



# Security Council

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## Letter dated 16 November 2023 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to submit 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 would be grateful if you could transmit the present letter and its annexes to the members of the Security Council.

(Signed) Graciela **Gatti Santana**  
President



**Annex I to the letter dated 16 November 2023 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council**

[Original: English and French]

**Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Graciela Gatti Santana, for the period from 16 May to 15 November 2023**

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1. The present report, the twenty-third in a series, is submitted pursuant to Security Council resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals.<sup>1</sup> The reporting requirement set out in paragraph 16 of that resolution is contained in article 32 (2) of the statute of the Mechanism (resolution 1966 (2010), annex I). The information contained in the report reflects the parameters set out in paragraphs 10 to 12 of Council resolution 2637 (2022), including the views and recommendations of the Council's Informal Working Group on International Tribunals.

## I. Introduction

2. The Mechanism was established in 2010 to carry out a number of essential residual functions of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, which closed in 2015 and 2017, respectively. Against this background, the Security Council set up the Mechanism to operate as a small, temporary and efficient structure, whose functions and size would diminish over time, with a small number of staff commensurate with its reduced functions.<sup>2</sup> However, it is worth recalling that the responsibilities inherited from the ad hoc Tribunals were in reality far more than “residual”, consisting primarily of trials and appeals, including with respect to high-level accused and fugitives. It is only during the current reporting period, 13 years after its inception, that the Mechanism has concluded its in-court activity for core crimes proceedings and is finally becoming the fully residual institution that it was originally designed to be.

3. In the initial years, the Mechanism operated in parallel with the two ad hoc Tribunals. On 1 January 2018, it began functioning independently as a stand-alone institution. Its structure comprises two branches, one in The Hague, Kingdom of the Netherlands, and the other in Arusha, United Republic of Tanzania. Both branches have been active for more than a decade, with The Hague branch reaching this marker on 1 July 2023, and the Arusha branch one year earlier.

4. Pursuant to resolution 1966 (2010), the Mechanism was set up to run for an initial four-year period, and for subsequent two-year periods, following reviews of the progress of its work, unless the Security Council decides otherwise. The Mechanism will undergo its fifth review in the first half of 2024. This review comes at a crucial moment given that the Mechanism is now transitioning from an operational court to a truly residual institution.

5. This turning point was triggered by the conclusion of the last core crimes case pertaining to the International Tribunal for the Former Yugoslavia in May 2023, and the indefinite stay of proceedings in the final core crimes case pertaining to the International Criminal Tribunal for Rwanda in September 2023.

6. As has been the practice with previous review processes, the Office of Internal Oversight Services (OIOS) is conducting an evaluation of the methods and work of the Mechanism with a view to strengthening independent oversight of the institution.

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<sup>1</sup> Unless otherwise specified, figures set out in the present report are accurate as at 15 November 2023.

<sup>2</sup> Resolution 1966 (2010), preambular para. 7.

The Mechanism is actively and transparently engaged in the evaluation exercise and appreciates the emphasis of OIOS on assessing long-term functions. This approach appropriately echoes the new, fully residual phase that the Mechanism is entering and provides an invaluable opportunity for the institution to reflect on its remaining activities while planning for its future.

7. Cognizant of the tremendous impact that transitioning into a fully residual phase would have on the Mechanism's operations, the President adapted the priorities of her presidency accordingly (see paras. 20–25). Under her leadership, one of the institution's prime areas of focus since the submission of the previous report continued to be the future of its operations. Following the Security Council's guidance in resolution 2637 (2022), and in line with OIOS recommendations, the Mechanism's leadership concentrated on scenario-based workforce planning and projections for the completion of the Mechanism's residual functions, as well as potential options for transferring remaining activities. In addition, attention was directed towards internal restructuring to further streamline workflows and increase efficiencies. As detailed below, the Mechanism is preparing a draft framework of operations to complete its functions, which will be presented to the Council's Informal Working Group on International Tribunals in December 2023.

8. One of the major developments relating to the Mechanism's judicial activities was the delivery of the appeal judgment in *Prosecutor v. Jovica Stanišić and Franko Simatović (Stanišić and Simatović case)* on 31 May 2023, one month earlier than previously expected. The completion of the appeal in this case, which the Mechanism inherited from the International Tribunal for the Former Yugoslavia, represents the conclusion of all core crimes proceedings brought before that Tribunal. This milestone also occurred during the same month as the thirtieth anniversary of the historic decision of the Security Council to establish the Tribunal, on 25 May 1993.

9. With respect to the final case concerning core crimes derived from the International Criminal Tribunal for Rwanda, *Prosecutor v. Félicien Kabuga (Kabuga case)*, the Trial Chamber determined on 6 June 2023 that Félicien Kabuga was unfit to stand trial and decided to proceed with an alternative finding procedure. The Trial Chamber's decision was appealed by the parties, and, on 7 August 2023, the Appeals Chamber confirmed Mr. Kabuga's unfitness for trial but rejected the alternative finding procedure owing to jurisdictional limitations. Consequently, the case was remanded to the Trial Chamber for an indefinite stay of proceedings. The Trial Chamber issued its order on 8 September 2023, and is now seized of overseeing issues related to Mr. Kabuga's health and provisional release from custody.

10. In relation to other core functions, the reporting period saw a major breakthrough with the arrest of fugitive Fulgence Kayishema on 24 May 2023, in South Africa, after having been on the run since 2001. In addition, on 14 November 2023, the Office of the Prosecutor announced the death of another fugitive, Aloys Ndimbati. With regard to cases referred to national jurisdictions, the Mechanism is pleased to report that its monitoring duties have been further reduced with the end of the case against Ladislav Ntaganzwa in Rwanda. Following his arrest in the Democratic Republic of the Congo in December 2015, and transfer to Rwanda for proceedings that lasted from 2017 to 2023, the completion of his case is another significant step in advancing accountability in accordance with international fair trial standards. In conjunction with this progress, the Mechanism continued to make headway with the supervision of the enforcement of sentences, assistance to national jurisdictions and the protection of victims and witnesses.

11. The present report, together with the assessment of the Prosecutor contained in annex II, offers comprehensive insights into the Mechanism's dedicated endeavours in these and other aspects of its mandate. The report also addresses the Mechanism's

challenges and difficulties, in particular in the areas of enforcement of sentences and cooperation.

## **II. Organization of the Mechanism**

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

12. As established in article 4 of the statute, the Mechanism consists of three organs: the Chambers; the Prosecutor; and the Registry. The work of the Chambers and the Registry is discussed in the present annex, while annex II details the activities of the Office of the Prosecutor (the prosecution).

13. 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 and is responsible for the overall execution of its mandate, presiding over the Appeals Chamber, assigning judges to cases and carrying out other functions as specified in the statute and the Rules of Procedure and Evidence of the Mechanism.<sup>3</sup> The Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute, while the Registrar is responsible for the administration and servicing of the institution, under the authority of the President. The President and the Registrar are appointed by the Secretary-General for terms of two years. By contrast, the Prosecutor is appointed by resolution of the Security Council, also for a two-year term.

14. The President of the Mechanism, Graciela Gatti Santana (Uruguay), commenced her presidency on 1 July 2022, having served as a judge on the Mechanism's judicial roster since 2012. She is based in The Hague. The Prosecutor of the Mechanism, Serge Brammertz (Belgium), and the Registrar of the Mechanism, Abubacarr M. Tambaou (Gambia), who were reappointed for new two-year terms effective 1 July 2022, are based in Arusha. The current terms of all three principals run until 30 June 2024.

### **B. Branches**

15. The Mechanism continues to function as a single, unified institution, optimizing and harmonizing its activities at both of its branches, which, in accordance with article 3 of the statute, are located in Arusha and The Hague. Cooperation with the United Republic of Tanzania and the Kingdom of the Netherlands remains excellent, and the Mechanism is grateful to both host States for their continued support and engagement in accordance with the respective headquarters agreements.

