

**Security Council**

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**Letter dated 19 May 2020 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council**

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, pursuant to paragraph 16 of Security Council resolution [1966 \(2010\)](#).

I should be grateful if you would transmit the present letter and its annexes to the Security Council.

*(Signed)* Carmel Agius  
President



**Annex I**

[Original: English and French]

**Assessment and progress report of the President of the International  
Residual Mechanism for Criminal Tribunals, Judge Carmel Agius,  
for the period from 16 November 2019 to 16 May 2020**

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1. The present report, the sixteenth in a series, is submitted pursuant to Security Council resolution [1966 \(2010\)](#), by which the Council established the International Residual Mechanism for Criminal Tribunals and, in paragraph 16 of that resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Council on the progress of the work of the Mechanism.<sup>1</sup> The same reporting requirement is reflected in article 32 of the statute of the Mechanism. Certain information contained in the present report is also submitted pursuant to paragraph 20 of Council resolution [2256 \(2015\)](#) and paragraph 9 of Council resolution [2422 \(2018\)](#).

## I. Introduction

2. The International Residual Mechanism for Criminal Tribunals was established by the Security Council to carry out a number of essential residual functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, which closed in 2015 and 2017, respectively. Those responsibilities are described in the present report. The Mechanism's branch in Arusha, United Republic of Tanzania, commenced operations on 1 July 2012, assuming functions derived from the International Criminal Tribunal for Rwanda, while the branch in The Hague, Netherlands, commenced operations on 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia. The Mechanism has been a stand-alone institution since 1 January 2018.

3. Pursuant to Security Council resolution [1966 \(2010\)](#), the Mechanism was tasked to operate for an initial period of four years and, subsequently, for periods of two years, following reviews of its progress, unless the Council decided otherwise. During the reporting period, the Mechanism was subject to the third such review by the Security Council, which is currently ongoing. In connection with that process, the Office of Internal Oversight Services (OIOS) undertook an evaluation of the methods and work of the Mechanism covering the period from 1 January 2018 to 31 December 2019 and issued its report on the evaluation on 26 March 2020 ([S/2020/236](#)). Considering that report, and in accordance with the statement by the President of the Security Council issued on 28 February 2020 ([S/PRST/2020/4](#)), the Mechanism submitted its third review report to the Security Council on 15 April 2020 ([S/2020/309](#)).<sup>2</sup> The Mechanism looks forward to the results of the review and to discussing them with the Council and its Informal Working Group on International Tribunals.

4. Through those review and evaluation processes, the current six-month reporting period has offered the Mechanism valuable opportunities to reflect on its work and achievements and to identify areas in which further efficiencies can be implemented. It should be noted at the outset, however, that the Mechanism has also been confronted in the last two months with challenges arising from the unprecedented situation relating to the coronavirus disease (COVID-19).

5. As detailed in the present report, the unfolding global health crisis has had an impact on numerous aspects of the Mechanism's operations. Until recently, the Mechanism was on track to conclude its ongoing judicial caseload by the end of 2020, with the exception of any new appeals from judgment. However, with the COVID-19 pandemic necessitating travel bans, the prohibition of gatherings, the setting up of remote work arrangements and other social distancing measures in the Mechanism's

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<sup>1</sup> Unless otherwise specified, figures set out in the present report are accurate as at 16 May 2020.

<sup>2</sup> Unlike the present report, which covers the six-month period from 16 November 2019 to 16 May 2020, the third review report covers the two-year period from 16 April 2018 to 15 April 2020.

host States and worldwide, the anticipated timelines for case completion have been affected.

6. Despite those challenges, the Mechanism has been quick to adapt to its new reality. Indeed, it has remained operational throughout and has continued to make progress. The Mechanism is mindful of its critical mandate as an independent judicial institution, with concomitant responsibilities to accused, detained and convicted persons, as well as to victims and witnesses. It has therefore sought to minimize interruptions to its activities to the greatest extent possible, while continuing to fulfil the duties owed to those under its supervision. At the same time, the Mechanism has taken steps to protect the health and safety of staff members and non-staff personnel. Details on the various measures taken by the Mechanism in response to the COVID-19 pandemic are provided throughout the present report.

7. Regarding the Mechanism's core judicial activity, work in the ongoing trial proceedings in *Prosecutor v. Jovica Stanišić and Franko Simatović* and the appeal proceedings in *Prosecutor v. Ratko Mladić* continued during the reporting period. Prior to the COVID-19 pandemic, both cases were on track for completion at the end of 2020, with the exception of any appeal from judgment in the *Stanišić and Simatović* case. Likewise, the pretrial phase in the multi-accused contempt case of *Prosecutor v. Maximilien Turinabo et al.* continued, with the trial phase previously expected to be concluded and judgment delivered this year. While public health restrictions have impeded progress in those cases, the judges and staff are working hard to mitigate delays and ensure the utmost preparedness for the resumption of courtroom activity, including through the use of the available management tools provided for in the Mechanism's Rules of Procedure and Evidence and the further streamlining of internal procedures. In addition to that work, numerous other judicial matters have been finalized in the past six months, including in relation to the variation of protective measures, early release and possible contempt proceedings.

8. Alongside the Mechanism's judicial activity, notable progress has been made in relation to its tracking of fugitives indicted by the International Criminal Tribunal for Rwanda. Further information is provided in paragraphs 95 to 98 below and in the report of the Prosecutor (see annex II).

9. The Mechanism also continued to perform its other residual functions during the reporting period, including supervising the enforcement of sentences, protecting victims and witnesses, providing assistance to national jurisdictions and managing the archives of the two Tribunals and the Mechanism. Furthermore, the Mechanism has refined its legal and regulatory framework and moved closer towards the harmonization of practices and procedures between the branches. Throughout, it has borne in mind the imperative of operating as efficiently and effectively as possible, with due regard for fundamental rights and the responsibilities owed to those under its care. Despite the impact of the COVID-19 pandemic on its activities, the Mechanism remains fully committed to realizing the Security Council's vision of the Mechanism as a small, temporary and efficient structure, whose functions and size will diminish over time.

10. Wherever possible, the present report reflects detailed projections of the duration of residual functions entrusted to the Mechanism, in accordance with Security Council resolutions [2256 \(2015\)](#) and [2422 \(2018\)](#), the statement by the President of the Council of 28 February 2020, and the second recommendation contained in the report of OIOS ([S/2020/236](#), para. 67). It must be noted that those projections are based on current data and are therefore subject to modification in the event of evolving circumstances.

## **II. Structure and organization of the Mechanism**

### **A. Organs and principals**

11. As established in article 4 of its statute, the Mechanism consists of three organs: the Chambers; the Prosecutor; and the Registry, which provides administrative services for the Mechanism, including the Chambers and the Prosecutor. The work of the Chambers and the Registry is discussed below, while the activities of the Office of the Prosecutor (the Prosecution) are detailed in annex II.

12. Each organ is led by a full-time principal who exercises responsibility over both Mechanism branches. The President is the institutional head and highest authority of the Mechanism, responsible for the overall execution of its mandate, assigning judges to cases, presiding over the Appeals Chamber and carrying out other functions specified in the Mechanism's statute and Rules of Procedure and Evidence. The Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute of the Mechanism, while the Registrar has overall responsibility for the administration and servicing of the institution, under the authority of the President.

13. The President of the Mechanism, Judge Carmel Agius, who took office on 19 January 2019, is based in The Hague, while the Prosecutor, Serge Brammertz, and the Registrar, Olufemi Elias, are based in Arusha. The current terms of all three principals run until 30 June 2020.

### **B. President**

14. During the reporting period, President Agius continued to focus on: the timely and efficient conclusion of the Mechanism's existing judicial proceedings, with regard to due process and fundamental rights; harmonizing practices and procedures between the Mechanism's two branches; and fostering high staff morale and performance. The President had announced those priorities upon taking office in January 2019 and decided more recently to retain them while the Mechanism advanced and consolidated their effective implementation. In those respects, the President again managed the judicial roster and oversaw the work of the Chambers; worked closely with the other principals on cross-cutting issues affecting the institution, including through periodic meetings of the Mechanism's Coordination Council; and consulted regularly with management and the staff union in order to keep updated on staff concerns.

15. President Agius's existing priorities took on even greater relevance in the last two months of the reporting period, as the COVID-19 pandemic presented challenges to the Mechanism's operations and rapidly impacted on working methods and staffing issues across the branches. Indeed, the pandemic has necessitated a flexible, institution-wide response that focuses on business continuity, as well as the welfare of staff members and persons under the Mechanism's supervision, while at the same time recognizing the different conditions prevailing at each of the Mechanism's duty stations. Accordingly, the President has closely collaborated with the Prosecutor, Registrar and management to ensure the Mechanism's responsiveness to the evolving situation and a smooth transition to remote working methods, where possible. In that regard, he and the other principals have provided regular guidance to the recently established COVID-19 crisis management team, mentioned below (see para. 44).

16. In addition, the President has been taking steps to ensure that the Mechanism's supervisory responsibilities vis-à-vis accused, detained and convicted persons continue to be optimally fulfilled during this time of global health crisis. The

President has been proactive in ensuring that the Mechanism continues to receive updated information from enforcement States on the COVID-19 pandemic as it pertains to prisons in which persons convicted by the two Tribunals or the Mechanism are serving their sentences. Similarly, he has requested regular updates from the Registrar on the situation in the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague. Furthermore, in recent weeks the President has dealt with numerous enforcement-related requests arising from the COVID-19 pandemic. These activities are outlined further below (see para. 76).

17. Aside from the recent focus on the COVID-19 pandemic, work continued, under the leadership of the President and the other principals, on the implementation of measures introduced to harmonize and streamline working methods across the branches, including with respect to filing practices and the Mechanism's unified judicial database. The identification of further areas for improvement remains an important priority for the President. Separately, the President, together with the other principals and the staff union, continued to focus on issues regarding discrimination, harassment, including sexual harassment, and abuse of authority, as previously reported, and to raise awareness among staff of the relevant Secretary-General's bulletin of September 2019 ([ST/SGB/2019/8](#)). In addition, the President reaffirmed the pledges he made in 2019 as a member of the International Gender Champions network and continued to provide full support for the activities of the Mechanism's focal points for gender.

18. Having held a town hall meeting for Arusha-based staff in November 2019, the President and the other principals held town hall meetings in The Hague in December 2019 and February 2020 for staff members to raise issues of concern, including with regard to the Mechanism's budget. Unfortunately, owing to the COVID-19 pandemic, the President was forced to cancel a planned visit to Arusha in April and has not been able to meet with staff in Arusha or the Mechanism's field offices this year. However, as meaningful communication with staff remains a key focus, the President and the other principals have been regularly issuing joint messages to staff and otherwise ensuring that staff members are kept informed about the Mechanism's ongoing responses to the pandemic. A town hall meeting via videoconference with staff at both branches is also being planned for the coming weeks.

19. Owing to travel and other restrictions, the President has likewise been unable to undertake official missions that had been scheduled for recent weeks. Earlier in the reporting period, however, he travelled to New York in December 2019 to present to the Security Council the Mechanism's fifteenth progress report. That mission also involved bilateral meetings with Member States and high-level representatives of the United Nations. Furthermore, in February 2020, the President and a representative of the Registrar addressed a working group of the European Commission in Brussels in relation to the Mechanism's core functions and priorities. While the COVID-19 pandemic may continue to prevent travel, the President looks forward to being able to engage once more with the Security Council and the Informal Working Group on International Tribunals, by videoconference where necessary. The President is also committed to participating – whether in person or otherwise – in events of significance to the Mechanism, including the twenty-fifth commemoration of the Srebrenica genocide in July 2020. For the same reason, he participated by video message in an event in early April 2020 marking the twenty-sixth commemoration of the genocide against the Tutsi in Rwanda, which was organized by the Embassy of Rwanda to the Netherlands and disseminated using social media.

## C. Judges

20. Article 8 (1) of the statute of the Mechanism provides that the Mechanism shall have a roster of 25 independent judges. In accordance with article 8 (3) of the statute, the judges shall only be present in Arusha or The Hague when necessary, as requested by the President, and insofar as possible will otherwise carry out their functions remotely. In line with article 8 (4) of the statute, Mechanism judges are not remunerated for being on the judicial roster, but rather receive compensation only for the days on which they exercise their functions.

21. During the reporting period, the Mechanism was very pleased to welcome Judge Iain Bonomy (United Kingdom of Great Britain and Northern Ireland) as the twenty-fifth judge on its judicial roster. Judge Bonomy was appointed by the Secretary-General, effective 6 February 2020, to replace Judge Ben Emmerson (United Kingdom of Great Britain and Northern Ireland), who had resigned on 19 July 2019. The Mechanism is delighted to once more have a full complement of judges available for assignment to judicial matters.

22. Taking into account this latest change, the current judicial roster comprises (in order of precedence): Judge Carmel Agius, President (Malta), Judge Theodor Meron (United States of America), Judge Jean-Claude Antonetti (France), Judge Joseph E. Chiondo Masanche (United Republic of Tanzania), Judge William Hussein Sekule (United Republic of Tanzania), Judge Lee G. Muthoga (Kenya), Judge Alphons M.M. Orié (Netherlands), Judge Burton Hall (Bahamas), Judge Florence Rita Arrey (Cameroon), Judge Vagn Prüsse Joensen (Denmark), Judge Liu Daqun (China), Judge Prisca Matimba Nyambe (Zambia), Judge Aminatta Lois Runeni N'gum (Zimbabwe/Gambia), Judge Seon Ki Park (Republic of Korea), Judge José Ricardo de Prada Solaesa (Spain), Judge Gberdao Gustave Kam (Burkina Faso), Judge Graciela Susana Gatti Santana (Uruguay), Judge Ivo Nelson de Caires Batista Rosa (Portugal), Judge Seymour Panton (Jamaica), Judge Elizabeth Ibanda-Nahamya (Uganda), Judge Yusuf Aksar (Turkey), Judge Mustapha El Baaj (Morocco), Judge Mahandrisoa Edmond Randrianirina (Madagascar), Judge Claudia Hofer (Germany) and Judge Iain Bonomy (United Kingdom of Great Britain and Northern Ireland).

23. Following on from the successful in-person plenary of judges held in Arusha in March 2019, a remote plenary by written procedure was held in late 2019, during which the judges adopted an amendment to the Rules of Procedure and Evidence of the Mechanism. Prior to the COVID-19 pandemic, the President had planned to hold an in-person plenary in The Hague in September 2020. The Mechanism will be closely following developments relating to travel and other restrictions in the hope that this plenary may still proceed. Indeed, given the immense value of such meetings, the President would like to be able to inform the Council of a fruitful in-person plenary in the next progress report.

24. Finally, pursuant to his discretion under article 12 (2) of the statute of the Mechanism, the President continued to assign on an alternating basis Judge William Hussein Sekule (United Republic of Tanzania) and Judge Vagn Prüsse Joensen (Denmark) as duty judges at the Mechanism's Arusha branch. As previously reported, that decision maximizes efficiency, since both judges reside in the United Republic of Tanzania and their assignment as duty judge is remunerated only to the extent that they exercise judicial functions in that capacity.

## D. The branches

25. As established in article 3 of its statute, the Mechanism has two branches: one located in Arusha and the other in The Hague. The Mechanism continues to enjoy

excellent cooperation with both host States, in accordance with the headquarters agreement in place for each branch.

26. Given the challenges posed by operating in different locations and time zones, the Mechanism seeks at all times to function as a single, unified institution so as to optimize activities and efficiencies. With that in mind, the principals and management have continued to advance the harmonization efforts commenced in previous reporting periods under the leadership of the President and have again emphasized to all staff the vital importance of inter-branch coordination.

27. Currently, in order to further harmonize practices and procedures, the Registry is revising a number of cross-branch policy instruments with a view to reflecting best practices across the two branches, most notably with respect to court operations and judicial records management. The Mechanism's unified filing system – the unified judicial database, which was successfully launched during the previous reporting period – has proved to be vital in that regard. The Mechanism looks forward to the launch of the public interface of the database, the unified court records database, which was developed to allow the public at large to access the unified judicial records of the two Tribunals and the Mechanism. The launch of the unified court records database was originally planned for March 2020 but was postponed owing to the COVID-19 pandemic. The Registry is now working towards launching the database in the third quarter of 2020.

28. At the Arusha branch, the Mechanism continued to implement remedial works on its premises, including in relation to technical defects in the archives building, where 95 per cent of the archive holdings of that branch are housed. The Mechanism formally closed the “punch list” of remaining defects, signalling the significant progress made in the finalization of the construction project.<sup>3</sup> The Mechanism remains focused on the appropriate recovery of direct and indirect costs arising from errors and delays, where economically feasible to do so, pursuant to General Assembly resolution 73/288, and decided to withhold delay damages, following close consultation with relevant offices at United Nations Headquarters. The Mechanism is grateful for the outstanding commitment and support of the United Republic of Tanzania in relation to its work and activities, including the support provided throughout the construction project.

29. In The Hague, the Mechanism and the International Tribunal for the Former Yugoslavia shared premises until the closure of the Tribunal on 31 December 2017. As previously reported, the host State acquired ownership of the rented premises occupied by the Mechanism in April 2019, which has allowed the Mechanism to remain in its current location. Negotiations with the host State on the future lease, which take into account the Mechanism's reduced occupancy requirements, are progressing, as are the host State's plans for the full renovation of the premises. The Mechanism is equally grateful for the outstanding commitment and support of the Netherlands in relation to its work and activities, including the support provided with respect to the Mechanism's premises in The Hague.

30. In addition to its premises in Arusha and The Hague, the Mechanism has two field offices that form part of the respective branches. The field office in Kigali continued to provide support to the Prosecution, the Defence and the Registry in relation to the ongoing contempt proceedings in the *Turinabo et al.* case,<sup>4</sup> including by monitoring the provisional release of four accused persons to Rwanda. The field

<sup>3</sup> Further details on the status of the finalization of the construction project are contained in the report of the Secretary-General on construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/74/662).

<sup>4</sup> The field office in Kigali provided similar support in the *Ngirabatware* contempt case up until its joinder with the *Turinabo et al.* case on 10 December 2019.



office further continued to provide support in relation to requests for assistance from national jurisdictions, as well as protection and support for witnesses, including medical and psychosocial services provided through its medical clinic. The Kigali field office also continued to facilitate the activities of the independent monitors of cases of the International Criminal Tribunal for Rwanda that have been referred to Rwanda, pursuant to article 6 of the statute of the Mechanism (see para. 136).

31. The field office in Sarajevo continued to provide support to witnesses in relation to the ongoing *Stanišić and Simatović* case. It also continued to provide protection and support services to witnesses who had previously been called to appear before the International Tribunal for the Former Yugoslavia or the Mechanism, and to liaise with national and local authorities on those issues. The Sarajevo field office further facilitated requests for variation of protective measures for witnesses, in support of national prosecutions of individuals allegedly implicated in the conflicts in the former Yugoslavia.

## **E. Budget, staffing and administration**

32. Since 1 January 2020, the Mechanism has been operating under its approved 2020 budget (see General Assembly resolution [74/259](#)). As explained further below (see paras. 62, 63, 66 and 69), courtroom activity in the Mechanism's ongoing cases has been postponed owing to the COVID-19 pandemic. As a result, judicial proceedings that were on track to be completed by the end of 2020 are now projected to continue into the first part of 2021. It is anticipated that this delay will have an impact on the required resource levels of the Mechanism's 2021 budget proposal. The relevant details are being finalized ahead of the submission of the proposal next month.

