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Amplifying Voices and Fighting Impunity: A Case for Incorporating Victim Impact into Early Release Decisions at the International Residual Mechanism for Criminal Tribunals

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AMPLIFYING VOICES AND FIGHTING IMPUNITY: A CASE
FOR INCORPORATING VICTIM IMPACT INTO EARLY
RELEASE DECISIONS AT THE INTERNATIONAL RESIDUAL
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INTRODUCTION

On April 11, 1994, thousands of Rwandan Tutsis fled from the violent fighting in their hometowns to Gikongoro Diocese.¹ There, local authorities directed them to the Murambi Technical School, promising to provide additional protection to those who stayed there.² Less than a week later, members of the *Interahamwe* civilian militia launched two separate attacks on the school.³ Armed only with traditional weapons, the *Interahamwe*'s murderous attempts were unsuccessful and the Tutsis suffered little to no casualties.⁴ Then, Aloys Simba arrived.⁵

On April 21, Simba, a former Lieutenant Colonel of the Rwandan armed forces, pulled up to the Murambi Technical School in a pickup truck "loaded with machetes."⁶ He distributed the weapons to the large group of *Interahamwe* members who had attacked the school in the days prior, urging them to "get rid of the filth."⁷ With Simba's machetes in hand, the *Interahamwe* launched their third and final attack on the Murambi Technical School.⁸ By the end of the *Interahamwe*'s twelve-hour assault, thousands of Tutsis had been slaughtered.⁹

The Murambi Technical School massacre is only one of the many criminal incidents that Aloys Simba was accused of participating in during the 1994 Rwandan Genocide.¹⁰ Eight years after the attack, the International Criminal Tribunal for Rwanda (ICTR) indicted Simba for a series of crimes.¹¹ Trial Chamber I of the ICTR ultimately found him guilty of genocide and extermination as a crime against humanity.¹² The Trial Chamber sentenced Simba to twenty-five years in prison, despite the Prosecution's submission that life imprisonment was the adequate sentence.¹³ Two years later, the Appeals Chamber

1. Prosecutor v. Simba, Case No. ICTR-01-76-I, Indictment, ¶ 22 (May 3, 2002) [hereinafter Simba Indictment]; Prosecutor v. Simba, Case No. ICTR-01-76-T, Judgement and Sentence, ¶ 87 (Dec. 13, 2005) [hereinafter Simba Judgement and Sentence].

2. Simba Judgement and Sentence, *supra* note 1, ¶ 116.

3. *Id.* ¶¶ 89–90, 116; see also The Organization, *Leave None to Tell the Story: Genocide in Rwanda*, HUM. RTS. WATCH (March 1999), https://www.hrw.org/reports/1999/rwanda/Geno4-7-03.htm#P714_191614 [<https://perma.cc/RG3T-FYFS>] (explaining the role of the *Interahamwe* in the conflict).

4. Simba Judgement and Sentence, *supra* note 1, ¶¶ 89–90.

5. *Id.* ¶ 87.

6. *Id.*

7. *Id.* ¶¶ 92, 418.

8. *Id.* ¶¶ 92, 116.

9. *Id.* ¶¶ 116, 416.

10. Simba Indictment, *supra* note 1, ¶¶ 30–35.

11. *Id.* ¶ I.

12. Simba Judgement and Sentence, *supra* note 1, ¶ 427.

13. *Id.* ¶¶ 430, 445.

of the ICTR denied Simba's appeal of the judgement in its entirety and affirmed his sentence.¹⁴ Those who had suffered great losses as a result of Aloys Simba's actions could take comfort in knowing he would be locked away for the next two decades. Or so they thought.

In 2018, Simba submitted an application for early release to the International Residual Mechanism for Criminal Tribunals, the judicial body tasked with continuing the work of the ICTR following its closure.¹⁵ The request was met with widespread anger from the citizens of Rwanda.¹⁶ The Rwandan government submitted a formal response to the Mechanism, opposing Simba's release "in the strongest terms" and asserting that releasing the convicted war criminal early "would cause 'untold psychological harm' to the survivors and victims" of his crimes.¹⁷ In its statement, the government also requested a victim impact hearing, during which victim statements could be heard and considered by the presiding judge.¹⁸

In his decision regarding Simba's application, Judge Theodor Meron responded to the Rwandan public's concerns.¹⁹ He stated that he would "take note" of the victim statements attached to the Rwandan Statement, but emphasized that the discretionary power that he held as President of the Mechanism did not provide a "sufficiently compelling reason to allow victims to make submissions . . . or to compel [him] to consider them" in his decision.²⁰ Simba's request for early release was ultimately approved by Judge Meron in January 2019 and he was subsequently released.²¹

During the twenty-four years that the ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY) were open, more than 250 individuals were indicted for genocide, crimes

14. Simba v. Prosecutor, Case No. ICTR-01-76-A, [Appeal] Judgement, 103 (Nov. 27, 2007).

15. Jennifer Trahan, *Unpacking the request for early release by three Rwanda genocide prisoners*, THE CONVERSATION (Aug. 22, 2018), <https://theconversation.com/unpacking-the-request-for-early-release-by-three-rwanda-genocide-prisoners-101743> [<https://perma.cc/CWQ6-VF4X>]; see *infra* notes 92–100 and accompanying text explaining the functioning of the Mechanism.

16. Trahan, *supra* note 15. An example: Damas Dukundane, who lost his entire family during the Kaduha Parish massacre, another attack enabled by Simba, was quoted as saying that "if we are going for justice, Simba cannot be let out" of prison. Jina Moore, *Betraying Justice for Rwanda's Genocide Survivors*, THE NEW YORKER (July 9, 2018), <https://www.newyorker.com/news/news-desk/betraying-justice-for-rwandas-genocide-survivors> [<https://perma.cc/FY5G-NQV3>].

17. Prosecutor v. Simba, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 Jan. 2019 Decision on the Early Release of Aloys Simba, ¶ 67 (Jan. 7, 2019) [hereinafter Simba Early Release Decision] (quoting Rwanda Statement).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* ¶ 82.

against humanity, and violations of the laws or customs of war.²² One hundred and fifty-two of those indicted went on to be convicted and sentenced.²³ By July 2019, eighty of these war criminals and genocidaires²⁴ had been released, eighty-five percent of which were released prior to completing their full sentences.²⁵ All of such releases were conducted without any mandated consideration of victim impact.²⁶

This Note argues that the procedural rules of the Mechanism should be modified to include victim impact as one of the factors that must be considered during the review of early release applications. International criminal tribunals do not have clients.²⁷ They seek justice on behalf of the greater global community.²⁸ However, it is the suffering of victims of international crimes that serves as the basis of the work that they do.²⁹ As Part I details, the people who lived through the Rwandan Genocide and the Yugoslav wars were subjected to crimes ranging from forced deportation and destruction of property to sexual violence and genocide.³⁰ Countless victims and witnesses relived their trauma, either remotely or from inside the courtroom, to bolster the prosecutorial efforts of the ICTY, the ICTR, and the Mechanism.³¹ If the Mechanism seeks to continue to apply

22. *Infographic: ICTY Facts & Figures*, LEGACY WEBSITE OF THE INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/content/infographic-icty-facts-figures> [<https://perma.cc/CYB3-RJ4T>]; *The ICTR in Brief*, LEGACY WEBSITE OF THE INT'L CRIM. TRIBUNAL FOR RWANDA, <https://unictr.irmct.org/en/tribunal> [<https://perma.cc/5VB2-Q3X6>].

23. *Infographic: ICTY Facts & Figures*, *supra* note 22; *The ICTR in Brief*, *supra* note 22.

24. "Qui prend part à un génocide." (Someone who takes part in a genocide) Définitions: Génocidaire, LAROUSSE, <https://www.larousse.fr/dictionnaires/francais/g%C3%A9nocidaire/36587> [<https://perma.cc/TGA9-LFWB>].

25. Barbora Hola, *Early Release of ICTR Convicts: The Practice Beyond the Outrage*, JUSTICEINFO.NET (July 5, 2019), <https://www.justiceinfo.net/en/tribunals/ict/41861-early-release-of-ICTR-convicts-the-practice-beyond-the-outrage.html> [<https://perma.cc/6J5Q-FASD>].

26. *See id.*

27. *See* S.C. Res. 827, ¶ 2, 7 (May 25, 1993) (stating the purpose of the ICTY and how the Tribunal does not prohibit individual victims from filing suit and seeking their own damages).

28. *Mandate and Crimes under ICTY Jurisdiction*, LEGACY WEBSITE OF THE INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-ICTY-jurisdiction> [<https://perma.cc/AG4D-4T72>].

29. *See The Tribunal—Establishment*, LEGACY WEBSITE OF THE INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about/tribunal/establishment> [<https://perma.cc/VG4G-RRWU>].

30. *Mandate and Crimes under ICTY Jurisdiction*, *supra* note 28.

31. Witnesses, LEGACY WEBSITE OF THE INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about/registry/witnesses> [<https://perma.cc/TL9X-TY7M>].

its two-thirds threshold ‘rule’³² and release Convicted Persons³³ early, the concerns of victims and witnesses must be brought to the decision-making table.

