

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-34-ES

Date: 18 February 2026

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 18 February 2026

PROSECUTOR

v.

DOMINIQUE NTAWUKULILYAYO

CONFIDENTIAL REDACTED VERSION

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF DOMINIQUE NTAWUKULILYAYO**

Counsel for Mr. Dominique Ntawukulilyayo:

Mr. Philippe Larochelle

Republic of Benin

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of an application for early release filed by Mr. Dominique Ntawukulilyayo (“Ntawukulilyayo”) on 12 December 2024.¹

I. BACKGROUND

2. On 17 October 2007, Ntawukulilyayo was arrested in the French Republic and, on 5 June 2008, he was transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania.² At his initial appearance, Ntawukulilyayo pleaded not guilty to all charges against him.³

3. On 3 August 2010, Trial Chamber III of the International Criminal Tribunal for Rwanda (“ICTR”) convicted Ntawukulilyayo, pursuant to Article 6(1) of the Statute of the ICTR, for ordering and aiding and abetting genocide and sentenced him to 25 years of imprisonment.⁴

4. On 14 December 2011, the Appeals Chamber of the ICTR affirmed Ntawukulilyayo’s convictions for aiding and abetting genocide, reversed his conviction for ordering genocide, and reduced his sentence to 20 years of imprisonment.⁵

5. On 1 July 2012, Ntawukulilyayo was transferred to the Republic of Mali to serve the remainder of his sentence.⁶

6. On 8 July 2016, the then-President denied Ntawukulilyayo’s first early release application, finding, *inter alia*, that the crimes for which Ntawukulilyayo was convicted were “of a high gravity” and that he had failed to demonstrate the existence of exceptional circumstances warranting his early release prior to serving two-thirds of his sentence.⁷

¹ Request for Reconsideration of the Decision on the Application for Early Release of Dominique Ntawukulilyayo, 12 December 2024 (confidential) (“Application”). A public redacted version of the Application was filed on the same day. See Public Redacted Version of Request for Reconsideration of the Decision on the Application for Early Release of Dominique Ntawukulilyayo, 12 December 2024.

² *Dominique Ntawukulilyayo v. Prosecutor*, Case No. ICTR-05-82-A, Judgement, 14 December 2011 (“Appeal Judgement”), para. 2; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, Judgement and Sentence, 3 August 2010 (“Trial Judgement”), paras. 92, 480, Annex A, para. 2.

³ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-I, Transcript of 10 June 2008, p. 10.

⁴ Trial Judgement, paras. 28-29, 457, 460-462, 479-480.

⁵ Appeal Judgement, paras. 206-207, 229, 237, 245-246.

⁶ See ICTR Press Release, More ICTR Convicts Transferred to Mali and Benin to Serve their Sentences, 3 July 2012, available at <https://unictr.irmct.org/en/news/more-ictr-convicts-transferred-mali-and-benin-serve-their-sentences>; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82, Decision on the Enforcement of Sentence, 8 February 2012, p. 3.

⁷ Decision of the President on the Early Release of Dominique Ntawukulilyayo, 8 July 2016 (public redacted) (“Decision of 8 July 2016”), paras. 16-18, 35-37.

7. On 19 December 2018, Ntawukulilyayo was transferred to the Republic of Benin (“Benin”) where he is currently serving the remainder of his sentence.⁸

8. On 8 January 2020, my predecessor denied Ntawukulilyayo’s second early release application on the grounds that he was not yet eligible to be considered for early release and had failed to demonstrate the existence of exceptional circumstances warranting his early release prior to serving two-thirds of his sentence.⁹

9. On 15 July 2024, I denied Ntawukulilyayo’s third early release application, as he had failed to demonstrate the existence of compelling humanitarian considerations warranting his early release.¹⁰

10. Ntawukulilyayo has served more than two-thirds of his 20-year sentence which will expire on 11 October 2027.¹¹ He has already spent close to 18.5 years in prison, representing more than 90 per cent of his sentence.

II. APPLICATION AND RELEVANT MATERIALS

11. On 12 December 2024, Ntawukulilyayo filed the Application, in which he requests, *inter alia*, that I reconsider the Decision of 15 July 2024 and order his early release, and indicates that, if released early, he would temporarily reside in Benin pending his potential relocation to another State.¹² Although submitted as a request for reconsideration of the Decision of 15 July 2024, I decided to treat the Application as a new direct petition for early release since it raises new facts and arguments.¹³ In support of the Application, Ntawukulilyayo relies on several medical assessments, namely: (i) a psychological report prepared by the prison psychologists following a consultation with Ntawukulilyayo on 4 July 2024;¹⁴ (ii) a medical report, dated 11 July 2024;¹⁵ (iii) a list of prescriptions and daily medical treatments, dated 2 August 2024;¹⁶ and (iv) a medical report prepared by a [REDACTED], dated 3 December 2024.¹⁷ Ntawukulilyayo also submits supporting letters from

⁸ Order Designating State in Which Dominique Ntawukulilyayo is to Serve the Remainder of his Sentence, 19 December 2018, p. 2.

⁹ Decision on the Application of Dominique Ntawukulilyayo for Early Release, 8 January 2020 (“Decision of 8 January 2020”), p. 6.

