

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-34-ES

Date: 15 July 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 15 July 2024

PROSECUTOR

v.

DOMINIQUE NTAWUKULILYAYO

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF DOMINIQUE NTAWUKULILYAYO**

Counsel for Mr. Dominique Ntawukulilyayo

Mr. Philippe Larochelle

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of an application for early release filed by Mr. Dominique Ntawukulilyayo on 26 September 2023 (“Ntawukulilyayo” and “Application”, respectively), seeking early release based on medical needs that, according to him, can no longer be accommodated in prison.¹

I. BACKGROUND

2. On 17 October 2007, Ntawukulilyayo was arrested in the French Republic and, on 5 June 2008, he was transferred to the custody of the International Criminal Tribunal for Rwanda (“ICTR”).²

3. On 3 August 2010, Trial Chamber III of the ICTR (“Trial Chamber”) convicted Ntawukulilyayo of genocide for aiding and abetting and for ordering the killing of Tutsis at Kabuye hill in April 1994.³ The Trial Chamber sentenced Ntawukulilyayo to 25 years of imprisonment, subject to credit for time served since his arrest on 17 October 2007.⁴

4. On 14 December 2011, the Appeals Chamber of the ICTR (“Appeals Chamber”) affirmed Ntawukulilyayo’s conviction for aiding and abetting genocide, but reversed his conviction for ordering genocide.⁵ The Appeals Chamber reduced Ntawukulilyayo’s sentence of 25 years to 20 years of imprisonment.⁶

5. On 1 July 2012, Ntawukulilyayo was transferred to the Republic of Mali (“Mali”) to serve his sentence.⁷

6. On 8 July 2016, then-President Theodor Meron denied Ntawukulilyayo’s direct petition for early release, on the basis that the crimes for which Ntawukulilyayo had been convicted were “very grave” and that he had failed to demonstrate the existence of “exceptional circumstances warranting his early release prior to having served two-thirds of his sentence”.⁸

¹ Application for Early Release, 26 September 2023 (public with confidential annexes), paras. 3, 6-7.

² *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, Judgement and Sentence, 3 August 2010 (“Trial Judgement”), paras. 92, Annex A, para. 2.

³ Trial Judgement, paras. 28, 392-393, 457, 460-461.

⁴ Trial Judgement, paras. 29, 479-480.

⁵ *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Judgement, 14 December 2011 (“Appeal Judgement”), para. 246.

⁶ Appeal Judgement, paras. 245-246.

⁷ See Decision on the Application of Dominique Ntawukulilyayo for Early Release, 8 January 2020 (“Decision of 8 January 2020”), p. 1.

⁸ Decision of the President on the Early Release of Dominique Ntawukulilyayo, 8 July 2016 (public redacted) (“Decision of 8 July 2016”), para. 36.

7. On 19 December 2018, then-President Meron decided to transfer Ntawukulilyayo to the Republic of Benin (“Benin”) in order to serve the remainder of his sentence.⁹

8. On 8 January 2020, then-President Carmel Agius denied Ntawukulilyayo’s second direct petition for early release on the grounds that he was not yet eligible to be considered for early release and had not otherwise demonstrated any compelling or exceptional circumstances that would warrant the granting of early release.¹⁰

II. APPLICATION

9. On 26 September 2023, Ntawukulilyayo filed the Application,¹¹ in which he seeks early release on the basis of his “dire and urgent medical needs” which, in his view, could “no longer be accommodated in prison, thus rendering his incarceration incompatible with respect for his dignity and human rights”.¹² In support of the Application, Ntawukulilyayo provided a medical report dated 31 August 2023 and a declaration from one of his children dated 25 September 2023.¹³

10. On 29 September 2023, I requested that the Registrar obtain from Benin on an expedited basis an updated medical report assessing Ntawukulilyayo’s health and any further medical treatment since 31 August 2023, as well as an indication of whether there are any impediments to him receiving any necessary medical treatment.¹⁴ On 9 October 2023, the Registrar transmitted a

⁹ Order Designating State in which Dominique Ntawukulilyayo is to Serve the Remainder of His Sentence, 19 December 2018, p. 2.