33. Moreover, while for much of the reporting period the Mechanism continued to downsize in accordance with the Registrar's downsizing policy of June 2019 and the Mechanism's approved budget for 2020, the COVID-19 pandemic could have an impact on some of the downsizing planned for the remainder of 2020. In that respect, the Mechanism may be compelled to retain staff whose services are required for the completion of judicial activity that has been delayed, as well as staff whose planned separation cannot be processed owing to COVID-19-related travel restrictions. The relevant decisions will be made on a case-by-case basis. The comparative review exercise that will result in a reduction in the number of posts in 2021 will begin once the Mechanism's proposed budget is submitted. The comparative review exercise should be finalized by 30 September 2020. By that time, many COVID-19-related measures may have eased. However, should the public health crisis remain a factor at the time the budget is approved and continue to prevent the completion of judicial work, staff positions in support of that work will be subject to revision.

34. Details and a breakdown of the Mechanism's expenditures in 2020, presented in terms of funds committed, are set forth in enclosure II.

35. During the reporting period, the Mechanism had a very low vacancy rate of 3 per cent for its continuous posts. As at 1 May 2020, 181 of the 187 approved continuous posts were occupied to carry out the Mechanism's continuous functions. An additional 373 personnel are serving as general temporary assistance to assist with ad hoc needs, including judicial work. Those positions are short-term in nature and, consistent with the flexible staffing structure of the Mechanism, the number of such staff will fluctuate depending on the relevant workload.

36. Details concerning the staffing of the Mechanism by division are reflected in enclosure I.

37. The Mechanism's continuous and general temporary assistance positions included nationals of 75 States: Algeria, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, China, Congo, Croatia, Cuba, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Egypt, Ethiopia, Fiji, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Kenya, Latvia, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Malta, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Rwanda, Senegal, Serbia, Sierra Leone, South Africa, Spain, Sudan, Sweden, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yemen, Zambia and Zimbabwe.

38. Averaged across the two branches, as at 1 May 2020, 53 per cent of Professional staff members at the Mechanism were female, which the Mechanism is pleased to note not only surpasses the Secretary-General's gender parity goals but also marks an increase of 1 per cent from the previous reporting date. However, when General and Field Service staff are also taken into account, the average percentage of female staff unfortunately is lower, with a total of 44 per cent overall. The Mechanism acknowledges that, despite the limitations imposed by its nature as a downsizing institution, there remains room for improvement in this regard. Nevertheless, the Mechanism is pleased that OIOS recognized its continuing efforts to increase the number of female staff at the Arusha branch and accordingly assessed the fifth recommendation from the OIOS evaluation of 2018 as having been implemented (S/2020/236, paras. 56–60).

39. During the reporting period, the Mechanism's focal points for gender and their alternates continued to be actively engaged in the Mechanism's recruitment and downsizing processes, during which they provided parity-related feedback. They also ensured that all new staff and non-staff personnel understood the protections and obligations set out in the above-mentioned bulletin of September 2019. In particular, in The Hague, the office of the focal point collaborated with the Mechanism's Safety and Security Section to develop a new in-person, day-long gender awareness training course for security staff. Although the initiative has been postponed, owing to the COVID-19 pandemic, until normal working conditions resume, eventually all security staff in The Hague will participate in the training. Furthermore, work has continued on a Mechanism-specific policy incorporating the above-mentioned bulletin of September 2019. The Mechanism hopes to be able to report on substantive progress in that regard in the coming reporting period.

40. Separately, the training programme designed to assist Mechanism staff in integrating a gender perspective into their professional lives, which was launched during the previous reporting period, was successfully completed in the current period. As the training was a joint initiative with other organizations based in The Hague, it was primarily aimed at staff in The Hague, although arrangements were made for Arusha-based staff to participate in one of the sessions. Finally, in Arusha the office of the focal point for gender was active in organizing the Mechanism's early celebration of International Women's Day. On that occasion, the Mechanism welcomed to its Arusha premises students from several schools and representatives of local groups supporting gender equality.

41. As previously reported, the Mechanism also has dedicated focal points for sexual exploitation and abuse issues, diversity, inclusion and LGBTIQ+ issues, disability and accessibility issues, and conduct and discipline issues, to provide information and address matters that may arise in the workplace. During the reporting period, the Registrar continued to meet and communicate with the focal points and to encourage their active role within the organization. It is relevant to note in this context

that all focal points are included in a working group established by the Registrar in March 2020 to finalize a Mechanism policy on occupational safety and health. The working group also includes representatives of the three organs, so as to ensure appropriate input from the relevant stakeholders.

42. Building on the Secretary-General's United Nations Disability Inclusion Strategy, launched in 2019, the relevant Mechanism focal points marked the International Day of Persons with Disabilities on 3 December 2019 and launched a section on the Mechanism's intranet dedicated to that important issue.

43. Mandatory diversity and inclusion workshops for staff continued to be offered across the Mechanism in the first part of the reporting period. Moreover, in support of the Secretary-General's focus on civility in the workplace and at the Registrar's initiative, the Office of the United Nations Ombudsman and Mediation Services facilitated a workshop on community, civility and communication and offered individual consultations for staff at the Arusha branch by the Regional Ombudsman's Office in February 2020. The feedback from staff on the workshop and the availability of individual consultations was most positive. The organization of similar workshops for staff at the branch in The Hague and the two field offices has been suspended owing to the COVID-19 pandemic.

44. Turning more generally to the COVID-19 pandemic, from mid-March 2020 the Mechanism was required to quickly adapt its working methods to the unprecedented circumstances resulting from the global health crisis. In order to ensure a coordinated approach and enhance the Mechanism's ability to respond to the changing situation at each duty station, the COVID-19 crisis management team was set up. This is an advisory body, comprising representatives of all organs and relevant sections, that meets weekly to address issues as they arise and provide relevant recommendations. In addition, the Registrar appointed an Outbreak Coordinator, in accordance with guidance from United Nations Headquarters. Furthermore, the three principals have met regularly by videoconference to discuss, determine and plan ahead how best to manage the impact of the crisis on the Mechanism and its staff. The Mechanism's responses to the COVID-19 pandemic are therefore coordinated through those forums and ultimately decided upon by the principals. Thereafter, they are broadcast to staff via the Mechanism's intranet and other secure channels as updates become available.

45. As a result, and also in line with the relevant administrative guidelines issued by United Nations Headquarters,<sup>5</sup> the Mechanism has implemented a series of mitigating measures aimed at ensuring business continuity while minimizing the possible exposure of staff and non-staff personnel to COVID-19 at all duty stations, most notably by enabling staff to carry out their professional duties remotely where possible. The Mechanism is also currently developing a document that sets out the principles and parameters for addressing various pandemic-related scenarios that the Mechanism may face in the coming months.

46. The transition to remote work, while not without challenges, has been made easier by the Mechanism's experience with judges working remotely from their home countries and by the flexible working arrangements already available to staff. Where remote work is not possible, the Mechanism has maintained a minimum presence on-site with due regard for the health and safety of staff members and non-staff personnel, including through the use of staggered work hours, rotation systems and the reallocation of staff to optimize resources. Crucially, those measures have enabled

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<sup>5</sup> United Nations System Chief Executives Board for Coordination (CEB) Human Resources Network, "Administrative guidelines for offices on the novel coronavirus (COVID-19) outbreak: framework for the management of staff members in United Nations common system headquarters and field duty stations", version 1.0, 13 February 2020. Version 2.0 issued on 10 March 2020; version 3.0 issued on 21 March 2020; version 4.0 issued on 14 April 2020.

the Mechanism to continue to adjudicate judicial matters and discharge its duties across all areas of operations, albeit at a reduced pace in some instances owing to various constraints associated with working from home. Such limitations are related to confidentiality of information, technical or equipment issues, and competing parenting and home-schooling responsibilities. Moreover, the psychosocial impact of the pandemic on staff well-being, morale and productivity cannot be underestimated and is of great concern to the Mechanism.

47. The Division of Administration has continued to provide support across branches and field offices to ensure the continuity of the Mechanism's operations during the COVID-19 pandemic. In particular, bearing in mind the stringent information security controls required to ensure the confidentiality of the data entrusted to the Mechanism, the Information Technology Services Section has excelled in quickly ensuring that all designated staff are granted remote access to the Mechanism's information technology network and to nearly all of the applications that staff may require to fulfil their duties. The Information Technology Services Section has to date issued 384 remote access tokens to staff members across branches. Business continuity in that respect has been assured. Likewise, the prior adoption of the Umoja and Inspira platforms has made it possible to use those supporting applications remotely, ensuring that nearly all activities relating to finance, procurement, budget and human resources continue seamlessly.

48. The Mechanism's Human Resources Section has been actively engaged in providing support and guidance to staff during the global health crisis, and additional information resources have been rolled out for that purpose. Information on health insurance and on temporary arrangements pertaining to remote working, general attendance requirements, sick leave and other administrative issues is clearly communicated; advice is offered to both staff and managers on remote working issues that may arise; and online training opportunities and emotional support tools that are available to staff are highlighted. The Section is currently developing its own psychosocial support programme to help Mechanism staff to deal with the COVID-19 pandemic. This will include a well-being and self-care platform, professionally facilitated group discussions, webinar training sessions for both staff and supervisors, and access to private tele-health counselling sessions with stress counsellors and psychologists. The goal of the programme is to strengthen the resilience of staff members, thus enabling them to continue the important work of the Mechanism.

49. The COVID-19 pandemic has placed the Medical Services Unit of the Mechanism under enormous pressure, which has necessitated the temporary expansion of its capacity.

## **F. Legal and regulatory framework**

50. In addition to its statute, the Mechanism has developed over the years a legal structure governing its activities, which comprises its Rules of Procedure and Evidence as well as Practice Directions and other internal policies. During the reporting period, the Mechanism continued to develop rules, procedures and policies that harmonize and build upon the best practices of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, as well as its own practice, in order to more efficiently and effectively carry out its mandate.

51. During the remote plenary by written procedure held in late 2019, the judges of the Mechanism decided to adopt amendments to rule 18 (B) of the Rules of Procedure and Evidence. In accordance with article 13 of the statute, those amendments were reported by President Agius to the President of the Security Council on 20 December

2019. The amendments can be found in the revised version of the Rules of Procedure and Evidence, publicly accessible on the Mechanism's website.

52. Progress was made in relation to 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. As anticipated in the previous report, the President undertook consultations with the Prosecutor and the Registrar regarding proposed amendments thereto. Following the conclusion of that process, the President issued a revised version of the Practice Direction on 15 May 2020, which is likewise publicly accessible on the Mechanism's website.

53. The President further continued his review of the proposals by the Registry to update the Code of Professional Conduct for Defence Counsel Appearing before the Mechanism, while additional, related consultation has recently been undertaken by the Registry with the Advisory Panel, the Association of Defence Counsel practising before the International Courts and Tribunals, and the Prosecution. The proposed amendments are aimed at further clarifying the professional obligations of defence counsel and their support staff. In addition, the Registry, in consultation with the President and the Association, is in the process of reviewing the Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the International Residual Mechanism for Criminal Tribunals.

54. During the reporting period, the Registrar adopted a Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses<sup>6</sup> in November 2019, following consultations with the President. The Practice Direction regulates the Registry's witness management operations and explicitly incorporates gender-sensitive and gender-appropriate approaches, in response to a recommendation in the OIOS evaluation of 2018 that has since been closed (S/2020/236, paras. 56–60). The Witness Support and Protection Unit continues to review the incorporation of gender considerations in lower-level instruments, as appropriate.

55. In addition, so as to further streamline and harmonize practices relating to court operations and judicial records management across the two branches, the Registry developed and adopted standard operating procedures on judicial records and transcript coordination. Furthermore, the Registry is in the process of reviewing additional cross-branch policy instruments regulating other court operations and judicial records management functions, including with regard to the submission and processing of filings and requests for assistance received from national jurisdictions.

56. The legal and regulatory instruments, policies, internal guidelines and operating procedures in effect at the Mechanism provide important clarity and transparency for stakeholders across a broad range of the Mechanism's mandated functions.

### III. Judicial activities

57. Throughout the reporting period, the Mechanism was seized of a number of complex judicial matters, many of which had been ongoing since the previous progress report. The President and the judges continued to engage in a wide variety of judicial activity, issuing 142 decisions and orders. In accordance with article 8 (3) of the statute of the Mechanism, judicial activity was primarily carried out remotely. Currently, judges on the roster are supported by a Chambers Legal Support Section

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<sup>6</sup> This Practice Direction (MICT/40, 26 November 2019) replaces the Policy for the Provision of Support and Protection Services to Victims and Witnesses, first issued on 26 June 2012.

of 24 staff, comprising 20 legal officers and four administrative assistants, serving at both branches of the Mechanism.

58. Of the 142 decisions and orders issued during the reporting period, 102 (or approximately 7 in 10) related to the adjudication of requests pertaining to the protection of victims and witnesses, assistance to national jurisdictions, enforcement of sentences, and investigation and trial of allegations of false testimony or contempt, as well as the management of the work of the Chambers and the judicial review of administrative decisions, rather than to the adjudication of the core crimes reflected in the statute of the Mechanism.

59. Chambers leadership continued to employ streamlined working methods and processes, in collaboration with other sections of the Mechanism, to facilitate an efficient and transparent one-office work environment that draws on the resources at both branches to address judicial workload wherever arising. Moreover, the judges, whose individual legal backgrounds are roughly evenly split between civil and common law, continued to draw on their expertise and knowledge in the adjudication of the various matters to which they were assigned.

60. With respect to the core crimes reflected in the statute of the Mechanism, during the reporting period the judges continued their work on a trial and an appeal from judgment, as set forth below.

61. In the *Stanišić and Simatović* case, the retrial commenced on 13 June 2017 and the Prosecution case concluded on 21 February 2019. The Defence case commenced in June 2019 and, at the time of the present report, the Trial Chamber had heard all witnesses from the Defence for Jovica Stanišić and approximately half of the witnesses from the Defence for Franko Simatović. Initially, it was projected that the presentation of evidence would recommence at the end of April 2020 and conclude in June 2020, with final trial briefs and closing arguments envisioned for September and October 2020 and the trial judgment for December 2020. Those timelines were based on the time frames from the prior trial before the International Tribunal for the Former Yugoslavia and were subject to change on the basis of the actual circumstances in the current retrial.

62. In March 2020, in view of the global health crisis and restrictions on travel and movement, the Trial Chamber decided to postpone hearing the final witnesses for Mr. Simatović's Defence until at least 2 June 2020, as reflected in the third review report. With the lifting of the state of emergency in Serbia on 7 May 2020, the Defence for Mr. Simatović is finally in a position to conclude the preparation of its last witnesses. Accordingly, and after consulting the parties, the Trial Chamber decided to resume hearing witnesses on 7 July 2020. The postponement of the resumption of the presentation of evidence by an additional month necessitates a corresponding one-month adjustment in the projections for both the filing of final trial briefs and the hearing of closing arguments, until the fourth quarter of 2020 or the first part of 2021.

63. On the basis of these circumstances, it is currently projected that the trial judgment will be issued by April 2021, instead of March 2021 as provisionally indicated in the third review report. Currently, the Mechanism still anticipates that major courtroom activity in the case, involving the hearing of witnesses, will conclude in 2020 and that only final arguments, deliberations and the delivery of the judgment will take place in 2021, which will minimize the financial impact of these developments. In the event that the COVID-19 pandemic necessitates a further postponement of the completion of the presentation of evidence, a new projection will be made once it is determined when the presentation of evidence can be completed. During the reporting period, the three judges on the bench in the case carried out their work at the seat of the Mechanism in The Hague.

64. The appeal proceedings in the *Mladić* case are also ongoing. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia issued its judgment against Ratko Mladić, finding him guilty of genocide, crimes against humanity and violations of the laws or customs of war, and sentencing him to life imprisonment. Both Mr. Mladić and the Prosecution appealed the judgment. Citing the extraordinary breadth and complexity of the case, the length of the trial judgment, the lack of Defence resources and intended medical and legal filings, Mr. Mladić requested the Appeals Chamber to extend the deadlines for the briefing process. The Appeals Chamber partly granted the requests, allowing a total of 210 days of extensions of time. The briefing of the appeals concluded on 29 November 2018. Following disqualification motions brought by Mr. Mladić, three judges were disqualified from the bench in the case on 3 September 2018, owing to the appearance of bias, and were replaced. Subsequently, on 14 September 2018, one of the newly assigned judges was replaced at his request. The replacement of the judges has not delayed the proceedings.

65. During the reporting period, all of the judges on the bench in the *Mladić* case carried out their work remotely, except for the presence in The Hague of the presiding judge during status conferences. One status conference was held during the period, on 30 January 2020, and the next status conference, to be conducted by videoconference, was scheduled for 29 May 2020. On 16 December 2019, the Appeals Chamber scheduled the hearing of the appeals for 17 and 18 March 2020. However, at the end of February 2020, Mr. Mladić requested the Appeals Chamber to reschedule the hearing owing to his surgery. The Appeals Chamber granted the request, staying the hearing to a date approximately six weeks after Mr. Mladić's surgery to allow for his recovery. At the same time, the Appeals Chamber requested to be provided with weekly status reports to facilitate an expeditious rescheduling of the appeal hearing.

66. Noting medical reports that Mr. Mladić was recovering well from the surgery, and considering the current COVID-19-related restrictions on travel, on 1 May 2020 the Appeals Chamber, in consultation with the parties, rescheduled the hearing of the appeals to 16 and 17 June 2020. The hearing of the appeals on those dates is subject to change, should pandemic-related restrictions inhibit the necessary travel or the holding of the hearing for other reasons. In that respect it should be noted, for example, that the five judges on the bench in the case reside in countries outside the European Union and that their travel to The Hague may be impeded by border closures or the unavailability of flights. In the third review report, the Mechanism adjusted its projection for completing the proceedings in the case by two months, from completion by the end of December 2020 to completion by the end of February 2021, on the basis of the then projected two-month postponement of the hearing to allow for Mr. Mladić's surgery and recovery. In view of the fact that, after the third review report had been submitted, the Appeals Chamber rescheduled the hearing of the appeals in the case to dates three months after the initially scheduled hearing, the Mechanism is now adjusting its projection for completion of the case by a commensurate amount of time, from the end of December 2020 to the end of March 2021. That projection will be closely monitored and will be updated as necessary.

67. In addition to the above-mentioned proceedings relating to core crimes reflected in the statute of the Mechanism, the Mechanism was also seized of six matters pertaining to allegations of false testimony or contempt. Notably, a single judge continues to conduct intensive pretrial proceedings in the multi-accused *Turinabo et al.* case, which relates to allegations of interference connected with the review proceedings in the case of *Prosecutor v. Augustin Ngirabatware*. As previously reported, the *Ngirabatware* review was concluded in September 2019. The original five accused persons in the *Turinabo et al.* case pleaded not guilty to all counts at their initial appearance on 13 September 2018. The trial, which had been scheduled

to commence on 7 October 2019, was postponed following the Prosecution's request in September 2019 to substantially amend the indictment, which the single judge granted on 17 October 2019.

68. Furthermore, on 10 October 2019 a single judge confirmed an indictment against Augustin Ngirabatware, which also concerns allegations of interference in relation to the *Ngirabatware* review. Mr. Ngirabatware pleaded not guilty at his initial appearance on 17 October 2019, and on 10 December 2019 the single judge granted the Prosecution's request that the *Ngirabatware* contempt case be joined to the *Turinabo et al.* case. The joint case was originally expected to commence in June 2020 and to conclude by the end of December 2020. The projection for the start of the case was based primarily on the time required under the Mechanism's Rules of Procedure and Evidence for the filing of key pretrial submissions, following the Prosecution's amendment of the indictment and the joinder of the *Ngirabatware* contempt case, as well as consultations with the parties concerning the time needed for preparation. The projection for the duration of the case was based principally on the parameters set by the single judge for the length of the Prosecution case, given its complexity, as well as the current working method in the Chambers.

