



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

1029/H

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ICTR-98-44-A

14<sup>th</sup> Dec. 2012

{1029/H -1024/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Patrick Robinson  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Bakhtiyar Tuzmukhamedov

**Acting Registrar:** Mr. Pascal Besnier

**Decision of:** 14 December 2012

**ÉDOUARD KAREMERA  
MATTHIEU NGIRUMPATSE**

v.

**THE PROSECUTOR**

*Case No. ICTR-98-44-A*

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**DECISION ON MATTHIEU NGIRUMPATSE'S MOTION FOR PROVISIONAL  
RELEASE**

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ICTR Appeals Chamber

Date: 14 DEC 2012

Action:

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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DATE: 14 Dec. 2012

2.

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) is seised of a motion for provisional release filed by Mr. Matthieu Ngirumpatse on 13 September 2012.<sup>1</sup> The Prosecution responded on 24 September 2012<sup>2</sup> and Mr. Ngirumpatse replied on 27 September 2012.<sup>3</sup>

### A. Background

2. In its Judgement pronounced on 21 December 2011 and filed in English on 2 February 2012, Trial Chamber III of the Tribunal (“Trial Chamber”) convicted Mr. Ngirumpatse of direct and public incitement to commit genocide, genocide, extermination and rape as crimes against humanity, as well as killing and causing violence to health and well-being as serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II.<sup>4</sup> The Trial Chamber sentenced Mr. Ngirumpatse to life imprisonment.<sup>5</sup>

3. The Prosecution and Mr. Ngirumpatse have appealed against the Trial Judgement and the case is currently pending before the Appeals Chamber.<sup>6</sup>

### B. Applicable law

4. Rule 65(I) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period if it is satisfied that: (i) the convicted person, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release. These requirements must

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<sup>1</sup> *Requête de Matthieu Ngirumpatse [sic] en liberté provisoire en vertu de l'article 65(I) du Règlement de Procédure et de Preuve*, 13 September 2012 (“Motion”).

<sup>2</sup> Prosecutor’s Response to Ngirumpatse’s Motion Requesting Provisional Release, 24 September 2012 (“Response”).

<sup>3</sup> *Réplique de Matthieu Ngirumpatse à la Réponse du Procureur à sa requête de [sic] mise en liberté provisoire déposée en vertu de l'article 65(I) du Règlement de Procédure et de Preuve*, 27 September 2012 (“Reply”).

<sup>4</sup> *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Judgement and Sentence, 2 February 2012 (“Trial Judgement”), p. 310; T. 21 December 2011 p. 15.

<sup>5</sup> Trial Judgement, para. 1763; T. 21 December 2011 p. 15.

<sup>6</sup> See Prosecutor’s Notice of Appeal, 5 March 2012; *Acte d’appel de M. Ngirumpatse contre le jugement et la sentence du 2 février 2012*, 19 March 2012; Prosecutor’s Appellant’s Brief, 21 May 2012; *Mémoire d’Appelant de M. Ngirumpatse*, 2 July 2012; *Corrigendum au Mémoire d’Appelant de M. Ngirumpatse*, 24 July 2012; Prosecutor’s Brief in Response to Matthieu Ngirumpatse’s Appeal, 13 August 2012; *Mémoire en réponse de M. Ngirumpatse contre l’appel du Procureur du jugement du 2 février 2012*, 3 September 2012; *Réplique de M. Ngirumpatse au mémoire d’intimé du Procureur*, 17 September 2012; Prosecutor’s Reply to Ngirumpatse’s Respondent Brief, 18 September 2012.

be considered cumulatively.<sup>7</sup> The Appeals Chamber recalls that whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities.<sup>8</sup> Finally, the discretionary assessment of the requirements under Rule 65 of the Rules is made on a case-by-case basis.<sup>9</sup>

### C. Submissions

5. Mr. Ngirumpatse seeks provisional release within the territory of the United Republic of Tanzania on such conditions as the Appeals Chamber may deem appropriate.<sup>10</sup> Mr. Ngirumpatse submits that his request meets the first requirement under Rule 65(I) of the Rules since he does not present a flight risk.<sup>11</sup> He underscores, *inter alia*, his eagerness to know the outcome of his case on appeal, which, he believes, will be in his favour,<sup>12</sup> his advanced age and poor health condition,<sup>13</sup> and his exemplary conduct throughout the proceedings, including when he was hospitalized in Kenya.<sup>14</sup> Concerning the second requirement under Rule 65(I) of the Rules, Mr. Ngirumpatse argues that nothing in this case demonstrates or may suggest that he will endanger any witness, victim, or other person.<sup>15</sup> He contends that he is a peaceful person and that, in any event, there is no reason for him to try to contact any witnesses from his case at this stage of the proceedings.<sup>16</sup>

6. With regard to the third requirement under Rule 65(I) of the Rules, Mr. Ngirumpatse submits that special circumstances warrant his provisional release.<sup>17</sup> In particular, he argues that: (i) he has spent more than 14 years in provisional detention;<sup>18</sup> (ii) the appeal proceedings will be significantly delayed for translation reasons;<sup>19</sup> (iii) he is 73 years old and not in good health;<sup>20</sup> and

<sup>7</sup> See *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motions for Provisional Release and Leave to File *Corrigendum*, 2 September 2009 ("*Bagosora et al.* Decision"), para. 16. See also, e.g., *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Nebojša Pavković's Motion for Provisional Release on Compassionate Grounds, 14 June 2012 (public redacted version) ("*Šainović et al.* Decision"), p. 2.

