



Mechanism for International Criminal Tribunals

Case No.: MICT-13-35-ES

Date: 5 December 2016

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 5 December 2016

PROSECUTOR

v.

EMMANUEL RUKUNDO

PUBLIC REDACTED

**PUBLIC REDACTED VERSION OF THE 19 JULY 2016
DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF EMMANUEL RUKUNDO**

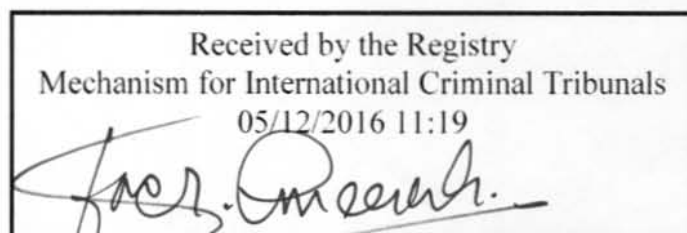
The Office of the Prosecutor

Mr. Serge Brammertz

The Applicant

Mr. Emmanuel Rukundo

The Republic of Mali



1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals ("Mechanism"), am seised of a confidential application for the pardon, commutation of sentence, or early release of Mr. Emmanuel Rukundo ("Rukundo"), dated 21 May 2015 and received on 29 May 2015.¹ I consider the Application pursuant to Article 26 of the Statute of the International Residual Mechanism for Criminal Tribunals ("Statute" and "Mechanism", respectively), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), and paragraph 3 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism ("Practice Direction").²

I. BACKGROUND

2. Rukundo was arrested on 12 July 2001, in Geneva, Switzerland, and was transferred to the United Nations Detention Facility in Arusha, Tanzania, on 20 September 2001.³ At his initial appearance on 26 September 2001, Rukundo entered a plea of not guilty on all counts of the indictment against him.⁴

3. On 27 February 2009, Trial Chamber II of the International Criminal Tribunal for Rwanda ("Trial Chamber" and "ICTR", respectively) convicted Rukundo for committing genocide through his participation in the killing of Madame Rudahunga and the causing of serious bodily harm to four other Tutsis who were abducted from Saint Joseph's College, the abduction and killing of Tutsis from the Saint Léon Minor Seminary, and the sexual assault of a Tutsi woman at the seminary.⁵ In addition, the Trial Chamber convicted Rukundo for committing murder as a crime against humanity for the killing of Madame Rudahunga⁶ and for extermination as a crime against humanity for his participation in the abduction and killing of Tutsis from the Saint Léon Minor Seminary.⁷ The Trial Chamber sentenced Rukundo to a single sentence of 25 years of imprisonment.⁸

4. On 20 October 2010, the Appeals Chamber of the ICTR reversed Rukundo's conviction for committing genocide, in part, and murder and extermination as crimes against humanity in relation

¹ Letter from Mr. Emmanuel Rukundo to Judge Theodor Meron, President, dated 21 May 2015 and filed 29 May 2015 (confidential) ("Application"). The confidential English translation of the Application was filed on 15 June 2015. All references herein are to the English translation.

² MICT/3, 5 July 2012.

³ *The Prosecutor v. Emmanuel Rukundo*, Judgement, Case No. ICTR-01-70-T, 27 February 2009 ("Trial Judgement"), para. 6.

⁴ Trial Judgement, paras. 6, 606.

⁵ Trial Judgement, paras. 561, 568-569, 573, 576.

⁶ Trial Judgement, para. 585.

⁷ Trial Judgement, para. 590.

⁸ Trial Judgement, para. 608.

to certain crimes, and reduced Rukundo's sentence to 23 years of imprisonment.⁹ Rukundo was transferred on 27 July 2011 to Koulikoro Prison in Mali to serve the remainder of his sentence.¹⁰

II. THE APPLICATION

5. On 20 May 2016, I received a memorandum from the Registry¹¹ conveying information collected in accordance with paragraphs 3, 4, and 5 of the Practice Direction, including: (i) a letter from the Ministry of Foreign Affairs, International Cooperation and African Integration of Mali, dated 24 March 2016 ("Foreign Ministry Letter"), with a letter from the Ministry of Justice and Human Rights of Mali, dated 17 March 2016 ("Ministry of Justice Letter"); (ii) a report from the warden of Koulikoro prison on Rukundo's psycho-social condition, dated 11 April 2016 ("Warden Report"); and (iii) a memorandum from the Prosecution of the Mechanism ("Prosecution"), dated 16 May 2016 ("Prosecution Memorandum").

