

NOTE

THE DEATH OF PRESUMPTIVE UNCONDITIONAL RELEASE: EVALUATING THE DEVELOPING STANDARDS FOR EARLY RELEASE IN THE INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

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Since the birth of international criminal courts and tribunals, persons convicted of international crimes have long enjoyed a presumption of early release after serving two-thirds of their sentence. This presumption, however, is dying: concerns for post-conflict regional stability and evolving notions of rehabilitation in the international context have refashioned the law of early release, resulting in the development of a stringent framework weighing against release and the imposition of parole-like conditions for released persons.

This Note seeks to track the developing standards for early release in the International Residual Mechanism for Criminal Tribunals. It argues that the tribunal's law of early release has developed in three primary phases: (i) an era of presumptive unconditional release; (ii) a transitory period of limited, calculated reform; and (iii) its present state, a rejection of the two-thirds presumption. This piece is significant because it highlights a development in an area of the law that has remained unchanged for over half a century; further, it evaluates the evolving definition and role of rehabilitation in the international criminal law context.

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INTRODUCTION

Scholars describe early release in the international criminal context as “the rule rather than the exception.”¹ This has held true for decades: international courts, dating back to the Tokyo tribunal, have granted some form of release to the vast majority of convicted persons before the end of their sentences.²

The International Residual Mechanism for Criminal Tribunals (“Mechanism”) was no exception: the tribunal opted for a policy of presumptive unconditional release after the convicted person served two-thirds of his or her sentence.³ This practice, in conformity with the Mechanism’s predecessor court, the International Criminal Tribunal for Yugoslavia, raised concerns within the international justice community: scholars, politicians, and advocates questioned whether this practice properly promoted the maintenance of security and peace in post-conflict regions.⁴

As a response to these growing concerns, international courts have heightened their criteria for early release in recent years. For example, the International Criminal Court, in its first early release decision, denied release to war criminal Thomas Lubanga Dyilo, once in 2015 and again in 2017, finding insufficient evidence of his rehabilitation.⁵ Similarly, the

¹ Barbora Hola, *Early Release of ICTR Convicts: The Practice Beyond the Outrage*, JUSTICEINFO.NET (July 5, 2019), <https://www.justiceinfo.net/en/tribunals/ictr/41861-early-release-of-ictr-convicts-the-practice-beyond-the-outrage.html> [<https://perma.cc/TCS3-T5QT>].

² *Id.*

³ Jonathan H. Choi, *Early Release in International Criminal Law*, 123 YALE L.J. 1784, 1788 (2014); see Appendix A.

⁴ Hola, *supra* note 1; see *infra* subpart II.B.

⁵ Wairagala Wakabi, *Judges Again Decline to Reduce Lubanga's ICC Sentence*, INT'L JUST. MONITOR (Nov. 20, 2017), <https://www.ijmonitor.org/2017/11/judges-again-decline-to-reduce-lubangas-icc-sentence/> [<https://perma.cc/TR35-UTYQ>].

Residual Special Court for Sierra Leone, which had granted early release in the past, imposed conditions of release on its former prisoners.⁶ In response to criticism of its own practices, the Mechanism has begun to follow suit, particularly through its new leadership.⁷

Part I of this Note will briefly provide an overview of the sources of law for early release in the Mechanism. Part II of this Note will contend that there have been three primary phases in the development of the early release framework in the Mechanism. The first phase covers the oft-criticized era of unconditional early release, spanning from the Mechanism's first early release decision in 2012 to approximately June 2018. Phase two covers a transitional period between June 2018 and January 2019, when President Meron made changes to the early release framework in response to concerns and recommendations by the UN Security Council. Phase three, spanning from January 2019 to present, tracks the current state of the law, formed by President Agius's desire to look critically at rehabilitation in the context of international crimes and engage non-party stakeholders in his early release determinations.

This Note highlights the developing standard of an important area of international criminal law in a major international criminal tribunal; early release frameworks have ultimately helped shape the definition of rehabilitation in the international context, providing answers to persistent questions regarding the role of remorse and reintegration of prisoners convicted of humanity's most serious crimes.

I

THE LEGAL FRAMEWORK

The President of the Mechanism may grant early release pursuant to Article 26 of the Statute of the International Residual Mechanism for Criminal Tribunals ("Statute"). The article reads:

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

⁶ RESIDUAL SPECIAL CT. FOR SIERRA LEONE, PRACTICE DIRECTION ON THE CONDITIONAL EARLY RELEASE OF PERSONS CONVICTED BY THE SPECIAL COURT FOR SIERRA LEONE 9 (2013).

⁷ See *infra* Part II.

basis of the interests of justice and the general principles of law.⁸

Per the text, the President has wide discretion to implement his or her own framework for early release, contingent only on conformity to vague principles of “interests of justice” and “general principles of law.”⁹ While early release is not explicitly mentioned in the Statute, the Rules of Procedure and Evidence of the Mechanism (“Rules”) and the “longstanding practice of the ICTY, ICTR, and the Mechanism” grant the President power to fill this gap.¹⁰ Rule 149 permits the State that holds the prisoner (“holding State”) to notify the Mechanism when the prisoner is eligible for early release under its domestic law.¹¹ Rule 150 gives the President, “in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism,” or two other Judges where there are no Mechanism Judges in the Chamber, power to determine a convicted person’s eligibility for early release upon notification from the holding State or direct petition from the prisoner.¹² Rule 151 of the Rules then provides a general framework for the President’s determination:

In determining whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account, *inter alia*, (i) the gravity of the crime or crimes for which the prisoner was convicted, (ii) the treatment of similarly-situated prisoners, (iii) the prisoner’s demonstration of rehabilitation, as well as (iv) any substantial cooperation of the prisoner with the Prosecutor.¹³

The President must therefore consider, at a minimum, each of the four criteria when he or she makes an early release determination.

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”) outlines the Mechanism’s procedures for early release. Under paragraph 3 of the previ-

⁸ S.C. Res. 1966, Art. 26 (Dec. 22, 2010).

⁹ *Id.*; see also Choi, *supra* note 3, at 1794 (arguing that the text of the statute “is intentionally vague”).

¹⁰ Prosecutor v. Galic, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galic, ¶ 13 (Int’l Residual Mechanism for Crim. Trib. Mar. p 21, 2021).

¹¹ U.N. Int’l Residual Mechanism for Crim. Tribs., Rules of Procedure and Evidence, r. 149, U.N. Doc. MICT/1/Rev.7 (Dec. 4, 2020) [hereinafter “RULES”].

¹² *Id.* at r. 150.

¹³ *Id.* at r. 151 (numerals added).

ous Practice Direction, the Mechanism reaches out to the holding State to determine the prisoner's eligibility for early release under its domestic law in response to a prisoner's direct petition;¹⁴ under paragraphs 9 and 10, the Registry of the Mechanism then takes action to inform the prisoner of their eligibility and collect necessary information to enable the President to make his or her determination.¹⁵ The most recent Practice Direction, revised on May 15, 2020, expands the scope of information that the Registry collects for this purpose. While the previous Practice Direction directed the registry to (a) notify the prisoner of his or her eligibility, (b) request reports regarding the prisoner's mental health, behavior, and conditions of imprisonment, (c) request information regarding cooperation with the Prosecution, and vaguely (d) "any other information that the President considers relevant,"¹⁶ the new Direction explicitly authorizes the President to obtain in addition to those materials: "any remarks of the convicted person regarding the crimes for which he or she was convicted and the victims of these crimes," "[a]ny medical reports on the physical condition of the convicted person, including whether the convicted person is capable of serving his or her sentence in the enforcement State," and "[i]nformation on where the convicted person intends to live if released early."¹⁷ The convicted person can review these materials and submit a response to the President, who then submits these materials to the other Judges for the consultation process.¹⁸ The new Practice Direction further makes explicit that the President can grant release "subject to conditions."¹⁹ If the holding State disagrees with the early release decision or cannot enforce it due to constraints under its domestic law, the President can send the prisoner to another State to carry out the remainder of their term under paragraph 23.²⁰ These recent changes to the Practice Direction evidence

¹⁴ U.N Int'l Residual Mechanism for Crim. Tribs., 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, at ¶¶ 3, 5, MICT/3/Rev.2 (Feb. 20, 2019).