16. In Arusha, the Mechanism's Lakilaki premises are situated on land made available by the United Republic of Tanzania. The premises also provide public access to the Mechanism's well-resourced library on international law, in particular international humanitarian law and international criminal justice. During the reporting period, efforts commenced to further enhance the sustainability of the premises, with a special focus on achieving greater energy efficiency and optimizing water usage.

17. With regard to The Hague branch, as previously reported, the host State has encouraged the Mechanism to consider moving permanently to other premises, since the current building requires substantial refurbishment. In this regard, the host State

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<sup>3</sup> The Rules of Procedure and Evidence are available at: [www.irmct.org/en/documents/rules-procedure-and-evidence](http://www.irmct.org/en/documents/rules-procedure-and-evidence).

has continued to work towards identifying appropriate alternative facilities for the Mechanism and currently anticipates that such premises will be available in 2028.

18. Throughout the reporting period, the Kigali field office supported the implementation of the Mechanism's mandate. This involved actively collaborating with national authorities on matters related to witness protection and conducting witness interviews. In addition, the office supported the Registrar's annual mission to Kigali in May 2023, facilitating meetings with senior government officials and victims' groups and fostering discussions on cooperation and the Mechanism's ongoing activities. In view of the Mechanism's new, truly residual phase, a decision was taken by the principals to close the field office in 2024, and to leave a small presence of prosecution staff housed within United Nations premises.

19. Following the closure of the Sarajevo field office on 31 March 2023, the direct lines of communication between the Mechanism and the relevant authorities of Bosnia and Herzegovina, which had been put in place in advance, allowed for continuing cooperation with local government and non-governmental entities on issues of mutual interest, including witness protection.

### **III. President and Chambers**

#### **A. President**

20. As a result of the transformative shift in the Mechanism's operations that came about with the end of core crimes proceedings, the President had adapted the priorities of her presidency. Accordingly, she announced the following three new priorities to the United Nations General Assembly on 18 October 2023: (a) to present the Security Council with a framework of operations for completing the functions of the Mechanism during its new residual phase; (b) to promote effective leadership and good governance in the performance of mandated functions and residual activities; and (c) to continue to consolidate the legacy of the ad hoc Tribunals and the Mechanism and work closely with all main stakeholders.

21. The first priority reflects the President's commitment to ensuring that the Mechanism makes every effort to promptly complete its remaining work. This includes responding comprehensively to resolution [2637 \(2022\)](#), wherein the Security Council requested the Mechanism to provide clear and focused projections of completion timelines for all activities and, for the first time, options for the transfer of its remaining activities, in due course.

22. In this context, the President has been leading efforts within the Mechanism to prepare a framework of operations for completing its functions that will also encompass a Mechanism-wide scenario-based workforce plan, as well as suggestions for the restructuring and streamlining of certain portfolios. It will also include focused projections and the recommendations of the Mechanism's Panel on Judicial Functions, which completed its work during the reporting period. A draft framework is intended to be submitted to the Informal Working Group on International Tribunals in December 2023.

23. In the second priority, the President acknowledges the delicate balance between limited resources and continued downsizing, on the one hand, and the need to maintain a functional and successful organization that consistently upholds the highest standards of performance for its mandated functions, on the other. Consequently, the President plans to strengthen collaboration among the institution's leadership and senior management to foster good governance and steer operations in a transparent, efficient and responsible manner. In this context, the periodic review,

evaluation and audit processes that the Mechanism undergoes play a major role in guaranteeing both continued accountability and the institution's responsiveness to change.

24. The third priority, aimed at further solidifying the legacy of the ad hoc Tribunals and the Mechanism, takes on increased significance as the institution now concentrates primarily on longer-term residual functions rather than in-court proceedings. Ultimately, it is this legacy that will endure from the remarkable journey and accomplishments of the ad hoc Tribunals and the Mechanism. In this regard, the Mechanism will sustain its support for national jurisdictions in Rwanda and the countries of the former Yugoslavia by responding to requests for assistance, among other activities.

25. Another fundamental aspect is ensuring maximum accessibility to the Mechanism's public judicial records, not only through the Mechanism's website, public databases and library, but also through the establishment of information centres, in line with Security Council resolution 1966 (2010). Disseminating information in these ways not only raises public awareness of the important work of the ad hoc Tribunals and the Mechanism but also serves as a pivotal tool in countering genocide denial and associated divisive phenomena.

26. The President worked closely with the two other principals to advance these priorities, while also focusing on further enhancing systemic thinking and a unified vision of the Mechanism's future, as previously recommended by OIOS.<sup>4</sup> In this regard, the President convened three meetings of the Mechanism Coordination Council during the reporting period, as well as more informal meetings and communications with the other principals. The Coordination Council is composed of the President, the Prosecutor and the Registrar, and provides a forum for in-depth discussions on cross-cutting issues.

27. While generally based in The Hague, the President worked from the Arusha branch for the month of November 2023. This provided an opportunity to hold further in-person meetings with section chiefs and foster inter-branch collaboration. Following the town hall meetings held earlier in 2023 with staff members working at the Mechanism's Arusha branch and the Kigali field office, the President also convened a town hall in The Hague in June 2023. Furthermore, the President regularly engaged with representatives of the Staff Union to stay apprised of staff concerns. The President is supported by a team of 13 staff, comprising 9 legal officers and 4 administrative assistants, serving at both branches of the Mechanism.

28. Turning to her representational role and external engagement, in June 2023, the President presented the Mechanism's twenty-second progress report to the Security Council (S/2023/357) and, in October 2023, the Mechanism's eleventh annual report to the General Assembly (A/78/257-S/2023/566). On these occasions, she also held bilateral meetings with numerous representatives of Member States and met with high-level Secretariat officials.

29. In addition, during her mission to New York in October 2023, the President participated in the launch of the ETHICA Project's 25 ethical principles for international criminal judges on the occasion of International Law Week. The ethical principles were adopted in May 2023, and the President was proud to participate throughout the project, alongside a number of eminent principals and judges from international courts, as well as jurists and academics.

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<sup>4</sup> See reports of the Office of Internal Oversight Services on the review of the methods and work of the Mechanism (S/2022/148), paras. 43–47, and on the evaluation of the methods and work of the Mechanism (S/2020/236), para. 66.

30. In July 2023, the President travelled to Bosnia and Herzegovina to take part in the twenty-eighth commemoration of the Srebrenica Genocide, held at the Srebrenica Memorial Center in Potočari, and to meet with a number of high-level officials and representatives of the diplomatic community. In September 2023, she returned to Bosnia and Herzegovina, with the Prosecutor and the Registrar, to participate in a conference entitled “30 years of the International Tribunal for the Former Yugoslavia – Legacy and Challenges” which was held in Sarajevo. On the margins of this event, the President took the opportunity to convene a round table with judges of the Court of Bosnia and Herzegovina, the Mechanism and the International Criminal Court, focusing on good practices and lessons learned in international justice.

31. Lastly, at the beginning of September 2023, the President undertook her first official mission to Croatia, where she met with senior representatives of the Government of Croatia, including the Prime Minister.

## **B. Judges**

32. Article 8 (1) of the statute provides that the Mechanism shall have a roster of 25 independent judges. According to article 8 (3) of the statute, the judges shall only be present at the seat of the Mechanism’s branches when necessary, as requested by the President, and otherwise carry out their functions remotely. In line with article 8 (4) of the statute, judges of the Mechanism are not remunerated for being on the judicial roster but receive compensation only for the days on which they exercise their functions.

