

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-14-78-ES
Date: 31 December 2019
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THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President
Registrar: Mr. Olufemi Elias
Decision of: 31 December 2019

PROSECUTOR

v.

MIROSLAV BRALO

PUBLIC REDACTED VERSION

DECISION ON THE EARLY RELEASE OF MIROSLAV BRALO

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Miroslav Bralo

The Kingdom of Sweden

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of a notification from the Kingdom of Sweden (“Sweden”) of Mr. Miroslav Bralo’s (“Bralo”) eligibility for conditional early release pursuant to Swedish law, received by the Registry of the Mechanism (“Registry”) on 14 November 2017 (“Notification”) and conveyed to my predecessor, Judge Theodor Meron, on 15 November 2017.¹

I. BACKGROUND

2. On 10 November 2004, Bralo surrendered in Bosnia and Herzegovina and was transferred to the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) shortly thereafter.² On 15 November 2004, an initial appearance was held and, on 14 December 2004, Bralo pleaded not guilty to all twenty-one counts of the operative indictment.³

3. On 19 July 2005, the ICTY Office of the Prosecutor filed a proposed amended indictment (“Indictment”) reducing the number of counts from twenty-one to eight, as well as a plea agreement.⁴ On the same day, Trial Chamber I of the ICTY confirmed the Indictment and Bralo formally pled guilty to each count.⁵ Trial Chamber I accepted the guilty pleas and entered a conviction for each of the eight counts charged, namely: persecutions as a crime against humanity; murder, torture, and outrages upon personal dignity, including rape, as violations of the laws or

¹ Internal Memorandum from the Acting Officer-in-Charge, Registry, Hague branch, to the then-President, dated 15 November 2017 (confidential), *transmitting* a correspondence from Sweden, dated 17 October 2017 and received by the Registry on 14 November 2017. Unless otherwise stated, all references herein are to the English translation of the documents received in connection with the Notification. On 16 August 2018, the Prosecution requested that a public redacted version of the Notification be filed on the record (Prosecution Request for a Public Redacted Version of Miroslav Bralo’s Pending Request for Early Release, 16 August 2018 (confidential) (“Prosecution Request for a Public Redacted Version”). Following consultation with Sweden, my predecessor granted the Prosecution Request for a Public Redacted Version on 23 October 2018 (Interim Order on the Prosecution Request for a Public Redacted Version of Miroslav Bralo’s Pending Request for Early Release, 2 October 2018 (confidential); Decision on Prosecution Request for a Public Redacted Version of Miroslav Bralo’s Pending Request for Early Release, 23 October 2018 (confidential)). On 2 November 2018, the Notification was filed on the public record (Notification Concerning the Enforcement of Sentence in Sweden – Early Release of Mr Miroslav Bralo, 2 November 2018).

² *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Sentencing Judgment, 7 December 2005 (“Sentencing Judgement”), para. 2.

³ Sentencing Judgment, para. 2.

⁴ Sentencing Judgement, para. 3; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-PT, Amended Indictment, 18 July 2005.

⁵ Sentencing Judgement, para. 3; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Transcript of 19 July 2005, T. 39, 40-42.

customs of war; as well as one count of torture or inhuman treatment, two counts of unlawful confinement, and one count of inhuman treatment as grave breaches of the Geneva Conventions.⁶

4. On 27 September 2005, the case was reassigned to Trial Chamber III of the ICTY (“ICTY Trial Chamber”).⁷ The sentencing hearing took place on 20 October 2005 and, on 7 December 2005, the ICTY Trial Chamber sentenced Bralo to 20 years of imprisonment.⁸ On 2 April 2007, the Appeals Chamber of the ICTY (“ICTY Appeals Chamber”) dismissed Bralo’s grounds of appeal and affirmed the sentence.⁹

5. On 1 November 2007, Bralo was transferred to Sweden to serve the remainder of his sentence.¹⁰

II. NOTIFICATION OF ELIGIBILITY

6. On 15 November 2017, the Registry transmitted the Notification, which informed the Mechanism that under Swedish law, Bralo would become eligible for “conditional release” on 13 March 2018.¹¹

7. Subsequently, the then-President requested the Registrar of the Mechanism (“Registrar”) to undertake the steps prescribed in paragraphs 4 and 5 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”).¹² On 18 January 2018, the Registry conveyed to my predecessor: (i) a strictly confidential and, to safeguard sensitive witness information, a redacted strictly confidential memorandum from the

⁶ Sentencing Judgement, para. 3, *referring to Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Transcript of 19 July 2005, T. 44. *See* Sentencing Judgement, para. 5.

⁷ Sentencing Judgement, para. 4; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Order Assigning a Case to a Trial Chamber, 27 September 2005, p. 2.

⁸ Sentencing Judgement, paras. 4, 95, 97.

⁹ *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Judgement on Sentencing Appeal, 2 April 2007 (“Sentencing Appeal Judgement”), p. 44.

¹⁰ Letter from the Registrar, dated 8 November 2007. *See Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-ES, Order Designating the State in which Miroslav Bralo is to Serve his Prison Sentence, 10 July 2007; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-ES, Order Withdrawing the Confidential Status of Order Designating the State in which Miroslav Bralo is to Serve his Prison Sentence, 29 October 2008.

¹¹ Notification, p. 1, *referring to* Article 8 of the Agreement between the United Nations and the Government of Sweden on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 23 February 1999 (“Enforcement Agreement”).

¹² MICT/3/Rev.2, 20 February 2019. *See* Internal Memorandum from the then-President to the Registrar, dated 15 November 2017 (confidential). I note that my predecessor made this request pursuant to paragraphs 4 and 5 of the Practice Direction as it existed at the time. *See* 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, MICT/3, 5 July 2012.

Office of the Prosecutor (“Prosecution”) dated 10 January 2018 (“Prosecution Memorandum”);¹³ and (ii) a communication from the Ministry of Justice of Sweden dated 11 December 2017, conveying observations from the Swedish Prison and Probation Service dated 7 December 2017 regarding Bralo’s behaviour and conditions of imprisonment (“Prison Report”).¹⁴ On 8 February 2018, the Redacted Prosecution Memorandum and the Prison Report were transmitted to Bralo pursuant to paragraph 6 of the Practice Direction.¹⁵

8. On 22 March 2018, considering the concerns raised in the Prosecution Memorandum, the then-President instructed the Registry to share information regarding the Notification and the Mechanism’s early release practice with witnesses who had made inquiries in this regard or previously signalled interest in being informed.¹⁶ On 24 April 2018, the Witness Support and Protection Unit of the Mechanism (“WISP”) informed the then-President that it was only able to contact three out of the nine witnesses identified by the Prosecution.¹⁷

9. On 24 April 2018, the Registry conveyed to the then-President a letter from Bralo dated 16 April 2018 containing his comments.¹⁸

10. On 12 June 2018, the then-President initiated the consultation process pursuant to Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) with two Judges of the Mechanism, Judge Liu Daqun and myself. As a result of these consultations, my predecessor requested additional information on 20 June 2018 (“First Request for Additional Information”). He specifically requested a further report from the Swedish authorities pursuant to paragraphs 4(b) and 4(d) of the Practice Direction addressing, *inter alia*: (i) Bralo’s demonstration of rehabilitation,

¹³ Internal Memorandum from the Acting Officer-in-Charge, Registry, Hague branch, to the then-President, dated 18 January 2018 (confidential) (“Registry Memorandum of 18 January 2018”), *transmitting* an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Acting Officer-in-Charge, Registry, Hague branch, 10 January 2018 (strictly confidential); and an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Acting Officer-in-Charge, Registry, Hague branch, dated 10 January 2018 (redacted confidential version). The then-President decided to further redact the Prosecution Memorandum, by deleting one additional paragraph, before communicating it to Bralo (“Redacted Prosecution Memorandum”). *See* Internal Memorandum from the then-President to the Acting Officer-in-Charge, Registry, Hague branch, dated 23 January 2018 (confidential), para. 2. All information contained in this additional paragraph was included in a subsequent submission by the Prosecution and therefore received by Bralo.

