

2015

If the residual mechanism should close for example in Sierra Leone. What should happen to the prisoners who choose to violate the conditions of early release? What options are available to monitor and enforce the conditions of release?

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CASE WESTERN RESERVE
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SCHOOL OF LAW

**MEMORANDUM FOR THE
SPECIAL COURT FOR SIERRA LEONE**

**ISSUE: IF THE RESIDUAL MECHANISM SHOULD CLOSE FOR EXAMPLE IN
SIERRA LEONE. WHAT SHOULD HAPPEN TO THE PRISONERS WHO CHOOSE
TO VIOLATE THE CONDITIONS OF EARLY RELEASE? WHAT OPTIONS ARE
AVAILABLE TO MONITOR AND ENFORCE THE CONDITIONS OF RELEASE?**

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Fall Semester, 2015

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I. Introduction and Summary of Conclusions

I. Introduction:

A. Issue:

This memorandum will be offering an examination on all the alternatives that can be used to enforce and monitor conditions of release and to also consider the enforcement options for prisoners that violate the conditions of early release. The point of this is to prepare for a hypothetical but realistic event of the Residual Mechanism closing down before the completion of all the sentences imposed by the Court. Tribunals like the International Court of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) and recently, the Special Court of Sierra Leone (SCSL) have granted early release to convicted prisoners, this issue has addressed certain flaws or thinking points that have not been addressed as of yet. This memo will be looking at the history of conditional early release and discuss the differing standards applied in other tribunals who have also granted conditional early release to its prisoners.*

B. Summary of Conclusions:

Violations of Early Release Conditions:

1. Sent back to prison- This option revokes all of the privileges that come attached to early release. This option can be used, if the residual mechanism is still in operation.

* If the Residual Mechanism should close for example in Sierra Leone, what should happen to the prisoners who choose to violate the conditions of early release? What options are available to monitor and enforce the conditions of release?

- If not then the convict may have to be transferred to another jurisdiction to serve the rest of their sentence.
2. House arrest – This option may be used, if the gravity of the condition of early release that was broken was not so great. House arrest may be a viable option if the crimes of the detainee are serving in a country where they did not commit their original war crime. However, if a violation of early release were to arise the convict should serve house arrest in the county where they served their sentence.
 3. Community service – If a convict violates one of their conditions the court should implement some form of community service i.e. cleaning the streets, recycling projects, building maintenance etc.
 4. Fines- The court may implement fines on those whose violations are off a lesser extent, if the convict reoffends, the fine fee can be raised. However, only a maximum of three fines should be handed out after that the prisoner should then be sent back to serve the rest of their sentence in prison.
 5. Tried in national court if a crime is committed nationally- Depending on the gravity of the violation committed and if it is considered to be a crime nationally. The Sierra Leonean national court may be able to try the convict for any national crime they may have committed.
 6. Amending the Rules of Procedure and Evidence, specifically rule 77¹ – The court can amend the law to include a clause that will make it illegal for a convict to violate their early release conditions and they will be held in contempt of court for it.

¹ Rules of Procedure and Evidence 1991, Rule 77

7. Transferring prisoners to other courts/jurisdictions- Depending on the gravity of the violation the court may be able to transfer the convict to another jurisdiction to either serve out the rest of their sentence or to continue their early release requirements in there.
8. Death penalty- If a convict has been transferred to a different entity and the violation they have committed is a heinous national crime, then it is possible for the national jurisdiction, whereby the convict was transferred to implement the death penalty if need be.

Enforcement Options for Prisoners Granted Early Release:

1. Rehabilitation centers – To enforce early release, the court can establish or implement a rehabilitation system, be it building rehabilitation centers in existing structures such as community centers or churches to reduce expenses. Rehabilitation and counseling programs would need to be tailored to every convict and the gravity of their original crimes need to be considered.
2. Therapy- the court should organize a way for convicts to receive some form of therapy as it will aid in the rehabilitation process, this could also help the convicts to come to terms for the crimes they have committed in the past.

II. Factual Background:

ICTY

During 1991, “[the] political developments in the former socialist [body] Federal Republic of Yugoslavia resulted in a number of conflicts, deportations, mass executions, ethnic cleansing,

mass sexual assaults and rapes.”² The ICTY was created to create a platform to bring restoration and peace, to the once war ridden country. The ICTY had jurisdiction to try crimes such as: crimes against peace, crimes against humanity, genocide, and violations of laws and customs of war.

