

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case Nos.: MICT-18-116-PT  
MICT-19-121-PT

Date: 10 December 2019

Original: English

**BEFORE A SINGLE JUDGE**

**Before:** Judge Vagn Joensen

**Registrar:** Mr. Olufemi Elias

**Decision of:** 10 December 2019

**PROSECUTOR**

**PROSECUTOR**

v.

v.

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

**AUGUSTIN NGIRABATWARE**

***PUBLIC***

**DECISION ON PROSECUTION MOTION FOR JOINDER OF THE  
*NGIRABATWARE AND TURINABO ET AL. CONTEMPT CASES***

**Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Rashid S. Rashid

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

**Counsel for Mr. Augustin Ngirabatware:**

Mr. David Hooper

1. I, Vagn Joensen, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the Single Judge in this case,<sup>1</sup> am seised of the Prosecution’s motion for joinder of the *Ngirabatware* and *Turinabo et al.* contempt cases, filed on 18 October 2019 pursuant to Rule 49(B) of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup> Mr. Maximilien Turinabo and Mr. Jean de Dieu Ndagijimana jointly responded on 31 October 2019,<sup>3</sup> Mr. Dick Prudence Munyeshuli, Mr. Anselme Nzabonimpa, and Ms. Marie Rose Fatuma filed responses on 4 November 2019,<sup>4</sup> and Mr. Augustin Ngirabatware filed his response on 8 November 2019.<sup>5</sup> The Prosecution filed a reply to the responses filed by Nzabonimpa and Fatuma on 12 November 2019.<sup>6</sup>

## I. BACKGROUND

2. Judge Seon Ki Park confirmed the indictment against Turinabo, Nzabonimpa, Ndagijimana, Fatuma, and Munyeshuli (“*Turinabo et al.* Accused”) on 24 August 2018 on the basis of alleged witness interference with Witnesses ANAE, ANAM, ANAN, and ANAT (“Recanting Witnesses”) as well as Witness ANAL and violations of court orders in connection with review proceedings in the case of *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R (“*Ngirabatware* review proceedings”).<sup>7</sup>

<sup>1</sup> *Prosecutor v. Maximilien Turinabo, et al.*, Case No. MICT-18-116, Order Assigning a Single Judge, 11 September 2018, p. 1. I am also the Single Judge assigned to the *Ngirabatware* contempt case. See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121-I, Order Assigning a Single Judge, 11 October 2019 (“*Ngirabatware* Order of 11 October 2019”), p. 1. References in the footnotes to these cases shall be introduced by “*Turinabo et al.*” or “*Ngirabatware*” where appropriate.

<sup>2</sup> Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 18 October 2019 (“Motion”), paras. 1, 15.

<sup>3</sup> Turinabo and Ndagijimana Response to the “Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases”, 31 October 2019 (“Turinabo and Ndagijimana Response”).

<sup>4</sup> Munyeshuli Response to Prosecution Motion for Joinder of *Ngirabatware* and *Turinabo et al.* Contempt Cases, 4 November 2019 (“Munyeshuli Response”); Nzabonimpa Defence Response to “Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases”, 4 November 2019 (confidential, with confidential Annexes A to F) (“Nzabonimpa Response”); Response from the Defence for Marie Rose Fatuma to Prosecution Motion for Joinder of Cases, 8 November 2019 (original French version filed on 4 November 2019) (“Fatuma Response”).

<sup>5</sup> Response to Prosecution Motion for Joinder of *Ngirabatware* and *Turinabo et al.* Contempt Cases, 8 November 2019 (“*Ngirabatware* Response”). I note that the *Ngirabatware* Response begins renumbering paragraphs after para. 15. In the interest of clarity, I will refer to the second paragraphs numbered “1” and “2” as “1bis” and “2bis”, and the third paragraph numbered “1” as “1ter”. See *Ngirabatware* Response, Registry pagination (“RP.”) 10925. I further recall that, on 30 October 2019, *Ngirabatware* requested an extension of time of seven days to file his response to the Motion, which I granted on 31 October 2019. See Request for Extension of Time to File Response to Prosecution Motion for Joinder of *Ngirabatware* and *Turinabo et al.* Contempt Cases, 30 October 2019.

<sup>6</sup> Motion for Leave to Reply and Reply to Nzabonimpa and Fatuma Responses to Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 12 November 2019 (confidential, with confidential Annex) (“Reply”). I find that the Reply falls within the proper scope and ambit of a reply and grant, pursuant to Rule 153(A) of the Rules, the Prosecution’s request to file the Reply, which I will consider.

<sup>7</sup> *Turinabo et al.*, Order on Confirmation of Indictment, 24 August 2018 (strictly confidential and *ex parte*; made public on 18 September 2018), pp. 1, 2; *Turinabo et al.*, Indictment, 5 June 2018 (strictly confidential; public redacted version filed on 5 September 2018). See also *Turinabo et al.*, Prosecution Notice of Compliance with Decisions Concerning the Indictment, 26 March 2019 (confidential, with confidential Annex); *Turinabo et al.*, Prosecution Notice of Compliance with Decision on Motions Challenging the Amended Indictment, 17 June 2019 (confidential, with confidential Annex A

3. Pursuant to warrants of arrest, the *Turinabo et al.* Accused were arrested in the Republic of Rwanda on 3 September 2018 and transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania on 11 September 2018.<sup>8</sup> Each pleaded not guilty to the count or counts charged against him or her during the initial appearances on 13 September 2018.<sup>9</sup> In accordance with decisions issued on 29 March 2019,<sup>10</sup> 19 June 2019,<sup>11</sup> and 29 July 2019,<sup>12</sup> all of which were affirmed on appeal,<sup>13</sup> Turinabo, Ndagijimana, Nzabonimpa, and Fatuma were provisionally released to Rwanda on 22 August 2019.<sup>14</sup> I further ordered Munyeshuli's unconditional release on 1 October 2019 and instructed him to return to the Mechanism when required.<sup>15</sup> Munyeshuli was released from custody on 2 October 2019.<sup>16</sup> On 17 October 2019, I granted a Prosecution motion to amend the Second Amended Indictment.<sup>17</sup> The Prosecution filed the third amended indictment on 21 October 2019.<sup>18</sup>

4. The *Turinabo et al.* Indictment charges Turinabo, Nzabonimpa, Ndagijimana, and Fatuma with crimes under Article 1(4)(a) of the Statute and Rules 90(A)(iv) and 90(B), and charges Turinabo and Munyeshuli with crimes under Article 1(4)(a) of the Statute and Rules 90(A)(ii) and/or 90(A)(iii) of the Rules.<sup>19</sup> It alleges that: (i) Turinabo, Nzabonimpa, Ndagijimana, and Fatuma interfered with witnesses directly or through intermediaries;<sup>20</sup> (ii) Turinabo, Nzabonimpa,

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and confidential and *ex parte* Annex B); *Turinabo et al.*, Prosecution Notice of Compliance with Further Decision on Second Amended Indictment, 11 July 2019 (public, with public Annex A and confidential Annex B).

