

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-90-ES.3

Date: 10 November 2021

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambadou

Decision of: 10 November 2021

PROSECUTOR

v.

PAULINE NYIRAMASUHUKO

PUBLIC

**DECISION ON THE APPLICATION FOR EARLY RELEASE
OF PAULINE NYIRAMASUHUKO**

The Office of the Prosecutor:

Mr. Serge Brammertz

Ms. Pauline Nyiramasuhuko

I, CARMEL AGIUS, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

BEING SEISED of a direct petition for early release submitted by Ms. Pauline Nyiramasuhuko (“Nyiramasuhuko”), dated 24 September 2020 (“Application”);¹

NOTING that on 18 July 1997, Nyiramasuhuko was arrested in the Republic of Kenya and was transferred to the International Criminal Tribunal for Rwanda (“ICTR”);²

NOTING that on 24 June 2011, Trial Chamber II of the ICTR convicted Nyiramasuhuko of conspiracy to commit genocide, genocide, extermination, rape and persecution as crimes against humanity, and violence to life, health and physical or mental well-being of persons as well as outrages upon personal dignity as serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and sentenced Nyiramasuhuko to life imprisonment;³

NOTING that on 14 December 2015, the Appeals Chamber of the ICTR, *inter alia*: (i) reversed Nyiramasuhuko’s conviction for persecution as a crime against humanity; (ii) affirmed the remainder of her convictions; and (iii) reduced her sentence of life imprisonment to 47 years of imprisonment;⁴

NOTING that on 28 July 2018, Nyiramasuhuko was transferred to the Republic of Senegal (“Senegal”) to serve the remainder of her sentence;⁵

NOTING that, in light of paragraph 9 of the applicable Practice Direction,⁶ on 3 February 2021 the Registry sent a letter to the Senegalese authorities requesting information as to whether

¹ Demande de Mise en Liberté Anticipée pour Raison de Santé Précaire, 2 August 2021 (strictly confidential and *ex parte*). I note that the Application was transmitted to my Office on 14 October 2020 and filed on the record, upon my request, on 2 August 2021. An English translation of the Application was filed on 3 August 2021 and, following Nyiramasuhuko’s response regarding necessary redactions before her Application could be made public, a public redacted version of both the original and the translation was filed on 26 August 2021. All references herein are to the English translation of the Application. See Application for Early Release on Grounds of Poor Health, 3 August 2021 (confidential and *ex parte*); Email communication from the Office of the Registrar to the Office of the President, dated 14 October 2020. See also Internal Memorandum from the President to the Registrar, dated 26 February 2021 (confidential) (“Memorandum of 26 February 2021”), para. 2; Internal Memorandum from the President to the Registrar, dated 9 July 2021 (confidential), para. 4.2; Internal Memorandum from the Registrar to the President, dated 13 August 2021, paras. 2-3, transmitting a letter from Nyiramasuhuko to the Registrar, dated 8 March 2021 (received by the Registry of the Mechanism (“Registry”) on 10 August 2021).

² *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, 24 June 2011 (“Trial Judgement”), paras. 14, 6295. See also *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015 (“Appeal Judgement”), para. 2.

³ Trial Judgement, paras. 6186, 6271.

⁴ Appeal Judgement, para. 3539.

⁵ See Internal Memorandum from the Registrar to the President, dated 18 December 2019 (strictly confidential), para. 9. See also Order Designating State in which Pauline Nyiramasuhuko is to Serve her Sentence, 19 June 2018, p. 2.

Nyiramasuhuko is eligible for early release under Senegalese law, and that notwithstanding repeated efforts by the Registry to follow up on this matter, the requested information has not been received;⁷

RECALLING that, pursuant to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTR, the International Criminal Tribunal for the former Yugoslavia (“ICTY”), or the Mechanism;

RECALLING that, 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;⁸

RECALLING that, pursuant to Rule 150 of the Rules, the President shall determine whether pardon, commutation of sentence, or early release is appropriate, in consultation with: (i) any Judges of the sentencing Chamber who are Judges of the Mechanism; or (ii) at least two other Judges, if none of the Judges who imposed the sentence are Judges of the Mechanism;

RECALLING that Article 3(1) of the relevant enforcement agreement between the United Nations and Senegal⁹ provides that in enforcing a sentence pronounced by the ICTR, the competent national authorities of Senegal shall be bound by the duration of the sentence;

RECALLING that Article 8 of the Enforcement Agreement provides, in relevant part, that: (i) the laws of Senegal governing pardon, commutation of sentence, and early release shall apply to convicted persons, subject to the prior opinion of the Mechanism; and (ii) the President shall determine, in consultation with the Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate, and that Senegal shall act according to such determination;

⁶ 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 (“Practice Direction”).

