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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

2009 SEP -2 P 4: 52

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IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 2 September 2009

**Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

v.

THE PROSECUTOR

Case No. ICTR-98-41-A

JUDICIAL RECORDS ARCHIVES
2009 SEP -2 P 4: 52

ICTR
CENTRAL REGISTRY
- 2 SEP 2009
ACTION: APPEALS/CMS
COPY 1:

**DECISION ON ALOYS NTABAKUZE'S MOTIONS FOR PROVISIONAL
RELEASE AND LEAVE TO FILE *CORRIGENDUM***

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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively), is seized of the "Motion for Provisional Release" filed by Aloys Ntabakuze ("Ntabakuze") on 25 June 2009 ("Motion for Provisional Release").

A. Procedural Background

2. In its Judgement pronounced on 18 December 2008 and filed in English on 9 February 2009, Trial Chamber I of the Tribunal ("Trial Chamber") convicted Théoneste Bagosora, Anatole Nsengiyumva and Ntabakuze (together "co-Appellants") of genocide, crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II and sentenced them to life imprisonment.¹ The Trial Chamber acquitted Gratién Kabiligi of all counts and ordered his immediate release.² Ntabakuze filed a notice of appeal against the Trial Judgement on 11 March 2009 and an initial appeal brief on 25 May 2009.³

3. On 12 June 2009, the Prosecution informed the Appeals Chamber and the Defence that it would respond to all co-Appellant's appeal briefs in a consolidated response brief as opposed to separate response briefs.⁴ Subsequently, Ntabakuze filed a notice of his intention to file a motion for provisional release and a motion to sever his case and enforce the briefing schedule.⁵

4. On 24 June 2009, Ntabakuze filed an amended version of his Appeal Brief.⁶ On the same day, Ntabakuze filed a motion requesting the Appeals Chamber to sever his case from those of his co-Appellants whilst maintaining the briefing schedule pursuant to Rule 112 of the Rules of

¹ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence, signed on 18 December 2008, filed on 9 February 2009 ("Trial Judgement"), paras. 2258, 2277, 2278, 2279.

² Trial Judgement, paras. 2258, 2283, 2368.

³ Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 11 March 2009; Public Amended Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 18 May 2009; Appeal Brief in the Interest of: Major Aloys Ntabakuze, 25 May 2009 ("Appeal Brief").

⁴ Prosecutor's Notice Regarding the Filing of a Consolidated Respondent's Brief, 12 June 2009 ("Prosecution Notice").

⁵ Notice of Intention to File Motion for Provisional Release Pending Appeal, and to: (a) Sever this Case and Enforce the Briefing Schedule; or, in the Alternative, (b) Bar Filing of the Respondent's Brief, and Dismiss Convictions Entered by the Trial Chamber, 17 June 2009 ("Notice of Intention of Filing").

⁶ Amended Appeal Brief in the Interest of: Major Aloys Ntabakuze, 24 June 2009 ("Amended Appeal Brief"). See Decision on Aloys Ntabakuze's Motion for Leave to File a Corrected Appeal Brief and Order Concerning the Appeal Brief, 23 June 2009 ("Decision on Corrected Appeal Brief"); Decision on Aloys Ntabakuze's Motion for Leave to File Amended Appeal Brief Out of Time, 3 July 2009, p. 2.

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Procedure and Evidence of the Tribunal ("Rules") and to bar the filing of the Prosecution's response brief as untimely.⁷

5. Ntabakuze filed his Motion for Provisional Release on 25 June 2009. On 29 June 2009, he separately filed a motion for leave to file a corrected version of his Motion for Provisional Release ("Motion for Leave to File *Corrigendum*")⁸ and the corrected version ("*Corrigendum*").⁹ The Prosecution filed its response to the Motion for Provisional Release on 6 July 2009.¹⁰ Ntabakuze replied on 10 July 2009.¹¹

6. On 24 July 2009, the Appeals Chamber granted Ntabakuze's request for modification of the briefing schedule for the filing of the Prosecution response brief to his appeal and denied the remainder of the Motion for Severance.¹²

