



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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**Office of the President
Cabinet du Président**

Before: Judge Erik Møse, President

Original: English

Registrar: Mr Adama Dieng

Date: 29 July 2005

ICR - 99 - 52 - A
1.08 2005
(3828A - 3825/A)

HASSAN NGEZE

VERSUS

THE PROSCUTOR

ICTR-99-52-A

2005 AUG - 1 P 12: 15
Adama Dieng

Request for Reversal of the Prohibition of Contact

Defence:

Mr Bharat B. Chadha

Mr Behram Shroff

Prosecution:

Mr James Stewart

Mr Neville Weston

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA;

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SITTING in the person of Judge Erik Møse, President;

CONSIDERING the request of 12 July 2005 from Hassan Ngeze (“the Applicant”) for review of the prohibition of contact enforced by the Commanding Officer of the United Nations Detention Facility (“the request”);

CONSIDERING that, in view of the nature of the request, a decision needs to be taken without further delay, although the Prosecutor and Registrar have not, as yet, filed their responses;

HEREBY DECIDES THE REQUEST

INTRODUCTION

The Applicant, a detainee at the United Nations Detention Facility (“the UNDF”), is convicted of conspiracy to commit genocide, genocide, direct and public incitement to commit genocide and crimes against humanity, and sentenced to imprisonment for the remainder of his life. He has a pending appeal against his convictions and sentence.

On 5 July 2005, the Prosecutor made an urgent request to the Commanding Officer of the UNDF to impose restrictive measures in respect of the Applicant’s contact with the outside world. A copy of this request has been enclosed by the Applicant in his written submissions. Also relevant to the Applicant’s request are two letters dated 8 and 11 July 2005 respectively, which have been copied to the President.

SUBMISSIONS

The Applicant submits that the restrictions, imposed by the Commanding Officer of the UNDF, prevent him from collecting information relating to his innocence. This information is also required in support of a motion to produce additional evidence, in accordance with Rule 115 of the Rules of Procedure and Evidence (“the Rules”). Consequently, these restrictions interfere with the preparation of his appeal.

The Applicant also argues that the Defence has not made any contact with Prosecution witnesses and not violated any witness protection orders. The restrictions imposed by the Commanding Officer of the UNDF has caused stress, pain and humiliation. They are an abuse of the process of the Tribunal and in complete disregard for the Applicant’s right to contact the outside world.

DELIBERATIONS

The Prosecution may, pursuant to Rule 64 of the Rules of Detention¹, request the Registrar to prohibit, regulate or set conditions for contact between a detainee and any other person. In the case of an emergency, this request may be made directly to the Commanding Officer of the

¹ Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal.

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UNDF. It follows from the wording of the provision that such a request may be made if the Prosecution has reasonable grounds for believing that such contact is for the purposes of attempting to arrange the escape of the detainee; could either prejudice or otherwise affect the outcome of the proceedings against the detainee or any other investigations; could be harmful to the detainee or any other person; or may breach an order of non-disclosure issued in accordance with Rules 53 and 69 of the Rules. Rule 64 of the Rules of Detention also provides that a detainee shall be informed of this request and may, at any time, apply to the President to have this request denied or reversed.

In the present case, the Prosecutor, on 5 July 2005, requested the Commanding Officer of the UNDF to prohibit contact between the Applicant and the outside world, for an initial period of thirty days. He indicated that this contact is being abused to subvert the course of justice and jeopardise the integrity of the proceedings. There is evidence, according to the Prosecutor, that the witness protection order is being repeatedly breached by the Applicant and people associated with him. This evidence emerges from the Applicant's filings before the Appeals Chamber and raises serious concerns with regard to the protection of witnesses.

In a letter of 8 July 2005 which was copied to the President, the Applicant confirmed that in his motion filed before the Appeals Chamber in accordance with Rule 115 of the Rules, he stated that he has had regular contacts, directly or indirectly, with members of his family and other people in Gisenyi (Rwanda), who kept him informed of the movements of protected witnesses and their meetings with Prosecution investigators. He also stated that he was able to know and name the protected witnesses who met with Prosecution investigators, within a few days after such meetings had taken place and know the substance of the interviews.

It is noted that on 23 November 1999, the Trial Chamber ordered the implementation of witness protection measures for Prosecution witnesses.² These measures included the non-disclosure of the names, address, locations and other identifying information relating to Prosecution witnesses to the public. It also states that the Defence Counsel or any representative acting on his behalf shall notify the Prosecution prior to any contact with any of the Prosecution witnesses, and that the Prosecution shall make arrangements for such contact. It is evident, from the Applicant's averments in his 8 July 2005 letter, that he is in violation of this order. This confirms the basis for the Prosecutor's request for the prohibition of contact. Consequently, this request will not be reversed.

This said, the President's office has received a copy of the Applicant's letter of 11 July 2005 to the Head of the Appeals Unit, requesting authorisation for the visit of his children Zahara Ngeze and Elizabeth Chance Ngeze. These children, according to the Applicant, are under the ages of fourteen. The present ruling does not preclude the Commanding Officer from allowing this visit, based on humanitarian reasons, provided that necessary arrangements are put in place to ensure that no discussions are held in respect of the Applicant's case (for instance by requiring that Tribunal staff be present during the visit).

² *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, case no. ICTR-99-52-T, Decision on the Prosecutor's Motion for Witness Protection of 23 November 1999.

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FOR THESE REASONS, the Tribunal

DISMISSES Hassan Ngeze's request of 12 July 2005.

Arusha, 29 July 2005



Erik Møse
President

(Seal of the Tribunal)

