



Mechanism for International Criminal Tribunals

Case No. MICT-15-90

Date: 9 March 2016

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 9 March 2016

PROSECUTOR

v.

ALPHONSE NTEZIRYAYO

PUBLIC REDACTED

**DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF ALPHONSE NTEZIRYAYO**

The Office of the Prosecutor

Mr. Serge Brammertz

Counsel for Mr. Aloys Nteziryayo

Mr. Frédéric Titinga Pacéré
Mr. Gershom Otachi Bw'Omanwa

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1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals ("Mechanism"), am seised of an application for early release from Mr. Alphonse Nteziryayo ("Nteziryayo") filed on 17 December 2015.¹ I consider the Application pursuant to Article 26 of the Statute of the Mechanism ("Statute"), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), and paragraph 3 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism ("Practice Direction").²

I. BACKGROUND

2. Nteziryayo was arrested in Burkina Faso on 24 April 1998 and transferred to the United Nations Detention Facility ("UNDF") in Arusha, Tanzania, on 21 May 1998.³ At his initial appearance on 17 August 1998, Nteziryayo entered a plea of not guilty on all six of the counts of the indictment against him.⁴ At a further appearance on 13 August 1999, Nteziryayo entered a plea of not guilty on all nine counts of the amended indictment against him.⁵

3. On 24 June 2011, Trial Chamber II of the International Criminal Tribunal for Rwanda ("Trial Chamber" and "ICTR", respectively) convicted Nteziryayo for direct and public incitement to commit genocide in relation to his speeches at the Muyaga and Kibayi commune meetings in June 1994 and with respect to his speech at Mr. Élie Ndayambaje's swearing-in ceremony that took place on 22 June 1994.⁶ The Trial Chamber sentenced Nteziryayo to 30 years of imprisonment.⁷

4. On 14 December 2015, the Appeals Chamber of the ICTR ("Appeals Chamber") affirmed Nteziryayo's convictions for direct and public incitement to commit genocide, but found that the Trial Chamber had erred in concluding that his right to be tried without undue delay had not been violated, which caused Nteziryayo prejudice.⁸ The Appeals Chamber reduced Nteziryayo's sentence of 30 years to 25 years of imprisonment.

5. As of the date of this Decision, Nteziryayo remains in custody at the UNDF pending designation of an enforcement State.

¹ Request for Early Release, 17 December 2015 (confidential) ("Application").

² MICT/3, 5 July 2012.

³ *The Prosecutor v. Pauline Nyiramasuhuko et al.* Case No. ICTR-98-42-T, Judgement and Sentence, 24 June 2011 ("Trial Judgement"), para. 49.

⁴ Trial Judgement, para. 50.

⁵ Trial Judgement, para. 51.

⁶ Trial Judgement, pp. 1450-1451. See also Trial Judgement, paras. 6022-6025, 6036.

⁷ Trial Judgement, para. 6271.

⁸ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015 ("Appeal Judgement"), p. 1211.

II. THE APPLICATION

6. On 11 February 2016, I received a memorandum from the Registry of the Mechanism ("Registry"),⁹ conveying information collected in accordance with paragraphs 3, 4, and 5 of the Practice Direction, including: (i) a report from the Commanding Officer of the UNDF ("UNDF Commanding Officer"), dated 19 January 2016 ("Report"); and (ii) a memorandum from the Prosecutor of the Mechanism ("Prosecution"), dated 28 January 2016 ("Prosecution Memorandum").

7. The Registry informed me that it conveyed the collected information to Nteziryayo on 9 February 2016 pursuant to paragraph 5 of the Practice Direction, who confirmed receipt of the information on 10 February 2016.¹⁰ In accordance with paragraph 6 of the Practice Direction, Nteziryayo was given 10 days to examine the information and to submit a response. Nteziryayo did not respond.

III. DISCUSSION

8. In coming to my decision on whether it is appropriate to grant Nteziryayo early release, I have consulted the Judges of the sentencing Chamber who are Judges of the Mechanism, pursuant to Rule 150 of the Rules.

A. Applicable Law

9. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Article 26 of the Statute further provides that there shall only be pardon or commutation of sentence if the President of the Mechanism ("President") so decides on the basis of the interests of justice and the general principles of law.

