



UNITED NATIONS  
International Residual Mechanism  
for Criminal Tribunals

Case no. MICT-12-29-ES.1

Date: 24 June 2026

Original: English

**BEFORE THE PRESIDENT**

**Before:** Judge Graciela Gatti Santana

**Registrar:** Mr. Abubacarr Tambadou

**THE PROSECUTOR**

v.

**AUGUSTIN NGIRABATWARE**

*PUBLIC*

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**PUBLIC REDACTED VERSION OF “APPLICATION FOR COMMUTATION OF SENTENCE OR EARLY RELEASE”**

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**Counsel for Augustin Ngirabatware:**

Mr. David Hooper KC, Lead counsel

Mr Sam Blom-Cooper, Co-counsel

**The Office of the Prosecutor:**

Mr. Serge Brammertz

## I. Introduction

1. This is an application for commutation of sentence or early release on behalf of Augustin Ngirabatware who is serving a sentence of thirty (30) years' imprisonment together with an additional sentence of two years' imprisonment for contempt ordered to run consecutively – therefore being a total of thirty-two (32) years' imprisonment.

2. Mr Ngirabatware is currently serving that sentence in Senegal and, having served more than half of the sentence, is now eligible for release under Senegalese domestic law.<sup>1</sup> This Application is Mr Ngirabatware's second request to seek a provisional release after his definitive convictions, and subsequent transfer to Senegal on 17 July 2021. The first request was submitted before the 'enforcement State' on 24 October 2024, and renewed on 5 May 2026. The Applicant submitted a request for an early release according to both the laws of the Republic of Senegal concerning early release, and the Agreement between the United Nations and the Republic of Senegal, Article 8(1).<sup>2</sup>

3. While recognising that eligibility for early release "generally" arises once two-thirds of the sentence has been served<sup>3</sup> it is submitted that Mr Ngirabatware's age, [REDACTED] and family circumstances, taken together with the recent practice of ordering conditional release, makes a commutation of sentence appropriate and in the interests of justice. Mr Ngirabatware applies for his sentence to be commuted on such terms as the President deems appropriate.

## II. Background

4. On 17 September 2007, Mr Ngirabatware was arrested in Germany and transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania, on 10 October 2008.

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<sup>1</sup> *“Les lois de l'Etat requis en matière de libération conditionnelle, grâce et commutation de peine sont applicables aux condamnés du Tribunal. Toutefois, cette application requiert l'avis préalable conforme du Tribunal.”* See Loi n° 2000-39 du 29 décembre 2000, Article 699 du Code de Procédure Pénale.

<sup>2</sup> Agreement Between the United Nations and the Government of the Republic of Senegal on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals, 22 November 2010.

<sup>3</sup> 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.4, 1 July 2024 (“Practice Direction”), para. 8.

5. On 20 December 2012, Mr Ngirabatware was convicted of ordering, aiding and abetting genocide and of direct and public incitement to commit genocide.<sup>4</sup> On 18 December 2014, the Appeals Chamber of the IRMCT affirmed the convictions for aiding and abetting genocide. He was sentenced to 30 years' imprisonment.<sup>5</sup>

6. On 19 June 2017, the Appeals Chamber granted Mr Ngirabatware's request for a review hearing.<sup>6</sup> On 27 September 2019, the Appeals Chamber decided that the Appeal Judgment remains in force in all respects.<sup>7</sup>

7. On 10 October 2019, Mr Ngirabatware was indicted for contempt of the ICTR and the Mechanism and/or incitement to commit contempt.<sup>8</sup>

8. On 25 June 2021, Single Judge found Mr Ngirabatware guilty of contempt for having interfered with the administration of justice and violating court orders, and sentenced him to 2 years' imprisonment, to run concurrently to the sentence of 30 years' imprisonment.<sup>9</sup>

9. On 17 July 2021, Mr Ngirabatware was transferred to the Republic of Senegal to serve the remainder of his sentence.

10. On 29 June 2022, the Appeals Chamber ordered the sentence of two years' for contempt to be served consecutively to his sentence of 30 years' already being served.<sup>10</sup>

11. On 10 October 2023, the Appeals Chamber dismissed Mr Ngirabatware's second request for review of the judgment rendered by the Appeals Chamber dismissing his appeal against conviction on 18 December 2014.<sup>11</sup>

12. Pursuant to the Practice Direction, Mr Ngirabatware submitted a request for early release before the State of Senegal on 24 October 2024, renewed on 5 May 2026.