¹⁰ Decision on the Application for Early Release of Dominique Ntawukulilyayo, 15 July 2024 (public redacted) (“Decision of 15 July 2024”), paras. 42-43. *See also* Decision of 15 July 2024, paras. 29-39.

¹¹ Internal Memorandum from the Registrar of the Mechanism (“Registrar”) to the President, dated 7 May 2025 (confidential), p. 12. *See also* Decision of 8 January 2020, p. 6; Decision of 8 July 2016, para. 22.

¹² Application, paras. 1-2, 9, 11, 39, 43.

¹³ *See* Invitation to the Republic of Benin Related to the Request for Reconsideration of Dominique Ntawukulilyayo, 20 December 2024 (confidential) (“First Invitation”), p. 1; Application, paras. 26-42.

¹⁴ Application, Annex A (“First Psychological Report”).

¹⁵ Application, Annex B (“Medical Report of 11 July 2024”).

¹⁶ Application, Annex C.

¹⁷ Application, Annex H (“Medical Report of 3 December 2024”).

his daughter on his behalf and on behalf of his children,¹⁸ as well as undertakings from his family members and a family acquaintance providing guarantees concerning his accommodation and medical care during his release in Benin,¹⁹ and statements regarding voluntary work carried out for various social organisations before his arrest.²⁰

12. On 20 December 2024, I invited the Beninese authorities to provide me with the information set out in paragraphs 10(a) through 10(c) and 10(f) of the applicable Practice Direction,²¹ namely: (i) any reports and observations from the appropriate authorities as to Ntawukulilyayo's behaviour during his incarceration and the general conditions under which he is imprisoned; (ii) any psychiatric or psychological evaluations on Ntawukulilyayo's mental condition, including in relation to any risks posed by his release and any remarks he has made regarding the crimes for which he was convicted and the victims of these crimes; (iii) any medical reports on Ntawukulilyayo's physical condition, including whether he is capable of serving his sentence in Benin; and (iv) any information on whether he is eligible for pardon, commutation of sentence, or early release under the law of Benin.²² I also invited the Beninese authorities to provide their views on the Application and Ntawukulilyayo's indication that he would temporarily stay in Benin if released early, and to confirm their willingness to authorise his temporary stay in Benin, to monitor any conditions that may be imposed by the Mechanism in the event of an early release in this case, and to provide guarantees to that effect.²³

13. On the same day, I requested, pursuant to paragraph 10(e) of the Practice Direction, the Office of the Prosecutor of the Mechanism ("Prosecution") to provide a detailed report on any cooperation of Ntawukulilyayo with the Prosecution of the ICTR or the Mechanism, as well as any other comments or information it considers relevant for the determination of the Application.²⁴ Furthermore, I asked the Registry of the Mechanism ("Registry") to provide me with: (i) information concerning the victims of the crimes for which Ntawukulilyayo was convicted and who testified in

¹⁸ See Application, Annex D ("Letter of 13 August 2004"), Annex E ("Letter of 30 November 2024"). I note that the Letter of 30 November 2024 attaches a power of attorney granted to Ntawukulilyayo's daughter, dated 5 October 2024. See Letter of 30 November 2024, Registry Pagination ("RP") 1141. I also note that, on 26 August 2024, I responded to the Letter of 13 August 2024, informing Ntawukulilyayo's family that, as he is represented by Counsel before the Mechanism, any request for reconsideration should be pursued through his Counsel. See Letter from the President to Ntawukulilyayo's daughter, dated 26 August 2024 (confidential).

¹⁹ See Application, para. 39, Annex F ("First Undertaking") (containing an undertaking from Ntawukulilyayo's daughter on behalf of his children, dated 21 October 2024), Annex G ("Second Undertaking") (containing an undertaking from a family acquaintance, dated 28 October 2024) (collectively, "First and Second Undertakings").

²⁰ See Application, para. 40, Annex I, RP 1132-1125, 1123-1122.

²¹ 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").

²² First Invitation, pp. 2-3.

²³ First Invitation, p. 3.

²⁴ Internal Memorandum from the President to the Prosecutor of the Mechanism ("Prosecutor"), dated 20 December 2024 (confidential), para. 3.

his case; (ii) any media reports concerning Ntawukulilyayo published in the Republic of Rwanda (“Rwanda”) in the last two years; and (iii) information regarding the existence of any relevant victims’ associations and groups in relation to the crimes for which he was convicted.²⁵

14. On 17 January 2025, I received a memorandum from the Prosecutor providing comments and information in relation to the Application.²⁶

15. On 24 January 2025, the Registrar transmitted to me an overview of media reports concerning Ntawukulilyayo published in Rwanda in the past two years.²⁷

16. On 18 February 2025, the Registrar provided me with a strictly confidential memorandum from the Witness Support and Protection Unit of the Mechanism (“WISP”), conveying information regarding witnesses who provided evidence in the case against Ntawukulilyayo, together with a list of 14 victims’ associations and groups related to the crimes for which he was convicted.²⁸

17. On 26 February 2025, I instructed the Registry to invite the above-mentioned 14 victims’ associations and groups to submit their views on the Application, if they so wished.²⁹

18. On 9 April 2025, the Registrar transmitted to me the response received from one of these victims’ associations and groups.³⁰

19. On 17 April 2025, the Registrar filed a hospitalisation report received from the Beninese authorities concerning Ntawukulilyayo’s health condition, issued by a doctor at *Clinique Louis Pasteur* in Porto Novo and dated 11 April 2025.³¹

20. On 28 April 2025, Ntawukulilyayo filed the same Hospitalisation Report of 11 April 2025 as well as a medical report, issued by the same doctor and also dated 11 April 2025, submitting that

²⁵ Internal Memorandum from the President to the Registrar, dated 20 December 2024 (confidential), paras. 2-3.

