UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: MICT-13-36-ES.2

Date: 17 September 2020

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THE PRESIDENT OF THE MECHANISM

Before: **Judge Carmel Agius, President**

Registrar: **Mr. Abubacarr Tambadou**

Decision of: **17 September 2020**

PROSECUTOR

v.

LAURENT SEMANZA

PUBLIC REDACTED VERSION

DECISION ON LAURENT SEMANZA'S APPLICATION FOR EARLY RELEASE

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Laurent Semanza:

Mr. Peter Robinson

Republic of Benin

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals ("President" and "Mechanism", respectively), am seised of an application for early release filed by Mr. Laurent Semanza ("Semanza") on 26 July 2018, before the then-President of the Mechanism, Judge Theodor Meron ("Application").[1]

I. BACKGROUND

2. On or about 26 March 1996, Semanza was arrested in the Republic of Cameroon, and was transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania, on 19 November 1997.[2]

3. On 15 May 2003, Trial Chamber III of the International Criminal Tribunal for Rwanda ("Trial Chamber" and "ICTR", respectively) convicted Semanza of complicity in genocide, aiding and abetting extermination as a crime against humanity, instigating rape as a crime against humanity, and instigating and committing torture and murder as crimes against humanity.[3] The Trial Chamber sentenced Semanza to 25 years of imprisonment, subject to a six-month reduction for violations of his pre-trial rights, and to credit for time already served.[4]

4. On 20 May 2005, the Appeals Chamber of the ICTR: (i) affirmed Semanza's convictions for rape, torture, and murder as crimes against humanity;[5] (ii) reversed, in part, Semanza's convictions for complicity in genocide and aiding and abetting extermination as a crime against humanity, and affirmed the remainder of his convictions under these counts;[6] (iii) reversed the acquittal for genocide;[7] (iv) entered convictions for genocide, ordering extermination as a crime against humanity, and violence to life, health, and physical or mental well-being of persons as serious violations of Common Article 3 of the Geneva Conventions and Additional Protocol II;[8] (v) quashed the sentence of 25 years of imprisonment handed down by the Trial Chamber;[9] and (vi) entered a sentence of 35 years of imprisonment, subject to a six-month reduction for violations

[1] Petition for Early Release on 26 March 2019, 26 July 2018. I note that, in connection with his Application, Semanza filed two motions for orders to the Registrar on 26 September 2018 and 8 July 2019, respectively. *See* Motion for Order to the Registrar, 26 September 2018; Second Motion for Order to the Registrar and for Supplemental Legal Aid, 8 July 2019 ("Motions"). My decision on these Motions has been issued separately today.
[2] *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 ("Trial Judgement"), paras. 16, 20, 22.
[3] Trial Judgement, paras. 553, 585-588.
[4] Trial Judgement, paras. 590-591.
[5] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005 ("Appeal Judgement"), p. 126.
[6] Appeal Judgement, pp. 125-126.
[7] Appeal Judgement, p. 125.
[8] Appeal Judgement, pp. 125-126.
[9] Appeal Judgement, p. 126.

of his fundamental pre-trial rights as ordered by the Trial Chamber, and to credit for time already spent in detention.[10]

5. On 8 December 2008, Semanza was transferred to the Republic of Mali ("Mali") to serve the remainder of his sentence.[11] On 9 June 2016, the then-President issued a decision denying Semanza's previous application for early release.[12] On 21 December 2018, Semanza was transferred from Mali to the Republic of Benin ("Benin") to serve the remainder of his sentence.[13]

II. APPLICATION

6. On 26 July 2018, Semanza filed his Application, whereby he requested that the then-President: (i) initiate the procedure for consideration of his early release; and (ii) grant him early release effective 26 March 2019, when he would have served two-thirds of his sentence.[14] On 27 July 2018, the then-President requested the Registry of the Mechanism ("Registry") to undertake the steps prescribed in paragraphs 3 to 5 of the Practice Direction (MICT/3/Rev.1).[15]

7. Semanza submits that he has: (i) become eligible for early release, having served one half of his sentence as required by Beninese law, and having served two-thirds of this sentence as of 26 March 2019;[16] (ii) exhibited good behaviour while in detention, and that there is strong evidence of his rehabilitation, faith, and fitness for early release;[17] (iii) been found capable of reintegrating into society if released;[18] (iv) "served his sentence without bitterness and is remorseful" over the genocide committed against the Tutsi, and in this context provides his Personal Statement, even

[10] Appeal Judgement, p. 126.
[11] *See Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, 9 June 2016 ("Early Release Decision"), para. 3. *See also Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-E, Decision on the Enforcement of Sentence, 4 November 2008, p. 3.
[12] Early Release Decision, paras. 36-37.
[13] Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential) ("Memorandum of 6 February 2019"), p. 20; *See also* Order Designating State in Which Laurent Semanza is to Serve the Remainder of his Sentence, 19 December 2018 (confidential, made public pursuant to President's instructions contained in the order) ("Order of 19 December 2018"), p. 2.
[14] Application, paras. 1, 11.
[15] Internal Memorandum from then-President to the Registrar, dated 27 July 2018 (confidential) *referring to* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, ICTY, or the Mechanism, MICT/3/Rev.1, 24 May 2018. Please note that this is version of the Practice Direction that was in force when this matter first arose. The Practice Direction was revised on 20 February 2019 (MICT/3/Rev.2), and 15 May 2020 (MICT/3/Rev. 3). Unless otherwise indicated, references will be made to the current Practice Direction. *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.3, 15 May 2020 ("Practice Direction").
[16] Application, paras. 1-2; Submission of 27 February 2019, paras. 6-7; Submission of 4 August 2019, paras. 2-4.
[17] Submission of 27 February 2019, paras. 8-12; Submission of 4 August 2019, paras. 5-9.
[18] Submission of 27 February 2019, paras. 13, 24; Submission of 4 August 2019, paras. 10-11, 19.

though he denies committing the crimes for which he was convicted of;[19] (v) not cooperated with the Prosecution, nor has he been asked to;[20] and (vi) agreed to abide by any conditions of release deemed necessary, and provides his agreement to conditions imposed on another person convicted by the ICTR.[21] Semanza has indicated that, if released, he would like to reside in **[REDACTED]**.[22]

8. On 1 August 2018, the then-President instructed the Registry to inform the relevant authorities of the Republic of Rwanda ("Rwanda") of the Application, and requested their views thereon.[23] On 29 August 2018, Rwanda filed its submission, opposing the Application,[24] and on 7 September 2018, Semanza filed his reply.[25]

9. On 28 November 2018, the Registry transmitted to the then-President a *note verbale* from Mali communicating its agreement with Semanza's request for "provisional release and commutation of sentence".[26]

10. On 17 January 2019, following Semanza's transfer from Mali to Benin,[27] the then-President directed the Registry to undertake the steps prescribed in paragraphs 3 to 5 of the Practice Direction (MICT/3/Rev.1) in relation to Benin.[28] In light of the length of time Semanza had already spent in detention in Mali, the then-President specified that the information referred to in paragraph 4(b) of the Practice Direction (MICT/3/Rev.1) should still be requested from Mali as the prior enforcement State.[29]

[19] Application, para. 17. *See also* Application, para. 6; Submission of 27 February 2019, paras. 15-18; Personal Statement, RP 788-787; Submission of 4 August 2019, para. 13.
[20] Application, para. 5; Submission of 27 February 2019, para. 19; Submission of 4 August 2019, para. 12.
[21] Application, para. 10; Submission of 27 February 2019, para. 21; Submission of 4 August 2019, para. 18. I note that the convicted person Semanza refers to is Aloys Simba. *See Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019 ("*Simba* Decision").
[22] Submission of 27 February 2019, para. 22; Submission of 4 August 2019, paras. 14, 16.
[23] Request to the Republic of Rwanda Related to Application for Early Release from Mr. Laurent Semanza, 1 August 2018 ("Request to Rwanda"), p. 2. *See also* Response to Request for Extension of Time and Reply to Submissions of Rwanda, 14 August 2018 ("Response to Time Extension Request"); Decision on Request for Disclosure and Extension of Time by the Republic of Rwanda, 15 August 2018, p. 4.
[24] Opposition to Application for Early Release, 29 August 2018 ("Rwanda's Submission"), p. 29.
[25] Reply to Rwanda's Opposition to Application for Early Release, 7 September 2018 ("Response to Rwanda's Submission").
[26] Internal Memorandum from the Registrar to then-President, dated 28 November 2018 (confidential) *conveying* a *note verbale* from Mali, dated 12 November 2018 (confidential) ("*Note Verbale* from Mali"), pp. 1-2. *See also* Internal Memorandum from then-President to the Registrar, dated 9 November 2018 (confidential); Internal Memorandum from the Registrar to then-President, dated 13 November 2018 (confidential).
[27] *Supra* para. 5.
[28] Internal Memorandum from then-President to the Registrar, dated 17 January 2019 (confidential) ("Memorandum of 17 January 2019"), para. 2.
[29] Memorandum of 17 January 2019, para. 3.

