MICT-12-07
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Translation

21bis

CASE: No. MICT-12-07 (ICTR-00-60)

DATE: 12 July 2012

BEFORE THE PRESIDENT OF THE

MECHANISM FOR

INTERNATIONAL CRIMINAL TRIBUNALS

THE PROSECUTOR v. PAUL BISENGIMANA

International Criminal Tribunal for Rwanda

REDACTED PUBLIC VERSION OF

CONFIDENTIAL APPLICATION OF PAUL BISENGIMANA'S COUNSEL FOR DEFENCE FOR EARLY RELEASE

(WITH CONFIDENTIAL ANNEXES)

Counsel for Mr Bisengimana:

Ms Catherine Mabille

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MADE PUBLICE PURSUANT TO THE DECISION OF THE PRESIDENT ON EARLY RELEASE OF PAUL BISENGIMANA AND ON MOTION TO FILE A PUBLIC REDACTED APPLICATION DATED 11 DECEMBER 2012

MAY IT PLEASE THE PRESIDENT OF THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

I. Procedural Background

1. On 1 July 2000, the Office of the Prosecutor of the International Criminal Tribunal for Rwanda (hereinafter "ICTR") filed an Indictment against Mr Paul BISENGIMANA. He was charged with 12 counts: genocide (Count 1); complicity in genocide (Count 2); conspiracy to commit genocide (Count 3); direct and public incitement to commit genocide (Count 4); murder as a crime against humanity (Count 5); extermination as a crime against humanity (Count 6); torture as a crime against humanity (Count 7); rape as a crime against humanity (Count 8); other inhumane acts as crimes against humanity (Count 9); violations of the Geneva Conventions (Counts 10, 11 and 12).

2. On 4 December 2001, Mr BISENGIMANA was arrested in Mali. On 11 March 2002, he was transferred to the ICTR Detention Facility.

3. On 18 March 2002, at his initial appearance, Mr BISENGIMANA pleaded not guilty to all counts of the Indictment.

4. On 19 October 2005, the parties filed a joint motion for consideration of a guilty plea agreement between Mr BISENGIMANA and the Office of the Prosecutor.

5. On 17 November 2005, Mr BISENGIMANA pleaded guilty to the counts of murder and extermination as crimes against humanity. In an oral decision of the same day, Trial Chamber II rejected the admission of guilt for not being unequivocal.

6. On 1 December 2005, the Prosecutor filed an Amended Indictment.

7. On 7 December 2005, Mr BISENGIMANA once again pleaded guilty to the counts of murder (Count 3 of the Amended Indictment) and extermination as crimes against humanity (Count 4 of the Amended Indictment). Trial Chamber II found Mr BISENGIMANA guilty of having aided and abetted the commission of murder and extermination as crimes against humanity. Moreover, it granted the motion of the Prosecution to withdraw the other counts, but denied the request for acquittal concerning the other counts.

8. On 19 January 2006, Trial Chamber II held a pre-sentencing hearing.

9. In the Judgement of 13 April 2006, Mr BISENGIMANA was sentenced to 15 years' imprisonment for the count of extermination as a crime against humanity, with Trial Chamber II deeming that the count of murder was included in the count of extermination.

10. On 6 December 2008, Mr BISENGIMANA was transferred to Mali to serve his sentence.

II. Applicable Law

11. Article 26 of the Statute of the Mechanism for International Criminal Tribunals ("Mechanism") stipulates that

"If, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR, or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law."

Rule 149 of the Rules of Procedure and Evidence of the Mechanism (hereinafter "Rules") envisages that

"If, according to the law of the State of imprisonment, a convicted person is eligible for pardon, commutation of sentence, or early release the State shall, in accordance with Article 26 of the Statute, notify the Mechanism of such eligibility."

Rule 150 of the Rules states 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 sets out that

"In determining whether pardon, commutation of sentence, or early release is appropriate, 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, as well as any substantial cooperation of the prisoner with the Prosecutor."*

12. Moreover, relevant jurisprudence of the International Criminal Tribunal of Rwanda (hereinafter "ICTR") and that of the International Criminal Tribunal for the Former Yugoslavia (hereinafter "ICTY") which, while not binding for the Mechanism, proves instructive, should be taken into consideration.

III. On the Admissibility of the Application

13. Article 3 of the "Practice Direction on the Procedure for the Determination of Application for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism" envisages 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."