¹⁴ Registry Memorandum of 18 January 2018, *transmitting* a communication from the Swedish Ministry of Justice, dated 11 December 2017, *conveying* a communication from the Swedish Prison and Probation Service, dated 7 December 2017.

¹⁵ Internal Memorandum from the Registrar to the then-President, dated 1 March 2018 (confidential), para. 2; Internal Memorandum from the then-President to the Registrar, dated 22 March 2018 (confidential), para. 3.

¹⁶ Internal Memorandum from the then-President to the Registrar, dated 22 March 2018 (confidential), para. 4.

¹⁷ Internal Memorandum from a Legal Officer, Registry, to the then-President, dated 24 April 2018 (confidential), para. 4.

including any discussions related to the crimes for which he was convicted; (ii) his psychological and/or somatic health; and (iii) information on Bralo's application for Swedish citizenship, as well as where he would intend to live should his application for citizenship be refused.¹⁹

11. On 5 September 2018, the Prosecution filed a confidential submission providing comments in relation to the Notification ("Prosecution Submission").²⁰ On 13 November 2018, a public redacted version of the Prosecution Submission was filed.²¹

12. Furthermore, on 20 September 2018, the Registry had informed the then-President that it was able to contact another witness identified by the Prosecution.²² On 15 October 2018, in response to the First Request for Additional Information, the Registry conveyed further information from the Swedish authorities, as well as a medical report ("Medical Report").²³ On 27 November 2018, the Registrar informed my predecessor that the latest information was shared with Bralo, who indicated that he did not wish to submit any additional comments.²⁴

13. On 29 March 2019, after assuming the Presidency, I requested the Registry to enquire with the Swedish authorities whether it would be possible to obtain a more comprehensive risk assessment or evaluation regarding Bralo's mental health ("Second Request for Additional Information"). I also requested an overview on the information collected by WISP in relation to the witnesses who had been identified by the Prosecution.²⁵ This overview was conveyed to me on 15 April 2019, and on 1 August 2019, I received a risk assessment from a psychologist of the Swedish Prison and Probation Service.²⁶

¹⁸ Internal Memorandum from a Legal Officer, Registry, to the then-President, dated 24 April 2018 (confidential), conveying a letter from Bralo, dated 16 April 2018 and received by the Registry on 23 April 2018 ("Response").

¹⁹ Internal Memorandum from the then-President, to the Registrar, dated 20 June 2018 (confidential), paras. 3-5.

²⁰ Prosecution Submissions Regarding Request for Miroslav Bralo's Early Release Request, 5 September 2018 (confidential).

²¹ Prosecution Notice of Filing of Public Redacted Version of Prosecution's Submissions Regarding Request for Miroslav Bralo's Early Release, 13 November 2018.

²² Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the then-President, dated 20 September 2018 (confidential), para. 4.

²³ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the then-President, dated 15 October 2018 (confidential), transmitting a communication from the Swedish Prison and Probation Service, dated 14 September 2018 ("Letter of 14 September 2018"), conveying a medical report from a physician specialised in psychiatric and forensic psychiatry, dated 20 August 2018.

²⁴ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the then-President, dated 27 November 2018 (confidential), paras. 1-4.

²⁵ Internal Memorandum from the President to the Deputy Chief, Registry, Hague branch, dated 29 March 2019 (strictly confidential), paras. 1-6. As this internal memorandum concerns strictly confidential information regarding witnesses, it is not appropriate to share it with Bralo.

²⁶ Internal Memorandum from the Chief, Registry, Hague branch, to the President, dated 1 August 2019 (confidential) ("Registry Memorandum of 1 August 2019"), transmitting a communication from the Ministry of Justice of Sweden,

14. On 16 August 2019, the Risk Assessment was provided to Bralo in the Bosnian/Croatian/Serbian language for his comments pursuant to paragraph 6 of the Practice Direction.²⁷ On 3 September 2019, the Registry informed me that no response from Bralo had been received.²⁸

III. CONSULTATION

15. The consultation procedure pursuant to Rule 150 of the Rules had been initiated by my predecessor on 12 June 2018. On 19 January 2019, I succeeded Judge Meron as President of the Mechanism and, since no decision on the Notification had been taken yet, the responsibility to decide this matter falls upon me. Considering this change in Presidency and in light of the new information obtained, I decided that it would be proper to consult anew on the Notification.

16. Rule 150 of the Rules requires the President to consult with any Judges of the sentencing Chamber who are Judges of the Mechanism, and if none of the Judges who imposed the sentence are Judges of the Mechanism, with at least two other Judges.²⁹ Accordingly, in coming to my decision, I have consulted with Judge Meron, who was a Judge of the ICTY Appeals Chamber that affirmed Bralo's sentence and is presently a Judge of the Mechanism. In addition, I consulted Judge Liu since no other Judge who imposed the sentence continues to be a Judge of the Mechanism, and he had been consulted previously by my predecessor on this matter.

IV. APPLICABLE LAW

17. Article 26 of the Statute of the Mechanism ("Statute") states: "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." Pursuant to this provision, the State enforcing the sentence shall notify the Mechanism if a convicted person is eligible for pardon or commutation of sentence under the laws of that State.³⁰ While Article 26 of the Statute, like the Statutes of the

dated 26 July 2019, *conveying* a letter from the Swedish Prison and Probation Service, dated 23 July 2019 ("Letter of 23 July 2019"), and a risk assessment [REDACTED], dated 24 June 2019 ("Risk Assessment").

²⁷ Internal Memorandum from the President to the Registrar, dated 9 August 2019 (confidential), para. 3; Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the President, dated 3 September 2019 (confidential), para. 2.

²⁸ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the President, dated 3 September 2019 (confidential), para. 3.

²⁹ *See also* Practice Direction, para. 10.

³⁰ *See also* Rule 149 of the Rules.

International Criminal Tribunal for Rwanda (“ICTR”) and the ICTY before, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

18. Rule 151 of the Rules sets out general standards for granting pardon, commutation of sentence, or early release. It provides that in making his or her determination, 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. Paragraph 10 of the Practice Direction stipulates that the President shall determine whether early release is to be granted having regard to the criteria specified in Rule 151 of the Rules, the interests of justice, the general principles of law, and any other information that he or she considers relevant.

19. Paragraph 2 of the Practice Direction specifies that the notification of eligibility under domestic law shall occur, where practicable, at least 45 days prior to the date of such eligibility. Paragraph 4 of the Practice Direction sets out the duties of the Registrar to inform the convicted person and collect information following the notification of eligibility. Paragraph 6 of the Practice Direction states that the convicted person shall be given 10 days to examine the information received by the Registrar, and thereafter the President shall hear him or her.

20. According to Article 25(2) of the Statute, the Mechanism supervises the enforcement of sentences pronounced by the ICTR, the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States. Article 3(2) of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provides that the conditions of imprisonment shall be governed by the law of Sweden, subject to the supervision of the ICTY (and now, the Mechanism).³¹ Article 8(1) of the Enforcement Agreement provides that if the convicted person is eligible for early release, pardon, or commutation of sentence pursuant to Swedish law, the Swedish Minister of Justice shall notify the Registrar accordingly. Pursuant to

³¹ Security Council Resolution 1966 (2010) of 22 December 2010 provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement applies to the Mechanism. *See* U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 (“[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]”).

Article 8(2) of the Enforcement Agreement, the Mechanism will give its view as to whether early release, pardon, or commutation of sentence is appropriate, which will be taken into account by Sweden prior to taking a decision in the matter. Articles 8(3) and 9(2) of the Enforcement Agreement clarify that, following receipt of the response from Sweden, the Mechanism may request Sweden to transfer the convicted person to another enforcement State or the Mechanism.