11. On 14 February 2019, the Registrar conveyed to me the Office of the Prosecutor's ("Prosecution") submission that Semanza did not cooperate with the ICTR or the Mechanism Prosecution.[30]

12. On 27 February 2019, Semanza filed a confidential and *ex parte* submission[31] providing, *inter alia*, a personal statement.[32]

13. On 25 March 2019, the Registrar transmitted to me Benin's psychiatric evaluation of Semanza,[33] and on 3 May 2019, he conveyed a *note verbale* from Benin indicating that Semanza does not meet the conditions to benefit from pardon, commutation of sentence, or early release under Beninese law.[34]

14. On 19 June 2019, the Registrar conveyed to me a medical and a psycho-social report on Semanza, received from the Malian authorities,[35] and on 26 June 2019, he provided me with a report by the Beninese authorities on Semanza's behaviour and conditions of detention.[36]

15. On 3 July 2019, I directed the Registrar to enquire with the Prosecution as to whether it had any comments on Semanza's Application, and the Prosecution provided its comments on 23 July 2019.[37]

16. On 30 July 2019, all information collected by the Registrar in this regard was communicated to Semanza in accordance with paragraph 5 of the Practice Direction

[30] Internal Memorandum from the Registrar to the President, dated 14 February 2019 (confidential) *conveying* Internal Memorandum from Acting Officer in Charge, Office of the Prosecutor, Arusha branch, to the Chief of Registry, Arusha branch, dated 29 January 2019 (confidential) ("Prosecution's Memorandum on Cooperation"). *See also* Internal Memorandum from the President to the Registrar, dated 12 February 2019 (confidential).
[31] Submission Pursuant to Paragraph Six of the Early Release Practice Direction, 27 February 2019 (confidential and *ex parte*) ("Submission of 27 February 2019").
[32] Submission of 27 February 2019, Annex D, Registry Pagination ("RP") 788-786 ("Personal Statement").
[33] Internal Memorandum from the Registrar to the President, dated 25 March 2019 (confidential) ("Memorandum of 25 March 2019") *conveying* Psychiatric Evaluation of Mr. Laurent Semanza, dated 19 February 2019 (confidential) ("Psychiatric Evaluation"). *See* Internal Memorandum from the President to the Registrar, dated 18 March 2019 (confidential).
[34] Internal Memorandum from the Registrar to the President, dated 3 May 2019 (confidential) *conveying* a *note verbale* from Benin, dated 26 April 2019 (confidential) ("*Note Verbale* from Benin").
[35] Internal Memorandum from the Registrar to the President, dated 19 June 2019 (confidential) ("Memorandum of 19 June 2019") *conveying* Medical Report, dated 10 December 2018 (confidential) ("Medical Report"), and Detention Psycho-Social Report, dated 10 June 2019 (confidential) ("Psycho-Social Report"). *See also* Internal Memorandum from the President to the Registrar, dated 13 May 2019 (confidential).
[36] Internal Memorandum from the Registrar to the President, dated 26 June 2019 (confidential) ("Memorandum of 26 June 2019") *conveying* Letter from the Ministry of Justice of Benin, dated 24 June 2019 (confidential) ("Prison Report").
[37] Internal Memorandum from the President to the Registrar, dated 3 July 2019 (confidential), para. 2; Internal Memorandum from the Registrar to the President, dated 1 August 2019 (confidential) *conveying* an Internal Memorandum from the Prosecutor to the Registrar, dated 23 July 2019 (confidential) ("Prosecution's Submission").

(MICT/3/Rev.2),[38] and on 4 August 2019, Semanza filed, confidentially and *ex parte*, a second submission in relation to his Application.[39]

17. In light of Semanza's indication that, if released, he intends to live in **[REDACTED]**,[40] I issued a confidential and *ex parte* order **[REDACTED]** on 2 March 2020, seeking its views.[41] At the time of writing, **[REDACTED]** has not responded.

18. On 16 March 2020, Semanza filed a Motion requesting provisional release, which I denied on 21 April 2020.[42]

19. With regard to the Application, I have consulted with Judge Meron in his capacity as a Judge of the sentencing Chamber,[43] as foreseen under Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules"). As no other Judges who imposed the sentence upon Semanza are Judges of the Mechanism, I also consulted with Judge Claudia Hoefer, in accordance with Rule 150 of the Rules and paragraph 16 of the Practice Direction.

III. APPLICABLE LAW

20. Pursuant to Article 26 of the Statute of the Mechanism ("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. While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the International Criminal Tribunal for the former Yugoslavia ("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.

21. 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

[38] Internal Memorandum from the Registrar to the President, dated 1 August 2019 (confidential), para. 4 *referring to* Practice Direction (MICT/3/Rev.2).
[39] Supplemental Submission Pursuant to Paragraph Six of the Early Release Practice Direction, 4 August 2019 (confidential and *ex parte*) ("Submission of 4 August 2019").
[40] Submission of 4 August 2019, para. 14; Personal Statement, RP 787.
[41] **[REDACTED]**
[42] Decision on Motion for Provisional Release, 21 April 2020 ("Decision of 21 April 2020"), p. 7; Motion for Provisional Release, 16 March 2020 ("Motion for Provisional Release"). *See* Supplemental Submission: Motion for Provisional Release, 24 March 2020; Second Supplemental Submission: Motion for Provisional Release, 12 April 2020.
[43] *See* Appeal Judgement, p. 127.

appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.[44]

22. The general standards for granting pardon, commutation of sentence, or 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.

23. 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. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which he or she considers may be relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate.[45] Paragraph 13 of the Practice Direction states that the convicted person shall be given 14 days to examine the information received by the Registrar, following which he or she may provide any written submissions in response. With regard to consultation, paragraph 16 of the Practice Direction specifies that in all circumstances, the President shall consult with at least two other Judges of the Mechanism. Paragraph 19 of the Practice Direction provides that the President shall determine, on the basis of the interests of justice and the general principles of law, whether early release is to be granted having regard to the criteria specified in Rule 151 of the Rules, and any other information that he or she considers relevant.

24. According to Article 25(2) of the Statute, the Mechanism supervises the enforcement of sentences pronounced by the ICTR, the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States. The

[44] *See* Practice Direction, para. 16.
[45] *See* Practice Direction, para. 10: "To assist in his or her determination of an Application, the President may direct the Registry, where applicable, to collect information such as: (a) any reports and observations from the appropriate authorities in the enforcement State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned; (b) any psychiatric or psychological evaluations prepared on the mental condition of the convicted person, including in relation to any risks posed by release, as well as any remarks of the convicted person regarding the crimes for which he or she was convicted and the victims of these crimes; (c) any medical reports on the physical condition of the convicted person, including whether the convicted person is capable of serving his or her sentence in the enforcement State; (d) information on where the convicted person intends to live if released early; (e) a detailed report from the Prosecution on any co-operation of the convicted person with the Prosecution of the ICTR, the ICTY, or the Mechanism and the significance thereof, as well as any other comments or information that the Prosecution considers of relevance for the determination of the Application; and (f) any other information that the President considers relevant".

Enforcement Agreement with Benin[46] provides in Article 3(2) that the conditions of imprisonment shall be governed by the law of Benin, subject to the supervision of the Mechanism. Article 8(3) of the Enforcement Agreement provides that, in the event of a direct petition for early release by the convicted person to the President of the Mechanism, Benin shall, upon the Registrar's request, inform the Registrar as to whether the convicted person is eligible under Beninese law. Article 8(5) of the Enforcement Agreement states that there shall only be commutation of sentence, pardon, or early release if the President so decides, on the basis of the interests of justice and the general principles of law, and the Registrar shall transmit the decision of the President to Benin, which shall execute the terms of the decision promptly. Article 8(6) of the Enforcement Agreement provides that if Benin, due to its domestic law or for any other reason, disagrees with, or is unable to accept the President's decision not to allow commutation of sentence, pardon, or early release, the President may decide to withdraw the convicted person and transfer that person to a different enforcement State.

