



AGREEMENT BETWEEN

THE UNITED NATIONS

AND

THE GOVERNMENT OF THE REPUBLIC OF BENIN

ON THE ENFORCEMENT OF SENTENCES

PRONOUNCED

BY THE

INTERNATIONAL CRIMINAL TRIBUNAL FOR

RWANDA

OR THE

INTERNATIONAL RESIDUAL MECHANISM FOR

CRIMINAL TRIBUNALS

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A handwritten signature in blue ink, consisting of a stylized, cursive script.



The United Nations, acting through the International Residual Mechanism for Criminal Tribunals, which is also known as the Mechanism for International Criminal Tribunals (hereinafter “the Mechanism”),

and

The Government of the Republic of Benin (hereinafter the “requested State”),

RECALLING Article 26 of the Statute of the International Criminal Tribunal for Rwanda (hereinafter “the ICTR”) adopted by Security Council Resolution 955 (1994) of 8 November 1994, according to which sentences of imprisonment pronounced by the ICTR shall be served in Rwanda or in any of the States on a list of States that have indicated to the Security Council their willingness to accept convicted persons;

RECALLING Security Council Resolution 1966 (2010) of 22 December 2010 establishing the Mechanism, with two branches, one branch for the ICTR with its seat in Arusha (hereinafter “the Arusha Branch”), and one branch for the International Tribunal for the former Yugoslavia (hereinafter “the ICTY”) with its seat in The Hague, and NOTING that the Arusha Branch commenced functioning on 1 July 2012;

RECALLING that, pursuant to Article 25 of the Statute of the Mechanism, the 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, and other agreements with international and regional organizations and other appropriate organizations and bodies;

RECALLING Article 25 of the Statute of the Mechanism, according to which imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose and that such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism, and ALSO RECALLING Rules 127 and 128 of the Rules of Procedure and Evidence of the Mechanism governing the place and supervision of imprisonment;

NOTING the willingness expressed by the requested State to enforce sentences pronounced by the ICTR or the Mechanism;

RECALLING the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council (ECOSOC) Resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, as revised as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by General Assembly Resolution 70/175 of 17 December 2015, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, adopted by General Assembly Resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners, adopted by General Assembly Resolution 45/111 of 14 December 1990;

IN ORDER to give effect to the judgments and sentences pronounced by the ICTR or the Mechanism;

HAVE AGREED as follows:

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Article 1

Purpose and Scope of the Agreement

This Agreement shall govern matters relating to or arising out of all requests to the requested State to enforce sentences pronounced by the ICTR or the Mechanism.

Article 2

Procedure

1. The Registrar of the Mechanism (hereinafter “the Registrar”) shall make a preliminary inquiry to the requested State to provide an indication of its readiness to enforce a sentence.
2. Upon receiving a positive response to the preliminary inquiry pursuant to paragraph 1, the Registrar shall provide the requested State with the following documents concerning the particular convicted person who the Mechanism is considering transferring for the purpose of serving the imposed sentence:
 - (a) a certified copy of the judgment(s) in a working language of the ICTR or the Mechanism;
 - (b) a statement indicating the length of the sentence that has already been served, including information on any pre-trial detention;
 - (c) any other documents of relevance including certified copies of identification papers of the convicted person in the Mechanism’s possession and, when appropriate and taking into account confidentiality requirements, any medical or psychological reports on the convicted person and any recommendation for his or her further treatment in the requested State.
3. The requested State shall promptly indicate to the Registrar whether it is willing and ready to accept the convicted person, following receipt of the documents pursuant to paragraph 2 of this Article.
4. Upon a decision by the President of the Mechanism designating the requested State as the State in which imprisonment shall be served, the Registrar shall formally request the requested State to enforce the sentence of the convicted person. The requested State shall, in accordance with its national law, promptly decide upon the request and notify the Registrar whether it accepts the Mechanism’s request to enforce the sentence of the convicted person.
5. All communications to the requested State relating to matters provided for in this Agreement shall be made to the Minister in charge of penitentiary administration through the Minister in charge of foreign affairs.



Article 3

Enforcement

1. In enforcing the sentence pronounced by the ICTR or the Mechanism, the competent authorities of the requested State shall be bound by the duration of the sentence so pronounced.
2. The conditions of imprisonment shall be governed by the law of the requested State and be subject to the supervision of the Mechanism.
3. Conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners, while also adhering to best practices in prison management aimed at ensuring, *inter alia*, the security of the detention facility and the convicted persons.

