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International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

ICTR-99-52-A  
28-05-2007  
(10158/A-10155/A)

Office of the President  
Cabinet du Président

Before: Judge Erik Møse, President

Original: English

Registrar: Mr. Adama Dieng

Date: 28 May 2007

HASSAN NGEZE

v.

THE PROSECUTOR

Case No. ICTR-99-52-A

JUDICIAL RECORDS/ARCHIVES  
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2007 MAY 28 P 6:00

**DECISION ON REQUEST FOR REVERSAL OF PROHIBITION OF CONTACT**

Counsel for the Prosecution:

Counsel for the Appellant:

Mr. James Stewart  
Mr. Neville Weston  
Mr. George Mugwanya  
Mr. Abdoulaye Seye  
Ms. Linda Bianchi  
Mr. Alfred Orono Orono

Mr. Bharat B. Chadha  
Mr. Dev Nath Kapoor

## THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SEIZED of requests from Hassan Ngeze dated *inter alia* 24 January 2007 for permission to receive telephone calls and family visits in the United Nations Detention Facility ("UNDF"), 29 January 2007 opposing the Prosecutor's request for a further extension of the restrictions on contact imposed pursuant to Rule 64 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules of Detention"), 9 February 2007 requesting the intervention of the Rwandan representative to the ICTR authorities and 8 May 2007, requesting reversal of the alleged prohibition of contact at the UNDF with a Mr. Ally Baba Mutagoma, who Mr. Ngeze contends is his step son, and other members of his family;

CONSIDERING the Prosecution's response of 6 February 2007;

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.<sup>1</sup> An appeal against his convictions and sentence was heard between 16 and 18 January 2007 and judgement 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 for a period of 30 days. This request was granted and since then, the Prosecution has consistently renewed its request for prohibition of contact.<sup>2</sup> Mr. Ngeze has on numerous occasions sought review and a reversal of these restrictions from the President.<sup>3</sup> On 29 July 2005, 7 April 2006, 25 October 2006 and 23 November 2006 respectively, the President denied these requests.<sup>4</sup>

### SUBMISSIONS

3. Mr. Ngeze contends that contrary to the terms of the Prosecution request for restrictive measures and the President's previous decisions in this regard, a prohibition against any communication with Mr. Ngeze's family has been imposed against him by the Commanding

<sup>1</sup> *The Prosecutor v. Ferdinand Nahimana, Jean-Basco Barayagwiza and Hassan Ngeze*, Judgement and Sentence (TC), 3 December 2003.

<sup>2</sup> Requests for further extension of these restrictive measures were lodged by the Office of the Prosecutor on 4 August 2005, 2 September 2005, 29 September 2005, 10 November 2005, 12 December 2005, 12 January 2006, 13 February 2006, 9 March 2006, 7 April 2006, 9 May 2006, 6 June 2006, 10 July 2006, 3 August 2006, 6 September 2006, 6 October 2006, 6 November 2006, 6 December 2006, 22 January 2007, 21 February 2007, 22 March 2007, 20 April 2007 and 22 May 2007 respectively.

<sup>3</sup> See *inter alia* requests from Hassan Ngeze for review of the prohibition of contact enforced by the Commanding Officer of the UNDF dated 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, 19 October 2006, 22 January 2007, 19 February 2007, 15 March 2007, 21 March 2007, 12 April 2007 and 8 May 2007, respectively.

<sup>4</sup> *Hassan Ngeze v. The Prosecutor*, Request for Reversal of the Prohibition of Contact (The President), 29 July 2005; *ibid.*, Decision on the Request for Reversal of the Prohibition of Contact (The President), 7 April 2006; *ibid.*, Decision on Request for Reversal of Prohibition of Contact (The President), 25 October 2006; *ibid.*, Decision on Request for Reversal of Prohibition of Contact (The President), 23 November 2006.

Officer of the UNDF. He seeks to be afforded monitored phone calls and family visits. In addition to visitation and contact rights with his family and children, Mr. Ngeze opposes any extension of the restrictive measures requested by the Prosecution on 22 January 2007. Such measures have been imposed for an 18 month duration, the purpose of which was to prevent the possibility of the subversion of due process and fairness in the appeal process and the evidentiary hearing of Witness EB. Following the conclusion of the evidentiary hearing of Witness EB on 16 January 2007 and the appeal hearing on 18 January 2007, continued and renewed restrictive measures are no longer warranted. Further, to extend such measures solely on the basis of a continuing Prosecution investigation, which has been ongoing for over 18 months, would entail both an unacceptable incursion into Mr. Ngeze's rights and an unacceptable degree of deference to the Prosecution.

