

MICT-12-29-R
06-11-2017
(1912 - 1910)

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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No: MICT-12-29-R

Date: 6 November 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

THE PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PUBLIC

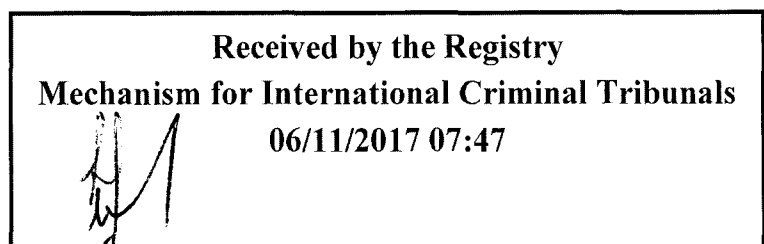
**PROSECUTION MOTION SEEKING LEAVE TO FILE A
SUR-REPLY AND SUR-REPLY TO DEFENCE REPLY TO
PROSECUTION RESPONSE TO NGIRABATWARE'S
SECOND RENEWED MOTION TO MODIFY CONDITIONS
OF DETENTION**

The Office of the Prosecutor:

Mr. Mathias Marcussen
Ms. Thembile Segoete

Augustin Ngirabatware:

Peter Robinson



1. Ngirabatware's Reply-Brief: Second Renewed Motion to Modify Conditions of Detention ("Ngirabatware's Reply"), filed 2 November 2017, impermissibly raises new arguments that he could and should have raised in his original motion if he wanted the Appeals Chamber to consider them.¹ The Prosecution therefore seeks leave to file this brief Sur-reply² to respond to Ngirabatware's new and unfounded claims.

2. Ngirabatware offers no support for his claim that a stay of his planned transfer to a West African state pending the review hearing would "leave Dr. Ngirabatware as the sole male occupant of the UN Detention Facility in Arusha ("UNDF") and create conditions akin to solitary confinement."³

3. In addition, while Ngirabatware relies on the sentencing decisions of the Trial Chamber and Appeals Chamber⁴ in the *Prosecutor v. Rašić* case, he fails to mention that the Appeals Chamber specifically distinguished those decisions and held that the fact that Rašić was the only woman detained at the UN Detention Unit in The Hague did not constitute "special circumstances" justifying provisional release.⁵

4. To the extent that Ngirabatware's continued detention in the UNDF were to be considered problematic, the appropriate remedy remains his transfer, as planned, to the enforcement State, as no substantiated justification for staying the transfer has been provided.

5. For the reasons stated above and in its 31 October 2017 Response to the Second Renewed Motion for Modification of Detention Conditions, the Prosecution requests that the President grant leave to file the instant Sur-reply and deny Ngirabatware's request for modification of detention conditions.

¹ *Prosecutor v. Mlado Radic*, Case No. IT-98-30/1-R.1, Decision on Prosecution Motion for Leave to File Sur-reply to Defence Reply in Request for Review by Mlado Radic, 9 May 2006, p.3.

² See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski's Motion for Leave to Present Appellate Arguments in Order Different from that Presented in Notice of Appeal, to Amend the Notice of Appeal, and to File Sur-reply, and on Prosecution Motion to Strike, 26 March 2009, para.15 (internal quotations omitted).

³ Ngirabatware's Reply, para.3. According to the most recent annual report submitted by the President, 10 convicted persons at the UNDF were awaiting transfer to enforcement States as of 30 June 2017. Fifth Annual Report of the International Residual Mechanism for Criminal Tribunals, 1 August 2017, UN Doc. No. A/72/261, S/2017/661, para.73. The Prosecution understands that there are currently 10 convicted persons in the UNDF.

⁴ Ngirabatware's Reply, para.4.

⁵ *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, para.11.

Word Count: 430



Mathias Marcussen
Senior Legal Officer
Officer-in-Charge,
The Hague Branch

Dated this 6th day of November 2017
At The Hague, The Netherlands



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Case Name/ Affaire :	NGIRABATWARE		Case Number/ Affaire n° : MICT-12-29-R
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