¹⁵ *Id.* ¶¶ 9–10.

¹⁶ U.N. Int'l Residual Mechanism for Crim. Tribs., Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, 4, MICT/3/Rev.3 (May 15, 2020) [hereinafter "PRACTICE DIRECTION"].

¹⁷ *Id.* ¶ 10.

¹⁸ *Id.* ¶¶ 13, 17.

¹⁹ *Id.* ¶ 20.

²⁰ *Id.* ¶ 23.

the evolving nature of the law in the Mechanism and provide a precursor to this analysis.

II

THE THREE PHASES OF EARLY RELEASE

A. Phase 1: Presumptive Unconditional Release

1. *Precedent for Unconditional Release*

The nascent framework for early release in the Mechanism emerged in substantial part from the decisions of its predecessor tribunals, the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for Yugoslavia (“ICTY”). The Mechanism, ICTY, and ICTR share an almost identical legal framework for early release: the Statute and Rules of the Mechanism echoed the language of the respective Rules and Statutes of the other tribunals.²¹ Despite sharing this language, however, the ICTY and ICTR diverged in their applications of the law: the ICTY, in their determination of the “treatment of similarly-situated prisoners” factor of Rule 151,²² deemed convicted persons eligible for early release after serving two-thirds of their sentence, while the ICTR considered release for prisoners after serving three-fourths of their sentence.²³ The ICTR’s more stringent approach derived from the “perceived greater severity of crimes before the ICTR,” notably genocide convictions.²⁴

The ICTY’s framework developed into a regime of unconditional “presumptive” release for prisoners who reached the two-thirds mark of their prison term: it denied release to only one person who served past this threshold.²⁵ None of the other three factors, namely the severity of crimes, demonstration of reform, nor cooperation with Prosecution, were dispositive in the President’s decision-making process.²⁶ The balance always found (i) the gravity of crimes to be a negative factor, given the nature of the crimes before the tribunal; (ii) the level of cooperation with the Prosecutor to always be positive or neutral, as finding an applicant’s decision to remain silent to be negative would implicate their rights against self-incrimination; and (iii) the demonstration of rehabilitation to be positive, neutral, or

²¹ Choi, *supra* note 3, at 1792.

²² RULES, *supra* note 11, at r. 151.

²³ Choi, *supra* note 3, at 1792–93.

²⁴ *Id.* at 1793.

²⁵ *Id.* at 1796.

²⁶ *Id.* at 1795–96.

negative, but never a bar to release.²⁷ Even where the President found high gravity of crimes, neutral cooperation with the Prosecution, and “little to no evidence of actual rehabilitation,” the President still granted release, citing the applicant’s eligibility under the two-thirds threshold.²⁸

Barbora Hola et al.’s study on the role of remorse in the tribunal sheds light on the severity of the strength of the presumption, particularly in the context of rehabilitation:

In 36% of all the early released individuals, the ICTY President does not in any way assess the convict’s attitude toward the crimes. . . . Of the 34 cases of early release in which a prisoner’s reflection on the past is discussed, only 10 prisoners (19% of the total number of early released) fit the ideal type. They appear to have acknowledged personal responsibility and expressed remorse for the crimes they committed. Others denied, only partially accepted responsibility and/or showed remorse on a general level.²⁹

Ultimately, precedent by the time the Security Council formed the Mechanism in 2010 favored unconditional presumptive release after a convicted person had served two-thirds of their sentence, irrespective to a large extent of rehabilitation, gravity of crimes, and cooperation with the Prosecution.

2. Adoption by the Mechanism

Theodor Meron, serving as President of the Mechanism, decided the tribunal’s first early release case, *Prosecutor v. Paul Bisengimana*, in 2012.³⁰ Having served as President of the ICTY from 2003 to 2004, President Meron previously granted early release to several ICTY-convicted persons under the presumptive release framework.³¹ President Meron used the

²⁷ *Id.*

²⁸ *Id.* at 1797.

²⁹ Barbora Hola, J. van Wijk, Francesca Costantini & Armi Korhonen, *Does Remorse Count? ICTY Convicts’ Reflections on Their Crimes in Early Release Decisions*, 28 INT’L CRIM. JUST. REV. 349, 365 (2018).

³⁰ *Prosecutor v. 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, ¶ 35 (Int’l Residual Mechanism for Crim. Trib. Dec. 11, 2012) [hereinafter “Bisengimana Decision”]; see Appendix A.

³¹ *E.g.* *Prosecutor v. Blaškic*, Case No. IT-95-14-A, Order of the President on the Application for Early Release of Tihomir Blaškic (Int’l Crim. Trib. for the Former Yugoslavia July 29, 2004); *Prosecutor v. Furundžija*, Case No. IT-95-17/1, Order of the President on the Application for the Early Release of Anto Furundžija (Int’l Crim. Trib. for the Former Yugoslavia July 29, 2004); *Prosecutor v. Mucic*, Case No. IT-96-21-A, Order of the President in Response to Zdravko Mucic’s Request for Early Release (Int’l Crim. Trib. for the Former Yugoslavia July 9, 2003); Prose-

Bisengimana decision to establish a similar early release regime in Mechanism.

After laying out the applicable law, President Meron considered the four factors mandated by Rule 151: “(i) the gravity of the crime or crimes for which the prisoner was convicted, (ii) the treatment of similarly situated prisoners, (iii) the prisoner’s demonstration of rehabilitation, and (iv) any substantial cooperation of the prisoner with the Prosecution.”³²

First, he found *Bisengimana*’s crime of “aiding and abetting the murder and extermination of more than a thousand Tutsi civilians,” aggravated by his role as a public official, as one of “high gravity,” weighing against his release.³³ Next, he considered *Bisengimana*’s eligibility for release under the “treatment of similarly-situated persons” prong, where he considered whether to adopt the two-thirds threshold of the ICTY or the three-fourths threshold of the ICTR.³⁴ President Meron, citing in part the principle of *lex mitior*, which demands “retroactive applicability of a more lenient criminal law to crimes committed and sentences imposed before the law’s enactment,” adopted the two-thirds threshold from the ICTY.³⁵ After, in determining *Bisengimana*’s “demonstration of rehabilitation,” President Meron considered the applicant’s behavior in prison through a letter from a prison director, his connections with family members, and his desire to open a business upon release.³⁶ President Meron ultimately found these considerations to weigh in favor of release.³⁷ President Meron gave positive weight to *Bisengimana*’s cooperation with the Prosecution, citing his guilty plea.³⁸ Finally, President Meron used his authority under the Practice Direction to “consider ‘any other [relevant] information’” to give weight to *Bisengimana*’s health and age.³⁹

Ultimately, President Meron granted *Bisengimana*’s release, using a framework almost identical to that of the ICTY. President Meron’s subsequent decisions mirrored his *Bisengimana* analysis, and the results seemed to produce the same result: unconditional release. Between 2012 and early

cutur v. Damir Došen, Case No. IT-95-8-S, Order of the President on the Early Release of Damir Došen (Int’l Crim. Trib for the Former Yugoslavia Feb. 28, 2003).

³² *Bisengimana* Decision, *supra* note 30, ¶ 10 (numerals added).

³³ *Id.* ¶¶ 13–14.

