

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-14-73-ES.2

Date: 9 October 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 9 October 2024

PROSECUTOR

v.

MATTHIEU NGIRUMPATSE

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION
FOR COMMUTATION OF SENTENCE OR EARLY RELEASE OF
MATTHIEU NGIRUMPATSE**

Counsel for Mr. Matthieu Ngirumpatse:

Mr. Frédéric Weyl

Republic of Senegal

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of an application for commutation of sentence or early release filed by Mr. Matthieu Ngirumpatse on 9 March 2024 (“Ngirumpatse” and “Application”, respectively).¹

I. BACKGROUND

2. On 5 June 1998, Ngirumpatse was arrested in the Republic of Mali and, on 11 July 1998, he was transferred to the custody of the International Criminal Tribunal for Rwanda (“ICTR”).²

3. On 2 February 2012, Trial Chamber III of the ICTR (“Trial Chamber”) convicted Ngirumpatse of direct and public incitement to commit genocide, genocide, rape and extermination as crimes against humanity, and killing and causing violence to health and well-being as serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II.³ The Trial Chamber sentenced Ngirumpatse to life imprisonment.⁴

4. On 29 September 2014, the Appeals Chamber of the ICTR reversed a number of findings but affirmed Ngirumpatse’s convictions for direct and public incitement to commit genocide, genocide, rape and extermination as crimes against humanity, and killing and causing violence to health and well-being as serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, as well as his sentence of life imprisonment.⁵

5. On 6 December 2017, Ngirumpatse was transferred to the Republic of Senegal (“Senegal”) to serve the remainder of his sentence.⁶

II. APPLICATION

6. On 9 March 2024, Ngirumpatse filed the Application, in which he seeks: (i) commutation of his sentence to 25 years, or “at the very least, a sentence not exceeding 36 years”, invoking relevant provisions of Senegalese law, and that I establish that he has served his sentence in full or at least

¹ Requête pour Monsieur Matthieu Ngirumpatse sur le fondement des articles 149 à 151 du Règlement de Procédure et de Preuve, 9 March 2024. An English translation of the Application was filed on 19 March 2024. See Application from Mr Matthieu Ngirumpatse Pursuant to Rules 149-151 of the Rules of Procedure and Evidence, 19 March 2024. All references herein are to the English translations of the documents.

² *Prosecutor v. Édouard Karemera & Matthieu Ngirumpatse*, Case No. ICTR-98-44-A, Judgement, 29 September 2014 (“Appeal Judgement”), paras. 57, 65; *Prosecutor v. Édouard Karemera & Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Judgement and Sentence, 2 February 2012 (“Trial Judgement”), paras. 11, 22, 26-27.

³ Trial Judgement, para. 1751.

⁴ Trial Judgement, para. 1763.

⁵ Appeal Judgement, paras. 743-749.

⁶ Email communication from the Office of the Registrar to the Office of the President, dated 26 June 2024; Order Designating State in which Matthieu Ngirumpatse is to Serve his Sentence, 24 November 2017, p. 2.

two-thirds of it and order his release in light of the factors mentioned in Rule 151 of the Rules of Procedure and Evidence of the Mechanism (“Rules”); or (ii) in the alternative, early release “strictly on humanitarian grounds since his continued detention is incompatible with his health and the requirements to respect his dignity”.⁷

7. On 15 March 2024, following my preliminary review of the Application, I requested additional information, specifically: (i) a supplement from Ngirumpatse identifying the location where he intends to live if released, and (ii) a medical report for Ngirumpatse from the Senegalese authorities, which would contain relevant diagnoses, prognoses, and treatment options.⁸

8. On 23 March 2024, Ngirumpatse filed public and confidential submissions in response to the Order.⁹ He submits that he would temporarily live in Senegal with an acquaintance and then seek reunification with his family in other countries.¹⁰

9. After various further inquiries with the Senegalese authorities, on 24 May 2024, I received the requested medical report, dated 22 May 2024 (“Medical Report”).¹¹

