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International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-14-62-ES.1

Date: 7 January 2019

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Decision of: 7 January 2019

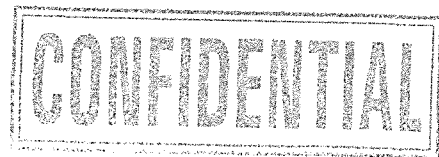
**DECLASSIFIED IN
ACCORDANCE WITH THE
INSTRUCTIONS CONTAINED
WITHIN THIS DECISION**

PROSECUTOR

v.

ALOYS SIMBA

CONFIDENTIAL



**PUBLIC REDACTED VERSION OF THE PRESIDENT'S 7
JANUARY 2019 DECISION ON THE EARLY RELEASE OF ALOYS
SIMBA**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for the Accused:

Ms. Caroline Buisman

Republic of Benin

**Received by the Registry
International Residual Mechanism for Criminal Tribunals
07/01/2019 12:47**

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of an application for the early release of Mr. Aloys Simba (“Simba”), dated 25 October 2016 and received on 27 October 2016.¹ I note that the Application has been pending for over two years, which is largely due to expert monitoring of Simba’s health condition during this period, including the level of access to medical care he is currently receiving], and partially due, *inter alia*, to the delay in receiving the necessary materials from the relevant Beninese authorities and litigation with the Republic of Rwanda (“Rwanda”) in relation to the Application.² I consider the Application pursuant to Article 26 of the Statute of the Mechanism (“Statute”), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), and paragraph 3 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism (“Practice Direction”).³

I. BACKGROUND

2. Simba was arrested on 27 November 2001 in the Republic of Senegal and transferred to the United Nations Detention Facility (“UNDF”) in Arusha, the United Republic of Tanzania, on 11 March 2002.⁴ At his initial appearance on 18 March 2002, Simba entered a plea of not guilty to all four counts of the indictment against him.⁵

¹ Letter from Mr. Sadikou Ayo Alao, Counsel for Simba, to Judge Theodor Meron, President, dated 25 October 2016 (with annexes) (“Application”), received on 27 October 2016. The English translation was received on 7 November 2016. All references herein are to the English translation of the Application.

² See, e.g., Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 24 March 2017; Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 15 May 2017; Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 2 June 2017; Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 28 July 2017; Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 20 September 2017; Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 27 October 2017; Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 29 January 2018; Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 28 February 2018 (“28 February Memorandum”); *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Request to the Republic of Rwanda Related to the Application for Early Release from Mr. Aloys Simba, 26 April 2018 (“Request to Rwanda”); *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Omnibus Response of the Republic of Rwanda on the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze and Request for Extension of Time, 11 May 2018 (“Omnibus Response”); *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, 21 May 2018 (“Supplementary Request”); *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Decision on Supplementary Request for Documents by the Republic of Rwanda, 12 July 2018 (“12 July Decision”).

³ MICT/3/Rev.1, 24 May 2018.

⁴ *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005 (“Trial Judgement”), paras. 5, 444, Annex 1, para. 450.

⁵ Trial Judgement, para. 4, Annex 1, para. 450.

3. On 13 December 2005, Trial Chamber I of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR”, respectively) convicted Simba of committing genocide and extermination as a crime against humanity pursuant to Article 6(1) of the Statute of the ICTR, based on his participation in a joint criminal enterprise to kill Tutsi civilians at Murambi Technical School and Kaduha Parish.⁶ The Trial Chamber sentenced Simba to a single sentence of 25 years of imprisonment.⁷ On 27 November 2007, the Appeals Chamber of the ICTR (“Appeals Chamber”) dismissed the appeals of both Simba and the ICTR Office of the Prosecutor (“ICTR Prosecution”) in their entirety, and affirmed Simba’s 25-year sentence.⁸ Simba was transferred to the Republic of Benin (“Benin”) to serve the remainder of his sentence on 27 June 2009.⁹

II. THE APPLICATION

4. On 27 October 2016, I received the Application, which includes the following annexes: (i) an application for the early release of Simba, dated 9 September 2014 (“First Application”); (ii) a medical report from Dr. Inès Magloire Dodji Yevi, Urology-Andrology Surgeon at the Hubert Koutoukou Maga National University Hospital Centre (“Hospital”) of Benin, University Clinic of Urology and Andrology, dated 21 October 2016 (“October 2016 Medical Report”); (iii) additional medical reports from 2014 (“Additional Reports”); and (iv) a statement from members of Simba’s family stating that they are willing to take responsibility for Simba upon his release (“Statement”), dated 15 December 2013.¹⁰

5. On 9 November 2016, the Registrar of the Mechanism (“Registrar”) updated me on Simba’s medical status,¹¹ and, in response, on 10 November 2016, I requested that the Registry of the Mechanism (“Registry”) arrange for an independent medical consultant recruited by the

⁶ Trial Judgement, paras. 419, 426-427.

⁷ Trial Judgement, para. 445.

⁸ *Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007 (“Appeal Judgement”), p. 103 (Disposition).

⁹ See Press Release, Nine ICTR Convicts Transferred to Benin, dated 30 June 2009, available at <http://unictr.irmct.org/en/news/nine-ictr-convicts-transferred-benin>.

¹⁰ Application, Annexes 1-4. I note that Simba attached one of the Additional Reports, specifically the report from Doctor-Commander Jean Sossa of the Department of Urology at the Army Teaching Hospital, Cotonou, Benin, dated 18 August 2014, and the Statement to his First Application. These documents were considered in *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Decision of the President on the Early Release of Aloys Simba (public redacted version) (“Decision on First Application”), 2 February 2016, para. 4.

¹¹ Internal Memorandum from Mr. John Hocking, Registrar, to Judge Theodor Meron, President, dated 9 November 2016 (Strictly Confidential).

United Nations, to examine Simba as a matter of urgency.¹² The Registrar conveyed to me a medical report from Dr. Paulus Falke on 14 December 2016.¹³ It was agreed that Dr. Falke would reassess Simba's medical condition in six months' time and report to the Mechanism on the status of Simba's health.¹⁴

6. On 31 May 2017, the Registrar informed me that on 24 May 2017, the Registry received an email communication from the National Director of Penitentiaries in Benin, indicating that the position of Benin as to Simba's eligibility for early release remained unchanged since the First Application. The Registry conveyed a communication from the Minister of Justice of Benin, dated 9 October 2015 ("9 October 2015 Communication"),¹⁵ and a letter addressed to the Minister of Foreign Affairs of Benin from the Minister of Justice of Benin, dated 5 April 2017 ("5 April 2017 Communication"), affirming Simba's eligibility for early release pursuant to Beninese law.¹⁶

7. On 29 June 2017, I received a memorandum from the Registry, conveying: (i) a memorandum from the Office of the Prosecutor of the Mechanism ("Prosecution"), dated 7 June 2017, regarding the cooperation provided by Simba to the ICTR Prosecution ("Prosecution Memorandum"); (ii) a report from the prison warden, dated 13 June 2017, including observations regarding Simba's behaviour during his incarceration and his eligibility for early release ("Observations"); (iii) a report from the prison warden, dated 13 June 2017, including observations on the general conditions under which Simba is imprisoned; (iv) a psychiatric report from Dr. Josiane Ezin Hougbe, Head of Psychiatric Department at the Hospital, dated 22 June 2017 ("Psychiatric Report"); and (v) correspondence between the prison director and the *Garde des Sceaux*, Minister of Justice and Legislation, dated 10 June 2017, regarding Simba's medical status ("Hospitalisation Report").¹⁷

¹² Internal Memorandum from Judge Theodor Meron, President to Mr. John Hocking, Registrar, dated 10 November 2016 (Strictly Confidential).

¹³ Internal Memorandum from Mr. John Hocking, Registrar, to Judge Theodor Meron, President, dated 14 December 2016 (Strictly Confidential) ("14 December 2016 Memorandum"), transmitting Medical Expert Report, dated 8 December 2016 ("First Medical Expert Report").

¹⁴ See 14 December 2016 Memorandum, para. 7; Internal Memorandum from Judge Theodor Meron, President, to Mr. John Hocking, Registrar, dated 30 December 2016 (Strictly Confidential), para. 2; Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 29 May 2017 ("29 May 2017 Memorandum"), para. 2.

¹⁵ I note that the 9 October 2015 Communication was considered in the Decision on First Application. See Decision on First Application, para. 5.

¹⁶ Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 31 May 2017, para. 4. The English translation of the 5 April 2017 Communication was received on 2 June 2017. All references herein are to the English translation thereof.

