

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-12-10-ES

Date: 13 March 2014

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**Decision of: 13 March 2014**

**PROSECUTOR**

**v.**

**OBED RUZINDANA**

***PUBLIC REDACTED VERSION***

**DECISION OF THE PRESIDENT ON THE  
EARLY RELEASE OF OBED RUZINDANA**

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow

**Mr. Obed Ruzindana**

**The Republic of Mali**

Received by the Registry  
Mechanism for International Criminal Tribunals

13/03/2014 17:27

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1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals ("Mechanism"), am seized of an application for early release from Mr. Obed Ruzindana ("Ruzindana"), filed on 26 April 2013.<sup>1</sup> I consider the Application pursuant to Article 26 of the Statute of the Mechanism ("Statute"), 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").<sup>2</sup>

## I. BACKGROUND

2. On 20 September 1996, Ruzindana was arrested in Kenya, and on 22 September 1996 he was transferred to the United Nations Detention Facility in Arusha, Tanzania.<sup>3</sup> Ruzindana was charged with 6 counts of genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions of 1949 and of Additional Protocol II to the Geneva Conventions of 1949, all in relation to killings that occurred in the area of Bisesero in Rwanda between 9 April and 30 June 1994.<sup>4</sup>

3. Trial Chamber II of the International Criminal Tribunal for Rwanda ("Trial Chamber" and "ICTR", respectively) found Ruzindana guilty of one count of genocide and sentenced him to twenty-five years imprisonment, with credit for time already served.<sup>5</sup> On 1 June 2001, the Appeals Chamber of the ICTR affirmed the Trial Chamber's conviction and sentence.<sup>6</sup>

4. On 23 November 2001, Mali was designated as the enforcing State,<sup>7</sup> and on 9 December 2001, Ruzindana was transferred to Mali to serve the remainder of his sentence.<sup>8</sup>

<sup>1</sup> *The Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10, *Requête de M. Ruzindana Obed pour une libération anticipée*, 26 April 2013 ("Application"). An English translation was filed on 16 July 2013. While the Application was originally submitted to me in French, all references herein are to the Mechanism's certified English translation. All references to correspondence between the Republic of Mali ("Mali") and the Mechanism, as well as an additional communication from Mr. Ruzindana, are also to the Mechanism's certified English translations.

<sup>2</sup> MICT/3, 5 July 2012.

<sup>3</sup> *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999 ("Trial Judgement"), para. 15.

<sup>4</sup> *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 ("Appeal Judgement"), para. 6. *See also* Trial Judgement, pp. 235-236.

<sup>5</sup> Trial Judgement, pp. 235-236; *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Sentence, 21 May 1999 ("Sentencing Judgement"), paras. 28, 30, 32.

<sup>6</sup> Appeal Judgement, para. 372.

<sup>7</sup> *The Prosecutor v. Obed Ruzindana*, Case No. ICTR-95-1-T, Order Designating the State in Which Obed Ruzindana is to Serve his Prison Sentence, 23 November 2001 (confidential), p. 3.

<sup>8</sup> "Former Prime Minister and Five Other Convicts Sent to Prison in Mali", ICTR/INFO-9-2-296, 11 December 2001, available at <http://unictr.org/tabid/155/Default.aspx?id=315>.

## II. THE APPLICATION

5. Ruzindana filed the Application on 26 April 2013. On 13 June 2013, the Registrar of the Mechanism ("Registrar"), in accordance with paragraphs 4 and 5 of the Practice Direction, provided me with: (i) correspondence from Mali regarding Ruzindana's application and eligibility for early release and the conditions of his imprisonment; and (ii) a memorandum from the Office of the Prosecutor of the Mechanism ("Prosecution") regarding, *inter alia*, Ruzindana's cooperation with the Prosecution.<sup>9</sup> The Registrar also informed me that Ruzindana had been notified of his eligibility for early release and was provided with copies of the information from the Malian authorities and the Prosecution pursuant to paragraph 5 of the Practice Direction.<sup>10</sup> The Registrar subsequently informed me that Ruzindana may not have received the Registrar's earlier communication, and that the Registrar re-transmitted the correspondence to Ruzindana on 21 November 2013,<sup>11</sup> Ruzindana submitted a response to the collected material, which was transmitted to me on 11 December 2013.<sup>12</sup>

## III. DISCUSSION

6. In coming to my decision on whether it is appropriate to grant Ruzindana's Application, I have consulted the Judge of the sentencing Chamber who is a Judge of the Mechanism, pursuant to Rule 150 of the Rules.