V. ANALYSIS

A. ELIGIBILITY

21. As previously stated, eligibility for early release upon having served two-thirds of the sentence is essentially a pre-condition.³² To reflect this existing practice of the Mechanism, I shall first examine Bralo's eligibility to be considered for early release.³³

1. Eligibility before the Mechanism

22. All convicted persons supervised by the Mechanism are eligible to be considered for early release upon the completion of two-thirds of their sentences.³⁴ Given the need for equal treatment, this uniform eligibility threshold applies irrespective of whether the person was convicted by the ICTR, the ICTY, or the Mechanism.³⁵ Similarly, the two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a notification from the relevant enforcement State or a direct petition by the convicted person.³⁶

³² *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted version) (“*Krstić Decision*”), para. 18. See *Prosecutor v. Yussuf Munyakazi*, Case No. MICT-12-18-ES.2, Decision on the Application of Yussuf Munyakazi for Early Release, 29 November 2019, p. 3; *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release, 7 August 2019 (“*Musema Decision*”), p. 3.

³³ *Krstić Decision*, para. 18.

³⁴ *Krstić Decision*, para. 16; *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*”), para. 20.

³⁵ *Krstić Decision*, para. 16; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted version) (“*Galić Decision of 26 June 2019*”), para. 15. See *Bisengimana Decision*, paras. 17, 20.

³⁶ *Krstić Decision*, para. 18 and references cited therein.

23. According to information provided by the Registry, Bralo served two-thirds of his sentence of 20 years of imprisonment on 9 March 2018.³⁷ Bralo is thus eligible to be considered for early release.

2. Eligibility under Swedish Law

24. In the Notification, the Swedish authorities inform the Mechanism that, pursuant to Swedish law, Bralo is eligible for conditional release as of 13 March 2018.³⁸

25. According to the Swedish authorities, their domestic law allows for conditional release once two-thirds of the sentence has been served.³⁹ However, the Swedish authorities clarify in the Notification that Swedish law provides that, following review by the Mechanism, the competence to decide on conditional release of persons convicted by the ICTY lies with the Swedish Government, which may decide that the release shall take place at a later date than otherwise prescribed by Swedish law.⁴⁰

26. In this respect I recall that, even if Bralo were to be considered eligible for conditional early release under the domestic law of Sweden, the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.⁴¹

B. GENERAL STANDARDS FOR GRANTING

27. A convicted person having served two-thirds of his or her sentence shall be merely eligible to be considered 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,

³⁷ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 23.

³⁸ Notification, p. 1.

³⁹ Notification, p. 1.

⁴⁰ Notification, p. 1, *referring to* the Swedish Act on Cooperation between Sweden and the International Tribunals for Violations of International Humanitarian Law.

⁴¹ *See, e.g.,* *Krstić* Decision, para. 24; *Galić* Decision of 26 June 2019, para. 23; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) (“*Lukić* Decision of 17 September 2018”), para. 14; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, 2 February 2017 (public redacted) (“*Kunarac* Decision”), para. 16.

as required by Rule 151 of the Rules.⁴² I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

28. In assessing the gravity of the crimes committed by Bralo, the ICTY Trial Chamber first examined the nature of the crimes and found that Bralo committed a “range of appalling crimes, the gravity of which is aggravated by the particular manner in which he committed them”, including the number of victims, the youth of some of his victims, and the degree of humiliation and degradation of one witness.⁴³ It recalled, for instance, that “many of those who were killed, displaced, and traumatised by the attack on Ahmići were children” and of the fourteen civilians “killed by an HVO soldier with the assistance of Bralo, nine were children”.⁴⁴ It further characterised Bralo’s crimes as being “of the utmost gravity” and “inherently shocking”.⁴⁵ The ICTY Trial Chamber recalled that the crime of persecutions as a crime against humanity is “an extremely serious offence involving a deliberate intention to discriminate against a particular group of people” and that the remaining counts Bralo was convicted of are “a catalogue of serious, violent offences, namely murder, rape torture, unlawful confinement, and inhuman treatment”.⁴⁶ In relation to the murder by Bralo of three captured Muslim men, the ICTY Trial Chamber held *inter alia* that “[t]he beating and cold-blooded killing of persons detained during an armed conflict is a brutal crime” and that Bralo violated this fundamental rule of international humanitarian law.⁴⁷

29. Turning to the specific manner in which Bralo committed these crimes, the ICTY Trial Chamber recalled that, during an attack on the residents of Nadioci and Ahmići on 16 April 1993, “Bralo killed a young woman [...] with a knife, while his associates murdered her parents”.⁴⁸ In addition, Bralo “shot and killed an unidentified adult male after capturing and interrogating him”, set fire to many houses in Ahmići belonging to Muslim residents, aided others in doing so, participated in the destruction of a mosque and “aided another member of the HVO in the killing of fourteen Bosnian Muslim civilians”.⁴⁹ The ICTY Trial Chamber found that the “Muslim community of Ahmići was decimated and those who survived the killing were driven from their

⁴² *Krstić* Decision, paras. 17-18 and references cited therein.

⁴³ Sentencing Judgement, para. 41.

⁴⁴ Sentencing Judgement, para. 31.

⁴⁵ Sentencing Judgement, paras. 28-29.

⁴⁶ Sentencing Judgement, para. 28.

⁴⁷ Sentencing Judgement, para. 32.

⁴⁸ Sentencing Judgement, para. 29.

⁴⁹ Sentencing Judgement, para. 29.

homes” with all of the approximately 180 Muslim homes having been destroyed and all of the surviving Muslim residents fleeing or forced to leave.⁵⁰ Stating that “[a] clearer example of ‘ethnic cleansing’ would be difficult to find” and pointing to the scale of the attack and the number of victims, the ICTY Trial Chamber found that there can be “little doubt that Bralo was a willing participant in one of the most brutal attacks upon a community in the entire conflict in Bosnia and Herzegovina”.⁵¹

30. A further factor increasing the gravity of his crimes was the degree of humiliation and degradation Bralo inflicted on a Bosnian Muslim woman.⁵² The ICTY Trial Chamber recalled the “horrific ordeal” of this woman who was “at the hands of Bralo and other members of the ‘Jokers’ over a lengthy period of time”.⁵³ It found that “[h]er brutal rape and torture, and her imprisonment for approximately two months to be further violated at the whim of her captors, are crimes of a most depraved nature” and “that the rape and torture of a woman in this context is a most heinous crime requiring unequivocal condemnation”.⁵⁴ The ICTY Trial Chamber recalled that Bralo threatened her life “while she was being interrogated”, raped her “in front of an unknown number of other people over an extended period of time, and he bit her and ejaculated repeatedly over her body during his prolonged assault of her”.⁵⁵

31. In relation to Bralo’s role in the detention of Bosnian Muslim civilians used as labourers in the digging of trenches in and around the village of Kratine and as “human shields”, the ICTY Trial Chamber recalled that Bralo was among those “who guarded these detainees and directed their work, in adverse weather conditions and with limited food or rest, under threat of physical harm”, aware of “the prospect that the detainees under his control might be injured or killed”, and referred to his “enthusiasm [...] for this task, and his desire to humiliate these Muslim detainees”.⁵⁶

32. Turning to the impact on the victims, the ICTY Trial Chamber pointed to the “mental and physical trauma”, “immense distress”, and impact on their physical and psychological health.⁵⁷ It recalled for instance the cases of two thirteen-year-old boys. One saw how his mother and eight-year-old brother were killed and the other boy, who was injured himself, witnessed his mother,

⁵⁰ Sentencing Judgement, para. 30.

⁵¹ Sentencing Judgement, para. 30.

⁵² Sentencing Judgement, paras. 33-34, 41.

⁵³ Sentencing Judgement, para. 33.

⁵⁴ Sentencing Judgement, para. 33.

⁵⁵ Sentencing Judgement, para. 34. *See also* Sentencing Judgement, para. 15.

⁵⁶ Sentencing Judgement, para. 35.

