegation.<sup>712</sup>

258. Nzabonimpa argues that the Prosecution has failed to demonstrate that the relevant Mobile Money account is solely attributable to Twagirayezu, or to present sufficient evidence to establish that the alleged payment was made by Nzabonimpa.<sup>713</sup> He further argues that the Prosecution does not establish that the payment amounts to a bribe or is criminal.<sup>714</sup> Ngirabatware submits that the Prosecution does not demonstrate the unreasonableness of the modest sum paid to Twagirayezu and contends that, even if determined to be a bribe, the record does not establish that Ngirabatware directed such a payment or knew Nzabonimpa would pay Twagirayezu.<sup>715</sup>

259. The record undoubtedly establishes that Nzabonimpa paid Twagirayezu 49,600 Rwandan francs on 26 October 2015. Notably, that day, Turinabo sent Nzabonimpa a text message containing Twagirayezu's telephone number.<sup>716</sup> Mobile Money transaction records show that the same number, which is attributable to Twagirayezu, received this amount later that day from a MTNR Agent.<sup>717</sup> Finally, and although undated, the payment of "50,000" Rwandan francs is recorded in the spreadsheet extracted from Nzabonimpa's external hard drive.<sup>718</sup> In this respect, the only reasonable inference is that Nzabonimpa paid Twagirayezu.

260. Furthermore, I find that the record firmly reflects that the money paid to Twagirayezu on 26 October 2015 was made available to Nzabonimpa based on funds made available from Ngirabatware for the purpose of obtaining and encouraging Witness ANAT's and others' recantations.<sup>719</sup> There is simply no other reasonable explanation as to why Ngirabatware provided this money to Nzabonimpa, and, to the contrary, circumstantial evidence demonstrates that it was for the purpose of furthering his attempts to obtain recantations in support of an anticipated request for review.

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<sup>712</sup> Prosecution Final Trial Brief, paras. 63, 167, 174; T. 21 June 2021 p. 37.

<sup>713</sup> Nzabonimpa Final Trial Brief, paras. 451-453.

<sup>714</sup> Nzabonimpa Final Trial Brief, paras. 454, 455.

<sup>715</sup> Ngirabatware Final Trial Brief, paras. 93, 95, 96; T. 22 June 2021 p. 69.

<sup>716</sup> See Exhibit P259 (text from Turinabo to Nzabonimpa on 26 October 2015 at 13:24:16) ("He is called Twagirayezu Vincent" and providing Twagirayezu's phone number).

<sup>717</sup> See Exhibit P140, p. 1, row 22 (Twagirayezu Mobile Money records reflecting incoming payment of 49,600 Rwandan francs). See also Exhibit P82.

<sup>718</sup> See Exhibit P229, p. 1, row 20. In the context of the relevant evidence, the reference to "Twagi" in column B is undeniably to Twagirayezu.

<sup>719</sup> Section II.A.

261. Turning to the purpose of this payment, I note first that it took place about two weeks before Witness ANAT signed his recantation letter dated 11 November 2015.<sup>720</sup> Notably, Nzabonimpa made further payments to Twagirayezu during this period, including on the exact day that Witness ANAT signed his recantation letter.<sup>721</sup> When viewed in context, and particularly in light of the transactional nature of both Twagirayezu's and Witness ANAT's cooperation with the Accused,<sup>722</sup> I have no doubt that this payment was made to Twagirayezu to facilitate Witness ANAT's agreement to recant his trial testimony. In reaching this conclusion, I have considered evidence on the record that has been presented to suggest that Witness ANAT lied while testifying in Ngirabatware's trial, including the witness's own testimony to this effect. The record as a whole raises the reasonable possibility that, from their first interactions with the witness (even if through Twagirayezu), the Accused and Turinabo believed that Witness ANAT lied during Ngirabatware's trial. This evidence, however, does not raise reasonable doubt as to the purpose of this payment. Indeed, the only reasonable conclusion is that Ngirabatware and Nzabonimpa made the funds available to Twagirayezu with the specific intent that he cooperate with the Ngirabatware Defence and assist in obtaining Witness ANAT's cooperation with the Ngirabatware Defence and to ensure that he maintain his recantation.

<sup>720</sup> Exhibit P27.

<sup>721</sup> See Exhibit P229, p. 1, row 29. For the same reasons as above, I find that the reference to "Twagi" in column B is undeniably to Twagirayezu.

<sup>722</sup> See, e.g., Exhibit P396 (text from Turinabo to Nzabonimpa on 26 February 2016) ("[...] You will let me know, but [Witness ANAT] and [Witness ANAM/TNN31] want something substantial next time although they do not show discontent like [Maniraguha's] people."); Exhibit P409 (text from Turinabo to Nzabonimpa on 7 June 2016) ("[Twagirayezu] suggests a budget the day before for his plot [Witness ANAT] but ditto for the remaining ones."); Exhibit P300 (text from Turinabo to Nzabonimpa on 27 October 2016) ("[...] I am waiting to meet the other 2 from [...] [Twagirayezu and Witness ANAT], so I will take over the debt, to be repaid afterwards."); Exhibit P301 (text from Turinabo to Nzabonimpa on 30 October 2016) ("[...] I have a suggestion that the [Twagirayezu and Witness ANAT] can remain with [Twagirayezu], then we can give him a ceiling in case he/she chooses those who request alcohol, because I think that his/her team is not expensive comparatively. Let me know. [...]"); Exhibit P310 (text from Turinabo to Nzabonimpa on 14 November 2016) ("[...] *je n'ai pas reçu d'appel de la part d'Umurera* [Munyeshuli]. *Vérifie s'il y a eu d'autres instructions via Uwacu* [Ngirabatware]. *Je vous rappelle de laisser le budget pour les quatre, si Théogène n'a pas changé d'avis.*"); Exhibit P1294 (text from Nzabonimpa to Turinabo on 27 July 2017) ("I planned 15 for [Witness ANAT]"); Exhibit P455 (text from Turinabo to Nzabonimpa on 25 September 2017) ("[Witness ANAT] is leaving on Thursday and is reminding of the requests he made before travelling. I told Visenti [Twagirayezu] to teach that the request is to be utilized well, that is not a permanent one. I think he should get the total, with the transport fees included."); Exhibit P569 (text from Turinabo to Nzabonimpa on 29 May 2018) ("[Witness ANAT's] coach [Twagirayezu] has chosen hundred for a great motivation given the times."). I note that Witness ANAT admitted that Twagirayezu gave him money from 2012 to 2018 in order to assist him with paying his house rent, children's school fees, and gacaca courts' compensation. See Witness ANAT, T. 9 April 2021 pp. 29, 30, 36-38. Witness ANAT denied having received any such money as a bribe to recant or maintain his recantation, which he claimed he made of his own free will and because his conscience dictated it. See Witness ANAT, T. 9 April 2021 pp. 8, 29, 30, 36-40. See also Exhibit P1724. I find his description of the circumstances of his recantation unbelievable when viewed among simultaneous efforts towards obtaining recantation letters. See Section II.B.1; Section II.C.1. In particular, Witness ANAT's testimony before me is contradicted by his testimony from the *Ngirabatware* review proceedings affirming that Twagirayezu gave him money "so that [he] can keep the decision" and "maintain [his] decision to recant". See Witness ANAT, T. 9 April 2021 pp. 30, 36-38. See also Exhibit P1724.

## 2. Payment: February 2016

262. The *Nzabonimpa et al.* and *Ngirabatware* Indictments allege that, on 2 February 2016, Nzabonimpa, with money from Ngirabatware, paid a “bribe” of 99,450 Rwandan francs to Twagirayezu – the intermediary used to contact Witness ANAT<sup>723</sup> – in exchange for his cooperation with the Ngirabatware Defence and to influence his prospective evidence.<sup>724</sup> The Prosecution points to transaction and communications evidence as well as to the financial spreadsheet extracted from Nzabonimpa’s external hard drive in support of these allegations.<sup>725</sup>

263. Nzabonimpa contends that the evidentiary records fail to establish sole attribution of the phone number to Twagirayezu or that Nzabonimpa would have made any of the payments reflected in the Mobile Money records, stressing the lack of weight of the spreadsheet extracted from his external hard drive.<sup>726</sup> He further submits that the Prosecution has not established that any such payments are criminal.<sup>727</sup> Ngirabatware argues that the Prosecution has not demonstrated the unreasonableness of the payment to, *inter alia*, Twagirayezu and contends that, even if determined to be a bribe, the record does not establish that Ngirabatware directed such a payment or knew that Nzabonimpa would pay Twagirayezu.<sup>728</sup>

264. The record undeniably establishes that Nzabonimpa paid Twagirayezu as alleged. I note that, on 29 January 2016, Turinabo messaged Nzabonimpa that “means should be freed” in relation to the Recanting Witnesses.<sup>729</sup> Communications evidence further reflects that, on 1 February 2016, Nzabonimpa withdrew 320,000 Rwandan francs,<sup>730</sup> 99,450 Rwandan francs were received by Twagirayezu on 2 February 2016 from a MTNR Agent, and that Witnesses ANAM/TNN31 and ANAE/TNN30 received the same amount on the same day from a MTNR Agent.<sup>731</sup> Furthermore, the entries in the spreadsheet extracted from Nzabonimpa’s external hard drive corroborate these payments.<sup>732</sup> Further circumstantial support that this payment was received by, *inter alia*,

<sup>723</sup> See *Nzabonimpa et al.* Indictment, para. 13.

<sup>724</sup> See *Nzabonimpa et al.* Indictment, para. 25(vi); *Ngirabatware* Indictment, para. 23(ii)(b).

<sup>725</sup> Prosecution Final Trial Brief, paras. 76, 167, 174.

<sup>726</sup> See *Nzabonimpa* Final Trial Brief, paras. 460-463. See also *Nzabonimpa* Final Trial Brief, paras. 464, 465.

<sup>727</sup> See *Nzabonimpa* Final Trial Brief, para. 466.

<sup>728</sup> See *Ngirabatware* Final Trial Brief, paras. 94-96.

<sup>729</sup> See Exhibit P373 (text from Turinabo to Nzabonimpa on 29 January 2016 at 11:52:06).

<sup>730</sup> See Exhibit P142 (text alert from Bke Bank to Nzabonimpa on 1 February 2016).

<sup>731</sup> See Exhibit P140, p. 1, row 28 (reflecting a payment to Twagirayezu’s phone of 99,450 Rwandan francs from a MTNR Agent on 2 February 2016 at 13:35). See also Section II.B.2.

<sup>732</sup> See Exhibit P229, rows 60-62 (reflecting payments of “100,000” to “L” [Maniraguha], the first three letters of Witness ANAM/TNN31’s name, and a code name attributable to Twagirayezu).

Twagirayezu is found in the message sent by Turinabo later that day to Nzabonimpa that the “message [*i.e.* money] reached all the 3 and it had a very good effect”.<sup>733</sup>

265. I further find that this payment derived from funds made available by Ngirabatware and that they were provided for the purpose of ensuring cooperation from the Recanting Witnesses.<sup>734</sup> Again, there is simply no other reasonable explanation as to why Ngirabatware provided this money to Nzabonimpa, and, to the contrary, circumstantial evidence demonstrates that it was for the purpose of furthering his attempts to obtain recantations in support of an anticipated request for review. When viewed in context, I find that Nzabonimpa paid this money to Twagirayezu as a reward for assisting in obtaining Witness ANAT’s recantation letter and to serve as further motivation to assist the recantation process as it evolved.

### 3. Training: June 2016

266. The *Nzabonimpa et al.* Indictment alleges that, in June 2016, Nzabonimpa used information prepared by Ngirabatware in instructing the Recanting Witnesses, including Witness ANAT, on what to say during his interview with Ngirabatware’s then Defence counsel, which took place on 5 July 2016.<sup>735</sup> The *Ngirabatware* Indictment alleges that, in June 2016, Ngirabatware prepared information that he intended Witness ANAT to provide during interviews with his counsel and that he sent it to Nzabonimpa to instruct the witness, which Nzabonimpa did.<sup>736</sup>

267. The Prosecution principally relies on question and answer documents that were created in June 2016 and relate to Witness ANAT’s recantation that were retrieved from Ngirabatware’s laptops and Nzabonimpa’s external hard drive as well as contemporaneous communications between Nzabonimpa and Turinabo.<sup>737</sup> The Prosecution also underlines that these acts coincide with bribes paid to Twagirayezu<sup>738</sup> and that the information in the June 2016 document aligns with the questions that Ngirabatware’s counsel asked during the 5 July 2016 interview and with the answers Witness ANAT actually gave.<sup>739</sup>

268. Nzabonimpa disputes the probative value of the question and answer documents obtained from his and Ngirabatware’s devices<sup>740</sup> and stresses that he is not alleged to have had any form of

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<sup>733</sup> See Exhibit P374 (text from Turinabo to Nzabonimpa on 2 February 2016 at 15.53:56).

<sup>734</sup> See Section II.A.

<sup>735</sup> *Nzabonimpa et al.* Indictment, para. 23(i).

<sup>736</sup> *Ngirabatware* Indictment, para. 21(i).

<sup>737</sup> Prosecution Final Trial Brief, paras. 81, 82, 84, 165, 173.

<sup>738</sup> Prosecution Final Trial Brief, n. 320.

<sup>739</sup> Prosecution Final Trial Brief, paras. 81, 84, n. 319.

<sup>740</sup> Nzabonimpa Final Trial Brief, para. 338. See also Nzabonimpa Final Trial Brief, paras. 112-128.

direct contact with, *inter alia*, Witness ANAT in the lead-up to the July 2016 interviews.<sup>741</sup> He submits that there is no clear case as to the specific acts allegedly undertaken by him in preparing the Recanting Witnesses ahead of these interviews.<sup>742</sup> Ngirabatware contends that there is no evidence that the question and answer documents extracted from his laptops and Nzabonimpa's external hard drive were provided to Witness ANAT and that the forensic evidence raises doubts that such documents were created by Ngirabatware.<sup>743</sup>

269. I observe that textually identical question and answer documents directly relating to Witness ANAT's recantation were extracted from Nzabonimpa's external hard drive (Exhibit P221) and Ngirabatware's laptops (Exhibits P34 and P55).<sup>744</sup> Bearing in mind the forensic expert's opinion and notably that the author listed in the metadata for all the documents is "Ngirabatware" – a user name only found on Ngirabatware's Dell laptop<sup>745</sup> – I find that there is no question that Ngirabatware, the person who was seeking to have his conviction overturned, was the driving force in the creation of these question and answer documents found on all devices.<sup>746</sup>

270. I am also convinced that their creation in June 2016, as Ngirabatware's counsel was preparing to interview the witness, would serve no other purpose than to be used to train Witness ANAT as to what questions to expect and how to answer them. The process of training that simultaneously occurred with other witnesses at this period<sup>747</sup> eliminates any reasonable doubt with respect to the conclusion that Ngirabatware played a material role in preparing the question and answer documents shared with Nzabonimpa, and that Ngirabatware did so for the purpose that Witness ANAT be instructed on how to answer questions that may be posed by his Defence counsel.<sup>748</sup>

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<sup>741</sup> Nzabonimpa Final Trial Brief, paras. 332, 574.

<sup>742</sup> Nzabonimpa Final Trial Brief, para. 574.

<sup>743</sup> Ngirabatware Final Trial Brief, paras. 75-77; T. 22 June 2021 pp. 57-59.

<sup>744</sup> Another version, in which answers were not included, was also retrieved from Ngirabatware's Samsung laptop. *See* Exhibit P69.

<sup>745</sup> *See* Exhibit P110 (Olejniczak Supplemental Report), paras. 42, 43, pp. 39-41; Exhibit P111 (Olejniczak Second Supplemental Report), paras. 37-42.

<sup>746</sup> *See* Section II.C.3.

<sup>747</sup> *See* Section II.B.3; Section II.C.3.

<sup>748</sup> While a version of the question and answer documents that does not contain answers (Exhibit P69) was also retrieved from Ngirabatware's Samsung laptop, the metadata related to it indicates that this was created after the original documents that have answers included. *See* Exhibit P110 (Olejniczak Supplemental Report), paras. 42, 43, pp. 39-41. This undermines the reasonableness of any argument suggesting that, for example, Witness ANAT might have first been presented with this question only document and that the other documents extracted from Ngirabatware's and Nzabonimpa's devices reflect answers the witness had then provided.

271. Turning to the actual training of Witness ANAT, contemporaneous communications show that Nzabonimpa and Turinabo discussed and prepared for the upcoming Defence interviews<sup>749</sup> and that, on 7 June 2016, Turinabo told Nzabonimpa that “[Twagirayezu] suggests a budget the day before for his plot [Witness ANAT]”.<sup>750</sup> Furthermore, there is evidence indicating that Nzabonimpa paid Twagirayezu later in June 2016.<sup>751</sup> Given my related findings on the training of the other Recanting Witnesses in preparation for their first interviews with Ngirabatware’s counsel in early July 2016, I have no doubt that Witness ANAT was trained on the basis of the question and answer documents that were prepared for this purpose.<sup>752</sup> In reaching this conclusion, I am mindful of Witness ANAT’s evidence that he was not instructed on what to say during his interviews, including with the Defence.<sup>753</sup> I have also considered the evidence on the record presented by the Defence to suggest that Witness ANAT lied while testifying in Ngirabatware’s trial, including his own evidence to this effect, and consider that the record as a whole raises the reasonable possibility that the Accused and Turinabo believed that Witness ANAT lied during Ngirabatware’s trial. However, this evidence fails to raise reasonable doubt that the Accused and Turinabo, nonetheless, prepared Witness ANAT on aspects of the information he was expected to give while meeting with, *inter alia*, Ngirabatware’s counsel.<sup>754</sup>

272. However, the Prosecution seeks to establish liability for these allegations on the basis that Nzabonimpa specifically trained Witness ANAT.<sup>755</sup> The Prosecution points to no evidence that concretely suggests that Nzabonimpa was in contact with Witness ANAT. Witness ANAT denied

<sup>749</sup> See, e.g., Exhibit P410 (text from Turinabo to Nzabonimpa on 9 June 2016); Exhibit P411 (text from Turinabo to Nzabonimpa on 25 June 2016) (Turinabo telling Nzabonimpa that he had informed, *inter alia*, “Gisa” [Twagirayezu] about the meeting with the counsel then planned on 30 June 2016); Exhibit P235 (text from Turinabo to Nzabonimpa on 30 June 2016); Exhibit P240 (text from Turinabo to Nzabonimpa on 4 July 2016) (“all the 4 plots [Recanting Witnesses] have been given until tomorrow. I don’t know, we should pray for this frequent changes. [...]”).

<sup>750</sup> Exhibit P409 (text from Turinabo to Nzabonimpa on 7 June 2016).

<sup>751</sup> See Exhibit P229, p. 2, row 101. Although undated, this payment is found immediately under a payment dated 29 June 2016 to “Misha” [Mukamisha], another intermediary in this case. See Exhibit P229, p. 2, row 100. See also Exhibit P229, p. 2, rows 90, 108.

<sup>752</sup> I am also mindful of Witness ANAT’s evidence that he was not instructed on what to say during his interviews, including with Ngirabatware’s counsel. See Exhibit 6D19 (Witness ANAT Statement), para. 28. I find this aspect of his evidence lacking any credibility in view of contemporaneous evidence reflecting that he was being fed information and directed to focus on certain issues in anticipation of interviews. See, e.g., Exhibit P1098 (intercept of Turinabo calling Nzabonimpa on 21 September 2017 at 10:45) (“[...] I will give Gisa [Twagirayezu] the text for him to read. [...] Then I can once again give him the methodology of what to communicate to the other one [*i.e.* Witness ANAT]...”); Exhibit P1147 (intercept of Twagirayezu calling Witness ANAT on 28 September 2017 at 05:55) (Twagirayezu asking Witness ANAT if he remembered “that date on that paper”); Exhibit P1152 (intercept of Twagirayezu calling Witness ANAT on 28 September 2017 at 15:59) (Twagirayezu asking Witness ANAT after his interview “[b]ut those questions we had discussed, did they ask you some of those?” and then questioning Witness ANAT on which persons they had asked him about). Witness ANAT’s explanations for these calls, when viewed in context, lack any credibility to the extent he suggests that he did not discuss with Twagirayezu the content of his responses to questions that may be posed to him. See Witness ANAT, T. 9 April 2021 pp. 17-22.

<sup>753</sup> See Exhibit 6D19 (Witness ANAT Statement), para. 28.

<sup>754</sup> Exhibit P1100 reflects the extensive nature to which Turinabo and the Accused planned and discussed in detail what the witnesses, including Witness ANAT, should say.



knowing Nzabonimpa<sup>756</sup> and communications evidence generally suggests that Twagirayezu was the principal point of contact with Witness ANAT<sup>757</sup> and that Turinabo would have been a secondary point of contact (and through Twagirayezu).<sup>758</sup> Around this time, specifically, Turinabo appears to be the one principally communicating with Witness ANAT, and that he did this through Twagirayezu.<sup>759</sup> This raises reasonable doubt that Nzabonimpa was the one who instructed Witness ANAT on what to say during his anticipated interview with Ngirabatware’s counsel on 5 July 2016. Furthermore, the manner in which the allegations are pleaded would not allow Nzabonimpa or Ngirabatware to be convicted on the basis of findings that Turinabo – directly or through Twagirayezu – trained Witness ANAT. Therefore, my findings here will only be considered for context.

#### 4. Training: August 2016

273. The *Nzabonimpa et al.* Indictment alleges that, in August 2016, Nzabonimpa and/or Ndagijimana, through telecommunications and/or in person meetings in Gisenyi directed Witness ANAT on what to say or do if requested to meet with the Prosecution.<sup>760</sup> In support of this allegation, the Prosecution principally relies on communications evidence between Nzabonimpa, Ndagijimana, and Turinabo.<sup>761</sup>

<sup>755</sup> See *Nzabonimpa et al.* Indictment, para. 23(i); *Ngirabatware* Indictment, para. 21(i).

<sup>756</sup> See Witness ANAT, T. 9 April 2021 p. 38.

<sup>757</sup> Intercepted telephone conversations admitted in this case, including three authenticated by Witness ANAT, are exclusively between Witness ANAT and Twagirayezu. See Witness ANAT, T. 9 April 2021 pp. 17, 19, 20 (authenticating Exhibits P1146, P1147, and P1152 as conversations between the witness and Twagirayezu). See also Exhibits P937-P939, P972-P974, P1023, P1024, P1028, P1134, P1146, P1147, P1173, P1176, P1177, P1184, P1194.

<sup>758</sup> See, e.g., Exhibit P251 (text from Turinabo to Nzabonimpa on 11 August 2016) (“[...] as I did with [Witness ANAT]! [...]”); Exhibit P283 (text from Turinabo to Nzabonimpa on 27 August 2016) (“[Witness ANAT] wants to ask for protection from the defense and move from Mukeba [the Prosecution].”); Exhibit P300 (text from Turinabo to Nzabonimpa on 27 October 2016) (“Hello, I am waiting to meet the other 2 [Twagirayezu and Witness ANAT], so I will take over the debt, to be repaid afterwards.”); Exhibit P819 (intercept of Twagirayezu calling Turinabo on 26 July 2017) (“[...] [Witness ANAT] [...] [w]e spoke and he told me that that person has already agreed that they will go there tomorrow [...]. Most important that he told me is that we take care of him/her as usual [...]”); Exhibits P1239, P1240 (text from Turinabo to Nzabonimpa on 18 July 2017) (“[...] [Witness ANAT] is back on the right track [...]”); Exhibit P1098 (intercept of Turinabo calling Nzabonimpa on 21 September 2017) (“[...] I will give Gisa [Twagirayezu] the text for him to read. [...] Then I can once again give him the methodology of what to communicate to the other one [i.e. Witness ANAT]...”); Exhibit P1100 (intercept of Turinabo calling Ndagijimana on 21 September 2017 at 14:53) (Turinabo saying “I am back from meeting... Gisa [Twagirayezu] [...] Yes, he told me that he can teach him/her [Witness ANAT] those things but he/she [Witness ANAT] is pressurizing him a lot... he/she [Witness ANAT] is telling him [Twagirayezu] that they are not giving him/her [Witness ANAT] any money while he/she is starving [...]. I will also tell [Witness ANAT] to do it that way.”); Exhibit P598 (text from Turinabo to Nzabonimpa on 5 May 2018) (“Ok, keep it in mind. I will meet Gisa [Twagirayezu] tomorrow to know the issue with his/her team [i.e. Witness ANAT].”).

