

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-37-ES.2

Date: 14 April 2022

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Carmel Agius, President**

**Registrar: Mr. Abubacarr Tambaou**

**Decision of: 14 April 2022**

**PROSECUTOR**

**v.**

**HASSAN NGEZE**

***PUBLIC REDACTED VERSION***

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**DECISION ON THE APPLICATION  
FOR COMMUTATION OF SENTENCE OF HASSAN NGEZE  
AND RELATED MOTIONS**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Mr. Hassan Ngeze:**

Ms. Mirjana Vukajlović

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of the direct petition of Mr. Hassan Ngeze for commutation of sentence received by my predecessor, Judge Theodor Meron, on 13 March 2018 (“Ngeze” and “Application”, respectively).<sup>1</sup> I am also seised of numerous motions filed by Ngeze, acting *pro se*, in relation to the Application.<sup>2</sup> I note that the Application has been pending for quite some time, which is due to: (i) the extensive record; (ii) Ngeze’s requests for additional time to submit documents and information related to the Application, as well as his practice of prolifically supplementing the Application;<sup>3</sup> and (iii) the delay in receiving the necessary materials from the relevant Beninese authorities and previously from the relevant Malian authorities.<sup>4</sup>

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<sup>1</sup> Communication from Ngeze to the then-President, dated 8 March 2018, received on 13 March 2018 and filed on 13 June 2018 (originally filed in French; English translation filed on 21 June 2018). *See* Internal Memorandum from the then-President to the Registrar, dated 16 March 2018 (confidential) (“Memorandum of 16 March 2018”), para. 1. Throughout this Decision, all references are to the English version of documents where available.

<sup>2</sup> “Extremely Motion for Understanding filed by Hassan Ngeze seeking the Comprehension and assistance From the President and the Registrar based on humanitarians grounds that deals with number of important issues which Ngeze would wish to be touched and solved before the Final decision of early release.”, 23 December 2020 (“Motion of 23 December 2020”); “Hassan Ngeze confidential and Ex parte motion filed before the President on 22<sup>nd</sup> of December 2020 seeking the grant of clarification regarding his present condition and the condition after he is released.”, 22 December 2020 (confidential and *ex parte*) (“Second Motion of 22 December 2020”); “Hassan Ngeze extremely second motion filed before the President Under humanitarian grounds Seeking the immediate temporally release until the motion or early release which is pending before the President is adjudicated due to [REDACTED].”, 22 December 2020 (confidential) (“First Motion of 22 December 2020”); “Public request filed by Hassan Ngeze for permission to access his case-file related to his application for early release that is currently under consideration.”, 2 December 2020 (originally filed in French; English translation filed on 4 January 2021) (“Motion of 2 December 2020”); “The third extremely urgent request filed by Hassan Ngeze on 15 October 2019 seeking from the President of the Mechanism and the Registrar of the Mechanism clarification on the Mechanism’s official position in respect of the categorical objection by the Government of Benin to the release and commutation of sentences for a number of Rwandans convicted by the Mechanism; the present request should be read and considered together with the previous one filed on 26 September, with the title: ‘Extremely Urgent Request filed by Hassan Ngeze seeking authorisation for access to his case file in relation to his application for early release of 8 March 2018 currently under deliberation’”, 16 October 2019 (confidential) (originally filed in French; English translation filed on 17 February 2020; public redacted versions filed on 2 April 2020) (“Motion of 16 October 2019”); “Motion filed by Hassan Ngeze asking the President of the Mechanism for International Criminal Tribunals (MICT), the Registrar of the Mechanism and the Prosecutor of the Mechanism to accept, in view of safeguarding the accomplishments of the Mechanism and fighting any form of denialism of the genocide perpetrated against Rwandans of Tutsi ethnicity, the four conditions that I propose must be met by those receiving temporary assistance from the Mechanism, or who have been granted commutation of sentence or early release; as well as prisoners who are seeking countries for exile and accommodation.”, 26 August 2019 (originally filed in French; English translation filed on 12 November 2019; emphases in the title omitted) (“Motion of 26 August 2019”). *See also* Order for Reclassification and Redaction of Motions, 13 March 2020 (confidential) (“Order of 13 March 2020”), pp. 1, 3; Registrar’s Submission in Relation to the Motion Filed by Hassan Ngeze on 16 October 2019, 23 October 2019 (confidential), paras. 1-6.

<sup>3</sup> *See infra*, paras. 14, 18, 28, 30, 36, 38-40, 42, 46-53, 56, 58-61, 63-67, 69-72, 74-77, 79-82, 85-86.

<sup>4</sup> *See infra*, paras. 7, 21, 29, 34, 37, 41, 43-45, 55, 68, 79, 87-88.

## I. BACKGROUND

2. On 18 July 1997, Ngeze was arrested in the Republic of Kenya and transferred to the United Nations Detention Facility.<sup>5</sup> At his initial appearance on 20 November 1997, Ngeze pleaded not guilty to all charges against him before the International Criminal Tribunal for Rwanda (“ICTR”).<sup>6</sup> Following an amendment of the indictment, Trial Chamber I of the ICTR (“Trial Chamber”) entered a plea of not guilty on behalf of Ngeze in respect of the new counts in the amended indictment, on 25 November 1999, after he had refused to plead to the new counts.<sup>7</sup>

3. On 3 December 2003, the Trial Chamber convicted Ngeze of: (i) conspiracy to commit genocide; (ii) genocide; (iii) direct and public incitement to commit genocide; (iv) persecution as a crime against humanity; and (v) extermination as a crime against humanity.<sup>8</sup> The Trial Chamber sentenced Ngeze to life imprisonment.<sup>9</sup>

4. On 28 November 2007, the Appeals Chamber of the ICTR (“Appeals Chamber”), *inter alia*: (i) affirmed Ngeze’s convictions for genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity; (ii) reversed, in part, Ngeze’s convictions for these crimes insofar as they concerned specific modes of liability or means of commission; (iii) reversed Ngeze’s convictions for conspiracy to commit genocide and persecution as a crime against humanity; and (iv) reduced Ngeze’s sentence to 35 years of imprisonment.<sup>10</sup>

5. On 2 December 2008, Ngeze was transferred to the Republic of Mali (“Mali”) to serve the remainder of his sentence.<sup>11</sup> On 21 December 2018, Ngeze was further transferred to the Republic of Benin (“Benin”) for that same purpose.<sup>12</sup>

## II. APPLICATION AND RELATED MOTIONS

6. On 13 March 2018, my predecessor received the Application, in which Ngeze requests that he be granted a commutation of sentence.<sup>13</sup>

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<sup>5</sup> *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 (“Trial Judgement”), para. 19.

<sup>6</sup> Trial Judgement, para. 29.

<sup>7</sup> Trial Judgement, para. 30.

<sup>8</sup> Trial Judgement, para. 1094.

<sup>9</sup> Trial Judgement, para. 1108.

<sup>10</sup> *Ferdinand Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007 (originally filed in French; English translation filed on 16 May 2008) (“Appeal Judgement”), paras. 1113-1115, p. 346.

<sup>11</sup> Decision on Motion Filed by Hassan Ngeze, 7 February 2019 (“Decision of 7 February 2019”), p. 1; *Prosecutor v. Hassan Ngeze*, Case No. ICTR-99-52, Decision on the Enforcement of Sentence, 3 November 2008, p. 3.

<sup>12</sup> Decision of 7 February 2019, p. 1; Order Designating State in which Hassan Ngeze is to Serve the Remainder of His Sentence, 19 December 2018 (“Order of 19 December 2018”), p. 2.

<sup>13</sup> Application, pp. 1, 5. See Memorandum of 16 March 2018, para. 1.

7. On 16 March 2018, my predecessor requested the Registry of the Mechanism (“Registry”) to undertake the steps prescribed in paragraphs 3 to 5 of the relevant Practice Direction applicable at the time.<sup>14</sup>
8. On 3 May 2018, in light of the previous practice of the ICTR<sup>15</sup> and pursuant to paragraph 4(d) of the Practice Direction (MICT/3), my predecessor requested that the Republic of Rwanda (“Rwanda”) provide its views on the Application within 14 days, and requested that Ngeze file any reply within 10 days of receipt of Rwanda’s views.<sup>16</sup>
9. On 11 May 2018, Rwanda filed its submissions, in which it, *inter alia*: (i) opposed the early release of Ngeze; (ii) requested a public hearing on the early release of Ngeze which “would permit fact witnesses, including victims, and experts – psychologists and legal scholars – to come forward in a transparent manner” (“Request for a Hearing”); and (iii) requested to be allowed to make further submissions within the following 14 days.<sup>17</sup>
10. On 15 May 2018, my predecessor granted Rwanda’s request to file an additional response to the Application and extended the time for Ngeze to file any reply.<sup>18</sup>
11. On 25 May 2018, Rwanda confirmed its intention to provide a supplementary submission, and, in order to do so, requested additional information from the Mechanism.<sup>19</sup>

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<sup>14</sup> Memorandum of 16 March 2018, para. 2. I note that this matter arose while an earlier version of the applicable Practice Direction was in force. *See* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism, MICT/3, 5 July 2012 (“Practice Direction (MICT/3)”). *See also* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”); Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.1, 24 May 2018 (“Practice Direction (MICT/3/Rev.1)”). Unless otherwise indicated, references will be made to the current Practice Direction. On 2 April 2018, Ngeze sent a communication to my predecessor correcting an error in the reference mentioned in the Application. *See* Communication from Ngeze to the then-President, dated 2 April 2018 and filed on 13 June 2018 (originally filed in French; English translation filed on 21 June 2018), p. 2. *See also* Communication from Ngeze to the then-President, dated 4 May 2018 and filed on 7 May 2018 (originally filed in French; English translation filed on 16 May 2018) (“Communication of 4 May 2018”), pp. 1-2.

<sup>15</sup> Rule 125 of the Rules of Procedure and Evidence of the ICTR stated that “[t]he President shall [...] determine, in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal and after notification to the Government of Rwanda, whether pardon or commutation is appropriate”.

<sup>16</sup> Request to the Republic of Rwanda Related to Application for Commutation of Sentence from Mr. Hassan Ngeze, 3 May 2018 (“Request to Rwanda”), pp. 2-3.

<sup>17</sup> Omnibus Response of the Republic of Rwanda on the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze and Request for Extension of Time, 11 May 2018 (“Omnibus Response”), pp. 2, 19.

<sup>18</sup> *See* Interim Order Related to the Request to the Republic of Rwanda on the Early Release Applications from Mr. Dominique Ntawukulilyayo, Mr. Hassan Ngeze, and Mr. Aloys Simba, 15 May 2018, pp. 2-3.

<sup>19</sup> Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 25 May 2018 (“Supplementary Request”), Registry Pagination (“RP”) 673-672.

12. On 31 May 2018, my predecessor granted, *inter alia*, Ngeze as well as Mali the right to respond to the Supplementary Request and requested that any such response be filed within 14 days.<sup>20</sup>
13. On 11 June 2018, Rwanda filed its further submissions opposing the Application.<sup>21</sup>
14. On 12 June 2018, Ngeze’s Counsel filed a motion, in which she requested, *inter alia*, an extension of time to respond to the Supplementary Request.<sup>22</sup> On the same day, Ngeze, acting *pro se*, filed three documents in relation to the Application.<sup>23</sup>
15. On 14 June 2018, my predecessor granted, in part, the First Motion of 12 June 2018 and ordered Ngeze’s Counsel to file a substantiated response to the Supplementary Request, if any, no later than 24 June 2018.<sup>24</sup> On the same day, my predecessor requested an update from the Registrar of the Mechanism (“Registrar”) on the status of the steps taken pursuant to paragraphs 3 to 5 of the Practice Direction (MICT/3).<sup>25</sup>
16. On 21 June 2018, Ngeze’s Counsel filed a request for legal aid to assist Ngeze with respect to the proceedings related to “his eligibility for early release”.<sup>26</sup> On the same day, Ngeze, acting *pro se*, filed a motion, in which he referred to the Supplementary Request and sought

<sup>20</sup> See Interim Order on the Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo, and Hassan Ngeze, 31 May 2018, p. 4.

<sup>21</sup> The Government of Rwanda’s Supplemental Brief in Opposition to Application for Early Release of Hassan Ngeze, 11 June 2018 (confidential; public redacted version filed on 11 February 2022) (“Supplement”); Statement of the Government of Rwanda In Opposition to Applications for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 11 June 2018 (confidential; public redacted version filed on 11 February 2022) (“Statement”). See also Decision on Hassan Ngeze’s Motion for Redactions, 9 February 2022 (confidential), pp. 1-3.

<sup>22</sup> Urgent Ngeze Defence Request for Extension of Time to Respond to the “Supplementary Request” by the Republic of Rwanda and All Other Related Filings, 12 June 2018 (“First Motion of 12 June 2018”), paras. 6, 27.

<sup>23</sup> “Personal Pledge”, 12 June 2018 (originally filed in French; English translation filed on 25 June 2018) (“Second Additional Document”); “Personal statement acknowledging the genocide perpetrated against the ethnic Tutsi population in Rwanda in 1994”, 12 June 2018 (originally filed in French; English translation filed on 25 June 2018) (“First Additional Document”); “Hassan Ngeze three motions combined in one, filed before the President of the mechanism, the 1<sup>st</sup> as to Seeking the extension of time that will enable the Registrar to provide to Ngeze ‘s lawyer the English translation of the documents filed by Ngeze so that lawyer Mirjina VuKajlovic be able to present the case after having understood the case at hands, 2<sup>nd</sup> to exclude the documents filed by Sir. Stephen J. Rapp, who is from US Holocaust memorial Museum.3<sup>rd</sup> Alternatively to allow Ngeze to call a law scholar Alexander Zahar as an amicus curiae to come and challenge what Stephen J. Rapp brought against Ngeze in the case at hand concerning the pending request of reducing sentence to a shorter sentence: / early release filed on dated 8 march 2018”, 12 June 2018 (“Second Motion of 12 June 2018”).

<sup>24</sup> Decision on Hassan Ngeze’s Request for Extension of Time, 14 June 2018 (“Decision of 14 June 2018”), p. 4. I note that my predecessor did not consider himself seised of the Second Motion of 12 June 2018. See Decision of 14 June 2018, fn. 16.

<sup>25</sup> Internal Memorandum from the then-President to the Registrar, dated 14 June 2018 (confidential), paras. 1-2.

<sup>26</sup> Hassan Ngeze’s Request for Legal Aid, 21 June 2018 (confidential) (“First Motion of 21 June 2018”), para. 23.