⁵⁷ Sentencing Judgement, para. 37.

father, and eleven-year-old sister being killed.⁵⁸ The ICTY Trial Chamber concluded that the consequences of Bralo's crimes "are profound and long-lasting" and that the witnesses' statements "paint a picture of shattered lives and livelihoods, and of tremendous ongoing pain and trauma".⁵⁹

33. The ICTY Appeals Chamber, which upheld the Sentencing Judgement in its entirety,⁶⁰ found that the ICTY Trial Chamber rightly considered the gravity of the crimes committed by Bralo and that Bralo failed to show an error in the ICTY Trial Chamber's findings in this respect.⁶¹

34. I observe that, in addition to the high gravity of the crimes for which Bralo was convicted, the ICTY Trial Chamber repeatedly emphasised the particularly brutal manner in which they were committed. Indeed, the ICTY Trial Chamber's findings evince the extreme violence and cruelty of the crimes, as well as Bralo's profound disregard for human life and the dignity of other human beings. I also note Bralo's direct involvement as the physical perpetrator in some of these crimes⁶² and that the ICTY Trial Chamber described him as "a willing participant in one of the most brutal attacks upon a community in the entire conflict in Bosnia and Herzegovina".⁶³

2. Treatment of Similarly-Situated Prisoners

35. In this respect, I recall that persons sentenced by the ICTY, like Bralo, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision and that all convicted persons supervised by the Mechanism are eligible to be considered for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.⁶⁴

36. I recall that Bralo served two-thirds of his sentence on 9 March 2018 and is thus eligible to be considered for early release.⁶⁵

⁵⁸ Sentencing Judgement, paras. 36-41.

⁵⁹ Sentencing Judgement, para. 40.

⁶⁰ Sentencing Appeal Judgement, p. 44.

⁶¹ Sentencing Appeal Judgement, paras. 33-35, *referring to* Sentencing Judgement, para. 48.

⁶² Sentencing Judgement, paras. 15, 32, 35, 40, 54.

⁶³ Sentencing Judgement, para. 30.

⁶⁴ *See e.g. Krstić* Decision, paras. 16, 18, 28; *Musema* Decision, p. 3; *Galić* Decision of 26 June 2019, para. 15.

⁶⁵ *See supra*, para. 23.

3. Demonstration of Rehabilitation

37. Rule 151 of the Rules specifically provides that in making his or her determination as to whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account a “prisoner’s demonstration of rehabilitation”. I note that at the ICTR and the ICTY, rehabilitation has been, on occasion, referred to as an additional sentencing goal,⁶⁶ but it has not been defined. Other international courts and tribunals refer to similar concepts in the context of early release and sentence review.⁶⁷ There is, however, no settled definition of the exact contours of the concept of rehabilitation in the context of genocide, crimes against humanity, or war crimes. In this regard, I observe that until recently the assessment of rehabilitation focused mostly on whether the convicted person had demonstrated good behaviour in prison.⁶⁸

38. Before turning to my case-by-case assessment of Bralo’s demonstration of rehabilitation, I consider that it is in the interest of transparency to identify some of the principles that guide my reasoning. For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not consider that such behaviour can on its own

⁶⁶ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009, paras. 803, 806; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 1057; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006, para. 402; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Delalić et al.* Appeal Judgement”), para. 806.

⁶⁷ See e.g., Rule 223 of the Rules of Procedure and Evidence of the International Criminal Court, in particular Rule 223(a) (“conduct of the sentenced person while in detention, which shows genuine dissociation from crimes”) and Rule 223(b) (“prospect of resocialization and successful resettlement”); Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone, as revised on 2 December 2016, Preamble, paras. 2(B), 2(C), 5(D), 8(D)(v) (“The Convicted Person’s participation in any remedial, educational, moral, spiritual or other programme to which he was referred within the Prison, his demonstration of remorse and his commitment to contribute to the restitution of victims and to reconciliation and maintenance of peace in Sierra Leone”).

⁶⁸ See e.g., *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019 (“*Ćorić* Decision”), paras. 49-52; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Decision of the President on the Early Release of Aloys Simba, 7 January 2019 (public redacted) (“*Simba* Decision”), paras. 42, 45; *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) (“*Miletić* Decision of 23 October 2018”), paras. 32-33; *Lukić* Decision of 17 September 2018, para. 26; *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 (“Public Redacted Version of *Pušić* Decision”), paras. 38-39; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Public Redacted Version of the 26 July 2017 Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017 (“*Miletić* Decision of 26 July 2017”), para. 26; *Prosecutor v. Sreten Lukić*, MICT-14-67-ES.4, Public Redacted Version of 30 May 2017 Decision of the President on the Early Release of Sreten Lukić, 11 August 2017 (“*Lukić* Decision of 30 May 2017”), paras. 36-37, 41; *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Public Redacted Version of 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 11 August 2017 (“Public Redacted Version of *Jelisić* Decision”), para. 42; *Kunarac* Decision, para. 53.

demonstrate rehabilitation of a person convicted for serious international crimes.⁶⁹ In my opinion, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity or war crimes through the exact same paradigm as rehabilitation of perpetrators of domestic or ordinary crimes. When referring to the concept of rehabilitation in relation to an appeal on sentencing, the ICTY Appeals Chamber recognised this particular context stating that “[t]he cases which come before the Tribunal differ in many respects from those which ordinarily come before national jurisdictions, primarily because of the serious nature of the crimes being prosecuted, that is ‘serious violations of international humanitarian law’”.⁷⁰

39. I also note that Rule 151 of the Rules requires the convicted person to demonstrate rehabilitation. There are a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism, which have been recognised as such in the past or, in my view, are of persuasive relevance. Such indicators include the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes;⁷¹ signs of critical reflection of the convicted person upon his or her crimes;⁷² public or private expressions of genuine remorse or regret;⁷³ actions taken to foster reconciliation or seek forgiveness;⁷⁴ evidence that a convicted person has a positive attitude towards other nationalities,⁷⁵ bearing in mind the discriminative motive of some of the crimes; participation in rehabilitation programmes in prison;⁷⁶ a person’s mental health status;⁷⁷ and/or a positive assessment of a

⁶⁹ *Krstić* Decision, para. 30; *Galić* Decision of 26 June 2019, para. 38.

⁷⁰ *Delalić et al.* Appeal Judgement, para. 806.

⁷¹ See e.g. *Krstić* Decision, para. 32; Public Redacted Version of *Pušić* Decision, para. 66; *Miletić* Decision of 26 July 2017, para. 29; *Lukić* Decision of 30 May 2017, paras. 38, 42; *Kunarac* Decision, paras. 53-54; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of the President on the Early Release of Milomir Stakić, 18 July 2011, paras. 30-31, 34; *Prosecutor v. Mlađo Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007, para. 15. Cf. *Simba* Decision, paras. 42, 44.

⁷² See e.g. *Krstić* Decision, paras. 32-33; *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 22 May 2017 (confidential), para. 37.

⁷³ See e.g. *Krstić* Decision, para. 32; *Lukić* Decision of 30 May 2017, para. 38; Public Redacted Version of *Jelisić* Decision, paras. 41-42; *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 13 October 2015, paras. 24, 44; *Prosecutor v. Momir Nikolić*, Case No. MICT-14-65-ES, Public Redacted Version of the 14 March 2014 Decision on Early Release of Momir Nikolić, 12 October 2015, para. 23. Cf. *Simba* Decision, paras. 42, 44.

⁷⁴ See e.g. Public Redacted Version of *Jelisić* Decision, para. 41.

⁷⁵ See e.g. *Galić* Decision of 26 June 2019, para. 37; *Čorić* Decision, para. 51; *Prosecutor v. Todorović*, Case No. IT-95-9/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Stevan Todorović, 22 June 2005, para. 9.

⁷⁶ See e.g. *Krstić* Decision, paras. 31, 33; *Lukić* Decision of 17 September 2018, para. 26.

⁷⁷ See e.g. *Čorić* Decision, para. 52; *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 (confidential), para. 34; *Lukić* Decision of 30 May 2017, para. 39; *Kunarac* Decision, para. 53.

convicted person's prospects to successfully reintegrate into society.⁷⁸ This is a non-exhaustive list and I do not expect that each convicted person fulfils all of these indicators in order to demonstrate rehabilitation. It falls however upon the convicted person to convince me that he or she can be considered rehabilitated and I should exercise my discretion to release him or her before the full sentence is served.