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<sup>4</sup> *Prosecutor v bbatware*, ICTR-99-54-T, Trial Judgment, 20 December 2012.

<sup>5</sup> *Prosecutor v Ngirabatware*, MICT-12-29-A, Appeals Judgment, 18 December 2014.

<sup>6</sup> Decision on Ngirabatware's Motion for Review, 19 June 2017.

<sup>7</sup> *Prosecutor v. Ngirabatware*, MICT-12-29-R, Review Judgement, 27 September 2019.

<sup>8</sup> *Prosecutor v. Ngirabatware*, MICT-19-121, Decision on Confirmation of Indictment, 10 October 2019.

<sup>9</sup> *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Trial Judgment, pronounced on 25 June 2021 and filed in writing on 20 September 2021.

<sup>10</sup> *Prosecutor v. Fatuma et al.*, MICT-18-116-A, Appeals Judgment, 29 June 2022.

<sup>11</sup> *Prosecutor v Ngirabatware*, MICT-12-29-R.2, Decision on Augustin Ngirabatware's Second Motion for Review, 10 October 2023.

13. On 18 May 2026, the Director General of Correctional Services conveyed Mr Ngirabatware's Request for early release to Mrs. Yassine Fall, the Minister of Justice and Garde des Sceaux of Senegal.

### III. Applicable Law

14. Jurisdiction over cases at the ICTR devolved to The International Residual Mechanism for Criminal Tribunals (IRMCT) which exercises a supervisory function and primary control. The numbering of the relevant provisions has changed but the law and procedure remain the same. The relevant law is set out in Articles 25 and 26 of the Statute of the Mechanism.

15. The relevant Rules are contained in Part 9 of the Rules of Procedure and Evidence (RPE).<sup>12</sup>

16. The administrative procedure for applications is governed by the Practice Direction.

#### *Criteria for Early Release*

17. In deciding whether or not to order early release the President, and his consulting judges, must do so "on the basis of the interests of justice and the general principles of law." (Article 26 IRMCT Statute). The Rules further requires the President, in consultation with any judges to "determine... whether pardon or commutation of sentence, or early release, is appropriate", taking 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, as well as any substantial cooperation of the prisoner with the Prosecutor.<sup>13</sup>

#### *Eligibility for Release*

18. As a general rule before the ICTR/ICTY the policy, when considering early release, was to consider a person eligible when two-thirds of the sentence was served. Release

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<sup>12</sup> See Rules 149-151 of the Rules of Procedure and Evidence (RPE).

<sup>13</sup> Rules 150-151 RPE.

generally followed. That practice has been subsequently reflected by the IRMCT in §7 of the Practice Direction. As Judge Meron stated in the *Ćorić* case:

“I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case. Nevertheless, while it has been consistently emphasized that the two-thirds point is a mark of eligibility and not an automatic right to release, the Mechanism has inherited a long-standing practice of granting requests for early release upon completion of two-thirds of a sentence absent particular circumstances that warrant against it.”<sup>14</sup>

19. This criterion has been applied in cases where the designated State for sentence permits early release.<sup>15</sup> Senegal’s Agreement with the UN on enforcement of sentence provides that it is bound by the decisions of the ICTY/IRMCT as to sentence and to any ruling as to early release.

20. The policy concerning early release is a matter of practice. Being a discretionary matter, release earlier than the two-thirds point can be ordered. In *Lukić* it was observed,

“[...] I do note that a convicted person may apply for early release even before the completion of the two-thirds of his or her sentence. In such circumstances, the President would consider a convicted person's application or eligibility for early release, in exceptional cases, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, and where other factors have also weighed in favour of early release”.<sup>16</sup>

21. The President can, subject to Article 26, depart from the practice in an appropriate case and allow release before two-thirds of the sentence is served. What is and what is not ‘an appropriate case’ will be case specific and depend on the particular circumstances of the case at the time of review.

### *‘Commutation of Sentence’ or ‘Early release’?*

<sup>14</sup> Per Judge Meron, *Prosecutor v Valentin Ćorić*, MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019 (“*Ćorić Decision*”), para. 38.

