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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR

v.

VINCENT RUTAGANIRA
ICTR-95-IC-T

2007 FEB 22 A 9 11
[Signature]

MOTION FOR RECONSIDERATION OF THE DECISION OF 2 JUNE 2006
DENYING THE EARLY RELEASE OF MR. VINCENT RUTAGANIRA

BEFORE THE PRESIDENT
OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Registrar: Adama Dieng

Date filed: 22 February 2007

For: Mr. Vincent Rutaganira (detainee at the UNDF, Arusha)

Represented by: François Roux, Lead Counsel
Maroufa Diabira, Co-Counsel

MAY IT PLEASE YOUR EXCELLENCY, THE PRESIDENT

I/ PROCEDURAL BACKGROUND:

1. Vincent Rutaganira was initially charged 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. On 29 April 1996 the Prosecutor filed an Amended Indictment, confirmed on 6 May 1996 by Judge Pillay, also charging other Accused (Clément Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimbati, Mika Muhimana, Ryandikayo and Obed Ruzindana) and containing 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, violation of Article 3 common to the Geneva Conventions (Count 18) and violation of Additional Protocol II (Count 19).
4. Vincent Rutaganira voluntarily surrendered 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 all seven counts.
6. The *Kayishema* case which was joined to the *Ruzindana* case on 6 November 1996, was severed therefrom 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. Accused Vincent Rutaganira and the Prosecutor reached an agreement on 7 December 2004 by which the Accused would plead 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 disclosed the existence of the Agreement on 8 December 2004 at a status conference, and, during a further initial appearance on the same day, the Accused entered a guilty plea as 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. By Oral Decision of 8 December 2004, the Trial Chamber:
 - a. Took note of the agreement between the two parties;
 - b. Accepted the guilty plea of the Accused after ascertaining that its conditions of validity were met;
 - c. Accepted 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. Requested the Registry to schedule the forthcoming pre-sentencing hearing for 17 January 2005;
 - e. Ordered the Accused to be kept in detention in conditions that guaranteed his security.
21. At the hearing on 17 January 2005, the Defence presented various mitigating circumstances applicable to the instant case.
22. By Judgement of 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. By Motion of 5 March 2006, the Applicant requested his early release.
24. By Decision of 2 June 2006, the President of the Tribunal, Judge Erik Møse, dismissed that Motion.
25. On 4 July 2006 the Applicant filed an appeal against that Decision.
26. By Motion dated 13 July 2006 addressed to the President of the Appeals Chamber, the Prosecutor of the International Criminal Tribunal for Rwanda sought the dismissal of the present appeal as being without legal basis.
27. By Decision dated 24 August 2006, the Appeals Chamber dismissed the Applicant's appeal.

II/ ADMISSIBILITY OF THE MOTION FOR RECONSIDERATION

28. The present Motion follows a Decision rendered on 2 June 2006 by the President of the International Criminal Tribunal for Rwanda on the Motion filed on 5 March 2006 by Vincent Rutaganira for his early release. The Motion of 5 March 2006 relied on Article 27 of the Statute and on Rules 124 to 126 of the Rules. The Decision of 2 June 2006 held the Motion admissible, but dismissed it on the merits.

29. Article 27 of the Statute and Rules 124 to 126 of the Rules provide for a special procedure for granting a convicted person early release. They give the President jurisdiction to rule on the Motion, but are silent as to the possibility of requesting reconsideration of the President's decision in the event that he dismisses the Motion. While there is no provision in the relevant test for a request for reconsideration of the President's decision in matters of early release, nor is such a request expressly excluded.

30. Furthermore, the settled jurisprudence of the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone has confirmed that a Trial Chamber has inherent power to reconsider its own decisions in exceptional circumstances, namely in cases where there is a clear error in reasoning -which may include an error of law or new circumstances of fact, but is not limited to these- and to avoid injustice.¹

31. In the instant case, the Decision rendered on 2 June 2006 is, *inter alia*, founded on a text that cannot be invoked against the Applicant (III) and is vitiated by a number of errors of reasoning (IV), which have undeniably resulted in an injustice, namely the fact that Rutaganira continue to be held in detention when all the conditions of admissibility and substance for an early release, as pleaded in the Motion filed on 5 March 2006, have been met.

III/ NON-OPPOSABILITY OF THE PRACTICE DIRECTION OF 10 MAY 2000

32. As a preliminary comment, the Applicant is greatly surprised to discover in the Decision of 2 June 2006 – also cited in the Prosecution Motion of 13 July 2006 – a reference to a “*Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal for Rwanda*” of 10 May 2000, of which the Applicant has never previously been aware, and which has never been published on the Tribunal's internet site or brought to the knowledge of the Defence in any manner whatsoever.