¹⁷ Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 29 June 2017. The English translation of the Observations, Psychiatric Report and Hospitalisation Report were received on 21 July

8. On 21 July 2017, the Registry informed me that it conveyed the collected information to Simba pursuant to paragraph 5 of the Practice Direction, and confirmed that Simba received the information on 15 July 2017.¹⁸ On 31 July 2017, the Registry conveyed to me Simba's response thereto.¹⁹

9. The Registry sent me another medical report from Dr. Falke on 8 August 2017, containing an update on Simba's health.²⁰ On 21 August 2017, the Registry forwarded me Simba's consent for the Mechanism to share the First Medical Expert Report and the Second Medical Expert Report with relevant Judges of the sentencing Chambers, who are Judges of the Mechanism, to facilitate consideration of the Application.²¹

10. Upon further consideration of the matter, and upon consultation with the relevant Judge of the sentencing Chambers who is a Judge of the Mechanism, I considered it prudent to request the Registry to secure a full complement of the medical records concerning Simba's condition, in light of Dr. Falke's determination that he was not able to access records or information pertaining to a number of ailments suffered by Simba. I further requested the Registry to engage an independent assessment of the material in question, prior to making a final determination on the Application.²²

11. On 27 October 2017, the Registry informed me that it had engaged the Chief Medical Officer of the United Nations Development Programme country office in Benin to obtain a full dossier of relevant medical information in connection with Simba's medical situation and to

2017. All references to the above-mentioned documents are to the English translations thereof. *See* Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 21 July 2017 ("21 July 2017 Memorandum").

¹⁸ 21 July 2017 Memorandum, para. 2.

¹⁹ Email from Ms. Philippa Greer, Associate Legal Officer, Registry, to Mr. Paul Oertly, Head of President's Office, Arusha Branch, dated 31 July 2017, *transmitting* letter from Mr. Sadikou Ayo Alao, Counsel for Simba, to Mr. Olufemi Elias, Registrar, dated 27 July 2017 ("Response"). The English translation of the Response was received on 2 August 2017. All references herein are to the English translation of the Response. *See also* Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 8 August 2017 ("8 August 2017 Memorandum"), para. 2.

²⁰ 8 August 2017 Memorandum, *transmitting* Medical Expert Report, dated 3 August 2017 ("Second Medical Expert Report").

²¹ Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 21 August 2017, paras. 1-2, *transmitting* a document signed by Simba indicating that he wishes to proceed with the Application, dated 18 August 2017.

²² Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 20 September 2017. *See also* Internal Memorandum from Judge Theodor Meron, President, to Judge Liu Daqun, dated 20 September 2017. In the Second Medical Expert Report, Dr. Falke states that he was unable to fully assess a series of medical issues affecting Simba, either as a result of relevant medical data being unavailable to him in a timely fashion or indeed at all. *See* Second Medical Expert Report, pp. 3-4, 7, 9, 12.

provide an independent assessment of material, with Simba's consent in relation thereto.²³ [REDACTED].²⁴ On 11 April 2018, the Registry transmitted to me Simba's full medical dossier, as well as an independent assessment thereof, as compiled by Dr. Eudoxie Hountondji, Chief Medical Officer of the United Nations in Benin ("Chief Medical Officer").²⁵

12. On 17 April 2018, Simba filed a separate submission, wherein he requests that he be released as soon as possible, but at least by 27 July 2018, when he will have served two-thirds of his sentence.²⁶

13. On 26 April 2018, I requested the Registry to inform the relevant authorities of Rwanda about the Application, and solicited their views thereon.²⁷ On 11 May 2018, Rwanda requested additional time in which to make submissions in this regard.²⁸ On 25 May 2018, Rwanda submitted a request for, *inter alia*, a copy of the Application and any supporting documentation, and any communications from or on behalf of Benin to the Mechanism in respect of the Application,²⁹ which I denied on 12 July 2018.³⁰

²³ Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 27 October 2017 ("27 October Memorandum"). See also 28 February Memorandum.

²⁴ [REDACTED].

²⁵ Internal Memorandum from Mr. Olufemi Elias, Registrar to Judge Theodor Meron, President, dated 11 April 2018, transmitting Medical Expert Report for Mr. Aloys Simba Completed in January and February 2018, Dr. Eudoxie Hountondji, dated 2 March 2018 ("Updated Medical Report"), with the following attachments: (i) Medical Report by Dr. Hervé Aïssi, Cardiologist, dated 16 January 2018 ("Cardiologist Report"); (ii) Email from Josue Avakoudjo, Urologist at FSS/CNHU HKM, to Eudoxie Hountondji, dated 12 February 2018 ("Urologist Report"); (iii) Medical Examination Report by Doctor Lucien Dossou-Gbete, *Clinique Louis Pasteur*, of examination conducted on 10 November 2016, interpreted by Dr. Félicien Hounto, Radiologist on 15 November 2016 ("Clinique Pasteur Report"); (iv) Scan of Lumbar, Cervical and Dorsal Spine Report, Dr. Félicien Yao Hounto, dated 14 November 2016 ("Radiologist Report"); (v) Table showing PSA measurements, Dr. Chef Hountondji, Internist; and (vi) Undated handwritten medical files and laboratory test results from Clinique Pasteur. The English translations of the Updated Medical Report and its attachments were also received on 11 April 2018 and 6 August 2018, respectively. All references to these documents are to the English translations thereof.

²⁶ *Prosecutor v. Aloys Simba*, Case No. MICT-14-62, Urgent Submissions in Support of Pending "Requête en Urgence aux fins de Libération Anticipée", 17 April 2018 (confidential with annexes) ("Submissions"), paras. 1-4, 15, 19, 34.

²⁷ See generally Request to Rwanda.

²⁸ See generally Omnibus Response. I granted Rwanda's request to be allowed to file additional responses to the Application on 15 May 2018. See *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Interim Order Related to the Request to the Republic of Rwanda on the Early Release Applications from Mr. Dominique Ntawukulilyayo, Mr. Hassan Ngeze, and Mr. Aloys Simba, 15 May 2018. On 30 May 2018, Simba filed a response to the Supplementary Request, opposing the submissions therein. See *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Response to "Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze", 30 May 2018.

²⁹ See generally Supplementary Request. See also *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Interim Order on the Supplementary Request for Documents by the Republic of Rwanda in Respect of the Requests for Early Release from Aloys Simba, Dominique Ntawukulilyayo, and Hassan Ngeze, 31 May 2018.

³⁰ See generally 12 July Decision. See also *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, The Government of Rwanda's Additional Submission in Opposition to the Early Release of Messrs. Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze and Request for Reconsideration of the 12 July 2018 MICT Decision Denying the Supplementary Request for Documents, 26 July 2018 ("Additional Submissions"); *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Decision on Request for Reconsideration of Decision on Supplementary Request for Documents by the Republic of Rwanda, 1 August 2018.

14. On 8 June 2018, the Registry informed me that the Beninese authorities had confirmed that there have not been any changes to report regarding Simba's behaviour, the general conditions under which he has been imprisoned, or his psychiatric or psychological condition. The Registry also forwarded me Simba's consent for the Mechanism to share the Updated Medical Report and attachments with relevant Judges of the Sentencing Chambers who are Judges of the Mechanism, to facilitate consideration of the Application.³¹

15. Rwanda filed additional submissions on 11 June 2018,³² and on 5 July 2018, Simba filed his response to the Supplemental Brief.³³ Rwanda filed further additional submissions opposing the Application on 26 July 2018,³⁴ and Simba filed his response to the Omnibus Response, Rwanda Statement, Supplemental Brief and Additional Submissions on 10 August 2018.³⁵ Furthermore, I note that various non-parties have made filings in relation to the Application.³⁶

16. On 10 October 2018, I requested that Simba provide proof that, (i) his family members are willing and able to accept full responsibility for him, should he be granted early release, and that they are able to provide him with adequate medical care; and (ii) the country where his family members are residing and where he intends to relocate is willing to accept him in its territory for the purpose of family reunification and access to adequate medical care.³⁷ Furthermore, on 23 October 2018, I outlined a set of conditions, in order to consider whether Simba should be released on a conditional basis, and requested that Simba confirm whether he

³¹ Internal Memorandum from Mr. Olufemi Elias, Registrar, to Judge Theodor Meron, President, dated 8 June 2018, paras. 1-3 ("8 June Memorandum"), transmitting a document signed by Simba indicating that he consents to the sharing of the Updated Medical Report with the relevant Judges of the sentencing Chambers, who are Judges of the Mechanism, dated 26 April 2018.