ICTR

The ICTR, which was established in Tanzania, was designed to try only those suspected of grave crimes. The Rwanda genocide stems from when Rwanda was first colonized. The ethnic tensions between the Hutus and Tutsis aided with the armed government and trained civilian military led to the massacre of more than 800, 000 Tutsis and few Hutus.³ The victims “were often tortured and raped before they were killed, many hacked to death with machetes.”⁴

SCSL

Sierra Leone suffered a civil war that lasted almost a decade that “left thousands dead, maimed or displaced.”⁵ The “Revolutionary United Front entered Sierra Leone from Liberia with the goal of overthrowing the government, [they did this by] recruiting child soldiers, amputating victim’s limbs, torture [of civilians], mass raping of women and girls, and the massacre of 50,000 civilians.”⁶

² Dafna Gozani, 'Beginning to Learn How to End: Lessons on Completion Strategies, Residual Mechanism, and Legacy Considerations from Ad Hoc International Criminal Tribunals to the International Criminal Court ' [2015] 36(1) Loyola of Los Angeles International and Comparative Law Review 356

³ Survivors fund " (Survivors Fund,) <survivors-fund.org.uk/resources/Rwandan-history/statistics/> accessed 24 October 2015

⁴ Sigall Horovitz, 'How International Courts Shape Domestic Justice: Lessons from Rwanda and Sierra Leone ' [2013] 46(03) Israel Law Review 342

⁵ Ibid,1

⁶ Dafna Gozani, 'Beginning to Learn How to End: Lessons on Completion Strategies, Residual Mechanism, and Legacy Considerations from Ad Hoc International Criminal Tribunals to the

Tejan Kabbah, the then President of Sierra Leone requested the Security Council to establish a “strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace.”⁷ By creating the SCSL, the United Nations affirmed that the “international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law.”⁸ The SCSL has jurisdiction to “prosecute those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean Law.” The SCSL is limited in its temporal jurisdiction to only hear crimes committed after November 1996.”⁹ SCSL was specifically designed to improve on the trial efficiency of the ICTR and ICTY, The court succeeded in achieving a guilty verdict for each of the individuals that it charged and tried in Freetown with the exception of Charles Taylor,¹⁰

RSCSL

The Residual Special Court for Sierra Leone (RSCSL) was “established by an agreement between the United Nations and the Government of Sierra Leone to oversee the continuing legal obligations of the SCSL after its closure in 2013. These include witness protection, supervision

International Criminal Court ' [2015] 36(1) Loyola of Los Angeles International and Comparative Law Review 356

⁷Fidelma Donlon, 'The Transition of Responsibilities from the Special Court to the Residual Special Court for Sierra Leone: Challenges and Lessons Learned for Other International Tribunals' [2013] 10(08) Journal of International Criminal Justice 15

⁸ Ibid, 2

⁹ Ibanetorg, " (Ibanetorg,) <http://www.ibanet.org/Committees/WCC_SCSL.aspx> accessed 24 September 2015

¹⁰ The Special Court for Sierra Leone and the Residual Special Court for Sierra Leone, " (The Special Court for Sierra Leone and the Residual Special Court for Sierra Leone,) <Rscsl.org> accessed 1 October 2015

of prison sentences, and management of the SCSL archives.”¹¹ The RSCSL will be funded by voluntary contributions from the international community.¹²

III. Legal Discussion:

A. Criteria for Early Release SCSL:

The Practice Direction on the Conditional Early Release of Persons Convicted by SCSL¹³ document sets out the criteria that are used to decide whether a convict is eligible for conditional early release. Section 2, sets out the terms that determine if a convict can be considered for early release:

(A) “A convicted person shall be eligible for consideration for conditional early release no sooner than upon serving two thirds of his total sentence provided he meets the requirements set out in paragraphs (B) through (D) below.

(B) ...The convicted person shall demonstrate the following:

- i. Successful completion of any remedial, educational, moral, spiritual or other programs to which he was referred within the Prison.
- ii. That he is not a danger to the community or to any other member of the public;
- iii. Compliance with terms and conditions of his imprisonment.

