



Mechanism for International Criminal Tribunals

Case No. MICT-12-17-ES

Date: 24 April 2014

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 24 April 2014

PROSECUTOR

v.

GÉRARD NTAKIRUTIMANA

PUBLIC REDACTED

**PUBLIC REDACTED VERSION OF THE 26 MARCH 2014
DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF GÉRARD NTAKIRUTIMANA**

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow

Counsel for Mr. Gérard Ntakirutimana

Mr. Philippe Larochelle

The Republic of Benin

Received by the Registry
Mechanism for International Criminal Tribunals
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A handwritten signature in black ink, appearing to read 'McCall Jallow', written over a white background within a black rectangular box.

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seized of a confidential application for early release from Mr. Gérard Ntakirutimana (“Ntakirutimana”) dated 29 October 2013 and received on 12 November 2013 (“Application”).¹ 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”).²

I. BACKGROUND

2. On 29 October 1996, Ntakirutimana was arrested in the Ivory Coast, and he was transferred to the United Nations Detention Facility in Arusha, Tanzania, on 30 November 1996.³ Ntakirutimana was charged with genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.⁴

3. Trial Chamber I of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR”, respectively) found Ntakirutimana guilty of genocide and of murder as a crime against humanity.⁵ The Trial Chamber sentenced Ntakirutimana to 25 years’ imprisonment with credit for time spent in custody awaiting trial.⁶ On 13 December 2004, the Appeals Chamber of the ICTR affirmed certain convictions entered by the Trial Chamber, quashed one such conviction, and affirmed the sentence imposed by the Trial Chamber.⁷

¹ Internal Memorandum from Mr. John Hocking, Registrar, to Judge Theodor Meron, dated 12 November 2013, *transmitting* Application. 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 Benin (“Benin”) and the Mechanism, as well as an additional communication from Mr. Ntakirutimana, are also to the Mechanism’s certified English translations.

² MICT/3, 5 July 2012. I also note that on 15 January 2014, Benin informed the Registry of the Mechanism that Ntakirutimana, having served half of his sentence, could be released on parole under the law of Benin if certain conditions were met. *See* Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 4 March 2014, *transmitting, inter alia*, Report by Chief Warrant Officer Akoutan Pierre Obagou from the Akpro Misséréte prison (“Akpro Misséréte Warden”), dated 30 December 2013 (“Obagou Report”). *See also* Obagou Report, pp. 1-2. This notification of Ntakirutimana’s eligibility for early release under domestic law was received in accordance with Rule 149 of the Rules and paragraph 2 of the Practice Direction.

³ *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement and Sentence, 21 February 2003 (“Trial Judgement”), para. 16.

⁴ Trial Judgement, para. 13-15.

⁵ Trial Judgement, para. 878.

⁶ Trial Judgement, paras. 924, 927.

⁷ *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004, paras. 554-564.

4. On 18 May 2009, Benin was designated as the enforcing State,⁸ and on 27 June 2009, Ntakirutimana was transferred to Benin to serve the remainder of his sentence.⁹

II. THE APPLICATION

5. The Application was received by the Mechanism on 12 November 2013. On 4 March 2014, the Registrar of the Mechanism (“Registrar”), in accordance with paragraphs 3, 4, and 5 of the Practice Direction, provided me with: (i) correspondence from Benin regarding Ntakirutimana’s eligibility for early release pursuant to its domestic laws; (ii) a report from Benin containing a notice to the Mechanism of Ntakirutimana’s eligibility for early release under its domestic laws, observations as to Ntakirutimana’s behaviour while incarcerated and the general conditions under which he was imprisoned, and information regarding Ntakirutimana’s mental health; and (iii) a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”) regarding, *inter alia*, Ntakirutimana’s cooperation with the Prosecution.¹⁰ Ntakirutimana submitted a response to the collected material, which was transmitted to me on 13 March 2014.¹¹

III. DISCUSSION

A. Applicable Law

6. 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.

7. 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,

⁸ *The Prosecutor v. Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Decision on the Enforcement of Sentence, 18 May 2009, p. 3.

