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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1201
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OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Vagn Joensen
President of the Tribunal

Registrar: Mr. Adama Dieng

Date: 06 March 2012

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

Tharcisse Muvunyi

Case No. ICTR-00-055A-T

DECISION ON THARCISSE MUVUNYI'S APPLICATION FOR EARLY RELEASE

Article 27 of the Statute, Rules 125 and 126 of the Rules of Procedure and Evidence, and the Practice Direction on the Procedure for the Determination of Application for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal for Rwanda

Pro Bono Counsel for Tharcisse Muvunyi
Ms. Tanoo Mylvaganam

INTRODUCTION

1. Tharcisse Muvunyi was first convicted by Trial Chamber II of this Tribunal on 12 September 2006 for multiple acts of genocide, direct and public incitement to commit genocide, and other inhumane acts and was on that date sentenced to 25 years imprisonment.¹ On appeal, all convictions and the sentence were set aside, and re-trial was ordered on one allegation of direct and public incitement to commit genocide.²

2. At re-trial, on 11 February 2010, Trial Chamber III of this Tribunal found Tharcisse Muvunyi guilty of one count of direct and public incitement to commit genocide and sentenced him to fifteen years imprisonment with credit for time served from 5 February 2000.³ The Appeals Chamber confirmed this conviction and sentence on 1 April 2011.⁴

3. On 18 April 2011, Tharcisse Muvunyi wrote to the President, Judge Dennis Byron, requesting early release since two-thirds of his sentence had already been served.⁵ Muvunyi renewed his request in a letter to the attention of President Khalida Rachid Khan dated 22 August 2011.⁶ On 10 January 2012, President Khan ordered Muvunyi to file any submissions he may wish to make with respect to his application for early release, considering the criteria that the President must consider with respect to such an application.⁷ Muvunyi filed submissions in support of his application for early release on 23 January 2012.⁸

4. I note that in accordance with Rule 125 of the Rules of Procedure and Evidence ("Rules"), my predecessor President Khan has consulted with the Sentencing Chamber and the Bureau, and the Government of Rwanda has been notified of Tharcisse Muvunyi's request for early release. I note that the Sentencing Chamber and a majority of the Bureau have indicated that they are of the view that early release is appropriate.⁹

¹ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T ("*Prosecutor v. Muvunyi*"), Judgement (TC), 12 September 2006, para. 531 ("*Muvunyi Trial Judgement*").

² *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-A ("*Muvunyi v. Prosecutor*"), Judgement (AC), 29 August 2008, para. 171 ("*Muvunyi Appeal Judgement*").

³ *Prosecutor v. Muvunyi*, Judgement (TC), 11 February 2010, paras. 138, 152 ("*Muvunyi Re-Trial Judgement*").

⁴ *Muvunyi v. Prosecutor*, Judgement (AC), 1 April 2011, paras. 30, 61 ("*Muvunyi Re-Trial Appeal Judgement*").

⁵ Confidential Letter from Tharcisse Muvunyi to President Byron, 18 April 2011.

⁶ Confidential Letter from Tharcisse Muvunyi to President Khan, 22 August 2011.

⁷ *Prosecutor v. Muvunyi*, Confidential Order for Submissions on Application for Early Release (P), 10 January 2012.

⁸ Accused Tharcisse Muvunyi's Submissions on Application for an Early Release, filed on 23 January 2012.

⁹ Interoffice Memorandum from Judges Byron, Kam, and Joensen to President Khan, 29 September 2011 ("*Sentencing Bench Memorandum*").

