

From: Members of the International Community

To: Mechanism for International Criminal Tribunals
Judge Theodor Meron, President
Mr. Olufemi Elias, Registrar

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

MICT-13-34-ES (*Prosecutor v. Dominique Ntawukulilyayo*)

MICT-13-37-ES.2 (*Prosecutor v. Hassan Hgeze*)

MICT-14-62-ES.1 (*Prosecutor v. Aloys Simba*)

Letter Opposing Commutation of Sentence and Early Release of ICTR Convicts

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Evil triumphs because good people keep silent.

If ever there was a time for just people to speak up, it is now. Painful memories born of silence and inaction while genocide took place in Rwanda in 1994 are back to haunt us all. The pain is more pronounced because three of the perpetrators convicted by the UN International Criminal Tribunal for Rwanda (ICTR) are seeking early release from imprisonment for the genocide crimes they committed.

The Mechanism for International Criminal Tribunals (MICT) that was setup to carry on the work of the ICTR when it closed in 2015 is deliberating the requests made by Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze for early release. These men were convicted for the most serious of crimes including genocide, aiding and abetting genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity.

Genocide is not just the problem of those groups and individuals targeted for extermination. It is a problem for all of us. We are all implicated in the moral and legal struggle to preserve, protect and restore human rights, human dignity and the rule of law. And that is why we, the undersigned members of the international community, stand with the people of Rwanda to express our outrage at the requests for early release and to publicly resist the personal affront represented by these requests.

We oppose and protest against the very consideration of these requests by the President of the MICT. As knowledgeable genocide scholars, researchers, human rights advocates and former ICTR staff members, we stand with the survivors and family members of victims of the Genocide against the Tutsi in Rwanda. We stand with the international community of humankind to oppose and decry the early release of any ICTR genocide convict.

The International community had to fight to prosecute and convict the high-level perpetrators of the genocide against the Tutsi. The ICTR was acting on behalf of the international community in prosecuting, convicting and incarcerating those who committed “crimes against humanity” in their attempt to exterminate the Tutsi minority group in Rwanda in 1994.

The Tribunal did its work in trying, convicting and sentencing these perpetrators. Its successor residual mechanism is not continuing the work of justice to keep them behind prison bars where they belong. Now we—the same international community—are obliged to fight to keep the convicts incarcerated. This time, the fight is with the very judicial system that we created to take the perpetrators out of circulation.

In what can only be called a gross miscarriage of justice, the presidents of the ICTR and MICT have already granted early release to 10 of the 61 ICTR convicts. The sentences were inconsequential compared to the crimes that the convicts committed. The Rwandan survivors and general population repeatedly expressed outrage in public protests at the time when most of the sentences were handed down by the ICTR judges. The previous early releases were done without consulting the Rwandan Government and in one instance without the knowledge or approval of the Tribunal.

This time, we hope that the President of the MICT will follow all of the rules for assessing the requests for early release. This includes verifying the evidence and psychological evaluations submitted by the convicts to demonstrate that they have indeed undergone successful rehabilitation

and are now free of the poisonous ideology that motivated their criminal acts in 1994. The President should provide whatever justification he thinks is persuasive for releasing these convicts to again confront the Rwandan public and the international community.

We expect that the MICT President will consult with the Trial Chamber judges who imposed the original sentences on the convicts now seeking early release from their prison sentences. We hope that responses of the Trial Chamber judges will be considered and included in the decision/judgment rendered on the early release requests. The response of the Government of Rwanda and input from its justice officials should also be given the deference deserved when determining the fate of these convicts seeking to curtail their punishment for genocide crimes.

Even given the adherence to legal process and protocol for reviewing the requests for early release, the court should reject them all. Genocide is a premeditated act fueled by a heinous ideology. We should treat genocide and genocide perpetrators with the opprobrium that they rightly deserve. The convicts have shown no change of mind. They are hardened, unrepentant adherents to the goal of extermination. Rewarding them with early release from punishment undermines justice and the attempt to prevent future genocides and crimes against humanity.

The convicts had plenty of time in pre-trial detention and during the years of the trial process to confess to their crimes, cooperate with the ICTR Prosecutor, demonstrate regret and remorse, and to ask for forgiveness. They did none of those things. Instead they insisted on their innocence and subjected the witnesses and survivors to the traumatizing ordeal of having to recount the details of their victimization. The international community bore the legal burden of proving their guilt and the financial expense of defending the accused who were judged culpable for their part in the campaign of extermination.

In the case of convict Simba, this is his second request for early release. His first request was turned down in February 2016 based in part on the gravity of the crimes that he committed in 1994. It is not uncommon for ICTR convicts to make multiple requests for early release. Some have requested release from prison while their appeal was still pending before the court.

Even more egregious is the practice of some ICTR convicts who over the years have filed continuous appeals against the finding of their guilt and the corresponding length of their prison sentences. Again, the international community has borne the financial burden of paying for defence attorneys to represent the frivolous claims of these convicts before the Tribunal.

The history of miscarriages of justice aside, the MICT is well on its way to enshrining impunity for genocide by instituting the practice of releasing ICTR convicts before they serve out the full length of their prison terms. To continue this practice would be adding insult to moral injury. Any additional grants of early release would be tantamount to minimization of the genocide against the Tutsi and would place the MICT front and center in the chorus of the very public campaign of genocide denial that is being carried out worldwide by the perpetrators and their sympathizers. The MICT would be perpetuating the very impunity that the ICTR was established to end by prosecuting and punishing the orchestrators of the genocide that took place in Rwanda in 1994. Those who commit premeditated murder in most western societies are incarcerated for life without any chance of parole or early release. Even under the most lenient national systems of justice, murderers spend 20-to 30 years in prison for their crimes.

In even considering early release for the three most recent requesters, the MICT would have us—the international community—accept that acts of genocide, extermination and other crimes against humanity should be pardoned after only 20 years of punishment. This would amount to impunity for committing genocide--“the crime of crimes”—if even common murderers are subject to harsher punishment. It is an easy calculation for would-be perpetrators zealous to exterminate the subjects of their hate if they know in advance that the most severe punishment they will receive under international justice is 20 years in prison. For genocidal zealots, this would appear to be quite a bargain to accomplish their nefarious purpose.

The attempt by the convicts to justify their early release because of failing health is one of the greatest affronts to all humanity seeking to uphold justice and dissuade the scourge of genocide. Following this logic, all ICTR convicts once they get sick enough or old enough would be able to make the claim that they need or deserve palliative care somewhere else other than in prison. Most convicts in American prisons are subject to extreme risks to health, life and limb based on the level of violence that is a normal part of incarceration with fellow criminals. The presence of such risks does NOT entitle them to early release. Why should ICTR “genocide convicts” be treated any different than “regular convicts” in national prisons who have not committed crimes of the same gravity?

We believe that the MICT President should deny all requests for early release of any ICTR convict because of the negative impact that such early releases would have—and have had—on the prospects for reconciliation in Rwanda. Security Council Resolution 955 and the original statute creating the ICTR call for the international justice system to help restore peace and bring about reconciliation in Rwanda. The early release of convicts does NOT assist with reconciliation in Rwanda but rather reopens wounds that the justice system was intended to salve—if only symbolically.

The collective international community of bystanders kept silent in 1994 when the ground was being stained with the blood of 1 million victims in Rwanda. Today, that blood cries out to the MICT for justice and we join in the cry of Rwandan survivors and of all humanity to oppose release of the genocide perpetrators and to shout loudly, never again!!

Signed:

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