“exceptional securit[y] measures” for himself and his family members, arguing, *inter alia*, that because of the Application, his son was killed by “the Government of Rwanda”.<sup>27</sup>

17. On 24 June 2018, Ngeze’s Counsel responded to the Omnibus Response and the Supplementary Request.<sup>28</sup>

18. On 25 June 2018, my predecessor granted, in part, the First Motion of 21 June 2018 and directed the Registrar to remunerate Ngeze’s Counsel.<sup>29</sup> On the same day, Ngeze, acting *pro se*, filed an additional document in relation to the Application.<sup>30</sup>

19. On 27 June 2018, the Registrar decided to assign Ms. Mirjana Vukajlović as Counsel for Ngeze with respect to the proceedings relating to the Application.<sup>31</sup>

20. On 12 July 2018, my predecessor denied the Supplementary Request.<sup>32</sup> In addition, my predecessor referred to a number of unsolicited communications that he received from non-parties, and stated that these communications would not be considered in the final determination of the Application.<sup>33</sup>

21. On 13 July 2018, the Registrar informed my predecessor that his Office had received notification from the Malian authorities that a response concerning Ngeze’s eligibility for commutation of sentence under Malian law would be communicated as soon as possible.<sup>34</sup>

22. On 17 July 2018, my predecessor dismissed the Second Motion of 21 June 2018 on the ground, *inter alia*, that Ngeze’s allegation was speculative.<sup>35</sup>

23. On 26 July 2018, Rwanda filed an additional submission opposing the Application and requesting reconsideration of the Decision of 12 July 2018.<sup>36</sup>

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<sup>27</sup> “Hassan Ngeze, extremely motion seeking from the President to set up supplementary security measures that will protect his remained children and family’s members who are abroad as refugees, those under the process of seeking asylum, and those who have obtained foreigner citizenships and myself, Hassan Ngeze, to be temporary under the full care of the mechanism”, 21 June 2018 (“Second Motion of 21 June 2018”), pp. 3-4.

<sup>28</sup> Ngeze Defence Response to Government of Rwanda’s “Omnibus Response”, “Supplementary Request”, and Third-Party Filings, 24 June 2018 (“Response to Submissions”).

<sup>29</sup> Decision on Hassan Ngeze’s Request for Legal Aid, 25 June 2018 (confidential), para. 16.

<sup>30</sup> “Additional document on the application for commutation of sentence addressed to the President by Hassan Ngeze following the Mechanism’s request to the Rwandan Government regarding the ongoing application for commutation of sentence”, 25 June 2018 (originally filed in French; English translation filed on 12 July 2018) (“Submission of 25 June 2018”).

<sup>31</sup> Decision, 27 June 2018 (confidential; public redacted version filed on 27 June 2018), p. 2.

<sup>32</sup> Decision on Supplementary Request for Documents by the Republic of Rwanda, 12 July 2018 (“Decision of 12 July 2018”), paras. 22, 24.

<sup>33</sup> *See* Decision of 12 July 2018, para. 17. I share my predecessor’s view with respect to this matter insofar as it applies to the Application, and consequently will not address these non-party communications below.

<sup>34</sup> Internal Memorandum from the Registrar to the then-President, dated 13 July 2018 (confidential), para. 2.

24. On 1 August 2018, my predecessor denied Rwanda's request for reconsideration of the Decision of 12 July 2018.<sup>37</sup>
25. On 9 August 2018, Ngeze's Counsel filed a reply to the Additional Submission.<sup>38</sup> On the same day, Ngeze, acting *pro se*, filed a motion, in which he requested that my predecessor order an investigation into the "assassination" of his son and his son's lawyer, contending that as a result of the Application they were both killed by the Government of Rwanda and that Ngeze's family members have been "harassed, tortured, and mysteriously disappeared" while he has been serving his sentence.<sup>39</sup>
26. On 23 August 2018, my predecessor dismissed the Motion of 9 August 2018.<sup>40</sup>
27. On 17 September 2018, Ngeze, acting *pro se*, filed a reply to Rwanda's submissions opposing the Application.<sup>41</sup>
28. On 18 September 2018, Ngeze, acting *pro se*, filed a submission, in which he informed my predecessor that the President of Rwanda had recently commuted the sentences of more than 2,400 prisoners incarcerated in Rwanda.<sup>42</sup>

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<sup>35</sup> Decision on Hassan Ngeze's Motion Seeking Supplementary Security Measures, 17 July 2018 (confidential and *ex parte*), pp. 3-4.

<sup>36</sup> The Government of Rwanda's Additional Submission in Opposition to the Early Release of Messrs. Aloys Simba, Dominique Ntawukuliyayo and Hassan Ngeze and Request for Reconsideration of the 12 July 2018 MICT Decision Denying the Supplementary Request for Documents, 26 July 2018 ("Additional Submission"), pp. 2-5.

<sup>37</sup> Decision on Request for Reconsideration of Decision on Supplementary Request for Documents by the Republic of Rwanda, 1 August 2018, p. 6.

<sup>38</sup> Ngeze Defence Reply to Government of Rwanda's Additional Submission in Opposition to the Early Release of Messrs. Aloys Simba, Dominique Ntawukuliyayo and Hassan Ngeze, 9 August 2018 ("Reply to Additional Submission").

<sup>39</sup> "Hassan Ngeze's Extremely urgent motion of 6<sup>th</sup> August requesting the president to order the investigation on the assassination of Dr. Thomas Ngeze (Hassan Ngeze son) and the additional assassination of his son's lawyer Mr. Peter -Jean-Staelnes carried out by Rwanda Government in south African as part of result of the motion filed by Hassan Ngeze on 8<sup>th</sup> of march 2018 that sought from the President the commutation of sentence and early release based on humanitarian grounds, both killed between the period of June and August 2018", 9 August 2018 ("Motion of 9 August 2018"), pp. 2-4. *See also* "Hassan Ngeze's urgent information in addition to the motion filed on 21<sup>st</sup> of june 2018(extremely motion seeking from the President to set up supplementary security measures that will protect his remained children and family' s members ) to be placed before the President regarding the additional killings of Lawyer Peter-Jean Staelens of Belgium nationality who was following the case of Hassan Ngeze deceased son Dr Thomas Ngeze by the Rwandan Government, again in the republic of South African", 6 August 2018, p. 2 (informing my predecessor of the death of the lawyer of Ngeze's son).

<sup>40</sup> Decision on Hassan Ngeze's Motion, 23 August 2018 (confidential and *ex parte*), p. 3.

<sup>41</sup> "Hassan Ngeze personal Response filed before the President as final reply to Rwanda's *Opposition to Application for Early Release*", 17 September 2018.

<sup>42</sup> "The Corrected version of Hassan Ngeze extremely urgent information to be placed before the office of the President concerning the decision taken by Rwandan President Paul Kagame who offered commutation of sentence and early release with immediate effect of more than 2400 Rwandans prisoners imprisoned in Rwanda. The President of the mechanism may use this new development while making determination and deciding the pending commutation of sentence and early release before the mechanism.", 18 September 2018, p. 2.

29. On 17 October 2018, my predecessor requested an update from the Registrar on the status of the information requested from the Malian authorities regarding Ngeze's eligibility for commutation of sentence under Malian law.<sup>43</sup>
30. On 25 October 2018, Ngeze, acting *pro se*, filed a motion, in which he requested that the Mechanism help arrange a meeting between himself and the Government of Rwanda to discuss, *inter alia*, the reconciliation process in Rwanda.<sup>44</sup> The next day, Ngeze, acting *pro se*, filed a modified version of this motion.<sup>45</sup>
31. On 19 December 2018, my predecessor issued an order to transfer Ngeze from Mali to Benin to serve the remainder of his sentence.<sup>46</sup>
32. On 20 December 2018, Ngeze's Counsel filed a motion, in which she requested reconsideration of the Order of 19 December 2018, or alternatively, postponement of Ngeze's transfer to Benin until the issuance of the decision on the Application or for a minimum of 14 days.<sup>47</sup> On the same day, Ngeze, acting *pro se*, filed a motion, in which he requested an immediate suspension of his transfer from Mali to Benin on "humanitarian grounds".<sup>48</sup>
33. On 21 December 2018, my predecessor denied the Motions of 20 December 2018.<sup>49</sup>

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<sup>43</sup> See Internal Memorandum from the then-President to the Registrar, dated 17 October 2018 (confidential), para. 2. On the same day, the Registrar informed my predecessor that the Registry had not received a response from the Malian authorities and that the Registry would continue to follow up on this matter. Internal Memorandum from the Registrar to the then-President, dated 17 October 2018 (confidential), paras. 2-3.

<sup>44</sup> "Hassan Ngeze urgent motion Filed before the office of the President on 23<sup>rd</sup> of October 2018 working with Malian Government seeking the arrangement of a meeting to be held in the territory of Mali between Hassan Ngeze and the representative of Rwandan Government as stated in the Mechanism Laws, read with Malians laws governing the diplomatic visitation to the foreigners prisoners.", 25 October 2018 ("Motion of 25 October 2018"), pp. 2-3.

<sup>45</sup> "Hassan Ngeze modified urgent motion Filed before the office of the President on 23<sup>rd</sup> of October 2018 working with Malian Government seeking the arrangement of a meeting to be held in the territory of Mali between Hassan Ngeze and the representative of Rwandan Government as stated in the Mechanism Laws, read with Malians laws governing the diplomatic visitation to the foreigners prisoners.", 26 October 2018 (together with the Motion of 25 October 2018, "Motions of 25 and 26 October 2018").

<sup>46</sup> Order of 19 December 2018, p. 2.

<sup>47</sup> Urgent Ngeze Request for Reconsideration of President's Order Designating State in which Hassan Ngeze is to Serve the Remainder of His Sentence or, in the Alternative, Request for Postpon[e]ment of Execution of Order, 20 December 2018 (confidential) ("First Motion of 20 December 2018"), paras. 21-22.

<sup>48</sup> "Hassan Ngeze extremely urgent amended motion filed before the President on 20<sup>th</sup> of December 2018, seeking the immediate postponing of one week or two before being transfer from Mali to the Republic of Benin in order to elaborate the list of Hassan Ngeze Personal materials which will be left and send to me later, and allow me to carry with my mi little 8 suitcases plus my Piano in which I have parked, these personal materials will be needing for my being in the Prison of Benin ..", 20 December 2018 (confidential) (together with the First Motion of 20 December 2018, "Motions of 20 December 2018"), p. 2.

<sup>49</sup> Decision on Hassan Ngeze's Request for Reconsideration of the Order Designating State in which Hassan Ngeze is to Serve the Remainder of His Sentence, 21 December 2018 (confidential), p. 2; Decision on Request for Reconsideration of President's Order Designating State in which Hassan Ngeze is to Serve the Remainder of His Sentence or, in the Alternative, Request for Postponement of Execution of Order, 21 December 2018 (confidential), p. 2.



34. On 17 January 2019, my predecessor requested the Registry to undertake the steps prescribed in paragraphs 3 to 5 of the Practice Direction (MICT/3/Rev.1) *vis-à-vis* Benin and also asked the Registry to still request information pursuant to paragraph 4(b) of the Practice Direction (MICT/3/Rev.1) *vis-à-vis* Mali, given the amount of time Ngeze had spent imprisoned there.<sup>50</sup>

35. On 7 February 2019, in my new capacity as President, I dismissed the Motions of 25 and 26 October 2018.<sup>51</sup>

36. On 18 April 2019, Ngeze, acting *pro se*, filed an additional document in relation to the Application.<sup>52</sup>

37. On 3 May 2019, the Registrar transmitted to me a *note verbale* from the Ministry of Foreign Affairs and Cooperation of Benin, notifying the Mechanism that Ngeze does not meet the conditions under Beninese law to benefit from pardon, commutation of sentence, or early release.<sup>53</sup>

38. On 26 August 2019, Ngeze, acting *pro se*, filed a motion, in which he requested the assistance of the Mechanism for his resettlement should the Application be granted and proposed a declaration that should be required of any person benefiting from the Mechanism's assistance, a commutation of sentence, or early release, or anyone seeking a "country for exile and accommodation" following their acquittal or release.<sup>54</sup>

39. On 9 September 2019, Ngeze, acting *pro se*, filed an additional document in relation to the Application.<sup>55</sup>

40. On 16 October 2019, Ngeze, acting *pro se*, filed a motion, in which he requested "clarification or the official position of the Mechanism on the request for release and commutation

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<sup>50</sup> Internal Memorandum from the then-President to the Registrar, dated 17 January 2019 (confidential), paras. 1-4.

<sup>51</sup> Decision of 7 February 2019, p. 2.

<sup>52</sup> See "Combined motion requesting a complete classification of all the documents filed by the Rwandan government in the case-files seeking provisional release for Hassan Ngeze, Dominique Ntawukuriryayo, Aloys Simba, and the filing in the archives of the Tribunal (MICT) of Hassan Ngeze's personal document addressed to the Rwandan people of today and tomorrow on the occasion of the 25<sup>th</sup> anniversary of the genocide perpetrated against the Tutsi population of Rwanda, referred to here as 'reconciliation of hearts' document", 18 April 2019 (originally filed in French; English translation filed on 27 June 2019) ("Submission of 18 April 2019").

<sup>53</sup> Internal Memorandum from the Registrar to the President, dated 3 May 2019 (confidential), *transmitting a note verbale* from the Ministry of Foreign Affairs and Cooperation of Benin, dated 26 April 2019 ("April 2019 *Note Verbale*"), p. 1.

<sup>54</sup> Motion of 26 August 2019, pp. 2-3.

<sup>55</sup> See "Extremely urgent motion filed on 30 August 2019 seeking that the document entitled 'Hassan Ngeze's statement about Hassan Ngeze in the third person singular' be accepted and taken into consideration, among many others, relating to his ongoing application for early release.", 9 September 2019 (originally filed in French; English translation filed on 23 April 2021) ("Third Additional Document").

of sentence for some of the Mechanism’s convicted Rwandans, in the face of the categorical refusal of the Government of Benin”.<sup>56</sup>

41. On 28 October 2019, the Registrar transmitted to me documents received from the Beninese prison authorities concerning Ngeze’s behaviour and conditions of detention, and a psychological assessment since his transfer to Benin.<sup>57</sup>

42. On 13 January 2020,<sup>58</sup> 14 January 2020,<sup>59</sup> 15 January 2020,<sup>60</sup> 17 January 2020,<sup>61</sup> 23 January 2020,<sup>62</sup> and 23 July 2020,<sup>63</sup> Ngeze, acting *pro se*, filed additional documents in relation to the Application.

