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UNITED
NATIONS

Mechanism for International Criminal Tribunals

Case No. MICT-12-07

Date: 11 December 2012

Original: English

THE PRESIDENT OF THE MECHANISM

Before: **Judge Theodor Meron, President**

Registrar: **Mr. John Hocking**

Decision of: **11 December 2012**

PROSECUTOR

v.

PAUL BISENGIMANA

PUBLIC REDACTED VERSION

DECISION OF THE PRESIDENT ON EARLY RELEASE OF PAUL BISENGIMANA AND ON MOTION TO FILE A PUBLIC REDACTED APPLICATION

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow

Counsel for Mr. Paul Bisengimana:

Ms. Catherine Mabille

The Republic of Mali

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1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals ("Mechanism"), am seised of a confidential application for early release ("Application") filed by Paul Bisengimana ("Bisengimana") on 12 July 2012,[1] as well as a confidential motion for leave to file a redacted public version of the Application, which Bisengimana filed on 5 September 2012.[2] I consider Bisengimana's 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").[3]

I. BACKGROUND

2. On 4 December 2001, Bisengimana was arrested in Mali, and on 11 March 2002 he was transferred to the United Nations Detention Facility in Arusha ("UNDF").[4] According to the Indictment,[5] Bisengimana, former *bourgmestre* of the Gikoro *commune* in the Kigali-Rural *prefécture* in Rwanda, was charged with five counts of: genocide; complicity in genocide; and murder, extermination, and rape as crimes against humanity.[6]

3. On 7 December 2005, Bisengimana pleaded guilty to aiding and abetting the murder and extermination of Tutsi civilians at the Musha Church and the Ruhanga Protestant Church and School in the Gikoro *commune* between 13 and 15 April 1994.[7] His guilty plea was entered pursuant to a plea agreement between Bisengimana and the Office of the Prosecutor of the International Criminal Tribunal for Rwanda ("ICTR Prosecution" and "ICTR", respectively).[8] On 13 April 2006, Trial Chamber II of the ICTR ("Trial Chamber") verified the validity of Bisengimana's guilty plea and convicted him of aiding and abetting the commission of murder and

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[1] Paul Bisengimana's Confidential Defence Motion for Early Release, 12 July 2012. The English translation of the Application was filed on 6 August 2012. Bisengimana repeated his request for early release in a letter to me dated 8 August 2012. *See* Confidential Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 23 August 2012 ("23 August Memorandum"), *transmitting, inter alia*, Letter from Paul Bisengimana to the President of the Mechanism for International Criminal Tribunals, dated 8 August 2012. While the Application was originally submitted to me in French, all references herein are to the Mechanism's certified English translation of this document. The same is true for all other communications between the Mechanism, Bisengimana, and the authorities of Mali that are cited herein, except as otherwise indicated.

[2] Confidential Motion of Paul Bisengimana's Defence Seeking Leave to File a Redacted Public Version of "*Paul Bisengimana's Defence Motion Seeking Early Release*", 5 September 2012 ("Motion to File a Public Redacted Application"). The English translation of the Motion to File a Public Redacted Application was filed on 24 October 2012.

[3] MICT/3, 5 July 2012.

[4] *The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, Judgement and Sentence, 13 April 2006 ("Trial Judgement"), para. 8.

[5] *The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-I, Amended Indictment, 1 December 2005.

[6] Trial Judgement, paras.. 1, 7.

[7] Trial Judgement, paras. 1, 12.