<sup>759</sup> See, e.g., Exhibit P409 (text from Turinabo to Nzabonimpa on 7 June 2016) (“Gisa [Twagirayezu] suggests a budget the day before for his plot [Witness ANAT] but ditto for the remaining ones. Bye”); Exhibit P411 (text from Turinabo to Nzabonimpa on 25 June 2016) (informing Nzabonimpa that “L [Maniraguha], Gatumba and Gisa [Twagirayezu]” are scheduled to meet with “Tot” [Defence counsel] on 30 June). See also Exhibits P235, P244, and P246.

<sup>760</sup> *Nzabonimpa et al.* Indictment, para. 22(i). No corresponding allegation is contained in the *Ngirabatware* Indictment.

<sup>761</sup> Prosecution Final Trial Brief, paras. 85, 86, 89, 172, n. 334.

274. Nzabonimpa argues that this allegation is not supported by the testimony of Witness ANAT<sup>762</sup> or relevant communications evidence.<sup>763</sup> Ndagijimana generally concedes that the Accused were in regular contact with the Recanting Witnesses and that they assisted these witnesses, including Witness ANAT, in deciding whether or not to meet with, *inter alia*, the Prosecution but contends that the Accused’s conduct was not illegal.<sup>764</sup>

275. I previously found that communications evidence reflects that information that the Recanting Witnesses were being summoned to Kigali was being shared among the Accused and Turinabo in early August 2016.<sup>765</sup> Notably, on 12 August 2016, Turinabo sent the following message to Nzabonimpa concerning, *inter alia*, Witness ANAT’s anticipated meeting with the WISP to determine if he would agree to meet with the Prosecution:

[Witness ANAM/TNN31] has been called for tomorrow but she was not prepared by your call as I did with [Witness ANAT]! Barak [Ndagijimana] has asked me what to do since you do not understand the benefit of [Witness ANAT’s] plan because there is no budget, be courageous with the message asking Mukeba [the Prosecution] to meet with defense present.<sup>766</sup>

276. It is undisputed that Witness ANAT met with the WISP in Kigali on 15 August 2016,<sup>767</sup> and that Nzabonimpa reported to Turinabo on 31 August 2016 after Witness ANAT’s interview with the Prosecution, that “[Witness ANAT] [was] perfect”.<sup>768</sup> When viewed in context, and in particular with the preparations that were being made with respect to Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN to encourage them to meet with the Prosecution but only in the presence of Ngirabatware’s counsel,<sup>769</sup> I have no doubt that this message was equally shared with Witness ANAT.<sup>770</sup> In reaching this conclusion, I am mindful of Witness ANAT’s evidence that he

<sup>762</sup> Nzabonimpa Final Trial Brief, paras. 315, 316. Nzabonimpa underlines that the Prosecution did not cross-examine Witness ANAT on the basis of this allegation. *See* Nzabonimpa Final Trial Brief, paras. 318, 326.

<sup>763</sup> Nzabonimpa Final Trial Brief, paras. 319-326; T. 21 June 2021 pp. 76-78.

<sup>764</sup> Ndagijimana Final Trial Brief, paras. 373-390.

<sup>765</sup> *See* Section II.C.4. *See also* Exhibit P249 (text from Ndagijimana to Nzabonimpa on 9 August 2016) (“Max [Turinabo] has informed me that there is urgency regarding the 4 elements [Recanting Witnesses] + me. How will we match them when we still have these conflicts?”); Exhibit P252 (text from Turinabo to Nzabonimpa on 12 August 2016) (“[Witness ANAM/TNN31, Witness ANAT, and Witness ANAE/TNN30] have been summoned for Monday.”).

<sup>766</sup> Exhibit P251 (text from Turinabo to Nzabonimpa on 12 August 2016).

<sup>767</sup> Exhibit 3D20, p. 8.

<sup>768</sup> Exhibit P289 (text from Nzabonimpa to Turinabo on 31 August 2016).

<sup>769</sup> *See* Section II.B.4; Section II.C.4.

<sup>770</sup> That the Accused would have instructed Witness ANAT on how to respond to a request to meet with the Prosecution finds circumstantial corroboration in communications evidence from July 2017 reflecting that Witness ANAT was instructed on what to do should he be requested to meet with the Prosecution. *See* Exhibit P819 (intercept of Twagirayezu calling Turinabo on 26 July 2017 at 17:20) (Turinabo telling Twagirayezu to remind Witness ANAT “that if he/she finds it is the Prosecutor...not to agree to meet with him/her” and Twagirayezu responding “[y]es, I told him/her, I told him/her, he/she knows”); Exhibit P820 (intercept of Nzabonimpa calling Turinabo on 27 July 2017 at 7:09) (Turinabo telling Nzabonimpa that he told “Twagira [Twagirayezu] to tell him [Witness ANAT] that once he is at [the WISP] he should only concentrate on the passport issue only, but if they tell him that it is an issue of meeting the prosecutor to try and refuse”).

was not instructed on what to say during his interviews, including with the WISP,<sup>771</sup> but find this aspect of his evidence lacking any credibility in view of contemporaneous evidence reflecting that information was being fed to him before meetings and that he was subsequently reporting on his interviews.<sup>772</sup>

277. Notwithstanding, there is no direct evidence of Nzabonimpa or Ndagijimana contacting Witness ANAT and, as noted above, contemporary communications evidence strongly suggests that Twagirayezu was the principal point of contact with Witness ANAT and that Turinabo would have been a secondary point of contact for the witness (and principally through Twagirayezu).<sup>773</sup> Indeed, the Prosecution had previously argued that the 12 August 2016 communication quoted above demonstrated that *Turinabo* trained Witness ANAT.<sup>774</sup> These circumstances raise reasonable doubt as to Nzabonimpa’s and/or Ndagijimana’s role in instructing Witness ANAT as alleged, as there remains the reasonable possibility that such instructions, for example, flowed from Turinabo to the witness directly or through Twagirayezu. Given the manner in which the allegation is charged, my findings above that Witness ANAT was instructed on how to respond to the WISP on the Prosecution’s request to meet with him will only be considered for context.

#### 5. Training: May through June 2018

278. The *Ngirabatware* Indictment alleges that, between 15 May 2018 and 11 June 2018, Ngirabatware acting through Nzabonimpa, Ndagijimana, and/or Turinabo, directed Witness ANAT on what to say during his interview with his counsel in June 2018.<sup>775</sup> The *Nzabonimpa et al.* Indictment charges that, during the same period, Nzabonimpa and Ndagijimana trained, *inter alia*, Witness ANAT on what to say during his interviews with Ngirabatware’s counsel in June 2018.<sup>776</sup> The Prosecution relies on communications evidence in support of this charge.<sup>777</sup>

<sup>771</sup> See Exhibit 6D19 (Witness ANAT Statement), para. 28.

<sup>772</sup> See, e.g., Exhibit P1147 (intercept of Twagirayezu calling Witness ANAT on 28 September 2017 at 05:55); Exhibit P1152 (intercept of Twagirayezu calling Witness ANAT on 28 September 2017 at 15:59). Witness ANAT’s explanations for these calls, when viewed in context, lack any credibility. See Witness ANAT, T. 9 April 2021 pp. 17-22.

<sup>773</sup> See Section II.D.3.

<sup>774</sup> See Prosecution Consolidated Reply to Defence Responses to Motion to Amend Its Rule 70(E) Exhibit List and First Motion for Admission of Documents from the Bar Table (Material Seized from the Accused on 3 September 2018), 18 September 2020 (confidential, with confidential annexes A and B), RP. 16092 (referring to the document with Rule 70 number #00078B.132 and, in the “relevance” column, arguing that this message “[d]emonstrates that Turinabo provided training to ANAT and that Nzabonimpa tried to provide training to ANAM[/TNN31] but it was insufficient; demonstrates that Turinabo, Ndagijimana and Nzabonimpa were telling those contacted by WISP to agree to meet the Prosecution so long as the Defence was present”).

<sup>775</sup> *Ngirabatware* Indictment, para. 21(iv).

<sup>776</sup> *Nzabonimpa et al.* Indictment, para. 23(vii).

<sup>777</sup> See Prosecution Final Trial Brief, paras. 117-121, 165, 173, 179.

279. Nzabonimpa generally argues that this allegation is not proven with respect to him,<sup>778</sup> and Ndagijimana disputes that any of his conduct in relation to Witness ANAT is criminal.<sup>779</sup> Ngirabatware denies that he instructed Witness ANAT.<sup>780</sup>

280. As reflected elsewhere in the Judgement, the weeks that preceded the meetings between Ngirabatware's new Defence counsel and the Recanting Witnesses in June 2018 reflected intense discussion among the Accused and Turinabo aimed at ensuring that the Recanting Witnesses' continued to cooperate in light of increasing demands for money to do so.<sup>781</sup> Ngirabatware made money available to pay the Recanting Witnesses in connection with these interviews, and provided instructions in May 2018 that the Recanting Witnesses be informed that more sizeable payments would be made in September in connection with the hearing itself.<sup>782</sup> Ngirabatware's communications at the same time also reflect instructions that the Recanting Witnesses maintain their recantations and be made aware of this before the prospective Defence interviews in June 2018.<sup>783</sup>

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<sup>778</sup> See Nzabonimpa Final Trial Brief, paras. 410-418.

<sup>779</sup> Ndagijimana Final Trial Brief, paras. 373-390.

<sup>780</sup> See Ngirabatware Final Trial Brief, RP. 21752. Ngirabatware's submissions related to *Ngirabatware* Indictment paragraph 22(ii) concerning Witness ANAT do not directly assess this allegation. See Ngirabatware Final Trial Brief, paras. 75-87.

<sup>781</sup> See Section II.B.10; Section II.C.7.

<sup>782</sup> See, e.g., Exhibit P635 (text from Ngirabatware to Nzabonimpa on 15 May 2018 at 8:32:35) ("Since the Tatalibw [Recanting Witnesses] will meet the Tots [Defence] in the presence of Mkeb [Prosecution] on the 11th of June, I was of the opinion that Vum [Nzabonimpa] should measure the plots once again [make payments to the Recanting Witnesses] shortly before they leave, meaning in September."). This message was then forwarded from Nzabonimpa to Turinabo and Ndagijimana. See Exhibit P551 (text from Nzabonimpa to Turinabo on 15 May 2018 at 9:40:52); Exhibit P552 (text from Nzabonimpa to Ndagijimana on 15 May 2018 at 9:41:25). See also Exhibit P722 (text from Ngirabatware to Nzabonimpa on 21 May 2018 at 22:25:03) ("Good evening. So, our person [Ngirabatware] is preparing to measure the hh plots for the unedibles /utatalibw/ [make payments to the Recanting Witnesses] before meeting the Totaux [Defence]. Therefore Vum [Nzabonimpa] can tell him when at the latest. The unedibles /Tatalibw/ [Recanting Witnesses] to know that it will be measured again for them [they will be paid] before they go in September."); Exhibit P568 (text from Ngirabatware to Nzabonimpa on 28 May 2018 at 17:03:31) ("Oh! Before June 11, hh [money/payments] will take the minimum measures and then in September the maximum measures."); Exhibit P573 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 11:12:10) ("[...] Barack [Ndagijimana] and Vum [Nzabonimpa] have done everything. 2000 hh [money/payments] measured for tatalib (all) [the Recanting Witnesses] available."). These discussions were followed by Ngirabatware arranging payments to Hirwa, and, in turn, Nzabonimpa. This is demonstrated through exchanges between Ngirabatware and his wife on 31 May 2018 that reflect him directing her that it is necessary to see how to send "2000" to "Vumb [Nzabonimpa] and company" and that this should be done by "10 June". See Exhibit P131 (text from Ngirabatware to his wife on 31 May 2018 at 7:37:47); Exhibit P135 (text from Ngirabatware to his wife on 31 May 2018 at 8:43:56). Hirwa's bank records reflect a deposit of 2,000 euros on 11 June 2018. See Exhibit P148, row 8 (deposit of 2,000 euros from M. Kwami Sossou on 11.06.18). Ngirabatware does not dispute that money was being paid via Hirwa. See T. 22 June 2021, p. 56.

<sup>783</sup> See Exhibit P668 (text from Ngirabatware to Nzabonimpa on 30 May 2018 at 5:06:05) ("In fact, the main questions that will be put to the four [the Recanting Witnesses] is the following: did you or didn't you tell the truth at the Tribunal? The answer they give at that point must be clear because it will determine whether or not the person in question will be summoned or not. They must know this before the 12<sup>th</sup> - 13<sup>th</sup> of next month.").

281. As it concerns Witness ANAT specifically, communications in April 2018 indicate that Ndagijimana intended to meet with Witness ANAT,<sup>784</sup> while later communications in May 2018 reflect that Turinabo took the lead in contacting Witness ANAT directly (through Twagirayezu) and that payment of 100,000 Rwandan francs for the witness was agreed upon.<sup>785</sup> Communications from Turinabo to Nzabonimpa on 3 June 2018 reflect the clear intention for a meeting to occur with Witness ANAT the next day to facilitate this payment,<sup>786</sup> and a message the following day from Turinabo to Nzabonimpa undeniably suggests that Witness ANAT was paid and that he was satisfied as a result.<sup>787</sup>

282. Viewed in the context of the on-going training and payment of the other Recanting Witnesses in preparation for their interviews with Ngirabatware's counsel in June 2018, I have no doubt that Witness ANAT was again trained by Turinabo directly or through Twagirayezu on what to say with respect to his upcoming interviews with Ngirabatware's new counsel and that he was paid 100,000 Rwandan francs in connection with this preparation. In reaching this conclusion, I am mindful of Witness ANAT's evidence that no one told him what to say for any of his interviews, including his interviews with Defence counsel,<sup>788</sup> and that none of the money he received from Twagirayezu was related to his willingness to recant.<sup>789</sup> This evidence lacks credibility in light of evidence discussed above, as well as the larger pattern and practice of training and paying the Recanting Witnesses in anticipation of their interviews with Ngirabatware's Defence counsel. Although the record establishes the reasonable possibility that the Accused and Turinabo may have believed in, *inter alia*, the truthfulness of Witness ANAT's recantation, it also establishes beyond reasonable doubt that the Accused and Turinabo consistently fed information to the Recanting Witnesses on how they should answer questions regardless of who was posing them and that they facilitated the Recanting Witnesses' cooperation through payments.

<sup>784</sup> See Exhibit P730 (text from Turinabo to Nzabonimpa on 12 April 2018) ("Barak [Ndagijimana] is evolving well even though he has not yet met with [Witness ANAT] given the work of Vct [Twagirayezu] but we agreed that he should meet the unedible /...akataribwa/ [Recanting Witnesses] and prepare for the objective of May-June. When you get time we will meet for the background.").

<sup>785</sup> See Exhibit P750 (text from Turinabo to Nzabonimpa on 26 May 2018 at 13:55:15) ("I have already met [Witness ANAT] and it is ok, I am remaining to hear L [Maniraguha] towards end of May. Let us pray."). In view of the timing and content of this message, I have no doubt that the code name employed here is a reference to Witness ANAT rather than Twagirayezu. See also Exhibit P569 (text from Turinabo to Nzabonimpa on 29 May 2018 at 16:16:27) ("[Twagirayezu] has chosen a hundred for a great motivation given the times. Bye").

<sup>786</sup> See Exhibit P756 (text from Turinabo to Nzabonimpa on 3 June 2018 at 16:19:58) ("Good evening, Visent [Twagirayezu] has opted for us to give [Witness ANAT] 100 tomorrow, to be given when the time comes, when he will receive 10 for his journey. [...]").

<sup>787</sup> Exhibit P757 (text from Turinabo to Nzabonimpa on 4 June 2018 at 16:17:25) ("It has been sorted now [Witness ANAT] is calm after the gesture. Thank God").

<sup>788</sup> See Exhibit 6D19 (Witness ANAT Statement), para. 28.

<sup>789</sup> See Exhibit 6D19 (Witness ANAT Statement), paras. 25-27.

283. In light of the foregoing, I find that Ngirabatware, acting through Turinabo who, either directly or through Twagirayezu, directed Witness ANAT on what to say during his upcoming interview with Ngirabatware's new Defence counsel in June 2018. In this respect, although the payment of 100,000 Rwandan francs to Witness ANAT is not charged expressly as a "bribe", I have no doubt that this payment formed part of the training, and it offers further circumstantial corroboration for the conclusion that the training efforts sought to ensure that Witness ANAT maintained his recantation and continued to cooperate as Ngirabatware's Defence sought to have his conviction overturned.

#### **E. Interference Related to Witness ANAL/TNN6**

284. The *Ngirabatware* Indictment alleges that, between September 2016 and 7 November 2017, Ngirabatware instructed Fatuma to pressure Witness ANAL/TNN6 to change her testimony.<sup>790</sup> Ngirabatware also allegedly instructed Fatuma to provide Witness ANAL/TNN6 with prepared information, which Ngirabatware intended the witness to give in answer to questions she would be asked by Defence counsel and at the review hearing.<sup>791</sup>

285. The *Nzabonimpa et al.* Indictment alleges that, between September 2016 and 7 November 2016, Fatuma sent relatives to Witness ANAL/TNN6's home to persuade her to recant her trial testimony and to testify for the Defence.<sup>792</sup> During this period, Fatuma also allegedly: (i) tried to do the same; (ii) provided instructions to Witness ANAL/TNN6 on how she should answer questions she would be asked by the Defence at the review hearing; and (iii) offered her money, including a payment of \$3,000 (United States Dollars) and/or a house, in exchange for accepting to recant her trial testimony.<sup>793</sup>

286. The Prosecution relies principally on the testimony of Witness ANAL/TNN6.<sup>794</sup> It contends that her evidence is corroborated by contemporaneous communications between the co-Accused attesting to Fatuma's role and provision of a list of questions to the witness, and Fatuma's discussions with the co-Accused about payments to the witness.<sup>795</sup> According to the Prosecution, the interference with Witness ANAL/TNN6 also follows a similar pattern, which occurred with other witnesses in the case.<sup>796</sup>

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<sup>790</sup> *Ngirabatware* Indictment, para. 20(v).

<sup>791</sup> *Ngirabatware* Indictment, para. 21(iii).

<sup>792</sup> *Nzabonimpa et al.* Indictment, paras. 21(v), 23(ii).

<sup>793</sup> *Nzabonimpa et al.* Indictment, para. 21(v); *Ngirabatware* Indictment, para. 23(iv)(c).

<sup>794</sup> Prosecution Final Trial Brief, paras. 36-38, 122-129.

<sup>795</sup> Prosecution Final Trial Brief, paras. 38, 123-129.

<sup>796</sup> Prosecution Final Trial Brief, paras. 38, 123.

287. Ngirabatware submits that there is no testimonial or documentary evidence indicating that he issued instructions to Fatuma in relation to Witness ANAL/TNN6 or that any money provided to Nzabonimpa was for the purpose of having Fatuma pay a bribe to the witness.<sup>797</sup> He contends that, even if a connection could be made, Witness ANAL/TNN6 is not credible for the reasons outlined by Fatuma in her final brief.<sup>798</sup>

288. Fatuma submits that Witness ANAL/TNN6 is not credible and cannot be relied upon in view of the implausible account of her receiving \$3,000, numerous inconsistencies between her testimony and prior statements, and the evasive nature of her testimony.<sup>799</sup> Fatuma argues that, in view of the witness’s credibility concerns, her account alone cannot be relied on in relation to the various encounters the witness had with her relatives or Fatuma seeking the recantation of her *Ngirabatware* trial testimony and that any documentary evidence corroborating the witness’s account is not reliable or is open to other reasonable interpretations.<sup>800</sup> Fatuma also points to other evidence which, in her view, calls into question the veracity of Witness ANAL/TNN6’s account and demonstrates Fatuma’s good character.<sup>801</sup> It further contends that contemporaneous communications evidence does not support that Fatuma committed a crime.<sup>802</sup>

### 1. Evidence

289. In assessing these allegations, it is necessary to set forth the salient features of Witness ANAL/TNN6’s testimony and to place it in context with her statement to the WISP on 7 November 2016<sup>803</sup> and to the Prosecution in October 2017<sup>804</sup> as well as contemporaneous or nearly contemporaneous communications among the Accused and Turinabo in 2016 and 2017.<sup>805</sup>

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<sup>797</sup> Ngirabatware Final Trial Brief, paras. 317, 318. Specifically, Ngirabatware states: “there is no evidence in any spreadsheet or elsewhere that it was contemplated that Witness ANAL/TNN6 would receive any amount, even for ‘legitimate expenses’”. See Ngirabatware Final Trial Brief, para. 318.

<sup>798</sup> Ngirabatware Final Trial Brief, para. 319.

<sup>799</sup> Fatuma Final Trial Brief, paras. 52-102.

<sup>800</sup> Fatuma Final Trial Brief, paras. 103-169.

<sup>801</sup> Fatuma Final Trial Brief, paras. 170-191.

<sup>802</sup> Fatuma Final Trial Brief, para. 51, n. 50, Annex A, pp. 1-28.

<sup>803</sup> See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Registrar’s Submission Regarding Witness ANAL, 13 December 2016 (confidential; *ex parte* status lifted by order of 22 November 2017) (“Registrar Submission of 13 December 2016”), Annex 1, RP 1398. See also Exhibit 4D1 (Witness ANAL/TNN6’s 7 November 2016 WISP Statement); Exhibit 4D2 (corrected translation). The witness was also cross-examined on the basis of a subsequent statement that she gave to the WISP on 9 August 2017. See T. 4 November 2020 pp. 31-39; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Registrar’s Further Submission Pursuant to Order for Further Submissions of 21 July 2017, 11 August 2017 (confidential; *ex parte* status lifted by order of 22 November 2017) (“Registrar Submission of 11 August 2017”).

<sup>804</sup> See Exhibit 4D4 (Witness ANAL/TNN6 Prosecution Statement of 2 October 2017).

<sup>805</sup> As previously stated, the Prosecution has demonstrated without any doubt the code names employed in the communications evidence (Section I.D.4), which includes all obvious variations of the code name used for a relation of Witness ANAL/TNN6. See Witness ANAL/TNN6, T. 3 November 2020 pp. 71, 72; T. 5 November 2020 pp. 15-19.