<sup>56</sup> Motion of 16 October 2019, p. 2.

<sup>57</sup> Internal Memorandum from the Registrar to the President, dated 28 October 2019 (confidential), *transmitting* a report from the Warden of the Beninese prison where Ngeze is serving his sentence (“Beninese Prison”), dated 17 October 2019 (“Beninese Prison Report”), *conveying* a report from a Beninese psychiatric expert, dated 10 September 2019 (“Beninese Psychological Report”).

<sup>58</sup> See “Public motion filed by Hassan Ngeze, requesting the President of the Mechanism (MICT) to accept his Declaration of breaking with and disengaging from any ideology with an ethnic overtone, or any other type whatsoever. The motion is filed before the Honourable Carmel Agius, President of the Mechanism, and before the Honourable Olufemi Elias, Registrar of the Mechanism, and before humanity and for all eternity”, 13 January 2020 (originally filed in French; English translation filed on 14 January 2020; emphases in the title omitted) (“Fourth Additional Document”).

<sup>59</sup> See “Urgent motion filed by Hassan Ngeze, dated 9 January 2020, requesting that the President of the Mechanism consider the motion filed on 23 December 2019 and the personal declaration dated 23 December 2019 as part of the overall main material filed in the release case that is currently being deliberated. The two documents have the following titles: (1) Combined motion filed by Hassan Ngeze asking the President of the Mechanism to: \* Accept Hassan Ngeze’s personal declaration stating that the creation of the International Criminal Tribunal for Rwanda and its judgements were a godsend from the United Nations to the Rwandans, in particular, and to Africa and to humanity in general in the matter of preventing impunity; \* Accept the results based on the research conducted by Hassan Ngeze which clarify the reasons that have led to the genocide carried out in 1994 against Rwanda’s ethnic Tutsi; \* Accept as a Mechanism document my publication entitled: “*Ce qui caractérise les Rwandais qui ont été condamnés par le Mécanisme*” /Characteristics of the Rwandans who have been convicted by the Mechanism/; \* The real reasons that led, from 1960 to 1994, the Hutu authorities before the genocide against the Tutsi, to massacre the Tutsi with the aim of holding on to power. (2) Declaration of breaking with and disengaging from any ideology with an ethnic tendency, or any other type whatsoever, filed before the Honourable Carmel Agius, President of the Mechanism, and before the Honourable Olufemi Elias, Registrar of the Mechanism, and before humanity and for all eternity.”, 14 January 2020 (confidential) (originally filed in French; English translation filed on 17 February 2020; public redacted versions filed on 2 April 2020; emphases in the title omitted) (“Fifth Additional Document”). See also Order of 13 March 2020, pp. 2-3.

<sup>60</sup> See “Combined motion filed by Hassan Ngeze asking the President of the Mechanism to: \* Accept Hassan Ngeze’s personal declaration stating that the creation of the International Criminal Tribunal for Rwanda and its judgements were a godsend from the United Nations to the Rwandans, in particular, and to Africa and to humanity in general in the matter of preventing impunity; \* Accept the results based on the research conducted by Hassan Ngeze which clarify the reasons that have led to the genocide carried out in 1994 against Rwanda’s ethnic Tutsi; \* Accept as a Mechanism document my publication called: “*Ce qui caractérise les Rwandais qui ont été condamnés par le Mécanisme*” /Characteristics of the Rwandans who have been convicted by the Mechanism/; \* The real reasons that led the Hutu authorities, from 1960 to 1994, before the genocide against the Tutsi, to massacre the Tutsi with the aim of holding on to power.”, 15 January 2020 (confidential) (originally filed in French; English translation filed on 17 February 2020; public redacted versions filed on 2 April 2020) (“Sixth Additional Document”). See also Order of 13 March 2020, pp. 2-3.

<sup>61</sup> See “Motion filed by Hassan Ngeze on 14 January 2020 asking the President of the Mechanism to accept the statement of positive rehabilitation entitled: ‘Prison has converted me over time and I am truly rehabilitated’ Hassan Ngeze asks the President of the Mechanism to consider this statement of positive rehabilitation as constituting part of the essential material in the case-file on early release currently in deliberation.”, 17 January 2020 (originally filed in French; corrected English translation filed on 19 March 2021) (“Seventh Additional Document”); “Separate motion filed by Hassan Ngeze on 15 January 2020 asking that his personal conclusions, stating that the creation of the International Criminal Tribunal for Rwanda and its judgements were a godsend from the United Nations to the

43. On 30 July 2020, I requested that the Registry continue following up with the Malian authorities in order to receive the information requested pursuant to paragraph 4(b) of the Practice Direction (MICT/3/Rev.1) and asked that the Registry request a detailed report from the Office of the Prosecutor of the Mechanism (“Prosecution”) on any cooperation of Ngeze with it or with the Office of the Prosecutor of the ICTR (“ICTR Prosecution”) and the significance thereof, as well as any other comments or information that the Prosecution considers of relevance for the determination of the Application.<sup>64</sup>

44. On 3 August 2020, I requested that the Registry transmit a *note verbale* to the Ministry of Foreign Affairs and Cooperation of Benin, seeking further information concerning the non-eligibility of Ngeze for pardon, commutation of sentence, or early release under Beninese law.<sup>65</sup>

45. On 7 September 2020, the Registrar transmitted to me information from the Prosecutor of the Mechanism (“Prosecutor”) concerning any cooperation from Ngeze and his views on the Application, as well as a report concerning Ngeze’s conduct during his imprisonment in Mali.<sup>66</sup>

46. On 10 September 2020, Ngeze, acting *pro se*, reiterated his request for assistance for his temporary resettlement in [REDACTED] should the Application be granted, and specified a list of goods that he would expect to be provided to him for this purpose.<sup>67</sup>

47. On 24 September 2020, Ngeze, acting *pro se*, filed a motion, in which he requested that I issue an order “allowing [him] to go to educational institutions and other centres where young

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Rwandans, in particular, and to Africa and to humanity in general in the matter of preventing impunity, be accepted.”, 17 January 2020 (originally filed in French; English translation filed on 12 May 2020) (“Eighth Additional Document”).

<sup>62</sup> See “Separate motion filed by Hassan Ngeze on 17 January 2020 asking that the President of the Mechanism accept his personal conclusions regarding the reasons, among others, that led, on the one hand, the Hutu leaders of the First and Second Republics of Rwanda to unleash the genocide against the Rwandan Tutsi and, on the other, led to regimes that manipulated the population with policies based on ethnic exclusion with the aim of holding on to power.”, 23 January 2020 (originally filed in French; English translation filed on 1 June 2020) (“Ninth Additional Document”).

<sup>63</sup> See “Extremely urgent motion filed by Hassan Ngeze requesting the inclusion in the file on his pending motion for early release of a document addressed to His Excellency, Mr Patrice Athanase Guillaume TALON, President of the Republic of Benin, Head of State and Government, entitled ‘Request for mediation between the authorities of the Rwandan Republic, i.e. my country, and me, Hassan Ngeze.’”, 23 July 2020 (originally filed in French; English translation filed on 12 August 2020) (“Tenth Additional Document”).

<sup>64</sup> Internal Memorandum from the President to the Registrar, dated 30 July 2020 (confidential), paras. 1-3.

<sup>65</sup> Internal Memorandum from the President to the Registrar, dated 3 August 2020 (confidential), para. 2, *transmitting a note verbale* from the Mechanism dated 30 July 2020 (confidential) (“July 2020 *Note Verbale*”), p. 1.

<sup>66</sup> Internal Memorandum from the Registrar to the President, dated 7 September 2020 (confidential), *transmitting an* Internal Memorandum from the Prosecutor to the Registrar, dated 28 August 2020 (confidential) (“Prosecutor’s Submission”) and a Report from the Warden of the Malian prison where Ngeze was previously serving his sentence, dated 24 August 2020 (“Malian Prison Report”).

<sup>67</sup> Communication from Ngeze to the President and the Registrar, dated 10 September 2020 (“Communication of 10 September 2020”), pp. 2-7.

people and others gather, in order to make them aware on how to prevent genocide, wars and other crimes against humanity”.<sup>68</sup>

48. On 22 October 2020, Ngeze, acting *pro se*, requested that I put in place a mechanism that would allow for his social and psychological assessment, should the Application be granted.<sup>69</sup>

49. On 3 November 2020,<sup>70</sup> 25 November 2020,<sup>71</sup> and 1 December 2020,<sup>72</sup> Ngeze, acting *pro se*, filed additional documents in relation to the Application.

50. On 2 December 2020, Ngeze, acting *pro se*, filed a motion, in which he requested to have access to the content of the case file and to be updated on the status of the Application.<sup>73</sup>

51. On 22 December 2020, Ngeze, acting *pro se*, filed a motion, in which he requested that I release him temporarily until the Application is adjudicated.<sup>74</sup> On the same day, Ngeze, acting *pro se*, filed a motion, in which he reiterated his request for assistance for his temporary resettlement in [REDACTED], should the Application be granted.<sup>75</sup>

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<sup>68</sup> “Motion filed on 23 September 2020 by Hassan Ngeze, convicted by the ICTR/Mechanism, asking the President of the Mechanism to issue a public order allowing Hassan Ngeze to go to educational institutions and other centres where young people and others gather, in order to make them aware on how to prevent genocide, wars and other crimes against humanity”, 24 September 2020 (originally filed in French; English translation filed on 30 September 2020) (“Motion of 24 September 2020”).

<sup>69</sup> Communication from Ngeze to the President, dated 22 October 2020 (“Communication of 22 October 2020”), pp. 1, 4.

<sup>70</sup> See “Motion filed by Hassan Ngeze asking for the documents issued by the President of the Benin National Assembly, Honourable Louis G. VLAVONOU and by the Special Prosecutor Gilbert Ulrich TOGBONON of the Cour de Répression des Infractions Economiques et du Terrorisme in Benin (CRIET) to be accepted and recorded in the release case-file currently under deliberation; these documents support Hassan Ngeze’s social reintegration after prison and his gradual and positive change of behavior.”, 3 November 2020 (originally filed in French; English translation filed on 17 November 2020; emphases in the title omitted) (“Eleventh Additional Document”).

<sup>71</sup> See “Additional request filed by Hassan Ngeze seeking admission, as part of his application for release currently under consideration, of supplementary documents issued by Mr Mariano OGOUTOLOU, Administrative Secretary General of the National Assembly of Benin, in support of the social reintegration of Hassan Ngeze after prison and his positive and gradual change of behaviour.”, 25 November 2020 (originally filed in French; English translation filed on 4 December 2020; emphases in the title omitted) (together with the First Additional Document, the Second Additional Document, the Third Additional Document, the Fourth Additional Document, the Fifth Additional Document, the Sixth Additional Document, the Seventh Additional Document, the Eighth Additional Document, the Ninth Additional Document, the Tenth Additional Document, and the Eleventh Additional Document, “Additional Documents”).

<sup>72</sup> See “Motion filed by Hassan N[geze] seeking acceptance and inclusion in his release case file, currently under consideration, of the conduct report entitled ‘Summary Report’ compiled by the Warden of the [REDACTED] dated 24 October 2020.”, 1 December 2020 (originally filed in French; English translation filed on 2 March 2021) (“Motion of 1 December 2020”), Annex (Report of the Warden of the Beninese Prison, dated 24 October 2020 (“Further Beninese Prison Report”, together with the “Beninese Prison Report” and “Malian Prison Report”, “Prison Reports”).

<sup>73</sup> Motion of 2 December 2020, RP 2/1425 BIS.

<sup>74</sup> First Motion of 22 December 2020, RP 1439-1438. Ngeze, acting *pro se*, filed a similar motion on 24 August 2020. See “Hassan Ngeze Extremely motion requesting the permission of leaving the [REDACTED] and be Located in placed house situated in Porto- Novo while waiting for the termination of his pending motion of early release due to the large spreading of the pandemic known as Covid -19 which now has landed already inside the [REDACTED].”, 24 August 2020, pp. 3-4. See also Decision on Motions for Temporary Release and a COVID-19 Test, 23 April 2021 (“Decision of 23 April 2021”), pp. 1, 3, 5.

<sup>75</sup> Second Motion of 22 December 2020, pp. 2-3.

52. On 23 December 2020, the Registrar provided notice that the Registry has recognised Ms. Mirjana Vukajlović as *pro bono* Counsel to Ngeze in relation to all post-conviction proceedings, as of 16 December 2020.<sup>76</sup> On the same day, Ngeze, acting *pro se*, filed a motion, in which he again reiterated his request for assistance for his temporary resettlement in [REDACTED] should the Application be granted, and raised a number of related issues.<sup>77</sup>

53. On 7 January 2021,<sup>78</sup> 11 January 2021,<sup>79</sup> 14 January 2021,<sup>80</sup> and 18 January 2021,<sup>81</sup> Ngeze, acting *pro se*, submitted additional documents in relation to the Application.

54. On 28 January 2021, the Registrar filed a submission, in which he requested, *inter alia*, that I declare the First Motion of 22 December 2020 null and void.<sup>82</sup>

55. On 19 February 2021, I requested that the Registry continue following up with the Beninese authorities in order to receive the information requested in the July 2020 *Note Verbale* and further requested the Registry to, in line with paragraphs 10(c), 10(d), and 10(f) of the Practice Direction, collect, *inter alia*: (i) any medical reports on Ngeze's health condition, including whether he is capable of serving his sentence in the enforcement State; (ii) information on where Ngeze intends to live if released and proof that he can legally relocate to the designated country or countries, if any; and (iii) information about whether Ngeze would be prepared to go back to Rwanda if released.<sup>83</sup>

56. On 9 March 2021, Ngeze, acting *pro se*, requested that, should the Application be granted, the Mechanism continue to be responsible for his medical care so long as he resides on [REDACTED] territory.<sup>84</sup>

57. On 10 March 2021, the Registrar transmitted to me communications from Ngeze,<sup>85</sup> in which Ngeze, *inter alia*: (i) provided information that if released, he intends to live in one of the

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<sup>76</sup> *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37, Registrar's Notice of Recognition of *Pro Bono* Counsel, 23 December 2020, para. 1.

<sup>77</sup> Motion of 23 December 2020, pp. 2-4.

<sup>78</sup> See Communication from Ngeze to the President, dated 7 January 2021 ("Communication of 7 January 2021").