40. Moreover, as I have stated previously, rehabilitation in my view entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.⁷⁹ Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.⁸⁰ For convicted persons who are eligible to be considered for pardon, commutation of sentence, or early release, I will therefore generally consider the convicted person's post-release plans, including the envisaged place of residence. If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under Chapter VII of the United Nations Charter to contribute to the restoration and maintenance of peace and security.⁸¹ Notably, in Bralo's case, the ICTY Appeals Chamber recalled that national reconciliation and the restoration and maintenance of peace are important goals of sentencing.⁸² Bearing this in mind, I generally do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence, without having demonstrated a certain degree of rehabilitation, including that their release will not endanger peace and security in the envisaged place of residence.

41. In this regard, I am of the view and remain cognisant that rehabilitation is a process, rather than a definite result. It is also just one factor that I will consider alongside the other factors set out in this decision. Conversely, there may be instances where, despite a lack of sufficient evidence of

⁷⁸ See e.g. *Galić* Decision of 26 June 2019, paras. 36, 38; *Simba* Decision, paras. 42, 45; *Miletić* Decision of 23 October 2018, para. 36; *Lukić* Decision of 17 September 2018, para. 28; Public Redacted Version of *Pušić* Decision, para. 39; *Miletić* Decision of 26 July 2017, para. 30; *Lukić* Decision of 30 May 2017, para. 41; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision of the President on the Early Release of Stanislav Galić, 18 January 2017 (public redacted), para. 29; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision of the President on the Early Release of Radislav Krstić, 13 December 2016 (public redacted), para. 24.

⁷⁹ *Krstić* Decision, para. 30.

⁸⁰ See *supra*, fn. 78.

⁸¹ U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, p. 1. See U.N. Security Council Resolution 955, U.N. Doc. S/RES/955 (1994), 8 November 1994, p. 1; U.N. Security Council Resolution 808, U.N. Doc. S/RES/808 (1993), 22 February 1993, p. 2.

⁸² Sentencing Appeal Judgement, para. 82.

rehabilitation, I may consider a pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.

(a) General Comments on the Available Information

42. Turning to the assessment of Bralo's demonstration of rehabilitation, I note that since his arrival in Sweden on 1 November 2007 to serve the remainder of his sentence, Bralo has been placed in different high security prisons.⁸³ In early 2015, he was moved from [REDACTED] Prison to [REDACTED] Prison, a facility for inmates convicted of sexual offences and, for that reason, requested to be transferred again.⁸⁴ As of 12 February 2015, he was placed in [REDACTED] Prison.⁸⁵ However, on 23 July 2018, he was transferred once more upon his request, and twice more thereafter in the same year, before returning back to [REDACTED] Prison in June 2019 "where the incarceration previously went well".⁸⁶

43. The Prison Report, which covers Bralo's incarceration at [REDACTED] Prison from 2015 to 2017, provides an overall positive account of his behaviour in this facility.⁸⁷ I observe that the Prison Report is dated 7 December 2017. However, the Risk Assessment, which is dated 24 June 2019, includes further information on Bralo's behaviour in prison, which I will discuss in detail below.

44. The Medical Report dated 20 August 2018, when compared to the initial Prison Report, sheds a different light on Bralo's rehabilitation. Most notably, the Medical Report indicates that "Bralo said spontaneously that he has no remorse for the crimes he was convicted of".⁸⁸ When

⁸³ Letter of 23 July 2019; Medical Report; Prison Report.

⁸⁴ Risk Assessment, p. 2.

⁸⁵ Prison Report.

⁸⁶ Letter of 14 September 2018; Medical Report; Prison Report.

⁸⁷ It indicates that "[d]ue to language difficulties the possibilities for Mr. Bralo to participate in preventive treatment programs have been limited", but that "[h]e has nonetheless, with great dedication, taken part in self-management together with other inmates, for example planning common meals, cooking cleaning and free time activities". He has worked as a caretaker, was responsible for the laundry service at his unit, and "has handled all of his occupations in a satisfactory manner". The Prison Report further indicates that Bralo "is in general well-liked, and has frequently been associating with other inmates irrespective of nationality or religious belief", and "with a few exceptions, [he] behaved well towards personnel and other inmates". See Prison Report. See also Medical Report, p. 2 ("Bralo has not participated in any of the [...] rehabilitation programmes while serving his sentence"); Risk Assessment, p. 2 ("Bralo has not been through any of the Prison and Probation Service's rehabilitation programmes, psychotherapy or other crime processing").

⁸⁸ Medical Report, p. 2. The Medical Report was drawn up during a short stay of Bralo at [REDACTED] Prison from 23 July to 27 August 2018 (Letter of 14 September 2018; Medical Report, p. 1). It is based on three hours of interviews and examinations carried out by two doctors with the help of an authorised B/C/S interpreter (Medical Report, p. 1).

asked [REDACTED], “[h]e replied that he would defend himself if necessary”.⁸⁹ [REDACTED].⁹⁰ [REDACTED].⁹¹ These statements from August 2018 are part of what prompted me to request further information from the Swedish authorities.

45. The Risk Assessment is the most complete record of Bralo’s behaviour during incarceration, his attitude in relation to the crimes he was convicted of, and his risk of reoffending.⁹² I will therefore discuss its contents in further detail.

(b) Personality and Mental State

46. In relation to his personality and mental state, the Risk Assessment [REDACTED] paints a rather worrisome picture of Bralo’s attitude. During the interview, Bralo [REDACTED].⁹³ He has not participated in any of the offered “rehabilitation programmes, psychotherapy or other crime processing”.⁹⁴ When questioned about his offending, Bralo stated that “he regrets nothing”, “does not think he has done anything wrong” and “there is nothing he feels bad about”.⁹⁵ He considers that “it was a war” and he was a professional soldier “only doing his job”.⁹⁶ He thinks “it is ‘unfortunate’ that so many civilians and children died”, admits that he “slaughtered three people”, but “denies rape and having harmed civilians”.⁹⁷ Bralo also considers that “he has done what he was supposed to do in the court in The Hague by pointing out graves and apologising in public”.⁹⁸

47. When asked how many people he killed, Bralo answered that “he does not know”.⁹⁹ When asked about the murder of his neighbour, for which he was detained in 1993, he said that this was also part of the war, it was “him or me”, “I won – he lost”.¹⁰⁰ Bralo further explained that because the neighbour had attacked his home, he went to the neighbour’s house, sent away the neighbour’s

⁸⁹ Medical Report, p. 2.

⁹⁰ Medical Report, p. 2.

⁹¹ Medical Report, p. 3.

⁹² The Risk Assessment was drawn up following an interview of an hour and a half and another interview of two hours with a one-hour break in between. The interviews were conducted with the assistance of a remote interpreter via phone but, due to network interruptions, also partly in Swedish, “which Bralo has an understandable command of”. Risk Assessment, p. 3.

⁹³ Risk Assessment, p. 3.

⁹⁴ Risk Assessment, p. 3.

⁹⁵ Risk Assessment, p. 3.

⁹⁶ Risk Assessment, p. 3.

⁹⁷ Risk Assessment, p. 3.

⁹⁸ Risk Assessment, p. 3.

⁹⁹ Risk Assessment, p. 3.

¹⁰⁰ Risk Assessment, p. 3. See Risk Assessment, p. 4.

wife and children, and subsequently “killed the bastard”.¹⁰¹ In this context, the Risk Assessment also quotes the following statements from Bralo: “I don’t kill anyone who doesn’t deserve it” and “if anyone comes after me this is the result”.¹⁰²

48. For the current personality assessment, the psychologist concludes that [REDACTED].¹⁰³

49. I do not find that this assessment of Bralo’s personality inspires trust in a successful reintegration into society. I strongly encourage Bralo to engage in rehabilitation programmes that are available to him, such as for instance anti-violence training or psychotherapy. He could further support future applications for pardon, commutation, or early release by demonstrating willingness to engage in a critical reflection on his attitude towards violence, as well as on the actions and motivations that led to the commission of his crimes.

