

UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No. MICT-13-34-ES
MICT-13-37-ES.2
MICT-14-62-ES.1
MICT-14-77

Date: 6 July 2018

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Decision of: 6 July 2018

PROSECUTOR	PROSECUTOR	PROSECUTOR	PROSECUTOR
v.	v.	v.	v.
DOMINIQUE NTAWUKULILYAYO	HASSAN NGEZE	ALOYS SIMBA	ALOYS NTABAKUZE

PUBLIC

**DECISION ON NTABAKUZE'S APPLICATION FOR LEAVE TO
INTERVENE**

The Office of the Prosecutor

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The Republic of Rwanda

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Thwaipopo

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

NOTING: (i) an application from Mr. Hassan Ngeze (“Ngeze”) for commutation of sentence dated 8 March 2018 and received on 13 March 2018; (ii) an application for early release from Mr. Dominique Ntawukulilyayo (“Ntawukulilyayo”) dated 1 February 2017 and received on 25 February 2017; and (iii) an application for early release from Mr. Aloys Simba (“Simba”) dated 25 October 2016 and received on 27 October 2016;¹

RECALLING that, in line with past practice of the International Criminal Tribunal for Rwanda (“ICTR”),² 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 (“Practice Direction”),³ I invited the Republic of Rwanda (“Rwanda”) to provide its views on the Application;⁴

NOTING that I requested Rwanda to file its response to the Applications, if any, no later than fourteen (14) days from the filing of the Requests to Rwanda, and instructed Ngeze, Ntawukulilyayo, and Simba to file a reply, if any, to the response from Rwanda to the Applications no later than ten (10) days after receipt of the response;⁵

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

¹ See *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, *Une demande de commutation de peine pour des raisons humanitaires qui est basée exclusivement sur les pouvoirs discrétionnaires du Président du Mécanisme*, dated 8 March 2018, received on 13 March 2018, and filed on 13 June 2018; Letter from Mr. Dominique Ntawukulilyayo to Judge Theodor Meron, President, dated 1 February 2017 and received on 25 February 2017; Letter from Mr. Sadikou Ayo Alao, Counsel for Mr. Aloys Simba, to Judge Theodor Meron, President, dated 25 October 2016 (with annexes) and received on 27 October 2016. The three above-mentioned applications are collectively referred to as “Applications”.

² 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”.

³ MICT/3/Rev.1, 24 May 2018.

⁴ *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Request to the Republic of Rwanda Related to Application for Early Release from Mr. Aloys Simba, 26 April 2018; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Request to the Republic of Rwanda Related to Request for Early Release from Mr. Dominique Ntawukulilyayo, 26 April 2018; *Prosecutor v. 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. The three above-mentioned requests are collectively referred to as “Requests to Rwanda”.

⁵ Requests to Rwanda, p. 3.

Extension of Time” submitted by the Ministry of Justice of Rwanda, dated 10 May 2018, and filed on 11 May 2018,⁶ wherein Rwanda, *inter alia*: (i) opposes the early release of Ngeze, Ntawukulilyayo, and Simba; (ii) requests a public hearing on the early release of Ngeze, Ntawukulilyayo, and Simba 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 Responses is found, and deemed to be in the interests of justice;⁷

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 Simba”, issued by me on 15 May 2018,⁸ granting Rwanda’s request to be allowed to file additional responses to the Applications, if any;⁹

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 by the Mechanism on 25 May 2018, wherein Rwanda confirms its intention to provide a supplementary submission, and, in order to do so, requests: (i) the respective Applications, including any supporting documentation; (ii) any communications from or on behalf of the Republic of Benin and/or the Republic of Mali to the Mechanism in respect of the Applications, or confirmation that no such communication has been received by the

⁶ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, 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; *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, 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; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, 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. The three above-mentioned responses are collectively referred to as “Responses”.

⁷ See Responses, pp. 2, 19.

⁸ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, 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; *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; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, 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. The three above-mentioned filings are collectively referred to as “Interim Orders”.

⁹ Interim Orders, pp. 2-3.

Mechanism; and (iii) any other relevant documents that will be considered in my judicial determination of the Applications;¹⁰

NOTING that various non-parties have made filings in relation to the Applications;¹¹

NOTING the additional filings made by Rwanda on 11 June 2018;¹²

BEING SEISED OF a motion filed by Counsel for Mr. Aloys Ntabakuze (“Counsel” and “Ntabakuze”, respectively) on 11 June 2018,¹³ in which Counsel, (i) seeks leave to make

¹⁰ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, 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; *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, 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; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, 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. The three above-mentioned filings are collectively referred to as “Supplementary Requests”.

¹¹ *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; Letter from Jean Yves St Denis, 7 June 2018; Letter from Kelly Ann Ryan, 20 June 2018; Email from Members of the Political Rwandan Activists for Democracy, 20 June 2018; Email from Beth Lilach, 20 June 2018.