4. In response, the Prosecution contends that the need for restrictive measures does not cease simply because the appeal hearing has been concluded. Following Witness EB's denial of authorship of the recantation statements and expressions of concern for his safety to the Appeal Chamber on 16 January 2007, Rule 115 proceedings regarding Witness EB are still ongoing. Extension of restrictive measures is further warranted by the need to protect other Prosecution witnesses from attempts to improperly influence or tamper with their evidence. Confidential documents adduced by the Prosecution demonstrate that the purported recantation of Witness EB is part of a wider campaign by persons close to the Appellant to suborn witnesses and obstruct the course of justice, and investigations led by the Special Counsel to the Prosecutor into these, and similar, allegations are ongoing. Finally, the restrictive measures in place – which amount to the restriction and monitoring of outside contact rather than its absolute prohibition – are justified and cannot be described as disproportionate or oppressive.

## DELIBERATIONS

5. Previous decisions of the President concerning restrictive measures were on the basis that Mr. Ngeze was not prevented from telephoning or receiving visits from members of his family.<sup>5</sup> These decisions nevertheless stipulated that such contact must take place in accordance with measures to ensure that Mr. Ngeze's 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.<sup>6</sup> The Prosecution has not sought an absolute prohibition on family visitation and contact rights but rather, has requested that contact and communication authorized by the Commanding Officer of the UNDF continue to be monitored as strictly as possible.<sup>7</sup>

6. The documentation provided by the Commander of the UNDF shows that there is no blanket prohibition on family visits. The Appellant was visited by two of his daughters on the 6 January 2006, 9 January 2006 and 10 January 2006. Five daughters also visited him on 31 July 2006. The Appellant was further visited by four of these five daughters daily between 1 August 2006 and 4 August 2006 and between 7 August 2006 and 11 August 2006 respectively. The

<sup>5</sup> See *Hassan Ngeze v. The Prosecutor, Decision on Request for Reversal of Prohibition of Contact (The President)*, 25 October 2006, para. 7 (citing telephone log sheets and memoranda produced by the Commander of the UNDF demonstrating that Ngeze has made numerous telephone calls to his family during the preceding year and documenting one family visit to the UNDF in January 2006).

<sup>6</sup> *Ibid.*, para. 7.

<sup>7</sup> See *Prosecution Request for a Further Extension of Restrictive Measures*, 22 January 2007, para. 11 and *ibid.*, 21 February 2007, para. 7. It is further recalled that Rule 61 of the Rules of Detention provides that detainees shall be allowed to receive visits from their family and friends at regular intervals under such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may deem necessary.

Appellant's wife was permitted to visit him each day from 6 November 2006, up to and including 9 November 2006, as was his wife and a daughter on 10 November 2006, 13 November 2006 and 14 November 2006. Between July 2005 and November 2006, the Appellant was further permitted a minimum of one and a maximum of five telephone calls to his children and other family members per month. All such contacts were monitored in accordance with the restrictive measures in force.

7. The Request of 24 January 2007 annexes a memorandum from the Commanding Officer of the UNDF to Mr. Ngeze dated 12 December 2006. This memorandum states that no family visit is currently approved and that none would be granted before the hearing of the appeal in January 2007.<sup>8</sup> Documentation provided by the Commander of the UNDF shows that this restriction was in response to a particular concern regarding the identity of one such purported family member. Rather than a blanket prohibition on family visits, this memorandum therefore was an additional and temporary measure which the Commanding Officer of the UNDF deemed necessary in his discretion, in the management of the UNDF. The UNDF Commanding Officer has further clarified that the requested visit by Mr. Ally Baba Mutagoma, Mr. Ngeze's alleged step son, was denied on the grounds that Mr. Ngeze is unmarried and thus by definition does not have a step son.

8. Previous requests by Mr. Ngeze to reverse restrictive measures were rejected by the President following a weighing of the impact of those measures against the rights of protected witnesses, and a finding that the protection of witnesses and the interests of justice warranted their continuance.<sup>9</sup> Further, the effect of allowing Mr. Ngeze to benefit from unrestricted communication at that stage of the proceedings, while investigations into matters of contempt and false testimony were ongoing and while Witness EB was yet to testify before the Appeals Chamber, was held to create a risk that Mr. Ngeze could subvert the course of justice and once again breach witness protection orders.<sup>10</sup>

9. Witness EB has since testified and oral submissions in this appeal have now concluded. Proceedings in respect of Witness EB pursuant to Rule 115 have nevertheless not concluded, and he and other protected witnesses cite ongoing security concerns. It cannot be said that the monitoring of visits and outside contact in such circumstances is an unacceptable precaution, or that this amounts to an undue curtailment of the Appellant's communication privileges.

**FOR THESE REASONS**, the President

**DENIES** the Requests.

Arusha, 28 May 2007.

*Erik Møse*

Erik Møse  
President



(Seal of the Tribunal)

<sup>8</sup> Request of 24 January 2007, Annex 1, paras. 3-4. Ngeze's appeal hearing took place on 16-18 January 2007.

<sup>9</sup> *Hassan Ngeze v. The Prosecutor*, Decision on Request for Reversal of Prohibition of Contact (The President), 25 October 2006, para. 6.

<sup>10</sup> *Idem*.