33. During the reporting period, the Mechanism welcomed Judge Lydia Mugambe of Uganda onto its judicial roster. Judge Mugambe was appointed by the Secretary-General, effective 26 May 2023, to replace Judge Elizabeth Ibanda-Nahamya (Uganda), who very sadly passed away during the previous reporting period. In addition, Judge Mahandrisoa Edmond Randrianirina (Madagascar) resigned from the roster of judges of the Mechanism, effective 4 October 2023. At present, the number of judges on the judicial roster therefore amounts to 24, 8 of whom are women. The Mechanism looks forward to the vacancy on the judicial roster being filled as soon as possible and hopes to have a full contingent of judges when the next in-person plenary takes place in Arusha in February 2024.

34. The current judicial roster of the Mechanism comprises (in order of precedence): Judge Graciela Gatti Santana, President (Uruguay), 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 Carmel Agius (Malta), Judge Alphons Orie (Kingdom of the 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 Ivo Nelson de Caires Batista Rosa (Portugal), Judge Seymour Panton (Jamaica), Judge Yusuf Aksar (Türkiye), Judge Mustapha El Baaj (Morocco), Judge Claudia Hofer (Germany), Judge Iain Bonomy (United Kingdom of Great Britain and Northern Ireland), Judge Fatimata Sanou Touré (Burkina Faso), Judge Margaret M. deGuzman (United States of America) and Judge Lydia Mugambe (Uganda).

35. Separately, pursuant to her discretion under article 12 (2) of the statute, the President assigned, on an alternating basis, Judges Masanche, Sekule and Joensen as duty judges at the Arusha branch of the Mechanism. As previously reported, the assignment of judges who are resident in the United Republic of Tanzania maximizes



efficiency, and their assignment is remunerated only to the extent that they exercise judicial functions in this capacity.

36. On 26 and 27 September 2023, the President convened the Mechanism's second virtual plenary of judges. With judges attending the plenary from 18 different countries and numerous time zones, the smooth running of the session was once again a significant operational achievement.

37. During the plenary session, the judges of the Mechanism engaged productively in confidential, in-depth discussions on a number of issues. They addressed, in particular, challenges and matters concerning the Mechanism's future. In addition, they deliberated on proposed amendments to rule 155 of the Rules of Procedure and Evidence. In line with a recommendation from the Panel on Judicial Functions, the President had proposed the deletion or amendment of rule 155 of the Rules, which relates to a declassification procedure that is without prejudice to declassification of documents under other regulatory provisions and could lead to substantive expenditures and delays in future work. For this reason, the President looks forward to settling this matter at the in-person plenary of judges in Arusha in February 2024.

### **C. Judicial activities**

38. The Mechanism was seized of a number of complex judicial matters. As will be explained in detail below, they can be classified as relating either to core crimes proceedings or to continuous judicial functions.

39. Notably, the reporting period saw the end of the Mechanism's active core crimes proceedings. However, this development does not signify the end of judicial activity. The President and the judges engaged in a wide variety of continuous judicial activity, which, in accordance with article 8 (3) of the statute, was primarily carried out remotely.

40. The President and judges issued a total of 75 decisions and orders during the reporting period. Of these, 57 (or approximately three in four) related to the Mechanism's continuous judicial functions – including matters pertaining to the protection of victims and witnesses, assistance to national jurisdictions, the enforcement of sentences and the investigation of allegations of contempt, as well as the management of the work of Chambers – rather than to the adjudication of the core crimes incorporated in the statute.

41. Presently, the judges on the roster are supported by the Chambers Legal Support Section, consisting of 18 staff, comprising 15 legal officers and 3 administrative assistants, serving at both branches of the Mechanism. The leadership of the Chambers Legal Support Section continued to employ streamlined working methods and processes, in collaboration with other sections of the Mechanism, and to draw on resources at both branches to address judicial workload wherever arising.

42. In addition to supporting the judges with their judicial work, the Chambers Legal Support Section maintains the Mechanism's Case Law Database, which provides the public with direct access to extracts and full-text versions of key judgments and decisions rendered by the Appeals Chambers of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Mechanism. During the reporting period, the Chambers Legal Support Section has significantly increased its efforts to ensure that the Case Law Database is up to date and to make this valuable resource accessible to researchers, practitioners and judges as part of the assistance provided to national jurisdictions.

## 1. Proceedings related to core crimes

43. With respect to the core crimes incorporated in the statute of the Mechanism, the judges, whose individual legal backgrounds are roughly evenly split between civil and common law, worked primarily on one trial and one appeal from judgment during the reporting period.

### (a) *Trial proceedings*

44. In line with the projections contained in the Mechanism's progress report of May 2022 (S/2022/404), the trial in the *Kabuga* case commenced at The Hague branch on 29 September 2022. The Trial Chamber heard 24 prosecution witnesses in court. Witnesses appeared in The Hague, and from Arusha and Kigali via videoconference link. The evidence of 47 other prosecution witnesses was admitted at the start of the trial exclusively in written form.

45. As previously reported, on 6 March 2023, the Trial Chamber temporarily suspended the presentation of the prosecution case following receipt of an independent medical expert report indicating that Félicien Kabuga was not fit for trial. Subsequently, the Trial Chamber held hearings in March to examine the experts and hear from the parties on Mr. Kabuga's fitness for trial. While the fitness question was under deliberation, the Trial Chamber requested submissions on the possible future course of proceedings in the event that Mr. Kabuga was found to be unfit for trial.

46. On 6 June 2023, the Trial Chamber held, by majority, that, on the basis of the unanimous opinion of the three medical experts, Mr. Kabuga was not fit for trial and was very unlikely to regain fitness. Judge Mustapha El Baaj dissented and considered that Mr. Kabuga was fit for trial and that the trial proceedings should resume. As a consequence, the Trial Chamber, by majority, decided that, because Mr. Kabuga was unlikely to regain fitness for trial, it should conduct an alternative finding procedure as the best means of effectuating Mr. Kabuga's fair trial rights and ensuring the goals of the Mechanism. On this aspect, Judge El Baaj also dissented and considered that there was no legal basis for conducting such a procedure at the Mechanism, which in his view would infringe on Mr. Kabuga's fair trial rights.

47. On 7 August 2023, the Appeals Chamber affirmed the Trial Chamber's decision that Mr. Kabuga was not fit for trial. However, it reversed the Trial Chamber's decision to conduct an alternative finding procedure on the basis that such procedure falls outside the Mechanism's jurisdiction. As a consequence, the Appeals Chamber remanded the case to the Trial Chamber with instructions to impose an indefinite stay of proceedings, pursuant to which Mr. Kabuga would remain under the Mechanism's jurisdiction, and to expeditiously consider matters related to his release from custody.

48. On 8 September 2023, following receipt of the most recent independent medical report and further to hearing from the parties, the Trial Chamber indefinitely stayed the trial proceedings. From then onwards, the functions of the Trial Chamber, prosecution and defence have been limited principally to matters relating to Mr. Kabuga's release, including monitoring the conditions of such release and monitoring Mr. Kabuga's health. In its decision, the Trial Chamber noted that, during the indefinite stay of the proceedings, Mr. Kabuga would remain in detention at the United Nations Detention Unit in The Hague where, according to the independent medical experts, he is closely monitored and well cared for, pending the resolution of the issue of his provisional release. The Trial Chamber has instructed the Registrar to assist the defence in connection with identifying a suitable State of provisional release and ordered the defence to file progress reports on its efforts to do so every two weeks. No evidentiary motions will be entertained during the stay of proceedings. However,

there may be limited periodic status conferences to the extent that Mr. Kabuga remains in detention. The next status conference is scheduled for 13 December 2023.

49. In view of the medical advice, it is unlikely that Mr. Kabuga will regain fitness for trial, although not impossible. While the Mechanism will continue to retain jurisdiction over Mr. Kabuga and will continue to monitor him and deal with ad hoc procedural matters, imposing an indefinite stay effectively ends major judicial activity in the case, specifically related to any evidentiary aspects. This does not mean, however, that the proceedings against Mr. Kabuga are terminated; to the contrary, the indictment against him remains in force.