³² *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, The Government of Rwanda's Supplemental Brief in Opposition to Application for Early Release from Aloys Simba, dated 1 June 2018, filed on 11 June 2018 ("Supplemental Brief"); *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Statement of the Government of Rwanda in Opposition to Applications for Early Release from Aloys Simba, Dominique Ntawukulilyayo and Hassan Ngeze, dated 1 June 2018, filed on 11 June 2018 ("Rwanda Statement").

³³ *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Reply to "The Government of Rwanda's Supplemental Brief in Opposition to Application for Early Release from Aloys Simba, 5 July 2018" ("Reply to Supplemental Brief").

³⁴ See Additional Submissions.

³⁵ *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Reply to All Submissions by the Government of Rwanda in Opposition to Application for Early Release from Aloys Simba, 10 August 2018 ("Response to Rwanda Submissions").

³⁶ See, e.g., Letter Opposing Commutation of Sentence and Early Release of ICTR Convicts, 6 June 2018; Letter from Mr. Jean Yves St Denis, 7 June 2018; Letter from Ms. Kelly Ann Ryan, 20 June 2018; Email from Members of the Political Rwandan Activists Group for Democracy, 20 June 2018; Email from Ms. Beth Lilach, 20 June 2018. The above-mentioned filings are collectively referred to as "Non-Party Filings". I note that in the 12 July Decision, I ruled that the Non-Party Filings will not be considered in my final determination of the Application. See 12 July Decision, para. 17.

³⁷ Interim Order for Additional Submissions, 10 October 2018 (public redacted) ("10 October Interim Order"), pp. 2-3.

would be willing to comply therewith.³⁸ Subsequently, on 31 October 2018, Simba filed a consolidated response to the 10 October Interim Order and the 23 October Interim Order.³⁹

17. Rwanda filed a submission in response to the 23 October Interim Order.⁴⁰ On 19 November 2018, Simba filed a response opposing the Rwanda Motion,⁴¹ and on 26 November 2018, the Prosecution filed submissions requesting that the President, (i) disregard the Response to Rwanda Motion and consider the Rwanda Motion; and (ii) reclassify the Response to Rwanda Motion as public or file a public redacted version thereof.⁴²

III. DISCUSSION

18. In coming to my decision on whether it is appropriate to grant Simba early release, I have consulted with the Judge of the sentencing Chamber who is a Judge of the Mechanism, pursuant to paragraph 7 of the Practice Direction and Rule 150 of the Rules. In addition, as I will be leaving the office of President as from 19 January 2019, I proceeded to seek views on the Application from the incoming President, Judge Carmel Agius, who declined to take part in the decision-making process or convey his position on the merits of the Application.

A. Preliminary Matter

1. Rwanda Motion and Prosecution Submissions

19. I note that in the 23 October Interim Order, I requested Simba to file confirmation as to whether he would be willing to abide by the conditions, as set forth therein, and in line with the

³⁸ Interim Order for Further Submissions, 23 October 2018 (public) ("23 October Interim Order"), pp. 2-3. In this regard, I noted Security Council resolution 2422 of 27 June 2018 (United Nations Security Council Resolution 2422, U.N. Doc. S/RES/2422 (2018), 27 June 2018 ("Resolution")), wherein the Security Council of the United Nations noted the views and concerns expressed by some Member States during the Security Council debate on 6 June 2018 about the current approach of the Mechanism to early release of persons convicted by the ICTR, and encouraged the Mechanism to consider an appropriate solution, including by considering putting in place conditions on early release in appropriate cases. *See* Resolution, para. 10.

³⁹ Additional Proof in Support of Pending Application for Early Release from Aloys Simba, 31 October 2018 (confidential and *ex parte*) ("Additional Proof"), *transmitting*: (i) an affidavit, dated 19 October 2018, and signed by Simba's family members, with a copy of their respective identity cards ("Annex 1, Additional Proof"); (ii) a letter from Ms. Régine Simba, Simba's daughter, to the Minister of Foreign and European Affairs of the Government of Luxembourg, dated 19 October 2018 ("Annex 2, Additional Proof"); (iii) an affidavit, dated 13 September 2018, signed by Ms. Régine Simba, Simba's daughter, and other family members ("Annex 3, Additional Proof"); (iv) an affidavit, dated 22 October 2018, signed by Simba's family members resident in Benin ("Annex 4, Additional Proof").

⁴⁰ *See* Motion and Statement Regarding Second Interim Order, dated 30 October 2018 and filed on 1 November 2018 ("Rwanda Motion").

⁴¹ Submission in Response to Motion and Statement Regarding Second Interim Order, 19 November 2018 (confidential) ("Response to Rwanda Motion") (with confidential and *ex parte* Annex ("Attestation")).

⁴² Prosecution Submissions Regarding Proposed Conditions on Aloys Simba's Early Release, 26 November 2018 (confidential) ("Prosecution Submissions").

recommendations of the Resolution.⁴³ In this context, I did not solicit submissions from Rwanda or the Prosecution and accordingly I am of the view that only Simba has *prima facie* standing to make submissions in regard to the 23 October Interim Order.

20. In addition, I recall that pursuant to Rule 151 of the Rules and paragraph 4(c) of the Practice Direction, the Prosecution is consulted in relation to an application for early release with respect to the substantial cooperation, if any, provided by the convicted person to the Prosecution during the pre-trial, trial, or appeal of his or her case and the significance thereof. I further recall that it has been repeatedly held that, in principle, the Prosecution has no standing to make submissions on sentence enforcement matters under the Statute and the Rules other than when consulted in the context of early release applications.⁴⁴

21. I consider that while the President has broad discretion to consider information he deems relevant pursuant to the Practice Direction,⁴⁵ neither the existence of such discretion alone nor its exercise in the particular circumstances of the present case in which submissions were sought from State authorities, provides a sufficiently compelling reason to change settled practice by allowing Rwanda or the Prosecution to make submissions on broader issues related to the Application. Furthermore, neither the Prosecution nor Rwanda has demonstrated the existence of either compelling reasons or special circumstances that would give them standing to make submissions on the 23 October Interim Order.

⁴³ 23 October Interim Order, pp. 2-3.

⁴⁴ See, e.g., *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 ("Second Miletić Decision"), para. 18; *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. 24 ("Neither the Rules nor the Practice Direction provides the Prosecution, a party to the proceedings, standing to make submissions on whether an application for early release should be granted, beyond with respect to whether the convicted person has provided substantial cooperation to the Prosecution."); *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"), para. 17; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Reasons for the President's Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted), para. 8; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision on Sreten Lukić's Request for Determination by the President of Time Served, 29 May 2015, p. 2. See also *Prosecutor v. Hazim Delić*, Case No. IT-96-21-ES, Decision on Hazim Delić's Motion for Commutation of Sentence, 24 June 2008 (public redacted), para. 10 ("While I appreciate the information provided, I do not consider it appropriate at this stage of the International Tribunal's history to change its long standing practice by allowing the Prosecution to make submissions on a convicted accused's application for early release. Accordingly, I do not consider that the material placed before me by the Prosecution, which goes beyond that identified in the Practice Direction, should be considered in rendering a determination on the Request of Mr. Delić."), annexed to *Prosecutor v. Hazim Delić*, Case No. IT-96-21-ES, Order Issuing a Public Redacted Version of Decision on Hazim Delić's Motion for Commutation of Sentence, 16 July 2008.

⁴⁵ See Paragraph 4(d) of the Practice Direction.

22. As a result, the Rwanda Motion and the Prosecution Submissions, insofar as they relate to the Rwanda Motion, will not be considered in my final determination of the Application.⁴⁶

2. Prosecution Request for Reclassification

23. In the Prosecution Submissions, the Prosecution also requests that the Response to Rwanda Motion be reclassified or that Simba should be required to file a public redacted version thereof (“Prosecution Request”).⁴⁷ The Prosecution further requests that the Prosecution Submissions thereafter be reclassified as public as well.⁴⁸

24. I note, in this regard, that Simba did not file a response to this aspect of the Prosecution Submissions. Furthermore, I recall that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential.⁴⁹ I consider that Simba’s right to confidentiality of his personal circumstances as contained in the Response to Rwanda Motion can be safeguarded through appropriate redactions. Accordingly, I find that a public redacted version of the Response to Rwanda Motion will safeguard the confidentiality of sensitive information, if any, contained therein while maintaining the public character of the proceedings before the Mechanism.⁵⁰ For the foregoing reasons, I hereby grant the Prosecution Request and order Simba to file a public redacted version of the Response to Rwanda Motion by 14 January 2019, and thereafter order the Registry to reclassify the Prosecution Submissions as public.