69. In view of the COVID-19 pandemic and related restrictions on travel and movement, the single judge decided to postpone the commencement of the trial in the *Turinabo et al.* case to at least 24 August 2020. Accordingly, the trial judgment is now expected in March 2021. Pretrial litigation and trial preparation are ongoing. This adjusted projection for the commencement of the trial may be further impacted by the evolving global health crisis. In that respect, it is noted that counsel for the accused, support staff and witnesses are located on three different continents, which makes the case particularly susceptible to restrictions on travel.

70. The contempt case against Petar Jojić and Vjerica Radeta, which was transferred from the International Tribunal for the Former Yugoslavia to the Mechanism on 29 November 2017, was referred to the authorities of Serbia for trial by order of a single judge on 12 June 2018. The *amicus curiae* prosecutor in the case appealed against the order of referral. On 12 December 2018, the Appeals Chamber found that the *amicus curiae* prosecutor had not raised before the single judge the issue of "the unwillingness of the witnesses to testify if the case is tried in Serbia" and remanded the matter for consideration of further submissions on the issue. On 13 May 2019, the single judge issued a decision revoking the referral order and requesting Serbia to transfer the two accused to the Mechanism without delay. On the same day, the single judge issued new international arrest warrants, directed to all States Members of the United Nations, for the arrest, detention and transfer to the custody of the Mechanism of the accused. On 4 June 2019, Serbia appealed the single judge's decision.

71. On 24 February 2020, the Appeals Chamber dismissed the appeal of Serbia and affirmed the single judge's decision of 13 May 2019 to revoke the referral order. All Member States must abide by their obligations under Chapter VII of the Charter of the United Nations and are therefore expected to act in accordance with the outstanding warrants against the two accused and to secure their arrest, detention and transfer to the custody of the Mechanism without delay. The Mechanism does not hold trials in absentia and therefore relies heavily on cooperation from Member States to secure the presence of the accused. In that regard, it calls upon Serbia in particular to cooperate fully with the Mechanism.

72. Turning to the judicial activity of the President, during the reporting period the President issued a total of 40 orders and decisions, including 6 orders and decisions related to the review of administrative decisions, 3 of which addressed detention matters, and 13 orders and decisions related to enforcement matters. In addition, he



presided over the Appeals Chamber seized of the above-mentioned appeal in the *Jojić and Radeta* case.

73. Furthermore, the President issued 18 assignment orders, of which 13 related to the assignment of single judges, 2 related to the assignment of a Trial Chamber and 3 concerned the Appeals Chamber. To the extent possible, in assigning matters to judges, the President endeavoured to ensure an equitable distribution of work, giving due consideration also to geographical representation and gender, as well as possible conflicts of interest arising from previous assignments.

74. As in previous reporting periods, the President, pursuant to his authority in the area of enforcement of sentences, continued to dedicate a substantial amount of time and resources to numerous enforcement matters, including those related to the early release of convicted persons. Such matters are dependent on the circumstances specific to each convicted person and case and, in addition, necessarily relate to questions of State support and cooperation. As a result, they can be extremely complex and time-consuming.

75. The President adjudicated four existing applications for early release during the reporting period<sup>7</sup> and remains seized of many more. To assist in his determination of those applications, the President continued to actively solicit a range of relevant information in order to ensure greater transparency and allow for full consideration of the broader impacts of early release. The President also consulted judges of the relevant sentencing Chamber who remain judges of the Mechanism, as applicable, pursuant to rule 150 of the Rules of Procedure and Evidence. Where no other judges who had imposed the sentence remained judges of the Mechanism, the President consulted at least two other judges, consistent with rule 151 of the Rules. Of note during the reporting period were further developments of the jurisprudence regarding conditional early release. In that respect, the President dismissed a claim, by a convicted person who in January 2019 had been released early subject to conditions, that the imposition of conditions was *ultra vires*. The President, in his reasoned decision,<sup>8</sup> explained the authority under which early release could be made contingent on the fulfilment of conditions, emphasizing that the discretion to impose conditions had always rested with the President of the Mechanism and, in addition, recalling paragraph 10 of Security Council resolution 2422 (2018), in which the Council encouraged the Mechanism to consider putting in place conditions on early release.

76. The COVID-19 pandemic has led to increased activity in relation to enforcement matters. In the past two months, the President has been seized of a number of requests by convicted persons for provisional or early release or similar relief on the basis of the potential spread of COVID-19, most of which have already been disposed of. In that connection, on 19 March 2020 the President directed the Registrar to contact every enforcement State to request information regarding measures taken to prevent the introduction and spread of COVID-19 in prisons where persons convicted by the two Tribunals or the Mechanism are serving their sentences. All enforcement States have responded to that request. The President has also requested information from the Registrar on measures taken at the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague,

<sup>7</sup> *Prosecutor v. Yussuf Muniyazi*, Case No. MICT-12-18-ES.2, Decision on the Application of Yussuf Muniyazi for Early Release, 29 November 2019; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted version); *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on the Application of Dominique Ntawukulilyayo for Early Release, 8 January 2020; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted version).

<sup>8</sup> *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Decision on Motions Related to Valentin Ćorić's Request for Variation of Early Release Conditions, 21 February 2020.

where Mechanism detainees are housed. To ensure that the Mechanism is kept informed of all relevant changes, on 24 April 2020 the President issued an order *inter alia* directing the Registrar to continue liaising with enforcement States so as to receive updated information at least every 14 days until the end of June 2020. The President will continue to follow these matters extremely closely.

77. Having detailed its current judicial activities, the Mechanism notes that the projections for case completion indicated above are uniformly made on the basis of past experience with cases of comparable complexity and, in the case of appeals from judgment, take into particular account the complexity of the case at trial. The Mechanism will closely monitor and adjust the projections as necessary to reflect developments, including those arising from any extraordinary events during the course of the proceedings that would affect their conduct. Such events could include continuation of the COVID-19 pandemic, the replacement of judges or counsel, or the illness of an accused or an appellant. In relation to the calculation of projections for any possible fugitive trial, the Mechanism refers to its third review report (S/2020/309, para. 62). Furthermore, the Mechanism will bear in mind the recommendation made by OIOS in relation to clear and focused case projections, which it takes very seriously (S/2020/236, para. 67 and annex I, and S/2020/309, paras. 204 and 214). As always, the judges and Chambers leadership remain fully committed to taking measures to expedite pending cases and conclude them as soon as possible.

78. With respect to projections for judicial activities other than trials and appeals from judgment, the Mechanism notes that it has a continuing obligation to safeguard the administration of justice. In that regard, its duty to investigate and prosecute allegations of false testimony or contempt, subject to the provisions of article 1 (4) of the statute, will continue until its closure. The Mechanism recalls more broadly the observations made in the report of the Secretary-General of 21 May 2009 that “it is not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgments, referral of cases and pardon and commutation of sentences will arise” but that “such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals ... and that the level of work involved ... will inevitably decrease over time” (S/2009/258, para. 102). Indeed, it is anticipated that such requests will continue to be filed for as long as cases continue to be investigated and prosecuted in domestic jurisdictions, persons convicted by the two Tribunals or the Mechanism continue to serve their sentences, and any of the victims and witnesses who testified before those institutions remain in need of protection.

79. It is therefore important to bear in mind that the Security Council has tasked the Mechanism with a range of residual judicial functions that will continue after the existing caseload has been concluded. Likewise, certain of the Mechanism’s non-judicial mandated functions, including the management and preservation of archives, will continue into the future, unless the Security Council decides otherwise.

80. The current status of the Mechanism’s trial, appeal and review proceedings is reflected in enclosure III.

#### **IV. Registry support for judicial activities**

81. During the reporting period, the Registry continued to provide support for the Mechanism’s judicial activities at both branches.

82. The Registry processed and disseminated 1,105 filings, including 130 Registry legal submissions, amounting in total to 13,891 pages. In addition, during the

reporting period, in Arusha the Registry facilitated and serviced a status conference in the multi-accused *Turinabo et al.* case. In The Hague, the Registry facilitated and serviced one status conference in the *Mladić* case and 35 court hearings in the *Stanišić and Simatović* case, in accordance with the Trial Chamber's court schedule. In total, 37 court hearing days were serviced during the reporting period.

83. The Registry's Language Support Services, at the two branches, translated approximately 17,500 pages, provided 262 conference interpreter days and produced 3,950 pages of transcripts in English and French. This includes the support provided in the *Stanišić and Simatović* case, the *Turinabo et al.* case, the *Ngirabatware* review and the *Ngirabatware* contempt case, as well as the translation of monitoring reports with regard to cases referred to Rwanda and France.

84. While the Registry has been able to support courtroom functions in the ongoing cases, holding more than one proceeding a day or sitting for extended hours is possible only with significant advance notice, owing to previously reported budget constraints, and would incur additional resources. The resources of the Language Support Services also remain under strain. However, it has been possible during the reporting period to deliver a number of previously delayed translations of judgments, including two in Kinyarwanda and two in Bosnian/Croatian/Serbian. At the time of writing, 36 judgments of the International Criminal Tribunal for Rwanda or the Mechanism were awaiting translation into Kinyarwanda, and two judgments of the International Tribunal for the Former Yugoslavia were awaiting translation into Bosnian/Croatian/Serbian. In addition, 14 judgments of the Tribunals and the Mechanism were yet to be translated into French.

85. The Registry's Office for Legal Aid and Defence Matters administered the Mechanism's legal aid system and provided various forms of assistance, financial and otherwise, to an average of 56 defence teams comprising a total of approximately 150 defence team members. In particular, the Office for Legal Aid and Defence Matters processed more than 580 defence invoices, travel requests and expense reports during the reporting period. In addition, the Office for Legal Aid and Defence Matters updated the list of those eligible for assignment to suspects and accused before the Mechanism, which now includes 57 admitted counsel, and increased the number of prosecutors and investigators eligible for assignment as an *amicus curiae* to 41.

86. As already discussed, in view of the COVID-19 pandemic and the resulting restrictions on travel and movement of witnesses, defence counsel and staff, a number of courtroom proceedings had to be postponed in the last two months of the reporting period. The uncertainties arising from such postponements have posed challenges to the timing of the recruitment of court reporters, interpreters and other staff necessary to support the upcoming trial proceedings in the *Turinabo et al.* case, as such staff are recruited on a rolling basis, if and when needed, in line with the Mechanism's flexible staffing structure. Meanwhile, judicial activities, other than the postponed courtroom proceedings, are progressing on the basis of the remote working arrangements in place for both judges and staff, and the Registry continues to provide full support for those activities.

87. In response to the international travel restrictions adopted owing to the global health crisis, the Office for Legal Aid and Defence Matters was instrumental in facilitating the urgent travel of defence team members back to their respective home bases between 13 and 18 March 2020. On a related note, all previously scheduled defence investigative missions have been deferred until at least early July 2020, owing to the current absence of commercial flights to various destinations. Finally, the Office for Legal Aid and Defence Matters has maintained direct communications with all defence teams, offering regular updates on the COVID-19 pandemic and measures implemented by the Registry.

## V. Victims and witnesses

88. Pursuant to article 20 of the statute, the Mechanism is responsible for the protection of the witnesses who have testified in cases completed by the two Tribunals, as well as those witnesses who have appeared or may appear before the Mechanism. In practice, approximately 3,150 witnesses benefit from judicial and/or non-judicial protective measures.

89. During the reporting period, consistent with judicial protection orders and in close collaboration with national authorities and other United Nations entities, the Witness Support and Protection Unit provided security for witnesses by undertaking threat assessments and coordinating responses to security-related requirements. The Unit also ensured that protected witness information remained confidential and continued to contact witnesses when orders to seek their comments in relation to requests for the continuation, rescission, variation or augmentation of judicial protective measures were received. Furthermore, the Unit facilitated contact between parties and relocated witnesses or witnesses of opposing parties when so required.

90. The witness support and protection teams at the two branches continued to exchange best practices and to use a common information technology platform for their respective witness databases, which maximized operational efficiency across both branches. Furthermore, a new Practice Direction relating to the support and protection of victims and witnesses was promulgated by the Registrar after consultation with the President, as set out above (see para. 54).

91. During the reporting period, the Witness Support and Protection Unit filed numerous submissions concerning witness-related matters and implemented 14 judicial orders related to protected witnesses, including orders in relation to requests for the variation of protective measures. The Unit in The Hague continued to receive new referrals for assessment and implementation of protective measures and provided assistance to national courts, including by facilitating the provision of evidence by relocated witnesses.

92. As part of the provision of support services to witnesses by the Mechanism in Arusha, witnesses residing in Rwanda continued to receive medical and psychosocial services from the medical clinic located at the Kigali field office. These services are particularly focused on witnesses experiencing psychotrauma or living with HIV/AIDS, as many of those who contracted the virus did so as a result of crimes committed against them during the 1994 genocide against the Tutsi in Rwanda. In addition, the Witness Support and Protection Unit continued to support protected witnesses who had testified before the International Criminal Tribunal for Rwanda in resolving refugee status and residency-related issues.

93. In providing support with regard to the Mechanism's judicial caseload, the Witness Support and Protection Unit in Arusha undertook administrative and logistical arrangements for witness activity in relation to the *Turinabo et al.* case. Similarly, the Unit in The Hague continued to support witness activity in the *Stanišić and Simatović* case. While those cases have been postponed in view of the COVID-19 pandemic, both branches continue to work towards providing appropriate support and protection for witnesses at this unique time, including through the development of new and alternative initiatives. Those initiatives include engaging with the Information Technology Services Section regarding new technology to enable secure and confidential video calls to be held with witnesses when required, in a manner that would not compromise personal information or rely on social media or other personal accounts.

94. It is expected that victim and witness protection will continue to be required in the coming years in the light of the multitude of judicial protection orders that will remain in force unless rescinded or waived. The provision of support may be required until the last victim or witness is deceased, or, where applicable, until the cessation of protective measures covering a victim's or witness's immediate family members. In relation to relocated witnesses, support may be required until the last member of the immediate family is deceased.

## **VI. Fugitives and trial and appeal readiness**

95. Responsibility for tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda was transferred to the Mechanism on 1 July 2012, in accordance with article 6 of the transitional arrangements. In its resolution [1966 \(2010\)](#), the Security Council urged all States, particularly those where fugitives are suspected to be at large, to further intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible. The Council has repeated this call to States in subsequent resolutions, including most recently in resolution [2422 \(2018\)](#). The Mechanism is deeply grateful for the Council's support in relation to this vital matter and emphasizes that it will continue to rely on the cooperation and political will of Member States in order for the fugitives to be apprehended and prosecuted.

96. The fugitive tracking function is within the responsibility of the Prosecutor and is discussed in his report (see annex II). As detailed by the Prosecutor, there were developments during the reporting period concerning the fugitives indicted by the International Criminal Tribunal for Rwanda. On 16 May 2020, Félicien Kabuga, one of the fugitives expected to be tried by the Mechanism, was arrested in France. In addition, the death of the fugitive Augustin Bizimana, over whom the Mechanism had similar jurisdiction, was confirmed during the reporting period.

97. Following those key events, there remain six fugitives, whose arrest and prosecution continue to be a top priority for the Mechanism. One of those individuals, Protais Mpiranya, is expected to be tried before the Mechanism, while the cases of the other five, namely, Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Ryandikayo (first name unknown) and Charles Sikubwabo, were referred to Rwanda by the International Criminal Tribunal for Rwanda, subject to the conditions set out in the relevant referral decisions.

98. Consistent with its commitment to efficiency, the Mechanism has continued to ensure that it is prepared to conduct a trial or appeal in the event of a fugitive being apprehended or of any other ad hoc judicial activity. Trial readiness continues to be a priority for the Mechanism, which must remain trial-ready as long as the cases of the remaining fugitives are pending before it; there is a possibility that a retrial may be ordered in any ongoing appeal proceedings before the Mechanism; additional contempt or false testimony proceedings may be initiated; or the referral of a case to a national jurisdiction for trial may be revoked. In accordance with article 15 (4) of the statute of the Mechanism, rosters of qualified potential staff have been established to enable the expeditious recruitment, as necessary, of the additional staff required to support those judicial functions. In the particular context of the COVID-19 pandemic, and given the news of Félicien Kabuga's arrest, the Mechanism can confirm that it stands ready to fully support any upcoming courtroom proceedings when in-court activity is able to resume.

## VII. Detention facilities

99. At the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, the Mechanism detains persons awaiting trial, appeal or other judicial proceedings before the Mechanism, as well as persons otherwise detained on the authority of the Mechanism, such as convicted persons awaiting transfer to an enforcement State.

100. The United Nations Detention Facility in Arusha housed one individual, who was convicted on appeal and is now an accused in the *Turinabo et al.* case. In relation to the ongoing contempt proceedings in the *Turinabo et al.* case, the Facility maintains custodial capacity for four individuals on provisional release, while one individual has been released with an order to appear before the Mechanism when required. The Facility will continue to be required until the detained person and those on provisional release are either released or transferred to enforcement States. In addition, the Facility must retain an area commensurate with the detention of those fugitives expected to be tried by the Mechanism once apprehended and will provide a residual custodial capacity for other individuals potentially appearing before the Mechanism.

101. The United Nations Detention Unit in The Hague housed three detainees while maintaining custodial capacity for two individuals who were on provisional release. The Unit furthermore adapted its operations to an individualized detainee supervision model, in response to the overall lower number of detainees at the Unit.

102. The services of the United Nations Detention Unit will continue to be required until all trials and appeals in ongoing cases are concluded and all detained persons are released or transferred to enforcement States, after which a reduced, residual custodial capacity for other individuals potentially appearing before the Mechanism may have to be arranged.

103. Both detention facilities are regularly inspected by the International Committee of the Red Cross to ensure that the Mechanism's Rules of Detention are properly applied and that both facilities are operating in accordance with international standards.

104. Finally, in order to reduce the risk of COVID-19 contamination for persons currently in detention, the Commanding Officers of both detention facilities, in cooperation with the respective host State authorities, have implemented strict preventive measures. As a result, all non-essential activities and services, such as non-urgent medical care and social and recreational activities, have been suspended. Furthermore, at both facilities the number of personnel in direct contact with the detainees has been reduced to a minimum, while all visits have been suspended, including those of defence counsel. Detainees continue to benefit from unhindered communications with their families and defence counsel through alternative means facilitated by both detention facilities (telephone, mail and email, where available). Similarly, access by detainees to medical care, fresh air and fresh meals has not been impeded.

## VIII. Enforcement of sentences

105. Pursuant to article 25 of the statute of the Mechanism, the Mechanism has jurisdiction to supervise the enforcement of sentences. Following delivery of a final judgment, the President decides where a convicted person will serve his or her sentence in accordance with article 25 of the statute, rule 127 of the Rules of Procedure and Evidence and the Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve His or Her Sentence of Imprisonment. There is no prescribed time limit for the decision of the President. However, rule 127 (B) of the Rules of Procedure and Evidence provides that the

transfer of the convicted person to an enforcement State shall be effected as soon as possible. According to the relevant Practice Direction, the President designates the State of imprisonment on the basis of a range of information, which may include any relevant views expressed by the convicted person. In line with the Mechanism's agreements with the host States, there is no possibility for convicted persons to be detained indefinitely at the United Nations Detention Facility in Arusha or the United Nations Detention Unit in The Hague.

106. In addition, and in accordance with article 26 of the statute of the Mechanism, the President has the authority to decide on requests for pardon or commutation of sentence. While article 26 of the statute, like the corresponding provisions in the statutes of the two Tribunals, does not specifically mention requests for early release of convicted persons, the Rules of Procedure and Evidence of the Mechanism reflect the President's powers to deal with such requests and the long-standing practice of the two Tribunals and the Mechanism in that regard.