³⁴ *Id.* ¶¶ 15–22.

³⁵ *Id.* ¶ 20.

³⁶ *Id.* ¶¶ 23–27.

³⁷ *Id.*

³⁸ *Id.* ¶¶ 28–31.

³⁹ *Id.* ¶¶ 32–33.

2018, President Meron granted release in all but one case where the applicant served two-thirds of his or her sentence.⁴⁰

B. Phase 2: New Constraints

1. Security Council Concerns

On June 6, 2018, during the Security Council's semi-annual debate on the Mechanism, Member States raised concerns regarding its practice of unconditional presumptive early release at the two-thirds threshold: representatives from Peru, France, Kuwait, the Netherlands, Equatorial Guinea, the Plurinational State of Bolivia, Ethiopia, and Rwanda urged the President to reassess his framework and consider the implementation of conditions on release to help promote careful resettlement of former prisoners, particularly in light of the impending early release decisions regarding genocide-convicts Dominique Ntawukulilyayo, and Hassan Ngeze, and Aloys Simba.⁴¹ Notably, Mrs. Valentine Rugwabiza, Rwanda's Permanent Representative to the United Nations, called on President Meron to increase transparency and consistency in his decision-making process, give further weight to the gravity of crimes, and consider adopting best practices from the Special Court for Sierra Leone.⁴² These practices included (i) proving that the eligible prisoner contributed to healing and peace in the nation in some capacity through public, affirmative words or acts of support to victims and others, (ii) providing "stringent requirements for supervision, restitution to victims, renunciation of ideologies contrary to peace and reconciliation, and proposed areas of resettlement," and (iii) considering views and involvement of victims, witness, governments of the applicant's home state, and the receiving state during the decision-making process.⁴³ The Security Council adopted Resolution 2422 on June 27, 2018, reiterating this feedback.⁴⁴

⁴⁰ See Appendix A.

⁴¹ U.N. SCOR, 73d Sess., 8278th mtg. at 6, 9, 11–12, 14–15, 24–25, U.N. Doc. S/PV.8278 (June 6, 2018); see *Hola*, *supra* note 1.

⁴² *Id.* at 24–25.

⁴³ *Id.*

⁴⁴ S.C. Res. 2422, ¶ 10 (June 27, 2018) (noting "the views and concerns expressed by some Member States during the Security Council debate on 6 June 2018 about the current approach of the Mechanism to early release of persons convicted by the ICTR" and encouraging the Mechanism "to consider an appropriate solution, including by considering putting in place conditions on early release in appropriate cases").

2. President Meron's Response

President Meron promptly responded to this international criticism in his subsequent decisions. On January 7, 2019, he imposed the first conditions of early release on a person convicted by the ICTR in the case of *Prosecutor v. Aloys Simba*.⁴⁵ Less than two weeks later, in an effort to homogenize the branches of the Mechanism, President Meron granted early release with conditions to an ICTY-convicted person, Valentin Coric.⁴⁶ Both decisions included almost identical conditions of release: prohibition of contact with witnesses and victims and interference with the proceedings of the Mechanism, limitations on civil and political involvement, restrictions on discussing the case and related matters with the media and public, compliance with laws of the state, and prohibition of owning and using firearms or other weapons.⁴⁷ President Meron required the receiving States to agree to comply with these terms; and violations resulted in the revocation of release.⁴⁸ In both of these cases, President Meron found, at a minimum, that the views of the other judge(s), the treatment of similarly situated persons, and the demonstration of rehabilitation weighed in favor of the applicants' release despite the high gravity of their crimes.⁴⁹ While this balance of factors resulted in unconditional release in the past,⁵⁰ President Meron instead granted release with conditions, signaling his willingness to comply with the Security Council's recommendations.⁵¹

In line with this new heightened scrutiny post-Resolution, President Meron denied release in his only other case where the applicant met the two-thirds eligibility threshold, *Prosecutor v. Radivoje Miletic*.⁵² Despite recognizing Miletic's demonstration

⁴⁵ *Prosecutor v. Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, ¶¶ 78–85 (Int'l Residual Mechanism for Crim. Trib. Jan. 7, 2019) [hereinafter "Simba Decision"].

⁴⁶ *Prosecutor v. Coric*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Coric and Related Motions, ¶ 74–79 (Int'l Residual Mechanism for Crim. Trib. Jan. 16, 2019) [hereinafter "Coric Decision"].

⁴⁷ See Simba Decision, *supra* note 45, Annex A (listing terms of release); see also Coric Decision, *supra* note 46, ¶¶ 78–79.

⁴⁸ See Simba Decision, *supra* note 45, Annex A; see also Coric Decision, *supra* note 46, ¶ 79.

⁴⁹ Simba Decision, *supra* note 45, ¶¶ 34, 40, 45, 81; Coric Decision, *supra* note 46, ¶¶ 42, 47, 52, 60, 66.

⁵⁰ See Appendix A.

⁵¹ See Simba Decision, *supra* note 45, ¶¶ 78–85; Coric Decision, *supra* note 46, ¶¶ 74–79.

⁵² See Appendix A.

of rehabilitation and completion of two-thirds of his sentence, President Meron refused to grant his release, reasoning that “the very high gravity of his crimes and the strong objections of the remaining Judges of the sentencing Chamber who are Judges of the Mechanism . . . militate against granting early release.”⁵³ He notably cited the opinion of Judge Carmel Agius, future president of the Mechanism, noting:

Indeed, according to Judge Agius, the recognition of the gravity of the crimes by Miletic, as expressed through his Counsel, is wholly insufficient to demonstrate rehabilitation, particularly when viewed in the context of Miletic’s “cold, challenging and uncompromising stance” taken throughout the trial proceedings [Judge Agius] “does not agree that Miletic is equal to those who were correctly granted early release in the past” [and believes that] “[r]eleasing him at this stage is showing complete disregard to the ongoing process of reconciliation and insensitivity to the pain of the victims of the Srebrenica 1995 events and genocide.”⁵⁴

While precedent established that past presidents could overrule contrary opinions during the consultation process⁵⁵ and President Meron explicitly expressed his disagreement with Judge Agius’s opinion,⁵⁶ he still denied Miletic’s release.⁵⁷ Again, this balance of factors (high gravity of crimes, positive demonstration of rehabilitation, positive treatment of similarly situated persons, neutral cooperation with the Prosecution, and opposing views during consultation),⁵⁸ once adequate to grant release, failed to secure it for Miletic,⁵⁹ further demonstrating President Meron’s willingness to respond to the criticisms of the Security Council’s Member States, particularly Rwanda’s suggestion that the President had failed to give due weight to the severity of the Applicant’s crimes.

President Meron further complied with the Resolution by expanding the scope of his decision-making process. While his previous decisions systematically considered (i) the applicable

⁵³ Prosecutor v. Miletic, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletic, ¶ 45 (Int’l Residual Mechanism for Crim. Trib. Oct. 23, 2018) [hereinafter “Miletic Decision”].

⁵⁴ *Id.* ¶¶ 41–42.

⁵⁵ *Id.* ¶ 44; *see also* Choi, *supra* note 3, at 1795 (explaining that the ultimate decision lies with the President, even in the *Plavšić* case, where the other judges opposed release).

⁵⁶ Miletic Decision, *supra* note 54, ¶¶ 36, 43 (weighing demonstration of rehabilitation in Miletic’s favor).

⁵⁷ *Id.* ¶ 47.

⁵⁸ *Id.* ¶¶ 27, 36, 40, 43.