⁹ “Nine ICTR Convicts Transferred to Benin”, ICTR/INFO-9-2-601.EN, 30 June 2009, available at <http://unictr.org/tabid/155/Default.aspx?id=1008>.

¹⁰ Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 4 March 2014, transmitting: (i) Note Verbale from the Ministry of Justice of Benin, dated 16 December 2013 (“Note Verbale”); (ii) Obagou Report; and (iii) Internal Memorandum from Hassan B. Jallow, Prosecutor, to John Hocking, Registrar, dated 3 February 2014 (“Prosecution Memorandum”).

¹¹ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 13 March 2014, transmitting: *Demande de libération anticipée: Observations sur le Mémoire du Procureur du MTPI et sur le Rapport des autorités béninoises*, dated 10 March 2014 (“Reply”).

or early release is appropriate.¹² 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.

8. 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.

9. Article 3(2) of the Agreement between the Government of the Republic of Benin and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, dated 26 August 1999 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by the law of Benin, subject to the supervision of the ICTR (and now, the Mechanism).¹³ Article 8 of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provides, *inter alia*, that, following notification of eligibility for early release under Beninese 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 Beninese authorities of the President's determination accordingly.

B. Eligibility under Beninese Law

10. Benin has informed the Registrar that, under Beninese law, Ntakirutimana is eligible for release on parole, having served half of his sentence.¹⁴ Prisoners may benefit from release on parole under the law of Benin if they meet certain conditions, including proof of good conduct and reliable guarantees of social rehabilitation.¹⁵

¹² Other than myself, none of the Judges of the sentencing Chambers are Judges of the Mechanism. On that basis, no consultations with other Judges of the Mechanism pursuant to Rule 150 of the Rules are required in determining this Application.

¹³ 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".

¹⁴ Obagou Report, pp. 1-2. *See also* Note Verbale, pp. 1-2.

¹⁵ *See* Note Verbale, p. 1; Obagou Report, p. 1.

11. I note, however, that even if Ntakirutimana may be eligible for release under the domestic law of Benin, the early release of persons convicted by the ICTR falls exclusively within the discretion of the President of the Mechanism, pursuant to Rule 150 of the Rules and Article 8(2) of the Enforcement Agreement.

C. Gravity of Crimes

12. The Prosecution underscores that Ntakirutimana was convicted of genocide and murder as a crime against humanity, crimes of extreme gravity.¹⁶ Ntakirutimana 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.¹⁷

13. Ntakirutimana was convicted of crimes of a very high gravity, which included acts such as attacking Tutsi refugees, and personally shooting and killing individuals.¹⁸ In determining Ntakirutimana's sentence, the Trial Chamber noted that it "is particularly egregious that, as a medical doctor, [Ntakirutimana] took lives instead of saving them".¹⁹ Moreover, the Trial Chamber observed that in several instances Ntakirutimana was found to have led attackers against Tutsi refugees and that he "personally shot at Tutsi refugees and that he thus directly contributed to the sheer death toll among the mainly defen[c]less Tutsi population".²⁰ In these circumstances, I am of the view that the high gravity of Ntakirutimana's offences weighs against his early release.

D. Eligibility and Treatment of Similarly-Situated Prisoners

14. I recall that ICTR convicts, like Ntakirutimana, 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.²¹ Although the two-thirds practice originates from the International Criminal Tribunal for the former Yugoslavia, 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.²² 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

¹⁶ Prosecution Memorandum, paras. 5-7.

¹⁷ Reply, paras. I(c), (e).

¹⁸ Trial Judgement, para. 832.

¹⁹ Trial Judgement, para. 910.

²⁰ Trial Judgement, paras. 911-912.

²¹ See *Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, 13 March 2014 (public redacted version) ("*Ruzindana Decision*"), para. 14. 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.

