UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: MICT-17-112-ES.4

Date: 16 January 2019

Original: English

THE PRESIDENT OF THE MECHANISM

Before: **Judge Theodor Meron, President**

Registrar: **Mr. Olufemi Elias**

Decision of: **16 January 2019**

PROSECUTOR

v.

VALENTIN ĆORIĆ

CONFIDENTIAL

FURTHER REDACTED PUBLIC REDACTED VERSION OF THE DECISION OF THE PRESIDENT ON THE EARLY RELEASE OF VALENTIN ĆORIĆ AND RELATED MOTIONS

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for the Accused:

Mr. Dražen Plavec

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. Valentin Ćorić ("Ćorić"), dated 28 June 2018.[1] I consider the Application pursuant to Article 26 of the Statute of the Mechanism ("Statute"), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), and paragraph 3 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism ("Practice Direction").[2]

I. BACKGROUND

2. Ćorić voluntarily surrendered to the International Criminal Tribunal for the former Yugoslavia ("ICTY") on 5 April 2004.[3] At his initial appearance on 6 April 2004, Ćorić pleaded not guilty to all charges contained in the initial Indictment.[4]

3. On 29 May 2013, Trial Chamber III of the ICTY ("Trial Chamber") found Ćorić guilty of the following: persecution on political, racial and religious grounds (count 1); murder (count 2); wilful killing (count 3); rape (count 4); inhuman treatment through sexual assault (count 5); deportation (count 6); unlawful deportation of a civilian (count 7); inhumane acts through forcible transfer (count 8); unlawful transfer of a civilian (count 9); imprisonment (count 10); unlawful confinement of a civilian (count 11); inhumane acts, due to conditions of confinement (count 12); inhumane treatment, due to the conditions of confinement (count 13); inhumane acts (count 15); inhumane treatment (count 16); unlawful labour (count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly (count 19); destruction or wilful damage done to institutions dedicated to religion or education (count 21); appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (count 22); plunder of public and private property (count 23); unlawful attack on

[1] *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Valentin Ćorić's Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence, 28 June 2018 (confidential) ("Application"). Ćorić filed a public redacted version of the Application on 25 July 2018. *See Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Valentin Ćorić's Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence, 25 July 2018 (public redacted version). *See also 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.
[2] MICT/3/Rev.1, 24 May 2018.
[3] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 29 May 2013 ("Trial Judgement"), Vol. IV, para. 1371; Annex II, para. 33. The English translation of the Trial Judgement was filed on 6 June 2014. All references herein are to the English translation of the Trial Judgement.
[4] Trial Judgement, Vol. V, Annex II, para. 33.

civilians (count 24); unlawful infliction of terror on civilians (count 25).[5] The Trial Chamber sentenced Ćorić to a single sentence of 16 years of imprisonment.[6]

4. On 29 November 2017, the Appeals Chamber of the ICTY ("Appeals Chamber") reversed, in part, Ćorić's convictions for counts 1, 2, 3, 15, 16, 19 and 25 of the Indictment. The Appeals Chamber affirmed the remainder of his convictions as well as his sentence of 16 years' imprisonment.[7] He is currently serving his sentence at the United Nations Detention Unit ("UNDU") in The Hague.[8]

II. THE APPLICATION

5. On 28 June 2018, I received the Application and on 29 June 2018, I requested the Registrar of the Mechanism ("Registrar") to undertake the steps prescribed in paragraphs 3, 4, and 5 of the Practice Direction.[9]

6. On 30 July 2018, the Registry of the Mechanism ("Registry") conveyed to me: (i) a memorandum from the Prosecution of the Mechanism ("Prosecution"), dated 12 July 2018 ("Prosecution Memorandum"), regarding the cooperation provided by Ćorić to the Prosecution and the Prosecution of the ICTY ("ICTY Prosecution"); (ii) a behavioural report, prepared by [REDACTED], Commanding Officer of the UNDU, dated 16 July 2018 ("Behavioural Report" and "Commanding Officer", respectively); and (iii) a medical report by [REDACTED], Medical Officer at the UNDU, concerning Mr. Ćorić's mental health, dated 16 July 2018 ("Medical Report").[10]

7. On 31 July 2018, all the relevant information was transmitted to Ćorić for his comment pursuant to paragraph 6 of the Practice Direction. On 1 August 2018, Ćorić responded that he did not intend to make any submissions in relation to the documentation.[11]

8. Upon consultation with the Judges of the sentencing Chamber who are Judges of the Mechanism, I issued an interim order for additional submissions.[12] On 16 November 2018, Ćorić

[5] Trial Judgement, Vol. IV, p. 431. *See also Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Second Amended Indictment, 11 June 2008.
[6] Trial Judgement, Vol. IV, p. 431.
[7] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Judgement, 29 November 2017 ("Appeal Judgement"), Vol. III, pp. 1406-1407.
[8] Application, para. 3; Annex A.
[9] Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, dated 29 June 2018.
[10] Internal Memorandum from [REDACTED], Chief of the Registry, Hague branch, to Judge Theodor Meron, President, dated 30 July 2018.
[11] Submission of Valentin Ćorić, 1 August 2018 (confidential), para. 2.
[12] Interim Order for Additional Submissions, 9 November 2018 (confidential and *ex parte*) ("Interim Order"), p. 4.

filed an additional submission in accordance with the terms of the Interim Order.[13] On 18 December 2018, the Registrar filed a submission containing a security report from the country in which Ćorić indicated he intends to relocate and further relevant information.[14]

III. DISCUSSION

9. In coming to my decision on whether it is appropriate to grant Ćorić early release, I have consulted with the Judges of the sentencing Chamber who are Judges of the Mechanism, pursuant to paragraph 7 of the Practice Direction and Rule 150 of the Rules.