²⁶ Internal Memorandum from the Prosecutor to the President, dated 17 January 2025 (confidential).

²⁷ Internal Memorandum from the Registrar to the President, dated 24 January 2025 (confidential).

²⁸ Internal Memorandum from the Registrar to the President, dated 18 February 2025 (confidential), *transmitting* an Internal Memorandum from the Legal Officer and Officer-in-Charge of WISP, Arusha branch, to the Registrar, dated 18 February 2025 (strictly confidential).

²⁹ Internal Memorandum from the President to the Registrar, dated 26 February 2025 (confidential), para. 2.

³⁰ Internal Memorandum from the Registrar to the President, dated 9 April 2025 (confidential), para. 3, *transmitting* a letter from the *Association des veuves du génocide Agahozo*, dated 27 March 2025.

³¹ Registrar’s Submission Pursuant to the “Invitation to the Republic of Benin Related to the Request for Reconsideration of Dominique Ntawukulilyayo” of 20 December 2024, 17 April 2025 (confidential with confidential and *ex parte* Annex), para. 3, Annex (“Hospitalisation Report of 11 April 2025”). To the extent that medical reports originally filed in French have their English translations filed on the record, references thereto are made to the official English translations.

Ntawukulilyayo's medical situation required early release based on the existence of compelling humanitarian considerations.³²

21. On 8 May 2025, considering the First Medical Report of 11 April 2025, I issued a second invitation to the Beninese authorities to provide me with the complete information previously requested in the First Invitation and to take all necessary measures to ensure that Ntawukulilyayo's conditions of imprisonment comply with international standards and his rights are fully protected, taking into account his present needs, including his placement in a specialised infrastructure if required.³³

22. On the same day, given the information contained in the First Medical Report of 11 April 2025 and the absence of other available information, I found it appropriate to seek additional medical expertise to assist my determination of whether compelling humanitarian considerations exist that may warrant granting the Application. I therefore issued an order instructing the Registrar to: (i) appoint, on an urgent basis, an independent medical expert in the field of [REDACTED] or a related field ("Independent Medical Expert"); (ii) request the Independent Medical Expert to provide me with a comprehensive report on Ntawukulilyayo's health condition; and (iii) file the Independent Medical Expert's report on the judicial record upon receipt.³⁴

23. On 26 June 2025, the Registrar filed a submission, reporting that an Independent Medical Expert had been appointed the previous day.³⁵

24. On 7 August 2025, following an extension of time granted due to, *inter alia*, difficulties the Independent Medical Expert faced in visiting Ntawukulilyayo at the prison in Benin,³⁶ the Registrar filed the Independent Medical Expert's report of the same day, in accordance with the Order of 8 May 2025.³⁷

³² Submissions Further to the "Registrar's Submission Pursuant to the 'Invitation to the Republic of Benin Related to the Request for Reconsideration of Dominique Ntawukulilyayo' of 20 December 2024", 28 April 2025 (confidential) ("Submissions of 28 April 2025"), paras. 2, 12, Annex A ("First Medical Report of 11 April 2025").

³³ Further Invitation to the Republic of Benin Related to the Request for Reconsideration of Dominique Ntawukulilyayo, 8 May 2025 (confidential) ("Second Invitation"), pp. 3-4.

³⁴ Order for Appointment of an Independent Medical Expert, 8 May 2025 (confidential) ("Order of 8 May 2025"), pp. 2-3.

³⁵ Registrar's Submission in Relation to the "Order for Appointment of an Independent Medical Expert" of 8 May 2025, 26 June 2025 (confidential), para. 5. *See* Decision on Registrar's Request for an Extension of time to Appoint an Independent Medical Expert, 11 June 2025 (confidential); Registrar's Request for an Extension of Time in Relation to the "Order for Appointment of an Independent Medical Expert" of 8 May 2025, 5 June 2025 (confidential).

³⁶ Decision on Request for Extension of Time to Submit Independent Medical Expert's Report, 25 July 2025 (confidential), pp. 1-2. *See* Registrar's Request for an Extension of Time in Relation to the "Order for Appointment of an Independent Medical Expert" of 8 May 2025, 21 July 2025 (confidential).

