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ICTR-95-IC-T
24-8-2006
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APPEALS CHAMBER

Case N^o. ICTR-95-IC-T

ENGLISH
Original: FRENCH

Registrar: Adama Dieng

Date filed: 4 July 2006

JUDICIAL RECORDS/ARCHIVE
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THE PROSECUTOR
v.
VINCENT RUTAGANIRA
ICTR-95-IC-T

NOTICE OF APPEAL

For: Vincent Rutaganira (UNDF detainee, Arusha)

Defence Counsel: François Roux, Lead Counsel
Maroufa Diabira, Co-Counsel
Soraya Brikci-Laucci, Legal Assistant

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MAY IT PLEASE THE APPEALS CHAMBER:

I. PROCEDURAL BACKGROUND

1. Vincent Rutaganira was originally prosecuted before the International Criminal Tribunal for Rwanda on the basis of an Indictment submitted by the Prosecutor on 22 November 1995, which Indictment was confirmed by Judge Pillay on 28 November 1995.
2. On 29 April 1996, the Prosecutor filed a 25 count Amended Indictment, covering other Accused (Clément Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimbati, Mika Muhimana, Ryandikayo and Obed Ruzindana) which was confirmed by Judge Pillay on 6 May 1996.
3. Vincent Rutaganira was personally charged with seven counts, namely: conspiracy to commit genocide (Count 1), genocide (Count 14), murder (Count 15), extermination (Count 16), and other inhumane acts (Count 17) as crimes against humanity, serious violations of Article 3 common to the Geneva Conventions (Count 18) serious and violations of Additional Protocol II (Count 19).
4. Vincent Rutaganira surrendered voluntarily on 18 February 2002, and was transferred to the United Nations Detention Facility on 4 March 2002.
5. At his initial appearance before the Tribunal on 26 March 2002, following his voluntary surrender, Vincent Rutaganira pleaded not guilty to the said counts.
6. The *Kayishema* case, which had been joined to the *Ruzindana* case on 6 November 1996, was severed on 27 March 1997.
7. The *Bagilishema* case was severed on 15 September 1999.
8. An order for the protection of victims and Prosecution witnesses was issued on 24 November 2004. 8.[sic] The Accused, Vincent Rutaganira, and the Prosecutor reached a plea agreement on 7 December 2004, providing for the Accused to enter a plea of guilty as an accomplice, to the count of extermination as a crime against humanity pursuant to Article 3(b) of the Statute of the Tribunal, as charged under Count 16 of the Indictment.
9. The parties unveiled the agreement at a Status Conference on 8 December 2004, and at a further initial hearing held the same day, the Accused pleaded guilty, as an accomplice, to the charge of extermination as a crime against humanity pursuant to Article 3(b) of the Statute of the Tribunal under Count 16 of the Indictment.
10. By an Oral Decision on 8 December 2004, the Trial Chamber:
 - a. Took note of the plea agreement between the parties;
 - b. Admitted the plea of guilty after having satisfied itself that the conditions for its validity were fulfilled;
 - c. Granted the Prosecutor's request, namely that Counts 1, 14, 15, 17, 18 and 19 be dismissed and that the Accused be acquitted on those counts;
 - d. Directed the Registry to schedule a sentencing hearing on 17 January 2005;
 - e. Ordered that Rutaganira be remanded in protective custody.

21. At the 17 January 2005 hearing, the Defence presented the various applicable mitigating circumstances in the instant.
22. In the Judgement of 14 March 2005, the Accused was sentenced to six years of imprisonment for the count of extermination as a crime against humanity, and was acquitted of all the other counts in the Indictment.
23. On 5 March 2006, the Applicant filed a Request for Early Release.
24. On 2 June 2006, the President of the Tribunal, Judge Erik Møse, dismissed Rutaganira's Request for Early Release.
25. On 3 July 2006, the Applicant appealed from the said Decision by filing this Notice of Appeal pursuant to Rule 108 of the Rules of Procedure and Evidence (the "Rules") and Article 24 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute"), which Notice is admissible and meritorious on the following grounds:

II. GROUNDS OF APPEAL

Whereas the President based his decision to deny the Request on Article 27 of the Statute, under which there shall only be pardon or commutation of sentence "[I]f, pursuant to the applicable law of the State the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence" and if "the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law";

Whereas on the basis of his "inherent powers", the President ruled Rutaganira's Request admissible notwithstanding the fact that "Mr Rutaganira's sentence is not being enforced by a designated state, and the Practice Direction of 10 May 2000 does not specify the procedure for early release in cases where convicted prisoners are serving their sentences at the Tribunal Detention Facility, while awaiting transfer to a designated State";