<sup>8</sup> See *Bagosora et al.* Decision, para. 16 and references cited therein.

<sup>9</sup> See *Bagosora et al.* Decision, para. 16 and references cited therein. See also *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 ("*Rašić* Decision"), para. 5.

<sup>10</sup> Motion, paras. 1, 2, 29, 50, pp. 12, 13. Mr. Ngirumpatse emphasizes that he is committed to remaining at the disposal of the Appeals Chamber and to returning to the Tribunal's premises within a prescribed date and time as set by the Appeals Chamber. See Motion, p. 13. See also Motion, Annex (Affidavit of Mr. Ngirumpatse, dated 3 September 2012); Reply, para. 3.

<sup>11</sup> Motion, paras. 20-27.

<sup>12</sup> Motion, paras. 20, 21.

<sup>13</sup> Motion, para. 21.

<sup>14</sup> Motion, paras. 24-27. See also Motion, para. 49.

<sup>15</sup> Motion, paras. 30, 31.

<sup>16</sup> Motion, paras. 34, 36.

<sup>17</sup> Motion, paras. 39-58. See also Reply, para. 6.

<sup>18</sup> Motion, para. 39. See also Reply, para. 6.

<sup>19</sup> Motion, paras. 43, 44. See also Reply, paras. 6, 7.

<sup>20</sup> Motion, paras. 40, 45, 48.

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(iv) when released, his life expectancy will be shortened due to the length of his detention.<sup>21</sup> He adds that a life sentence does not preclude the possibility of being provisionally released.<sup>22</sup> He further argues that his situation presents substantial similarities with the case of Mr. Lahi Brahimaj, in which the ICTY Appeals Chamber found the existence of special circumstances warranting Mr. Brahimaj's provisional release.<sup>23</sup> Finally, Mr. Ngirumpatse requests the Appeals Chamber to hear oral arguments, if needed.<sup>24</sup>

7. The Prosecution responds that Mr. Ngirumpatse fails to fulfill the cumulative requirements in favour of granting provisional release and that his Motion should be dismissed in its entirety.<sup>25</sup> As regards the factors of flight risk and threat posed to victims, witnesses, or other persons, the Prosecution submits that the seriousness of the offences of which Mr. Ngirumpatse was found guilty and the fact that he was sentenced to life imprisonment are factors which militate against granting him provisional release.<sup>26</sup> With respect to the last requirement under Rule 65(I) of the Rules, the Prosecution submits that none of the arguments presented by Mr. Ngirumpatse demonstrates the existence of special circumstances justifying provisional release.<sup>27</sup> Further, the Prosecution presents arguments distinguishing Mr. Ngirumpatse's case from that of Mr. Brahimaj.<sup>28</sup> The Prosecution also submits that Mr. Ngirumpatse's claim that he might be acquitted on appeal is irrelevant to his present request.<sup>29</sup>

8. Mr. Ngirumpatse replies that, in his Motion, he merely expressed confidence in his appeal rather than arguing its substance.<sup>30</sup> He further submits that Rule 65(I) of the Rules requires him to show the existence of "special circumstances" rather than "exceptional" or "particularly serious" circumstances and that he has satisfied this standard.<sup>31</sup>

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<sup>21</sup> Motion, paras. 41, 45-47. In support of his contention that his life expectancy will be shortened due to the length of his detention, Mr. Ngirumpatse relies on a report from the Registry of the International Criminal Tribunal for the former Yugoslavia ("ICTY") as quoted in the case *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Accused Praljak's Motion for Provisional Release, original filed in French on 17 July 2008, English translation filed on 25 July 2008 (public with confidential annex), para. 27. See Motion, paras. 45-47.

<sup>22</sup> Motion, para. 53.

<sup>23</sup> Motion, paras. 54, 55, referring to *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj's Application for Provisional Release, 25 May 2009 ("*Haradinaj et al.* Decision").

<sup>24</sup> Motion, p. 13. See also Reply, para. 10.

<sup>25</sup> Response, paras. 4, 6, 8-13, 15, 17-23.

<sup>26</sup> Response, paras. 6, 9, 15.

<sup>27</sup> Response, paras. 17-22.

<sup>28</sup> Response, para. 21.

<sup>29</sup> Response, paras. 7, 8.

<sup>30</sup> Reply, paras. 4, 5.

<sup>31</sup> Reply, para. 6.