10. Rule 149 of the Rules echoes Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President of the Mechanism shall, upon such notice, 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. Pursuant to Rule 151 of the Rules, in making a determination on pardon, commutation of sentence, or early release, the President shall take into account, *inter alia*,

⁹ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha Branch, to Judge Theodor Meron, President, dated 11 February 2016 ("11 February 2016 Memorandum").

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.

11. The jurisprudence of the Mechanism recognizes that, in the situation where there is no appeal pending and a convicted person is still detained at either the UNDF or at the United Nations Detention Unit ("UNDU") in The Hague, a request for early release may be entertained by the President.¹¹ Following the approach taken by the ICTR and the ICTY, the President may consider such requests given that "the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced" by the ICTR, the ICTY, or the Mechanism and that the eligibility of individuals serving their sentences at the UNDF or the UNDU "must be determined by reference to the equivalent conditions for eligibility established by the enforcement states".¹²

B. Gravity of Crimes

12. Rule 151 of the Rules provides that, in making a determination on early release, the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

13. The crimes for which Nteziryayo has been convicted are of a high gravity. Specifically, the Trial Chamber found that Nteziryayo incited the population at various meetings to kill Tutsis.¹³ The Trial Chamber further found, *inter alia*, that given that he was later sworn in as prefect of Butare, he exerted considerable authority and power in Butare.¹⁴ The Trial Chamber considered that given Nteziryayo's high profile position, his active incitement and encouragement of the public to commit genocide demonstrated an abuse of his authority.¹⁵

14. In these circumstances, I am of the view that the high gravity of Nteziryayo's offences weighs against his early release.

¹⁰ 11 February 2016 Memorandum.

¹¹ See *Prosecutor v. Vladimir Lazarević*, Case No. MICT-14-67-ES.3, Public Redacted Version of the 7 September 2015 Decision of the President on the Early Release of Vladimir Lazarević, 3 December 2015 ("Lazarević Decision"), para. 9. See also *Prosecutor v. Innocent Sagahutu*, Case No. MICT-13-43-ES, Public Redacted Version of the 9 May 2014 Decision of the President on the Early Release of Innocent Sagahutu, 13 May 2014 ("Sagahutu Decision"), paras. 11-12; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Decision on Tharcisse Muvunyi's Application for Early Release, 6 March 2012, para. 10; *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011, para. 11.

¹² Lazarević Decision, para. 9.

¹³ Trial Judgement, para. 6239.

¹⁴ Trial Judgement, para. 6240.

¹⁵ Trial Judgement, para. 6241.

C. Eligibility and Treatment of Similarly-Situated Prisoners

15. Rule 151 of the Rules requires the President to consider, as a separate factor, the need for equal treatment of similarly-situated prisoners when deciding early release applications.

16. In this respect, I recall that ICTR convicts, like Nteziryayo, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision and that all convicts supervised by the Mechanism are to be considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them.¹⁶ However, 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.¹⁷

17. As of the date of this Decision, and based on my own calculation, Nteziryayo served two-thirds of his 25-year sentence on 24 December 2014. I am therefore of the view that the amount of time that Nteziryayo has served for his crimes weighs in favour of his early release.

D. Demonstration of Rehabilitation

18. Rule 151 of the Rules provides that the President shall take into account a “prisoner’s demonstration of rehabilitation” in determining whether early release is appropriate. In addressing the convicted person’s rehabilitation, paragraph 4(b) of the Practice Direction states that the Registrar shall

[r]equest reports and observations from the relevant authorities in the enforcing State as to the behavior of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration[.]

19. According to the UNDF Commanding Officer, Nteziryayo did not present any problems since his arrival at the UNDF.¹⁸ The UNDF Commanding Officer states that Nteziryayo interacts well socially with his fellow detainees.¹⁹ Lastly, the UNDF Commanding Officer informs that since Nteziryayo did not present any psychological or pathological problems during his detention at the UNDF, no evaluation of his mental condition was made.²⁰

¹⁶ See *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Decision of the President on the Early Release of Aloys Simba, 2 February 2016 (public redacted version) (“*Simba Decision*”), para. 17. See also *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) (“*Bisengimana Decision*”), paras. 17, 20.