<sup>8</sup> *Turinabo et al.*, Transcript (“T.”) 13 September 2018 p. 4.

<sup>9</sup> *Turinabo et al.*, T. 13 September 2018 pp. 24-27.

<sup>10</sup> See *Turinabo et al.*, Decision on Maximilien Turinabo’s Motion for Provisional Release, 29 March 2019 (confidential; made public on 3 July 2019) (“*Turinabo et al.* Turinabo Provisional Release Decision”); *Turinabo et al.*, Decision on Jean de Dieu Ndagijimana’s Motion for Provisional Release, 29 March 2019 (confidential; made public on 3 July 2019) (“*Turinabo et al.* Ndagijimana Provisional Release Decision”).

<sup>11</sup> *Turinabo et al.*, Decision on Anselme Nzabonimpa’s Second Motion for Provisional Release, 19 June 2019 (confidential; made public on 3 July 2019) (“*Turinabo et al.* Nzabonimpa Provisional Release Decision”).

<sup>12</sup> *Turinabo et al.*, Decision on Marie Rose Fatuma’s Second Motion for Provisional Release to Rwanda, 29 July 2019 (“*Turinabo et al.* Fatuma Provisional Release Decision”).

<sup>13</sup> *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 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).

<sup>14</sup> *Turinabo et al.*, Registrar’s Submission in Relation to Provisional Release, 23 August 2019 (confidential) (“*Turinabo et al.* Registrar’s Submission of 23 August 2019”), paras. 1, 2.

<sup>15</sup> *Turinabo et al.*, Decision on Order to Show Cause, 1 October 2019 (“*Turinabo et al.* Decision of 1 October 2019”), p. 6.

<sup>16</sup> *Turinabo et al.*, Registrar’s Submission in Relation to the “Decision on Order to Show Cause” of 1 October 2019, 8 October 2019, para. 2.

<sup>17</sup> *Turinabo et al.*, Decision on the Prosecution Motion to Amend the Indictment, 17 October 2019 (“*Turinabo et al.* Decision of 17 October 2019”), para. 5, p. 17.

<sup>18</sup> *Turinabo et al.*, Prosecution Notice of Filing Third Amended Indictment, 21 October 2019, Annex A, RP. 10450-10437 (“*Turinabo et al.* Indictment”).

<sup>19</sup> *Turinabo et al.* Indictment, RP. 10450-10437.

<sup>20</sup> *Turinabo et al.* Indictment, paras. 14, 21-26, p. 13, RP. 10447-10440, 10438.

Ndagijimana, and Fatuma incited others to commit contempt;<sup>21</sup> and (iii) Turinabo and Munyeshuli violated court orders by revealing the identities of protected witnesses, and Munyeshuli violated court orders through prohibited indirect contact with protected witnesses.<sup>22</sup>

5. On 10 October 2019, in my capacity as Duty Judge, I confirmed an indictment against Ngirabatware charging him with crimes under Article 1(4)(a) of the Statute and Rules 90(A)(ii) and/or 90(A)(iii), 90(A)(iv), and 90(B) of the Rules on the basis of witness interference with, *inter alia*, the Recanting Witnesses and Witness ANAL in connection with the *Ngirabatware* review proceedings and for violating court orders.<sup>23</sup> On 11 October 2019, I was assigned to the *Ngirabatware* contempt case as a Single Judge<sup>24</sup> and, on 17 October 2019, Ngirabatware made his initial appearance and pleaded not guilty to all charges.<sup>25</sup>

6. The Prosecution seeks to join the *Ngirabatware* and *Turinabo et al.* contempt cases, submitting that a joint trial on two separate indictments is warranted because both cases concern crimes committed in the course of the same transaction, there would be no prejudice to the *Turinabo et al.* Accused or Ngirabatware (collectively, “Accused”), and it would promote judicial economy.<sup>26</sup> Fatuma and Munyeshuli request that I deny the Motion, while Turinabo, Ndagijimana, Nzabonimpa, and Ngirabatware do not explicitly oppose the Motion and/or take no position on its merits.<sup>27</sup> In general, the Accused do not dispute the factual nexus between the two cases,<sup>28</sup> but note the potential prejudice to the right of the Accused to, *inter alia*, an expeditious trial,<sup>29</sup> and, in the case the Motion is granted, request measures to mitigate this prejudice.<sup>30</sup>

<sup>21</sup> *Turinabo et al.* Indictment, paras. 15, 27, p. 14, RP. 10447, 10440-10438.

<sup>22</sup> *Turinabo et al.* Indictment, paras. 16, 28-31, pp. 13, 14, RP. 10447, 10439-10437.

<sup>23</sup> *Ngirabatware*, Decision on Confirmation of Indictment, 10 October 2019, pp. 1, 2. *See also Ngirabatware*, Notice of Filing Indictment, 10 October 2019, Annex, RP. 18-5 (“*Ngirabatware* Indictment”).

<sup>24</sup> *Ngirabatware* Order of 11 October 2019, p. 1.

<sup>25</sup> *Ngirabatware*, T. 17 October 2019 p. 20; *Ngirabatware*, Order Scheduling Initial Appearance, 14 October 2019, p. 1.

<sup>26</sup> Motion, paras. 1, 4-15.

<sup>27</sup> Turinabo and Ndagijimana Response, paras. 1-4; Nzabonimpa Response, paras. 1, 3, 11; Fatuma Response, paras. 1, 10, p. 3; Munyeshuli Response, para. 11; Ngirabatware Response, para. 1 *iter*.

<sup>28</sup> Turinabo and Ndagijimana Response, para. 1; Nzabonimpa Response, para. 5; Fatuma Response, para. 13; Munyeshuli Response, paras. 5-10; Ngirabatware Response, para. 12.

