

MICT-12-20  
13-03-2014  
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**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-12-20

Date: 13 March 2014

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**Decision of: 13 March 2014**

**PROSECUTOR**

**v.**

**BERNARD MUNYAGISHARI**

***PUBLIC***

**DECISION ON REQUEST FOR REVOCATION OF AN ORDER  
REFERRING A CASE TO THE REPUBLIC OF RWANDA**

**The Office of the Prosecutor:**

Hassan Bubacar Jallow

**Bernard Munyagishari**

Received by the Registry  
Mechanism for International Criminal Tribunals  
13/03/2014 17:35

**I, THEODOR MERON**, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

**NOTING** the “Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda”, issued on 6 June 2012 by the referral chamber designated under Rule 11*bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“Referral Chamber” and “ICTR”, respectively) in the case of *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11*bis* (“Referral Decision”), in which the Referral Chamber ordered that the case of Mr. Bernard Munyagishari be referred to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;<sup>1</sup>

**NOTING** the “Decision on Bernard Munyagishari’s Third and Fourth Motions for Admission of Additional Evidence and on the Appeals Against the Decision on Referral under Rule 11 *bis*”, issued on 3 May 2013 by the Appeals Chamber of the ICTR (“ICTR Appeals Chamber”), in which the ICTR Appeals Chamber, *inter alia*, affirmed the referral of Mr. Munyagishari’s case to Rwanda;<sup>2</sup>

**NOTING** the request for revocation of the order referring Mr. Munyagishari’s case to Rwanda submitted by Mr. Munyagishari, acting *pro se*, and filed on 30 August 2013,<sup>3</sup> in which it is alleged that revocation is warranted because: (i) his initial appearance was not conducted before a competent and independent Rwandan court and in accordance with the law;<sup>4</sup> (ii) his right to be informed in a language which he understands has been violated;<sup>5</sup> and (iii) his consular rights have been violated;<sup>6</sup>

**NOTING** that the Office of the Prosecutor (“Prosecution”) has not filed a submission in relation to the Revocation Request;

<sup>1</sup> Referral Decision, pp. 54-56.

<sup>2</sup> *Bernard Munyagishari v. The Prosecutor*, Case No. ICTR-05-89-AR11*bis*, Decision on Bernard Munyagishari’s Third and Fourth Motions for Admission of Additional Evidence and on the Appeals Against the Decision on Referral under Rule 11 *bis*, 3 May 2013, p. 44. See also *Bernard Munyagishari v. The Prosecutor*, Case No. ICTR-05-89-AR11*bis*, Decision on Bernard Munyagishari’s Motion for Reconsideration of the Decision on Appeals Against Referral Decision, 8 July 2013; *Bernard Munyagishari v. The Prosecutor*, Case No. ICTR-05-89-AR11*bis*, Decision on Bernard Munyagishari’s Motion for Reconsideration of the 8 July 2013 Decision and for Replacement of Counsel and on the Prosecution’s Motion to Strike, 19 July 2013; *Bernard Munyagishari v. The Prosecutor*, Case No. ICTR-05-89-AR11*bis*, Decision on Bernard Munyagishari’s Motion for Reconsideration of Prior Reconsideration Decisions, 24 July 2013.

<sup>3</sup> *Requête de dessaisissement du transfert de B. Munyagishari pour violation grave des droits fondamentaux*, filed on 30 August 2013, English translation filed on 26 September 2013 (“Revocation Request”). All references herein are to the English translation of the Revocation Request.

<sup>4</sup> Revocation Request, paras. 2-7, p. 2.

<sup>5</sup> Revocation Request, para. 8, p. 2.

<sup>6</sup> Revocation Request, para. 9, p. 2.