[8] Trial Judgement, para. 231.

extermination as crimes against humanity.[9] The Trial Chamber sentenced Bisengimana to 15 years of imprisonment.[10] Bisengimana did not appeal the Trial Judgement. 75

4. On 3 November 2008, the Republic of Mali was designated as the country in which Bisengimana was to serve his sentence.[11]

II. THE APPLICATION

5. Bisengimana filed his Application directly before me as the President of the Mechanism on 12 July 2012. On 13 August 2012, the Registry of the Mechanism ("Registrar") forwarded a letter from the Malian authorities, recommending Bisengimana for early release and informing me that Bisengimana will have served three-quarters of his sentence in March 2013.[12] On 23 August 2012, the Registrar transmitted to me, *inter alia*, (i) a letter from the director of the Koulikoro prison in Mali, and (ii) a memorandum from Mr. Hassan B. Jallow, the Mechanism's Prosecutor ("Prosecution").[13] On 18 September 2012, I received a further report from the Koulikoro prison in Mali.[14] On 4 October 2012, the Registrar informed me that no psychiatric or psychological evaluations of Bisengimana were available and that all collected information regarding the Application had been submitted to Bisengimana for his comments, pursuant to paragraph 6 of the Practice Direction.[15] Bisengimana did not file a response to the collected material.

III. BISENGIMANA'S MOTION TO FILE A PUBLIC REDACTED APPLICATION

6. As an initial matter, I note Bisengimana's request to file a public redacted version of his Application. The Appeals Chambers of the ICTR and the International Criminal Tribunal for the former Yugoslavia ("ICTY") have repeatedly held that proceedings should be public unless there are exceptional reasons for keeping them confidential.[16] In the interests of ensuring consistency

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[9] Trial Judgement, paras. 12, 19-25.
[10] Trial Judgement, para. 203.
[11] *The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60, Decision on the Enforcement of Sentence, 3 November 2008, p. 3.
[12] *See* Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 13 August 2012, *transmitting, inter alia*, Letter from the Director of Prison Services and Surveilled Education, dated 19 July 2012.
[13] *See* 23 August Memorandum, *transmitting, inter alia*, (i) Letter from the Director of Koulikoro Prison and Correctional Facility, dated 9 August 2012 ("9 August Letter"), and (ii) Internal Memorandum from Hassan B. Jallow, Prosecutor, to John Hocking, Registrar, dated 23 August 2012 ("Prosecution Memorandum").
[14] *See* Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 18 September 2012 ("September Memorandum"), *transmitting, inter alia*, Report from the Registrar of Koulikoro Prison, dated 9 September 2012 (in French) ("September Report").
[15] *See* Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 4 October 2012 ("October Memorandum").
[16] *See, e.g., Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Motion on Behalf of Vinko Pandurević for Provisional Release, 6 June 2012, p. 1 n. 2; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No.

with the practice and the jurisprudence of the ICTY and the ICTR,[17] I authorise the filing of the public redacted version of the Application attached to the Motion to File a Public Redacted Application. 74

IV. DISCUSSION

7. In considering Bisengimana's Application pursuant to Rule 150 of the Rules, I have consulted the Judges of the sentencing chamber of the ICTR who are Judges of the Mechanism.

A. Applicable Law

8. Pursuant to Article 25, paragraph 2 of the Statute, the Mechanism has "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".

9. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR, or the Mechanism is imprisoned ("Enforcing State"), he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President of the Mechanism 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, under the Enforcing State's laws, "for pardon, commutation of sentence, or early release". 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. Rule 151 of the Rules provides that, in making a determination on pardon, commutation of sentence, or early release, the President of the Mechanism shall take into account, *inter alia*, the gravity of the crime or crimes for which the

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ICTR-99-52-A, Order to Appellant Hassan Ngeze to File Public Versions of His Notice of Appeal and Appellant's Brief, 30 August 2007, p. 2. *Cf.* Rules 78 and 107 of the Rules of Procedure and Evidence of the ICTY; Rules 78 and 107 of the Rules of Procedure and Evidence of the ICTR.

[17] *See Phénéas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012 ("*Munyarugarama* Decision"), para. 6.

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.[18] 73

11. Paragraph 3 of the Practice Direction provides that "[a] convicted person may directly petition the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible."