50. On 6 October 2023, the Registrar conditionally determined that Mr. Kabuga was not indigent and was capable of fully funding his defence, in the event that he was able to access his frozen assets in the near future. Given Mr. Kabuga's current lack of access to his assets, the Registrar found it appropriate to defer seeking an order from the Trial Chamber for contribution to the expenses already incurred by the Mechanism until a natural conclusion of the proceedings and/or a related order of the Trial Chamber. The Defence did not seek review of the Registrar's decision.

51. In view of the procedural posture of the case, following the stay of trial proceedings, the President immediately removed the reserve judge from the bench. In addition, the Trial Chamber is now working remotely, being remunerated only for a limited number of days per month, instead of on a full-time basis as was the case until 30 September 2023. The Trial Chamber is currently composed of Judge Iain Bonomy, presiding, Judge Mustapha El Baaj and Judge Margaret M. deGuzman.

(b) *Appeal proceedings*

52. The Appeals Chamber delivered its judgment in the *Stanišić and Simatović* case on 31 May 2023. In its judgment, the Appeals Chamber dismissed the appeals of Jovica Stanišić and Franko Simatović against their convictions for aiding and abetting murder as a violation of the laws or customs of war, as well as murder, deportation, inhumane acts (forcible transfer) and persecution as crimes against humanity committed in connection with and following the April 1992 takeover of Bosanski Šamac in Bosnia and Herzegovina. The Appeals Chamber also dismissed Mr. Stanišić's and Mr. Simatović's appeals against their respective sentences of 12 years of imprisonment.

53. However, the Appeals Chamber granted aspects of the prosecution appeal and reversed Mr. Stanišić's and Mr. Simatović's acquittals for joint criminal enterprise liability. Specifically, it found each liable as a member of a joint criminal enterprise that had a common criminal purpose to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, through the commission of murder, deportation, inhumane acts (forcible transfer) and persecution. The Appeals Chamber found Mr. Stanišić and Mr. Simatović responsible for all or some such crimes committed by various Serb forces in Bosnia and Herzegovina in 1992 in Bijeljina, Zvornik, Bosanski Šamac, Doboj and Sanski Most and for crimes committed in 1995 in Trnovo and Sanski Most. It also found them responsible for a murder committed in Daljska Planina, Croatia, in June 1992. The Appeals Chamber increased Mr. Stanišić's and Mr. Simatović's sentences to 15 years of imprisonment.

54. At the pronouncement of its judgment, the Appeals Chamber, with Mr. Stanišić's consent, authorized, on an exceptional basis, his counsel's legal assistant to represent him in person and his counsel to attend via videoconference link, and it granted Mr. Simatović's request to follow the pronouncement of judgment through videoconference link from the United Nations Detention Unit in The Hague. Prior to the pronouncement, the Appeals Chamber, on 30 and 31 May 2023, issued

two decisions adjudicating three urgent motions filed by Mr. Stanišić and Mr. Simatović concerning the consideration of domestic jurisprudence and the admission of additional evidence on appeal.

55. As reflected in the prior report, the Appeals Chamber, with the assistance of the Chambers Legal Support Section, worked diligently and maximized the use of technological resources to ensure consistent progress throughout the appeal proceedings. Notably, it delivered its judgment earlier than previously projected, notwithstanding the recomposition of the Appeals Chamber in July 2022, when Judge Graciela Gatti Santana, following her appointment as President of the Mechanism, replaced Judge Carmel Agius as the pre-appeal and presiding judge. The Appeals Chamber also authorized Mr. Stanišić, Mr. Simatović and their respective counsel to participate in status conferences, the hearing of the appeals and/or judgment pronouncement through videoconference link in order to avoid delays, while safeguarding Mr. Stanišić's and Mr. Simatović's rights under the statute and the Rules of Procedure and Evidence.

56. As set out above, the conclusion of the *Stanišić and Simatović* case has particular significance. The delivery of the appeal judgment marked the conclusion of all the core crimes proceedings brought before the International Tribunal for the Former Yugoslavia and a case that has been on the docket of that Tribunal, and later the Mechanism, for an extended period of time. The *Stanišić and Simatović* case was one of only three cases in the history of the ad hoc Tribunals and the Mechanism in which a retrial was ordered, and the only retrial spanning two institutions.

(c) *Review proceedings*

57. Under article 24 of the statute, a convicted person has the right to request a review of a final judgment issued by the Tribunals or the Mechanism. The prosecution also has the ability to seek review in the first year after the issuance of a final judgment. Review proceedings require a threshold determination by the Appeals Chamber of whether the applicant has identified a new fact that was unknown during the original proceedings, which, if established, would have been a decisive factor in reaching the verdict. If the threshold is met, a review of the judgment is authorized, further proceedings are held and a review judgment is issued.

58. On 10 October 2023, the Appeals Chamber, composed of Judge Graciela Gatti Santana, presiding, Judge Joseph E. Chiondo Masanche, Judge Burton Hall, Judge Liu Daqun and Judge Aminatta Lois Runeni N'gum, dismissed Augustin Ngirabatware's second request for review of his convictions for direct and public incitement to commit genocide and for instigating and aiding and abetting genocide. In its decision, the Appeals Chamber found that Mr. Ngirabatware had not presented a new fact which could have been a decisive factor in reaching the original decision.

59. Given the high standard, requests for review are rarely granted. To date, 10 requests for review have been filed before the Mechanism. Nine have been dismissed, and only one has been granted. In the history of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, only two other requests for review have been granted, out of a total of approximately 25 requests. Review is an extraordinary remedy, and, while it has seldom been granted, a convicted person's ability and right to seek review remains an essential fair trial right guarantee, and adjudicating such applications is a continuous function.

## 2. Continuous judicial activities

60. Even after all cases related to core crimes have been disposed of, the Mechanism remains accountable for fulfilling several other discrete, yet crucial and continuous, judicial functions.

(a) *Judicial activity of the President*

61. The President's continuous judicial responsibilities relate mainly to the supervision of enforcement of sentences, judicial review of administrative decisions and the assignment of judges to cases.

62. During the reporting period, the President issued a total of 26 decisions and orders. These included 16 decisions and orders relating to enforcement matters, as well as 10 orders relating to the assignment of judges.

63. In connection with the enforcement of sentences, the President issued four decisions on applications for early or provisional release.<sup>5</sup> One such application was granted. In addition, the President issued one order and one decision with regard to the transfer of convicted persons to or from enforcement States.<sup>6</sup> The President is currently seized of eight pending applications for early release and, during the reporting period, issued four orders or invitations related to their adjudication.

64. The number of enforcement-related applications pending before the President demonstrates the persistent workload that is generated by such matters. However, one of the benefits arising from the conclusion of core crimes cases is that it enhances the predictability of the Mechanism's remaining enforcement work. The list of convicted persons whose sentences for core crimes still need to be supervised by the Mechanism is now closed at 50. Out of this total number, 43 are serving their sentences in European or African countries, 3 are awaiting designation of an enforcement State, and 4 have been released with conditions<sup>7</sup> – meaning that their sentences remain in force until the full period of time imposed by the Chamber has elapsed. During the reporting period two convicted persons passed away while serving their sentences,<sup>8</sup> and another passed away while on conditional early release.<sup>9</sup>

65. In the coming years, the workload generated by enforcement-related applications is expected to remain consistently high for two reasons. First, at present, 14 convicted persons who are serving their sentences have completed more than two thirds of their sentences, which is the eligibility threshold for consideration for early release or commutation of sentence before the Mechanism. By the end of 2024, five more convicted persons will reach this threshold. Second, as the already elderly population of convicted persons continues to age, the Mechanism may expect an

<sup>5</sup> *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES.1, Decision on the Application for Early Release of Stanislav Galić, 6 November 2023; *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Decision on Franko Simatović's Applications for Provisional Release and Legal Aid, 29 September 2023; *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Decision on the Application for Early Release of Franko Simatović, 29 August 2023; *Prosecutor v. Gaspard Kanyarukiga*, Case No. MICT-22-126-ES.1, Decision on the Applications for Early Release and Commutation of Sentence of Gaspard Kanyarukiga, 9 June 2023.