B. Applicable Law

25. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the person convicted by the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the ICTR, or the Mechanism, he or she is eligible for pardon or commutation of sentence, the

⁴⁶ Cf. 12 July Decision, para. 17, fn. 34.

⁴⁷ Prosecution Submissions, para. 7.

⁴⁸ Prosecution Submissions, para. 7.

⁴⁹ See Article 18(4) of the Statute; Rules 92, 93, 131 of the Rules. See also *Prosecutor v. Radivoje Miletic*, Case No. MICT-15-85-ES.5, Decision on Prosecution Request for Public Redacted Versions of Radivoje Miletic’s Request and Submissions Regarding Early Release, 26 September 2018 (“*Miletic* PRV Decision”); *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Decision on Prosecution Request for a Public Redacted Version of Valentin Ćorić’s Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence, 24 July 2018, p. 1 (“*Ćorić* Decision”); *Prosecutor v. Momir Nikolić*, Case Nos. MICT-14-65-ES & MICT-13-55-A, Decision on Radovan Karadžić’s Motion for a Public Redacted Version of a President’s Decision, 1 June 2018 (“*Nikolić* Decision”), p. 240 (Registry pagination); *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Public Redacted Version of the “Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response” filed on 7 March 2018, 1 June 2018, p. 3; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Public Redacted Versions of Rule 86(F) Jurisprudence, 6 April 2017, p. 2; *Prosecutor v. Naser Orić*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge’s Decision of 10 December 2015, 17 February 2016, para. 8.

⁵⁰ See *Miletic* PRV Decision, pp. 1-2; *Ćorić* Decision, p. 1; *Nikolić* Decision, p. 240 (Registry pagination).

State concerned shall notify the Mechanism accordingly. Pursuant to Article 26, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law.

26. Rule 149 of the Rules echoes Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President shall, upon such notice, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. Rule 151 of the Rules 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.

27. 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.

28. Article 3(2) of the 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"), provides that the conditions of imprisonment shall be governed by the law of Benin, subject to the supervision of the Mechanism. Article 8 of the Enforcement Agreement provides, *inter alia*, that, following notification of eligibility for early release under Beninese law, the President shall determine whether early release, pardon or commutation of sentence is appropriate, 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 the Beninese authorities, who shall execute the terms of the decision accordingly.

C. Eligibility under Beninese Law

29. Under Article 810 of Law No. 2012-15 of 18 March 2013 in section III of the Benin Code of Criminal Procedure, a convicted person may be eligible for conditional or early release, having served just over half of his sentence, and "if sufficient proof of good conduct and signs of

earnest social rehabilitation are presented”.⁵¹ I note, however, that even if Simba is eligible for early release under the domestic law of Benin, the early release of persons convicted by the ICTR falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.

D. Treatment of Similarly-Situated Prisoners

30. Rule 151 of the Rules requires the President to consider, as a separate factor, the need for equal treatment of similarly-situated prisoners when deciding early release applications.

31. In this respect, I recall that the guiding principle established by the Mechanism is that persons sentenced by the ICTR, like Simba, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision and that 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.⁵²

32. Moreover, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case.⁵³ In this regard, I note that persons convicted by the ICTR with equal or higher sentences and with convictions for crimes of graver than or of equal magnitude to those of Simba, including convictions of genocide, have been granted early release upon reaching the two-thirds benchmark.⁵⁴

⁵¹ See Application, pp. 1, 3; 9 October 2015 Communication; 5 April 2017 Communication, p. 1 (Registry pagination); Observations, p. 2 (Registry Pagination); Submissions, paras. 13-14.

⁵² See Second *Miletić* Decision, para. 23; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) (“Second *Lukić* Decision”), para. 16; *Pušić* Decision, para. 34; *Lukić* Decision, para. 30; *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”), para. 20; *Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017 (“*Beara* Decision”), para. 23; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) (“*Bisengimana* Decision”), paras. 17, 20.

⁵³ Second *Miletić* Decision, para. 23; Second *Lukić* Decision, para. 17; *Pušić* Decision, para. 35; *Miletić* Decision, para. 21; *Beara* Decision, para. 25; *Prosecutor v. Mladen Naletilić*, Case No. IT-98-34-ES, Public Redacted Version of the 29 November 2012 Decision of the President on Early Release of Mladen Naletilić, 26 March 2013, para. 20; *Bisengimana* Decision, paras. 21, 35.

⁵⁴ See, e.g., *Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, 13 March 2014 (public redacted version) (“*Ruzindana* Decision”); *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014 (“*Ntakirutimana* Decision”); *Prosecutor v. Alphonse Nteziryayo*, Case No. MICT-15-90, Decision of the President on the Early Release of Alphonse Nteziryayo, 9 March 2016 (I note that Nteziryayo had completed two-thirds of his sentence before the conclusion of his appeal); *Prosecutor*

33. Accordingly, I consider that Rule 151 of the Rules mandates consistency in terms of treatment of similarly-situated prisoners by the ICTR and ICTY, not as a matter of convenience, but insofar as it is necessary in the interests of justice. As determination of these applications is a matter of discretion for the President, a proper exercise of that discretion would, in my view, require consistency with past practice and adherence to the terms of Rule 151 of the Rules.

34. In this context, as of the date of this Decision, and based on my own calculation, Simba has served two-thirds of his 25-year sentence on 27 July 2018. Accordingly, as of that date, Simba became eligible to apply for early release. I note, however, that the Application was filed prior to that date. Given the foregoing, and taking into account the established jurisprudence of the Mechanism in this regard, I consider that the fact that Simba has already served almost five months more than the two-thirds benchmark of his sentence weighs in favour of his early release.

E. Gravity of Crimes

35. Rule 151 of the Rules provides that, in making a determination on early release, the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

36. The crimes of which Simba has been convicted are of a very high gravity. In this regard, the Trial Chamber convicted Simba of committing genocide and extermination as a crime against humanity pursuant to Article 6(1) of the Statute of the ICTR, based on his participation in a joint criminal enterprise to kill Tutsi civilians at Murambi Technical School and Kaduha Parish.⁵⁵ The Trial Chamber found with respect to the massacre at Kaduha Parish that Simba, “invoking the approval of the government, urged the attackers to ‘get rid of the filth’ at the parish” and distributed guns and grenades to them, after which they proceeded “to kill the Tutsi at the parish”.⁵⁶ The Trial Chamber further noted that “Simba was a respected national figure in Rwandan society and well-known in his native region. Therefore, the assailants at those places would have viewed his presence during the attacks, however brief, as approval of their conduct, particularly after Simba’s invocation of the government”.⁵⁷ The Trial Chamber determined that Simba also “distributed the means to implement the killings during an ongoing massacre at the Murambi Technical School”.⁵⁸ In reference to the killings, the Trial Chamber stated that “[t]hese

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 (“*Nahimana Decision*”).

⁵⁵ Trial Judgement, paras. 419, 426-427.

⁵⁶ Trial Judgement, para. 400. *See also* Trial Judgement, para. 440.

⁵⁷ Trial Judgement, para. 403.

⁵⁸ Trial Judgement, para. 406.

Tutsi refugees were slaughtered by the thousands over the course of a period of around twelve hours on a single day”.⁵⁹

37. The Trial Chamber found that Simba was a retired Lieutenant Colonel and a former Member of Parliament, and was well-known throughout Rwanda, but at the time of the events, he had no formal ties to government, military or political structures.⁶⁰ He was a Civil Defence Advisor to the Prefect of Gikongoro in May 1994 but his crimes were not related to that position.⁶¹ In this regard, I note that the Prosecution withdrew charges of superior responsibility against Simba.⁶² The Trial Chamber acknowledged that there was evidence indicating that Simba had close personal relationships and worked harmoniously with Tutsis and that several Tutsi witnesses testified in his defence.⁶³

38. In determining Simba’s sentence, the Trial Chamber stated that it was not convinced beyond reasonable doubt that Simba was an “architect” of the massacres or “played a role in their planning”.⁶⁴ The Trial Chamber also asserted that there was no evidence of “particular zeal or sadism” on Simba’s part in his manner of participation in the crimes.⁶⁵ He “did not physically participate in the killings and did not remain at the massacre sites for more than a brief period”.⁶⁶ Although it found that his crimes were “grave”, the Trial Chamber was not satisfied that he was “deserving of the most serious sanction available”.⁶⁷ In addition, the Trial Chamber also considered that Simba did “not deny the existence of genocide in Rwanda and condemned the massive slaughter that occurred”.⁶⁸ Moreover, I note that on Appeal, Simba’s convictions were upheld in their entirety and his 25-year sentence was affirmed by the Appeals Chamber.⁶⁹

39. Simba argues that he is entitled to the same treatment as similarly-situated prisoners, and that all ICTR-convicted persons to date have been released upon serving two-thirds of their sentences, submitting that the crimes for which he was convicted are not of a “higher gravity”

⁵⁹ Trial Judgement, para. 416. *See also* Trial Judgement, para. 440.