(C) In addition the convicted person shall provide proof that the following requirements have been met

- i) Respect for the fairness of the process by which he was convicted
- ii) Refraining from incitement against the peace and security of the people of Sierra Leone while incarcerated and
- iii) Positive contribution to peace and reconciliation in Sierra Leone and the region such as public acknowledgment of guilt, public support for peace projects, public apology to victims, or victim restitution.

¹¹ Ibid

¹² Agreement Between the United Nations and Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone, Art 3

¹³ Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone 2013

(D) The convicted person shall further provide a statement of understanding that his release will be subject to entering into and complying with a conditional early release agreement.”¹⁴

All of these factors are taken into consideration before the President of the SCSL can decide whether a convict should be granted early release. The President may consult with the judges who imposed on the sentence, however, “the consultation with other judges is only to aid the Presidents final decision, only the President of a tribunal is required to authorize pardons or commutations granted under national law.”¹⁵

Criteria for ICTY and ICTR:

The SCSL criteria derive from its forefather tribunals the ICTY and ICTR. The criteria also used in these tribunals was the 2/3 standard. ¹⁶ Other factors that were also taken into consideration includes: cooperating after sentencing humanitarian concerns, cooperation before sentencing, remorse, gravity of crimes, good behavior, probability of reintegration, Likelihood of reoffending, time served and finally social instability.¹⁷

Under Rule 125 of the ICTY Rules of evidence and procedure¹⁸ states that the President should take into account the following factors before granting release “the gravity of the crime for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the

¹⁴ Ibid, S.2a

¹⁵ Kevin Jon Heller, 'Completion Strategies and the Office of the Prosecutor' [2009] 26(2) Oxford University Press 41

¹⁶ Updated Statute of International Criminal Tribunal For The Former Yugoslavia 2009 Art, 28

¹⁷ Jonathan Choi, 'Early Release in International Criminal Law ' [2014] 20(123) Yale Law Journal 1823

¹⁸ Rules of Procedure and Evidence 1991, Rule 125

Prosecutor.”¹⁹ It should be noted that these factors could possibly be “interpreted differently across the enforcement countries.”²⁰

Other factors:

The Rome statute also has some procedures that can be applied when deciding whether to grant early release:

“[W]hen the person has served two thirds of the sentence, or 25 years in the case of the life imprisonment” it also lays out a very different set of factors:

- i. The early and continuing willingness of the person to cooperate with the court in its investigations and prosecutions
- ii. The voluntary assistance of the person in enabling the enforcement of the judgments and orders of the court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims
- iii. Or other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence as provided in the rules of procedure and evidence.²¹

Rules contain several further departures from the practice of the ad hoc tribunals. First, sentence reduction at the ICC is determined by a panel of three judges, rather than unilaterally by the president ²²the rules also enumerate several additional criteria:

1. The conduct of the sentenced person while in detention, which shown a genuine dissociation from his or her crime
- iv. The prospect of the re-socialization and successful resettlement of the sentenced person
- v. Whether the early release of the sentenced person would give rise to significant social instability
- vi. Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release.
- vii. Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.”²³

¹⁹ Ibid

²⁰Leidenlawblognl, " (Leidenlawblognl,) <<http://leidenlawblog.nl/articles/early-release-and-life-after-release-a-gamble-for-the-life-of-a-convicted-i>> accessed 24 November 2015

²¹ Rome Statute of the International Criminal Court, art 110

²² Rules of Procedure and Evidence 1991, 224(1)

²³ Ibid, 223

All of these factors are deliberated before SCSL can grant early release to any of its detainees.

B. Current Enforcement and Monitoring Options:

Choi argues, that “the vagueness of these tribunals founding documents and the absence of a consistent arbiter for early release have led to misguided modeling of international early release after domestic parole.”²⁴ The SCSL has already granted early release to both Moinina Fofana and Eric Koi Sensessie, they have yet to violate their early release conditions, but should such an event arise then the RSCSL would use these enforcement and monitoring methods:

1. “8d. the president shall deliver a decision on conditional early release that shall be accompanied by a reasoned opinion in writing. The reasoned opinion shall include an evaluation of.
2. Of the safety of the community if the convicted person is released
3. The views and concerns of victims, witnesses and their families, if any regarding the conditional early release of the convicted person
4. The effect of any conviction for contempt of court for any manner of interference or attempted interference with witnesses, bearing in mind that such a conviction alone may justify denial of conditional early release/.
5. The convicted person’s participation in any remedial, educational, moral, spiritual or other programme to which he was referred within the prison, his demonstration of remorse and his commitment to contribute to the restitution of victims and to reconciliation and maintenance of peace in Sierra Leone and the views and concerns of the community to which he seeks to be released.”²⁵