<sup>6</sup> *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-ES.1, Decision on Request for Transfer, 20 June 2023 (public redacted version). In addition, the President issued one confidential order in relation to another convicted person.

<sup>7</sup> *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Decision on the Application for Early Release of Franko Simatović, 29 August 2023 (public redacted version); *Prosecutor v. Milivoj Petković*, Case No. MICT-17-112-ES.5, Decision on the Early Release of Milivoj Petković, 16 December 2021 (public redacted version); *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision on the Application for Early Release of Sreten Lukić, 7 October 2021 (public redacted version); *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019.

<sup>8</sup> Sylvestre Gacumbitsi and Mikaeli Muhimana passed away while serving their sentences in Mali, on 11 September and 26 October 2023, respectively.

<sup>9</sup> Aloys Simba passed away while on conditional early release in Benin on 4 July 2023.

increased number of applications citing the convicted person's ill health as the reason for the application.

66. With regard to other judicial activity, in May 2023, the President issued an order vacating her previous order for updates from enforcement States on the coronavirus disease (COVID-19) pandemic. The President further issued three decisions and one order in relation to the situation of the acquitted and released persons relocated to the Niger. Lastly, as expanded upon in the following section, the President was also engaged in judicial activity in her capacity as Presiding Judge of the Appeals Chamber.

(b) *Judicial activities of single judges/benches*

67. Other continuous judicial functions concern the adjudication of applications for information on or the rescission, variation or augmentation of protective measures, as provided for in rule 86 of the Rules of Procedure and Evidence; requests for the assistance of the Mechanism in obtaining testimony of a person under the Mechanism's authority, in line with rule 87 of the Rules; issues pertaining to the *non bis in idem* principle, as enshrined in article 7 of the statute and rule 16 of the Rules; submissions seeking the reclassification of judicial filings for reasons of transparency or, conversely, reasons of security; and the possibility of initiating declassification proceedings under rule 155 of the Rules. The list is not exhaustive, and experience shows that unexpected issues requiring the Mechanism's focus can emerge at any time.

68. On average, Chambers adjudicate 20 to 30 applications pursuant to rule 86 a year. During the reporting period, 11 orders and decisions were issued concerning applications for information on or the rescission, variation or augmentation of protective measures. Of these, six were issued by single judges and five by the Appeals Chamber. The Mechanism thereby discharged its residual functions in relation to both the protection of victims and witnesses, in line with article 20 of the statute, and responding to requests for assistance from national authorities, as set out in article 28 (3) of the statute.

69. The continued protection of victims and witnesses and the effective administration of justice requires judicial oversight to sanction any violation of Tribunals' orders. The Mechanism was again seized of a number of matters pertaining to allegations of contempt during the reporting period, in accordance with article 1 (4) (a) of the statute. There are no active matters concerning possible false testimony as provided for by article 1 (4) (b) of the statute. Pursuant to the statute, before proceeding to try any person alleged to be responsible for contempt or false testimony, the Mechanism must consider referring the case to the authorities of a State, taking into account the interests of justice and expediency.

70. The Mechanism deeply regrets that, once more, there have been no developments in the contempt case against Petar Jojić and Vjerica Radeta (*Jojić and Radeta* case). Despite its obligations to arrest and surrender the accused persons, Serbia has again failed to take any action during the reporting period in this regard. The Mechanism reiterates that all Member States, including Serbia, must abide by their obligations under Chapter VII of the Charter of the United Nations and are therefore expected to act in accordance with outstanding warrants against the two accused and to secure their arrest, detention and transfer to the custody of the Mechanism without delay. This is particularly discouraging considering that the

non-compliance of Serbia has already been referred to the Security Council on three occasions.<sup>10</sup>

71. In relation to a possible contempt matter that came to light during the trial in the case of *Prosecutor v. Anselme Nzabonimpa et al.*, on 25 October 2021, a single judge directed the Registrar to appoint an *amicus curiae* to investigate the matter and for a report to be filed within 120 days of the appointment. Following the appointment of the *amicus curiae* on 30 November 2021, the single judge has authorized six extensions of time, in view of the volume and nature of the material under consideration. The *amicus curiae* filed the report on his investigation on 13 March 2023 and filed a supplement on 13 June 2023, as requested by the single judge. The matter of whether or not to proceed to trial on the basis of the information in the report is currently under consideration. If a decision is taken to proceed to trial, the single judge will first need to consider whether it is appropriate to refer the case to a national jurisdiction.

72. In a different matter, on 19 April 2022, a single judge directed the Registrar to appoint an *amicus curiae* to investigate two individuals and their former counsel to determine whether contempt proceedings or other appropriate action should be taken in connection with the submission of forged documents, arising out of proceedings before another single judge concerning frozen assets linked to Mr. Kabuga. The Registrar appointed the *amicus curiae* on 23 May 2022. On 19 September 2022, the single judge stayed the 120-day deadline for the filing of the investigation report, pending the resolution of an interim matter. The report was filed on 6 April 2023, and the matter of whether or not to proceed to trial on the basis of the information in the report is under consideration. If a decision is taken to proceed to trial, the next step will be consideration of whether to refer the case to a national jurisdiction.

73. In another contempt matter, on 11 August 2023, a single judge confirmed an indictment against Vojislav Šešelj, Miljan Damjanović, Mirosljub Ignjatović, Ljiljana Mihajlović and Ognjen Mihajlović for contempt of the International Tribunal for the Former Yugoslavia and the Mechanism. The indictment alleges that the accused disclosed information in knowing violation of court orders, including orders for the protection of witnesses, and failed to comply with court orders to cease and desist from the publication of confidential information. On 5 October 2023, the single judge referred the matter to the President for the appointment of a judge to determine whether the case against the accused should be referred to the authorities of a State. On 9 October 2023, the President assigned a single judge for this purpose, who, on 12 October 2023, invited submissions from Serbia and the prosecution on whether the case should be referred to Serbia for trial.

74. Lastly, in two separate decisions, the Appeals Chamber dismissed appeals from Ferdinand Nahimana on 7 August 2023, and Emmanuel Rukundo on 15 August 2023, in which they challenged decisions denying them additional financial support following their release from prison.

## IV. Future planning

75. The Mechanism maintained a strong focus on its institutional future and the completion of mandated functions. As detailed above, this reporting period marked a turning point, following the conclusion of the appeal proceedings in the *Stanišić and*

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<sup>10</sup> The first was a confidential referral by the President of the International Tribunal for the Former Yugoslavia on 13 October 2015. The second referral, also by the President of the International Tribunal for the Former Yugoslavia, was on 1 March 2017 (S/2017/180), while the third was by the then President of the Mechanism on 11 May 2021 (S/2021/452).

*Simatović* case in May 2023 and the indefinite stay of trial in the *Kabuga* case in September 2023.

76. Notably, this is the first time the Mechanism finds itself without any active or anticipated trial or appeal proceedings in core crimes cases. Consequently, as mentioned above, the President adapted the priorities of her presidency to reflect this new phase (see paras. 20–25). Planning for the Mechanism’s future necessarily entails an assessment of and a strategy for the completion of its remaining activities, all while the institution undergoes its fourth OIOS evaluation and enters the fifth review of its work by the Security Council.

77. Under the President’s leadership, the Mechanism has taken substantial steps to devise a comprehensive framework of operations for completing its functions. This framework is in response to prior requests from the Security Council and OIOS. Specifically, it addresses the parameters outlined in resolution 2637 (2022), wherein the Council, for the first time, urged the Mechanism to provide options regarding the transfer of its remaining activities in due course, together with completion timelines for all ongoing activities. In addition, the framework will address outstanding recommendations by OIOS following its previous evaluations of the Mechanism’s methods and work, in particular with regard to scenario-based workforce planning and strategic institutional thinking.