107. The Mechanism relies on the cooperation of States for the enforcement of sentences. Sentences are served within the territory of States Members of the United Nations that have concluded enforcement of sentence agreements or indicated their willingness to accept convicted persons under any other arrangement. The agreements concluded by the United Nations for the two Tribunals continue to apply to the Mechanism, *mutatis mutandis*, unless superseded by subsequent agreements. During the reporting period, the Mechanism continued its efforts, through bilateral meetings and other communications of both the President and the Registrar, to increase its enforcement capacity for both branches, and it welcomes the cooperation of States in that regard.

108. Of the 30 persons convicted by the International Criminal Tribunal for Rwanda who are currently serving their sentences, 18 are in Benin, 7 in Mali and 5 in Senegal. One convicted person remains at the United Nations Detention Facility in Arusha, pending contempt proceedings and transfer to the designated enforcement State.

109. Currently, 20 persons convicted by the International Tribunal for the Former Yugoslavia are serving their sentences under the supervision of the Mechanism. Those individuals are serving their sentences in 11 States: Austria (1), Denmark (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (4), Sweden (1) and the United Kingdom of Great Britain and Northern Ireland (1). Two convicted persons remain at the United Nations Detention Unit in The Hague, awaiting transfer to enforcement States. Enforcing those two sentences as soon as possible, as well as any future sentences, is of paramount importance to the Mechanism.

110. The Mechanism again expresses its deep gratitude to all of the above-mentioned States for their unwavering support for the Mechanism and engagement in the enforcement of sentences. Without such support, this crucial – but less visible – aspect of the Mechanism's work would not be possible.

111. Sentences pronounced by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism are enforced in accordance with the applicable law of the enforcing State and with international standards of detention, subject to the supervision of the Mechanism. Conditions of imprisonment shall be compatible with relevant human rights standards, which include the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Recognized organizations such as the International Committee of the Red Cross and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment serve as independent inspecting bodies and regularly monitor the conditions of imprisonment to ensure that international standards are being met. The Mechanism is grateful for their continued assistance in that regard.

112. During the reporting period, the Mechanism, in coordination with national authorities and the United Nations Development Programme, continued its efforts to address the recommendations of the relevant inspecting bodies, as well as the recommendations of an independent expert on ageing in prison and associated vulnerabilities engaged by the Mechanism. With regard to the latter, further progress was made during the reporting period in the implementation of the expert's recommendations addressed to the Mechanism. Recommendations falling within the purview of the enforcement States have been referred to the respective States for consideration.

113. Furthermore, in response to the unfolding COVID-19 pandemic and at the instruction of the President, the Registry took immediate steps to engage with all enforcement States in order to obtain information on measures taken in their respective prisons to prevent the potential spread of COVID-19, as part of the Mechanism's supervision of the enforcement of sentences. The Registry continues to liaise with enforcement States and to provide the President with updated information, in accordance with the order of the President outlined above (see para. 76).

114. It is expected that the functions related to supervision of the enforcement of sentences carried out under the authority of the President will continue until the last prison sentence has been served, subject to the application of rule 128 of the Rules of Procedure and Evidence of the Mechanism. That rule allows for the possibility of another body being designated to supervise the enforcement of sentences after the Mechanism ceases to exist, in the event that any convicted person remains imprisoned in an enforcement State at that time.

115. In that respect, the Mechanism notes that 18 individuals are currently serving life sentences, while 14 convicted persons will complete their sentences between 2030 and 2040 and another 8 not until after 2040. Of the latter group, the longest three sentences will have been fully served in 2044. Furthermore, a majority of the individuals currently serving life sentences will not be eligible for consideration of pardon, commutation of sentence or early release until after 2030, even if they may seek such relief beforehand. Two individuals serving a life sentence will not become eligible for consideration of pardon, commutation of sentence or early release until 2038.

## **IX. Relocation of acquitted and released persons**

116. Unfortunately, no progress has been made since the previous report regarding the resettlement of the nine acquitted and released persons currently residing in Arusha.

117. As previously reported, those nine individuals either were acquitted by the International Criminal Tribunal for Rwanda or have already served their sentences as imposed by that Tribunal, but are unable or afraid to return to their country of citizenship. The Mechanism's headquarters agreement with the United Republic of Tanzania provides that the released and acquitted persons shall not permanently remain in the United Republic of Tanzania except with its consent. The United Republic of Tanzania has therefore permitted those persons to stay on its territory temporarily, pending their relocation to another country. One of the individuals has remained in this predicament since his acquittal by the International Criminal Tribunal for Rwanda in 2004.

118. The President of the Mechanism again raised this pressing matter in bilateral meetings during the reporting period, and the Registrar also continued to explore possibilities and engage with potential receiving States. However, the situation remains unresolved and the rights of those individuals continue to be profoundly affected.

119. The Mechanism emphasizes once more that it will be unable to find a long-term solution without the support and goodwill of Member States. In that respect, it recalls



Security Council resolution [2422 \(2018\)](#), in which the Council called upon all States to cooperate with and render all necessary assistance to the Mechanism for increased efforts towards the relocation of the nine persons. More recently, in the statement by the President of the Council dated 28 February 2020 ([S/PRST/2020/4](#)), the Council noted with concern the problems faced by the Mechanism in relocating those persons and emphasized the importance of their successful relocation.

120. While the Mechanism is grateful to the Security Council and individual States for their support to date, it reiterates that this serious humanitarian challenge will exist until such time as all acquitted and released individuals are appropriately relocated or are deceased. In the meantime, the situation continues to reflect poorly on both the Mechanism and the United Nations more broadly. The Mechanism therefore urges Member States to support it in finding a permanent solution.

## **X. Cooperation of States**

121. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate with the Mechanism in the investigation and prosecution of persons covered under the statute, and to comply with orders and requests for assistance in relation to cases before the Mechanism. States are also required to respect the statute of the Mechanism owing to its adoption by the Security Council pursuant to Chapter VII of the Charter of the United Nations. The Mechanism is dependent upon the cooperation of States.

122. The arrest and surrender of the remaining fugitives of the International Criminal Tribunal for Rwanda are a top priority for the Mechanism, as mentioned above (see para. 97). The Mechanism requires the full cooperation of States in relation to the ongoing fugitive-tracking operations conducted by the Prosecutor. In that respect, the Mechanism wishes to acknowledge the exemplary cooperation of all those involved in the operations leading not only to the arrest of one fugitive during the reporting period, but also to the confirmation of the death of another fugitive. Building on that momentum, the Mechanism hopes that Member States will continue to support its efforts in relation to the remaining six fugitives.

123. As previously reported, since August 2018 the Prosecution has been seeking cooperation from South Africa in relation to the arrest and transfer of a fugitive who was located on its territory in mid-2018. Urgent requests for assistance were submitted by the Prosecution to the South African authorities on 16 August 2018, 15 March 2019 and 19 September 2019. However, South Africa did not attempt to execute those requests until December 2019, and its efforts at that time were unsuccessful. On 18 December 2019, the Prosecution submitted a further request for assistance to the South African authorities. South Africa responded on 8 May 2020 but much of the information requested by the Prosecution was not provided. The Mechanism reminds South Africa of its continuing obligations under article 28 of the Mechanism's statute, as well as the Security Council's numerous calls to all Member States to intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible.

124. While the Mechanism is grateful for the robust cooperation provided by States in relation to the enforcement of sentences, it must also call for greater cooperation in the resettlement of the nine acquitted and released persons currently living in Arusha, as discussed above (see paras. 116–120).

125. Separately, the Mechanism urges Member States to provide full cooperation in respect of the arrest, detention and transfer to the custody of the Mechanism of the

accused in the *Jojić and Radeta* case, outlined above (see paras. 70 and 71). In particular, it calls upon Serbia to honour its obligations under Chapter VII of the Charter by executing the outstanding arrest warrants against those individuals.

126. In line with the President's previously stated priority of fostering stronger relationships between the Mechanism and the Governments and peoples of Rwanda and the States of the former Yugoslavia, the Mechanism continued to promote communication and cooperation with those Governments and other key stakeholders. Prior to the imposition of restrictions on travel and other restrictions resulting from the COVID-19 pandemic, representatives of the Mechanism, up to and including the level of the principals, engaged with government officials and met with victims' groups during the reporting period.

127. The Mechanism will continue to discuss matters of mutual interest with the Rwandan authorities, including means by which the cooperation with the Government of Rwanda can be enhanced, in line with paragraph 23 of Security Council resolution [2256 \(2015\)](#). In that regard, the Mechanism's Kinyarwanda Unit, established at the beginning of 2016, has continued to translate judgments of the International Criminal Tribunal for Rwanda into Kinyarwanda. During the reporting period, the Kinyarwanda Unit completed the translation of two further judgments and a number of decisions and orders, as well as monitoring reports concerning three cases referred to Rwanda that are discussed below (see paras. 136, 139 and 140).

128. In its resolution [1966 \(2010\)](#), the Security Council requested the Mechanism to cooperate with Rwanda and the countries of the former Yugoslavia to facilitate the establishment of information and documentation centres. With respect to the former Yugoslavia, the first such information centre was opened on 23 May 2018 in Sarajevo, with the support of the Mechanism. Since then, the Mechanism has continued to support the work of the Sarajevo information centre by, inter alia, providing certified copies of judgments, books and informational and exhibition materials, as well as by participating in events organized by the centre. The Mechanism remains available to facilitate the establishment of similar information centres with other stakeholders in the former Yugoslavia. Representatives of the Mechanism continued to engage in dialogue with relevant authorities in that regard during the reporting period.

129. As previously reported, since January 2019 the Mechanism and the European Union have been working together on a project focused on informing affected communities and younger generations in the former Yugoslavia about the legacy of the International Tribunal for the Former Yugoslavia and the ongoing work of the Mechanism, and on facilitating access to the Tribunal and Mechanism archives. That collaboration continued during the reporting period; more than 120 secondary-school teachers from five different States in the region of the former Yugoslavia have now participated in workshops on using the archives. In addition, the series of video lectures for postgraduate law students from six States of the former Yugoslavia that was launched in October 2019 continued in the reporting period. The project has been well received, with its social media campaigns reaching more than 1,250,000 users during the first six months after its launch. The Mechanism wishes to thank the European Union and its member States for their generous support.

## **XI. Assistance to national jurisdictions**

130. In accordance with article 28 (3) of the statute of the Mechanism, the Mechanism shall respond to requests for assistance from national authorities in relation to the investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of the former Yugoslavia and Rwanda.

131. During the reporting period, the Mechanism continued to routinely receive requests from national authorities or parties to national proceedings for assistance in relation to domestic proceedings concerning individuals allegedly implicated in the genocide against the Tutsi in Rwanda or the conflicts in the former Yugoslavia. It also received and considered numerous requests to vary the protective measures granted to witnesses who had testified in cases before the two Tribunals or the Mechanism, in order to disclose their testimony and evidence. Comprehensive information and guidance for those who wish to request assistance are available on the Mechanism's website.<sup>9</sup>

132. The Registry has processed 55 requests for assistance from national jurisdictions and has provided over 1,364 documents since the previous reporting date.

133. In addition to the processing of such requests, the data concerning requests for assistance submitted to both branches of the Mechanism continued to be centralized into one repository. The two branches also continued to exchange best practices for the development of policies and training programmes with a view to maximizing operational efficiency and ensuring that the Mechanism provides effective assistance to national jurisdictions.

134. It is expected that activities linked to requests for assistance from national jurisdictions will continue alongside the investigation and prosecution of cases in domestic jurisdictions related to the genocide against the Tutsi in Rwanda and the conflicts in the former Yugoslavia.

## **XII. Cases referred to national jurisdictions**

135. Pursuant to article 6 (5) of its statute, the Mechanism is responsible for monitoring cases referred to national courts by the two Tribunals and the Mechanism, with the assistance of international and regional organizations and bodies.

136. During the reporting period, the Mechanism continued to exercise its monitoring functions in respect of three cases referred to Rwanda. Those cases concern Jean Uwinkindi, Bernard Munyagishari and Ladislas Ntaganzwa, who were indicted by the International Criminal Tribunal for Rwanda and subsequently apprehended. The proceedings in the *Uwinkindi* case and the *Munyagishari* case are currently at the appeal stage. Trial proceedings are ongoing in the *Ntaganzwa* case. Consistent with Security Council resolution 2256 (2015), the Mechanism continued to monitor the three cases in Rwanda with the pro bono assistance of monitors from the Kenyan section of the International Commission of Jurists, pursuant to a memorandum of understanding concluded on 15 January 2015 and subsequently amended on 16 August 2016.

137. The cases of two additional individuals indicted by the International Criminal Tribunal for Rwanda, Laurent Bucyibaruta and Wenceslas Munyeshyaka, had previously been referred to France for trial. In the *Bucyibaruta* case, on 24 December 2018 the investigating judge issued an indictment against Mr. Bucyibaruta confirming some charges and rejecting or requalifying others. Proceedings in the case are ongoing, with the next hearing scheduled to take place in May 2020. An interim monitor continues to monitor the proceedings. In the *Munyeshyaka* case, on 30 October 2019, the Cour de cassation issued a decision dismissing all of the appeals, thereby bringing the case to a close.

138. The Mechanism also continued to follow the status of the case against Vladimir Kovačević, which was referred to Serbia by the International Tribunal for the Former Yugoslavia in March 2007.

<sup>9</sup> Available at <https://www.irmct.org/en/about/functions/requests-assistance>.

139. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of the cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. The *Ntaganzwa* case is currently at trial, four years after the accused was transferred to Rwanda. Both the *Uwinkindi* case and the *Munyagishari* case are currently at the appeal stage, following the transfer to Rwanda for trial of Mr. Uwinkindi in 2012 and Mr. Munyagishari in 2013. If any of the five remaining fugitives whose cases have been referred to Rwanda for trial are arrested, the estimate for the continuation of the Mechanism's monitoring function with respect to Rwanda will need to be assessed at that time. The two cases referred to France have been at the investigative/pretrial phase for more than 10 years and, as set forth above, so far only one case has been closed. Further estimates regarding the expected duration of the Mechanism's monitoring function with respect to France will depend on decisions of the French judicial authorities in the remaining *Bucyibaruta* case.

140. Unfortunately, as a result of the COVID-19 pandemic, the ongoing monitoring of the above-mentioned cases was impeded from mid-March 2020 onwards. Some prisons have put access restrictions in place, resulting in a suspension of the monitors' visits to the accused persons in prison. Furthermore, owing to restrictions on international travel into and out of the countries to which cases have been referred, the monitors are currently prevented from travelling. Upon request of the monitors for the cases referred to Rwanda, the President has adjusted the schedule for the submission of monitoring reports and allowed for the provision of a consolidated report once the travel restrictions have been lifted. In the meantime, the President will be requesting regular COVID-19-related updates from the Registrar regarding the situation in Rwanda and France as it pertains to the above-mentioned accused persons and appellants.

### **XIII. Archives and records**

141. In accordance with article 27 of its statute, the Mechanism has responsibility for the management of the archives of the Mechanism and the two Tribunals, which are co-located with the respective branches of the Mechanism. The management of the archives includes responsibility for the preservation, arrangement and description of records, their security and the provision of access thereto.

142. The archives include records concerning investigations, indictments and court proceedings; the protection of witnesses; the detention of accused persons; and the enforcement of sentences. The archives also include documents from States, other law enforcement authorities, international and non-governmental organizations and other stakeholders. The records exist in both digital and physical formats and consist of documents, maps, photographs, audiovisual recordings and objects. The Mechanism Archives and Records Section has been tasked with preserving these records and facilitating the widest possible access to them, while ensuring the continued protection of confidential information, including information concerning protected witnesses.

143. The Mechanism Archives and Records Section is currently responsible for the management of approximately 2,000 linear metres of physical records and 1.2 petabytes of digital records from the International Criminal Tribunal for Rwanda and the Mechanism's Arusha branch, and approximately 2,400 linear metres of physical records and 1.5 petabytes of digital records from the International Tribunal for the Former Yugoslavia and the Mechanism's branch in The Hague.

144. The Mechanism Archives and Records Section is also responsible for the periodic disposition of the records that have temporary value, in accordance with established retention policies. During the reporting period, this entailed the authorized destruction of 67.3 linear metres of records. The Mechanism will remain

responsible for the management of records of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia that have been designated for permanent retention, as well as for records of archival value generated by the Mechanism.

145. During the reporting period, the preservation of audiovisual recordings stored on obsolete physical media in The Hague continued. Approximately 8,900 physical audiovisual records were assessed to determine preservation needs. In addition, over 500 analogue tapes were digitized for preservation, including all of the recordings of courtroom proceedings in the case of *Prosecutor v. Goran Hadžić* before the International Tribunal for the Former Yugoslavia.

146. The digital records of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia continue to be incorporated into the Mechanism's digital preservation system to safeguard their long-term integrity, reliability and usability, in accordance with the Mechanism's policy on retention and preservation of records. During the reporting period, a total of 32.24 terabytes of digital records were ingested, including more than 7,364 files in a variety of formats. In the coming year, both branches will continue the work of strengthening the Mechanism's digital preservation programme by continuing to develop institutional capacity and capability for digital preservation.

147. The uploading of records to the public databases of the two Tribunals and the Mechanism continued throughout the reporting period. Over 350,000 judicial records, including approximately 27,000 hours of audiovisual recordings, are currently available to the public through those interfaces, and the records were accessed by over 11,800 users during the reporting period.

148. The Mechanism received and responded to 66 requests for access to records under the Mechanism's access policy during the reporting period. Many of those requests were for copies of audiovisual recordings of courtroom proceedings.

149. Regarding the Tribunal and Mechanism archives, the Mechanism Archives and Records Section continued its work in developing a publicly accessible catalogue containing descriptions of the archives, prepared in accordance with international standards. Furthermore, the Section continued its programme of exhibitions and events to draw attention to the archives in the custody of the Mechanism. An exhibition entitled "To Support and Protect: the Evolution of Witness Services at the International Criminal Tribunals" was launched in January 2020. The exhibition focuses on the history of the Tribunals' witness support and protection services and is on display at both branches of the Mechanism.

150. Owing to the COVID-19 pandemic, some of the work of the Mechanism Archives and Records Section has been suspended, for technical, logistical or information security reasons, until normal working arrangements can be resumed. The above-mentioned authorized destruction of records and the preservation of audiovisual recordings are cases in point. Ongoing work to develop a publicly accessible catalogue of the archives in the custody of the Mechanism has been delayed. This may affect the launch of the catalogue, which originally had been scheduled for 2020. To the extent possible, the Mechanism Archives and Records Section is maintaining services for other Mechanism sections and the public as best it can, with its staff working remotely or accessing Mechanism premises on a rotational basis, as needed.

#### **XIV. External relations**

151. The External Relations Office provides key stakeholders and the general public with timely and accurate information about the judicial work and activities of the

Mechanism. This includes providing information to and interacting with stakeholders and the general public through the Mechanism's website and social media channels, responding to media inquiries, hosting visits, organizing meetings and public events and producing informational materials.

152. During the reporting period, the External Relations Office facilitated the attendance of the media and the general public at public judicial hearings at both the Arusha branch and the branch in The Hague. This included status conferences in the *Turinabo et al.* case and the *Mladić* case, as well as hearings in the ongoing retrial in the *Stanišić and Simatović* case. The hearings in those cases were attended by more than 450 visitors, while the online streaming of the respective court sessions received more than 4,300 views.

153. On 3 December 2019, the Mechanism's branch in The Hague hosted a study visit for 12 journalists from the region of the former Yugoslavia. The visit included training on how to access public judicial records of the Mechanism and the International Tribunal for the Former Yugoslavia, as well as how to use the available documents to facilitate reporting on the work of the Mechanism and the legacy of the Tribunal. Furthermore, on 6 March 2020, the Mechanism's Arusha branch organized an early celebration of International Women's Day on its premises, in recognition of the theme for 2020, "I am Generation Equality: Realizing Women's Rights".

