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NATIONS UNIES

ICTR-95-1C-T
13-8-2008
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Dieng

OR: ENG

OFFICE OF THE PRESIDENT

Before Judge: Dennis C. M. Byron
President of the Tribunal
Registrar: Adama Dieng
Date: 13 February 2008

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

Vincent RUTAGANIRA

Case No. ICTR-1995-1C-R73

**DECISION ON THE MOTION FOR RECONSIDERATION
OF THE DENIAL OF EARLY RELEASE**

Article 27 of the Statute & Rule 126 of the Rules of Procedure and Evidence

Office of the Prosecutor:
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[Signature]

INTRODUCTION

1. On 14 March 2005, Vincent Rutaganira was sentenced to six years of imprisonment for extermination as a crime against humanity.¹ He was granted credit for time already served since his arrest and transfer to the United Nations Detention Facility on 4 March 2002.²
2. On 6 March 2006, Vincent Rutaganira filed a motion before the President of the Tribunal ("President") for early release.³ On 2 June 2006, the President, Judge Erik Mose, rejected this request.⁴ Vincent Rutaganira appealed the Impugned Decision on 4 July 2006.⁵ The Appeals Chamber dismissed the application on 24 August 2006 for lack of jurisdiction.⁶
3. On 22 February 2007, Vincent Rutaganira moved the President to reconsider his Decision of 2 June 2006.⁷ On 21 May 2007, Judge Dennis C. M. Byron was elected to succeed Judge Erik Mose, while the motion for reconsideration was still pending.

DELIBERATIONS

Is a Motion for Reconsideration of Decisions of the President Admissible?

4. An early release is a commutation of sentence which Article 27 of the Statute provides for. It can be granted at the discretion of the President upon consultation with the Judges, and on the basis of the interests of justice and the general principles of law. While the Statute and the Rules of Procedure and Evidence ("Rules") do not provide for reconsideration, the jurisprudence of the Tribunal has long established that a Chamber has an inherent power to reconsider its own decisions under specific conditions.⁸ In the exercise of his judicial functions, the President has the same inherent power to reconsider, vary or rescind his own decisions where exceptional circumstances and the interests of justice so

¹ *The Prosecutor v. Vincent Rutaganira*, Case No. ICTR-1995-1C-T ("Rutaganira"), Judgement and Sentence (TC), 14 March 2005.

² *Id.*, para. 171.

³ Requête aux fins de libération anticipée devant le Président du Tribunal pénal international pour le Rwanda, 6 March 2006.

⁴ *Rutaganira*, Decision on Request for Early Release (President), 2 June 2006.

⁵ Acte d'appel, 4 July 2006.

⁶ *Rutaganira*, Decision on Appeal of a Decision of the President on Early Release (AC), 24 August 2006.

⁷ Requête en reconsidération de la décision de refus de libération anticipée de M. Rutaganira rendue le 2 juin 2006 devant le Président du Tribunal pénal international pour le Rwanda, 22 February 2007.

⁸ See e.g. *The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva* ("Bagosora et al.") Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(1)(c)" (TC), 15 June 2004, para. 7.

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require. It is also settled in the jurisprudence that reconsideration cannot be used to circumvent the inadmissibility of an appeal or a review of an interlocutory decision.⁹

Is Reconsideration of the Impugned Decision Warranted?

5. According to the settled law of the Tribunal, reconsideration is warranted when

- (i) a new fact has been discovered that was not known at the time of the original Decision;
- (ii) there has been a material change in circumstances since the original Decision; or
- (iii) there is reason to believe that the original Decision was erroneous or constituted an abuse of power, resulting in an injustice.¹⁰

6. There has been no discovery of new facts, and no material changes in circumstances since the original decision.

7. Vincent Rutaganira argues that the 10 May 2000 Practice Direction referred to in the Decision of 2 June 2006 cannot be opposed to him because he does not have access to it. That argument is irrelevant as the jurisdiction exercised by the President derives from Part Nine of the Rules of Evidence and Procedure in Rules 124 to 126.

8. Vincent Rutaganira contends that the President erred in going beyond the enumerated standards in Rule 126 for consideration of early release. However, Rule 126 does not purport to be a complete list of factors that may be considered, as it explicitly states: "In determining whether pardon or commutation of sentence is appropriate, the President shall take into account, *inter alia*, the gravity of the crime..."¹¹

9. Vincent Rutaganira complains that the President erred in comparing his situation -- convicted of extermination -- with that of prisoners convicted of genocide for the purposes of Rule 126, referring to the following extract of the Decision of 2 June 2006: "previous requests for commutation of sentence or early release have been made by prisoners who are serving sentences for genocide". Such reference to the practice on and commutation and early release is a normal feature of decisions.

⁹ *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses, 9 May 2002, para. 8.

¹⁰ See e.g. *The Prosecutor v. Édouard Karemera, Muthien Ndirumpatse and Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 6 (and sources cited). See also *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11; *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003, para. 25.

¹¹ Emphasis added.

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10. Finally, Vincent Rutaganira also contends that the factors taken into consideration in sentencing and early release are largely the same, suggesting that the President reviews them in his determination of early release. It is worth recalling that the sentence imposed was based on a guilty plea bargain agreement, and that reconsideration shall not be used as an alternative appeals mechanism. Most importantly the President considers that no injustice results from the rejection of an application for early release from a six year sentence for the grave crime of Extermination as a crime against humanity.

11. The application is entirely without merit, none of the conditions for reconsideration is met, and the motion falls to be dismissed.

FOR THOSE REASONS, THE PRESIDENT

DENIES the Motion for Reconsideration on all grounds.

Arusha, 13 February 2008, done in English.



Dennis C. M. Byron
President

[Seat of the Tribunal]