⁵⁹ *Id.* ¶ 45.

law, (ii) the applicant's eligibility for release under the holding State's law, (iii) the treatment of similarly situated persons, (iv) the applicant's demonstration of rehabilitation, (v) the applicant's substantial cooperation with prosecution, and, in some cases, (vi) humanitarian concerns and (vii) other exceptional circumstances.⁶⁰ President Meron's subsequent decisions more frequently included factors such as the location where the applicant intended to relocate,⁶¹ how the applicant intended to reintegrate into society,⁶² proof that the applicant's family indicated willingness to accept the applicant,⁶³ submissions from the applicant's State,⁶⁴ the applicant's willingness to comply with conditions upon release,⁶⁵ and even justifications for controversial statements the applicant made indicating a lack of rehabilitation.⁶⁶ Many of these additional factors responded in some degree to the concerns of the Security Council Member States, notably President Meron's failure to consider views of the State's government, considerations for peaceful resettlement, and more sincere demonstrations of rehabilitation.⁶⁷

3. *President Meron Draws the Line*

Despite President Meron's increased scrutiny in his post-Resolution decisions, he did not fully adopt the recommendations of the Member States. First, while President Meron fur-

⁶⁰ See, e.g., Prosecutor v. 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 (Int'l Residual Mechanism for Crim. Trib. Apr. 24, 2018) (including sections on applicable law, treatment of similarly situated persons, the applicant's demonstration of rehabilitation, the applicant's substantial cooperation with prosecution, and humanitarian concerns); Prosecutor v. Jelisić, Case No. MICT-14-63-ES, Public Redacted Version of the 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić (Int'l Residual Mechanism for Crim. Trib. Aug. 11, 2017) (including sections on applicable law, the applicant's eligibility for release under Italian law, treatment of similarly situated persons, the applicant's demonstration of rehabilitation, and the applicant's substantial cooperation with prosecution).

⁶¹ Simba Decision, *supra* note 45, ¶¶ 75–76; Coric Decision, *supra* note 46, ¶¶ 67–68.

⁶² Simba Decision, *supra* note 45, ¶¶ 75–77; Coric Decision, *supra* note 46, ¶¶ 67–72.

⁶³ Simba Decision, *supra* note 45, ¶¶ 75–77.

⁶⁴ *Id.* ¶¶ 66–74.

⁶⁵ *Id.* ¶ 78.

⁶⁶ Coric Decision, *supra* note 46, ¶ 64–66.

⁶⁷ See *supra* section II.B.1.

ther scrutinized applicants' previous statements,⁶⁸ he did not go so far as to require "restitution to victims, renunciation of ideologies contrary to peace and reconciliation" and other words or actions that promote reconciliation.⁶⁹ Even where he requested Valentin Coric to provide an explanation for his statements that "he is a victim of a fraudulent trial before the ICTY" and that "[t]he Prosecution used dirty methods"⁷⁰ to fully evaluate the degree of his rehabilitation, President Meron accepted Coric's expression of regret in response to the questioning and still found the factor of rehabilitation to weigh in favor of his release.⁷¹ Even further, in the case of *Simba*, President Meron stated:

Although Simba does not accept responsibility for his crimes, I note that while there is limited case law of the ICTY which provides for remorse as a primary requirement for commutation of sentence specifically, remorse is not generally considered as such. It is mainly considered as just one of a number of factors that may be taken into account.⁷²

President Meron remained far from adopting words of peace and restitution as a requirement for release, allowing an applicant to maintain their innocence throughout their post-conviction proceedings and beyond.

Contrary to Member States' requests,⁷³ President Meron limited the involvement of victims in the decision-making framework and only narrowly accepted input from States. While he requested input from Rwanda regarding its views on Simba's release under his authority pursuant to paragraph 4(d) of the Practice Direction,⁷⁴ President Meron found

⁶⁸ See *Simba Decision*, *supra* note 45, ¶¶ 43–44; see also, *Coric Decision*, *supra* note 46, ¶¶ 61–66 (considering applicant's previous statements and sentiments regarding the proceedings).

⁶⁹ See U.N. SCOR, *supra* note 41, at 24.

⁷⁰ *Coric Decision*, *supra* note 46, ¶ 61 ("[T]he Prosecution used dirty methods and did not stop at striking bargains in order to engage as its collaborators in The Hague proceedings certain lawyers, certain suspicious security service operatives and certain state politicians of the highest rank. These dishonourable individuals, usually from the Croatian people, sold themselves by their false testimony, secret cooperation with the Prosecution and by offering selected war-time documents and forgeries. In this way, the Prosecution consciously amnestied numerous war criminals while being perfectly aware that some of them have committed war crimes, and by covering up criminal activity, they protected criminals and before this Court and other courts in Bosnia and Herzegovina, they shifted blame onto innocent people." (alteration in original)).

⁷¹ *Id.* ¶ 66.

⁷² *Simba Decision*, *supra* note 45, ¶ 44 (footnote omitted).

⁷³ See *supra* section II.B.1.

⁷⁴ *Simba Decision*, *supra* note 45, ¶ 66.

Rwanda's submission to be a "neutral factor"⁷⁵ in his decision. Despite narrowly considering expert and victims statements attached to Rwanda's submission,⁷⁶ he denied Rwanda's request to hold a hearing on victim and witness submissions, indicating that he had already considered such input when evaluating the gravity of Simba's crimes.⁷⁷

Additionally, in the *Coric* decision, President Meron explained that his discretion under paragraph 4(d) of the Practice Direction "does not provide a sufficiently compelling reason to allow victims to make submissions on issues related to the Application, or to compel [him] to consider them in [his] judicial determination thereof," citing similar precedent from the ICTY and ICTR.⁷⁸ President Meron further denied submissions by Rwanda in response to his 23 October Interim Order requesting Simba's consent to abide by conditions of his release, stating that neither the President's "broad discretion to consider information he deems relevant pursuant to the Practice Direction" nor his decision to seek Rwanda's input gives the State standing to submit on "broader issues related to the Application," and no compelling circumstances existed to give them this standing otherwise.⁷⁹ He recalled this same authority to ultimately deny submissions from "victim witnesses," academics, and non-party States.⁸⁰

President Meron further drew the line on the extent of the Prosecution's involvement. Where the Prosecution made submissions arguing against the applicant's early release, President Meron struck the submissions, noting that the role of the Prosecutor in early release proceedings is to provide consultation in respect to the applicant's substantial cooperation during the case pursuant to Rule 151 and paragraph 4(c) of the Practice Direction; absent compelling circumstances, "the Prosecution has no standing to make submissions on sentence enforcement matters under the Statute and the Rules."⁸¹ Ultimately, President Meron amended his approach to his early release decisions in response to the Security Council, but only to this certain extent; he proved unwilling to invite non-party submissions to a large degree.

⁷⁵ *Id.* ¶ 74.

⁷⁶ *Id.* ¶ 70.

⁷⁷ *Id.* ¶ 73.

⁷⁸ *Coric* Decision, *supra* note 46, ¶ 23.

⁷⁹ *Simba* Decision, *supra* note 45, ¶ 21.

⁸⁰ *Id.* ¶¶ 68 n.107, 72.

⁸¹ *Simba* Decision, *supra* note 45, ¶¶ 19–22; *Coric* Decision, *supra* note 46, ¶¶ 10–17.

C. Phase 3: The Death of Presumptive Unconditional Release

1. Enter President Carmel Agius

The United Nations Secretary-General appointed Judge Carmel Agius as President of the Mechanism effective January 19, 2019. Prior to his term, then-Judge Agius's vocal disagreements with President Meron's early release framework and decisions⁸² signaled to the international community a desire to make the regime more stringent. His appointment carried much change: to date, he has not granted early release to any applicant, notably those applicants in the *Bralo* and *Brdanin* cases where the applicants served two-thirds of their sentences.⁸³ The largest changes to the early release framework are most evident in President Agius's approach to (i) weighing factors in the demonstration of rehabilitation; (ii) accepting submissions from witnesses, victims, relevant States, and the Prosecution; and (iii) using his discretion under Rule 151 to conform the framework to more closely resemble the best practices mentioned by the Security Council Member States.