⁶⁰ Trial Judgement, paras. 7, 57, 404, 435.

⁶¹ Trial Judgement, para. 7.

⁶² Trial Judgement, para. 4.

⁶³ Trial Judgement, para. 61.

⁶⁴ Trial Judgement, para. 435.

⁶⁵ Trial Judgement, para. 435.

⁶⁶ Trial Judgement, para. 435.

⁶⁷ Trial Judgement, para. 436.

⁶⁸ Trial Judgement, para. 441.

⁶⁹ Appeal Judgement, p. 103 (Disposition).

than the crimes committed by those ICTR-convicted persons who have been released at this two-thirds benchmark.⁷⁰

40. In these circumstances, and notwithstanding the mitigating circumstances considered by the Trial Chamber in determination of Simba's sentence, I am of the view that the high gravity of Simba's offences weighs against his early release, notwithstanding the fact that he has served two-thirds of his sentence as of 27 July 2018, and has thus served almost five months more than the two-thirds benchmark of his sentence.

F. Demonstration of Rehabilitation

41. Rule 151 of the Rules provides that the President shall take into account a "prisoner's demonstration of rehabilitation" in determining whether early release is appropriate. In addressing the convicted person's rehabilitation, paragraph 4(b) of the Practice Direction states that the Registrar shall,

[r]equest reports and observations from the relevant authorities in the enforcing State as to the behaviour 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[.]

42. According to the prison warden, Simba "has always demonstrated good conduct within the prison and cooperates well with his fellow prisoners".⁷¹ The Psychiatric Report further states that Simba "has a good relationship with his wife and children".⁷² He is a social person who "does not like to be isolated", he "seems to be sincere and straightforward in his relations with others", and he feels better having discussed his problems with others.⁷³ According to the Psychiatric Report, Simba states that if released, he "would not be a burden to Benin" and that his children, [REDACTED], would take care of him.⁷⁴ He also states that "[h]e would like to see his wife again before he dies, and he will not die until he sees her".⁷⁵ The Psychiatric Report states that Simba "appears well", his attitude is "appropriate", his approach "syntonic", he "cooperated fully" with the consultation, and he has no suicidal thoughts.⁷⁶ [REDACTED].⁷⁷ Dr.

⁷⁰ Reply to Supplemental Brief, paras. 19-20. *See also* Additional Proof, para. 8.

⁷¹ Observations, p. 2 (Registry pagination). *See also* 9 October 2015 Communication; 5 April 2017 Communication, p. 1 (Registry pagination). *See also* 8 June Memorandum, paras. 1-2.

⁷² Psychiatric Report, p. 4 (Registry pagination). *See also* Submissions, paras. 22-23; 8 June Memorandum, paras. 1-2.

⁷³ Psychiatric Report, p. 4 (Registry pagination). *See also* 8 June Memorandum, paras. 1-2.

⁷⁴ Psychiatric Report, pp. 5-6 (Registry pagination). *See also* Statement; 8 June Memorandum, paras. 1-2; Additional Proof, paras. 3, 5; Annex 1, Additional Proof; Annex 3, Additional Proof; Annex 4, Additional Proof.

⁷⁵ Psychiatric Report, p. 6 (Registry pagination). *See also* 8 June Memorandum, paras. 1-2.

⁷⁶ Psychiatric Report, p. 5 (Registry pagination). *See also* 8 June Memorandum, paras. 1-2.

⁷⁷ Psychiatric Report, pp. 5-6 (Registry pagination).

Falke confirmed that Simba is “friendly and cooperative” [REDACTED].⁷⁸ Furthermore, it was reported that Simba feels his imprisonment is “unjust” and continues to proclaim his innocence of the crimes for which he was convicted.⁷⁹

43. Simba submits that he has “provided sufficient proof of good conduct”, as was recognized in the Decision on First Application.⁸⁰ He further submits that during his detention both at the UNDF and in Benin, his “behaviour has been irreproachable”, that he has never received disciplinary measures or reprimands from prison staff, and that he did not undergo any psychiatric or psychological treatment during his incarceration.⁸¹ In addition, Simba submits that he is very close to his family who have continued to support him, and that his family [REDACTED] will assume full responsibility for him upon release.⁸² Furthermore, Simba maintains his innocence, that the findings against him were based on false evidence, and that he cannot be forced to confess to crimes he did not commit.⁸³

44. Although Simba does not accept responsibility for his crimes, I note that while there is limited case law of the ICTY which provides for remorse as a primary requirement for commutation of sentence specifically,⁸⁴ remorse is not generally considered as such. It is mainly considered as just one of a number of factors that may be taken into account.⁸⁵ Indeed numerous

⁷⁸ First Medical Expert Report, pp. 5, 8; Second Medical Expert Report, pp. 10-11. *See also* 8 June Memorandum, paras. 1-2.

⁷⁹ Psychiatric Report, pp. 4-6 (Registry pagination). *See also* 8 June Memorandum, paras. 1-2; Response to Rwanda Submissions, para. 37.

⁸⁰ Application, pp. 1, 3 (Registry pagination). *See also* Submissions, paras. 20-21, 26.

⁸¹ Response, p. 2 (Registry pagination); Application, p. 3 (Registry pagination); Submission, paras. 20-21; Response to Rwanda Submissions, paras. 39, 41. *See also* Response to Rwanda Submissions, para. 37.

⁸² Statement; Submissions, para. 22; Response to Rwanda Submissions, paras. 40-41; Additional Proof, paras. 3, 5; Annex 1, Additional Proof; Annex 3, Additional Proof; Annex 4, Additional Proof.

⁸³ Response to Rwanda Submissions, para. 37.

⁸⁴ *See, e.g., Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 18 July 2011 (public), paras. 30-31, 34, 38 (denying sentence remission); *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007, para. 15. The then-ICTY President denied Mr. Mlado Radić’s request for commutation of sentence, based on the fact that he did not consider Radić to have demonstrated clear signs of rehabilitation, stating that “[w]hile his behaviour in detention has generally been good, this is outweighed by his denial of having committed rape and sexual assault”.

⁸⁵ *See, e.g., Pušić* Decision, paras. 37, 66 (early release was granted based on signs of rehabilitation and that Pušić had already served two-thirds of his sentence); *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision of the President on the Early Release of Dominique Ntawukulilyayo, 8 July 2016 (public redacted version) (“*Ntawukulilyayo* Decision”), paras. 25, 37 (early release was denied on the basis that he had not as yet completed two-thirds of his sentence, although he expressed remorse); *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 (early release was denied based on gravity of crimes and that he had not as yet completed two-thirds of his sentence, but he was granted provisional release for a fixed-term period); *Prosecutor v. Vinko Pandurević*, Case No. MICT-15-85-ES.1, Public Redacted Version of the 9 April 2015 Decision of the President on the Early Release of Vinko Pandurević, 10 April 2015, paras. 26, 30 (early release was granted based on signs of rehabilitation, noting his statements of remorse, and that he had completed two-thirds of his sentence); *Prosecutor v. Ranko Češić*, Case No. MICT-14-66-ES, Public Redacted Version of the 30 April 2014 Decision of the President on the Early Release of Ranko Češić, 28 May 2014, paras. 20, 25 (early release was granted based on signs of

requests for early release have been granted where there was no clear indication of remorse⁸⁶ and in some instances where the convicted person expressly denied the crimes for which they were convicted.⁸⁷ I do not consider that remorse should be treated as a determining factor in this case or in determining early release applications more generally. Rule 151 of the Rules provides that I must take into account “a prisoner’s demonstration of rehabilitation” in determining whether early release is appropriate, but the applicable legal framework of the Mechanism (following that of its predecessor institutions, the ICTY and the ICTR) does not stipulate that remorse must be present.