12. 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") provides that the conditions of imprisonment shall be governed by the law of Mali, subject to the supervision of the ICTR. Article 8(2) of the Enforcement Agreement provides that the President of the ICTR shall determine, in consultation with the Judges of the ICTR, whether "any form of early release is appropriate", and the Registrar of the ICTR shall inform the Malian authorities of the ICTR President's determination accordingly. I note that the Mechanism is bound by the Enforcement Agreement, even though it was concluded between Mali and the ICTR, in accordance with Article 25, paragraph 2 of the Statute, and the Mechanism's founding document, Security Council Resolution 1966 of 22 December 2010.[19]

B. Gravity of Crimes

13. Pursuant to a plea agreement with the ICTR Prosecution, Bisengimana pleaded guilty to aiding and abetting the murder and extermination of more than a thousand Tutsi civilians in the Gikoro *commune* of the Kigali-Rural *prefécture* in Rwanda in April 1994.[20] Bisengimana was the *bourgmestre* of the Gikoro *commune* at the time.[21] In determining Bisengimana's sentence, the Trial Chamber emphasised that "Bisengimana's official position as *bourgmestre* [was] an overwhelmingly aggravating circumstance."[22] In the words of the Trial Chamber,

> despite knowing that Tutsi civilians had taken refuge at Musha Church and Ruhanga Complex and that weapons had been distributed to be used to attack them, and despite having the means to oppose the killings, Paul Bisengimana did nothing to stop the killings. [...] [Bisengimana] had a duty to act to protect the population and [...] he knew that his presence when the attack was launched would encourage the attackers by giving them the impression that he approved of their criminal actions. The Chamber considers that [Bisengimana's] presence is a very serious form of

[18] While Rule 151 of the Rules refers to cooperation with the "Prosecutor", which is defined in Rule 2(A) of the Rules as the Prosecutor of the Mechanism, I consider that it is in the interests of justice to interpret Rule 151 of the Rules to allow me to consider an early release applicant's cooperation with the Prosecution of the ICTY or the ICTR as well.
[19] *See* U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010 ("Resolution 1966"), para. 4 ("the 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").
[20] Trial Judgement, paras. 65, 67, 183.
[21] Trial Judgement, paras. 1, 29.
[22] Trial Judgement, para. 182.

participation even if it is not alleged or established that he was a co-perpetrator or that he directly committed a criminal act during the massacre. The Chamber recalls that more than a thousand Tutsi civilians died as a result of the massacres at Musha Church and Ruhanga Complex.[23]

14. Taking the above into consideration, I am of the view that the high gravity of Bisengimana's crimes weighs against his early release.

C. Treatment of Similarly-Situated Prisoners

1. Eligibility for Early Release

15. In deciding early release applications, I am required, under Rule 151 of the Rules, to consider the treatment of similarly-situated prisoners as a factor. In his Application, Bisengimana submits that this factor should include consideration of the treatment of, *inter alios*, prisoners convicted by both the ICTR and the ICTY.[24] He claims that this interpretation best serves the equal treatment criterion set forth in Rule 151 of the Rules.[25] Accordingly, based on the practice of the ICTY, Bisengimana submits that, having served two-thirds of his sentence, he should be considered eligible for early release. He contends that service of the two-thirds of the sentence is an appropriate eligibility threshold for the Mechanism to apply, in light of established national and international practice.[26]

16. I note that, under Article 25, paragraph 2 of the Statute, the Mechanism will supervise the enforcement of sentences imposed by the ICTY, the ICTR, and the Mechanism itself. Even though the Mechanism's Statute has, as of now, only entered into force with respect to the Mechanism's ICTR branch, the Mechanism will also succeed the ICTY in its rights, obligations and essential functions (including the supervision of the enforcement of ICTY sentences) as of 1 July 2013.[27] The Mechanism may also impose sentences itself.[28] Pursuant to Article 26 of the Statute, early release applications may be filed by any prisoner whose sentence is supervised by the Mechanism, irrespective of the sentencing tribunal. The question before me is whether, for purposes of early release determinations under Rule 151 of the Rules, persons convicted and sentenced by the ICTR, like Bisengimana, should be considered "similarly-situated" not only to persons convicted and sentenced by the ICTR, but also to those convicted and sentenced by the ICTY or the Mechanism.