This Note fills an important gap in existing literature on international criminal law. Little has been written on the topic of early release and the literature that does exist primarily focuses on the judicial morality or efficacy of the practice as a whole.³⁴ I argue that including victim impact as a key component of early release application reviews conducted by the President of the Mechanism is a necessary step towards fighting impunity amongst perpetrators of international crimes.³⁵

Parts II and III explain the current process for reviewing early release applications, including an overview of the two-thirds sentencing threshold and the role that victim impact currently plays in the proceedings. In Part IV, this Note provides a two-step recommendation for how the Mechanism can modify its current framework to account for the concerns of victims and witnesses. Part V discusses the procedural blueprint provided by the Residual Special Court for Sierra Leone, positioning it as an example that the Mechanism might benefit from following.

I. THE CONFLICTS AND THE COURTS: BACKGROUND ON THE ICTY, THE ICTR AND THE MECHANISM

Appreciating the importance of including victim impact in early release determinations requires an understanding of the gravity of the crimes that the Mechanism charges and convicts individuals for committing. To do that, background on the conflicts that prompted the creation of the Mechanism’s predecessors—the ICTY and ICTR—is necessary.

A. The Yugoslav Wars and the International Criminal Tribunal for the Former Yugoslavia

When the Federal People’s Republic of Yugoslavia was formed, the varying ethnic and religious groups of eight republics and

32. See *infra* notes 108–16 and the accompanying text.

33. “Convicted Person” refers to individuals convicted of any crime by the ICTR, the ICTY or the Mechanism.

34. See Jonathan H. Choi, *Early Release in International Criminal Law*, 123 YALE L. J. 1784, 1789 (2014); see also Andrew Merrylees, *Two-Thirds and You’re Out? The Practice of Early Release at the ICTY and ICC, in Light of the Goals of International Criminal Justice*, 8 AMSTERDAM L.F. 69, 70 (2016). But see Jessica M. Kelder, Barbora Holá, & Joris van Wijk, *Rehabilitation and Early Release of Perpetrators of International Crimes: A Case Study of the ICTY and ICTR*, 14 INT’L CRIM. L. REV. 1177, 1177 (2014).

35. See *infra* notes 152–53 and the accompanying text on the meaning of “impunity.”

provinces were blended together.³⁶ Josip Broz Tito, Yugoslavia's first Prime Minister and the only person to ever serve as its President, quashed any and all whisperings of anti-Yugoslavian nationalism.³⁷ However, following Tito's death in 1980, tensions between traditionally Christian and Muslim ethnic groups began to flare and nationalist ideologies spread throughout the different republics and provinces.³⁸ By the early 1990s, the central government had weakened and republics began to seek independence from the federation.³⁹ Yugoslavia reached a period of intense political crisis.⁴⁰ It was against this backdrop that the Yugoslav Wars took place.

The fighting began in 1991 when the Yugoslav government, led by Serbia's President Slobodan Milošević, sent the Yugoslav People's Army (JNA)⁴¹ to circumvent Croatia's campaign for independence.⁴² Joining forces with the ethnic Serb minority of Croatia, the JNA took control of nearly one-third of Croatia's territory, shelled areas like the city of Dubrovnik, and sent thousands of Croats and other non-Serbs into exile.⁴³ Though Croatia suffered great losses during this conflict, the deadliest period of the Yugoslav Wars took place in

36. The six republics were Bosnia & Herzegovina, Serbia, Slovenia, Croatia, Montenegro and Macedonia. The two provinces were Kosovo and Vojvodina. *The Former Yugoslavia: The Conflicts*, LEGACY WEBSITE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about/what-former-yugoslavia/conflicts> [<https://perma.cc/93DL-DG2G>].

37. Borgna Brunner & David Johnson, *Timeline: The Former Yugoslavia, From World War I to the Splintering of the Country*, INFOPLEASE, <https://www.infoplease.com/history/world/timeline-the-former-yugoslavia> [<https://perma.cc/C2NM-RPLP>].

38. *Id.*; *The Former Yugoslavia: The Conflicts*, *supra* note 36.

39. Brunner & Johnson, *supra* note 37.

40. *The Former Yugoslavia: The Conflicts*, *supra* note 36.

41. "Yugoslav People's Army" translates to *Jugoslavenska narodna armija* in Croatian and *Jugoslovenska narodna armija* in Serbian. The ICTY and the Mechanism refer to the militia in judicial documents by its acronym or the English translation of its name. See, e.g., Prosecutor v. Martić, Case No. IT-95-11-T, Judgement, at 5 (Int'l Crim. Trib. For Yugoslavia June 12, 2007).

42. The JNA was also sent into the republic of Slovenia, which declared independence on the same day as Croatia. The fighting between Slovenian forces and the JNA lasted for ten days—hence the reference to the conflict as the "Ten-Day War"—and the JNA ultimately withdrew. *The Former Yugoslavia: The Conflicts*, *supra* note 36; see also Amy Burchfield, *International Criminal Courts for the Former Yugoslavia, Rwanda and Sierra Leone: A Guide to online and Print Resources*, GLOBALEX (Oct. 2005), https://www.nyu.lawglobal.org/globalex/International_Criminal_Courts.html [<https://perma.cc/4G2Q-4PN9>].

43. The bloody conflict in Croatia occurred over the course of four years (1991–1995) and resulted in the death or displacement of thousands of Croatians. The above sentences do not describe the conflict in full. For more detailed information on the Croatian struggle for independence, see *Croatia Profile—Timeline*, BBC NEWS (May 22, 2018), <https://www.bbc.com/news/world-europe-17217954> [<https://perma.cc/7DRP-GGR6>]; *Balkans Special Report: Croatia Overview*, WASH. POST (1997), <https://www.washingtonpost.com/wp-srv/inatl/longterm/balkans/overview/croatia.htm> [<https://perma.cc/UN5Z-3X4P>]; *Serbo-Croatian War/Homeland War*, GlobalSecurity.org, <https://www.globalsecurity.org/military/world/war/croatia-1.htm> [<https://perma.cc/V23V-JGQY>].

Bosnia-Herzegovina, triggered, yet again, by a referendum that saw a majority of Bosnian citizens vote for independence.⁴⁴ The Bosnian Serb minority rebelled and went on to assert control over more than sixty percent of the country, with the support of JNA units from Croatia.⁴⁵ In a bid to create and maintain an ethnically pure Serbian state, Serb forces led a campaign of ethnic cleansing against Bosnian Muslims that resulted in the death of an estimated 100,000 people.⁴⁶ More than 2,000,000 people were forced to flee their homes.⁴⁷ Detention centers where thousands of men were subjected to poor living conditions and torture were set up around the country.⁴⁸ At least 20,000 women and girls were systematically raped by soldiers.⁴⁹ Individual cities were targeted by indiscriminate shelling and shooting attacks, the most deadly of which was the infamous eleven-day Srebrenica massacre of 1995, during which over 8,000 men and boys were killed.⁵⁰

1. *The ICTY*

The atrocities committed in Bosnia-Herzegovina and elsewhere in what is now the former Yugoslavia pushed the international community into action.⁵¹ The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the United Nations Security Council in May 1993.⁵² The ICTY was the first war crimes tribunal that the world had seen since the Nuremberg and Tokyo tribunals created after World War II.⁵³ It was the first ever court to have jurisdiction over the crime of genocide.⁵⁴ The objective of the Tribunal was to prosecute the individuals “responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia.”⁵⁵

Hearing cases on crimes committed from 1991 onwards, the ICTY indicted 161 individuals, including three of the most notorious

44. *The Former Yugoslavia: The Conflicts*, *supra* note 36.

45. *Id.*

46. *Id.*; see also Burchfield, *supra* note 42.

47. *The Former Yugoslavia: The Conflicts*, *supra* note 36.

48. *Id.*

49. *Id.*; see also Angela Robson, *Weapon of War*, NEW INTERNATIONALIST (June 5, 1993), <https://newint.org/features/1993/06/05/rape> [<https://perma.cc/7VA2-26LY>].

50. *The Former Yugoslavia: The Conflicts*, *supra* note 36.

51. See S.C. Res. 827, 1 (May 25, 1993).

52. *The Former Yugoslavia: The Conflicts*, *supra* note 36.

53. *International Criminal Justice Since Nuremberg*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice/international-criminal-justice-since-nuremberg> [<https://perma.cc/DA8R-4WUQ>].