45. The prison warden’s description of Simba’s behaviour while detained in Benin, as well as the Psychiatric Report’s portrayal that Simba is social, cooperative, and has family to support him upon release, suggest that Simba is capable of reintegrating into society and is not at risk of reoffending, if he is released. Accordingly, I believe that in context, and having carefully reviewed the information before me, including that Simba does not deny the existence of genocide in Rwanda and condemned the massive slaughter that occurred,⁸⁸ I am of the opinion that Simba has demonstrated some signs of rehabilitation, and I am therefore inclined to count this factor as weighing in favour of his early release.⁸⁹

G. Substantial Cooperation with the Prosecution

46. Rule 151 of the Rules states that the President shall take into account any “substantial cooperation” of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states

rehabilitation, including his expressions of remorse, and that he had completed more than two-thirds of his sentence); *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, paras. 22-24, 35 (early release was granted prior to completion of two-thirds of his sentence based on his signs of rehabilitation and his guilty plea at trial, as well as humanitarian reasons); *Prosecutor v. Dragan Zelenović*, Case No. MICT-15-89-ES, Public Redacted Version of the 28 August 2015 Decision of the President on the Early Release of Dragan Zelenović, 15 September 2015 (“*Zelenović Decision*”), paras. 18, 21, 23 (early release was granted taking into account his guilty plea at trial).

⁸⁶ See, e.g., *Prosecutor v. Emmanuel Rukundo*, Case No. MICT-13-35-ES, Public Redacted Version of the 19 July 2016 Decision of the President on the Early Release of Emmanuel Rukundo, 5 December 2016; *Prosecutor v. Nikola Šainović*, Case No. MICT-14-67-ES.I, Public Redacted Version of the 10 July 2015 Decision of the President on the Early Release of Nikola Šainović, 27 August 2015; *Prosecutor v. Innocent Sagahutu*, Case No. MICT-13-43-ES, Public Redacted Version of the 9 May 2014 Decision of the President on the Early Release of Innocent Sagahutu, 13 May 2014; *Ntakirutimana Decision*.

⁸⁷ See, e.g., *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 8 April 2013 (public), paras. 20, 23; *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision of the President on Early Release of Haradin Bala, 28 June 2012 (confidential), paras. 25-27, 31 (early release was granted despite his attitude towards the deeds for which he was convicted, which were noted to weigh against his application for early release, however, this was ultimately considered as neutral given that Bala had issues adjusting to the conditions of detention in France); *Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 9 January 2012 (public), paras. 21, 26 (maintaining that he was not responsible for acts committed).

⁸⁸ Trial Judgement, para. 441.

⁸⁹ See also Decision on First Application, paras. 23-34. Cf. *Zelenović Decision*, paras. 18-20.

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”.

47. According to the Prosecution, Simba has at no time provided any cooperation to the Prosecution or the ICTR Prosecution.⁹⁰

48. Simba submits that he cooperated with the ICTR, as evidenced by his decision not to participate in a general strike with other ICTR detainees from 21-23 September 2004.⁹¹ He further submits that although he did not plead guilty, he has “always complied with all the requests of the Tribunal”, and states that he is “not aware of any lack of cooperation” with the Mechanism.⁹² Simba argues that this matter should be considered as a neutral factor.⁹³

49. I do not consider that Simba’s decision not to join in the strike with other ICTR detainees in 2004, or his compliance with the Trial Chamber during his proceedings, amount to cooperation with the Prosecution. However, I note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.⁹⁴ I therefore consider that Simba’s lack of cooperation with the Prosecution and ICTR Prosecution is a neutral factor in determining whether or not to grant him early release.

H. Other Factors

50. Paragraph 9 of the Practice Direction provides that the President may consider “any other information” that the President considers “relevant” to supplement the criteria specified in Rule 151 of the Rules.

1. Humanitarian Concerns

51. Previous decisions on early release have determined that the condition of a convicted person’s health may be taken into account in the context of an application for early release,

⁹⁰ Prosecution Memorandum, para. 2.

⁹¹ Application, p. 3 (Registry pagination).

⁹² Response, p. 2 (Registry pagination).

⁹³ Response to Rwanda Submissions, para. 37.

⁹⁴ See *Pušić* Decision, para. 42; *Lukić* Decision, para. 49; *Miletić* Decision, para. 34; *Beara* Decision, para. 32; *Ntawukulilyayo* Decision, para. 20.

especially when the seriousness of the condition makes it inappropriate for the person to remain in prison any longer.⁹⁵

52. [REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. [REDACTED]

57. [REDACTED]

58. [REDACTED]

59. [REDACTED]

60. [REDACTED]

61. [REDACTED]

62. [REDACTED]

63. [REDACTED]

64. [REDACTED]

65. [REDACTED]

2. Submissions from Rwanda

66. Paragraph 4(d) of the Practice Direction provides that the President may obtain any further information considered relevant for his judicial determination of a request for pardon, commutation of sentence, or early release, through the Registry. In this regard, I issued the Request to Rwanda, in which I requested the authorities of Rwanda to file their views on the Application, if any, and I granted Simba the right to reply to Rwanda's submissions, if any.⁹⁶

⁹⁵ See, e.g., *Pušić* Decision, para. 43; *Lukić* Decision, para. 50; *Beara* Decision, paras. 33, 46; *Nahimana* Decision, para. 31; *Ntakirutimana* Decision, para. 21; *Ruzindana* Decision, para. 22.

⁹⁶ Request to Rwanda, p. 3.

67. Rwanda opposes the Application “in the strongest terms” and states that it “must” be rejected,⁹⁷ arguing that (i) early release is “unwarranted” because of the gravity of Simba’s crimes, and that accordingly Simba should serve his full sentence;⁹⁸ (ii) Simba’s early release would cause “untold psychological harm” to the survivors and victims;⁹⁹ (iii) the rationale for the Application is “unsubstantiated”, as Simba has not referenced medical reports or opinions that would demonstrate his severe health condition, and that Simba has shown no remorse or taken responsibility for the crimes of which he was convicted;¹⁰⁰ (iv) the Mechanism’s legal provisions do not provide for unconditional early release after completion of two-thirds of a convicted-person’s sentence,¹⁰¹ and that the ICTR considered ICTR-convicted persons eligible to apply for early release upon completion of three-fourths of their sentences, which was a “more appropriate” standard to apply;¹⁰² and (v) according to Rule 149 of the Rules, eligibility for early release depends on the law of the enforcement State, that Benin does not provide for unconditional early release, and that the Mechanism therefore does not have the “apparent authority to authorize it”.¹⁰³ In addition, Rwanda requests a hearing during which the victims’ views could be solicited and considered in my determination of the Application.¹⁰⁴

68. In response, Simba requests that his Application be granted notwithstanding the objections made by Rwanda, and that the President should disregard the submissions made by Rwanda.¹⁰⁵ Simba submits, *inter alia*, that, (i) Rwanda is not a “neutral” party and has demonstrated bias against all ICTR-convicted persons;¹⁰⁶ (ii) the President should deny the request for a hearing;¹⁰⁷ (iii) Rwanda’s submissions cover arguments raised during the trial, prior

⁹⁷ See Omnibus Response, pp. 2, 17, 19; Rwanda Statement, pp. 308-307 (Registry pagination).

⁹⁸ See Omnibus Response, pp. 2-7; Rwanda Statement, pp. 308, 306, 304 (Registry pagination); Supplemental Brief, pp. 2-4, 12, 17.

⁹⁹ See Omnibus Response, pp. 2, 4-14; Rwanda Statement, pp. 306, 304 (Registry pagination); Supplemental Brief, p. 2. In support of this argument, Rwanda attaches and references affidavits of victims voicing their opposition to Simba’s potential early release, as well as a statement from an alleged mental health expert detailing the “ongoing damage and trauma” that the victims endure to this day, and statements from former counsel from the ICTR Office of the Prosecutor (“ICTR Prosecution Counsel”) working on Simba’s case. See Rwanda Statement, pp. 306-305 (Registry pagination), Annexes A-D, F; Supplemental Brief, pp. 4-9, Annexes F-Q, R. I note that Annexes S-T of the Supplemental Brief relate only to Mr. Hassan Ngeze and not Simba. Accordingly they will not be considered herein.

¹⁰⁰ See Omnibus Response, pp. 3, 14-16; Rwanda Statement, p. 307 (Registry pagination); Supplemental Brief, p. 12.

