



Mechanism for International Criminal Tribunals

Case No.: MICT-13-36-ES

Date: 9 June 2016

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 9 June 2016

PROSECUTOR

v.

LAURENT SEMANZA

PUBLIC REDACTED

**DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF LAURENT SEMANZA**

The Office of the Prosecutor

Mr. Serge Brammertz

The Applicant

Mr. Laurent Semanza

The Republic of Mali

**Received by the Registry
Mechanism for International Criminal Tribunals
09/06/2016 11:31**

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1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seised of an application for the early release of Mr. Laurent Semanza (“Semanza”), dated 28 May 2015 (“Application”) and conveyed to me by the Registry of the Mechanism (“Registry”) on 9 June 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. Semanza was arrested on or about 26 March 1996 in the Republic of Cameroon and was transferred to the United Nations Detention Facility in Arusha, Tanzania, on 19 November 1997.³ At his initial appearance on 16 February 1998, Semanza entered a plea of not guilty to all seven counts of the initial indictment against him.⁴

3. On 13 December 2005, Trial Chamber III of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR”, respectively) convicted Semanza of complicity to commit genocide, and aiding and abetting extermination, murder, rape, and torture as crimes against humanity.⁵ The Trial Chamber sentenced Semanza to a sentence of 24 years and six months of imprisonment.⁶ On 20 May 2005, the Appeals Chamber of the ICTR (“Appeals Chamber”) reversed certain findings by the Trial Chamber, including with respect to various acquittals, and sentenced Semanza to 35 years of imprisonment, subject to a six-month reduction as ordered by the Trial Chamber for violations of fundamental pre-trial rights.⁷ Semanza was transferred to the Republic of Mali (“Mali”) on 8 December 2008 to serve the remainder of his sentence.⁸

¹ Internal Memorandum from Mr. Samuel Akorimo, Head of Office, Registry, Arusha Branch, to Judge Theodor Meron, President, dated 9 June 2015. All referenced herein are to the English translation of the Application.

² MICT/3, 5 July 2012.

³ *The Prosecutor v. Laurent Semanza*, Judgement and Sentence, Case No. ICTR-97-20-T, 15 May 2003 (“Trial Judgement”), paras. 16, 22.

⁴ Trial Judgement, para. 23. On 24 June 1999, Semanza made a further appearance and entered a plea of not guilty to all counts in the first amended indictment. Trial Judgement, para. 24.

⁵ Trial Judgement, para. 553.

⁶ Trial Judgement, para. 590.

⁷ *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005 (“Appeal Judgement”), p. 126.

⁸ Application, p. 1.

II. THE APPLICATION

4. On 20 May 2016, I received a memorandum from the Registry conveying information collected in accordance with paragraphs 3, 4, and 5 of the Practice Direction,⁹ including: (i) a letter from the Ministry of Foreign Affairs, International Cooperation and African Integration of Mali, dated 24 March 2016 (“Ministry of Foreign Affairs Letter”), with a letter from the Ministry of Justice and Human Rights of Mali, dated 17 March 2016 (“Ministry of Justice Letter”); (ii) a report from the warden of Koulikoro prison on Semanza’s psycho-social condition, dated 11 April 2016 (“Warden Report”); and (iii) a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), dated 16 May 2016 (“Prosecution Memorandum”).

5. The Registry informed me on 20 May 2016 that it would convey the material to Semanza pursuant to paragraph 5 of the Practice Direction,¹⁰ who confirmed receipt on 27 May 2016.¹¹ In accordance with paragraph 6 of the Practice Direction, Semanza was given 10 days to examine the information and to submit a response. Semanza responded by letter dated 30 May 2016 (“Response”).¹²

6. On 31 May 2016, the Registry conveyed to me a psychiatric evaluation report from Polyclinique Pasteur, dated 5 May 2016 (“Psychiatric Report”), regarding Semanza’s psychiatric condition.¹³ The Registry further informed me on that same day that it would convey the Psychiatric Report to Semanza pursuant to paragraph 5 of the Practice Direction.¹⁴ On 3 June 2016, the Registry conveyed to me Semanza’s response, dated 2 June 2016, to the Psychiatric Report, indicating that he has no further observations in relation thereto.¹⁵

⁹ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha Branch, to Judge Theodor Meron, President, dated 20 May 2016 (“20 May 2016 Memorandum”). All references to the attachments are to the English translation thereof.