<sup>29</sup> Turinabo and Ndagijimana Response, paras. 1, 2, 4; Nzabonimpa Response, paras. 2, 4, 5; Fatuma Response, paras. 1-7; Munyeshuli Response, paras. 5-10; Ngirabatware Response, paras. 14, 15.

<sup>30</sup> Turinabo and Ndagijimana Response, para. 3; Nzabonimpa Response, paras. 2, 5-12; Fatuma Response, para. 13, pp. 3, 4; Ngirabatware Response, paras. 1 *bis*, 1 *iter*. *See also Reply*, paras. 3-7.

## II. DISCUSSION

### A. Motion for Joinder

7. Pursuant to Rule 49(B) of the Rules, persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried. Whether the joinder of cases is appropriate depends upon the factual allegations contained in the indictments and related submissions.<sup>31</sup> In accordance with Rule 97 of the Rules, it is also appropriate to consider and weigh the following factors: (i) protection of the fair trial rights of the accused pursuant to Article 19 of the Statute; (ii) avoidance of any conflict of interest that might cause serious prejudice to an accused; and (iii) protection of the interests of justice.<sup>32</sup>

8. In assessing these considerations below, I will first examine whether the crimes alleged in the two indictments form part of the same transaction before turning to whether joinder would be consistent with the fair trial rights of the Accused or involve a conflict of interest resulting in prejudice. Finally, I will consider whether joinder would ultimately serve the interests of justice.

#### 1. “Same Transaction” Requirement

9. The Prosecution contends that a joint trial is warranted because the two cases concern crimes committed in the course of the same transaction, namely a criminal scheme to overturn Ngirabatware’s genocide convictions in the context of the *Ngirabatware* review proceedings.<sup>33</sup> The Prosecution stresses that the charges in the *Turinabo et al.* Indictment and *Ngirabatware* Indictment mirror each other and concern acts carried out by the same Accused, targeting the same protected witnesses, and taking place during the same temporal period.<sup>34</sup> None of the Accused dispute that the acts and conduct alleged in the two indictments were carried out in the course of the same transaction.<sup>35</sup>

10. I recall that Rule 49(C) of the Rules defines the term “transaction” as a “number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.” The events constituting the “same

<sup>31</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015 (“*Nyiramasuhuko et al.* Appeal Judgement”), para. 69 and references cited therein.

<sup>32</sup> *Nyiramasuhuko et al.* Appeal Judgement, para. 71 and references cited therein.

<sup>33</sup> Motion, paras. 1, 4-9.

<sup>34</sup> Motion, paras. 7-9.

<sup>35</sup> *Turinabo* and *Ndagijimana* expressly acknowledge that the factual predicate for *Ngirabatware* contempt case is the same as the *Turinabo et al.* contempt case. See *Turinabo* and *Ndagijimana* Response, para. 1. *Nzabonimpa* takes no position on the merits of the application. See *Nzabonimpa* Response, paras. 1, 3, 5, 11. See also *Fatuma* Response, para. 13; *Munyeshuli* Response, paras. 5-10; *Ngirabatware* Response, para. 12.

transaction” need not take place at the same time or be committed together.<sup>36</sup>

11. I find that the factual allegations contained in the *Turinabo et al.* Indictment and the *Ngirabatware* Indictment reflect acts committed as part of a common scheme, strategy, or plan, and that a comparison of the factual allegations contained in the two indictments reveals significant overlap. Specifically, the allegations contained in the *Ngirabatware* Indictment mirror those in the *Turinabo et al.* Indictment according to which, over the exact same time period: (i) Ngirabatware acted through Turinabo, Nzabonimpa, Ndagijimana, and Fatuma, who in turn acted directly or through intermediaries, to interfere with the Recanting Witnesses and Witness ANAL;<sup>37</sup> (ii) Ngirabatware incited Turinabo, Nzabonimpa, Ndagijimana and/or Fatuma, who in turn incited intermediaries, to interfere with the Recanting Witnesses and Witness ANAL;<sup>38</sup> and (iii) Ngirabatware, Munyeshuli, and Turinabo violated court orders by revealing the identities of protected witnesses from Ngirabatware’s proceedings and/or had prohibited contact with protected witnesses.<sup>39</sup>

12. In light of the foregoing, I am satisfied that the “same transaction” requirement for joinder under Rule 49 of the Rules is met.

## 2. Fair Trial Rights and Potential Conflict of Interests

13. The Prosecution submits that joinder would preserve the Accused’s right to a fair and expeditious trial, since both cases are at the pre-trial stage without set trial dates,<sup>40</sup> and that the unconditional release of Munyeshuli, the provisional release of the remaining *Turinabo et al.* Accused, and Ngirabatware’s detention on the basis of convictions for core crimes would mitigate any prejudice caused by anticipated delay.<sup>41</sup> It further submits that the Accused’s right to adequate time and facilities for the preparation of the defence would also not be violated, as the trial date may be set after accounting for the time necessary for Defence preparations.<sup>42</sup> Finally, the Prosecution argues that there are no “extraordinary circumstances” establishing a conflict of interest

<sup>36</sup> *Nyiramasuhuko et al.* Appeal Judgement, para. 69 and references cited therein.

<sup>37</sup> *Ngirabatware* Indictment, paras. 17, 20-24, p. 13, RP. 15-8, 6; *Turinabo et al.* Indictment, paras. 14, 21-26, p. 13, RP. 10447-10440, 10438.

<sup>38</sup> *Ngirabatware* Indictment, paras. 18, 25, p. 13, RP. 14, 8, 6; *Turinabo et al.* Indictment, paras. 15, 27, p. 13, RP. 10447, 10440-10438.

<sup>39</sup> *Ngirabatware* Indictment, paras. 19, 26-28, p. 14, RP. 14, 8-5; *Turinabo et al.* Indictment, paras. 16, 28-31, pp. 13, 14, RP. 10447, 10439-10437.

<sup>40</sup> Motion, para. 13.

<sup>41</sup> Motion, para. 14.