Article 4

Transfer of the convicted person

1. The Registrar shall make appropriate arrangements for the transfer of the convicted person from the Mechanism to the competent authorities of the requested State. Prior to the transfer, the Registrar shall inform the convicted person of the contents of this Agreement.
2. The requested State shall secure the transfer of the convicted person from the point of handover by Mechanism authorities to the prison in which the sentence is to be served, and, as required pursuant to paragraphs 3 and 4 below or Article 9, paragraph 2, from the prison to the custody of Mechanism authorities.
3. If, after transfer of the convicted person to the requested State, the ICTR or the Mechanism, in accordance with their respective Rules of Procedure and Evidence, orders that the convicted person appear as a witness in a judicial proceeding before them, the convicted person shall be transferred temporarily to the detention facility of the ICTR or the Mechanism for that purpose, conditional on the convicted person's return to the requested State within the period decided by the ICTR or the Mechanism.
4. The Registrar shall transmit the order for the temporary transfer of the convicted person to the competent authorities of the requested State. The Registrar shall ensure the proper transfer of the convicted person from the requested State to the detention facility of the ICTR or the Mechanism, as appropriate, and back to the requested State for his or her continued imprisonment after the expiration of the period of temporary transfer decided by the ICTR or the Mechanism. The convicted person shall receive credit for the period spent in the custody of the ICTR or the Mechanism, as appropriate.



5. The requested State shall cooperate with the Mechanism in the event of the need to evacuate the convicted person in case of an emergency which, in the view of the Mechanism, necessitates an evacuation and transfer to another prison in the requested State or to another State.

Article 5

Non bis in idem

The convicted person shall not be tried before a court of the requested State for acts constituting serious violations of international humanitarian law under the Statute of the ICTR or the Mechanism, for which the convicted person has already been tried by the ICTR or the Mechanism.

Article 6

Inspection

1. The competent authorities of the requested State shall allow the inspection of the conditions of detention and treatment of the convicted person by the International Committee of the Red Cross (hereinafter "ICRC") or by any other person or body designated by the Mechanism for that purpose at any time and on a periodic basis. The frequency of visits shall be determined by the ICRC or the designated person or body.

2. The ICRC or the designated person or body shall submit a confidential report based on the findings of these inspections to the requested State and to the President of the Mechanism. Representatives of the requested State and the President of the Mechanism shall consult each other on the findings of the report referred to above. The President of the Mechanism may thereafter request the requested State to inform him or her of any action taken in light of the suggestions made by the ICRC or the designated person or body.

3. Notwithstanding the provisions of paragraph 1 of this Article, the competent authorities of the requested State shall allow the Registrar or his or her designated representative, or any other person designated by the Registrar, to inspect the facilities housing the convicted person, consult or meet with relevant authorities on all matters related to enforcement of sentences and visit the convicted person.

Article 7

Communication

1. The relevant authorities of the requested State and the Registrar shall maintain open, direct and regular communication and shall consult each other on all matters relating to the enforcement of the sentence, upon request by either party. The relevant authorities of the requested State shall facilitate communications to and from convicted persons and the Mechanism.



2. The requested State shall immediately notify the Registrar:
 - (a) two months prior to the completion of the sentence;
 - (b) if the convicted person has escaped from prison;
 - (c) of the death of the convicted person;
 - (d) of a serious illness or injury of the convicted person, subject to medical confidentiality requirements.
3. Upon request of the Mechanism, the requested State shall provide any information regarding the convicted person's conditions of detention, including medical information, taking into account confidentiality requirements.
4. The requested State shall treat as confidential any communication related to the enforcement of sentences of the convicted person, except where the Mechanism indicates otherwise.

Article 8

Commutation of sentence, pardon and early release

1. The laws of the requested State governing commutation of sentence, pardon and early release shall apply to persons convicted by the ICTR or the Mechanism who are serving their sentences in the requested State. However, the convicted persons shall only be granted commutation of sentence, pardon or early release in accordance with the provisions of this Article.
2. The requested State shall notify the Registrar, where practicable, at least forty-five (45) days prior to the date of eligibility if, pursuant to the applicable national law of the requested State, the convicted person is eligible for commutation of sentence, pardon or early release.
3. In the event of a direct petition by the convicted person to the President of the Mechanism for commutation of sentence, pardon or early release, the requested State shall, upon request of the Registrar, inform the Registrar as to whether the convicted person is eligible for commutation of sentence, pardon or early release under its domestic law.
4. The requested State shall facilitate the provision of reports and observations from the relevant authorities of the requested State in relation to the convicted person during the period of incarceration in the enforcing State, upon request of the Registrar.
5. There shall only be commutation of sentence, pardon or early release if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law. The Registrar shall transmit the decision of the President of the Mechanism to the requested State, which shall execute the terms of the decision promptly.