C. Proposed Enforcement and Monitoring Options

Rehabilitation:

A possible way to enforce or monitor a convict on early release is to implement a rehabilitation system. The “primary justification for parole is rehabilitation”²⁶ early release

²⁴ Jonathan Choi, 'Early Release in International Criminal Law ' [2014] 20(123) Yale Law Journal 1788

²⁵ Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone 2013, S.8d

²⁶ Jonathan Choi, 'Early Release in International Criminal Law ' [2014] 20(123) Yale Law Journal 1799

“provides an incentive for inmates to behave well and to participate in certain rehabilitative programs.”²⁷ New rehabilitation centers need not be built but existing structures like churches or community halls can be used or renovated in order for this option to be implemented. Such rehabilitation programs would need to be catered to each offender depending on the gravity of their crimes. “Rehabilitation believes each offender has different problems to overcome, [therefore the] program for reform should be fashioned accordingly. Thus, each sentence is individualized and two convicts committing the same crime may receive entirely different sentences. Rehabilitative punishment is tailored to the offender rather than to the crime.”²⁸ In this instance it would be prove more beneficial to adhere programs to the gravity of a convicts war crimes, this would help deter some members of the national community feeling like these perpetrators, have received lenient sentences. Rehabilitation promotes feelings of “remorse, risk of recidivism, good behavior, and potential for reintegration. [However] expressions of remorse may hasten reconciliation”²⁹ which can prove difficult for the court to determine who should be made eligible for early release. For example, Blijana Plavsic was sentenced to 11 years for genocide, war crimes and crimes against humanity. Plavsic plea bargained with ICTY admitting for one count of crimes against humanity and showing ‘full remorse’. Her plea was accepted [and many of charges were dropped]. After she was given release she “retracted her statements of remorse during two interviews she gave while in prison.”³⁰

There will always lingering thoughts of whether a convict is truly remorseful, however the SCSL may find this to be a viable alternative when dealing with enforcement, of early release.

²⁷ Ibid, 799

²⁸ Encyclopedia of criminal justice

, (Pubpagesunhedu,) <<http://pubpages.unh.edu/~nicks/pdf/Rehabilitation.pdf>> accessed 1 November 2015

²⁹ Jonathan Choi, 'Early Release in International Criminal Law ' [2014] 20(123) Yale Law Journal 1798

³⁰ <http://www.whenjusticeisdone.org/index.php/convicted1/41-profiles/73-blijana-plavsic>

The court can also order the convict to “spend a set period of hours each day in an attendance center for a certain period of time. The attendance center is meant to offer a structured program for offenders to address their offending behavior in a group environment.”³¹

Counselling:

In conjunction with making provisions with rehabilitation centers, the court can order the convict to undergo some form of counselling. “Counselors should see [convicts]... not only as individuals who use their cognitions to understand and explain their crimes, mental disorders, and or need areas. Any counselling efforts that fail to help them understand their experiences cannot have lasting benefits on their functioning.”³² This option is relatively, cheap and counselors can easily inform the court of any worrying thoughts or feelings a convict may have.

D. Current Procedures in Place when Violations of Sentences Occur:

In the case that a convict should violate their early release conditions the SCSL has already set aside some provisions that can be used see below:

“12a. In the event of the monitoring authority having reason to believe that the convicted person has violated a condition of the conditional early release agreement, the convicted person shall be arrested and transferred to the special court for detention pursuant to the supervision order and pending a decision of the president as to whether or not there is probable cause to believe that the convicted person has violated a condition of his early release agreement.

