



Mechanism for International Criminal Tribunals

Case No.: MICT-13-43

Date: 16 September 2013

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**Decision of:** 16 September 2013

Received by the Registry  
Mechanism for International Criminal Tribunals

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AUGUSTIN NDINDILYIMANA  
AUGUSTIN BIZIMUNGU  
FRANÇOIS-XAVIER NZUWONEMEYE  
INNOCENT SAGAHUTU

v.

THE PROSECUTOR

*PUBLIC*

**DECISION ON INNOCENT SAGAHUTU'S NOTICE OF  
ELIGIBILITY FOR EARLY RELEASE AND THE  
PROSECUTION'S OBJECTION THERETO**

**The Office of the Prosecutor:**

Mr. Hassan B. Jallow  
Mr. James J. Arguin  
Mr. Abdoulaye Seye  
Mr. Abubacarr Tambadou  
Mr. Thembile M. Segoete

**Counsel for Innocent Sagahutu:**

Mr. Fabien Segatwa  
Mr. Scott Martin  
Mr. Wayne Jordash

**I, THEODOR MERON**, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism),

**NOTING** the Trial Judgement pronounced in the case of *The Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-T, by Trial Chamber II of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR”, respectively) on 17 May 2011 and filed on 17 June 2011 (“Trial Judgement”), in which the Trial Chamber, *inter alia*, convicted Innocent Sagahutu (“Sagahutu”) of murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II and sentenced Sagahutu to a single term of 20 years of imprisonment;<sup>1</sup>

**NOTING** that Sagahutu has filed a notice of appeal against the Trial Judgement and the sentence pronounced therein, and that his appeal, as well as that of the Prosecutor of the ICTR against Sagahutu’s sentence, are pending before the Appeals Chamber of the ICTR;<sup>2</sup>

**BEING SEISED OF** the “Notice of Eligibility for Early Release for Mr. Innocent Sagahutu” filed confidentially by Sagahutu on 20 June 2013 (“Notice of Eligibility”), in which Sagahutu submits that, as of 15 June 2013, he had served two-thirds of his sentence and is therefore eligible to be considered for early release, and further requests that he be heard on the matter after having received information from the Registry of the Mechanism pursuant to 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, dated 5 July 2012 (“Practice Direction”);<sup>3</sup>

**BEING SEISED OF** the “Prosecutor’s Objection to Innocent Sagahutu’s Confidential ‘Notice of Eligibility for Early Release for Mr. Innocent Sagahutu’” filed on 26 June 2013 (“Objection”), in which the Office of the Prosecutor (“Prosecution”) requests, *inter alia*, that I: (i) find the Notice of Eligibility improperly filed because Sagahutu’s case is currently on appeal within the jurisdiction of the ICTR; (ii) find the Notice of Eligibility premature in light of the pending appeal before the

<sup>1</sup> Trial Judgement, paras. 79, 2093, 2099, 2108, 2146, 2148, 2150-2151, 2156-2157, 2163, 2269.

<sup>2</sup> See generally *Augustin Ndingiyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, *Acte d’appel d’Innocent Sagahutu*, 13 January 2012; *Augustin Ndingiyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Prosecutor’s Notice of Appeal, 20 July 2011. See also *Augustin Ndingiyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Transcripts, 9-10 May 2013.

<sup>3</sup> Notice of Eligibility, paras. 11-12.

ICTR and the fact that Sagahutu's convictions and sentence are not yet final; and (iii) order the Notice of Eligibility expunged from the record;<sup>4</sup>

**NOTING** the "Response to Prosecutor's Objection to Innocent Sagahutu's Confidential Notice of Eligibility for Early Release" filed confidentially with confidential Annex A by Sagahutu on 8 July 2013 ("Response"), in which Sagahutu asserts, *inter alia*, that: (i) the Mechanism has jurisdiction over his request for early release because the Statute of the Mechanism ("Statute") provides that the Mechanism shall continue the jurisdiction of the ICTR from 1 July 2012;<sup>5</sup> and (ii) his request is not premature in light of the "fundamental principle of law that [he] need only serve the length of his sentence decided by the Trial Chamber";<sup>6</sup>