290. Witness ANAL/TNN6 testified that, at some point around October 2016, her relatives – “M” and “F”<sup>806</sup> – came to her home with a bag of beans, Irish potatoes, cooking oil, and meat.<sup>807</sup> F told Witness ANAL/TNN6 that they were aware that the witness had testified against Ngirabatware and asked her to testify for his Defence.<sup>808</sup> Witness ANAL/TNN6 denied having previously testified and stated that she was not ready to be a Defence witness.<sup>809</sup> A week later, Witness ANAL/TNN6’s younger sister<sup>810</sup> told the witness that Fatuma had asked her to convince the witness to testify for Ngirabatware, stating that the witness would receive \$3,000.<sup>811</sup> Witness ANAL/TNN6 stated that her sister mentioned that Fatuma had transcripts of her testimony.<sup>812</sup> Witness ANAL/TNN6 again denied being a prosecution witness and stated that she did not want to be a Defence witness.<sup>813</sup>

291. Witness ANAL/TNN6 further testified that, following this encounter, she explained this situation to the WISP office in Gisenyi and received advice from WISP staff to accept the money.<sup>814</sup> Witness ANAL/TNN6 then initiated a meeting with Fatuma through the witness’s sister, which took place a short walk from the Stella Maris Church.<sup>815</sup> There, Fatuma handed Witness ANAL/TNN6’s sister a piece of paper and pen and instructed her to write down questions the witness was supposed to study and repeat before the “Tribunal” for the purpose of testifying that she had lied previously.<sup>816</sup> The witness was given the piece of paper, and Fatuma gave the witness \$3,000 in cash.<sup>817</sup> Witness ANAL/TNN6 stated that the sum was too little, and Fatuma told the witness that she would be given more in order to buy a house.<sup>818</sup> According to Witness ANAL/TNN6, she gave the list of questions and showed the \$3,000 to the same WISP staff member at the Prosecution authority office in Gisenyi.<sup>819</sup> At the advice of the WISP staff member, she kept

<sup>806</sup> The relatives, referred to as “M” and “F”, are identified by name and relation to the witness in private session testimony. *See* T. 3 November 2020 pp. 69, 70.

<sup>807</sup> *See* T. 4 November 2020 p. 52.

<sup>808</sup> T. 3 November 2020 pp. 75, 76; T. 4 November 2020 pp. 52, 53.

<sup>809</sup> T. 3 November 2020 pp. 74-76; T. 4 November 2020 pp. 53, 57.

<sup>810</sup> Witness ANAL/TNN6’s younger sister is identified by name in private session. *See* T. 3 November 2020 p. 70.

<sup>811</sup> T. 3 November 2020 pp. 76-78; T. 4 November 2020 pp. 60-63.

<sup>812</sup> T. 3 November 2020 pp. 77-79; T. 4 November 2020 pp. 55, 59, 60.

<sup>813</sup> T. 3 November 2020 pp. 76-79; T. 4 November 2020 p. 55.

<sup>814</sup> T. 3 November 2020 p. 81; T. 4 November 2020 pp. 63, 64.

<sup>815</sup> T. 3 November 2020 pp. 79-81; T. 4 November 2020 pp. 1, 33. *See also* T. 4 November 2020 pp. 75-77 (affirming the contents of her 2 October 2017 statement to the Prosecution about the meeting with Fatuma near the Stella Marie Church).

<sup>816</sup> T. 3 November 2020 pp. 82, 83; T. 4 November 2020 pp. 24, 77-82. Fatuma read out from a sheet of paper that Kaparata, Ngirabatware’s and Cenge’s brother, had given to Fatuma, which revealed that she had testified in Arusha. *See* T. 3 November 2020 pp. 82, 83. In particular, the document Fatuma had read to Witness ANAL/TNN6’s sister indicated that the witness had testified that Ngirabatware, or “Bitwi”, had distributed guns and grenades. *See* T. 3 November 2020 p. 83; T. 4 November 2020 p. 79.

<sup>817</sup> T. 3 November 2020 p. 82; T. 4 November 2020 pp. 1, 2, 28, 32, 34, 64, 66; T. 5 November 2020 pp. 10, 11.

<sup>818</sup> T. 3 November 2020 p. 82; T. 4 November 2020 pp. 28, 29, 32. Fatuma also informed that witness that she had given money to another person. *See* T. 4 November 2020 pp. 2, 3, 41, 42; T. 5 November 2020 pp. 9, 10.

<sup>819</sup> T. 3 November 2020 pp. 83, 84; T. 4 November 2020 pp. 3, 4, 77, 78, 87; T. 5 November 2020 pp. 11, 12.



and later converted the \$3,000 into Rwandan francs at a *bureau de change* in Gisenyi.<sup>820</sup> The witness later informed Fatuma that the document she had given to the WISP had gotten wet, and Fatuma gave her another document prior to their next meeting at Nyirabunori's house.<sup>821</sup>

292. Witness ANAL/TNN6 testified that, two weeks after their initial meeting, she met with Fatuma, at Fatuma's behest, at Ngirabatware's sister's house.<sup>822</sup> Fatuma asked the witness to confirm with the Defence in Kigali that she would testify and that the Defence would tell her what her "testimony would be on".<sup>823</sup> The witness agreed, even though she did not intend to meet nor did she subsequently meet with the Defence.<sup>824</sup>

293. Around this time, the WISP called the witness, and she met with them in Kigali on 7 November 2016.<sup>825</sup> According to Witness ANAL/TNN6, the WISP asked the witness about the document given to the Gisenyi office, and she informed them that she had been asked to testify for the Defence.<sup>826</sup> The witness gave the WISP the second document that Fatuma had given to her.<sup>827</sup> The WISP took a statement from the witness about the events, which was read back to her before she signed it.<sup>828</sup> During this meeting, the WISP asked Witness ANAL/TNN6 if she would meet with Ngirabatware's lawyer, which she refused to do.<sup>829</sup>

294. The contemporaneous statement provided by Witness ANAL/TNN6 to the WISP in November 2016 offers circumstantial corroboration<sup>830</sup> to some degree that Fatuma met the witness at the Stella Maris Church, provided her with a list of questions, and promised to give her money for a house after she met with counsel and answered the questions.<sup>831</sup> In the statement, Witness

<sup>820</sup> T. 4 November 2020 pp. 64, 65.

<sup>821</sup> T. 4 November 2020 pp. 8, 9, 77, 78, 88-90.

<sup>822</sup> T. 4 November 2020 pp. 4-7.

<sup>823</sup> T. 4 November 2020 pp. 5, 6.

<sup>824</sup> T. 4 November 2020 pp. 5, 7. Instead of meeting with the Defence in Kigali, Witness ANAL/TNN6 testified that she went to Gitarama for about two weeks. *See* T. 4 November 2020 p. 7.

<sup>825</sup> T. 4 November 2020 pp. 7, 8, 18, 39; T. 5 November 2020 p. 2.

<sup>826</sup> T. 4 November 2020 p. 19; T. 5 November 2020 p. 3.

<sup>827</sup> T. 4 November 2020 pp. 8, 9. *See also* T. 4 November 2020 pp. 9-12 (authenticating Exhibit P13 as the document she gave to the WISP in Kigali, which was part of the Registrar Submission of 13 December 2016 in the *Ngirabatware* review proceeding), 78-81.

<sup>828</sup> T. 4 November 2020 pp. 24-27. *See also* T. 4 November 2020 pp. 21, 22; Exhibit 4D1 (Witness ANAL/TNN6's 7 November 2016 WISP Statement); Exhibit 4D2 (corrected translation).

<sup>829</sup> T. 5 November 2020 pp. 2, 3.

<sup>830</sup> The corroboration comes from the contemporaneous nature of the statement; the fact that parts are consistent with the witness's ultimate testimony does not bolster her credibility. *See The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A & ICTR-96-17-A, Appeal Judgement, 13 December 2004, para. 147.

<sup>831</sup> Exhibit 4D1 (Witness ANAL/TNN6's 7 November 2016 WISP Statement); Exhibit 4D2 (corrected translation). I have considered that, in her 9 August 2017 WISP statement, Witness ANAL/TNN6 did not expressly indicate that Fatuma told the witness that she would be paid if she testified for the Defence and indicated that her relatives promised her that she would be given \$3,000 if she agreed to testify for the Defence. *See* Witness ANAL/TNN6, T. 4 November 2020 pp. 31, 32, 34; Registrar Submission of 11 August 2017, para. 7, Annex, RP. 1761. I consider that this variance is immaterial and resulted from the nature of the questions posed to her during that interview. *See* T. 4 November 2020

ANAL/TNN6 also refers to her relatives, M and F, asking her to testify for the Defence and Fatuma asking Witness ANAL/TNN6's younger sister to try to convince the witness to testify for the Defence by offering her money for a house.<sup>832</sup> This statement was disclosed to the parties in the *Ngirabatware* review proceedings on 22 November 2017.<sup>833</sup>

295. There is other evidence that, on 11 September 2016, Turinabo informed Nzabonimpa by text message that “[...] the project failed on the level of the 2 ladies. Please urgently call for details.”<sup>834</sup> A subsequent text message from Turinabo to Nzabonimpa on 26 September 2016 states: “[...] Our person sent another person to that wicked person, let us see if there is any result that will emerge from that!”<sup>835</sup> Placing these exchanges in their proper context, there can be no doubt that these cryptic messages are references to M and F being sent to meet with Witness ANAL/TNN6 and Ngirabatware ultimately dispatching Fatuma to meet with the witness.

296. Indeed, five days after Witness ANAL/TNN6's statements were provided to the parties in the *Ngirabatware* review proceedings in November 2017,<sup>836</sup> an exchange among the Accused acknowledges that Witness ANAL/TNN6 had implicated Fatuma, M, and F. Specifically, on 27 November 2017, Nzabonimpa sent the following text message to Turinabo: “Our person [Ngirabatware] has seen [Witness ANAL/TNN6's] stuff. Bad. The difficult question is how our person will explain to Tot [Robinson] about the questions which were copied. Says it is Fat [Fatuma] who issued them. This implicates Fat [Fatuma], Kip [Ngirabatware's brother], [“F”], [“M”]? Can our person [Ngirabatware] honey<sup>837</sup> this? He is asking for urgent advice”.<sup>838</sup> Other communications among the Accused in 2017 reflect that Fatuma was the point person in efforts led by Ngirabatware to get Witness ANAL/TNN6 to “deny everything” and that Fatuma used Witness

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pp. 31, 32, 34, 35. Furthermore, and in light of the record before me, I do not consider that there is a reasonable basis supporting the Defence's theory that Witness ANAL/TNN6 reported this incident to the WISP after having asked Fatuma for money to recant her trial testimony and Fatuma having declined.

<sup>832</sup> Exhibit 4D1 (Witness ANAL/TNN6's 7 November 2016 WISP Statement); Exhibit 4D2 (corrected translation).

<sup>833</sup> See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Order Regarding Status of Filings, 22 November 2017 (confidential) (“Order of 22 November 2017”), p. 2.

<sup>834</sup> See Exhibit P293 (text from Turinabo to Nzabonimpa on 11 September 2016).

<sup>835</sup> See Exhibit P295 (text from Turinabo to Nzabonimpa on 26 September 2016).

<sup>836</sup> See Order of 22 November 2017, p. 2.

<sup>837</sup> In the context of this message, the only reasonable inference is that the term “honey” is employed as a short form for asking whether the situation can be “resolved” or “fixed” through “payment”. As further support for this conclusion, when paying Twagirayezu 50,000 Rwandan francs, Nzabonimpa's message accompanying the payment included the single word “honey”. See Exhibit P318 (text from M-money to Nzabonimpa on 19 December 2016).

<sup>838</sup> See Exhibit P480 (text from Nzabonimpa to Turinabo on 27 November 2017). This concern is reflected later in June 2018 in exchanges between Nzabonimpa and Ngirabatware after the Defence learned that Witness ANAL/TNN6 and her sister might testify for the Prosecution, who would “accuse” Fatuma (“Fatu”), Ngirabatware's brother (“Kipa”) and “M” and “F”. See Exhibit P651 (text from Ngirabatware to Nzabonimpa on 30 June 2018 at 9:12:24); Exhibit P585 (text from Nzabonimpa to Ngirabatware on 30 June 2018 at 20:21:44).

ANAL/TNN6's relatives, specifically including "M", "F", and the witness's younger sister, to liaise with her.<sup>839</sup>

297. Notably, another earlier exchange in August 2017 between Turinabo and Fatuma reflects Fatuma's involvement with the witness and that financial incentives were discussed at some point with her.<sup>840</sup> Specifically, on 20 August 2017, Fatuma told Turinabo that Witness ANAL/TNN6 was asking for \$3,000 as that is what "the other people had paid her".<sup>841</sup> Turinabo responded that that amount would be too much and directed Fatuma to convince the witness to accept \$500 in two instalments with the second coming after she testifies.<sup>842</sup>

## 2. Findings

298. Witness ANAL/TNN6's testimony is heavily contested, and there is good reason to view several aspects of it with suspicion. My concern with the witness's credibility is rooted primarily in her account of receiving \$3,000 from Fatuma and the related details of being advised by officials of the WISP or the Rwandan prosecutor's office to accept and keep this sum. At the outset, I find it highly improbable that an official from the WISP or the Rwandan prosecutor's office<sup>843</sup> would advise the witness to do such a thing. This aspect of her testimony was also not mentioned in the witness's contemporaneous statements to the WISP from November 2016 and August 2017 or her statement to the Prosecution in October 2017. Her explanation that she shared this information, but that it was not included in her statements,<sup>844</sup> is entirely unconvincing in view of its material nature to the inquiries that were being conducted by the WISP and the Prosecution into witness interference.

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<sup>839</sup> Exhibit P505 (text from Ngirabatware to Nzabonimpa on 12 December 2017) ("There is no way Fat can say that she did not meet [Witness ANAL/TNN6's] sister. Then where did she get what she wrote?"). *See also* Exhibit P1018 (intercept of Nzabonimpa calling Ndagijimana on 28 August 2017), p. 2 ("J: Yes...So now those people who want to meet with that...woman who had made it impossible for us, the one who was impossible to us. That sister-in-law of his/hers is [Fatuma, who is the widow of Ngirabatware's deceased brother] the one who managed to...who managed him/her ... J: So we... be it me or other people we cannot appear in this because he/she is unmanageable to us."). *See* Exhibit P487 (text from Turinabo to Nzabonimpa on 29 November 2017 at 6:19:20); Exhibit P492 (text from Turinabo to Nzabonimpa on 29 November 2017 at 17:09:09). In this regard, I also note communications between Nzabonimpa and Ngirabatware indicating that Fatuma did not meet with Witness ANAL/TNN6. *See* Exhibit P508 (text from Nzabonimpa to Ngirabatware on 13 December 2017); Exhibit P509 (text from Ngirabatware to Nzabonimpa on 13 December 2017) (stating that Fatuma and Witness ANAL/TNN6 did not meet but that Fatuma met with the witness's sister).

<sup>840</sup> *See* Exhibit P776 (intercept of Turinabo calling Fatuma on 20 August 2017), pp. 2, 3.

<sup>841</sup> *See* Exhibit P776 (intercept of Turinabo calling Fatuma on 20 August 2017), pp. 2, 3.

<sup>842</sup> *See* Exhibit P776 (intercept of Turinabo calling Fatuma on 20 August 2017), pp. 2, 3.

<sup>843</sup> During closing arguments, it was made clear that the supposed Mechanism's WISP employee with whom Witness ANAL/TNN6 testified that she spoke in Gisenyi was a staff member associated with the Gisenyi Public Prosecutor's office. *See* T. 23 June 2021 pp. 4, 5, 25.

<sup>844</sup> *See* T. 4 November 2020 pp. 27, 28, 37, 87; T. 5 November 2020 p. 10.

299. In addition, a text message in November 2016 from Nzabonimpa to Turinabo undeniably suggests that they were waiting to determine whether to pay Witness ANAL/TNN6 for her cooperation.<sup>845</sup> Intercept evidence from the August 2017 call between Fatuma and Turinabo nearly a year after the initial contact reflects that the witness *asked* for \$3,000 and that it was deemed to be far too much.<sup>846</sup> Given the timing and nature of this communication, it raises further doubt that this sum in fact had been offered or paid in 2016 as the witness described. Fatuma's remarks in this intercept that Witness ANAL/TNN6 indicated that "the other people had paid her USD 3,000" does not support the notion that Fatuma had previously paid her that amount. Rather, a more reasonable interpretation is that she received this sum from the WISP while testifying as a Prosecution witness in the *Ngirabatware* trial. Witness ANAL/TNN6's demand for \$3,000 also raises questions as to whether pressure was in fact placed on the witness or whether she was instead seeking to benefit from the arrangement. Finally, unlike the numerous and precise documentation of payments made by the Accused in facilitating the recantation process with other witnesses and intermediaries, there is no contemporaneous evidence of such a payment being made to Witness ANAL/TNN6.<sup>847</sup>

300. In view of these concerns, I cannot accept as proven that Fatuma pressured Witness ANAL/TNN6, offered the witness the sum of \$3,000, or ultimately paid her any amount of money. My concerns with Witness ANAL/TNN6's credibility demand viewing her evidence with caution, but do not, as the Fatuma Defence advocates, require dismissing it entirely.<sup>848</sup> Indeed, other fundamental features of her account, including being approached by her relatives and Fatuma, being offered some financial incentive to say that she lied while testifying in the *Ngirabatware* trial, and being provided with a list of questions are corroborated by other direct and circumstantial evidence.

301. Having considered the evidence, I have no doubt that, in September and October 2016, Fatuma sent M and F and the younger sister of Witness ANAL/TNN6 to try to convince the witness to change her *Ngirabatware* trial testimony and that, when this failed, Fatuma met with Witness ANAL/TNN6 at the Stella Maris Church, provided her with questions that she would be asked by the Defence, and offered her a financial incentive for cooperating with the Defence. This follows from Witness ANAL/TNN6's account, her contemporaneous statements to the WISP, the

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<sup>845</sup> See Exhibit P312 (text from Nzabonimpa to Turinabo on 25 November 2016) ("[...] [Witness ANAL/TNN6] should be left to be handled by Kipa [Ngirabatware's brother] and be observed! We also have to wait for what they will rule before they deal with issues of hh [money]."). See also Witness ANAL/TNN6, T. 3 November 2020 pp. 82, 83 (referring to Ngirabatware's younger brother as "Kaparata"); Prosecution Final Trial Brief, Annexes A.1, A.2 (code names for Ngirabatware's brother, including "Gaparata").

<sup>846</sup> See Exhibit P776 (intercept of Turinabo calling Fatuma on 20 August 2017), pp. 2, 3.

<sup>847</sup> T. 23 June 2021 p. 5.

<sup>848</sup> It is within my discretion to accept some and reject other parts of a witness's evidence. See, e.g., *Ephrem Setako v. The Prosecutor*, Case No. ICTR-04-81-A, Judgement, 28 September 2011, para. 48; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, paras. 201, 226.

exchanges described above referencing these events and Fatuma's role in them, and the circumstantial evidence of the pattern of witness interference involving financial inducements in anticipation of review proceedings in the *Ngirabatware* case. The Fatuma Defence also does not dispute that Witness ANAL/TNN6 received a list of questions dictated by Fatuma.<sup>849</sup> This evidence also shows that Ngirabatware instructed Fatuma to do so and used her for this purpose. There simply is no conceivable, let alone reasonable, explanation for why Fatuma would interfere in the *Ngirabatware* case absent doing so on Ngirabatware's instructions.

302. In making these findings, I have also considered the evidence cited by the Fatuma Defence that raise questions about Witness ANAL/TNN6's original motives to testify against Ngirabatware<sup>850</sup> and attest to Fatuma's good character.<sup>851</sup> This evidence, however, carries limited to no weight in relation to the documented involvement of Fatuma in interfering with Witness ANAL/TNN6 described above.

### 3. Conclusion

303. In light of the foregoing, I find as the only reasonable inference that Ngirabatware instructed Fatuma – the sister-in-law of his deceased brother – to encourage Witness ANAL/TNN6 to recant her testimony and to offer her money to do so. I further find as the only reasonable conclusion that Ngirabatware, in knowing violation of protective measures, shared confidential information related

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<sup>849</sup> Fatuma Final Trial Brief, paras. 137-141, Annex, p. 20 (“*Il n’est pas contesté que l’écriture sur la pièce 4D00005 est celle de la soeur de TNN6/ANAL.*”); T. 22 June 2021 p. 20 (“Mrs. Fatuma pointed out that she simply assisted a witness and contacted that witness to come and give evidence in the Ngirabatware case by reading out to her a list of questions to refresh her memory and giving an idea of the subjects that were to be broached during those proceedings, including during meetings with the counsel for Mr. Ngirabatware.”); T. 23 June 2021 p. 23 (“They say that that corroborates her account that Madam Fatuma met with her. That there was a list of questions given to her. Not questions and answers, questions only. Exhibit 4D0005. But of course, none of that is in dispute.”). Representations by Defence counsel during Witness ANAL/TNN6's cross-examination also suggest that there is no dispute that Fatuma met with the witness or that she provided her with questions as dictated to the witness's sister. See T. 4 November 2020 pp. 78 (noting that the Defence does not challenge that the Prosecution document with Rule 70 number 00133 “is that handwritten note, produced by your – or written by your sister as dictated by Madame Fatuma”), 82 (“You may have been asked to look at the questions, but you certainly were never told what answers you should give to these questions.”).

<sup>850</sup> Witness Augustin Kanyabituro testified that, starting in early 2007 and around April 2007, Witness ANAL/TNN6 met with, among others, her younger sister and Witness ANAE/TNN30 and that they eventually informed him that they had decided to testify against Ngirabatware for money. See T. 6 April 2021 pp. 25-30, 33-36. Information related to Kanyabituro's relationship with Witness ANAL/TNN6 is contained in private session testimony. See T. 6 April 2021 pp. 22, 23, 29, 30. Witness ANAL/TNN6 had previously confided in the witness about her circumstances during the genocide in 1994, including where she hid, and she did not inform him that she had heard or seen Ngirabatware then. See T. 6 April 2021 pp. 23-25. See also Exhibit 4D14 (Statement of Jean Marie Vianney Nyandwi), para. 11 (noting that Witness ANAL/TNN6 informed him that she had been instigated to testify in the *Ngirabatware* trial and that she fainted while testifying because she was unable to reproduce the statements she had been told to give and could not answer questions posed to her).

<sup>851</sup> Evidence admitted pursuant to Rule 110 of the Rules reflects that individuals, who have known Fatuma from a young age, attest to her good reputation and describe her as helpful, generous, compassionate, and regularly assisting those in need. See Exhibit 4D13, paras. 2-5; Exhibit 4D12, paras. 8, 9, 11; Exhibit 4D14, paras. 13, 17, 18. See also Exhibit 3D35, para. 15.

to Witness ANAL/TNN6's prior participation in his trial with Fatuma, and that he was also the source of the information that was shared with Witness ANAL/TNN6 as to the questions she was asked and the responses that she was supposed to give in relation to his anticipated review proceedings. I have no doubt that Ngirabatware managed to do this in view of his possession of contraband communication devices within the UNDF until they were seized from him and the circumstantial communications evidence reflecting Ngirabatware had instructed Fatuma to contact Witness ANAL/TNN6.<sup>852</sup>

304. I further find as the only reasonable inference that, during the time frame charged in the relevant indictment paragraphs, Fatuma encouraged M and F to speak with Witness ANAL/TNN6 for the purpose of having her recant her testimony and that F asked the witness to testify for Ngirabatware. I further find that Fatuma prompted Witness ANAL/TNN6's younger sister to persuade the latter to recant her testimony in exchange for a financial incentive if she agreed to do so. I also conclude that, during this period in 2016 and at a location near the Stella Maris Church, Fatuma instructed the witness on what questions would be asked by the Defence, told her that she needed to recant her *Ngirabatware* trial testimony when talking with the Defence, and told her that she would be given a sum of money if she cooperated with Ngirabatware and recanted her trial testimony.

305. I further find that these actions were taken with the undeniable aim of persuading Witness ANAL/TNN6 to ultimately testify before a Review Bench that she had lied and that Fatuma provided direct and explicit instructions on what Witness ANAL/TNN6 would be asked and what she should say in response.