¹ See for example: *Prosecutor v. Mucić, Delić and Landžo*, Case No. IT-96-21-Abis, Judgment on Sentence, 8 April 2003, para. 49; *The Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Decision on Appeal against the Oral Decision Dismissing the Motion to Review, 16 April 2002; *The Prosecutor against Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Prosecutor's Motion for Variation, or in the Alternative Reconsideration of the Decision on Protective Measures for Defence Witnesses, 2 November 2005, para.4; *The Prosecutor v. Renzaho*, Case No. ICTR-97-31-I, Decision on Renzaho's Motion to Reconsider the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 9 November 2005, paras. 20-21; *The Prosecutor v. Bizimungu, Nindiliyimana, Nzuwonemeye and Sagahutu*, Case No. ICTR-00-56-T, Decision on Bizimungu's Motion in Opposition to the Admissibility of the Testimonies of Witnesses LMC, BB, GS, CJ/ANL and GFO and for Reconsideration of the Chamber's Decision of 13 May 2005, 24 November 2005, paras. 18-19; *The Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, Case No. ICTR-98-44-PT, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Prosecutor against Norman, Fofana, Kondawa*, Case No. SCSL-04-14-T, Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 7 December 2005, paras. 10-14, See Cyril Laucci, *Digest of Jurisprudence of the Special Court for Sierra Leone*, Dordrecht, MartinusNijhoff Publishers, 2006, pp. 553-555 (Ref. R73-TC-18).

33. Under Article 16(1) of the Statute of the International Criminal Tribunal for Rwanda, “*The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda*”. Under Rule 33(A) of the Rules and Article 52(1) and (2) of the Directive for the Registry – Judicial and Legal Services Division – Court Management Section,² this responsibility comprises, *inter alia*, the duty of publishing on the ICTR internet site practice directions drawn up by the President of the Tribunal or the Registrar pursuant to Rules 19(B) and 33(C) of the Rules of Procedure and Evidence.

34. While the Direction cited by the Prosecutor may well exist and have effectively entered into force, it cannot be invoked against the Applicant so long as it has not been published by the Registry. To invoke such a text, which has never been published, would infringe the general principle of law that the rules of criminal law, including rules of procedure, must be accessible to those to whom they apply. This principle is in particular enshrined by the European Court of Human Rights in its Judgements in *Kruslin v. France* and *Huvig v. France* of 24 April 1990.³

35. Failing such publication, the Practice Direction cited by the President is not opposable to the Applicant, and must be disregarded for purposes of reconsideration of the impugned Decision. Equally, the Practice Direction in force before the International Criminal Tribunal for the former Yugoslavia, which has been published and is available on the ICTY Website, is only applicable before ICTY, and is thus without effect before the Rwanda Tribunal.

IV/ ERRORS OF REASONING

36. In order to justify his Decision of 2 June 2006 rejecting the Applicant’s appeal, the President relied on Article 27 of the Statute, which predicates eligibility for pardon or commutation of sentence on the fact that “*the convicted person [may be] eligible for pardon or commutation of sentence pursuant to the applicable law of the State in which [he or she] is imprisoned*” and that “*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*”.

37. Relying on the inherent powers attributed to him, the President held that Rutaganira’s Motion was 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*”.

² Directive for the Registry – Judicial and Legal Services Division – Court Management Section (as amended on 31 May 2001), Article 52: Inter-Sectional Management of the Tribunal’s Website:

- (1) The Tribunal shall maintain a Website, namely a homepage on the internet which shall feature the Tribunal’s basic texts, decisions, judgements, orders, indictments, bulletins, press releases and other materials.
- (2) The Website shall be managed by an inter-sectional “ICTR Internet Task Force”, under the authority of the Registrar.

³ ECHR, *Kruslin v. France* and *Huvig v. France*, Judgements of 24 April 1990 (Chamber), Series A No. 176-A and B.

38. The President then continued his analysis on the basis of Rule 126 of the Rules, which provides: "*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 prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecution.*"

39. However, the President committed one error of fact (A) and two errors of law (B).

(A) **Error of fact: Vincent Rutaganira's situation differs from that of other committed persons before ICTR, and this fact was not taken into account**

40. Under Rule 126 of the Rules of Procedure and Evidence, the President may take into account, among the elements used in assessing whether a request for early release is justified, "*the treatment of similarly-situated prisoners*".

