



International Residual Mechanism  
for Criminal Tribunals

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

Date: 14 June 2018

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. Olufemi Elias

**Decision of:** 14 June 2018

**PROSECUTOR**

v.

**HASSAN NGEZE**

***PUBLIC***

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**DECISION ON HASSAN NGEZE'S REQUEST FOR EXTENSION  
OF TIME**

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**Office of the Prosecutor**

Mr. Serge Brammertz

**Counsel for Mr. Hassan Ngeze**

Ms. Mirjana Vukajlović

**The Republic of Rwanda**

**The Republic of Mali**

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*Thwaipopo*

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

**NOTING** an application from Mr. Hassan Ngeze (“Ngeze”) for commutation of sentence dated 8 March 2018 and received on 13 March 2018;<sup>1</sup>

**RECALLING** that, in line with past practice of the International Criminal Tribunal for Rwanda (“ICTR”),<sup>2</sup> and pursuant to paragraph 4(d) 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 ICTR, the ICTY or the Mechanism,<sup>3</sup> I invited the Republic of Rwanda (“Rwanda”) to provide its views on the Application;<sup>4</sup>

**NOTING** that I requested Rwanda to file its views on the Application, if any, no later than fourteen (14) days from the filing of the Requests to Rwanda, and instructed Ngeze, to file a reply, if any, to the response from Rwanda in this regard no later than ten (10) days after receipt of the response;<sup>5</sup>

**NOTING** the “Omnibus Response of the Republic of Rwanda on the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze and Request for Extension of Time” submitted by the Ministry of Justice of Rwanda, dated 10 May 2018, and filed on 11 May 2018,<sup>6</sup> wherein Rwanda, *inter alia*: (i) opposes the early release of Ngeze; (ii) requests a public hearing on the early release of Ngeze that “would permit witnesses, including victims, and experts – psychologists and legal scholars – to come forward in a transparent manner”; and (iii) requests to be allowed to make further submissions within the next fourteen (14) days, if more information than that which was stated in the Response is found, and deemed to be in the interests of justice;<sup>7</sup>

**NOTING** the “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

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<sup>1</sup> Letter from Mr. Hassan Ngeze to Judge Theodor Meron, President, dated 8 March 2018, received on 13 March 2018, and filed on 13 June 2018 (“Application”).

<sup>2</sup> Rule 125 of the ICTR Rules of Procedure and Evidence states that “[t]he President shall, upon such notice, determine, in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal and after notification to the Government of Rwanda, whether pardon or commutation is appropriate”.

<sup>3</sup> MICT/3/Rev.1, 24 May 2018.

<sup>4</sup> Request to the Republic of Rwanda Related to Application for Commutation of Sentence from Mr. Hassan Ngeze, 3 May 2018 (“Request to Rwanda”).

<sup>5</sup> Request to Rwanda, p. 3.

<sup>6</sup> Omnibus Response of the Republic of Rwanda on the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze and Request for Extension of Time, 11 May 2018 (“Response”).

<sup>7</sup> Response, pp. 2, 19.

Simba”, issued by me on 15 May 2018,<sup>8</sup> granting Rwanda’s request to be allowed to file additional responses to the Application (“Additional Responses”), if any, no later than fourteen (14) days from the filing of the Interim Order, and instructing Ngeze to file a reply, if any, to the Additional Responses and any further information received from Rwanda, no later than twenty-one (21) days after receipt of the response, or ten (10) days following the expiration of the deadline for the filing of the Additional Responses from Rwanda, should none be filed by the latter within the deadline;<sup>9</sup>

**NOTING** the “Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze”, submitted by the Ministry of Justice of Rwanda, dated 21 May 2018, and filed on 25 May 2018, wherein Rwanda confirms its intention to provide a supplementary submission, and, in order to do so, requests: (i) a copy of the Application, including any supporting documentation; (ii) any communications from or on behalf of the Republic of Mali (“Mali”) to the Mechanism in respect of the Application, or confirmation that no such communication has been received by the Mechanism; and (iii) any other relevant documents that will be considered in my judicial determination of the Application;<sup>10</sup>