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<sup>852</sup> The mobile device seized from Fatuma had Ngirabatware's contraband mobile telephone number saved in it under "Bitwi Wacu." See Exhibit P105 (Murphy Spreadsheet of Verified Material), p. 2 (referring to the extraction report of contacts taken from the Tecno K7 seized from Fatuma at the time of her arrest). Further evidence establishing beyond reasonable doubt that this was a cellular number Ngirabatware used from the UNDF is reflected in, *inter alia*, Exhibit P105 (Murphy Spreadsheet of Verified Material), p. 1 ("Uwacu 1" or "Ngirabatware" associated with the same number on Ndagijimana's tablet) as well as contextual readings of Exhibit P200, which reflect this number sharing information that only Ngirabatware would have been privy to, as well as Exhibit P571, which reflects Nzabonimpa communicating with this number on how to deal with the fallout from Witness ANAE/TNN30 not going to Kigali. See also Witness ANAL/TNN6, T. 3 November 2020 pp. 73, 74 (Fatuma referred to Ngirabatware as "Bitwi", his father's surname); Prosecution Final Trial Brief, Annexes B.1 and B.2. Furthermore, this finding does not exclude the possibility that, while Ngirabatware was the source of confidential information disclosed to Fatuma as well as the information that Witness ANAL/TNN6 was supposed to provide in the context of Ngirabatware's anticipated review proceedings, he may have used co-Accused such as Nzabonimpa and/or Turinabo or others to convey it to Fatuma. Contemporaneous communications suggest that Nzabonimpa and Turinabo were behind Fatuma's interactions with the witness. See, e.g., Exhibit P481 (text from Nzabonimpa to Turinabo on 28 November 2017) (reflecting "relief" that there is no mention of Nzabonimpa's or Turinabo's involvement with Fatuma in relation to the WISP report shared on 22 November 2017). See also Exhibit P312 (text from Nzabonimpa to Turinabo on 25 November 2016) ("[...] [Witness ANAL/TNN6] should be left to be handled by Kipa [Ngirabatware's brother] and be observed! We also have to wait for what they will rule before they deal with issues of hh [money].").

## F. Interference Related to the Intermediaries

306. Paragraph 24 of the *Nzabonimpa et al.* Indictment alleges that, from 29 July 2017 through September 2017, Ndagijimana and Turinabo took steps to procure false evidence from the Intermediaries – i.e. Maniraguha, Twagirayezu, Mbarimo, and/or Mukamisha – corroborating the alleged recantations of the Recanting Witnesses. In particular, Ndagijimana is alleged to have instructed the Intermediaries through telecommunications and/or in person meetings in Gisenyi about the evidence they should give.

307. Paragraph 22 of the *Ngirabatware* Indictment alleges that Ngirabatware prepared information in June 2016 and in September 2017 which he intended to be used to train the Intermediaries about the evidence they should give, and which constituted the basis of the instructions given by, *inter alia*, Ndagijimana to the Intermediaries.

308. The Prosecution submits that Ngirabatware and Ndagijimana devised a training for the Intermediaries to provide and memorize evidence corroborating the Recanting Witnesses' accounts, in order to ensure that all would have "one language", notably to conceal that Nzabonimpa mailed the recantation and consent letters<sup>853</sup> and to say that Mukamisha advised Witness ANAM/TNN31 to confess.<sup>854</sup> The Prosecution contends that, based on information prepared by Ngirabatware in June 2016, Ndagijimana and Turinabo trained the Intermediaries for Prosecution interviews<sup>855</sup> through in-person meetings, which allegedly occurred in Gisenyi on or about 10 August 2017 and on 19 August 2017.<sup>856</sup> Further training was subsequently arranged with Maniraguha, including on 3 September 2017 regarding details of a revised version of the narrative,<sup>857</sup> and with Mbarimo on 18 September 2017.<sup>858</sup>

309. Ndagijimana admits that meetings took place at *Petite Barrière* in Gisenyi "to find a way to build a wall around Nzabonimpa", when Nzabonimpa understood that having sent the letters on

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<sup>853</sup> Prosecution Final Trial Brief, paras. 14, 78, 100-105, 180. *See also* Prosecution Final Trial Brief, paras. 157, 158; T. 21 June 2021 pp. 34, 35, 37. The Prosecution highlights that Ndagijimana admitted that the information procured were "fabricated lies". *See* Prosecution Final Trial Brief, para. 102, *referring to* Ndagijimana, T. 16 March 2021 p. 65.

<sup>854</sup> Prosecution Final Trial Brief, para. 105.

<sup>855</sup> Prosecution Final Trial Brief, paras. 104, 105, 166, nn. 413-415. *See also* Prosecution Final Trial Brief, nn. 314, 315, 319.

<sup>856</sup> Prosecution Final Trial Brief, paras. 103, 104. The second meeting allegedly took place after Nzabonimpa and Ndagijimana discussed needing further training to solidify the narrative. *See* Prosecution Final Trial Brief, para. 104.

<sup>857</sup> Prosecution Final Trial Brief, para. 104, n. 410. Maniraguha's training was set to restart when the Prosecution's interviews approached. *See* Prosecution Final Trial Brief, n. 412.

<sup>858</sup> Prosecution Final Trial Brief, para. 104.

behalf of somebody accused of genocide could cause him problems.<sup>859</sup> Ndagijimana generally does not challenge the allegations charged at paragraph 24 of the *Nzabonimpa et al.* Indictment.

310. Ngirabatware contends that there is no evidence to demonstrate that he or his co-Accused took any steps to procure false evidence from the Intermediaries for the purpose of corroborating the alleged recantations, or that he provided information intended to be used to train Twagirayezu and Mbarimo, as alleged in paragraph 22 of his Indictment.<sup>860</sup> Ngirabatware argues that he did not play any role in the posting of the recantation letters and acknowledges Ndagijimana's account of the reasons why Nzabonimpa and others took steps to conceal Nzabonimpa's role in sending the letters.<sup>861</sup> Ngirabatware further submits that there is no evidence that he knew, at the time, that Witness ANAN's letter was not sent through Maniraguha<sup>862</sup> or that any information prepared by him and transmitted to Nzabonimpa was false.<sup>863</sup>

### 1. Evidence

311. The relevant evidence relating to the alleged training of Intermediaries between 29 July 2017 and September 2017, as summarized hereafter, relies principally on intercepted and extracted telecommunications between the co-Accused and/or with the Intermediaries, as well as on the testimonial evidence of Witness TNN12 and Ndagijimana.

312. On 29 July 2017, Mbarimo and Turinabo had a conversation regarding upcoming contacts with the WISP in relation to the organization of the Prosecution's interviews, during which Turinabo indicated to Mbarimo that they would "see each other when you [Mbarimo] get back" and then "start discussing strategies".<sup>864</sup> On 1 August 2017, Turinabo informed Nzabonimpa that Mbarimo and Twagirayezu wanted the team to meet "urgently in order to discuss how to have one language", as they expected to be summoned again.<sup>865</sup>

313. On or about 10 August 2017, telecommunications involving the co-Accused and the Intermediaries reflect that Ndagijimana and Turinabo organized a meeting at *Petite Barrière* in Gisenyi with, *inter alia*, Mbarimo and Twagirayezu.<sup>866</sup> On 13 August 2017, Turinabo informed

<sup>859</sup> Ndagijimana Final Trial Brief, paras. 187, 188.

<sup>860</sup> Ngirabatware Final Trial Brief, pp. 17, 32, 56, paras. 87, 159.

<sup>861</sup> Ngirabatware Final Trial Brief, paras. 153, 154.

<sup>862</sup> Ngirabatware Final Trial Brief, para. 155.

<sup>863</sup> Ngirabatware Final Trial Brief, para. 158.

<sup>864</sup> Exhibit P20 (intercept of Mbarimo calling Turinabo on 30 July 2017), p. 5.

<sup>865</sup> Exhibit P351 (text from Turinabo to Nzabonimpa on 1 August 2017).

<sup>866</sup> See Exhibit P16 (intercept of Mbarimo calling Turinabo on 1 August 2017) (Turinabo telling Mbarimo and Twagirayezu that they have to meet); Exhibit P1318 (intercept of Twagirayezu calling Ndagijimana on 8 August 2017) (Ndagijimana informing Twagirayezu that "We have opted for [...] the day after tomorrow, Thursday [...] We could



Nzabonimpa that he would meet Ndagijimana and Witness ANAT to discuss the “scenario” with Twagirayezu, Maniraguha and Witness ANAN.<sup>867</sup> On 16 August 2017, Turinabo told Nzabonimpa that he would “call L [Maniraguha] well in advance” and indicate “which position to take before Umurera [Munyeshuli] comes here”.<sup>868</sup> Various telecommunications make reference to a second in person meeting on 19 August 2017 in which, *inter alia*, Maniraguha, Twagirayezu and Witness ANAN participated,<sup>869</sup> and reflect that Twagirayezu and Ndagijimana were asked to bring documents to “compare the signature initials”.<sup>870</sup>

314. Ndagijimana acknowledged that two meetings were held at *Petite Barrière* in Gisenyi in order to “protect” Nzabonimpa and to conceal that the letters were sent by him.<sup>871</sup> Ndagijimana confirmed that Nzabonimpa dispatched the letters by DHL<sup>872</sup> but that he later thought that he might have problems if it was revealed that he had sent these letters to someone accused of genocide, because of his responsibilities at the district and national levels and of his closeness with the authorities.<sup>873</sup> It was therefore decided to claim that it was Maniraguha who sent the letter.<sup>874</sup>

315. Witness TNN12 testified that meetings with Turinabo, Ndagijimana, Twagirayezu, and Mbarimo were organized in order to not forget what to say or what to do for the defence of

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meet there, at the ... little /?barrier/. [...] I told you that I would talk to you at that point [...] to tell you what you need to prepare. [...]”); Exhibit P779 (intercept of Turinabo calling Mbarimo on 10 August 2017 at 8:46) (Mbarimo informing Turinabo that he had reached Mukamira); Exhibit P931 (intercept of Mbarimo calling Ndagijimana on 10 August 2017 at 18:28) (Mbarimo informing Ndagijimana that he had returned home); Exhibit P932 (intercept of Mbarimo calling Turinabo on 10 August 2017 at 18:35) (Mbarimo informing Turinabo that he had reached home and tried to call Maniraguha).

<sup>867</sup> Exhibits P1397 and P1398 (texts from Turinabo to Nzabonimpa on 13 August 2017) (“Prepare [Witness ANAN] to come this way to rehearse the visen [Twagirayezu], L [Maniraguha] and [Witness ANAN] scenario before mukeba [the Prosecution] and tot [Robinson]. If not loss vis a vis our camp. Tomorrow RV with muler [Munyeshuli], then I meet vumbi [Nzabonimpa] and barak [Ndagijimana] and we study hugura acceleration underlined above.”).

<sup>868</sup> Exhibit P1380 (intercept of Nzabonimpa calling Turinabo on 16 August 2017).

<sup>869</sup> Exhibit P962 (intercept of Ndagijimana calling Turinabo on 18 August 2017 at 17:39) (Turinabo saying “Tell Vincent to be available [...] I just gave Laurent precisions. [...] Bring the other papers to me tomorrow, but there is huge error that boy made in them. [...] So that is among the topics we shall discuss tomorrow but it’s problematic. The rest is all okay and is on line. [...] Meeting point is Petite Barriere there in the bus station”); Exhibit P964 (intercept of Turinabo calling Ndagijimana on 18 August 2017); Exhibit P968 (intercept of Turinabo calling Ndagijimana on 19 August 2017 at 13:07) (Ndagijimana informing Turinabo that he had reached town); Exhibit P781 (intercept of Maniraguha calling Turinabo on 19 August 2017 at 13:13) (Turinabo informing Maniraguha that he was delayed); Exhibit P969 (intercept of Turinabo calling Maniraguha on 19 August 2017 at 13:45); Exhibit P970 (intercept of Witness ANAN calling Turinabo on 19 August 2017 at 14:14) (Witness ANAN informing Turinabo that he had reached Gisenyi and searching for directions); Exhibit P971 (intercept of Turinabo calling Witness ANAN on 19 August 2017 at 14:45); Exhibit P418 (text from Turinabo to Nzabonimpa on 19 August 2017 at 15:54) (Turinabo informing Nzabonimpa that the meeting ended late).

<sup>870</sup> Exhibit P962 (intercept of Ndagijimana calling Turinabo on 18 August 2017 at 17:39) (Turinabo asking “Bring the other papers to me tomorrow, but there is huge error that boy made in them.”); Exhibit P964 (intercept of Turinabo calling Ndagijimana on 18 August 2017) (Turinabo asking “I would like Vincent to bring his other small document [...] Because he also told me that he has one [...] Then you also should bring yours [...] So that I can compare the signature initials.”).

<sup>871</sup> Ndagijimana, T. 16 March 2021 pp. 4, 5, 65. *See also* Exhibit P1704 (statement of Ndagijimana), paras. 55, 57.

<sup>872</sup> Ndagijimana, T. 16 March 2021 p. 3. *See also* Exhibit P1704 (statement of Ndagijimana), para. 53.

<sup>873</sup> Ndagijimana, T. 16 March 2021 pp. 3-5. *See also* Exhibit P1704 (statement of Ndagijimana), para. 55.

Ngirabatware and that Mbarimo was regularly trained by Turinabo.<sup>875</sup> In particular, Witness TNN12 confirmed that a training session chaired by Turinabo took place in Gisenyi and that Ndagijimana, Nzabonimpa, Twagirayezu, Mbarimo, and Maniraguha were present.<sup>876</sup>

316. On 25 August 2017, Turinabo confirmed to Nzabonimpa that Maniraguha and Twagirayezu had been instructed as follows:

I have just spoken again with... that man called me again, drunk [...] But you can meet before to study the formula of asking him and what the limits will be. Because I told Jean de Dieu [Ndagijimana] that we ought to warn him because [...] he has to accept those stamps, no that he is the one who sent the documents [...] we have discussed with Vincent [Twagirayezu] the response that he will give, telling him that [Witness ANAT] agrees that he was paid for everything [...].<sup>877</sup>

317. Between 23 August 2017 and 18 September 2017, Ndagijimana, Turinabo, and Nzabonimpa regularly discussed the difficulties encountered while training Maniraguha to have him “master” the narrative regarding the dispatch of the letters.<sup>878</sup> On 3 September 2017, Turinabo was in contact several times with Maniraguha to rehearse a narrative according to which Mbarimo gave Maniraguha money from Witness ANAN to send the letter.<sup>879</sup> On 11 September 2017, Ndagijimana talked to Nzabonimpa and agreed that they would meet Maniraguha again to “teach him”:

<sup>874</sup> Exhibit P1704 (statement of Ndagijimana), para. 56.

<sup>875</sup> Witness TNN12, T. 5 November 2020 pp. 50, 51.

<sup>876</sup> Witness TNN12, T. 5 November 2020 pp. 52, 53, 55.

<sup>877</sup> Exhibit P1005 (intercept of Turinabo calling Nzabonimpa on 25 August 2017), pp. K0669085, K0669087, K0669089.

<sup>878</sup> See, e.g., Exhibit P995 (intercept of Turinabo calling Ndagijimana on 23 August 2017) (Turinabo saying “I am now going to see the other one [...]. In fact what we are going to look is at the preparation of answers we are going to give to that imbecile. [...] you must call him and you him; look, our superiors told us this, the contract we concluded with you is for this much and we gave it to you”); Exhibit P1004 (intercept of Turinabo calling Ndagijimana on 25 August 2017), pp. K0669055, K0669056, K0699508 (Turinabo saying “that man called me a moment ago very drunk, I could barely comprehend him [...] look at how to give him the formula to the questions regarding... that will remain in his head... [...] I am going to call him in a moment so that he can get to you early. [...] Learn the strategies [...] He should try and call him early, for him to get to you when you have already planned... the time you will spend with him and underline what you have to touch on. [...] He should take notes, really.”); Exhibits P1452 to P1454 (text from Turinabo to Ndagijimana on 3 September 2017) (“I have taken an urgent initiative to meet with L [Maniraguha] tomorrow at noon because what he told muler [Munyeshuli] is very worrying. Despite the 2 meetings which took a sizeable budget L [Maniraguha] is saying that mbarimo is Vincent [Twagirayezu], another time he becomes [Witness ANAN] so you understand where we are headed. I had dissuaded him from the mobile money story, so instead confirm that mbarimo is the one who connects him with [Witness ANAN] but alas I see that they are putting the one we want to save in danger”); Exhibit P1038 (intercept of Ndagijimana calling Turinabo on 10 September 2017), pp. K0667750, K0667752 (Turinabo saying “and that guy does not know anything, he will destroy everything. [...] there are two initials that he must study and master. [...] Then finally mastering the text [...] The shipping language.”); Exhibit P1040 (intercept of Ndagijimana calling Turinabo on 11 September 2017), pp. K0667724, K0667752 (Turinabo saying “it is something he has to learn [...] And then answering those questions [...] He has to be automatic. [...] He confuses Vincent [Twagirayezu] for Mbarimo after all! [...] it is Mbarimo alone who connected them. [...] Then, Mbarimo is the one who brought him the money also, having gotten it from [Witness ANAN].”).

<sup>879</sup> Exhibit P1433 (intercept of Turinabo calling Maniraguha on 3 September 2017 at 11:06), pp. K0668915, K0668917 (“Dick may phone you [...] It’s necessary to... to remember that name, to avoid any divergence on this matter... [...] it’s Ndayisaba. [...] Write it down somewhere... their names must not be confused. [...] You will say that the two of you were both doing your military service at the same time and that you were able to meet with [Witness ANAN] through him. [...] I want to remind you the name of Ndayisaba, you should remember it. [...].”); Exhibit P1443

We have to overcome very difficult stages; this is a decisive stage [...] these signatures that he needs to master. [...] That's very important because he always has to put them in three locations. [...] they will ask him some minor questions with a number of twists and who knows what else. They will ask him for information about those people, how he met them, how he sent them things and how things came to him. He needs to learn all of these elements and master them. [...] He also needs to master these signatures [...] Time now needs to be found, to... to learn and master this. We need to teach him this. [...] We need to arrive on time so that we can /?coach/ him, but I am certain that he won't remember anything. If he has received money, the first thing he'll have done is to go drinking and celebrating. It's as though he doesn't care about the rest. [...] we'll meet up on Thursday... [...] we will teach him... and then see where he's got to [...].<sup>880</sup>

318. On the same day, Ndagijimana agreed with Turinabo to meet Maniraguha in anticipation of Prosecution interviews planned during the week of 25 September 2017:

Turinabo: So the whole team will meet on the twenty fifth. [...] We should meet before because honestly if you don't drill that boy early enough... the twenty fifth seems so near for me but it wouldn't be a problem. If you worked in an intensive manner, that time would come when he has mastered it all if he is not a drinker. [...]

Ndagijimana: I already told him and he told me that he sent for him [...]

Turinabo: He suggested that we meet on Thursday [...] let's pass by there tomorrow and tell him.

Ndagijimana: I already told him that we will be there by nine o'clock.<sup>881</sup>

319. On 18 September 2017, Turinabo requested Ndagijimana to talk to Maniraguha about "mastering the signatures" and to plan a visit with him to DHL Kigali:

I don't know about L [Maniraguha], I found him gone home already. That msg is [a]n outcry for vigilance. Ask him about mastering the signatures and plan together the visit to DHL kgl.<sup>882</sup>

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(intercept of Turinabo calling Maniraguha on 3 September 2017 at 11:10) ("There are some things I have forgotten to tell you... [...] The other one [...] sent you this letter for you to forward, as for the money, he sent it to you by mobile money... [...] It's not you who gave this money, it's actually [Witness ANAN] [...] and that you went to drop off his documents because he asked you to do it as a favour... [...] You took them at the agency... [...] the money was sent by mobile money [...] As for the letter, you should say that you went to pick it up at Horizon [...] because there is no Virunga at that location. [...]); Exhibits P1446 and P1447 (texts from Turinabo to Maniraguha on 3 September 2017 at 11:26) ("To confirm that Lieutenant Ndayisaba is the one who connected you with [Witness ANAN], that you continued to talk to each other and that he even requested you to send a dossier through DHL Kigali and he sent you cash in hand to pay for it which you were given by one Mbarimo who comes from the same area as [Witness ANAN]."); Exhibit P1490 (intercept of Maniraguha calling Turinabo on 3 September 2017 at 12:39) ("Have you received the message? [Maniraguha] I have but... even Dick called me a few minutes ago... [...] [Turinabo] It's lucky that I briefed you about it [...] did you remember Mbarimo? [Maniraguha] No, Mbarimo [...] from here to Cyanika? [Turinabo] No! Mbarimo is from Kibirira while Vincent is from Cyanika. [...] That means that you haven't read the message. Haven't you read the message? [...] Let us first agree. No, it can't be via mobile money, it is a mistake. They can go and check and not find this money that was supposed to have been sent via mobile money. [...] I wrote to you a message asking you to say that it was Mbarimo who gave you this money. Isn't it what was written? [...] Everything will have failed if you reply incorrectly.")

<sup>880</sup> Exhibit P1500 (intercept of Nzabonimpa calling Ndagijimana on 11 September 2017 at 8:54).

<sup>881</sup> Exhibit P1045 (intercept of Turinabo calling Ndagijimana on 11 September 2017 at 15:30). See also Exhibit 5D30 (email from Robinson to Munyeshuli dated 8 September 2017) ("OTP has finally confirmed today that the interviews of the 9 witnesses will take place during the week of 25 September.").

<sup>882</sup> Exhibits P1532 and P1533 (texts from Turinabo to Ndagijimana on 18 September 2017). See also Exhibit P1040 (intercept of Ndagijimana calling Turinabo on 11 September 2017), p. K067726 (Turinabo saying "they will ask him, do you know where DHL is? [...] he must know the area.").

320. On 18 September 2017, Turinabo further instructed Mbarimo that “the thing [he] would like [him] to remember” is that he passed on Witness ANAN’s letter to Maniraguha as well as money to send the letter.<sup>883</sup> Witness TNN12 confirmed that Mbarimo was asked to accept to say that he took a letter to Maniraguha, so that he could post it.<sup>884</sup>

321. Regarding alleged steps to procure false evidence from other Intermediaries, the Prosecution presented evidence that Mukamisha was asked by Ndagijimana on 31 July 2017 to say that she told Witness ANAM/TNN31 that she should “look for all means possible to talk to those people and tell them that what she said was not true.”<sup>885</sup>

## 2. Findings

322. Having reviewed the evidence and arguments of the parties, there is no dispute that Ndagijimana participated in the training of Maniraguha, Mbarimo, and Twagirayezu regarding the evidence they were expected to give to conceal Nzabonimpa’s role in dispatching the recantation and consent letters. Ndagijimana conceded that he participated in two meetings that took place at *Petite Barrière* in Gisenyi in order to “protect” Nzabonimpa in relation to the sending of letters,<sup>886</sup> and Witness TNN12 generally confirmed the existence of training sessions involving, *inter alia*, Ndagijimana, Turinabo, Twagirayezu, Maniraguha, and Mbarimo.<sup>887</sup> Contemporaneous telecommunications reflect that two in-person meetings involving these individuals were held in Gisenyi on 10 and 19 August 2017.<sup>888</sup>

323. I am also convinced that Ndagijimana personally instructed Maniraguha in August and September 2017 regarding the narrative he should give. In particular, Ndagijimana’s telecommunications with Turinabo address the difficulties of training Maniraguha and reflect that

<sup>883</sup> Exhibit P21 (intercept of Nzabonimpa [and Turinabo] calling Mbarimo on 18 September 2017). *See also* Exhibit P1080 (intercept of Nzabonimpa calling Witness ANAN on 18 September 2017).

<sup>884</sup> Witness TNN12, T. 5 November 2020 pp. 60, 61. According to Witness TNN12, Mbarimo knew nothing about that letter and whether it was sent. *See* Witness TNN12, T. 5 November 2020 p. 61.

<sup>885</sup> Exhibit P860 (intercept of Ndagijimana calling Mukamisha on 31 July 2017). *See also* Exhibits P1305 and P1306 (texts from Turinabo to Ndagijimana on 29 July 2017) (“The same for Misha [Mukamisha], but concerning her, there is no terror except that it is necessary to emphasize on proving her discussion with [Witness ANAM/TNN31], who confessed to her the origin of the lie she was taught and advise her to confess and be free.”).