<sup>42</sup> Motion, para. 13.

between the Accused.<sup>43</sup>

14. The Accused respond that the joinder of the contempt cases at this stage may impact their rights to an expeditious trial and to be tried without undue delay, as it will necessarily lengthen the pre-trial proceedings and delay the trial proceedings.<sup>44</sup> Fatuma and Munyeshuli add that the prejudice against their right to an expeditious trial is not mitigated by their provisional or unconditional release.<sup>45</sup> They emphasize that the *Turinabo et al.* case is at a more advanced stage than the *Ngirabatware* case, and that their fair trial rights may be impacted by the additional time required by *Ngirabatware*.<sup>46</sup> Turinabo, Nzabonimpa, Ndagijimana, Fatuma, and *Ngirabatware* also stress the belated nature of the Motion and the Prosecution's failure to provide notice of its intent to request the joinder.<sup>47</sup> Notwithstanding, Turinabo, Ndagijimana, Nzabonimpa, and Fatuma express concern regarding the availability of adequate resources,<sup>48</sup> and *Ngirabatware* regarding the availability of adequate time<sup>49</sup> for the preparation of their respective defences.

15. Finally, Turinabo, Ndagijimana, and *Ngirabatware* further allege a potential conflict of interests and prejudice if one trial is held on two separate indictments.<sup>50</sup> *Ngirabatware* submits that a conflict causing prejudice may exist because the *Turinabo et al.* Accused have an advantage considering their "significant head-start" in preparing their defences.<sup>51</sup>

16. The Prosecution replies that it did not fail to provide notice of its intent to join both contempt cases, and that *Ngirabatware*'s indictment was not untimely.<sup>52</sup>

17. The *Turinabo et al.* Accused emphasize the length of the pre-trial phase of this case as a

<sup>43</sup> Motion, para. 12. The Prosecution refers to case law according to which co-accused may testify against one another in a joint trial without causing a conflict of interest resulting in serious prejudice. See Motion, para. 12, nn. 30, 31.

<sup>44</sup> Turinabo and Ndagijimana Response, paras. 1, 4; Nzabonimpa Response, paras. 4, 5; Fatuma Response, paras. 1-4, 7, 8; Munyeshuli Response, paras. 5-10. See also *Ngirabatware* Response, paras. 13-1*bis*. Nzabonimpa stresses the public stigma and scrutiny he is subject to, eroding his right to the presumption of innocence, from facing criminal charges at the pre-trial stage for over thirteen months. See Nzabonimpa Response, paras. 4, 5. Munyeshuli further notes the relatively limited nature of the allegations against him, which in particular may render the prolongation of proceedings in violation of his rights to a fair and expeditious trial and to be tried without undue delay. See Munyeshuli Response, paras. 6, 7.

<sup>45</sup> Fatuma Response, paras. 8, 9; Munyeshuli Response, para. 10.

<sup>46</sup> Fatuma Response, para. 2; Munyeshuli Response, paras. 5, 8. See also Nzabonimpa Response, para. 5; *Ngirabatware* Response, paras. 13, 14.

<sup>47</sup> See Turinabo and Ndagijimana Response, para. 1; Nzabonimpa Response, paras. 2, 4; Fatuma Response, paras. 5, 6; *Ngirabatware* Response, paras. 13, 14.

<sup>48</sup> Turinabo and Ndagijimana Response, paras. 3, 4; Nzabonimpa Response, para. 10; Fatuma Response, p. 3.

<sup>49</sup> *Ngirabatware* Response, paras. 1*bis*, 1*ter*. *Ngirabatware* argues that he will need until August 2020 to adequately prepare his defence. See *Ngirabatware* Response, para. 1*bis*.

<sup>50</sup> Turinabo and Ndagijimana Response, para. 2; *Ngirabatware* Response, para. 2*bis*. Fatuma, although not explicitly objecting to proceeding in a joint trial with two separate indictments, submits that the Prosecution does not provide any reasoning to support such request. See Fatuma Response, para. 12.

<sup>51</sup> *Ngirabatware* Response, paras. 13, 1*bis*.

<sup>52</sup> Reply, paras. 2, 8.

principal basis for potential prejudice and violation of their fundamental rights.<sup>53</sup> However, I observe that the allegations in the *Turinabo et al.* Indictment are of a scope and complexity that is unprecedented for a contempt case before the *ad hoc* Tribunals. The litigation in the *Turinabo et al.* case has involved novel issues such as referral of a contempt case to Rwanda,<sup>54</sup> jurisdiction pertaining to particular crimes or modes of liability,<sup>55</sup> privilege,<sup>56</sup> the statutory authority of the Prosecution to investigate allegations of contempt,<sup>57</sup> and rights of detainees against search and seizure.<sup>58</sup> The complexity of the litigation has been matched by its breadth – I have issued more than 125 decisions and orders in a little over a year. In this context, the *Turinabo et al.* case is proceeding fairly and expeditiously in view of the requirements under Articles 18(1) and 19(4)(c) of the Statute. Furthermore, the *Turinabo et al.* Accused, aside from Munyeshuli, have all asserted that additional time and resources are needed in view of the recent amendment of their indictment.<sup>59</sup> Joinder with the *Ngirabatware* case, which will be explained in greater detail below, will not affect in any material respect the requirement that this case proceed fairly and expeditiously or the *Turinabo et al.* Accused’s right to a trial without undue delay.

18. Furthermore, there is significant overlap between the *Turinabo et al.* Indictment and the *Ngirabatware* Indictment and the Prosecution asserts that it will present much of the same evidence to prove allegations in both, including evidence extracted from electronic devices seized from the Accused and testimony from the same witnesses.<sup>60</sup> Therefore, the Prosecution case that would be presented during a joint proceeding against the *Turinabo et al.* Accused and *Ngirabatware* will not be materially broader or more complex than the case against the *Turinabo et al.* Accused, were they to be tried without *Ngirabatware*.

19. I am, of course, mindful that *Ngirabatware*’s counsel for his contempt proceedings was

<sup>53</sup> See *Turinabo and Ndagijimana Response*, para. 4; *Munyeshuli Response*, paras. 5, 9, 10; *Fatuma Response*, paras. 3, 7, 8; *Nzabonimpa Response*, paras. 4, 5.

<sup>54</sup> *Turinabo et al.*, Decision on Suitability of Referral of the Case, 7 December 2018.

<sup>55</sup> *Turinabo et al.*, Decision on Challenges to Jurisdiction, 12 March 2019 (confidential; public and redacted version filed on the same day).

<sup>56</sup> See, e.g., *Turinabo et al.*, Decision in Relation to Material Seized from Dick Prudence Munyeshuli, 18 February 2019.

<sup>57</sup> *Turinabo et al.*, Decision on Joint Motion to Quash Indictment or Enter Stay of Proceedings, 13 March 2019 (confidential; public and redacted version filed on the same day).

<sup>58</sup> *Prosecutor v. Maximilien Turinabo et al. and Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT & MICT-12-29-R, Decision on the 7 February 2019 Search at the United Nations Detention Facility, 5 July 2019.