¹⁰ Decision of 8 January 2020, p. 6.

¹¹ The Application was distributed the following workday, 27 September 2023, in light of the time when it was received by the Registry of the Mechanism (“Registry”) and in compliance with Article 14(4)-(5) of the Practice Direction on Judicial Records, MICT/42, 25 May 2023.

¹² Application, para. 3. *See also* Application, paras. 4-6. Ntawukulilyayo further requested that, if I did not grant him early release immediately, I instead order the Register of the Mechanism (“Register”) to provide any information I may require within five days. *See* Application, para. 7. As immediate adjudication or provision of relevant information was not deemed necessary under the circumstances, this part of the Application is dismissed.

¹³ The medical report, *inter alia*, elaborates a number of medical issues experienced by Ntawukulilyayo, identifies related examinations, and indicates that, following treatment, Ntawukulilyayo experienced “[i]mprovement in general condition and mood” with “no remaining signs of” the underlying medical condition, that he “is autonomous”, and that he has been awaiting the result of a further medical test. Application, Annex A (“Medical Report dated 31 August 2023”), Registry Pagination (“RP”) 4/1067 BIS-3/1067 BIS. The declaration from one of his children expresses grave concerns for Ntawukulilyayo’s life. *See* Application, Annex B, paras. 2-6. Throughout this decision, reference is made to the English translation of documents with respect to quoted material.

¹⁴ Internal Memorandum from the President to the Registrar, dated 29 September 2023 (confidential) (“Memorandum of 29 September 2023”), para. 2. I also indicated to the Registrar that the steps foreseen under paragraph 9 of the applicable Practice Direction, as it existed at that time, did not need to be undertaken with respect to the Application. *See* Memorandum of 29 September 2023, para. 3 *referring to* 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. This Practice Direction has since been revised. *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”). Unless otherwise indicated, reference will be made to the current version of the Practice Direction.

letter to the Director-General of the Benin Prison Agency in order to be provided with the information that I requested.¹⁵

11. On 9 November 2023, I sought an update from the Registrar with respect to the outstanding request for updated medical information for Ntawukulilyayo, and in doing so I stressed the potential urgency of the matter.¹⁶ On 13 December 2023, the Registrar informed me that the Registry had followed up by email and telephone with the Beninese authorities on 7 November, 16 November, 21 November, 23 November, and 4 December 2023.¹⁷

12. On 8 January 2024, I raised this outstanding matter with the Registrar, who conveyed that he would instruct his Office to take further steps and that he would escalate the issue should a response from the Beninese authorities not be received shortly thereafter.¹⁸ On 24 January 2024, the Registrar indicated that the Registry had undertaken steps to follow up with the Beninese authorities on multiple occasions via email, text, and telephone on 14 December 2023 and on 4, 10, 11, 16, 17, and 18 January 2024, but that the efforts had not yielded the requested medical report.¹⁹ The Registrar therefore escalated the matter in a telephone call to the National Director of Prisons in Benin.²⁰

13. On 31 January 2024, Ntawukulilyayo filed a motion seeking an urgent decision on the Application because his “rapidly deteriorating” health had “reached a critical point with dire and urgent medical needs that can no longer be accommodated in prison”, such that his “continued incarceration violates his right to be free from torture, inhuman and degrading treatment and punishment”.²¹ In support of the Urgent Request, Ntawukulilyayo provided medical reports dated 31 October and 2 November 2023, a handwritten medical note dated 18 December 2023, and a declaration from one of his children dated 30 January 2024.²²

¹⁵ See *Note verbale* from the Mechanism to the Ministry of Foreign Affairs of Benin, dated 9 October 2023 (confidential) *transmitting* Letter from the Registrar to the Director-General of the Benin Prison Agency, dated 9 October 2023 (confidential), p. 1.

¹⁶ Internal Memorandum from the President to the Registrar, dated 9 November 2023 (confidential), para. 5.