<sup>886</sup> Ndagijimana, T. 16 March 2021 pp. 3-5, 65. *See also* Exhibit P1704 (statement of Ndagijimana), paras. 53, 55-57.

<sup>887</sup> Witness TNN12, T. 5 November 2020 pp. 50-53, 55.

<sup>888</sup> *See* Exhibit P16 (intercept of Mbarimo calling Turinabo on 1 August 2017); Exhibit P1318 (intercept of Twagirayezu calling Ndagijimana on 8 August 2017); Exhibit P779 (intercept of Turinabo calling Mbarimo on 10 August 2017); Exhibit P931 (intercept of Mbarimo calling Ndagijimana on 10 August 2017); Exhibit P962 (intercept of Ndagijimana calling Turinabo on 18 August 2017); Exhibit P964 (intercept of Turinabo calling Ndagijimana on 18 August 2017); Exhibit P968 (intercept of Turinabo calling Ndagijimana on 19 August 2017), Exhibit P781 (intercept of Maniraguha calling Turinabo on 19 August 2017); Exhibit P969 (intercept of Turinabo calling Maniraguha on 19 August 2017); Exhibit P970 (intercept of Witness ANAN calling Turinabo on 19 August 2017); Exhibit P971

Ndagijimana was regularly meeting Maniraguha and instructing him to say that Maniraguha mailed Witness ANAN's recantation letter, which Mbarimo transmitted to him.<sup>889</sup> Likewise, Mbarimo received from Turinabo instructions consistent with this narrative.<sup>890</sup> On 11 September 2017, Ndagijimana explicitly confirmed to Nzabonimpa and Turinabo that he "already told him [Maniraguha] and he told me that he sent [...]"<sup>891</sup> but that Maniraguha "needs to learn all of these elements and master them", "needs to master these signatures", and that he would meet him again to "coach" and "teach him this".<sup>892</sup>

324. I also consider that Ndagijimana's call to Mukamisha on 31 July 2017 asking her to say that she directed Witness ANAM/TNN31 to confess and "to look for all means possible to talk to those people and tell them that what she said was not true"<sup>893</sup> constitutes direct evidence that Ndagijimana instructed Mukamisha about a certain narrative she should give.

325. I now turn to the allegation that Ngirabatware prepared information that he intended to be used to train the Intermediaries about the evidence they should give, and which constituted the basis of the instructions given by, *inter alia*, Ndagijimana to the Intermediaries. I note that Ngirabatware acknowledges Ndagijimana's account of the reasons why Nzabonimpa and other took steps to conceal Nzabonimpa's role in sending the letters but that he disputes that he provided any information intended to be used to train the Intermediaries or that he knew, at the time, that any information prepared by him and transmitted to Nzabonimpa was false.<sup>894</sup>

326. I have previously found that Ngirabatware played a material role in preparing the question and answer documents created in June 2016, as retrieved from his laptops and from Nzabonimpa's external hard drive, and that he did so for the purpose that they be used to instruct and train the Recanting Witnesses as to what questions to expect and how to answer them.<sup>895</sup> I note that the June 2016 documents prepared by Ngirabatware in relation to Witnesses ANAN and ANAT notably read: "[Witness ANAN] will say that, after writing [the letter] by hand, he took it to a typist

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(intercept of Turinabo calling Witness ANAN on 19 August 2017); Exhibit P418 (text from Turinabo to Nzabonimpa on 19 August 2017).

<sup>889</sup> See, e.g., Exhibit P995 (intercept of Turinabo calling Ndagijimana on 23 August 2017); Exhibit P1004 (intercept of Turinabo calling Ndagijimana on 25 August 2017); Exhibit P1038 (intercept of Ndagijimana calling Turinabo on 10 September 2017); Exhibit P1040 (intercept of Ndagijimana calling Turinabo on 11 September 2017). See also Exhibit P1704 (statement of Ndagijimana), para. 56.

<sup>890</sup> See Witness TNN12, T. 5 November 2020 pp. 60, 61; Exhibit P21 (intercept of Nzabonimpa [and Turinabo] calling Mbarimo on 18 September 2017). See also Exhibit P1080 (intercept of Nzabonimpa calling Witness ANAN on 18 September 2017).

<sup>891</sup> See Exhibit P1045 (intercept of Turinabo calling Ndagijimana on 11 September 2017).

<sup>892</sup> See Exhibits P1500 (intercept of Nzabonimpa calling Ndagijimana on 11 September 2017); Exhibit P1045 (intercept of Turinabo calling Ndagijimana on 11 September 2017).

<sup>893</sup> See Exhibit P860 (intercept of Ndagijimana calling Mukamisha on 31 July 2017).

<sup>894</sup> Ngirabatware Final Trial Brief, pp. 17, 32, 56, paras. 87, 153-155, 158, 159.

and got it typed, then signed it and gave it to a friend who took it to the DHL with the money to send it”<sup>896</sup> and “[Witness ANAT] will say that, after writing [the letter] with his hand, he gave it to [...] Twagirayezu Vincent, so that he could correct and type it for him [...] and sent it by post with the help once again of Twagirayezu Vincent who had found the address for him”.<sup>897</sup>

327. These documents provide the substance of the fabricated story as to how the recantation letters of Witnesses ANAN and ANAT were sent. Read in the context of the interference scheme and the pivotal role Ngirabatware played in preparing the question and answer documents, the only reasonable conclusion is that Ngirabatware also intended this information to be used as a basis to instruct all persons involved going forward, including Intermediaries, should they need to provide corroborating evidence regarding the dispatch of the recantations letters, and that Ndagijimana and Turinabo subsequently used this information when coaching the Intermediaries, as detailed above.<sup>898</sup>

### 3. Conclusion

328. In light of the foregoing, I find beyond reasonable doubt that, based on the information prepared by Ngirabatware in June 2016, Ndagijimana took steps to train Maniraguha, Twagirayezu, and Mbarimo to give false evidence corroborating that of the Recanting Witnesses concerning the mailing of the letters. I also have no doubt also that Ndagijimana instructed Mukamisha regarding the evidence she should give. Furthermore, I find that Ngirabatware prepared the information that was used by Ndagijimana and Turinabo to instruct the Intermediaries knowing that it would be used to train the Recanting Witnesses and any other individuals who may be called upon to corroborate their accounts, including the Intermediaries.

### **G. Conclusion: Counts 1 and 2**

329. Article 1(4)(a) of the Statute provides that the Mechanism, in accordance with the provisions of the Statute, shall have the power to prosecute any person who knowingly and wilfully

<sup>895</sup> See Section II.B.3; Section II.C.3; Section II.D.3.

<sup>896</sup> Exhibit P36, p. KA152272; Exhibit P57, p. KA152320; Exhibit P218, p. 1.

<sup>897</sup> Exhibit P34, p. KA152315; Exhibit P55, p. KA152315; Exhibit P221, p. KA152132.

<sup>898</sup> While the communications evidence suggests that the fabricated narrative regarding the dispatch of the letters evolved as it pertains to the involvement of a certain Ndayisaba, I do not find sufficiently established the allegation that Ngirabatware prepared revised information in September 2017 as a basis to train the Intermediaries. See *Ngirabatware Indictment*, para. 22; Exhibit P1040 (intercept of Ndagijimana calling Turinabo on 11 September 2017), p. K0667725 (Turinabo saying “we remove the Lieutenant then he says that everything regarding that one... it is Mbarimo alone who connected them.”); Exhibit P1080 (intercept of Nzabonimpa calling Witness ANAN on 18 September 2017), p. K0666838 (Nzabonimpa saying “We put in the laboratory and analysed, when we put it in the laboratory we found out that this Ndayisaba person will complicate matters [...] And the person we are using, the other one cannot memorize it [...]. So then we are of the mind that old man Mbarimo is one who can remain.”).

interferes or has interfered with the administration of justice by the Mechanism or the ICTR, and to hold such person in contempt.

330. Rule 90(A)(iv) of the Rules provides, *inter alia*, that the Mechanism may hold in contempt those who knowingly and wilfully interfere with the administration of justice, including any person who “threatens, intimidates, causes any injury, offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber or a Single Judge, or a potential witness”. The enumerated offences under Rule 90(A)(iv) of the Rules do not require that the interference with a witness’s testimony result in it ultimately being false.<sup>899</sup> Liability under Rule 90(A)(iv) of the Rules may be predicated on any conduct that is intended to disturb the administration of justice by deterring a witness or a potential witness from giving full and truthful evidence, or in any way to influence the nature of the witness’s or potential witness’s evidence.<sup>900</sup> Nzabonimpa, Ndagijimana, Fatuma, and Ngirabatware are charged with interfering with this offence under Count 1 of their respective Indictments.

331. Rule 90(B) of the Rules provides that any incitement or attempt to commit any of the acts punishable under Rule 90(A) of the Rules is punishable as contempt of the ICTR or the Mechanism with the same penalties. Nzabonimpa, Ndagijimana, Fatuma, and Ngirabatware are charged with incitement under Count 2 of their respective Indictments on the basis of the same conduct charged under Count 1.

332. The record firmly establishes that Ngirabatware made thousands of euros available to Nzabonimpa.<sup>901</sup> Monies provided by Ngirabatware served as the backbone of a highly organized effort aimed at obtaining the recantations of, in particular, Witnesses ANAM/TNN31, ANAE/TNN30, ANAN, and ANAT in anticipation of review proceedings. Bank records, contemporaneous communications evidence, and testimonial evidence without any doubt demonstrate that money was paid or offered to witnesses – including Witness ANAL/TNN6 – as well as to intermediaries and was used to facilitate the recantation process. Furthermore, the record

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<sup>899</sup> See, e.g., *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008 (“*Haraqija and Morina* Trial Judgement”), para. 18 (outlining conduct punishable under Rule 77(A)(iv) of the ICTY Rules as threatening, intimidating, causing injury, offering a bribe or otherwise interfering with a witness and noting that it is immaterial whether the witness actually felt threatened or intimidated, or was deterred or influenced); *Prosecutor v. Beqa Beqaj*, Case No. IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005 (“*Beqaj* Trial Judgement”), paras. 16-18, 21 (defining how modes of commission of “threat”, “intimidation”, and “offering a bribe” are liberally construed as well as defining “otherwise interfering with a witness” and observing that there is no indication that proof is required that the conduct intended to influence the nature of the witness’s evidence produced a result).

<sup>900</sup> *Haraqija and Morina* Trial Judgement, para. 18; *Beqaj* Trial Judgement, para. 21. See also *The Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-T, Judgement, 7 July 2009 (“*Nshogoza* Trial Judgement”), para. 193.

<sup>901</sup> See Section II.A.

firmly establishes that actions taken by the Accused, including actions to conceal their role in these events, concretely sought to manipulate and improperly influence potential witness evidence in the context of Ngirabatware's anticipated review proceedings.

333. Specifically, substantial payments were made on Ngirabatware's behalf to Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN and to Maniraguha, Mbarimo, and Twagirayezu to induce and maintain their cooperation with the Ngirabatware Defence.<sup>902</sup> Additionally, Witnesses ANAE/TNN30, ANAM/TNN31, ANAN, ANAT, and ANAL/TNN6 were all trained on his behalf in relation to meetings with the parties or the WISP, in part on the basis of documents that Ngirabatware played an essential role in preparing.<sup>903</sup> Promises of payment in exchange for cooperation were also made on Ngirabatware's behalf to Witnesses ANAE/TNN30, ANAM/TNN31, ANAN, and ANAL/TNN6.<sup>904</sup> In addition, Maniraguha, Twagirayezu, and Mbarimo were all trained on the basis of material prepared by Ngirabatware to give a false account of how the recantation letters and consent letters were sent.<sup>905</sup> These acts done by, at the behest, or on behalf of Ngirabatware amount to an interference with the administration of justice. I further find that, in view of the scope and duration of the interference, Ngirabatware acted knowingly and wilfully when viewing each act of interference individually and collectively in the context of the record as a whole.

334. Nzabonimpa facilitated the payment of money to Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN and to Maniraguha, Mbarimo, and Twagirayezu to induce and maintain their cooperation with the Ngirabatware Defence.<sup>906</sup> In addition, he induced Witness ANAN to sign the recantation letter and instructed him on what to say in connection with meetings with the parties and the WISP<sup>907</sup> and with the review hearing.<sup>908</sup> These acts done directly or in conjunction with others amount to an interference with the administration of justice. In view of the scope and duration of the interference, Nzabonimpa acted knowingly and wilfully when viewing each act of interference individually and collectively in the context of the record as a whole.

335. Ndagijimana also facilitated the payment of money to Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN and to Maniraguha to induce and maintain their cooperation with the

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<sup>902</sup> See Section II.B.1, 2, 4, 5, 8, 9; Section II.C.1, 2, 4, 5, 6; Section II.D.1, 2; Section II.E.3.

<sup>903</sup> See Section II.B.6, 10; Section II.C.3, 4, 5, 7; Section II.D.5; Section II.E.3.

<sup>904</sup> See Section II.B.10; Section II.C.8; Section II.E.3.

<sup>905</sup> See Section II.F.3.

<sup>906</sup> See Section II.B.1, 2, 4, 5, 8, 9; Section II.C.1, 2, 4, 5, 6, 8; Section II.D.1, 2.

<sup>907</sup> See Section II.C.1, 3, 4, 5, 7.

<sup>908</sup> See Section II.C.6.



Ngirabatware Defence.<sup>909</sup> Ndagijimana also induced Witness ANAM/TNN31 to sign her recantation letter and instructed Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN on what to say in connection with interviews by the parties or the WISP.<sup>910</sup> In addition, Ndagijimana also participated in the training of Maniraguha, Twagirayezu, and Mbarimo to give a false account of how the recantation letters and consent letters were sent.<sup>911</sup> These acts done directly or in conjunction with others amount to an interference with the administration of justice. In view of the scope and duration of the interference, Ndagijimana acted knowingly and wilfully when viewing each act of interference individually and collectively in the context of the record as a whole.

336. I further find that Fatuma interfered with the administration of justice by prompting Witness ANAL/TNN6's relatives to persuade and offer a financial incentive to the witness in exchange for recanting and by instructing the witness on what to say when interviewed by the Defence and offering her a financial incentive to cooperate and recant.<sup>912</sup> The nature of Fatuma's conduct done directly and through others, and in particular in view of the specific exchanges that she had with Turinabo, demonstrate that her actions were done knowingly and wilfully.

337. Defence efforts to explain payments and the direct or indirect contact the Accused had with witnesses through analogy to normal investigative practices of the Prosecution or the Defence as a type of affirmative defence lack a reasonable factual or legal basis in the context of this case. The main *Ngirabatware* proceeding is a genocide case that relied on a witness protection regime to regulate contact with witnesses, judicially determined to require protection. The actions of Ngirabatware, Nzabonimpa, Ndagijimana, and Fatuma circumvented all accountability and judicial oversight that would normally apply in any sanctioned investigation. Their actions interfered with the administration of justice. Defence arguments and evidence that the Accused acted with the genuine belief that Ngirabatware was innocent have not raised reasonable doubt in relation to their liability under Count 1.<sup>913</sup> The proper process for challenging a conviction perceived as unjust is

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<sup>909</sup> See Section II.B.1, 4, 9, 10.

<sup>910</sup> See Section II.B.1, 4, 5, 6, 10; Section II.C.4.

<sup>911</sup> See Section II.F.3.

<sup>912</sup> See Section II.E.3.

<sup>913</sup> In this respect, in my Order of 12 February 2021, I stated that evidence related to the underlying *Ngirabatware* trial, and particularly whether witnesses lied during the *Ngirabatware* trial or review, or cannot otherwise be trusted, are collateral to the charges in this case. See Order of 12 February 2021, Annex, para. 4. I cannot exclude that the Accused sincerely believed that the Recanting Witnesses lied during the *Ngirabatware* trial. However, it does not alter my conclusion that the means and methods used by the Accused that underpin the charges in this trial amount to a knowing and wilful interference with the administration of justice. As such, although I have taken full note of it, I have not considered it necessary to discuss in detail the evidence submitted by the Defence on this issue. For these reasons, I also dismiss the Ndagijimana Request for Disclosure of Witness Statements from Ruhengeri and Gisenyi Prisons, 21 April 2021 (confidential, with confidential Annex A), which sought disclosure of additional material to this effect from the Prosecution.

through the review proceedings provided for in law and by doing so transparently in accordance with the law.

338. In the specific context of this case, the clandestine communications with key witnesses subject to protective measures, the instructions provided on what to say to judicially accountable agents investigating the case and/or to the Judges who might review Ngirabatware's convictions, and secretly paying them or offering to pay them to ensure their cooperation is a crime. This is no less true in a situation where the Accused felt they were being extorted by the witnesses. This is simply not how to legitimately and legally conduct a defence. This is common sense.

339. Accordingly, I find Nzabonimpa, Ndagijimana, Fatuma, and Ngirabatware guilty under Count 1 of their respective Indictment for interfering with the administration of justice in violation of Article 1(4)(a) of the Statute and Rule 90(A)(iv) of the Rules.

340. The allegations underpinning Count 2 of each Indictment are the same as those underpinning Count 1 of the Indictments. For the allegations that have been proven, I have entered a conviction under Count 1 of the Indictments against the Accused for interfering with the administration of justice in violation of Article 1(4)(a) of the Statute. Count 2 also charges the Accused with a violation of this same provision of the Statute. In other words, a conviction entered under Count 2 in the context of this case would not be materially different from the conviction entered under Count 1 as the charged crime and the underlying allegations are the same. The only difference is the characterization of the manner of committing the offence.

341. In my view, the convictions entered under Count 1 fully encapsulate the criminal conduct of the Accused. Therefore, I do not consider it necessary to assess whether the proven conduct may also have amounted to incitement to interfere with the administration of justice.<sup>914</sup> Moreover, any additional conviction on this basis, given that the underlying conduct is the same, would have no impact on the totality of the sentence imposed. Accordingly, I find the Accused not guilty of Count 2 of their respective Indictment.

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<sup>914</sup> Cf. *Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor*, Case No. ICTR-98-44-A, Judgement, 29 September 2014, para. 720 ("The Appeals Chamber is mindful that joint criminal enterprise and instigating, ordering, and aiding and abetting are distinct categories of responsibility and that an accused can be convicted for a crime on the basis of several categories of responsibility. However, the Prosecution seeks to hold Karemera responsible for this crime through ordering, instigating, or aiding and abetting on the basis of the same essential facts that already underpin his conviction for this crime through his participation in a joint criminal enterprise, namely his speech in Bisesero at the 3 May 1994 Meeting and the killings that took place in Bisesero on or about 13 May 1994. In these circumstances, the Appeals Chamber finds that Karemera's responsibility for this crime through his participation in a joint criminal enterprise fully encapsulates his criminal conduct and concludes that a finding that he ordered, instigated, or aided and abetted the killings in Bisesero would have no impact on the verdict.") (references omitted).

### III. CRIMES: COUNT 3

342. Rule 90(A)(ii) of the Rules provides that the Mechanism may hold in contempt those who disclose information relating to proceedings before the ICTR or the Mechanism in knowing violation of an order of a Chamber or a Single Judge. Munyeshuli and Ngirabatware are charged with this offence under Count 3 of their respective Indictments.

#### A. Violation of Court Orders – Munyeshuli

343. Count 3 of the *Nzabonimpa et al.* Indictment charges Munyeshuli with two distinct violations of court orders.<sup>915</sup> Paragraph 29 of the *Nzabonimpa et al.* Indictment alleges that, on 15 July 2017, Munyeshuli knowingly violated the protective measures issued in the *Ngirabatware* case<sup>916</sup> by revealing to Turinabo the identities of the Recanting Witnesses. Paragraph 31 of the same indictment alleges that, from at least 15 July 2017 to the second half of August 2017, Munyeshuli repeatedly had prohibited indirect contact in knowing violation of protective measures with protected witnesses through telecommunications with Turinabo, who, in turn, contacted them directly and/or through Ndagijimana, Nzabonimpa and/or Maniraguha.

344. The Prosecution submits that, on 15 July 2017, Munyeshuli informed Turinabo that the Prosecution wished to interview the Recanting Witnesses, effectively revealing their protected witness status by mentioning that they were to be contacted by the WISP.<sup>917</sup> In support of allegations of repeated prohibited indirect contact with protected witnesses, the Prosecution relies on intercepted calls and text messages between Munyeshuli and Turinabo<sup>918</sup> and between other Accused and certain Recanting Witnesses<sup>919</sup> exchanging information about the management of the Recanting Witnesses at the time their training for Prosecution interviews began.

<sup>915</sup> *Nzabonimpa et al.* Indictment, paras. 29, 31. See also *Nzabonimpa et al.* Indictment, para. 16.

<sup>916</sup> See *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution’s Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009 (“Protective Order of 7 May 2009”); *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution Motion for Leave to Vary Its Witness List, 28 January 2010 (“Protective Order of 28 January 2010”); *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on a Motion for Modification of Protective Measures, 5 August 2016 (confidential) (“Protective Order of 5 August 2016”) (collectively in this section, “Protective Orders”).

<sup>917</sup> Prosecution Final Trial Brief, para. 91, referring to, *inter alia*, Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), pp. 2-5. See also Prosecution Final Trial Brief, para. 197; T. 21 June 2021 pp. 13, 17, 18, 60. The Prosecution contends that Turinabo immediately relayed the message to Ndagijimana and that Ndagijimana, in turn, called Witness ANAM/TNN31 to ask her to say that she had no time to meet the Prosecutor. See Prosecution Final Trial Brief, para. 91, referring to Exhibits P785, P786, P1588; T. 21 June 2021 pp. 13, 18, referring to Exhibits 3D24, 5D4, P1588.

<sup>918</sup> Prosecution Final Trial Brief, para. 98, referring to, *inter alia*, Exhibits P780, P782, P936, P975, P1237, P1238, P1256, P1257, P1269, P1270, P1351. See also T. 21 June 2021 p. 60.

<sup>919</sup> Prosecution Final Trial Brief, para. 98, referring to, *inter alia*, Exhibits P336, P906, P1233, P1234, P1261, P1262, P1369, P1397, P1398. The Prosecution acknowledges that there is no evidence that Munyeshuli knew about these

345. The Prosecution contends that Munyeshuli knew that the Protective Orders prohibited disclosure of the Recanting Witnesses' identities and status as protected witnesses in the review proceedings, and still was "recklessly indifferent and wilfully blind".<sup>920</sup> It further argues that Munyeshuli may not avoid criminal responsibility by claiming that he followed his lead counsel's instructions or by claiming that it was not a crime because Turinabo already knew the identities of the protected witnesses.<sup>921</sup>

346. Munyeshuli does not contest that the conversations and text messages in question happened but challenges their interpretation by the Prosecution.<sup>922</sup> He contends that the case against him impermissibly evolved<sup>923</sup> and is based on circumstantial evidence taken out of context.<sup>924</sup> In Munyeshuli's view, the Prosecution distorts the significance of the 15 July 2017 call between him and Turinabo and of subsequent calls between Turinabo, Ndagijimana, and Witness ANAM/TNN31 relaying, according to the Prosecution, the information Munyeshuli provided.<sup>925</sup> He also disputes that the witnesses whom he asked Turinabo to contact were Prosecution witnesses.<sup>926</sup> Munyeshuli also argues that his conduct does not amount to "disclosure",

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specific conversations but submits that he must have been aware of their substance, namely that the Recanting Witnesses wanted to know when they would be trained by the Defence. *See* T. 23 June 2021 pp. 5-7.

<sup>920</sup> Prosecution Final Trial Brief, paras. 91, 199, *referring to, inter alia*, Munyeshuli, T. 8 April 2021 pp. 8-10, 37, 38.

