



Mechanism for International Criminal Tribunals

Case No.: MICT-12-29-R

Date: 22 June 2017

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. Olufemi Elias**

**Decision of: 22 June 2017**

**PROSECUTOR**

**v.**

**AUGUSTIN NGIRABATWARE**

***PUBLIC***

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**DECISION ON RENEWED MOTION TO MODIFY  
CONDITIONS OF DETENTION**

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**The Office of the Prosecutor**

Mr. Serge Brammertz  
Mr. Richard Karegyesa  
Ms. Sunkarie Ballah-Conteh

**Counsel for Mr. Augustin Ngirabatware**

Mr. Peter Robinson

**Received by the Registry  
Mechanism for International Criminal Tribunals**

**22/06/2017 11:21**

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

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

**NOTING** the “Judgement and Sentence” issued by Trial Chamber II of the International Criminal Tribunal for Rwanda on 20 December 2012 in the case of *The Prosecutor v. Augustin Ndirabatware*, Case No. ICTR-99-54-T;

**NOTING** the “Judgement” issued by the Appeals Chamber of the Mechanism (“Appeals Chamber”) on 18 December 2014 in the case of *Augustin Ndirabatware v. The Prosecutor*, Case No. MICT-12-29-A;

**NOTING** the “Motion for Review of Judgement” filed confidentially on 8 July 2016 by Augustin Ndirabatware (“Request for Review” and “Ndirabatware”, respectively);

**RECALLING** that, on or around 21 September 2016, Judge Aydin Sefa Akay, a member of the bench of the Appeals Chamber in this case, was detained in the Republic of Turkey in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey, and that Judge Akay has remained in detention since that time;<sup>1</sup>

**NOTING** the “Decision on Motion to Report Government of Turkey to United Nations Security Council and for Modification of Conditions of Detention” rendered on 22 March 2017 (“22 March Decision”), wherein I, *inter alia*, denied Ndirabatware’s request for modification of his conditions of detention and invited him to make a renewed application should there be no material change in the circumstances that were giving rise to the ongoing delay in his case by 9 June 2017;<sup>2</sup>

**NOTING** that Ndirabatware remains in the custody of the Mechanism at the United Nations Detention Facility in Arusha, pending transfer to a State where his sentence will be served;

**BEING SEISED OF** the “Renewed Motion to Modify Conditions of Detention” filed by Ndirabatware on 26 May 2017 (“Renewed Motion”), wherein Ndirabatware contends, *inter alia*, that there has been no material change in the circumstances that are giving rise to the ongoing delay in his case, namely Judge Akay’s continued detention by the Government of Turkey,<sup>3</sup> and requests that his conditions of detention be modified to mitigate the prejudice caused by the undue delay in his case;<sup>4</sup>

**NOTING** in particular Ndirabatware’s request that I order the modification of his conditions of detention until such time as Judge Akay “rejoins the Appeals Chamber bench hearing [Ndirabatware’s] case”;<sup>5</sup>

<sup>1</sup> See Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay, 31 January 2017, paras. 3-4; Oral Hearing, T. 17 January 2017, pp. 1-2; Order for Oral Hearing, 21 December 2016, p. 1.

<sup>2</sup> 22 March Decision, p. 4.

<sup>3</sup> Renewed Motion, para. 2.

<sup>4</sup> Renewed Motion, paras. 1, 8. See also Renewed Motion, para. 9.

<sup>5</sup> Renewed Motion, para. 1. See also Renewed Motion, paras. 2, 6-10.

**NOTING** the “Prosecution Response to Ngirabatware’s Renewed Motion to Modify Conditions of Detention” filed by the Office of the Prosecutor of the Mechanism on 5 June 2017;

**NOTING** the “Reply Brief: Renewed Motion to Modify Conditions of Detention” filed by Ngirabatware on 9 June 2017 (“Reply”);

**NOTING** that a Turkish criminal court of first instance entered a conviction against Judge Akay on 14 June 2017 and that Judge Akay has been provisionally released pending appeal;<sup>6</sup>

**NOTING** the public and redacted version of the “Decision on Ngirabatware’s Motion for Review” filed on 19 June 2017 (“Decision on Motion for Review”), wherein the Appeals Chamber, *inter alia*, granted the Request for Review and ordered the parties to submit in writing a list of evidence and witnesses, if any, each party proposes to introduce at an eventual hearing;<sup>7</sup>

**CONSIDERING** that Ngirabatware requests that his conditions of detention be modified until such time as Judge Akay resumes his duties as a member of the bench of the Appeals Chamber in this case;<sup>8</sup>

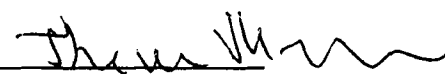
**CONSIDERING** that, as demonstrated by the issuance of the Decision on Motion for Review by the Appeals Chamber, Judge Akay has resumed his duties as a member of the bench of the Appeals Chamber in this case;

**FOR THE FOREGOING REASONS,**

**HEREBY DISMISS** the Renewed Motion as moot.

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

Done this 22nd day of June 2017,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
President

[Seal of the Mechanism]



<sup>6</sup> See “Statement of the Mechanism on Conviction of Judge Aydin Sefa Akay by Turkish Criminal Court of First Instance”, dated 15 June 2017, available at <http://www.unmict.org/en/news/statement-mechanism-conviction-judge-aydin-sefa-akay-turkish-criminal-court-first-instance>.

<sup>7</sup> Decision on Motion for Review, p. 3. See also Decision on Motion for Review, p. 2.

<sup>8</sup> See Renewed Motion, para. 1. See also Reply, para. 10.



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