A. Preliminary Matters

1. Prosecution Submissions

10. On 11 July 2018, the Prosecution filed submissions regarding Ćorić's request for early release, wherein the Prosecution submits, *inter alia*, that the Application should be denied.[15]

11. On 19 July 2018, Ćorić filed a motion to strike the Prosecution Submissions,[16] contending that the Prosecution has no standing to make such submissions and that the Prosecution Submissions are in violation of "clear and unequivocal jurisprudence" issued in relation to numerous prior applications for early release, and accordingly requests the President

[13] Additional Submission of Valentin Ćorić as to Interim Order for Additional Submissions Dated 9 November 2018, 16 November 2018 (confidential and *ex parte*) ("Additional Submissions").
[14] Registrar's Submission of Security Report of Republic of Croatia and Relevant Information from External Relations Office and Witness Support and Protection Unit, 18 December 2018 (confidential and *ex parte* with confidential and *ex parte* annexes) ("Registrar's Submissions"), *attaching*: (i) a letter from Nikola Milina, Head Director of Police, to Ministry of Justice, Directorate for European Affairs, International and Judicial Cooperation, Republic of Croatia, dated 7 December 2018 ("Police Security Report"); (ii) a letter from Daniel Markić, Director, Security and Information Agency, Republic of Croatia, to Mr. Ivan Crneč, Assistant Minister, Ministry of Justice, Directorate for European, International and Judicial Cooperation, and Mr. Nikola Milina, Head Director, Ministry of the Interior, Police Directorate, dated 7 December 2018 ("Director Security Report"); (iii) Internal Memorandum from [REDACTED], External Relations Officer, to Olufemi Elias, Registrar, Re: External Relations Office's analysis of print, online and social media coverage related to Valentin Ćorić between 29 November 2017 and 29 November 2018, dated 18 December 2018 ("Media Report"); Internal Memorandum from [REDACTED], Head, Witness Support and Protection Unit, to Mr. Olufemi Elias, Registrar, Re: Report in relation to a request of Mr. Valentin Ćorić for early release and the President's decision of 22 November 2018, dated 18 December 2018 ("WISP Report"). *See also* Registrar's Submission in Relation to the Interim Order of 9 November 2018, 22 November 2018 (confidential and *ex parte*); Decision on Registrar's Submission of 22 November 2018, 23 November 2018 (confidential and *ex parte*).
[15] Prosecution's Submissions Regarding Valentin Ćorić's Request for Early Release, 11 July 2018 (confidential) ("Prosecution Submissions"), with confidential Annex A. I note that the Prosecution filed a public redacted version of its Submissions on 31 July 2018. *See* Prosecution's Submissions Regarding Valentin Ćorić's Request for Early Release, 31 July 2018 (public and redacted), with public Annex A.
[16] Motion to Strike Prosecution Submission to Valentin Ćorić's Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence, 19 July 2018 (confidential) ("Motion to Strike").

to strike the Prosecution Submissions and to state on the record that they will not be taken into account in the determination of the Application.[17]

12. On 30 July 2018, the Prosecution responded that the Motion to Strike should be dismissed, arguing, *inter alia*, that the President has broad discretion to consider information he deems relevant pursuant to the Practice Direction, that the Prosecution Submissions pertain to the interests of justice and general principles of law, the relevance of which is recognized by the Statute, and that in other cases concerning requests for early release submitted by persons convicted by the International Criminal Tribunal for Rwanda ("ICTR"), the President has determined it was in the interests of justice to hear from the relevant authorities of the Republic of Rwanda ("Rwanda") but "neither Bosnia and Herzegovina nor the victims have been consulted" in relation to the Application.[18]

13. On 4 September 2018, Ćorić, *inter alia*, reiterated his contention that neither the Prosecution nor the victims have standing to make submissions other than as provided for in the Statute, the Rules, or the Practice Direction, in relation to Ćorić's request for early release.[19]

14. 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 phase 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.[20]

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[17] Motion to Strike, paras. 4, 6-7, 9-10, 15, p. 5.
[18] Prosecution's Response to Valentin Ćorić's Motion to Strike, 30 July 2018 (confidential) ("Response to Motion to Strike"), paras. 1-3.
[19] Response of Valentin Ćorić in Opposition to Prosecution Request to Re-Classify Non-Party "Letters" and Ćorić's Submissions to Same", 4 September 2018 (confidential) ("Reply"), paras. 6-8.
[20] *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 (public redacted version) ("2018 *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, 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

15. I note that, notwithstanding the long-standing practice at the ICTY and the established jurisprudence of the Mechanism, the Prosecution has failed to explicitly address the question of its standing to make submissions in relation to the Application beyond the consultations contemplated by Rule 151 of the Rules and paragraph 4(c) of the Practice Direction.[21]

16. In addition, I consider that the Prosecution has failed to demonstrate the existence of either compelling reasons or special circumstances that would give the Prosecution standing to make submissions in this case or cogent reasons to depart from the principles set forth in earlier judicial rulings more generally.[22]

17. Furthermore, I note that the Prosecution has already provided information relevant to Ćorić's cooperation with both the Prosecution and the ICTY Prosecution and there is therefore no need for further submissions from the Prosecution in this regard,[23] and no need to consider the Prosecution Submissions except insofar as the information provided therein relates to Ćorić's cooperation with the Prosecution and the significance thereof.

18. Finally, in Judge Agius's communications, respectively dated 26 October 2018 and 13 January 2019, Judge Agius, *inter alia*, is "strongly against" granting the Motion to Strike[24] referencing paragraph 9 of the Practice Direction and Rule 151 of the Rules where the President is "entrusted to take into consideration" the interests of justice, the general principles of law and any other information that he considers relevant, which the President invoked when seeking the opinion of the Government of Rwanda in other early release cases of persons convicted by the ICTR.[25] Judge Agius considers that it is not in the interest of justice to accept information from various entities, including the medical officer at the UNDU, and the Commanding Officer of the

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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.

[21] *See generally* Prosecution Submissions.

[22] In this context, I am of the view that the mere invocation by the Prosecution of the interests of justice and general principles of law is inadequate to demonstrate that the Prosecution Submission should be taken into account in the context of my judicial determination of the Application. While the Prosecution contends that the Prosecution Submission is well-founded because it relates, *inter alia*, to the "need to consider the views of affected parties", *see* Response to Motion to Strike, para. 2, the Prosecution does not, and does not purport to, represent such affected parties. *See generally* Article 14 of the Statute. *Cf.* 2018 *Miletić* Decision, para. 20.

[23] *See* Prosecution Memorandum.

[24] Internal Memorandum from Judge Carmel Agius, to Judge Theodor Meron, President, dated 26 October 2018 ("Judge Agius's 26 October Memorandum"), p. 3; Electronic Mail from Judge Carmel Agius, to [REDACTED], dated 13 January 2019, for the attention of President Theodor Meron ("Judge Agius's Email").

