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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

ICTR-99-52-A
25-10-2006
(8485/A - 8482/A)

Office of the President
Cabinet du Président

Before: Judge Erik Møse, President

Original: English

Registrar: Mr. Adama Dieng

Date: 25 October 2006

HASSAN NGEZE

v.

THE PROSCUTOR

ICTR-99-52-A

JUDICIAL RECORDS/ARCHIVES
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DECISION ON REQUESTS FOR REVERSAL OF PROHIBITION OF CONTACT

Counsel for the Appellant:

Mr. Bharat B. Chadha
Mr. Behram Shroff

Counsel for the Prosecution:

Mr. James Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye

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THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SEIZED of requests dated *inter alia* 12 April 2006, 4 July 2006, 14 July 2006, 26 July 2006, 3 August 2006, 15 August 2006, 16 August 2006, 18 August 2006, 25 August 2006, 4 September 2006, 18 September 2006 and 19 October 2006 from Hassan Ngeze concerning requests for review of the prohibition of contact enforced by the Commanding Officer of the United Nations Detention Facility ("UNDF") and for unmonitored family visits;

CONSIDERING the Prosecutor's responses of 23 June 2006, 31 August 2006, 11 September 2006 and 26 September 2006, respectively;

HEREBY DECIDES THE REQUESTS.

INTRODUCTION

1. Hassan Ngeze, a detainee at 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.¹ An appeal against his convictions and sentence is pending.

2. On 5 July 2005, the Prosecution made an urgent request to the Commanding Officer of the UNDF to impose restrictive measures in respect of Mr. Ngeze's contact with the outside world. Mr. Ngeze requested review of this prohibition, which had a duration of thirty days. On 29 July 2005, the President dismissed the request.² The measures were subsequently extended for further periods of thirty days. In February and March 2006, Mr. Ngeze requested that they be reviewed. On 7 April 2006, the President dismissed the requests.³ The Prosecution has since renewed its requests for prohibition of contact.⁴

SUBMISSIONS

3. Mr. Ngeze reiterates his submissions made in previous requests for review. Continuous extension of the restrictive measures is arbitrary, unlawful and amount to mental torture and cruel, inhuman or degrading treatment and punishment. He also seeks the same relief – in essence, that the President reconsiders his previous rulings and denies the Prosecution requests.

4. It is further submitted that the imposition of restrictive measures was linked to the investigation relating to the recanted statement of Witness EB. According to Mr. Ngeze, this controversy no longer exists since the Appeals Chamber has granted his motion to produce the

¹ *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Judgement and Sentence (TC), 3 December 2003.

² *Hassan Ngeze v. The Prosecutor*, Request for Reversal of the Prohibition of Contact (The President), 29 July 2005.

³ *Hassan Ngeze v. The Prosecutor*, Decision on the Request for Reversal of the Prohibition of Contact (The President), 7 April 2006.

⁴ Requests for further extension of 7 April 2006, 9 May 2006, 6 June 2006, 10 July 2006, 3 August 2006, 6 September 2006 and 6 October 2006, respectively.

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witness, who allegedly will testify on his behalf. Witness EB has allegedly sent copies of a letter in which he recants his previous testimony, which had inculpated Mr. Ngeze.

5. The Prosecution argues that the restrictive measures are warranted, as investigations show that Mr. Ngeze has made unacceptable attempts to subvert the course of justice and to jeopardise the integrity of the appeal proceedings. The measures were requested against the backdrop of Mr. Ngeze's earlier attempts at interference with various witnesses. They continue to be warranted, particularly in light of recent developments, which indicate that there is a continuing campaign, involving Ngeze and people associated with him, to interfere with Witness EB, who is due to testify in an upcoming evidentiary hearing before the Appeals Chamber.⁵ Consequently, recent events confirm the need for the restrictive measures to be maintained.

DELIBERATIONS

6. As mentioned above, previous requests by Mr. Ngeze to reverse restrictive measures in accordance with Rule 64 of the Rules of Procedure and Evidence have been rejected by the President in his decisions of 29 July 2005 and 7 April 2006.⁶ Mr. Ngeze was found to have violated a witness protection order of 23 November 1999. His contact with the outside world had been abused to subvert the course of justice and jeopardize the integrity of proceedings. In these decisions, the President weighed the impact of the restrictive measures against the rights of protected witnesses and found that the protection of witnesses and the interests of justice justified restrictive measures to be imposed on Mr. Ngeze. There is nothing to suggest that this has changed. The effect of allowing Mr. Ngeze to benefit from unrestricted communication at this stage of the proceedings, while investigations into matters of contempt and false testimony are ongoing and while Witness EB is about to testify before the Appeals Chamber, would create the risk that Mr. Ngeze subverts the course of justice and once again breaches witness protection orders.

7. It is recalled that Mr. Ngeze has not been prevented from telephoning or receiving visits from members of his family.⁷ Such contact, however, must take place in accordance with measures to ensure that his case is not discussed, that the safety and security of protected witnesses are not put at risk, and that the interests of justice are not compromised. Furthermore, the restrictive measures have not encroached on Mr. Ngeze's right to prepare his appeal.⁸ He has consulted with his counsel on a regular basis and continues to do so. There has accordingly been no infringement of his rights in the present case.

8. For the reasons mentioned above, the restrictive measures imposed on Mr. Ngeze are still warranted. The protection of the rights of protected witnesses and the interests of justice justify the continuation of the restrictive measures. Mr. Ngeze has not demonstrated any reasons to reverse the President's previous rulings.

⁵ See e.g. Prosecution submissions of 31 August 2006, paras. 3-11, disputing Mr. Ngeze's claim that Witness EB intends to recant his testimony, notwithstanding a letter to that effect allegedly written by the witness. The Prosecution submits that this purported letter confirms the need to maintain the restrictive measures currently in place.

⁶ See foot-notes 2 and 3 above.

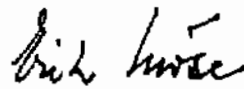
⁷ Telephone log sheets produced by the Commander of the UNDF demonstrate that Ngeze has made numerous telephone calls to his family during the past year. A memorandum, dated 19 June 2006, further describes one family visit to the UNDF in January 2006.

⁸ Decision on Hassan Ngeze's Motions Concerning Restrictive Measures of Detention (AC), 20 September 2006.

FOR THESE REASONS, the President

DENIES the Requests.

Arusha, 25 October 2006.



Erik Møse
President

(Seal of the Tribunal)