<sup>15</sup> See *Prosecutor v. Ljube Boskoski and Johan Tarculovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarculovski, 8 April 2013, para. 17, and authorities cited. Also see *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-ES, Decision of the President on Sentence Remission of Goran Jelisić, 28 May 2013.

<sup>16</sup> *Prosecutor v. Lukić*, MICT-14-67-ES.4, Decision of the President on the Early release of Sreten Lukić, 17 September 2018, Judge Theodor Meron.

22. There is no explicit provision in the ICTR, ICTY or IRMCT Statutes or Rules for conditional early release. In *Bagaragaza* it was said that, as a consequence, “early release pursuant to the Rules is, in fact, an unconditional reduction or commutation of the sentence.”<sup>17</sup> Since that observation was made matters have changed. Cases have seen conditions imposed when granting early release<sup>18</sup> with failure to observe conditions a contempt of court leading to revocation of the order and re-arrest.<sup>19</sup> States must comply with the orders of the court and ensure conditions are kept. The observation in *Bagaragaza* that “the Tribunal has no means to supervise convicted persons on parole or to react if conditions for early release are being violated” must be seen as overtaken by these more recent cases. The imposition of conditions on release reflects the concerns expressed in Security Council Resolution 2422.<sup>20</sup> The power of the President to impose such conditions is consistent with the practice relating to an international institution’s implied powers and inherent jurisdiction.<sup>21</sup>

23. The ability to grant conditional release is a significant development. The more restrictive the conditions the closer it is to a custodial regime. It is well established in human rights jurisprudence that “[t]he difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance.”<sup>22</sup> The capacity to impose conditions, particularly of a restrictive nature, provides an opportunity for commuting a sentence in a way that mirrors a parole regime.

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<sup>17</sup> *Prosecutor v Bagaragaza*, Decision on the Early Release of Michael Bagaragaza 24 October 2011, Case No. ICTR-05-86-S

<sup>18</sup> *Čorić Decision*.

<sup>19</sup> See *Čorić Decision*, para. 78: “[...] f. Čorić shall be held in contempt of court, pursuant to Rule 90 of the Rules, if he violates any of the conditions as stated herein; g. The decision granting Čorić conditional release shall be revoked if he violates any of the conditions [...]”.

<sup>20</sup> United Nations Security Council Resolution 2422, U.N. Doc. S/RES/2422 (2018), 27 June 2018: “[...] Acting under Chapter VII of the Charter of the United Nations [...].10. Notes the views and concerns expressed by some Member States during the Security Council debate on 6 June 2018 about the current approach of the Mechanism to early release of persons convicted by the ICTR, and encourages the Mechanism to consider an appropriate solution, including by considering putting in place conditions on early release in appropriate cases.”

<sup>21</sup> See Advisory Opinion of the International Court of Justice on Legality of the Use by a State of Nuclear Weapons in Armed Conflict: “...the necessities of international life may point to the need for organizations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their activities. It is generally accepted that international organizations can exercise such powers, known as « implied » powers.” (1996) ICJ Reports 66, para. 76; The ICC Chambers also possess such implied powers and inherent jurisdiction was recognised in: Trial Chamber V- A, *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, 17 April 2014, Case No. ICC-01/09-01/11-1274, para. 77-78.

<sup>22</sup> ECHR, Grande Chambre, *Guzzardi v. Italy*, ‘Judgment’, 6 November 1980, Application No. 7367/76, para. 93

24. The making of conditions also addresses the concerns of victims and other parties. Use of conditions is to be welcomed as it provides a humane alternative for the Presidency in making these decisions. In the present case, for example, the President can impose conditions including conditions of residence, association and movement with effective electronic tagging and supervision.

25. The observations in *Lukié* included reference to “where other factors have also weighed in favour of early release”. Of what such ‘other factors’ comprise is not stated but clearly relate to any matter considered by the court sufficient to justify an early commutation or release.

26. A new matter that has arisen concerning cases for which the IRMCT is responsible is the effective closure of the institution as evidenced by present discussions taking place before the Security Council. It may even be suggested or ordered that prisoners currently serving sentences should do so in a state other than the current nominated state, including Rwanda itself. It is no part of this application to discuss the merits of such a possibility other than to submit that such a course, if put into effect, will, given its consequences for the prisoner, arguably amount to ‘other factors’ favouring an early release in order to balance the interests of justice with the rights of an accused. In such circumstances conditional release will provide an alternative to continued imprisonment where such imprisonment would be a detriment. It is not appropriate to address such matters in this present application but such matters will need to be addressed and argued fully by the Applicant should such a situation arise.