<sup>79</sup> See Communication from Ngeze to the President, dated 11 January 2021 ("Communication of 11 January 2021").

<sup>80</sup> See Communication from Ngeze to the President, dated 14 January 2021 ("Communication of 14 January 2021").

<sup>81</sup> See Communication from Ngeze to the President, dated 18 January 2021 ("Communication of 18 January 2021").

<sup>82</sup> Registrar's Submission Pursuant to Rule 31(B) of the Rules Requesting for a Filing to be Declared Null and Void, 28 January 2021 (confidential and *ex parte*) ("Registrar's Submission"), para. 4(a).

<sup>83</sup> Internal Memorandum from the President to the Registrar, dated 19 February 2021 (confidential), paras. 2-3.

<sup>84</sup> Communication from Ngeze to the President, dated 9 March 2021 (confidential) ("Communication of 9 March 2021"), pp. 2, 4.

<sup>85</sup> Internal Memorandum from the Registrar to the President, dated 10 March 2021 (confidential), *transmitting, inter alia*, a communication from Ngeze to the Registrar, dated 3 March 2021 ("Communication of 3 March 2021") and a communication from Ngeze to the President, dated 4 March 2021 ("Communication of 4 March 2021").

three countries [REDACTED], namely: [REDACTED], [REDACTED], or [REDACTED];<sup>86</sup> (ii) indicated that if released, he is not prepared to return to Rwanda in the immediate future;<sup>87</sup> and (iii) requested an additional 27 days to provide supporting documentation that he can legally relocate to a country of his choice.<sup>88</sup>

58. On 11 March 2021, Ngeze, acting *pro se*, requested the support of the Prosecution in relation to the Application.<sup>89</sup>

59. On 15 March 2021, Ngeze, acting *pro se*, communicated a document proposing that all persons convicted by the ICTR and the Mechanism applying for commutation of sentence or early release must acknowledge the 1994 Genocide against the Tutsi in Rwanda (“Genocide”).<sup>90</sup>

60. On 23 March 2021, Ngeze, acting *pro se*, requested that I hear him by video- or telephone-link in relation to the Application.<sup>91</sup>

61. On 29 March 2021, Ngeze, acting *pro se*, submitted an additional document in relation to the Application.<sup>92</sup>

62. On 19 April 2021, I dismissed the Motion of 24 September 2020.<sup>93</sup>

63. On 23 April 2021, Ngeze, acting *pro se*, requested that, should the Application be granted, I plead for him before the United Nations and the Rwandan Government so that he can become an awareness-raiser in educational institutions.<sup>94</sup>

64. On 28 April 2021, Ngeze, acting *pro se*, requested that a project he initiated to provide free sanitary napkins to schoolgirls in Benin be taken into account in assessing the Application.<sup>95</sup> On 8 May 2021, Ngeze, acting *pro se*, submitted additional documents in relation to this project.<sup>96</sup>

65. On 14 May 2021, Ngeze, acting *pro se*, requested that his contributions to social well-being within the Beninese Prison be taken into account in assessing the Application.<sup>97</sup>

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<sup>86</sup> See Communication of 3 March 2021, p. 14.

<sup>87</sup> Communication of 3 March 2021, pp. 19, 22.

<sup>88</sup> Communication of 4 March 2021, p. 2.

<sup>89</sup> Communication from Ngeze to the Prosecutor, dated 11 March 2021, pp. 2, 10-11, 14.

<sup>90</sup> Communication from Ngeze to the President, dated 15 March 2021 (“Communication of 15 March 2021”), pp. 2, 4-5.

<sup>91</sup> Communication from Ngeze to the President, dated 23 March 2021, p. 2.

<sup>92</sup> See Communication from Ngeze to the President, dated 29 March 2021 (“Communication of 29 March 2021”).

<sup>93</sup> Decision on Hassan Ngeze’s Motion Filed on 24 September 2020, 19 April 2021, p. 1.

<sup>94</sup> Communication from Ngeze to the President, dated 23 April 2021, pp. 2, 5.

<sup>95</sup> See Communication from Ngeze to the President, dated 28 April 2021 (“Communication of 28 April 2021”), pp. 2-3, 5.

<sup>96</sup> See Communication from Ngeze to the President, dated 8 May 2021 (“Communication of 8 May 2021”).

<sup>97</sup> Communication from Ngeze to the President, dated 14 May 2021 (“Communication of 14 May 2021”), pp. 2, 5.

66. On 17 May 2021, Ngeze, acting *pro se*, informed me that, should the Application be granted, he would not be able to support himself in [REDACTED] after his release.<sup>98</sup>

67. On 18 May 2021, Ngeze, acting *pro se*, requested that I transmit a copy of his public file “that relate[s] to Rwandan reconciliation and the rebuilding of Rwanda” to the Rwandan authorities, in order to obtain guarantees for Ngeze’s safety following his release.<sup>99</sup>

68. On 19 May 2021, I followed up on whether the Registry had received: (i) the information requested in the July 2020 *Note Verbale*; (ii) any medical reports from Benin on Ngeze’s health condition; and (iii) Ngeze’s final and complete response to my request for information, including supporting documentation that he can legally relocate to [REDACTED], [REDACTED], or [REDACTED].<sup>100</sup>

69. On 24 May 2021, Ngeze, acting *pro se*, requested that I give him until 25 July 2021 to provide the supporting documentation establishing that he can legally relocate to [REDACTED], [REDACTED], or [REDACTED].<sup>101</sup>

70. On 10 June 2021, Ngeze, acting *pro se*, requested, *inter alia*, a stay of 90 days on the final decision on the Application.<sup>102</sup>

71. On 16 June 2021, Ngeze, acting *pro se*, submitted an additional document in relation to the Application.<sup>103</sup>

72. On 21 June 2021, Ngeze, acting *pro se*, informed the Registrar that the second part of his response to my request for information will be submitted after 25 August 2021, after receiving the supporting documentation establishing that he can legally relocate to [REDACTED], [REDACTED], or [REDACTED].<sup>104</sup>

73. On 23 June 2021, I invited the authorities of Rwanda to provide any views that they may wish to offer with regard to the Additional Documents by 7 July 2021, and invited Ngeze to file a response, if any, to Rwanda’s submissions by 14 July 2021.<sup>105</sup>

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<sup>98</sup> Communication from Ngeze to the President, dated 17 May 2021 (“Communication of 17 May 2021”), pp. 2, 5.

<sup>99</sup> Communication from Ngeze to the President, dated 18 May 2021, pp. 2, 4-5.

<sup>100</sup> See Internal Memorandum from the President to the Registrar, dated 19 May 2021 (confidential), paras. 1-2.

<sup>101</sup> See Communication from Ngeze to the President, dated 24 May 2021, p. 7.

<sup>102</sup> Communication from Ngeze to the President, dated 10 June 2021, pp. 2, 7.

<sup>103</sup> See Communication from Ngeze to the President, dated 16 June 2021, *transmitting, inter alia*, a letter from Ngeze to the President of Benin, dated 14 June 2021 (“Letter of 14 June 2021”).

<sup>104</sup> See Communication from Ngeze to the Registrar, dated 21 June 2021, pp. 3-4, 8, 12-13.

<sup>105</sup> Further Request to the Republic of Rwanda Related to the Application for Commutation of Sentence of Hassan Ngeze, 23 June 2021 (“Further Request to Rwanda”), p. 2.

74. On 25 June 2021, Ngeze, acting *pro se*, asked that his case file include his request for the support of Rwanda in relation to the Application.<sup>106</sup>
75. On 28 June 2021, Ngeze, acting *pro se*, requested that a number of documents be transmitted to the Judges who would be consulted in relation to the Application.<sup>107</sup>
76. On 29 June 2021, Ngeze, acting *pro se*, asked that his case file also include his further request to Rwanda to support the Application.<sup>108</sup>
77. On 3 July 2021, Ngeze, acting *pro se*, affirmed that, by 25 August 2021, he will have received the supporting documentation establishing that he can legally relocate to [REDACTED], [REDACTED], or [REDACTED].<sup>109</sup>
78. On 7 July 2021, Rwanda submitted further views in line with the Further Request to Rwanda.<sup>110</sup>
79. On 9 July 2021, I reminded the Registrar that I had not yet received the information requested in the July 2020 *Note Verbale* or any medical reports from Benin on Ngeze's health condition.<sup>111</sup> On the same day, Ngeze, acting *pro se*, submitted a portion of his response to the Further Statement.<sup>112</sup>
80. On 12 July 2021, Ngeze, acting *pro se*, requested more time to submit the remaining portion of his response to the Further Statement in the event that his Counsel did not receive all the documents that would allow her to file this final portion.<sup>113</sup>
81. On 7 August 2021, Ngeze, acting *pro se*, requested that a decision on the Application be issued despite the fact that his Counsel did not file a response to the Further Statement.<sup>114</sup>
82. On 9 August 2021, Ngeze, acting *pro se*, requested that a decision on the Application be issued without necessarily applying paragraphs 12 and 13 of the Practice Direction,<sup>115</sup> which pertain to the participation of the convicted person.

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<sup>106</sup> See Communication from Ngeze to the President, dated 25 June 2021, p. 2.

<sup>107</sup> Communication from Ngeze to the President, dated 28 June 2021, pp. 2-3.

<sup>108</sup> See Communication from Ngeze to the President, dated 29 June 2021, pp. 2-3.

<sup>109</sup> See Communication from Ngeze to the President, dated 3 July 2021, pp. 2-3.

<sup>110</sup> See Statement of the Republic of Rwanda in Further Opposition to the Application for Commutation of Sentence of Hassan Ngeze, 7 July 2021 ("Further Statement").

<sup>111</sup> Internal Memorandum from the President to the Registrar, dated 9 July 2021 (confidential), para. 3.2.

<sup>112</sup> See Communication from Ngeze to the President, dated 9 July 2021 ("Communication of 9 July 2021").

<sup>113</sup> See Communication from Ngeze to the President, dated 12 July 2021, pp. 2-3.

<sup>114</sup> Communication from Ngeze to the President, dated 7 August 2021, pp. 2, 7-8, 17. See also Communication from Ngeze to the President, dated 10 August 2021, pp. 2, 8, 17.

<sup>115</sup> Communication from Ngeze to the President, dated 9 August 2021, pp. 3-4.



83. On 16 August 2021, I instructed the Registrar to communicate the relevant collected material to Ngeze in accordance with paragraph 12 of the Practice Direction.<sup>116</sup>
84. On 20 August 2021, the Registry transmitted this material to Ngeze as well as to his Counsel.<sup>117</sup>
85. On 21 August 2021,<sup>118</sup> 23 August 2021,<sup>119</sup> 24 August 2021,<sup>120</sup> 25 August 2021,<sup>121</sup> 27 August 2021,<sup>122</sup> and 28 August 2021,<sup>123</sup> Ngeze, acting *pro se*, submitted his comments regarding the material transmitted to him on 20 August 2021 in relation to the Application. On 24 August 2021, Ngeze, acting *pro se*, also reiterated his request that, should the Application be granted, the Mechanism continue to be responsible for his basic living needs, as well as for his medical care, so long as he resides on [REDACTED] territory.<sup>124</sup>
86. On 3 September 2021, Ngeze, acting *pro se*, reiterated his request that I put in place a mechanism that would allow for his social and psychological assessment, should the Application be granted.<sup>125</sup>
87. On 29 October 2021, the Registrar transmitted to me a letter from the Director General of Penitentiaries in Benin, dated 13 October 2021 (“Letter of 13 October 2021”).<sup>126</sup>
88. On 26 January 2022, the Registrar transmitted to me a letter from the *Directeur de Cabinet* of the Ministry of Justice and Legislation of Benin, dated 7 January 2022 (“Letter of 7 January 2022”).<sup>127</sup>

<sup>116</sup> Internal Memorandum from the President to the Registrar, dated 16 August 2021 (confidential), para. 2.

<sup>117</sup> Internal Memorandum from the Registrar to the President, dated 20 August 2021 (confidential), paras. 1-2.

<sup>118</sup> See Communication from Ngeze to the President, dated 21 August 2021 (“Communication of 21 August 2021”).

<sup>119</sup> See Additional Communication from Ngeze to the President, dated 23 August 2021; Communication from Ngeze to the President, dated 23 August 2021 (“Communication of 23 August 2021”).

<sup>120</sup> See Communication from Ngeze to the President, dated 24 August 2021 (“Communication of 24 August 2021”).

<sup>121</sup> See Communication from Ngeze to the President, dated 25 August 2021 (“Communication of 25 August 2021”).

<sup>122</sup> See Communication from Ngeze to the President, dated 27 August 2021 (“Communication of 27 August 2021”).

<sup>123</sup> See Communication from Ngeze to the President, dated 28 August 2021 (“Communication of 28 August 2021”).

<sup>124</sup> Further Communication from Ngeze to the President, dated 24 August 2021, pp. 1, 4, 6-10.

<sup>125</sup> Communication from Ngeze to the President, dated 3 September 2021 (“Communication of 3 September 2021”), pp. 2, 7, 16.

<sup>126</sup> See Internal Memorandum from the Registrar to the President, dated 29 October 2021 (strictly confidential), para. 3. See also Additional Internal Memorandum from the Registrar to the President, dated 29 October 2021 (strictly confidential), transmitting a *note verbale* from the Ministry of Justice and Legislation of Benin, dated 2 November 2020 (“November 2020 *Note Verbale*”); and Further Internal Memorandum from the Registrar to the President, dated 29 October 2021 (strictly confidential), transmitting a medical report of a Beninese cardiologist, dated 6 May 2021 (“Beninese Cardiologist Report”).

<sup>127</sup> See Internal Memorandum from the Registrar to the President, dated 26 January 2022 (confidential), para. 2, transmitting a *note verbale* from the Ministry of Foreign Affairs and Cooperation of Benin, dated 19 January 2022 (“January 2022 *Note Verbale*”), conveying the Letter of 7 January 2022.

89. As no Judge who imposed the sentence upon Ngeze is a Judge of the Mechanism, I consulted with Judge William H. Sekule and Judge Ivo Nelson de Caires Batista Rosa, in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) and paragraph 16 of the Practice Direction.

### III. APPLICABLE LAW

90. According to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism supervises the enforcement of sentences pronounced by the ICTR, the International Criminal Tribunal for the former Yugoslavia (“ICTY”), or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States.

91. Pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law.

92. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

93. The general standards for granting pardon, commutation of sentence, or early release are set out in Rule 151 of the Rules, which provides that, in making a determination on pardon, commutation of sentence, or early release, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.

94. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if the convicted person believes that he or she is eligible.

95. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which he or she considers may be relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 13 of the Practice Direction states that the convicted person shall be given 14 days to examine the information

received by the Registrar, following which he or she may provide any written submissions in response.

96. Paragraph 19 of the Practice Direction specifies that the President shall determine whether pardon, commutation of sentence, or early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules.

97. The enforcement agreement between the United Nations and the Government of Benin<sup>128</sup> provides in Article 3(1) that the Beninese authorities shall be bound by the duration of the sentence pronounced by the ICTR or the Mechanism. Article 8(3) of the Enforcement Agreement provides that, in the event of a direct petition for pardon, commutation of sentence, or early release by a convicted person to the President, Benin shall, upon request of the Registrar, inform the Registrar as to whether the convicted person is eligible for pardon, commutation of sentence, or early release under its domestic law. Article 8(5) of the Enforcement Agreement states that there shall only be pardon, commutation of sentence, or early release if the President so decides on the basis of the interests of justice and the general principles of law, and that the Registrar shall transmit the decision of the President to Benin, which shall execute the terms of the decision promptly.

#### IV. ANALYSIS

##### A. Scope of the Application

98. In the Application, Ngeze requests that he be granted a “commutation of sentence”.<sup>129</sup> While in his ensuing filings and communications he appears to request both commutation of sentence and early release,<sup>130</sup> Ngeze subsequently clarified that he requests that I grant the commutation of his sentence and annul the remainder of his 35-year sentence.<sup>131</sup>

99. In this regard, I recall that while commutation of sentence has not been defined in the Statute or the Rules of the Mechanism or its predecessor Tribunals, or, until recently, in the jurisprudence, it is a distinct legal concept from that of pardon and early release and, accordingly,

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<sup>128</sup> Agreement Between the United Nations and the Government of the Republic of Benin on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals, dated 12 May 2017 (“Enforcement Agreement”).

<sup>129</sup> Application, pp. 1, 5.

<sup>130</sup> See e.g. Ninth Additional Document, p. 9; Submission of 18 April 2019, pp. 1-2; First Motion of 20 December 2018, paras. 7, 20, 22; Motion of 9 August 2018, p. 2; Submission of 25 June 2018, pp. 2, 7, 9; First Motion of 21 June 2018, paras. 15, 22-23; Second Motion of 12 June 2018, pp. 2-4; First Motion of 12 June 2018, paras. 7, 11, 27; Communication of 4 May 2018, pp. 1-3.

has a different impact on the character of the sentence.<sup>132</sup> A pardon sets aside the sentence imposed for a crime, while commutation changes the nature of the sentence, by reducing it or otherwise making it less severe.<sup>133</sup> Early release, on the other hand, means that a prisoner is freed before the end of his or her sentence, either with or without conditions.<sup>134</sup> Thus, with regard to the latter, the sentence does not change and the breach of any conditions imposed upon early release can result in the person being transferred back to the Mechanism to serve the remainder of his or her sentence.<sup>135</sup>

100. Given the content of the Application and Ngeze’s subsequent clarification regarding its scope, I have therefore considered the Application as seeking only commutation of sentence and not early release.

## **B. Eligibility**

### 1. Eligibility before the Mechanism

101. All convicted persons serving a sentence under the Mechanism’s supervision are eligible to be considered for commutation of sentence upon having served two-thirds of their sentence, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State.<sup>136</sup> Serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”.<sup>137</sup> As Ngeze had served two-thirds of his sentence by November 2020,<sup>138</sup> he is eligible to be considered for commutation of sentence.

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<sup>131</sup> Communication of 28 August 2021, pp. 8-9, 11-12, 32, 34-35.

<sup>132</sup> *Prosecutor v. Goran Jelišić*, Case No. MICT-14-63-ES, Decision on Sentence Remission and Early Release of Goran Jelišić, 11 March 2021 (“*Jelišić Decision*”), para. 32; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision on Sentence Remission and Early Release of Milomir Stakić, 31 December 2020 (“*Stakić Decision*”), para. 34.

<sup>133</sup> *Jelišić Decision*, para. 32; *Stakić Decision*, para. 34.

<sup>134</sup> *Jelišić Decision*, para. 32; *Stakić Decision*, para. 34.

<sup>135</sup> *Jelišić Decision*, para. 32; *Stakić Decision*, para. 34.

<sup>136</sup> *Prosecutor v. Élie Ndayambaje*, Case No. MICT-15-90-ES.1, Decision on the Applications for Early Release and Commutation of Sentence of Élie Ndayambaje, 15 November 2021 (“*Ndayambaje Decision*”), p. 3; *Jelišić Decision*, para. 33; *Stakić Decision*, para. 35.

<sup>137</sup> *Ndayambaje Decision*, p. 3; *Prosecutor v. Siméon Nchamihigo*, Case No. MICT-12-19-ES.1, Decision on Siméon Nchamihigo’s Application for Commutation of Sentence, 31 December 2020 (“*Nchamihigo Decision*”), p. 3. *See Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted), para. 19.

<sup>138</sup> Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 24.

2. Eligibility under Beninese Law

102. As set out above, Ngeze is currently serving his sentence in Benin.<sup>139</sup> The Beninese authorities have informed the Mechanism that Ngeze is not eligible for pardon, commutation of sentence, or early release under Beninese law.<sup>140</sup>

103. In this respect, I recall that regardless of Ngeze’s eligibility status pursuant to Beninese law, the commutation of sentence of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the President’s discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.<sup>141</sup>

C. General Standards for Granting

104. A convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for commutation of sentence and not entitled to such commutation, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.<sup>142</sup> I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

105. While I note that the gravity of the crimes is not the only factor in assessing an application for pardon, commutation of sentence, or early release pursuant to Rule 151 of the Rules, it is nevertheless a factor of fundamental importance.<sup>143</sup> It is precisely the gravity of the crimes, understood as an overall assessment of the severity of a convicted person’s criminal conduct, which is the primary consideration in determining the length of a sentence imposed by the sentencing Chamber.<sup>144</sup> I emphasise in this respect that, as a general rule, a sentence should be served in full unless it can be demonstrated that a convicted person should be granted pardon, commutation of sentence, or early release.<sup>145</sup> Moreover, the graver the criminal conduct in question, the more

<sup>139</sup> See *supra*, para. 5.

<sup>140</sup> See April 2019 *Note Verbale*, p. 1. See also November 2020 *Note Verbale*, pp. 1-2.

<sup>141</sup> *Ndayambaje* Decision, p. 4; *Nchamihigo* Decision, p. 4.

<sup>142</sup> See *Jelisić* Decision, paras. 33-35, 41; *Stakić* Decision, paras. 35-37, 42.

<sup>143</sup> See *Prosecutor v. Bruno Stojić*, Case No. MICT-17-112-ES.3, Decision on the Application for Early Release of Bruno Stojić, 11 April 2022 (public redacted) (“*Stojić* Decision”), para. 33; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application for Early Release of Radoslav Brđanin, 1 April 2022 (public redacted) (“*Brđanin* Decision”), para. 24; *Prosecutor v. Vlastimir Đorđević*, Case No. MICT-14-76-ES, Decision on the Applications for Early Release of Vlastimir Đorđević, 30 November 2021 (public redacted) (“*Đorđević* Decision”), para. 36.

<sup>144</sup> *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24; *Đorđević* Decision, para. 36.

<sup>145</sup> See *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24; *Đorđević* Decision, para. 36.

compelling such a demonstration should be.<sup>146</sup> In other words, while the gravity of the crimes by itself cannot be seen as depriving a convicted person of an opportunity to argue his or her case for pardon, commutation of sentence, or early release, it may be said to determine the threshold that the arguments in favour of pardon, commutation of sentence, or early release must reach.<sup>147</sup>

106. In his submissions, Ngeze recognises the serious nature of the crimes committed during the Genocide.<sup>148</sup> At the same time, however, he attempts to downplay the gravity of his own criminal conduct, by emphasising that he “did not commit any acts of murder or extermination himself, nor did he control -in any way- those who committed such acts in Rwanda”.<sup>149</sup> He also submits that he “was ultimately convicted on the basis of his role as an accessory to the crimes committed by others, and, consequently, not as a principal to those crimes”.<sup>150</sup> Further, Ngeze indicates that the Appeals Chamber quashed all his convictions for acts he allegedly committed during the period of 6 to 9 April 1994,<sup>151</sup> relies on the fact that he was not part of the Government or of the Army,<sup>152</sup> and contends that “[t]hroughout the existence of the Mechanism and the ICTR, [he] has been the only accused to save thousands of Tutsi during the genocide against the Tutsi”.<sup>153</sup>

107. As set out above, Ngeze was convicted of genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity.<sup>154</sup> The Trial Chamber was adamant that these are extremely grave crimes, which shock the conscience of humanity and threaten the foundations of society.<sup>155</sup>

108. More specifically, Ngeze was found responsible for having directly and publicly incited the commission of genocide through content published in his newspaper *Kangura* in 1994.<sup>156</sup> As owner, founder, and editor-in-chief of *Kangura*, Ngeze exercised control over all the articles and editorials published in *Kangura* and was therefore responsible for its contents.<sup>157</sup>

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<sup>146</sup> See *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24; *Dorđević* Decision, para. 36.

<sup>147</sup> See *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24; *Dorđević* Decision, para. 36.

<sup>148</sup> See Application, p. 4.

<sup>149</sup> Response to Submissions, para. 29.

<sup>150</sup> Response to Submissions, para. 29 (emphases omitted).

<sup>151</sup> Communication of 18 January 2021, p. 3, referring to *Hassan Ngeze v. Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze’s Motions of 26 and 28 August 2008, 28 October 2008 (“Decision of 28 October 2008”), RP 329/H.

<sup>152</sup> Communication of 14 January 2021, p. 2.

<sup>153</sup> Application, p. 2. See e.g. Communication of 14 January 2021, pp. 2-3; Submission of 25 June 2018, pp. 5-6.

<sup>154</sup> See *supra*, paras. 3-4.

<sup>155</sup> Trial Judgement, para. 1096.

<sup>156</sup> Trial Judgement, para. 1038; Appeal Judgement, para. 886, p. 346.

<sup>157</sup> Trial Judgement, paras. 135, 1038; Appeal Judgement, paras. 565, 886.

109. Certain articles and editorials published in *Kangura* in 1994, including ones Ngeze himself wrote, directly incited its readers to commit genocide.<sup>158</sup> For example, the article titled “The Last Lie”, authored by Ngeze and published in issue No. 54 of *Kangura* (January 1994), stated that “if they [the *Inyenzi*, meaning the Rwandan Patriotic Front (“RPF”)] make a small mistake, they will be exterminated; if they make the mistake of attacking again, there will be none of them left in Rwanda, not even a single accomplice [referring to the Tutsi population in general]. All the Hutus are united...”.<sup>159</sup> The article titled “Who Will Survive the War of March?”, published in issue No. 55 of *Kangura* (January 1994), contained an appeal to “the majority people” to kill the “*Inkotanyi*” and their “accomplices within the country”, meaning the Tutsi population, in case of an attack by the RPF.<sup>160</sup> Another example is the article titled “How Will the UN Troops Perish?”, signed by Ngeze and published in issue No. 56 of *Kangura* (February 1994), which stated that, after the departure of the United Nations troops, “[a]ll the Tutsis and cowardly Hutus will be exterminated”.<sup>161</sup>

110. The Trial Chamber considered that “[t]he power of the media to create and destroy fundamental human values comes with great responsibility” and that “[t]hose who control such media are accountable for its consequences”.<sup>162</sup> In particular, the Trial Chamber found that the newspaper *Kangura* “explicitly and repeatedly, in fact relentlessly, targeted the Tutsi population for destruction” by “[d]emonizing the Tutsi as having inherently evil qualities, equating the ethnic group with ‘the enemy’ and portraying its women as seductive enemy agents”.<sup>163</sup> Ngeze, as owner and editor of *Kangura*, was “in a position to inform the public and shape public opinion towards achieving democracy and peace for all Rwandans”, but “[i]nstead of using the media to promote human rights, he used it to attack and destroy human rights”.<sup>164</sup> The Trial Chamber concluded that Ngeze “poisoned the minds of his readers” against the Tutsi.<sup>165</sup>

111. Ngeze was also found responsible for genocide and extermination as a crime against humanity for his acts in the *préfecture* of Gisenyi.<sup>166</sup> These convictions were based on the fact that Ngeze himself identified and selected Tutsis at the roadblocks and gave instructions to those manning the roadblocks to stop and search every vehicle which passed, to ask for identity cards

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<sup>158</sup> See e.g. Appeal Judgement, para. 886.

<sup>159</sup> Trial Judgement, para. 215; Appeal Judgement, para. 771.

<sup>160</sup> Trial Judgement, paras. 220, 223; Appeal Judgement, para. 772.

<sup>161</sup> Trial Judgement, para. 225; Appeal Judgement, para. 773.

<sup>162</sup> Trial Judgement, para. 945.

<sup>163</sup> Trial Judgement, para. 963.

<sup>164</sup> Trial Judgement, para. 1101.

<sup>165</sup> Trial Judgement, para. 1101.

<sup>166</sup> Trial Judgement, paras. 956, 977A, 1068, 1094; Appeal Judgement, para. 1114, p. 346.

from those in the vehicles, and to separate out those whose identity cards indicated that they were Tutsi, who were then taken to *Commune Rouge* and killed.<sup>167</sup>

112. Ngeze’s attempts to minimise the gravity of his offences are unconvincing. Even though the Appeals Chamber reversed the Trial Chamber’s findings on Ngeze’s alibi for the period of 6 to 9 April 1994 and quashed all the convictions for acts he allegedly committed during that period,<sup>168</sup> he was still found guilty of genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity, which are all extremely serious crimes.<sup>169</sup>

113. Further, I note that Ngeze’s submissions that he was not part of the Government or of the Army,<sup>170</sup> and that he had saved the lives of Tutsis in 1994,<sup>171</sup> were already taken into account by the Trial Chamber and/or the Appeals Chamber. Indeed, I recall that, contrary to Ngeze’s contentions, the Trial Chamber dismissed as “highly improbable” Ngeze’s claim that he had saved over 1,000 Tutsis during the Genocide.<sup>172</sup> Instead, the Trial Chamber concluded that “a small circle of individuals were saved by his intervention, in particular Tutsi of the Muslim faith and Tutsi close relatives”.<sup>173</sup> The Trial Chamber added that Ngeze extorted a Tutsi woman’s employer, extracting the price of \$1,000 USD for their lives.<sup>174</sup> This woman later testified that “those who joined in another initiative of Ngeze, presented to them as a humanitarian intervention, were in the end lured to their death by Ngeze rather than saved by him”.<sup>175</sup> The Trial Chamber concluded that Ngeze’s “power to save was more than matched by his power to kill”.<sup>176</sup>

114. The high gravity of Ngeze’s crimes is not in doubt. In these circumstances, I am of the view that this factor weighs very strongly against any commutation of his sentence.