IV. ANALYSIS

A. Eligibility

25. Eligibility for early release upon having served two-thirds of the sentence is essentially a pre-condition.[47] In the Mechanism's first decision on early release, the two-thirds mark was described as being "in essence, an admissibility threshold".[48] To reflect this existing practice of the Mechanism, I will first examine Semanza's eligibility to be considered for early release.[49]

[46] 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, dated 12 May 2017 ("Enforcement Agreement").
[47] *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted) ("*Krstić* Decision of 10 September 2019"), para. 18. *See Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted) ("*Brđanin* Decision"), para. 28; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted) ("*Bralo* Decision"), para. 21; *Prosecutor v. Yussuf Munyakazi*, Case No. MICT-12-18-ES.2, Decision on the Application of Yussuf Munyakazi for Early Release, 29 November 2019 ("*Munyakazi* Decision"), p. 3.
[48] *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on the Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted) ("*Bisengimana* Decision"), para. 20.
[49] *See e.g. Brđanin* Decision, para. 28; *Bralo* Decision, para. 21; *Munyakazi* Decision, p. 3; *Krstić* Decision of 10 September 2019, para. 18.

1. Eligibility before the Mechanism

26. All convicted persons whose enforcement is supervised by the Mechanism are eligible to be considered for early release upon the completion of two-thirds of their sentences.[50] Given the need for equal treatment, this uniform eligibility threshold applies irrespective of whether the person was convicted by the ICTR, the ICTY, or the Mechanism.[51] Similarly, the two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State.[52]

27. According to information provided by the Registry, Semanza served two-thirds of his sentence of 35 years of imprisonment on 26 March 2019.[53] Semanza is thus eligible to be considered for early release.

2. Eligibility under Beninese Law

28. As set out above, Semanza is currently serving his sentence in Benin and the Beninese authorities have informed the Mechanism that Semanza does not fulfil the requirements to benefit from pardon, commutation of sentence, or early release under Beninese law.[54] **[REDACTED]**.[55]

29. In this respect, I recall that regardless of whether or not Semanza is considered eligible for release under Beninese law, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.[56]

[50] *Brđanin* Decision, para. 29; *Bralo* Decision, para. 22; *Krstić* Decision of 10 September 2019, para. 16; *Bisengimana* Decision, para. 20. *See* Practice Direction, para. 8.
[51] *Brđanin* Decision, para. 29; *Bralo* Decision, para. 22; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted) ("*Galić* Decision of 26 June 2019"), para. 15. *See Bisengimana* Decision, paras. 17, 20.
[52] *Brđanin* Decision, para. 29; *Bralo* Decision, para. 22; *Krstić* Decision of 10 September 2019, para. 18 and references cited therein.
[53] *See* Early Release Decision, para. 20; Memorandum of 6 February 2019, p. 24 *noting* that Semanza was sentenced to 35 years of imprisonment subject to a six-month reduction.
[54] *Note Verbale* from Benin. *See supra* paras. 5, 13.
[55] **[REDACTED]** *See supra* para. 17. While I recognise that Mali submitted that they agree with Semanza's request for "provisional release and commutation of sentence", the enforcement State is now Benin and therefore it is not necessary to address this factor further. *Note Verbale* from Mali, p. 1. *See supra* para. 9. I note that with regards to Benin's submission, Semanza submits that Benin's indication that Semanza is not eligible for early release under its laws can only be due to the fact that he has not had sufficient time in Benin to demonstrate his proof of good conduct and social rehabilitation. *See* Submission of 4 August 2019, para. 3.
[56] *See e.g. Brđanin* Decision, para. 33; *Bralo* Decision, para. 26; *Krstić* Decision of 10 September 2019, para. 24.

B. General Standards for Granting

30. 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, as required by Rule 151 of the Rules.[57] I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

31. At the outset, I note that Semanza acknowledges the high gravity of the crimes for which he was convicted and that this factor weighs against his early release.[58]

32. As set out above, Semanza was convicted for genocide and complicity in genocide, for ordering and aiding and abetting extermination as a crime against humanity, for instigating rape as a crime against humanity, for instigating and committing torture and murder as crimes against humanity, as well as for several counts of violence to life, health and physical or mental well-being of persons as serious violations of Common Article 3 of the Geneva Conventions and Additional Protocol II.[59]

33. In assessing the gravity of the crimes for which Semanza was convicted,[60] the Trial Chamber considered that these crimes were, "by definition, of the most serious gravity, which affect the very foundations of society and shock the conscience of humanity".[61] Through his participation in these crimes, the Trial Chamber found that Semanza had contributed to the harming and killing of many civilian Tutsi.[62]

34. In describing Semanza's crimes, the Trial Chamber found, *inter alia*, that Semanza sought out a Tutsi man in a large crowd of people, and repeatedly struck him with a machete, resulting in his death.[63] Further, Semanza was found to have encouraged a crowd to rape Tutsi women, and his general influence in the community, combined with his statements being made in the presence of commune and military authorities, "gave his instigation greater force and legitimacy".[64] The Trial

[57] *Brđanin* Decision, para. 34; *Bralo* Decision, para. 27; *Krstić* Decision of 10 September 2019, paras. 17-18 and references cited therein.
[58] Response to Rwanda's Submission, para. 3.
[59] *Supra* paras. 3-4.
[60] Trial Judgement, paras. 555-559.
[61] Trial Judgement, para. 556.
[62] Trial Judgement, para. 556.
[63] Trial Judgement, paras. 486, 493.
[64] Trial Judgement, para. 485.

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.[65] Similarly, Semanza "encouraged and supported the murder of […] 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".[66]

35. The Trial Chamber also observed, in the context of the gravity of his crimes, that with the exception of his personal participation in the torture and killing of a male civilian, Semanza was not a principal perpetrator of the other crimes he was found guilty of, nor was he in a position of authority, with most of his crimes being "crimes of indirect participation".[67]

36. The Appeals Chamber entered convictions for ordering genocide and ordering extermination,[68] based on 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" and that these refugees "were then executed on [Semanza's] directions".[69]

37. The Appeals Chamber was not satisfied that Semanza's sentence was "commensurate with the gravity of [his] offences, as determined by the Appeals Chamber", recalling its finding that some of Semanza's actions amounted to perpetration in the form of ordering rather than mere complicity in genocide and aiding and abetting extermination.[70] Holding that this form of direct perpetration involves a higher level of culpability, the Appeals Chamber concluded that the Trial Chamber's sentence was, in this respect, inadequate.[71] Consequently, the Appeals Chamber increased Semanza's sentence to 35 years of imprisonment, subject to a six-month reduction for violations of his pre-trial rights.[72]

38. I take note that in Rwanda's Submission, the Rwandese authorities recall that Semanza was convicted for genocide, and that he was previously denied early release due to the high gravity of

[65] Trial Judgement, para. 453.
[66] Trial Judgement, para. 449.
[67] Trial Judgement, para. 557.
[68] Appeal Judgement, para. 364.
[69] Appeal Judgement, para. 363 *citing* Trial Judgement, paras. 178, 196.
[70] Appeal Judgement, para. 388.
[71] Appeal Judgement, para. 389.
[72] Appeal Judgement, paras. 388-389, p. 126. *See supra* para. 4.

his crimes.[73] Additionally, the Rwandese authorities refer to specific witness testimonies which illustrate the gravity of his crimes.[74]

39. I also take note that the Prosecution submits that Semanza's early release is not warranted, given that the high gravity of his crimes outweighs any signs of rehabilitation that he has demonstrated.[75]

40. The high gravity of Semanza's crimes is not in doubt, and the severity is reflected throughout the judgements in his case.