#### *Personal Circumstances of Augustin Ndirabatware*

27. Augustin Ndirabatware is now 69 years of age, having been born on 12 January 1957 in Nyamyumba Commune, Gisenyi Prefecture, Rwanda. After secondary education in Rwanda, he pursued further studies in Switzerland. He was employed as an assistant lecturer in Switzerland from 1981-1986 and after training in business management and international financial instruments obtained a PhD in Economic Sciences in 1986.

28. Upon his return to Rwanda, he was appointed in July 1990 to the post of Minister of Planning, a position he retained until July 1994. The Ministry was in charge of economic

policy, investments, statistics and planning for the parastatal companies and oversaw the national office responsible for project studies, development and the implementation of agreements for cooperation. He was also a part-time lecturer in the Faculty of Economics at the National University of Rwanda in Butare during the 1990s. As the Minister of Planning between 1990 and 1994, Mr Ngirabatware was part of several Rwandan delegations travelling abroad and led various joint commissions to other countries.

29. Mr Ngirabatware left Rwanda in 1994 and settled with his wife and two children [REDACTED], where they still live. He has siblings and extended family living [REDACTED]. He has received regular visits and support from many of his family and friends who regularly travel to Senegal to visit him and provide support.

30. He continues to pursue his work in economics and has published several books while in custody including publication with acclaim in 2022 of “*Reflections on the Economy of Rwanda. Understanding the Growth of an Economy at War during the Last Thirty Years*” which was recognised as contributing to African economic policy and led to research centres and institutes in Senegal and other countries offering collaboration and consultation with him in the event of early release or commutation of sentence.

31. Aged 69, Mr Ngirabatware’s [REDACTED]. Within the last 3 years of incarceration in Senegal, he [REDACTED]. In the past 18 months he [REDACTED]. An early release would be beneficial to his condition.

32. Mr Ngirabatware recognises the seriousness of the offences.

33. There is no chance of any repetition. He poses no danger to any victim, witness, or other person.

34. In the event of an earlier release Mr Ngirabatware would be willing to remain in Senegal [REDACTED]. He will pose no financial burden to Senegal as his family [REDACTED] will formally undertake to support him financially. Fluent in five languages he has sought to become fluent in the *lingua franca* of Senegal - Wolof. He has contact with institutions willing to offer him a position as an economic planning consultant and will continue with his economic research and writing.

35. Mr Ngirabatware expresses his acceptance of such conditions as may be imposed as to residence, association, reporting, electronic tagging *etc.* and confirms his commitment to sign a Conditional Early Release Agreement. He is willing to be subject to electronic monitoring. Such a tag will limit the parameters of movement of the wearer to the extent thought appropriate.

36. He is willing to abide by further conditions, as appropriate. These can include, as in the *Ćorić* case, restrictions on contact with witnesses, victims or other accused; non-contact with media or other means of communication; no conduct likely to cause upset or concern to victims *etc.* Mr Ngirabatware fully understands that failure to comply with any of the provisions would likely lead to his recall.

37. Mr Ngirabatware will have served 19 years' imprisonment on 17 September 2026.

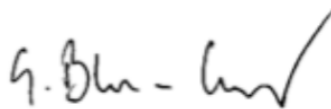
### Conclusion

38. Given the applicant's age, declining health, and family situation, a commutation of sentence or early release with sufficient, restrictive monitoring conditions is appropriate and in the interest of justice, would enable Mr Ngirabatware to live in more humane circumstances and give support, aid and comfort to his wife and family and would be sufficient to address the interests and concerns of the victims of his crimes.

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David Hooper K.C.

A handwritten signature in black ink, appearing to read 'S. Blom-Cooper', with a checkmark-like flourish at the end.

Sam Blom-Cooper





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| <b>Date Created/ Daté du :</b>                              | 24/06/2026  | <b>Date transmitted/ Transmis le :</b>   | 24/06/2026   | <b>Number of Pages/ Nombre de pages :</b>   | 10   |  |
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