³⁷ Registrar's Submission in Relation to the "Order for Appointment of an Independent Medical Expert of 8 May 2025", 7 August 2025 (confidential with confidential and *ex parte* Annex), para. 5, Annex ("Independent Medical Expert Report of 7 August 2025"). On 22 August 2025, I issued a decision granting Ntawukulilyayo's request to reclassify the

25. On 26 August 2025, I again invited the Beninese authorities to submit the information that had been sought in the First Invitation and the Second Invitation, considering that it may be important to the full and fair consideration of the Application.³⁸

26. From 30 September to 2 October 2025, representatives from my Office and the Registry conducted a joint mission to Benin to engage directly with the Beninese authorities and to follow up on outstanding information relevant to Ntawukulilyayo's Application.³⁹

27. On 12 November 2025, the Registrar filed a medical report prepared by the Head of the Health and Hygiene Department of the Benin Prison Agency ("Head of the Health Department"), dated 10 November 2025, and a psychological report, prepared by a psychologist, dated 10 October 2025.⁴⁰ The Registrar noted that the Head of the Health Department indicated, in his transmission email, that the remaining requested information was being transmitted to the Mechanism via official channels.⁴¹

28. On 22 January 2026, the Registrar filed another medical report received from the Beninese authorities concerning Ntawukulilyayo's health condition, also dated 11 April 2025 and signed by the same doctor who issued the First Medical Report of 11 April 2025.⁴²

29. As of today, the information requested from the Beninese authorities remains pending, despite repeated follow-ups by the Registry and my Office.

30. Pursuant to paragraph 12 of the Practice Direction, I considered whether to communicate to Ntawukulilyayo, in a language that he understands, selected material collected in the context of the

Independent Medical Expert Report of 7 August 2025 as confidential. *See* Decision on Dominique Ntawukulilyayo's Request for Reclassification of the Independent Medical Expert's Report, 22 August 2025 (confidential), p. 2.

³⁸ Third Invitation to the Republic of Benin Related to the Request for Early Release of Dominique Ntawukulilyayo, 26 August 2025 (confidential), pp. 2-3.

³⁹ Internal Memorandum from the *Chef de Cabinet* and Principal Legal Advisor and Legal Officers in the Office of the President and the Registry to the President and the Registrar, dated 4 November 2025 (confidential), para. 1, Annex, paras. 14, 17, 43, 53, 70.

⁴⁰ Registrar's Submission Pursuant to the "Third Invitation to the Republic of Benin Related to the Request for Early Release of Dominique Ntawukulilyayo" of 26 August 2025, 12 November 2025 (confidential) ("Registrar's Submission of 12 November 2025"), para. 4, Annex ("Annex to the Registrar's Submission of 12 November 2025"), RP 4/1326 BIS-2/1326 BIS ("Medical Report of 10 November 2025"), RP 1/1326 BIS ("Psychological Report of 10 October 2025"). On 21 November 2025, following my instruction, the Registrar lifted the *ex parte* classification of the Annex to the Registrar's Submission of 12 November 2025. *See* Registrar's Notice of Change of Security Classification, 21 November 2025 (confidential), paras. 3-4. *See* Email Communication from the *Chef de Cabinet* and Principal Legal Advisor to the President to the Officer-in-Charge, Registry, Arusha branch, dated 19 November 2025 (confidential).

⁴¹ Registrar's Submission of 12 November 2025, para. 4.

⁴² Registrar's Second Submission Pursuant to the "Third Invitation to the Republic of Benin Related to the Request for Early Release of Dominique Ntawukulilyayo" of 26 August 2025, 22 January 2026 (confidential with confidential and *ex parte* Annex), para. 4, Annex ("Second Medical Report of 11 April 2025", together with the First Medical Report of 11 April 2025, "Medical Reports of 11 April 2025", and together with the First Medical Report of 11 April 2025 and the Hospitalisation Report of 11 April 2025, "Medical and Hospitalisation Reports of 11 April 2025").

Application. I am, however, satisfied that the information before me is sufficient to adjudicate the Application and that no further submissions from Ntawukulilyayo are necessary. Given the disposition of the present decision, adjudicating the Application without inviting any further submissions from Ntawukulilyayo in response to the collected material does not result in any prejudice to him.

31. With regard to the Application, I consulted Judge Lee G. Muthoga, Judge Carmel Agius, and Judge Liu Daqun, in their capacity as Judges of the respective sentencing Chambers, in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) and paragraph 16 of the Practice Direction.

III. APPLICABLE LAW

32. According to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism supervises the enforcement of sentences pronounced by the ICTR, the International Criminal Tribunal for the former Yugoslavia (“ICTY”), or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States.

33. 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. While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to adjudicate such requests, which is also consistent with the longstanding practice of the ICTR, the ICTY, and the Mechanism.

34. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, determine whether a pardon, commutation of sentence, or early release is appropriate, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism.

35. The general standards for granting early release are set out in Rule 151 of the Rules, which states that, 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.

36. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release if he or she believes that he or she is eligible.

37. Paragraph 10 of the Practice Direction indicates that the President may collect, directly or through the Registry, information, which he or she considers relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate.

38. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules.

39. Paragraph 20 of the Practice Direction states that, if early release is granted, it may be subject to conditions.

40. The enforcement agreement between the United Nations and Benin⁴³ provides, in Article 8(5), that there shall only be pardon, commutation of sentence, or early release if the President so decides on the basis of the interests of justice and the general principles of law, and that the Registrar shall transmit the decision of the President to the Beninese authorities, which shall execute the terms of the decision promptly. Article 12(3) of the Enforcement Agreement provides that, upon completion of the sentence, Benin shall facilitate the stay of a convicted person until transfer.

