



Mechanism for International Criminal Tribunals

Case No. MICT-13-43-ES

Date: 13 May 2014

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**Decision of: 13 May 2014**

**PROSECUTOR**

**v.**

**INNOCENT SAGAHUTU**

***PUBLIC REDACTED***

**PUBLIC REDACTED VERSION OF THE 9 MAY 2014  
DECISION OF THE PRESIDENT ON THE  
EARLY RELEASE OF INNOCENT SAGAHUTU**

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow

**Counsel for Mr. Innocent Sagahutu:**

Mr. Fabien Segatwa

Mr. Scott Martin

Mr. Wayne Jordash

Received by the Registry  
Mechanism for International Criminal Tribunals  
13/05/2014 17:00

A handwritten signature in black ink, appearing to read 'Michael Carter', written over a rectangular stamp box.

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seized of an application for early release from Mr. Innocent Sagahutu (“Sagahutu”), filed on 13 February 2014.<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. Sagahutu was arrested on 15 February 2000 in Denmark and transferred to the United Nations Detention Facility (“UNDF”) in Arusha, Tanzania, on 24 November 2000.<sup>3</sup> He made his initial appearance before a Judge of the International Criminal Tribunal for Rwanda (“ICTR”) on 28 November 2000 and entered a plea of not guilty.<sup>4</sup>

3. On 17 May 2011, Trial Chamber II of the ICTR (“Trial Chamber”) found Sagahutu responsible as a superior for murder as a crime against humanity in relation to the killing of the Belgian peacekeepers and convicted him of ordering and aiding and abetting murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.<sup>5</sup> It further convicted Sagahutu of ordering and aiding and abetting murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the killing of Prime Minister Agathe Uwilingiyimana.<sup>6</sup> The Trial Chamber sentenced Sagahutu to a single term of 20 years of imprisonment.<sup>7</sup>

4. On 11 February 2014, the Appeals Chamber of the ICTR (“Appeals Chamber”) affirmed Sagahutu’s convictions for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of aiding and abetting the killing of the Belgian peacekeepers and as a superior for murder as a crime against humanity in relation to the killing of the Belgian peacekeepers.<sup>8</sup> However, the Appeals Chamber reversed his conviction for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva

<sup>1</sup> *Innocent Sagahutu v. The Prosecutor*, Case No. MICT-13-43, Petition for Early Release for Mr. Innocent Sagahutu, 13 February 2014 (confidential) (“Application”).

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

<sup>3</sup> *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Judgement and Sentence, pronounced on 17 May 2011, filed in writing on 17 June 2011 (“Trial Judgement”), para. 97 and Annex A, para. 13.

<sup>4</sup> Trial Judgement, Annex A, para. 13.

<sup>5</sup> Trial Judgement, paras. 2099, 2108, 2146, 2148, 2150, 2151, 2157, 2163.

<sup>6</sup> Trial Judgement, paras. 2093, 2108, 2146, 2156, 2163.

<sup>7</sup> Trial Judgement, paras. 79, 2269.

<sup>8</sup> *Augustin Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Judgement, pronounced on 11 February 2014, filed in writing on 27 February 2014 (public and redacted) (“Appeal Judgement”), paras. 388, 447, p. 152.

Conventions and of Additional Protocol II on the basis of ordering the killing of the Belgian peacekeepers and on the basis of Corporal Masonga's participation in the attack.<sup>9</sup> It also reversed Sagahutu's convictions for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of ordering and aiding and abetting the killing of the Prime Minister.<sup>10</sup> The Appeals Chamber, Judge Tuzmukhamedov dissenting, reduced Sagahutu's sentence from 20 years of imprisonment to 15 years of imprisonment.<sup>11</sup>

5. While his appeal was pending before the Appeals Chamber, Sagahutu filed a confidential notice of eligibility for early release before the Mechanism on 20 June 2013.<sup>12</sup> On 16 September 2013, Sagahutu's petition for early release was dismissed.<sup>13</sup>

