



Mechanism for International Criminal Tribunals

Case No.: MICT-12-29-R
MICT-12-16

Date: 18 April 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding

Registrar: Mr. Olufemi Elias

Decision of: 18 April 2017

PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PROSECUTOR

v.

ELIÉZER NIYITEGEKA

PUBLIC

**DECISION ON A MOTION FOR A PUBLIC REDACTED
VERSION OF "DECISION ON MOTION FOR PROVISIONAL
RELEASE" ISSUED IN THE NIYITEGEKA CASE ON
12 MARCH 2009**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa

Counsel for Mr. Augustin Ngirabatware:

Mr. Peter Robinson

Counsel for Mr. Eliézer Niyitegeka:

Mr. Philippe Larochelle

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Mechanism for International Criminal Tribunals
18/04/2017 16:48

A handwritten signature in black ink, appearing to be 'A. Elias', written over the date and time stamp.

I, THEODOR MERON, Presiding Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Presiding Judge in this case;¹

BEING SEISED OF the “Motion for Public Version of Decision”, filed on 23 March 2017 by Mr. Augustin Ngirabatware (“Motion”), in which he seeks the issuance of a public redacted version of the confidential “Decision on Motion for Provisional Release”, issued on 12 March 2009 by the International Criminal Tribunal for Rwanda in the case of *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R (“*Niyitegeka* Decision”) or, in the alternative, requests to be granted access to the *Niyitegeka* Decision;²

NOTING Ngirabatware’s submission that the *Niyitegeka* Decision was relied upon by the Prosecution to support its contention that, given the stage of Ngirabatware’s proceedings, he can no longer be considered an “accused” person, and that, therefore, the decision may be relevant to Ngirabatware’s future motions for modification of the conditions of his detention or for provisional release;³

NOTING that neither the Prosecution nor Eliézer Niyitegeka have filed responses to the Motion;

REITERATING that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;⁴

CONSIDERING that the *Niyitegeka* Decision, which the Prosecution has cited in a prior submission,⁵ relates to the ability of a convicted person to seek provisional release following the issuance of a final judgement and thus may be relevant to any future request by Ngirabatware for provisional release;

¹ See Order Assigning Judges to Consider a Case Before the Appeals Chamber, 25 July 2016, p. 2; Article 12(3) of the Mechanism’s Statute. In accordance with Rule 86(K) of the Mechanism’s Rules of Procedure and Evidence, requests for access to confidential material in another case may be dealt with either by the Chamber or by a Judge of that Chamber. See, e.g., *Prosecutor v. Radovan Karadžić*, Case Nos. MICT-13-55-A & MICT-15-85, Decision on Vujadin Popović’s Request for Access to Confidential Material in the *Prosecutor v. Radovan Karadžić* Case, 17 February 2017.

² Motion, paras. 1, 5, 7, 8.

³ Motion, paras. 2, 4.

⁴ See *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Public Redacted Versions of Rule 86(F) Jurisprudence, 6 April 2017, p. 2; *Prosecutor v. Naser Orić*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge’s Decision of 10 December 2015, 17 February 2016, para. 8.

⁵ See Prosecution Response to Ngirabatware’s Motion to Report the Government of Turkey to the United Nations Security Council and for Modification of Conditions of Detention, 27 February 2017, para. 6, n. 5.

FINDING that issuing a public redacted version of the *Niyitegeka* Decision would satisfy the objectives of providing Ngirabatware with access to relevant jurisprudence, maintaining the public character of the proceedings before the Mechanism, and protecting privacy concerns;


FOR THE FOREGOING REASONS,

HEREBY GRANT the Motion; and

ISSUE, as an annex to the present decision, a public redacted version of the *Niyitegeka* Decision.

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

Done this 18th day of April 2017,
At The Hague,
The Netherlands.


Judge Theodor Meron,
Presiding Judge

[Seal of the Mechanism]



Stanislav Galic's Further Motion for Access to Confidential Materials in the *Karadžić* Case, 4 August 2016, para. 19; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos. IT-03-69-A & IT-04-75-T, Decision on Goran Hadžić's Motion for Access to Confidential Material in the *Stanišić and Simatović* Case, 1 November 2013, para. 15; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A & IT-09-92-T, Decision on Motion by Ratko Mladić for Access to Confidential Material, 20 February 2013, p. 3.

ANNEX



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mohamed Shahabuddeen
Judge Fausto Pocar
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 12 March 2009

Eliézer NIYITEGEKA

v.