12d. president determines that there is no probable cause to believe a violation has occurred within 48 hours of convicted person being detained

12f. if the president determines that there is probable cause to believe that a violation has occurred, the president shall

³¹ Ibid

³²Encyclopedia of criminal justice

.(Pubpagesunhedu,) <<http://pubpages.unh.edu/~nicks/pdf/Rehabilitation.pdf>> accessed 1 November 2015

- i. Designate a judge to hear the matter
- ii. Direct the prosecutor to prosecute the matter
- iii. Direct the principal defender to represent the convicted person and
- iv. Direct the registrar to set a preliminary hearing within 7 days

12 I. upon admission by the convicted person or a finding that the allegations have been proved, the judge shall.

- 1) Revoke the order for conditional early release and order imprisonment of the convicted person for the time remaining on the sentence at the date that conditional early release went into effect, with credit for time served in detention pending disposition of the violation and any credit the judge may order for served under conditional early release.
- 2) Revoke the order of the conditional early release and order the release of the convicted person subject to modified conditions of the conditional early release agreement or
- 3) Order the release of the convicted person on the terms and conditions of the original conditional early release agreement.”³³

Such conditions often include:

- 1) “Will not possess, consume, purchase, alcohol or drugs considered illegal in Sierra Leone
- 2) Visits from the monitoring authority in their residence
- 3) Searches of thy person, property possessions, by the monitoring authority
- 4) Report regularly to monitoring authority or police station when instructed too
- 5) Immediately relinquish to the monitoring authority an illegal possessions found on me
- 6) Will not commit any offence,
- 7) Will not publically or privately incite or promote crime or behave in a way which undermines public peace and security
- 8) Will not violate any orders of the SCSL or RSCSL. abide all protection orders pursuant to Rule 75
- 9) Will not act violently, intimidating, coercive, threatening behavior to any one
- 10) Will not associate with people the monitoring authority has incrustrated not too.”³⁴

E. Proposed Options for Violations of Conditional Early Release:

Send back to prison:

³³ Practice Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone 2013

³⁴ Ibid

Revoked early release privileges and sent back to the prison they were originally serving in. This helps in making a lasting impression to other convicts who could possibly be considered for conditional early release, in regards that the court is able to act effectively and efficiently to revoke privileges that have been abused.

House arrest:

“The offender [would be] obliged [to] live in a certain place (normally his or her place of residence) under the supervision of a specialized agency. The offender cannot change place of residence, work or education, without permission of the supervising body.”³⁵ It may be helpful if war criminals were placed under house arrest in another country, or a secured location; where civil uproar is unlikely to happen. Although, one of the conditions for being eligible for early release that the presence of the convict in the public sphere will not cause social instability, the court can never be too careful. Tharcisse Muvunyi, who was charged with crimes against humanity and genocide, was granted conditional early release by the ICTR. He currently resides in a UN safe house, together with those acquitted by the ICTR. He served his entire sentence in Tanzania and still lives in a UN safe house, as it is still unsafe for him to return.³⁶ In regards to the technological advances it would be difficult for Sierra Leone to provide the resources to carefully supervise house arrest. Detainees would find it easy to escape.

Community Service:

If a convict were to violate their early release conditions, the court could require them to partake in some kind of community service, a form of service that would benefit the greater

³⁵ United nations , 'Custodial and Non-Custodial Measures, Alternative to Incarceration' [2006] 0(0) United Nations Office on Drugs and Crime

³⁶ Leidenlawblognl, " (Leidenlawblognl,) <<http://leidenlawblog.nl/articles/early-release-and-life-after-release-a-gamble-for-the-life-of-a-convicted-i>> accessed 24 November 2015

community. The RSCSL can order community service in lieu of a term of imprisonment %.³⁷
The service should be done without any form of compensation.

Contempt of the Court:

The court can amend the law to include a clause that would make it illegal for a convict to violate the conditions of their early release conditions so that they can be held in contempt of court for it. Under, the Rules of Procedure and Evidence 77³⁸

“(C) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may: (I) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt; (ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an amicus curiae to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings; or (iii) initiate proceedings itself.”³⁹

If the court can make amendments and make provisions to make it an offence when convicts violate their early release conditions then it would deter many convicts from breaking their conditions in fear that they would be sent back to prison. It would not be unreasonable to ask for an amendment as the early release conditions were created and implemented by the SCSL and RSCSL so it could be shown that breaking these conditions is being in contempt with the court.