¹⁰¹ See Omnibus Response, pp. 3, 16; Rwanda Statement, p. 304 (Registry pagination); Supplemental Brief, p. 2, 12.

¹⁰² See Rwanda Statement, p. 304 (Registry pagination); Supplemental Brief, pp. 2, 12.

¹⁰³ See Omnibus Response, p. 17; Rwanda Statement, p. 304 (Registry pagination); Supplemental Brief, pp. 10-12; Additional Submissions, pp. 3-4, 474-468 (Registry pagination). In this regard, it further argues that the enforcement State has not notified the Mechanism of Simba’s eligibility for early release in accordance with its laws, pursuant to Article 26 of the Statute, and accordingly, Simba cannot be granted early release. See Supplemental Brief, pp. 10, 13.

¹⁰⁴ See Rwanda Statement, p. 306 (Registry pagination); Supplemental Brief, p. 4.

¹⁰⁵ Reply to Supplemental Brief, para. 11; Response to Rwanda Submissions, paras. 1-2, 23, 52.

¹⁰⁶ Reply to Supplemental Brief, para. 16; Response to Rwanda Submissions, para. 1.

¹⁰⁷ Response to Rwanda Submissions, paras. 20, 21, 52. Simba asserts that Rwanda has included statements from “victim witnesses” and academic scholars to support its argument, that their views are “abundantly clear”, and there is consequently “no added benefit” to the President to order a hearing. In addition, Simba submits that a hearing would

to conviction and sentencing, and therefore these arguments have already been considered in the determination of sentencing;¹⁰⁸ and (iv) he is eligible for early release pursuant to Beninese law,¹⁰⁹ contending that, in any event, the ultimate decision on whether to grant early release lays with the President, regardless of whether a convicted person is eligible for early release according to the laws of the enforcement State.¹¹⁰

69. With regard to the issue of remorse, Simba maintains that he is innocent of the crimes for which he was convicted and that he cannot be forced to confess to crimes that he did not commit.¹¹¹ He argues that the fact that he did not plead guilty at trial has already been taken into account in the determination of his sentence, and recognizes that had he pled guilty, he would have likely received a lower sentence.¹¹²

70. I have taken note of the information provided by Rwanda, including the statements of, *inter alia*, victims, academic scholars, purported experts, and ICTR Prosecution Counsel. As a preliminary matter, allow me to reiterate that regardless of whether Simba is eligible for early release under the domestic law of Benin, the early release of persons convicted by the ICTR falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, and paragraphs 9 and 12 of the Practice Direction.¹¹³ Furthermore, I note Rwanda's submissions related to the gravity of crimes for which Simba was convicted. In this regard, I recall that I have taken into account the very high gravity of the crimes of which Simba was convicted and that I determined that this factor weighs against granting his early release.¹¹⁴

71. I further note Rwanda's argument that the Mechanism's legal provisions do not provide for unconditional early release after completion of two-thirds of a convicted-person's sentence,¹¹⁵ that Benin does not provide for unconditional early release, and that the Mechanism therefore does not have the "apparent authority to authorize it".¹¹⁶ While I recall that each application for early release is considered on a case-by-case basis and is ultimately a matter of

delay the proceedings and cause him further prejudice. Response to Rwanda Submissions, paras. 19-20. *See also* Additional Proof, para. 10.

¹⁰⁸ Reply to Supplemental Brief, paras. 19.

¹⁰⁹ Reply to Supplemental Brief, paras. 21.

¹¹⁰ Response to Rwanda Submissions, para. 50-51.

¹¹¹ Response to Rwanda Submissions, para. 37.

¹¹² Response to Rwanda Submissions, para. 37.

¹¹³ *See also* paragraph 11 of the Practice Direction.

¹¹⁴ *See supra*, para. 40.

¹¹⁵ *See* Omnibus Response, pp. 3, 16; Rwanda Statement, p. 304 (Registry pagination); Supplemental Brief, p. 2, 12.

¹¹⁶ *See* Omnibus Response, p. 17; Rwanda Statement, p. 304 (Registry pagination); Supplemental Brief, pp. 10-12; Additional Submissions, pp. 3-4, 474-468 (Registry pagination). In this regard, it further argues that the enforcement State has not notified the Mechanism of Simba's eligibility for early release in accordance with its laws, pursuant to Article 26 of the Statute, and accordingly, Simba cannot be granted early release. *See* Supplemental Brief, pp. 10, 13.

discretion for the President regardless of the laws of the enforcement State, I also note that in the present proceedings I have deemed it appropriate to consider whether Simba should be released on a conditional basis, in line with the recommendations of the Resolution.¹¹⁷ In this regard, I have received confirmation from Simba that he is willing to abide by the conditions set forth in the 23 October Interim Order.¹¹⁸

72. In regard to the views of victims and other individuals about the impact that Simba's potential early release would have on the victims, I recall that the Statute, the Rules, and the Practice Direction do not provide for the victims' views on an application for early release, commutation of sentence, or pardon by persons convicted by the ICTR, the ICTY, or the Mechanism. I recall, in this regard that the fact that the President has broad discretion to consider information he deems relevant pursuant to paragraph 4(d) of the Practice Direction, does not provide a sufficiently compelling reason to allow victims to make submissions on issues related to the Application, or to compel me to consider them in my judicial determination thereof.¹¹⁹ In addition, I note that it has been long standing practice at the ICTR, the ICTY and the Mechanism, not to consult with the victims in making a judicial determination of an application for pardon, commutation of sentence, or early release of convicted persons. Nevertheless, I take note of the various statements made by the victims, and other individuals as attached to the Rwanda Statement and Supplemental Brief, and referenced in both documents.¹²⁰

73. Given that there is no role for these types of statements in proceedings related to early release, and that such proceedings do not relate to a finding of guilt, and accordingly do not re-litigate issues already determined by the Trial Chamber, and that I have already considered the high gravity of the crimes for which Simba was convicted, I do not consider it necessary to hold a hearing on this matter and accordingly deny such a request.

74. Allow me to reiterate, at this juncture, that it is long-standing practice of the Mechanism that each application for early release is considered on a case-by-case basis and is ultimately a matter of discretion for the President. Following careful consideration of the totality of submissions filed by Rwanda in this regard, and based on the foregoing, I am of the opinion that, notwithstanding the submissions concerning conditional release, in line with the Resolution, Rwanda has otherwise not provided any compelling reasons warranting a departure from the

¹¹⁷ See 10 October Interim Order, p. 2; 23 October Interim Order.

¹¹⁸ See *infra*, para. 78.

¹¹⁹ See, e.g., 12 July Decision, para. 17.

¹²⁰ See Rwanda Statement, pp. 306-305 (Registry pagination), Annexes A-D, F; Supplemental Brief, pp. 4-8, Annexes F-Q.

long-standing practice of the Mechanism. I therefore consider the submissions filed by Rwanda to be a neutral factor in determining whether or not to grant Simba early release.

3. Additional Information

75. In response to the 10 October Interim Order, I note that Simba has provided proof that his family members [REDACTED] are willing and able to accept full responsibility for him should his Application be granted, and that they are financially able to provide Simba with adequate medical care.¹²¹ Although Simba is currently unable to provide proof that [REDACTED] is willing to accept him in its territory should he be granted early release, I note that Simba has initiated the procedure [REDACTED] in this regard and that his family members had an appointment with the relevant authorities regarding the status of this process, in November 2018.¹²² In this regard, Simba indicates that his family members [REDACTED] have made arrangements to accommodate him, and have committed to cater for his daily needs, [REDACTED].¹²³

76. Furthermore, Simba argues that pursuant to Article 12(3) of the Enforcement Agreement, Simba will be allowed to stay in Benin upon release, pending his potential relocation [REDACTED].¹²⁴ In addition, Simba contends that the relevant legal provisions [REDACTED] are clear on family reunification, and “oblige[...]” the authorities to accept Simba on its territory, based on which Simba states that his application for immigration [REDACTED] “stands a very reasonable chance of success”.¹²⁵

77. Given the foregoing, I am satisfied with the information provided by Simba in response to the 10 October Interim Order, and I take note that Simba has family to support him should the Application be granted, [REDACTED] I therefore consider this information as weighing in favour of his early release.

4. Conditional Release

78. In the 23 October Interim Order, I requested Simba to file confirmation as to whether he would be willing to abide by the conditions, as set forth therein, and in line with the

¹²¹ Additional Proof, para. 3; Annex 1, Additional Proof, pp. 560-559 (Registry pagination); Annex 3, Additional Proof, p. 546 (Registry pagination); Attestation.