## 2. Treatment of Similarly-Situated Prisoners

115. Persons sentenced by the ICTR, like Ngeze, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision.<sup>177</sup> As noted above, all convicted persons supervised

<sup>167</sup> Trial Judgement, paras. 837, 956, 977A, 1068; Appeal Judgement, paras. 670-672, 965-968.

<sup>168</sup> Decision of 28 October 2008, RP 329/H, *referring to* Appeal Judgement, para. 474.

<sup>169</sup> *See supra*, paras. 3-4, 107.

<sup>170</sup> *See* Appeal Judgement, paras. 1101, 1105.

<sup>171</sup> *See* Trial Judgement, paras. 838-850; Appeal Judgement, paras. 570-571, 1101, 1106.

<sup>172</sup> Trial Judgement, para. 850. *See also* Appeal Judgement, para. 571.

<sup>173</sup> Trial Judgement, para. 850. *See also* Appeal Judgement, para. 571.

<sup>174</sup> Trial Judgement, paras. 798, 850. *See also* Appeal Judgement, para. 571.

<sup>175</sup> Trial Judgement, para. 850. *See also* Appeal Judgement, para. 571.

<sup>176</sup> Trial Judgement, para. 1101. *See also* Appeal Judgement, para. 1106.

<sup>177</sup> *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Decision on the Early Release of Théoneste Bagosora, 1 April 2021 (public redacted) (“*Bagosora Decision*”), para. 39; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza’s Application for Early Release, 17 September 2020 (public redacted), para. 41; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President’s 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019, para. 31.



by the Mechanism are considered eligible to apply for commutation of sentence upon the completion of two-thirds of their sentences, irrespective of the Tribunal that convicted them and where they serve their sentence.<sup>178</sup> As Ngeze passed this two-thirds threshold in November 2020, he is eligible to be considered for commutation of sentence.<sup>179</sup>

### 3. Demonstration of Rehabilitation

116. Before turning to an individualised assessment of whether there is any demonstration of rehabilitation by Ngeze, I recall that I have set forth some of the considerations that will guide my assessment of whether a convicted person has demonstrated rehabilitation under Rule 151 of the Rules.<sup>180</sup>

117. In my view, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through exactly the same paradigm as rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.<sup>181</sup> For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not consider that such behaviour can on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.<sup>182</sup>

118. There are, however, a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism which have been recognised as such in the past and may be of persuasive relevance.<sup>183</sup> Such indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes; (ii) signs of critical reflection of the convicted person upon his or her crimes; (iii) public or private expressions of genuine remorse or regret; (iv) actions taken to foster reconciliation or seek forgiveness; (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes; (vi) participation in rehabilitation programmes in prison; (vii) a convicted person's mental health status; and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.<sup>184</sup> This is a non-exhaustive list and I do not expect convicted persons to fulfil all of these indicators in

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<sup>178</sup> See *supra*, para. 101.

<sup>179</sup> See *supra*, para. 101.

<sup>180</sup> *Stojić* Decision, paras. 43-47; *Brđanin* Decision, paras. 36-40; *Bagosora* Decision, paras. 41-45.

<sup>181</sup> *Stojić* Decision, para. 44; *Brđanin* Decision, para. 37; *Bagosora* Decision, para. 42.

<sup>182</sup> *Stojić* Decision, para. 44; *Brđanin* Decision, para. 37; *Bagosora* Decision, para. 42.

<sup>183</sup> *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38; *Bagosora* Decision, para. 43.

<sup>184</sup> *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38; *Bagosora* Decision, para. 43.

order to demonstrate rehabilitation.<sup>185</sup> It falls, however, upon the convicted person to convince me that sufficient progress has been made in his or her rehabilitation, and that granting pardon, commutation of sentence, or early release before the full sentence is served would be a responsible exercise of my discretion.<sup>186</sup>

119. Rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.<sup>187</sup> Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.<sup>188</sup> I will, therefore, generally consider the convicted person's post-release plans, including the envisaged place of residence.<sup>189</sup> If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under Chapter VII of the United Nations Charter to contribute to the restoration and maintenance of peace and security.<sup>190</sup> As a general matter, I do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence without having demonstrated a greater degree of rehabilitation.<sup>191</sup>

120. Rehabilitation is a process rather than a definite result, and it is just one factor that I will consider alongside other factors when deciding on the pardon, commutation of sentence, or early release of a convicted person who is eligible to be considered for such relief.<sup>192</sup> Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, I may consider pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.<sup>193</sup>

121. Turning to the extent to which Ngeze has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the information provided by the Malian and Beninese authorities, in particular the Prison Reports; as well as (ii) the Additional Documents filed on the record by Ngeze and his lengthy correspondence in support of the Application.

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<sup>185</sup> *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38; *Bagosora* Decision, para. 43.

<sup>186</sup> *See Stojić* Decision, para. 45; *Brđanin* Decision, para. 38; *Bagosora* Decision, para. 43.

<sup>187</sup> *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39; *Bagosora* Decision, para. 44.

<sup>188</sup> *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39; *Bagosora* Decision, para. 44.

<sup>189</sup> *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39; *Bagosora* Decision, para. 44.

<sup>190</sup> *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39; *Bagosora* Decision, para. 44.

<sup>191</sup> *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39; *Bagosora* Decision, para. 44.

<sup>192</sup> *See Stojić* Decision, para. 47; *Brđanin* Decision, para. 40; *Bagosora* Decision, para. 45.

<sup>193</sup> *Stojić* Decision, para. 47; *Brđanin* Decision, para. 40; *Bagosora* Decision, para. 45.

(a) Behaviour in Prison

122. I observe that the picture of Ngeze's conduct in prison is quite mixed. On the one hand, the Malian authorities were critical regarding his behaviour in the period between 2008 and 2018 when Ngeze served his sentence in Mali. The Malian Prison Warden indicates that "Ngeze expressed ideas of grandeur and might, claiming to know a lot about the world and to have many high-level contacts throughout the world" and "to be wealthy, to be able to obtain anything that he wants with his fortune".<sup>194</sup> The Malian Prison Warden emphasises that Ngeze is "very sensitive about anything that concerns his rights, and in such instances responds in a highly anxious and negative way with verbal aggression" and "[w]hen he deems that his rights have not been respected, he becomes difficult to control".<sup>195</sup> It is also noted that Ngeze "has never appreciated the efforts by the administration of the [...] prison facility to respond to his numerous demands in accordance with the existing regulation" and that he "has been the subject of a number of disciplinary measures due to his behaviour towards his fellow prisoners, but also, and especially, towards staff".<sup>196</sup> The Malian Prison Warden concludes that Ngeze, who calls himself "SATAN", "is an extremely dangerous prisoner who needs close monitoring".<sup>197</sup>

123. On the other hand, Ngeze's behaviour after his transfer to Benin appears to have improved to some extent. In the Beninese Prison Report, the Beninese Prison Warden states that Ngeze is "calm", "respects the prison regulations in effect", and "exercises self-control and displays coherent reasoning".<sup>198</sup> He further indicates that Ngeze is satisfied with his conditions of detention and the efforts made by the prison administration regarding health care.<sup>199</sup> At the same time, the Beninese Prison Warden highlights that Ngeze "has complaints about his community and is very mistrustful of it" and that "[h]e is always at daggers drawn with this community and does not respect the common rules that govern it".<sup>200</sup>

124. The Further Beninese Prison Report submitted by Ngeze overall corroborates the above-mentioned, more positive opinion of the prior Beninese Prison Warden and provides further clarification. Indeed, in this later report the new Beninese Prison Warden observes that the Beninese prisoners "consider [Ngeze] friendly and generous as he helps those among them who are indigent", although the Rwandan prisoners "paint a picture of [Ngeze] as a man who is out of control,

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<sup>194</sup> Malian Prison Report, p. 2.

<sup>195</sup> Malian Prison Report, p. 2.

<sup>196</sup> Malian Prison Report, pp. 2-3.

<sup>197</sup> Malian Prison Report, pp. 2-3.

<sup>198</sup> Beninese Prison Report, p. 1.

<sup>199</sup> Beninese Prison Report, p. 1.

<sup>200</sup> Beninese Prison Report, p. 1.

shameless, difficult to advise, a babbler, and suspicious of them”.<sup>201</sup> This Beninese Prison Warden further states that “the prison administration does not have any complaints about [Ngeze] at all as a prisoner, apart from the way in which he [is] on the brink of paranoia in his dealings with his community, which he regards as the enemy”.<sup>202</sup> He concludes, however, that Ngeze “would require counselling for proper social reintegration”.<sup>203</sup>

125. The Beninese psychiatric expert states that Ngeze “[REDACTED]” and “[REDACTED]”.<sup>204</sup> She observes that “[REDACTED]”.<sup>205</sup> According to her, Ngeze seems “[REDACTED]”, and “[REDACTED]”.<sup>206</sup> The Beninese psychiatric expert concludes that Ngeze “[REDACTED]” and that his “[REDACTED]”.<sup>207</sup>

126. In response, Ngeze argues that the Malian Prison Report is largely inaccurate, tendentious, and false and that it is the reports prepared by the Beninese authorities which reflect the reality about his person and his mental health.<sup>208</sup> For example, he submits that the Malian Prison Report omits to mention that since December 2018 he has been serving the remainder of his sentence at the Beninese Prison.<sup>209</sup> He also contests the truthfulness of the allegations that he has many high-level contacts throughout the world and that he has never appreciated the efforts made by the Malian prison authorities.<sup>210</sup> Regarding his relationship with his community in prison, Ngeze asserts that the animosity of his fellow Rwandan inmates stems from the fact that he has recognised the Genocide, expressed remorse, and asked for forgiveness.<sup>211</sup> Ngeze also explains that his nickname is “SATAN” because he is a supporter of the Belgium national football team and the Manchester United Football Club, which are both known as the “Red Devils”.<sup>212</sup> Further, Ngeze emphasises that his role in contributing to social well-being within the Beninese Prison is a factor that should be taken into account in determining the Application.<sup>213</sup>

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<sup>201</sup> Further Beninese Prison Report, RP 8/1422 BIS-7/1422 BIS. I note that the Further Beninese Prison Report was prepared by a different Warden.

<sup>202</sup> Further Beninese Prison Report, RP 7/1422 BIS. *See also* Further Beninese Prison Report, RP 2/1422 BIS.

<sup>203</sup> Further Beninese Prison Report, RP 7/1422 BIS. *See also* Further Beninese Prison Report, RP 2/1422 BIS.

<sup>204</sup> Beninese Psychological Report, p. 5.

<sup>205</sup> Beninese Psychological Report, p. 5.

<sup>206</sup> Beninese Psychological Report, p. 5.

<sup>207</sup> Beninese Psychological Report, p. 6.

<sup>208</sup> Communication of 25 August 2021, p. 3; Communication of 24 August 2021, p. 3; Communication of 23 August 2021, pp. 3-4.

<sup>209</sup> Communication of 23 August 2021, p. 4.

<sup>210</sup> Communication of 23 August 2021, pp. 15-17.

<sup>211</sup> Communication of 27 August 2021, pp. 24-27; Communication of 24 August 2021, pp. 14-16; Communication of 23 August 2021, pp. 18-20.

<sup>212</sup> Communication of 23 August 2021, pp. 20-21.

<sup>213</sup> Communication of 14 May 2021, pp. 2-5.

127. More recently, the *Directeur de Cabinet* of the Ministry of Justice and Legislation of Benin informed me, in the Letter of 7 January 2022, that Ngeze had violated the regulations of the Beninese Prison and was confined to his cell as punishment on 31 December 2021 and 2 January 2022.<sup>214</sup>

128. I am of the view that only minimal weight should be attached to Ngeze's role in contributing to social well-being within the Beninese Prison and that greater emphasis should be placed on his behaviour as described by the Prison Reports. In this regard, while I note that Ngeze's conduct in prison seems to have improved to some extent since his transfer to Benin in December 2018, the fact remains that the Malian authorities, which observed him during the period 2008-2018, depicted a critical picture of his conduct in prison. Ngeze's recent punishment for violating the Beninese Prison's regulations only strengthens this conclusion and further lessens the weight to be given to his overall more positive behaviour while in Benin. Overall, I therefore find that Ngeze's conduct in prison is a factor that militates against the commutation of his sentence.

(b) Reflection on Crimes Committed, Acceptance of Responsibility, and Genuine Expressions of Remorse or Regret

129. Following the submission of the Application, Ngeze has continued to supplement it with voluminous submissions that I have carefully reviewed. This practice, which is reflective of what the Malian Prison Warden characterised as "intense recreational activity with flight of ideas associated with graphomania",<sup>215</sup> has, despite being burdensome, also presented me with a wealth of material (albeit, not focused) showing the results of Ngeze's reflection upon the Genocide and his own participation in it.

130. Ngeze contends that he "has progressively and gradually gone through a change of behaviour and mentality, with the aim of becoming a valued member of society",<sup>216</sup> writes that "the prison has transformed [him] and converted [him] in a drastic but rational way",<sup>217</sup> and insists on the fact that he is "rehabilitated".<sup>218</sup> He also claims that he has "completely and permanently broken with and disassociated himself from any ethnically or religiously motivated ideology and all other kinds of ideologies whatever they may be".<sup>219</sup>

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<sup>214</sup> See Letter of 7 January 2022, p. 1. See also January 2022 *Note Verbale*, p. 1.

<sup>215</sup> Malian Prison Report, p. 2.

<sup>216</sup> Communication of 11 January 2021, p. 3; Communication of 7 January 2021, p. 3. See also Communication of 3 March 2021, pp. 3, 10, 26; Motion of 1 December 2020, p. 2.

<sup>217</sup> Communication of 3 March 2021, p. 5. See also Communication of 9 July 2021, p. 11.

<sup>218</sup> Seventh Additional Document, pp. 3, 5-8.