### A. Applicable Law

7. 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 so decides on the basis of the interests of justice and the general principles of law.

8. 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,

<sup>9</sup> Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 13 June 2013 ("13 June Memorandum"), *transmitting*: (i) Letter from Lieutenant Ahmadou A. Maiga, Warden of the Koulikoro Prison and Correctional Facility ("Koulikoro Warden"), dated 6 May 2013 ("6 May Letter"); (ii) Letter from Koulikoro Warden, dated 13 May 2013 ("13 May Letter"); (iii) Letter from Koulikoro Warden, dated 20 May 2013 ("20 May Letter"); (iv) Memorandum from Hassan B. Jallow, Prosecutor, to John Hocking, Registrar, dated 21 May 2013 ("Prosecution Memorandum").

<sup>10</sup> 13 June Memorandum, para. 6.

<sup>11</sup> Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 27 November 2013.

<sup>12</sup> See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 11 December 2013, *transmitting*: *Observations de Mr. Ruzindana Obed sur le mémorandum intérieur du Procureur du MTPI sur sa demande de libération anticipée*, dated 5 December 2013 ("Reply").

or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President of the Mechanism 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.

9. 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 forty-five days prior to the date of eligibility, notify the Mechanism accordingly.

10. 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 Rwanda, dated 12 February 1999 ("Enforcement Agreement"), 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).<sup>13</sup> 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 of the Mechanism 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 accordingly.

### **B. Gravity of Crimes**

11. The Prosecution underscores that Ruzindana was convicted of genocide, a crime of extreme gravity.<sup>14</sup> Ruzindana does not dispute the Prosecution's contention but notes that the gravity of the crime for which he was convicted does not preclude a grant of early release.<sup>15</sup>

<sup>13</sup> 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".

<sup>14</sup> Prosecution Memorandum, paras. 5-7, 16.

<sup>15</sup> Reply, paras. 8-11.

12. Ruzindana was convicted for a crime of a very high gravity, which included acts such as heading a convoy of assailants, transporting attackers in his vehicle, distributing weapons, shooting at Tutsi refugees, and personally mutilating and murdering individuals.<sup>16</sup> In determining Ruzindana's sentence, the Trial Chamber noted that he committed offences "beyond human comprehension and of the most extreme gravity".<sup>17</sup> Moreover, the Trial Chamber observed the "heinous" way in which Ruzindana committed killings, including the "vicious nature of the murder of a sixteen-year old girl".<sup>18</sup>

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

### C. Eligibility and Treatment of Similarly-Situated Prisoners

14. I recall that ICTR convicts, like Ruzindana, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision and that all convicts 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.<sup>19</sup> Although the two-thirds practice originates from the International Criminal Tribunal for the former Yugoslavia ("ICTY"), it applies to all prisoners within the jurisdiction of the Mechanism, given the need for equal treatment of all convicted persons supervised by the Mechanism and the need for a uniform eligibility threshold applicable to both of the Mechanism's branches.<sup>20</sup> However, 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 of the Mechanism as a matter of discretion, after considering the totality of the circumstances in each case.<sup>21</sup>

<sup>16</sup> Trial Judgement, para. 571.

<sup>17</sup> Sentencing Judgement, para. 9.

<sup>18</sup> Sentencing Judgement, para. 18.

<sup>19</sup> See *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. See also *Prosecutor v. Omar Serushago*, Case No. MICT-12-28, Public Redacted Version of Decision of the President on the Early Release of Omar Serushago, 13 December 2012 ("*Serushago Decision*"), paras. 16-17.