¹⁰ 20 May 2016 Memorandum.

¹¹ See Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha Branch, to Judge Theodor Meron, President, dated 31 May 2016 (“31 May 2016 Memorandum”), para. 2.

¹² Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha Branch, to Judge Theodor Meron, President, dated 31 May 2016, *conveying* the Response. All references herein are to the English translation of the Response, which was received on 2 June 2016.

¹³ 31 May 2016 Memorandum, *conveying* the Psychiatric Report.

¹⁴ 31 May 2016 Memorandum, para. 4.

¹⁵ Internal Memorandum from Mr. Samuel Akorimo, Officer in Charge, Registry, Arusha Branch, to Judge Theodor Meron, President, dated 3 June 2016.

III. DISCUSSION

A. Applicable Law

7. 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.

8. 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 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.¹⁶ 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*, 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.

9. Paragraph 2 of the Practice Direction provides that upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with Article 26 of the Statute and with its agreement with the United Nations on the enforcement of sentences and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly.

10. Article 3(2) of the Agreement between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, dated 12 February 1999 (“Enforcement Agreement”),¹⁷ provides that the conditions of imprisonment shall be governed by the law of Mali, subject to the supervision of the ICTR (and now, the Mechanism).¹⁸ Article 8 of the Enforcement Agreement, applied *mutatis mutandis* to the

¹⁶ Other than myself, none of the Judges of the sentencing Chamber are Judges of the Mechanism. On that basis, no consultations with other Judges of the Mechanism pursuant to Rule 150 of the Rules are required in determining this Application.

¹⁷ A new agreement on the enforcement of sentences pronounced by the ICTR and the Mechanism entered into force on 13 May 2016, after the filing of the Application. As relevant to the Application, the terms of this agreement are identical to the Agreement.

¹⁸ Security Council Resolution 1966 (2010) provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement

Mechanism, provides, *inter alia*, that, following notification of eligibility for early release under Malian law, the President shall determine, in consultation with the Judges of the Mechanism, whether early release is appropriate, and the Registrar shall inform the Malian authorities of the President's determination, who shall act accordingly.

B. Eligibility under Malian Law

11. According to the provisions of Article 35 of Law No. 01-003 of 27 February 2001 on the prison system and supervised education, "detainees who have provided sufficient proof of their improvement could be eligible for parole or semi-custodial treatment".¹⁹ The Malian authorities state that "Semanza meets the conditions set out in Malian legislation for parole or semi-custodial treatment".²⁰

12. I note, however, that even if Semanza is eligible for early release under the domestic law of Mali, the early release of persons convicted by the ICTR falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.

C. Gravity of Crimes

13. 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.

14. The crimes for which Semanza has been convicted are of a high gravity. In this regard, the Trial Chamber found, *inter alia*, that Semanza sought out a specific Tutsi man in a large crowd of people, and repeatedly struck this man with a machete, which resulted in his death.²¹ The Trial Chamber further found that Semanza encouraged a crowd to rape Tutsi women and that his general influence in the community and the fact that his statements were made in the presence of commune and military authorities "gave his instigation greater force and legitimacy".²²

applies to the Mechanism. *See* U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 ("[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]"). According to Article 25(2) of the Statute, "[t]he Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States".

¹⁹ Ministry of Foreign Affairs Letter; Ministry of Justice Letter.

²⁰ Ministry of Foreign Affairs Letter. *See also* Ministry of Justice Letter.

²¹ Trial Judgement, paras. 486, 493.

²² Trial Judgement, para. 485.