UNDU, but not to consider information from the Prosecution, who may have "important information relevant to rehabilitation issues as a matter of principle".[26]

19. I am grateful for Judge Agius's remarks. However, in regard to those remarks concerning consultation with stakeholders, particularly his remarks concerning my decision to consult with the Government of Rwanda in other early release cases of ICTR-convicted persons but not accepting the Prosecution Submissions in this instance, I note that my consultation with Rwanda in that regard derived from Rule 125 of the ICTR Rules of Procedure and Evidence which required "notification" of such matters to the Government of Rwanda. With regard to the consultation or acceptance of the views of the Prosecution, or the victims, in this context, no such antecedent exists. Accordingly, in my view, such consultation with the Prosecution should only be undertaken if approved by formal amendment of the Rules. Consequently, I respectfully disagree with Judge Agius's views in this context. Moreover, I note that Judge Antonetti states that in relation to the Prosecution Submissions, the Prosecution's position is "open to criticism", and that the Prosecution "relentlessly hounds" the convicted persons who are "entitled to be reintegrated into society and not to be permanently excluded".[27] In this regard, I note that neither Judge Antonetti nor Judge Liu has expressed their support for Judge Agius's arguments and as such Judge Agius's views reflect the views of the minority in this context.

20. Based on the foregoing, I hereby grant the Motion to Strike.

2. Victims' Submissions

21. On 10 August 2018 and 17 August 2018, respectively, I received two letters from victims in Bosnia and Herzegovina opposing the Application.[28] On 24 August 2018, Ćorić filed a submission, requesting that the President disregard the Victims' Submissions, given that they have no standing to make such submissions in relation to the Application.[29]

22. 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.

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[25] Judge Agius's 26 October Memorandum, p. 3. Judge Agius also states that in the section entitled "Humanitarian Considerations" in the Early Release Memorandum, the President references paragraph 9 of the Practice Direction. *See* Judge Agius's 26 October Memorandum, pp. 3-4.
[26] Judge Agius's 26 October Memorandum, p. 3.
[27] Judge Antonetti's 19 October Memorandum, paras. 13, 20.

23. 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.[30] 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. I do not consider that there exist cogent reasons to depart from this long standing practice by granting the victims standing to make submissions or by considering the Victims' Submissions in the present case.

24. In addition, I take note of Judge Agius's comments that he is, *inter alia*, "strongly against" granting the Submission on Non-Party Letters.[31] Specifically, Judge Agius states that I "very unwisely" propose to grant Ćorić's motion to dismiss the Victims' Submissions,[32] explaining that the Practice Direction provides the President with a broad discretion to consider information he deems relevant, which the President invoked when seeking the opinion of the Government of Rwanda in other early release cases of persons convicted by the ICTR.[33] Judge Agius requests that I "seriously reconsider" this proposed course of action.[34]

25. I am grateful for Judge Agius's remarks and at this juncture, I reiterate that my consultation with Rwanda in regard to other early release cases of ICTR-convicted persons derived from Rule 125 of the ICTR Rules of Procedure and Evidence which required "notification" of such matters to the Government of Rwanda. With regard to the consultation or acceptance of the views of the victims, in this context, no such antecedent exists. Accordingly, and as set forth above, in my view, such consultation should only be undertaken if approved by formal amendment of the Rules. Consequently, I respectfully disagree with Judge Agius's views in this context.

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[28] The Request of Victims from Bosnia and Herzegovina to Prevent Preterm Release of Valentin Ćorić from Custody, 17 August 2018; Letter from Armin Kmetaš re Valentin Ćorić possible release, 23 August 2018. The above-mentioned filings will collectively be referred to herein as "Victims' Submissions".
[29] Submission of Valentin Ćorić as to Non-Party "Letters", 24 August 2018 ("Submission on Non-Party Letters").
[30] *See, e.g.*, *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2; *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, para. 17.
[31] Judge Agius's 26 October Memorandum, p. 3; Judge Agius's Email.
[32] Judge Agius's 26 October Memorandum, p. 4. *See also* Submission of Valentin Ćorić as to Non-Party "Letters", 24 August 2018 ("Submission on Non-Party Letters").
[33] Judge Agius's 26 October Memorandum, p. 4.
[34] Judge Agius's 26 October Memorandum, p. 4.

26. In addition, I note that although Judge Antonetti recognises that the situation regarding the victims is more "sensitive" as their "misery is never-ending", he states that "our mission goes beyond their trauma and involves bringing back into society those who have transgressed while ensuring that they do not reoffend".[35] In this regard, I note that neither Judge Antonetti nor Judge Liu has expressed their support for Judge Agius's arguments and as such Judge Agius's views reflect the views of the minority in this context.

27. Accordingly, I hereby grant the Submission on Non-Party Letters.

3. Prosecution's Request for public redacted Victims' Submissions and Motion to Strike

28. On 30 August 2018, the Prosecution filed a motion requesting that the Victims' Submissions be reclassified as public, or, alternatively, that a public redacted version of the statements be filed in consultation with the authors of the statements.[36] The Prosecution further requests that the Motion to Strike thereafter be reclassified as public as well.[37]

29. I recall that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential.[38]

30. Turning to the Motion to Strike, I note that while Ćorić's Reply ostensibly opposes the Prosecution Request by virtue of the title on the cover page,[39] the substance of the Reply instead challenges the Prosecution's standing to make submissions in relation to the Application, and does not address the Prosecution's arguments related to the reclassification of the Motion to Strike.[40] Accordingly, Ćorić has not put forth any arguments that demonstrate exceptional

[35] Judge Antonetti's 19 October Memorandum, para. 15.
[36] Prosecution Request for Reclassification or Public Redacted Versions of Victim Submissions and Valentin Ćorić's Motion to Strike, 30 August 2018 (confidential) ("Prosecution Request"), paras. 1-3, 5.
[37] Prosecution Request, paras. 4-5.
[38] *See, e.g.*, *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on Prosecution Request for Public Redacted Versions of Radivoje Miletić's Request and Submissions Regarding Early Release, 26 September 2018, p. 1; *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; *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, p. 6801 (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 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.
[39] *See* Reply, cover page.
[40] *See generally* Reply.

reasons that require keeping the Motion to Strike confidential, nor does a close review of the Motion to Strike reveal any information that requires keeping it confidential.[41]

31. With respect to the Victims' Submissions, I note that these statements were filed on the record and classified as confidential upon my instruction and out of an abundance of caution. However, a close review of the Victims' Submissions does not reveal any information that requires maintaining its confidential classification.[42]

32. Accordingly, I hereby grant the Prosecution Request and order the Registry to reclassify the Motion to Strike and the Victims' Submissions as public as soon as practicable following the issuance of this Decision.

B. Applicable Law

33. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR, or the Mechanism is serving his or her sentence, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law.

34. 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.

35. The jurisprudence of the Mechanism recognizes that, in the situation where there is no appeal pending and a convicted person is still detained at either the United Nations Detention Facility ("UNDF") in Arusha or at the UNDU in The Hague, a request for early release may be

[41] *See generally* Motion to Strike.
[42] *See generally* Victims' Submissions.

entertained by the President. Following the approach taken by the ICTR and the ICTY, the President may consider such requests given that "the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced" by the ICTR, the ICTY, or the Mechanism and that the eligibility of individuals serving their sentences at the UNDF or the UNDU "must be determined by reference to the equivalent conditions for eligibility established by the enforcement states".[43]

C. Treatment of Similarly-Situated Prisoners

36. 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.

