



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Khalida Rachid Khan
President of the Tribunal

Registrar: Adama Dieng

Date: 8 February 2012

THE PROSECUTOR

v.

JUVÉNAL RUGAMBARARA

Case No. ICTR-00-59

DECISION ON THE EARLY RELEASE REQUEST OF JUVÉNAL RUGAMBARARA

*Article 27 of the Statute, Rules 125 and 126 of the Rules of Procedure and Evidence,
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*

INTRODUCTION

1. On 16 November 2007, Juvénal Rugambarara was convicted of extermination as a crime against humanity and was sentenced to 11 years' imprisonment with credit for time already served. The time was calculated from the date of his arrest, 11 August 2003.¹
2. On 21 September 2011, the Minister of Justice of Benin transmitted Juvénal Rugambarara's 26 August 2011 letter requesting early release to the President of the ICTR.
3. In accordance with Rule 125 of the Rules of Procedure and Evidence ("Rules"), consultations have been undertaken with the Sentencing Chamber and the Bureau, and the Government of Rwanda has been notified of Juvénal Rugambarara's request for early release. I note that the Sentencing Chamber and a majority of the Bureau are of the view that early release is appropriate.

DELIBERATIONS

4. 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, when considering pardon or commutation of sentence, the President must consider, *inter alia*, the gravity of the crimes for which the prisoner is convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, and any substantial cooperation with the Prosecutor.²

Gravity of the crime

5. Juvénal Rugambarara pleaded guilty to and was convicted of one count of extermination as a crime against humanity for failing in his duty to take necessary and reasonable measures to investigate and punish crimes committed by his subordinates between 7 and 20 April 1994 in Mwulire, Mabare and Nawe *secteurs* in Bicumbi *commune*.³

¹ *The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59-T ("*Prosecutor v. Rugambarara*"), Sentencing Judgement (TC), 16 November 2007, para. 63.

² Rules of Procedure and Evidence, 31 January 2010, Rule 126: General Standards for Granting Pardon or Commutation.

³ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), paras. 5, 32; T. 13 July 2007, p. 8, pp. 11-13.

6. In its sentencing, the Chamber considered that while the crimes to which Juvénal Rugambarara confessed involved the deaths of thousands of Tutsi civilians,⁴ he had no history of ethnic discrimination prior to the events of 1994 and had no previous criminal record.⁵ Moreover, the Sentencing Chamber accepted the evidence that Rugambarara personally assisted Tutsi refugees by way of moral and material support in Bicumbi *commune* during the 1994 events and that his acts contributed to saving some of their lives.⁶

7. Still, the Sentencing Chamber found that Juvénal Rugambarara's participation constituted a very serious offence and a gross violation of international law,⁷ and sentenced him to 11 years' imprisonment. I consider that the relative gravity of the crime was assessed when determining Rugambarara's sentence and, in my opinion, does not *per se* bar him from early release, if otherwise appropriate.

Substantial cooperation with the Prosecutor

8. On 13 June 2007, Rugambarara signed a guilty plea agreement with the Prosecutor.⁸ On 13 July 2007, at his further appearance, he pleaded guilty for having failed in his duty to take necessary and reasonable steps to ensure the punishment of his subordinates for the crimes they committed between 7 and 20 April 1994⁹ and expressed remorse and compassion for the victims and the people of Rwanda.¹⁰ The Sentencing Chamber concluded that it was satisfied that his public expression of regret and remorse was sincere.¹¹

9. The Chamber concluded that Rugambarara's guilty plea and expression of remorse saved judicial time and resources and may contribute to the process of national reconciliation in Rwanda.¹²

10. Although I acknowledge that cooperation with the Prosecutor was considered as a mitigating factor in the determination of his sentence, this does not preclude its consideration during this determination of eligibility for early release. On the contrary, cooperation with the Prosecution is one of the factors enumerated in Rule 126 which the President must consider,

⁴ Plea Agreement between Mr. Juvénal Rugambarara and the Office of the Prosecutor ("Plea Agreement"), 13 June 2007, paras. 38, 40, 41, 42, 44, 46-48, 49-50 and 52; *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 24.