¹⁷ Internal Memorandum from the Registrar to the President, dated 13 December 2023 (confidential), para. 11.

¹⁸ Email communication from the President to the Registrar, dated 8 January 2024; Email communication from the Registrar to the President, dated 8 January 2024.

¹⁹ Email communication from the Registrar to the President, dated 24 January 2024.

²⁰ Email communication from the Registrar to the President, dated 25 January 2024.

²¹ Urgent Request for Decision on Still Pending Application for Early Release, 31 January 2024 (public with confidential annexes) (“Urgent Request”), paras. 1, 8.

²² Urgent Request, Annexes A (“Medical Report dated 31 October 2023”), B (“Medical Report dated 2 November 2023”), C (“Medical Note dated 18 December 2023”), D (declaration from one of Ntawukulilyayo’s children, dated 30 January 2024, which provides further information as to his penitentiary situation and again expresses grave concerns for his life).

14. On 12 February 2024, I denied the Urgent Request insofar as it sought that the Application be adjudicated immediately.²³ In doing so, I emphasised that I would continue to take steps to solicit the information requested from the Beninese authorities, and that I would adjudicate the Application following receipt and consideration of up-to-date and necessary medical documentation.²⁴

15. On 14 February 2024, the Registrar informed me that the Beninese authorities had now provided a medical report dated 21 November 2023 from Ntawukulilyayo’s treating physician at the prison where he is serving his sentence.²⁵ On 7 March 2024, I requested that the Registrar transmit the Medical Report dated 21 November 2023 to Ntawukulilyayo and indicate that he would have 14 days to examine the information and make any written submissions that he wishes, in accordance with the Practice Direction.²⁶ This material was communicated to Ntawukulilyayo and his Counsel on 21 March and 28 March 2024, respectively.²⁷

16. On 8 April 2024, the Registrar conveyed to me the comments of Ntawukulilyayo and his Counsel, who also provided a further medical report from his treating physician at the prison.²⁸

17. With regard to the Application, I have consulted with Judge Lee G. Muthoga, Judge Carmel Agius, and Judge Liu Daqun in their capacity as Judges of the sentencing Chambers,²⁹ in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

III. APPLICABLE LAW

18. 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

²³ Decision on the Urgent Request for an Early Release Decision, 12 February 2024 (“Decision of 12 February 2024”), p. 5. I considered that “the information submitted by Ntawukulilyayo and the [Urgent Request] fails, on a *prima facie* basis, to substantiate his allegation that there exist exceptional or compelling circumstances that could meet this very high threshold and therefore warrant his early release on an urgent basis”. Decision of 12 February 2024, p. 4.

²⁴ Decision of 12 February 2024, p. 5.

²⁵ Internal Memorandum from the Registrar to the President, dated 14 February 2024 (confidential), para. 2, Annex (“Medical Report dated 21 November 2023”).

²⁶ Internal Memorandum from the President to the Registrar, dated 7 March 2024 (confidential), para. 2.

²⁷ Internal Memorandum from the Registrar to the President, dated 8 April 2024 (confidential) (“Memorandum of 8 April 2024”) para. 2.

²⁸ Memorandum of 8 April 2024 *transmitting* Letter from Counsel for Ntawukulilyayo to the Registrar and the Officer-in-Charge, Registry, Arusha branch, dated 4 April 2024 (“Counsel Letter of 4 April 2024”) *conveying* Letter from Ntawukulilyayo dated 26 March 2024 (“Ntawukulilyayo Letter of 26 March 2024”) *and* Medical Report (“Medical Report conveyed by Counsel Letter of 4 April 2024”). I note that while this medical report is dated 7 March 2023, its contents indicate it was done after 8 August 2023, Counsel for Ntawukulilyayo suggests it was prepared after February 2024, and the Registrar refers to it as being from 7 March 2024. *See* Counsel Letter of 4 April 2024, p. 1; Memorandum of 8 April 2024, para. 3.

²⁹ *See generally* Trial Judgement; Appeal Judgement.

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.

19. 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.

20. 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.