154. During the reporting period, the Mechanism welcomed 551 visitors in Arusha and 742 visitors in The Hague, among them members of the diplomatic community, legal professionals and students. Unfortunately, however, owing to the COVID-19 pandemic, the External Relations Office was required to cancel all further visits and planned events from mid-March 2020 onwards.

155. Owing to the COVID-19 pandemic and the high number of staff working remotely as a result, the Mechanism's libraries in Arusha and The Hague experienced an overall reduction in the use of library services, processing a total of 3,251 research requests, loans and other enquiries. The website recorded 603,121 page views and 254,496 visitors during the reporting period.

## **XV. Reports of the Office of Internal Oversight Services**

156. As previously reported, OIOS commenced its most recent evaluation of the methods and work of the Mechanism in October 2019. In its evaluation, OIOS assessed the implementation of the recommendations of its 2018 evaluation, projections of completion timelines, cost savings, the geographical diversity and gender balance of staff and the implementation of a human resources policy consistent with a temporary mandate in the period from 1 January 2018 to 31 December 2019. The process concluded with the formal issuance of the OIOS evaluation report, to which the Mechanism responded in detail in its third review report.<sup>10</sup>

157. In its evaluation report, OIOS recognized that the Mechanism, as a self-standing institution, had made further progress towards realizing the Security Council's vision of a small, temporary and efficient organization (S/2020/236, para. 64). OIOS further found that the Mechanism had been effective in reducing costs and flexibly deploying staff on the basis of the workload and that it had exceeded the gender balance targets in favour of women in the Mechanism as a whole, noting that it continued to strive to achieve geographical diversity as well as gender balance at all levels (*ibid.*, summary). OIOS also found that, between 2018 and 2019, the Mechanism had implemented most of the recommendations from the 2018 OIOS evaluation (*ibid.*, paras. 36–64). In the

<sup>10</sup> S/2020/309, paras. 189–210. See also S/2020/236, annex I.

report, OIOS issued two new recommendations to the Mechanism: first, with regard to coordination and information-sharing across the three organs on matters that affect them equally; and, second, with regard to presenting clear and focused projections of completion timelines for its cases (*ibid.*, paras. 65–67).

158. The Mechanism appreciates and accepts the issuance of the two new recommendations and has initiated steps towards their implementation, while remaining committed to fully implementing the first and second recommendations from the 2018 evaluation, which are currently partially implemented.

159. In addition, the Mechanism continued to benefit from regular audits by OIOS. During the reporting period, the audit relating to the enforcement and monitoring of sentences of convicted persons at the Mechanism was concluded and a report issued. In the report, which was classified as strictly confidential, only one recommendation was issued, and the Mechanism is working towards its implementation. This very positive outcome will continue to guide the Registry’s activities in the area of enforcement of sentences.

160. With regard to earlier OIOS audits, the Mechanism continued to diligently follow up on and implement outstanding recommendations. Actions taken in that respect include reviewing, verifying and updating education grant data in Umoja and closing the final open recommendation from the audit of education grant disbursement at the Mechanism. The remaining three recommendations from the audit of the unified judicial database project were also closed. Furthermore, work continued on implementing recommendations from previous audits on the construction and occupancy of the Arusha facilities. During the reporting period, four recommendations were closed in that respect. In addition, two recommendations from the strictly confidential audit of the management of safety and security at the Mechanism’s Arusha branch and the Kigali field office were closed.

161. Finally, the Mechanism is also audited annually by the Board of Auditors. Accordingly, on 30 April 2020, the Board completed a three-week “virtual audit”, conducted entirely remotely owing to the measures and travel restrictions in place regarding the COVID-19 pandemic.

162. The Mechanism welcomes and appreciates the work of OIOS and the Board of Auditors, as well as the opportunity to further enhance its operations through regular audits and evaluations. Referring to Security Council resolutions [2256 \(2015\)](#) and [2422 \(2018\)](#), the Mechanism is pleased to have made significant progress in closing outstanding recommendations, which has contributed to further enhancing its efficiency and ensuring effective and transparent management.

## **XVI. Conclusion**

163. Perhaps more than ever before, the reporting period has presented the Mechanism with both opportunities and challenges: opportunities, through review and evaluation processes, to take stock, reflect on achievements and identify areas for further improvement, as well as separate opportunities to pull together and demonstrate resilience in the face of extraordinary circumstances; and challenges across the board in the form of the COVID-19 pandemic. The Mechanism is proud that, despite the global health crisis, it has remained operational throughout and has continued to deliver results, while safeguarding fundamental rights and fulfilling the duties owed to those under its care. This has been no easy task, and the coming period will likewise require determination, hard work and resourcefulness in order to navigate the obstacles ahead. The Mechanism is undeterred by that prospect. It remains committed to continuing to fulfil its critical mandate during these troubled times.

164. In that respect, the Mechanism wishes to pay tribute to its judges and staff, as well as non-staff personnel, including members of defence teams. Because of their dedication, the Mechanism has continued to make progress throughout the reporting period and has been able to keep functioning despite the COVID-19 pandemic. The Mechanism recognizes that the current situation is stressful for all personnel and in that context is especially grateful for their service.

165. The Mechanism also wishes to sincerely thank the Security Council and its Informal Working Group on International Tribunals, the Office of Legal Affairs and OIOS for their crucial support. It truly values their engagement with the Mechanism during the reporting period and looks forward to the results of the current review. Furthermore, the Mechanism acknowledges the contributions made by the General Assembly and the United Nations more broadly, and is most grateful for the cooperation and assistance of Rwanda, the States of the former Yugoslavia, and the European Union. Finally, the United Republic of Tanzania and the Netherlands must also be commended for their support, not only during the reporting period but throughout the lifespan of the Mechanism and the two Tribunals before it.

166. As the Mechanism moves towards the next phase of its operations, it is aware that Member States and other stakeholders are themselves facing exceptional challenges and demands on their resources. The Mechanism is deeply concerned by the suffering already caused by the COVID-19 pandemic and affirms its solidarity with all who have been affected. At the same time, amid the uncertainty, it urges the international community not to lose sight of the vital role played by the Mechanism and other institutions tasked with delivering justice. The Mechanism will continue to rely on the support of those who believe in its mission and looks forward to working closely with them in the coming period.



## Enclosure I

### International Residual Mechanism for Criminal Tribunals: staffing\*

Table 1  
Staff numbers by branch and organ

Category	Arusha branch	The Hague branch	Chambers <sup>a</sup>	Office of the Prosecutor	Registry <sup>b</sup>	Mechanism overall
All staff	237	317	39	95	420	554
Staff on continuous posts	126	55	8	28	145	181
Staff on general temporary assistance positions	111	262	31	67	275	373
International (Field Service, Professional and above)	126	137	32	62	169	263
Local (General Service)	111	180	7	33	251	291

<sup>a</sup> Chambers staffing data include the Office of the President and exclude judges.

<sup>b</sup> Registry staffing data include: Immediate Office of the Registrar, Archives and Records Section, Witness Support and Protection, Judicial Records and Court Operations Unit, Language Support Services, External Relations, Office for Legal Aid and Defence Matters, Administration, Security, and United Nations Detention Facility and United Nations Detention Unit.

Table 2  
Geographical representation by regional group

	Arusha branch	The Hague branch	Mechanism overall <sup>a</sup>
<b>Nationalities</b>	39	61	75 (percentage)
All staff			
African	181	23	204 (36.8)
Asia-Pacific	9	22	31 (5.6)
Eastern European	4	83	87 (15.7)
Latin American and Caribbean	3	7	10 (1.8)
Western European and Other States	40	182	222 (40.1)
International staff (Field Service, Professional and above)			
African	70	7	77 (29.3)
Asia-Pacific	9	8	17 (6.5)
Eastern European	4	33	37 (14.1)
Latin American and Caribbean	3	3	6 (2.3)
Western European and Other States	40	86	126 (47.9)
Local (General Service)			
African	111	16	127 (43.6)
Asia-Pacific	0	14	14 (4.8)
Eastern European	0	50	50 (17.2)
Latin American and Caribbean	0	4	4 (1.4)
Western European and Other States	0	96	96 (33.0)

(Footnotes on following page)

\* The data in the tables below represent the number of staff employed as at 1 May 2020.

(Footnotes to table 2)

<sup>a</sup> As percentages are rounded to the nearest decimal, the total may not add up exactly to 100 per cent.

**African Group:** Algeria, Benin, Burkina Faso, Burundi, Cameroon, Congo, Democratic Republic of the Congo, Egypt, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Madagascar, Malawi, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Uganda, United Republic of Tanzania, Zambia, Zimbabwe.

**Asia-Pacific Group:** Cambodia, China, Cyprus, Fiji, India, Indonesia, Iraq, Lebanon, Nepal, Pakistan, Republic of Korea, Philippines, Thailand, Yemen.

**Eastern European Group:** Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Latvia, Poland, Romania, Russian Federation, Serbia, North Macedonia, Ukraine.

**Latin American and Caribbean Group:** Brazil, Cuba, Guatemala, Haiti, Jamaica.

**Western European and Other States Group:** Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Malta, Netherlands, New Zealand, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Table 3  
**Gender representation**

	<i>Arusha branch</i>		<i>The Hague branch</i>		<i>Mechanism overall</i>
	<i>Arusha (percentage)</i>	<i>Kigali field office (percentage)</i>	<i>The Hague (percentage)</i>	<i>Sarajevo field office (percentage)</i>	
Professional staff (all levels)	64	3	135	2	204
Male	40 (63)	2 (67)	51 (38)	2 (100)	95 (47)
Female	24 (37)	1 (33)	84 (62)	0 (0)	109 (53)
Professional staff (P-4 and above)	20	1	50	1	72
Male	15 (75)	0 (0)	20 (40)	1 (100)	36 (50)
Female	5 (25)	1 (100)	30 (60)	0 (0)	36 (50)
Field Service staff (all levels)	54	5	0	0	59
Male	34 (63)	3 (60)	0	0	37 (63)
Female	20 (37)	2 (40)	0	0	22 (37)
General Service staff (all levels)	96	15	177	3	291
Male	62 (65)	12 (80)	101 (57)	2 (67)	177 (61)
Female	34 (35)	3 (20)	76 (43)	1 (33)	114 (39)
All staff	214	23	312	5	554
Male	136 (64)	17 (74)	152 (49)	4 (80)	309 (56)
Female	78 (36)	6 (26)	160 (51)	1 (20)	245 (44)

Table 4  
**Staff by organ**

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Chambers (including the Office of the President)	9	30	39
Office of the Prosecutor	35	60	95
Registry:	194	226	420
Immediate Office of the Registrar	13	10	23
Archives and Records Section	19	14	33
Witness Support and Protection	16	12	28

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	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Judicial Records and Court Operations Unit	4	8	12
Language Support Services	9	41	50
External Relations	5	7	12
Office for Legal Aid and Defence Matters	0	4	4
Administration	44	73	117
Security	67	53	120
United Nations Detention Facility and United Nations Detention Unit	17	4	21

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## Enclosure II

**International Residual Mechanism for Criminal Tribunals:  
approved appropriations and expenditures for 2020**

Table 1  
**Approved appropriations for the period from 1 January to 31 December 2020  
(net of staff assessment)**

(United States dollars)

		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	<i>Mechanism</i>
Arusha	Post		3 040 100	11 148 100		14 188 200
	Non-post <sup>a</sup>	213 300	2 692 700	15 186 300	2 384 900	20 477 200
	<b>Subtotal</b>	<b>213 300</b>	<b>5 732 800</b>	<b>26 334 400</b>	<b>2 384 900</b>	<b>34 665 400</b>
The Hague	Post		1 364 300	5 899 400		7 263 700
	Non-post	1 852 200	6 267 000	34 041 300	2 384 900	44 545 400
	<b>Subtotal</b>	<b>1 852 200</b>	<b>7 631 300</b>	<b>39 940 700</b>	<b>2 384 900</b>	<b>51 809 100</b>
New York	Post			164 100		164 100
	Non-post					
	<b>Subtotal</b>			<b>164 100</b>		<b>164 100</b>
Office of Internal Oversight Services	Post			195 000		195 000
	Non-post			78 200		78 200
	<b>Subtotal</b>			<b>273 200</b>		<b>273 200</b>
Overall	Post		4 404 400	17 406 600		21 811 000
	Non-post	2 065 500	8 959 700	49 305 800	4 769 800	65 100 800
	<b>Total</b>	<b>2 065 500</b>	<b>13 364 100</b>	<b>66 712 400</b>	<b>4 769 800</b>	<b>86 911 800</b>

<sup>a</sup> Non-post includes all commitment items other than posts, such as general temporary assistance, travel and rental of premises.

Table 2  
**Expenditures (net of staff assessment) as at 30 April 2020 (per Umoja)**

(United States dollars)

		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	<i>Mechanism</i>
Arusha	Post		855 597	3 316 424		4 172 021
	Non-post	60 750	828 495	3 964 147	1 455 605	6 308 997
<b>Subtotal</b>		<b>60 750</b>	<b>1 684 092</b>	<b>7 280 571</b>	<b>1 455 605</b>	<b>10 481 018</b>
The Hague	Post		420 094	1 794 586		2 214 680
	Non-post	602 875	1 893 248	10 498 211	0	12 994 334
<b>Subtotal</b>		<b>602 875</b>	<b>2 313 342</b>	<b>12 292 797</b>	<b>0</b>	<b>15 209 014</b>
New York	Post			54 519		54 519
	Non-post					
<b>Subtotal</b>				<b>54 519</b>		<b>54 519</b>
Office of Internal Oversight Services	Post			54 717		54 717
	Non-post			41 400		41 400
<b>Subtotal</b>				<b>96 117</b>		<b>96 117</b>
Overall	Post		1 275 691	5 220 246		6 495 937
	Non-post	663 625	2 721 743	14 503 758	1 455 605	19 344 731
<b>Total</b>		<b>663 625</b>	<b>3 997 434</b>	<b>19 724 004</b>	<b>1 455 605</b>	<b>25 840 668</b>

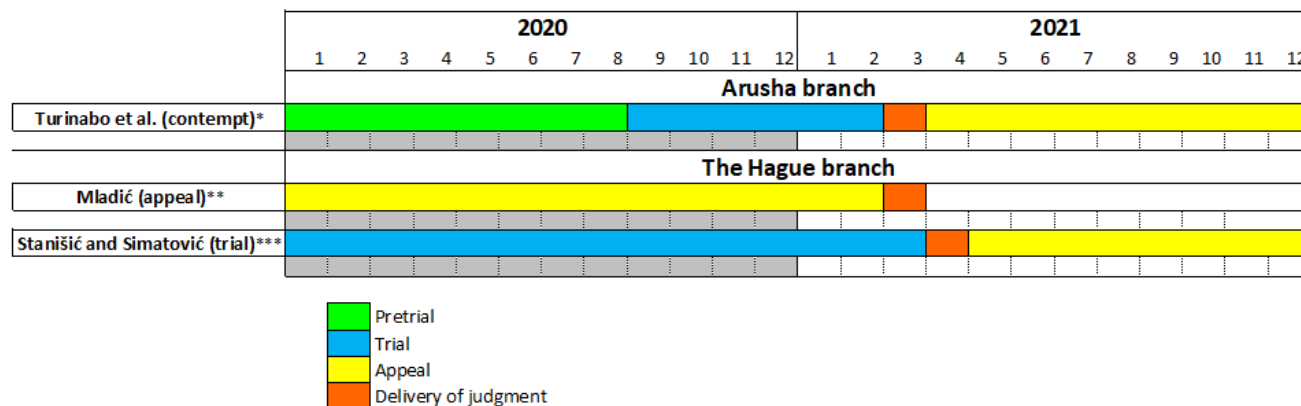
Table 3  
**Percentage of annual budget expended as at 30 April 2020**

		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	<i>Mechanism</i>
Arusha	Post		28.1	29.7		29.4
	Non-post	28.5	30.8	26.1	61.0	30.8
	<b>Subtotal</b>	<b>28.5</b>	<b>29.4</b>	<b>27.6</b>	<b>61.0</b>	<b>30.2</b>
The Hague	Post		30.8	30.4		30.5
	Non-post	32.5	30.2	30.8	0	29.2
	<b>Subtotal</b>	<b>32.5</b>	<b>30.3</b>	<b>30.8</b>	<b>0</b>	<b>29.4</b>
New York	Post			33.2		33.2
	Non-post					
	<b>Subtotal</b>			<b>33.2</b>		<b>33.2</b>
Office of Internal Oversight Services	Post			28.1		28.1
	Non-post			52.9		52.9
	<b>Subtotal</b>			<b>35.2</b>		<b>35.2</b>
Overall	Post		29.0	30.0		29.8
	Non-post	32.1	30.4	29.4		29.7
	<b>Total</b>	<b>32.1</b>	<b>29.9</b>	<b>29.6</b>	<b>30.5</b>	<b>29.7</b>

## Enclosure III

### International Residual Mechanism for Criminal Tribunals: status of trial and appeal proceedings, 2020–2021

(On the basis of information available as at 16 May 2020 and subject to change)



\* The trial in the *Turinabo et al.* case is expected to commence no sooner than the end of August 2020. The presentation of evidence is expected to conclude by December 2020, with final arguments in February 2021. The trial judgment is expected to be delivered in March 2021. Subject to the outcome of the trial, an appeal may follow.

\*\* The appeal is expected to be concluded and the appeal judgment delivered in March 2021.

\*\*\* The closure of evidence and the filing of final briefs are expected to conclude by December 2020. Final arguments are expected by February 2021 and the trial judgment is anticipated by April 2021. Subject to the outcome of the trial, an appeal may follow.

## Annex II

**Progress report of the Prosecutor of the International Residual  
Mechanism for Criminal Tribunals, Serge Brammertz, for the  
period from 16 November 2019 to 16 May 2020**

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## I. Overview

1. The Prosecutor of the International Residual Mechanism for Criminal Tribunals submits the sixteenth progress report pursuant to Security Council resolution 1966 (2010), covering developments between 16 November 2019 and 16 May 2020.

2. During the reporting period, the Office of the Prosecutor continued to focus on three priorities: (a) expeditiously completing trials and appeals; (b) locating and arresting the remaining fugitives indicted by the International Criminal Tribunal for Rwanda; and (c) assisting national jurisdictions prosecuting international crimes committed in Rwanda and the former Yugoslavia. The Office relies on the full cooperation of States to carry out its mandate successfully in those areas.

3. After nearly 23 years as a fugitive, on 16 May 2020, Félicien Kabuga was finally arrested. On the basis of intelligence provided by the Office of the Prosecutor, the French authorities executed a successful operation and took Kabuga into custody. Following appropriate procedures in relevant French legislation, it is expected that Kabuga will be transferred into the Mechanism's custody in the upcoming period. The Office of the Prosecutor was also able to confirm the death of Augustin Bizimana, one of the other major fugitives whose case was to be tried by the Mechanism. The Office commends its many national and international partners who contributed to those successful results, including the authorities of Austria, Belgium, the Congo, France, Germany, Luxembourg, the Netherlands, Rwanda, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, as well as the European Union Agency for Law Enforcement Cooperation (Europol) and the International Criminal Police Organization (INTERPOL). Accordingly, only six fugitives indicted by the International Criminal Tribunal for Rwanda remain at large. The Office of the Prosecutor underscores that – as Kabuga's arrest has again demonstrated – full, timely and effective cooperation from Member States is necessary to achieve further progress and meet the victims' and survivors' legitimate expectations for justice.