54. *Id.*

55. Statute of the International Tribunal, U.N. SCOR, 48th Sess., art. 1, U.N. Doc. at 5 (1993).

figures at the forefront of the conflict: President Slobodan Milošević, Bosnian General Ratko Mladić, and Bosnian Serb leader Radovan Karadžić.⁵⁶ Ninety individuals were convicted of crimes ranging from forcible displacement and deportation to genocide and murder as a crime against humanity.⁵⁷ Thirteen were referred to national courts and nineteen were acquitted of their charges.⁵⁸ After twenty-four years of groundbreaking work in the field of international criminal law, the ICTY closed on December 31, 2017.⁵⁹ The establishment of the ICTY laid the groundwork for the creation of other international tribunals, like that which was established in the face of the Rwandan Genocide.⁶⁰

B. The Rwandan Genocide and the International Criminal Tribunal for Rwanda

Though the Rwandan Genocide occurred in 1994, ethnic tensions began building between Rwanda's two largest ethnic groups, the Hutus and the Tutsis, decades before.⁶¹ Prior to the colonialist era, the Tutsis had generally held a higher position in society than the Hutus, despite comprising the minority.⁶² Belgian colonizers favored the Tutsi minority, thereby reinforcing the divisive social system and exacerbating the pre-existing tensions between the two groups.⁶³ In 1959, the Hutus launched a revolution, bolstered by the desire for equality.⁶⁴ For the next two years, Tutsis were killed in large numbers and over 100,000 were forced to flee to neighboring

56. Owen Bowcott, *Yugoslavia Tribunal Closes, Leaving a Powerful Legacy of War Crimes Justice*, THE GUARDIAN (Dec. 20, 2017), <https://www.theguardian.com/law/2017/dec/20/former-yugoslavia-war-crimes-tribunal-leaves-powerful-legacy-milosevic-karadzic-mladic> [<https://perma.cc/CD2R-HY9Q>]; ICTY, INT'L JUST. RES. CTR., <https://ijrcenter.org/international-criminal-law/ICTY> [<https://perma.cc/D9CP-PFZS>].

57. *Infographic: ICTY Facts and Figures*, *supra* note 22.

58. *Id.*

59. Press Release, *ICTY Marks Official Closure with Moving Ceremony in The Hague*, LEGACY WEBSITE OF THE INT'L CRIM. TRIB. FOR THE FORMER YUGOSLAVIA (Dec. 27, 2017), <https://www.icty.org/en/press/icty-marks-official-closure-with-moving-ceremony-in-the-hague> [<http://perma.cc/NZ25-GL5Z>].

60. T.J., *What the Yugoslav war-crimes tribunal achieved*, THE ECONOMIST (Dec. 7, 2017), <https://www.economist.com/the-economist-explains/2017/12/07/what-the-yugoslav-war-crimes-tribunal-achieved> [<http://perma.cc/ZUS5-26H8>].

61. *Rwanda: How the genocide happened*, BBC NEWS (May 17, 2011), <https://www.bbc.com/news/world-africa-13431486> [<https://perma.cc/EQ7V-CU7D>].

62. *Rwanda: A Brief History of the Country*, OUTREACH PROGRAMME ON THE 1994 GENOCIDE AGAINST THE TUTSI IN RWANDA AND THE U.N., <https://www.un.org/en/prevent/genocide/rwanda/historical-background.shtml> (last visited Nov. 2, 2020).

63. *Rwandan Genocide*, HISTORY (Sept. 30, 2019), <https://www.history.com/topics/africa/rwandan-genocide> [<http://perma.cc/Nx7N-U5TY>].

64. *Rwanda Genocide of 1994: Background*, BRITANNICA, <https://www.britannica.com/event/Rwanda-genocide-of-1994> [<http://perma.cc/M2PD-PDAR>].

countries.⁶⁵ The revolution marked the end of the Tutsis' social domination.⁶⁶ By 1962, Rwanda had declared independence from Belgium, and the Hutus had taken over the government.⁶⁷ Ethnic tensions were stronger than ever.⁶⁸

In the two decades that followed, Tutsi refugees living in neighboring countries organized and carried out a series of attacks on Hutu targets, resulting in large-scale retaliatory killings of Tutsi civilians still living in Rwanda.⁶⁹ By the 1980s, this violence had increased the number of Rwandan refugees to nearly 500,000.⁷⁰ In 1988, a group of such refugees living in Uganda formed the Rwandan Patriotic Front (RPF).⁷¹ The RPF invaded Rwanda in 1990 with the goal of overthrowing then-President Juvenal Habyarimana.⁷² In 1993, after years of fighting and civil unrest, a ceasefire and a series of negotiations between the RPF and President Habyarimana led to the signing of the Arusha Accords.⁷³ The agreement laid the groundwork for a transitional government that would include the RPF and Hutu moderates.⁷⁴ However, the agreement did little to settle the conflict, and, on April 6, 1994, an airplane carrying President Habyarimana and Burundian President Cyprien Ntaryamira, both of whom were Hutus, was shot out of the sky.⁷⁵ The resulting crash killed everyone on board and served as a catalyst for the horrific violence that followed.⁷⁶

For the next 100 days, Hutu extremists launched a widespread and organized campaign of violence, killing Tutsis and moderate Hutus around the country.⁷⁷ Machetes were their preferred instrument.⁷⁸ Local administrators who resisted the killings were either removed from office or murdered.⁷⁹ Government-sponsored radio

65. *Rwanda: A Brief History of the Country*, *supra* note 62.

66. *Rwanda: How the genocide happened*, *supra* note 61.

67. *Id.*

68. *Id.*

69. *Rwanda: A Brief History of the Country*, *supra* note 62.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Rwandan Genocide*, *supra* note 63.

74. See Peace Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, RFP-Rwanda, Aug. 04, 1993, Annex I, art. 6–9, available at <https://peacemaker.un.org/rwanda-peaceagreementrpf93>.

75. The identity of the perpetrator(s) of the crash has never been confirmed, but it is assumed by some that the plane was shot down by Tutsi rebels. AFP, *Who shot down the presidents' plane?: An unresolved Mystery*, THE ECONOMIST (Mar. 25, 2004), <https://www.economist.com/special-report/2004/03/25/who-shot-down-the-presidents-plane> [<https://perma.cc/X58F-BYB2>].

76. *Id.*

77. *Rwanda Genocide of 1994: Genocide*, *supra* note 64.

78. *Rwanda genocide: 100 days of slaughter*, BBC NEWS (Apr. 4, 2019), <https://www.bbc.com/news/world-africa-26875506> [<https://perma.cc/7U2B-ENQA>].

79. *Rwandan Genocide*, *supra* note 63.

stations broadcasted hit lists and urged people to “weed out the cockroaches,” a code for killing Tutsis.⁸⁰ The international community’s failure to intervene, combined with the absence of the Rwandan political parties’ commitment to reconciliation enabled the bloodshed to continue.⁸¹ The genocide ended in July 1994, when the RPF defeated the Hutu government.⁸² In those three short months, more than 800,000 people were killed and an estimated 150,000 to 250,000 were subjected to wartime rape.⁸³ By August 1994, an estimated two million Rwandan refugees had fled to neighboring countries.⁸⁴

1. *The ICTR*

On November 8, 1994, just over a year after the creation of the ICTY, the U.N. Security Council adopted Resolution 955, thereby establishing the International Criminal Tribunal for Rwanda (ICTR).⁸⁵ The “sole purpose” of the ICTR was prosecuting those responsible for committing “genocide and other systematic, widespread, and flagrant violations of international humanitarian law” in Rwanda,⁸⁶ as well as prosecuting Rwandan citizens responsible for committing such violations in neighboring countries.⁸⁷

The ICTR was the first international tribunal in history to deliver verdicts against people for the crime of genocide.⁸⁸ It was also the first institution to recognize rape as a form of genocide, ruling in its judgement against Jean-Paul Akayesu that “rape and sexual violence . . . constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.”⁸⁹ The tribunal

80. *Rwanda genocide: 100 days of slaughter*, *supra* note 78.

81. *Rwanda: A Brief History of the Country*, *supra* note 62.

82. Burchfield, *supra* note 42.

83. *Rwanda: A Brief History of the Country*, *supra* note 62.

84. United Nations High Commissioner for Refugees, *The Rwandan Genocide and Its Aftermath*, in THE STATE OF THE WORLD’S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION 245, 246 (Jan. 1, 2000), <https://www.unhcr.org/en-us/publications/sowr/4a4c754a9/state-worlds-refugees-2000-fifty-years-humanitarian-action.html> [http://perma.cc/UW58-4JHW].

85. Michael P. Scharf, *Statute of the International Criminal Tribunal for Rwanda*, AUDIOVISUAL LIBR. OF INT’L L., <http://legal.un.org/avl/ha/ictf/ictf.html> (last visited Nov. 2, 2020).

86. S.C. Res. 955, 1–2 (Nov. 8, 1994).

87. Home to thousands of Rwandan refugees, countries like Burundi and the Democratic Republic of Congo experienced a spillover of violence throughout the Rwandan genocide and in the months that followed. ALEXIS ARIEFF, RWANDA: IN BRIEF, CONG. RSCH. SERV. R44402, at 7 (2019).

88. *The ICTR in Brief*, *supra* note 22.

89. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgement, ¶ 731 (Sept. 2, 1998); *The ICTR in Brief*, *supra* note 22; *Rwanda Genocide of 1994: Aftermath*, *supra* note 64.

indicted ninety-three individuals, including Prime Minister Jean Kambanda and other high-ranking military and government officials, for genocide, crimes against humanity, and serious violations of the 1949 Geneva Conventions.⁹⁰ Of those ninety-three, sixty-two were convicted, fourteen were acquitted, and ten were referred to national jurisdictions.⁹¹

C. *The International Residual Mechanism for Criminal Tribunals*

The ICTY and ICTR [hereinafter referred to as the preceding tribunals] were formed as internationally backed responses to the atrocities committed against the people of Rwanda and the former Yugoslavia; however, their mandates were explicit in prescribing their temporary nature.⁹² Established by the United Nations Security Council in 2010, the International Residual Mechanism for Criminal Tribunals (the Mechanism) was created to continue to carry out the “obligations and essential functions of the ICTY and the ICTR,” following the close of the respective tribunals.⁹³ The Mechanism has two branches: one in The Hague, Netherlands that focuses on ICTY cases and related matters, and another in Arusha, Tanzania that focuses on ICTR cases.⁹⁴

The functions of the tribunal include providing assistance to domestic courts, managing judicial and historical archives, protecting victims and witnesses, and supervising the enforcement of sentences.⁹⁵ Its primary purpose, however, is the execution of judicial proceedings that stem from cases or investigations started at the preceding tribunals.⁹⁶ Since opening, the Mechanism has overseen eighty-nine cases, three of which are still pending.⁹⁷ The court has completed a number of high-profile cases, including the appeal of Radovan Karadžić, whose convictions for persecution, deportation,

90. Burchfield, *supra* note 42; *Rwanda: A Brief History of the Country*, *supra* note 62; *The ICTR in Brief*, *supra* note 22.

91. *The ICTR in Brief*, *supra* note 22.

92. *Mandate and Structure*, ICTR BASIC DOCUMENTS AND CASE L., <http://ictrcaselaw.org/ContentPage.aspx?cid=2> [<http://perma.cc/7D3J-AURT>]; *Mandate and Crimes under ICTY Jurisdictions*, INT'L RESIDUAL MECHANISM FOR CRIM. TRIBS., <http://icty.org/sid/320> [<http://perma.cc/85AU-2VYD>].

93. S.C. Res. 1966, ¶ 4 (Dec. 22, 2010) [hereinafter Mechanism Statute].

94. Giorgia Tortora, *The Mechanism for International Criminal Tribunals: A Unique Model and Some of Its Distinctive Challenges*, 21 AM. SOC'Y OF INT'L L. (Apr. 6, 2017), <https://www.asil.org/insights/volume/21/issue/5/mechanism-international-criminal-tribunals> [<http://perma.cc/5V6K-X2PP>].

95. *Id.*

96. *Id.*

97. *Cases*, THE INT'L RESIDUAL MECHANISM FOR CRIM. TRIBS., <https://www.irmct.org/en/cases> [<http://perma.cc/X9NL-88QV>].

and genocide, among other things, were affirmed by the Appeals Chamber.⁹⁸ As of September 2020, approximately forty-five Convicted Persons are still serving sentences throughout the western regions of Europe and Africa, all of whom the Mechanism is responsible for supervising.⁹⁹ Each one will, at some point in the coming years, qualify to apply for early release.¹⁰⁰ It is the procedures of the Mechanism that this Note seeks to amend.

II. CURRENT EARLY RELEASE PROCEDURES AT THE MECHANISM

A. *Statutory Procedure*

The Preceding Tribunals first began commuting sentences in 2001 (ICTY) and 2011 (ICTR), with the release of Zlatko Aleksovski and Michel Bagaragaza.¹⁰¹ The Mechanism has continued the practice.¹⁰² Those released early by the ICTY and ICTR were freed on the basis of Article 28 and Article 27 of their respective statutes—both of which contain language identical to that in Article 26 of the Mechanism’s statute:

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 decides¹⁰³

Sentences are commuted (i.e., shortened) at the discretion of the Mechanism’s President.¹⁰⁴ The Mechanism’s Practice Direction on Pardon, Commutation, and Early Release does require consultation

98. Prosecutor v. Karadžić, Case No. MICT-13-55-A, Judgement, at 318 (Int’l Residual Mechanism for Crim. Tribs. Mar. 20, 2019).

99. *Enforcement of Sentences*, THE INT’L RESIDUAL MECHANISM FOR CRIM. TRIBS., <https://www.irmct.org/en/about/functions/enforcement-of-sentences> [http://perma.cc/JL6E-VN4F].

100. *Id.*

101. Choi, *supra* note 34, at 1790 (citing Prosecutor v. Aleksovski, Case No. IT-95-14/1, Order of the President for the Early Release of Zlatko Aleksovski (Int’l Crim. Trib. for the Former Yugoslavia Oct. 14, 2011)); Prosecutor v. Bagaragaza, Case No. ICTR-05-86-S, Decision on the Early Release of Michel Bagaragaza (Oct. 24, 2011).

102. See Question & Answers, THE INT’L RESIDUAL MECHANISM FOR CRIM. TRIBS., <https://www.irmct.org/en/about/questions-answers> [http://perma.cc/8CJX-JHCW].

103. Mechanism Statute, art. 26; Statute of the International Criminal Tribunal for Rwanda (amended Jan. 31, 2010) [hereinafter ICTR statute], art. 27; Updated Statute of the International Criminal Tribunal for the Former Yugoslavia (amended July 7, 2009) [hereinafter ICTY statute], art. 28.

104. Mechanism Statute, art. 26.

with any of the Judges involved in sentencing the individual whose application is up for review; however, the President has the final say, and their decision is not subject to appeal.¹⁰⁵ Rule 151 of the Mechanism's Rules and Procedures lists four factors that should be taken into account, *inter alia*, while determining whether early release is appropriate: (1) the gravity of the crime or crimes for which the prisoner was convicted, (2) the treatment of similarly situated prisoners, (3) the prisoner's demonstration of rehabilitation, and (4) any substantial cooperation of the prisoner with the Prosecutor.¹⁰⁶ Application of the early release Articles and the rules related to them has evolved into what is now referred to as the two-thirds rule.¹⁰⁷

B. The Two-Thirds Rule: Presumption-Turned-Quasi-Rule

The two-thirds "rule" is a presumption favoring early release for persons convicted by the ICTY who have served two-thirds of their sentence and persons convicted by the ICTR who have served three-quarters of their sentence.¹⁰⁸ Reaching the two-thirds threshold of a sentence does not guarantee early release.¹⁰⁹ However, it was viewed by the preceding tribunals as a "benchmark" or "mark of eligibility" to be considered when reviewing applications.¹¹⁰ The presumption relies, in part, upon the desire to make tribunal jurisprudence and procedure consistent with the legislation of the states in which Convicted Persons carry out their sentences [hereinafter states of imprisonment].¹¹¹ Many states of imprisonment have legislation that ascribes eligibility for early release to domestic persons who have served a benchmark duration of their sentences.¹¹² Given that

105. 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 (Doc. No. MICT/3), ¶¶ 7, 12 (July 5, 2012) [hereinafter Mechanism Practice Direction]; see *Prosecutor v. Rutaganira*, Case No. ICTR-95-IC-AR, Decision on Appeal of a Decision of the President on Early Release, ¶ 3 (Aug. 24, 2006) (stating "[t]he Appeals Chamber cannot identify any legal basis for its consideration of this appeal. . . . The Tribunal's Statute and Rules of Procedure and Evidence do not provide for appellate review of such a decision.>").

106. International Residual Mechanism Rules of Procedure and Evidence, MICT/1/Rev.5, R. 151 (Mar. 4, 2019) [hereinafter Mechanism Rules of Procedure and Evidence].

107. See Merrylees, *supra* note 34, at 71.

108. See *id.*; Hola, *supra* note 25.

109. See Merrylees, *supra* note 34, at 71.

110. *Prosecutor v. 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, ¶ 38 (Jan. 16, 2019) [hereinafter Ćorić Early Release Decision]; *Simba Early Release Decision*, *supra* note 17, ¶ 32.

111. ICTY Manual on Developed Practices, UNICRI ¶ 52 (2009), https://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf [<http://perma.cc/SVZ6-GA7M>].

112. *Id.* ¶¶ 53–55.

these countries had accepted responsibility for enforcing sentences, the preceding tribunals operated on the notion that judicial consistency was promoted by implementing procedures that mirrored state legislation.¹¹³

After serving as the President of the ICTY for a total of six years, Judge Theodor Meron carried the two-thirds rule over to the Mechanism during his tenure as the residual court's first President.¹¹⁴ The Mechanism, which now supervises all remaining ICTR and ICTY sentences, as well as its own, has favored the ICTY's two-thirds threshold.¹¹⁵ Though the threshold is not codified in any of the tribunals' statutes, it has been applied with such frequency that at least once, a Trial Chamber factored the likelihood of early release into the sentence of a convicted individual.¹¹⁶

C. Criticism of the Two-Thirds Rule

Victims of and witnesses to crimes charged at the ICTY, ICTR, and the Mechanism have been critical of the practice of releasing Convicted Persons early.¹¹⁷ Survivor support organizations like the Genocide Survivors Foundation (GSF) have pleaded with the Mechanism to halt early release procedures for convicted genocidaires altogether.¹¹⁸ In a letter to President Meron, GSF argued that early release was a "privilege . . . reserved for common criminals, not for those convicted of genocide, the 'crime of all crimes'."¹¹⁹

The Mechanism has also been criticized for a lack of transparency in its early release proceedings.¹²⁰ President Meron's formal request to Rwanda for its opinion on Aloys Simba's application for early release

113. *Id.* ¶ 57.