15. The Trial Chamber also found that Semanza's act of bringing "*Interahamwe*, soldiers, and their weapons to the massacre [at Mwulire hill] provided substantial support to the principal perpetrators who were murdering the Tutsi civilians" at this location.²³ Similarly, the Trial Chamber determined that Semanza "encouraged and supported the murder of the refugees by ordering the separation of Tutsi from Hutu refugees, by assisting in identifying Tutsi refugees to be murdered, and by directing *Interahamwe* and soldiers to kill them".²⁴ Lastly, the Appeals Chamber took note of the evidence that Semanza "directed attackers, including soldiers and *Interahamwe*, to kill Tutsi refugees who had been separated from the Hutu refugees at Musha church".²⁵

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

D. Eligibility and Treatment of Similarly-Situated Prisoners

17. 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.

18. In this respect, I recall that ICTR convicts, like Semanza, 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.²⁶ I also note that a convicted person may apply for early release even before the completion of the two-thirds of his or her sentence. In such circumstances, the President would consider a convicted person's application or eligibility for early release, in exceptional cases, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, and where other factors have also weighed in favour of early release.²⁷

²³ Trial Judgement, para. 453.

²⁴ Trial Judgement, para. 449.

²⁵ Appeal Judgement, para. 363.

²⁶ See *Prosecutor v. Alphonse Nteziryayo*, Case No. MICT-15-90, Decision of the President on the Early Release of Alphonse Nteziryayo, 9 March 2016 (public redacted version) ("*Nteziryayo* Decision"), para. 16. 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.

²⁷ See, e.g., *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; *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 13 October 2015, para. 21; *Prosecutor v. Mladen Naletilić*, Case No. IT-98-37-ES, Public Redacted Version of the 29 November 2012 Decision of the President on Early Release of Mladen Naletilić, 26 March 2013, paras. 32-35; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Public Redacted Decision of President on Early Release of Dragan Obrenović, 29 February 2012, paras. 25-28.

19. 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.²⁸

20. As of the date of this decision, and based on my own calculation, Semanza will have served two-thirds of his sentence of 34 years and six months on 26 March 2019. I am therefore of the view that the amount of time that Semanza has served for his crimes does not weigh in favour of his early release.

E. Demonstration of Rehabilitation

21. 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[.]

22. According to the Psychiatric Report, Semanza, who is 71 years old, REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].³¹ [REDACTED].³²

23. [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵ [REDACTED].³⁶ [REDACTED].³⁷

24. The Ministry of Justice and Human Rights of Mali further states that Semanza “is engaged in market gardening and by doing so contributes to maintaining the prison environment. Calm and courteous, he respects the rules of the establishment and he will endeavour to foster Rwandan reconciliation upon his release from prison”.³⁸

²⁸ See *Nteziryayo* Decision, para. 16; *Bisengimana* Decision, paras. 21, 35.

²⁹ Psychiatric Report, p. 2.

³⁰ Psychiatric Report, p. 2.

³¹ Psychiatric Report, p. 2.

³² Psychiatric Report, p. 2.

³³ Psychiatric Report, p. 2.

³⁴ Psychiatric Report, p. 2.

³⁵ Psychiatric Report, p. 2.

³⁶ Psychiatric Report, p. 2.

³⁷ Psychiatric Report, p. 3.

³⁸ Ministry of Justice Letter.

25. According to the warden, Semanza “will not pose a danger to his community of reinsertion [REDACTED]”.³⁹ The warden further notes that Semanza “participates in communal activities, primarily those activities related to caring for the surroundings (market gardening, cleaning) and nutrition (cooking)”.⁴⁰

26. The Psychiatric Report, the Ministry of Justice and Human Rights of Mali, as well as the warden’s description of Semanza’s behaviour while in prison, suggest that Semanza is capable of reintegrating into society if he is released. In this context, I am of the view that Semanza has demonstrated some signs of rehabilitation and I am therefore inclined to weigh this factor in favour of his early release.

F. Substantial Cooperation with the Prosecution

27. 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”.