<sup>59</sup> *Turinabo et al.*, T. 2 October 2019 pp. 7, 9, 11, 13; *Turinabo et al.*, Marie Rose Fatuma Defence Response to Prosecution Motion for Leave to Amend the Indictment, 17 September 2019 (confidential; original French version filed on 9 September 2019), para. 25; *Turinabo et al.*, Ndagijimana Response to “Prosecution Motion for Leave to Amend the Indictment”, 9 September 2019 (confidential), para. 23; *Turinabo et al.*, Nzabonimpa Defence Response to “Prosecution Motion for Leave to Amend the Indictment”, 9 September 2019 (confidential with confidential Annexes A-C), para. 36; *Turinabo et al.*, Turinabo Response to the “Prosecution Motion for Leave to Amend the Indictment”, 9 September 2019 (confidential), paras. 13, 15.

<sup>60</sup> Motion, paras. 1, 10, 11.



assigned on 23 October 2019.<sup>61</sup> However, Ngirabatware has also maintained on a *pro bono* basis his prior counsel during the review proceedings which covered similar issues.<sup>62</sup> In this respect, and to ensure Ngirabatware's right to adequate time and facilities to prepare his defence, his new counsel in the contempt proceedings will need some time to familiarize himself with the case and an appropriate date for trial will be considered and decided following a further consultation with the parties bearing in mind Ngirabatware's need to prepare his defence.

20. However, and to be clear, Ngirabatware's present request for a trial start date in August 2020<sup>63</sup> is not justified nor necessary to protect his fair trial rights and it is anticipated that the trial will commence within months of the time that had been anticipated for the commencement of the *Turinabo et al.* trial prior to the filing of the Motion.<sup>64</sup> Specifically, while Ngirabatware has only recently been indicted, he has been granted *inter partes* access to the entire *Turinabo et al.* case file – public and confidential – since the end of February 2019.<sup>65</sup> Since as early as July 2019, and while assisted by counsel during his review proceedings, who continues to assist him, he has been aware that the Prosecution was in possession of information suggesting his involvement with certain *Turinabo et al.* Accused in acts that may amount to contempt in violation of Article 1(4)(a) of the Statute.<sup>66</sup> His review proceedings in September 2019, while separate from the *Turinabo et al.* case, canvassed fundamental issues related to witness interference that feature in his indictment and the *Turinabo et al.* Indictment.<sup>67</sup> Under the circumstances, the suggestion that the *Turinabo et al.* Accused have had a “significant head-start” in preparing their defences is misleading. Ngirabatware, with the assistance of his review counsel who continues to represent him, has been receiving and processing information and evidence central to the contempt charges against him for months and he and his present counsel in the contempt case are very well placed to rapidly prepare his defence now that he has been indicted. Nothing in Ngirabatware's submissions reflects that his counsel in his contempt case has been unable to consult with his *pro bono* counsel or receive from her necessary information and material vital to Ngirabatware's defence, which he should have in

<sup>61</sup> See *Ngirabatware*, Decision, 23 October 2019.

<sup>62</sup> See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Registrar's Notice of Recognition of *Pro Bono* Counsel, 18 October 2019, paras. 1, 2.

<sup>63</sup> See *Ngirabatware* Response, para. 1*bis*.

<sup>64</sup> See *Turinabo et al.*, T. 2 October 2019 p. 6.

<sup>65</sup> *Prosecutor v. Maximilien Turinabo et al.* and *Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT & MICT-12-29-R, Decision on Requests for Access, 26 February 2019 (confidential; made public on 27 November 2019), pp. 2, 3.

<sup>66</sup> See *Prosecutor v. Maximilien Turinabo et al.* and *Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT & MICT-12-29-R, Decision on the Prosecution's Urgent Request to Stay the Decision of 5 July 2019, 9 July 2019, pp. 1, 2.

<sup>67</sup> *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Review Judgement, paras. 17, 30, 31, 33, 34, 38, 39, 51-55, 58, 59.

view of the Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism.<sup>68</sup>

21. In view of the above, and although the commencement of a joint trial may result in some pre-trial delay that may not have arisen were the *Turinabo et al.* Accused to be tried alone, I do not find that any such delays, amounting to possibly a few months, will impact on the requirement for a fair and expeditious trial, violate the *Turinabo et al.* Accused's right to a trial without undue delay, nor will a joint trial infringe Ngirabatware's right to adequate time and facilities to prepare his defence.<sup>69</sup> Pre-trial deadlines and the commencement of trial will be determined with due consideration of each defence team's trial readiness and their statutory rights.

22. In addition to the impact joinder may have on the pre-trial phase of this case, I am also mindful that joinder of the *Ngirabatware* contempt case to the *Turinabo et al.* contempt case may result in perhaps a slightly longer trial for the *Turinabo et al.* Accused.<sup>70</sup> A new defendant may require additional time for cross-examination of Prosecution evidence and the presentation of additional evidence during the Defence phase of proceedings. However, in light of the considerable overlap of the allegations in the two indictments as well as the overlap in the evidence that is intended to support the allegations, none of the Accused has demonstrated that joinder will result in *undue* delay.<sup>71</sup> I still envision, as has been indicated in a prior status conference, that the Prosecution case will take no longer than four to six weeks absent unforeseen circumstances.<sup>72</sup>

23. Furthermore, it is worth emphasizing that the provisional and unconditional release of the

<sup>68</sup> Cf. Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism (MICT/6), 14 November 2012, Article 9(D) ("Upon termination or withdrawal of representation, counsel shall take steps to the extent reasonably practicable to protect the client's interests, such as [...] surrendering papers and property to which the client or the Mechanism is entitled").

<sup>69</sup> See *Prosecutor v. Mićo Stanišić and Prosecutor v. Stojan Župljanin*, Case Nos. IT-04-79-PT & IT-99-36/2-PT, Decision on Prosecution's Motion for Joinder and for Leave to Consolidate and Amend Indictments, 23 September 2009 ("*Stanišić and Župljanin* Decision of 23 September 2009"), para. 32 ("Unfair or unjust advancement of a trial is an issue not limited to joinder and may arise in any case. [...] This is a matter of pre-trial management").