114. Ćorić Early Release Decision, *supra* note 110, ¶¶ 38–39; *Former Presidents*, LEGACY WEBSITE OF THE ICTY, <https://www.icty.org/en/about/chambers/former-presidents> [http://perma.cc/D7M9-6FEB].

115. Ćorić Early Release Decision, *supra* note 110, ¶ 38.

116. Prosecutor v. Nikolić, Case No. IT-94-2-A, Judgement on Sentencing Appeal, ¶ 97 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 4, 2005).

117. See, e.g., Trahan, *supra* note 15.

118. Jacqueline Murekatete, *Letter to Honorable Judge Theodor Meron Re: Application for early release from Aloys Simba (MICT-14-62), Dominique Ntawukulilyayo (MICT-13-34) and Hasan Ngeze (MICT-13-37)*, GENOCIDE SURVIVORS FOUNDATION at 7 (July 4, 2018), <https://genocidesurvivorsfoundation.org/wp-content/uploads/2018/07/Genocide-Survivors-Foundation27s-Letter-to-Judge-Meron-of-MICT.pdf> [https://perma.cc/A3PW-MH65].

119. *Id.*; see also William A. Schabas, *National Courts Finally Begin to Prosecute Genocide, the 'Crime of Crimes,'* 1 J. INT'L CRIM. JUST. 39, 43 (2003).

120. Edmund Kagire, *Why Rwanda is furious with the UN Court leniency*, THE EAST AFRICAN (June 11, 2018), <https://www.theeastafrican.co.ke/news/ea/Rwanda-furious-UN-Court-leniency-genocide/4552908-4605838-10a3uo5z/index.html> [https://perma.cc/56WT-3RYU].

was the first communication of its kind during the first six years of the Mechanism.¹²¹ Up until that point, all early release decisions on ICTR Convicted Persons had been made without notification of the Rwandan government.¹²² In 2018, Rwanda's UN envoy Valentine Rugwabiza filed an official complaint with the Security Council.¹²³ She cited the timing of the request as an example of how leaving the decision process up to the personal discretion of the President had created a "credibility crisis."¹²⁴ The inability to consistently participate—or, at least, be aware of—the proceedings has made Rwandans feel that the Mechanism is being purposefully opaque.¹²⁵

The fact that victims and witnesses do not have to be notified when relevant Convicted Persons are up for early release has also been of particular concern.¹²⁶ For example, Ferdinand Nahimana, sentenced in 2007 to thirty-years' imprisonment for direct and public incitement to commit genocide via his radio show, was granted early release in 2016.¹²⁷ The Rwandan government and the witnesses for his case learned of his release, ironically, on the radio.¹²⁸ When Aloys Simba was similarly released without formal notification of the Rwandan public, government officials decried the fact that the process had been carried out "in secret."¹²⁹

Whether they advocate for the complete abolition of the practice or a modification of how it is conducted, the people that critique early release and the two-thirds rule are the same people who stand to be most affected by it.¹³⁰ These critiques evidence the need to create a process that is more transparent and victim-inclusive.

121. Simba Early Release Decision, *supra* note 17, ¶ 66; Peter Mugabo, *Rwanda Seeks Russian Help to Stop UN Freeing Key Genocide Convicts*, RWANDA NEWS (June 7, 2018), <http://www.newsofrwanda.com/featured1/32744/rwanda-seeks-russian-help-to-stop-un-freeing-key-genocide-convicts> [https://perma.cc/6U3L-FXY7].

122. Mugabo, *supra* note 121.

123. *Id.*

124. *Id.*

125. *See* Kagire, *supra* note 120.

126. *See id.*

127. During the Genocide, Nahimana had co-founded an incendiary radio station that published the names and locations of surviving Tutsis, inciting violence against those populations. Moore, *supra* note 16. Because the Trial Chamber credited Nahimana's time spent in jail from his arrest in 1996 to the Appeal Chamber's affirmation of his conviction in 2007, the radio host was able to reach the two-thirds threshold of his thirty-year sentence in 2016. *See* Nahimana v. Prosecutor, Case No. ICR-99-52-A, [Appeal] Judgement, ¶ 1115 (Nov. 28, 2007).

128. Moore, *supra* note 16.

129. *Statement from Rwanda Minister of Justice on the Early Release of Aloys Simba by Judge Theodor Meron*, TOP AFRICA NEWS (Jan. 17, 2019), <http://www.topafricanews.com/2019/01/17/statement-from-rwanda-minister-of-justice-on-the-early-release-of-alloys-simba-by-judge-theodor-meron> [https://perma.cc/C9C6-SD6E].

130. *See* Kagire, *supra* note 120; Moore, *supra* note 16.

III. VICTIM IMPACT AT THE MECHANISM

The Practice Direction on Pardon, Commutation and Early Release [Mechanism Practice Direction] at the Mechanism is a five-page document that governs how the tribunal handles early release.¹³¹ The Mechanism Practice Direction explains, in very limited terms, the procedure associated with submitting, reviewing, and deciding on an application for early release.¹³² When a Convicted Person's sentence is approaching the two-thirds mark, the state of imprisonment must inform the Mechanism.¹³³ Upon notification of eligibility, the Office of the Registry must take a series of steps to prepare for the application review process.¹³⁴ One of these steps, provided for in subparagraph 4(d), is the optional collection of any information not otherwise required by the Practice Direction that the President deems relevant.¹³⁵ Oftentimes, though, the President does not seek any additional documents at all.¹³⁶

Submission pursuant to subparagraph 4(d) is the only means by which victim impact can be folded into the President's review of early release applications.¹³⁷ The Prosecution has attempted to admit victim letters as part of its submissions; however, the choice to review the letters is the President's alone.¹³⁸ In the ten years that the Mechanism has been open, the Presidential stance on the admission of victim statements has shifted from one extreme to the other, based on the discretion of the judge holding the position.¹³⁹

In his decision on Aloys Simba's appeal, former President Theodor Meron stated that he could not find a "sufficiently compelling reason"

131. See Practice Direction on Pardon, Commutation and Early Release, International Residual Mechanism for Criminal Tribunals (amended Feb. 20, 2019) [hereinafter Practice Direction on Pardon].

132. See *id.* ¶¶ 2–7, 10–15.

133. *Id.* ¶ 2.

134. *Id.* ¶¶ 4–5.

135. *Id.* ¶ 4(d).

136. See, e.g., Prosecutor v. Ruzindana, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana ¶¶ 1, 22, 26 (Mar. 13, 2014); Prosecutor v. Rukundo, Case No. MICT-13-35-ES, Public Redacted Version of the 19 July 2016 Decision of the President on the Early Release of Emmanuel Rukundo ¶¶ 1, 18, 21, 34 (Dec. 5, 2016); Prosecutor v. Lukić, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić ¶¶ 2, 14, 19, 37–38 (Sept. 17, 2018) (none of which include information related to anything outside of that which Rule 151 requires the President to consider in their decision).

137. See Practice Direction on Pardon, *supra* note 131, ¶ 4(d).

138. See Ćorić Early Release Decision, *supra* note 110, ¶¶ 23–25; see also Mechanism Practice Direction, *supra* note 105, ¶¶ 8–11.

139. Compare Simba Early Release Decision, *supra* note 17, ¶ 72, with Prosecutor v. Bralo, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, ¶ 74 (Dec. 31, 2019) [hereinafter Decision on the Early Release of Miroslav Bralo].

to consider submissions by victims and halted his analysis on the matter there.¹⁴⁰ In contrast, the December 2019 decision on the early release of Miroslav Bralo delivered by Judge Carmel Agius, the current President of the Mechanism, featured frequent references to the victims and witnesses relevant to the case at hand.¹⁴¹ Though President Agius did not expressly mention victim impact as one of the deciding factors in his conclusory remarks, he did include, in an unprecedented move, an “Impact on Victims and Witnesses” section that summarily recognized that Bralo’s release would affect victims of his crimes and that such would be considered in the final decision.¹⁴² He specifically acknowledged the Prosecution’s submission regarding the “horrific and depraved nature of Bralo’s violent crimes” and the potential risk of retraumatizing surviving victims.¹⁴³ President Agius ultimately denied Bralo’s application.¹⁴⁴

There is a stark difference between Presidents Agius’s and Meron’s perspective on the degree of importance that victim impact can hold in early release decisions. Whereas President Agius favors inclusion of victim submissions now, who is to say whether this proclivity will continue throughout his tenure?¹⁴⁵ Whether the next President will share the same concern for victims? If the Mechanism does not modify its early release process to include a mandated seat for victim submissions, the role of victims in the process will be subject entirely to the determination of the President. This Note provides recommendations for how to implement a permanently victim-inclusive process.