41. This is what the President sought to do when he initially recalled that "*previous requests for commutation of sentence or early release have been made by prisoners who are serving sentences for genocide*" (paragraph 8).

42. It is not in dispute, however, that Rutaganira was convicted of a crime against humanity and not of the crime of genocide, and furthermore, that he was so convicted not for direct participation in the crime but for complicity by omission.⁴ The Judgement further indicates that the Prosecution itself, because it "*lacks evidence to support its allegations*",⁵ requested the acquittal of Vincent Rutaganira on the other counts, including the counts of genocide.

43. Hence Rutaganira's situation is altogether different from that of prisoners convicted of genocide whose requests for early release have been rejected.

44. Moreover, Rutaganira's voluntary surrender, the state of his health, his age, his family situation and the sincere remorse he expressed before the Trial Chamber, all of which were noted in the Judgement,⁶ are such as to exclude any possible comparison with other prisoners convicted before ICTR.

45. By partly basing the refusal of early release on the comparison with other prisoners convicted before ICTR, the President thus committed an error in his assessment of the specific situation of Vincent Rutaganira, such error being assimilable to an error of fact.

46. This error in the assessment of Vincent Rutaganira's specific situation is confirmed by the fact that there is no reference to any form of inquiry, which is essential for an informed assessment of a request for early release: the President's Decision refers to the consultations

⁴ See para. 100 of the Judgement and Sentence: "In light of the foregoing, the Chamber finds that there is sufficient evidence to prove that the Accused Vincent Rutaganira is guilty of extermination as a crime against humanity as charged in count 16 of the Indictment, in that he aided and abetted by omission the commission of the said crime."

⁵ Paras. 103-104 of the Judgement.

⁶ See in particular paras. 121, 136 and 157-158 of the Judgement.

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provided for in Rule 125 of the Rules of Procedure and Evidence (consultation with the Office of the Prosecutor, with any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal and notification to the Government of Rwanda) and states that these have taken place.

47. However, the requirement for such consultations under Rule 125 implies that they should be effective. But, such consultations cannot be effective unless accompanied by a minimum of measures to verify that the Applicant indeed meets the conditions for early release. Such measures at least comprise, but are not limited to, an enquiry of the prison authority, in this case the Director of the ICTR Detention Centre in Arusha, into the prisoner's state of health and conduct and his potential for rehabilitation. Other measures have also been applied before the International Criminal Tribunal for the former Yugoslavia and are specifically cited in the various decisions relating to requests for early release brought before the ICTY.⁷

48. The total absence of any reference to simple verification measures of this kind shows that Vincent Rutaganira's specific situation was not taken into account during the consultations required under Rule 125 of the Rules. Given that the said consultations were not informed, they were thus not effective. This procedural defect – namely the violation of Rule 125 – made it impossible to assess the Applicant's true situation, thus resulting in the alleged error of fact which undermines the validity of the impugned Decision.

49. Furthermore, the President cannot properly deny early release on the grounds that such release has never been granted before the International Criminal Tribunal for Rwanda. While it may be correct to say that, to date, no request for early release has succeeded before the International Criminal Tribunal for Rwanda, the converse is true in the International Criminal Tribunal for the former Yugoslavia, where the President has allowed 14 early releases, notably in situations similar to that of Rutaganira.⁸

(B) Errors of law: misinterpretation of Rule 126

50. In law, the impugned Decision is founded on the following considerations:

- (i) The Decision takes into account the gravity of the crime – in the instant case, the fact that, "according to the judgement, Mr. Rutaganira, as *Conseiller* for Mubuga *secteur* did not take any measures to protect the people who sought refuge at the Mubuga church in April 1994, resulting in a large number of deaths and injury to

⁷ See ICTY, *Prosecutor v. Mucić*, Case No. IT-96-21-Abis, Order of the President in Response to Zdravko Mucić's Request for Early Release(P), 9 July 2003: "CONSIDERING Zdravko Mucic's Request, the Registrar's Confidential Memorandum, the Sentencing Judgement, the Detention Report, the Psychological Evaluation, the Prosecutor's internal Memoranda, the Interview and Zdravko Mucic's Supplemental Memorandum." See also ICTY, *Prosecutor v. Kos*, Case No. IT-98-30/1-A, Order of the President for the early release of Milojica Kos (P), 30 July 2002, etc.

⁸ See in particular ICTY, *Sikirica et al.* (Case No. IT-95-8-S) "*Keraterm Camp*", *Ordonnance du Président relative à la libération anticipée de Dragan Kolundžija*, [Order of the President for the early release of Dragan Kolundžija], 5 December 2001.

men, women and children, despite having knowledge of imminent attacks on the church”.