14. Consequently, the present Application is fully admissible.

IV. **On the Merit of the Application**

15. Rule 151 of the Rules sets out a non-exhaustive list of criteria to be taken into consideration when examining an application for early release. Thus, the President of the ICTR "*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, as well as any substantial cooperation of the prisoner with the Prosecutor.*"

1.1 On the Criteria of "Treatment of Similarly-Situated Prisoners"

1.1.1 *On Eligibility for Early Release*

16. First of all, Mr BISENGIMANA takes cognizance of the recent decisions of the ICTR setting the eligibility for early release at ¾ of the sentence served. Mr BISENGIMANA, however, wishes to point out that such a quantum places the ICTR prisoners in an unequal situation when compared to prisoners in other local or international jurisdictions.

17. The "treatment of similarly-situated prisoners" criterion refers to the fundamental principle of equality, which means that in similar situations, similar solutions should be found. In this respect, it must be noted that eligibility set at 2/3 of the sentence is maintained and applied by:

- some States that are signatories of the agreements to accept in their territory persons convicted by the ICTR;[1]
- some States that are signatories of the agreements to accept in their territory persons convicted by the ICTY;[2]
- the ICTY;[3]
- the International Criminal Court;[4]

[1] *See*, for example, *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S, "Decision on the Early Release of Michel Bagaragaza", 24 October 2011, for the practice in force in **Sweden**.

[2] *See*, for example, *The Prosecutor v. Esad Land`o*, Case No. IT-96-21-ES, "Order of the President on Commutation of Sentence", 13 April 2006, *The Prosecution v. Hazim Deli}*, Case No. IT-96-21-ES, "Decision on Hazim Deli}'s Motion for Commutation of Sentence", 24 June 2008, which applies the practice in force in **Finland**; *The Prosecutor v. Biljana Plav{i}*, Case No. IT-00-39 & 40/1-ES, "Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs Biljana Plav{i}", 14 September 2009, for practice in force in **Sweden**; *The Prosecutor v. Dragan Joki}* and *Contempt Proceedings against Dragan Joki}*, Case No. IT-02-60-ES, "Public Redacted Version of Decision of President on Application for Pardon and Commutation of Sentence of Dragan Joki} of 8 December 2009", 13 January 2010, for practice in force in **Austria**; *The Prosecutor v. Darko Mr|a*, Case No. IT-02-59-S, "Decision of President on Early Release of Darko Mr|a", 1 February 2011, for practice in force in **Spain**; *The Prosecutor v. Blagoje Simić*, Case No. IT-95-9-ES, "Decision of President on Early Release of Blagoje Simić", 15 February 2011, for practice in force in the **United Kingdom**.

[3] On the fundamental principle of equality, the ICTY applied to the convicted persons at the United Nations Detention Unit the threshold of 2/3 of the sentence: *see*, for example, *The 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; *The Prosecutor v. Milan Simić*, Case No. IT-95-9/2, "Order of the President on the Application for the Early Release of Milan Simić", 27 October 2003; *The Prosecutor v. Simo Zarić*, Case No. IT-95-9, "Order of the President on the Application of for the Early Release of Simo Zarić", 21 January 2004; *The Prosecutor v. Miroslav Kvočka*, Case No. IT-98-30/1-A, "Decision on Application for Pardon or Commutation of Sentence", 30 March 2005; *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-ES, "Decision of the President on the Application for Pardon or Commutation of Sentence of Pavle Strugar", 16 January 2009; *The Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-ES, "Decision of President on Early Release of Veselin Šljivančanin".
It is also necessary to note that the ICTY even kept the 2/3 threshold, despite the refusal of the State in whose territory the prisoner was detained: *see The Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, "Decision of the President on early release of Vinko Martinović", 16 December 2011.

- the Special Court for Sierra Leone.[5]

18. It is clear that the ICTR was not bound by the jurisprudence of other local or internationals courts. This being the case, Mr BISENGIMANA is of the opinion that the situation of ICTR prisoners cannot be used as a point of comparison in order to consider his application.

19. It should be recalled, in fact, that the *Rugambarara* jurisprudence is the first decision, *in general terms*, to keep eligibility at ¾ of the sentence served: in this case, the President emphasises that "*This Tribunal has refused to consider[6] early release prior to three-fourths of the sentence being served*".[7] This wording was later taken over in the *Muvunyi* Decision, the last one to deal with early release before the ICTR.[8]

20. On the other hand, the jurisprudence that precedes the *Rugambarara* and *Muvunyi* decisions does not lead to this conclusion:

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[4] Article 110, paragraph 3 of the Statue of the International Criminal Court states: "When the person has served **two thirds of the sentence**, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time."