78. As indicated above, the President will first present a draft framework to the Security Council’s Informal Working Group on International Tribunals in December 2023. The Mechanism hopes to receive feedback from the Informal Working Group before the submission of its fifth review report in April 2024, in order to be able to present a comprehensive framework to the Council in time for its review. The framework is meant to serve as a basis for the Mechanism’s operations in the years to come and will undoubtedly be a key document for the Council’s deliberations on the fifth review of the Mechanism’s mandate in June 2024.

79. In terms of duration, with the effective completion of ad hoc judicial activity in core crimes proceedings and the imminent completion of fugitive tracking, these two residual functions can be considered closed earlier than previously anticipated. Detailed projections for the duration of other residual functions are currently under assessment, as they are integral to the ongoing framework preparation and are closely tied to discussions on transfer of functions. In the road map to develop a Mechanism-wide scenario-based workforce plan introduced last year to the Informal Working Group, three phases for completing the remaining work were identified. Phase 1 (2022–2026) covers the period during which ad hoc judicial activity and the tracking of fugitives will be completed, leaving the Mechanism to perform only its continuous residual functions. Phase 2 (2026–2032) refers to the period during which the Mechanism is projected to have a substantial workload in its continuous residual functions. Lastly, phase 3 (2032 onwards) represents the time when the workload for continuous residual functions will have been greatly reduced.

80. Downsizing will inevitably reduce the Mechanism’s financial footprint and is a logical consequence of its narrowed activities. However, the solution does not solely rest with cutting posts; it also demands a new, more streamlined approach. Tasks that have conventionally necessitated the involvement of numerous staff from various sections should now be integrated into the main offices, within existing resources. In this regard, the President has initiated an internal restructuring process aimed at optimizing resources and efficiencies, as well as avoiding duplications. Areas of focus are, for example, the enforcement of sentences, judicial activities, external relations and the monitoring of cases referred to national jurisdictions. Any restructuring will be thoroughly assessed in accordance with the Mechanism’s legal framework. Similarly, the Registrar has taken steps to further streamline the Registry’s operations



by integrating certain tasks of the External Relations Office into his office and merging the Judicial Records Unit with the Mechanism's Archives and Records Section to function under his direct supervision.

81. The reporting period also saw the completion of the work of the Panel on Judicial Functions, a committee of nine judges who were tasked with assessing the nature, duration and potential transferability of the Mechanism's remaining judicial functions. In July 2023, the Panel finalized its report on judicial functions, which has significantly contributed to shaping the Mechanism's framework of operations for completing its functions. Notably, the judges recommended not transferring judicial functions at this stage, owing to both legal and practical reasons. They further advised against reducing the judicial roster as this would not present any financial gain but might unnecessarily decrease geographic and gender diversity. During the virtual plenary of judges in September 2023, a revised and updated version of the report was adopted. Considering the previous interest of Member States in the Panel's work, the President intends to share the present report also with the Informal Working Group on International Tribunals.

82. The Mechanism embarks on this process fully aware that any closure must be orderly, transparent and smooth and is keen to constructively engage with the Security Council for a successful outcome. Therefore, the transition to a truly residual institution requires a collective effort to re-evaluate processes and adapt to the Mechanism's new reality. The Mechanism takes these matters very seriously and will leverage its experience across its various organs to craft the most suitable policy for the future.

## **V. Assistance to national jurisdictions**

83. The Mechanism responds 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 Rwanda and the countries of the former Yugoslavia, pursuant to article 28 (3) of the statute.

84. The Mechanism continued to receive and consider numerous requests pursuant to rule 86, as well as rule 87, of the Rules of Procedure and Evidence. Rule 86 provides for variation of protective measures granted to witnesses who testified in cases before the ad hoc Tribunals or the Mechanism, whereas rule 87 pertains to requests for assistance in obtaining the testimony of persons under the authority of the Mechanism (see para. 68). Except if otherwise specified in the decision, the protective measures remain in force until a subsequent decision by a Chamber to rescind or vary them. Hence, the handling of requests for assistance pursuant to these rules continues to require judicial determinations by judges and ongoing support from the Judicial Records Unit and the Witness Support and Protection Unit at both branches.

85. During the reporting period, the Registry processed 32 requests for assistance from national authorities or parties to domestic proceedings, predominantly in relation to proceedings concerning the conflicts in the former Yugoslavia, and provided 1,479 documents. Compared with the previous reporting period, this represents an increase in the number of requests received and a significant increase in the number of documents provided.

86. The assistance provided to national jurisdictions by the prosecution is detailed in annex II.

## VI. Cases referred to national jurisdictions

87. The Mechanism is responsible for monitoring cases referred to national courts by the ad hoc Tribunals and the Mechanism, with the assistance of international and regional organizations and bodies, pursuant to article 6 (5) of the statute. At any time before the accused is convicted or acquitted by the national court, the referral of the case may be revoked by Chambers, proprio motu or at the Prosecutor's request. This may occur, for example, when the assigned Chamber determines that national proceedings violate the rights of the accused to a fair trial.

88. The Mechanism is pleased to report that its duties in this regard have seen a further decrease.<sup>11</sup> The monitoring of the case against Ladislas Ntaganzwa, which had been referred to Rwanda and was monitored with pro bono assistance from the Kenyan Section of the International Commission of Jurists, has now concluded. On 5 July 2023, the Supreme Court of Rwanda rejected Mr. Ntaganzwa's request for review of the judgment delivered by the Court of Appeal of Rwanda on 28 March 2023, which had confirmed the sentence of life imprisonment earlier imposed by the Trial Chamber.

89. As a result, the Mechanism is now actively monitoring only the case against Laurent Bucyibaruta, which was referred to France by a Chamber of the International Criminal Tribunal for Rwanda in November 2007. As in previous periods, the case was monitored by a Mechanism-appointed staff member and remains in the appellate phase, with an appeal hearing not expected before 2025. During the reporting period, a hearing took place before the Cour d'assises, during which the civil parties' interests were addressed and their specific claims discussed, as well as the applicability of a French legal provision allowing compensation claims for damages, following an acquittal or exemption from punishment in criminal proceedings.

90. Following the arrest of Fulgence Kayishema in South Africa on 24 May 2023, the Mechanism is in the process of examining possibilities for efficient monitoring arrangements, including with international and regional organizations, as set out in article 6 of the statute. The Mechanism's monitoring function will start as soon as Mr. Kayishema is transferred to Rwanda. This function will carry on for the duration of proceedings in his case.

91. The Mechanism's monitoring responsibilities have been further reduced following the recent announcement by the Prosecutor on the death of Aloys Ndimbati. In this regard, additional monitoring will now be required only for two instead of three remaining fugitives indicted by the International Criminal Tribunal for Rwanda. This means that the scope of what remains to be done for this function is clearly defined and progressing towards completion.

## VII. Enforcement of sentences

92. The Mechanism continues to supervise the enforcement of sentences handed down by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism, pursuant to article 25 of the statute.

93. The Mechanism wishes to underscore the importance of this function and highlight the challenges that it faces in carrying it out. Most significantly, the

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<sup>11</sup> Since its establishment, the Mechanism has monitored five cases, three in Rwanda (Ladislas Ntaganzwa, Jean Uwinkindi and Bernard Munyagishari) and two in France (Laurent Bucyibaruta, Wenceslas Munyeshyaka).

Mechanism depends entirely on the cooperation of Member States for the enforcement of sentences.

