

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-12-19-ES.1

Date: 31 December 2020

Original: English

---

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Carmel Agius, President

**Registrar:** Mr. Abubacarr Tambadou

**Decision of:** 31 December 2020

**PROSECUTOR**

v.

**SIMÉON NCHAMIHIGO**

*PUBLIC*

---

**DECISION ON SIMÉON NCHAMIHIGO'S  
APPLICATION FOR COMMUTATION OF SENTENCE**

---

**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Mr. Siméon Nchamihigo:**

Ms. Marie-Hélène Proulx

**Republic of Benin**

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

**BEING SEISED** of a request for “commutation of sentence” submitted by Mr. Siméon Nchamihigo (“Nchamihigo”) on 4 March 2019;<sup>1</sup>

**NOTING** that, on 19 May 2001, Nchamihigo was arrested in Arusha, United Republic of Tanzania, and, on 25 May 2001, he was transferred to the United Nations Detention Facility;<sup>2</sup>

**NOTING** that, on 12 November 2008, Trial Chamber III of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR”, respectively) convicted Nchamihigo of: (i) nine charges of genocide;<sup>3</sup> (ii) two charges of murder as a crime against humanity;<sup>4</sup> (iii) four charges of extermination as a crime against humanity;<sup>5</sup> and (iv) one charge of other inhumane acts as a crime against humanity;<sup>6</sup> and sentenced him to life imprisonment;<sup>7</sup>

**NOTING** that, on 18 March 2010, the Appeals Chamber of the ICTR: (i) reversed Nchamihigo’s convictions under six charges of genocide,<sup>8</sup> one charge of murder as a crime against humanity,<sup>9</sup> and two charges of extermination as a crime against humanity;<sup>10</sup> (ii) affirmed the remaining

<sup>1</sup> Request for Commutation of Sentence and Assignment of a *Pro Bono* Lawyer, dated 4 March 2019, filed publicly on 26 November 2020 (originally filed in French; English translation filed on 30 November 2020) (“Application”). See also Request for Clarification about my Pending Request for Commutation of Sentence, dated 12 March 2019, filed publicly on 26 November 2020 (originally filed in French; English translation filed on 30 November 2020) (“Letter of 12 March 2019”). I note that, in the Application, Nchamihigo also requested the assignment of *pro bono* counsel and that, on 23 July 2019, the Registrar of the Mechanism (“Registrar”) filed a notice, whereby he informed me, *inter alia*, that the Registry of the Mechanism had recognised Ms. Marie-Hélène Proulx as the *pro bono* counsel to Nchamihigo in relation to post-conviction proceedings. See *Prosecutor v. Siméon Nchamihigo*, Case No. MICT-12-29, Registrar’s Notice of Recognition of *Pro Bono* Counsel, 23 July 2019, para. 1.

<sup>2</sup> See *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence, 12 November 2008 (“Trial Judgement”), paras. 7, 400; *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Judgement, 18 March 2010 (“Appeal Judgement”), paras. 2, 405.

<sup>3</sup> Trial Judgement, paras. 347 (killings that took place on or about 7 April 1994), 354 (killings of Joséphine Mukashema, Hélène, and Marie), 357 (killing of Father Joseph Boneza), 360 (killings at the Gendarmerie on 16 April 1994), 369 (killings at Shanghi parish), 371 (massacre at Hanika parish), 374 (massacre at Mibilizi parish and hospital), 376 (massacre at Nyakanyinya school), 378 (massacres in Gihundwe sector), 395.

<sup>4</sup> Trial Judgement, paras. 354 (killings of Joséphine Mukashema, Hélène, and Marie), 357 (killing of Father Joseph Boneza), 395.

<sup>5</sup> Trial Judgement, paras. 347 (killings that took place on or about 7 April 1994), 374 (massacre at Mibilizi parish and hospital), 376 (massacre at Nyakanyinya school), 378 (massacres in Gihundwe sector), 395.

<sup>6</sup> Trial Judgement, paras. 350 (attack on Jean de Dieu Gakwandi), 395.

<sup>7</sup> Trial Judgement, para. 396.

<sup>8</sup> Appeal Judgement, paras. 83 (killings of Joséphine Mukashema, Hélène, and Marie), 314 (killings at the Gendarmerie on 16 April 1994), 322 (massacre at Mibilizi parish and hospital), 326 (massacre at Nyakanyinya school), 344 (killings at Shanghi parish), 355 (massacre at Hanika parish), 402, 405.

<sup>9</sup> Appeal Judgement, paras. 83 (killings of Joséphine Mukashema, Hélène, and Marie), 402, 405.