IV. MODIFYING EARLY RELEASE PROCEDURES AT THE MECHANISM

A. *Why Victims Need to Be Included in the Process*

Releasing international criminals convicted of heinous crimes early, without incorporating the concerns of their victims and witnesses, contravenes the very purpose of international criminal tribunals. Consider the scope of some of the crimes that make up the subject matter jurisdiction of the Mechanism and the Tribunals that preceded it:

140. Simba Early Release Decision, *supra* note 17, ¶ 72.

141. Decision on the Early Release of Miroslav Bralo, *supra* note 139, at 28, 32, 74, 80; see also *Judge Carmel Agius, President*, THE IRMCT, <https://www.irmct.org/en/about/judges/judge-carmel-agius-president> [<https://perma.cc/EC3C-ES65>].

142. Decision on the Early Release of Miroslav Bralo, *supra* note 139, ¶ 80.

143. *Id.* ¶ 74.

144. *Id.* ¶ 81.

145. *Id.* ¶ 80.

1. Genocide: killing members of a group, causing serious bodily harm to members of the group, or, among other things, imposing measures intended to prevent births within the group—all done with the intent to destroy, in whole or in part, a specified racial, ethnical, religious or national group;¹⁴⁶
2. Crime Against Humanity: committing the crime of murder, extermination, enslavement, deportation, imprisonment, torture, rape, or persecution on political, racial and religious grounds, as part of a “widespread or systematic attack against any civilian population” on the basis of a specified identity.¹⁴⁷

The murder, rape, or torture of a single person does not create a factual basis for genocide or crimes against humanity.¹⁴⁸ These crimes arise only out of the widespread victimization of a population.¹⁴⁹

Without victims, there are no crimes. And without witnesses, many of whom were direct victims of the crimes that they testify about, developing cases against indicted individuals would be more arduous a task than it already is. The ICTY alone heard testimonies from more than 4,650 Prosecution and Defense witnesses over the course of its tenure.¹⁵⁰ The judgments of Convicted Persons are often hundreds, if not thousands, of pages long, due in great part to the plethora of evidence brought before the court.¹⁵¹ It does not make sense to turn to a community of people for the sake of building a case against their former oppressor, only to turn away from them when it comes time to decide whether that person should be freed prior to the end of their sentence and allowed to reenter society.

One of the primary principles of international criminal law is the goal of fighting against impunity.¹⁵² “Impunity” is “the impossibility, de jure or de facto, of” holding human rights violators accountable for their crimes, because “they are not subject to any inquiry that might” result in arrest, trial, or conviction.¹⁵³ The goal of fighting

146. ICTR Statute, art. 2(2); ICTY Statute, art. 4(2).

147. ICTR Statute, art. 3; ICTY Statute, art. 5.

148. ICTR Statute, art. 3.

149. ICTR Statute, arts. 2(2), 3; ICTY Statute, art. 4(2).

150. *Infographic: ICTY Facts and Figures*, supra note 22.

151. See, e.g., Prosecutor v. Mladic, Case No. IT-09-92-T, Judgment (Nov. 22, 2017) (taking up five volumes, the judgment is more than 2,500 pages long).

152. Geoffrey Robertson, *Ending Impunity: How International Criminal Law Can Put Tyrants on Trial*, 38 COR. INT'L L.J. 649, 661 (2005).

153. Louis Joinet, *Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political): Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119*, The Administration of Justice and the Human Rights of Detainees, UN Doc. E/CN.4/Sub.2/1997/20, 15–16 (1997).

impunity is weakened by the notion that Convicted Persons can be released early without any consideration of the potential harm on the victims and witnesses of their crimes. For these reasons, it is important and necessary to incorporate the concerns of victims and witnesses into the review and decision process for applications for early release at the Mechanism.

As previously stated, the only way that victim impact can be considered in early release decisions is if the President, via subsection 4(d) of the Mechanism Practice Direction, chooses to do so.¹⁵⁴ The interpretations of that provision by the two judges that have served as President of the Mechanism thus far differ greatly.¹⁵⁵ Rectifying this inconsistency requires a change at the Mechanism. This Note proposes a two-step process: (1) amendment of Mechanism Rule 151 and (2) modification of the existing Practice Direction on Early Release.

B. Step 1: Amend Rule 151 of the Mechanism's Rules of Evidence and Procedure

The most straightforward means of incorporating victim impact into the early release review process is the amendment of an existing rule. Amendment of the Rules of Procedure and Evidence is not an uncommon practice at the Mechanism.¹⁵⁶ Rule 6 permits and provides the details of the amendment process.¹⁵⁷ Suggested rule changes can come from a Judge, the Prosecutor, or the Registrar.¹⁵⁸ Proposed rules are adopted if they are agreed to by thirteen judges or by a majority of the judges present at a plenary meeting organized by the President.¹⁵⁹ Since the Rules were first published in July 2012, they have been amended six times, including twice in the last eleven months.¹⁶⁰ This Note proposes another amendment.

Rule 151 lists the four factors to be considered for granting early release.¹⁶¹ The rule should be amended as marked by italics below:

In determining whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account,

154. See Practice Direction on Pardon, *supra* note 131, ¶ 4(d).

155. Compare Simba Early Release Decision, *supra* note 17, ¶ 72, with Decision on the Early Release of Miroslav Bralo, *supra* note 139, ¶ 74.

156. Mechanism Rules of Procedure and Evidence, R. 6.

157. *Id.*

158. *Id.*

159. *Id.*

160. U.N. IRMCT, Rules of Procedure of Evidence, UN Doc. MICT/1/Amend.6 (Dec. 18, 2019), <https://www.irmct.org/en/basic-documents/rules-procedure-and-evidence> [<https://perma.cc/BZ2S-KHBL>].

161. Mechanism Rules of Procedure and Evidence, R. 151.

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, *the concerns of Prosecution witnesses and victims*, as well as any substantial cooperation of the prisoner with the Prosecutor.

The use of the word "concerns" is a conscious choice because ascertaining the concerns of a group requires interaction with said group, whereas "interests" can be inferred from existing information or external third parties. Requiring an assessment of victim concern ensures that victims are engaged in the process. Past amendments to the procedural rules of the Mechanism have featured the complete rewording of sections of a rule.¹⁶² Technically speaking, making consideration of victim impact a procedural requirement for early release proceedings requires little more than the addition of seven words to an existing rule.

Of course, per Mechanism Rule 6, amendments only enter into force after they have been agreed to by a collection of judges.¹⁶³ How the various judges that presently serve the Mechanism would receive this rule change is a matter for another paper. However, the current President, Judge Agius, has historically favored the inclusion of victim statements in early release proceedings.¹⁶⁴ With him at the helm of the Tribunal and in consideration of the fact that the proposed amendment would not require the application of extensive changes to existing proceedings, one is optimistic about how the amendment might be received if proposed by one of the parties that has the power to do so.¹⁶⁵

C. Step 2: Modify the Mechanism's Existing Practice Direction on Early Release

The Mechanism's Practice Direction on Early Release is meant to expand upon the requirements of the rules, in order to clarify how to apply them.¹⁶⁶ To ensure that the amendment to Rule 151 is carried out as intended, the section of the Practice Direction that covers the duties of the Registry needs to be modified. At present, the Practice Direction lists four responsibilities of the Registry following notification of a Convicted Person's eligibility for early release.¹⁶⁷ This Note

162. See, e.g., U.N. IRMCT, Amendments to the Rules of Procedure and Evidence, MICT/1/Amend.2 21 (Oct. 3, 2016).

163. Mechanism Rules of Procedure and Evidence, R. 6.

164. See, e.g., Decision on the Early Release of Miroslav Bralo, *supra* note 139, ¶ 80.

165. Mechanism Rules of Procedure and Evidence, R. 6.

166. See Mechanism Practice Direction, *supra* note 105, ¶ 1.

167. Practice Direction on Pardon, *supra* note 131, ¶ 4.

proposes the addition of a fifth, marked as subsection (d), modifying the practice direction as follows:

4. After receiving the notification of eligibility, the Registry shall:

(a) Inform the convicted person that he or she may be eligible for pardon, commutation of sentence or early release and advise him or her of the steps that will be taken;

(b) Request reports and observations from the relevant authorities in the enforcing State as to the behavior of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration;

(c) Request the Prosecutor to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof; and

(d) Request the Prosecution to acquire, in conjunction with the Witness Support and Protection Unit where necessary, detailed information on the following from the government of the Requested Area of Release:

(i) effects upon the health and safety of victims, Prosecution witnesses, and their families if the Convicted Person is released;

(ii) evidence of any threats, direct or indirect, made against the aforementioned parties by the Convicted Person and/or their known associates; and

(e) Obtain any other information that the President considers relevant.

Requesting information on matters of health and safety, rather than asking for an assessment of the general attitudes and feelings of victims is intentional. Focusing on the former helps combat the potential counterargument that including victims in the early release process will only encourage submissions from people who seek to use the Mechanism to carry out personal vendettas. Some might worry that the modification would enable victor's justice¹⁶⁸ to seep

168. "Victor's justice" refers to situations in which the party or group in power following a conflict and a regime change utilizes its position to retributively punish members of the losing party or group. See Gary J. Bass, *Why Not Victor's Justice?*, WASH. POST

into the work of the Tribunal; however, this suggested modification does not advocate for unyielded collection of opinion statements about how disliked the Convicted Person is or was. This change would require the collection of concrete information on potential dangers posed by intended actions of the Mechanism—information that the Mechanism’s Witness Support and Protection Unit is already in the position to collect.¹⁶⁹

Including the collection of victim statements as one of the listed steps for early release application preparation ensures that whether the President considers it relevant or not, victim impact will always be an automatic and essential aspect of early release proceedings. Part of the critiques of early release discussed in Part II stem from the fact that communities in locales affected by conflict are afraid of sharing the streets with the very people who destroyed their neighbor’s home, raped their cousin, murdered their grandfather—or ordered others to carry out such crimes.¹⁷⁰ Acknowledging legitimate concerns about the threat to safety and personal well-being posed by the release of a convicted war criminal is essential to determining whether that individual should be released or required to serve their sentence in full.