2. Treatment of Similarly-Situated Prisoners

41. Persons sentenced by the ICTR, like Semanza, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.[76] As noted above, all convicted persons supervised by the Mechanism are considered eligible to apply for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.[77]

42. In this regard, I observe that Semanza has served two-thirds of his sentence as of 26 March 2019 and is thus eligible to be considered for early release.[78]

43. I also note that, according to Semanza, he presents a stronger case for early release than many similarly-situated persons, highlighting that he was not as high ranking or as prominent as other convicted persons who have been granted early release, and that he has a strong record of rehabilitation.[79] I consider such comparisons to other similarly-situated persons to be inconsequential, given that each case presents unique circumstances that must be considered on

[73] Rwanda's Submission, pp. 2-3 *referring to* Early Release Decision, paras. 14-16, 36.
[74] Rwanda's Submission, pp. 3-6.
[75] Prosecution's Submission, paras. 2, 4-8, 16.
[76] *See e.g. Brđanin* Decision, para. 29; *Bralo* Decision, para. 22; *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019 ("*Ćorić* Decision"), para. 37; *Bisengimana* Decision, paras. 17-20.
[77] *See e.g. Brđanin* Decision, para. 45; *Bralo* Decision, para. 22; *Ćorić* Decision, para. 37; *Bisengimana* Decision, paras. 17-20. I note in this regard that Rwanda submits that granting Semanza early release would treat him more favourably than other similarly-situated persons convicted by the ICTR, recalling the ICTR requirement that a convicted person serve three-fourths of their sentence before being eligible for release. *See* Rwanda's Submission, pp. 19-20, 25-26. However, it is the long established jurisprudence of the Mechanism that same eligibility threshold of two-thirds should apply to all persons convicted by the ICTR, the ICTY, or the Mechanism. *See supra* para. 26.
[78] *See supra* para. 27.
[79] Submission of 27 February 2019, para. 24; Submission of 4 August 2019, para. 19.

their own merits by the President when determining whether pardon, commutation of sentence, or early release is to be granted.[80]

3. Demonstration of Rehabilitation

44. Before turning to an individualised assessment of Semanza's demonstration of rehabilitation, I recall that I have recently set forth some of the considerations that will guide my assessment of a convicted person's demonstration of rehabilitation under Rule 151 of the Rules.[81] In the interests of transparency, I recall these considerations here as well.

45. In my view, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through exactly the same paradigm as for the rehabilitation of perpetrators of domestic or ordinary crimes.[82] For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not consider that such behaviour can on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.[83]

46. There are, however, a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism which have been recognised as such in the past or may be of persuasive relevance.[84] Such indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes;[85] (ii) signs of critical reflection of the convicted person upon his or her crimes;[86] (iii) public or private

[80] *See Brđanin* Decision, para. 46.
[81] *Brđanin* Decision, paras. 47-51; *Bralo* Decision, paras. 37-41.
[82] *Brđanin* Decision, para. 48; *Bralo* Decision, para. 38 *referring to Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 806.
[83] *Brđanin* Decision, para. 48; *Bralo* Decision, para. 38; *Krstić* Decision of 10 September 2019, para. 30; *Galić* Decision of 26 June 2019, para. 38.
[84] *Brđanin* Decision, para. 49; *Bralo* Decision, para. 39 and references cited therein. *See Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, 2 February 2017 (public redacted) ("*Kunarac* Decision"), para. 53.
[85] *See e.g. Krstić* Decision of 10 September 2019, para. 32; *Prosecutor v. Berislav Pušić*, Case No. MICT-17-112-ES.1, Public Redacted Version of the 20 April 2018 Decision of the President on the Early Release of Berislav Pušić, 24 April 2018 ("*Pušić* Decision"), para. 66; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Public Redacted Version of the 26 July 2017 Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017 ("*Miletić* Decision of 26 July 2017"), para. 29; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Public Redacted Version of 30 May 2017 Decision of the President on the Early Release of Sreten Lukić, 11 August 2017 ("*Lukić* Decision of 30 May 2017"), paras. 38, 42; *Kunarac* Decision, paras. 53-54; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 18 July 2011, paras. 30-31, 34; *Prosecutor v. Mlađo Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007, para. 15. *Cf. Simba* Decision, paras. 42, 44.
[86] *See e.g. Krstić* Decision of 10 September 2019, paras. 32-33; *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 22 May 2017 (confidential), para. 37.

expressions of genuine remorse or regret;[87] (iv) actions taken to foster reconciliation or seek forgiveness;[88] (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes;[89] (vi) participation in rehabilitation programmes in prison;[90] (vii) a convicted person's mental health status;[91] and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.[92] This is a non-exhaustive list and I do not expect convicted persons to fulfil all of these indicators in order to demonstrate rehabilitation.[93] It falls, however, upon the convicted person to convince me that he or she can be considered rehabilitated, and that I should exercise my discretion responsibly to release him or her before the full sentence is served.[94]

47. Moreover, rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.[95] Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.[96] For a convicted person who is eligible to be considered for early release, I will therefore generally consider the convicted person's post-release plans, including the envisaged place of residence.[97] If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under Chapter VII

[87] *See e.g. Krstić* Decision of 10 September 2019, para. 32; *Lukić* Decision of 30 May 2017, para. 38; *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Public Redacted Version of 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 11 August 2017 ("*Jelisić* Decision"), paras. 41-42; *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, paras. 24, 44; *Prosecutor v. Momir Nikolić*, Case No. MICT-14-65-ES, Public Redacted Version of the 14 March 2014 Decision on Early Release of Momir Nikolić, 12 October 2015, para. 23. *Cf. Simba* Decision, paras. 42, 44.
[88] *See e.g. Jelisić* Decision, para. 41.
[89] *See e.g. Galić* Decision of 26 June 2019, para. 37; *Ćorić* Decision, para. 51; *Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Stevan Todorović, 22 June 2005, para. 9.
[90] *See e.g. Krstić* Decision of 10 September 2019, paras. 31, 33; *Lukić* Decision of 17 September 2018, para. 26.
[91] *See e.g. Ćorić* Decision, para. 52; *Miletić* Decision of 23 October 2018 (confidential), para. 34; *Lukić* Decision of 30 May 2017, para. 39; *Kunarac* Decision, para. 53.
[92] *See e.g. Galić* Decision of 26 June 2019, paras. 36, 38; *Simba* Decision, paras. 42, 45; *Miletić* Decision of 23 October 2018, para. 36; *Lukić* Decision of 17 September 2018, para. 28; *Pušić* Decision, para. 39; *Miletić* Decision of 26 July 2017, para. 30; *Lukić* Decision of 30 May 2017, para. 41; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision of the President on the Early Release of Stanislav Galić, 18 January 2017 (public redacted) ("*Galić* Decision of 18 January 2017"), para. 29; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision of the President on the Early Release of Radislav Krstić, 13 December 2016 (public redacted) ("*Krstić* Decision of 13 December 2016"), para. 24.
[93] *Brđanin* Decision, para. 49; *Bralo* Decision, para. 39.
[94] *Brđanin* Decision, para. 49; *Bralo* Decision, para. 39.
[95] *Brđanin* Decision, para. 50; *Bralo* Decision, para. 40; *Krstić* Decision of 10 September 2019, para. 30.
[96] *Brđanin* Decision, para. 50; *Bralo* Decision, para. 40 *referring to Galić* Decision of 26 June 2019, paras. 36, 38; *Simba* Decision, paras. 42, 45; *Miletić* Decision of 23 October 2018, para. 36; *Lukić* Decision of 17 September 2018, para. 28; *Pušić* Decision, para. 39; *Miletić* Decision of 26 July 2017, para. 30; *Lukić* Decision of 30 May 2017, para. 41; *Galić* Decision of 18 January 2017, para. 29; *Krstić* Decision of 13 December 2016, para. 24.
[97] *Brđanin* Decision, para. 50; *Bralo* Decision, para. 40.

of the United Nations Charter to contribute to the restoration and maintenance of peace and security.[98] Bearing this in mind, I generally do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence without having demonstrated a certain degree of rehabilitation.[99]

48. Rehabilitation is a process rather than a definite result, and it is just one factor that I will consider alongside other factors when deciding on the early release of a convicted person who is eligible to be considered for such relief.[100] Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, I may consider pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.[101]

49. Turning to the extent to which Semanza has demonstrated rehabilitation, I note that the most probative materials before me include: (i) Semanza's Application and information provided in annexes attached thereto, including his Personal Statement;[102] (ii) information provided by the former enforcement State, Mali, namely a Medical Report dated 10 December 2018 and a Psycho-Social Report dated 10 June 2019;[103] and (iii) information provided by the current enforcement State, Benin, namely a Psychiatric Evaluation of Semanza dated 19 February 2019 and a Prison Report on his behaviour and conditions of detention dated 24 June 2019.[104]