DELIBERATIONS

5. There shall only be pardon under Article 27 of the Statute of the Tribunal if the President so decides in the interests of justice. Pursuant to Rule 126 of the Rules, when considering pardon or commutation of sentence, the President must consider, *inter alia*, the gravity of the crimes for which the prisoner was convicted, the treatment of similarly situated prisoners, the prisoner's demonstration of rehabilitation, and any substantial cooperation with the Prosecutor.¹⁰ I note that the Sentencing Chamber has also considered all of these factors in its memorandum to President Khan on Tharcisse Muvunyi's application for early release.¹¹

The prisoner's demonstration of rehabilitation

6. This assessment is usually based upon, *inter alia*, the prisoner's statements and demeanour in Court and a statement from the prison authorities as to his or her conduct in prison.¹² The Sentencing Chamber has noted that although Muvunyi did not testify on his own behalf, he otherwise behaved in a civilised manner during his re-trial.¹³ Moreover, the commander of UNDF, where Tharcisse Muvunyi has been detained since 30 October 2000, has advised that Muvunyi has been amenable to the rules and regulations of the UNDF. He has further advised of Muvunyi's non-involvement in acts of breach of detention rules, and that Muvunyi has maintained a high level of self-control in all circumstances both before and after his conviction, stating that generally Muvunyi has shown to be of exemplary character.¹⁴

Substantial cooperation of the prisoner with the Prosecutor

7. The Sentencing Chamber has noted that it is unaware of any substantial cooperation with the Prosecution, and that any such cooperation before sentencing would have been reflected in the sentence as a mitigating factor.¹⁵

Gravity of the Crime

8. Tharcisse Muvunyi was convicted of one count of direct and public incitement to commit genocide with respect to his actions at the Gikore Centre in May 1994.¹⁶ As the

¹⁰ Rules of Procedure and Evidence, 31 January 2010, Rule 126: General Standards for Granting Pardon or Commutation.

¹¹ Sentencing Bench Memorandum, para. 3.

¹² See e.g. *Prosecutor v. Mucić*, Case No. IT-96-21-Abis, Order on Application for Early Release, (P), 9 July 2003; *Prosecutor v. Kos*, Case No. IT-98-30/I-A, Order of the President for Early Release of Milošević (P), 30 July 2002.

¹³ Sentencing Bench Memorandum, para. 3 (iii).

¹⁴ Interoffice Memorandum from Saidou Guindo, Commanding Officer, UNDF to Pascal Besnier, Chief, DCDMS, 6 October 2011.

¹⁵ Sentencing Bench Memorandum, para. 3. (iv).

Sentencing Chamber noted when sentencing Muvunyi to fifteen years imprisonment, all crimes under the jurisdiction of this Tribunal constitute serious violations of international humanitarian law, and genocide is, by definition, the most serious of the crimes under the Statute.¹⁷

9. In considering its sentence, the Chamber noted that it paid particular attention to other Trial Judgements where the accused were convicted of direct and public incitement to commit genocide, noting that the sentences were generally between twelve and fifteen years imprisonment.¹⁸ I note that the relative gravity of the crime, along with the individual aggravating and mitigating circumstances were assessed when determining Muvunyi's sentence and, in my opinion, does not *per se* bar him from early release, if otherwise appropriate. I note further that Muvunyi has now served twelve years of his fifteen year sentence.

Treatment of Similarly Situated Prisoners

10. I note that Tharcisse Muvunyi has not been transferred to a State for the enforcement of his sentence and remains in the custody of the Tribunal at the United Nations Detention Facility ("UNDF") in Arusha, Tanzania. I consider, however, that precedent exists for consideration of applications for early release by prisoners detained at UNDF awaiting transfer to a designated state,¹⁹ and therefore find Muvunyi's application to be admissible based upon the principle that a prisoner at UNDF may be considered to be similarly-situated with prisoners who have already been transferred to a designated state and who have become eligible for early release based upon the applicable law of that state.

11. To date, two prisoners from this Tribunal have been granted early release.²⁰ I have also taken into consideration the general practice of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") to grant early release if otherwise appropriate for serious

¹⁶ *Muvunyi* Re-Trial Judgement, para. 139.

¹⁷ *Muvunyi* Re-Trial Judgement, para. 140.

¹⁸ *Muvunyi* Re-Trial Judgement, para. 142.

¹⁹ *The Prosecutor v. Samuel Imanishimwe*, Case No. ICTR-99-46-S, Decision on Samuel Imanishimwe's Application for Early Release (P), 30 August 2007; *The Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-IC-T. Decision on Request for Early Release (P), 2 June 2006.