<sup>70</sup> Ngirabatware does not submit that joinder of his case will result in undue delay in his proceedings nor is there any basis to believe this. Indeed, given the Mechanism's limited financial resources and access to only one court room at the Arusha branch, it is unlikely that Ngirabatware's case would proceed faster were he tried alone. See *Nyiramasuhuko et al.* Appeal Judgement, Dissenting Opinion and Declaration of Judge Khan, n. 93 ("[W]here defendants who *could be* tried jointly are tried separately, the separate proceedings would require either: (i) more court space and additional judges to hear the separate proceedings; (ii) one bench to hear both cases and splitting the court time for both so that each may proceed at the same time; or (iii) one bench hear both proceedings consecutively, with one defendant waiting for his case to start after the close of the first defendant's case. Thus, the last scenario validates the concern that 'further delay would result as it is not obvious that his separate trial could commence at the same time as this joint trial.'") (citation omitted).

<sup>71</sup> Cf. *Nyiramasuhuko et al.* Appeal Judgement, para. 108 ("[A] joint trial might last longer than that of a single accused [and] not necessarily encroach the co-accused's right to be tried without undue delay.").

<sup>72</sup> *Turinabo et al.*, T. 4 June 2019 p. 6.

*Turinabo et al.* Accused nearly eliminates a main area of prejudice that may stem from any delay.<sup>73</sup> In relation to *Turinabo*, *Ndagijimana*, *Nzabonimpa*, and *Fatuma*, their provisional release was granted rapidly upon their demonstration of the requirements of Rule 68(B) of the Rules.<sup>74</sup> The conditions of their provisional release allow for an extraordinary level of freedom when compared with similarly situated provisionally released contempt defendants.<sup>75</sup> Furthermore, great care has been taken to advance their proceedings in a manner that has avoided the need to re-arrest the provisionally released *Turinabo et al.* Accused and further protect their liberty interests and their presumption of innocence.<sup>76</sup> Finally, *Munyeshuli* was unconditionally released, with no restrictions except to appear before the Mechanism when required.<sup>77</sup> Moreover, none of the *Turinabo et al.* Accused who asserts that prejudice will result from foreseeable delays resulting from joinder has substantiated such claims.<sup>78</sup> Foreseeable delays resulting from joinder under the circumstances of this case are neither prejudicial nor will they result in violations of the rights to be tried without

<sup>73</sup> *Prosecutor v. Ante Gotovina and Prosecutor v. Ivan Čermak and Mladen Markač*, Case Nos. IT-01-45-AR73.1, IT-03-73-AR73.1, & IT-03-73-AR73.2, Decision on Interlocutory Appeals Against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006 ("*Gotovina and Čermak and Markač* Decision of 25 October 2006"), para. 41.

<sup>74</sup> *Turinabo et al.* Registrar's Submission of 23 August 2019, paras. 1, 2. See also *Turinabo et al.* *Fatuma* Provisional Release Decision, pp. 1, 4, 5; *Turinabo et al.* *Nzabonimpa* Provisional Release Decision, paras. 1, 19, 22; *Turinabo et al.* *Turinabo* Provisional Release Decision, paras. 1, 16, 18; *Turinabo et al.* *Ndagijimana* Provisional Release Decision, paras. 1, 17, 19. See also *Turinabo et al.*, Decision on Dick Prudence *Munyeshuli*'s Motion for Severance and Separate Trial, 3 June 2019 (confidential), n. 37.

<sup>75</sup> Compare *Turinabo et al.* *Fatuma* Provisional Release Decision, pp. 5-7 and *Turinabo et al.* *Nzabonimpa* Provisional Release Decision, pp. 10-12 and *Turinabo et al.* *Turinabo* Provisional Release Decision, pp. 7-10 and *Turinabo et al.* *Ndagijimana* Provisional Release Decision, pp. 8-11 and *Turinabo et al.*, Decision on Requests Related to Provisional Release, 14 October 2019 ("*Turinabo et al.* Decision of 14 October 2019"), p. 2 with *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2-A, Decision on Jelena Rašić's Urgent Motion for Provisional Release Pursuant to Rule 65(I), 4 April 2012, pp. 6, 7 (requiring Rašić to remain within the municipality of Belgrade, and to report twice a week to the Belgrade police station) and *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Decision on Astrit Haraqija's Request to Vary Condition of Provisional Release, 7 October 2008, p. 3 (allowing Haraqija to leave his place of residence every Saturday to visit his parents).

<sup>76</sup> The provisionally released *Turinabo et al.* Accused were notified and availed themselves of their right to waive being re-arrested and appearing in Arusha for the latest status conference. Notwithstanding, logistical arrangements were made to allow them to voluntarily attend and follow status conference from Kigali while remaining on provisional release. See *Turinabo et al.*, T. 2 October 2019 p. 1. In addition, I have instructed the Registrar that the monitoring of *Nzabonimpa*'s and *Fatuma*'s provisional release does not require them to travel to Kigali but may be done through phone calls. See *Turinabo et al.* Decision of 14 October 2019, p. 2. Furthermore, *Turinabo*, *Nzabonimpa*, and *Ndagijimana*, in order to avoid the termination of their provisional release, availed themselves of the option I provided, *proprio motu*, to enter written pleas to the *Turinabo et al.* Indictment. See *Turinabo et al.* Decision of 17 October 2019, para. 36, p. 17. See also *Turinabo et al.*, Notification of [Mr.] Anselme *Nzabonimpa*'s Written Plea in Relation to the Third Amended Indictment, 28 October 2019 (corrigendum filed on 4 November 2019); *Turinabo et al.*, Maximilien *Turinabo*'s Written Plea Further to "Decision on the Prosecution Motion to Amend the Indictment", 1 November 2019; *Turinabo et al.*, Notice of Filing of [Mr.] Jean de Dieu *Ndagijimana*'s Written Plea in Relation to the Third Amended Indictment, 4 November 2019.

<sup>77</sup> *Turinabo et al.* Decision of 1 October 2019, p. 6.