(a) Assessment of Semanza's Behaviour in Prison

50. The Prison Report indicates that since his arrival in Benin, there have been no complaints regarding his conduct.[105] The report characterises Semanza as a calm man who has respect for himself and the community around him" and is considered to be of "good moral character".[106] The

[98] *Brđanin* Decision, para. 50; *Bralo* Decision, para. 40 *referring to* Security Council Resolution 1966 (2010), 22 December 2010; Security Council Resolution 955 (1994), 8 November 1994; Security Council Resolution 808 (1993), 22 February 1993.
[99] *Brđanin* Decision, para. 50; *Bralo* Decision, para. 40.
[100] *Brđanin* Decision, para. 51; *Bralo* Decision, para. 41.
[101] *Brđanin* Decision, para. 51; *Bralo* Decision, para. 41.
[102] Submission of 27 February 2019 *conveying* as confidential and *ex parte* annexes: (i) an email dated 24 February 2019 from a priest from the Mali Archdiocese (Annex A, RP 797, hereafter "Malian Priest Statement"); (ii) a letter dated 22 February 2019 from Emmanuel Rukundo, priest and ICTR convicted person detained with Semanza in Tanzania and in Mali (Annex B, RP 795, hereafter "Statement of an ICTR Convicted Person"); (iii) the Psychiatric Evaluation (Annex C, RP 793-790); (iv) his Personal Statement (Annex D), RP 788-786; (v) a document entitled "Conditional Early Release Agreement", signed and dated 20 February 2019 (Annex E, RP 784, hereafter "Semanza's Agreement to Respect Conditions"); (vi) an email from Semanza's son dated 25 February 2019 (Annex F, RP 782, hereafter "Statement of Semanza's Son"); Submission of 4 August 2019 *conveying* **[REDACTED]**.
[103] Memorandum of 19 June 2019 *conveying* Medical Report *and* Psycho-Social Report.
[104] Memorandum of 25 March 2019 *conveying* Psychiatric Evaluation; Memorandum of 26 June 2019 *conveying* Prison Report.
[105] Prison Report, p. 1.
[106] Prison Report, p. 1.

Psychiatric Evaluation conducted by the Beninese authorities indicates that during the examination Semanza "displayed appropriate and cooperative behaviour".[107]

51. The Psycho-Social Report, concerning Semanza's imprisonment in Mali for approximately ten years, records that he did not cause any significant problems, apart from a few reports of "minor misbehaviour towards staff".[108] However, I note that the same report characterised Semanza as "not very cooperative and not very well socially integrated".[109] In the Malian Priest Statement, Semanza is observed as getting along with other prisoners.[110]

52. In his Personal Statement, Semanza indicates that his record of behaviour in prison over 23 years reflects that he is a "good companion and friend to [his] fellow prisoners and a respectful and correct prisoner to the staff".[111] He states that he regularly attends mass, and that he has never been disciplined.[112] Further, according to Semanza, if his rehabilitation was not genuine, he could not have hidden it from the staff and his fellow prisoners for all these years.[113]

53. In considering his Application, I have taken into account that the Malian and Beninese authorities have reported that Semanza's conduct in prison has generally conformed to their expectation.

(b) Assessment of Semanza's Mental Health Status

54. **[REDACTED]**.[114] **[REDACTED]**.[115]

55. In light of this information, I note that Semanza's mental state appears to be stable, and that he does not suffer from any apparent mental illness.

(c) Assessment of Semanza's Acceptance of Responsibility, Signs of Critical Reflection, and Genuine Expressions of Remorse

56. The Psychiatric Evaluation provides some insight as to how Semanza views the events that took place in Rwanda before, during, and after the genocide, as well as how he perceives his role in those events and the crimes for which he was convicted.

[107] Psychiatric Evaluation, p. 3.
[108] Psycho-Social Report, p. 3.
[109] Psycho-Social Report, p. 3.
[110] Malian Priest Statement, RP 797.
[111] Personal Statement, RP 787.
[112] Personal Statement, RP 787.
[113] Personal Statement, RP 787.
[114] Prison Report, p. 1.
[115] Psychiatric Evaluation, pp. 2-3.

57. I find Semanza's choice of vocabulary in describing the historical events leading to the genocide to be concerning. For instance, he speaks of the Hutu in Rwanda as "conquered" and seeking refuge, and that the Tutsi "invaded" Rwanda from bordering countries.[116] Further, he describes the relationship between Hutu and Tutsi in Rwanda as follows: "The Hutu had once been considered the slaves of the Tutsi, who ruled for almost 400 years. This changed in 1959 when the Hutu came to power, which led to the exile of the Tutsi".[117] As to motive for the crimes committed against the Tutsi during the genocide, Semanza refers to "vengeance".[118] Further, Semanza describes the crimes that were committed as the consequence of an "uprising by the Hutu" because the "Rwandan president, who was Hutu was killed […] when his plane was brought down by the rebels".[119] With respect to his own crimes, Semanza considers that "the team that conducted the investigation was from the victor's side".[120]

58. As to his role in these events, the Psychiatric Evaluation records that Semanza considers himself to be "the victim of injustice", stating that "he is innocent and that the judgement was predetermined".[121] He describes the war as "a symbol of failure, during which every family experienced the loss of human life" and considers that "[t]he Rwandans are continuing to pay the price of this painful war" but the meaning of this is not further elaborated upon.[122] The Psychiatric Evaluation states that "[p]rison is a terrible lesson that has allowed him to repent",[123] and records the "lack of reconciliation between the sons of Rwanda" as a negative notable event.[124]

59. In response to the Psychiatric Evaluation, Semanza denies committing the crimes he was convicted of, and submits that he: (i) did not participate in the attacks he was convicted for; (ii) cannot admit to crimes he has not committed; and (iii) was already significantly penalised for not admitting to the crimes with which he was charged, as a guilty plea would have resulted in a lower sentence.[125] He further states that "[d]espite his innocence, [he] has served his sentence without bitterness and is remorseful and heartsick over the genocide committed against the Tutsi in Rwanda, which he has expressly recognised".[126] Semanza also recalls a March 2016 report by the

[116] Psychiatric Evaluation, pp. 1-2.
[117] Psychiatric Evaluation, p. 2.
[118] Psychiatric Evaluation, p. 2.
[119] Psychiatric Evaluation, p. 2.
[120] Psychiatric Evaluation, p. 1.
[121] Psychiatric Evaluation, p. 3.
[122] Psychiatric Evaluation, p. 3.
[123] Psychiatric Evaluation, p. 3.
[124] Psychiatric Evaluation, p. 3.
[125] Submission of 27 February 2019, paras. 15-16.
[126] Submission of 27 February 2019, para. 17 *referring to* Application, para. 6.

Malian authorities, which indicates that "he will endeavour to foster Rwandan reconciliation upon his release from prison".[127]

60. In his Personal Statement, Semanza communicates that he would like to express his remorse to me and explain how he has been rehabilitated over the years.[128] He submits that he has been a "humble prisoner" for the last twenty-three years, fulfilling his daily tasks "without bitterness" because he considers himself "one of the lucky ones compared to the hundreds of thousands of [his] fellow Rwandans who were killed during the genocide […]".[129] Further he states:

> While I miss my family, my loss cannot compare with those whose family members were killed during the genocide or who continue to bear the scars of having survived such unspeakable crimes. I fully accept that there was a genocide against the [T]utsi in Rwanda and that I have been convicted of crimes committed during that genocide. While I know it is inadequate, I fully and completely express my deep sorrow for those events and for the horrible pain that was caused to the [T]utsi in Rwanda. Over the past 23 years, I have turned to my faith to help me understand and develop as a person.[130]

61. Semanza "acknowledges that there was a genocide against the Tutsi in Rwanda in 1994 and expresses his deepest sympathy to the victims and their families".[131] I also note that Semanza is "amenable to reasonable conditions [upon being granted early release], including the condition that he not engage in any activity, or make any statements, negating or denying the genocide".[132]

62. To illustrate what he describes as his "genuine rehabilitation", Semanza provides a number of supporting documents, including the Statement of an ICTR Convicted Person who was imprisoned with him in the United Republic of Tanzania and in Mali, and the Malian Priest Statement from a priest of the Malian Archdiocese who ministered to the detainees for ten years.[133] Semanza submits that both men provide strong evidence of his rehabilitation, faith, and fitness for early release.[134]

63. I am of the opinion that no weight should be attached to the Statement of an ICTR Convicted Person who has been convicted of genocide, as well as murder and extermination as

[127] Submission of 27 February 2019, para. 8 *referring to* Early Release Decision, para. 24; Submission of 4 August 2019, para. 5 *referring to* Early Release Decision, para. 24.
[128] Personal Statement, RP 788.
[129] Personal Statement, RP 788.
[130] Personal Statement, RP 788-787.
[131] Application, para. 6. *See* Response to Time Extension Request, para. 3.
[132] Application, para. 10.
[133] Malian Priest Statement, RP 797; Statement of an ICTR Convicted Person, RP 795. *See Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Judgement, 20 October 2010 ("*Rukundo* Appeal Judgement"), para. 270.
[134] Submission of 27 February 2019, para. 11; Submission of 4 August 2019, para. 8.

crimes against humanity.[135] In fact, Semanza's inclusion of such a statement raises doubt as to whether he fully comprehends the gravity of such crimes.