17. For the reasons explained below, I have formed the view that all prisoner populations to be ultimately supervised by the Mechanism should be treated equally. There is no compelling reason why convicted persons whose sentences are, or will ultimately be, supervised by the Mechanism

[23] Trial Judgement, paras. 182-183.
[24] Application, para. 17.
[25] *See* Application, paras. 16-18, 23.
[26] *See* Application, paras. 24-26.
[27] Resolution 1966, paras. 1, 4.
[28] *See, e.g.*, Article 1 of the Statute, and Articles 1-4 of Annex 2 (Transitional Arrangements) to the Statute.

should be treated differently for early release purposes depending on which tribunal convicted or sentenced them. The Mechanism is a single institution that will ultimately succeed both the ICTY and the ICTR (with one branch for each of those tribunals).[29] I therefore consider it fair and just to deem early release applicants "similarly-situated" to all prisoners whose sentences will supervised by the Mechanism, irrespective of whether they were convicted or sentenced by the ICTR, the ICTY, or the Mechanism itself. 71

18. The determination that all prisoners applying to the Mechanism for early release should be treated equally is particularly relevant as the ICTR and the ICTY have developed divergent practices on early release eligibility. Before the Mechanism assumed the responsibility for the supervision of prisoners convicted and sentenced by the ICTR,[30] the ICTR's practice was to consider convicted persons eligible to apply for early release only when they had served at least three-quarters of their sentences.[31] That practice was introduced in 2011, in connection with the first grant of early release to a person convicted by the ICTR in the *Bagaragaza* Decision.[32] That decision made it clear that the three-quarters mark was "not intended to create a precedent" at the ICTR and that "future decisions on early release will continue to be determined on a case-by-case basis."[33] The three-quarters threshold established in the *Bagaragaza* Decision has been applied by the ICTR in two other decisions as a factor relevant to the consideration of similarly-situated ICTR prisoners.[34]

19. By contrast, ICTY convicted persons are considered eligible for early release upon completion of two-thirds of their sentences.[35] The two-thirds practice at the ICTY was first introduced in 2003, based on a consideration of the eligibility thresholds for early release that were in effect in the ICTY enforcing States,[36] and has since been applied consistently by the ICTY.[37] This practice does not mean that every person convicted by the ICTY is automatically granted early release upon completion of two-thirds of his or her sentence, but that these prisoners are eligible to

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[29] *See* Resolution 1966, paras. 1, 4.
[30] *See* Resolution 1966, para. 1; Article 25(2) of the Statute.
[31] *See, e.g., The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-59A-T, Decision on Tharcisse Muvuyni's Application for Early Release, 6 March 2012 ("*Muvunyi* Decision"), para. 12, and cases cited therein.
[32] *See The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S, Decision on the Early Release of Michel Bagaragaza, 24 October 2011 ("*Bagaragaza* Decision"), paras. 8-10.
[33] *Bagaragaza* Decision, para. 17.
[34] *See Muvuyni* Decision, para. 12; *The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59, Decision on the Early Release Request of Juvénal Rugambarara, 8 February 2012 ("*Rugambarara* Decision"), para. 12.
[35] *See, e.g., Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 30 November 2012 ("*Zelenović* Decision"), para. 14, and cases cited therein; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011 ("*Krajišnik* Decision"), para. 21, and cases cited therein.
[36] *See Prosecutor v. Zdravko Mucić et al.*, Order of the President in Response to Zdravko Mucić's Request for Early Release, Case No. IT-96-21-A *bis*, 9 July 2003, p. 3.
[37] *See, e.g., Zelenović* Decision, para. 14 n. 26; *Krajišnik* Decision, para. 21 n. 46.

apply for early release once that threshold has been met.[38] The two-thirds mark is, in essence, an admissibility threshold. 70

20. Given that the early release practice of the ICTR was derived by reference to the long-established relevant jurisprudence and practice of the ICTY,[39] and taking into account the *lex mitior* principle – *i.e.*, the retroactive applicability of a more lenient criminal law to crimes committed and sentences imposed before the law's enactment – which is a fundamental principle of criminal law,[40] I am of the opinion that all convicts supervised by the Mechanism should be considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them.[41] Although the two-thirds practice originates from the ICTY, I believe that fundamental fairness and justice are best served[42] if the ICTY practice applies uniformly to the entire prisoner population to be ultimately supervised by the Mechanism.