37. In this respect, I recall that the guiding principle established by the Mechanism is that persons sentenced by the ICTY, like Ćorić, 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.[44]

38. 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.[45] Nevertheless, while it has been consistently emphasized that the two-thirds point is a mark of eligibility and not an automatic right to release, the Mechanism has inherited a long standing practice of granting requests for early release upon completion of two-thirds of a sentence absent particular circumstances that warrant against it. This practice was initiated by Judge Claude Jorda, during his tenure as President of the ICTY,[46] and continued by

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[43] *Pušić* Decision, para. 20; *Prosecutor v. Alphonse Nteziryayo*, Case No. MICT-15-90, Decision of the President on the Early Release of Alphonse Nteziryayo, 9 March 2016 (public redacted version), para. 11; *Prosecutor v. Vladimir Lazarević*, Case No. MICT-14-67-ES.3, Public Redacted Version of the 7 September 2015 Decision of the President on the Early Release of Vladimir Lazarević, 3 December 2015, para. 9.

[44] *See* 2018 *Miletić* Decision, para. 23; *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.

[45] 2018 *Miletić* Decision, para. 23; *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.

[46] *See, e.g., Prosecutor v. Dragan Kolundžija*, Case No. IT-95-8-S, Order of the President on the Early Release of Dragan Kolundžija, 5 December 2001 ("*Kolundžija* Order") (Kolundžija was arrested on 7 June 1999 and was sentenced to 3 years of imprisonment. He applied for early release on 13 November 2001 and was released on 6

subsequent Presidents of the ICTY thereafter.[47] It is also a practice which many Judges of the ICTY and the Mechanism have endorsed as members of the Bureau or sentencing Chamber who were consulted by the President prior to granting early release.[48]

39. In addition, I recall that the Mechanism was established pursuant to United Nations Security Council Resolution 1966 (2010) and continues the material, territorial, temporal, and personal jurisdiction of the ICTR and the ICTY.[49] The Statute and the Rules reflect normative continuity with the Statutes and Rules of Procedure and Evidence of the ICTR and the ICTY.[50] Accordingly, I consider that I am bound to interpret the Statute and the Rules in a manner consistent with the jurisprudence of the ICTR and ICTY.[51] Although I am not bound by the jurisprudence of the ICTR or the ICTY, I am guided by the principle that, in the interests of legal certainty and predictability, I should follow previous decisions of the ICTY or ICTR and depart from them only for cogent reasons in the interests of justice.[52]

40. Furthermore, I note that persons convicted by the ICTR and ICTY with higher sentences and with convictions for crimes of graver than or equal magnitude to those of Ćorić, including convictions of genocide, have been granted early release upon reaching the two-thirds benchmark.[53]

December 2001. Although in this instance two-thirds of his sentence would have been 7 June 2001, he did not apply for early release until 13 November 2001). *See Kolundžija* Order, pp. 2-3; *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001, para. 1. S*ee also Prosecutor v. Damir Došen*, Case No. IT-95-8-S, Order of the President on the Early Release of Damir Došen, 28 February 2003 ("*Došen* Decision").

[47] *See, e.g., Prosecutor v. Zdravko Mucić*, Case No. IT-96-21-A *bis*, Order of the President in Response to Zdravko Mucić's Request for Early Release, 9 July 2003 ("*Mucić* Decision"), p. 3 (President Theodor Meron); *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1-ES, Decision of the President on Request for Early Release, 1 September 2008 ("*Jokić* Decision"), para. 16 (ICTY President Fausto Pocar); *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, Decision of President on Early Release of Duško Sikirica, 21 June 2010 ("*Sikirica* Decision"), para. 13 (ICTY President Patrick Robinson).

[48] *See, e.g., Kolundžija* Order p. 4; *Došen* Decision, p. 4; *Mucić* Decision, p. 5; *Jokić* Decision, para. 18; *Sikirica* Decision, para. 23; *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 ("*Sagahutu* Decision"), para. 23; *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. 35.

[49] United Nations Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010, paras. 1, 4, Annex 1, Statute of the Mechanism ("Statute"), Preamble, Article 1.

[50] *See Augustin Ngirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014 ("*Ngirabatware* Judgement"), para. 6; *Phénéas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012 ("*Munyarugarama* Decision"), para. 5.

[51] *Ngirabatware* Judgement, para. 6; *Munyarugarama* Decision, para. 6.

[52] *Cf. Laurent Semanza v. Prosecutor*, Case No. MICT-13-36-R, Decision on a Request for Access and Review, 9 April 2018, para. 15. *Munyarugarama* Decision, para. 6.

[53] *See, e.g., 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 ("*Nahimana* Decision"); *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. Ljubomir*

41. 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.

42. In this context, as of the date of this memorandum, and based on my own calculation, Ćorić has served two-thirds of his sentence as of 24 September 2018. Given the foregoing, and taking into account the long standing practice of the ICTY and the established jurisprudence of the Mechanism, I consider that the fact that Ćorić has already served over three months more than the two-thirds benchmark of his sentence weighs in favour of his early release.

D. Gravity of Crimes

43. 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.

44. The crimes of which Ćorić has been convicted are of a very high gravity. In this regard, the Trial Chamber found that from January 1993 to 10 November 1993, as Chief of the Military Police Administration, Ćorić engaged Military Police units in the eviction operations conducted in the municipalities of Gornji Vakuf, Stolac, Čapljina and Mostar.[54] The Trial Chamber also found that Ćorić failed to investigate the crimes committed by members of the *Kažnjenička Bojna* or "Convicts Battalion" and played a key role in the functioning of the Croatian Defence Council's network of detention centres.[55] He also executed a part of the common plan by blocking the Muslim population of East Mostar and blocking humanitarian aid.[56] Accordingly, the Trial Chamber was satisfied that Ćorić had "played a key role in the implementation of all of the crimes", and that his intent was discriminatory and aimed at persecuting the Muslim population.[57] The Trial Chamber also concluded that Ćorić abused his authority in order to

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Borovčanin, Case No. MICT-15-85-ES.6, Public Redacted Version of the 14 July 2016 Decision of the President on the Early Release of Ljubomir Borovčanin, 2 August 2016; *Prosecutor v. Nikola Šainović*, Case No. MICT-14-67-ES.1, Public Redacted Version of the 10 July 2015 Decision of the President on the Early Release of Nikola Šainović, 27 August 2015; *Prosecutor v. Zoran Žigić*, Case No. MICT-14-81-ES.1, Public Redacted Version of the 10 November 2014 Decision of the President on the Early Release of Zoran Žigić, 23 December 2014; *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").

