

UNITED
NATIONS

MICT-12-29
16/09/2015
(3570-3568)

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Mechanism for International Criminal Tribunals

Case No.: MICT-12-29

Date: 16 September 2015

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Decision of: 16 September 2015

PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PUBLIC

DECISION ON REQUEST FOR ACCESS

Counsel for Augustin Ngirabatware

Mr. Peter Robinson

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow

Received by the Registry
Mechanism for International Criminal Tribunals
16/09/2015 15:31

A handwritten signature in black ink, appearing to be a stylized 'M' followed by a long horizontal stroke.

I, **BAKONE JUSTICE MOLOTO**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

BEING SEISED OF the “Request for Access” filed on 27 August 2015 (“Request”), in which Augustin Ngirabatware requests that his counsel, Peter Robinson, be given access to all material, except the documents filed by the Prosecution that remain classified as *ex parte*, in the case of *The Prosecutor v. Augustin Ngirabatware*, Case No. IT-12-29 (“*Ngirabatware case*”) so that Mr. Robinson can prepare an application for review of Ngirabatware’s conviction;²

NOTING that the Prosecution did not file a response;

NOTING that, according to the Request, Mr. Ngirabatware has signed a power of attorney designating Mr. Robinson as his counsel for purposes of seeking a review and that Mr. Robinson, who is on the List of Counsel admitted to practice before the Mechanism, filed an undertaking agreeing to serve as Mr. Ngirabatware’s counsel and to respect the confidentiality of any disclosures made to him;³

NOTING that the Registry advised Mr. Robinson that a judicial order is necessary for him to have access to the *Ngirabatware case file*;⁴

CONSIDERING that there is no provision in the Mechanism’s Statute, Rules of Procedure and Evidence (“Rules”), or the operative witness protection orders in the *Ngirabatware case* that requires a new counsel, once recognized, appointed, or assigned by the Registry, to obtain a judicial order to access confidential material in his/her client’s case file;⁵

CONSIDERING that, by virtue of Article 22(B) of the Mechanism’s Directive on the Assignment of Defence Counsel, in the event of withdrawal or discontinuance of services of assigned counsel, “the counsel must deliver within 15 days of withdrawal all the original documents in the file to the counsel who succeeds him, or otherwise, to his client” without any requirement for a judicial order;

¹ Order Assigning a Single Judge to Consider an Application, 15 September 2015, p. 1.

² Request, paras. 3, 6, 9.

³ Request, paras. 3-5.

⁴ Request, para. 8.

⁵ See generally Article 20 of the Statute; Rule 86 of the Rules; *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Defence Urgent Motion for Witness Protective Measures, 9 February 2010; *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 (“Witness Protection Decision of 7 May 2009”). In accordance with Rule 86(F) of the Rules, once protective measures have been ordered in respect of a witness in any proceeding before the ICTR such provisions will continue to have effect in any proceeding before the Mechanism.

CONSIDERING that the Witness Protection Decision of 7 May 2009 simply requires the Defence team to notify the Prosecution and Registry of any change to the composition of the team, to provide an updated list of the persons authorized to access confidential information, and to confirm to the Registry in writing that the former Defence team members have returned all material containing identifying information;⁶

CONSIDERING that, in order to carry out their duties in full, counsel recognized, assigned, or appointed by the Registrar as acting for an accused or convicted person must, in principle, automatically have access to the record of the proceedings;⁷

CONSIDERING FURTHER that, absent exceptional circumstances or any contrary provision of an operative witness protection order, no order is required for a Defence counsel to have access to his client's case file;⁸

CONSIDERING that neither the Registrar nor the Prosecution has raised any exceptional circumstances to preclude access to the record in this case and the operative witness protection orders do not require a judicial order;


FOR THE FOREGOING REASONS, HEREBY

DISMISS the Request as moot.

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

Done this 16th day of September 2015,
At The Hague,
The Netherlands.




Judge Bakone Justice Moloto
Single Judge

[Seal of the Mechanism]

⁶ Witness Protection Decision of 7 May 2009, p. 7 (“(vii) The Defence shall provide a written list, and immediately following a change to the Defence provide an updated written list, to the Prosecution and the Registry, designating all officially authorized persons working with the Defence who will have access to any identifying information. In the event that any such persons leave the Defence, the Defence must provide written notification to the Registry and confirm that any such persons have remitted all materials containing identifying information”).

⁷ *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48, Decision on Request for Access, 3 August 2015 (“*Brđanin* Decision of 3 August 2015”), p. 1. See *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Request for Access, 25 June 2015 (“*Kamuhanda* Decision of 25 June 2015”), paras. 11, 14 (indicating that, where new counsel has been approved to appear before the Mechanism, a variation of witness protection orders pursuant to Rule 86 is not required).

⁸ *Brđanin* Decision of 3 August 2015, p. 1. See *Kamuhanda* Decision of 25 June 2015, paras. 19-21 (explaining that, in certain circumstances, access to “specifically sensitive information”, for instance, to *ex parte* material may be restricted).