4. The Office of the Prosecutor remained engaged in intense litigation throughout the reporting period, despite the coronavirus disease (COVID-19) pandemic. At the Arusha branch, extensive pretrial litigation in the *Turinabo et al.* case continues, while the Prosecution also remains focused on its preparations for the commencement of the trial, which is now scheduled for late August. At The Hague branch, the Prosecution undertook immense preparations for the oral appeals hearing in the *Mladić* case, which was unfortunately postponed one week prior to its scheduled date. The Prosecution continues to ensure that it is fully ready to present its arguments for the rescheduled dates of 16 and 17 June, or whenever the hearing may ultimately be held. In the *Stanišić and Simatović* retrial, the Prosecution continued to cross-examine defence witnesses and respond to defence motions, including voluminous bar table motions filed by the Stanišić defence. With the delay in the resumption of hearings, the Prosecution has taken the opportunity to move forward its preparations for closing submissions. As previously reported, in addition to the trial and appeal activity in Arusha and The Hague, at both branches the Office processed a high volume of other litigation arising from completed cases.

5. Regarding national prosecutions of war crimes committed in Rwanda, the Office of the Prosecutor, within existing resources, continued to monitor cases referred to the Rwandan and the French authorities, provide national justice sectors with access to the Mechanism's collection of evidence and support national accountability for those crimes. More justice regarding crimes committed during the Rwandan genocide is still urgently needed, and a large number of suspects have yet to be prosecuted. The Office calls upon Member States to continue to provide full support to the

accountability process, whether in the courtrooms of the Mechanism, Rwanda or third-party States.

6. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Office of the Prosecutor continued to support the further implementation of the completion strategy of the International Tribunal for the Former Yugoslavia. Following the closure of the Tribunal, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. At the request of Governments and stakeholders in the region, the Office continued to provide vital assistance during the reporting period, particularly by providing access to its evidence and expertise.

7. In managing its work, the Office of the Prosecutor continued to be guided by the views and requests of the Security Council, as set forth in, inter alia, paragraphs 18 to 20 of resolution [2256 \(2015\)](#) and paragraphs 7 and 8 of resolution [2422 \(2018\)](#).

8. The Office of the Prosecutor would like to draw the attention of the Security Council to the impressive dedication and resilience demonstrated by its staff during the COVID-19 pandemic. The Office was able to quickly transition to remote working arrangements at all its duty stations, while effectively ensuring full business continuity in all of its operations. That achievement is in large measure attributable to the commitment of the Office's staff, who have continued to fully perform their responsibilities despite significant challenges, including childcare responsibilities, health concerns and lockdown restrictions. The Office extends its deepest appreciation to its staff, as well as support services such as the Information Technology Services Section, General Services Section, the Medical Units and the Security and Safety Section, which have provided important assistance.

## II. Trials and appeals

9. During the reporting period, the Office of the Prosecutor worked on one case at pretrial (*Turinabo et al.*), one retrial (*Stanišić and Simatović*) and one appeals proceeding (*Mladić*).

10. Such judicial activity is temporary in nature, and the Office of the Prosecutor is undertaking all steps under its control to expedite the completion of the proceedings.

### A. Update on the progress of trials

#### 1. *Turinabo et al.*

11. On 24 August 2018, the single judge confirmed the indictment in the case *Prosecutor v. Turinabo et al.* and issued warrants of arrest. The indictment charged four accused – Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma – with contempt of court in an effort to overturn Augustin Ngirabatware's conviction. It is alleged that they directly, and through intermediaries, interfered with witnesses who had given evidence in Ngirabatware's trial and interfered with witnesses in the related *Ngirabatware* review proceeding. In addition, the indictment charges Dick Prudence Munyeshuli, an investigator on Ngirabatware's former defence team, and Turinabo with violation of court orders protecting witnesses. On 7 December 2018, the single judge decided not to refer the case of *Turinabo et al.* to Rwanda and ordered that the case be conducted by the Mechanism.

12. On 9 August 2019, the Prosecutor submitted a confidential indictment against Augustin Ngirabatware, charging him with two counts of contempt of court and one

count of incitement to commit contempt of court. On 10 October 2019, the single judge confirmed the indictment. On 17 October 2019, Ngirabatware pleaded not guilty on all charges, and the single judge issued an oral decision not to refer the case to a national jurisdiction and ordering that the Mechanism would retain jurisdiction over the case.

13. On 18 October 2019, the Prosecution submitted a motion requesting the joinder of the *Turinabo et al.* contempt case with the new *Ngirabatware* contempt case so that the cases could be tried together. On 10 December 2019, the single judge granted the Prosecution's motion and ordered that the cases be joined.

14. During the reporting period, the Prosecution was engaged in extensive pretrial preparation and litigation. As *Turinabo et al.* is the first major contempt case prosecuted before the Mechanism, and involves six accused, the pretrial litigation was demanding, with many significant issues of law and a wide range of procedural issues involved. From the date of arrest until the end of the reporting period, the defence teams made 357 filings, while the Prosecution submitted 239 filings. There were 148 orders and decisions by the single judge, 25 orders and decisions by the Appeals Chamber and 38 orders and decisions by the President. There were also 101 filings by the Registry. The Prosecution responded to 288 items of correspondence from the defence teams and disclosed more than 1.9 terabytes of material. It is expected that litigation will remain at a high level throughout the pretrial and trial phases of the case.

15. It is currently anticipated that trial proceedings will commence no earlier than 24 August 2020.

## 2. *Stanišić and Simatović*

16. On 15 December 2015, the Appeals Chamber of the International Tribunal for the Former Yugoslavia reversed the trial judgment in the *Stanišić and Simatović* case and ordered the case to be retried on all counts. Pursuant to the statute and transitional arrangements of the Mechanism, the retrial is being conducted by the Mechanism. Trial proceedings in the case commenced on 13 June 2017.

17. The Prosecution completed the presentation of its case-in-chief on 21 February 2019. On 18 June, as planned, the defence phase of the proceedings commenced with the presentation of evidence by the *Stanišić* Defence. The *Stanišić* Defence called its last witness on 17 October 2019, and the *Simatović* Defence began the presentation of its evidence on 12 November. On 20 February 2020, the Trial Chamber ordered that no court hearings would be held between 21 March and 27 April 2020 to allow the *Simatović* Defence to verify that the remaining witnesses that it would call would testify. On 17 March, the Trial Chamber informed the parties that court hearings would resume no sooner than 2 June 2020 in the light of the COVID-19 pandemic. On 11 May, the Trial Chamber informed the parties that court hearings would resume on 7 July.

18. During the reporting period, the Prosecution cross-examined 11 witnesses in court. The Prosecution also litigated 11 motions for the admission of evidence and responded to another 4 motions filed by the defences in the case. Notably, the Prosecution has responded to a series of voluminous bar table motions filed by the *Stanišić* Defence, which sought the admission of 902 documents totalling more than 20,000 pages of evidence. The Prosecution continues to endeavour to conduct cross-examinations as efficiently as possible.

19. In the light of the postponement of court hearings owing to the COVID-19 pandemic, the Prosecution has taken the opportunity to advance its preparations for the closing submissions. The Office anticipates that this may contribute to reducing

the time required to complete the case once hearings resume, although it should also be noted that these preparations will necessarily be constrained by the fact that the presentation of defence evidence remains incomplete. Should delays continue beyond the anticipated resumption of the *Simatović* defence case on 7 July, the Office will give appropriate consideration to all possible measures to allow the trial to be completed in a reasonable amount of time.

## **B. Update on the progress of appeals**

### ***Mladić***

20. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia unanimously convicted Ratko Mladić of genocide, terror, persecution, extermination, murder, unlawful attacks on civilians, deportation, inhumane acts and hostage-taking, and sentenced him to life imprisonment. On 22 March 2018, the Defence filed its notice of appeal against the trial judgment, setting out nine grounds of appeal. On the same date, the Office of the Prosecutor filed its notice of appeal. The Office identified two grounds of appeal, both of which concern the acquittal for genocide in relation to events in 1992.

21. During the reporting period, the Prosecution continued its preparations for the oral appeals hearing in the case, which was scheduled to be held on 17 and 18 March 2020. On 6 March 2020, the Appeals Chamber granted the Defence motion and ordered that the hearing be stayed until further notice in the light of Mladić's scheduled surgery. The Prosecution submitted an urgent request for the reconsideration of that decision on 9 March, which the Appeals Chamber denied on 11 March. On 28 March, Mladić's surgery took place. Recognizing Mladić's progress in recovering from surgery, on 1 May 2020, the Appeals Chamber rescheduled the oral appeals hearing for 16 and 17 June, although the Appeals Chamber further noted that those dates are subject to change in the light of COVID-19-related restrictions. By ensuring that it has remained prepared to present its oral arguments at any time, the Prosecution will be ready for the hearing whenever it ultimately takes place.

## **C. Other proceedings**

22. At the order of single judges of the Mechanism, during the reporting period, the Office of the Prosecutor continued to conduct two investigations into alleged crimes under the Mechanism's jurisdiction. The Office is complying with directions from the court and submitting regular progress reports as directed. The Office submitted its final report in one matter during the reporting period, and the matter was closed by judicial order on 14 May 2020. The Office anticipates that the other investigation will be completed before the end of 2020. Utilizing the "One Office" policy, the Office of the Prosecutor has absorbed the related requirements for the investigations within existing resources.

## **D. Cooperation with the Office of the Prosecutor**

23. The Office of the Prosecutor continues to rely on the full cooperation of States to complete its mandate successfully and efficiently. The Office's access to documents, archives and witnesses is critical for ongoing trial and appeal proceedings of the Mechanism, as well as in relation to locating and arresting fugitives and to witness protection.

24. During the reporting period, cooperation with the Office of the Prosecutor was generally satisfactory, except in relation to fugitives, as discussed in section III of the present report.

25. The Office is grateful for the support provided to date by Rwanda, particularly by the Office of the Prosecutor General and the heads of law enforcement agencies. The continued cooperation and assistance from the Rwandan authorities has been instrumental to the Prosecution's efforts in the *Turinabo et al.* contempt case.

26. In relation to Serbia, there have been some significant delays in responses to requests for assistance from the Office of the Prosecutor in relation to the *Stanišić and Simatović* case and other matters. The Office trusts that there will be meaningful improvements in the expeditiousness of responses to its requests. The timely provision of such assistance is necessary to prevent any further delays in the ongoing proceedings.

27. Cooperation and support from States outside Rwanda and the former Yugoslavia, as well as from international organizations, remain integral to the successful completion of Mechanism activities. The Office of the Prosecutor again acknowledges the support it received during the reporting period from Member States and international organizations, including the United Nations and its agencies, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and INTERPOL. The Office would like to highlight, in particular, the important assistance provided by the authorities in the Netherlands and the United Kingdom in relation to proceedings at the Arusha branch.

28. The international community continues to play an important role in providing incentives for States to cooperate with the Mechanism and undertake national prosecutions of war crimes. The support of the European Union remains a key tool for ensuring continued cooperation with the Mechanism. Assistance is also increasingly needed to support the national prosecution of war crimes cases in Rwanda and in the countries of the former Yugoslavia.

## **E. Conditional early release**

29. As previously reported, the Office of the Prosecutor proposed in early 2016 to amend rule 151 of the Rules of Procedure and Evidence of the Mechanism in order to establish a programme for conditional early release. The Office is gravely concerned that the vast majority of convicted persons have been released unconditionally upon or soon after serving only two thirds of their sentences. While the Office's proposal to amend rule 151 was not adopted by the plenary of judges, the Office took note of the Security Council debate on 6 June 2018. The Office also welcomed Council resolution [2422 \(2018\)](#), in which it encouraged the Mechanism to consider a conditional early release regime.

30. During the reporting period, in the light of the guidance of the Security Council, the Office of the Prosecutor made five submissions in relation to the early release of specific convicted persons, and no convicts were granted early release. The Office will continue to urge consideration of the views of the victims and affected States and communities before granting early release, particularly without conditions, and bring its views and concerns to the attention of the President of the Mechanism in response to applications for the early release of persons convicted of genocide, crimes against humanity and war crimes.

### III. Fugitives

31. The Prosecutor has the honour to report to the Security Council that the Office of the Prosecutor has now accounted for two of the remaining fugitives.

32. On 16 May 2020, the French authorities arrested Félicien Kabuga in Asnières-sur-Seine, France, following a joint investigation with the Office of the Prosecutor. The arrest was the ultimate result of the Office's revised strategy and intensified efforts since 2016.

33. As previously reported in the Prosecutor's ninth (S/2016/975, annex II) and tenth (S/2017/434, annex II) progress reports, the Office conducted a comprehensive review of its tracking activities in 2016 and 2017, and significantly reformed its work. The Office's revised tracking strategy involved, among other elements, a more analytically driven methodology and a strategic focus on fugitive support networks. The Office first closed many unsupported or weak leads on Kabuga's location, while also shifting from reacting to intelligence provided by human sources to proactively investigating and testing viable lines of inquiry. Working forward from Kabuga's last known location – in 2007 – the Office had, over the last three years, increasingly focused its investigations on possible locations in Western Europe and the involvement of his family members who were living in a number of European countries. To that end, the Office established a European Task Force, which was previously reported in the Prosecutor's tenth (S/2017/434, annex II) and eleventh (S/2017/971, annex II) progress reports, to coordinate gathering, analysing and taking action on intelligence. Through those efforts, the Office was able to obtain a significant amount of data, which, when analysed and combined with additional relevant information, allowed the Office, earlier in 2020, to conclude that Kabuga was hiding in Asnières-sur-Seine. The Office sought and obtained immediate cooperation from the French authorities, which confirmed the Office's intelligence and were further able to pinpoint Kabuga's location. In close coordination, the Office and the French authorities successfully planned the sophisticated operation that led to Kabuga's arrest on 16 May.

34. The arrest conclusively demonstrates the vital importance of swift, effective cooperation by Member States with the Office of the Prosecutor, a topic that has been addressed regularly in the Mechanism's progress reports, particularly its thirteenth (S/2018/1033), fourteenth (S/2019/417) and fifteenth (S/2019/888) reports. The assistance and support provided by the law enforcement and judicial authorities in France – as well as in Austria, Belgium, Germany, Luxembourg, the Netherlands, Rwanda, Switzerland, the United Kingdom, the United States and others, together with Europol and INTERPOL – were decisive to the Office's success. The Office of the Prosecutor expresses its deepest appreciation to all of its partners in that effort. The experience has shown the impressive results that can be achieved through international law enforcement and judicial cooperation.

35. In a second important development, the Office of the Prosecutor was able to confirm the death of Augustin Bizimana, one of the major fugitives whose case was to be tried by the Mechanism. The Office had previously attempted in 2013 and 2014 to confirm intelligence of Bizimana's death through DNA analysis of the remains in an identified grave site in the Republic of the Congo. However, the effort at that time to identify the mitochondrial DNA sequence information from the samples that had been retrieved was unsuccessful. Over the past year, the Office worked with the authorities in the United States to re-examine the samples using the most state-of-the-art technology, which successfully produced results. The Office was able to confirm that the mitochondrial DNA of the remains in the identified grave site corresponded to reference samples obtained from Bizimana's mother. The Office, with the

assistance of the Rwandan authorities, further excluded the possibility that the remains were those of any of Bizimana's male relations from his mother's side of the family. The Office was accordingly able to conclude that Augustin Bizimana is deceased and that his remains are located in the previously identified grave site. The Office anticipates filing a motion to close the proceedings against Bizimana in the near future. The Office expresses its deep appreciation to the authorities in the Congo, the Netherlands, Rwanda and the United States for their cooperation and assistance in the matter.

36. Accordingly, as at the end of the reporting period, six fugitives indicted by the International Criminal Tribunal for Rwanda remained at large. In addition to arresting Kabuga and confirming Bizimana's death, during the reporting period, the Office of the Prosecutor continued to develop and follow actionable leads based on intelligence, analytical and investigative activities of the Office and its partners. The Office continues to submit requests for assistance and cooperation to Member States in support of its efforts to track, locate and arrest the fugitives.

37. In that regard, the Office is compelled to note that, despite progress in important areas, including those described above, the Office has otherwise struggled to obtain the necessary cooperation from a number of relevant Member States, which has significantly hindered its efforts. The Office has discussed those challenges in the Mechanism's previous reports, including its third review report ([S/2020/309](#), annex).

38. The arrest of Félicien Kabuga, after he evaded justice for nearly 23 years, should encourage all Member States to provide their full support and cooperation to the Office of the Prosecutor. When international and national authorities work together, fugitives such as Kabuga can be located and arrested. The Office also reiterates that under the War Crimes Rewards Program of the United States, individuals who provide information leading to the arrest of a fugitive may be eligible for a monetary reward in an amount up to \$5 million.

#### **IV. Assistance to national war crimes prosecutions**

39. National prosecutions remain essential to achieving greater justice for the victims of war crimes, crimes against humanity and genocide committed in Rwanda and the former Yugoslavia. The Office of the Prosecutor is mandated to assist and support national prosecutions of those crimes, in accordance with the completion strategies of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Former Yugoslavia, Security Council resolution [1966 \(2010\)](#) and the statute of the Mechanism. The effective prosecution of the crimes committed is fundamental to building and sustaining the rule of law, establishing the truth of what occurred and promoting reconciliation in the affected countries. Third-party States are also undertaking prosecutions against suspects who are present in their territory for crimes committed in Rwanda and the former Yugoslavia.

40. The Office of the Prosecutor continued its efforts, within existing resources, to support, monitor and advise the national judicial authorities prosecuting war crimes cases arising from the conflicts in Rwanda and the former Yugoslavia. The Office maintains an ongoing dialogue with all relevant counterparts and undertakes a range of initiatives to assist and build capacity in national criminal justice sectors.



## **A. War crimes committed in Rwanda**

### **1. Completion strategy of the International Criminal Tribunal for Rwanda**

41. The twenty-sixth anniversary of the Rwandan genocide was an important opportunity to commemorate the victims and reflect on the shared commitment to protect others from suffering the horrors of genocide. It was also a reminder that the victims of Rwanda are still waiting for more justice and that the closure of the International Criminal Tribunal for Rwanda was not an end to that process. All those who committed crimes during the Rwandan genocide must be held accountable. The Mechanism and national courts are responsible now for continuing the work of the Tribunal and ensuring the full implementation of its completion strategy by bringing more perpetrators to justice.

42. The Office of the Prosecutor is fully committed to undertaking all efforts to locate and arrest the remaining six fugitives indicted by the International Criminal Tribunal for Rwanda. As reported above, the Office is generating and pursuing active leads. Full cooperation and support from Member States are urgently needed to enable the Office to achieve results. The Mechanism further continues to monitor the four ongoing cases referred by the Tribunal to the national courts of France and Rwanda under rule 11 bis of the Rules of Procedure and Evidence of the Tribunal. The case against Laurent Bucyibaruta was referred to France in 2007. Jean Uwinkindi, Bernard Munyagishari and Ladislas Ntaganzwa were transferred to Rwanda in 2012, 2013 and 2016, respectively.

43. At the same time, national authorities now have primary responsibility for the continued implementation of the completion strategy of the International Criminal Tribunal for Rwanda. The Prosecutor General of Rwanda is currently searching for approximately 900 fugitives. Courts in countries around the world continue to process cases of crimes committed during the Rwandan genocide. For example, in an important recent development, several European countries, together with Eurojust, have commenced preparations to establish an international investigative task force focusing on Rwandan genocide suspects present in Europe. With the implementation of “no safe haven” policies, courts in other countries are also pursuing immigration enforcement actions against those suspected of participating in the genocide.