¹² *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, 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; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, The Government of Rwanda’s Supplemental Brief in Opposition to Application for Early Release of Dominique Ntawukulilyayo, dated 1 June 2018 and filed on 11 June 2018; *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, 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; *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, The Government of Rwanda’s Supplemental Brief in Opposition to Application for Early Release of Hassan Ngeze, dated 1 June 2018 and filed on 11 June 2018; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, 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; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, The Government of Rwanda’s Supplemental Brief in Opposition to Application for Early Release of Aloys Simba, dated 1 June 2018 and filed on 11 June 2018. The above-mentioned filings are collectively referred to as “Additional Filings”.

¹³ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Ntabakuze’s Application for Leave to Intervene in the Matter Regarding the President’s Request to the Republic of Rwanda Related to the Application for Early Release Lodged by Mssrs. Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 11 June 2018; *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Ntabakuze’s Application for Leave to Intervene in the Matter Regarding the President’s Request to the Republic of Rwanda Related to the Application for Early Release Lodged by Mssrs. Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 11 June 2018; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Ntabakuze’s Application for Leave to Intervene in the Matter Regarding the President’s Request to the Republic of Rwanda Related to the Application for Early Release Lodged by Mssrs. Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 11 June 2018; *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77, Ntabakuze’s Application for Leave to Intervene in the Matter Regarding the President’s Request to the Republic of Rwanda Related to the Application for Early Release Lodged by Mssrs. Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 11 June 2018. The four above-mentioned filings are collectively referred to as “Motion”.

observations on the filings made by Rwanda; and (ii) requests that the Responses, Supplementary Requests, and any future submissions by Rwanda be rejected, submitting that: (i) Ntabakuze has *locus standi* in this matter as any decisions taken in this matter “will affect his own interests” and that persons convicted by the ICTR (“Convicted Persons”) have a “direct concern in the legal issues raised in this case”; (ii) the “unprecedented move” of consulting with Rwanda on the Applications has no legal basis and will adversely affect the Convicted Persons’ right to request consideration for early release upon eligibility given the “unfair bias” already displayed by Rwanda in their submissions thus far; and (iii) any future applications for early release will be treated differently than previous such applications, which were decided without consulting with Rwanda, placing all Convicted Persons “on an unequal footing”;¹⁴

RECALLING that paragraph 4(d) provides that the Registry shall “[o]btain any other information that the President considers relevant” in regard to an application for pardon, commutation of sentence or early release;

CONSIDERING, therefore, that Ntabakuze has failed to demonstrate that there is no legal basis to consult with Rwanda in respect of the Applications in light of the broad discretion given to the President to determine what material is relevant to his consideration of an application for pardon, commutation of sentence or early release;

NOTING that the Motion is based on Rule 83 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), which provides that a Judge or Chamber has the discretion to invite an applicant to appear as *amicus curiae* and make submissions on any issue specified by the Judge or Chamber if it considers it desirable for the proper determination of the case;¹⁵

¹⁴ Motion, paras. 7-9, 12-13, 15-18, 20-23, 25-33, 34.

¹⁵ Motion, para. 7. See *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Decision on ADAD-ICTR and ADC-ICTY Motions for Leave to Submit *Amicus Curiae* Observations and Decision on Application for Leave to Reply, 13 August 2015, para. 8. I note, in this regard, that although Rule 83 of the Rules refers to a Chamber of the Mechanism, its provisions apply, *mutatis mutandis*, to motions filed before the President of the Mechanism. See, e.g., *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Decision on Hassan Ngeze’s Request for Extension of Time, 14 June 2018, p. 3; *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. See also *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Decision on ADAD-ICTR and ADC-ICTY Motions for Leave to Submit *Amicus Curiae* Observations and Decision on Application for Leave to Reply, 13 August 2015, para. 8.

CONSIDERING that the role of an *amicus curiae* is not to represent an individual's interests before a Judge or Chamber of the Mechanism, but to assist said Judge or Chamber in its consideration of questions at issue for the proper determination of a case, or to ensure the fairness of the proceedings of a case;¹⁶

CONSIDERING that applications for pardon, commutation of sentence or early release are fact specific to the applicant and involve a consideration of specific factors, including, *inter alia*, the gravity of the crime or crimes for which a prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Office of the Prosecutor of the ICTR, the International Criminal Tribunal for the former Yugoslavia or the Mechanism, respectively, as they pertain to the applicant;¹⁷

CONSIDERING that any application for pardon, commutation of sentence or early release made by Ntabakuze in future would give Ntabakuze the opportunity to set out his views in relation to what material is relevant to the President's consideration of his specific application, including any submissions of Rwanda;

FOR THE FOREGOING REASONS,

HEREBY DENY the Motion.

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

Done this 6th day of July 2018,
At The Hague,
The Netherlands.



[Seal of the Mechanism]

Judge Theodor Meron
President

¹⁶ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Request for Leave to Make Submissions as *Amicus Curiae*, 25 September 2017, p. 1; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Momčilo Krajišnik's Request to Self-Represent, on Counsel's Motions in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007, paras. 16-17. Although these cases refer specifically to questions at issue in an appeal case, I consider that the concept applies, *mutatis mutandis*, to proceedings before the President.

¹⁷ See Rule 151 of the Rules.



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