V. VICTIM IMPACT AT SIMILARLY STRUCTURED BODIES: THE (RESIDUAL) SPECIAL COURT FOR SIERRA LEONE

The inclusion of victim impact in sentence commutation proceedings is not unheard of in the realm of international law. The Special Court for Sierra Leone (SCSL) and its successor court, the Residual Special Court for Sierra Leone (RSCSL), have developed a procedural structure for reviewing early release applications that centers the concerns of victims.¹⁷¹

A. *The Sierra Leonean Civil War and President Kabbah’s Special Court*

From 1991 to 2002, Sierra Leoneans suffered the violent consequences of a civil war launched by the Revolutionary United Front

(Feb. 15, 2002), <https://www.washingtonpost.com/archive/opinions/2002/02/15/why-not-victors-justice/b9f4aa5e-ee70-47e9-9942-262d8dc33dcd> [<https://perma.cc/NHT3-8UNN>].

169. Mechanism Rules of Procedure and Evidence, R. 32.

170. See Murekatete, *supra* note 118.

171. See Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone, art. 5(D)(ii)(d)–(e), 5(E)–(F)(iii) (Jan. 1, 2013) [hereinafter RSCSL Practice Direction], http://www.rscsl.org/Documents/PRACTICE_DIRECTION_Conditional_Early_Release.pdf [<https://perma.cc/F8Y5-C7BH>].

(RUF) and its leader, former army corporal Foday Sankoh.¹⁷² Though the exact number of casualties is unknown, death toll estimates range from 30,000 to 70,000 people.¹⁷³ Thousands more were victims of abduction, sexual slavery, indiscriminate amputation, and more than half of the population was forcefully displaced.¹⁷⁴ On August 9, 2000, Sierra Leone's President Alhaji Ahmad Tejan Kabbah sent a letter to the Security Council requesting assistance from the international community in the form of a "special court for Sierra Leone."¹⁷⁵ The Security Council acknowledged the request and adopted Resolution 1315, requesting that the Secretary General negotiate an agreement with the Sierra Leonean government to create the court.¹⁷⁶

Two years later, the Special Court for Sierra Leone opened.¹⁷⁷ The SCSL indicted fourteen individuals and ultimately convicted nine¹⁷⁸ of them, including Charles Taylor, the former President of Liberia.¹⁷⁹ In 2013, the Residual Special Court for Sierra Leone (RSCSL) took over the SCSL's remaining responsibilities, including witness protection, supervising the imprisonment of still-incarcerated Convicted Persons, and historical preservation.¹⁸⁰

172. *Sierra Leone Civil War*, GLOBALSECURITY.ORG, https://www.globalsecurity.org/military/world/war/sierra_leone.htm [<https://perma.cc/VP3L-ZGTJ>].

173. Mary Kaldor & James Vincent, *Human Security: Evaluation of UNDP Assistance to Conflict-Affected Countries*, U.N. DEV. PROGRAMME, 1, 6 (2006), <http://web.undp.org/evaluation/documents/thematic/conflict/SierraLeone.pdf> [<https://perma.cc/MX5P-2JUN>]; *Sierra Leone*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/sierra-leone/#Fatalities> [<https://perma.cc/35SW-XZVA>].

174. Charles Chernor Jalloh, *Special Court for Sierra Leone: Achieving Justice?*, 32 MICH. J. OF INT'L L. 395, 398–99 (2011); Kaldor & Vincent, *supra* note 173. For a more in-depth description of the atrocities committed during the Sierra Leonean civil war, see *Getting Away with Murder, Mutilation, and Rape: New Testimony from Sierra Leone*, HUM. RTS. WATCH (July 1999), <https://www.hrw.org/legacy/reports/1999/sierra>.

175. Annex to the Letter dated Aug. 9, 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council, at 2, U.N. Doc. S/2000/786 (Aug. 10, 2000).

176. S.C. Res. 1315, 1 (Aug. 14, 2000).

177. Jalloh, *supra* note 174, at 404.

178. President of the Special Court for Sierra Leone, *Eleventh and Final Report of the President* (Dec. 2013), <http://www.rscsl.org/Documents/AnRpt11.pdf> [<https://perma.cc/9CPA-C93T>].

179. Lansana Gberie, *The Special Court for Sierra Leone rests—for good*, AFR. RENEWAL (Apr. 2014), <https://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good> [<https://perma.cc/GA4K-HY56>]. Prior to becoming President, the Liberian warlord Charles Taylor and the RPF's Foday Sankoh had formed an agreement to support one another in overthrowing their respective governments. See Ismail Rashid, *Sierra Leone: The Revolutionary United Front*, THE J. OF COMPLEX OPERATIONS, <https://cco.ndu.edu/News/Article/780201/chapter-8-sierra-leone-the-revolutionary-united-front> [<https://perma.cc/342Z-AAG3>].

180. *The Mandate of the Residual Special Court for Sierra Leone*, THE RESIDUAL SPECIAL CT. FOR SIERRA LEONE, <http://www.rscsl.org/RSCSL-Mandate.html> [<https://perma.cc/2CYP-6XHN>].

B. Procedural Similarities Between the Mechanism and the RSCSL

Early release was first provided for in Article 23 of the Statute of the SCSL, using language identical to that of the Mechanism.¹⁸¹ Both Courts rested the power of commutation in the hands of their respective Presidents.¹⁸² Both statutes state that sentences can only be pardoned or commuted if the President so decides.¹⁸³ The RSCSL Statute contains similar language.¹⁸⁴

C. Consideration of Victim Impact as a Statutory Requirement

Though the statutory provisions of the SCSL and the Mechanism are similar, the RSCSL's procedural structure for early release is substantially more robust than that of the Mechanism—particularly concerning victim impact.¹⁸⁵ Article 24 of the RSCSL's Statute mirrors the language of articles in its predecessors' statutes; however, its rules expand the standard upon which the President must base his or her decisions on early release applications.¹⁸⁶ Rule 124, which is still in force, states that:

There shall only be pardon, commutation of sentence or early release if the President of the Residual Special Court . . . after considering the position of the Prosecutor, *which shall incorporate the interests of Prosecution witnesses and victims*, as well as the convicted person individually or through counsel, so decides on the basis of the interests of justice and the general principles of law.¹⁸⁷

The RSCSL is the first (and only) of the five international tribunals discussed in this Note to make consideration of victim impact a statutorily required component of early release proceedings.¹⁸⁸ Expanding upon this requirement, the RSCSL's thirty-four-page Practice Direction on Conditional Early Release details the various ways in which victims and Prosecution witnesses are to be involved in early release proceedings.¹⁸⁹

181. Statute of the Special Court for Sierra Leone [hereinafter SCSL Statute], art. 23; Mechanism Statute, art. 26.

182. SCSL Statute, art. 23; Mechanism Statute, art. 26.

183. SCSL Statute, art. 23; Mechanism Statute, art. 26.

184. RSCSL Statute, art. 24.

185. See RSCSL Practice Direction, *supra* note 171, art. 5(D)(ii)(d)–(e), 5(E)–(F)(iii).

186. Residual Special Court for Sierra Leone Rules of Procedure and Evidence, R. 124.

187. *Id.* (emphasis added).

188. *Id.*

189. Article 5 sections (D)(ii)(d)–(e), (E), (F)(i)–(iv), and (G) provide detailed instructions for the Registrar on collection of information related to witness and victim safety. 6(B) covers the responsibility of the Prosecution to submit a report summarizing that

The Office of the Registrar oversees the administrative functions of the SCSL and plays an integral role in gathering and organizing the information used in early release proceedings.¹⁹⁰ First, the Registrar must inform victims and relevant witnesses of “any impending Conditional Early Release of Convicted Persons.”¹⁹¹ The office is then required to ask states of imprisonment for details on evidence of Convicted Persons’ empathy towards and willingness to make amends with victims, individually and collectively.¹⁹² The Registrar must also work with the Witness and Victims Section to collect information including the “[e]ffects upon the well-being and safety” of victims, witnesses and their families; evidence of threatening behavior against those parties; and, any evidence that the Convicted Person might, upon release, incite former associates to commit acts of violence.¹⁹³ The Registrar must then compile this information and responses to other inquiries into a report that the Prosecutor can then submit for transmission to the President.¹⁹⁴

The President’s decision on an application for early release must be accompanied by a “reasoned opinion” that includes, among other things, an evaluation of “[t]he safety [. . .], views and concerns of victims, witnesses, and their families, if any” as described in the Prosecution’s submission.¹⁹⁵ The last step in the execution of the decision, prior to actually releasing the Convicted Person, is to again notify victims and witnesses of the granted application.¹⁹⁶

D. The Rules in Practice

In September 2016, Allieu Kondewa submitted an application for Determination of Eligibility for Consideration of Conditional Early Release to the RSCSL President.¹⁹⁷ Convicted on four counts of war

information to the President. 8(D)(i)–(iii) specifically lists the safety, views, and concerns of victims, witnesses, and their respective families as factors to be considered by the President during their review of early release applications. 9(A) and 10(F) cover the procedure for notification of witnesses and victims following the conclusion of an early release application review. See RSCSL Practice Direction, *supra* note 171.