6. The Registry informed me on 20 May 2016 that it would convey the collected information to Rukundo pursuant to paragraph 5 of the Practice Direction.¹² On 31 May 2016, the Registry informed me that Rukundo confirmed receipt on 27 May 2016.¹³ In accordance with paragraph 6 of the Practice Direction, Rukundo was given 10 days to examine the information and to submit a response. On 2 June 2016, the Registry conveyed to me Rukundo's response dated 1 June 2016 ("Response").¹⁴

7. On 31 May 2016, the Registry conveyed to me a psychiatric evaluation report from Polyclinique Pasteur, dated 6 May 2016 ("Psychiatric Report"), regarding Rukundo's psychiatric condition.¹⁵ The Registry further informed me on that same day that it would convey the Psychiatric Report to Rukundo pursuant to paragraph 5 of the Practice Direction.¹⁶ On 3 June 2016, the

⁹ *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-01-70-A, Judgement, 20 October 2010, paras. 269-270.

¹⁰ See Report of the International Criminal Tribunal for Rwanda, A/67/253-S/2012/594, 6 August 2012, para. 50. See also Application, para. 6.

¹¹ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha, to Judge Theodor Meron, President, 20 May 2016 ("20 May 2016 Memorandum"). All references to the attachments are to the English translation thereof.

¹² See 20 May 2016 Memorandum.

¹³ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha, to Judge Theodor Meron, President, dated 31 May 2016 ("31 May 2016 Memorandum"), para. 2.

¹⁴ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha, to Judge Theodor Meron, President, dated 2 June 2016. All referenced herein are to the English translation of the Response, which was received on 12 June 2016.

¹⁵ 31 May 2016 Memorandum, conveying the Psychiatric Report. The English translation of the Psychiatric Report was received on 21 June 2016.

¹⁶ 31 May 2016 Memorandum, para. 4.

Registry conveyed to me Rukundo's response to the Psychiatric Report, dated 2 June 2016, in which he states that he has no further observations in relation thereto.¹⁷

III. DISCUSSION

8. In coming to my decision on whether it is appropriate to grant Rukundo early release, I have consulted the Judges of the sentencing Chamber who are Judges of the Mechanism, pursuant to Rule 150 of the Rules.

A. Applicable Law

9. Under Article 26 of the Statute, 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 Mechanism accordingly. Article 26 of the Statute further provides that there shall only be pardon or commutation of sentence if the President of the Mechanism ("President") so decides on the basis of the interests of justice and the general principles of law.

10. Rule 149 of the Rules echoes Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President shall, upon such notice, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. Pursuant to Rule 151 of the Rules, in making a determination on pardon, commutation of sentence, or early release, 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, and any substantial cooperation of the prisoner with the Prosecution.

11. Paragraph 2 of the Practice Direction provides that upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with Article 26 of the Statute and with its agreement with the United Nations on the enforcement of sentences and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly.

12. Article 3(2) of the Agreement between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for

¹⁷ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha, to Judge Theodor Meron, President, dated 3 June 2016, conveying letter from Mr. Emmanuel Rukundo to Mr. Samuel Akorimo, Officer in

Rwanda, dated 12 February 1999 ("Enforcement Agreement"),¹⁸ provides that the conditions of imprisonment shall be governed by the law of Mali, subject to the supervision of the ICTR (and now, the Mechanism).¹⁹ Article 8 of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provides, *inter alia*, that, following notification of eligibility for early release under Malian law, the President shall determine, in consultation with the Judges of the Mechanism, whether early release is appropriate, and the Registrar shall inform the Malian authorities of the President's determination, who shall act accordingly.

B. Eligibility under Malian Law

13. According to the provisions of Article 35 of Law No. 01-003 of 27 February 2001 on the Prison System and Supervised Education, "detainees who have provided sufficient proof of their improvement could be eligible for parole or semi-custodial treatment".²⁰ The Malian authorities state that "Rukundo meets the conditions set out in Malian legislation for parole or semi-custodial treatment".²¹

14. I note, however, that even if Rukundo is eligible for early release under the domestic law of Mali, the early release of persons convicted by the ICTR falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.

C. Gravity of Crimes

15. Rule 151 of the Rules provides that, in making a determination on early release, the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

16. The crimes for which Rukundo has been convicted are of a high gravity. In this regard, the Trial Chamber considered it "highly aggravating that Rukundo abused his moral authority and

Charge, Registry, Arusha, dated 2 June 2016 ("3 June 2016 Memorandum").

¹⁸ A new agreement on the enforcement of sentences pronounced by the ICTR and the Mechanism entered into force on 13 May 2016, after the filing of the Application. As relevant to the Application, the terms of this agreement are identical to the Agreement.

¹⁹ Security Council Resolution 1966 (2010) provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement applies to the Mechanism. See U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 ("[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]"). According to Article 25(2) of the Statute, "[t]he Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States".