[5] Rule 124 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone stipulates that: "There shall only be pardon, commutation of sentence, or early release if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law, but an early release shall only occur after the prisoner has served **a minimum of two thirds of his original sentence**."

[6] The use of the English "consider", which can be translated into French as "*examiner*" shows that this concerns eligibility for early release. Had the President wished to emphasise that the ICTR had refused to "grant" early release to prisoners who had served less than ¾ of their sentence, he would have used, in all probability, the term "grant".

[7] *The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59, "Decision on the Early Release Request of Juvénal Rugambarara", 8 February 2012, para. 12.

[8] *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-055A-T, "Decision on Tharcisse Muvunyi's Application for Early Release", 6 March 2012, para. 12.

- on the one hand, the *Serushago*, *Ruggiu*, *Rutaganira* and *Imanishimwe* jurisprudence does not make any mention of an eligibility for early release, nor of the time that the prisoners have served. It should be emphasised that they submitted their applications at different stages of the sentence being served.[9] The denial of these applications for early release cannot, therefore, be assessed as resulting from applications with eligibility at ¾ of the sentence served;[10]

- on the other hand, in the *Bagaragaza* case, the ICTR deemed that, because of the gravity of the crime, early release should not be considered for him until he has served ¾ of his sentence.[11] In other words, the ICTR decided that the <u>gravity of the crime justified the application of eligibility set at ¾ of the sentence</u>. Such an assessment thus amounts to confusing two of the four criteria listed in Rule 126 of the Rules of the ICTR, namely, "the treatment of similarly-situated prisoners" and "the gravity of the crime",[12] which clearly goes against both the letter and the spirit of this provision. Moreover, the "treatment of similarly-situated prisoners" is a purely objective criterion since it relates to the fundamental principle of equality. Conversely, the evaluation

[9] Mr Serushago and Mr Ruggiu submitted their application before having served half and 2/3 of their respective sentences, while Mr Imanishimwe submitted his having served over ¾ of his sentence. The application of Mr Rutaganira was filed at the 2/3 point of the sentence served.

[10] This is even more true in the *Imanishimwe* Case – in which the application for early release was submitted after he served <u>more than ¾ of his sentence</u> – to the extent that, in relation to the criteria of treatment of similarly-situated prisoners, the President followed the same reasoning as in the *Serushago* and *Ruggiu* cases.

[11] *The Prosecutor v. Michel Bagaragaza*, "Decision on the Early Release of Michel Bagaragaza", *ibid.*, para. 12.

[12] The circumstance that the President of the ICTR had assessed the "gravity of the crime" criterion separately in this case, is not something that can bring into question the finding according to which the ICTR took into account the nature and the gravity of the crime when assessing the "treatment of similarly-situated prisoners".

of the gravity of the crime is an eminently subjective step since, in themselves, all crimes that come under the ICTR are serious.[13]

21. It follows that, in the *Rugambarara* and *Muvunyi* cases,[14] the ICTR cannot legitimately base itself on Mr Bagaragaza's situation when examining the criterion reserved for similarly-situated prisoners, since the rationale in this decision relied on an erroneous assessment.

22. Moreover, if the gravity of a crime can be such that it has an effect on the eligibility for early release, the ICTR could no longer base itself on the situation of Mr Bagaragaza since he, Mr Rugambarara and Mr Muvunyi were convicted for different crimes and forms of responsibility.[15] Therefore, it cannot be maintained that these three prisoners find themselves in the same situation,[16] other than to consider that the crimes they committed are of a similar degree of gravity. A similar theory applies to the *Bagaragaza*

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[13] According to Article 1 of the Statue of the ICTR, this court was set up, in particular, in order to "prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda".

[14] *The Prosecutor v. Juvénal Rugambarara*, "Decision on the Early Release Request of Juvénal Rugambarara", *ibid.*, para. 12; *The Prosecutor v. Tharcisse Muvunyi*, "Decision on Tharcisse Muvunyi's Application for Early Release, *ibid.*, para. 12.

[15] Mr Bagaragaza was convicted for complicity in genocide under Article 6 (1) of the Statute (*see The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S, "Sentencing Judgement", 17 November 2009, para. 27) and Mr Muvunyi for direct and public incitement to commit genocide (*see The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, "Judgment", 11 February 2010, para. 133). For his part, Mr Rugambarara was convicted for extermination as a crime against humanity under Article 6 (3) of the Statute (*see The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59-T, "Sentencing Judgment", 16 November 2007, para. 9).