21. The general standards for granting 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.

22. 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.

23. Paragraph 10 of the Practice Direction indicates that the President may collect information, directly or through the 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.

24. Paragraph 19 of the Practice Direction specifies that the President shall determine whether 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.

25. The enforcement agreement between the United Nations and the Government of Benin³⁰ provides, in Article 3(1), that in enforcing the sentence pronounced by the ICTR or the Mechanism, the competent authorities of the requested State shall be bound by the duration of the sentence so pronounced. Article 8(5) of the Enforcement Agreement states that there shall only be pardon, commutation of sentence, or early release if the President so decides on the basis of the interests of justice and the general principles of law.

IV. ANALYSIS

A. Standards for Granting Early Release

26. In the context of an early release application, serving two-thirds of a sentence has been described by the Mechanism’s jurisprudence as being “in essence, an admissibility threshold”.³¹ While any eligibility concerns can potentially be overcome if compelling or exceptional circumstances arise,³² I note that Ntawukulilyayo served two-thirds of his sentence on 17 February 2021,³³ and is therefore eligible to be considered for early release.

27. I consider that in the Application, Ntawukulilyayo seeks early release exclusively on the basis of exceptional or compelling circumstances. Although he refers to the factors set out in Rule 151 of the Rules,³⁴ he makes no submissions with respect to the gravity of his crimes, his rehabilitation, any substantial cooperation with the Prosecution, or the treatment of similarly-situated prisoners.³⁵ Instead, he observes that “early release can be granted when medical conditions or serious illness make continued detention inappropriate” and that the President “can

³⁰ Agreement between the United Nations and the Government of the Republic of Benin on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals, 12 May 2017 (“Enforcement Agreement”).

³¹ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-ES, Decision on the Application for Release of Ratko Mladić, 10 May 2024 (public redacted) (“*Mladić Decision*”), para. 27; *Prosecutor v. Stojan Župljanin*, Case No. MICT-13-53-ES.1, Decision on the Application for Early Release of Stojan Župljanin, 18 January 2024 (public redacted), para. 26; *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) (“*Bisengimana Decision*”), para. 19.

³² *Mladić Decision*, para. 28; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 6 November 2023, p. 5; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, 9 June 2016, para. 18.

³³ Decision of 8 January 2020, p. 6; Decision of 8 July 2016, para. 22.

³⁴ Application, paras. 2, 4.

³⁵ *See generally* Application. Ntawukulilyayo notes that he has served more than two-thirds of his sentence and that until 2018 “the majority of persons convicted by the ICTY and ICTR were released unconditionally after serving two-thirds”. Application, para. 4.

and does consider humanitarian considerations when making release decisions”.³⁶ In this respect, Ntawukulilyayo submits that he suffers from “dire and urgent medical needs”, which, in his view, could “no longer be accommodated in prison, thus rendering his incarceration incompatible with respect for his dignity and human rights”.³⁷ Subsequently, Ntawukulilyayo attempted to claim a wider basis for the Application with cursory statements indicating that he also sought early release based on his age, good behaviour in prison, and completion of two-thirds of his sentence.³⁸ However, I find these submissions unsubstantiated and unconvincing. I continue to regard the Application as being based exclusively on compelling humanitarian grounds due to his medical condition, which he argues makes his continued incarceration inappropriate.

28. I recall that if a particular situation requires the release of a convicted person based on compelling humanitarian grounds, it is immaterial whether any of the factors set out in Rule 151 of the Rules weigh in favour of or against the convicted person’s early release.³⁹ Indeed, while any early release based on the existence of exceptional or compelling circumstances will necessarily require that a very high threshold be met, due to its inherent nature, it will not be dependent on the convicted person’s demonstration of rehabilitation or an assessment of the gravity of his or her crimes, for example.⁴⁰ In such a scenario, it is not the behaviour of the convicted person, but rather the specific and prevailing circumstances, often due to his or her health condition, that will dictate whether the person should be released in accordance with the Mechanism’s legal framework.⁴¹

B. Humanitarian Considerations

1. Submissions

29. Ntawukulilyayo submits that he is “in a state of rapidly deteriorating physical and mental ill-health that has reached a critical point”.⁴² He states that he requires “heightened medical care and the constant presence of his family”, who do not reside in Benin, and that he has been “left with no choice but to request a fellow prisoner with no medical training whatsoever to help him” in

³⁶ Application, para. 4.