(c) Behaviour in Prison

50. Regarding Bralo’s behaviour in prison, the Risk Assessment confirms that Bralo “has been a conscientious inmate for many years without any notes regarding misconduct, inappropriate behaviour, disobedience or threats/violence towards staff or other inmates”.¹⁰⁴ However, in 2015, following a transfer to a facility for persons convicted of sexual offences, “Bralo was issued a warning for misconduct regarding threats of violence as he had stated that he was prepared to physically attack an inmate in order to have his wishes met regarding transfer” and he was transferred shortly thereafter.¹⁰⁵

51. The Risk Assessment further notes that there has been a change in Bralo’s behaviour from 2017 onwards, with “repeated daily notes regarding inappropriate behaviour and disobedience, as well as misconduct reports”.¹⁰⁶ These notes and reports concern the following types of behaviours: (i) refusal to work; (ii) refusal to provide samples for drug testing; (iii) repeatedly having been “found to be demonstratively naked in his room during the roll-call inspections”; (iv) repeatedly ignoring attempts to communicate with him or an unpleasant attitude and irritated tone;

¹⁰¹ Risk Assessment, p. 3. See Risk Assessment, p. 4.

¹⁰² Risk Assessment, p. 3.

¹⁰³ Risk Assessment, p. 4.

¹⁰⁴ Risk Assessment, p. 2.

¹⁰⁵ Risk Assessment, p. 2.

¹⁰⁶ Risk Assessment, p. 2.

(v) demonstrating his dissatisfaction when being transferred, including going on hunger strike; and
 (vi) setting “ultimatums in order to get what he wants”.¹⁰⁷

52. Notably, the [REDACTED] concludes that “[i]t is clear that Bralo feels he has completed his prison sentence after the date for conditional release in accordance with the Swedish system (10/03/2018) passed and that he no longer intends to subordinate himself to the Prison and Probation Service’s system”, adopting instead an attitude of “passive resistance such as refusing or ignoring”.¹⁰⁸ The Risk Assessment indicates that Bralo is now in solitary confinement at his own request.¹⁰⁹ In relation to the Risk Assessment, Bralo stated “that he is not interested in reading the report and will likely ‘throw it in the bin’ just like he does with all other documents and decisions”.¹¹⁰ More generally, the Risk Assessment notes a “disparaging attitude towards the legal system and its actors”.¹¹¹

53. I observe that, regrettably, Bralo’s behaviour has changed and he is no longer cooperative with the prison authorities. This change in behaviour undermines any positive assessment that could have been given for his having been a conscientious inmate for many years. I therefore strongly encourage him to return to good behaviour in prison.

(d) Risk of Reoffending

54. Turning to an assessment of Bralo’s risk to reoffend upon release, I take note in particular of the psychologist’s statements and Bralo’s own statements on his relationship with violence. While Bralo stated that “he does not intend to attack anyone”, he considers that he has the “right to bear arms for his own and his family’s safety, in order to feel secure in his home and to be able to defend himself in the event of an attack”.¹¹² When asked whether he intends to obtain weapons in the future, “Bralo answers that he already has weapons safely hidden and if they turn out to be no longer operational, he will buy new ones”.¹¹³ The psychologist notes that Bralo has “a history of problems with violence and other antisocial behaviour”, having perpetrated his first crime at the age of 25.¹¹⁴ In relation to the crimes Bralo was convicted for by the ICTY, the psychologist notes that

¹⁰⁷ Risk Assessment, p. 2.

¹⁰⁸ Risk Assessment, p. 2.

¹⁰⁹ Risk Assessment, p. 2.

¹¹⁰ Risk Assessment, p. 2.

¹¹¹ Risk Assessment, p. 5.

¹¹² Risk Assessment, p. 4.

¹¹³ Risk Assessment, p. 4.

¹¹⁴ Risk Assessment, p. 5.

“[t]he violence has been ruthless, sadistic and serious in nature and has included sexual violence”.¹¹⁵

55. The Risk Assessment concludes that Bralo’s “risk of a return to serious violent offending is significantly elevated” in light of his: (i) [REDACTED]; (ii) [REDACTED]; (iii) “possession of weapons and readiness to use violence in self-defence”; and (iv) “continued attitude that his acts were justified”.¹¹⁶ As a particularly risky scenario, it describes a situation where Bralo perceives himself to be under attack in his own home. “In such a situation, the violence may be deadly in nature, involve firearms”, the psychologist notes, and “the situation could escalate even further” because “Bralo is determined that he will never again be imprisoned”.¹¹⁷ The psychologist believes that, in such circumstances, Bralo would “likely take pride in fighting to his last breath”.¹¹⁸

56. To manage this risk, the Risk Assessment makes the following recommendations:

On the matter of risk assessment, it is recommended, as one proposal, that conditional demands be placed on Bralo related to potentially obtaining early release, that this be specified in a concrete manner and it be made clear to him that he will be imprisoned again if he does not comply. The advantage of conditional early release is that it simplifies the process of Bralo re-establishing himself in society and that this occurs under the supervision of authorities within the scope of the period of the sentence. For example, this could involve a requirement for/monitoring of sobriety, continuous contact with the legal system in the location where he takes up residence and/or electronic monitoring (ankle tag).¹¹⁹

57. The Risk Assessment also concludes that “Bralo’s treatability is low, in terms of both acceptance and receptiveness” and “[a]fter fifteen years in prison, no treatment, processing or rehabilitation has taken place”.¹²⁰

58. I have taken careful note of these observations, which show not only that the risk of a return to serious violent offending is significantly elevated, but also that Bralo’s treatability may be limited. I take very seriously the recommendation that conditional early release would be a good way forward to adequately prepare Bralo for his final release from prison and to enable the relevant local authorities to take part in his reintegration into society.

¹¹⁵ Risk Assessment, p. 5.

¹¹⁶ Risk Assessment, p. 6.

¹¹⁷ Risk Assessment, p. 6.

¹¹⁸ Risk Assessment, p. 6.

¹¹⁹ Risk Assessment, p. 6.

¹²⁰ Risk Assessment, p. 6.

(e) Prospects of Successful Reintegration into Society

59. In relation to Bralo's plans upon release, the information before me is not clear regarding the intended place of release and little preparation seems to have taken place for a successful reintegration into society. Bralo initially indicated his desire to live in [REDACTED].¹²¹ Both the Medical Report and the Risk Assessment mention Bralo's desire to [REDACTED].¹²² When questioned by the Swedish authorities where he intends to live after his release, Bralo stated that he wants to live in [REDACTED].¹²³ The Risk Assessment records Bralo saying "I go where I want, no one can stop me", and that changing his country/location is not up for discussion.¹²⁴ I note in this regard that Bralo was born and raised in the village of Kratine near the town of Vitez in Bosnia and Herzegovina, located in close proximity to the places where Bralo committed the crimes for which he was convicted.¹²⁵ In this context, I observe that the Risk Assessment indicates that Bralo mentions that [REDACTED].¹²⁶ Due to contradictory information, Bralo was recently asked again, following the Risk Assessment, where he would reside upon release and confirmed his wish to live in [REDACTED] and that "he doesn't understand why the psychologist perceived that [REDACTED]".¹²⁷

60. The Risk Assessment specifies that Bralo "has no concrete plan for the future" and since he has been "on the run and deprived of liberty for many years [...] he lacks a social network and personal support" and "may have some difficulties re-establishing himself in society".¹²⁸ It is further mentioned that "[i]n recent years, Bralo has had no contact with relatives" and that "[t]here is a history of problems with work/employment".¹²⁹ Bralo himself reportedly states that "in the future, he intends to get himself a beautiful wife, two to three children and work with his own company or within security and export/import."¹³⁰ I note that Bralo is now 52 years old¹³¹, he has little formal education or work experience, and provides no tangible information on how he intends to realise his professional plans upon release.

¹²¹ Response; Letter of 14 September 2018; Medical Report, p. 1.

¹²² Medical Report, p. 1; Risk Assessment, p. 3.

¹²³ Letter of 23 July 2019.