[16] *The Prosecutor v. Juvénal Rugambarara*, "Decision on the Early Release Request of Juvénal Rugambarara", *ibid.*, para. 12; *The Prosecutor v. Tharcisse Muvunyi*, "Decision on Tharcisse Muvunyi's Application for Early Release", *ibid.*, para. 12.

Decision in which the crime of genocide constitutes, by definition, the most serious of crimes set out in the Statute.[17]

23. If follows from the aforementioned that to take into account the situation of other ICTR prisoners as part of the assessment of Mr BISENGIMANA's request would lead to an erroneous application of the principle of equality underlying the criterion applied to similarly-situated prisoners.

24. Consequently, relying on the practice in force in the aforementioned local and international courts, it would also seem right for the Mechanism to keep to the eligibility set at 2/3 of the sentence served. By keeping to this threshold, on the one hand, the Mechanism would contribute to ensuring the efficacy of the principle of equality and, on the other, would reinforce the consistency of international law, while ensuring that it is harmonised with the practice in force at local level. While the coexistence of the ICTY and the ICTR allowed different jurisprudence to develop on this matter, on the other hand, the substitution of these two jurisdictions by the Mechanism demands the application of uniform regulations.

25. Finally, it should be noted that the 2/3 of the sentence served threshold also seems appropriate with regard to the purpose of the prison sentence. Having served 2/3 of the sentence, the prisoner has generally succeeded in his process of reform and, if need be, sufficiently demonstrates his social rehabilitation.

[17] *The Prosecutor v. Michel Bagaragaza*, "Decision on the Early Release of Michel Bagaragaza", *ibid.*,

26. It follows from the above that the Mechanism should keep to the eligibility criteria for early release of 2/3 of the sentence served.

1.1.2. On Eligibility of Mr Paul BISENGIMANA for Early Release

27. On 13 April 2006, Mr BISENGIMANA was sentenced to 15 years' imprisonment.[18] Mr BISENGIMANA has been in detention since 4 December 2001.[19]

28. Consequently, on 4 December 2011, Mr BISENGIMANA will have served 2/3 of his sentence.

29. In view of the aforementioned, Mr BISENGIMANA should be considered eligible for early release.

1.2. On the Gravity of Crimes Committed

30. Mr BISENGIMANA does not wish to undermine the gravity of the crime that he committed and for which he expressed profound regret. Nonetheless, he wishes to emphasise that pursuant to Rule 151 of the Rules, the gravity of the crimes committed is only one of the criteria applied when assessing such an

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para. 8.

[18] *The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, "Judgement and Sentence", 13 April 2006.

application for early release. Indeed, this was recalled by the ICTR President in the *Rugambarara* Case.[20]

31. In this regard, ICTY jurisprudence is instructive in that this court has granted early release to certain persons who were initially convicted for crimes whose gravity was emphasised.[21] However, all of these prisoners were granted early release after serving 2/3 of their sentence.

32. In addition, the ICTY granted applications for early release after 2/3 of the sentence served, although the gravity of the crimes was, in the opinion of the President, of the type that would weigh against the granting of such an application.[22] In these various cases, the President justified his decision by

[19] *The Prosecutor v. Paul Bisengimana*, "Judgement and Sentence", *ibid.*

[20] *The Prosecutor v. Juvénal Rugambarara*, "Decision on the Early Release Request of Juvénal Rugambarara", *ibid.*, para. 7 ("I consider that **the relative gravity of the crime** was assessed when determining Rugambarara's sentence and, in my opinion, **does not *per se* bar him from early release, if otherwise appropriate.**").

[21] *See* in this sense: *The Prosecutor v. Hazim Delić, ibid.*, para. 19 (*"**the seriousness of the crimes** for which Mr. Delić was convicted* [...] *and the fact that **his crimes were committed with particular brutality***"); *The Prosecutor v. Predrag Banovi}*, Case No. IT-02-65/1-ES, "Decision of the President on Commutation of Sentence", 3 September 2008, para. 15 ("***the gravity of his crimes***"); *The Prosecutor v. Biljana Plavšić, ibid.*, para. 10 ("**the gravity of her crimes**"); *The Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-ES, "Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević", 12 March 2010, para. 13 ("**the crimes** [...] **are of very high gravity**").