<sup>921</sup> Prosecution Final Trial Brief, para. 196; T. 21 June 2021 p. 61; T. 23 June 2021 pp. 11, 12. The Prosecution underlines that Munyeshuli and his lead counsel were trained professionals with an ethical duty to represent Ngirabatware. *See* T. 21 June 2021 p. 12. That Munyeshuli may have followed the lead counsel's order does not require mitigation of his sentence and, instead, Munyeshuli's role as an officer of justice should be considered in aggravation of his sentence. *See* T. 23 June 2021 pp. 12, 13. The Prosecution further submits that breaches of protective measures and other violations of court orders *per se* interfere with the administration of justice and are captured by Rule 90(A)(iii) of the Rules. *See* T. 21 June 2021 pp. 61, 62; T. 23 June 2021 pp. 7, 8.

<sup>922</sup> *See, e.g.*, Munyeshuli Final Trial Brief, paras. 33, 107-121, 146.

<sup>923</sup> *See, e.g.*, T. 22 June 2021 pp. 28-32.

<sup>924</sup> Munyeshuli Final Trial Brief, paras. 152, 207; T. 22 June 2021 p. 26. Munyeshuli argues that it cannot be concluded as the only reasonable inference from the fact that Turinabo was passing onto his co-Accused information he had gathered from Munyeshuli that the latter must have been part of the recantation scheme. *See* Munyeshuli Final Trial Brief, paras. 65, 74, 146. Munyeshuli generally submits that the Prosecution should have put to him at least some of the intercepts during his testimony instead of resorting to speculation. *See, e.g.*, Munyeshuli Final Trial Brief, paras. 150, 151; T. 22 June 2021 p. 26. He stresses a message from Turinabo to Nzabonimpa that Munyeshuli's version "requires caution", as well as the co-Accused's efforts at "keeping [him] in the dark" and the fact that the flow of information between him and Turinabo was mostly unidirectional. *See* Munyeshuli Final Trial Brief, paras. 147-149, 183, *referring to, inter alia*, Exhibit P266.

<sup>925</sup> Munyeshuli Final Trial Brief, paras. 111-114, *referring to* Exhibits 5D4, P1588, 3D24. *See also* T. 22 June 2021 pp. 33, 34. Munyeshuli underlines that the indictment was initially confirmed based on a mistranslation of the 15 July 2017 intercept, in which the term "witnesses" was mistakenly used while the official translation only refers to "people". *Compare* Exhibit 5D4 with Exhibit 5D5. *See also* Munyeshuli Final Trial Brief, para. 154; T. 22 June 2021 pp. 25, 29.

<sup>926</sup> Munyeshuli submits that the "Laurent's group" in the 15 July 2017 intercept could only have referred to former Defence Witnesses DWAN-147, DWAN-28, DWAN-41, and DWAN-78, and that there was therefore no indirect contact with Prosecution witnesses. *See* Munyeshuli Final Trial Brief, paras. 111, 139, 185, 186, *referring to* Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017). *See also* Munyeshuli Final Trial Brief, paras. 205, 206, 208.

as Turinabo already knew the identity and status of the protected witnesses,<sup>927</sup> and that the use of witnesses' names without reference to their status is permissible.<sup>928</sup>

347. Likewise, Munyeshuli submits that he merely followed the instructions of his lead counsel, Robinson, in whom he had full confidence, and that such contacts with his resource person were necessary for the conduct of investigations.<sup>929</sup> Furthermore, according to Munyeshuli, he only communicated with Defence witnesses through Turinabo and at no point asked him to relay any message to the Prosecution witnesses.<sup>930</sup> Munyeshuli further argues that the conduct defined by the Prosecution as 'indirect contact' impermissibly expands the scope of the offence of contempt.<sup>931</sup>

348. Munyeshuli challenges the Prosecution's inference that he possessed the requisite *mens rea* and submits that any doubt should be resolved in his favour, pointing to evidence adduced at trial regarding his character and reputation.<sup>932</sup> Alternatively, Munyeshuli submits that the Single Judge should exercise his discretion to not make a finding of contempt in view of his lack of intention to violate the protective measures and of the unique circumstances of the case, and he stresses examples of the Prosecution engaging in the same conduct with impunity.<sup>933</sup>

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<sup>927</sup> Munyeshuli Final Trial Brief, paras. 158-176, 204; T. 22 June 2021 pp. 42, 43. Munyeshuli submits that the present case is distinguishable from the *Nshogoza* and *Jović* cases, where confidential information was further disclosed to previously unaware third parties, and that considering the conduct charged as 'disclosure' is contrary to the plain meaning of the notion and to basic tenets of interpretation. See T. 22 June 2021 pp. 39-42; Munyeshuli Final Trial Brief, paras. 159-166, referring to, *inter alia*, *Nshogoza* Trial Judgement, paras. 186, 187; *Prosecutor v. Josip Jović*, Case No. IT-95-14 & 14/2-R77-A, Judgement, 15 March 2007 ("*Jović* Appeal Judgement"), para. 30. Munyeshuli underlines that Turinabo was not extraneous to the proceedings and that mentioning the name of protected witnesses to someone who already knew their identity and was aware of their status is in no way capable of compromising the object and purpose of the protective measures. See Munyeshuli Final Trial Brief, paras. 169, 170. Munyeshuli also relies on a decision in the *Karadžić* case, in which the Appeals Chamber accepted that the Prosecution did not violate the relevant protective measures by disclosing the identity of protected witnesses to state authorities which were already aware of the witnesses' identifying information. See Munyeshuli Final Trial Brief, para. 166, referring to *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Order Referring a Matter to the President Pursuant to Rule 90(C), 23 November 2018, pp. 7, 8.

<sup>928</sup> Munyeshuli Final Trial Brief, paras. 155-157, 173, 174. Munyeshuli stresses that Witness Blaszczyk accepted that giving out names of the witnesses to the intermediary without revealing their status as protected witnesses was in accordance with protective orders. See Munyeshuli Final Trial Brief, paras. 90, 97, n. 278, referring to, *inter alia*, Exhibit 5D9, pp. 20, 21. See also Munyeshuli Final Trial Brief, paras. 92-98, 203.

<sup>929</sup> Munyeshuli Final Trial Brief, paras. 117, 118. See also Munyeshuli Final Trial Brief, paras. 125, 131, 132, 146, 206; T. 22 June 2021 pp. 45-47. Munyeshuli underlines that Robinson insisted on the importance of respecting the protective measures in several instances. See Munyeshuli Final Trial Brief, paras. 125, 127 referring to, *inter alia*, Exhibit P1708. Munyeshuli considered his lead counsel to be better placed to assess whether certain tasks requested from him were in accordance with the "ever-morphing" protective measures regime. See Munyeshuli Final Trial Brief, para. 130.

<sup>930</sup> See, e.g., Munyeshuli Final Trial Brief, para. 206; T. 22 June 2021 pp. 48, 49.

<sup>931</sup> Munyeshuli Final Trial Brief, paras. 178-180; T. 22 June 2021 pp. 32, 35; T. 23 June 2021 pp. 29, 31.

<sup>932</sup> Munyeshuli Final Trial Brief, paras. 119, 120, 187-196, 205. See also Munyeshuli Final Trial Brief, paras. 2, 3; T. 22 June 2021 pp. 31, 39, 40, 51.

<sup>933</sup> Munyeshuli Final Trial Brief, paras. 32-45, 199-202. See also Munyeshuli Final Trial Brief, para. 129.

## 1. Evidence

349. To prove these allegations, the Prosecution relies on intercepted communications and messages, including between Munyeshuli and Turinabo and, in turn, between Turinabo, Ndagijimana, and the Protected Witnesses, including Witness ANAM/TNN31, or their intermediaries.<sup>934</sup> Munyeshuli also provided an account of his actions, including his interpretation of exchanges between Robinson and him, and offered several character witnesses. The salient aspects of this evidence are summarized below.

350. In 2015 and 2016, with the help of their resource person Turinabo,<sup>935</sup> Robinson and Munyeshuli met individuals, including former Defence Witnesses DWAN-28, DWAN-78, and DWAN-147, who had been in contact with the Recanting Witnesses and worked on setting up interviews with them.<sup>936</sup> In January 2016, Robinson informed Munyeshuli that Witnesses ANAE/TNN30 and ANAM/TNN31 had refused to meet the Defence and asked him to find out what happened, which Munyeshuli investigated notably by meeting with Maniraguha.<sup>937</sup> In July 2016, Robinson and Munyeshuli interviewed the Recanting Witnesses.<sup>938</sup> In August 2016, Robinson informed Munyeshuli that the Prosecution had requested re-interviews of, *inter alia*, the Recanting Witnesses,<sup>939</sup> and accordingly asked Munyeshuli to contact Maniraguha and Turinabo:

[The Prosecution] has asked WISP to contact the witnesses (including ANAH) to see if they consent to be interviewed. [...] Please contact [Maniraguha] and [Turinabo] if you have not done so already so they will not be surprised when WISP begins contacting the witnesses.<sup>940</sup>

<sup>934</sup> Prosecution Final Trial Brief, para. 92. *See also* Prosecution Final Trial Brief, paras. 97-99.

<sup>935</sup> *See* Munyeshuli, T. 7 April 2021 pp. 64, 68; Munyeshuli, T. 8 April 2021 p. 7; Exhibit 1D11. *See also* Witness MT1, T. 18 March 2021 pp. 61, 62, 70. Munyeshuli indicated that he was put in touch with Turinabo and that their first conversation took place in November 2015. *See* Munyeshuli, T. 7 April 2021 pp. 68, 69. *See also* Witness MT1, T. 18 March 2021 pp. 24, 58-60, 75; Witness MT1, T. 19 March 2021 p. 28; Exhibits 1D9, P1709. Witness MT1 testified that Turinabo already worked for the Defence as a resource person during Ngirabatware's trial. *See* T. 18 March 2021 pp. 23, 74. Munyeshuli and Witness Blaszczyk both indicated that the use of resource persons and intermediaries was necessary for Defence and Prosecution investigations. *See* Munyeshuli, T. 8 April 2021 p. 20; Witness Blaszczyk, T. 18 November 2020 pp. 7, 8. *See also* Witness MT1, T. 18 March 2021 pp. 70, 71. When signing the document undertaking to maintain confidentiality when joining the case, Munyeshuli understood that he was not permitted to provide confidential information to anyone not listed among team members, and that Turinabo, Ndagijimana, Nzabonimpa, and Fatuma were not on that list. *See* Munyeshuli, T. 8 April 2021 pp. 59, 60.

<sup>936</sup> Munyeshuli, T. 7 April 2021 pp. 29, 30, 33, 74-77, 80-84; Munyeshuli, T. 8 April 2021 pp. 71-78. *See also* Exhibits 1D11, 1D12, 1D13, 1D14, 1D15, 5D7, 5D8, P1706, P1707, P1708, P1709, P1710, P1712. *See also* Witness Blaszczyk, T. 16 November 2020 pp. 62-64.

<sup>937</sup> Munyeshuli, T. 7 April 2021 pp. 32, 33, 37, 38, 42, 43; Exhibits 5D15, 5D16.

<sup>938</sup> Munyeshuli, T. 7 April 2021 pp. 33, 34, 40; Munyeshuli, T. 8 April 2021 pp. 11-13. *See also* Exhibits 5D21, 5D22, 5D23. Munyeshuli acknowledged that, during Witness ANAN's interview, Robinson gave his telephone number to the witness. *See* Munyeshuli, T. 7 April 2021 pp. 35-37; Exhibit 5D22. *See also* Munyeshuli, T. 8 April 2021 pp. 65-67.

<sup>939</sup> Munyeshuli, T. 7 April 2021 pp. 41, 42; Munyeshuli, T. 8 April 2021 pp. 67, 68; Exhibit 5D24 (email exchanges between Robinson and Munyeshuli on 9 August 2016).

<sup>940</sup> Exhibit 5D24 (email exchanges between Robinson and Munyeshuli on 9 August 2016).

351. On 14 July 2017, after Ngirabatware’s request for review had been granted,<sup>941</sup> Robinson informed Munyeshuli by email of the Prosecution’s intent to re-interview Witnesses ANAE/TNN30, ANAM/TNN31, ANAT, and ANAN, as well as former Prosecution Witness ANAH and Defence Witnesses DWAN-78, DWAN-28, DWAN-147, and DWAN-41.<sup>942</sup> Specifically, Robinson wrote:

[The Prosecution] was reportedly in Gisenyi this week interviewing some former [Prosecution] witnesses in Ngirabatware’s case. Today they sent me the below e-mail. I plan to come to Rwanda in August and attend those interviews of persons who consent. WISP will probably contact them next week to ask if they consent. *I would appreciate it if you could inform [Turinabo] and [Maniraguha] about that in advance.* We should take no position on whether the witnesses consent to be interview[ed] – that is totally up to them.<sup>943</sup>

352. On 15 July 2017, Munyeshuli called Turinabo at 3.17 p.m. to inform him that the Prosecution wanted to meet with nine individuals, that the WISP would be in contact with them in the course of the next week, that the individuals could refuse or agree to the meeting, and that if they agreed the Defence would also be there.<sup>944</sup> In the call, Munyeshuli initially refers to the Recanting Witnesses as “[t]he four” and then later in the conversation to Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN by their first names and to Witness ANAT by his full name.<sup>945</sup> Turinabo responded: “I’ll see to it that they are informed tomorrow. [...] They will meet up; they will say that they were on the Defence side and that they have met such and such persons who told them this or that. That’s it, [...] nothing more.”<sup>946</sup> Munyeshuli stated that, during this conversation on 15 July 2017, he relayed Robinson’s message word for word.<sup>947</sup>

353. An intercepted conversation at 4.22 p.m. on 15 July 2017 reveals that, a short time after speaking with Munyeshuli, Turinabo informed Ndagijimana that the Prosecution wanted to meet with nine witnesses, including the four Recanting Witnesses.<sup>948</sup> In the conversation, Turinabo and Ndagijimana discussed meeting before hand to formulate a plan, potentially summoning the witnesses before informing them about the requests, and preparing and paying them.<sup>949</sup> Turinabo

<sup>941</sup> In June 2017, Robinson informed Munyeshuli that Ngirabatware’s motion for review had been granted and asked him to let Turinabo know. *See* Munyeshuli, T. 7 April 2021 pp. 44, 45; Exhibit 5D27 (email exchanges between Robinson and Munyeshuli on 19 June 2017).

<sup>942</sup> Munyeshuli, T. 7 April 2021 p. 46; Exhibit 5D10 (email exchanges between Robinson and Munyeshuli on 14 and 15 July 2017).

<sup>943</sup> Exhibit 5D10 (email exchanges between Robinson and Munyeshuli on 14 and 15 July 2017) (emphasis added). *See also* Munyeshuli, T. 7 April 2021 pp. 46, 47. Munyeshuli confirmed to Robinson that he would proceed. *See* Munyeshuli, T. 7 April 2021 p. 48; Exhibit 5D10 (email exchanges between Robinson and Munyeshuli on 14 and 15 July 2017).

<sup>944</sup> *See* Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), pp. 1-5.

<sup>945</sup> *See* Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), pp. 3-5.

<sup>946</sup> *See* Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), p. 5.

<sup>947</sup> Munyeshuli, T. 7 April 2021 pp. 47-49.

<sup>948</sup> Exhibit P1588 (intercept of Ndagijimana calling Turinabo on 15 July 2017), pp. 1, 2.

<sup>949</sup> Exhibit P1588 (intercept of Ndagijimana calling Turinabo on 15 July 2017), pp. 3-6.

did not convey Munyeshuli's message that the witnesses were free to agree or disagree to the meeting.<sup>950</sup> Two days later, on 17 July 2017, Ndagijimana called Witness ANAM/TNN31 and told her that she would be contacted about meeting with the Prosecution and that she should refuse:

So, if they do call you, they should be told that you haven't got time to meet the Prosecutor, as you have nothing to add to what you have already told him.<sup>951</sup>

354. Munyeshuli testified that the subsequent calls between Turinabo, Ndagijimana, and Witness ANAM/TNN31, asking her to refuse to meet the Prosecution, do not reflect what he told Turinabo.<sup>952</sup> There is also evidence of subsequent contacts between Munyeshuli and Turinabo from 15 July up until August 2017 during which Turinabo relays, *inter alia*, information regarding the progress of the organization of Prosecution's interviews with the nine witnesses as well as concerns from the witnesses who reportedly did not want to meet the Prosecution and/or wanted to know whether they would receive training from the Defence before the meetings.<sup>953</sup> Other conversations pertain notably to Munyeshuli's investigations regarding the sending of the recantation letters.<sup>954</sup> In September 2017, Robinson asked Munyeshuli not to contact the witnesses until the Prosecution interviews scheduled later that month.<sup>955</sup> In November 2017, Robinson and Munyeshuli were informed of allegations of bribery made by Witness ANAM/TNN6, and both decided to withdraw from Ngirabatware's case in December 2017.<sup>956</sup>

355. During his testimony, Munyeshuli generally asserted that he had been an investigator for the ICTR and Mechanism since 2003 and that he never intentionally violated a court order or influenced any witness.<sup>957</sup> Munyeshuli trusted Robinson, who at all times insisted that they strictly obey the protective measures and have no direct or indirect contact with Prosecution witnesses, and he scrupulously executed his instructions.<sup>958</sup> Munyeshuli acknowledged that he had a legal duty to

<sup>950</sup> See generally Exhibit P1588 (intercept of Ndagijimana calling Turinabo on 15 July 2017).

<sup>951</sup> Exhibit 3D24 (intercept of Ndagijimana calling Witness ANAM/TNN31 on 17 July 2017), p. 2. The Prosecution also refers to other communications where the other witnesses are also instructed not to meet with the Prosecution. See Prosecution Final Trial Brief, para. 92.

<sup>952</sup> Munyeshuli, T. 7 April 2021 pp. 49-51. See also Exhibits P1588, 3D24.

<sup>953</sup> See, e.g., Exhibits P797, P936, P1237, P1238, P1244, P1245, P1256, P1257, P1269, P1270, P1301, P1302, P1351, P1399, P1538. I note that Exhibits 5D18 and 5D19 were mislabeled as involving Munyeshuli.

<sup>954</sup> See, e.g., Exhibits P780, P782, P908, P924, P925, P975, P1379. During the relevant period, Munyeshuli produced reports at his lead counsel's request regarding the recantation letters' stamps, the DHL waybills, and prisoners' accusations against high ranking people. See Munyeshuli, T. 7 April 2021 pp. 43, 44, 50, 51; Munyeshuli, T. 8 April 2021 pp. 4-7, 27-30; Exhibits 5D25, 5D26, 5D28, 5D29, P1716.

<sup>955</sup> Munyeshuli, T. 7 April 2021 pp. 51, 52; Exhibit 5D30 (email exchanges between Robinson and Munyeshuli on 8 September 2017).

<sup>956</sup> Munyeshuli, T. 7 April 2021 pp. 52, 53; Munyeshuli, T. 8 April 2021 pp. 47-53; Exhibits 5D32, 5D33, P1713. Munyeshuli testified that he was not aware of any campaign to conceal information from him or Robinson. See Munyeshuli, T. 8 April 2021 p. 8.

<sup>957</sup> See Munyeshuli, T. 7 April 2021 p. 49.

<sup>958</sup> Munyeshuli, T. 7 April 2021 pp. 25-29, 31, 32, 39, 46-48; Munyeshuli, T. 8 April 2021 pp. 60, 61, 66, 67, 91, 92. See also Exhibits P1708, P1710, P1714. Munyeshuli indicated that this was the first time he was involved in a case in



respect all court orders and that he would not have followed an instruction if clearly illegal.<sup>959</sup> He denied having knowingly exchanged messages with Prosecution witnesses through Ngirabatware's supporters and explained that, in his understanding, prohibited contact would be sending someone to talk to another person with a precise message.<sup>960</sup> Munyeshuli also presented written evidence from witnesses attesting that he was a skilled investigator, professional, honest, and with a high level of integrity.<sup>961</sup>

## 2. Findings

356. On 5 August 2016, the Appeals Chamber changed the protection measures in relation to Witnesses ANAE, ANAM, ANAN, and ANAT, placing extraordinary limitations on either party's ability to have contact with these witnesses. Specifically, the Appeals Chamber required each party to notify the other if it wanted to contact a witness, provided that the WISP alone would ascertain whether a witness consented to contact with a party, and required the WISP to be present and allowed the opposing party to attend any interview that a witness consented to.<sup>962</sup> The Appeals Chamber did so because it found "it appropriate that the Defence and the Prosecution be aware of the other party's contact with the Protected Witnesses and for the WISP to seek consent of the witnesses prior to any such contact and to be present during any resulting meeting between the parties and the witnesses".<sup>963</sup> This was done "to safeguard the integrity of any such statements by the Protected Witnesses and to ensure that there is no interference with the course of justice".<sup>964</sup> The relevant Protective Orders also prohibit disclosure of information identifying the Recanting Witnesses, directly or indirectly, to any person or entity outside of the Defence and Prosecution teams.<sup>965</sup>

357. I have no doubt that Munyeshuli mentioned the names of protected witnesses to Turinabo during their conversation on 15 July 2017. Although he did not specifically refer to these individuals as "witnesses", there is no other reasonable inference that can be drawn from their

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which four Prosecution witnesses came forward to become Defence witnesses and in which two witnesses were relatives, and that he therefore relied on the instructions given by his lead counsel. *See* Munyeshuli, T. 7 April 2021 pp. 45, 46.

<sup>959</sup> Munyeshuli, T. 8 April 2021 pp. 36-38. *See also* Munyeshuli, T. 8 April 2021 p. 64. At the time, Munyeshuli did not familiarise himself with the Protective Orders of 7 May 2009 and 28 January 2010, but he was aware of the Protective Order of 5 August 2016. *See* Munyeshuli, T. 8 April 2021 pp. 8, 9.

<sup>960</sup> Munyeshuli, T. 8 April 2021 p. 61. *See also* Munyeshuli, T. 8 April 2021 pp. 64, 82.

<sup>961</sup> *See* Exhibit 5D34, paras. 3, 4; Exhibit 5D35, paras. 5-7, 10; Exhibit 5D36, paras. 10, 12, 15-17, 19; Exhibit 5D37, paras. 6, 9, 10, 13, 21, 25, 31; Exhibit 5D38, paras. 10, 11, 16; Exhibit 5D39, paras. 9, 10, 12, 13; Exhibit 5D40, paras. 11, 13, 14, 23; Exhibit 5D41, paras. 9, 11, 12; Exhibit 5D42, paras. 3, 10. *See also* Witness MT1, T. 18 March 2021 p. 69.

<sup>962</sup> Protective Order of 5 August 2016, pp. 3, 4.

<sup>963</sup> Protective Order of 5 August 2016, p. 3.

<sup>964</sup> Protective Order of 5 August 2016, p. 3.

conversation, which was conducted by a Defence investigator and the team's resource person and contained references to the individuals' anticipated contact by the Mechanism's witness protection services for a meeting with the Prosecution in the presence of the Defence.

358. I am not, however, convinced that, in so saying these names, Munyeshuli committed a crime. In reaching this conclusion, I am mindful that Turinabo was a resource person for the Defence during Ngirabatware's trial and review proceedings.<sup>966</sup> Witness Blaszczyk also recognized that the protected witnesses' identities had already been revealed by Nzabonimpa to Turinabo in the course of the preparation of the review on November 2015.<sup>967</sup> It follows from his prior work on the *Ngirabatware* case, the evidence of Witness Blaszczyk, and the tenor of Munyeshuli's conversation with Turinabo, that Turinabo undoubtedly already knew the identity of the Protected Witnesses and their status as protected witnesses at the time of the charged disclosure of protected information on 15 July 2017.