[54] Trial Judgement, Vol. IV, para. 1367. *See also* Trial Judgement, Vol. IV, paras. 918-945, 1000, 1008-1016.

[55] Trial Judgement, Vol. IV, para. 1367. *See also* Trial Judgement, Vol. IV, paras. 949-1001, 1017.

[56] Trial Judgement, Vol. IV, para. 1368. *See also* Trial Judgement, Vol. IV, para. 1003.

[57] Trial Judgement, Vol. IV, paras. 1369-1370, 1004.

facilitate the crimes by using the resources at his disposal for the implementation of all crimes, which were factors considered as aggravating circumstances in determination of Ćorić's sentence.[58]

45. Nevertheless, the Trial Chamber also noted that Ćorić voluntarily surrendered to the ICTY and did so "rapidly" after notification of the indictment against him.[59] The Trial Chamber further acknowledged that, with a few exceptions, Ćorić generally complied with the conditions and guarantees imposed during his periods of provisional release pursuant to its orders and decisions since 30 July 2004, and recognized his good behaviour pending and during trial and during his periods spent on provisional release.[60] These matters were considered as mitigating factors in determination of Ćorić's sentence,[61] and I consider it apt to note, at this juncture, that the gravity of Ćorić's crimes is reflected in the unanimous and comparatively low sentence imposed on him by the Trial Chamber.

46. On Appeal, the following of Ćorić's convictions were reversed: persecution, murder and inhumane acts and wilful killing and inhuman treatment with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality; murder and wilful killing for the killing of two unarmed men in Tošćanica, Prozor Municipality; persecution in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993; persecution and unlawful infliction of terror on civilians in relation to the destruction of the Old Bridge of Mostar; and the extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, in relation to the destruction of houses and buildings in Vareš Municipality. The Appeals Chamber, however, affirmed the remainder of his convictions.[62] The Appeals Chamber also found that no reduction of sentence was warranted due to the "limited nature of these reversals" and accordingly affirmed Ćorić's sentence of 16 years of imprisonment.[63]

47. In these circumstances, and notwithstanding the relatively low sentence imposed on Ćorić by the Trial Chamber based on, *inter alia*, the mitigating circumstances, I am of the view that the high gravity of Ćorić's offences weighs against his early release, notwithstanding the fact that he has served two-thirds of his sentence as of 24 September 2018, and has thus served over three months more than the two-thirds benchmark of his sentence.

[58] Trial Judgement, Vol. IV, para. 1370.
[59] Trial Judgement, Vol. IV, para. 1371.
[60] Trial Judgement, Vol. IV, para. 1372.
[61] Trial Judgement, Vol. IV, paras. 1371-1372.

E. Demonstration of Rehabilitation

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

> [r]equest reports and observations from the relevant authorities in the enforcing State as to the behavior of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration[.]

49. The information provided by the Behavioural Report provides a generally positive account of Ćorić's time in detention. In particular, the Commanding Officer states that Ćorić has shown "respect for the management and staff" and has complied with both the Rules of Detention and the instructions of the UNDU officers.[64] Although there have been three instances of "alcohol production" by Ćorić resulting in disciplinary action against him, the Commanding Officer affirms that the incremental increases in sanction appear to have provided "adequate deterrence" and other offences have not been recorded since 2015.[65] According to the Commanding Officer, Ćorić has steadily maintained good relations with his fellow detainees and is "well integrated into the routine pattern of life in custody".[66] The Commanding Officer also states that Ćorić has taken part in Catholic religious services and other activities organized by the UNDU, including yoga classes, music sessions, gardening and tennis.[67] He has also maintained close ties with his wife and daughter, which has helped Ćorić to "maintain his emotional stability".[68]

50. [REDACTED].[69] [REDACTED].[70]

51. Ćorić submits that he has always shown "great respect" for the management, the staff of UNDU, and the personnel at the Tribunal, and that he has always complied with their orders and instructions.[71] Ćorić also asserts that he has actively participated in the activities for detainees at

[62] Appeal Judgement, Vol. III, pp. 1406-1407. *See also* Appeal Judgement, Vol. III, para. 3364.
[63] Appeal Judgement, Vol. III, p. 1407; para. 3364.
[64] Behavioural Report.
[65] Behavioural Report.
[66] Behavioural Report.
[67] Behavioural Report.
[68] Behavioural Report.
[69] Medical Report.
[70] Medical Report.
[71] Application, para. 16.

UNDU, including in maintaining its garden facilities, and that he has been "cordial" with fellow detainees from different nationalities, ethnic or religious groups.[72] Ćorić further contends that he voluntarily surrendered to the ICTY at the earliest possible time after the indictment against him became public.[73]

52. The overall description of Ćorić's conduct while detained at the UNDU, as well as [REDACTED] analysis of Ćorić's current mental health, suggest that Ćorić is capable of reintegrating into society should he be released. In this regard, I note the progress made by Ćorić since he was sanctioned for the offences he committed while in detention prior to 2015 and that no further offences have been recorded since then. In addition, I recall that Ćorić voluntarily surrendered to the ICTY very shortly after the indictment filed against him was made public.[74] Having carefully reviewed the information before me, I am of the opinion that Ćorić has demonstrated some signs of rehabilitation, particularly from 2015 onward, and I am therefore inclined to count this factor as weighing in favour of his early release.

F. Substantial Cooperation with the Prosecution

53. Rule 151 of the Rules states that the President shall take into account any "substantial cooperation" of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar shall request the Prosecution "to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof".

54. The Prosecution Memorandum states that Ćorić has never cooperated with the Prosecution during the proceedings against him or others, nor at any point while serving his sentence.[75]

55. I note that the Prosecution does not indicate whether they sought Ćorić's cooperation at any point during his trial or after he was convicted.[76] I further note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the

[72] Application, para. 16.
[73] Application, para. 17.
[74] Trial Judgement, Vol. IV, para. 1371.
[75] Prosecution Memorandum, para. 2.
[76] *See generally* Prosecution Memorandum.

Prosecution.[77] I therefore consider that Ćorić's lack of cooperation with the Prosecution or the ICTY Prosecution is a neutral factor in determining whether or not to grant him early release.

