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MICT-13-37-ES.2
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Case No.: MICT-13-37-ES.2

Mechanism for International Criminal Tribunals

Date: 11 June 2018

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Date: 11 June 2018

PROSECUTOR

v.

HASSAN NGEZE

PUBLIC

**URGENT NGEZE DEFENCE REQUEST FOR EXTENSION OF TIME TO
RESPOND TO THE “SUPPLEMENTARY REQUEST” BY THE REPUBLIC OF
RWANDA AND ALL OTHER RELATED FILINGS**

The Office of the Prosecutor
Mr. Serge Brammertz

Counsel for Mr. Ngeze
Ms. Mirjana Vukajlović

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I. INTRODUCTION

1. On 8 March 2018, Mr. Hassan Ngeze, filed before Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism” or “MICT”), an application for commutation of his 35-year sentence (the “Application”).¹
2. On 3 May 2018, the President of the Mechanism requested the authorities of the Republic of Rwanda to file their response to Mr. Ngeze’s Application within 14 days from the filing of the President’s request.²
3. On 10 May 2018, the Republic of Rwanda filed its “Omnibus Response of the Republic of Rwanda on the Requests for Early Release from Aloys Siba, Dominique Ntaqukuliyayo and Hasan Ngeze and Request for Extension of Time”. In its response, the Republic of Rwanda requested 14 additional days “to make further submissions” in relation to the matter.
4. On 15 May 2018, the President of the Mechanism, granted the Republic of Rwanda 14 additional days to file its Additional Responses to the Applications, and gave Mr. Ngeze 21 days after the receipt of the Additional Responses or 10 days after the expiration of the deadline for the filing of the Additional Responses, if no further response was filed by the Republic of Rwanda, to reply “[...] to the Responses and any further information received from Rwanda [...]”.³
5. On 31 May 2018, the President of the Mechanism granted Mr Hassan Ngeze, 14 additional days to respond to the “Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique

¹ *Prosecutor vs. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Request to the Republic of Rwanda Related to Application for Commutation of Sentence from Mr. Hassan Ngeze, 3 May 2018, p. 1 (“Request to the Republic of Rwanda”).

² Request to the Republic of Rwanda.

³ *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Interim Order Related to the Request to the Republic of Rwanda on the Early Release Applications from Mr. Dominique Ntawukulilyayo, Mr. Hassan Ngeze, and Mr. Aloys Simba., 15 May 2018, pp. 2-3 (“Interim Order related to the Request”).

Ntawukulilyayo and Hassan Ngeze” (“Supplementary Request”), filed by the Ministry of Justice of Rwanda on 25 May 2018.⁴

6. The deadline to file a response to the “Supplementary Request for Documents” is 14 June 2018.

II. REQUEST FOR EXTENSION TO RESPOND TO THE “SUPPLEMENTARY REQUEST” BY THE REPUBLIC OF RWANDA AND ALL OTHER RELATED FILINGS

a. Legal Counsel for Mr. Hassan Ngeze was not provided with the “Application” and other pending filings by Mr. Ngeze

7. Legal Counsel for Mr. Hasan Ngeze was not provided with the initial Application for Commutation of Sentence and Early Release filed by Mr. Ngeze on 8 March 2018.
8. The possibility to conduct an effective defence for individuals facing criminal proceedings essentially depends, inter alia, on the possibility of the individual and his counsel to have access all available information related to the specific case. Hampering or otherwise unlawfully limiting such access to case files would undermine the individual’s right to an effective defence, and, thus, would result in a violation of his fundamental human rights.
9. The right to access his case files has been recognized by the jurisprudence of the ICTY, ICTR, and preserved by the Mechanism. In this regard, in *Prosecutor v. Brdjanin*, Single Judge Burton Hall emphasized that counsel for an accused or convicted person ought to have access to the complete record of the proceedings to which their client is entitled.⁵ This statement recognizes that counsel should have an unhindered access to their clients’ case files.⁶ This has been further upheld in *Niyitegeka*, *Karera*, and *Ngirabatware*.⁷

⁴ *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Interim Order on the Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Mr. Dominique Ntawukulilyayo, Mr. Hassan Ngeze, and Mr. Aloys Simba., 31 May 2018, pp. 2-4 (“Interim Order on the Supplementary Request for Documents”).

⁵ *Prosecutor v. Radoslav Brdjanin*, No. MICT-13-48, Decision on Request for Access (3 August 2015).

⁶ As stated by Judge Burton Hall, such access is necessary for counsel “[...] to carry out their duties in full [...]”, in *Prosecutor v. Radoslav Brjanin*, Decision on Request for Access.

10. Indeed, it is not sufficient for the right to adequately prepare the defence to be recognized in abstract by the law. Rather, pursuant to the jurisprudence of the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (“IACtHR”), its practicality and effectiveness must be guaranteed.⁸
11. Legal Counsel for Mr. Hassan Ngeze was not provided with the Application for Commutation of Sentence and Early Release filed by Mr. Ngeze on 8 March 2018. Notwithstanding that Mr. Ngeze personally filed the “Application” to the President of the Mechanism, Legal Counsel for Mr. Ngeze should have been informed about and provided with the Application filed by him. This is of particular importance considering the continuous hindering of client-lawyer communications to which Mr. Ngeze has been subjected during his imprisonment at Koulikoro Prison, in Mali.⁹
12. Lack of notice to Mr. Ngeze’s Legal Counsel about his application seriously affected the practicality of an effective legal representation, as it deprived his legal defence team of adequate time and facilities to prepare an effective defence in order to support the Application, and in relation to the subsequent submissions filed by the Republic of Rwanda.
13. As submitted in Mr. Ngeze’s Motion for Reconsideration or, in the Alternative, Leave to Appeal the *Décision sur la Requete d’Hassan Ngeze with Extension of Time Limit and Extension of Word Limit* from 15 March 2017, the abusive conduct of Koulikoro’s prison authorities has seriously impeded private communications between Mr. Ngeze and his Defence team, which in turn erodes his right to effectively prepare motions and filings in his interests.