¹²⁴ Risk Assessment, pp. 3-4.

¹²⁵ Risk Assessment, p. 2; Sentencing Judgement, paras. 10-17.

¹²⁶ Risk Assessment, p. 3.

¹²⁷ Letter of 23 July 2019.

¹²⁸ Risk Assessment, p. 5.

¹²⁹ Risk Assessment, p. 5.

¹³⁰ Risk Assessment, p. 4.

¹³¹ See Sentencing Judgement, para. 10.

61. In this respect, I strongly encourage Bralo to take more concrete steps to prepare his eventual release and I encourage the Swedish authorities to provide assistance, where possible, to support these efforts.

(f) Overall Assessment

62. I recall that, in my view, rehabilitation entails that a convicted person can be trusted to successfully and peacefully reintegrate into a given society. I observe that Bralo has physically perpetrated violent crimes and that he has lived an adult life dominated by experiences of war, hiding from prosecution, and long-term imprisonment. Moreover, it appears that releasing Bralo unconditionally without adequate preparation for release could be dangerous. The analysis of his [REDACTED] criminal history show that there is an elevated risk of violent reoffending. Bearing in mind this tendency towards violence, I am very concerned about Bralo's behaviour in prison and that he no longer cooperates with the prison authorities because he considers that he has served his sentence. I also note that Bralo has been transferred more than seven times to different prisons in Sweden and that the Prison Report does not cover his latest period of detention. The Risk Assessment however makes it clear that Bralo's recent behaviour in prison was problematic, with "repeated daily notes regarding inappropriate behaviour and disobedience, as well as misconduct reports".¹³² I strongly encourage Bralo to return to cooperative behaviour in prison to demonstrate his ability to successfully reintegrate into civil society.

63. Further and as outlined above, in the context of crimes against humanity and war crimes, I do not consider that a convicted person's cooperative behaviour in prison could, on its own, demonstrate rehabilitation. For instance, I remain acutely aware of the discriminatory motive for the crimes. I am referring in particular to the crime of persecutions and its specific intent, a crime of which Bralo was convicted. In addition, I observe that Bralo has pleaded guilty to the charges against him but now spontaneously has said that he has no remorse. He even denies some of the crimes for which he entered a guilty plea. Furthermore, he has made no efforts to critically reflect upon his actions. Of particular concern to me is his denial of the brutal rape and torture of a Bosnian Muslim woman for which he was a direct perpetrator.¹³³

¹³² Risk Assessment, p. 2.

¹³³ Risk Assessment, p. 3. *See supra*, para. 30.

64. Having carefully reviewed the information before me, I consider that at present, nothing allows me to conclude that Bralo has demonstrated any signs of rehabilitation. With a view to any future applications for pardon, commutation of sentence, or early release, I strongly encourage Bralo to take actions that facilitate his rehabilitation. Such actions could include a return to good behaviour in prison; participation in available rehabilitation programmes, such as anti-violence training or psychotherapy; and any other action that demonstrates a critical reflection on his crimes and the victims of his crimes.

4. Substantial Cooperation with the Prosecution

(a) Preliminary Matter

65. The Prosecution submits that, consistent with the interests of justice and general principles of law, the President should exercise his discretion to give consideration to the Prosecution's submissions and consult affected parties.¹³⁴ In relation to adequate consultations with affected parties such as victims and witnesses, the Prosecution, and affected States, the Prosecution submits that the current practice of the Mechanism departs from the overwhelming trend in national and international jurisdictions, citing both common and civil law jurisdictions, as well as the International Criminal Court and the Special Court for Sierra Leone.¹³⁵ Bralo has not provided any comments in response to the Prosecution's submissions.

66. I note that, in line with Rule 151 of the Rules, the President seeks information from the Prosecution on any cooperation of the convicted person with the Prosecution. In relation to any comments that go beyond the question of cooperation, it has been held that 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.¹³⁶ This has been explained as reflecting a longstanding practice of the ICTY and as being established jurisprudence of the Mechanism.¹³⁷

¹³⁴ Prosecution Submission, paras. 7, 17.

¹³⁵ Prosecution Submission, paras. 10-11.

¹³⁶ *Čorić* Decision, para. 14; *Simba* Decision, para. 20; *Miletić* Decision, para. 18. See Public Redacted Version of *Pušić* Decision, para. 24; *Lukić* Decision of 30 May 2017, para. 17; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Reasons for the President's Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted), para. 8.

¹³⁷ *Čorić* Decision, paras. 14-15; *Simba* Decision, para. 20; *Miletić* Decision, para. 18. See *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, 15 July 2008, Annex, para. 10.

67. I respectfully disagree with this position for the following reasons. First, I do not share the view that the applicable legal framework bars consideration of submissions from the Prosecution. While the Statute and the Rules are indeed silent on this issue, they certainly do not prevent the President from requesting or accepting submissions from relevant sources. To the contrary, Article 26 of the Statute provides as the only guideline for the exercise of the President's discretion that he or she shall decide on the basis of the interests of justice and the general principles of law, while Rule 151 of the Rules provides a non-exhaustive list of factors to be considered. Moreover, the Practice Direction addresses the possibility of inviting third-party submissions.¹³⁸ It also explicitly provides for the possibility to seek "any other information that the President considers relevant" and stipulates that the President shall have regard to such information in taking his decision.¹³⁹

68. Second, I am equally unconvinced by any argument to the effect that I would be bound in the exercise of my discretion by the prior practice of not consulting the Prosecution beyond the matter of cooperation. Article 26 of the Statute and Rule 151 of the Rules provide a large discretion to the President and it is in the interests of justice for the President to obtain all information that he or she considers relevant. This includes, in my view, information provided by the Prosecution. The Prosecution was a party to the legal proceedings which led to the conviction and has intimate knowledge of the case at hand and, as such, it may possess information which is highly relevant to the assessment of a convicted person's rehabilitation, the gravity of the crimes, or in identifying particularly vulnerable witnesses should the convicted person be released. In many instances, the Prosecution will be well placed to represent the views of the victims and affected communities, which ought to be considered in the context of mass atrocity crimes. In my opinion, the Prosecution's comments are thus part of a broader consultation process to obtain relevant material in the interests of justice.

69. In conclusion, while caution needs to be exercised to avoid any unreasonable imbalance to the detriment of the convicted person, I intend to use my discretion to receive and consider more general comments from the Prosecution on early release applications. I will, however, carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.

¹³⁸ Practice Direction, para. 8.

¹³⁹ I note that the Practice Direction provides that the Registrar shall obtain "any other information the President considers relevant" and that the President shall make his or her determination having regard to "any other information that he or she considers relevant". Practice Direction, paras. 4(d), 10.

70. In the present case, I have considered the Prosecution's submissions to the extent outlined in the following section.

a) Submissions from the Prosecution

71. The Prosecution submits that Bralo's cooperation with the Prosecution has already been considered in mitigation in sentencing, and is thus not relevant at the early release stage.¹⁴⁰ It notes that no additional cooperation has been given, without specifying whether any such cooperation was sought by the Prosecution.¹⁴¹ In response, Bralo states that his cooperation with the Prosecution at the sentencing stage "was taken as satisfactory" and he "was not asked for any additional cooperation".¹⁴²

72. I recall that the entry of a guilty plea constitutes a degree of cooperation with the Prosecution, as such pleas beneficially impact the efficient administration of justice.¹⁴³ However, while my predecessor has at times considered that a guilty plea weighs in favour of early release,¹⁴⁴ it was only in cases where the convicted person had significantly cooperated with the Prosecution that the cooperation was found to be substantial.¹⁴⁵ In the absence of such substantial cooperation, other Presidents have found this factor to be neutral.¹⁴⁶

73. In the present case, there is neither an indication that Bralo has substantially cooperated with the Prosecution, nor that he has had an opportunity to provide such cooperation. Furthermore, Bralo's guilty pleas have already been taken into account as a mitigating factor in the determination of his sentence, which was reduced accordingly. The ICTY Trial Chamber found that "a sentence of at least 25 years' imprisonment would be warranted" but, having weighed some mitigating circumstances, including, *inter alia*, his guilty plea, "the efforts he has made to atone for his crimes", and his genuine remorse, it concluded "that a single sentence of 20 years' imprisonment is

¹⁴⁰ Prosecution Memorandum, para. 2; Prosecution Submission, para. 6.