10. On 3 June 2024, I requested that the Registrar of the Mechanism (“Registrar”) transmit the Medical Report to Ngirumpatse and inform him that he would have 14 days to examine the Medical Report and make any written submissions that he wishes, in accordance with the applicable Practice Direction.¹²

11. On 12 July 2024, the Registrar transmitted to me three documents from Ngirumpatse: (i) a supplementary submission (“Supplement”); (ii) a second supplementary submission (“Second

⁷ Application, Registry Pagination (“RP”) 3/18 BIS. *See also* Application, RP 13/18 BIS, 10/18 BIS - 9/18 BIS. Ngirumpatse also makes cursory references to “pardon” but does not develop arguments in support of this specific basis for relief. Accordingly, his submissions in this regard are summarily dismissed.

⁸ Order for Information regarding the Application for Early Release of Matthieu Ngirumpatse, 15 March 2024 (“Order”), p. 2.

⁹ Mémoire public pour Monsieur Matthieu Ngirumpatse sur le fondement des articles 149 à 151 du Règlement de Procédure et de Preuve, 23 March 2024 (“Public Submission”); Mémoire confidentiel pour Monsieur Matthieu Ngirumpatse sur le fondement des articles 149 à 151 du Règlement de Procédure et de Preuve, 23 March 2024 (confidential) (“Confidential Submission”). English translations of both submissions were filed on 8 April 2024. *See* Public Submission from Mr Matthieu Ngirumpatse Pursuant to Rules 149-151 of the Rules of Procedure and Evidence, 8 April 2024. *See* Confidential Submission from Mr Matthieu Ngirumpatse Pursuant to Rules 149-151 of the Rules of Procedure and Evidence, 8 April 2024 (confidential).

¹⁰ Public Submission, RP 1/25 BIS; Confidential Submission, RP 6/33 BIS, 4/33 BIS - 1/33 BIS.

¹¹ Email communication from the Office of the Registrar to the Office of the President, dated 24 May 2024.

¹² Internal Memorandum from the President to the Registrar, dated 3 June 2024 (confidential), para. 2. *See* 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. I note that on 1 July 2024, a revised version of the Practice Direction on this topic entered into force. *See* 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”).

Supplement”); and (iii) a personal statement about his health (“Statement”), all dated 24 June 2024.¹³

12. With regard to the Application, I have consulted with Judge William H. Sekule and Judge Vagn Joensen in accordance with Rule 150 of the Rules.

III. APPLICABLE LAW

13. 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.

14. 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 before it, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

15. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

16. The general standards for granting pardon, commutation of sentence, or early release are set out in Rule 151 of the Rules, which provides 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.

¹³ Internal Memorandum from the Registrar to the President, dated 12 July 2024 (confidential), para. 3. The Registrar further conveyed that Ngirumpatse claimed to have submitted the additional documentation within 14 days of having received them. Irrespective of when Ngirumpatse submitted the documentation, I have considered it in adjudicating the Application.

17. 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.

18. Paragraph 10 of the Practice Direction indicates that the President may collect information, directly or through the Registry of the Mechanism (“Registry”), which he or she considers relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 12 of the Practice Direction provides that, once all information requested has been received, the President shall communicate, directly or through the Registry, relevant information to the convicted person in a language that he or she understands. Paragraph 13 of the Practice Direction states that the convicted person shall then be given 14 days to examine the information, following which he or she may provide any written submissions in response.

19. Paragraph 19 of the Practice Direction specifies that the President shall determine whether pardon, commutation of sentence, or 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. Paragraph 20 of the Practice Direction states that if early release is granted, it may be subject to conditions.

20. The enforcement agreement between the Government of Senegal and the United Nations¹⁴ provides, in Article 3(1), that in enforcing the sentence pronounced by the ICTR, the competent Senegalese authorities shall be bound by the duration of the sentence so pronounced. Article 8(3) of the Enforcement Agreement states that the President of the ICTR shall determine whether commutation of sentence, pardon, or early release is appropriate.