B. Motion for Leave to File *Corrigendum*

7. A few days after filing his Motion for Provisional Release, Ntabakuze requested leave to file the *Corrigendum* in order to correct "editing oversights and footnote anomalies" contained in the Motion for Provisional Release.¹³ Despite this course of action, Ntabakuze then argued in his Reply that "the *corrigendum* became part of the record in this case at the time of filing and is properly before the Appeals Chamber".¹⁴

8. The Appeals Chamber recalls that a party may, without requesting leave from the Appeals Chamber or the Pre-Appeal Judge, file a corrigendum to a previously filed motion or brief whenever a minor or clerical error in said motion or brief is subsequently discovered and where correction of the error is necessary in order to provide clarification.¹⁵ The Appeals Chamber or the Pre-Appeal Judge may otherwise authorize a variation of a previously filed motion or brief upon a

⁷ Extremely Urgent Motion for: (a) Severance, and Retention of Briefing Schedule; or, in the Alternative, (b) Judicial Bar to the Untimely Filing of Respondent's Brief, and Dismissal of Appellant's Conviction, 24 June 2009 ("Motion for Severance").

⁸ Motion for Leave to File: *Non-substantive Corrigendum to 24 June 2009 Motion for Provisional Release*, 29 June 2009.

⁹ *Non-substantive Corrigendum to 24 June 2009 Motion for Provisional Release*, 29 June 2009.

¹⁰ Prosecution Response to Ntabakuze's Motion for Provisional Release, 6 July 2009 ("Response").

¹¹ Reply-Motion for Provisional Release, 10 July 2009 ("Reply").

¹² Decision on Aloys Ntabakuze's Motion for Severance, Retention of the Briefing Schedule and Judicial Bar to the Untimely Filing of the Prosecution's Response Brief, 24 July 2009 ("Decision on Motion for Severance").

¹³ Motion for Leave to File *Corrigendum*, para. 5.

¹⁴ Reply, para. 4. Relying on the Decision on Corrected Appeal Brief, Ntabakuze argues that "parties are entitled, without requesting leave, to file a *corrigendum* whenever 'minor or clerical errors are discovered' and where the correction of the error is 'necessary in order to provide clarification'" (*ibid.*).

¹⁵ Decision on Corrected Appeal Brief, p. 2 and references contained therein.

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showing of good cause.¹⁶ The filing party should identify with clarity the changes amounting to a variation of the initial filing, for which leave has to be requested.

9. In the instant case, Ntabakuze filed his Motion for Leave to File *Corrigendum* and the *Corrigendum* itself without identifying any of the changes made to the Motion for Provisional Release. The Appeals Chamber considers that Ntabakuze's failure to identify the changes would justify a summary dismissal of his Motion for Leave to File *Corrigendum* and that the *Corrigendum* be declared inadmissible.

10. However, a review of the Motion for Provisional Release seems to indicate that it is a draft motion, containing internal comments to Ntabakuze's Defence team.¹⁷ The Appeals Chamber considers that it would better serve the interests of justice to rule on a proper motion rather than on a mere draft thereof. Furthermore, in light of the fact that the filing of the Motion for Provisional Release was not subject to any prescribed time limit that would have been circumvented by the filing of a draft motion, the Appeals Chamber has elected to nonetheless examine whether the *Corrigendum* may be deemed admissible.

11. The Appeals Chamber has therefore compared the Motion for Provisional Release with the *Corrigendum* to determine whether, as claimed, Ntabakuze had merely corrected "editing oversights and footnote anomalies" without "alter[ing] the substance of any of those issues raised in the initial filing".¹⁸ Having done so, the Appeals Chamber finds that Ntabakuze went well beyond merely correcting minor or clerical errors: not only did he delete arguments,¹⁹ but he also added information of a substantive nature.²⁰ Given that Ntabakuze fails to show good cause for any of these substantive variations, the Appeals Chamber denies Ntabakuze leave to file the *Corrigendum* and, accordingly, declares the *Corrigendum* inadmissible.

