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ICTR-95-IC-T
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(802-793)

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Dieng

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER III

Case No. ICTR-95-IC-T

ENGLISH

Original: FRENCH

Before: The President of the International Criminal Tribunal for Rwanda

Registrar: Adama Dieng

Date: 5 March 2006

VINCENT RUTAGANIRA
(in Custody at UNDF, Arusha)

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v.

THE PROSECUTOR

REQUEST FOR EARLY RELEASE

Counsel for the Defence

François Roux, Lead Counsel

Maroufa Diabira, Co-Counsel

Soraya Briki-Laucci, Legal Assistant

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MAY IT PLEASE THE PRESIDENT

I. PROCEDURAL BACKGROUND

1. Vincent Rutaganira was initially prosecuted before the International Criminal Tribunal for Rwanda on the basis of an Indictment filed by the Prosecutor on 22 November 1995 and confirmed by Judge Pillay on 28 November 1995.

2. The Prosecutor filed an Amended Indictment on 29 April 1996, which was confirmed by Judge Pillay on 6 May 1996. The Amended Indictment included other accused persons (Clément Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimbati, Mika Muhimana, Ryandikayo and Obed Ruzindana) and 25 counts.

3. Vincent Rutaganira was 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) and serious 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 aforementioned counts.

6. The *Kayishema* trial, which was joined to *Ruzindana* on 6 November 1996, was severed on 27 March 1997.

7. The *Bagilishema* trial was severed on 15 September 1999.

8. An order for protective measures for victims and Prosecution witnesses was issued on 24 November 2004.

8. The Accused, Vincent Rutaganira, and the Prosecutor reached an agreement on 7 December 2004 for the Accused to enter a guilty plea 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 revealed the agreement at a Status Conference on 8 December 2004, and during the course of a further appearance that day, the Accused pleaded 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.

10. In the Oral Decision of 8 December 2004, the Trial Chamber:

- a. took note of the agreement between the Parties;



- b. admitted the plea of guilty entered by the Accused after having verified that the conditions of its validity had been fulfilled;
- c. granted the Prosecutor's request to drop Counts 1, 14, 15, 17, 18 and 19 of the Indictment, and entertained the Accused's acquittal on those Counts;
- d. directed the Registry to schedule a pre-sentencing hearing for 17 January 2005;
- e. ordered that the Accused be kept in custody under conditions that guaranteed his safety.

21. During the hearing of 17 January 2005, the Defence presented the various mitigating circumstances applicable in the case.

22. In the Judgement rendered on 14 March 2005, the Accused was sentenced to six years imprisonment on the Count of extermination as a crime against humanity, and was acquitted on all the other counts in the Indictment.

23. The Applicant hereby files a request for early release, which is admissible and well-founded, for the reasons set forth hereinafter.

III. DISCUSSION

(1) Applicable instruments and case-law

13. Article 27 of the Statute of ICTR provides that: *"If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence 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."*

14. Rule 124 of the Rules of Procedure and Evidence of ICTR provides that: *"If, according to the law of a State in which a convicted person is imprisoned, he is eligible for pardon or commutation of sentence, the State shall, in accordance with Article 27 of the Statute, notify the Tribunal of such eligibility."*

15. Rule 125 of the said Rules provides that: *"The President shall, upon such notice, determine, in consultation with the Judges and after notification to the Government of Rwanda, whether pardon or commutation is appropriate"*.

16. Rule 126 of the said Rules further provides that: *"In 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*

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prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor."

17. In its interpretation of these instruments, the case-law of the International Criminal Tribunal for the former Yugoslavia has established the standard that where the convict is not serving his sentence in one of the States signatory to the agreement with one of the International Criminal Tribunals because he remains in detention at one of the United Nations detention facilities, he may be subject to the procedure provided for under the aforementioned Article or Rules (which only pertain to instances where the convicted person has been transferred under the responsibility of the State that has accepted the convicted person to serve his or her sentence), and may personally file an application before the President.

18. In this connection, see notably,

- Order of 30 July 2002 by the President of ICTY in *Kos*, where President Jorda held that it is within the inherent powers of the International Tribunal to dispose of an application filed by a convicted person who is serving his sentence at a United Nations detention facility; that an application for early release does not have to be filed by a Signatory State in order to be examined by the Tribunal;
- Order of 8 March 2003 by the President of ICTY, in *Mucić*: **"CONSIDERING**, however, that Zdravko Mucic is not serving his sentence in one of the States signatory to the agreement with the International Tribunal on the enforcement of sentences (Signatory State or, for more than one Signatory State, Signatory States) because he remained in detention at the United Nations Detention Unit ("UNDU") pending the outcome of his appeals, **CONSIDERING** that the Practice Direction does not specify the early release procedure when a convicted person has served his sentence at the UNDU, in The Netherlands, which is not a Signatory State; **CONSIDERING** that the conditions for eligibility regarding early release petitions should be applied equally";
- Order of 27 October 2003 by the President of ICTY, in *Milan Simić*;
- Order of 29 July 2004 by the President of ICTY in *Blaškić*, paragraphs 2 and 3.