⁷ See Email communication from the Registry to the Office of the President, dated 24 August 2021.

⁸ While Article 26 of the Statute does not specifically mention requests for early release of convicted persons, the President’s power to deal with such requests is reflected in the Rules of Procedure and Evidence of the Mechanism (“Rules”). See Rules 149-151 of the Rules. See also *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) (“*Miletić Decision*”), para. 23; *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Decision on the Early Release of Théoneste Bagosora, 1 April 2021 (public redacted) (“*Bagosora Decision*”), para. 20; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 24 March 2021 (public redacted) (“*Galić Decision*”), para. 13.

⁹ 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, dated 22 November 2010 (“Enforcement Agreement”). The Enforcement Agreement applies *mutatis mutandis* to the Mechanism. See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

RECALLING that all convicted persons serving a sentence under the Mechanism’s supervision are eligible to be considered for early release upon having served two-thirds of their sentences, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State;¹⁰

RECALLING further that serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”,¹¹ and that if a convicted person applies for early release before having served two-thirds of his or her sentence, the application may be considered promptly, without conducting an in-depth Rule 151 assessment¹² and without necessarily triggering the multi-step and resource-intensive process of requesting, receiving, translating, sharing, and considering additional information before determining whether the application should be denied as premature;¹³

CONSIDERING that, although Senegal has not indicated whether Nyiramasuhuko is eligible for early release according to its laws, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules;¹⁴

CONSIDERING that as Nyiramasuhuko will not have served two-thirds of her 47-year sentence until July 2027,¹⁵ she is not yet eligible to be considered for early release by the Mechanism;

RECALLING that in compelling or exceptional circumstances, early release may be granted prior to the serving of two-thirds of the sentence;¹⁶

RECALLING that, as Nyiramasuhuko bases her Application on her poor health,¹⁷ I requested and obtained a medical report from the Senegalese authorities;¹⁸

¹⁰ *Miletić* Decision, para. 29; *Bagosora* Decision, para. 26; *Galić* Decision, para. 21.

¹¹ *Miletić* Decision, para. 29; *Prosecutor v. Jadranko Prlić*, Case No. MICT-17-112-ES.2, Decision on the Early Release of Jadranko Prlić, 23 March 2021 (“*Prlić* Decision”), p. 4; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on the Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted), para. 19.

¹² *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Decision on Sentence Remission and Early Release of Goran Jelisić, 11 March 2021 (“*Jelisić* Decision”), para. 43 and references cited therein.

¹³ *Prlić* Decision, p. 4; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision on Sentence Remission and Early Release of Milomir Stakić, 31 December 2020, para. 43.

¹⁴ *Miletić* Decision, para. 31; *Bagosora* Decision, para. 29; *Prlić* Decision, p. 4.

¹⁵ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 25.

¹⁶ See *Galić* Decision, para. 24; *Prlić* Decision, p. 4; *Jelisić* Decision, para. 44.

¹⁷ Application, p. 1.

CONSIDERING that the Application and the Medical Report do not reveal any compelling or exceptional circumstances that would warrant granting Nyiramasuhuko early release;

CONSIDERING that I have consulted with Judge William H. Sekule and Judge Liu Daqun who, in addition to myself, were Judges of the sentencing Chambers in Nyiramasuhuko’s case;¹⁹

CONSIDERING further that Judge Sekule and Judge Liu share my position that Nyiramasuhuko is not eligible to be considered for early release at this stage, and that no compelling or exceptional circumstances have been demonstrated which would justify granting her early release prior to reaching the two-thirds eligibility threshold;

FOR THE FOREGOING REASONS,

HEREBY DENY the Application; and

DIRECT the Registrar to provide the authorities of Senegal with a copy of this Decision as soon as practicable.

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

Done this 10th day of November 2021,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]

¹⁸ Memorandum of 26 February 2021, para. 3; Internal Memorandum from the Registrar to the President, dated 6 August 2021, paras. 2, 4-5, *transmitting* a medical report from the Senegalese Ministry of Justice, Penitentiary Administration, Medical and Welfare Division, dated November 2020 (confidential) (“Medical Report”). The Medical Report and its English translation were subsequently filed, strictly confidential and *ex parte*, on 26 August 2021.

¹⁹ See Rule 150 of the Rules; Practice Direction, para. 16.



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