<sup>20</sup> See *Serushago Decision*, para. 17; *Bisengimana Decision*, para. 20.

<sup>21</sup> See *Serushago Decision*, paras. 18, 34; *Bisengimana Decision*, paras. 21, 35. I note, for clarification purposes, that the two-thirds threshold does not prohibit enforcement States from notifying the Mechanism whenever convicted persons become eligible for pardon, commutation of sentence, or early release under national law, even before the completion of two-thirds of their sentence. See generally Practice Direction, para. 2. Paragraph 3 of the Practice Direction also allows a convicted person to directly petition the President of the Mechanism for pardon, commutation of sentence, or early release, if the convicted person believes that he or she is eligible, even before the completion of the two-thirds of his or her sentence. According to the Practice Direction, in such circumstances, the President will still consider a convicted person's application or eligibility for pardon, commutation of sentence, or early release. See Practice Direction, para. 3. However, it is only in exceptional circumstances, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, that early release prior to the serving of two-thirds of the sentence may be granted, provided that other factors also weigh in favour of early release. See, e.g., *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, 29 February 2012 (public redacted version), paras. 15, 25-28, 30 (granting early release in a case involving exceptional cooperation

15. According to the Malian authorities and based on my own calculation, Ruzindana completed two-thirds of his twenty-five year sentence on 20 May 2013.<sup>22</sup>

#### D. Demonstration of Rehabilitation

16. Ruzindana submits that he has "demonstrated good conduct throughout [his] imprisonment, both towards [his] fellow inmates and towards the prison authorities".<sup>23</sup> He further states that if he is released, he would have "no difficulties reintegrating into normal life outside prison" and that he could be "useful to society".<sup>24</sup> Ruzindana also notes that he would "like to lift the spirits of [his] family and the people around [him]".<sup>25</sup>

17. I note that the Malian authorities did not provide any professional psychiatric or psychological evaluation of Ruzindana.<sup>26</sup> However, the Koulikoro Warden indicates that Ruzindana "is living in perfect harmony with his co-detainees and is taking part in all the rehabilitation activities for communal living" at the prison.<sup>27</sup> The Koulikoro Warden also notes Ruzindana's "exemplary conduct"<sup>28</sup> and that he [REDACTED].<sup>29</sup>

18. As a general matter, I note that the limited information provided by the Malian authorities does not allow me to fully assess the extent to which Ruzindana has been rehabilitated, particularly with regard to any threat he may pose to society if released. Nevertheless, I am of the view that the lack of a professional psychiatric or psychological evaluation, something over which Ruzindana has no control, should not negatively affect his application for early release.<sup>30</sup>

19. Ruzindana's claims and the Koulikoro Warden's description of his behaviour while in prison suggest that Ruzindana is capable of reintegrating into society if he is released. In this context, I am of the view that there is some evidence from Ruzindana's "exemplary" behaviour in prison that he is able to live peacefully with others and to be of use to society. Accordingly, I consider Ruzindana's demonstration of rehabilitation to weigh in favour of his early release.

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with the Office of the Prosecutor of the ICTY); *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009 (public redacted version), paras. 8, 13-15 (granting early release because of substantial cooperation with the Office of the Prosecutor of the ICTY and because the convicted person had effectively completed two-thirds of his sentence once sentence remissions under national law were recognized).

<sup>22</sup> 13 May Letter, p. 1.

<sup>23</sup> Application, para. 9. *See also* Application, para. 3; Reply, para. 13.

<sup>24</sup> Application, para. 10.

<sup>25</sup> Application, para. 10.

<sup>26</sup> 13 June Memorandum, para. 3. *See generally* 6 May Letter; 13 May Letter; 20 May Letter.

<sup>27</sup> 6 May Letter, p. 1. *See also* 20 May Letter, p. 2.

<sup>28</sup> 13 May Letter, p. 1.

<sup>29</sup> 20 May Letter, p. 2.