¹²² Additional Proof, para. 4; Annex 2, Additional Proof. *See also* Additional Proof, paras. 5-8.

¹²³ Additional Proof, para. 5; Annex 4, Additional Proof. *See also* Attestation.

¹²⁴ Additional Proof, para. 6.

¹²⁵ Additional Proof, para. 7; Annex 1, Additional Proof.

recommendations of the Resolution.¹²⁶ I note that Simba confirms that he is willing to abide by said conditions, and he indicates that he is willing to sign an undertaking in this regard.¹²⁷ Accordingly, I attach a Conditional Early Release Agreement as Annex 1 to the present Decision ("Annex 1"), in line with the terms of the 23 October Interim Order, and order Simba to sign this document and file it on the record by 14 January 2019. I am of the view that Simba's indicated willingness to abide by the conditions set forth in the 23 October Interim Order and Annex 1, weigh in favour of granting him early release, and I consider that his early release will be conditional upon his filing of the signed document contained in Annex 1 by the date set forth herein.

IV. CONCLUSION

79. Notwithstanding the high gravity of Simba's crimes, which are somewhat mitigated by the Trial Chamber's reasoning in determining the ultimate sentence imposed on Simba, as upheld by the Appeals Chamber, I note that Simba has completed two-thirds of his sentence on 27 July 2018, having presently served almost five months more than the two-thirds benchmark of his sentence, and just over 16 years of his 25-year sentence. [REDACTED].¹²⁸

80. Furthermore, I note the additional proof that Simba's family [REDACTED] are willing and able to accept full responsibility for him and that they are able to provide him with adequate medical care, should the Application be granted.¹²⁹ I also take into account Simba's indicated willingness to sign an undertaking to abide by conditions as set forth in the 23 October Interim Order.¹³⁰

81. In light of the above, and having considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, I am inclined to grant the Application, on the condition that Simba signs and files on the record the document contained in Annex 1 by the date set forth herein. The view that Simba should be granted early release at this time is shared by Judge Liu Daqun, the Judge of the sentencing Chamber who is a Judge of the Mechanism, who was consulted pursuant to Rule 150 of the Rules. Judge Liu has informed me that having considered all the relevant documentation provided in accordance with the Practice

¹²⁶ 23 October Interim Order, pp. 2-3.

¹²⁷ Additional Proof, para. 9.

¹²⁸ [REDACTED].

¹²⁹ Psychiatric Report, pp. 5-6 (Registry pagination); Statement; Additional Proof, paras. 3, 5; Annex 1, Additional Proof, pp. 560-559 (Registry pagination); Annex 3, Additional Proof, p. 546 (Registry pagination); Annex 4, Additional Proof; Attestation.

¹³⁰ Additional Proof, para. 9.

Direction, he believes that Simba qualifies for early release. As a member of the Appeals Chamber in Simba's case, Judge Liu states that he understands that although the crimes for which Simba was convicted are very serious, compared with other convicted persons they are not the "most serious".¹³¹ Judge Liu also noted that Simba has already served two-thirds of his sentence and he stated that Simba's health constitutes "an extraordinary circumstance" in this regard.¹³²

V. DISPOSITION

82. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, and paragraph 9 of the Practice Direction, I hereby **GRANT** Simba early release as soon as practicable, following his filing on the record of the signed document contained in Annex 1 by 14 January 2019.

83. The Registrar is hereby **DIRECTED** to implement this decision and to inform the Beninese authorities thereof as soon as practicable, in line with the terms contained herein, as prescribed in paragraph 13 of the Practice Direction. Furthermore, I note that for efficiency's sake, I am simultaneously filing confidentially, a public redacted version of the present Decision and I hereby **INSTRUCT** the Registrar to lift the confidential status of the public redacted version of the present Decision upon Simba's release and **ORDER** that the public redacted version of the present Decision shall thereupon and henceforth be considered a public filing.

84. I further,

- a. **RECALL** that the Mechanism was established by the Security Council of the United Nations pursuant to Chapter VII of the Charter of the United Nations,¹³³ and that all States are obligated to cooperate with the Mechanism as set out in Article 28 of the Statute;¹³⁴
- b. **CONSIDER** that pursuant to Article 28 of the Statute, any State that is willing to accept Simba into its territory for the purpose of relocation and family reunification, will be obligated to comply with the conditions imposed on Simba's early release, as set forth in Annex 1 of the present Decision; and

¹³¹ See Electronic Mail from Judge Liu Daqun, to Mr. Thomas Lay for the attention of Judge Theodor Meron, President, 3 December 2018 ("Judge Liu Email").

¹³² Judge Liu Email.

¹³³ United Nations Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010, p. 2.

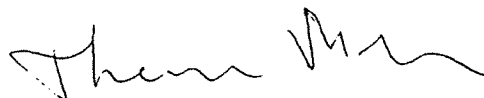
¹³⁴ See Article 28(2) of the Statute.

- c. **CONSIDER** in addition, that I would deem it appropriate to hold Simba in contempt of court should he violate any of the conditions, as stated herein, pursuant to Rule 90 of the Rules of Procedure and Evidence of the Mechanism.

85. In addition, I **HEREBY GRANT** the Prosecution Request as contained in the Prosecution Submissions, and **ORDER** Simba to file a public redacted version of his Response to Rwanda Motion by 14 January 2019, and thereafter **ORDER** the Registry to reclassify the Prosecution Submissions as publicly filed.

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

Done this 7th day of January 2019,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]



ANNEX A**CONDITIONAL EARLY RELEASE AGREEMENT**

Name: **Date of Birth:**

I, the undersigned, declare that,

- I. I have read and understood the following applicable conditions on my early release, as set forth in the present agreement ("Agreement");
- II. I agree to fully comply with the conditions of this Agreement as set forth below:
 - a. I shall have no contact whatsoever, directly or indirectly try to harm, intimidate or otherwise interfere, with victims or witnesses who testified at my trial or the trial of other ICTR-convicted persons, or otherwise interfere in any way with the proceedings of the Mechanism, or the administration of justice;
 - b. I shall conduct myself honourably and peacefully in the community to which I am released, and shall not engage in secret meetings intended to plan civil unrest or engage in any political activities;
 - c. I shall not discuss my case, including any aspect of the 1994 Genocide against the Tutsi in Rwanda, with anyone, including the media, other than *pro bono* counsel, if any, nor will I make any statement denying the 1994 Genocide against the Tutsi in Rwanda;
 - d. I shall not purchase, possess, use or handle any weapons; and
 - e. I shall not commit any offence.
- III. I understand and agree that if I violate any of the conditions of this Agreement, I will be held in contempt of court, pursuant to Rule 90 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), and I understand that this Agreement and the decision granting my conditional release will be revoked, and that my conditional release will be terminated;
- IV. I understand that under the terms of this Agreement, the State that is willing to accept me into its territory for the purpose of relocation and family reunification, will be obligated to comply with the conditions as set forth herein, pursuant to Article 28 of the Statute of the

Mechanism, and I agree that if the State concerned has reason to believe that I have failed to comply with any requirement of this Agreement or if I pose a risk of harm to any person, I shall be detained and transferred to the Mechanism without need for any further order of the Mechanism and that the President may, after consideration of my alleged violation, hold me in contempt of court, pursuant to Rule 90 of the Rules;

- V. I understand and agree that unless this Agreement is revoked or modified, I will be subject to the terms and conditions of this Agreement until the expiration of my sentence on 27 November 2026.
- VI. I agree that any change in the foregoing conditions can only be authorised by the President of the International Residual Mechanism for Criminal Tribunals;
- VII. This document will be filed on the record in *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1;

Signed:

Name:

Date:

We, the undersigned, hereby confirm that Mr. Aloys Simba, convicted by the International Criminal Tribunal for Rwanda on 27 November 2007 has signed this Agreement before us and has confirmed to us that he has been fully advised of its conditions and the consequences of any breach of this Agreement, understands the terms and conditions of this Agreement, and has freely and voluntarily signed it with the knowledge of the binding nature of this Agreement and its terms and conditions.

Witness 1

Witness 2

.....

.....

Name

Name

.....

.....

Position

Position

.....

.....

Date

Date



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From/ De :	☒ Chambers/ <i>Chambre</i>	☐ Defence/ <i>Défense</i>	☐ Prosecution/ <i>Bureau du Procureur</i>
Case Name/ Affaire :	Prosecutor v. Aloys Simba		Case Number/ Affaire n° : MICT-14-62-ES.1
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