G. Humanitarian Considerations

56. Paragraph 9 of the Practice Direction provides that the President of the Mechanism may consider "any other information" that the President considers "relevant" to supplement the criteria specified in Rule 151 of the Rules. Previous decisions on early release have determined that the state of the convicted person's health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.[78]

57. [REDACTED].[79] [REDACTED].[80] [REDACTED].[81]

58. While I recognize the difficulties associated [REDACTED], the Medical Report suggests that Ćorić's mental health is stable. Accordingly, I am not convinced based on the information before me, [REDACTED]. Similarly, the reports received do not suggest that Ćorić's medical condition is so serious as to support his early release. I therefore consider this to be a neutral factor in determining whether to grant Ćorić early release.

H. Views of the Judges of the Sentencing Chamber and Other Factors

59. I recall that while it is within my discretion as President to determine whether to grant early release, this discretion is exercised "in consultation with" certain other Judges, as specified in Rule 150 of the Rules. Such consultations form a meaningful part of the President's assessment of applications for pardon, commutation of sentence, or early release at the Mechanism, as they did for the Presidents at the ICTY and the ICTR. Indeed, at the Mechanism, as at the ICTY and the ICTR, it has been the general practice that the President will grant early release where, *inter alia*, taking into account the President's own views and those of the Judges consulted pursuant to Rule 150 of the Rules, a majority are in favour of granting early release, and, conversely, that the President will deny early release where, *inter alia*, taking into account

[77] *See* 2018 *Miletić* Decision, para. 40; *Pušić* Decision, para. 42; *Lukić* Decision, para. 49; *Miletić* Decision, para. 34; *Beara* Decision, para. 32; *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"), para. 31; *Ntakirutimana* Decision, para. 20.
[78] *See, e.g.*, *Lukić* Decision, para. 50; *Beara* Decision, paras. 33, 46; *Nahimana* Decision, para. 31; *Ntakirutimana* Decision, para. 21; *Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, 13 March 2014 (public redacted version), para. 22.
[79] Application, para. 14.
[80] Application, para. 14.

the President's own views and those of the Judges consulted pursuant to Rule 150 of the Rules, a majority are opposed, absent compelling circumstances requiring otherwise.[82]

60. In this regard, I note that of the remaining Judges of the sentencing Chamber who are also Judges of the Mechanism, Judge Jean-Claude Antonetti is of the overall view that the Application should be granted,[83] as it is "fair" to do so, stating that Ćorić was a "pawn like many others" and it is important to show "fairness" when considering his role in the events compared to the greater role of others.[84] Judge Antonetti further states that the convicted persons are "entitled to be reintegrated into society and not to be permanently excluded".[85] Judge Liu is of the view that the Application should be granted based on the analysis provided herein.[86]

1. Demonstration of Rehabilitation

61. In Judge Agius's communication dated 26 October 2018, Judge Agius, *inter alia*, states that although he respects the two-thirds standard for early release and the requirement to treat similarly-situated prisoners equally, based on the information received in relation to the Application and in accordance with the Practice Direction he does not consider that Ćorić has demonstrated "an acceptable indication of a measure of rehabilitation for the purposes of early release of a war criminal", and accordingly he requires further information, including from Ćorić, to establish Ćorić's "readiness and preparedness to re-integrate into society" as

[81] Application, para. 15.
[82] *See, e.g.*, 2018 *Miletić* Decision, para. 44; *Miletić* Decision, para. 35; *Pušić* Decision, para. 67;*Beara* Decision, para. 48; *Ntawukulilyayo* Decision, para. 36; *In the case against Florence Hartmann*, Case No. MICT-15-87-ES, Decision of the President on the Early Release of Florence Hartmann, 29 March 2016, para. 29; *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 ("*Nikolić* Decision"), para. 43; 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, para. 22; *Prosecutor v. Youssouf Munyakazi*, Case No. MICT-12-18-ES.1, Public Redacted Version of the 22 July 2015 Decision of the President on the Early Release of Youssouf Munyakazi, 22 July 215, para. 25; *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, para. 29; *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 Cešić, 28 May 2014, para. 25; *Sagahutu* Decision, para. 23; *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrđa, 18 December 2013, para. 31; *Prosecutor v. Mile Mrkšić*, Case No. IT-95-13/1-ES.2, Decision of the President on the Early Release of Mile Mrkšić, 13 December 2013 (public redacted version), paras. 29-30.
[83] Internal Memorandum from Judge Jean-Claude Antonetti, to Judge Theodor Meron, President, dated 19 October 2018 ("Judge Antonetti's 19 October Memorandum"), paras. 12-20. *See also* Electronic Mail from Judge Jean-Claude Antonetti, to [REDACTED], for the attention of Judge Theodor Meron, President, dated 28 December 2018.
[84] Judge Antonetti's 19 October Memorandum, paras. 18-20. *See also* Internal Memorandum from Judge Jean-Claude Antonetti, to Judge Theodor Meron, dated 29 October 2018 ("Judge Antonetti's 29 October Memorandum"), paras. 5, 8-9.
[85] Judge Antonetti's 19 October Memorandum, paras. 13, 20.
[86] Electronic Mail from Judge Liu Daqun, to [REDACTED], for the attention of Judge Theodor Meron, President, dated 4 January 2019 ("Judge Liu's Email"); Electronic Mail from Judge Liu Daqun, to [REDACTED], for the attention of Judge Theodor Meron, President, dated 29 October 2018

demonstration of his rehabilitation, before he is satisfied that Ćorić "deserves" to be granted early release.[87] Judge Agius states that he does "not want to close all doors on [...]Ćorić", but requests: (i) that Ćorić should provide an indication about "where he intends to live" should his Application be granted; (ii) that, based on where Ćorić intends to live should he be granted early release, "an intelligence report on the situation in that area" should be provided to enable Judge Agius to properly assess whether it is appropriate to "release [Ćorić] to that society"; (iii) that Ćorić should demonstrate how he will "successfully reintegrate into the society" in which he intends to live should his Application be granted; and (iv) that Ćorić should convince Judge Agius that "he deserves to be so released", in particular by: (a) explaining his views on the following statement he issued during the Appeal Hearing on 28 March 2017, in *Prosecutor v. Prlić et al.*, Case No. IT-04-74-A ("Appeal Hearing"),

> "[T]he Prosecution used dirty methods and did not stop at striking bargains in order to engage as its collaborators in The Hague proceedings certain lawyers, certain suspicious security service operatives and certain state politicians of the highest rank. These dishonourable individuals, usually from the Croatian people, sold themselves by their false testimony, secret cooperation with the Prosecution and by offering selected war-time documents and forgeries. In this way, the Prosecution consciously amnestied numerous war criminals while being perfectly aware that some of them have committed war crimes, and by covering up criminal activity, they protected criminals and before this Court and other courts in Bosnia and Herzegovina, they shifted blame onto innocent people."[88]

and whether he "still believes he is a victim of a fraudulent trial before the ICTY"; and (b) explaining his statement that he "has demonstrated by his behavior to date that he has always respected the proceedings and the Tribunal",[89] in the context of the statement he made during the Appeal Hearing as quoted above.[90]