21. While I acknowledge that adoption of the two-thirds eligibility threshold might constitute a benefit not previously recognised for persons convicted by the ICTR, I do not consider that this can justify discriminating between the different groups of convicted persons falling under the jurisdiction of the Mechanism. I further emphasise that consideration of an application for early release at the two-thirds mark does not guarantee that release will be granted, nor does it preclude considering every application on its merits in a manner consistent with the practice of both the ICTY and the ICTR. A convicted person having served two-thirds of his sentence shall merely be eligible for early release and not entitled to such release, which may only be granted by the President of the Mechanism as a matter of discretion.[43]

2. Bisengimana's Eligibility

22. As of the date of this decision, Bisengimana has completed more than two-thirds of his 15-year sentence, as he has been detained since 4 December 2001.[44] For the foregoing reasons, I am of the view that the completion of two-thirds of Bisengimana's sentence renders him eligible for consideration for early release.

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[38] *See Zelenović* Decision, para. 14; *Krajišnik* Decision, para. 21.
[39] *See Bagaragaza* Decision, paras. 8-10; *Rugambarara* Decision, para. 11; *Muvuyni* Decision, para. 11.
[40] *See Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005, paras. 79-86. *See also Scoppola v. Italy*, Application No. 10249/03, Judgment, 17 September 2009 (European Court of Human Rights) ("*Scoppola* Judgement"), para. 106 (describing the international instruments that reflect the *lex mitior* principle and concluding that it has become a "fundamental principle of criminal law.").
[41] *Cf. Munyarugarama* Decision, paras. 5-6 (stating that, because of the "normative continuity" between the Statute and the Rules of the Mechanism with the Statutes and the Rules of the ICTR and the ICTY, the Mechanism's Statute and Rules should be interpreted in such a manner as to be consistent with the jurisprudence and practice of both the ICTY and the ICTR, as a matter of "due process and fundamental fairness").
[42] *See* Article 26 of the Statute ("There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.").
[43] *See* Article 26 of the Statute; Rule 150 of the Rules.
[44] Trial Judgement, para. 204. *See also supra*, n. 10.

D. Demonstration of Rehabilitation

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23. Rule 151 of the Rules provides that the President of the Mechanism shall take into account, *inter alia*, a "prisoner's demonstration of rehabilitation" in determining whether early release is appropriate. To allow the President of the Mechanism to reach an informed decision as to a 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[.]

24. Bisengimana argues that the rehabilitation factor should be counted in his favour because (i) he has shown "exemplary behaviour vis-à-vis both the prison authorities and his co-detainees",[45] and (ii) he has maintained "a close relationship with his family since he was imprisoned."[46] In support of his claims concerning his relationship with his family, Bisengimana submits, as annexes to the Application, signed statements by three of his children, who confirm that they visit Bisengimana regularly at the Koulikoro prison.[47] Bisengimana also refers to his intention to set up a business in Mali upon his release as proof of his successful rehabilitation.[48]

25. The facts that Bisengimana has retained close links with his family and has plans for his future suggest that he will be able to reintegrate into his family and society should he be released. While this does not constitute concrete evidence of rehabilitation, I do consider this evidence relevant in establishing his ability to return to a productive life, supported by his family members.