¹⁴¹ Prosecution Memorandum, para. 2.

¹⁴² Response.

¹⁴³ Public Redacted Version of *Jelisić* Decision, para. 46; *Prosecutor v. Dragan Zelenović*, Case No. MICT-15-89-ES, Public Redacted Version of the 28 August 2015 Decision of the President on the Early Release of Dragan Zelenović, 15 September 2015 ("*Zelenović* Decision"), para. 21; *Prosecutor v. Ranko Češić*, Case No. MICT-14-66-ES, Public Redacted Version of the 30 April 2014 Decision of the President on the Early Release of Ranko Češić, 28 May 2014 ("*Češić* Decision"), para. 24.

¹⁴⁴ *Zelenović* Decision, para. 21; *Češić* Decision, para. 24.

¹⁴⁵ I note that all decisions pertaining to this matter have been filed confidentially. As citing these decisions would reveal confidential information which may identify persons who have substantially cooperated with the Prosecution, I do not consider it appropriate to include references to these decisions here.

proportionate and appropriate punishment”.¹⁴⁷ I also recall in this context that Bralo now denies responsibility for some of his crimes and indicates that “he regrets nothing” and considers he has done nothing wrong.¹⁴⁸ Therefore, I do not consider it appropriate to attach additional weight to Bralo’s guilty pleas during my assessment of the Notification.

74. Separately, the Prosecution argues that the gravity of the crimes does not support early release, referring to the “horrific and depraved nature of Bralo’s violent crimes”, which he physically perpetrated, as well as the risk of traumatising and profound and long-lasting consequences for surviving victims.¹⁴⁹ The Prosecution also identified specific victims and witnesses who could be at risk in case of his release.¹⁵⁰ Upon instruction by the former President and myself, the Registry has undertaken steps to inform them about the pending Notification. In the present case, I do not consider it necessary to seek further information from these witnesses in order to adjudicate the Notification.

75. Furthermore, the Prosecution raised the lack of information to assess Bralo’s rehabilitation.¹⁵¹ The Prosecution stressed that rehabilitation is a key consideration and therefore strongly urged my predecessor to obtain adequate documentation such as psychological or other mental health reports and rehabilitation assessments.¹⁵² Subsequently and as outlined in the section on rehabilitation above, further information has been requested and obtained.

76. In line with the approach outlined above, I have taken careful note of all additional information provided by the Prosecution in relation to the present matter and have considered its submissions in as far as I consider them relevant.

¹⁴⁶ See *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-ES, Decision of the President on Early Release of Blagoje Simić, 15 February 2011, para. 31; *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, Decision of the President on Early Release of Duško Sikirica, 21 June 2010, para. 21.

¹⁴⁷ Sentencing Judgement, paras. 70, 72, 95, 97.

¹⁴⁸ See *supra*, para. 46, referring to Risk Assessment, p. 3.

¹⁴⁹ Prosecution Submission, paras. 1, 3-4.

¹⁵⁰ Prosecution Memorandum, paras. 3-5. The Prosecution submits that if the President decides to grant early release, he should: (a) impose appropriate conditions for the remainder of Bralo’s sentence; (b) inform the States of enforcement and release of the precise nature of his crimes, enabling them to consider measures to protect witnesses and victims potentially at risk; and (c) ensure that the Registry take steps to secure sufficient time following the designation of a State of release in order to assess the security situation of these witnesses and victims (Prosecution Memorandum, paras. 4-6; Prosecution Submission, paras. 15-17).

¹⁵¹ Prosecution Submission, paras. 1, 5, 17.

¹⁵² Prosecution Submission, para. 5.

VI. OTHER CONSIDERATIONS

A. Health of the Convicted Person

77. Previous decisions on early release have determined that other considerations, such as the state of the convicted person's health, may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.¹⁵³

78. Bralo himself does not raise any particular health issues, nor does the Notification. The Medical Report dated 20 August 2018 states that [REDACTED].¹⁵⁴ [REDACTED].¹⁵⁵ [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷

79. I note that there is no indication that Bralo's health may be an impediment to continued detention or would require him to be released early on that ground.

B. Impact on Victims and Witnesses

80. Several victims have indicated that they wish to be informed if Bralo is granted early release.¹⁵⁸ These statements, together with the ICTY Trial Chamber's conclusions on the profound and long-lasting consequences for the victims described as "tremendous ongoing pain and trauma",¹⁵⁹ illustrate in the present circumstances that granting early release to Bralo would affect the victims of his crimes and I consider this of relevance to my decision. This is especially so because, although he is not clear on this point, Bralo has expressed [REDACTED].¹⁶⁰

¹⁵³ 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, para. 31; *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, para. 21.

¹⁵⁴ Medical Report, p. 2. See Prison Report; Risk Assessment, p. 3.

¹⁵⁵ Medical Report, p. 2.

¹⁵⁶ Medical Report, p. 2; Risk Assessment, p. 3.

¹⁵⁷ Risk Assessment, p. 3.

¹⁵⁸ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the President, dated 15 April 2019 (strictly confidential), Annex.

¹⁵⁹ Sentencing Judgement, para. 40.

¹⁶⁰ Medical Report, p. 1; Risk Assessment, p. 3. See Sentencing Judgement, paras. 10-17.

VII. CONCLUSION

81. After a thorough review of all the information provided in relation to the present matter and having carefully assessed the standards listed in Rule 151 of the Rules, as well as any other relevant information, I am not inclined at this moment to grant Bralo early release. The main reasons for this decision are the absence of any sign of rehabilitation and Bralo's "significantly elevated" risk of returning to violent offending. The Judges who have been consulted in the present matter agree that early release should not be granted.

82. I recall in this regard that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for, but not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.¹⁶¹ The fact that Bralo served two-thirds of his sentence on 9 March 2018 does not outweigh other factors that strongly militate against early release. There is also no evidence before me that demonstrates the existence of sufficiently compelling humanitarian grounds which would warrant overriding the above negative assessment and granting pardon, early release or commutation of sentence.

83. Finally, I note that Bralo has approximately five more years of his sentence to serve¹⁶² and that the Mechanism has recently introduced a practice of conditional early release.¹⁶³ Bearing this in mind, I strongly encourage Bralo to return to good behaviour in prison and engage in rehabilitation programmes that are available to him, such as for instance anti-violence training or psychotherapy. I also invite the Swedish authorities to support such efforts, where possible.

84. Finally, with reference to paragraph 11 of the Practice Direction, I would like to provide an approximate indication to Bralo and the Swedish authorities regarding the timeframe that I would consider most appropriate for a renewed application for pardon, commutation of sentence, or early release. In my view, it would be appropriate to resubmit the matter for consideration by the President two years after the issuance of the present decision. However, if circumstances require, the convicted person may of course apply at an earlier stage. This indication is also without prejudice to the possibility for Sweden to resubmit the matter before this time, bearing in mind any

¹⁶¹ See *Krstić* Decision, paras. 17-18 and references cited therein.

¹⁶² See *supra*, paras. 2, 4.

¹⁶³ See *Čorić* Decision, para. 73; *Simba* Decision, para. 78. See also U.N. Security Council Resolution 2422, U.N. Doc. S/RES/2422 (2018), 27 June 2018.

potential requirements under Swedish law, as well as important changes in circumstances, which may be brought to my attention at any time.

VIII. DISPOSITION

85. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 10 of the Practice Direction, and Article 8 of the Enforcement Agreement, I hereby **DENY** Bralo early release.

86. The Registrar is hereby **DIRECTED** to inform the authorities of Sweden of this decision as soon as practicable, as prescribed in paragraph 14 of the Practice Direction.

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

Done this 31st day of December 2019,
At The Hague,
The Netherlands.



Judge Carmel Agius
President



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