²⁰ *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S ("*Prosecutor v. Bagaragaza*"), Decision on the Early Release of Michel Bagaragaza (P), 24 October 2011 ("*Early Release Decision*"); *The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59 ("*Prosecutor v. Rugambarara*"), Decision on the Early Release Request of Juvénal Rugambarara (P), 8 February 2012 ("*Early Release Decision*").

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violations of international criminal law after two-thirds of the sentence has been served.²¹ As was noted by President Khan in deciding to grant early release for Michel Bagaragaza after three-fourths of his sentence had been served,²² I recall that the general practice of the ICTY to grant early release if otherwise appropriate for serious humanitarian crimes after two-thirds of the sentence has been served is based upon regulations in many countries for conditional early release.²³ As President Khan further noted in the *Bagaragaza* Decision, I reiterate that the Tribunal has no means to supervise convicted persons on parole or to react if conditions for early release are being violated, and thus, early release by the Tribunal is in fact an unconditional reduction or commutation of the sentence.

12. With respect to this Tribunal, Michel Bagaragaza was released last year after serving three-fourths of his eight year sentence for complicity in genocide,²⁴ and Juvénal Rugambarara was released last month after having served more than three-fourths of his eleven year sentence for extermination as a crime against humanity.²⁵ It is useful to consider the decision to release Bagaragaza and Rugambarara as they relate to the similarly-situated Tharcisse Muvunyi, taking note that this Tribunal has refused to consider early release prior to three-fourths of the sentence being served, and that Muvunyi has already served more than three-fourths of his sentence.

Conclusion

13. I recall that more than three-fourths of Tharcisse Muvunyi's sentence has been served. Moreover, Muvunyi has now served more than twelve years of his fifteen year sentence, meaning that his time served is equal to or exceeds that of prisoners who were sentenced at the lesser end of the spectrum for similar crimes.

²¹ *The Prosecutor v. Miroslav Tadić*, Case No. IT-95-9, Decision of the President on the Application for Pardon or Commutation of Sentence of Miroslav Tadić, 3 November 2004, paras. 3-6; *The Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1, Order of the President on the Application for Early Release of Anto Furundzija, 29 July 2004; *The Prosecutor v. Milan Simić*, Case No. IT-95-9/2, Order of the President on the Application for Early Release of Milan Simić, 27 October 2003; *The Prosecutor v. Zdravko Mucić*, Case No. IT-96-21-A bis, Order of the President in Response to Zdravko Mucić's Request for Early Release (P), 9 July 2003; *The Prosecutor v. Simo Zarić*, Case No. IT-95-9, Order of the President on Application for the Early Release of Simo Zarić, 21 January 2004.

²² *Prosecutor v. Bagaragaza*, Early Release Decision, para.

²³ Among others, the following countries grant early release after two-thirds of the sentence has been served: Germany, Sweden, and Finland (conditional release after two-thirds of sentence); Kenya (remission may be granted when one-third of the sentence remains); Canada (inmates automatically granted statutory release after two-thirds of sentence); France (parole may be granted after half of sentence for first-time offenders and after two-thirds of sentence for repeat offenders).

²⁴ *Prosecutor v. Bagaragaza*, Early Release Decision, para. 15.

²⁵ *Prosecutor v. Rugambarara*, Early Release Decision, paras. 7, 17.

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14. Having considered the recommendations of the Sentencing Chamber and the Bureau, Tharcisse Muvunyi's submissions, the gravity of the crime for which Muvunyi was convicted, the treatment of similarly situated prisoners, the lack of any substantial cooperation with the Prosecutor, and the prisoner's demonstration of rehabilitation, I agree with the Sentencing Chamber and majority of the Bureau that early release is appropriate.

FOR THESE REASONS, THE PRESIDENT

ORDERS that Tharcisse Muvunyi shall be released from the United Nations Detention Facility in Arusha with immediate effect; and

REQUESTS that the Registrar make all necessary arrangements for such release, including immediate notification of this Decision to the Prisoner and the Government of Rwanda.

Arusha, 06 March 2012, done in English.


Judge Vagn Joensen
President

[Seal of the Tribunal]





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