IV. ANALYSIS

21. Ngirumpatse invokes relevant provisions of Senegalese law and submits that I should commute his sentence and reduce it to between 25 and 36 years, so that he either would have served his sentence in full or would have become eligible for early release.¹⁵ He further argues that, given his age and his deteriorating health condition, waiting until he reaches the eligibility threshold that is applicable under the Mechanism’s legal framework would be “discriminatory” and would “have

¹⁴ Agreement between the Government of the Republic of Senegal and the United Nations on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda, 22 November 2010 (“Enforcement Agreement”). See Security Council Resolution 1966 (2010) of 22 December 2010, which provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism.

¹⁵ Application, RP 10/18 BIS - 9/18 BIS, 3/18 BIS.

the effect of depriving him of the ability to request and obtain a [...] reduction of sentence, and/or early release”, while pointing to circumstances justifying his release in light of the factors set forth under Rule 151 of the Rules.¹⁶ In the alternative, Ngirumpatse seeks early release “strictly on humanitarian grounds since his continued detention is incompatible with his health and the requirements to respect his dignity”.¹⁷

22. At the outset, Ngirumpatse’s references to domestic sentence remissions¹⁸ and domestic eligibility thresholds for pardon and conditional release¹⁹ do not impact the length of his sentence or his eligibility for commutation of sentence or early release before the Mechanism.²⁰ Rather, all convicted persons serving a sentence under the Mechanism’s supervision are eligible to be considered for commutation of sentence or early release upon having served two-thirds of their sentence.²¹ In this respect, I observe that Ngirumpatse has not yet reached the eligibility threshold that has been established in connection with convicted persons sentenced to life imprisonment.²² I am further not convinced that the two-thirds eligibility threshold requires adaptation in this specific case, as submitted by Ngirumpatse. In fact, the two-thirds threshold is not a *conditio sine qua non* as Ngirumpatse appears to suggest, considering that compelling or exceptional circumstances could arise in specific instances prior to a convicted person having served two-thirds of his or her

¹⁶ Application, RP 10/18 BIS.

¹⁷ Application, RP 13/18 BIS, 9/18 BIS, 3/18 BIS.

¹⁸ Application, RP 10/18 BIS.

¹⁹ Application, RP 10/18 BIS.

²⁰ See *Prosecutor v. Vlastimir Đorđević*, Case No. MICT-14-76-ES, Decision on Notification of Sentence Remission, 20 August 2024, p. 2 (for the impact of domestic sentence remissions); and *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision on the Application for Early Release of Dragoljub Kunarac, 22 July 2024, para. 29 (for the impact of domestic early release eligibility).

²¹ *Prosecutor v. Gaspard Kanyarukiga*, Case Nos. MICT-22-126 & MICT-22-126-ES.1, Decision on the Applications for Early Release and Commutation of Sentence of Gaspard Kanyarukiga, 9 June 2023, p. 4; *Prosecutor v. Vujadin Popović*, Case No. MICT-15-85-ES.2, Decision on the Application for Early Release of Vujadin Popović, 30 January 2023 (“*Popović* Decision”), p. 3; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 16, 18.

²² See *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Reasons for the President’s Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted), para. 35. The relevant threshold that was established is “more than 30 years”, given that the then-President determined that a life sentence should be seen as “equivalent to more than a sentence of 45 years”, based in part on the fact that, at the relevant time, the highest fixed-term sentence imposed by the ICTR, the ICTY, or the Mechanism was imprisonment for 45 years. Since then, a higher fixed-term sentence of 47 years has been imposed by the ICTR. See *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015. The impact, if any, of this sentencing decision upon future applications for the early release of persons serving a sentence of life imprisonment will be addressed if and when required. See also *Popović* Decision, p. 4; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 17 June 2022, fn. 19; *Prosecutor v. Vujadin Popović*, Case No. MICT-15-85-ES.2, Decision on the Early Release of Vujadin Popović, 30 December 2020 (public redacted), p. 4; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 33.