28. According to the Prosecution, Semanza has at no time cooperated with it or the Office of the Prosecutor of the ICTR (“ICTR Prosecution”) in the course of his trial, appeal, or at any point while serving his sentence.⁴¹

29. Semanza confirms that he has at no time cooperated with the Prosecution or the ICTR Prosecution, but submits that neither the Prosecution nor the ICTR Prosecution ever sought his cooperation.⁴² Semanza further asserts that neither the Statute nor the Rules of Procedure and Evidence of the ICTR or the Mechanism require an accused or convicted person to cooperate with the Prosecution.⁴³ Semanza contends, however, that he always assiduously participated in the proceedings in the interests of justice, including by being present during the entire process at trial and on appeal, by working with his counsel with a view to ensuring the smooth presentation of evidence by Prosecution and Defence witnesses, and by testifying before the Trial Chamber himself.⁴⁴ Accordingly, Semanza submits that by his exemplary conduct he cooperated in the smooth running of the proceedings against him.⁴⁵

³⁹ Warden Report.

⁴⁰ Warden Report.

⁴¹ Prosecution Memorandum, para. 2.

⁴² Response.

⁴³ Response.

⁴⁴ Response.

⁴⁵ Response.

30. 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.⁴⁶ I therefore consider that Semanza's lack of cooperation with the Prosecution or the ICTR Prosecution is a neutral factor in determining whether or not to grant him early release.

G. Other Factors: Humanitarian Concerns

31. 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 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.⁴⁷

32. Semanza contends that his age and ill health are grounds for early release.⁴⁸ In particular, Semanza asserts that he is now 71 years old and that he suffers "from serious and chronic illnesses which have seriously eroded [his] health over time".⁴⁹ [REDACTED].⁵⁰ According to Semanza, his health is deteriorating, he is visibly ailing, and he has requested early release so that he could be close to his family who could care for him.⁵¹

33. [REDACTED].⁵² [REDACTED].⁵³ [REDACTED].⁵⁴ [REDACTED].⁵⁵ [REDACTED].⁵⁶

34. The Ministry of Justice and Human Rights of Mali states that Semanza "suffers from various illnesses".⁵⁷ The warden further states that Semanza "suffers from various illnesses, [REDACTED]."⁵⁸

35. While there are some indications that Semanza suffers from certain health ailments, I am not convinced, based on the information before me, that Semanza's health condition is so serious as to

⁴⁶ *Nteziryayo* Decision, para. 24; *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.

⁴⁷ 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.

⁴⁸ Application, p. 1.

⁴⁹ Application, p. 1. See also Psychiatric Report, p. 3.

⁵⁰ Application, p. 1.

⁵¹ Application, pp. 1-2.

⁵² Psychiatric Report, p. 2.

⁵³ Psychiatric Report, p. 3.

⁵⁴ Psychiatric Report, p. 3.

⁵⁵ Psychiatric Report, p. 3.

⁵⁶ Psychiatric Report, p. 3.

⁵⁷ Ministry of Justice Letter.

constitute an exceptional circumstance that warrants his early release.⁵⁹ Nor do I believe that, in context, his current age plays such a role. I therefore consider these to be neutral factors in determining whether or not to grant Semanza early release.

H. Conclusion

36. In light of the above, and having carefully considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, I am inclined to deny Semanza's Application. Although his demonstration of some signs of rehabilitation weighs in favour of his early release, the crimes for which Semanza was convicted are very grave, and Semanza has failed to demonstrate that there exist exceptional circumstances warranting his early release prior to having served two-thirds of his sentence.

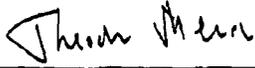
IV. DISPOSITION

37. 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 **DENY** the Application.

38. The Registrar is hereby **DIRECTED** to inform the authorities of Mali of this decision as soon as practicable, as prescribed in paragraph 13 of the Practice Direction.

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

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



Judge Theodor Meron
President

[Seal of the Mechanism]



⁵⁸ Warden Report. See also Ministry of Justice Letter.

⁵⁹ See *supra*, para. 18.



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