2. A New Rehabilitation Framework

In the *Bralo* decision, President Agius, in the interest of transparency, first provided an overview of the principles that would "guide [his] reasoning" in determining an applicant's demonstration of rehabilitation, noting that there is no settled framework for "the concept of rehabilitation in the context of genocide, crimes against humanity, or war crimes" and the recent framework, prior to President Meron's recent adjustments, focused mostly on behavior in detention.⁸⁴ He noted some indicators he would use, including some that the previous President used in the past and others he found to be relevant; the non-exhaustive list included: accountability for crimes, "willingness to engage in critical reflection" of the crimes, genuine demonstrations of remorse, actions to promote peace and receive pardon, positive interactions with persons of

⁸² See, e.g., Coric Decision, *supra* note 46, ¶¶ 24–27, 61–63 (disagreeing over the propriety of granting the Submission on Non-Party Letters and Coric's demonstration of rehabilitation); see also Miletic Decision, *supra* note 54, ¶¶ 41–44 (disagreeing over Miletic's demonstration of rehabilitation).

⁸³ See Appendix A.

⁸⁴ Prosecutor v. Bralo, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, ¶¶ 37–38 (Int'l Residual Mechanism for Crim. Trib. Dec. 31, 2019) [hereinafter "Bralo Decision"].

other nationalities, involvement in rehabilitative prison programs, mental health considerations, and positive prospects for reintegration.⁸⁵

President Agius introduced various factors into his rehabilitation analysis, particularly in his consideration of the applicant's successful reintegration into society. Unlike President Meron's decision in the *Simba* case,⁸⁶ President Agius strongly considered remorse as a factor in Bralo and Brdanin's demonstrations of rehabilitation, noting in the *Bralo* case:

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.⁸⁷

Further, in the *Brdanin* case, President Agius notes: “[a] holistic consideration of the material before me reveals that Brdanin continues to this day to deflect responsibility onto others, and that any signs of critical reflection and expressions of remorse cannot be credited as sincere.”⁸⁸ Considering statements made during his proceedings and proceedings of others, statements made to detention and health personnel and, in a novel manner, his statements made to the media, President Agius commented extensively on Brdanin's inability to accept responsibility and his lack of reflection as evidence he failed to demonstrate rehabilitation.⁸⁹ He took the time to highlight and consider that the psychologists did not have access to his previous statements when they evaluated his risk of re-offending, a demonstration of the particular attention President Agius provided for in his framework.⁹⁰ Again, in a novel manner, he considered Brdanin's ability to live with members of other nationalities in the context of his propensity for reintegration, finding that neither his time and cooperation in a multi-ethnic prison nor his relationships with others of different nationalities constitute enough evidence to weigh this factor in

⁸⁵ *Id.* ¶¶ 39–40, 49.

⁸⁶ *See supra* section II.B.3.

⁸⁷ Bralo Decision, *supra* note 84, ¶ 63.

⁸⁸ Prosecutor v. Brdanin, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brdanin for Early Release, ¶ 54 (Int'l Residual Mechanism for Crim. Tribs. Feb. 28, 2020) [hereinafter “Brdanin Decision”].

⁸⁹ *Id.* ¶¶ 54–64.

⁹⁰ *Id.* ¶ 72.

Brdanin's favor.⁹¹ Ultimately, President Agius's in-depth consideration of these factors under his framework caused him to find insufficient demonstrations of rehabilitation in both cases, signaling a heightened standard.⁹²

3. *Invitation for Submissions*

President Agius's willingness and desire to accept non-party submissions demonstrate a further departure from his predecessor's application of the law. In his recent decisions, he amended the application of the law to receive input from the Prosecutor, State authorities, victims, witnesses, and the Mechanism's Witness Support and Protection Unit ("WISP").

In the *Bralo* decision, President Agius responded directly to President Meron's previous assertion that the "established jurisprudence of the Mechanism" (and "longstanding practice of the ICTY") disallows submissions from the Prosecutor: according to his predecessor, the Prosecution has no standing to make submissions on "sentence enforcement matters" in the context of early release pursuant to Rule 151 and the Mechanism Statute.⁹³ President Agius rejected the argument on two grounds: (i) while the Rules and Statute are "silent" on the issue, they do not disallow the President from obtaining relevant information, and the Practice Direction addresses and permits the invitation of third-party submissions, allowing the President to seek relevant information and give it due regard in her decision;⁹⁴ (ii) Rule 151 and Article 26 of the Statute grant the President discretion "in the interests of justice" to obtain all relevant information: because the Prosecution is intimately familiar with case, its submissions may assist with determining rehabilitation, severity of offenses, and "particularly vulnerable witnesses" upon release, and the Prosecution often "represent[s] the views of the victims," which should be considered where crimes are grave.⁹⁵ Additionally, he gave mention to the argument made by the Prosecution 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."⁹⁶ Thereby, Pres-

91 *Id.* ¶¶ 75–77.

92 *See id.* ¶¶ 79–81; *Bralo* Decision, *supra* note 84, ¶¶ 62–64.

93 *Bralo* Decision, *supra* note 84, ¶ 66.

94 *Id.* ¶ 67.

95 *Id.* ¶ 68.

96 *Id.* ¶ 65.

ident Agius transformed the law to allow such submissions “on a case-by-case basis . . . mindful of the rights of the convicted person,” seeming to respond directly again to the concerns of the Security Council regarding best practices.⁹⁷

Using his discretionary powers under 4(d) of the Practice Direction, President Agius further expanded the early release framework to request and take into consideration (where received) submissions by State authorities, victims and victim associations, and WISP.⁹⁸ In the *Brdanin* decision, President Agius requested and considered the views of Bosnia and Herzegovina, as well as those of the mayor of Banja Luka, where Brdanin intended to relocate.⁹⁹ The WISP provided information on victim and insider witnesses, indicating which are “vulnerable” or may potentially “experience a heightened perception of risk” upon Brdanin’s release.¹⁰⁰ In the *Bralo* decision, President Agius considered victims’ request to be informed of Bralo’s release as relevant to his decision for release.¹⁰¹ Ultimately, these assessments further informed President Agius’s determination of the applicant’s propensity for successful and peaceful reintegration.

President Agius, through the development of his rehabilitation framework and invitation of party submissions, used his statutory powers to create a more robust and transparent early release framework in the Mechanism.

CONCLUSIONS AND CONSIDERATIONS

The law of early release has significantly developed since the Mechanism’s first decision in 2012. In its first phase, spanning from 2012 to early 2018, the Mechanism, under President Meron, seemed to adopt a policy of presumptive release: after serving two-thirds of their sentences, prisoners received a grant of early release absent exceptional circumstances. Security Council Member States aired their frustration with the Mechanism’s framework, claiming that the President’s process lacked transparency, failed to include important stakeholders, and did not consider important factors to ensure successful reintegration and lasting peace. The Security Council’s resolution triggered change and ushered in the second phase of early release: President Meron did not grant

⁹⁷ *Id.* ¶ 69.

⁹⁸ *Brdanin Decision*, *supra* note 88, ¶ 10.

⁹⁹ *Id.* ¶¶ 86–88.

¹⁰⁰ *Id.* ¶¶ 89–90.

¹⁰¹ *Bralo Decision*, *supra* note 84, ¶ 80.

one unconditional early release application in any case during the remainder of his term.¹⁰² He increased scrutiny on the gravity of crimes and demonstration of rehabilitation, considering novel factors in the mechanism's approach to early release such as relocation prospects and conditions for release. While he ushered in new changes, he did not fully adopt all recommendations: President Meron drew the line at certain requirements for applicants to demonstrate rehabilitation and invitations of input from victims, States, and the Prosecution.