26. Moreover, I observe that, in his 9 August Letter, the director of the Koulikoro prison advises that Bisengimana "has demonstrated exemplary behaviour on a daily basis" and "is a calm person who respects the rules of the prison and its authorities, and even his co-detainees."[49] The director of the Koulikoro prison further notes that Bisengimana "shuns laziness in the sense that he is very involved in various commissions managing the community of Rwandan prisoners in Koulikoro" prison, and also that Bisengimana "regrets everything that has happened to his country and wishes to make amends."[50] This information from the prison authorities appears to corroborate Bisengimana's rehabilitation claims. I note that Bisengimana has not been evaluated by a psychiatrist or psychologist during his incarceration in Mali.[51] However, as the availability of these

[45] Application, para. 41.
[46] Application, para. 43.
[47] Application, Annexes 1, 2, and 3.
[48] Application, paras. 46-47.
[49] 23 August Memorandum, 9 August Letter.
[50] 23 August Memorandum, 9 August Letter.
[51] *See* October Memorandum.

types of services to prisoners held in Mali is unclear, I do not consider this a factor to be accorded any negative weight. 68

27. Based on the foregoing, I am of the view that there is evidence of Bisengimana's rehabilitation, and that this factor militates in favour of his early release.

E. Substantial Cooperation with the Prosecution

28. Rule 151 of the Rules states that the President shall take into account any "substantial cooperation" of the prisoner with the MICT or ICTR Prosecution.[52] 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".

29. In its submissions, the Prosecution denies that Bisengimana provided any cooperation at any time "other than by entering into a guilty plea accord with" the ICTR Prosecution.[53] Furthermore, the Prosecution asserts that the guilty plea has "already [been] taken into account by the [T]rial [C]hamber as a mitigating factor in imposing [Bisengimana's] sentence".[54] Bisengimana challenges this evaluation and submits that he "must be considered as having fully co-operated with" the ICTR Prosecution[55] through his guilty plea, which, as the Trial Chamber observed, "facilitated the administration of justice and saved the [ICTR]'s resources."[56]

30. At the outset, I observe that the entry of a guilty plea by an accused person constitutes cooperation with the Prosecution, mainly due to the impact of such a plea on the efficient administration of justice.[57] Further, the entry of a guilty plea may be taken into account in favour of an early release application, even if it was also taken into account at the sentencing stage.[58] In addition, I note that the Prosecution does not indicate whether it has sought any additional cooperation from Bisengimana in addition to his guilty plea.

31. In view of the foregoing, I am of the view that this factor weighs in favour of Bisengimana's early release.

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[52] *See supra*, n. 18.
[53] 23 August Memorandum, Prosecution Memorandum.
[54] 23 August Memorandum, Prosecution Memorandum.
[55] Application, para. 38.
[56] Application, para. 37.
[57] *See Zelenović* Decision, para. 21.
[58] *See, e.g., Prosecutor v. Dragan Obrenović*, IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, 29 February 2012 (public redacted version), paras. 8, 26-28 (granting early release to Dragan Obrenović who had pleaded guilty, on the grounds of, *inter alia*, his exceptional cooperation with the ICTY Prosecution); *Prosecutor v. Dragan Obrenović*, IT-02-60/2-S, Sentencing Judgement, 10 December 2003, para. 153 (taking into account, *inter alia*, Obrenović's "substantial co-operation with the [ICTY] Prosecution," and "the unqualified acceptance of his responsibility and his guilt" as mitigating factors concerning his sentence).

F. Other Factors: Humanitarian Concerns

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32. Paragraph 9 of the Practice Direction provides that the President of the Mechanism may consider "any other information" that the President considers "relevant" to supplement the criteria specified in Rule 151 of the Rules. Previous decisions on early release have determined that the state 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 convict to remain in prison any longer.[59]

33. [REDACTED] [60] [REDACTED] [61] [REDACTED] [62] [REDACTED] [63] I further note that, in determining Bisengimana's sentence, the Trial Chamber admitted into evidence a confidential medical report indicating that Bisengimana was "being treated for several illnesses."[64] The Trial Chamber held that Bisengimana's age and state of health constituted "a mitigating circumstance."[65]

34. [REDACTED]

G. Conclusion

35. Having carefully considered the factors identified in Rule 151 of the Rules, as well as the particular circumstances of Bisengimana's case, I am of the view that Bisengimana should be granted early release, effective immediately. Bisengimana has already completed two-thirds of his sentence and there is evidence of rehabilitation, cooperation with the ICTR Prosecution, [REDACTED] all of which I find counsel in favour of his early release.