**NOTING** that the Prosecution has not filed any reply to the Response;

**CONSIDERING** that, although presented as a notification of eligibility, Sagahutu's Notice of Eligibility constitutes a petition for early release;<sup>7</sup>

**NOTING** that Article 25(2) of the Statute provides that the Mechanism shall have the power to supervise the enforcement of sentences pronounced by, *inter alia*, the ICTR;

**NOTING** that, pursuant to Rule 102(A) of the Rules of Procedure and Evidence of the ICTR, as soon as notice of appeal has been given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention;

**NOTING** that once an appeal is pending and while a convicted person is still detained at a United Nations detention facility, provisional release by the Appeals Chamber assigned to his appeal is the procedural avenue to be taken for a request for release from detention;<sup>8</sup>

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<sup>4</sup> Objection, paras. 2-5, 7, 9-10. The Prosecution also contends that Sagahutu does not have the right to file a "notification of eligibility". Objection, para. 8.

<sup>5</sup> See Response, paras. 4-6 (referring to the preamble and Article 25(2) of the Statute as well as to a 3 July 2013 letter from the Registrar of the Mechanism to all detainees at the United Nations Detention Facility ("3 July 2013 Letter")). See also Response, Annex A (confidential). A review of the relevant submissions demonstrates that the Notice of Eligibility and the Response do not contain any information which warrants giving the present decision confidential status. Accordingly, I render this decision publicly.

<sup>6</sup> Response, para. 7. See also Response, paras. 8-12 (relying upon, *inter alia*, Rules 145(B), 149, and 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules") and arguing that Rule 126(B) of the Rules should be read in conjunction with Rule 145(B) of the Rules). Sagahutu also contends that the only means open to him to seek early release was by submitting a direct petition pursuant to the Practice Direction. See Response, para. 14.

<sup>7</sup> See Notice of Eligibility, para. 12; Response, paras. 1, 14, and p. 2, heading A. The Practice Direction provides that it is by direct petition, rather than a notification of eligibility, that a convicted person may seek pardon, commutation of sentence, or early release if he or she believes that he or she is eligible. Compare Practice Direction, para. 2, with Practice Direction, para. 3.

**CONSIDERING**, therefore, that because the enforcement of the Trial Judgement has been stayed in light of the pending appeals before the ICTR and is thus not final,<sup>9</sup> the Mechanism has not yet assumed the power to supervise the enforcement of the sentence pronounced in the Trial Judgement in relation to Sagahutu, and it is for the Appeals Chamber of the ICTR to consider any request for release from detention;<sup>10</sup>

**CONSIDERING** that the parties' remaining arguments concerning the Notice of Eligibility are thus rendered moot;

**FURTHER CONSIDERING** that the Prosecution has not demonstrated that the Notice of Eligibility needs to be expunged from the record;

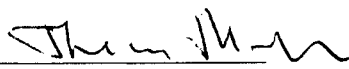
**FOR THE FOREGOING REASONS,**

**GRANT** the Objection **in part**; and

**DISMISS** the Notice of Eligibility.

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

Done this 16th day of September 2013,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
President

[Seal of the Mechanism]



<sup>8</sup> See, e.g., *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011, para. 11, and references cited therein.

<sup>9</sup> See, e.g., *The Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision of the President on the Early Release of Miroslav Kvočka, 20 December 2002, Registry pagination 2/3237bis. The original version in French was filed on 16 December 2002.

<sup>10</sup> Neither the provisions of the Statute, nor the 3 July 2013 Letter, nor any of the specific Rules relied upon by Sagahutu suggests to the contrary. In particular, Sagahutu fails to demonstrate how Rule 145(B) of the Rules, which authorizes the Appeals Chamber of the Mechanism to deliver a judgement in the absence of the defendant in certain circumstances, is relevant to a determination of whether the Mechanism has the authority to enforce the sentence rendered by the Trial Chamber pending the completion of appeals before the Appeals Chamber of the ICTR.



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