Where President Meron refused to broaden the law, President Agius pushed further. In this third phase, beginning with his appointment in January 2019, President Agius promulgated changes that reflected his desire to conform the practice to the mission of the Mechanism, as established by Chapter VII of the UN Charter, or to promulgate measures for the "maintenance of peace and security."¹⁰³ He thereby undertook in-depth consideration of the demonstration of rehabilitation and allowed for submissions by State actors, witnesses, and victims alike to better assess the applicant's prospects for successful reintegration, while also considering regional stability and victim well-being. Notably, he placed greater emphasis on genuine remorse, creating a moral hurdle for convicted persons in their demonstrations for rehabilitation.

While witnesses and victims have heralded President Agius's changes as a victory for international peace and justice, others have expressed concerns. One defense lawyer, Aleksander Lazarevic, expressed:

I think that the fact that convicts are obliged to admit the commission of crimes as a precondition for their early release is completely unacceptable, particularly if they pleaded not guilty to crimes they were charged with during their trials. In this way they are somehow forced to admit guilt.¹⁰⁴

While it is difficult to imagine a definition of rehabilitation that does not demand some form of accountability or expression of regret,¹⁰⁵ the tribunal will have to take special caution

¹⁰² See Appendix A.

¹⁰³ Bralo Decision, *supra* note 84, ¶ 40.

¹⁰⁴ Emina Dizdarevic, *Hague Court Denies Early Release to 'Unrehabilitated' Convicts*, BALKAN TRANSITIONAL JUST. (Apr. 8, 2020), <https://balkaninsight.com/2020/04/08/hague-court-denies-early-release-to-unrehabilitated-convicts/> [<https://perma.cc/PQ2X-L24K>].

¹⁰⁵ See Cody Corliss, *Truth Commissions and the Limits Of Restorative Justice: Lessons Learned in South Africa's Cradock Four Case*, 21 MICH. ST. INT'L L. REV. 273 (2013) (considering accountability and rehabilitation in the context of restorative justice models).

to balance this desire for remorse with its need to respect the rights of the convicted person as it continues to shape its own definition.

While President Agius has not yet granted release, his desire to promote reconciliation in conflict-torn regions, demonstrated by his development of the law, will likely lead him to impose conditions in line with his predecessor. What these conditions will look like remains an open question. Of course, the Mechanism's move to a parole-like framework raises questions of enforceability: can the Mechanism adequately rely on States, particularly ones that herald former prisoners to be war heroes,¹⁰⁶ to ensure compliance with conditions of release? Can the Mechanism further rely on the participation and cooperation of domestic law enforcement and relevant agencies to monitor these conditions in States where former convicted persons serve in public life?¹⁰⁷ Should the tribunal assess regional stability in its determination of a person's propensity for reentry into society, basing one's prospects for rehabilitation on external, uncontrollable factors? And does depriving a convicted person of freedom as a means to achieve peace honor the dignity of that person? Despite potential risks and difficulties in ensuring enforcement, the Mechanism's decision to impose conditions, at the very least, serves as a symbol of heightened scrutiny to the international community, and its recent developments regarding early release demonstrate the Mechanism's growing commitment to ensuring stability and reconciliation as an Article VII instrument.

¹⁰⁶ See, e.g., Marija Ristic, *How Did War Criminals Become Serbia's Heroes?*, BALKAN TRANSITIONAL JUST. (Oct. 9, 2017), <https://balkaninsight.com/2017/10/09/how-did-war-criminals-become-serbia-s-heroes-10-09-2017/> [<https://perma.cc/CF87-B36X>] (describing the Serbian Defense Minister's praise of convicted war criminals); see also Selma Milovanovic, *Hero's Welcome for Serb Accused of War Crimes*, AL JAZEERA (Nov. 12, 2014), <https://www.aljazeera.com/news/europe/2014/11/hero-welcome-serb-accused-war-crimes-20141112164025222909.html> [<https://perma.cc/DK79-EK4K>] (identifying that over 1,000 supporters greeted a convicted war criminal upon his return to Serbia); Nenad Pejic, *A Land Where War Criminals Are Heroes*, RADIO FREE EUR./RADIO LIBERTY (Oct. 31, 2009), https://www.rferl.org/a/A_Land_Where_War_Criminals_Are_Heroes/1865935.html [<https://perma.cc/3ASJ-MFJE>] (noting that "[a] government plane was waiting to carry the released convict," a convicted war criminal, "from prison to a hero's welcome in Belgrade").

¹⁰⁷ See, e.g., Katarina Subasic, *Former Balkan Leaders Convicted for Crimes Against Humanity Get Welcomed Back to Public Life*, BUS. INSIDER (Feb. 24, 2017), <https://www.businessinsider.com/afp-balkan-war-criminals-welcomed-back-to-public-life-2017-2> [<https://perma.cc/AT96-3RSV>] (noting that "Balkan war criminals are being welcomed back to the limelight, resuming political posts, advising top officials and preaching in church").

APPENDICES

APPENDIX A

Summary of Early Release Decisions from the Mechanism

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-13-48-ES	Brđanin, Radoslav	28 February 2020	Carmel Agius	Denied	High gravity of crimes and failure to demonstrate sufficient rehabilitation despite completion of two-thirds of sentence ¹
MICT-12-15-ES.1	Musema, Alfred	10 January 2020 (declining motion for reconsideration of 7 August 2019 decision); ² 7 August 2019 (decision)	Carmel Agius	Denied	Failure to meet two-thirds admissibility threshold and no “exceptional circumstances” to warrant prior release ³
MICT-13-34-ES	Ntawukulilyayo, Dominique	8 January 2020	Carmel Agius	Denied	Failure to meet two-thirds admissibility threshold and no “exceptional circumstances” to warrant prior release ⁴

¹ Prosecutor v. Radoslav Brđanin, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđjanin for Early Release, ¶ 96 (Int’l Residual Mechanism for Crim. Trib. Feb. 28, 2020).

² Prosecutor v. Alfred Musema, Case No. MICT-12-15-ES.1, Decision on the Request for Reconsideration of the Decision Denying Early Release (Int’l Residual Mechanism for Crim. Trib. Jan. 10, 2020).

³ Prosecutor v. Alfred Musema, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release (Int’l Residual Mechanism for Crim. Trib. Aug. 17, 2019).

⁴ Prosecutor v. Dominique Ntawukulilyayo, Case No. MICT-13-34-ES, Decision on the Application of Dominique Ntawukulilyayo for Early Release (Int’l Residual Mechanism for Crim. Trib. Jan. 8, 2020) (noting two-thirds eligibility on Feb. 17, 2020).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-14-78-ES	Bralo, Miroslav	31 December 2019	Carmel Agius	Denied	Failure to demonstrate rehabilitation, “significantly elevated risk of returning to violent offending,” and no “compelling humanitarian grounds” despite completion of two-thirds of sentence ⁵
MICT-12-18-ES.2/ MICT-12-18-ES.1	Munyakazi, Yussuf	29 November 2019; 22 July 2015 ⁶	Carmel Agius (2019); Theodor Meron (2015)	Denied	Failure to meet two-thirds admissibility threshold and no “exceptional circumstances” to warrant prior release ⁷
MICT-13-46-ES.1	Krstić, Radislav	10 September 2019; 13 December 2016	Carmel Agius; Theodor Meron (2016)	Denied	Failure to meet two-thirds admissibility threshold and no “exceptional circumstances” to warrant prior release ⁸

⁵ Prosecutor v. Miroslav Bralo, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, ¶ 81–82 (Int’l Residual Mechanism for Crim. Trib. Dec. 31, 2019).