62. Furthermore, Judge Agius states that the information provided in the Behavioural Report, in this regard could be considered as a "measure of rehabilitation" in some countries "with some able persuading", but that for the purposes of "the crimes [...] for which our prisoners have been convicted [...] and always keeping in mind the context of peace and security, this understanding of rehabilitation is bad and [...] a disservice to international criminal [law] and the legacy of the two ad hoc tribunals".[91] In Judge Agius's Email, Judge Agius further states that,

> "[t]his decision once more continues to understand and apply rehabilitation in a way that I've criticized over the years. It's an understanding of rehabilitation which makes sense at the domestic level and in a context of normal crimes and normal criminals, but it does not make sense in a

[87] Judge Agius's 26 October Memorandum, p. 3.
[88] Judge Agius's Memorandum, p. 3. *See* Appeal Hearing, T. 28 March 2017, p. 868 (open session).
[89] Judge Agius's Memorandum, p. 3. *See also* Application, p. 7, para. 16.
[90] Judge Agius's 26 October Memorandum, p. 3. I note that Judge Antonetti agreed with Judge Agius's point of view on the legal principles. *See* Judge Antonetti's 29 October Memorandum, para. 6.
[91] Judge Agius's 26 October Memorandum, pp. 2-3.

> context of the gravest crimes against humanity, war crimes and genocide. My view is that I'm not satisfied that based on what is contained in part E of the [...] decision there is enough evidence of rehabilitation on the part of Ćorić."[92]

63. Based on the information before me and discussed in further detail above,[93] I respectfully disagree with my Colleague's view that Ćorić has not shown any signs of rehabilitation. The record before me reflects that Ćorić's behaviour following his conviction generally appears to have been positive and focused on rehabilitation.[94] I therefore remain of the view that Ćorić has shown some signs of rehabilitation.

64. Nevertheless, I also supported Judge Agius's views and considered it necessary and appropriate, in the interest of justice, and in accordance with the relevant provisions of the Practice Direction, to obtain additional information from Ćorić in line with Judge Agius's 26 October Memorandum. Accordingly, in the Interim Order, I requested, *inter alia*, that Ćorić file an explanation justifying the statement he made in the Application, that he "has demonstrated by his behavior to date that he has always respected the proceedings of the tribunal" in light of the statement that he made during the Appeal Hearing, as quoted herein.[95]

65. In response, Ćorić submits that he is "surprised and distraught" that his words have been "understood" in a manner which was "neither intended by him nor reflect his intended expression of feelings during the Appeals Hearing".[96] He "regrets" this and "genuinely" "apologizes to the Chamber for his perhaps inartful [*sic*] expression of his words", attributing this to the insufficient time he had to "elaborate with clarity", and his "elevated medical condition" which was exacerbated by the effects of medication he took before the Appeal Hearing, and his emotional and stressed state at that time.[97] Ćorić further clarifies that he "neither intended to accuse nor attack the Court or the Prosecution", that he "very strongly does not share [the] sentiment" of the statement made by Judge Agius,[98] and is "perplexed as to how those words have been cited and attributed" to him.[99] In addition, Ćorić contends that there were errors made in the initial interpretation of his statements that were later rectified and highlights that the corrected transcripts reflected the most important aspects of his remarks.[100] He states that during the Appeal Hearing, he said: "I most sincerely regret each victim, especially civilian

[92] Judge Agius's Email.
[93] *See supra*, paras. 49-52.
[94] *See supra*, paras. 49-52.
[95] Interim Order, p. 4. *See also supra*, para. 61.
[96] Additional Submissions, p. 3.
[97] Additional Submissions, pp. 3-5.
[98] Additional Submissions, pp. 3, 5.
[99] Additional Submissions, p. 4.
[100] Additional Submissions, p. 5.

victims and their suffering caused by this unfortunate war. If I have done anyone any injustice or caused them misfortune during the war, I sincerely beg their forgiveness".[101] He hopes that these words of "regret, repentance and atonement to victims" are now understood.[102]

66. Based on the foregoing, as well as the record before me, I remain of the view that Ćorić has shown some signs of rehabilitation. While I respect my Colleague's concerns in this respect, I believe that in context, and having carefully reviewed the information before me, including the information contained in Ćorić's Additional Submissions, that Ćorić has demonstrated some signs of rehabilitation. Accordingly, I am inclined to count this factor as weighing in favour of his early release.

2. Relocation

67. Further to Judge Agius's 26 October Memorandum, I also requested Ćorić to: (i) indicate where he intends to relocate should his Application be granted; and (ii) demonstrate how he will successfully reintegrate into the society in which he intends to live should his Application be granted, and I requested the Registrar to provide a security report on the situation in the State in which Ćorić indicates he intends to live should his Application be granted.[103]

68. In this regard, Ćorić submits that he intends [REDACTED].[104] [REDACTED].[105] Ćorić contends that he is a "retired General" already in receipt of his pension [REDACTED] and that he is able to sustain himself and his family with that pension.[106] [REDACTED][107] In addition, Ćorić declares that he does not intend to be in contact with any Prosecution witnesses or victims, and intends to assist his wife and daughter to overcome their medical issues.[108]

69. The Registrar submitted a security report [REDACTED], as well as relevant information from the External Relations Office and the Witness Support and Protection Unit of the Mechanism.[109] [REDACTED].[110] [REDACTED].[111] [REDACTED].[112] [REDACTED].[113]

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[101] Additional Submissions, p. 5. Ćorić submits that these words were not translated in the courtroom and were omitted from the initial transcripts.
[102] Additional Submissions, p. 6.
[103] Interim Order, p. 4.
[104] Additional Submissions, p. 2.
[105] Additional Submissions, p. 2.
[106] Additional Submissions, p. 2.
[107] Additional Submissions, p. 2.
[108] Additional Submissions, pp. 2-3. [REDACTED]. Additional Submissions, p. 3.
[109] Registrar's Submissions, Annexes I-III.
[110] Police Security Report, p. 212 (Registry pagination).
[111] Police Security Report, p. 211 (Registry pagination).
[112] Police Security Report, p. 211 (Registry pagination).