THE PROSECUTOR

Case No. ICTR-96-14-R

[PUBLIC AND REDACTED]

DECISION ON MOTION FOR PROVISIONAL RELEASE

The Applicant

Mr. Eliézer Niyitegeka, *pro se*

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George Mugwanya
Ms. Inneke Onsea

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 seized of the “*Requête urgente aux fins de mise en liberté provisoire*” filed confidentially by Eliézer Niyitegeka (“Niyitegeka”) on 16 February 2009 (“Motion”).

2. In his Motion, Niyitegeka requests provisional release pursuant to Rule 65(I) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) from 16 August 2009 to 5 September 2009 in order to attend the wedding of his daughter FREDACTEDġ.¹ He explains that the wedding will take place on FREDACTEDġ but that he would like to be granted provisional release for a duration of three weeks.² He submits that, if released, he will surrender into detention at the conclusion of the fixed period and will comply with any conditions that may be imposed.³

3. The Prosecution opposes the provisional release on the ground that Niyitegeka fails to fulfill the cumulative requirements provided for under Rule 65(I) of the Rules.⁴ In reply, Niyitegeka argues that the Prosecution’s arguments are ill-founded.⁵

4. On 16 May 2003, Trial Chamber I of the Tribunal convicted Niyitegeka of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and murder, extermination, and other inhumane acts as crimes against humanity, and sentenced him to imprisonment for the remainder of his life.⁶ In its Judgement of 9 July 2004, the Appeals Chamber dismissed Niyitegeka’s appeal against his convictions and affirmed his sentence.⁷ Niyitegeka’s multiple motions for review were also dismissed by the Appeals Chamber.⁸ Niyitegeka’s case has therefore reached finality and he can no longer be considered an “accused” or a “convicted person” who is applying for provisional release “pending an appeal” before the International Tribunal within

¹ Motion, paras. 1, 2, 9(ii).

² Motion, para. 2.

³ Motion, para. 7.

⁴ Prosecutor’s Response to Niyitegeka’s Request for Provisional Release, confidential, 25 February 2009, paras. 2, 7, 8.

⁵ *Mémoire en réplique à la “Prosecutor’s Response to Niyitegeka’s Request for Provisional Release”*, confidential, 4 March 2009.

⁶ *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement, 16 May 2003, paras. 420, 429, 437, 447, 454, 467, 480, 502.

⁷ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004, para. 270.

⁸ See Decision on Request for Review, 30 June 2006; Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006; Decision on Request for Review, 6 March 2007; Decision on Third Request for Review, 23 January 2008; Decision on Fourth Request for Review, confidential, 12 March 2009.

the meaning of Rule 65 of the Rules. The Appeals Chamber notes that, as of 6 December 2008, Niyitegeka has been serving his sentence in the Republic of Mali.⁹

5. The enforcement of sentences imposed by the Tribunal and served in the Republic of Mali is governed by the agreement reached between the Republic of Mali and the Tribunal on 12 February 1999, which provides in relevant part that:

the conditions of imprisonment shall be governed by the law of the [Republic of Mali], subject to the supervision of the Tribunal, as provided for in Articles 6 to 8 and paragraphs 2 and 3 of Article 9¹⁰.

Whereas Articles 6 and 9 of the Agreement relate to inspection and termination of enforcement matters, Article 7(2) of the Agreement provides that “the Registrar and the [Republic of Mali] shall consult each other on all matters relating to the enforcement of the sentence, upon request of either party.”

6. Since Niyitegeka’s application for provisional release pertains to his “conditions of imprisonment”, it is a matter governed by the law of the Republic of Mali.

7. As a result, the Appeals Chamber finds that the proper forum for considering Niyitegeka’s request is the judicial system of the Republic of Mali. Niyitegeka’s Motion is therefore **DISMISSED**.

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

Done this 12th day of March 2009,
at The Hague, The Netherlands.

Judge Liu Daqun
Presiding

[Seal of the Tribunal]

⁹ Cf. *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14, Decision on the Enforcement of Sentence, 4 December 2008.

¹⁰ Article 3(2) of the Agreement between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, concluded in Bamako on 12 February 1999, registered on 4 October 2000 (Reg. No. 36963) (“Agreement”).



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Date Created/ Daté du :	18 April 2017	Date transmitted/ Transmis le :	18 April 2017
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Rev: April 2014/Rév. : Avril 2014