⁶ Prosecutor v. Yussuf Munyakazi, Case No. MICT-12-18-ES.1, Public Redacted Version of the 22 July 2015 Decision of the President on the Early Release of Youssouf Munyakazi, (Int’l Residual Mechanism for Crim. Trib. Jul. 22, 2015).

⁷ Prosecutor v. Yussuf Munyakazi, Case No. MICT-12-18-ES.2, Decision on the Application of Yussuf Munyakazi for Early Release (Int’l Residual Mechanism for Crim. Trib. Nov. 29, 2019) (noting two-thirds eligibility on Jan. 5, 2021).

⁸ Prosecutor v. Radislav Krstić, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, ¶ 39 (Int’l Residual Mechanism for Crim. Trib. Sep. 10, 2019) (noting two-thirds eligibility on Mar. 28, 2022).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-14-83-ES	Galić, Stanislav	26 June 2019; 18 January 2017; ⁹ 23 June 2015	Carmel Agius (2019); Theodor Meron (2017 & 2015)	Denied	High gravity of crimes, failure to meet two-thirds admissibility threshold, and no “exceptional circumstances” to warrant prior release; ¹⁰ early release eligible for persons serving life sentences ¹¹
MICT-17-112-ES.4	Čorić, Valentin	16 January 2019	Theodor Meron	Granted (Subject to Conditions)	Completion of two-thirds of sentence and demonstration of “some signs of rehabilitation” despite high gravity of crimes; ¹² conditional on Applicant and receiving State’s willingness to oblige with release orders ¹³

⁹ Prosecutor v. Stanislav Galić, Case No. MICT-14-83-ES, Decision of the President on the Early Release of Stanislav Galić, ¶ 40 (Int’l Residual Mechanism for Crim. Trib. Jan. 18, 2017).

¹⁰ 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, ¶ 51 (Int’l Residual Mechanism for Crim. Trib. Jun. 23, 2015); Prosecutor v. Stanislav Galić, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, ¶ 47 (Int’l Residual Mechanism for Crim. Trib. Jun. 26, 2019) (noting two-thirds eligibility on Dec. 13, 2019).

¹¹ 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, ¶ 36 (Int’l Residual Mechanism for Crim. Trib. Jun. 23, 2015).

¹² 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, ¶ 74 (Int’l Residual Mechanism for Crim. Trib. Jan. 16, 2019).

¹³ *Id.* ¶ 78–79

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-14-62-ES.1	Simba, Aloys	7 January 2019; 2 February 2016 (denial on failure to meet two-thirds eligibility in July 2018) ¹⁴	Theodor Meron	Granted (Subject to Conditions)	Completion of two-thirds of sentence, willingness to comply with conditions, family's willingness to receive Applicant, and consideration of concerns for Applicant's health despite high gravity of crimes ¹⁵
MICT-15-85-ES.5	Miletić, Radivoje	23 October 2018; 27 July 2017 (denial on failure to meet two-thirds eligibility in February 2017) ¹⁶	Theodor Meron	Denied	"Very high gravity" of crimes and "strong objections of the remaining Judges of the sentencing Chamber" despite "some signs of rehabilitation" and completion of two-thirds of sentence ¹⁷

¹⁴ Prosecutor v. Aloys Simba, Case No. MICT-14-62-ES.1, Decision of the President on the Early Release of Aloys Simba, ¶ 34 (Int'l Residual Mechanism for Crim. Trib. Feb. 2, 2016).

¹⁵ Prosecutor v. Aloys Simba, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, ¶ 79–81 (Int'l Residual Mechanism for Crim. Trib. Jan. 7, 2019).

¹⁶ 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, ¶ 35 (Int'l Residual Mechanism for Crim. Trib. Jul. 27, 2017).

¹⁷ Prosecutor v. Radivoje Miletić, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletić, ¶ 45 (Int'l Residual Mechanism for Crim. Trib. Oct. 23, 2018).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-14-67-ES.4	Lukić, Sreten	17 September 2018; 30 May 2017	Theodor Meron	Denied	Failure to meet two-thirds admissibility threshold, high gravity of crimes, and no “exceptional circumstances” to warrant prior release despite “certain indicia of rehabilitation and his measure of cooperation with the Prosecution” ¹⁸
MICT-17-112-ES.1	Pušić, Berislav	20 April 2018	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, and consideration of “high severity” of redacted condition despite gravity of crimes ¹⁹
MICT-14-63-ES	Jelisić, Goran	22 May 2017	Theodor Meron	Denied	High gravity of crimes, failure to meet two-thirds admissibility threshold, and no “exceptional circumstances” to warrant prior release despite demonstration or rehabilitation and cooperation with Prosecution; sentence remission granted ²⁰

¹⁸ Prosecutor v. Sreten Lukić, Case No. MICT-14-67-ES.4, Public Redacted Version of 30 May 2017 Decision of the President on the Early Release of Sreten Lukić, ¶ 56 (Int’l Residual Mechanism for Crim. Trib. Aug. 11, 2017) (noting two-thirds eligibility on May 12, 2019); Prosecutor v. Sreten Lukić, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, ¶ 37 (Int’l Residual Mechanism for Crim. Trib. Sep. 17, 2018).

¹⁹ 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, ¶ 66–67 (Int’l Residual Mechanism for Crim. Trib. Apr. 24, 2018).

²⁰ Prosecutor v. Goran Jelisić, Case No. MICT-14-63-ES, Public Redacted Version of the 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, ¶ 58 (Int’l Residual Mechanism for Crim. Trib. Aug. 11, 2017).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-15-85-ES.3	Beara, Ljubiša	7 February 2017	Theodor Meron	Denied	High gravity of crimes and failure to meet two-thirds admissibility threshold, conditional release granted on humanitarian grounds ²¹
MICT-15-88-ES.1	Kunarac, Dragoljub	2 February 2017	Theodor Meron	Denied	High gravity of crimes and insufficient demonstration of rehabilitation despite completion of two-thirds of sentence ²²
MICT-13-35-ES	Rukundo, Emmanuel	29 July 2016	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of "some signs of rehabilitation" despite high gravity of crimes ²³
MICT-13-37-ES.1	Nahimana, Ferdinand	22 September 2016	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of "some signs of rehabilitation" despite high gravity of crimes ²⁴

²¹ Prosecutor v. Ljubiša Beara, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, ¶ 47-49 (Int'l Residual Mechanism for Crim. Trib. Jun. 16, 2017).

²² Prosecutor v. Dragoljub Kunarac, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, ¶ 68 (Int'l Residual Mechanism for Crim. Trib. Feb. 2, 2017).

²³ Prosecutor v. Emmanuel Rukundo, Case No. MICT-13-35-ES, Public Redacted Version of the 19 July 2016 Decision of the President on the Early Release of Emmanuel Rukundo, ¶ 32 (Int'l Residual Mechanism for Crim. Trib. Dec. 5, 2016).

²⁴ 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, ¶ 35 (Int'l Residual Mechanism for Crim. Trib. Dec. 5, 2016).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-15-85-ES.6	Borovčanin, Ljubomir	14 July 2016	Theodor Meron	Granted	Completion of two-thirds of sentence, “ongoing demonstration of rehabilitation,” and “significant cooperation” with the Prosecution despite high gravity of crimes ²⁵
MICT-13-34-ES	Ntawukulilyayo, Dominique	8 July 2016	Theodor Meron	Denied	Failure to meet two-thirds admissibility threshold, high gravity of crimes, and no “exceptional circumstances” to warrant prior release despite “signs of rehabilitation” ²⁶
MICT-13-36-ES	Semanza, Laurent	9 June 2016	Theodor Meron	Denied	Failure to meet two-thirds admissibility threshold, high gravity of crimes, and no “exceptional circumstances” to warrant prior release despite “signs of rehabilitation” ²⁷
MICT-15-87-ES	Hartmann, Florence	29 March 2016	Theodor Meron	Granted	Completion of two-thirds of sentence and “exemplary conduct in the UN-DU” despite high gravity of crimes ²⁸

²⁵ Prosecutor v. Ljubomir Borovčanin, Case No. MICT-15-85-ES.6, Public Redacted Version of the 14 July 2016 Decision of the President on the Early Release of Ljubomir Borovčanin, ¶ 30 (Int’l Residual Mechanism for Crim. Trib. Aug. 2, 2016).