[22] *See* in this sense: *The Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, "Decision of President on Early Release of Duško Sikirica", 21 June 2010, para. 15 ("***the gravity of Mr. Sikirica's offences is high, which is thus a factor that weighs against his early release***"); *The Prosecutor v. Dragan Jokić* and *Contempt Proceedings against Dragan Jokić, ibid.*, para. 13 ("***the seriousness of the crimes*** [...] ***are factors weighing against his early release***"); *The Prosecutor v. Blagoje Simić, ibid.*, para. 19 ("***Mr. Simić's offences are of a very high gravity and that this is a factor that weighs against granting him early release***"); *The Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, "Decision of President on Early Release of Ivica Rajić", 22 August 2011, para. 16 ("***Mr. Rajić's crimes are of a very high gravity and that this is a factor that weighs against granting him early release***"); *The Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, "Decision of the President on Early Release of Vinko Martinović", 16 December 2011, para. 15 ("***the crimes for which Martinović was convicted are of high gravity and that this factor weighs against his early release***").

basing it on the time that the prisoner spent in prison and his demonstration of rehabilitation.[23]

33. In this sense, ICTY jurisprudence conforms to the purpose of the prison sentence: rehabilitation of the prisoners. If he shows sufficient willingness to rehabilitate and if the considerable time spent in prison has allowed him to reform, his release should be granted.

34. As serious as the committed crimes are, the willingness and ability to rehabilitate must take precedence over punishment. Otherwise, a sanction that deprives a person of his freedom is void of its meaning.

35. Consequently, the gravity of the crime committed by Mr BISENGIMANA must not allow one to lose sight of the fact that he has shown a serious and satisfactory degree of willingness to rehabilitate, which has been set out hereinafter.

1.3. On Mr BISENGIMANA's Cooperation with the Prosecutor

36. According to ICTR jurisprudence, a guilty plea is an element which shows that the convicted person has cooperated with the Prosecutor, while this

[23] *See* for example: *The Prosecutor v. Blagoje Simić, ibid.*, para. 32; *The Prosecutor v. Ivica Rajić, ibid.*, para. 24; *The Prosecutor v. Vinko Martinović, ibid.*, para. 24.

circumstance may have been taken into account as a mitigating circumstance when the sentence was pronounced.[24]

37. On 7 December 2005, the ICTR received a guilty plea from Mr BISENGIMANA. When pronouncing the sentence, the Trial Chamber noted that Mr BISENGIMANA's guilty plea was such that it could contribute to the process of national reconciliation in Rwanda. It also emphasised that the acknowledgement of guilt would facilitate the administration of justice and save the Tribunal resources.[25]

38. In view of this, Mr Paul BISENGIMANA should be considered as having fully cooperated with the Prosecutor.

1.4. On Mr BISENGIMANA's Willingness to Rehabilitate

1.4.1. On Mr BISENGIMANA's Acknowledgement of Guilt

39. The acknowledgement of guilt generally indicates the person's willingness to rehabilitate,[26] while this factor may have been taken into account as a mitigating circumstance when the sentence was pronounced.[27]

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[24] *The Prosecutor v. Michel Bagaragaza*, "Decision on the Early Release of Michel Bagaragaza", *ibid.*, paras 13 to 14; *The Prosecutor v. Juvénal Rugambarara*, "Decision on the Early Release Request of Juvénal Rugambarara", *ibid.*, paras 8 and 10.
[25] *The Prosecutor v. Paul Bisengimana*, "Judgement and Sentence", *ibid.*, paras 139 to 140.
[26] *The Prosecutor v. Michel Bagaragaza*, "Decision on the Early Release of Michel Bagaragaza", *ibid.*, para. 11; *The Prosecutor v. Juvénal Rugambarara*, "Decision on the Early Release Request of Juvénal Rugambarara", *ibid.*, para. 13.

40. Therefore, it should be recalled that even before the start of the trial, Mr BISENGIMANA acknowledged his guilt and expressed remorse for not having taken requisite measures in order to save the refugees in the Musha church and at the Ruhanga complex, even though his first task was to ensure the safety of his citizens.[28]

1.4.2 On the Exemplary Conduct of Mr BISENGIMANA at the Detention Facility

41. Throughout his detention, Mr BISENGIMANA's conduct has been exemplary, both towards the prison authorities and towards his co-detainees.[29] Mr BISENGIMANA became fully involved in communal life at the detention facility, participating actively in two of the five internal commissions managed by the detainees: the "environmental" commission responsible for the prison vegetable garden, gardening activities and cleanliness of the prison's communal areas, and the "nutritional" commission, which is basically responsible for the foodstuff supplies and the preparation of menus.

42. Mr BISENGIMANA's respectful conduct as well as his significant involvement in communal life at the detention facility show his ability to rehabilitate.