⁵ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 43.

⁶ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 37.

⁷ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), paras. 19, 20.

⁸ Joint Motion for Consideration of Guilty Plea Agreement between Juvénal Rugambarara and the Office of the Prosecutor, 13 June 2007.

⁹ T. 13 July 2007, p. 8.

¹⁰ T. 13 July 2007, p. 11-13.

¹¹ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 34.

¹² *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), paras. 33-35.

inter alia, when determining whether early release is appropriate. I note that Rugambarara's cooperation with the Prosecutor was an important positive factor in my deliberations in this case.

The treatment of similarly-situated prisoners

11. To date, only one prisoner from this Tribunal has been granted early release.¹³ Therefore, 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 violations of international criminal law after two-thirds of the sentence has been served.¹⁴

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.¹⁵ While it was specifically noted that the decision was not intended to create a precedent at the Tribunal that early release should be granted after three-fourths of a sentence has been served,¹⁶ it is useful to consider the decision to release Bagaragaza as it relates to the similarly-situated Rugambarara, taking note that this Tribunal has refused to consider early release prior to three-fourths of the sentence being served, and that Rugambarara has already served more than three-fourths of his sentence.

The prisoner's demonstration of rehabilitation

13. 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.¹⁷ The Sentencing Chamber noted that Juvénal Rugambarara pleaded guilty, exhibited good behaviour during his detention up until the date of his sentencing, and expressed

¹³ *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S ("*Prosecutor v. Bagaragaza*"), Decision on the Early Release of Michel Bagaragaza (P) ("Early Release Decision"), 24 October 2011.

¹⁴ *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.

¹⁵ *Prosecutor v. Bagaragaza*, Early Release Decision (P), para. 15.

¹⁶ *Prosecutor v. Bagaragaza*, Early Release Decision (P), para. 17.

¹⁷ *Prosecutor v. Bagaragaza*, Early Release Decision (P), para. 11. See also e.g. *The Prosecutor v. 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. Kos*, Case No. IT-98-30/I-A, Order of the President for Early Release of Milojica Kos (P), 20 July 2002.

genuine remorse in his public address to the Court.¹⁸ I consider that Juvénal Rugambarara's guilty plea is a strong positive factor in my deliberations.

14. The Sentencing Chamber also concluded that the personal and family situation of Juvénal Rugambarara, as a married man with children, led it to believe in his chances of rehabilitation after his release.¹⁹ I agree that the family situation of Rugambarara points to an increased chance of rehabilitation, and is a positive factor in my consideration of whether he should be granted early release.

15. Moreover, the Sentencing Chamber concluded that, before the 1994 events, Rugambarara was a person of good character with no previous criminal record.²⁰ The statement of the United Nations Detention Facility in Arusha ("UNDF") Commanding Officer further demonstrates Rugambarara's good conduct while in detention.

CONCLUSION

16. Having considered the Decision on the early release of Michel Bagaragaza, the gravity of the crimes for which Juvénal Rugambarara was convicted, the treatment of similarly situated prisoners, that Rugambarara has already served three-fourths of his sentence, and the prisoner's demonstration of rehabilitation – primarily his guilty plea and his substantial cooperation with the Prosecutor, the President agrees with the Sentencing Chamber and majority of the Bureau that early release after Rugambarara has served three-fourths of his sentence is appropriate.

17. I am therefore satisfied that Juvénal Rugambarara should be granted early release with immediate effect. The Registrar is directed to inform the Beninois and Rwandan authorities of this decision as soon as practicable.

FOR THESE REASONS, THE PRESIDENT

¹⁸ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 34, 42-43.

¹⁹ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 39.

²⁰ *Prosecutor v. Rugambarara*, Sentencing Judgement (TC), para. 42-43.

REQUESTS the Registrar to inform the Beninois and Rwandan authorities of her decision to grant early release for Juvénal Rugambarara.

Arusha, 8 February 2012, done in English.

Judge Khalida Rachid Khan
President

[Seal of the Tribunal]