**NOTING** the “Interim Order on the Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo, and Hassan Ngeze”, issued by me on 31 May 2018 (“Second Interim Order”), granting Ngeze and Mali the right to respond to the Supplementary Request, no later than fourteen (14) days from the date of the Second Interim Order;<sup>11</sup>

**NOTING** that various non-parties have made filings in relation to the Application;<sup>12</sup>

**NOTING** the additional filings made by Rwanda on 11 June 2018 (collectively, “Additional Filings”);<sup>13</sup>

**BEING SEISED OF** a motion filed by Counsel for Ngeze (“Counsel”) on 12 June 2018,<sup>14</sup> in which Ngeze requests an extension of “at least 10 additional days” to file his response to the

<sup>8</sup> 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 (“First Interim Order”).

<sup>9</sup> First Interim Order, pp. 2-3.

<sup>10</sup> Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 21 May 2018 (“Supplementary Request”).

<sup>11</sup> Second Interim Order, p. 4.

<sup>12</sup> *See, e.g.*, Submission of Additional Information Relevant to the Request for Early Release of Hassan Ngeze, 30 May 2018; Letter from Dr. Frank Chalk, Professor of History and Co-Founder, the Montreal Institute for Genocide and Human Rights Studies, 4 June 2018; Letter Opposing Commutation of Sentence and Early Release of ICTR Convicts, 6 June 2018.

<sup>13</sup> Statement of the Government of Rwanda in Opposition to Applications for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, dated 1 June 2018 and filed on 11 June 2018; The Government of

Supplementary Request and other third-party filings, and expedited filing of the Application “and other pending filings”, arguing, *inter alia*, that: (i) Counsel has not been provided with the Application; (ii) communications between Ngeze and his legal defence team have been hindered, affecting the preparation of a response to the submissions by Rwanda; (iii) more time is needed to address the nature of the “numerous filings”, including filings by third parties who do not have *locus standi* in this matter; and (iv) there are “numerous pending filings” by Ngeze that have not been filed by the authorities at the Koulikoro prison (“Prison”) where Ngeze is serving his sentence in Mali;<sup>15</sup>

**NOTING** that on 12 June 2018, Ngeze, acting *pro se*, filed three motions combined in one document;<sup>16</sup>

**RECALLING** that Rule 154(A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), allows a Chamber of the Mechanism, on good cause being shown by motion, to enlarge any time prescribed by or under the Rules or to recognize as validly done any act done after the expiration of the prescribed time limit;

**NOTING** that, although Rule 154(A) of the Rules refers to a Chamber of the Mechanism, its provisions apply, *mutatis mutandis*, to motions filed before the President of the Mechanism;<sup>17</sup>

**CONSIDERING** that the Application was filed on the record on 13 June 2018, Counsel is thereby assumed to have received it, and consequently that aspect of the Motion has been rendered moot;

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Rwanda’s Supplemental Brief in Opposition to Application for Early Release of Hassan Ngeze, dated 1 June 2018 and filed on 11 June 2018.

<sup>14</sup> Urgent Ngeze Defence Request for Extension of Time to Respond to the “Supplementary Request” by the Republic of Rwanda and all Other Related Filings, 12 June 2018 (“Motion”).

<sup>15</sup> Motion, paras. 7, 11-14, 16, 18, 21-22, 23-24, 27. In view of the Motion’s urgency and considering that the other parties with standing in relation to this matter will not be prejudiced by the issuance of a ruling on the Motion without awaiting the filing of any responses thereto, the present Decision is issued without awaiting any such responses.

