

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-36-ES.2

Date: 15 March 2021

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambadou

Order of: 15 March 2021

PROSECUTOR

v.

LAURENT SEMANZA

PUBLIC

**ORDER TO THE REGISTRAR
RELATED TO LAURENT SEMANZA'S URGENT
PETITION FOR EARLY RELEASE**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Laurent Semanza:

Mr. Peter Robinson
Mr. Sadikou Alao

I, CARMEL AGIUS, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

BEING SEISED of a motion filed by Mr. Laurent Semanza (“Semanza”) on 11 March 2021 seeking immediate early release due to the presence of COVID-19 in the prison where he is serving his sentence and the high risk he faces if he were to contract COVID-19;¹

NOTING that Semanza was arrested in the Republic of Cameroon on or about 26 March 1996 pursuant to an international arrest warrant issued by the Republic of Rwanda and, following an order for transfer pursuant to Rule 40*bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“ICTR”), was transferred to the United Nations Detention Facility on 19 November 1997;²

NOTING that, on 20 May 2005, the Appeals Chamber of the ICTR: (i) affirmed Semanza’s convictions for rape, torture, and murder as crimes against humanity; (ii) reversed, in part, Semanza’s convictions for complicity in genocide and aiding and abetting extermination as a crime against humanity, and affirmed the remainder of these convictions; (iii) entered convictions for genocide, for ordering extermination as a crime against humanity, and for serious violations of Common Article 3 of the Geneva Conventions and Additional Protocol II; and (iv) increased Semanza’s sentence to 35 years of imprisonment, subject to a six-month reduction for violations of his fundamental pre-trial rights;³

NOTING that, after initially serving his sentence in the Republic of Mali, Semanza was transferred to the Republic of Benin (“Benin”) on 21 December 2018 to serve the remainder of his sentence;⁴

NOTING Semanza’s submissions that four prisoners serving their sentences in Benin under the supervision of the Mechanism have tested positive for COVID-19 and that due to his age and various medical conditions, he is “vulnerable to death from this virus”;⁵

RECALLING that pursuant to Article 25 of the Statute of the Mechanism, imprisonment in an enforcement State shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism;⁶

¹ Urgent Petition for Immediate Early Release due to COVID-19, 11 March 2021 (“Application”), paras. 1, 8.

² *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003, paras. 16, 20, 22.

³ *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 1995, pp. 125-126.

⁴ Order Designating State in Which Laurent Semanza is to Serve the Remainder of his Sentence, 19 December 2018, p. 2. *See also* Decision on Laurent Semanza’s Application for Early Release, 17 September 2020 (public redacted), para. 5; Decision on Motion for Provisional Release, 21 April 2020, p. 1.

⁵ Application, paras. 1, 4-5, 8.

⁶ *See also* Rule 128 of the Rules of Procedure and Evidence of the Mechanism.

RECALLING that Article 3(2) of the relevant enforcement agreement between the United Nations and the Government of Benin⁷ also provides that the conditions of imprisonment shall be governed by the law of Benin, subject to the supervision of the Mechanism;

RECALLING that Article 3(3) of the Enforcement Agreement provides, *inter alia*, that the conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners,⁸ the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment,⁹ and the Basic Principles for the Treatment of Prisoners;¹⁰

RECALLING that the Standard Minimum Rules, the Mandela Rules, the Body of Principles, and the Basic Principles all provide that prisoners shall have access to health care services,¹¹ and that, according to the Mandela Rules, “[p]risoners should enjoy the same standards of health care that are available in the community”;¹²

RECALLING that on 19 March 2020 in response to the COVID-19 pandemic, I immediately took steps directing the Registrar of the Mechanism (“Registrar”) to request as a matter of priority regular updates from enforcement States, including Benin, on the measures taken thus far in their detention facilities,¹³ and have more recently directed the Registrar to liaise with Benin to receive updated information in this respect;¹⁴

RECALLING further the substantial efforts already undertaken by the Mechanism to prepare a detailed response plan to a number of COVID-19 scenarios that could arise in an enforcement State;¹⁵

⁷ 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, dated 12 May 2017 (“Enforcement Agreement”).

⁸ Adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by Resolutions 663 C (XXIV), 31 July 1957 and 2076 (LXII), 13 May 1977 (“Standard Minimum Rules”). I note that a revised version of the Standard Minimum Rules was subsequently issued. *See* United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by United Nations General Assembly Resolution 70/175 of 17 December 2015 (“Mandela Rules”), as recalled in the Preamble of the Enforcement Agreement.