²⁰ Foreign Ministry Letter; Ministry of Justice Letter.

²¹ Foreign Ministry Letter. See also Ministry of Justice Letter.

influence [as a well-known priest within the community and in the Rwandan army] in order to promote the abduction and killing of Tutsi refugees and to sexually assault a Tutsi girl".²² The Trial Chamber found, *inter alia*, that "on at least four occasions during April and May 1994, Rukundo visited the St. Léon Minor Seminary, accompanied by soldiers and *Interahamwe*. At the Seminary, Rukundo identified Tutsi refugees with a list and then left the Seminary. Shortly after Rukundo's departure, those refugees who had been identified were taken from the Seminary by soldiers and *Interahamwe* to an unknown location, where they were killed".²³ Additionally, the Trial Chamber concluded that Rukundo sexually assaulted a young Tutsi woman who came to him seeking protection as a member of the clergy.²⁴

17. In these circumstances, I am of the view that the high gravity of Rukundo's offences weighs against his early release.

D. Eligibility and Treatment of Similarly-Situated Prisoners

18. Rule 151 of the Rules requires the President to consider, as a separate factor, the need for equal treatment of similarly-situated prisoners when deciding early release applications.

19. In this respect, I recall that ICTR convicts, like Rukundo, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision and that all convicted persons supervised by the Mechanism are to be considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them.²⁵ However, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case.²⁶

20. As of the date of this decision, and based on my own calculation, Rukundo will have served two-thirds of his 23-year sentence on 12 November 2016.

²² Trial Judgement, para. 599.

²³ Trial Judgement, para. 364.

²⁴ Trial Judgement, para. 387.

²⁵ See *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision of the President on the Early Release of Dominique Ntawukulilyayo, 8 July 2016 (public redacted) ("*Ntawukulilyayo* Decision"), para. 20. See also *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) ("*Bisengimana* Decision"), paras. 17, 20.

²⁶ See *Ntawukulilyayo* Decision, para. 21; *Bisengimana* Decision, paras. 21, 35.

E. Demonstration of Rehabilitation

21. Rule 151 of the Rules provides that the President shall take into account a “prisoner’s demonstration of rehabilitation” in determining whether early release is appropriate. In addressing the convicted person’s rehabilitation, paragraph 4(b) of the Practice Direction states that the Registrar shall

[r]equest reports and observations from the relevant authorities in the enforcing State as to the behavior of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration[.]

22. Rukundo underwent a psychiatric evaluation on 4 May 2016 to evaluate his mental health in accordance with paragraph 4(b) of the Practice Direction.²⁷ [REDACTED].²⁸ [REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].³¹ [REDACTED].³²

23. According to the Psychiatric Report, Rukundo asserts that he continues to preach for the Christian community at the prison.³³ [REDACTED].³⁴ [REDACTED].³⁵

24. According to the warden, he has no doubt that if Rukundo is granted early release, he will be able to reintegrate quickly into society, especially in Catholic surroundings, given his ability to hold services in chapels or churches.³⁶ The warden notes that Rukundo, “[t]hrough his prayers and preaching [...] spreads the good word and offers advice needed by his co-detainees so that they can cope with the burden of being in prison”.³⁷ The warden further states that Rukundo respects the rules and the staff of the prison.³⁸ The warden informs that Rukundo also dedicates himself to the up-keep of the prison surroundings through market gardening, which greatly assists in the improvement of the food being prepared both for the detention unit of the Mechanism and the local Malian unit, as these products are used for cooking.³⁹

²⁷ See Psychiatric Report, p. 1.

²⁸ Psychiatric Report, p. 1.

²⁹ Psychiatric Report, p. 1.

³⁰ Psychiatric Report, p. 1.

³¹ Psychiatric Report, p. 1.

³² Psychiatric Report, pp. 1-2.

³³ Psychiatric Report, p. 2.

³⁴ Psychiatric Report, p. 2.

³⁵ Psychiatric Report, p. 2.

³⁶ Warden Report.

³⁷ Warden Report.

³⁸ Warden Report.

³⁹ Warden Report.