359. It follows from the Oxford English Dictionary that the plain meaning of the term "disclosure" is: "[t]he action or fact of disclosing or revealing *new or secret information*; the action of making something *openly* known; an instance of this."<sup>968</sup> I am mindful that the ICTY Appeals Chamber in the *Jović* Appeal determined that an accused person can be found in violation of protective orders where material has already been disclosed to the public by a third party and the accused simply engages in a further publication of material which is already in the public domain.<sup>969</sup> I also agree that a prior disclosure does not necessarily mean that the information is no longer protected, that court orders had been *de facto* lifted, or that their violation would not interfere with the administration of justice.<sup>970</sup>

360. However, the situation in this case is clearly distinguishable from the facts in the *Jović* case. Giving additional publicity to protected material in the public domain is plainly different from telling one individual in a private conversation information that he already knows. It 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

<sup>965</sup> Protective Order of 5 August 2016, p. 4.

<sup>966</sup> See, e.g., Witness MT1, T. 18 March 2021 pp. 23, 74, 61, 62, 70; Munyeshuli, T. 7 April 2021 pp. 64, 68; Munyeshuli, T. 8 April 2021 p. 7. See also Exhibits 1D11, 5D24, 5D27.

<sup>967</sup> See Witness Blaszczyk, T. 16 November 2020 p. 61; Exhibit 5D9, pp. 23, 24.

<sup>968</sup> Oxford English Dictionary, <https://www.oed.com/view/Entry/53779?redirectedFrom=disclosure#eid> (last accessed on 25 June 2021), definition 1.a (emphasis added).

<sup>969</sup> *Jović* Appeal Judgement, para. 30.

<sup>970</sup> See *In the Case Against Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Judgement, 19 May 2010 ("*Šešelj* Appeal Judgement of 19 May 2010"), para. 29; *Jović* Appeal Judgement, para. 30.

this information openly known.<sup>971</sup> Accordingly, in the specific circumstances of this case, I am not convinced that Munyeshuli *disclosed* protected information in violation of the relevant Protective Orders.

361. Even if Munyeshuli’s conversation can be construed as prohibited disclosure of protected information, I am not satisfied beyond reasonable doubt in the circumstances of the present case that Munyeshuli had the requisite *mens rea* for a violation of Rule 90(A)(ii) of the Rules, that is the knowledge that disclosure of a particular information is done in violation of a court order.<sup>972</sup> It is not disputed that Munyeshuli was aware that protective measures were in place and that he was able to comprehend their contents, including that information concerning the Recanting Witnesses shall not be revealed to anyone outside of the Defence team.<sup>973</sup> Nonetheless, considering the position of Turinabo, who had been an intermediary for the Ngirabatware’s Defence for many years and informed of the Recanting Witnesses’ identities since at least November 2015,<sup>974</sup> I am not convinced beyond reasonable doubt that Munyeshuli knowingly and wilfully violated the relevant court orders by mentioning the names of these witnesses to Turinabo.

362. Turning to the second aspect of Count 3, I have carefully considered the evidence and arguments related to the allegation that Munyeshuli repeatedly had prohibited indirect contact with protected witnesses through Turinabo. I am satisfied that, through his conversation with Turinabo on 15 July 2017, Munyeshuli initiated indirect contact with protected witnesses. This follows from Munyeshuli telling Turinabo that the Mechanism’s witness protection services would contact nine named individuals.<sup>975</sup> Any doubt as to whether Munyeshuli was only providing information as opposed to a prompt for action is dispelled by their exchange at the end of the conversation:

[Turinabo]: The information will be passed on tomorrow without delay to the persons concerned.

<sup>971</sup> The circumstances in this case are also different from Léonidas Nshogoza’s disclosure of the identity of a protected witness and that individual’s status as such to a third party who previously had no knowledge of the person’s status as a protected witness. *See Nshogoza* Trial Judgement, paras. 186-188.

<sup>972</sup> *See, e.g., Šešelj* Appeal Judgement of 19 May 2010, para. 26; *Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-07-91-A, Judgement, 15 March 2010 (“*Nshogoza* Appeal Judgement”), para. 77; *Jović* Appeal Judgement, para. 27. Proof of actual knowledge of an order satisfies this element and, while mere negligence in failing to ascertain whether an order had been made granting protective measures could never amount to contempt, either wilful blindness or reckless indifference to the existence of protective measures is sufficiently culpable conduct to be punishable as contempt. *See, e.g., In the Matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4, Public Redacted Version of Judgement Issued on 28 June 2012, 28 June 2012, n. 125; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 45.

<sup>973</sup> *See* Munyeshuli, T. 8 April 2021 pp. 8, 9, 36-38, 59, 60, 64. *See also* Protective Order of 5 August 2016, p. 4.

<sup>974</sup> *See* Witness MT1, T. 18 March 2021 pp. 23, 74, 61, 62, 70; Munyeshuli, T. 7 April 2021 pp. 64, 68; Munyeshuli, T. 8 April 2021 p. 7; Witness Blaszczyk, T. 16 November 2020 p. 61; Exhibits 1D11, 5D24, 5D27; Exhibit 5D9, pp. 23, 24.

<sup>975</sup> *See* Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), pp. 1-5.

[Munyeshuli]: Yes.<sup>976</sup>

363. Had initiating contact with the witnesses not been the purpose of Munyeshuli’s call, then his response of “yes” necessarily would have been a warning to Turinabo not to be in touch with, in particular, the Recanting Witnesses.<sup>977</sup> It follows from the evidence described above that Turinabo immediately called Ndagijimana and that Ndagijimana in turn called Witness ANAE/TNN30 to convey the information that the WISP would be in contact with the witnesses. I am mindful that Munyeshuli’s full message was not conveyed, namely that the witnesses had a choice of whether to attend the interview. In addition, I must note that Munyeshuli consistently dissuaded Turinabo to give any advice to the witnesses as to whether they should agree to meet the Prosecution or not,<sup>978</sup> which raises doubt regarding the Prosecution’s submission that Munyeshuli used Turinabo to send instructions to the Recanting Witnesses in preparation for interviews.<sup>979</sup> That, however, does not alter the conclusion that the *Ngirabatware* Defence team did have indirect contact with the witnesses. Munyeshuli’s indirect contact with the witnesses, prompted by his conversation with Turinabo on 15 July 2017, amounted to a violation of the relevant Protective Orders.

364. This violation, however, must be placed in its proper context. I note that, on 5 May 2016, the Appeals Chamber found that Robinson violated witness protection orders by having direct contact with Witness ANAH.<sup>980</sup> The Appeals Chamber, having considered Robinson’s explanations

<sup>976</sup> See Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), p. 5.

<sup>977</sup> Moreover, subsequent communications from 15 July 2017 to the second half of August 2017 also depict Turinabo updating Munyeshuli on Turinabo’s direct contact with the witnesses in connection with the case. These later communications do not appear, however, to have been prompted by Munyeshuli. The evidence mostly shows that Munyeshuli occasionally inquired about the progress of the organization of Prosecution’s interviews with the nine witnesses and at some point investigated the sending of the recantation letters, as required by the lead counsel. See Exhibits P1237 and P1238 (text from Turinabo to Munyeshuli on 17 July 2017) (Turinabo reporting concerns from witnesses “including the 4 new ones” as to whether they would be trained); Exhibit P936 (intercept of Munyeshuli calling Turinabo on 18 July 2017), pp. 1-3 (Munyeshuli informing Turinabo that the Defence had also requested to be allowed to meet “these people” and recommending that “[i]t must be followed closely”); Exhibits P1256 and P1257 (text from Turinabo to Munyeshuli on 26 July 2017) (Turinabo reporting that the WISP had begun “to call the 4 to ask if they have passports”); Exhibits P1269 and P1270 (text from Turinabo to Munyeshuli on 26 July 2017) (Turinabo informing that “[a]ll the 9 have been called” by the WISP); Exhibit P1351 (text from Turinabo to Munyeshuli on 4 August 2017) (Turinabo complaining that Munyeshuli does not say anything). See also Exhibits P780, P782, P975 (Turinabo giving out information he gathered regarding the issue of the sending of the letters), P944, P1202, P1206, P1244, P1245, P1246, P1238, P1301, P1302, P1379, P1399, P1400. On 10 August 2017, Turinabo indicated to Munyeshuli that he was “with the 4 guys” and that he “opted [...] to contact them and hear where they individually stand” before meeting him. See Exhibit P925 (intercept of Munyeshuli calling Turinabo on 10 August 2017), p. 1. I have further carefully reviewed other communications evidence between the Accused, some of them making reference to Munyeshuli, and I do not find that they bolster the allegation that Munyeshuli took part in the criminal scheme. See, e.g., Exhibits P336, P906, P1233, P1234, P1261, P1262, P1369, P1397, P1398.

<sup>978</sup> See, e.g., Exhibit 5D4 (intercept of Munyeshuli calling Turinabo on 15 July 2017), pp. 2, 3; Exhibit P797 (intercept of Turinabo calling Munyeshuli on 16 July 2017), p. 2; Exhibit P936 (intercept of Munyeshuli calling Turinabo on 18 July 2017), pp. 2, 3.

<sup>979</sup> See Prosecution Final Trial Brief, para. 98.

<sup>980</sup> *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Decision on Prosecution’s Motion Regarding Protected Witnesses and Ngirabatware’s Motion for Assignment of Counsel, 5 May 2016 (confidential; declassified on 25 September 2019) (“*Ngirabatware* Appeal Decision of 5 May 2016”), para. 26.

that it was inadvertent, decided that: “it is sufficient to caution Mr. Robinson to exercise greater care when seeking to contact witnesses.”<sup>981</sup> In that same decision, the Appeals Chamber also considered whether Robinson had indirect contact with the Recanting Witnesses, but decided that the Prosecution had not substantiated its claim.<sup>982</sup> In view of this situation, the Appeals Chamber declined the Prosecution’s invitation to enter a blanket prohibition on the then current *Ngirabatware* Defence team from having contact with witnesses, and stated: “[c]ontact with the witnesses may therefore take place with their consent and in accordance with other terms of the Protective Measures Decision [of 7 May 2009]”.<sup>983</sup>

365. Munyeshuli did not indirectly contact witnesses on his own initiative. Munyeshuli called Turinabo on 15 July 2017 because he was instructed to do so by Robinson, the head of the *Ngirabatware* Defence team.<sup>984</sup> Indeed, after informing Munyeshuli of the nine witnesses that the Prosecution wanted to interview and that the WISP would be contacting them, Robinson stated: “I would appreciate it if you could inform [Turinabo] and [Maniraguha] about that in advance. We should take no position on whether the witnesses consent to be interview[ed] – that is totally up to them.”<sup>985</sup> Robinson’s instruction raises clear concerns as to the intended purpose of informing Turinabo and Maniraguha in advance and at a minimum is recklessly indifferent to that natural conclusion that indirect contact with the Recanting Witnesses will occur as a result.<sup>986</sup>

366. Following the instructions of lead counsel is not a defence to a violation of witness protection orders.<sup>987</sup> In this case, however, Robinson was warned at the first instance where concerns about his improper contact with a witness was in breach of the relevant protective measures and where other concerns related to indirect contact with the Recanting Witnesses were raised by the Prosecution. I consider that Munyeshuli – who acted on Robinson’s instructions – should benefit from the same consideration and, as such, I decline to enter a conviction against Munyeshuli for having indirect contact with witnesses. Instead, I find that there has been a violation and issue him a warning to closely scrutinize applicable witness protection measures in future cases

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<sup>981</sup> *Ngirabatware* Appeal Decision of 5 May 2016, para. 26.

<sup>982</sup> *Ngirabatware* Appeal Decision of 5 May 2016, para. 25.

<sup>983</sup> *Ngirabatware* Appeal Decision of 5 May 2016, para. 27.

<sup>984</sup> Exhibit 5D10 (email exchanges between Robinson and Munyeshuli on 14 and 15 July 2017).

<sup>985</sup> Exhibit 5D10 (email exchanges between Robinson and Munyeshuli on 14 and 15 July 2017).

<sup>986</sup> The instruction also follows other instructions from Robinson asking Munyeshuli to alert Turinabo to intended WISP contact with witnesses or to follow up with him when witnesses refuse. See Exhibits 5D24 (email exchanges between Robinson and Munyeshuli on 9 August 2016) (“[The Prosecution] has asked WISP to contact the witnesses (including ANAH) to see if they consent to be interviewed. [...] Please contact [Maniraguha] and [Turinabo] if you have not done so already so they will not be surprised when WISP begins contacting the witnesses.”), 5D28, P1716. Munyeshuli confirmed that Robinson requested him to contact Fatuma in August 2017 to find out information about Witness ANAL, but he denied that the Defence team used Fatuma to contact her. See Munyeshuli, T. 8 April 2021 pp. 53-59. See also Exhibit P944.

and to adhere to his independent duty to uphold such measures even if his lead counsel, as Robinson appears to have done in this instance, instructs him to violate them.

### 3. Conclusion

367. It is true that any defiance of an order of a chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt, without any gravity threshold, and that no additional proof of harm to the administration of justice is required.<sup>988</sup> However, the individual facts of a case must matter, and the judgement and discretion of a Judge in determining what in fact amounts to an interference with the administration of justice must matter before holding an individual criminally responsible.

368. In this case, I am not convinced that Munyeshuli in fact “disclosed” the identity of any protected witnesses in his conversation with Turinabo or that his conduct demonstrates that he knowingly and wilfully violated the relevant court orders. Although Munyeshuli violated the relevant Protective Orders through indirect contact with certain Protected Witnesses, I am not convinced that this should result in criminal responsibility in the circumstances of this case. He should instead be warned.<sup>989</sup> For the foregoing reasons, Munyeshuli is not guilty under Count 3 of the *Nzabonimpa et al.* Indictment.

#### **B. Violation of Court Orders - Ngirabatware**

369. Count 3 of the *Ngirabatware* Indictment charges Ngirabatware with contempt based on knowing violation of and failure to comply with court orders.<sup>990</sup> Paragraph 27 of this indictment alleges that, on or about 15 August 2015, Ngirabatware had prohibited contact with Witness ANAE/TNN30, using digital communications from the UNDF.

370. Paragraph 28 of the same indictment alleges that, from at least November 2017 until August 2018, using digital communications from the UNDF, Ngirabatware disclosed confidential information to Nzabonimpa who, in turn, forwarded it to Turinabo and/or Ndagijimana. Specifically, Ngirabatware allegedly shared, discussed, and/or revealed: (i) on 27 November 2017,

<sup>987</sup> See, e.g., *Nshogoza* Appeal Judgement, para. 85.

<sup>988</sup> See, e.g., *Nshogoza* Appeal Judgement, para. 56; *Jović* Appeal Judgement, para. 30.

<sup>989</sup> Had I convicted Munyeshuli on his count and bearing in mind the sentencing submissions received, he would have been sentenced to time served. See, in particular, Prosecution Final Trial Brief, paras. 200-202, 205, 210-212. See also Decision of 1 October 2019, paras. 11, 12.

<sup>990</sup> See Protective Order of 7 May 2009; Protective Order of 5 August 2016; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision in Relation to Prosecution Motion for Protective Measures, 24 August 2018 (confidential) (“Protective Order of 24 August 2018”) (collectively in this section, “Protective Orders”).

the contents of two confidential Registrar's submissions<sup>991</sup> concerning Witness ANAL/TNN6; (ii) on 27 June 2018, 30 July 2018, and 2 August 2018, identifying information concerning Witness ANAL/TNN6, her sister, and Witness ANAE/TNN30's parents; (iii) on 14 August 2018, the contents of an order regarding the Prosecution's witness list;<sup>992</sup> (iv) on 27 August 2018, an attempt to independently determine the identity of a protected witness; and (v) on 30 and 31 August 2018, the identity of Prosecution witnesses scheduled to testify in the review hearing.

371. The Prosecution relies on the testimony of Witness ANAE/TNN30 and on intercepted communications between the Accused to establish that Ngirabatware used contraband devices<sup>993</sup> to contact Witness ANAE/TNN30 to personally influence her to recant<sup>994</sup> and to keep Nzabonimpa, Ndagijimana, and Turinabo directly informed, after the withdrawal of Robinson and Munyeshuli from the case, of confidential information concerning the review proceedings.<sup>995</sup> The Prosecution submits that Ngirabatware had first-hand knowledge of the operative protective measures, that he was aware of the confidential nature of the witness identities and filings he disclosed, and that his deliberate and repeated violation of court orders shows that he acted with the requisite *mens rea*.<sup>996</sup>

372. In relation to paragraph 27, Ngirabatware argues that the Prosecution has failed to discharge its burden of proof in respect of the allegation of prohibited contact with Witness ANAE/TNN30, considering that this witness lacks credibility and is not corroborated.<sup>997</sup> In addition, Ngirabatware also challenges the allegation at paragraph 28(i) of the *Ngirabatware* Indictment related to Witness ANAL/TNN6,<sup>998</sup> but otherwise does not contest the allegations of improper disclosure charged at paragraphs 28(ii) to 28(v) of the same indictment.<sup>999</sup>

<sup>991</sup> See Registrar Submission of 13 December 2016; Registrar Submission of 11 August 2017.

<sup>992</sup> *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Order Regarding Lists of Witnesses, 13 August 2018 (confidential) ("*Ngirabatware* Order of 13 August 2018").

<sup>993</sup> Prosecution Final Trial Brief, paras. 9, 24, 48, 131, 138.

<sup>994</sup> Prosecution Final Trial Brief, paras. 9, 24, 48, 160, 190, 193, *referring to, inter alia*, Witness ANAE/TNN30, T. 26 October 2020 pp. 27, 28.

<sup>995</sup> Prosecution Final Trial Brief, paras. 129, 130, 132-135, 160, 190, 194, *referring to, inter alia*, Exhibits P480, P493, P505, P506, P507, P508, P509, P511, P580, P581, P582, P583, P585, P590, P591, P593, P616, P637, P651, P665, P667, P684, P701.

<sup>996</sup> Prosecution Final Trial Brief, paras. 160, 192, 195.

<sup>997</sup> Ngirabatware Final Trial Brief, paras. 321, 323, 324, 331.

<sup>998</sup> Ngirabatware Final Trial Brief, paras. 325-331. In particular, with regard to the allegation at paragraph 28(i), Ngirabatware argues that the Prosecution relies on one text message sent by Nzabonimpa to Turinabo and that the Prosecution fails to properly attribute the code name to Witness ANAL/TNN6 and to substantiate what Nzabonimpa meant by "[Witness ANAL/TNN6's alleged code name's] stuff". See Ngirabatware Final Trial Brief, paras. 326, 327 *referring to* Exhibit P480. Ngirabatware also contends that there is no evidential basis for concluding whether Ngirabatware was served with the relevant filings at the UNDF, and at what date, and whether it was Ngirabatware who provided Nzabonimpa with protected information and not the inverse. See Ngirabatware Brief, paras. 328, 329.

<sup>999</sup> Ngirabatware Final Trial Brief, para. 322.

373. At the outset, I recall that that the Prosecution did not prove beyond reasonable doubt that Ngirabatware telephoned Witness ANAE/TNN30 in August 2015 while she was in Kampala, Uganda.<sup>1000</sup> I therefore dismiss the allegation that the Accused had prohibited contact with this protected witness on or around 15 August 2015 as charged in paragraph 27 of the *Ngirabatware* Indictment.

374. Turning to the allegations in paragraph 28 that Ngirabatware improperly disclosed confidential witness information and the content of confidential filings to his co-Accused, there is no dispute as to the existence and applicability of the relevant Protective Orders at the time of the alleged conduct. There is also no dispute that, from at least November 2017 until August 2018, Ngirabatware possessed contraband mobile telecommunications devices and had contact with Nzabonimpa from the UNDF.

375. With respect to paragraph 28(i), on 27 November 2017, the Registry disclosed to the parties in the *Ngirabatware* review proceedings confidential information regarding Fatuma's offer of a bribe to Witness ANAL/TNN6.<sup>1001</sup> On the same day, Nzabonimpa sent a message to Turinabo reporting that Ngirabatware had seen a "bad" statement from Witness ANAL/TNN6 implicating, *inter alia*, Fatuma:

Our person [Ngirabatware] has seen [Witness ANAL/TNN6's] stuff. Bad. The difficult question is how our person [Ngirabatware] will explain to Tot [Robinson] about the questions which were copied. [...] This implicates Fat [Fatuma] [...]. Can our person [Ngirabatware] honey this? He is asking for urgent advice.<sup>1002</sup>

376. There can be no doubt that Ngirabatware was privy to confidential filings in his own review hearing and that he was a source of information for Nzabonimpa's during the relevant period.<sup>1003</sup> I am also convinced that the reference's using variations of a code name of a relation of Witness ANAL/TNN6 in the text messages between Nzabonimpa and Turinabo on 27 November and 1 December 2017<sup>1004</sup> undoubtedly refer to Witness ANAL/TNN6 and to the related Registrar

<sup>1000</sup> See Section II.B.1.

<sup>1001</sup> See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Order Regarding the Status of Filings, 22 November 2017 (confidential), p. 2; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Defence Counsel's Motion to Withdraw, 30 November 2017 (public, with confidential Annex A), Annex A, para. 2. See also Registrar Submission of 13 December 2016; Registrar Submission of 11 August 2017.

<sup>1002</sup> See Exhibit P480 (text from Nzabonimpa to Turinabo on 27 November 2017). See also Exhibit P482 (text from Nzabonimpa to Turinabo on 28 November 2017) ("We will come out because she is a liar!"); Exhibit P483 (text from Nzabonimpa to Turinabo on 28 November 2017).

<sup>1003</sup> See, e.g., Exhibits P580, P590, P591, P593, P616, P637, P651, P665, P667, P684, P701.

<sup>1004</sup> Exhibit P480 (text from Nzabonimpa to Turinabo on 27 November 2017); Exhibit P493 (text from Nzabonimpa to Turinabo on 1 December 2017).



submissions, given the timing of the communications and the supporting evidence regarding the attribution of these code names.<sup>1005</sup>

377. Considering the precise timing of Nzabonimpa’s text message, which was sent in the evening on the same day the Registry lifted the *ex parte* status of the relevant submissions, as well as the express mention by Nzabonimpa that “[Ngirabatware] has seen [Witness ANAL/TNN6’s] stuff”,<sup>1006</sup> the only reasonable inference that can be drawn is that Ngirabatware at a minimum discussed with Nzabonimpa the content of the Registrar submissions regarding Witness ANAL/TNN6, with reckless indifference to the confidential status of the filing and to the protective measures contained in the Protective Orders, and most likely shared and revealed it himself. I therefore find sufficiently established the violation of court orders as charged in paragraph 28(i) of the *Ngirabatware* Indictment.

378. With regard to the remainder of the allegations pleaded in paragraphs 28(ii) to 28(v) of the *Ngirabatware* Indictment, I note that Ngirabatware does not contest them.<sup>1007</sup> I also observe that the alleged occurrences of improper disclosure are amply supported by direct evidence in the form of telecommunications between Ngirabatware and Nzabonimpa<sup>1008</sup> and, in turn, between Nzabonimpa and Turinabo and/or Ndagijimana.<sup>1009</sup>

379. Specifically, on 27 June 2018, Ngirabatware informed Nzabonimpa that the Prosecution had filed its confidential witness list for the review hearing:

Good evening. Our person [Ngirabatware] has told me that Mkeb’s [the Prosecution’s] response has arrived. Meaning those whom he/she will present. Honey.<sup>1010</sup>

380. Ngirabatware complained that the Prosecution was using pseudonyms but said he could identify Witness ANAL/TNN6 and Witness ANAE/TNN30’s father, as well as the individuals who had been summoned between July and December 2017.<sup>1011</sup> The day after, Nzabonimpa forwarded that information to Turinabo,<sup>1012</sup> who responded that Ngirabatware should identify the remaining

<sup>1005</sup> See, e.g., Witness ANAL/TNN6, T. 3 November 2020 pp. 71, 72; Witness Blaszczyk, T. 18 November 2020 p. 53; Exhibits P312, P423, P424, P505, P509, P763. See also Prosecution Final Trial Brief, Annex A.1, RP. 20935, Annex A.2, RP. 20928. See also *supra* Section II.E.