36. I note that my colleagues unanimously share my view that Bisengimana should be granted early release.

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[59] *See, e.g.*, *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010 (made public on 29 June 2010), para. 10, n. 25.
[60] [REDACTED].
[61] [REDACTED]
[62] [REDACTED]
[63] [REDACTED]
[64] Trial Judgement, para. 173.
[65] Trial Judgement, para. 174.

V. DISPOSITION

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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 **GRANT** the Application.

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

39. I further **GRANT** the Motion to File a Public Redacted Application and **DIRECT** the Registrar to take all necessary actions to allow the filing of a public redacted version of the Application.

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

Done this 11th day of December 2012,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

TRANSMISSION SHEET / *FICHE DE TRANSMISSION*

FOR FILING OF DOCUMENTS WITH THE ARUSHA BRANCH OF THE MECHANISM FOR INTERNATION CRIMINAL TRIBUNALS/
POUR LE DEPOT DE DOCUMENTS A LA DIVISION D'ARUSHA DU MECHANISME POUR LES TRIBUNAUX PENAUX INTERNATIONAUX

I - FILING INFORMATION / *INFORMATIONS GENERALES*

To/ *A*:	MICT Registry/ *Greffe du MTPI*				
From/ *De*:	☒ Chambers/ *Chambre*	☐ Defence/ *Défense*	☐ Prosecution/ *Bureau du Procureur*	☐ Other/ *Autre :*	
Case Name/ *Affaire*:	**Prosecutor v. Paul Bisengimana**			**Case Number/ *Affaire No*:**	**MICT-12-07**
Date Created/ *Daté du*:	**11 December 2012**		**Date transmitted/ *Transmis le*:**	**11 December 2012**	
No. of Pages/ *No de pages*:	**12**	**Original Language / *Langue de l'original*:**	☒ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda
Title of Document/ *Titre du document*:	**Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application (Public Redacted Version)**				
Classification Level/ *Catégories de classement*:	☒ Unclassified/ *Non classé*	☐ Strictly Confidential/ *Strictement confidentiel*			
	☐ Confidential/ *Confidentiel*	☐ Ex Parte (specify/ *préciser*):			
	☐ Ex Parte Defence excluded/ *Défense exclu*	☐ Ex Parte Prosecution excluded/ *Bureau du Procureur exclu*	☐ Other Ex Parte/ *Ex Parte Autre* (specify/ *préciser*):		
Document type/ *Type de document*:	☐ Indictment/ *Acte d'accusation*	☐ Order/ *Ordre*	☐ Appeal Book/ *Livre d'appel*	☐ Notice of Appeal/ *Acte d'appel*	
	☐ Warrant/ *Mandat*	☐ Affidavit/ *Déclaration sous sermon*	☐ Submission from non-parties/ *Ecritures déposés par des tiers*		
	☐ Motion/ *Requête*	☐ Correspondence	☐ Submission from parties/ *Ecritures déposés par des parties*		
	☒ Decision/ *Décision*	☐ Judgement/ *Jugement*	☐ Book of Authorities/ *Livre de sources juridiques*		

II - TRANSLATION STATUS ON THE FILING DATE/ *ETAT DE LA TRADUCTION AU JOUR DU DÉPÔT*

☐ Translation not required/ *La traduction n'est pas requise*

☒ Filing Party hereby submits only the original, and requests the Registry to translate/
La Partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction
(Word version of the document is attached/ *La version en Word se trouve en annexe)*

☐ English/ *Anglais* ☒ French/ *Français* ☐ Kinyarwanda

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La Partie déposante soumet ci-joint l'original et la version traduite pour dépôt, comme suit :

Original/ *Original en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda
Translation/ *Traduction en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda

☐ Filing Party will be submitting the translated version(s) in due course in the following language(s)/
La *Partie déposante soumettra la (les) version(s) traduite(e) sous peu, dans la (les) langue(s) suivante(s)*:

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