(2) Admissibility of the Request

19. The practice at the International Criminal Tribunal for the former Yugoslavia has been to entertain requests for early release filed after the convicted person has served **two-thirds of his sentence**.

20. In this connection, see:

- Order of 9 March 2003 by the President of ICTY, in *Mucić*: “**CONSIDERING** that eligibility for early release in Signatory States starts at two-thirds of the sentence served and, in some circumstances, even earlier, Zdravko Mucic’s application is receivable because he has served two-thirds of his sentence and is therefore eligible for early release”;
- Order of 27 October 2003 by the President of ICTY in *Simić*, “**CONSIDERING** that eligibility for early release in some Signatory States starts at two-thirds of the sentence served and, in some circumstances, even earlier, and that Milan Simic’s application is receivable because he will have served two-thirds of his sentence on 3 November 2003 and will therefore be eligible for early release on that date”;
- In the Decision of 24 June 2004 in *Simić*, paragraph 4, the President denied the Request, as it was premature: “As I have also stated in previous decisions and as the Applicant acknowledges, the eligibility for pardon or commutation or sentence in the enforcement states generally ‘starts at two-thirds of the sentence served’. It has been the consistent practice of this Tribunal to apply this standard when determining the eligibility of persons imprisoned at the UNDU for pardon or commutation of sentence. As the Applicant concedes, he has not yet served two thirds of his sentence. In these circumstances, and in line with the established practice of the Tribunal, I conclude that Mr. *Tadić* is not yet eligible for pardon or commutation of sentence.” However, in his Decision of 3 November 2004, in *Simić*, the President granted the new Request filed after the convicted person had served two-thirds of his sentence;
- Decision of 30 March 2005, in *Kvočka*, paragraph 5;
- Order of 21 January 2004, in *Zarić*.

21. Considering that Vincent Rutaganira was transferred to the Detention Facility in Arusha on 4 March 2002, he has now served 4 years in prison, that is, two-thirds of his sentence.

22. He is therefore eligible to apply for early release.

(3) Merits of the Request

23. Rule 126 of the Rules of Procedure and Evidence of ICTR enumerates some of the factors that ought to be considered in ruling on the present Request:

- gravity of the crime or crimes for which the person was convicted;
- treatment of similarly-situated prisoners;
- prisoner’s demonstration of rehabilitation;

- any substantial cooperation with the Prosecutor. However, lack of cooperation is not an impediment to early release (see Order of 29 July 2004 in *Blaskić*, para. 10):
 - “On the basis of the foregoing, and notwithstanding the report of the Office of the Prosecutor that *Blaskić* has not cooperated with it, I have determined pursuant to Rules 124 and 125 and Article 7 of the Practice Direction to grant the early release application of *Blaskić*. The Registrar is requested to transmit this decision to the Commanding Officer of the UNDU and provision is to be made for the early release of Thomir *Blaskić* to take effect on Monday, 3 August 2004.”

24. ICTY case-law also takes account of the appropriateness of early release, based on the following criteria:

- plea of guilty and expression of remorse (See Order of 27 October 2003 in *Simić*, “Considering that *Milan Simić* pleaded guilty and has expressed remorse for his crimes”; Order of 21 January 2004 in *Zarić*, “Considering that *Zarić* has expressed remorse for the suffering of victims, including to witnesses who testified at trial”);
- Poor health (see Order of 27 October 2003 in *Simić*: “Considering that *Milan Simić* is a paraplegic confined to a wheelchair and requires assistance on a daily basis, and the statement in the Written Submission that his wife is a trained nurse able to provide such assistance”).

25. However, it is established, and was acknowledged in the Judgement of 14 March 2004 that:

- Vincent Rutaganira surrendered voluntarily on 18 February 2002;
- he decided to enter a plea of guilty prior to the commencement of his trial and thereby saved the Tribunal and the international community a lot in terms of resources and time; by pleading guilty, Vincent Rutaganira also manifested his willingness to contribute to the prevention of revisionism with regard to the crimes committed in Rwanda, and to the process of peace and reconciliation in his country;
- he provided assistance to victims whenever possible and saved their lives;
- he is a married man, a father of several children including a little six-year-old girl; his wife has responsibilities in the new Government; his personal and family situation is therefore a true demonstration of rehabilitation;
- he has on several occasions expressed very sincere and heart-felt apologies to victims of the Rwandan genocide in the agreement by both Parties, but he again wishes to say how much he regrets not having had the courage to act

otherwise, and would have liked to do all in his power to avert what happened in his *commune*;