94. Following the delivery of a final judgment, the President designates the State in which a convicted person is to serve a sentence in accordance with article 25 of the statute, rule 127 of the Rules of Procedure and Evidence and the relevant Practice Direction.<sup>12</sup> Rule 127 (B) of the Rules provides that the transfer of the convicted person to an enforcement State shall be effected as soon as possible, although there is no specific time limit. To assist the President in designating an enforcement State, the Registrar provides information, and the President can make any other enquiries that she considers relevant.

95. Once that initial step is taken, the President's supervisory powers are triggered over complaints on conditions of imprisonment, requests for transfer, interaction with monitoring bodies tasked with inspection of conditions of imprisonment and, for the most part, applications pertaining to early release, pardon or the commutation of sentence. The last two represent a central activity for the President and her office. In the exercise of these functions, the President is supported by the Registry, which plays an essential role in securing the enforcement of the Mechanism's remaining sentences and overall administration thereof.

96. As explained below (see para. 137), there are currently three convicted persons at the United Nations Detention Unit awaiting transfer to an enforcement State, two of whom remain following the completion of appeal proceedings and one who was returned to the Unit on a temporary basis in June 2023. An additional convicted person is expected to be returned before the end of the year. The designation of enforcement States for these four individuals is a top priority for the Mechanism, and it is actively involved in negotiations with potential receiving States.

97. Currently, 43 persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism are serving their sentences in the territory of 12 Member States, subject to the supervision of the Mechanism. All 25 persons convicted by the International Criminal Tribunal for Rwanda continue to serve their sentences under the supervision of the Mechanism in two different States: Benin (17) and Senegal (8). Mali, which has been enforcing sentences for the International Criminal Tribunal for Rwanda and later the Mechanism, since 1999, has now ceased to be an enforcement State, following the death of the two remaining convicted persons in that country (see para. 64, footnote 10). A total of 18 persons convicted by the International Tribunal for the Former Yugoslavia continue to serve their sentences under the supervision of the Mechanism, in 10 different States: Austria (1); Belgium (1); Estonia (3); Finland (2); France (1); Germany (4); Norway (1); Poland (2); Sweden (1); and the United Kingdom of Great Britain and Northern Ireland (2).

98. As detailed above, another aspect of this function is the President's power to grant pardon or commutation of sentence to persons convicted by the ad hoc Tribunals or the Mechanism. While article 26 of the statute, like the corresponding provisions in the statutes of the ad hoc Tribunals, does not specifically mention applications for early release of convicted persons, the Rules of Procedure and Evidence reflect the President's authority to receive and adjudicate such requests in accordance with the long-standing practice of the ad hoc Tribunals and the Mechanism.

99. In this regard, it is noteworthy that four convicted persons who were granted conditional early release by the President currently remain under the supervision of the Mechanism until their sentences have been completed (see para. 64, footnote 9).

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<sup>12</sup> Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve His or Her Sentence of Imprisonment, MICT/2 Rev.1, 24 April 2014.

This brings the total number of convicted individuals under the supervision of the Mechanism to 50.

100. The conditions of imprisonment in the enforcement States must be compatible with international standards of detention.<sup>13</sup> The International Committee of the Red Cross and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment continued to serve as independent inspecting bodies. These organizations regularly monitor the conditions of imprisonment to ensure that international standards are being met, and any recommendations made are considered and addressed by the Mechanism, which also coordinates with relevant national authorities and/or the United Nations Development Programme.

101. The Mechanism wholeheartedly thanks and commends each of the 12 enforcement States referenced above. By volunteering to take on the substantial responsibilities of sentence enforcement, these States have demonstrated their commitment to international criminal justice. Without their support and cooperation, the Mechanism would not be able to fulfil its important mandate.

102. Having said this, the Mechanism wishes to draw the attention of the international community to the serious challenges that it continues to face in the area of enforcement. In recent times, a number of convicted persons have been returned to the United Nations Detention Unit by States, including one during the reporting period (see para. 137), due to limitations within domestic legislation or for other reasons internal to those States. As the Unit was never intended to house returned convicted persons in such a manner, these returns are straining the Mechanism's resources.

103. More support, and in particular a willingness to take on enforcement responsibilities, will be required from States to overcome this challenge. Without such support from States, the Unit will be required to provide long-term detention for convicted persons, which creates burdens for both the Mechanism and the host State. The Mechanism therefore reiterates its request for States to continue to cooperate on enforcement and share the burden of enforcing the sentences of those convicted by the ad hoc Tribunals or the Mechanism.

104. In terms of remaining work, 15 convicted persons are currently serving life sentences, while 16 will complete their sentences between 2030 and 2040, and a further 8 after 2040. Notwithstanding the Security Council's request for precise projections on the duration of these activities and possibilities for transfer of enforcement functions, rule 128 of the Rules of Procedure and Evidence provides that the Security Council may designate another body to supervise the enforcement of sentences after the Mechanism ceases to exist.

## **VIII. Cooperation of States**

105. The Mechanism recalls that 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, pursuant to article 28 of the statute. States are also required to respect the statute owing to its adoption by the Security Council pursuant to Chapter VII of the Charter of the United Nations. In addition, as detailed elsewhere in the present report, State cooperation is essential in the enforcement of sentences and in finding a durable solution to the protracted situation of the relocated persons in the Niger.

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<sup>13</sup> These include the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

## A. Fugitives

106. The tracking of fugitives comes under the responsibility of the Prosecutor and is discussed in annex II. As detailed therein, the prosecution continued its efforts towards tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda.

107. The reporting period began with a major development when, on 24 May 2023, Fulgence Kayishema, one of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda, was arrested in South Africa. Charged with genocide, complicity in genocide, conspiracy to commit genocide and extermination as a crime against humanity, a trial chamber of that Tribunal referred his case to Rwanda in 2012. Warrants of arrest issued by the International Criminal Tribunal for Rwanda and, subsequently, the Mechanism, required that Mr. Kayishema be arrested and transferred to the National Public Prosecution Authority of Rwanda.

108. Mr. Kayishema's arrest warrant was amended in March 2019 to provide for his temporary transfer to the Arusha branch of the Mechanism. This amendment was granted based on a prosecution motion raising concerns that a key partner who could assist in tracking and apprehending Mr. Kayishema could no longer do so if the arrest warrant provided for his transfer to Rwanda. However, a related motion filed by the Prosecutor in March 2019 to revoke the referral of Mr. Kayishema's case to Rwanda was denied without prejudice by the Trial Chamber of the Mechanism in September 2019.

109. It is therefore expected that Mr. Kayishema will be transferred first to Arusha and thereafter to Rwanda, where he will be tried. Should Mr. Kayishema seek to appeal the referral of his case to Rwanda under rule 14 (E) of the Rules of Procedure and Evidence, a bench of the Appeals Chamber would be composed to adjudicate the request.

110. A further breakthrough occurred on 14 November 2023, when the prosecution announced the death of Aloys Ndimbati, another of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda. Following a comprehensive investigation, the prosecution was able to conclude that Mr. Ndimbati passed away at about the end of June 1997, in the area of the current Gatore sector in Rwanda. Mr. Ndimbati was first indicted in November 1995 and was charged with seven counts of genocide, aiding and abetting genocide, direct and public incitement to commit genocide and the crimes against humanity of extermination, murder, rape and persecution.

111. With Mr. Kayishema's arrest, and the announcement of Mr. Ndimbati's death, Charles Ryandikayo and Charles Sikubwabo are now the only remaining fugitives indicted by the International Criminal Tribunal for Rwanda. The cases of these individuals are also expected to be tried in Rwanda, subject to the conditions set out in the relevant referral decisions. The Mechanism will be required to maintain trial readiness to support any judicial activity resulting from a potential revocation of the referral of these cases.

112. With regard to the two remaining fugitives, their arrest and surrender continue to be a high priority for the Mechanism. The full support and cooperation of all Member States remains crucial to ensuring that they are finally brought to justice. The Mechanism reminds all States of their continuing obligations under article 28 of the statute, as well as the Security Council's most recent call to States, in resolution [2637 \(2022\)](#), 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.