12. In the present case, the filing of the request for provisional release was not subject to any particular deadline. The proper way of proceeding for Ntabakuze's Counsel would therefore have been to withdraw the Motion for Provisional Release and then file a revised motion. Instead, Ntabakuze's Counsel filed an alleged "corrected" version containing much more than minor or clerical corrections and sowed confusion by contradictorily requesting leave to file the corrected

¹⁶ Decision on Corrected Appeal Brief, p. 2.

¹⁷ See Motion for Provisional Release, paras. 23(b), 24, 28.

¹⁸ Motion for Leave to File *Corrigendum*, paras. 5, 6. See also Reply, para. 4.

¹⁹ The Appeals Chamber notes that paragraph 26 of the Motion for Provisional Release was deleted in the *Corrigendum*.

²⁰ Compare paras. 25(a), 27(b)(ii), 27(c), 28, 29 and 31 of the Motion for Provisional Release, with paras. 25(a), 26(b)(ii) 26(c), 27, 29 and 31 of the *Corrigendum*. The Appeals Chamber also observes that Ntabakuze added in the *Corrigendum* a new paragraph 28, the words "or a life sentence" at page 11 and the last sentence of paragraph 30, which the Motion for Provisional Release did not contain.

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version and arguing that the Corrigendum became part of the record at the time of filing. The filing of submissions that require subsequent corrections²¹ leads to a considerable waste of the Tribunal's resources and runs contrary to Ntabakuze's expressed interest to further expedite the appeal proceedings. The Appeals Chamber therefore reminds Ntabakuze's Counsel to exercise greater diligence in preparing submissions.

C. Motion for Provisional Release

1. Preliminary Issues

13. Upon receiving the Motion for Provisional Release, the Appeals Chamber noted that Ntabakuze requested that the Appeals Chamber order the Prosecution to file its response, if any, no later than 28 June 2009, or on such date the Appeals Chamber deems fit.²² In support, Ntabakuze argued that (i) Rule 117(A) of the Rules specifically envisages that an appeal from a decision under Rule 65 be heard expeditiously; (ii) the response and the reply could not be accommodated before the deadline for the filing of the Prosecution's response brief; and (iii) that the parties were put on notice by the Notice of Intention of Filing.²³ The Prosecution responded that Rule 117(A) does not stipulate a specific period for such an expedited filing and that the proper time-limit of ten days as foreseen by the relevant practice direction had been complied with.²⁴

14. Pursuant to paragraph 13 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, the Prosecution's response was to be filed within ten days of the filing of the Motion for Provisional Release,²⁵ that is no later than 6 July 2009. On receipt of the Motion for Provisional Release, the Appeals Chamber noted that Rule 117(A) of the Rules was not applicable in the present case since it provides an expedited appeals procedure for "appeal[s]" under Rule 65 of the Rules. It found that the other reasons put forward by Ntabakuze did not justify a variation of the prescribed time-limit and, therefore, did not consider it necessary to issue an immediate ruling.

²¹ See Decision on Prosecution Motion Requesting Compliance with Requirements for Filing Notices of Appeal, 16 April 2009, paras. 12-14 (concerning defects in Ntabakuze's initial notice of appeal); Decision on Aloys Ntabakuze's Motion for Leave to File an Amended Notice of Appeal Pursuant to the 16 April 2009 Decision, 15 May 2009, pp. 3, 4 (concerning the erroneous filing of the Amended Notice of Appeal confidentially); Decision on Corrected Appeal Brief, pp. 2-4 (concerning Ntabakuze's request for leave to file a corrected appeal brief); Amended Appeal Brief in the Interest of: Major Aloys Ntabakuze Second Corrigendum, 6 July 2009 (concerning further corrections made to the Amended Appeal Brief).

²² Motion for Provisional Release, p. 12. Ntabakuze also refers to "29" June 2009 at paragraph 32.

²³ Motion for Provisional Release, para. 32.