**NOTING** the observations submitted by Mr. Munyagishari and filed confidentially on 17 February 2014, in which Mr. Munyagishari makes submissions concerning alleged violations of the conditions of referral of his case for trial in Rwanda;<sup>7</sup>

**NOTING** the monitoring reports filed between September 2013 and March 2014 in relation to Mr. Munyagishari's case;<sup>8</sup>

**RECALLING** that the Referral Chamber granted Mr. Munyagishari standing to seek revocation of the order referring his case to Rwanda;<sup>9</sup>

**CONSIDERING** that Rule 14(C) of the Rules of Procedure and Evidence of the Mechanism ("Rules") grants the President of the Mechanism discretion to assign a Trial Chamber to decide, pursuant to Article 6(6) of the Statute of the Mechanism ("Statute"), whether to revoke an order of referral and make a formal request for deferral;

**CONSIDERING** that insofar as Mr. Munyagishari makes submissions in the Revocation Request concerning both the language used in the proceedings in Rwanda and his nationality, these matters are currently *sub judice* in Rwanda<sup>10</sup> and are, accordingly, not ripe for consideration as a basis for revocation pursuant to Article 6(6) of the Statute;

**CONSIDERING**, moreover, that insofar as Mr. Munyagishari makes submissions in the Revocation Request concerning the legality of his initial appearance and derivative issues, it appears that this claim is now moot<sup>11</sup> and therefore not a basis for revocation pursuant to Article 6(6) of the Statute;

<sup>7</sup> *Observations faites sur la violation faite par les autorités rwandaises aux conditions de renvoi*, 17 February 2014 (confidential) ("Observations"). Insofar as Mr. Munyagishari raises new matters in the Observations that were not the basis for the Revocation Request, I decline to consider them at this time.

<sup>8</sup> Monitoring Report for the *Munyagishari* Case (January and February 2014), 11 March 2014 ("January and February 2014 Monitoring Report"); Monitoring Report for the *Munyagishari* Case (December 2013), 20 January 2014 ("December 2013 Monitoring Report"); Monitoring Report for the *Munyagishari* Case (October and November 2013), 20 December 2013 ("October and November 2013 Monitoring Report"); Monitoring Report for the *Munyagishari* Case (September 2013), 31 October 2013 ("September 2013 Monitoring Report"); Monitoring Report for the *Munyagishari* Case (July-August 2013), 19 September 2013 ("July and August 2013 Monitoring Report").

<sup>9</sup> Referral Decision, p. 56.

<sup>10</sup> See January and February 2014 Monitoring Report, paras. 3-10, 58, 62, 72-89, 94. See also January and February 2014 Monitoring Report, paras. 12, 28-30, 60; December 2013 Monitoring Report, paras. 3-5, 9-10; October and November 2013 Monitoring Report, paras. 5, 15, 29; September 2013 Monitoring Report, paras. 7-17, 20-29; July and August 2013 Monitoring Report, paras. 41-42, 44-46, 53-68, 76-94.

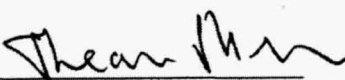
<sup>11</sup> See October and November 2013 Monitoring Report, paras. 5, 37; September 2013 Monitoring Report, paras. 6, 31, 34, 38; July and August 2013 Monitoring Report, paras. 54, 57, 61, 65-68, 77-94.

**FOR THE FOREGOING REASONS,**

**DISMISS** the Revocation Request, without prejudice to the filing of a new request for revocation, including a request based on issues raised in the Revocation Request or Observations, should circumstances warrant.

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

Done this 13th day of March 2014,  
At The Hague,  
The Netherlands.

  
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Judge Theodor Meron  
President

**[Seal of the Mechanism]**





**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
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From/ De:	<input checked="" type="checkbox"/> Chambers/ Chambre <input type="checkbox"/> Defence/ Défense <input type="checkbox"/> Prosecution/ Bureau du Procureur <input type="checkbox"/> Other/ Autre :
Case Name/ Affaire:	Prosecutor v. Bernard Munyagishari <span style="float:right">Case Number/ Affaire No: MICT-12-20</span>
Date Created/ Daté du:	13 March 2014 <span style="margin-left: 100px;">Date transmitted/ Transmis le: 13 Mar. 2014</span> <span style="float:right">No. of Pages/ No de pages: 4</span>
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 <input type="checkbox"/> Other/Autre (specify/préciser):
Title of Document/ Titre du document:	Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda
Classification Level/ Catégories de classement:	<input checked="" type="checkbox"/> Unclassified/ Non classé <input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue <input type="checkbox"/> Confidential/ Confidentiel <input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu <input type="checkbox"/> Strictly Confidential/ Strictement confidentiel <input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 (H) requérant exclu <input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus Curiae exclu <input type="checkbox"/> Ex Parte other exclusion/ Ex Parte autre(s) partie(s) exclue(s) (specify / préciser):
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