IV. ANALYSIS

A. Preliminary Issue

41. At the outset, although the Application was not limited to compelling humanitarian considerations, the subsequent information received requires that my assessment focus mainly on Ntawukulilyayo's health condition. My determination of the Application is therefore guided by whether the information before me demonstrates the existence of compelling humanitarian considerations warranting early release.

42. In this regard, if a particular situation requires the release of a convicted person based on compelling humanitarian considerations, it is immaterial whether any of the factors set out in

⁴³ 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").

Rule 151 of the Rules weigh in favour of or against the convicted person's early release.⁴⁴ Indeed, while any early release based on the existence of compelling humanitarian considerations will necessarily require that a very high threshold be met, due to its inherent nature, it will not be dependent on the convicted person's demonstration of rehabilitation or an assessment of the gravity of his or her crimes, for example.⁴⁵ In such a scenario, it is not the behaviour of the convicted person, but rather the specific and prevailing circumstances, often due to his or her health condition, that will dictate whether the person should be released in accordance with the Mechanism's legal framework.⁴⁶

B. Humanitarian Considerations

1. Submissions and Medical Information

43. In the Application, Ntawukulilyayo submits that his medical situation requires early release based on the existence of compelling humanitarian considerations.⁴⁷ He contends that the lack of access to appropriate medical care capable of preserving his dignity and responding to his specific requirements are "accelerating the deterioration of his condition towards a certain and possibly imminent death".⁴⁸ He therefore requests to be released and relocated to an environment where he may receive suitable treatment.⁴⁹

44. The First Psychological Report records Ntawukulilyayo's medical history of [REDACTED].⁵⁰ It recalls earlier findings [REDACTED].⁵¹ During the consultation, the psychologists observe [REDACTED].⁵² The report notes [REDACTED] perceived by Ntawukulilyayo as [REDACTED].⁵³ Ntawukulilyayo also expresses [REDACTED].⁵⁴ The psychologists advance [REDACTED].⁵⁵ They recommend [REDACTED].⁵⁶

⁴⁴ *Prosecutor v. Nebojša Pavković*, Case No. MICT-14-67-ES.2, Reasons for the 26 September 2025 Decision on the Application for Early Release of Nebojša Pavković, 8 October 2025 (public redacted) ("Reasons for *Pavković* Decision"), para. 24; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-ES, Decision on the Application for Release of Ratko Mladić, 29 July 2025 (public redacted) ("*Mladić* Decision"), para. 25; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Reasons for the 3 September 2022 Decision on the Application for Early Release of Radoslav Brđanin, 26 September 2022 (public redacted) ("Reasons for *Brđanin* Decision"), para. 37.

⁴⁵ Reasons for *Pavković* Decision, para. 24; *Mladić* Decision, para. 25; Reasons for *Brđanin* Decision, para. 37.

⁴⁶ Reasons for *Pavković* Decision, para. 24; *Mladić* Decision, para. 25; Reasons for *Brđanin* Decision, para. 37.

⁴⁷ Application, paras. 9, 13-25. *See* Submissions of 28 April 2025, paras. 12, 19.

⁴⁸ Application, paras. 17-18, 25.

⁴⁹ Submissions of 28 April 2025, paras. 13, 19, 28.

⁵⁰ First Psychological Report, RP 1164.

⁵¹ First Psychological Report, RP 1164.

⁵² First Psychological Report, RP 1163.

⁵³ First Psychological Report, RP 1163.

⁵⁴ First Psychological Report, RP 1163.

⁵⁵ First Psychological Report, RP 1163.

⁵⁶ First Psychological Report, RP 1163.

45. The Medical Report of 11 July 2024 similarly documents multiple chronic conditions, including [REDACTED].⁵⁷ [REDACTED] assessments identify [REDACTED], considered the likely cause of Ntawukulilyayo's [REDACTED].⁵⁸ During the examination, Ntawukulilyayo complains of [REDACTED].⁵⁹ The treating physician observes [REDACTED].⁶⁰ The report concludes that Ntawukulilyayo's combination of chronic illnesses, [REDACTED] creates major challenges for treatment adherence and autonomy.⁶¹ Continued monitoring and [REDACTED] reassessment are recommended.⁶²

46. In the Medical Report of 3 December 2024, a [REDACTED] reviews Ntawukulilyayo's condition following [REDACTED].⁶³ The [REDACTED] records a history of [REDACTED], eventually necessitating hospitalisation.⁶⁴ On admission, Ntawukulilyayo displays [REDACTED] and refusal of care.⁶⁵ Imaging reveals [REDACTED], later confirmed by magnetic resonance imaging.⁶⁶ A provisional diagnosis of [REDACTED] is made.⁶⁷ [REDACTED] is not recommended; instead, [REDACTED] and monitoring of chronic conditions are advised.⁶⁸ Although temporary improvement is noted, [REDACTED] remain.⁶⁹ By November 2024, Ntawukulilyayo's condition has worsened, [REDACTED].⁷⁰ The [REDACTED] concludes that Ntawukulilyayo is at significant risk and requires permanent paramedical assistance.⁷¹

47. In the Submissions of 28 April 2025, Ntawukulilyayo argues that the Medical and Hospitalisation Reports of 11 April 2025 confirm the existence of compelling humanitarian considerations.⁷² He contends that the infrastructure and medical care required to safeguard his health and safety are not available in prison and that he should therefore be urgently relocated to an appropriate environment.⁷³ He emphasises the reported deterioration of his condition, including [REDACTED] observed by medical personnel and family members.⁷⁴ In particular, Ntawukulilyayo relies on the First Medical Report of 11 April 2025 diagnosing [REDACTED], noting that concerns

⁵⁷ Medical Report of 11 July 2024, RP 1161.