- (ii) The Decision refuses to consider the elements raised by the Applicant in favour of his early release, namely “his voluntary surrender; his guilty [plea] prior to the commencement of his trial; the assistance he had provided to several victims during the genocide; his personal and family circumstances namely, that he is a married man and a father of five children and his wife has responsibilities in the current Rwandan government; his sincere expression of remorse and regret for his actions; his good behaviour as a detainee; and his poor state of health”. The refusal to consider these elements is motivated by the fact that “these submissions were already taken into consideration by the Trial Chamber when Mr. Rutaganira was sentenced”.
- (iii) The fact that the Applicant was sentenced to six years’ imprisonment whereas the plea agreement recommended a sentence of from six to eight years’ imprisonment.

51. However, Rule 126, which sets out the criteria to be taken into account in a decision for early release, provides: *“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 prisoners, the prisoner’s demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.”*

52. These grounds of the Decision thus contain two errors of law in its interpretation of Rule 126: refusal to take into account the elements advanced by the Applicant in favour of his early release (a) and the fact that account was taken of the length of the sentence in order to refuse to grant early release (b).

a. Refusal to take into account the elements in favour of early release

53. Under Article 23(2) of the Statute of the International Criminal Tribunal for Rwanda, *“In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person”*.

54. Under Rule 101(B) of the Rules of Procedure and Evidence: *“In determining the sentence, the Trial Chambers shall take into account the factors mentioned in Article 23(2) of the Statute, as well as such factors as:*

- (i) *Any aggravating circumstances;*
- (ii) *Any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction;*

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- (iii) *The general practice regarding prison sentences in the courts of Rwanda;*
- (iv) *The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.”*

55. It is clear from a comparison of the provisions on determining sentence with those of Rule 126 as cited above that the elements to be taken into consideration for determining sentence and for granting early release largely correspond.

56. In the instant case, the Trial Chamber, in accordance with current case-law,⁹ took account of the following elements in order to determine sentence-elements also taken into account by the case-law with regard to early release: (i) the gravity of the crime; the personal situation of the prisoner, which includes (ii) his family situation,¹⁰ (iii) his personality and general behaviour,¹¹ (iv) the absence of a criminal record and his good conduct in detention;¹² (v) his advanced age and ill health;¹³ mitigating circumstances, which include (vi) his voluntary surrender, (vii) his voluntary guilty plea,¹⁴ (viii) his assistance to some victims; (ix) his remorse;¹⁵ (x) constraint and the sentencing scale applied in Rwanda.

57. The settled jurisprudence of ICTY thus applies the same criteria for determining individual sentences as for early release.

⁹ See in particular: for voluntary surrender: ICTR Judgement in *Serushago*, TC, 5 February 1999; ICTY Judgement in *Babić*, TC, 29 June 2004; ICTY Judgement in *Jokić*, TC, 18 March 2004; ICTY Judgement in *Plavšić*, TC, 27 February 2003; ICTY Judgement in *Simić*, TC, 17 October 2002; for guilty plea: ICTY, *Todorović*, TC, 31 July 2001, paras. 80-81; for sincere remorse: ICTY Judgement in *Simić*, TC, 17 October 2002, para. 92; for gravity of the crime, non-participation in the killings and constraint: ICTR Judgement, *Ruggiu*, TC, 1 June 2000; ICTY Judgement in *Erdemović*, TC, 29 November 1996 and 5 March 1998; for the accused's advanced age, good character and no previous conviction before the events: ICTY Judgement, *Banović*, TC, 28 October 2003, paras. 75 and 76 and ICTY Judgement, *Plavšić*, TC, 2 February 2003, para. 105; for state of health: ICTY Judgement, *Simić*, TC, 17 October 2002, para. 98.

¹⁰ See ICTY, *Blaškić* (IT-95-14-A), Order of the President on the application for the early release of Tihomir Blaškić, 29 July 2004; ICTY, *Zarić* (IT-95-9), Order of the President on the Application for the Early Release of Simo Zarić, 21 January 2004; ICTY, *Prosecutor v. Kvočka* (IT-98-30/1-A), Order of the President for the early release of Milojica Kos, 30 July 2002.

¹¹ See ICTY, *Prosecutor v. Kvočka* (IT-98-30/1-A), Decision on Application for Pardon or Commutation of Sentence, 30 March 2005, para. 7.

¹² *Ibid.*, para. 8.