²⁴ Response, para. 14.

²⁵ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006, para. 13.

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15. Ntabakuze further requested that the Appeals Chamber “hear oral argument, either in person or by phone at the earliest convenience of the Chamber”.²⁶ The Appeals Chamber notes that it is within its discretion to decide a motion with or without an oral hearing.²⁷ Ntabakuze has failed to provide any reason in support of his request, and the Appeals Chamber sees no reason to hear the parties in oral argument in the present matter.

2. Applicable Law

16. Pursuant to Rule 65(I) of the Rules, a convicted person may bring an application seeking provisional release pending an appeal or for a fixed period. By virtue of Rule 107 of the Rules, the whole of Rule 65 applies *mutatis mutandis* to applications brought before the Appeals Chamber.²⁸ Rule 65(I) of the Rules thus provides that the Appeals Chamber may grant provisional release if it is satisfied that: (i) the convicted person, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release. These requirements must be considered cumulatively.²⁹ Whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities.³⁰ Finally, the discretionary assessments of the requirements under Rule 65 of the Rules are made on a case-by-case basis.³¹

3. Submissions

17. Ntabakuze seeks provisional release “until the appeal hearing, or at such time as the Chamber deems fit”.³² The Prosecution responds that Ntabakuze fails to demonstrate the cumulative

²⁶ Motion for Provisional Release, p. 12.

²⁷ See Decision on Motion for Severance, para. 22; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Mile Mrkšić's Second Rule 115 Motion, 13 February 2009, para. 11; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 9.

²⁸ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Vladimir Lazarević's Second Motion for Temporary Provisional Release on the Grounds of Compassion, public redacted version, 22 May 2009 (“Second Lazarević Decision”), para. 4; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Application for Provisional Release Pursuant to Rule 65(I), public redacted version, 29 April 2008 (“Milošević Decision”), para. 3.

²⁹ See Second Lazarević Decision, para. 4; Milošević Decision, para. 3.

³⁰ Second Lazarević Decision, para. 4; Milošević Decision, para. 3.

³¹ Second Lazarević Decision, para. 4; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008, public redacted version (“Strugar Decision”), para. 11, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 7.

³² Motion for Provisional Release, p. 12.

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criteria in favour of granting provisional release and that his Motion for Provisional Release should accordingly be dismissed.³³

18. With respect to the first requirement under Rule 65(I) of the Rules related to the flight risk, Ntabakuze states that he will “comply with any conditions that the Chamber sees fit to impose in order to ensure surrender, such as residence in a UN ‘safe house’”.³⁴ He submits that he has far more interest in reaching a final resolution of his case than fleeing and risking further penalty when apprehended, especially since it is likely in his view that his sentence will be reduced on appeal even if his convictions were to be upheld.³⁵ In his view, the fact that he has been sentenced to life imprisonment is of little relevance to the exercise of the Appeals Chamber’s discretion.³⁶ The Prosecution responds that Ntabakuze fails to demonstrate that he does not pose a flight risk. Instead, the Prosecution maintains that Ntabakuze attempts to argue the substance of his appeal,³⁷ It further submits that the seriousness of the offences of which Ntabakuze was found guilty and the fact that he was sentenced to life imprisonment are factors which militate against granting him provisional release.³⁸ Ntabakuze replies that factors other than the seriousness of the sentence must predominate and that the fact that an individual was already sentenced is of limited relevance as applicants under Rule 65(I) of the Rules are convicted persons who, by definition, have already been sentenced.³⁹

19. With respect to the second requirement under Rule 65(I) of the Rules, Ntabakuze submits that the Prosecution bears the burden of producing evidence that, if released, he may pose a danger to any victim, witness or other person.⁴⁰ He argues that his acquittals of all charges of conspiracy and “direct responsibility” confirm the absence of evidence that he may pose a threat.⁴¹ The Prosecution responds that the serious nature of Ntabakuze’s convictions and sentence indicates

³³ Response, para. 3. The Motion for Leave to File *Corrigendum* having not yet been ruled upon at the time of filing, the Prosecution decided to limit its response to the Motion for Provisional Release, disregarding the changes made in the *Corrigendum* (Response, para. 4).