⁵⁸ Medical Report of 11 July 2024, RP 1161.

⁵⁹ Medical Report of 11 July 2024, RP 1161.

⁶⁰ Medical Report of 11 July 2024, RP 1161-1160.

⁶¹ Medical Report of 11 July 2024, RP 1160.

⁶² Medical Report of 11 July 2024, RP 1160.

⁶³ Medical Report of 3 December 2024, RP 1135.

⁶⁴ Medical Report of 3 December 2024, RP 1135.

⁶⁵ Medical Report of 3 December 2024, RP 1135.

⁶⁶ Medical Report of 3 December 2024, RP 1135-1134.

⁶⁷ Medical Report of 3 December 2024, RP 1135-1134.

⁶⁸ Medical Report of 3 December 2024, RP 1135-1134.

⁶⁹ Medical Report of 3 December 2024, RP 1134.

⁷⁰ Medical Report of 3 December 2024, RP 1134.

⁷¹ Medical Report of 3 December 2024, RP 1134.

⁷² Submissions of 28 April 2025, paras. 2, 19-26.

⁷³ Submissions of 28 April 2025, paras. 13, 28.

⁷⁴ Submissions of 28 April 2025, para. 15.

regarding [REDACTED] had already been raised in the context of the Application.⁷⁵ He stresses that [REDACTED] is a condition for which no effective treatment exists.⁷⁶

48. Ntawukulilyayo further submits that his hospitalisation in April 2025 resulted from his inability to manage a complex medication regimen in prison, leading to mistakes in the dosages and frequencies of taking his medications.⁷⁷ Ntawukulilyayo states that, although the First Medical Report of 11 April 2025 recommends the administration of medications by medical staff, it also expresses concern that compliance cannot be guaranteed because of frequent staff turnover.⁷⁸ Ntawukulilyayo relies on the Hospitalisation Report of 11 April 2025, which records [REDACTED].⁷⁹ Ntawukulilyayo alleges that subsequent incidents, including [REDACTED], demonstrate the prison's inability to provide reliable medical support,⁸⁰ and that his health is incompatible with continued imprisonment.⁸¹

49. The Hospitalisation Report of 11 April 2025 records that Ntawukulilyayo is admitted for [REDACTED].⁸² It concludes that Ntawukulilyayo [REDACTED], recommends that all medications be administered by medical staff, and instructs close monitoring of [REDACTED].⁸³

50. The Medical Reports of 11 April 2025 provide a broader overview of Ntawukulilyayo's progressively worsening condition, noting the existence of [REDACTED].⁸⁴ They further observe [REDACTED].⁸⁵ The reports conclude that Ntawukulilyayo requires continuous supervision and cannot safely remain in prison,⁸⁶ recommending urgent relocation to an adapted environment.⁸⁷

51. The Independent Medical Expert Report of 7 August 2025 confirms that Ntawukulilyayo suffers from multiple severe chronic conditions, including [REDACTED].⁸⁸ Additional comorbidities are documented.⁸⁹ [REDACTED] assessments demonstrate that Ntawukulilyayo has [REDACTED].⁹⁰

⁷⁵ Submissions of 28 April 2025, para. 15.

⁷⁶ Submissions of 28 April 2025, para. 15.

⁷⁷ Submissions of 28 April 2025, para. 16.

⁷⁸ Submissions of 28 April 2025, para. 17.

⁷⁹ Submissions of 28 April 2025, para. 18; Hospitalisation Report of 11 April 2025, RP 7/1219 BIS-5/1219 BIS.

⁸⁰ Submissions of 28 April 2025, paras. 20, 21.

⁸¹ Submissions of 28 April 2025, para. 19.

⁸² Hospitalisation Report of 11 April 2025, RP 7/1219 BIS-6/1219 BIS.

⁸³ Hospitalisation Report of 11 April 2025, RP 5/1219 BIS.

⁸⁴ Second Medical Report of 11 April 2025, RP 1333-1332; First Medical Report of 11 April 2025, RP 1226-1225.

⁸⁵ Second Medical Report of 11 April 2025, RP 1332; First Medical Report of 11 April 2025, RP 1225.

⁸⁶ Second Medical Report of 11 April 2025, RP 1332; First Medical Report of 11 April 2025, RP 1225.

⁸⁷ Second Medical Report of 11 April 2025, RP 1332; First Medical Report of 11 April 2025, RP 1225.

⁸⁸ Independent Medical Expert Report of 7 August 2025, RP 15/1302 BIS-14/1302 BIS.