70. The Police Security Report further provides that there is "no objective indication" of any danger to Ćorić's health or life, or to that of his immediate family, or any "reliable information" to indicate that Ćorić might seek vengeance against witnesses or their immediate families.[114] Moreover, the Police Security Report contends that the conviction that Ćorić has received carries "a significant social stigma", and accordingly "it should not be assumed" that he will speak with the media or "intensify social interaction with persons from his circle of acquaintances/friends" that would negatively affect "the general security condition in the state".[115] In this regard, the Police Security Report states that Ćorić has in the past "avoided public appearances" in situations that could have "had a compromising influence" on his status before the ICTY.[116] [REDACTED].[117]

71. Furthermore, I note that the Media Report concludes that there are "no overt threats or visible calls for violence" against Ćorić, as observed in the daily media report compilations compiled by the External Relations Section of the Mechanism, during the period between 29 November 2017 and 29 November 2018.[118] The WISP Report [REDACTED], and recommends that the President may wish to consider the imposition of appropriate conditions to prevent Ćorić from contacting any witnesses.[119]

72. Based on the foregoing, [REDACTED]. I consider there to be no threat either to Ćorić or his immediate family or to the general security situation in the country, should Ćorić be granted early release. However, I am of the view that it would be appropriate to consider whether Ćorić should be released on a conditional basis, in line with the recommendations of the WISP Report.[120] I consider the information provided in the Registrar's Submissions to weigh in favour of granting conditional early release.

3. Conditional Early Release

73. In Security Council resolution 2422 of 27 June 2018 ("Resolution"),[121] 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

[113] Police Security Report, p. 211 (Registry pagination).
[114] Police Security Report, p. 211 (Registry pagination).
[115] Police Security Report, p. 211 (Registry pagination).
[116] Police Security Report, pp. 211-210 (Registry pagination).
[117] Director Security Report, p. 209 (Registry pagination).
[118] Media Report, paras. 2, 5, 15.
[119] WISP Report, para. 4.
[120] The matter of conditions to be imposed on Ćorić's early release will be considered below.
[121] United Nations Security Council Resolution 2422, U.N. Doc. S/RES/2422 (2018), 27 June 2018.

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.[122] In this regard, I have already considered imposing conditions on an early release case concerning an ICTR-convicted person.[123] Accordingly, and while noting my Colleague, Judge Liu's, concerns regarding the imposition of conditions on convicted persons following their release following the long-standing practice at the ICTY and the Mechanism not to do so,[124] I consider that it would be appropriate to also impose conditions on the early release of ICTY-convicted persons, in line with the Resolution, certain past practice of the Mechanism in regard to ICTY-convicted persons,[125] and in this case, in particular, in line with the recommendations of the WISP Report, as well as to harmonise the approach to early release across both branches of the Mechanism, as it falls within my discretion to do.

IV. CONCLUSION

74. 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 Ćorić's early release subject to the conditions outlined herein. In reaching this conclusion, I have given due consideration to the long standing practice of granting requests for early release upon completion of two-thirds of a given sentence absent particular circumstances that warrant against it. I consider that Rule 151 of the Rules mandates consistency in terms of treatment of similarly-situated prisoners by the ICTR, the ICTY and the Mechanism and that the proper exercise of my discretion mandates that I follow past practice and jurisprudence. Accordingly, I consider that despite the gravity of the crimes for which he was convicted, the fact that Ćorić has already completed two-thirds of his sentence as of 24 September 2018, and has therefore already served over three months past that date, and the fact that he has demonstrated some signs of rehabilitation, weigh in favour of his early release subject to the conditions outlined herein, as soon as practicable.

75. The view that Ćorić should be granted early release at this time is shared by Judge Antonetti and Judge Liu, a majority of the remaining Judges of the sentencing Chamber who are Judges of the Mechanism, whom I consulted pursuant to Rule 150 of the Rules. In this regard, I

[122] *See* Resolution, para. 10.
[123] *See Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Interim Order for Further Submissions, 23 October 2018.
[124] *See* Judge Liu's Email.
[125] *See, e.g., Nikolić* Decision (although this case relates to conditions imposed on provisional release, I consider it relevant in this regard); *Beara* Decision.

also take note of Judge Agius's comments that "he is not prepared to grant early release to Ćorić until the [Prosecution Submissions and Victims' Submissions] have been duly given adequate consideration by the President".[126] As stated above, I stand by my decision to grant the Motion to Strike and the Submission on Non-Party Letters.[127]

V. DISPOSITION

76. 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** Ćorić early release based on the conditions outlined herein, effective immediately, or as soon as practicable thereafter.

77. The Registrar is hereby **DIRECTED** to implement this decision 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 Ćorić's release and **ORDER** that the public redacted version of the present Decision shall thereupon and henceforth be considered a public filing.

78. I further **ORDER** that Ćorić shall abide by the following conditions:

a. Ćorić shall have no contact whatsoever, directly or indirectly try to harm, intimidate or otherwise interfere, with victims or witnesses who testified at his trial or the trial of other ICTY-convicted persons, or otherwise interfere in any way with the proceedings of the Mechanism, or the administration of justice;

b. Ćorić shall conduct himself honourably and peacefully in the community to which he is released, and shall not engage in secret meetings intended to plan civil unrest or engage in any political activities;

c. Ćorić shall not discuss his case, including any aspect of the events in the former Yugoslavia that were the subject of his trial, with anyone, including the media, other than *pro bono* counsel, if any;

d. Ćorić shall not purchase, possess, use or handle any weapons;

[126] Judge Agius's Email.
[127] *See supra*, paras. 10-27.

e. Ćorić shall not commit any offence;

f. Ćorić shall be held in contempt of court, pursuant to Rule 90 of the Rules, if he violates any of the conditions as stated herein;

g. The decision granting Ćorić conditional release shall be revoked if he violates any of the conditions as stated herein, and his conditional release will be terminated;

h. Ćorić shall be subject to the terms of the conditions as stated herein, unless these conditions are revoked or modified, until the expiration of his sentence; and

i. Any change in the foregoing conditions can only be authorised by the President.

79. I further **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,[128] and that all States are obligated to cooperate with the Mechanism as set out in Article 28 of the Statute.[129] I further **CONSIDER** that pursuant to Article 28 of the Statute, any State that is willing to accept Ćorić into its territory for the purpose of relocation, will be obligated to comply with the conditions imposed on Ćorić's early release, as set forth herein.

80. In addition, I hereby **GRANT** the Motion to Strike and **GRANT** the Submission on Non-Party Letters. Furthermore, I hereby **GRANT** the Prosecution Request and **ORDER** the Registry to reclassify the Motion to Strike and the Victims' Submissions as public as soon as practicable following the issuance of this Decision.

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

Done this 16th day of January 2019,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

[128] United Nations Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010, p. 2.
[129] *See* Article 28(2) of the Statute.

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