³⁷ Application, para. 3. *See also* Application, paras. 4-6.

³⁸ Motion, para. 6 (“Even if Mr. Ntawukulilyayo were given a clean bill of health, he would be a prime candidate for early release in the light of his age, good behaviour, and the fact that he has served almost the entirety of his sentence already.”); Counsel Letter of 4 April 2024, p. 2 (“The request for his release is not solely based on the dire humanitarian reasons he faces, but also simply by the fact that he has already long served more than two thirds of his sentence.”).

³⁹ *Mladić* Decision, para. 29; *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.

⁴⁰ *Mladić* Decision, para. 29; Reasons for *Simatović* Decision, para. 38; Reasons for *Brđanin* Decision, para. 37.

⁴¹ *Mladić* Decision, para. 29; Reasons for *Simatović* Decision, para. 38; Reasons for *Brđanin* Decision, para. 37.

ensuring he takes his medication.⁴³ He concludes that his “dire and urgent medical needs can no longer be accommodated in prison”,⁴⁴ and that his “continued custody violates the right to freedom from torture, inhumane and degrading treatment and punishment”.⁴⁵

2. Assessment

30. The medical documentation before me, originating from various medical professionals who have treated Ntawukulilyayo,⁴⁶ reflects that on 6 August 2023, Ntawukulilyayo experienced the initial manifestation of a “[REDACTED]” with *inter alia* “[REDACTED]”.⁴⁷ On 8 August 2023, Ntawukulilyayo displayed “[REDACTED]”, and the Beninese prison officers referred him that same day for a medical consultation at [REDACTED].⁴⁸

31. On 9 August 2023, Ntawukulilyayo was also referred to a [REDACTED] who recommended treatment as well as a [REDACTED], which was performed the next day and which revealed “[REDACTED]”.⁴⁹ On 14 August 2023, Ntawukulilyayo had a consultation with a [REDACTED], who advised that [REDACTED] was not required.⁵⁰

32. On 18 August 2023, Ntawukulilyayo met with a [REDACTED] who prescribed medication to treat [REDACTED], prescribed additional checks for [REDACTED] and complaints, and recommended that he be seen following the results of [REDACTED].⁵¹ Ntawukulilyayo also consulted a [REDACTED] on 21 August, a [REDACTED] on 23 August, a [REDACTED] on 25 August, a [REDACTED] on 26 August, a [REDACTED] on 28 August, a [REDACTED] on 29 August, and the [REDACTED] again for a second opinion on 31 August 2023.⁵² By 31 August 2023, Ntawukulilyayo’s progress was being described as “[i]mprovement in general

⁴² Application, para. 3.

⁴³ Application, para. 3. *See also* Counsel Letter of 4 April 2024, p. 1; Ntawukulilyayo Letter of 26 March 2024, p. 1.

⁴⁴ Application, para. 3. *See also* Counsel Letter of 4 April 2024, p. 2.

⁴⁵ Application, para. 6.

⁴⁶ *See* Medical Report dated 31 August 2023 ([REDACTED]); Medical Report dated 31 October 2023 ([REDACTED]); Medical Report dated 2 November 2023 and Medical Note dated 13 December 2023 ([REDACTED]); Medical Report dated 21 November 2023 and Medical Report conveyed by Counsel Letter of 4 April 2024 (treating physician at the prison).

⁴⁷ Medical Report dated 31 August 2023, RP 13/1085 BIS. *See* Medical Report dated 31 October 2023, RP 1080.

⁴⁸ Medical Report dated 31 August 2023, RP 13/1085 BIS; Medical Report dated 31 October 2023, RP 13/1085 BIS. *See* Medical Report dated 2 November 2023, RP 1077; Medical Report dated 21 November 2023, p. 1.