6. Should the requested State, by reason of its domestic law or for any other reason, disagree with or be unable to accept the President of the Mechanism's decision not to allow commutation of sentence, pardon or early release, the President of the Mechanism may decide to withdraw the convicted person and transfer him or her to a different State to serve the remainder of his or her sentence.

Article 9

Termination of enforcement

1. Enforcement of the sentence shall cease:
 - (a) upon completion of the sentence;
 - (b) upon completion of the sentence following commutation, pardon or early release under Article 8 of this Agreement;
 - (c) following a decision of the Mechanism, pursuant to paragraph 2 of this Article;
 - (d) upon the demise of the convicted person.
2. The Mechanism may at any time decide to request termination of the enforcement of the sentence in the requested State and transfer the convicted person to another State or to the Mechanism.
3. The competent authorities of the requested State shall terminate enforcement of the sentence as soon as they are informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 10

Impossibility of enforcement of sentence

If, for any reason, further enforcement becomes impossible, the requested State shall promptly inform the Registrar. The Registrar shall make appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow for at least sixty (60) days, following the notification to the Registrar, before taking any other measures on the enforcement of the sentence.

Article 11

Costs

1. The Mechanism shall bear the expenses related to its own inspection, supervision and evaluation of the enforcement of the sentence.

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2. In line with the Mechanism's guidelines and policies, the Mechanism shall bear the expenses related to:

- (a) the transfer of the convicted person to and from the requested State;
- (b) the repatriation or relocation of the convicted person to another State upon completion of his or her sentence;
- (c) maintenance of the convicted person for the duration of the enforcement of the sentence, including food, telephone calls, incidental expenses and medical care, as agreed in writing by the Mechanism and the requested State. Any expenses exceeding the agreed amount may only be incurred with the prior authorization of the Mechanism;
- (d) any refurbishment works to upgrade the designated block allotted to the convicted person in the prison, as agreed upon in writing by the Mechanism and the requested State, to ensure compliance with international standards of imprisonment conditions for the convicted person;
- (e) in the event of the demise of the convicted person, reasonable expenses relating to the transportation and return of the mortal remains and his or her personal effects to family members of the deceased for burial, or, where necessary, burial expenses incurred by the requested State authorities, should the family of the deceased fail to collect his or her mortal remains.

3. The Government of the requested State shall defray all other expenses incurred in relation to the enforcement of the sentence, including:

- (a) Surveillance, protection, and security of the convicted person as well as overall daily management of their detention;
- (b) Salaries and other remuneration of the prison staff, and basic services and utilities, such as water, electricity, sanitation, including reasonable and necessary maintenance of the facilities housing the convicted persons.

Article 12

Transfer upon completion of sentence

1. Following completion of the sentence, the requested State may, in accordance with its national law and with the agreement of the Mechanism, transfer a convicted person to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the Government authorizes the person to remain in its territory.

2. The requested State may also, in accordance with its national law and with the agreement of the Mechanism, and subject to the *non bis in idem* principle under Article 7 of

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the Statute of the Mechanism, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence if the charges against him have been duly established.

3. The requested State undertakes to facilitate the stay in the requested State of the convicted person until the transfer or extradition takes place.

Article 13

Substitution clause

In the event of the conclusion of the Mechanism's mandate, the Registrar shall inform the Security Council of any sentences remaining to be completed in the requested State pursuant to this Agreement.

Article 14

Entry into force

1. This Agreement shall enter into force upon the signature of both parties.
2. 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, signed on 26 August 1999 is terminated by the conclusion of this Agreement, effective upon the entry into force of this Agreement.

Article 15

Amendment

This Agreement may be amended by written agreement of the parties.

Article 16

Duration of the Agreement

1. This Agreement shall remain in force as long as sentences pronounced by the ICTR or the Mechanism are being enforced by the requested State under the terms and conditions of this Agreement.
2. Either party may terminate this Agreement with two (2) months' prior written notice.

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3. This Agreement shall, however, continue to apply for a period not exceeding six (6) months with regard to any convicted person in respect of whom the requested State is, at the time of the termination of the Agreement, enforcing a sentence pronounced by the ICTR or the Mechanism.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

Done at Cotonou on this 12th day of the month of May in the Year 2017, in duplicate, in English and French, both texts being equally authentic.

FOR THE UNITED NATIONS

**FOR THE GOVERNMENT OF THE
REPUBLIC OF BENIN**

Olufemi Elias
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Registrar International Residual
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Aurélien A. AGBENONCI
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