



**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)

INTRODUCTION

1. Pursuant to Rule 23(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Rules” and “Mechanism”, respectively); in accordance with Article 26 of the Statute of the Mechanism and Rules 149 through 151 of the Rules; considering the relevant Practice Directions of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”);¹ and having consulted with the Registrar and the Prosecutor, I hereby issue this revised Practice Direction to provide guidance on the procedure for the determination of applications for pardon, commutation of sentence, or early release of persons convicted by the respective Tribunal or by the Mechanism.

APPLICATION

2. The term “Application” shall refer to both State Notifications pursuant to Article 26 of the Statute and Direct Petitions as defined hereinafter.

State Notification

3. Upon the convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the State in which the convicted person is serving his or her sentence (the “enforcement State”), the enforcement State shall, in accordance with Article 26 of the Statute and with its agreement with the United Nations and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly.

4. Upon receipt of the State Notification, in order to ensure that all proceedings before the Mechanism are public, unless exceptional reasons require keeping them confidential, the Mechanism shall enquire with the enforcement State whether it has any objections to a public or public redacted version being filed on the judicial record.

Direct Petition

5. A convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if the convicted person believes that he or she is eligible.

¹ Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal for Rwanda, 10 May 2000; Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the International Tribunal, IT/146/Rev.3, 16 September 2010.

6. In order to ensure that all proceedings before the Mechanism are public, unless exceptional reasons require keeping them confidential, any convicted person who is assisted by legal counsel shall file the Direct Petition on the record publicly or together with a public redacted version. Any convicted person who is not assisted by legal counsel may submit the Direct Petition either on the record or by letter to the President, after which the President shall instruct the Registry to ensure that the Direct Petition is filed on the record publicly or in a public redacted version.

ELIGIBILITY BEFORE THE MECHANISM

7. Applications for pardon, commutation of sentence, or early release may be submitted at any time.

8. Notwithstanding paragraph 7 of this Practice Direction, a convicted person serving a sentence under the supervision of the Mechanism will generally be eligible to be considered for early release only upon having served two-thirds of his or her sentence as imposed by the ICTR, the ICTY, or the Mechanism.

DUTIES OF THE REGISTRY

9. Upon receipt of an Application and unless directed otherwise by the President, the Registry shall:

- (a) In case of a State Notification, inform the convicted person that a State Notification has been submitted;
- (b) In case of a Direct Petition, request the enforcement State to inform the Mechanism whether the convicted person is eligible for pardon, commutation of sentence, or early release under the law of the enforcement State; and
- (c) Provide a copy of this Practice Direction to the convicted person in a language that he or she understands and inform the convicted person of the steps that will be taken.

10. To assist in his or her determination of an Application, the President may direct the Registry, where applicable, to collect information such as:

- (a) Any reports and observations from the appropriate authorities in the enforcement State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned;
- (b) Any psychiatric or psychological evaluations prepared on the mental condition of the convicted person, including in relation to any risks posed by release, as well as any remarks of the convicted person regarding the crimes for which he or she was convicted and the victims of these crimes;
- (c) Any medical reports on the physical condition of the convicted person, including whether the convicted person is capable of serving his or her sentence in the enforcement State;
- (d) Information on where the convicted person intends to live if released early;
- (e) A detailed report from the Office of the Prosecutor (“Prosecution”) on any co-operation of the convicted person with the Prosecution of the ICTR, the ICTY, or the Mechanism and the significance thereof, as well as any other comments or information that the Prosecution considers of relevance for the determination of the Application; and
- (f) Any other information that the President considers relevant.

11. The requested information should be submitted within 28 days and in one of the two working languages of the Mechanism, where possible. The Registry shall forward any such received information to the President as soon as it becomes available.

PARTICIPATION OF THE CONVICTED PERSON

12. Once all information requested pursuant to paragraph 10 of this Practice Direction has been received, the President shall instruct the Registry to communicate said information to the convicted person in a language that he or she understands. The President may decide whether to communicate sensitive information or to apply security classifications, as appropriate.

13. Upon receipt of the information requested pursuant to paragraph 10 of this Practice Direction, the convicted person shall be given 14 days to examine the information, following which he or she may provide any written submissions in response. If considered necessary, the President may decide to hear the convicted person by video- or telephone-link.

THIRD PARTY SUBMISSIONS

14. In addition to any information collected through the Registry pursuant to paragraph 10 of this Practice Direction, the President may decide to seek or accept submissions from third parties.

15. Such submissions and any response shall not exceed 3,000 words unless the President provides otherwise.

CONSULTATION PROCESS

16. In accordance with Article 26 of the Statute and Rule 150 of the Rules, the President shall determine whether pardon, commutation of sentence, or early release is appropriate, in consultation with any Judges of the sentencing Chamber(s) who are Judges of the Mechanism, or if none of them are Judges of the Mechanism, with at least two other Judges of the Mechanism. In all circumstances, the President shall consult with at least two other Judges of the Mechanism.

17. The President shall convey a copy of the information received from the enforcement State and the Prosecution, any comments from the convicted person and any third party submissions, as well as any other information the President considers relevant, to the consulted Judges. The consulted Judges shall be given a specified period of time to survey and respond to the material provided.

CONFIDENTIALITY OF INFORMATION

18. All information received by the President shall be considered confidential, unless disclosure is authorised by the President for the purpose of rendering a public decision or the information has been submitted in the form of a public filing. Information received by the President not otherwise on the judicial record may be filed on the instruction of the President.

DECISION

19. In accordance with Article 26 of the Statute, the President shall determine 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 relevant information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules, whether pardon, commutation of sentence, or early release is to be granted.

20. Early release may be granted subject to conditions.

21. The decision of the President shall be rendered as expeditiously as possible. In cases of extreme urgency, the President may dispense with the procedural steps set forth in this Practice Direction to the extent required to meet the urgency, accelerate the consultation with other Judges, and if necessary issue a decision with reasons to follow.

22. Unless the President decides otherwise, the decision shall be made public.

23. Should the enforcement State, by reason of its own domestic law or for any other reason, disagree with or be unable to accept the President's decision not to allow pardon, commutation of sentence, or early release, the enforcement State shall inform the Mechanism. The President, in consultation with the Registrar, may decide to withdraw the convicted person from the enforcement State and transfer him or her to a different State to serve the remainder of his or her sentence.

24. The decision of the President shall be final and not subject to appeal.

EXECUTION OF THE DECISION

25. The Registry shall transmit the decision of the President immediately to the appropriate authorities of the enforcement State, which shall, in accordance with its agreement with the United Nations, execute the terms of the decision promptly. A copy of the decision shall also be forwarded to the convicted person.

26. Where appropriate, at the direction of the President, the Registry shall undertake best efforts to inform persons, who testified during the relevant proceedings before the respective Tribunal or the Mechanism, of the convicted person's release and any other information that the President considers relevant.

Done this 15th day of May 2020,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]