6. As of the date of this decision, Sagahutu remains in custody at the UNDF pending designation of an enforcement State.

## II. THE APPLICATION

7. Sagahutu filed the Application on 13 February 2014. On 17 March 2014, the Registrar of the Mechanism ("Registrar"), in accordance with paragraphs 4 and 5 of the Practice Direction, provided me with: (i) a memorandum from the Office of the Prosecutor of the Mechanism ("Prosecution"), dated 26 February 2014 ("Prosecution Memorandum"), regarding the cooperation provided by Sagahutu to the Prosecution; (ii) a memorandum from the Commanding Officer of the UNDF, dated 11 March 2014 ("UNDF Report on Conduct"), containing observations as to Sagahutu's behaviour during his period of incarceration and the general conditions under which he was detained; (iii) a confidential report from the Commanding Officer of the UNDF, dated 11 March 2014 ("UNDF Report on Time in Custody"), containing additional information concerning Sagahutu and the duration of his time in custody; and (iv) a confidential report from the Commanding Officer of the UNDF, dated 11 March 2014 ("UNDF Psycho-Social Report"), containing information on whether any psychiatric or psychological evaluations were prepared on Sagahutu's mental condition.<sup>14</sup> In

<sup>9</sup> Appeal Judgement, paras. 388, 446, p. 152.

<sup>10</sup> Appeal Judgement, paras. 322, 446, p. 151.

<sup>11</sup> Appeal Judgement, para. 448, p. 152.

<sup>12</sup> *Augustin Ndingilyimana et al. v. The Prosecutor*, Case No. MICT-13-43, Notice of Eligibility for Early Release for Mr. Innocent Sagahutu, 20 June 2013 (confidential).

<sup>13</sup> *Augustin Ndingilyimana et al. v. The Prosecutor*, Case No. MICT-13-43, Decision on Innocent Sagahutu's Notice of Eligibility for Early Release and the Prosecution's Objection Thereto, 16 September 2013, p. 3.

<sup>14</sup> Internal Memorandum from Mr. John Hocking, Registrar, to Judge Theodor Meron, President, dated 17 March 2014. I was informed on 25 March 2014 that, following receipt of the French translations of these materials, the collected information was forwarded to Sagahutu by the Registry of the Mechanism ("Registry") on 19 March 2014 pursuant to paragraph 5 of the Practice Direction, and Sagahutu confirmed receipt of this information on the same day. See Internal memorandum from Mr. Samuel Akorimo, OIC, Head of Registry, to Judge Theodor Meron, President, dated 25 March 2014, para. 1.

response to the information conveyed to him, Sagahutu filed submissions on 28 March 2014 pursuant to paragraph 6 of the Practice Direction.<sup>15</sup>

### III. DISCUSSION

8. In coming to my decision on whether it is appropriate to grant Sagahutu's Application, 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 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 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.

11. The jurisprudence of both the ICTR and the International Criminal Tribunal for the former Yugoslavia ("ICTY") recognizes that, in the situation where there is no appeal pending and a convicted person is still detained at either the UNDF or the United Nations Detention Unit ("UNDU") in The Hague, a request for early release may be entertained by the President of the respective tribunal.<sup>16</sup> In such circumstances, the President of the ICTR has held that an application

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<sup>15</sup> *Innocent Sagahutu v. The Prosecutor*, Case No. MICT-13-43, Submissions of Innocent Sagahutu Pursuant to Paragraph Six 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, 28 March 2014 (confidential and *ex parte*) ("Reply"), para. 3.

<sup>16</sup> See, e.g., *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A, Decision on Tharcisse Muvunyi's Application for Early Release, 6 March 2012 ("*Muvunyi Decision*"), para. 10; *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011 ("*Kabashi Decision*"), para. 11, referring to *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early

for early release from a convicted person not yet transferred to an enforcement State is admissible “based upon the principle that a prisoner at [the] 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”.<sup>17</sup> Similarly, the President of the ICTY has concluded that, although the Statute, Rules, and Practice Direction do not address the situation where a convicted person is detained at the UNDU, rather than in one of the enforcement States, “the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced by the Tribunal” and the “eligibility of individuals serving their sentence at the UNDU must be determined by reference to the equivalent conditions for eligibility established by the enforcement states”.<sup>18</sup>

12. The Mechanism will follow the approach taken by both the ICTR and the ICTY in this respect.<sup>19</sup>

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

13. The crimes for which Sagahutu has been convicted are of high gravity. Sagahutu was convicted at trial of murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of aiding and abetting the killing of the Belgian peacekeepers and as a superior for murder as a crime against humanity in relation to the killing of the Belgian peacekeepers and these convictions were affirmed on appeal.<sup>20</sup> In reference to these killings, the Trial Chamber repeatedly stated that the Belgian peacekeepers were “brutally murdered”.<sup>21</sup>