⁹ *See* General Assembly Resolution 43/173, 9 December 1988 (“Body of Principles”).

¹⁰ *See* General Assembly Resolution 45/111, 14 December 1990 (“Basic Principles”).

¹¹ Standard Minimum Rules, Rules 22-26; Mandela Rules, Rules 24-35; Body of Principles, Principle 24; Basic Principles, para. 9.

¹² Mandela Rules, Rule 24(1).

¹³ *See* Order for COVID-19 Updates from Enforcement States, 24 April 2020 (public redacted) (“Order of 24 April 2020”), p. 1.

¹⁴ Fifth Order for COVID-19 Updates from Enforcement States, 23 February 2021 (public redacted), p. 2; Fourth Order for COVID-19 Updates from Enforcement States, 30 October 2020 (public redacted), p. 2; Third Order for COVID-19 Updates from Enforcement States, 28 August 2020 (public redacted), p. 2; Second Order for COVID-19 Updates from Enforcement States, 26 June 2020 (public redacted), p. 2; Order of 24 April 2020, pp. 2-3.

¹⁵ *See e.g.* Internal Memorandum from the President to the Registrar, dated 27 April 2020 (confidential), para. 5; Internal Memorandum from the Chief, Registry, Arusha branch and Chief, Registry, Hague branch to the *Chef de*

RECALLING that 18 persons convicted by the ICTR are currently serving their sentence in the Akpro-Misséréké prison in Benin (“Convicted Persons” and “Prison”, respectively);

NOTING with serious concern the information regarding the spread of COVID-19 in the Prison, including the confirmation provided by the Beninese authorities that four Convicted Persons have tested positive for COVID-19;

CONSIDERING the urgency of the Application;

FINDING that in coming to my decision on the Application, I require as soon as feasible detailed submissions regarding the epidemiological situation in the Prison; steps taken to limit further COVID-19 infections in the Prison; and the procedures in place to treat prisoners who have already contracted the virus, including the capacity of nearby medical institutions to provide necessary care for those infected;

CONSIDERING that at least some of this information concerns medical information of Convicted Persons, and that it may therefore be appropriate for the Registrar to file a confidential and *ex parte* submission setting out the requested information;

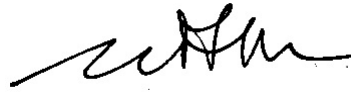
HEREBY ORDER the Registrar to continue to urgently liaise with the Beninese authorities and other relevant entities, and to thereafter file a submission at the earliest possible opportunity, but no later than Friday, 19 March 2021, at 14:00 hours (The Hague time) with detailed information regarding:

- (i) Whether all Convicted Persons have been tested for COVID-19, and if so the dates and most recent test results for each individual, provided that this is done with the consent of each individual;
- (ii) An assessment of the current medical condition of any Convicted Person who has tested positive for COVID-19 and clarification as to whether they have been isolated appropriately from others in the Prison, including the rest of the Convicted Persons;
- (iii) Updated information on the medical care available to the Convicted Persons, and should the need arise, their access to Level 3 Intensive Care Facilities in Benin and abroad;

Cabinet and Principal Legal Advisor, with a copy to the President and Registrar, dated 29 June 2020 (confidential), para. 2, Annex, paras. 1-51; Internal Memorandum from the President to the Registrar, dated 18 August 2020 (confidential), paras. 2-13; Internal Memorandum from the President to the Registrar, dated 5 November 2020 (confidential), paras. 3-5; Internal Memorandum from the Registrar to the President, dated 26 November 2020 (confidential), paras. 2-41; Internal Memorandum from the President to the Registrar, dated 15 December 2020 (confidential), paras. 3-5; Internal Memorandum from the President to the Registrar, dated 11 March 2021 (confidential), paras. 2-4.

- (iv) An updated assessment of whether the Prison contains the necessary facilities to ensure the immediate transportation of any of the Convicted Persons to a medical facility near the Prison should the situation so require;
- (v) Confirmation of the Mechanism's ability to evacuate on short notice any of the Convicted Persons to a medical facility outside Benin should the situation so require; and
- (vi) Information concerning the vaccination program in Benin and whether the Convicted Persons may count on a priority access to vaccines as appropriate in view of their age, medical history, and other factors.

Done this 15th day of March 2021,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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Date Created/ Daté du :	15 March 2021	Date transmitted/ Transmis le :	15 March 2021
			No. of Pages/ Nombre de pages : 5
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