⁷ *Prosecutor v. Eliézer Niyitegeka*, MICT-12-16, Decision on Niyitegeka’s Urgent Request for Orders Relating to Prosecution Witnesses (29 January 2016), para. 10; *Prosecutor v. Karera*, Case No. MICT-12-24-R, Decision on Request for Access (9 August 2016); *Prosecutor v. Augustin Ngirabatware*, No. MICT-12-29, Decision on Request for Access (16 September 2015).

⁸ “[...] *the conditions under which the defense attorneys had to operate were wholly inadequate for a proper defense, as they did not have access to the case file [...]. The effect was that the presence and participation of the defense attorneys were mere formalities [...]*”, in IACtHR, *Castillo Petruzzi et al. v. Peru*, Merits Reparations and Costs (30 May 1999), para. 141; See also, ECHR, *Öcalan v. Turkey*, Application No. 46221/99, Judgment (12 March 2003), para. 146.; Nelson Mandela Rules, Rule 61(3).

⁹ For reference, see *Prosecutor vs. Hassan Ngeze*, Motion for Reconsideration or, in the Alternative, Leave to Appeal the *Décision sur la Requete d’Hassan Ngeze with Extension of Time Limit and Extension of Word Limit*, 15 March 2017.

14. Accordingly, the continuous hindering of communications between Mr. Ngeze and his legal defence team, have affected the possibility of preparing a response to the submissions of the Republic of Rwanda in a way that would guarantee an effective defence of Mr. Ngeze's interests.
15. One of the criteria specified in Rule 151 of the Rules of Procedure and Evidence, reiterated in paragraph 9 of the Practice Directions, which the President is taking into account when deciding, apart from the interests of justice and the general principles of law, is "any other information that he or she considers relevant".
16. The Counsel for Mr. Ngeze has a limited possibility of communication with him, although it is of the utmost importance to obtain all the relevant information in order to support the Application, and to prepare the response in question. This includes also access to the sensitive issues such as client's consent for use of medical records.
17. Some of the relevant information is not known to Counsel without consultation with the client, bearing in mind that Ms. Mirjana Vukajlovic was not Mr. Ngeze's counsel during the trial and appeal proceedings.
18. In addition, more time is needed in order to address the nature of the numerous filings, including the filings by third parties in relation to the "Application" by Mr. Ngeze.
19. Rule 150 of the Rules of Procedure and Evidence of the Mechanism establishes that, upon direct petition from a convicted person, the President shall determine whether pardon, commutation of sentence or early release is appropriate. Accordingly, Rule 151 further provides that, in making a determination on the matter, the President shall take into account, among other factors, the gravity of the crimes for which the respective individual was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation and any substantial cooperation of the prisoner with the Prosecutor.
20. Moreover, paragraph 3 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons

Convicted by the ICTY, the ICTY or the Mechanism, highlights that when a petition for pardon, commutation of sentence or early release has been presented directly by a convicted person to the President of the MICT, “the Mechanism shall request [...] the enforcing State to inform it whether the convicted person is eligible for pardon, commutation of sentence or early release”.

21. In this regard, the applicable law only mentions States as potential intervening parties during the process of analysis of an application for pardon, commutation of sentence or interim release. Other third parties do not have *locus standi* in the proceedings concerning Mr. Ngeze’s Application.
22. The Defence for Mr. Ngeze submits that the third-party filings presented to the President of the Mechanism in relation to Mr. Ngeze’s Application, ought not be taken into account by the President when considering our client’s submissions.
23. Given the short notice with which these third-party filings have been provided to Defence team of Mr. Ngeze, and being informed by the client, on the date of this Request, that there are numerous pending filings by him, which are still not filed by the prison authorities, the Defence has not been provided with adequate time and facilities to present submissions to the Mechanism in relation to the Application, submissions filed by the Republic of Rwanda, and nature of third-party filings in these matters, and to respond to the accusations against Mr. Ngeze which those filings include.
24. Considering that the deadline to respond the last “Supplementary Request” by the Republic of Rwanda, and based on the submissions presented above, the Defence for Mr. Ngeze respectfully requests that the President of the Mechanism grants Mr. Ngeze and his legal defence team an extension of time to respond to the “Supplementary Request” and other irregular third-parties filings, for at least 10 additional days, until 24 June 2018 at the earliest.
25. The Defence of Mr. Ngeze recalls that the Republic of Rwanda has similarly been provided with time extensions in order to provide more information in relation to their submissions.

The Defence also recalls that Mr. Ngeze's fundamental human rights demand that he is given adequate time and facilities to conduct an effective defence.

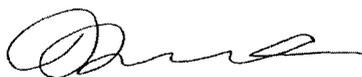
26. Finally, the Defence also respectfully requests that the President consider the request urgently, in view of the fast approaching deadline.

III. RELIEF REQUESTED

27. The Defence respectfully requests the President to:

- i. order the expedited filing of Mr. Ngeze's Application for Commutation of Sentence and Early Release dated 8 March 2018, and other pending filings by Mr. Ngeze;
- ii. authorise the Defence to file its substantiated response to the "Supplementary Request" and other irregular third-parties filings by 24 June 2018.

Respectfully submitted,



Att. Mirjana Vukajlović

11 June 2018

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**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
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Date Created/ Daté du :	11 June 2018	Date transmitted/ Transmis le :	11 June 2018	No. of Pages/ Nombre de pages : 8 <i>FTL</i>	
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