14. In determining Sagahutu’s sentence, the Trial Chamber recalled its findings that, “on 7 April 1994, RECCE Battalion soldiers under Sagahutu’s command participated in arresting, disarming, killing and mutilating Belgian UNAMIR soldiers”.<sup>22</sup> The Trial Chamber further found that

[t]he killings of [...] the UNAMIR peacekeepers, international representatives ensuring adherence to the Arusha Accords, carried particular symbolic weight and removed impediments to the genocide and other crimes that ultimately occurred. It is additionally aggravating that the UNAMIR peacekeepers were sent to Rwanda by the UN Security Council under its Chapter VI

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Release of Milan Gvero, 28 June 2010 (“*Gvero Decision*”), para. 7; *The Prosecutor v. Samuel Imanishimwe*, Case No. ICTR-99-46-S, Decision on Samuel Imanishimwe’s Application for Early Release, 30 August 2007, p. 2; *The Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-1C-T, Decision on Request for Early Release, 5 June 2006, p. 2. See also *Prosecutor v. Enver Hadžijhasanović and Amir Kubura*, Case No. IT-01-47-T, Decision of the President on Amir Kubura’s Request for Early Release, 11 April 2006, paras. 4-8.

<sup>17</sup> *Muvunyi* Decision, para. 10.

<sup>18</sup> *Kabashi* Decision, para. 11, quoting *Gvero Decision*, para. 7 (internal quotation marks omitted).

<sup>19</sup> See generally *Phénéas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal Against the Referral of Phénéas Munyarugarama’s Case to Rwanda and Prosecution Motion to Strike, 5 October 2012, para. 6.

<sup>20</sup> Appeal Judgement, paras. 388, 447, p. 152; Trial Judgement, paras. 2099, 2108, 2146, 2148, 2150, 2151, 2157, 2163.

<sup>21</sup> Trial Judgement, paras. 2019, 2096, 2141.

<sup>22</sup> Trial Judgement, para. 2255.

peacekeeping authority and were engaged in protecting the Prime Minister under that authority at the time of their capture.<sup>23</sup>

Although the Appeals Chamber reversed certain of Sagahutu's convictions, it stated that he remained convicted of "very serious crimes".<sup>24</sup>

15. In these circumstances, I am of the view that the high gravity of Sagahutu's offences weighs against his early release.<sup>25</sup>

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

16. I recall that ICTR convicts, like Sagahutu, 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>26</sup> Although the two-thirds practice originates from the 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>27</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>28</sup>

17. According to the UNDF Report on Time in Custody, and based on my own calculation, Sagahutu has completed, as of the date of this Decision, more than 14 years of his 15-year sentence, given that he has been detained since 15 February 2000.<sup>29</sup> I am of the view that Sagahutu's completion of nearly the entirety of his sentence is a factor that weighs in favour of his early release.

<sup>23</sup> Trial Judgement, para. 2258.

<sup>24</sup> Appeal Judgement, para. 447.

<sup>25</sup> I note that the Prosecution made submissions concerning the gravity of Sagahutu's crimes on their own and in comparison to the crimes of other convicted persons who have been granted early release. See Prosecution Memorandum, pp. 2-4. In the Reply, Sagahutu contends that the Prosecution has exceeded its role at this stage in the proceedings by submitting arguments unrelated to Sagahutu's cooperation. See Reply, para. 9. See also Reply, paras. 10-11. As a general matter, I note that the Practice Direction provides that the President of the Mechanism shall determine whether early release should be granted based on, *inter alia*, "any other information he or she considers relevant". See Practice Direction, para. 9. In light of my view, expressed above, that the high gravity of Sagahutu's offences weighs against his early release, I do not consider it necessary to address Sagahutu's challenge in this respect.

<sup>26</sup> See *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. 14 ("*Ntakirutimana* Decision"). 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.

<sup>27</sup> See *Ntakirutimana* Decision, para. 14; *Bisengimana* Decision, para. 20.

<sup>28</sup> See *Ntakirutimana* Decision, paras. 21, 35; *Bisengimana* Decision, paras. 21, 35.