<sup>1006</sup> Exhibit P480 (text from Nzabonimpa to Turinabo on 27 November 2017).

<sup>1007</sup> Ngirabatware Final Trial Brief, paras. 322, 331.

<sup>1008</sup> See Exhibits P580, P590, P591, P593, P616, P637, P651, P665, P667, P684, P701.

<sup>1009</sup> See Exhibits P199, P582, P610, P611, P612, P613, P614, P617, P634, P666, P671, P672, P673, P768, P772.

<sup>1010</sup> Exhibit P580 (text from Ngirabatware to Nzabonimpa on 27 June 2018). See also *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Prosecution Preliminary List of Evidence and Witnesses for the Review Hearing, 26 June 2018 (confidential).

<sup>1011</sup> Exhibit P701 (email from Ngirabatware to Nzabonimpa on 27 June 2018).

<sup>1012</sup> Exhibit P671 (text from Nzabonimpa to Turinabo on 28 June 2018 at 9:30:37) (“[...] Our person [Ngirabatware] has told me that Mkeb’s [the Prosecution’s] response has arrived. Meaning those whom he/she will present.”).

witnesses<sup>1013</sup> On 30 June 2018, Ngirabatware wrote to Nzabonimpa that, according to Robinson, Witness ANAL/TNN6 and her sister were on the Prosecution witness list,<sup>1014</sup> which Nzabonimpa forwarded to Turinabo.<sup>1015</sup>

381. On 30 July 2018, Ngirabatware confirmed to Nzabonimpa that Witness ANAL/TNN6 and her sister were Prosecution witnesses and, on 2 August 2018, that Witness ANAE/TNN30's parents were potential Prosecution witnesses.<sup>1016</sup> Nzabonimpa immediately conveyed this information to Turinabo.<sup>1017</sup>

382. On 14 August 2018, Ngirabatware revealed to Nzabonimpa the contents of the Appeals Chamber's confidential order instructing the Prosecution to reduce its witness list:

[...] Yesterday, the powerful ones [Judges] said to Mkeb [the Prosecution] that the seven [it] had planned are too many and repeat themselves. They therefore ordered [it] to reduce the number. In my opinion, [it] will get three of the seven to come.<sup>1018</sup>

383. On 27 August 2018, Ngirabatware told Nzabonimpa that, on the following day, his counsel would get information about two of the Prosecution's witnesses, but that he was already "certain" that one would be Witness ANAL/TNN6.<sup>1019</sup> On 28 August 2018, the Prosecution disclosed its unredacted list of witnesses as required by the Protective Order of 24 August 2018<sup>1020</sup> and, on 30 and 31 August 2018, Ngirabatware informed Nzabonimpa, using names, their relation to persons

<sup>1013</sup> Exhibit P672 (text from Turinabo to Nzabonimpa on 28 June 2018 at 9:33:25) ("He/she should give them to you so that we can analyse them early. Has he/she given you a trial date?"); Exhibit P673 (text from Nzabonimpa to Turinabo on 28 June 2018 at 9:35:47) ("He/she has 7 ututaribwa. Our person [Ngirabatware] did not get the documents but only pseudonyms and very little information. But he thinks that it is [Witness ANAL/TNN6] and [Witness ANAE/TNN30]'s father and all those who had been summoned in July, August, October, November and December [...]"). In the specific context of this conversation and related message, the "7 ututaribwa" is undeniably a reference to the Prosecution witnesses even though this attribution was also used for the Recanting Witnesses.

<sup>1014</sup> Exhibit P651 (text from Ngirabatware to Nzabonimpa on 30 June 2018) ("According to Totox [Robinson], among the 7 ututal there is [Witness ANAL/TNN6] and his/her sister."). Once again, "7 ututal" is a reference to anticipated Prosecution witnesses in the context of this conversation.

<sup>1015</sup> Exhibit P582 (text from Nzabonimpa to Turinabo on 30 June 2018).

<sup>1016</sup> Exhibit P590 (text from Ngirabatware to Nzabonimpa on 30 July 2018); Exhibit P591 (text from Ngirabatware to Nzabonimpa on 30 July 2018) ("Up to now the Totos [Defence] don't know those who will be presented by Mkeb [the Prosecution]! [...] Except [Witness ANAL/TNN6] and her sister."); Exhibit P593 (text from Ngirabatware to Nzabonimpa on 2 August 2018) ("Mkeb [The Prosecution] continues to hide the names and statements of his witnesses. From the new stuff he has just written, I can see that one of them is either [Witness ANAE/TNN30]'s father or mother, and that 4 of them are former witnesses including, I guess [...]. Four others are new including, maybe [...] [Witness ANAE/TNN30]'s father and two others that I don't know. [...]").

<sup>1017</sup> See Exhibit P768 (text from Nzabonimpa to Turinabo on 2 August 2018).

<sup>1018</sup> Exhibit P665 (text from Ngirabatware to Nzabonimpa on 14 August 2018). See also *Ngirabatware* Order of 13 August 2018. Nzabonimpa forwarded the information to Ndagijimana and Turinabo on the same day. See Exhibit P666 (text from Nzabonimpa to Ndagijimana on 14 August 2018); Exhibit P772 (text from Nzabonimpa to Turinabo on 14 August 2018).

<sup>1019</sup> Exhibit P667 (text from Ngirabatware to Nzabonimpa on 27 August 2018).

<sup>1020</sup> See Protective Order of 24 August 2018, p. 3, para. (vii).

identified, and code names.<sup>1021</sup> Nzabonimpa forwarded the information to Ndagijimana and Turinabo.<sup>1022</sup>

384. In view of the foregoing, I have no doubt that Ngirabatware disclosed confidential information in violation of the Protective Orders instructing that the Defence shall keep confidential any information concerning the protected witnesses and their identities, that it shall not share, discuss, or reveal, directly or indirectly, such information to any person outside the Defence team, and that it shall not attempt to make an independent determination of the identity of any protected witness.<sup>1023</sup> I am further satisfied that Ngirabatware's communications with Nzabonimpa demonstrate that he was aware of the confidential status of filings and of the witnesses' information. In particular, Ngirabatware expressly acknowledged that the Prosecution was using pseudonyms to protect the witnesses identities. Moreover, Ngirabatware deliberately and repeatedly disclosed confidential information to his co-Accused over an extended period of time. Accordingly, I am convinced that Ngirabatware possessed the requisite *mens rea*, that is the knowledge that disclosure of a particular information is done in violation of a court order.<sup>1024</sup>

385. Accordingly, I find beyond reasonable doubt that Ngirabatware knowingly and wilfully disclosed confidential witness information and the contents of confidential filings related to his review proceedings, as charged at paragraph 28 of the *Ngirabatware* Indictment, and I find him guilty of Count 3 of the *Ngirabatware* Indictment.

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<sup>1021</sup> Exhibit P637 (text from Ngirabatware to Nzabonimpa on 30 August 2018) (“There were 8 people on the list, including [Witness ANAL/TNN6], his/her older sister and [Witness ANAE/TNN30] [...]”); Exhibit P684 (email from Ngirabatware to Nzabonimpa on 30 August 2018) (“The list of the 5 other beekeepers is: the younger sibling of [Witness ANAL/TNN6], [Witness TNN8], [Witness TNN3], [Witness ANAE/TNN30] and [Witness TNN7] who was born in [...]. The last one is the one who wrote a letter accusing [Turinabo]”); Exhibit P616 (text from Ngirabatware to Nzabonimpa on 31 August 2018) (“In any case, [Witness ANAL/TNN6] and [Witness ANAE/TNN30]’s mother are the only ones still on the dancing floor. [...]”).

<sup>1022</sup> Exhibit P610 (text from Nzabonimpa to Turinabo on 30 August 2018); Exhibit P634 (text from Nzabonimpa to Ndagijimana on 30 August 2018); Exhibit P611 (text from Turinabo to Nzabonimpa on 30 August 2018); Exhibit P612 (text from Nzabonimpa to Turinabo on 30 August 2018); Exhibit P613 (text from Nzabonimpa to Turinabo on 31 August 2018); Exhibit P614 (text from Nzabonimpa to Ndagijimana on 31 August 2018); Exhibit P199 (text from Nzabonimpa to Ndagijimana on 31 August 2018); Exhibit P617 (text from Nzabonimpa to Turinabo on 31 August 2018).

<sup>1023</sup> See Protective Order of 7 May 2009, pp. 6, 7, paras. (i), (ii), (vi); Protective Order of 5 August 2016, p. 5, para. (vi); Protective Order of 24 August 2018, pp. 3, 4, paras. (i), (iv), (vi).

<sup>1024</sup> See, e.g., *Šešelj* Appeal Judgement of 19 May 2010, para. 26; *Nshogoza* Appeal Judgement, para. 77; *Jović* Appeal Judgement, para. 27.

#### IV. SENTENCING

386. Having found Nzabonimpa, Ndagijimana, and Fatuma guilty of contempt under Count 1 of the *Nzabonimpa et al.* Indictment and Ngirabatware guilty of contempt under Counts 1 and 3 of the *Ngirabatware* Indictment, I must determine the appropriate sentence.

387. Rule 90(G) of the Rules provides that the maximum penalty that may be imposed on a person found to be in contempt shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 50,000 euros or the equivalent thereof, or both.

388. Pursuant to Article 22(3) of the Statute and Rule 125(B) of the Rules, I shall take into account in determining the appropriate sentence such factors as the gravity of the offence and the individual circumstances of the convicted person, as well as factors such as, *inter alia*, aggravating and mitigating circumstances. Rule 125(C) of the Rules further provides that credit shall be given to the convicted person for the period, if any, during which he or she was detained in custody pending surrender to the Mechanism or pending trial or appeal.

##### A. Submissions

389. The Prosecution requests that Ngirabatware be sentenced to seven years of imprisonment, to be served consecutively to his genocide conviction, and that Nzabonimpa be sentenced to four years of imprisonment, Ndagijimana to two and a half years of imprisonment, and Fatuma to time served.<sup>1025</sup> The Prosecution submits that these sentences reflect the gravity of the crimes, stressing that the Accused engaged in an unprecedented and elaborated interference scheme, that their conduct undermines public confidence in the Mechanism, and that deterrence should be a serious consideration in sentencing.<sup>1026</sup>

390. The Prosecution argues that the individual circumstances of the Accused aggravate their offences, and that evidence of prior good character or personal circumstances should be given no weight in mitigation.<sup>1027</sup> It underlines that Ngirabatware, already convicted for genocide, initiated and directed the criminal scheme.<sup>1028</sup> The Prosecution further stresses that Nzabonimpa and Ndagijimana abused their positions of relative authority as former *bourgmestre* and teacher and school director, respectively, by pressuring and bribing ordinary people, including Witness

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<sup>1025</sup> Prosecution Final Trial Brief, para. 213. *See also* T. 21 June 2021 p. 63.

<sup>1026</sup> Prosecution Final Trial Brief, paras. 200-205.

<sup>1027</sup> Prosecution Final Trial Brief, paras. 206-212.

<sup>1028</sup> Prosecution Final Trial Brief, para. 206.

ANAM/TNN31 who was a former student.<sup>1029</sup> Fatuma also took advantage of the power differential between her, as the widow of Ngirabatware's brother, and Witness ANAL/TNN6.<sup>1030</sup>

391. Nzabonimpa and Fatuma submit that any sentence imposed on them should not exceed the time already served in detention and that any additional term of imprisonment would be disproportionate compared to other contempt cases,<sup>1031</sup> considering, *inter alia*, that witnesses have not been threatened in the present case.<sup>1032</sup>

392. In particular, Nzabonimpa submits that his role was neither that of a leader, an instigator, nor of a beneficiary, that his involvement was based solely in the intention to assist Ngirabatware with exercising his right to review, and that he did not interact with the Recanting Witnesses, except Witness ANAN, and never coerced them.<sup>1033</sup> He stresses his impeccable behaviour when detained, after his provisional release, and when attending the proceedings,<sup>1034</sup> as well as his role in the Rwandan community,<sup>1035</sup> his family circumstances, and the consequences he already suffered from the serious allegations with which he was charged.<sup>1036</sup>

393. Fatuma submits that, amongst the co-Accused, her involvement in the crimes charged in Counts 1 and 2 of the *Nzabonimpa et al.* Indictment was the lowest, that she interfered with Witness ANAL/TNN6 only, without any violence or coercion, and that the interference attempt did not succeed.<sup>1037</sup> Fatuma also underlines mitigating circumstances pertaining to her personal situation, including her good character and behavior while in provisional release in Rwanda, her family circumstances, and the adverse impact of the period she spent in detention.<sup>1038</sup>

<sup>1029</sup> Prosecution Final Trial Brief, para. 207. The Prosecution also stresses that Nzabonimpa played a leadership role and that Ndagijimana was aware of the vulnerability of the protected witnesses. *See* Prosecution Final Trial Brief, para. 208.

<sup>1030</sup> Prosecution Final Trial Brief, para. 209.

<sup>1031</sup> Nzabonimpa Final Trial Brief, paras. 590, 619; Fatuma Final Trial Brief, para. 199; T. 21 June 2021 pp. 84-87, 92; T. 22 June 2021 p. 23. The Defence indicates that the Accused have spent 11 months and 19 days in pre-trial detention, and that a sentence to a fine or of no more than ten or eleven months is comparable to cases with similar fact patterns before, *inter alia*, the ICTR and the ICTY. *See* Nzabonimpa Final Trial Brief, paras. 589, 591, 592; Fatuma Final Trial Brief, paras. 201-208. Alternatively, Nzabonimpa requests that any further sentence of imprisonment be suspended on condition of good behaviour. *See* Nzabonimpa Final Trial Brief, para. 620; T. 21 June 2021 p. 90. Fatuma submits that sentencing her to a fine would be sufficient, and that this fine should be considered paid taking into account the time spent in detention. *See* Fatuma Final Trial Brief, para. 199. *See also* Fatuma Final Trial Brief, para. 208.

<sup>1032</sup> T. 21 June 2021 p. 85.

<sup>1033</sup> Nzabonimpa Final Trial Brief, paras. 596, 597, 599-602; T. 21 June 2021 pp. 87, 88.

<sup>1034</sup> Nzabonimpa Final Trial Brief, paras. 604-606.

<sup>1035</sup> Nzabonimpa Final Trial Brief, paras. 612-618; T. 21 June 2021 pp. 88, 91.

<sup>1036</sup> Nzabonimpa Final Trial Brief, paras. 607-611; T. 21 June 2021 pp. 89-91.

<sup>1037</sup> Fatuma Final Trial Brief, paras. 200, 212. *See also* Fatuma Final Trial Brief, para. 201.

<sup>1038</sup> Fatuma Final Trial Brief, paras. 210, 211, 213.

394. Ngirabatware, in turn, contends that a degree of leniency is required given the unusual facts of the case and his exceptional conditions of detention, and invites the Single Judge not to impose any further penalty beyond the term of imprisonment to which he is currently subject.<sup>1039</sup>

395. Ngirabatware stresses that his conduct was motivated by a desire to pursue the truth concerning his conviction for genocide and that there is no evidence that any payments were made with the intent to influence the action of witnesses.<sup>1040</sup> Ngirabatware further submits that account should be taken of his detention conditions since he has been in effective isolation for a prolonged period, being the sole detainee at the UNDF with limited contacts with prison staff and no visits from family and friends for health reasons, as well as his age, the loss of his close friend Turinabo, and other family hardships.<sup>1041</sup>

396. Ndagijimana did not make any submissions in relation to sentencing.<sup>1042</sup>

## **B. Findings**

### 1. Gravity of the Offences

397. I recall that, with regard to the crime of contempt, the most important factors to be taken into account in determining the appropriate sentence are the gravity of the contempt and the need to deter repetition and similar conduct by others.<sup>1043</sup> Contempt of the court is a grave offence, constituting a direct challenge to the integrity of the trial process, and it is necessary for general deterrence and denunciation to be given high importance in sentencing policies.<sup>1044</sup>

398. The scope of the interference in this case – repeated acts involving multiple witnesses spanning nearly three years – renders this amongst the most brazen efforts to interfere with the administration of justice before an international tribunal and underscores the gravity of the offence charged under Count 1 of the Indictments. Notwithstanding, I am mindful that it was not established that the Accused employed threats, pressure, or intimidation to secure cooperation and that the witnesses in some cases seemed all too willing to exploit Ngirabatware’s need of their

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<sup>1039</sup> Ngirabatware Final Trial Brief, paras. 332, 352. Ngirabatware does not contest that contempt is a serious offence but submits that context – in this case, motivation – should be taken into account. *See* Ngirabatware Final Trial Brief, paras. 337, 338.

<sup>1040</sup> Ngirabatware Final Trial Brief, paras. 338, 339. *See also* T. 22 June 2021 p. 71.

<sup>1041</sup> Ngirabatware Final Trial Brief, paras. 340-352, Annex B (confidential and *ex parte*), paras. 1-3; T. 22 June 2021 p. 75.

<sup>1042</sup> *See generally* Ndagijimana Final Trial Brief; T. 21 June 2021 pp. 92-116.

<sup>1043</sup> *See, e.g., Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Public Redacted Version of “Judgement” Issued on 31 October 2011, 31 October 2011, para. 77; *Nshogoza* Trial Judgement, para. 216.

<sup>1044</sup> *See, e.g., Nshogoza* Trial Judgement, para. 218, referring to *The Prosecutor v. GAA*, Case No. ICTR-07-90-R77-I, Judgement and Sentence, 4 December 2007, para. 10.

participation in the review hearing to present ever increasing demands for money in exchange for their cooperation. This does not minimize the gravity of the offence. This type of interference remains a major threat to the administration of justice and public confidence in the integrity of these proceedings. However, the fact that witnesses were not threatened or harmed is a consideration and places the gravity of the offence in its proper context.

399. Moreover, Ngirabatware played the leading role in funding and directing the operation, which he conducted through his co-Accused and others, to interfere with the proper administration of his case. His conviction for Count 1 of his Indictment reflects his involvement in conduct related to nearly every aspect of this case. In addition, he is also convicted under Count 3 of his Indictment for repeatedly violating court orders and protective measures, which is vital to the legacy of the ICTR and the success of the work of Mechanism.

400. Nzabonimpa and Ndagijimana also engaged in a wide range of serious misconduct involving multiple witnesses, but their conduct, while significant, is not as far reaching in the overall interference in the *Ngirabatware* case as that of Ngirabatware. Fatuma's role in interfering in the *Ngirabatware* case was relatively minor in comparison, as it implicated only one witness. It nonetheless remains serious, but also must be placed in context. I am mindful too that Nzabonimpa, Ndagijimana, and Fatuma in many cases were acting on behalf and at the behest of Ngirabatware.

## 2. Individual Circumstances of the Accused

401. I have further considered the Prosecution's and Defence's submissions on aggravating and mitigating circumstances for each Accused. I have wide discretion in determining what constitutes aggravating and mitigating circumstances and the weight to be accorded to such circumstances.<sup>1045</sup>

### (a) Aggravating Circumstances

402. I do not find that the Prosecution has proven any aggravating circumstances against the Accused. The nature of the interference and each Accused's relative role in it has been taken into account in considering the gravity of the offence. I likewise do not find that any of the Accused abused their position of authority in relation to interfering with the case. As noted in the Judgement, I have not found that pressure was placed to bear on the witnesses and that in many cases the witnesses sought to exploit the situation for their own financial gain.

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<sup>1045</sup> See, e.g., *Nshogoza* Trial Judgement, para. 220.

(b) Mitigating Circumstances

403. In mitigation, I have taken into consideration Nzabonimpa's, Ndagijimana's, and Fatuma's comportment since their arrest, including while released in Rwanda and during the trial proceedings, and the general evidence pertaining to their good character and positive roles in their local communities, to which I have accorded some weight. I am also mindful of the family circumstances of Nzabonimpa and Fatuma and of the personal hardship of their prolonged trial in the context of the global pandemic. I have already given due weight to the fact that it had not been established beyond reasonable doubt that any of the Accused improperly brought pressure in the form of express or implied threats or intimidation as charged. I, however, do not consider that the fact that Fatuma's interference with Witness ANAL/TNN6 failed to produce the expected results diminish or mitigate her responsibility for the purpose of sentencing.

404. Turning to Ngirabatware's mitigating circumstances. I have carefully considered submissions regarding his age, family circumstances, and hardship of his detention in the context of the global pandemic, and find that they should only be taken into account in determining the modalities of his sentence. I have, however, attached no weight to Ngirabatware's claim that his conduct was motivated by a desire to pursue the truth, considering the means he chose to do so amounted to an elaborate criminal scheme.

(c) Credit for Time Served

405. Finally, I note that Nzabonimpa, Ndagijimana, and Fatuma were arrested on 3 September 2018 on the basis of the present contempt charges<sup>1046</sup> and that each spent more than eleven months in pre-trial detention prior to their provisional release on 22 August 2019.<sup>1047</sup> They were subsequently unconditionally released on 11 September 2020 before the commencement of the trial.<sup>1048</sup> It follows that Nzabonimpa, Ndagijimana, and Fatuma are entitled to credit for time served pursuant to Rule 125(C) of the Rules.

406. Ngirabatware's detention pending the present trial has not been on the basis of the *Ngirabatware* Indictment but of the sentence of 30 years' imprisonment imposed by the Appeals Chamber after affirming his genocide convictions.<sup>1049</sup> He is therefore not entitled to credit for time served. I, however, am of the view that any custodial sentence for contempt charges shall run concurrently with the sentence that he is currently serving.

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<sup>1046</sup> T. 13 September 2018 p. 4

<sup>1047</sup> See Registrar's Submission in Relation to Provisional Release, 23 August 2019 (confidential), paras. 1, 2.



### C. Conclusion

407. In light of the above and having considered the gravity of the crimes for which Nzabonimpa, Ndagijimana, and Fatuma are convicted, as well as all relevant aggravating and mitigating circumstances, I consider that the appropriate sentence to impose on them respectively is time served.

408. Taking into account all the relevant circumstances as discussed above, including the gravity of the crimes as well as any relevant aggravating and mitigating circumstances, I sentence Ngirabatware to two years of imprisonment to be served concurrently with the sentence of 30 years of imprisonment that he is already serving.

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<sup>1048</sup> See Decision of 11 September 2020, para. 14.

<sup>1049</sup> Appeal Judgement, para. 279.

## V. DISPOSITION


409. **FOR THE FOREGOING REASONS**, pursuant to Articles 21 and 22 of the Statute and Rules 90, 122, 125, and 126 of the Rules, I, Judge Vagn Joensen, **FIND**:

(i) Anselme Nzabonimpa, Jean de Dieu Ndagijimana, and Marie Rose Fatuma **GUILTY**, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(iv) of the Rules, of Count 1 of the *Nzabonimpa et al.* Indictment for having interfered with the administration of justice, **NOT GUILTY** of Count 2 of the *Nzabonimpa et al.* Indictment (incitement to interfere with the administration of justice), and **SENTENCE** them respectively to **TIME SERVED**;

(ii) Dick Prudence Munyeshuli **NOT GUILTY** of Count 3 of the *Nzabonimpa et al.* Indictment (violation of court orders) and issue a warning to him to closely scrutinize applicable witness protection measures in future cases; and

(iii) Augustin Ngirabatware **GUILTY**, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(ii), (iv) of the Rules, of Counts 1 and 3 of the *Ngirabatware* Indictment for having interfered with the administration of justice and violated court orders, **NOT GUILTY** of Count 2 of the *Ngirabatware* Indictment (incitement to interfere with the administration of justice), and **SENTENCE** him to **TWO YEARS OF IMPRISONMENT**, which shall run concurrently with the sentence of 30 years of imprisonment that he is already serving.

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

  
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Judge Vagn Joensen  
Single Judge

Pronounced on 25 June 2021 and filed in writing on 20 September 2021 at Arusha, Tanzania.

[Seal of the Mechanism]



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