<sup>16</sup> “Hassan Ngeze three motions combined in one, filed before the President of the Mechanism, the 1<sup>st</sup> as to Seeking the extension of time that will enable the Registrar to provide to Ngeze’s lawyer the English translation of the documents filed by Ngeze so that lawyer Mirjina VuKajlovic be able to present the case after having understood the case at hands [*sic*], 2<sup>nd</sup> to exclude the documents filed by Sir. Stephen J. Rapp, who is from US Holocaust memorial Museum. 3<sup>rd</sup> Alternatively to allow Ngeze to call a law scholar Alexander Zaher as an amicus curiae to come and challenge what Stephen J. Rapp brought against Ngeze in the case at hand concerning the pending request of reducing sentence to a shorter sentence:/early release filed on [*sic*] dated 8 March 2018” (“Ngeze Filing”), filed on 12 June 2018. Where a submission is filed by both the convicted person and counsel on his behalf, the submission filed by counsel is generally taken into account for purposes of adjudicating a matter. See *Eliézer Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka’s Request for Review and Assignment of Counsel, 13 July 2015, paras. 13-14. Accordingly, I will take into account the Motion alone for purposes of adjudicating this matter and I do not consider myself seised of the Ngeze Filing. In any event, I consider the Ngeze Filing to be, in part, duplicative of the Motion. See also *Prosecutor v. Dragoljub Kunarac*, Decision of the President on the Early Release of Dragoljub Kunarac, 2 February 2017 (public redacted version), p. 2, fn. 12; *Bernard Munyagishari v. The Prosecutor*, Case No. ICTR-05-89-AR11bis, Decision on Bernard Munyagishari’s Motion for Reconsideration of Prior Reconsideration Decisions, 24 July 2013, p. 2, which provides that, “as a general matter, the Appeals Chamber does not entertain *pro se* submissions from a party who is represented by counsel”.

<sup>17</sup> *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-ES.1, Decision on Milan Lukić’s Motion Pursuant to Rule 154 to Enlarge the Time Limit for Filing of the Reply Brief, 10 April 2015, p. 1.

**NOTING** with concern the allegations raised by Ngeze that communications between Ngeze and his legal defence team have been hindered, and that Ngeze claims that certain filings have not been transmitted for filing by the Prison authorities;<sup>18</sup>

**CONSIDERING** that the Second Interim Order grants Ngeze the right to respond to the Supplementary Request;<sup>19</sup>

**NOTING** in this regard that only parties mentioned in the Request to Rwanda, First Interim Order and Second Interim Order have standing to make submissions in regard to this matter;<sup>20</sup>

**CONSIDERING**, moreover, that the materials requested in the Supplementary Request include documentation pertaining to, *inter alia*, convicted persons' medical conditions, family contact details, and information received from Mali, and accordingly that the Supplementary Request raises potentially complex issues in this regard;<sup>21</sup>

**CONSIDERING**, accordingly, that given the nature of the issues at stake, good cause has been shown for extending the deadline set in the Second Interim Order to allow Counsel sufficient time to prepare a meaningful response to the Supplementary Request;<sup>22</sup>

**FOR THE FOREGOING REASONS,**

**HEREBY GRANT** the Motion in part;

**ORDER** Counsel to file a substantiated response to the Supplementary Request, if any, no later than 24 June 2018; and

**REQUEST** the Registrar of the Mechanism to take any reasonable, necessary and appropriate steps, within his power, to resolve the issues raised herein concerning the potential impediment of communications between Ngeze and Counsel and/or the existence of filings that have not been transmitted for filing by the relevant Prison authorities as referenced in the Motion.

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<sup>18</sup> Motion, paras. 11, 13-14. I note in this regard that Counsel was listed in copy to the Application and to subsequent letters sent by Ngeze to the Mechanism in the context of his Application.

<sup>19</sup> See Second Interim Order, p. 4.


<sup>20</sup> Cf. *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on Dominique Ntawukulilyayo's Request for Legal Aid, 12 June 2018, fn. 18.

<sup>21</sup> See Second Interim Order, p. 3. See generally Supplementary Request.

<sup>22</sup> Any response solicited from relevant parties to the Additional Filings will be dealt with by a separate order of the President.

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

Done this 14th day of June 2018,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
President

**[Seal of the Mechanism]**





**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
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