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[27] *The Prosecutor v. Michel Bagaragaza*, "Sentencing Judgment", *ibid.*, para. 38; *The Prosecutor v. Juvénal Rugambarara*, "Sentencing Judgment", *ibid.*, paras 33 to 35.
[28] *The Prosecutor v. Paul Bisengimana*, "Judgement and Sentence", *ibid.*, paras 136 to 138.
[29] Counsel has tried to obtain an attestation from the prison authorities at the Koulikouro detention facility. However, due to the current events in Mali, this was not successful.

1.4.3. On Mr BISENGIMANA's Relationship with His Family

43. Since the beginning of his detention, Mr BISENGIMANA has continued to maintain contact with his family. Three of his children who have refugee status in Mali frequently visit him at the detention facility (Annexes no. 1, 2 and 3). It should be emphasised that they all have jobs in Mali (Annexes no. 4 and 5).

44. Mr BISENGIMANA's other children live in Europe. Although they are not able to see their father as often as they would like, they remain in regular contact with him, mainly by phone.

45. Despite his conviction and imprisonment, Mr BISENGIMANA has kept intact the links that tie him to his family, which greatly goes in favour of his early release.

1.4.4. On Mr BISENGIMANA's Projects upon His Release from Prison

46. Today, Mr BISENGIMANA already sees his professional rehabilitation in working on creating a family business: [REDACTED] (Annex no. 3).

47. This professional family project goes strongly in favour of Mr BISENGIMANA's early release.

1.5. <u>On Other Factors that Go in Favour of Mr BISENGIMANA's Early Release</u>

1.5.1. On the Refugee Status Granted to Mr BISENGIMANA by the Malian Authorities

48. In 1997, Mali granted Mr BISENGIMANA and his family the status of political refugees (Annex no. 6). This status will allow Mr BISENGIMANA and his family to live permanently in Mali and to realise their professional project.

49. In this sense, the refugee status granted to Mr BISENGIMANA and to the members of his family goes in support of his early release.

1.5.2. On Mr BISENGIMANA's Delicate Health

50. [REDACTED].

51. [REDACTED].

52. [REDACTED].

1.5.3. On Mr BISENGIMANA's Sentence

53. Mr BISENGIMANA was sentenced to 15 years' imprisonment. To date, he has spent more than ten years in prison, more time than other ICTR prisoners have spent for similar crimes.[30]

54. Mr BISENGIMANA believes that this factor goes in support of his application for early release.

V. **Conclusion**

55. It follows from the aforementioned that Mr BISENGIMANA fulfils all the criteria required for early release to be granted.

56. To date, he has served more than 2/3 of his sentence, time during which he pursued and completed the process of reform that he began even before the start of his trial. In the ten years he spent in detention, Mr BISENGIMANA's conduct has been exemplary both towards the prison administration and his co-detainees. Through the contacts he continued to maintain with his family and the professional project he is taking up with his sons, Mr BISENGIMANA has shown that his social rehabilitation has been successful. Finally Mr BISENGIMANA [REDACTED].

[30] *See* for comparison *The Prosecutor v. Vincent Rutaganira*, "Decision on Request for Early Release", *ibid.*; *The Prosecutor v. Juvénal Rugambarara*, "Decision on the Early Release Request of Juvénal Rugambarara", *ibid.*

FOR THE FOREGOING REASONS

MAY IT PLEASE THE PRESIDENT OF THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Noting Article 26 of the Statues,

Noting Rules 149 to 151 of the Rules of Procedure and Evidence,

Noting the aforementioned jurisprudence,

Noting the Judgement rendered in the Paul BISENGIMANA Case on 13 April 2006,

(1) to find that Mr BISENGIMANA is eligible for early release and that he has fulfilled all the criteria required for early release;

(2) to order his immediate early release.

/signed/

Ms Catherine Mabille

Counsel for Mr Paul Bisengimana

Done this twelfth day of July 2012

At The Hague,

Netherlands

List of Supporting Documents

(1) Attestation from Claudine UWERA BISENGIMANA and photocopy of her refugee card

(2) Attestation from Jean-Paul ISABWE BISENGIMANA and photocopy of his refugee card

(3) Attestation from Jean-Pierre NYANDWI BISENGIMANA and photocopy of his refugee card

(4) Certificate of employment for Claudine UWERA BISENGIMANA

(5) Payslip for Jean-Paul ISABWE BISENGIMANA

(6) Refugee card for Mr BISENGIMANA