25. Rukundo submits that throughout his detention, he “always made an effort to conduct [himself] in an exemplary fashion, both towards [his] co-detainees and towards the prison staff”,⁴⁰ and that he does not pose a danger “either to society or to anyone else”.⁴¹ Rukundo contends that as a priest, he has “always encouraged [his] co-detainees not to lose hope in the face of harsh prison life”.⁴² Rukundo states that he has “continuously urged [his] colleagues to reconcile with themselves, with others and with God because only reconciliation can help overcome a crisis, restore human dignity and open a dialogue for peace between men from all walks of life”.⁴³ He further states that he has “never missed an opportunity to explain that genuine reconciliation is accompanied by a courageous and honourable act to establish the truth and deliver fair justice, because all victims, regardless of who they are, have the right to peace and justice”.⁴⁴

26. Rukundo asserts that he has become involved in “the collective life of the detention centre and [he is] active in various internal committees managed by the prisoners”.⁴⁵ In one such committee, according to Rukundo, the prisoners discuss “not only how to improve [their] prison conditions but also the appropriate ways in which to purify [their] memory and thereby build a Rwandan society based on peace and reconciliation”.⁴⁶ Lastly, Rukundo contends that “as a Catholic priest, the [REDACTED] Diocese is prepared to welcome [him] into its clergy and would assume responsibility for [him] if [he is] released”.⁴⁷

27. The Psychiatric Report, the warden’s description of Rukundo’s behaviour while in prison, as well as Rukundo’s own submissions, suggests that Rukundo is capable of reintegrating into society if he is released. In this context, I am of the view that there is some evidence from Rukundo’s good behaviour in prison that he is able to live peacefully with others and to be of use to society. Accordingly, I consider Rukundo’s demonstration of some signs of rehabilitation to weigh in some measure in favour of his early release.

F. Substantial Cooperation with the Prosecution

28. Rule 151 of the Rules states that the President shall take into account any “substantial cooperation” of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar shall request the Prosecution “to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof”.

⁴⁰ Application, para. 16.

⁴¹ Application, para. 19.

⁴² Application, para. 16.

⁴³ Application, para. 16.

⁴⁴ Application, para. 16.

⁴⁵ Application, para. 17.

29. The Prosecution states that at no time did Rukundo cooperate with it or the Office of the Prosecutor of the ICTR ("ICTR Prosecution") in the course of his trial, appeal, or at any point while serving his sentence.⁴⁸

30. Rukundo submits that "[n]o one can be forced to incriminate himself, much less to incriminate oneself falsely".⁴⁹ Rukundo contends that, throughout his trial, he has "always strived to bring the truth to light".⁵⁰ Rukundo submits, however, that his arguments "fell on deaf ears and human justice decided otherwise".⁵¹

31. I note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.⁵² I therefore consider that Rukundo's lack of cooperation with the Prosecution or the ICTR Prosecution is a neutral factor in determining whether or not to grant him early release.

G. Conclusion

32. I note that Rukundo's request for early release was filed on 29 May 2015, but that the Registry was not able to procure all the relevant documentation until 31 May 2016 from the relevant State.⁵³ In this respect, I consider that despite the gravity of the crimes of which he was convicted, the fact that Rukundo will have completed two-thirds of his sentence as of 12 November 2016, and the fact that he has demonstrated some signs of rehabilitation weigh in favour of his early release as of that date. The view that Rukundo should be granted early release is shared by one of the Judges of the sentencing Chamber who is a Judge of the Mechanism. I note that the other two Judges of the sentencing Chamber who are also Judges of the Mechanism do not support granting Rukundo early release. I respect colleagues' concerns, but I believe that in context, the circumstances of this case weigh in favour of Rukundo's early release.

33. Accordingly, having considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, and taking into account the protracted period of time it has taken to procure the relevant documentation in these proceedings and the fair and efficient administration of justice, I hereby grant Rukundo's request for early release, effective 12 November

⁴⁶ Application, para. 17.

⁴⁷ Application, para. 20.

⁴⁸ Prosecution Memorandum, para. 2.

⁴⁹ Application, para. 30. *See also* Response, para. 10.

⁵⁰ Application, para. 31. *See also* Response, para. 10.

⁵¹ Application, para. 31.

⁵² *Ntawukulilyayo* Decision, para. 31; *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014, para. 20.

⁵³ *See* the Application; 3 June 2016 Memorandum.

2016, or as soon as practicable thereafter. In view of the fact that I am granting Rukundo's request for early release, I do not deem it necessary to consider his alternative requests for pardon or commutation of sentence.⁵⁴

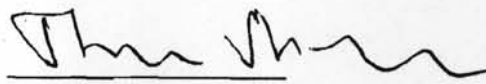
IV. DISPOSITION

34. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 9 of the Practice Direction, and Article 8 of the Enforcement Agreement, I hereby **GRANT** the Application effective 12 November 2016, or as soon as practicable thereafter.

35. The Registrar is hereby **DIRECTED** to inform the authorities of Mali of this decision as soon as practicable, as prescribed in paragraph 13 of the Practice Direction.

Done in English and French, the English version being authoritative.

Done this 5th day of December 2016,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Mechanism]

⁵⁴ See Application, paras. 1, 22, 25, 28-29.



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