44. Consistent with the principle of complementarity and national ownership of post-conflict accountability, prosecutions by the Rwandan justice sector in accordance with international due process and fair trial standards are, in principle, the most advantageous accountability mechanism. The Office of the Prosecutor encourages the international community to continue its efforts to support and strengthen the Rwandan criminal justice sector by providing financial assistance and capacity-building as needed.

45. It is essential that those who bear individual criminal responsibility for crimes committed during the genocide are prosecuted. Twenty-six years after the genocide, significant steps towards justice have been achieved, but more remains to be done. The Office of the Prosecutor stands ready to provide support and assistance to the Rwandan authorities and third-party States prosecuting, in their own domestic courts, Rwandan nationals suspected of genocide. The Office calls upon all Member States to ensure that all possible efforts are undertaken to continue the implementation of the completion strategy of the International Criminal Tribunal for Rwanda and to support more justice for more victims of the Rwandan genocide.

## 2. Genocide denial

46. In 2006, the Appeals Chamber of the International Criminal Tribunal for Rwanda held that the facts of the genocide committed in Rwanda were established beyond any dispute and thus constituted facts of common knowledge. In particular, the Appeals Chamber concluded that it was a universally known fact that, between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group. Establishing that and other facts about the Rwandan genocide was one of the Tribunal's most important contributions to re-establishing peace and security in Rwanda and promoting reconciliation between the affected communities.

47. However, genocide denial, in all its forms and manifestations, continues today. Efforts to minimize the scale of the death and destruction or point to other factors to detract attention from the facts of the genocide are intolerable and unacceptable. There are no other facts or circumstances that in any way alter the truth that in the course of just 100 days in Rwanda, hundreds of thousands of innocent people were senselessly murdered, tortured, raped and forced to flee their homes. At the same time, genocide ideology continues to present clear risks to international peace and security. Ideologies of discrimination, division and hate are promoting conflict and crimes in places around the globe.

48. The Office of the Prosecutor of the Mechanism firmly rejects genocide denial and is committed to promoting education and remembrance as key tools in the fight against genocide ideology. In such efforts, the Office will vigorously investigate and prosecute those who interfere with witnesses with the aim of falsely undermining the established facts of the genocide committed in Rwanda. Such contempt of court is a form of genocide denial and must be opposed.

## 3. Cases referred to France

49. The *Bucyibaruta* case continued to progress. Laurent Bucyibaruta, prefect of Gikongoro Prefecture, was indicted by the International Criminal Tribunal for Rwanda in June 2005 on six counts, namely, direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. The indictment was referred by the Tribunal to France for trial on 20 November 2007. The investigation by the French authorities has been completed. On 4 October 2018, the Public Prosecutor filed his final submission, asking for partial discharge and transfer to the criminal court and requesting the investigating judge to order an indictment for genocide, complicity in genocide and complicity in crimes against humanity. On 24 December, the judge issued a decision that the case should proceed to trial, which was appealed by the accused and civil parties.

50. Although the Office of the Prosecutor recognizes the challenges the French judiciary has faced, significant time has been required to process the case. The Office hopes to be able to report in the next progress report regarding the schedule for commencement of the trial in the *Bucyibaruta* case.

## 4. Cases referred to Rwanda

51. Jean Uwinkindi, a pastor in the Pentecostal Church, was indicted by the International Criminal Tribunal for Rwanda in September 2001 on three counts, namely, genocide, conspiracy to commit genocide and extermination as a crime against humanity. He was transferred to Rwanda for trial on 19 April 2012, and the trial commenced on 14 May. On 30 December 2015, the High Court of Rwanda issued its trial judgment, convicting Uwinkindi and sentencing him to life imprisonment. Appeals proceedings are under way.

52. Bernard Munyagishari, a local leader in the Mouvement républicain national pour la démocratie et le développement, was indicted by the International Criminal Tribunal for Rwanda in September 2005 on five counts, namely, conspiracy to commit genocide, genocide, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 24 July 2013. The High Court issued its trial judgment on 20 April 2017, convicting Munyagishari of genocide and murder as a crime against humanity, acquitting him of rape as a crime against humanity and sentencing him to life imprisonment. Appeals proceedings are under way.

53. Ladislas Ntaganzwa, mayor of Nyakizu commune, was indicted by the International Criminal Tribunal for Rwanda in June 1996. In the amended indictment, he was charged with five counts, namely, genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 20 March 2016. Trial proceedings are under way.

54. The Office of the Prosecutor encourages the Rwandan authorities to ensure that the cases are processed as expeditiously as possible.

## **B. War crimes committed in the former Yugoslavia**

### **1. Completion strategy of the International Tribunal for the Former Yugoslavia**

55. As the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia emphasized in its final completion strategy report (S/2017/1001, annex II), it was always foreseen in the completion strategy of the Tribunal that the end of the Tribunal's mandate would not be the end of justice for war crimes committed in the former Yugoslavia, but the beginning of the next chapter. Following the closure of the Tribunal, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. The work of the Tribunal has created a solid foundation for national judiciaries to continue implementing the completion strategy and securing more justice for more victims.

56. More than 15 years after the adoption of the completion strategy, national judiciaries have achieved progress in accountability for war crimes, albeit unevenly among different countries. They continue to face a very large backlog of war crimes cases to process, with several thousand cases remaining across the region. Most importantly, much more remains to be done to bring to justice senior- and mid-level suspects who worked together with or were subordinate to senior-level war criminals prosecuted and convicted by the International Tribunal for the Former Yugoslavia.

### **2. Denial and glorification**

57. The Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism have regularly reported that the denial of crimes and the non-acceptance of the facts established in the judgments of the Tribunal are widespread throughout the region of the former Yugoslavia. Convicted war criminals are often glorified as heroes. Students in different countries, including in Bosnia and Herzegovina itself, are taught widely different and irreconcilable versions of the recent past. The Office of the Prosecutor of the Mechanism has expressed its grave concern in that regard and called for urgent attention to those issues. Acceptance of the truth of the recent past is the foundation for reconciliation and healing between communities in the former Yugoslavia.

58. The year 2020 will mark the twenty-fifth anniversaries of many notable crimes and events that occurred during the conflicts in the former Yugoslavia, including the

shelling of Tuzla on 25 May 1995, the Srebrenica genocide, Operation Storm, the shelling of the Markale market in Sarajevo on 28 August 1995 and the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina.

59. Those anniversaries should be solemn moments to commemorate the victims. They are also an opportunity to recall the devastating humanitarian consequences of the conflicts on all the peoples of the former Yugoslavia, including the massive displacement of civilians. Victims from all sides deserve to have their suffering recognized and acknowledged. Societies should speak with one voice to condemn those responsible for war crimes, crimes against humanity and genocide.

60. Unfortunately, as the Office of the Prosecutor has reported regularly, major anniversaries are more likely to be marked by the denial of crimes and the glorification of convicted war criminals than empathy for the victims. Too often, the narratives in regard to such events promoted by politicians and public officials throughout the region drive a wedge between societies, rather than bringing them together through reconciliation.

61. The Office of the Prosecutor calls upon all officials and public figures in the region to act responsibly and put the victims and civilian suffering at the forefront in all activities marking the anniversaries. They should publicly condemn the denial of crimes and the glorification of war criminals, rather than supporting them with public rhetoric and funds. Twenty-five years on, a break with the rhetoric of the past is long overdue, and leadership in favour of reconciliation and peacebuilding is urgently needed.

### **3. Regional judicial cooperation**

62. Judicial cooperation between the countries of the former Yugoslavia is essential to ensuring that those responsible for war crimes are held accountable. Many suspects may not be present in the territory in which they are alleged to have committed the crimes. Yet Governments in the region refuse to extradite their citizens on war crimes charges, despite regularly extraditing persons accused of committing other serious crimes, such as organized crime, corruption and economic crimes. As reported in the Prosecutor's thirteenth progress report (S/2018/1033, annex II), regional judicial cooperation in war crimes matters among the countries of the former Yugoslavia is at its lowest level in years and faces immense challenges. Decisive action is needed to reverse the current negative trends and ensure that war criminals do not find safe haven in neighbouring countries. Solutions are available and well-known; the commitment and willingness to use them are now required.

63. The Office of the Prosecutor can report that there has been some limited progress in regard to the transfer of confirmed indictments against senior- and mid-level accused from Bosnia and Herzegovina to Croatia and Serbia, respectively. As previously noted, the Office facilitated an agreement between the chief war crimes prosecutors to commence the transfer, through mutual legal assistance, of an initial set of four such indictments that had been confirmed by the Court of Bosnia and Herzegovina, two of which would be transferred to Croatia, and two of which would be transferred to Serbia. During the reporting period, the Court of Bosnia and Herzegovina approved the transfer of those indictments, as proposed by the Prosecutor's Office of Bosnia and Herzegovina, which the Ministry of Justice of Bosnia and Herzegovina then transmitted to its Croatian and Serbian counterparts. All four indictments and supporting case files have now been received by the competent prosecution offices in Croatia and Serbia.

64. Croatian and Serbian prosecutors now have an invaluable opportunity to demonstrate their commitment to both promoting good regional judicial cooperation in war crimes cases and ensuring that case files against senior- and mid-level accused are processed promptly and appropriately. Each of the four cases was initially

investigated by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia, is supported by extensive evidence and relates to crimes already successfully prosecuted at the Tribunal. The Prosecutor's Office of Bosnia and Herzegovina subsequently prepared indictments that were confirmed by the Court of Bosnia and Herzegovina. The Office of the Prosecutor has offered its assistance and expertise to the State Attorney's Office of Croatia and the Office of the War Crimes Prosecutor of Serbia, and will continue to work closely with them. The Office hopes to be able to report continued progress in the upcoming period.

65. Regrettably, however, many issues previously identified in relation to regional judicial cooperation in war crimes matters remain unresolved. There has been no progress in the matter of Novak Djukić, which was covered extensively in the Prosecutor's fifteenth progress report (S/2019/888, annex II). Judicial cooperation between Serbia and Kosovo<sup>1</sup> in war crimes matters has not improved and creates an undeniable barrier to justice. Long-standing negotiations between Croatia and Serbia to establish an agreement on a framework for war crimes cases, previously reported in the Prosecutor's fourteenth progress report (S/2019/417, annex II), remain at a standstill. While judicial cooperation continues in relation to low-level perpetrators, it is still the case that many senior- and mid-level suspects enjoy impunity because of ineffective regional judicial cooperation. The Office of the Prosecutor urges prosecution offices, judiciaries and justice ministries throughout the former Yugoslavia to urgently resolve these and other matters and get regional judicial cooperation in war crimes matters on the right track.

#### **4. Registration of judgments**

66. In its previous reports, the Office of the Prosecutor has touched upon the need for the countries in the former Yugoslavia to register criminal convictions entered by the International Tribunal for the Former Yugoslavia and the Mechanism into domestic criminal records. This matter is vitally important for the rule of law, reconciliation and stability in the former Yugoslavia, as well as a fundamental issue of cooperation with the Mechanism.

67. Today, in the countries of the former Yugoslavia, while the domestic records of ordinary criminals reflect their crimes, the domestic records of most international war criminals do not. From the perspective of domestic legal orders, it is therefore almost as if the crimes never happened and the perpetrators were never convicted.

68. The registration of international criminal judgments in domestic criminal records is important in both principle and practice. Respect for the rule of law entails giving effect to judicial decisions, including, in particular, criminal convictions. It is difficult to conclude that judicial decisions are being given effect if criminal convictions are not recognized and reflected in criminal records. That same notion lies at the heart of the obligation of Member States to cooperate with the Tribunal and the Mechanism. More broadly, the registration of international criminal judgments is also how national authorities recognize – and ultimately condemn – the crimes and guilt of those convicted. Such recognition and condemnation are preconditions for reconciliation, particularly in the context of the widespread denial of crimes and glorification of convicted war criminals throughout the region.

69. Registering international criminal convictions in domestic criminal records also has important practical implications. When past convictions are recognized, courts can identify recidivism and take that into account in sentencing. Similarly, many States have legislated, particularly for the most severe crimes, further post-conviction

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<sup>1</sup> All references to Kosovo shall be understood as being in full compliance with Security Council resolution 1244 (1999).

consequences after the sentence is served, such as limitations on political rights or ineligibility to hold positions of public trust. Finally, a recognized criminal conviction may be an important element in related civil litigation, particularly by the victims of the crime. These practical considerations take on additional importance where States have developed systems for the mutual exchange of information on criminal records, such as the European Criminal Records Information System.

70. While the issue was not given much attention in the past, it has taken on increasing urgency in the light of the closure of the Tribunal and the nearing completion of the Mechanism's final trials and appeals, particularly with the release of many convicted persons after serving their sentences. For example, in 2010, Simo Zarić, who was convicted for crimes against humanity by the International Tribunal for the Former Yugoslavia, was elected deputy mayor in the same municipality in which he committed crimes during the conflict. Understanding the need to address similar situations, the Office ensured that the Registry formally transmitted all criminal convictions of the Tribunal and the Mechanism to the countries in the region and further opened discussions with national authorities to move the issue forward.

71. To date, some important progress has been made, but much more remains to be done. The most notable advances have been in Croatia, where the authorities have confirmed that many Tribunal judgments have been registered in its domestic criminal records, including the convictions entered in the *Prlić et al.* case. However, in both Bosnia and Herzegovina and Serbia, the authorities have informed the Office that there is no domestic legal basis for registering international criminal convictions in domestic criminal records. The Ministry of Justice of Bosnia and Herzegovina has reported that it is actively pursuing the matter and hopes that it will be resolved in the near future. The Ministry of Justice of Serbia has not yet informed the Office of the steps that it is taking to address the issue.

72. The Office of the Prosecutor strongly encourages all countries of the former Yugoslavia to swiftly resolve any national obstacles and ensure that the convictions entered by the Tribunal or the Mechanism against their nationals are registered in domestic criminal records. The Office hopes to be able to report in the near future that this matter has been fully addressed.

## **5. Bosnia and Herzegovina**

73. The Office of the Prosecutor of the Mechanism continued to enjoy positive discussions with the Chief Prosecutor of Bosnia and Herzegovina about cooperation in war crimes justice. The Chief Prosecutor underlined her desire for even closer cooperation and collaboration with the Office, including through assistance on concrete cases, strategic support and activities to transfer lessons learned. The Office of the Prosecutor of the Mechanism is committed to continuing to support the work of the Prosecutor's Office of Bosnia and Herzegovina, particularly with regard to the mutual goal of successfully implementing the national war crimes strategy.

74. During the reporting period, the Prosecutor's Office of Bosnia and Herzegovina filed 15 indictments. The number of new cases initiated has been declining over the past few reporting periods, but the Office of the Prosecutor of the Mechanism is aware that the Prosecutor's Office of Bosnia and Herzegovina is also actively undertaking investigations in complex cases, which should result in additional indictments in the upcoming reporting period. The Office of the Prosecutor of the Mechanism also inquired about a number of indictments filed during the reporting period against low-level suspects, which would not normally be the priority for the Prosecutor's Office of Bosnia and Herzegovina, and was informed in response that those indictments were related to other ongoing cases before the Court of Bosnia and Herzegovina. In response to questions regarding the results of prosecutions initiated in past years,

including a number of acquittals, the Prosecutor's Office of Bosnia and Herzegovina committed to continuing to review its practices and make additional reforms as needed. The Office of the Prosecutor of the Mechanism stands ready to provide assistance and work with the Chief Prosecutor to ensure that her Office meets the public's high expectations for war crimes justice.

75. The Office of the Prosecutor of the Mechanism and the Prosecutor's Office of Bosnia and Herzegovina also held important discussions during the reporting period in relation to strategic management, the organization of prosecutors into regional teams and ensuring that the indictments brought by individual prosecutors are in accordance with the national war crimes strategy. Those topics have taken on increasing importance as the Prosecutor's Office of Bosnia and Herzegovina more fully dedicates its resources to the investigation and prosecution of senior- and mid-level suspects, and are expected to feature prominently in the forthcoming expert review report by Judge Joanna Korner commissioned by the Organization for Security and Cooperation in Europe. The Chief Prosecutor expressed her belief that her office could best achieve progress on those issues by using as a model the regulations and practices implemented by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism. The Office of the Prosecutor of the Mechanism agreed to partner with and support the Prosecutor's Office of Bosnia and Herzegovina in that area, including in relation to implementing any recommendations in the forthcoming report of Judge Korner.

76. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, significant results have been achieved so far in accountability for war crimes in Bosnia and Herzegovina, but it is clear that much more remains to be done. There is a strong foundation for continued justice in Bosnia and Herzegovina. The Office of the Prosecutor of the Mechanism and the Prosecutor's Office of Bosnia and Herzegovina continue to strengthen their cooperation. However, there remains an enormous backlog of cases, and efforts still need to be further intensified. The Office of the Prosecutor of the Mechanism encourages further progress to prevent any regression and will continue to work with the Prosecutor's Office of Bosnia and Herzegovina and other prosecution offices in Bosnia and Herzegovina. The Office further encourages the Prosecutor's Office of Bosnia and Herzegovina to continue to strengthen its engagement with the victim community, including in relation to the so-called "rules of the road" files.

## **6. Croatia**

77. As has been the case for several years, the Office of the Prosecutor is required to report to the Security Council that the Government of Croatia, by failing to withdraw its 2015 conclusion directing the Ministry of Justice not to provide judicial cooperation in certain war crimes cases, regrettably continues to interfere politically in the justice process. As a result, a large and continually growing number of war crimes cases against former members of Croatian and Bosnian Croat forces are frozen. Croatian counterparts have suggested that although the conclusion remains in force, in practice its effect is more limited. Prosecution services in neighbouring countries still report, however, that many past requests remain unaddressed and that there are still significant difficulties in obtaining cooperation from Croatia, including access to evidence and suspects. No satisfactory explanations have been provided for maintaining the policy, even on paper, and indeed none could be provided, particularly by a State member of the European Union. The Government of Croatia should withdraw the conclusion immediately and allow the justice process to continue without further interference.

78. With respect to the category II case files from Bosnia and Herzegovina to be prosecuted in Croatia, which have been previously discussed in the progress reports of the Mechanism, as noted above, the Office can report that the files have been received

by the Croatian authorities. Consistent with previous commitments, the State Attorney's Office of Croatia should now expeditiously process the files with a view to ensuring that the suspects are quickly brought to trial. Separately, the *Glavaš* case, a category II case previously referred by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to the State Attorney's Office of Croatia, remains at trial following the earlier revocation of a convicting judgment by the Supreme Court of Croatia.

79. During the reporting period, the Zagreb County Court convicted Milan Martić, the former president of the Republic of Serbian Krajina, in absentia and sentenced him to seven years of imprisonment for the shelling of Croatian towns using rockets in 1995. Martić was convicted by the International Tribunal for the Former Yugoslavia in 2008 and is currently serving his sentence of 35 years of imprisonment in Estonia. Martić's co-accused in the trial before the Zagreb County Court, Milan Čeleketić, was also tried in absentia as he is living in Serbia and was sentenced to 20 years of imprisonment. The State Attorney's Office has full authority to determine its prosecutorial strategy and allocate its limited resources. At the same time, victims are increasingly concerned about significant impunity gaps that remain in Croatia, including in relation to crimes committed in Vukovar and Bosnia and Herzegovina. The prosecution of those who have already been convicted of war crimes and crimes against humanity requires resources that would otherwise be available to address those impunity gaps. In addition, while the State Attorney's Office has explained that its limited resources hinder progress on cases against persons who are present in Croatia and could be tried with their presence, resources are being allocated to the many in absentia trials that continue to be prosecuted.

80. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, it is clear that more justice for war crimes is urgently needed in Croatia. While fewer cases are being prosecuted each year, significant accountability gaps remain, particularly in relation to the responsibility of commanders for crimes committed by their subordinates. Victims have high expectations for justice that the Croatian authorities will need to meet.