²⁶ Prosecutor v. Dominique Ntawukulilyayo, Case No. MICT-13-34-ES, Decision of the President on the Early Release of Dominique Ntawukulilyayo, ¶ 36 (Int’l Residual Mechanism for Crim. Trib. Jul. 8, 2016) (noting two-thirds eligibility on Feb. 17, 2021).

²⁷ Prosecutor v. Laurent Semanza, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, ¶ 36 (Int’l Residual Mechanism for Crim. Trib. Jun. 9, 2016) (noting two-thirds eligibility on Mar. 26, 2019).

²⁸ In the Case Against Florence Hartmann, Case No. MICT-15-87-ES, Decision of the President on the Early Release of Florence Hartmann, ¶ 29 (Int’l Residual Mechanism for Crim. Trib. Mar. 29, 2016).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-15-90	Nteziryayo, Alphonse	9 March 2016	Theodor Meron	Granted	Completion of two-thirds of sentence, consideration of health problems, and demonstration of rehabilitation despite high gravity of crimes ²⁹
MICT-14-67-ES.3	Lazarević, Vladimir	7 September 2015	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, cooperation with Prosecutors despite high gravity of crimes ³⁰
MICT-15-85-ES.4	Nikolić, Drago	20 July 2015	Theodor Meron	Denied	Failure to meet two-thirds admissibility threshold and high gravity of crimes despite "signs of rehabilitation" and "compelling humanitarian considerations;" provisional release granted ³¹
MICT-14-65-ES	Nikolić, Momir	14 March 2014	Theodor Meron	Granted	Demonstration of rehabilitation and redacted consideration despite severity of crimes and failure to serve two-thirds of sentence ³²

²⁹ Prosecutor v. Alphonse Nteziryayo, Case No. MICT-15-87, Decision of the President on the Early Release of Alphonse Nteziryayo, ¶ 28 (Int'l Residual Mechanism for Crim. Trib. Mar. 9, 2016).

³⁰ Prosecutor v. Vladimir Lazarević, Case No. MICT-14-67-ES.3, Public Redacted Version of the 7 September 2015 Decision of the President on the Release of Vladimir Lazarević, ¶ 28 (Int'l Residual Mechanism for Crim. Trib. Dec. 3, 2015).

³¹ Prosecutor v. Drago Nikolija, 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 Nikolija, ¶ 35 (Int'l Residual Mechanism for Crim. Trib. Oct. 13, 2015).

³² Prosecutor v. Momir Nikolija, Case No. MICT-14-65-ES, Public Redacted Version of the 14 March 2014 Decision on Early Release of Momir Nikolija, ¶ 35 (Int'l Residual Mechanism for Crim. Trib. Oct. 12, 2015).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-15-89-ES	Zelenović, Dragan	28 August 2015	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, and cooperation with the Prosecution despite high gravity of crimes ³³
MICT-14-67-ES.1	Sainović, Nikola	10 July 2015	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of rehabilitation despite high gravity of crimes ³⁴
MICT-15-85-ES.1	Pandurević, Vinko	9 April 2015	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of rehabilitation despite high gravity of crimes ³⁵
MICT-14-81-ES.1	Žigić, Zoran	10 November 2014	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of rehabilitation despite high gravity of crimes ³⁶

³³ 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, ¶ 22 (Int'l Residual Mechanism for Crim. Trib. Sep. 15, 2015).

³⁴ Prosecutor v. Nikola Sainović, Case No. MICT-14-67-ES.1, Public Redacted Version of the 10 July 2015 Decision of the President on the Early Release of Nikola Sainović, ¶ 26 (Int'l Residual Mechanism for Crim. Trib. Aug. 27, 2015).

³⁵ Prosecutor v. Vinko Pandurević, Case No. MICT-15-85-ES.1, Public Redacted Version of the 9 April 2015 Decision of the President on the Early Release of Vinko Pandurević, ¶ 29 (Int'l Residual Mechanism for Crim. Trib. Apr. 10, 2015).

³⁶ Prosecutor v. Zoran Žigić, Case No. MICT-14-81-ES.1, Public Redacted Version of the 10 November 2014 Decision of the President on the Early Release of Zoran Žigić, ¶ 23 (Int'l Residual Mechanism for Crim. Trib. Dec. 23, 2014).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-14-68-ES	Kordić, Dario	21 May 2014	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of rehabilitation despite high gravity of crimes ³⁷
MICT-14-66-ES	Češić, Ranko	20 April 2014	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, and cooperation with the Prosecution despite high gravity of crimes ³⁸
MICT-13-43-ES	Sagahutu, Innocent	9 May 2014	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of rehabilitation despite high gravity of crimes ³⁹
MICT-12-17-ES	Ntakirutimana, Gerard	26 March 2014	Theodor Meron	Granted	Completion of two-thirds of sentence and demonstration of rehabilitation ⁴⁰

³⁷ Prosecutor v. Dario Kordić, Case No. MICT-14-68-ES, Public Redacted Version of the 21 May 2014 Decision of the President on the Early Release of Dario Kordić, ¶ 27 (Int'l Residual Mechanism for Crim. Trib. Jun. 6, 2014).

³⁸ Prosecutor v. Ranko Ćešić, Case No. MICT-14-66-ES, Public Redacted Version of the 20 April 2014 Decision of the President on the Early Release of Ranko Ćešić, ¶ 25 (Int'l Residual Mechanism for Crim. Trib. May 28, 2014).

³⁹ Prosecutor v. Innocent Sagahutu, Case No. MICT-13-43-ES, Public Redacted Version of the 9 May 2014 Decision of the President on the Early Release of Innocent Sagahutu, ¶ 23 (Int'l Residual Mechanism for Crim. Trib. May 13, 2014).

⁴⁰ Prosecutor v. Gerard Ntakirutimana, Case No. MICT-12-17-ES, Public Redacted Version of the March 26, 2014 Decision of the President on the Early Release of Gerard Ntakirutimana, ¶ 23 (Int'l Residual Mechanism for Crim. Trib. Apr. 24, 2014).

Case No.	Applicant	Decision Date(s)	President	Decision	Justification(s) Provided:
MICT-12-10-ES	Ruzindana, Obed	13 March 2014	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, and other redacted consideration ⁴¹
MICT-12-28-ES	Serushago, Omar	13 December 2012	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, and cooperation with the Prosecution despite high gravity of crimes ⁴²
MICT-12-07	Bisengimana, Paul	11 December 2012	Theodor Meron	Granted	Completion of two-thirds of sentence, demonstration of rehabilitation, and cooperation with the Prosecution despite high gravity of crimes ⁴³

⁴¹ Prosecutor v. Obed Ruzindana, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, ¶ 25 (Int'l Residual Mechanism for Crim. Trib. Mar. 13, 2014).

⁴² Prosecutor v. Omar Serushago, Case No. MICT-12-28-ES, Public Redacted Version of Decision of the President on the Early Release of Omar Serushago, ¶ 34 (Int'l Residual Mechanism for Crim. Trib. Dec. 13, 2012).

⁴³ 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, ¶ 35 (Int'l Residual Mechanism for Crim. Trib. Dec. 11, 2012).

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