Whereas the President further relied on Rule 26 of the Rules, which provides that "[I]n determining whether pardon or commutation is appropriate, 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";

Whereas, in the instant case, the President committed an error of fact and two errors of law;

(A) Error of fact

Whereas in determining the merits of a request for early release, the President may take account, *inter alia*, of the treatment of similarly-situated prisoners;

Whereas the President so elected to proceed, by recalling, firstly, Rutaganira's "previous requests for commutation of sentence or early release have been made by prisoners who are serving sentences for genocide" (para. 8);

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Whereas the President therefore rules that Rutaganira is imprisoned to serve the sentence resulting for his conviction of participation in the crime of genocide;

Whereas, it is undisputed that Rutaganira was convicted of a crime against humanity and not of the crime of genocide and that, moreover, he was not convicted of direct participation in the crime, but rather for complicity by omission;

Whereas Rutaganira is therefore quite not similarly-situated in relation to other convicted persons whose requests have been denied;

Whereas Rutaganira's situation is, to say the least, unique in ICTR jurisprudence;

Whereas the President erred in fact by relying in part on such a reasoning;

Whereas, moreover, the President cannot deny a request for early release on the grounds that no such release has been accorded by the International Criminal Tribunal for Rwanda;

Whereas, while it is true that no request for early release has been granted to date by the International Criminal Tribunal for Rwanda – as opposed to the International Criminal Tribunal for the former Yugoslavia where the President has authorized 14 early releases, including circumstances similar to Rutaganira's (see, *inter alia*, Damir Došen, Kolundžija and Todorović cases);

B) Errors of law

Whereas the President states in paragraphs 9 and 10, that the submissions put forward by Rutaganira had already been taken into consideration by the Trial Chamber in determining his sentence and that Rutaganira cannot rely thereon;

Whereas Rule 126 of the Rules on the standards for granting pardon or commutation in no way requires that the Judge must identify new elements such that had not been taken into consideration by the Trial Chamber in determining the sentence pursuant to Rule 101;

Whereas under the reasoning put forth in the aforementioned paragraph, the President seems to systematically exclude from the ambit of Rule 125 persons who pleaded guilty and received a sentence which was based on the same elements as those provided for under Rule 126;

Whereas, indeed, the President notes that “these submissions were already taken into consideration by the Trial Chamber when Mr. Rutaganira was sentenced” without specifying what, in this instance, is contrary to the interests of justice or the general principles of law cited in the instant;

Whereas by so ruling, the President effectively failed to assess the merits of Rutaganira's request, thereby committing an error of law;

Whereas, finally, in paragraph 11, the President considered among the reasons for denying the request the light sentence having regard to the sentencing guidelines proposed in the plea of guilty agreement and the short prison time left for Rutaganira to serve;

Whereas the decision to deny the request is comparable to the decision to grant early release by the President of the International Criminal Tribunal for the former Yugoslavia, Judge Jorda, to Kolundžija, on 5 December 2001, which concerned an accused person sentenced to a minimum 3-year sentence based on the sentencing guidelines contained in the plea agreement and where the Accused had already served more than two thirds of his sentence;

Whereas the President of the Tribunal also makes Rutaganira's early release contingent upon the length of his initial sentence and the time he has already served, contrary to the consistent rulings of International Tribunals, whereby a prisoner may request early release after serving two thirds of his or her sentence;

Whereas such rulings serve in the interests of justice and that of the persons under the Tribunal's jurisdiction, and whereas it is in keeping with the general principle of the right to predictability;

Whereas in this respect the President therefore failed to take into consideration the interests at stake and thereby committed an error of law in the assessment thereof;

III) Relief sought

Whereas it is the case that Rutaganira fulfils all the conditions (see Motion for Early Release) of similarly-situated detainees of the International Criminal Tribunal for the former Yugoslavia who have had their sentences commuted;

Rutaganira prays the Appeals Chamber to reverse the Decision of the President of the Tribunal and to order his immediate early release.

AND JUSTICE SHALL BE DONE

[Signed]



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	Case No / no. de l'affaire: ICTR-95-IC-A	
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	ACCUSED / DEFENSE <input checked="" type="checkbox"/> Accused / <i>Accusé</i> RUTAGANIRA <i>[Signature]</i> <small>see / voir * CMS4</small> <input checked="" type="checkbox"/> Lead Counsel / <i>Conseil Principal</i> : F. Roux <input type="checkbox"/> In Arusha / à Arusha: <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax: <input type="checkbox"/> Co-Counsel / <i>Conseil Adjoint</i> : M. Diabira <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax:	
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