- he was not charged with direct participation; his only crime was having been in authority during the events of 1994 and having failed to take appropriate measures to prevent the massacres and exactions committed in his *secteur*, Mubuga;
- Vincent Rutaganira is now 61; therefore it is harder for him to serve his sentence than if he were younger (see TC, *Plavšić*, 27 February 2003);
- Vincent Rutaganira has a clean criminal record and has shown good behaviour throughout his detention at the Detention Facility in Arusha;
- Vincent Rutaganira is in poor health, as reflected in his medical file. He has diabetes, which has many psychological consequences. He suffers from 15% permanent partial disability due to a road accident.

26. The Applicant therefore satisfies all the requirements entitling him to early release.

27. Wherefore, it is in order to grant Vincent Rutaganira's Request and to order his immediate release.

FOR THESE REASONS,

Considering Article 27 of the Statute,

Considering Rules 124 to 126 of the Rules of Procedure and Evidence;

Considering the aforementioned case-law on early release;

Considering the *Rutaganira* Judgement of 14 March 2005,

TO FIND that Vincent Rutaganira has now served two-thirds of his sentence for time served since 4 March 2002, and that he is eligible for early release, and therefore,

ORDER his immediate early release.

THE APPLICANT RESERVES THE RIGHT TO MAKE FURTHER SUBMISSIONS

AND JUSTICE SHALL BE DONE

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Done at Montpellier on 2 March 2006

[Signed]

Vincent Rutaganira

[Signed]

François Roux, Lead Counsel

[Signed]

François Roux, Lead Counsel for Maroufa Diabira, Co-Counsel

ADDENDUM

Pursuant to the Statutes of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, a sentence must not only reflect the convicted person's individual situation at the time it is imposed, but also at the time it is enforced in "the interests of justice and the general principles of law" (Articles 27 and 28, respectively).

Accordingly, a sentence, or a penalty, a deterrence in itself, must also be one of the instruments of rehabilitation and justice: (see notably *Ruggiu* (Trial Chamber), June 1, 2000, paras. 32-33): "The objective in creating the Tribunal is to prosecute and punish the perpetrators of the atrocities in Rwanda, to put an end to impunity, and thereby promote national reconciliation and restoration of peace. The jurisprudence of the ICTR with regard to penalties has addressed the principal aims of sentencing, namely retribution, deterrence, rehabilitation and justice."

Thus, a sentence must be imposed taking into account the interests of justice, and must serve as a deterrence and promote rehabilitation; but it is also crucial for it to be enforced in accordance with the changes and realities of those interests. This means that judges must also adapt to such changes and realities in the constant search for the interests of justice.

It is therefore not surprising that out of 15 accused persons who have served their sentences after having been convicted by the International Criminal Tribunal for the former Yugoslavia, eight – that is more than half – have had their application for early release granted, and have thus served only two-thirds of the sentences initially imposed on them.

This includes, in particular:

Milojica Kos

(Age 43)

Team leader at Omarska Camp, arrested by members of SFOR on 28 May 1998, and transferred to The Hague on 29 May 1998;

Pleaded "not guilty" to all the counts on 2 June 1998;

Found guilty of crimes against humanity (persecution) and violation of the laws or customs of war (torture and murder), and sentenced to six years imprisonment on 2 November 2001 by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia; Granted early release on 31 July 2002 after serving two-thirds of his sentence.

Miroslav Tadić

(Age 69)

Chairman of the Bosanski Samac "Exchange Commission", from 17 April 1992 to 1995, and member of the Serbian Crisis Staff;

Surrendered voluntarily on 14 February 1998 and was transferred to ICTY on 15 February 1998;

Pleaded "not guilty" to all the counts;

Found guilty for his individual responsibility on one count of crimes against humanity (persecution) and sentenced to eight years imprisonment on 7 October 2003;

Granted early release on 3 November 2004, effective from 4 November 2004.

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Stevan Todorović

(Age 49)

Police Chief of the Municipality of Bosanski Samac and member of the Serb Crisis Staff;
Arrested by SFOR on 27 September 1998 and transferred to ICTY on 27 September 1998;
Pleaded “not guilty” to all the counts at his initial appearance on 30 September 1998;
Subsequently pleaded “guilty” to one count of crimes against humanity (Article 5: persecution on political, racial or religious grounds);
Sentenced on 31 July 2001 to 10 years on the basis of his plea of guilty;
Todorović’s application for commutation of sentence was granted on 22 June 2005 by President Theodor Meron, who held, *inter alia*, that Todorović had pleaded guilty to the crime of persecution and expressed remorse.

[Signed]