190. *The Office of the Registrar*, RESIDUAL SPECIAL CT. FOR SIERRA LEONE, <http://www.rscsl.org/registrar.html> [<https://perma.cc/8LRE-W2MT>]; see RSCSL Practice Direction, *supra* note 171, art. 3(B).

191. RSCSL Practice Direction, *supra* note 171, art. 5(E).

192. *Id.* art. 5(D)(ii)(d)–(e).

193. *Id.* art. 5(F).

194. *Id.* art. 5(G).

195. *Id.* art. 8(D)(i)–(ii).

196. RSCSL Practice Direction, *supra* note 171, art. 9(A); see also Residual Special Court for Sierra Leone Rules of Procedure and Evidence, R. 34 (reinforcing the duty to notify victims and witnesses).

197. Prosecutor v. Kondewa, Case No. RSCSL-04-14-ES, Decision of the President on Application for Conditional Early Release, ¶¶ 1, 3–4 (May 29, 2017) [hereinafter Kondewa Early Release Decision].

crimes, three counts of crimes against humanity, and one count of a serious violation of international humanitarian law, Kondewa was thirteen years into his twenty-year sentence at the time of his application.¹⁹⁸ In February 2017, the Prosecutor filed submissions reflective of the Registrar's Article 5 findings (referring to Article 5 of the RSCSL Practice Direction),¹⁹⁹ which included 5(G)-(E) submissions on the views and concerns of victims, witnesses, and their families.²⁰⁰ In a section of her decision dedicated specifically to the subject, then-President Renate Winter reviewed the submissions.²⁰¹

The primary concern for the eighteen witnesses interviewed by the Prosecution in preparation for their submission was their safety in the event that Kondewa was released.²⁰² Given that he had been a revered leader and war hero prior to his arrest, witnesses feared that former subordinates who remained loyal to him would be eager to follow whatever directions he provided.²⁰³ One witness feared that popularity amongst this group might enable political engagement.²⁰⁴ Others worried about how sincere Kondewa would be in abiding by the conditions of his release.²⁰⁵ Winter asserted that the witnesses' concerns were "legitimate and serious enough to militate against . . . granting" the application and that she would consider them in her final decision.²⁰⁶ She then went on to discuss the efficacy of the Sierra Leone Police's National Witness Protection Programme (the authority responsible for monitoring released Convicted Persons) and reviewed the reports from prison authorities on Kondewa's behavior and disposition while incarcerated.²⁰⁷

In her conclusion, President Winter noted that of all the factors discussed in her decision, the factor that weighed most heavily against granting the application was the security concern of victims and witnesses and a fear that he would use potential popularity to get involved in politics.²⁰⁸ However, the President stated that she did not believe that these concerns rose to an "insurmountable" degree.²⁰⁹

198. At sentencing, Kondewa's sentence was back-dated by the court to the day of his arrest in 2003. *Id.* ¶¶ 1, 3–4; *see also* Prosecutor v. Fofana, Case No. SCSL-04-14-T, Judgment on the Sentencing of Moinina Fofana and Allieu Kondewa, at 34 (Oct. 9, 2007).

199. *See supra* note 189 and accompanying text.

200. Kondewa Early Release Decision, *supra* note 197, ¶¶ 7, 32.

201. *Id.* ¶¶ 32–39.

202. *Id.* ¶ 32.

203. *Id.*

204. *Id.*

205. *Id.* ¶¶ 7, 32.

206. Kondewa Early Release Decision, *supra* note 197, ¶ 38.

207. *Id.* ¶¶ 39, 48.

208. *Id.* ¶ 57.

209. *Id.*

Recalling that many witnesses had stated that they would favor early release if it was accompanied by conditions of strict monitoring of Kondewa and regular victim/witness visitation, and in light of the other information before her, Winter ultimately chose to grant Kondewa's application.²¹⁰ Several conditions reflective of the witnesses' concerns were imposed on his release, including subjecting Kondewa to a further ten months in custody, effectively preventing him from taking place in the upcoming election.²¹¹

That Kondewa was released following this comprehensive application review further strengthens the case against the argument that amplifying the voice of victims would enforce victor's justice. The inclusion is not strictly intended to keep Convicted Persons in prison. It is about ensuring that the person deciding whether to release them must first confront the reality of the effect that the Convicted Person has had on people's lives. Because Judge Winter was made directly aware of this information in the case of Kondewa, she was able to impose conditions that specifically contemplated what victims had conveyed to her.²¹²

Inclusion of victim impact in proceedings at a United Nations judicial body is therefore not unprecedented. The practices of the Residual Special Court for Sierra Leone and its predecessor, the SCSL, exemplify how victims and witnesses integral to the case-building process can also play a constructive role in early release decisions. Rule 124 and the RSCSL's Practice Direction on Conditional Early Release combine to create a comprehensive "early release blueprint" on which implementation of the modifications suggested in Part IV can be based.

CONCLUSION

The creation of the ICTY and ICTR were pioneering acts in a time when the field of international criminal law was just beginning to emerge.²¹³ For the first time in nearly five decades, perpetrators of large-scale war crimes were investigated and indicted for their crimes.²¹⁴ The work that the Mechanism and its predecessors started is important, but it has not finished.

210. *Id.* ¶¶ 58–61.

211. *Id.* ¶¶ 33, 59.

212. See Kondewa Early Release Decision, *supra* note 197, ¶¶ 57–58.

213. See Selma Korjenic, *Despite Its Limits, the ICTY Has Blazed a Trail for Victims' Empowerment*, TRIAL INT'L (Aug. 14, 2017), <https://trialinternational.org/latest-post/despite-its-limits-the-icty-has-blazed-a-trail-for-victims-empowerment> [https://perma.cc/9VK4-U5KA]; *The ICTR in Brief*, *supra* note 22.

214. See Korjenic, *supra* note 213.

There are, presently, numerous ongoing violent conflicts taking place around the world.²¹⁵ Each day, diverse populations of people are subjected to horrific acts of torture and violence.²¹⁶ Since the opening of the ICTY in 1994, a small number of institutions seeking to fight impunity and promote justice for some of these populations have emerged.²¹⁷ The ICTY and the ICTR have served as examples to these institutions.²¹⁸ Current tribunals not only pull legal arguments from their legacies of substantive international criminal and human rights law, but also learn from the “structural legacy” of how an “ad hoc, time-bound international criminal court” should be run.²¹⁹

The Mechanism carries on these legacies each day as it continues to do the work that its predecessors began. However, it has the power to create a legacy of its own. One that is victim-conscious. One that thinks of victim impact not only while building a case, but also while deciding whether to return war criminals to their former communities. Demonstrating the importance of victim impact by considering it in all early release determinations can and should be one of the “many lessons” that future institutions stand to benefit from when looking to the standard set by the Mechanism for guidance.²²⁰

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215. See, e.g., *Ten Conflicts to Worry About in 2020*, THE ARMED CONFLICT LOCATION & EVENT DATA PROJECT (2020), <https://acleddata.com/2020/01/23/ten-conflicts-to-worry-about-in-2020> [https://perma.cc/F2ZL-Q8AQ].

216. See, e.g., *About the ICC*, INT'L CRIM. CT., <https://www.icc-cpi.int/about> [https://perma.cc/B3HC-A3CA]; *About ECCC*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA (2020), <https://www.eccc.gov.kh/en/about-eccc> [https://perma.cc/QN4F-84V4]; *About the STL*, SPECIAL TRIB. FOR LEB. (2020), <https://www.stl-tsl.org/en/about-the-stl> [https://perma.cc/X9JX-E22D].

217. See *About the ICC*, *supra* note 216; *About ECCC*, *supra* note 216; *About the STL*, *supra* note 216.

218. Irene C. Lu, Note, *Curtain Call at Closing: The Multi-dimensional Legacy of the International Criminal Tribunal for Rwanda*, 34 U. PA. J. INT'L L. 859, 864 (2013); *About the ICTY*, INT'L RESIDUAL MECHANISMS FOR CRIM. TRIBS., <https://www.icty.org/en/about> [https://perma.cc/PL95-VTUQ].

219. Lu, *supra* note 218, at 863–64.

220. *Closure of the Tribunal for the former Yugoslavia marks end of important chapter for international justice*, INT'L BAR ASS'N (Dec. 21, 2017), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUId=221e8e59-d682-49b3-bbdb-ca84c569cfb8> [https://perma.cc/CV6X-YGN5].

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