64. The Malian Priest Statement notes that Semanza "bears within him the suffering of all that he has seen and has lived through".[136] In the Malian priest's view, Semanza is an honest and sincere man who regrets what happened, seeks peace and reconciliation, and wishes to work to restore peace.[137] I observe that these comments are of a very general nature and do not relate to the crimes for which Semanza was convicted.

65. I note that the Prosecution's Submission contains observations pertaining to Semanza's rehabilitation in terms of his perception of the crimes for which he was convicted, and his victims, and in particular the Prosecution states:

> [Semanza's] claim for sympathy for the victims of the 1994 genocide against the Tutsi and their families is a self-serving afterthought, and should be considered against his earlier position on the genocide. Throughout his trial, at no time did Semanza acknowledge that there was a genocide in Rwanda, nor did he express any sympathy for the victims and their families. Instead, in his mitigation of sentence, Semanza portrayed himself as a victim of the "events". Semanza could have evidenced concrete rehabilitation by such means as credible acceptance of responsibility, renunciation of earlier denials, public support for peace projects, public apology to the victims, or victim restitution.[138]

66. I also note that Rwanda's Submission contains information regarding Semanza's lack of acceptance of responsibility of the crimes for which he was convicted, noting that: "[h]e makes no mention of his own role in the genocide" and that "[i]t is difficult to see how a man who does not accept responsibility for his crimes has demonstrated any serious degree of rehabilitation or 'will endeavo[u]r to foster Rwandan reconciliation upon his release from prison'".[139]

67. In analysing the information before me, I observe at the outset that Semanza submitted his Personal Statement and comments in relation to rehabilitation confidentially and *ex parte*.[140] Thus, any statements expressing sentiments of remorse or regret have not been made publicly. Further, while Semanza acknowledges the genocide against the Tutsi[141] and the suffering of the victims, expressing sorrow and his deepest sympathy in this regard,[142] these statements are of a very general

[135] *See Rukundo* Appeal Judgement, para. 270; *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement, pronounced on 27 February 2009 and filed in writing on 13 March 2009, para. 591. *See Rukundo* Appeal Judgement, para. 1.
[136] Malian Priest Statement, RP 797.
[137] Malian Priest Statement, RP 797.
[138] Prosecution's Submission, para. 2.
[139] Rwanda's Submission, pp. 23-24.
[140] *See* Submission of 27 February 2019. Semanza indicates that I may refer to this material in my public decision on the Application as I see fit. *See* Submission of 27 February 2019, fn. 1. *See also* Submission of 4 August 2019, fn. 1.
[141] *See* Application, para. 6; Personal Statement, RP 788-787. *See* Response to Time Extension Request, para. 3.
[142] *See* Personal Statement, RP 788-787; Psychiatric Evaluation, p. 3.

nature. Without attaching weight to the fact that he considers himself to be wrongfully convicted, I note that Semanza shows no sign of critical reflection upon the crimes for which he was convicted.[143] Semanza's view of the history of his country[144] further demonstrates a lack of nuanced understanding of the policies and ideology that allowed for the commission of these crimes. While Semanza states that "he will endeavour to foster Rwandan reconciliation upon his release from prison",[145] he does not provide evidence of any actions he has taken to contribute to such reconciliation. Based on the information before me, I am of the opinion that while Semanza shows some general regret for the genocide perpetrated against the Tutsi, and some compassion for the victims, this is insufficient to demonstrate his rehabilitation.

(d) Assessment of the Prospect of Semanza's Successful Reintegration into Society

68. In his Application, Semanza did not specify where he intends to live if granted early release. He later submitted that he would like to reside in **[REDACTED]**.[146] The Statement of Semanza's Son suggests that **[REDACTED]**.[147] **[REDACTED]**.[148] However, given Semanza's stated intention to reside in **[REDACTED]**, I provided the **[REDACTED]** authorities with an opportunity to provide comments in this regard, if any. To date no such comments have been received.[149]

69. Semanza submits that his family would financially support him upon release as set out in the Statement of Semanza's Son.[150] He specifies that in light of his advanced age, he would be a retiree and "spend his time in church activities, gardening, and socialising with his neighbo[u]rs".[151] Semanza indicates that "[a]fter 23 years in prison, his heart is burning with a desire for freedom and the simple things that we take for granted in our own lives".[152] He considers himself to be "a modest, quiet man who will live a modest, quiet life if released".[153] To demonstrate the environment in which he would live in **[REDACTED]**, Semanza submitted **[REDACTED]**.[154] According to Semanza, this information demonstrates that the conditions in **[REDACTED]** are

[143] *See* Psychiatric Evaluation, p. 3; Submission of 27 February 2019, paras. 15-17.
[144] *See* Psychiatric Evaluation, pp. 1-3.
[145] Submission of 27 February 2019, para. 8 *referring to* Early Release Decision, para. 24; Submission of 4 August 2019, para. 5 *referring to* Early Release Decision, para. 24.
[146] Submission of 4 August 2019, para. 14; Personal Statement, RP 787.
[147] Statement of Semanza's Son, RP 782.
[148] **[REDACTED]**
[149] **[REDACTED]**
[150] Submission of 27 February 2019, para. 22; Personal Statement, RP 787; Statement of Semanza's Son, RP 782; Submission of 4 August 2019, para. 14.
[151] Submission of 27 February 2019, para. 23.
[152] Submission of 27 February 2019, para. 23.
[153] Submission of 27 February 2019, para. 24. *See* Submission of 4 August 2019, para. 19.
[154] Submission of 4 August 2019, paras. 15-16 *referring to Galić* Decision of 26 June 2019, para. 38; **[REDACTED]**

very peaceful, there are no security problems **[REDACTED]**, and that he would be able to live a peaceful and secure life.[155]

70. Semanza also recalls an earlier report from the Malian authorities from March 2016, which indicates that he "will not pose a danger to his community of reinsertion".[156] In his view this report, together with the recent Psychiatric Evaluation, demonstrate that he is capable of reintegrating into society.[157] Semanza declares that if released, he will "not be interested or involved in politics" and that he is willing to abide to any conditions imposed upon his release.[158] To further support this statement, he has signed a document in which he agrees to the same conditions that were imposed on Aloys Simba who was convicted by the ICTR and released subject to conditions in January 2019.[159] Semanza also explains that "part of his rehabilitation has been a change in what is important to [him;] family, personal relations, and even gardening are the things [he now values]" and he would be "so grateful to simply have [his] freedom".[160] Semanza concludes his Personal Statement with the following:

> "I have worked hard to rehabilitate myself from the inside out while in Prison. By having more access to church services, and more contact with my family, and community members, I think I can do even better at rehabilitation outside of prison. I can assure you that I will never disappoint you with my behaviour and attitude if released".[161]

71. I observe that important aspects of Semanza's post-release plans remain unclear, and limited objective information has been provided on his ability to successfully reintegrate into society. Notably, it is unclear to me where Semanza intends to reside. To the extent that he wishes to reside in **[REDACTED]**, no information has been provided as to whether Semanza has taken steps to obtain the right to live in **[REDACTED]** upon his release. The lack of clarity resulting from the various statements pertaining to his intended preferred State of residence following release makes it difficult to engage in a meaningful assessment of Semanza's post-release plans. Therefore, in light of the foregoing, it is my opinion that the information provided is insufficient to establish whether Semanza would be able to successfully reintegrate into society.