¹⁷ See *Simba Decision*, para. 18; *Bisengimana Decision*, paras. 21, 35.

¹⁸ Report, para. 3.

¹⁹ Report, para. 3.

²⁰ Report, para. 4.

20. Nteziryayo submits that he has “maintained good conduct” for the duration of his detention at the UNDF.²¹ Specifically, Nteziryayo contends that he has been entrusted with a number of responsibilities, including being responsible for library operations, tending to the gardens at the UNDF, and organizing festivities.²² Nteziryayo asserts that he has “endeavoured to discharge these obligations and duties with diligence, despite the health challenges”.²³ Nteziryayo further submits that he has maintained contact with his family and “keenly followed matters relating to the education of his children”.²⁴

21. The UNDF Commanding Officer’s description of Nteziryayo’s behaviour while in custody at the UNDF, as well as Nteziryayo’s own submissions, suggest that Nteziryayo is capable of reintegrating into society if he is released. Having carefully reviewed the information before me, I am of the opinion that Nteziryayo has demonstrated signs of rehabilitation and therefore count this factor as weighing in favour of his early release.

E. Substantial Cooperation with the Prosecution

22. Rule 151 of the Rules states that the President shall take into account any “substantial cooperation” of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar shall request the Prosecution “to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof”.

23. According to the Prosecution, Nteziryayo has at no time provided any cooperation to the Prosecutor of the ICTR.²⁵

24. I note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.²⁶ I therefore consider that Nteziryayo’s lack of cooperation with the Prosecutor of the ICTR is a neutral factor in determining whether or not to grant him early release.

F. Other Factors: Humanitarian Concerns

25. Paragraph 9 of the Practice Direction provides that the President may consider “any other information” that the President believes to be “relevant” to supplement the criteria specified in Rule 151 of the Rules. Previous decisions on early release have determined that the condition of a

²¹ Application, para. 8.

²² Application, para. 7.

²³ Application, para. 7.

²⁴ Application, para. 9.

²⁵ Prosecution Memorandum, p. 2.

²⁶ See *Prosecutor v. Youssouf Muniyaka*, Case No. MICT-12-18-ES.1, Public Redacted Version of the 22 July 2015 Decision of the President on the Early Release of Youssouf Muniyaka, 22 July 2015, para. 21; *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014 (“*Ntakirutimana Decision*”), para. 20.

convicted person's health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the person to remain in prison any longer.²⁷

26. Nteziryayo submits that he has suffered from chronic health problems for most of the time that he has been in detention, [REDACTED].²⁸ In this regard, Nteziryayo asserts that serious health complications caused him to be absent from trial proceedings on a number of occasions.²⁹ [REDACTED].³⁰

27. While no official medical records or reports from a physician were provided, I am satisfied based on Nteziryayo's submissions as a whole that he likely suffers from a number of health problems in combination affecting his well-being. Although I am not convinced that his health condition is serious, I am of the view that limited weight should be attached to this factor in favour of his request for early release.

G. Conclusion

28. In light of the above, and having considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, I am inclined to grant Nteziryayo's Application, effective as soon as practically possible following the issuance of the decision on the Application. Although the crimes for which Nteziryayo was convicted are very grave, Nteziryayo's completion of substantially more than two-thirds of his sentence, his health-related problems, and his demonstrated signs of rehabilitation counsel in favour of his early release. The view that Nteziryayo should be granted early release is shared by a majority of the Judges of the sentencing Chamber who are Judges of the Mechanism.

²⁷ See, e.g., *Simba* Decision, para. 28; *Ntakirutimana* Decision, para. 21; *Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, 13 March 2014 (public redacted version), para. 22.

²⁸ Application, para. 6.

²⁹ Application, para. 6.

³⁰ Application, para. 6.

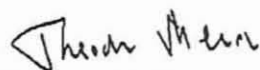
IV. DISPOSITION

29. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 9 of the Practice Direction, and Article 8 of the Enforcement Agreement, I hereby **GRANT** the Application, as soon as practically possible following the issuance of this Decision.

30. The Registrar is hereby **DIRECTED** to inform the UNDF authorities of this decision as soon as practicable.

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

Done this 9th day of March 2016,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]





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