<sup>219</sup> Communication of 3 March 2021, p. 7; Communication of 11 January 2021, p. 3; Communication of 7 January 2021, p. 3; Eleventh Additional Document, p. 3; Motion of 24 September 2020, p. 2; Tenth Additional

131. At the outset, I note that Ngeze recognises the Genocide.<sup>220</sup> I accept his numerous statements to this effect as being genuine. At the same time, however, I observe with concern that, despite so many years spent in prison and hundreds, if not thousands, of pages of submissions sent with a single purpose of proving his rehabilitation, Ngeze appears to neither grasp nor accept his role in the Genocide. In particular, I observe that he does not admit responsibility for the crimes for which he was found guilty. Rather, he merely concedes that he made “mistakes” or “errors”<sup>221</sup> and exercised “poor judgement” in the past.<sup>222</sup> In one of his more recent submissions, Ngeze even questioned why the Rwandan Government has not awarded him with an honorary prize for having saved Tutsis during the Genocide.<sup>223</sup>

132. Moreover, Ngeze presents himself as a victim of manipulation and shifts the blame to others.<sup>224</sup> In some submissions, he writes that “it has taken [me] a long time to discover that [I] was not able to distance [my]self sooner from the manipulative grasp of the politicians who manipulated everyone before, during and after the genocide committed against the Rwandan ethnic Tutsi”.<sup>225</sup> In other submissions, Ngeze goes even further, attempting to absolve himself of responsibility for his role in the Genocide by stating that: “I did not have the courage to disengage myself from these types of politicians and others until now, after so many years, and this is because of the bullies who still exist and who have, unfortunately, always existed. They are so powerful that breaking away from them always comes at a cost, and I am now ready to pay the price, whatever it may be, and to leave this vicious circle which sees itself as eternally strong and irresistible.”<sup>226</sup>

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Document, p. 11. *See also* Sixth Additional Document, p. 3; Fifth Additional Document, pp. 11, 56; Fourth Additional Document, p. 2.

<sup>220</sup> *See e.g.* Eleventh Additional Document, p. 3; Eighth Additional Document, pp. 3, 6-7; Third Additional Document, RP 19/1185 BIS-17/1185 BIS; First Additional Document, p. 1. *See also* Communication of 28 August 2021, pp. 17-18; Communication of 15 March 2021, pp. 2-5; Communication of 3 March 2021, p. 7; Communication of 7 January 2021, p. 3; Response to Submissions, para. 42.

<sup>221</sup> Communication of 28 August 2021, pp. 10, 15, 17-18, 21, 29; Communication of 3 March 2021, pp. 3, 5, 8, 10, 26, 28; Communication of 11 January 2021, pp. 3-6; Communication of 7 January 2021, pp. 3-6; Eleventh Additional Document, pp. 3-6; Seventh Additional Document, pp. 3-5; Third Additional Document, RP 17/1185 BIS-15/1185 BIS, 10/1185 BIS, 8/1185 BIS.

<sup>222</sup> Communication of 3 March 2021, p. 8; Communication of 11 January 2021, p. 4; Communication of 7 January 2021, p. 4; Eleventh Additional Document, p. 4; Seventh Additional Document, p. 4; Third Additional Document, RP 17/1185 BIS, 10/1185 BIS.

<sup>223</sup> Communication of 9 July 2021, p. 20.

<sup>224</sup> *See e.g.* Communication of 28 August 2021, pp. 17-18; Communication of 29 March 2021, pp. 5-7, 10, 23; Communication of 3 March 2021, pp. 5, 8, 17, 26; Communication of 11 January 2021, pp. 3-4; Communication of 7 January 2021, pp. 3-4; Eleventh Additional Document, p. 3; Tenth Additional Document, p. 8; Ninth Additional Document, pp. 2, 6-8; Seventh Additional Document, pp. 3-4; Third Additional Document, RP 17/1185 BIS, 10/1185 BIS.

<sup>225</sup> Communication of 3 March 2021, p. 7; Eleventh Additional Document, p. 3; Motion of 24 September 2020, p. 2. *See also* Tenth Additional Document, p. 12; Sixth Additional Document, p. 4; Fifth Additional Document, pp. 12, 57; Fourth Additional Document, p. 3.

<sup>226</sup> Sixth Additional Document, p. 46; Fifth Additional Document, p. 54.

133. While Ngeze does talk about “regret” and “remorse”, he depicts himself as a mere observer rather than as a person convicted of having incited others to commit the Genocide and having participated in it. For example, in the Application, he refers to the “serious nature of the crimes committed in Rwanda” and considers that: “every person who came before the ICTR or [Mechanism] judges should express remorse, a deep regret, even if acquitted, or even those who have not yet been arrested or brought before the Tribunal. Anyone who did not help persons in danger, who did not do anything to put an end to what was happening and anyone who thought that this was not their concern, every one of them should express deep regret to the Rwandans, the victims and the entire humanity.”<sup>227</sup> It is difficult to escape the impression that this statement is aimed at generalising remorse and diluting his own crimes and responsibility. In my view, it cannot be seen as an expression of genuine regret and remorse.

134. I note that Ngeze has presented his apologies “to the victims, to the Rwandans, and to humanity in general”.<sup>228</sup> In one submission, he writes that he would like the opportunity to address “all of those who became victims, in one way or another, of my writing or victims of other prejudicial behaviour that I might have displayed at any time”.<sup>229</sup> In other submissions, he explains that “[he] believe[s] that feeling remorse because of a mistake, a crime, remorse for having given offence, should always find its resolution by asking for pardon from the victims and apologising before all of humanity”.<sup>230</sup> I consider that, once again, his words constitute generalities that fall short of expressing genuine regret and remorse for his own actions.

135. Finally, I observe that Ngeze intends “to devote the rest of his life to serving humanity in order, on the one hand, to raise awareness among those working in the media not to make the same mistakes as he did in the past; and, on the other, to warn politicians and governments to learn lessons from what happened in Rwanda in order to prevent having the world experience once again a situation that plunged his country, Rwanda, into genocide in 1994”.<sup>231</sup> I also note Ngeze’s project to create a non-governmental organisation with a view to providing free sanitary napkins to schoolgirls in Benin.<sup>232</sup>

<sup>227</sup> Application, p. 4. *See* First Additional Document, pp. 1-2. *See also* Motion of 26 August 2019, p. 3.

<sup>228</sup> Communication of 3 March 2021, p. 3. *See* First Additional Document, pp. 1-2.

<sup>229</sup> Ninth Additional Document, pp. 2, 8. *See also* Communication of 28 August 2021, p. 19; Communication of 29 March 2021, p. 23; Communication of 3 March 2021, pp. 4, 9, 28; Communication of 7 January 2021, p. 4; Third Additional Document, RP 16/1185 BIS, 9/1185 BIS.

<sup>230</sup> First Additional Document, p. 2 (emphases omitted). *See also* Seventh Additional Document, p. 7; Third Additional Document, RP 18/1185 BIS; Response to Submissions, para. 43.

<sup>231</sup> Third Additional Document, RP 17/1185 BIS. *See also* Communication of 3 March 2021, p. 8; Communication of 7 January 2021, p. 4; Seventh Additional Document, p. 4.

<sup>232</sup> *See* Communication of 28 April 2021, pp. 2-7. *See also* Communication of 8 May 2021, pp. 2-4. Ngeze also took steps to initiate another project with a view to promoting peace. However, Ngeze asked my predecessor not to consider

136. The information before me does not convince me that Ngeze has engaged in meaningful or critical reflection upon his crimes or expressed genuine regret and remorse for his actions.

(c) Prospects of Successful Reintegration into Society

137. Ngeze submits that, if released, he would temporarily reside in [REDACTED] before [REDACTED], [REDACTED], and [REDACTED].<sup>233</sup> In this regard, he requests that the Mechanism continue to be responsible for his basic living needs so long as he resides on [REDACTED] territory, given that he is not able to take care of himself after his release.<sup>234</sup> He also requests that the Mechanism provide him with three months of psychological support after his release with the aim of being able to live up to the standards of the society from which he has been absent.<sup>235</sup> Further, Ngeze submits that he recognises the political, security, and social issues at stake in relation to his release and, should he be released, commits to not undermine the safety of the Rwandan people or the victims of the Genocide, and to not hold any political position or play any other role unless it is in the interest of the Rwandan people and within the political framework of the Rwandan authorities.<sup>236</sup>

138. I note that Ngeze has not substantiated whether the authorities of [REDACTED], [REDACTED], or [REDACTED] would permit him to reside there upon his release. At the same time, Ngeze is adamant that, if released, he is not prepared to return to Rwanda in the immediate future.<sup>237</sup> This submission appears to contradict Ngeze's past initiatives aimed at assisting him to reintegrate into Rwandan society. In particular, I observe that, in 2015, he addressed a letter to this effect to the President of Rwanda<sup>238</sup> and that, in 2020, he asked the President of Benin to take on the role of mediator between the Rwandan authorities and himself.<sup>239</sup> Regardless, the lack of any response to his letter to the President of Rwanda<sup>240</sup> and the vociferous opposition to the Application expressed on several occasions by Rwanda<sup>241</sup> do not paint an optimistic picture of Ngeze's prospects of a smooth and successful reintegration into society in Rwanda. Ngeze's extremely deep

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it in the context of the Application. *See* Communication of 4 May 2018, p. 2. *See also* Communication from Ngeze to the then-President, dated 5 February 2018, pp. 2-4.

<sup>233</sup> *See e.g.* Communication of 3 March 2021, p. 14; Second Motion of 22 December 2020, pp. 2-3; Communication of 10 September 2020, pp. 2-3.

<sup>234</sup> *See e.g.* Communication of 21 August 2021, p. 8; Communication of 17 May 2021, pp. 2, 5; Communication of 9 March 2021, pp. 2, 4; Motion of 23 December 2020, p. 2; Second Motion of 22 December 2020, pp. 2-3; Communication of 10 September 2020, pp. 2-7; Motion of 26 August 2019, RP 3/1168 BIS-2/1168 BIS.

<sup>235</sup> Communication of 3 September 2021, pp. 2, 5-7, 16; Communication of 22 October 2020, pp. 1, 4.

<sup>236</sup> Communication of 3 March 2021, pp. 4, 18-19; Second Additional Document, p. 1.

<sup>237</sup> Communication of 3 March 2021, pp. 19, 22.

<sup>238</sup> Submission of 25 June 2018, pp. 5, 10-11.

<sup>239</sup> Tenth Additional Document, p. 4. *See also* Letter of 14 June 2021, pp. 1-2, 7-8.

<sup>240</sup> *See* Communication of 3 March 2021, p. 32; Submission of 25 June 2018, p. 5.

<sup>241</sup> *See infra*, paras. 151-152.



mistrust toward his fellow Rwandan prisoners, as reported by the Beninese prison authorities, also does not bode well in this respect.<sup>242</sup>

139. Further, as set out above, while the Beninese psychiatric expert stated that Ngeze's "[REDACTED]",<sup>243</sup> I note that the Beninese Prison Warden concluded that Ngeze "would require counselling for proper social reintegration"<sup>244</sup> and also that a "psychological examination would be needed before his successful reintegration into society".<sup>245</sup>

140. I am of the view that the information before me does not convincingly demonstrate that Ngeze would be able to successfully reintegrate into society at this point in time, particularly in light of other concerns that call into question whether Ngeze has been sufficiently rehabilitated.

#### (d) Overall Assessment

141. While I note that Ngeze acknowledges the Genocide, I consider that his path towards sufficient rehabilitation remains incomplete. In this respect, I am mindful that the Malian prison authorities, having observed his behaviour during the period 2008-2018, indicated that Ngeze had been "the subject of a number of disciplinary measures due to his behaviour towards his fellow prisoners, but also, and especially, towards staff" and described him as "an extremely dangerous prisoner who needs close monitoring".<sup>246</sup> I also have serious concerns about Ngeze's ability to grasp and accept his role in the Genocide. In particular, I observe that Ngeze attempts to downplay the gravity of his crimes, presents himself as a victim of manipulation, shifts the blame to others, and offers only vague and unspecific apologies. It is clear to me that he has therefore not engaged in meaningful or critical reflection upon his crimes. Further, Ngeze's post-release plans remain vague and, based on the materials before me, I am not convinced that he can be safely reintegrated into society. I am therefore not convinced that Ngeze has demonstrated sufficient signs of rehabilitation as to merit commutation of sentence as a responsible exercise of my discretion.

#### 4. Substantial Cooperation with the Prosecutor

142. The Prosecutor indicates that Ngeze has not provided any cooperation to the ICTR Prosecution, either during investigations or his trial.<sup>247</sup> Ngeze submits that he has written several times to the Prosecution to propose his assistance and that he has always been ready to testify.<sup>248</sup>

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<sup>242</sup> See *supra*, paras. 123-124.

<sup>243</sup> See *supra*, para. 125.

<sup>244</sup> See *supra*, para. 124.

<sup>245</sup> See *infra*, para. 153.

<sup>246</sup> See *supra*, para. 122.

<sup>247</sup> See Prosecutor's Submission, paras. 2, 12.

143. Notwithstanding Ngeze's recent communication with the Prosecution,<sup>249</sup> it is clear that he did not cooperate with the Prosecution or with the ICTR Prosecution, substantially or otherwise. Accordingly, this merits no weight in my consideration of the Application.

#### **D. Other Considerations**

##### **1. Comments and Information Provided by the Prosecutor**

144. I have previously explained that I will use my discretion to receive and consider general comments and information from the Prosecution with regard to early release applications,<sup>250</sup> and I will likewise receive and consider such comments and information with respect to applications for pardon or commutation of sentence. In doing so, I will exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and will carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.<sup>251</sup>

145. The Prosecutor submits that commutation of Ngeze's sentence is not warranted in light of Ngeze's key role during the Genocide, the gravity of his crimes, his failure to exhibit credible signs of remorse or rehabilitation, and his non-cooperative and dismissive attitude towards the judicial process before the ICTR.<sup>252</sup>

146. In particular, the Prosecutor argues that Ngeze continues to discount his own culpability.<sup>253</sup> The Prosecutor recalls that, throughout his trial, "Ngeze consistently shirked personal responsibility for his participation in the hate media campaign that drove the 1994 genocide against the Tutsi" and argues that, after his conviction, Ngeze "has rather continued to divert blame and minimize his own role in the genocidal propaganda campaign by arguing that he was 'manipulated' into participating in the genocidal acts of others".<sup>254</sup> According to the Prosecutor, "Ngeze's [recent] claims for sympathy towards the victims of the genocide and their families constitute a calculated and self-serving afterthought void of any genuine sense of personal accountability" which should be considered against his well-publicised position during the Genocide.<sup>255</sup>

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<sup>248</sup> Submission of 25 June 2018, p. 5; Response to Submissions, paras. 46-47; Application, p. 2.