³⁴ Motion for Provisional Release, para. 16.

³⁵ Motion for Provisional Release, para. 17. Ntabakuze argues that he has “a much greater incentive [to] receive the final ruling and probably acquittal by the Appeals Chamber, rather than condemn himself to a life as a *fugitive*” (Reply, para. 11 (emphasis omitted)).

³⁶ Motion for Provisional Release, para. 15.

³⁷ Response, para. 7.

³⁸ Response, para. 7. In his Reply, Ntabakuze contends that the Prosecution misrepresented the Trial Judgement by referring to the orders “given by [Ntabakuze]” since he was acquitted of all allegations under Article 6(1) of the Statute. He requests that the Prosecution be ordered to retract its statement (Reply, paras. 6-8, p. 9). The Appeals Chamber notes the Prosecution’s submission in its 21 July 2009 filing that paragraph 7 of its Response contains a typographical error and that it should have instead referred to the “orders given to [Ntabakuze]” (Prosecution Response to Ntabakuze’s Motion to Time-Bar the Prosecutor’s Response and Other Related Reliefs, 21 July 2009, para. 4).

³⁹ Reply, paras. 11, 12 (emphasis omitted).

⁴⁰ Motion for Provisional Release, para. 19; Reply, para. 13.

⁴¹ Motion for Provisional Release, para. 19.

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on the contrary that he would pose a serious threat if released.⁴² It argues that the burden is on the Defence to show that the applicant will not pose a danger once the Prosecution presents at least some evidence that the applicant does pose a danger.⁴³ Ntabakuze replies that his convictions (i) relate to incidents in war time, which took place 15 years ago; and (ii) do not suggest that he physically harmed anyone or ordered that anyone be harmed "other than those acts and orders consistent with the war in which he found himself".⁴⁴ He adds that the fact that he was convicted under Article 6(3) of the Statute, and not under Article 6(1), must be a significant factor in the Appeals Chamber's assessment.⁴⁵

20. With respect to the third requirement under Rule 65(I) of the Rules, Ntabakuze submits that the time he already spent in detention considered together with the undue delay caused by the Prosecution's "unlawful" decision to file a consolidated response brief constitute "special circumstances" warranting his release.⁴⁶ He argues that, by delaying the appeal proceedings for a further year, the Prosecution renders his detention "arbitrary and unlawful" within the meaning of the International Covenant on Civil and Political Rights.⁴⁷ According to Ntabakuze, "incarceration pending undue delay in prosecution represents humanitarian grounds, as recognized by international standards, in respect of which this tribunal has previously granted provisional release under Rules 66(I) [*sic*]"⁴⁸ The Prosecution responds that Ntabakuze fails to demonstrate the existence of any special circumstances resulting from any alleged delay.⁴⁹ It submits that Ntabakuze does not demonstrate any "undue delay".⁵⁰ The Prosecution further argues that the Appeals Chamber has held that "special circumstances" require an "acute justification, such as medical need or a memorial service for an immediate family member" and that "lengthy pre-trial detention does not constitute *per se* good cause for release".⁵¹ Ntabakuze replies that good cause is established if the length of the delay is undue.⁵²

21. Ntabakuze finally argues that the merits of the case are additional factors relevant to the exercise of discretion, specifically referring to the following factors: (i) his former co-accused

⁴² Response, para. 10.

⁴³ Response, para. 10.

⁴⁴ Reply, para. 14.

⁴⁵ Reply, para. 15. Ntabakuze submits that his "convictions evince no *actual* danger posed by [him]" (Reply, para. 16).

⁴⁶ Motion for Provisional Release, paras. 23-25, 31.

⁴⁷ Motion for Provisional Release, paras. 20, 21, 26.