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[155] Submission of 4 August 2019, para. 16 **[REDACTED]**.
[156] Submission of 27 February 2019, para. 9 *referring to* Early Release Decision, para. 25; Submission of 4 August 2019, para. 6 *referring to* Early Release Decision, para. 25.
[157] Submission of 27 February 2019, paras. 13-14 *referring to* Early Release Decision, para. 26 and Psychiatric Evaluation; Submission of 4 August 2019, paras. 10-11 *referring to* Early Release Decision, para. 26 and Psychiatric Evaluation.
[158] Personal Statement, RP 787-786. *See* Submission of 4 August 2019, para. 18.
[159] Semanza's Agreement to Respect Conditions, RP 784. *See* Simba Decision, paras. 82, 84, Annex (RP 586-585).
[160] Personal Statement, RP 787-786.
[161] Personal Statement, RP 786.

(e) Overall Assessment of Semanza's Rehabilitation

72. In my view, Semanza shows some degree of rehabilitation, taking into account his general good behaviour in prison and his expressions of sympathy for the victims of the genocide, despite such expressions having been made confidentially. At the same time, I recall that Semanza's expressions of sympathy are general in nature and that the mere recognition of the genocide against the Tutsi is insufficient to demonstrate his rehabilitation. Semanza neither accepts responsibility for the crimes for which he was convicted nor does he link his expressions of sympathy to the victims of his crimes. He has therefore not engaged in any critical reflection upon his crimes and while he states that he would like to contribute to reconciliation, he has not demonstrated any actions he has taken to that effect, nor has he made any public or private expressions of genuine remorse or regret. In addition, Semanza's post-release plans remain vague and other positive indicators of rehabilitation are absent.

73. For these reasons, I conclude that Semanza has not sufficiently demonstrated that he is rehabilitated.

4. Substantial Cooperation with the Prosecution

74. The Prosecution indicates that Semanza did not cooperate with the ICTR or Mechanism Prosecution, either in the course of his trial or appeal proceedings, or while serving his sentence.[162] Semanza submits that he recognises that he has not provided cooperation to the Prosecution, nor has he been asked to do so.[163] Accordingly, I note that there was no cooperation between Semanza and the Prosecution and, as such, this merits no weight in my consideration of Semanza's Application.

C. Other Considerations

1. Views of the Prosecutor

75. I have previously explained that I will use my discretion to receive and consider general comments from the Prosecution with regard to early release applications.[164] In doing so, I will exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and

[162] Prosecution's Memorandum on Cooperation, para. 2.
[163] Submission of 27 February 2019, para. 19; Submission of 4 August 2019, para. 12. *See* Application, para. 5.
[164] *Brđanin* Decision, para. 83; *Bralo* Decision, para. 69.

will carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.[165]

76. As noted above, the Prosecution submits that Semanza's early release is not warranted because the high gravity of his crimes outweighs any signs of rehabilitation that he has demonstrated.[166] Further, as also noted above, the Prosecution states that "[h]is claim for sympathy for the victims of the 1994 genocide against the Tutsi and their families is a self-serving afterthought", which should be considered against his earlier position on the genocide.[167] Should I nevertheless be inclined to grant the Application, the Prosecution urges that appropriate conditions be imposed upon Semanza's early release "in compliance with international best practices".[168]

77. In considering the Application, I have taken note of the Prosecution's submissions and its opposition to Semanza's early release.

2. Views of Rwanda

78. I observe that then-President invited submissions from Rwanda in the present matter.[169] As I have recently indicated, I consider that the views of Rwanda may be of relevance to my determination of an application for pardon, commutation of sentence, or early release.[170] However, in taking into account such submissions, I will carefully assess, on a case-by-case basis, which submissions are of relevance in any given case, and I will attach particular importance to the convicted person's comments in response.

79. As noted above, Rwanda submits that the Application should be denied in light of the gravity of Semanza's crimes and the "irreparable psychological harm his release would create for

[165] *Brđanin* Decision, para. 83; *Bralo* Decision, para. 69.
[166] Prosecution's Submission, paras. 2, 4-8, 16. *See supra* para. 39.
[167] Prosecution's Submission, para. 2. *See supra* para. 65.
[168] Prosecution's Submission, paras. 3, 11-13, 16. The Prosecution suggests several conditions that should be imposed on Semanza upon release. *See* Prosecution's Submission, para. 12. Furthermore, the Prosecution considers that any such conditions should require the cooperation of the receiving State to ensure adherence. *See* Prosecution's Submission, para. 12. It therefore requests that I seek the agreement of the relevant State to serve as the Monitoring Authority during the period of Semanza's conditional early release. *See* Prosecution's Submission, para. 14. In addition, the Prosecution submits that Semanza should be directed to provide proof that the relevant State authorities have authorised him to remain in its territory. *See* Prosecution's Submission, para. 2. I note that these submissions were originally made in relation to Mali but consider that these arguments are of a generic nature.
[169] *See* Request to Rwanda, pp. 1-2.
[170] *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Invitation to the Republic of Rwanda Related to the Application for Early Release of Théoneste Bagosora, 13 July 2020, p. 2.

his numerous victims and survivors of his crimes".[171] I further recall that Rwanda considers the Application to be premature and in violation of the legal framework.[172]

80. In relation to the gravity of Semanza's crimes and as noted above, Rwanda recalls that he was convicted for genocide and that the then-President denied Semanza early release because of the high gravity of his crimes.[173] In addition, the Rwandese authorities point to specific witness testimonies illustrating the gravity of Semanza's crimes.[174] To illustrate the psychological impact upon the surviving victims, Rwanda refers to a report of a traumatologist and victimologist dated 30 May 2018 ("Victimologist Report") and a letter from the President of the victims association *Ibuka Europe* ("Ibuka Letter").[175] Both documents arose in the context of the applications for early release of Aloys Simba, Hassan Ngeze, and Dominique Ntawukililyayo, and Rwanda states that these are equally applicable to Semanza.[176]

81. Rwanda quotes the following excerpt from the Victimologist Report:

> Despite their attempts at healing and (re)building life anew, victim/survivors experience even the mere consideration of early release of three of the masterminds of the 1994 Genocide against the Tutsi as ominous, wounding and (re)traumatizing, and their barely mended scars at risk of being re-ruptured. As well, it threatens to resurrect their victim identity at the expense of their hard-won, yet fragile, identity as survivors. They are bewildered. Bereft and confused, their reactions range from disbelief to profound sadness, disillusionment and outrage to devastation and fears of the return of the powerlessness and hopelessness. […]
>
> Psychologically, the possibility of early release of those unarguably responsible for their agonizing losses at best undermines, and at worst undoes, the reparative sense of vindication purported to be rendered by justice to the victims. , [sic] It also virtually ensures reawakening of their own questionably dormant suffering, a new sense of betrayal and sorrow, and the transmission of genocide's multidimensional legacies to their offspring.[177]

82. Regarding the Ibuka Letter, Rwanda recalls that the President of *Ibuka Europe* opposed unconditional release and stressed the importance of taking into consideration the perspective of the victims.[178] He further objected to the release of "prisoners who don't regret actions for which they have been convicted" as "an insult to the memory of victims and an offence to survivors".[179]

[171] Rwanda's Submission, p. 2. *See supra* para. 38.
[172] Rwanda's Submission, pp. 2, 8-26. *See supra* para. 41, fn. 77.
[173] Rwanda's Submission, pp. 2-3 *referring to* Early Release Decision, paras. 14, 16, 36.
[174] Rwanda's Submission, pp. 3-6.
[175] Rwanda's Submission, pp. 6-8.
[176] Rwanda's Submission, p. 7.
[177] Rwanda's Submission, p. 6.
[178] Rwanda's Submission, pp. 7-8.
[179] Rwanda's Submission, p. 7.