<sup>249</sup> See *supra*, para. 58.

<sup>250</sup> *Stojić* Decision, para. 71; *Dorđević* Decision, para. 82; *Bagosora* Decision, para. 54.

<sup>251</sup> See *Stojić* Decision, para. 71; *Dorđević* Decision, para. 82; *Bagosora* Decision, para. 54.

<sup>252</sup> Prosecutor's Submission, paras. 2, 5-7, 12.

<sup>253</sup> Prosecutor's Submission, paras. 2, 6.

<sup>254</sup> Prosecutor's Submission, paras. 2, 6.

<sup>255</sup> Prosecutor's Submission, para. 6. See Prosecutor's Submission, para. 2.

147. In the event that I would nevertheless grant the Application, the Prosecutor requests that appropriate conditions should be imposed on Ngeze’s release.<sup>256</sup>

148. In response, Ngeze argues that his “case-file has undergone significant and very positive changes” since the Prosecutor’s Submission and that various documents in relation to the Application demonstrate that he has expressed remorse and asked for forgiveness.<sup>257</sup> According to Ngeze, the Prosecutor erred in not acknowledging that, of all the persons convicted by the ICTR and the ICTY, he is the only one to recognise the significant work carried out by the Tribunals.<sup>258</sup> Ngeze also considers that the Prosecutor’s Submission does not bring anything to the reconciliation between Rwandans or to the social reintegration of Rwandans convicted by the ICTR into Rwandan society.<sup>259</sup> Further, he indicates that he cannot see or envisage what could prevent him from complying with any conditions imposed by the President upon his release.<sup>260</sup>

149. I have given due regard to the Prosecutor’s comments and information on the Application.

## 2. Views of Rwanda

150. As I have indicated, I consider that the views of Rwanda may be of relevance to the determination of the Application.<sup>261</sup> As with the comments and information provided by the Prosecutor, I will ensure that comments received from Rwanda are given appropriate weight where they are relevant to the matter before me, while exercising the necessary caution to ensure that they do not unreasonably impact my consideration of the Application to the detriment of the convicted person.<sup>262</sup>

151. Rwanda opposes the Application “in the strongest terms”,<sup>263</sup> arguing, *inter alia*, that: (i) early release is “unwarranted” because of the gravity of Ngeze’s crimes;<sup>264</sup> (ii) Ngeze’s early release would cause “untold psychological harm” to the survivors of the Genocide;<sup>265</sup> (iii) Ngeze

<sup>256</sup> Prosecutor’s Submission, paras. 3, 8-11.

<sup>257</sup> Communication of 21 August 2021, p. 3. *See* Communication of 21 August 2021, pp. 4-8, 10, 12.

<sup>258</sup> Communication of 27 August 2021, p. 22; Communication of 21 August 2021, p. 11.

<sup>259</sup> Communication of 21 August 2021, p. 12.

<sup>260</sup> Communication of 21 August 2021, p. 8.

<sup>261</sup> *See* Further Request to Rwanda, p. 2. *See also* Request to Rwanda, p. 2.

<sup>262</sup> *Bagosora* Decision, para. 57.

<sup>263</sup> Omnibus Response, p. 2. *See* Statement, RP 762, 758.

<sup>264</sup> Omnibus Response, p. 2. *See* Supplement, RP 887-884; Statement, RP 762-760, 758; Omnibus Response, pp. 3-4, 10-14.

<sup>265</sup> Omnibus Response, pp. 2, 14. *See* Supplement, RP 887; Statement, RP 762, 760-758. In support of this argument, Rwanda attached and referenced statements of victims voicing their opposition to Ngeze’s potential release, a statement detailing the ongoing damage and trauma that surviving victims endure to this day, and statements from former Counsel from the ICTR Prosecution who worked on Ngeze’s case. *See* Supplement, RP 884-878, Annexes C-M, O; Statement, RP 760-759, Annexes A, F.

has shown no remorse or taken responsibility for the crimes of which he was convicted;<sup>266</sup> and (iv) the ICTR considered ICTR-convicted persons eligible for early release upon completion of three-fourths of their sentences, which was a “more appropriate” standard to apply.<sup>267</sup> In addition, in its Request for a Hearing and related submissions, Rwanda requests a hearing during which the victims’ views could be solicited and considered in the determination of the Application.<sup>268</sup>

152. When providing its views on the Additional Documents, Rwanda submits that Ngeze “continues to evade responsibility for his crimes and to espouse dangerously ethnicist views, proving he has not rehabilitated himself”.<sup>269</sup> Rwanda claims that Ngeze’s assertions constitute “transparent attempts to absolve [himself] of culpability for his role in the systematic slaughter of a people”.<sup>270</sup>

153. In response, Ngeze claims, *inter alia*, that: (i) the views of Rwanda are “tainted with bias” and that its participation in these proceedings is “unwarranted, unlawful, unjustified and unnecessary”;<sup>271</sup> (ii) the ultimate decision on whether to grant commutation of sentence or early release lies with the President, regardless of whether a convicted persons is eligible for commutation of sentence or early release according to the laws of the enforcement State;<sup>272</sup> and (iii) his accessorial role in the Genocide, as reflected in the modes of liability attributed to him by the Appeals Chamber, should be legally considered in favour of granting the Application, together with his public recognition of the Genocide and his sincere remorse and respect for victims.<sup>273</sup>

154. Further, Ngeze reiterates that he has disengaged from any ideology with an ethnic overtone and undergone a positive change allowing him to reintegrate into society after prison and live in harmony with others.<sup>274</sup> According to Ngeze, Rwanda’s assertion that he continues to evade responsibility for his crimes is incorrect, given that he accepted and repeated that he had made “mistakes” and asked for forgiveness.<sup>275</sup> He also submits that Rwanda erred in the assessment of his penitence and that he has done what no other persons convicted by the ICTR has done in terms of

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<sup>266</sup> Supplement, RP 876-875; Statement, RP 761; Omnibus Response, p. 3.

<sup>267</sup> Supplement, RP 874. *See* Statement, RP 758; Omnibus Response, p. 3.

<sup>268</sup> Omnibus Response, p. 19. *See* Supplement, RP 883; Statement, RP 760.

<sup>269</sup> Further Statement, RP 2039.

<sup>270</sup> Further Statement, RP 2038.

<sup>271</sup> Response to Submissions, paras. 65, 70. Ngeze also argues that the opportunity which was given to Rwanda to express its views on the Application led to injustice, as that opportunity “was misused for the purpose of a ‘second trial’ against him, by collecting ‘expert reports’, statements of victims, organising the civil sector representatives and legal scholars, and even calling for a public hearing”. Response to Submissions, para. 16.

<sup>272</sup> Reply to Additional Submission, paras. 16-23, 29; Response to Submissions, paras. 18-22, 71.

<sup>273</sup> Response to Submissions, paras. 28-29, 31, 42-43.

<sup>274</sup> *See* Communication of 9 July 2021, pp. 5-6.

<sup>275</sup> Communication of 9 July 2021, p. 11.

confession, repentance, transformation, and contrition.<sup>276</sup> Finally, he states that the Further Statement expresses the political position of the Rwandan Government, but not the position of victims and victims' associations.<sup>277</sup>

155. I have taken note of Rwanda's strong opposition to the Application. However, I do not consider that it is necessary to hold a public hearing on the present matter and therefore deny the Request for a Hearing.

### 3. Health of the Convicted Person

156. Previous decisions have determined that the state of the convicted person's health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.<sup>278</sup> I consider that this principle should likewise apply with respect to applications for pardon or commutation of sentence.

157. Regarding his physical condition, Ngeze [REDACTED].<sup>279</sup> He [REDACTED].<sup>280</sup> Further, he [REDACTED].<sup>281</sup> The overall assessment provided by Benin is, however, that Ngeze [REDACTED], that he is satisfied with his conditions of detention and the efforts made by the prison administration regarding health care, and that he is capable of serving his sentence in the enforcement State.<sup>282</sup> Further, the Medical Officer of the Arusha branch of the Mechanism consulted the doctor of the Beninese Prison, who [REDACTED].<sup>283</sup>

158. The picture of Ngeze's psychological condition is unclear. On the one hand, the Malian authorities report that Ngeze "[REDACTED]".<sup>284</sup> Moreover, it is reported that he "[REDACTED]" and that "[REDACTED]".<sup>285</sup>

159. The report of the Beninese Prison Warden also states that "[Ngeze's] paranoia about his community and his excessive talking makes us wonder about his mental health".<sup>286</sup> It concludes that a "psychological examination would be needed before his successful reintegration into society".<sup>287</sup>

<sup>276</sup> Communication of 9 July 2021, pp. 11, 21.

<sup>277</sup> Communication of 9 July 2021, p. 22.

<sup>278</sup> *Stojić* Decision, para. 81; *Brđanin* Decision, para. 59; *Bagosora* Decision, para. 60.

<sup>279</sup> See Beninese Psychological Report, p. 3.

<sup>280</sup> Beninese Psychological Report, p. 3.

<sup>281</sup> Beninese Cardiologist Report, pp. 1-2.

<sup>282</sup> Letter of 13 October 2021, p. 2; Beninese Prison Report, p. 1; Beninese Psychological Report, p. 5.

<sup>283</sup> Internal Memorandum from the Registrar to the President, dated 26 May 2021 (confidential), para. 3. See also Letter from the Registrar to Ngeze, dated 16 August 2021 ("Letter of 16 August 2021"), p. 2.

<sup>284</sup> Malian Prison Report, p. 2.

<sup>285</sup> Malian Prison Report, p. 2.

<sup>286</sup> Further Beninese Prison Report, RP 2/1422 BIS.

160. On the other hand, the Beninese psychiatric expert reports that, as of September 2019, Ngeze “[REDACTED]” and that “[REDACTED]”.<sup>288</sup> Rather, it is reported that Ngeze “[REDACTED]”.<sup>289</sup>

161. Therefore, in light of the information before me, I consider that there is no indication that Ngeze’s health may be an impediment to his continued detention. Consequently, there are no sufficiently compelling humanitarian grounds which would warrant granting commutation of sentence notwithstanding the overall negative assessment above.

#### 4. Consultation

162. In coming to my decision on whether to grant the Application I have consulted with two other Judges of the Mechanism.<sup>290</sup> Judge Sekule and Judge Rosa have both indicated that they agree that the Application should be denied.

163. I am grateful for my Colleagues’ views on this matter and have taken them into account in my ultimate assessment of the Application.

### V. CONCLUSION

164. Having carefully reviewed the Application, together with all of the motions filed by Ngeze, acting *pro se*, or by his Counsel in relation to the Application, as well as the numerous other communications submitted by Ngeze, I am of the opinion that the Application should be denied. Although Ngeze is eligible to be considered for commutation of sentence, there are significant factors strongly militating against granting it. The high gravity of his crimes is certainly one of them. In addition, I consider that Ngeze has failed to demonstrate sufficient signs of rehabilitation. Finally, there is no evidence before me that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

165. I also wish to make one point very clear: even if Ngeze had sought early release rather than a commutation of sentence, the outcome would be the same. The Application would still be denied in light of the above factors.

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<sup>287</sup> Further Beninese Prison Report, RP 2/1422 BIS.

<sup>288</sup> Beninese Psychological Report, p. 5.

<sup>289</sup> Beninese Psychological Report, p. 6.

<sup>290</sup> See *supra*, para. 89.

166. As a consequence of this assessment and as indicated above, I do not consider that it is necessary to hold a public hearing on the present matter. I am also of the view that the following motions should be dismissed:

- (i) the Motion of 16 October 2019, given that the Mechanism’s applicable legal framework for applications for pardon, commutation of sentence, or early release is encapsulated in the present Decision;<sup>291</sup>
- (ii) the Motion of 2 December 2020, given that Ngeze has had access to the content of the present case file as appropriate<sup>292</sup> and has been updated on the status of the Application;<sup>293</sup>
- (iii) the First Motion of 22 December 2020, given that, as I have explained in more detail in a previous decision issued in relation to a similar motion, there is no basis in law for Ngeze’s request for provisional release while serving his sentence;<sup>294</sup> and
- (iv) the Motion of 26 August 2019, the Second Motion of 22 December 2020, and the Motion of 23 December 2020,<sup>295</sup> given that these motions seek relief in the event that the Application would be granted.

167. I have also carefully examined all of the other motions filed by Ngeze, acting *pro se*, in relation to the Application. While Ngeze labels them as “motions” or “requests”,<sup>296</sup> he essentially seeks that these filings be considered in relation to the Application. I have therefore treated these filings as additional submissions and considered them, as appropriate, in my determination of the Application.

## VI. DISPOSITION

168. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **DENY** the Application, **DENY** the Request for a Hearing, and **DISMISS**: (i) the Motion of 26 August 2019; (ii) the Motion of 16 October 2019; (iii) the Motion of

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<sup>291</sup> See *supra*, paras. 90-97.

<sup>292</sup> See *supra*, paras. 83-85.

<sup>293</sup> See Letter from the President to Ngeze, dated 22 September 2021 (confidential), p. 1; Letter from the President to Ngeze, dated 11 March 2021 (confidential), p. 2.

<sup>294</sup> See Decision of 23 April 2021, pp. 1, 3, 5. I also do not consider that it is necessary to address the Registrar’s Submission under the present circumstances.

<sup>295</sup> I note that the other issues not related to the Application raised by Ngeze in the Motion of 23 December 2020 have already been addressed. See *e.g.* Letter of 16 August 2021, pp. 1-2; Decision of 23 April 2021, pp. 1-2, 4-5.

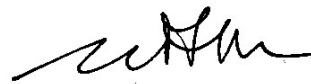
<sup>296</sup> See *e.g. supra*, paras. 39, 42, 49.

2 December 2020; (iv) the First Motion of 22 December 2020; (v) the Second Motion of 22 December 2020; and (vi) the Motion of 23 December 2020.

169. The Registrar is hereby **DIRECTED** to provide the authorities of Benin and Rwanda with the public redacted version of this Decision as soon as practicable.

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

Done this 14th day of April 2022,  
At The Hague,  
The Netherlands.



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Judge Carmel Agius  
President

**[Seal of the Mechanism]**





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