¹³ See ICTY, *Blaškić* (IT-95-14-A), Order of the President on the application for the early release of Tihomir Blaškić, 29 July 2004; ICTY, *Zarić* (IT-95-9), Order of the President on the Application for the Early Release of Simo Zarić, 21 January 2004; ICTY, *Milan Simić* (IT-95-9/2), Order of the President on the application for the early release of Milan Simić, 27 October 2003; ICTY, *Mucić* (IT-96-21-A-bis), Order of the President in response to Zdravko Mucić's request for early release, 9 July 2003.

¹⁴ See ICTY, *Milan Simić* (IT-95-9/2), Order of the President on the application for the early release of Milan Simić, 27 October 2003.

¹⁵ See ICTY, *Milan Simić* (IT-95-9/2), Order of the President on the application for the early release of Milan Simić, 27 October 2003; ICTY, *Zarić* (IT-95-9), Order of the President on the Application for the Early Release of Simo Zarić, 21 January 2004; ICTY, *Furundžija* (IT-95-17/1), Order of the President on the application for the early release of Anton Furundžija, 29 July 2004.

58. The impugned Decision also considers the gravity of the sentence, whereas this had already been taken into account in the sentencing judgement.¹⁶ The assessment of this element in the 2 June 2006 Decision is, moreover, partial, in that it takes account of only certain of the elements considered by the Trial Chamber and omits others, such as the fact that the prisoner did not participate directly in the crime.¹⁷

59. The Decision of 2 June 2006 thus makes selective application of the criteria for early release, taking into account only the single unfavourable element which had been taken into account by the Trial Chamber, and deliberately discounting the favourable elements, on the ground that they had already been taken into consideration for purposes of sentencing.

60. The Decision thus makes a restrictive and erroneous interpretation of Rule 126 which does not preclude the consideration of factors already considered in determining sentence.

61. Moreover, there is nothing in Rule 126 requiring the President to seek new elements not considered by the trial Judge in determining sentence under Rule 101.

b. Account was taken of the length of the sentence:

62. In paragraph 11 of the impugned Decision, the President cites the low sentence imposed in relation to the range of sentences proposed by the plea agreement, as well as the time remaining for Rutaganira to serve his prison term, as one of the elements justifying his decision to dismiss the application.

63. This Decision should be compared with the Decision for the early release of Kolundžija, rendered on 5 December 2001¹⁸ by the President of the International Criminal Tribunal for the former Yugoslavia, Judge Jorda: that Decision concerned an accused sentenced to the minimum sentence of three years from the range proposed in the plea agreement and where the accused had already served more than two-thirds of the sentence.

64. In the impugned Decision, the President of the International Criminal Tribunal for Rwanda predicates Rutaganira's early release on the length of the sentence initially imposed on him and on the term already served, contrary to the settled jurisprudence of the International Tribunals, which allows a prisoner to request early release after serving two-thirds of his sentence.¹⁹

65. This jurisprudence has been established in the interest of justice and of its subjects and corresponds to the general principle of the right to a foreseeable outcome.

¹⁶ Judgement TPIY, Rutaganira (TPIR-95-1C-T), 14 March 2005, paras. 117-119.

¹⁷ *Ibid.*, paras. 137-138.

¹⁸ ICTY, *Sikirica et al.* (Case No. IT-95-8-S) "*Camp de Keraterm*", *Ordonnance du Président relative à la libération anticipée de Dragan Kolundžija*, [Order of the President for the early release of *Dragan Kolundžija*], 5 December 2001.

¹⁹ See jurisprudence referred to earlier in footnotes 10-15.

66. Thus, on that point, in his Decision of 2 June 2006 the President failed to take account to the various interests at stake and hence committed an error of law in his determination.

IV/ The Applicant's request

67. It is established that, as at 18 February 2006, four years after his voluntary surrender, and having then served two-thirds of his sentence, Rutaganira met all the conditions (see the Motion for Early Release filed on 5 March 2006) that have already enabled similarly-situated prisoners of the International Criminal Tribunal for the former Yugoslavia to have their sentences commuted and to be granted early release. As at 18 February 2007, Rutaganira had completed five years of detention, namely five sixths of his sentence.

68. Rutaganira accordingly prays the President to reconsider the Decision rendered on 2 June 2006 by taking account in particular of the new fact that the prisoner has now served five sixths of his sentence and consequently prays for an immediate order for his early release.

The Defence reserves the right to make further submissions.

AND JUSTICE SHALL BE DONE

Done at Arusha, 22 February 2007

[Signed]

François Roux
Lead Counsel for Rutaganira