Fines:

Fining can be another useful way to punish convicts that violate their early release conditions. “In some countries instead of a fine the court obliges the convicted offender to pay a

³⁷ http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf

³⁸ Rules of Procedure and Evidence 1991

³⁹ Ibid, 77(C)

certain amount of money to the victim as compensation.”⁴⁰ However, it should be noted that some of these convicts may not have sufficient funds to afford the fines that have been enforced by the courts, and may end up being imprisoned once again if they are deemed unable to pay. Under the Declaration of Basic Principles of Justice for Victims of Crime and Abuse Power, the “return [...] property or payment for the harm or loss suffered, reimburse [...] expenses incurred as a result of the victimization, [and provide] services and the restoration of rights.”⁴¹ However, it should be considered whether this is a viable option as war criminals, as they generally wronged thousands of victims, so it would be difficult to track down and compensate each and every single victim. Nonetheless, convicts can be fined by the state and monies should be paid to the government of Sierra Leone- in the hopes the government will use the money to aid victims of the convicts crimes. Under the RPE 77,“(G) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.”⁴²

Tried in national courts?

Can a convict be tried again for their original war crimes, in a national court in Sierra Leone instead of the SCSL? Or if they should commit a lesser crime, should they receive a tougher sentence considering their past crimes? The SCSL made special provisions to deter courts from double jeopardy, “[n]o person shall be tried before a national court of Sierra Leone

⁴⁰ United nations , 'Custodial and Non-Custodial Measures, Alternative to Incarceration' [2006] 0(0) United Nations Office on Drugs and Crime

⁴¹ 36 General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse Power, RES 40/34, 29 November 1985, para. 8.

⁴² Ibid, 77 (G)(Amended 4 Dec 1998, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001)

for acts which he has already been tried by the SCSL or the RSCSL.”⁴³ For example “if Johnny Paul Koroma were to be tried by a national court, the RSCSL may try him subsequently if the national proceedings were not impartial or independent, or if they were designed to shield him from international justice.”⁴⁴ However, if a convict were to commit a national crime, the international entity of the RSCSL cannot interfere into national matters and the convict may face national penalty, if their violation was a crime is committed nationally.

Transferring prisoners to other courts:

Another factor to consider as Oosterveld points out is that the “international and hybrid criminal tribunals do not have their own prisons and thus individuals convicted by these bodies must serve their sentences in the prisons of willing states. ICTY, ICTR and SCSL have entered into sentence enforcement agreements with a number of states. Art 22(1), of SCSL statute:⁴⁵

“1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.”⁴⁶

Only three states have entered into bilateral enforcement agreements with the SCSL:

Sweden, UK, and unknown state and Rwanda.⁴⁷ The presence of certain prisoners would have a

⁴³ The Special Court for Sierra Leone and the Residual Special Court for Sierra Leone, " (The Special Court for Sierra Leone and the Residual Special Court for Sierra Leone,) <Rscsl.org> accessed 1 October 2015

⁴⁴ Ibid

⁴⁵ Statute of the Special Court for Sierra Leone, Art 22(1)

⁴⁶ Ibid

⁴⁷ Roisin Mulgrew, 'On the Enforcement of Sentences Imposed by International Courts: Challenges Faced by the Special Court for Sierra Leone' [2009] 45(12) Journal of International Criminal Justice 2

detrimental impact on local and regional stability⁴⁸ which is a possible reason as to why some states have not acted upon their agreements. Security concerns now focus on the ability of Sierra Leone prison service to keep internationally convicted prisoners behind bars. Ex-combatants have escaped or been freed from the national maximum security facility where international prisoners would most likely be sent⁴⁹ staff are overworked and underpaid⁵⁰ possibilities for bribery and escape are too high to make the national prison system a suitable option for international imprisonment⁵¹ Sierra Leonean prisons do not meet international standards.⁵² Severely overcrowded, shortages of food, water, bedding and adequate sanitation frequently cause malnutrition and disease.⁵³ Charles Taylor does not serve his sentence in Sierra Leone, and was not tried there either because of the fear of social instability. Taylor was found guilty of “crimes against humanity, war crimes and other serious violations of international humanitarian law perpetrated by Sierra Leone’s Revolutionary United Front (RUF) rebels, who he supported.”⁵⁴ The SCSL statute provides that ‘conditions of imprisonment, whether in Sierra Leone or in a third state, shall be governed by the law of the state of enforcement subject to the supervision of the Special Court’⁵⁵ Taylor was transferred to a prison in the UK, to serve the remainder of his sentence the result of an agreement between the court and the UK government. By the rules of the UK judicial system, Mr. Taylor, 65, has 43 years left to serve and will only be