<sup>78</sup> I note *Nzabonimpa*'s submission concerning the public stigma and scrutiny that he is subject to, eroding his right to the presumption of innocence, from facing criminal charges at the pre-trial stage for over thirteen months. See *Nzabonimpa* Response, paras. 4, 5. This claim is not substantiated. *Fatuma* complains about the "requirement to comply with the residency condition and the inability to keep her passport and to travel." *Fatuma* Response, para. 9. However, *Fatuma* may apply to change her residence in Rwanda should she desire and the only known travel that she has requested has been in relation to a funeral in Rwanda, which was allowed under the terms of her provisional release.

undue delay or to be presumed innocent.<sup>79</sup>

24. Turning to potential conflicts of interest, I recall that when a conflict of interest is alleged, the burden rests on the accused to demonstrate its existence and the fact that it might cause the accused serious prejudice.<sup>80</sup> In this context, none of the Accused has demonstrated how proceeding in a joint trial on the basis of two indictments would be prejudicial. The joinder of cases with two separate indictments is neither unusual nor prejudicial. In joint trials with more than one indictment, each accused shall be accorded the same rights as if he or she were being tried separately and the Prosecution remains under an obligation to unambiguously plead the material facts underpinning the charges against each accused.<sup>81</sup> I also, and for the reasons explained above, do not find that Ngirabatware's argument that prejudice may arise from the "head-start" that the *Turinabo et al.* Accused have had in their defence preparations reflects a possible conflict of interest that may result in serious prejudice to him or any of the other Accused.<sup>82</sup>

25. In light of the above, I find that none of the Accused has shown joinder will deny them the rights required for a fair trial or that it may result in a conflict of interest that might cause serious prejudice to any of them. Furthermore, the Accused may continue to seek remedies allowed for under the Statute or the Rules to protect their fundamental rights in the event a conflict of interest arises causing serious prejudice.

### 3. Interests of Justice

26. The Prosecution submits that joinder would avoid the duplication of evidence because it intends to present much of the same evidence to prove allegations in both indictments, including evidence extracted from electronic devices seized from the Accused, and testimony from the same witnesses.<sup>83</sup> The Prosecution further submits that joinder would promote judicial economy,

<sup>79</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decide upon Evidence Tendered Pursuant to Rule 92 bis, 1 July 2010, para. 20 (Rule 97(A) of the Rules does not bar "in abstracto any difference of treatment between accused in a joint trial and those in separate trials [...] and] does not prohibit a Trial Chamber from taking into account a proper balance among all the co-accused in managing the trial proceedings of a multiple accused case, insofar as such a consideration does not result in prejudice to one or more co-accused."). Furthermore, I have previously rejected the contention that an Accused's right under Article 19(4)(a) of the Statute has been violated by the Prosecution's prior failure to promptly notify the Accused of its intention to seek the amendments that have been accepted in the *Turinabo et al.* Indictment. See *Turinabo et al.* Decision of 17 October 2019, para. 20, n. 63. This same rationale applies to contentions that this right under this article of the Statute may be violated based on the Prosecution's failure to provide advance notice of its intention to join the *Ngirabatware* contempt case with the *Turinabo et al.* contempt case. See Nzabonimpa, para. 5; Fatuma Response, paras. 5, 6.

<sup>80</sup> *Stanišić and Župljanin* Decision of 23 September 2009, para. 38.

<sup>81</sup> *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006, paras. 60, 61.

<sup>82</sup> See *supra* para. 20.

<sup>83</sup> Motion, paras. 1, 10, 11.

minimize hardship to witnesses, as they will not have to appear twice before the Mechanism, and ensure consistency in the verdicts.<sup>84</sup>

27. The Accused do not dispute that much of the same evidence will be used.<sup>85</sup> Rather, Turinabo and Ndagijimana respond that judicial economy must be balanced against the prejudice to the Accused's fair trial rights and need for additional resources.<sup>86</sup> Munyeshuli and Fatuma respond that joinder will result in delays in the pre-trial and trial proceedings and thus likely not promote judicial economy.<sup>87</sup>

28. I recall that, when considering whether joinder is in the interests of justice, I may consider the following factors: (i) avoiding the duplication of evidence; (ii) promoting judicial economy; (iii) minimizing hardship to witnesses and increasing the likelihood that they will be available to give evidence; and (iv) ensuring consistency of verdicts.<sup>88</sup> In the present case, I note that, according to the Prosecution's submission, much of the evidence it intends to present is the same in the two contempt cases, including the testimony of the same witnesses.<sup>89</sup> I find, therefore, that joinder would both avoid the duplication of evidence and minimize hardship to witnesses, who would likely otherwise have to appear twice to testify. Furthermore, judicial economy resulting from joinder is to be determined on the basis of judicial resources that would be expended if the cases proceeded as separate trials.<sup>90</sup> Given the significant overlap between the cases and extensive logistical and financial resources that would need to be duplicated should the cases proceed separately, I find that joinder would result in judicial economy notwithstanding foreseeable delays resulting from a joint trial. As noted above, I have not found such foreseeable delays to be prejudicial or considered that they would violate any of the Accused's fundamental rights.

#### 4. Conclusion

29. I find that the "same transaction" test is satisfied and that the discretionary factors weigh in favour of granting the Motion for joinder. Joinder will not result in prejudice or violations of the statutory rights of the Accused, or a conflict of interest causing serious prejudice, and it is in the interests of justice. Therefore, I will order the joinder of the *Turinabo et al.* and *Ngirabatware* contempt cases on the bases of their respective indictments.

<sup>84</sup> Motion, paras. 1, 11.

<sup>85</sup> Nzabonimpa Response, para. 6; Fatuma Response, para. 6.

<sup>86</sup> Turinabo and Ndagijimana Response, para. 4.

<sup>87</sup> Munyeshuli Response, para. 6; Fatuma Response, para. 7.

<sup>88</sup> *Nyiramasuhuko et al.* Appeal Judgement, para. 71 and references cited therein.

<sup>89</sup> See Motion, paras. 1, 10, 11.

<sup>90</sup> See *Gotovina* and *Čermak and Markač* Decision of 25 October 2006, para. 44.