⁴⁸ Motion for Provisional Release, para. 23(b). Ntabakuze submits that "undue delay" has arisen from, *inter alia*, (i) the fact that "his guilt could not have been great as compared with other Accused"; (ii) the fact that he spent the "statutory maximum of 90 days in detention, without charge, or remedy"; (iii) the delay caused by the joinder with Bagosora's and Nsengiyumva's cases; and (iv) the joint trial. (*Ibid.*, paras. 24, 25).

⁴⁹ Response, para. 12.

⁵⁰ Response, para. 12.

⁵¹ Response, para. 12. The Prosecution refers to its response to the Motion for Severance where it explains that any delay, if any at all, is due to the translation of the Judgement into French. Ntabakuze replies that it is irrelevant to know which organ of the Tribunal is responsible (Reply, para. 18).

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Gratien Kabiligi and he were acquitted of all indicted charges;⁵³ (ii) his conviction on "unindicted separate charges" violates the Tribunal's jurisprudence;⁵⁴ and (iii) the evidence upon which his conviction is premised cannot as a matter of law support a conviction.⁵⁵ The Prosecution responds that an application for provisional release is not the occasion to argue the merits of the appeal.⁵⁶

4. Discussion

22. The Appeals Chamber first emphasizes that a request for provisional release is not the appropriate forum to argue the substance of the appeal. The Appeals Chamber will determine the issues raised in the appeal in its judgement at the conclusion of the appeal proceedings. At this stage, the outcome of Ntabakuze's appeal cannot be foreseen and thus the merits of the case cannot amount to factors that could be taken into account in determining whether provisional release should be granted.⁵⁷ Ntabakuze's reliance on arguments from his Appeal Brief therefore constitutes an improper basis for his application for provisional release.

23. When assessing a request for provisional release, the Appeals Chamber considers that the specificity of the appeal stage is reflected in Rule 65(I)(iii) of the Rules, which provides for an additional criterion that "special circumstances exist warranting such release".⁵⁸ As previously held by the ICTY Appeals Chamber, special circumstances warranting provisional release require an acute justification, such as the applicant's medical need, extremely poor health of a close family member whose death is believed to be imminent, or a memorial service for a close family member immediately after his death.⁵⁹ In the present case, the Appeals Chamber considers that, in light of the seriousness of the offences and the penalty imposed on Ntabakuze, the time spent in detention and the length of the proceedings do not constitute an acute justification. In its view, Ntabakuze's justification does not constitute a special circumstance within the meaning of Rule 65(I)(iii) of the Rules.

24. The Appeals Chamber is therefore not satisfied that special circumstances exist in Ntabakuze's case warranting provisional release. Because the requirements under Rule 65(I) of the

⁵² Reply, para. 18.

⁵³ Motion for Provisional Release, para. 28.

⁵⁴ Motion for Provisional Release, paras. 28, 29.

⁵⁵ Motion for Provisional Release, para. 30.

⁵⁶ Response, para. 13.

⁵⁷ See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Second Defence Request for Provisional Release of Stanislav Galić, 31 October 2005, para. 16; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Mario Čerkez's Request for Provisional Release, 12 December 2003, para. 8.

⁵⁸ See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Tarčulovski's Motion for Provisional Release on Compassionate Grounds, 22 July 2009, para. 8 ("*Tarčulovski Decision*"); *Strugar Decision*, para. 11.


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Rules are cumulative,⁶⁰ the Appeals Chamber considers that it need not examine whether the remaining requirements set out in Rule 65(I) are met in the present case.

D. Disposition

25. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Motion for Leave to File Corrigendum, **DECLARES** the *Corrigendum* inadmissible and **DISMISSES** the Motion for Provisional Release in its entirety.

Done this second day of September 2009
At The Hague,
The Netherlands



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]



⁵⁹ *Tarčulovski* Decision, para. 8; *Bala* Decision, para. 10; Second *Lazarević* Decision, para. 10; *Strugar* Decision, para. 12; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Radoslav Brđanin's Motion for Provisional Release, 23 February 2007, para. 6.

⁶⁰ *See supra* para. 16.