⁸⁹ Independent Medical Expert Report of 7 August 2025, RP 5/1302 BIS-14/1302 BIS, 12/1302 BIS-11/1302 BIS.

⁹⁰ Independent Medical Expert Report of 7 August 2025, RP 11/1302 BIS-10/1302 BIS.

52. The Independent Medical Expert observes that Ntawukulilyayo requires [REDACTED], and that structured supervision is necessary to prevent life-threatening complications.⁹¹ He concludes that Ntawukulilyayo's health cannot be adequately safeguarded in prison and that continued imprisonment poses a serious risk of irreversible deterioration, including accelerated [REDACTED] decline.⁹² The Independent Medical Expert states that it "would be possible to care for [Ntawukulilyayo] in a home environment or possibly in a specialised institution" where he "would be in permanent contact with his family or close friends and would be able to receive help from a care-giver on a permanent basis given the deterioration in his state of health".⁹³

53. The Psychological Report of 10 October 2025 states that Ntawukulilyayo was referred for [REDACTED] following several hospitalisations and [REDACTED].⁹⁴ It notes [REDACTED] linked to [REDACTED] and his prolonged imprisonment.⁹⁵ The report diagnoses [REDACTED] and recommends his [REDACTED] and transfer to a specialised facility for elderly persons.⁹⁶

54. The Medical Report of 10 November 2025 concludes that Ntawukulilyayo's condition has markedly deteriorated with [REDACTED].⁹⁷ It diagnoses [REDACTED] and finds his condition incompatible with imprisonment, recommending transfer to a specialised medical facility and consideration of sentence reduction measures.⁹⁸

2. Assessment

55. According to earlier jurisprudence, early release on purely humanitarian considerations requires a showing of an "acute terminal illness", characterised by the absence of curative treatment options and a consistent prognosis of a very short life expectancy.⁹⁹ Applications for release premised solely on advanced age combined with poor health, without evidence of an acute crisis or life-threatening medical condition, have not met the threshold of "compelling humanitarian considerations".¹⁰⁰ Early release based on purely humanitarian considerations has generally been

⁹¹ Independent Medical Expert Report of 7 August 2025, RP 9/1302 BIS-8/1302 BIS.

⁹² Independent Medical Expert Report of 7 August 2025, RP 7/1302 BIS-6/1302 BIS.

⁹³ Independent Medical Expert Report of 7 August 2025, RP 2/1302 BIS.

⁹⁴ Psychological Report of 10 October 2025, RP 1/1326 BIS.

⁹⁵ Psychological Report of 10 October 2025, RP 1/1326 BIS.

⁹⁶ Psychological Report of 10 October 2025, RP 1/1326 BIS.

⁹⁷ Medical Report of 10 November 2025, RP 4/1326 BIS.

⁹⁸ Medical Report of 10 November 2025, RP 4/1326 BIS-3/1326 BIS.

⁹⁹ Reasons for *Pavković* Decision, para. 27; *Mladić* Decision, para. 31.

¹⁰⁰ *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision on the Application for Early Release of Dragomir Milošević, 5 December 2025 (public redacted), p. 4; *Mladić* Decision, para. 31; *Prosecutor v. Zdravko Tolimir*, Case No. MICT-15-95-ES, Public Redacted Version of the "Decision on Motion for Provisional Release" filed on 28 January 2016, 23 February 2016, para. 9, fn. 35 and references cited therein. See also *Prosecutor v. Radoslav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Application for Early Release of Radoslav Krstić, 3 February 2025 (public redacted), para. 72 (finding that age and chronic health conditions did not rise to the level of compelling humanitarian considerations).

granted in cases involving convicted persons suffering from a clearly identifiable terminal *physical* illness with a short prognosis, where the imminence of death and the impossibility of providing curative treatment options in prison were central to the analysis.¹⁰¹

56. Ntawukulilyayo's case does not involve a single terminal diagnosis permitting a precise short-term prognosis. Instead, he suffers from [REDACTED]. Based on the medical information before me, I observe that, while these conditions do not allow for the specification of his prognosis, they result in recurring clinical instability and foreseeable medical emergencies that the conditions of Ntawukulilyayo's imprisonment are demonstrably unable to accommodate safely. The relevant inquiry is therefore whether Ntawukulilyayo's specific situation, taking into account all factors, obliges me to find that humanitarian considerations outweigh the fact that sentences for core international crimes should generally be served in full. In this context, it becomes important to assess whether Ntawukulilyayo can continue to be detained with respect for his dignity.

57. Having considered the totality of the information before me, I find that the combination of Ntawukulilyayo's [REDACTED] has led to a rapid and irreversible decline in his physical and, even more emphatically, his mental capacities. The record demonstrates a clear progression from chronic but manageable illnesses to a situation in which Ntawukulilyayo has [REDACTED] and is now [REDACTED]. He remains at a persistent risk of sudden and life-threatening deterioration due to recurring episodes of [REDACTED], as well as his inability to manage his complex medication regimen without assistance.