⁴⁹ Medical Report dated 31 August 2023, RP 5/1067 BIS; Medical Report dated 31 October 2023, RP 12/1085 BIS; Medical Report dated 2 November 2023, RP 7/1085 BIS. *See* Medical Report dated 21 November 2023, p. 1.

⁵⁰ Medical Report dated 31 August 2023, RP 1080.

⁵¹ Medical Report dated 31 August 2023, RP 1080.

⁵² *See* Medical Report dated 31 August 2023, RP 1079; Medical Report dated 31 October 2023, RP 1079; Medical Report dated 2 November 2023, RP 1076-1075 (the [REDACTED] noted that Ntawukulilyayo had no complaints nor reported any undesirable effects from his medication); Medical Report dated 21 November 2023, p. 1.

condition and mood; the patient is autonomous, [REDACTED]; no remaining signs of [REDACTED] or [REDACTED]” and that his “[REDACTED]”.⁵³

33. On 12 September 2023, Ntawukulilyayo was seen for a follow-up consultation by the [REDACTED], who noted that the [REDACTED] results were pending and prescribed medication in the meantime.⁵⁴ On 25 September 2023, the [REDACTED] indicated that Ntawukulilyayo’s [REDACTED] confirmed “[REDACTED]”, which was identified as a possible explanation for his “[REDACTED]”.⁵⁵ On 26 September 2023, the [REDACTED]’s follow-up consultation reflected that Ntawukulilyayo’s “[REDACTED]”, and it was recommended that he continue the treatments prescribed by the [REDACTED] and [REDACTED].⁵⁶

34. Ntawukulilyayo was further seen by the [REDACTED] on 23 October 2023, who informed him that his [REDACTED] could be explained by the [REDACTED] results, his [REDACTED], and that he would be followed by a [REDACTED] as a matter of priority.⁵⁷ On 31 October 2023, the [REDACTED] reported, *inter alia*, that there was “[i]mprovement in general condition and mood; [Ntawukulilyayo] is autonomous; [REDACTED]; no more signs of [REDACTED] or [REDACTED]”.⁵⁸ The [REDACTED] also stated that [REDACTED] follow-up is required for Ntawukulilyayo’s [REDACTED], recommended additional medication to supplement his existing treatment, and noted that the next consultation would be “in three months’ time”.⁵⁹

35. On 2 November 2023, the [REDACTED] reported, *inter alia*, that Ntawukulilyayo presents a [REDACTED] and that “his clinical condition seems to be improving as a result of the treatment that should be continued”.⁶⁰ On 21 November 2023, Ntawukulilyayo was seen by the treating physician at the prison, who noted that he was “[REDACTED]”, was “being treated by adequate specialists”, and “suffers from [REDACTED] that could adversely affect his therapeutic adherence”.⁶¹

⁵³ Medical Report dated 31 August 2023, RP 4/1067 BIS.

⁵⁴ Medical Report dated 2 November 2023, RP 1075.

⁵⁵ Medical Report dated 31 October 2023, RP 12/1085 BIS.

⁵⁶ Medical Report dated 2 November 2023, RP 7/1085 BIS.

⁵⁷ Medical Report dated 2 November 2023, RP 1075.

⁵⁸ Medical Report dated 31 October 2023, RP 12/1085 BIS.

⁵⁹ Medical Report dated 31 October 2023, RP 12/1085 BIS-11/1085 BIS.

⁶⁰ Medical Report dated 2 November 2023, RP 6/1085 BIS.

⁶¹ Medical Report dated 21 November 2023, p. 2.