<sup>10</sup> Appeal Judgement, paras. 322 (massacre at Mibilizi parish and hospital), 326 (massacre at Nyakanyinya school), 402, 405.

convictions;<sup>11</sup> and (iii) set aside the sentence imposed by the Trial Chamber and sentenced him to 40 years of imprisonment;<sup>12</sup>

**NOTING** that, on 20 March 2012, Nchamihigo was transferred to the Republic of Benin (“Benin”) to serve the remainder of his sentence;<sup>13</sup>

**NOTING** that, on 5 December 2019, the Registrar transmitted to me a *note verbale* from Benin, dated 22 November 2019, in which Benin notified the Mechanism that, under Beninese law, Nchamihigo was not eligible for pardon, commutation of sentence, or early release;<sup>14</sup>

**RECALLING** that, pursuant to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism shall have the power to supervise the enforcement of sentences pronounced by the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the ICTR or the Mechanism;

**RECALLING** that, pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law;

**RECALLING** that, pursuant to Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), the President shall determine whether pardon, commutation of sentence, or early release is appropriate, in consultation with: (i) any Judges of the sentencing Chamber who are Judges of the Mechanism; or (ii) at least two other Judges, if none of the Judges who imposed the sentence are Judges of the Mechanism;

**RECALLING** that Article 3 of the relevant enforcement agreement between the United Nations and the Government of Benin<sup>15</sup> provides, *inter alia*, that, 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;

---

<sup>11</sup> Appeal Judgement, paras. 64 (genocide and extermination as a crime against humanity for the killings that took place on or about 7 April 1994), 253 (other inhumane acts as a crime against humanity for the attack on Jean de Dieu Gakwandi), 289 (genocide and murder as a crime against humanity for the killing of Father Joseph Boneza), 380 (genocide and extermination as a crime against humanity for the massacres in Gihundwe sector), 403, 405.

<sup>12</sup> Appeal Judgement, paras. 404-405.

<sup>13</sup> See ICTR Press Release, More ICTR Convicts Transferred to Mali and Benin to Serve their Sentences, 3 July 2012, available at: <<http://unictr.irmct.org/en/news/more-ictr-convicts-transferred-mali-and-benin-serve-their-sentences>>.

<sup>14</sup> Internal Memorandum from the Registrar to the President, dated 5 December 2019 (confidential), para. 3, Annex.

<sup>15</sup> 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, 12 May 2017 (“Enforcement Agreement”).

**RECALLING FURTHER** that Article 8 of the Enforcement Agreement provides, *inter alia*, that: (i) in the event of a direct petition by the convicted person to the President 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; and (ii) there shall only be commutation of sentence, pardon, or early release if the President so decides on the basis of the interests of justice and the general principles of law;

**RECALLING** that, in the first decision of the Mechanism on early release, serving two-thirds of the sentence was described as being “in essence, an admissibility threshold”,<sup>16</sup> and that, in subsequent decisions of the Mechanism, this threshold for early release applications was also applied to a convicted person’s eligibility for commutation of sentence;<sup>17</sup>

**CONSIDERING** that, given the need for equal treatment, this eligibility threshold applies irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether a matter involving commutation of sentence or early release is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State;<sup>18</sup>

**NOTING** that, while Nchamihigo requests the “commutation of [his] sentence”<sup>19</sup> and refers to applications submitted by certain persons convicted by the ICTR as applications for “commutation of sentence”, these were in fact applications for early release;<sup>20</sup>

---

<sup>16</sup> *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) (“*Bisengimana Decision*”), para. 19.

<sup>17</sup> *See Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision on Sentence Remission and Early Release of Milomir Stakić, 31 December 2020 (“*Stakić Decision*”), para. 35; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision of the President on Sentence Remission of Milomir Stakić, 17 March 2014 (public redacted version of decision issued confidentially on 19 December 2013), paras. 14-15.

<sup>18</sup> *See Stakić Decision*, paras. 35, 42; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza’s Application for Early Release, 17 September 2020 (public redacted version) (“*Semanza Decision*”), para. 26; *Prosecutor v. Milan Martić*, Case No. MICT-14-82-ES, Decision on the Early Release of Milan Martić, 7 August 2020 (“*Martić Decision*”), p. 3; *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision on the Early Release of Dragomir Milošević, 29 July 2020 (“*Milošević Decision*”), p. 3; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted version) (“*Brđanin Decision*”), para. 29; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted version) (“*Bralo Decision*”), para. 22; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted version) (“*Krstić Decision*”), paras. 16, 18. *See Bisengimana Decision*, para. 20. *See also* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“*Practice Direction*”), para. 8.

<sup>19</sup> Application, p. 1.