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.²³

15. Based on my own calculation, Ntakirutimana had completed more than two-thirds of his twenty-five year sentence as of 29 June 2013.²⁴

E. Demonstration of Rehabilitation

16. I note that the authorities of Benin did not provide any professional psychiatric or psychological evaluation of Ntakirutimana.²⁵ However, the Akpro-Misséréte Warden indicates that Ntakirutimana “is a prisoner who observes the provisions of internal regulations of the Akpro-Misséréte prison and leads a prison life in symbiosis with both his fellow detainees and the prison authorities”.²⁶ The Akpro-Misséréte Warden also notes Ntakirutimana’s “exemplary” conduct²⁷ and that he [REDACTED].²⁸

17. As a general matter, I note that the limited information provided by the Beninese authorities does not allow me to fully assess the extent to which Ntakirutimana 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 Ntakirutimana has no control, should not negatively affect his application for early release.²⁹

18. The Akpro-Misséréte Warden’s description of Ntakirutimana’s behaviour while in prison suggests that Ntakirutimana is capable of reintegrating into society if he is released. In this context, I am of the view that there is some evidence from Ntakirutimana’s “exemplary” behaviour in prison that he is able to live peacefully with others and to be of use to society. Accordingly, I consider Ntakirutimana’s demonstration of rehabilitation to weigh in favour of his early release.

F. Substantial Cooperation with the Prosecution

19. The Prosecution asserts that “[a]t no time has Ntakirutimana provided any cooperation to the [Office of the Prosecutor] of the ICTR or the [Mechanism]”.³⁰ The Prosecution also notes that, unlike the other convicted persons granted early release by the Mechanism thus far, Ntakirutimana

²² See *Ruzindana* Decision, para. 14; *Serushago* Decision, para. 17.

²³ See *Ruzindana* Decision, para. 14; *Serushago* Decision, paras. 18, 34.

²⁴ See Obagou Report, p. 2.

²⁵ See Obagou Report, p. 7.

²⁶ Obagou Report, p. 7.

²⁷ Obagou Report, p. 3. Specifically, the Akpro-Misséréte Warden notes that Ntakirutimana “gained the trust of the prison administration” and has served multiple terms as the representative of the Mechanism’s detainees. See Obagou Report, pp. 3-4.

²⁸ Obagou Report, p. 7.

²⁹ See, e.g., *Ruzindana* Decision, para. 18; *Serushago* Decision, para. 21.

³⁰ Prosecution Memorandum, para. 10 (emphasis omitted).

did not plead guilty.³¹ In his Reply, Ntakirutimana 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.³²

20. I note at the outset that entering a guilty plea promotes the efficient administration of justice and constitutes cooperation with the Prosecution.³³ However, an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.³⁴ I also note that the Prosecution does not indicate whether it or the Office of the Prosecutor of the ICTR sought Ntakirutimana's cooperation at any point during his trial or after he was convicted. I therefore consider that Ntakirutimana'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.

G. Other Factors: Humanitarian Concerns

21. 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.³⁵

22. [REDACTED].³⁶ I note that no official medical records or reports from a physician were provided, and that conflicting information exists about Ntakirutimana's current medical condition. In these circumstances, I consider that Ntakirutimana's health concerns are a neutral factor in my determination of whether to grant him early release.

H. Conclusion

23. Having carefully considered the factors identified in Rule 151 of the Rules, as well as the particular circumstances of Ntakirutimana's case, I conclude that Ntakirutimana should be granted early release. Specifically, Ntakirutimana has already completed more than two-thirds of his sentence and has demonstrated signs of rehabilitation. I believe that in context, the particular factors and circumstances of Ntakirutimana's case are sufficient to justify his early release.

³¹ Prosecution Memorandum, paras. 12-14. *See also* Prosecution Memorandum, paras. 15-19.

³² Reply, para. I(d).

³³ *See Ruzindana Decision*, para. 21.

³⁴ *See Ruzindana Decision*, para. 21, and references cited therein.

³⁵ *See, e.g., Ruzindana Decision*, para. 22; *Serushago Decision*, paras. 31, 33.

³⁶ Application, p. 1. *See also* Reply, para. II.

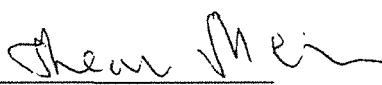
IV. DISPOSITION

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 inform the authorities of Benin 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 24th day of April 2014,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]





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