## D. Discussion

9. The Appeals Chamber recalls that special circumstances warranting provisional release require an acute justification, such as the applicant's medical need, extremely poor health of a close family member whose death is believed to be imminent, or a memorial service for a close family member after his death.<sup>32</sup> Contrary to Mr. Ngirumpatse's assertion, the requirement to show "special circumstances" has been interpreted in ICTY jurisprudence as covering only particularly serious humane and compassionate considerations.<sup>33</sup> In the present case, Mr. Ngirumpatse's submissions in relation to his health and age do not demonstrate that his physical condition amounts to an acute justification, and thus do not amount to a special circumstance warranting his provisional release.

10. The Appeals Chamber further finds that, in light of the seriousness of the offences and the penalty imposed on Mr. Ngirumpatse, the time spent in detention, its potential impact on his health, and the length of the proceedings do not constitute an acute justification for the purposes of provisional release in this case. The Appeals Chamber notes Mr. Ngirumpatse's reliance on the *Haradinaj et al.* Decision but recalls that the discretionary assessment of the requirements under Rule 65 of the Rules is made on a case-by-case basis.<sup>34</sup> Drawing comparisons with other cases is therefore of limited assistance in assessing a motion for provisional release.<sup>35</sup>

11. The Appeals Chamber is therefore not satisfied that special circumstances warranting Mr. Ngirumpatse's provisional release exist. As the requirements under Rule 65(I) of the Rules are cumulative,<sup>36</sup> the Appeals Chamber considers that it need not examine whether the remaining requirements set out in Rule 65(I) of the Rules are met in the present case. Finally, the Appeals Chamber recalls that it is within its discretion to decide a motion with or without an oral hearing.<sup>37</sup> In the present circumstances, the Appeals Chamber considers that there is no reason to hear oral arguments from the parties.

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<sup>32</sup> *Bagosora et al.* Decision, para. 23. See also *Šainović et al.* Decision, p. 2, fn. 6; *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Tarčulovski Motion for Provisional Release on Compassionate Grounds, 22 July 2009 ("*Boškoski and Tarčulovski* Decision"), para. 8.

<sup>33</sup> See, e.g., *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008 (public redacted version), para. 12. See also *Šainović et al.* Decision, p. 2; *Boškoski and Tarčulovski* Decision, para. 8.

<sup>34</sup> See *supra*, para. 4.

<sup>35</sup> Although Mr. Ngirumpatse attempts to compare his case to that of Mr. Brahimaj, he fails to take into account the differences between the two cases. Notably, the ICTY Appeals Chamber relied on, *inter alia*, the facts that Mr. Brahimaj's past provisional release did not give rise to any concerns and that Mr. Brahimaj may have been eligible for early release at the time of its decision. See *Haradinaj et al.* Decision, paras. 15, 16.

<sup>36</sup> See *supra*, para. 4.

<sup>37</sup> See *Bagosora et al.* Decision, para. 15; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Mile Mrkšić's Second Rule 115 Motion, 13 February 2009, para. 11.

**E. Disposition**

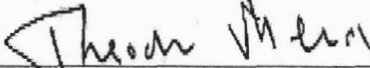
12. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion.

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

Done this 14th day of December 2012,  
At The Hague,  
The Netherlands.



**[Seal of the Tribunal]**

  
Judge Theodor Meron  
Presiding Judge




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Tribunal Pénal International pour le Rwanda**

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**APPEALS CHAMBER – PROOF OF SERVICE**  
*CHAMBRE D'APPEL - PREUVE DE NOTIFICATION*

Date:	<b>14 December 2012</b>	Case Name / affaire: <b>Karemera et al.</b>	The Prosecutor v.
		Case No / no. de l'affaire: <b>ICTR-98-44-A</b>	<b>Edouard KAREMERA</b> <b>Mathieu NGIRUMPATSE</b>
To: A:	<b>In Arusha</b> ✘ Judicial Archives and Records Unit Fax #: <b>179 5251</b>  ✘ Judge / Juge Theodor Meron, Presiding ✘ Judge / Juge Patrick Robinson ✘ Judge / Juge Fausto Pocar, ✘ Judge / Juge Ramaroson, ✘ Judge / Juge Tuzmukhamedov  ✘ Ms. G. McIntyre ✘ Mr Roman Boed ✘ Concerned Associate Legal Officers ✘ Ms. Kate Aboagye  <b>DEFENSE</b> ✘ Accused / <i>accusé</i> : Mr Edouard KAREMERA, Mathieu NGIRUMPATSE, ✘ Lead Counsels / <i>Conseil Principal</i> : Ms. Dior Diagne, <small>name / nom</small> ✘ Fax Number: <b>221-822 87 12, 33 1 40 26 94 95,</b> ✘ E-mail: <a href="mailto:mediordiagne@yahoo.fr">mediordiagne@yahoo.fr</a> ; ✘ Co-Counsel / <i>Conseil Adjoint</i> : Mr. Felix Sow, Frederick Weyl( <small>name / nom</small> ), <a href="mailto:cabinet@weyl-porcheron.fr">cabinet@weyl-porcheron.fr</a> ✘ E-mail: <a href="mailto:sowmoussafelix@yahoo.fr">sowmoussafelix@yahoo.fr</a> ; <a href="mailto:careweyl@gmail.com">careweyl@gmail.com</a>		
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