



Mechanism for International Criminal Tribunals

Case No.: MICT-12-29-R

Date: 21 December 2016

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Review Judge

Registrar: Mr. John Hocking

Order of: 21 December 2016

PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PUBLIC

ORDER FOR ORAL HEARING

The Office of the Prosecutor:

Government of the Republic of Turkey

Mr. Serge Brammertz
Mr. Richard Karegyesa
Mr. Abubacarr Tambadou

Counsel for Mr. Augustin Ngirabatware:

Mr. Peter Robinson

**Received by the Registry
Mechanism for International Criminal Tribunals
21/12/2016 11:45**

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

I, **THEODOR MERON**, Presiding Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) and Pre-Review Judge in this case;¹

RECALLING that, on 18 December 2014, the Appeals Chamber: (i) affirmed Augustin Ngirabatware’s convictions for committing direct and public incitement to commit genocide and instigating and aiding and abetting genocide; (ii) reversed Ngirabatware’s conviction for rape as a crime against humanity; and (iii) imposed a sentence of 30 years of imprisonment;²

NOTING that, on 8 July 2016, Ngirabatware filed a request for review of his convictions,³ and that, on 1 September 2016, he requested to be granted provisional release until the completion of the review proceedings;⁴

NOTING that, on 25 July 2016, the President of the Mechanism assigned a Bench of the Appeals Chamber in the case of *The Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, composed of Judge Theodor Meron, Presiding, Judge Joseph E. Chiondo Masanche, Judge Aydin Sefa Akay, Judge Aminatta Lois Runeni N’gum, and Judge Gberdao Gustave Kam;⁵

NOTING that, on or around 21 September 2016, Judge Akay was detained in Turkey in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey and has remained in detention since that time;

BEING SEISED OF a motion filed by Ngirabatware on 10 November 2016, requesting: (i) an oral hearing; and (ii) an order to the Government of the Republic of Turkey, pursuant to Article 28 of the Mechanism’s Statute (“Statute”) and Rule 55 of the Mechanism’s Rules of Procedure and Evidence (“Rules”), to cease its prosecution of Judge Akay so that he can resume his judicial functions in this case;⁶ or, in the alternative (iii) an order for Ngirabatware’s “temporary provisional release” on the grounds that Judge Akay’s arrest and detention are causing undue delay in the adjudication of Ngirabatware’s request for review of his convictions;⁷

¹ See Order Designating a Pre-Review Judge, 17 August 2016, p. 1.

² *Augustin Ngirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014, paras. 3, 252, 278, 279. See also *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgement and Sentence, pronounced on 20 December 2012 and issued in writing on 21 February 2013, para. 1394.

³ Motion for Review of Judgement, 8 July 2016 (confidential).

⁴ Motion for Provisional Release, 1 September 2016 (public redacted version), paras. 1, 13.

⁵ Order Assigning Judges to Consider a Case Before the Appeals Chamber, 25 July 2016, p. 2.

⁶ Motion for Order to Government of Turkey or for Temporary Provisional Release, 10 November 2016 (“Motion”), paras. 1, 21.

⁷ Motion, paras. 2, 22.

NOTING that, in response, the Prosecution opposes Ngirabatware's request for temporary provisional release,⁸ and submits that it is in the interests of justice to give the Government of the Republic of Turkey an opportunity to be heard prior to the issuance of any decision pursuant to Article 28 of the Statute and Rule 55 of the Rules;⁹

RECALLING that, on 28 November 2016, I invited the Government of the Republic of Turkey to file written submissions in response to the Motion by 12 December 2016;¹⁰

NOTING that the Government of the Republic of Turkey did not file a written response to the Motion;

NOTING that, on 18 December 2016, Ngirabatware reiterated his request for "temporary provisional release" and for an order to the Government of the Republic of Turkey to immediately release Judge Akay;¹¹

CONSIDERING that, prior to deciding on the relief sought by Ngirabatware, it is appropriate to allow the Government of the Republic of Turkey an additional opportunity to make oral submissions in relation to Judge Akay's arrest and detention in Turkey;

CONSIDERING that, therefore, it is appropriate to hold a hearing pursuant to Rules 70 and 131 of the Rules;

CONSIDERING that, in view of the urgency of the matter and the recent transition of the Mechanism's branch in Arusha to new facilities, it is appropriate for reasons of effective court management to hold the hearing at The Hague branch;

CONSIDERING that, in accordance with Rules 70(G) and 131 of the Rules, the presence of Ngirabatware is not required at the hearing;

PURSUANT to Rules 55, 70(G), 131, and 135 of the Rules;

HEREBY ORDER that a public hearing shall be held on this matter on Tuesday, 17 January 2017, at 2:30 p.m. in Courtroom I of the Mechanism's branch in The Hague at which

⁸ Prosecution Response to Motion for Order to Government of Turkey or for Temporary Provisional Release, 18 November 2016 ("Response of 18 November 2016"), paras. 1, 6. *See* Response of 18 November 2016, paras. 3-5. *See also* Prosecution Further Submissions on Motion for Order to the Government of Turkey or for Temporary Provisional Release, 19 December 2016, para. 2.

⁹ Prosecution Response to Order for Further Written Submissions, 24 November 2016, para. 2. *See also* Order for Further Written Submissions, 21 November 2016, p. 2.

¹⁰ Invitation to the Government of the Republic of Turkey, 28 November 2016, p. 2.

¹¹ Further Submission on Motion for Order to Government of Turkey or for Temporary Provisional Release, 18 December 2016, paras. 1, 13-15.

the parties and a representative of the Government of the Republic of Turkey shall be provided an opportunity to be heard.

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

Done this 21st day of December 2016,
At The Hague,
The Netherlands



Judge Theodor Meron,
Pre-Review Judge

[Seal of the Mechanism]





**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

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From/ De :	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur
Case Name/ Affaire :	Prosecutor v. AUGUSTIN NGIRABATWARE		Case Number/ Affaire n° : MICT-12-29-R
Date Created/ Daté du :	21 December 2016	Date transmitted/ Transmis le :	21 December 2016
		No. of Pages/ Nombre de pages :	4
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
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Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
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