<sup>29</sup> See UNDF Report on Time in Custody, paras. 7, 9. See also Appeal Judgement, p. 152; Trial Judgement, para. 2269.

#### **D. Demonstration of Rehabilitation**

18. The information supplied by the Commanding Officer of the UNDF provides a positive account of Sagahutu's time in detention. In particular, the UNDF Report on Conduct states that, since his admission to the UNDF, Sagahutu "has proved to be quite amenable to the rules and regulations" of the UNDF and notes that Sagahutu's "non involvement in acts of breach of detention rules and regulations is a clear testimony to this".<sup>30</sup> The UNDF Report on Conduct further states that Sagahutu's "easygoing disposition" is readily noticeable and that he has shown to be capable of maintaining "a high level of self control in all circumstances as demonstrated by his sense of equanimity before and after his conviction".<sup>31</sup> As a general matter, according to the UNDF Report on Conduct, Sagahutu has "shown to be of exemplary character".<sup>32</sup> [REDACTED].<sup>33</sup>

19. In the Reply, Sagahutu submits that "the abundance of positive comments regarding his behaviour over such a long period of time, in close quarters and under the stress of trial, demonstrates that he is able to reintegrate into society, should early release be granted to him".<sup>34</sup> Sagahutu further notes that the Trial Chamber, when determining his sentence, recalled evidence that a number of witnesses testified to "Sagahutu's good deeds during the war", and he submits that these acts support the conclusion that he is prepared to be reintegrated into society.<sup>35</sup>

20. Sagahutu's claims and the description of his behaviour while in custody at the UNDF suggest that Sagahutu is capable of reintegrating into society if he is released. Having carefully reviewed the information before me, I am of the opinion that Sagahutu has demonstrated signs of rehabilitation and, thus, count this factor as weighing in favour of his early release.

#### **E. Substantial Cooperation with the Prosecution**

21. The Prosecution Memorandum states that Sagahutu has not cooperated with the Prosecution at any time.<sup>36</sup> The Prosecution does not indicate whether it (or the Office of the Prosecutor of the ICTR) sought Sagahutu's cooperation at any point during his trial or after he was convicted. In the Reply, Sagahutu notes, *inter alia*, that an accused person is under no obligation to plead guilty or, in the absence of a guilty plea, to cooperate with the Prosecution.<sup>37</sup>

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<sup>30</sup> UNDF Report on Conduct, para. 4. *See also* UNDF Psycho-Social Report.

<sup>31</sup> UNDF Report on Conduct, para. 5. *See also* UNDF Psycho-Social Report.

<sup>32</sup> UNDF Report on Conduct, para. 6.

<sup>33</sup> UNDF Psycho-Social Report.

<sup>34</sup> Reply, para. 4.

<sup>35</sup> Reply, paras. 5-6.

<sup>36</sup> Prosecution Memorandum, p. 4.

<sup>37</sup> Reply, para. 8.

22. 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.<sup>38</sup> I therefore consider that Sagahutu's lack of cooperation with the Prosecution is a neutral factor in my determination of whether or not to grant him early release.

#### F. Conclusion

23. Having carefully considered the factors identified in Rule 151 of the Rules, as well as the particular circumstances of Sagahutu's case and the views of the Judges of the sentencing Chamber who are Judges of the Mechanism, and taking into account the information provided to me, I conclude that Sagahutu should be granted early release. Specifically, although the crimes for which Sagahutu was convicted are very grave, Sagahutu has completed nearly the entirety of his sentence and has demonstrated signs of rehabilitation. I note that the Judges of the sentencing Chamber who are also Judges of the Mechanism unanimously share my view that Sagahutu should be released.


### IV. DISPOSITION

24. 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.

25. The Registrar is hereby **DIRECTED** to make all necessary arrangements for the release of Innocent Sagahutu from the United Nations Detention Facility in Arusha as soon as practicable and once the necessary administrative procedures have been completed.

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

Done this 13th day of May 2014,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
President

[Seal of the Mechanism]



<sup>38</sup> *Ntakirutimana* Decision, para. 20; *Prosecutor v. Obed Ruzindana*, Decision of the President on the Early Release of Obed Ruzindana, 14 March 2014 (public redacted version), para. 21.





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