58. The information before me, including that furnished by the prison and the independent medical expert,¹⁰² further establishes that the care available in prison cannot mitigate these risks. Despite repeated instructions from treating physicians, the prison has been unable to ensure consistent administration of medication, continuous monitoring of [REDACTED], or stable supervision to prevent [REDACTED]. The reliance on fellow convicted persons to perform essential medical functions underscores the structural limitations of the specific prison environment. These shortcomings reflect systemic constraints that render the prison incapable of meeting Ntawukulilyayo's essential medical needs.

59. In these circumstances, I find that a prison environment cannot adequately manage Ntawukulilyayo's situation and that the *status quo* leads to a deprivation of dignity that is inconsistent with his fundamental rights. I also note that Ntawukulilyayo has served more than 90 per cent of his

¹⁰¹ Reasons for *Pavković* Decision, paras. 26-28, 33-34; *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Reasons for the 29 August 2023 Decision on the Application for Early Release of Franko Simatović, 11 September 2023 (public redacted), paras. 43-50, 57-58; Reasons for *Brđanin* Decision, paras. 44-54, 57-58.

¹⁰² See *supra* paras. 50, 52-54.

sentence. In view of all these circumstances, Ntawukulilyayo, despite the gravity of his crimes, must be released early.

C. Practical Considerations

60. With respect to his release in Benin, Ntawukulilyayo has provided an undertaking from his family members, in which they commit to providing an accommodation suitable to his health condition and to monitoring his medical condition on a daily basis, including through the provision of permanent assistance, pending his relocation to one of their respective States of residence.¹⁰³ He has also provided an undertaking from a family acquaintance residing in Benin, who guarantees to host him and commits to coordinating with his family concerning his healthcare, including regular medical check-ups and permanent assistance.¹⁰⁴

61. Considering the First and Second Undertakings, I find that there exist concrete guarantees of suitable living arrangements and support that can adequately address Ntawukulilyayo's medical condition, specifically regarding assistance with medical appointments, daily living, and a planned and coordinated approach to his medical needs. In my view, these arrangements can ensure that Ntawukulilyayo will receive the support necessary to safeguard his health and well-being, preserving the humanitarian purpose of his release. In addition, I consider it imperative that Ntawukulilyayo's Counsel, through coordination with the Registry, assists his client by liaising with the prison authorities and the family acquaintance, so as to ensure that Ntawukulilyayo reaches his temporary residence in Benin safely upon release.

62. Lastly, I considered whether Ntawukulilyayo's early release should be subject to a set of conditions, as has been the practice over the years. Such conditions are meant to ensure that released persons do not abuse their freedom and remain under the Mechanism's jurisdiction until the expiry of their sentence. In the instant case, Ntawukulilyayo's sentence will expire in the near future (October 2027), so any conditions would be of a limited duration. More importantly, Ntawukulilyayo's cognitive situation raises doubts as to his ability to enter into an enforceable agreement with the Mechanism and, at the same time, minimises any concerns that he poses a physical or ideological risk to anyone or that he will use his release as an opportunity to engage in conduct that may undermine the Mechanism and its legacy. As a result, I consider that Ntawukulilyayo's early release need not be subject to conditions.

¹⁰³ See Application, para. 39; First Undertaking.

¹⁰⁴ See Application, para. 39; Second Undertaking.

V. CONSULTATION

63. In coming to my decision on whether to grant the Application, I have consulted with three other Judges of the Mechanism, in accordance with Rule 150 of the Rules and paragraph 16 of the Practice Direction.¹⁰⁵ All three Judges agree that, on the basis of the available medical information, the Application should be granted on humanitarian grounds.

64. I am grateful for my Colleagues' views on these matters and took them into account in my ultimate assessment of the Application.

VI. CONCLUSION

65. I am of the opinion that the Application should be granted. Having considered the totality of the information before me, I am satisfied that Ntawukulilyayo suffers from serious and progressively deteriorating medical conditions, which have not been, and will not be, adequately managed within the prison. Consequently, Ntawukulilyayo's imprisonment, in the specific circumstances of his case, is inconsistent with humanitarian principles and basic dignity.

66. Granting early release to Ntawukulilyayo does not, in any way, alter the sentence imposed on him or diminish the gravity of the crimes for which he was convicted. Ntawukulilyayo remains convicted of very grave crimes for which he was sentenced to 20 years of imprisonment.

VII. DISPOSITION

67. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **GRANT** the Application.

68. The Registrar is hereby **DIRECTED** to:

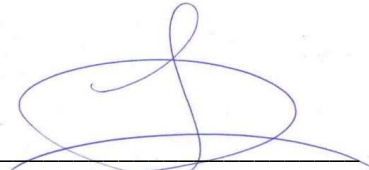
- i. provide the Prosecutor with the confidential redacted version of this decision as soon as possible;
- ii. take all necessary measures to facilitate Ntawukulilyayo's release in Benin and into the custody of his family acquaintance; and
- iii. recirculate as public the confidential redacted version of this decision, once Ntawukulilyayo has been released in Benin.

¹⁰⁵ See *supra* para. 31.

69. Ntawukulilyayo's Counsel is further **DIRECTED** to liaise as necessary with the prison authorities and his client's family acquaintance, with the assistance of the Registry, so as to ensure that Ntawukulilyayo is expeditiously and safely received by his acquaintance offering him a temporary residence in Benin.

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

Done this 18th day of February 2026,
At Arusha,
Tanzania.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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