sentence, which, in the exercise of my discretion as President, may overcome any eligibility concerns.²³

23. Considering that Ngirumpatse is not yet eligible to be considered for commutation of sentence or early release, his submissions on the factors set out in Rule 151 of the Rules – gravity of crimes, treatment of similarly-situated prisoners, demonstration of rehabilitation, or substantial cooperation with the Prosecution – are immaterial to my determination. Any form of release in this context would only be justified based on the existence of compelling humanitarian grounds.²⁴ In such a scenario, it is the specific and prevailing circumstances, often due to a prisoner’s health condition, that will dictate whether the person should be released, or the sentence commuted in accordance with the Mechanism’s legal framework.²⁵

24. In this respect, Ngirumpatse submits no evidence to support his claims that there exist compelling humanitarian grounds for early release. Instead, he avers that “his advanced age is not in question” and that the “Mechanism archives contain all the medical information on the illness from which he has suffered since being imprisoned”.²⁶ He also states that “he is not able to provide any relevant medical information on his condition, given that he does not have access to such information”.²⁷

25. I observe that “advanced age” and “chronic illnesses”, on their own, would usually be insufficient to satisfy the high threshold of commutation of sentence or early release on the basis of compelling humanitarian grounds. Nevertheless, I exceptionally decided to request updated information in relation to Ngirumpatse’s medical situation directly from the enforcement State and ensured that this information was shared with Ngirumpatse and his counsel. The medical documentation before me, however, presents a markedly different picture of Ngirumpatse’s medical situation compared to its portrayal in the Application. While Ngirumpatse is being treated by specialists in various fields, the chief physician of the Prison Administration assessed him as being in a “good general state” and “stable”, not mentioning any diagnoses or prognoses that, in the

²³ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on the Application for Early Release of Dominique Ntawukulilyayo, 15 July 2024 (public redacted), para. 26; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-ES, Decision on the Application for Release of Ratko Mladić, 10 May 2024 (public redacted), para. 28; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, 9 June 2016 (public redacted), para. 18.

²⁴ See *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) (“Reasons for *Simatović* Decision”), para. 38; *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.

²⁵ See Reasons for *Simatović* Decision, para. 38; Reasons for *Brđanin* Decision, para. 37.

²⁶ Confidential Submission, RP 6/33 BIS.

opinion of the chief physician, render Ngirumpatse's health condition incompatible with his continued imprisonment.²⁸

26. In response, Ngirumpatse submits that the Medical Report "was compiled following one very short visit"²⁹ and "says nothing about the psychological effects of his imprisonment and his [REDACTED]".³⁰ Ngirumpatse further mentions that he "[REDACTED]" and [REDACTED].³¹

27. While I acknowledge that Ngirumpatse, like many other prisoners of his age, struggles with activities of daily life, especially in a prison environment, the Application remains unsubstantiated in relation to his claims. I therefore consider that Ngirumpatse has failed to demonstrate that there are compelling humanitarian grounds that would warrant his early release or commutation of sentence.

28. In coming to my decision on whether to grant the Application, I have consulted with two other Judges of the Mechanism.³² Judge Sekule and Judge Joensen both agree that Ngirumpatse is not yet eligible to be considered for commutation or early release and that he has not demonstrated compelling humanitarian reasons that may override his ineligibility.

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

V. CONCLUSION

30. Based on the information before me, I consider that Ngirumpatse has failed to demonstrate that there are compelling humanitarian considerations that warrant his commutation of sentence or early release.

VI. DISPOSITION

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

32. The Registrar is **DIRECTED** to provide the Prosecutor of the Mechanism with the public redacted version of this decision as soon as practicable.

²⁷ Confidential Submission, RP 6/33 BIS.

²⁸ Medical Report, p. 1.

²⁹ Second Supplement, p. 2.

³⁰ Supplement, p. 2. *See* Statement, para. 3.

³¹ Statement, paras. 1-3.

³² *See supra*, para. 12.

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

Done this 9th day of October 2024,
At Arusha,
Tanzania.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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