36. On 18 December 2023, the [REDACTED] informed the warden and medical officer of the prison that Ntawukulilyayo “is currently suffering from [REDACTED], in particular, [REDACTED] as a result of which he needs help taking his medicine”.⁶²

37. The medical report submitted most recently by Ntawukulilyayo, which was prepared by his treating physician at the prison, confirms that Ntawukulilyayo “[REDACTED]”, concludes that these problems “make therapeutic adherence extremely difficult”, and notes that a fellow inmate has been made responsible “for helping him to adhere to his treatment, which has not yet given the results for which we hoped”.⁶³

38. I observe that, taken as a whole, the medical information reveals that Ntawukulilyayo experienced a “[REDACTED]” and was subsequently diagnosed with a [REDACTED], including [REDACTED].⁶⁴ Ntawukulilyayo thereafter underwent extensive medical examinations by a range of specialists. He was prescribed treatments by a [REDACTED] and a [REDACTED], and he has had regular follow-up consultations. Ntawukulilyayo has been found to respond well to the treatments and his condition has evolved favourably. I also note that, according to the most recent medical information, Ntawukulilyayo is now described as [REDACTED] and autonomous.⁶⁵ He reportedly suffers from ongoing physical ailments and from [REDACTED], impacting the extent to which he takes his prescribed medication. While the treating physician has taken steps to improve Ntawukulilyayo’s adherence to his prescribed treatment,⁶⁶ I nevertheless urge the relevant Beninese authorities to implement a regime that directly facilitates Ntawukulilyayo in taking his medication on a regular basis.

39. In addition to the detailed medical information before me, which indicates an improvement in Ntawukulilyayo’s condition since his “[REDACTED]” in August 2023, I have taken particular note of the fact that neither the Beninese authorities, nor the various specialists consulted, have indicated that Ntawukulilyayo’s medical condition cannot be accommodated in prison. To the contrary, it is evident that the immediate, diligent, and ongoing medical care provided by the Beninese authorities has resulted in a prompt diagnosis and effective treatment of Ntawukulilyayo’s underlying medical condition.

⁶² Medical Note dated 18 December 2023, RP 4/1085 BIS.

⁶³ Medical Report conveyed by Counsel Letter of 4 April 2024, pp. 1-2.

⁶⁴ Medical Report dated 31 October 2023, RP 12/1085 BIS. *See* Medical Report dated 2 November 2023, RP 6/1085 BIS.

⁶⁵ Medical Report conveyed by Counsel Letter of 4 April 2024, p. 2. *See also* Medical Report dated 21 November 2023, p. 2.

⁶⁶ Medical Report conveyed by Counsel Letter of 4 April 2024, pp. 1-2.

3. Consultation

40. In coming to my decision on whether to grant the Application, I have consulted with three other Judges of the Mechanism.⁶⁷ Judge Muthoga, Judge Agius, and Judge Liu all share the view that the Application should be denied, as there is no indication that Ntawukulilyayo’s medical condition cannot be accommodated in prison. They further observe that Ntawukulilyayo has received immediate and diligent medical care from the authorities of Benin.

41. 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

42. Based on the information before me, I consider that Ntawukulilyayo has failed to demonstrate that there are compelling humanitarian considerations that meet the very high threshold to warrant his early release. In particular, he has not substantiated his claim that his continued incarceration would be inappropriate as a result of his medical condition. While I urge the relevant Beninese authorities to implement a regime that directly facilitates Ntawukulilyayo in taking his medication on a regular basis, they are to be commended for their ability to provide immediate, diligent, and ongoing medical care to Ntawukulilyayo, who received a prompt diagnosis and effective treatment as a result.

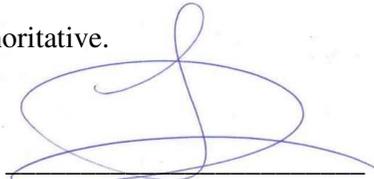
VI. DISPOSITION

43. 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.

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

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

Done this 15th day of July 2024,
At Arusha,
Tanzania.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]

⁶⁷ See *supra*, para. 17.



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Case Name/ Affaire :	Prosecutor v. Dominique Ntawukulilyayo		Case Number/ Affaire n° : MICT-13-34-ES			
Date Created/ Daté du :	15 July 2024	Date transmitted/ Transmis le :	15 July 2024	Number of Pages/ Nombre de pages :	12	
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