⁴⁸ Ibid, 9

⁴⁹ Ibid, 5

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid, 5

⁵³ Ibid

⁵⁴ unorg, " (Wwwunorg,) <<http://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests---good>> accessed 15 November 2015

⁵⁵ Statute of the Special Court for Sierra Leone, Art 22(2)

eligible for early release after serving two-thirds of his sentence, at which point he will be more than 90 years old.”⁵⁶

The secretary-general’s report of 21 May 2009 does not explicitly set out options for supervision of sentences and related [additional] activities but points out that refereeing this function to national jurisdictions may create inconsistencies of treatment, which might in turn lead to allegations of human rights violations.⁵⁷ The security council requests each tribunal to provide assessments explaining what measures have been taken to implement the completion strategies and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions.⁵⁸ The security council calls on each tribunal in reviewing and confirming any indictments to ensure that any such indictments concentrate on the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the relevant tribunal as set out in Resolution 1503 (2003).⁵⁹ If a convict should violate the terms of their early release and the RSCSL was closed then it is possible that the court could transfer such individuals to another state.

Death penalty

According to “Sierra Leone’s legal code, murder, treason, mutiny and armed robbery are punishable by death, but in 2012, President Dr. Ernest Bai Koroma announced that it is now government policy that the death penalty now operates as life imprisonment.”⁶⁰ The last

⁵⁶ unorg, " (Wwwunorg,) <<http://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests---good>> accessed 15 November 2015

⁵⁷ Secretary General’s Report of 21 May 2009 ss.81

⁵⁸ S/RES/1534 (2004)

⁵⁹ Resolution 1503 (2003)

⁶⁰ THE DEATH PENALTY IN SIERRA LEONE ABDUL TEJAN-COLE

<http://www.biicl.org/files/2301_country_report_sierra_leone_tejan_cole.pdf> accessed 22 October 2015

executions committed in Sierra Leone was in 1998. The 1998 “executions of 24 rebels belonging to the Revolutionary United Front, one of the principle armed groups in Sierra Leone’s civil war, marked the last instance of capital punishment in Sierra Leone.”⁶¹ The SCSL does not have the jurisdiction to give out death penalties, however, the death penalty has not been abolished in Sierra Leone. The death penalty can be given out to a convict who has violated the conditions of their early release, depending on the gravity of the crime committed and whether it was committed in a different national jurisdiction, i.e. if the convict commitees a grave crime in another country and the courts decide to hand out the death penalty sentence. If there is no transferring to another state then it is there is a possibility that it can be used. Empirical research done by Holá and van Wijk “international criminals mostly depends on the way the conflict ended in the respective countries... Hutu defendants are not eager to return to Rwanda as they might fear other prosecutions or some form of discrimination with a Tutsi-government in place, Serbs, Croats and Bosnians are often welcomed as war heroes on their return.”⁶² The death penalty she only be an option if the convict committed a particular heinous crime/s during their early release period.⁶³

IV. Conclusion:

According, to Hola and Joris van Wijk “forty-six individuals (84% of the released) have been granted early release, generally after having served 2/3 of their imprisonment term.”⁶⁴

⁶¹ Ibid

⁶² Leidenlawblognl, " (Leidenlawblognl,) <<http://leidenlawblog.nl/articles/early-release-and-life-after-release-a-gamble-for-the-life-of-a-convicted-i>> accessed 24 November 2015

⁶³ Newsrecordco, " (Record,) <<http://www.newsrecord.co/abolishing-the-death-penalty-in-sierra-leone/2014>> accessed 15 November 2015

⁶⁴ Cicjorg, " (Cicjorg,) <<http://cicj.org/2014/02/life-after-conviction-at-international-criminal-tribunals/>> accessed 15 November 2015

The more widely parole is granted, the more likely prisoners are to take its incentive effects seriously. The more widely parole is granted, the greater the savings to the penal system.⁶⁵ The area of enforcement, supervision is not widely written about and there will be trial and error when it comes to implementing different methods to see that violators are punished and the correct steps are carried out. Nonetheless, all the options mentioned above would help the RSCSL in that they cost relatively nothing and they are practices that can be easily adopted.

⁶⁵ Jonathan Choi, 'Early Release in International Criminal Law ' [2014] 20(123) Yale Law Journal 1800