83. As regards the legal requirements for early release, Rwanda argues that the Application fails to meet both requirements of Article 26 of the Statute.[180] Semanza is not eligible for pardon or commutation under the applicable law of the enforcement State and the factors to be considered in determining the interests of justice and the general principles of law weigh heavily against his early release.[181] Rwanda submits that: (i) unconditional early release would run contrary to prevailing international legal norms, referring in particular to the practice of the Residual Special Court for Sierra Leone;[182] (ii) Semanza's Application is premature both under the ICTR's three-fourth standard of eligibility for early release and under the two-thirds eligibility standard since Semanza applied eight months before serving two-thirds of his sentence;[183] (iii) mere eligibility for release does not entitle the convicted person to release as it is merely the starting point for the weighing of the factors provided in Rule 151 of the Rules;[184] and (iv) the first three factors listed in Rule 151 of the Rules weigh heavily against Semanza's early release, because of the gravity of his crimes, his failure to cooperate, and the absence of any serious evidence of rehabilitation.[185]

84. Further, in relation the factors listed in Rule 151 of the Rules, Rwanda submits that: (i) Semanza's grave crimes and failure to cooperate strongly outweigh any purported rehabilitation;[186] (ii) granting Semanza early release would treat him better than similarly-situated prisoners;[187] and (iii) early release of the most serious criminals creates a disincentive for future defendants to plead guilty.[188]

85. Semanza responds that: (i) Rwanda's contention that he is not eligible for early release is incorrect and, even if the law of the enforcement State did not allow for early release, the President could order it;[189] and (ii) in any event, he is willing to abide by any conditions imposed upon his early release.[190] I note that all submissions made by Semanza in relation to his then-enforcement State of Mali are irrelevant, given his subsequent transfer to Benin.

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[180] Rwanda's Submission, pp. 9-10.
[181] Rwanda's Submission, p. 9. *See* Rwanda's Submission, pp. 10-28. The submissions in relating to a lack of eligibility under the law of the enforcement State were made in relation to Mali, and I therefore find such submissions to be irrelevant for the purposes of the current determination.
[182] Rwanda's Submission, pp. 16-19.
[183] Rwanda's Submission, pp. 19-21.
[184] Rwanda's Submission, pp. 21-22.
[185] Rwanda's Submission, p. 22. *See* Rwanda's Submission, pp. 23-28.
[186] Rwanda's Submission, pp. 23-25.
[187] Rwanda's Submission, pp. 25-26.
[188] Rwanda's Submission, p. 28.
[189] Response to Rwanda's Submission, para. 2. Semanza also submits that Mali has notified the Mechanism that he is eligible for early release and has not indicated that it requires any conditions of release. *See* Response to Rwanda's Submission, para. 2. Furthermore, he submits that Mechanism prisoners serving their sentences in Mali have been granted early release without conditions. *See* Response to Rwanda's Submission, para. 2.
[190] Response to Rwanda's Submission, para. 2.

86. As set out above, Semanza recognises that the crimes he was convicted of are of high gravity and weigh against his early release.[191] However, he considers that "the argument that [his] early release will cause irreparable harm to the victims is overstated".[192] Semanza also considers that "[i]f the news of early release of [Mechanism] prisoners is as traumatic to the victims as Rwanda claims, it seems counter-productive for Rwanda, and Ibuka, to have engaged in a publicity campaign against the early releases".[193]

87. In relation to the treatment of similarly-situated prisoners, Semanza submits that since the Mechanism assumed jurisdiction over persons convicted by the ICTR or the ICTY "all of those who have reached the 2/3 mark of their sentences, or thereabouts, have been granted early release", and recalls that the then-President deemed all early release applicants "similarly situated", irrespective of whether they were convicted or sentenced by the ICTR, the ICTY, or the Mechanism.[194] Semanza states that the amount of his sentence that he has served is a factor in favour of his early release.[195]

88. Regarding his rehabilitation, Semanza responds that, in his view, "Rwanda has no relevant information about [his] rehabilitation and its submissions on that issue are speculative and argumentative".[196] Semanza concludes that:

> [He] appreciates Rwanda's participation in the early release process. He welcomes the opportunity, once released, to demonstrate that the concerns expressed by Rwanda were not well founded in his case and that he will be a productive, peaceful, and quiet member of society.[197]

89. In considering the Application, I have taken note of Rwanda's opposition to Semanza's early release.

3. Health of the Convicted Person

90. Previous decisions on early release have determined that other considerations, such as the state of the convicted person's health, may be taken into account in the context of an application for

[191] Response to Rwanda's Submission, para. 3. *See supra* para. 31.
[192] Response to Rwanda's Submission, para. 4.
[193] Response to Rwanda's Submission, para. 5.
[194] Response to Rwanda's Submission, para. 6.
[195] Response to Rwanda's Submission, para. 8.
[196] Response to Rwanda's Submission, para. 9. Semanza further indicated his intention to address the issue of rehabilitation after receiving the information requested from Mali pursuant to paragraph 4(b) of the Practice Direction (MICT/3/Rev.1). *See* Response to Rwanda's Submission, para. 10.
[197] Response to Rwanda's Submission, para. 12.

early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.[198]

91. In his Application, Semanza submits that **[REDACTED]**.[199] **[REDACTED]**.[200] He specifies that he therefore does not present any special humanitarian reasons for his early release at this time.[201]

92. Nevertheless, I have information before me with regard to his health. **[REDACTED]**.[202] **[REDACTED]**.[203] **[REDACTED]**.[204] **[REDACTED]**.[205] **[REDACTED]**.[206] **[REDACTED]**.[207] **[REDACTED]**.[208]

93. Therefore, in light of the information before me, I consider that there is no indication that Semanza's health may be an impediment to his continued detention or would require him to be released early on this basis.[209] Consequently there is no sufficiently compelling humanitarian ground which would warrant granting early release notwithstanding the overall negative assessment above.

4. Consultation

94. As set out above, I consulted Judge Meron and Judge Hoefer in the present matter. In this regard, they both agree that early release should not be granted.

95. I am grateful for my Colleagues' views on these matters, and have taken them into account in my ultimate assessment of the Application.

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[198] *See e.g. Brdjanin* Decision, para. 92; *Bralo* Decision, para. 77; *Prosecutor v. Ferdinand Nahimana*, Case No. MICT-13-37-ES.1, Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release of Ferdinand Nahimana, 5 December 2016, para. 31; *Ntakirutimana* Decision, para. 21.
[199] Application, para. 4.
[200] Submission of 27 February 2019, para. 20.
[201] Submission of 27 February 2019, para. 20.
[202] **[REDACTED]**
[203] **[REDACTED]**
[204] **REDACTED]**
[205] **[REDACTED]**
[206] **[REDACTED]**
[207] **[REDACTED]**
[208] **[REDACTED]**
[209] I note that, on 16 March 2020, Semanza filed a Motion for Provisional Release arguing *inter alia* that at age 76, he is at high risk of dying from the COVID-19 virus should he contract it. *See* Motion for Provisional Release, para. 11. On 21 April 2020, I denied his Motion for Provisional Release, considering *inter alia* that in light of information received from Benin, I was assured that the Beninese prison authorities are taking appropriate measures in relation to the management of the COVID-19 pandemic. *See* Decision of 21 April 2020, p. 6 *referring to* Letter from the Director-General of the Ministry of Justice and Legislation of Benin to the Registrar, dated 25 March 2020, filed on 26 March 2020 (confidential). Furthermore, I directed the Registrar to continue to closely monitor the situation of Semanza and other convicted persons serving their sentences in Benin under the supervision of the Mechanism, in light of the COVID-19 pandemic, and to provide me with updated information as necessary. *See* Decision of 21 April 2020, p. 6.

V. CONCLUSION

96. After a thorough review of all the information provided in relation to the Application, and having carefully assessed the factors set out in Rule 151 of the Rules, as well as all other relevant information, I do not consider it appropriate to exercise my discretion to grant early release to Semanza at this stage. In particular, the high gravity of his crimes militates against releasing him early. Further, and for the reasons specified above, Semanza has failed to demonstrate that he has been sufficiently rehabilitated. Finally there is no evidence before me that demonstrates the existence of sufficiently compelling humanitarian grounds which would warrant overriding the above negative assessment.

VI. DISPOSITION

97. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, and paragraph 19 of the Practice Direction, I hereby **DENY** Semanza's Application for early release.

98. The Registrar is hereby **DIRECTED** to provide the authorities of Rwanda with the public redacted version of this decision as soon as practicable.

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

Done this 17th day of September 2020,
At The Hague,
The Netherlands.

Judge Carmel Agius
President

[Seal of the Mechanism]

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