## **B. Relief Requested to Mitigate Prejudice**

30. In the case that the Motion is granted, Turinabo, Ndagijimana, Fatuma, and Nzabonimpa express concern regarding the availability of resources,<sup>91</sup> and Ngirabatware about the availability of adequate time<sup>92</sup> for the preparation of the defence. Nzabonimpa and Fatuma request access to the indictment supporting materials related to the *Ngirabatware* contempt case.<sup>93</sup> Nzabonimpa and Fatuma also note concern in relation to the prospect of two separate work plans under Rule 70(D) of the Rules, and to the ability of the Defence in the *Turinabo et al.* case to meet the ordered deadlines for their filings.<sup>94</sup> Nzabonimpa requests an order for the Prosecution to comply with fixed disclosure deadlines<sup>95</sup> and to facilitate interviews with Prosecution witnesses.<sup>96</sup>

31. The Prosecution requests that a joint trial proceed with a joint pre-trial work plan, submits that the additional time for preparation of the defence should be considered when setting a trial start date, and does not object to providing the *Ngirabatware* Indictment supporting materials to the *Turinabo et al.* Accused.<sup>97</sup> The Prosecution further replies that it is already facilitating Defence interviews, and that fixed deadlines in relation to disclosure obligations are inappropriate because they could not account for the varying complexity of disclosure requests.<sup>98</sup>

32. I observe that the *Turinabo et al.* Accused have withdrawn the requests which were pending before the President in relation to remuneration of counsel,<sup>99</sup> and that concerns as to adequate facilities for the preparation of their defences on this basis are presently moot. As to the related submissions concerning adequate time and facilities for defence preparations, pre-trial deadlines, and the commencement of trial, I will give full consideration to submissions of the parties. However, I do not agree that a joint work plan is necessary. The present deadlines for the *Turinabo et al.* Accused provided for in the Decision of 17 October 2019 are not materially impacted by the

<sup>91</sup> Turinabo and Ndagijimana Response, paras. 3, 4; Nzabonimpa Response, para. 10; Fatuma Response, p. 3.

<sup>92</sup> Ngirabatware Response, paras. *Ibis, Iter*.

<sup>93</sup> Nzabonimpa Response, para. 8; Fatuma Response, para. 13, p. 3. I note that Fatuma in fact requests access to a wider range of materials, encompassing “all of the evidence in the *Ngirabatware* case”. See Fatuma Response, para. 13. This request has previously been dismissed and Fatuma’s submissions do not demonstrate that it should be re-assessed. See *Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-12-29-R & MICT-18-116, Decision on Requests for Access, 11 December 2018 (confidential), pp. 3, 4.

<sup>94</sup> Nzabonimpa Response, para. 5; Fatuma Response, p. 4. The Defence are presently required to submit filings pursuant to Rules 70(F), 72(B), and 116(B) of the Rules by 16 December 2019 and both parties are required to submit a joint filing pursuant to pursuant to Rule 70(N) of the Rules by 20 December 2019. See *Turinabo et al.* Decision of 17 October 2019, p. 17.

<sup>95</sup> Nzabonimpa Response, para. 9.

<sup>96</sup> Nzabonimpa Response, para. 7. See also *Turinabo et al.*, T. 2 October 2019 pp. 9, 10.

<sup>97</sup> Motion, para. 13; Reply, paras. 3, 6.

<sup>98</sup> Reply, paras. 5, 7. See also Reply, Annex, RP. 10935-10932.

<sup>99</sup> *Turinabo et al.*, Joint Defence Submission Providing Notice of Withdrawal of All Pending Motions Concerning the Implementation of the Contempt Remuneration Policy in the *Turinabo et al.* Proceedings, 28 November 2019, paras. 1, 11, 12.

joinder of their case with Ngirabatware's. The *Turinabo et al.* Accused are being prosecuted on a separate indictment and on the basis of a separate pre-trial brief, and their present pre-trial filings are responsive to Prosecution filings before them.<sup>100</sup> None of the *Turinabo et al.* Accused has presented specific circumstances demonstrating that more time is required to meet these deadlines.

33. In the same vein, and considering that the charges against the Accused significantly overlap and that the Prosecution intends to present much of the same evidence to prove allegations in the two indictments,<sup>101</sup> I consider that the Prosecution should be prepared to complete its pre-trial filings with regards to the *Ngirabatware* Indictment, pursuant to Rules 70(E), 71(A)(ii), and 116(A) of the Rules, by Friday, 24 January 2020. Any additional motions on the presentation of evidence pursuant to Rules 110-112 of the Rules that have not already been filed must also be filed by Friday, 7 February 2020. Deadlines for Ngirabatware's pre-trial filings pursuant to Rules 70(F), 70(N), 72(B), and 116(B) of the Rules, as well as proposed dates for a pre-trial conference and trial start date, will be issued in due course and following consultation with all the parties.

34. Furthermore, there presently is insufficient justification for the imposition of disclosure deadlines on the Prosecution outside of what is required by the Rules or previously ordered in this case. Disclosure obligations in relation to the conduct of trial will be issued shortly and after having received the views of the party. Similar claims that the Prosecution should provide greater assistance in facilitating interviews with anticipated Prosecution witnesses are not substantiated and are dismissed. However, I find that the Prosecution should, to the extent it has not already done so, provide the *Turinabo et al.* Accused with the *Ngirabatware* Indictment supporting materials.

### III. DISPOSITION

For the foregoing reasons, **I HEREBY:**

**GRANT** the Motion and **ORDER** a joint proceeding on the basis of the *Turinabo et al.* Indictment and the *Ngirabatware* Indictment;

**ORDER** the Prosecution to complete its pre-trial filings with regards to the *Ngirabatware* Indictment, pursuant to Rules 70(E), 71(A)(ii), and 116(A) of the Rules by Friday, 24 January 2020 and to file additional motions on the presentation of evidence pursuant to Rules 110-112 of the Rules by Friday, 7 February 2020;

<sup>100</sup> See *Turinabo et al.* Decision of 17 October 2019, p. 17.

<sup>101</sup> See *supra* paras. 9-11, 26-28. See also Motion, paras. 1, 7-11.

**ORDER** the Prosecution, to the extent it has not already done so, to disclose to the *Turinabo et al.* Accused the *Ngirabatware* Indictment supporting materials; and

**ORDER** the Registrar to close Case No. MICT-19-121 and **INSTRUCT** the Registrar and the parties that all filings in this proceeding from this day forward shall be made under Case No. MICT-18-116.<sup>102</sup>

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

Done this 10th day of December 2019,  
At Arusha,  
Tanzania

  
Judge Vagn Joensen  
Single Judge

[Seal of the Mechanism]

<sup>102</sup> See Practice Direction on Filings Made Before the International Residual Mechanism for Criminal Tribunals, MICT/7/Rev.3, 4 January 2019, Article 10 *bis* (4). Furthermore, in this respect, I note that the bulk of the filings in this case have been made under the *Turinabo et al.* case number and name, and that it would facilitate judicial economy to maintain this case number for both indictments rather than create a new one.





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Case Name/ Affaire :	Prosecutor v. Maximilien Turinabo et al. Prosecutor v. Augustin Ngirabatware	Case Number/ Affaire n° :	MICT-18-116-PT MICT-19-121-PT
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		No. of Pages/ Nombre de pages :	16
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S
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Rev: August 2019/ Rév. : Août 2019