<sup>20</sup> *Cf.* Letter of 12 March 2019, p. 1 with *Semanza Decision*, para. 1; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on the Application of Dominique Ntawukulilyayo for Early Release, 8 January 2020,

**CONSIDERING** that Nchamihigo therefore seems to confuse the legal concepts of “commutation of sentence” and “early release”,<sup>21</sup> and that the relief being sought in the Application is not entirely clear;

**CONSIDERING** that, as Nchamihigo will not have served two-thirds of his sentence of 40 years’ imprisonment until January 2028,<sup>22</sup> he is in any event not yet eligible to be considered for either commutation of sentence or early release before the Mechanism at this stage;

**CONSIDERING** that in compelling or exceptional circumstances, commutation of sentence or early release may be granted prior to the serving of two-thirds of the sentence;<sup>23</sup>

**CONSIDERING** that nothing in the Application demonstrates compelling or exceptional circumstances that would warrant granting Nchamihigo commutation of sentence or early release;<sup>24</sup>

**CONSIDERING** that, as Nchamihigo is not yet eligible to be considered for commutation of sentence or early release before the Mechanism at this stage, and as no compelling or exceptional circumstances have been demonstrated, it is not necessary to consider additional information before reaching a conclusion on the Application;<sup>25</sup>

**CONSIDERING** that, although Benin has provided information regarding Nchamihigo’s ineligibility to benefit from commutation or early release under its domestic law, the commutation of sentence or early release of persons convicted by the ICTR in any event falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules;<sup>26</sup>

---

p. 1; *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release, 7 August 2019 (“*Musema Decision*”), p. 2 (noting that, while in his application Mr. Alfred Musema had requested the “commutation of [his] sentence”, he later agreed that it was reasonable to proceed on the basis that his application be treated as if it were an application for early release).

<sup>21</sup> See *Stakić Decision*, para. 34.

<sup>22</sup> Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 24.

<sup>23</sup> See *Stakić Decision*, paras. 35, 37, 44; *Martić Decision*, p. 4; *Milošević Decision*, p. 4; *Krstić Decision*, para. 17; *Musema Decision*, p. 3. See also *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted version), para. 16 and references cited therein.

<sup>24</sup> See Application.

<sup>25</sup> See e.g. Practice Direction, para. 10; 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, MICT/3/Rev.2, 20 February 2019, para. 4 (I note that this is the version that was in effect when the Application was submitted).

<sup>26</sup> See e.g. *Stakić Decision*, para. 47; *Prosecutor v. Vujadin Popović*, Case No. MICT-15-85-ES.2, Decision on the Early Release of Vujadin Popović, 30 December 2020 (public redacted version), p. 4; *Semanza Decision*, para. 29; *Martić Decision*, p. 4; *Milošević Decision*, p. 4; *Brđanin Decision*, para. 33; *Bralo Decision*, para. 26; *Krstić Decision*, para. 24.


**CONSIDERING** that, in accordance with Rule 150 of the Rules, I have consulted with the other Judges who imposed the sentence in Nchamihigo's case and who are Judges of the Mechanism, namely Judge Theodor Meron, Judge Liu Daqun, and Judge Gberdao Gustave Kam,<sup>27</sup> and they unanimously share my opinion that commutation of sentence or early release at this stage is inappropriate;

**FOR THE FOREGOING REASONS,**

**HEREBY DENY** the Application.

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

Done this 31st day of December 2020,  
At The Hague,  
The Netherlands.



Judge Carmel Agius  
President

**[Seal of the Mechanism]**

---

<sup>27</sup> See Trial Judgement; Appeal Judgement.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS

**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
<b>From/ De :</b>	<input checked="" type="checkbox"/> President / <i>Président</i>	<input type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
	<input type="checkbox"/> Registrar / <i>Greffier</i>	<input type="checkbox"/> Other/ <i>Autre</i>	<input type="checkbox"/> Defence / <i>Défense</i>
<b>Case Name/ Affaire :</b>	<b>PROSECUTOR v. SIMÉON NCHAMIHIGO</b>	<b>Case Number/ Affaire n° :</b>	<b>MICT-12-19-ES.1</b>
<b>Date Created/ Daté du :</b>	<b>31 December 2020</b>	<b>Date transmitted/ Transmis le :</b>	<b>31 December 2020</b>
			<b>No. of Pages/ Nombre de pages :</b> <b>6</b>
<b>Original Language / Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S
<b>Title of Document/ Titre du document :</b>	<b>DECISION ON SIMÉON NCHAMIHIGO'S APPLICATION FOR COMMUTATION OF SENTENCE</b>		
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
<b>Document type/ Type de document :</b>			
<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

**II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT**

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i> )
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input checked="" type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
<b>Original/ Original en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> B/C/S
<b>Translation/ Traduction en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> B/C/S
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*

[JudicialFilingsArusha@un.org](mailto:JudicialFilingsArusha@un.org) OR/ *OU* [JudicialFilingsHague@un.org](mailto:JudicialFilingsHague@un.org)

Rev: August 2019/ *Rév. : Août 2019*