81. The Office of the Prosecutor of the Mechanism has continued to offer its support to the State Attorney's Office of Croatia in terms of training, capacity-building and assistance on concrete cases. The State Attorney's Office faces a number of key challenges, including insufficient resources and staff, that will need to be overcome in order to achieve improved results. The State Attorney's Office may also benefit from exchanging experiences and knowledge with international prosecutors. The Office of the Prosecutor of the Mechanism stands ready to provide assistance to the State Attorney's Office as requested.

## **7. Montenegro**

82. At the request of the Montenegrin authorities, the Office of the Prosecutor has, over the past few years, developed its assistance to Montenegro in relation to justice for war crimes committed in the conflicts in the former Yugoslavia. In January 2019, the Prosecutor visited Podgorica for discussions with the President, the Minister for Foreign Affairs, the Minister for Justice and the Supreme State Prosecutor of Montenegro. Also at the request of the Montenegrin authorities, the Office agreed to significantly strengthen cooperation in war crimes justice, including through the transfer of evidence, assistance in concrete cases, training and capacity-building. Subsequently, the Montenegrin authorities and the Office have had further positive engagement and will continue working together closely to improve the processing of war crimes cases in Montenegro.

83. It is well understood that, to date, sufficient justice for war crimes has not been achieved in Montenegro. In the four major cases that have been completed, 28



accused were acquitted and only 4 were convicted. Those cases were marred by a number of problems, including insufficient evidence and the inconsistent application of international law. At the same time, the Special State Prosecutor's Office, which is mandated to investigate and prosecute war crimes, faces significant challenges, in particular insufficient resources.

84. During the reporting period, the Court of Appeal upheld the conviction of Vlado Zmajević for war crimes against the civilian population and the sentence of 14 years in prison. Zmajević, a former member of the Yugoslav Army, was found guilty of the murder of four Kosovar Albanian civilians in the village of Žegra during the conflict in Kosovo. The *Zmajević* case was the first successful war crimes prosecution in Montenegro in a number of years, and it is hoped that it represents the beginning of steps towards reinvigorating accountability for war crimes in Montenegro.

85. The Office of the Prosecutor also commenced discussions during the reporting period with the Montenegrin authorities with a view to introducing important reforms in domestic law to support war crimes justice. Those discussions follow on from a previous agreement that the Office would review its evidence to identify additional suspects for the Special State Prosecutor's Office to process. While the COVID-19 pandemic prevented planned follow-up discussions in May, the Office and the Montenegrin authorities remain committed to working together on the reform efforts.

86. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, war crimes justice in Montenegro is still just beginning. There has been almost no accountability for Montenegrin citizens who committed crimes during the conflicts. Nonetheless, the Montenegrin authorities accept that far more needs to be done and have requested the assistance of the Office of the Prosecutor to ensure that Montenegro can achieve much more justice and meet its commitments. The Office is committed to providing the support needed and hopes to be able to report in the future that war crimes justice in Montenegro has begun producing concrete results.

## **8. Serbia**

87. The Office of the Prosecutor of the Mechanism continued its engagement and cooperation with the Serbian authorities, including the Chief War Crimes Prosecutor of Serbia. The Serbian authorities remain committed to strengthening cooperation with the Office as a means to support the implementation of the national war crimes strategy and the prosecutorial strategy. They acknowledge that regional judicial cooperation in war crimes matters has not been satisfactory and that efforts need to be made to improve cooperation as an important element in regional relations. The Serbian authorities and the Office of the Prosecutor will continue to work together closely to expedite the processing of war crimes cases in Serbia.

88. During the reporting period, the Office of the War Crimes Prosecutor of Serbia filed two indictments. In the four-year period since the adoption of the Serbian national war crimes strategy, the Office of the War Crimes Prosecutor has filed 25 indictments, nearly all of which concerned low-level perpetrators whose cases were transferred from Bosnia and Herzegovina. As at the end of the reporting period, the Office of the War Crimes Prosecutor also had 6 active investigations into known suspects, 11 investigations into unknown suspects and 28 inactive investigations.

89. As noted above, during the reporting period, two indictments confirmed by the Court of Bosnia and Herzegovina against two accused, presently in Serbia, for crimes committed in Bosnia and Herzegovina were transferred through mutual legal assistance to the Office of the War Crimes Prosecutor of Serbia. Subsequently, the Court of Bosnia and Herzegovina transferred to Serbia another confirmed indictment in a category II case. In addition, the Office of the Prosecutor of the Mechanism

previously handed over to the Office of the War Crimes Prosecutor of Serbia two complex case files involving senior-level accused for analysis and processing.

90. Accordingly, the Office of the War Crimes Prosecutor has now received five cases against six senior- and mid-level suspects that are supported by extensive evidence and relate to crimes successfully prosecuted at the International Tribunal for the Former Yugoslavia. The Office of the Prosecutor of the Mechanism has offered its full assistance to the Office of the War Crimes Prosecutor of Serbia in processing all those cases, and in that regard hosted deputy prosecutors from the Office of the War Crimes Prosecutor for intensive case-specific discussions in December 2019. The progress of those cases will be of decisive importance when assessing the implementation of the national war crimes strategy and the prosecutorial strategy, and will be of significant interest to victims, civil society and other stakeholders.

91. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, few results have been achieved and impunity for many well-established crimes continues in Serbia. Stakeholders rightly expect to see clear signs that war crimes justice in Serbia is heading in the right direction, and decisive steps are urgently needed to show that investments are bearing fruit and that there is the will to realize the commitments made in the national war crimes strategy. Important case files involving senior- and mid-level officials have been transferred to Serbia, and the Office of the Prosecutor of the Mechanism will provide all requested assistance, including training, direct case assistance and other forms of support, needed to appropriately process those files. The next reporting period will be critical to demonstrating whether the Office of the War Crimes Prosecutor of Serbia is investigating, processing, indicting and prosecuting more cases, particularly against senior- and mid-level officials, at a higher rate and to a higher quality.

### **C. Access to information and evidence**

92. The Office of the Prosecutor possesses extensive evidence and invaluable expertise that can greatly benefit national justice efforts. The collection of evidence relating to the former Yugoslavia comprises more than 9 million pages of documents and thousands of hours of audio and video records, most of which were not introduced into evidence in any proceeding of the International Tribunal for the Former Yugoslavia and are therefore available only from the Office of the Prosecutor. The collection of evidence relating to Rwanda comprises more than 1 million pages of documents. The Office's staff members have unique insight into the crimes and the cases that can assist national prosecutors in preparing and proving their indictments.

93. During the reporting period, the Office of the Prosecutor continued to receive a high volume of requests for assistance from national judiciaries and international organizations.

94. In relation to Rwanda, the Office of the Prosecutor received six requests for assistance from four Member States, which have been processed. One request was submitted by the Canadian authorities, one request was from the Swedish authorities, two requests were from the United Kingdom and two requests were submitted by the French authorities. In total, the Office handed over more than 1,400 documents comprising more than 23,000 pages of evidence. In addition, the Office facilitated access to two witnesses and filed two submissions in relation to a request for assistance.

95. In relation to the former Yugoslavia, the Office of the Prosecutor received 258 requests for assistance from five Member States and three international organizations. Seventy-seven requests for assistance were submitted by the authorities in Bosnia and Herzegovina, 1 came from Croatia, and 10 came from Serbia. In total, the Office handed over more than 2,600 documents comprising nearly 79,000 pages of evidence and 83

audiovisual records. In addition, the Office filed two submissions in relation to a request for the continuation of witness protective measures, which concerned proceedings in Bosnia and Herzegovina. In addition, the Office filed two submissions in relation to requests for variations of protective measures from an international organization. The Office continued to receive a large volume of requests for assistance during the reporting period and expects to receive an even larger volume of requests in the future.

96. The significant growth in recent years in requests for assistance received by the Office – for example, at The Hague branch the number of requests received increased from 111 in 2013 to 329 in 2019, a nearly three-fold increase – has only partially been met by increases in related resources. The Office has sought to absorb the additional requirements by flexibly redeploying staff. Unfortunately, as the Office already has lean staffing numbers, it has not been possible to fully address the increased workload, as OIOS recognized in noting that “given the dynamic level of ad hoc judicial activity, the Office of the Prosecutor had a shortfall of capacity to address ongoing activities” (S/2020/236, para. 41). As a result, a backlog of approximately 150 requests has developed.

97. The joint European Union-Mechanism training project for national prosecutors and young professionals continued during the reporting period. Liaison prosecutors and young professionals from Bosnia and Herzegovina and Serbia worked with the Office of the Prosecutor to support the transfer of evidence and expertise to their home offices and the national prosecutions of war crimes committed in the former Yugoslavia. The Office also continued to implement the joint European Union-Mechanism project supporting domestic accountability for war crimes.

#### **D. Capacity-building**

98. The Office of the Prosecutor continued its efforts, within existing resources, to build capacity in national judiciaries prosecuting war crimes. The Office’s capacity-building efforts were focused on the Great Lakes region, East Africa and the former Yugoslavia. Strengthening national capacities supports the principle of complementarity and national ownership of post-conflict accountability.

99. During the reporting period, the Office of the Prosecutor of the Mechanism hosted new deputy prosecutors and legal assistants from the Office of the War Crimes Prosecutor of Serbia for an intensive five-day induction training in The Hague. The topics covered included an introduction to building complex cases, training on accessing evidence from the Office of the Prosecutor of the Mechanism and discussions regarding accountability for war crimes in Serbia and the region. The induction training was requested by the Office of the War Crimes Prosecutor of Serbia, with the support of the Ministry of Justice of Serbia, and was generously funded by the Netherlands. Owing to the COVID-19 pandemic, the Office delayed other planned training activities.

100. Within the limits of its operational capacity and existing resources, the Office of the Prosecutor will continue to engage with training providers and donors to ensure that appropriate practical training on investigative and prosecutorial techniques in war crimes justice is made available. The Office expresses its deep gratitude to partners for providing financial, logistical and other support to enable the Office’s capacity-building and training efforts.

## E. Missing persons

101. The search for persons who are still missing as a result of the conflicts in the former Yugoslavia continued to be consistently identified as one of the most important outstanding issues. Significant results have been achieved, with approximately 30,000 missing persons found and identified. Unfortunately, the families of some 10,000 missing persons still do not know the fates of their loved ones. The search for and exhumation of mass graves and the subsequent identification of the remains need to be accelerated. Further progress on those issues is a humanitarian imperative and fundamental to reconciliation in the countries of the former Yugoslavia. Victims from all sides of the conflicts must be located, identified and returned to their families.

102. During the reporting period, the Office of the Prosecutor and the International Committee of the Red Cross (ICRC) continued their cooperation pursuant to the memorandum of understanding that they signed in October 2018. That important agreement enables ICRC to gain access to the Office's collection of evidence to obtain information that may assist in clarifying the fate and whereabouts of persons who are still missing. The Office and ICRC are also working jointly, in accordance with their respective mandates, to analyse information, identify new leads and provide files to domestic missing persons authorities for action. From 16 November 2019 to 16 May 2020, the Office responded to 15 requests for assistance from ICRC and handed over 601 documents comprising 16,000 pages, as well as one audiovisual record.

## V. Other residual functions

103. During the reporting period, the Office of the Prosecutor continued to carry out its responsibilities in respect of other residual functions.

104. The volume of litigation before the Mechanism arising from completed cases continued to be higher than anticipated, which put a strain on the Office's limited resources. The Office was nonetheless able to address those unforeseen requirements within existing resources, particularly thanks to the "One Office" policy. The Office will continue to monitor the volume of litigation and report as appropriate.

## VI. Management

### A. Overview

105. The Office of the Prosecutor is committed to managing its staff and resources in line with the instruction of the Security Council that the Mechanism be a "small, temporary and efficient structure". The Office continues to be guided by the views and requests of the Security Council, as set forth in, inter alia, paragraphs 18 to 20 of resolution 2256 (2015) and paragraphs 7 and 8 of resolution 2422 (2018). An important part of those efforts is the Prosecutor's "One Office" policy to integrate the staff and resources of the Office across both branches. Under the policy, staff and resources are available to be flexibly deployed to work on matters arising at either branch as necessary.

106. During the reporting period, the Office of the Prosecutor continued to litigate unexpected ad hoc judicial activity in relation to the *Turinabo et al.* contempt case. The Office was able to absorb most of the related requirements within existing resources by taking a number of steps, including the flexible redeployment of resources and distribution of workload throughout the Office. As a result of those efforts, the Office continued to meet all court-imposed deadlines.

107. In general, the Office of the Prosecutor continued to maximize its resources and “do more with less” through extensive multitasking and cross-training. In order to meet the Office’s responsibilities in the light of its lean staffing, staff members of the Office have been regularly requested to take on exceptional workloads. The Office is grateful for the continued dedication and commitment of its staff.

108. The Office continued to downsize during the reporting period, abolishing a number of posts at the end of 2019 at The Hague branch. The Office continued to manage downsizing and staff attrition to ensure that it can meet all of its responsibilities inside and outside the courtroom.

## **B. COVID-19 pandemic response**

109. In response to the COVID-19 pandemic, the Office, together with the other organs of the Mechanism, rapidly shifted in mid-March to remote working arrangements. During that process and subsequently, the Office has remained in close daily communication with its staff and has provided regular updates on developments in the Office and the Mechanism. The Office has effectively maintained full business continuity across all of its functions, as demonstrated by the arrest of Félicien Kabuga on 16 May 2020. The Office is further closely monitoring staff morale and welfare, including appointing staff welfare focal points, taking the initiative to organize remote social events and advocating for Mechanism-wide staff welfare programmes. The Office is consistently identifying lessons learned and is committed to continuous improvement in its response to the COVID-19 pandemic and implementation of remote working arrangements.

110. The Office has further taken an active role in Mechanism-wide activities in response to the COVID-19 pandemic, including participating in the COVID-19 crisis management team. In the initial stages of the pandemic, the Office focused its efforts on identifying and implementing appropriate arrangements that balanced the imperative to protect staff health with the need to ensure full business continuity. More recently, the Office has promoted planning for the relaxation of national lockdown measures and consequent changes in the Mechanism’s working posture. The Office will continue to cooperate with the other organs to ensure that the Mechanism responds appropriately to the COVID-19 pandemic and future changes.

## **C. Audit reports**

111. In its report on the evaluation of the methods and work of the Mechanism, OIOS recognized that the Office’s methods and work were consistent with the expectations set by the Security Council, including in, inter alia, resolution 2422 (2018). In accordance with the expectation of the Council that the Mechanism would be a small, temporary and efficient structure with a small number of staff commensurate with its reduced functions, OIOS concluded that the Office of the Prosecutor had “lean staffing numbers to represent the ad hoc nature of the judicial activity” (S/2020/236, para. 20) and that “both trial and appeals teams were lean” (ibid., para. 41).

112. During the reporting period, the Office worked to implement the recommendation by OIOS to support and strengthen staff morale. In its report, OIOS assessed that the Office has already taken measures to address the situation, noting that “staff morale appeared to have improved in comparison with previous years” (ibid., para. 42). OIOS further agreed with the Office’s conclusion that the main drivers of negative morale were downsizing and job insecurity. In that regard, it should be noted that the improvements acknowledged by OIOS were achieved despite the fact that the previously identified negative factors persisted.

113. As noted by OIOS, in 2019, the Office carried out an extensive confidential survey of morale in the office, to identify the negative factors impacting staff morale, assess the Office's efforts to promote positive staff morale in the previous two years and solicit suggestions for further steps that could be taken. The anonymous results were shared with the Office management, OIOS and all Office staff. According to the survey results, morale in the Office was positive, and certainly more positive than might have been expected in the circumstances. Staff reported positive job satisfaction, considered their work to be meaningful and believed that they were contributing to something important and the achievement of the Office's mandate. The survey results also indicated that morale had generally improved in recent years. Staff reported positive views about the Office's successful transition to a residual institution, how downsizing had been conducted and the Office's successful response to the sharply reduced initial commitment authority in 2018. Overall, staff were positive about change management in the Office and placed a great deal of trust in the Office's senior management.

114. At the same time, the Office fully appreciates that maintaining positive staff morale will be a significant challenge in the future, and promoting positive staff morale will therefore be a key priority for the Office in 2020 and beyond. In close consultation with staff, the Office has already identified a list of 25 preliminary measures to be implemented. As at the submission date of the present report, the Office has implemented or commenced implementation of many of the measures. The Office will keep OIOS informed and looks forward to the closure of the recommendation in the near future.

115. In its report, OIOS issued one new cross-organ recommendation, namely that the Mechanism should bolster coordination and information-sharing to continuously update Mechanism-wide scenario planning. The Office welcomed that recommendation, which was aligned with the Office's own ongoing strategic review process, and looked forward to further discussions with Chambers and Registry in that regard.

116. The Office expresses its appreciation to OIOS for its continued assistance. The Office is pleased that its commitment to the vision of the Security Council of the Mechanism as "a small, temporary and efficient structure" was recognized and that OIOS favourably assessed the Office's work and innovative methods, including flexibly deploying staff to address the dynamic level of ad hoc judicial activity while maintaining lean staffing.

## **VII. Conclusion**

117. Félicien Kabuga was indicted by the International Criminal Tribunal for Rwanda in 1997 on seven counts of genocide, complicity in genocide, direct and public incitement to commit genocide, attempt to commit genocide, conspiracy to commit genocide, persecution and extermination, all in relation to crimes committed during the 1994 genocide against the Tutsi in Rwanda. He was a fugitive from justice for nearly 23 years, until his arrest on 16 May 2020 in Asnières-sur-Seine, France. The arrest, executed by the French authorities on the basis of intelligence generated by the Office of the Prosecutor through its reinvigorated fugitive tracking efforts, is a tribute to the unwavering commitment of the Security Council, which mandated the Office to continue the search for the remaining fugitives indicted by the International Criminal Tribunal for Rwanda. It further demonstrates that international justice can succeed when it has the international community's full support and that international law enforcement and judicial cooperation can achieve impressive results. Following the confirmation of Augustin Bizimana's death during the reporting period, six fugitives indicted by the International Criminal Tribunal for Rwanda now remain at large. The Office requests the Security Council to take note, and underscores that to bring the fugitives to justice, full and timely cooperation is needed from Member States and other relevant authorities,

as aptly demonstrated by Kabuga's arrest. The victims and survivors of the genocide against the Tutsi in Rwanda deserve our full commitment and support.

118. The Office continued to undertake all efforts to contribute to the expeditious completion of the remaining trials and appeals. Courtroom hearings in all three remaining cases were delayed as a result of the COVID-19 pandemic. Nonetheless, the Office continued to be engaged in active litigation in all cases, ensured its readiness to resume proceedings as soon as judicially ordered and took the opportunity to progress other case-related responsibilities, including the preparation of final submissions.

119. Significant challenges remain with respect to national prosecutions of war crimes in the former Yugoslavia and Rwanda. The Office of the Prosecutor continued its engagement with national authorities, and remains committed to providing its full support, including by responding to requests for assistance, transferring knowledge gained and lessons learned and providing assistance on concrete cases.

120. In response to the COVID-19 pandemic, the Office was able to quickly transition to remote working arrangements at all its duty stations, while effectively ensuring full business continuity in all of its operations, as shown by the arrest of Félicien Kabuga on 16 May 2020. That achievement is in large measure attributable to the commitment of the Office's staff. The Office is consistently identifying lessons learned and is committed to continuous improvement in its response to the COVID-19 pandemic. The Office of the Prosecutor will further continue to cooperate with the other organs to ensure that the Mechanism is prepared for future changes, including changes to its working posture as national measures are relaxed.

121. In all of its endeavours, the Office of the Prosecutor relies upon and gratefully acknowledges the support of the international community and especially that of the Security Council.

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