<sup>30</sup> *See Serushago* Decision, para. 21; *Bisengimana* Decision, para. 26.

### E. Substantial Cooperation with the Prosecution

20. The Prosecution asserts that “[a]t no time has Ruzindana provided any cooperation to the [Office of the Prosecutor] of the ICTR or the [Mechanism]”.<sup>31</sup> The Prosecution also notes that, unlike the two convicted persons granted early release by the Mechanism thus far, Ruzindana did not plead guilty.<sup>32</sup> In his Reply, Ruzindana submits that neither the Rules nor the Practice Direction restrict a grant of early release to those convicted persons who have cooperated with the Prosecution.<sup>33</sup>

21. I note at the outset that entering a guilty plea promotes the efficient administration of justice and constitutes cooperation with the Prosecution.<sup>34</sup> However, an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.<sup>35</sup> I also note that the Prosecution does not indicate whether it or the Office of the Prosecutor of the ICTR sought Ruzindana’s cooperation at any point during his trial or after he was convicted. I therefore consider that Ruzindana’s lack of cooperation with the Prosecution or the Office of the Prosecutor of the ICTR is a neutral factor in my determination of whether to grant him early release.

### F. Other Factors: Humanitarian Concerns

22. Paragraph 9 of the Practice Direction provides that the President may consider “any other information” that the President believes to be “relevant” to supplement the criteria specified in Rule 151 of the Rules. Previous decisions on early release have determined that the condition of a convicted person’s health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the person to remain in prison any longer.<sup>36</sup>

23. The Koulikoro Warden notes that Ruzindana [REDACTED].<sup>37</sup> Ruzindana submits that [REDACTED].<sup>38</sup>

<sup>31</sup> Prosecution Memorandum, para. 8.

<sup>32</sup> Prosecution Memorandum, paras. 8-11. *See also* Prosecution Memorandum, paras. 12-14, 16.

<sup>33</sup> Reply, paras. 11-12.

<sup>34</sup> *See, e.g., Serushago* Decision, para. 29; *Bisengimana* Decision, para. 30.

<sup>35</sup> *See, e.g., Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 8 April 2013, para. 25; *Prosecutor v. Mladen Naletilić*, Case No. IT-98-34-ES, Public Redacted Version of the 29 November 2012 Decision of the President on Early Release of Mladen Naletilić, 26 March 2013, para. 30.

<sup>36</sup> *See, e.g., Serushago* Decision, paras. 31, 33; *Bisengimana* Decision, para. 32.

<sup>37</sup> 6 May Letter, p. 1. *See also* 20 May Letter, p. 2.

<sup>38</sup> Reply, para. 14.

24. While no official medical records or reports from a physician were provided, I am satisfied that the Koulikoro Warden's statement is sufficient to establish that Ruzindana [REDACTED]. In these circumstances, I consider that [REDACTED] weigh in favour of his early release.

#### G. Conclusion

25. Having carefully considered the factors identified in Rule 151 of the Rules, as well as the particular circumstances of Ruzindana's case and the views of the remaining Judge of the sentencing Chamber who is also a Judge of the Mechanism, I conclude that Ruzindana should be granted early release. Specifically, Ruzindana has already completed more than two-thirds of his sentence, demonstrates signs of rehabilitation, and [REDACTED]. I note that the remaining Judge of the sentencing Chamber who is also a Judge of the Mechanism is not convinced that there are compelling reasons to grant Ruzindana early release now. I respect my colleague's concerns, but I believe that in context, the particular factors and circumstances of Ruzindana's case are sufficient to justify his early release, effective 28 February 2014.

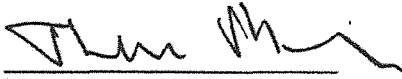
#### IV. DISPOSITION

26. 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 28 February 2014.

27. The Registrar is hereby **DIRECTED** to inform the Malian authorities 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 13th day of March 2014,  
At The Hague,  
The Netherlands.

  
\_\_\_\_\_  
Judge Theodor Meron  
President

[Seal of the Mechanism]







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