113. Turning to the outstanding matter of the *Jojić and Radeta* case, the Mechanism emphasizes, as in previous reports, that it will be unable to bring the accused persons to justice unless Serbia fulfils its obligations and other States do their utmost to ensure that the outstanding arrest warrants and orders of surrender are executed as soon as possible. Serbia continues to fail, as it has for many years, to take action in this regard, despite three referrals to the Security Council by the Mechanism or the International Tribunal for the Former Yugoslavia (see para. 70, footnote 12). The continued non-cooperation of Serbia is a direct challenge to the Council itself. The Mechanism notes with appreciation the position taken by certain States and entities in relation to proceedings against the two accused persons and hopes that others might take similar steps.<sup>14</sup> The Mechanism takes this opportunity to remind all States to honour their responsibilities under Chapter VII of the Charter of the United Nations.

## B. Relocated persons

114. The situation of the seven acquitted and released persons who were relocated to the Niger on 6 December 2021,<sup>15</sup> pursuant to an agreement between the United Nations and the Government of the Niger dated 15 November 2021, remains unresolved. This is despite the ongoing and extensive efforts carried out during the reporting period by the Mechanism and the defence counsel of the relocated persons.

115. The relocated persons, who should be free men since they were either acquitted by the International Criminal Tribunal for Rwanda or released after serving their sentences, continue to live under de facto house arrest in the Niger and without identification documents. Not only does this situation adversely affect the rights of the relocated persons in a most serious manner, it also continues to impact the Mechanism's workload and budgetary expenditure.

116. During the reporting period and, in particular, following the 26 July 2023 coup d'état, which caused immense political and other instability, the Registry maintained regular contact with United Nations representatives in the Niger, as well as with the focal point for the relocated persons in order to keep apprised of the matter. In addition, the Registry continued to engage in diplomatic efforts with a view to finding a viable and durable solution, stressing the urgency of the current situation in the Niger. Most importantly, the Registry will persist in its focus on enhancing communications with States that are seized of family reunification requests relating to the relocated persons.

117. Following the instruction by a single judge of the Mechanism in January 2023, the Registrar finalized the payment of an additional \$10,000 to all relocated persons in June 2023. The International Committee of the Red Cross continues to provide logistical assistance.

118. To complement the Registrar's efforts, the President took every opportunity to raise this issue during her bilateral meetings with Member States and other stakeholders, underscoring the importance of Member States' active involvement to effectively resolve this challenge. Since the President's Order of 19 December 2022 instructing the Registrar to, inter alia, file regular reports on his efforts to find a

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<sup>14</sup> See, for example, [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_695\\_Serbia.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_695_Serbia.pdf), p. 29; and [www.state.gov/designation-of-former-representatives-of-the-national-assembly-of-serbia-verica-radeta-and-petar-jojic-for-involvement-in-significant-corruption/](http://www.state.gov/designation-of-former-representatives-of-the-national-assembly-of-serbia-verica-radeta-and-petar-jojic-for-involvement-in-significant-corruption/).

<sup>15</sup> During the reporting period, one of the initial eight relocated persons, Tharcisse Muvunyi, passed away on 9 June 2023. *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124 (*Nzuwonemeye et al.*), Registrar's Filing in Relation to the Death of Mr. Tharcisse Muvunyi (public), 13 June 2023.

solution in line with the Mechanism's duty of care towards the relocated persons, the Registry has provided five bimonthly reports, three of which were filed during the reporting period, on 6 July, 11 September and 10 November 2023.

119. The Mechanism refers to Security Council resolution [2637 \(2022\)](#), wherein the Council calls upon all States to cooperate and assist in this matter. Simultaneously, the Mechanism respectfully appeals to the Council to provide any additional support that it deems appropriate given the present circumstances.

### C. Information-sharing and dissemination

120. In line with paragraph 23 of Security Council resolution [2256 \(2015\)](#), the Mechanism continued to discuss means by which cooperation with the Government of Rwanda, one of the States most directly affected by the Mechanism's work, can be enhanced. In this regard, the Mechanism's principals engaged with Rwandan authorities on matters such as increasing access to the Mechanism's archives and the Mechanism's work more generally. In response to these discussions, the Mechanism has made further court documents and audiovisual recordings of proceedings easily accessible to the public by updating a feature on its website. The Kigali field office also effectively supported the efforts to strengthen the relationship with Rwandan authorities and civil society.

121. In 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 centres. During the reporting period, discussions advanced regarding the establishment of an information centre on the International Tribunal for the Former Yugoslavia in Zagreb. The Mechanism hopes to be able to indicate progress on this front in future reports and remains committed to facilitating the establishment of similar centres with other stakeholders in the region of the former Yugoslavia. The Mechanism considers that increasing access to the public judicial records of the ad hoc Tribunals and the Mechanism, in addition to enhancing cooperation with affected States more broadly, would assist greatly in countering the phenomena of genocide denial, historical revisionism and glorification of convicted war criminals that continue to gain momentum.

122. The Mechanism, together with the European Union, continued its Information Programme for Affected Communities.<sup>16</sup> During the reporting period, 100 secondary school history teachers participated in five workshops organized by the Mechanism on using the archives of the International Tribunal for the Former Yugoslavia and the Mechanism. In addition, the Programme contributed to the International Summer School on Transitional Justice, which was held in Sarajevo, Bosnia and Herzegovina, in July 2023 and gathered graduate and PhD students from throughout the world.

123. Commencing with a lecture by the President, the Programme launched the fifth cycle of its video lecture series, entitled "International law and facts established before the ICTY", on 2 November 2023. This cycle will feature lectures by Mechanism officials from all organs, members of the Association of Defence Counsel practising before the International Courts and Tribunals, former staff members of the International Tribunal for the Former Yugoslavia and experts from other United Nations bodies. The network of participating universities continued to expand in the reporting period, with postgraduate law students from 15 faculties throughout the former Yugoslavia now following the lecture series. Separately, the Programme also contributed to 10 lectures on the legacy of the International Tribunal for the Former

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<sup>16</sup> For further information about the Mechanism Information Programme for Affected Communities, see [www.irmct.org/en/mip](http://www.irmct.org/en/mip).

Yugoslavia, hosted by local groups or organizations and addressed to young people, journalists and researchers from the region.

124. Overall, the Mechanism Information Programme for Affected Communities continued to be well received, with its social media campaigns having reached more than 5,500,000 people since January 2019. The Mechanism wishes to reiterate its sincere gratitude to the European Union and its Member States for their ongoing and generous support.

## **IX. Registry support for Mechanism activities**

### **A. Judicial support services**

125. During the reporting period, the Registry continued to provide support to the Mechanism's judicial activities at both branches.

126. The Judicial Records Unit at both branches processed and disseminated 652 filings, including 201 Registry legal submissions, amounting to 9,097 pages. In The Hague, the Judicial Records Unit supported the status conference and the appeals judgment pronouncement in the *Stanišić and Simatović* case, which were held on 17 and 31 May 2023, respectively. In addition, staff from both branches aided in the trial proceedings of the *Kabuga* case, while the hearings were coordinated from The Hague branch. The Judicial Records Unit supported a status conference and a procedural hearing in the *Kabuga* case, on 17 July 2023 and 6 September 2023, respectively. During the reporting period, four court hearing days were serviced, all at The Hague branch. The Judicial Records Unit was instrumental in facilitating the smooth conduct of proceedings through efficient liaison with all relevant stakeholders and ongoing cooperation with the Chambers Legal Support Section and the parties.

127. With the indefinite stay of the proceedings in the *Kabuga* case, support for the judicial functions of the Mechanism will be on a more limited scale in the future. However, it will include status conferences in the *Kabuga* case every 120 days pursuant to rule 69 of the Rules of Procedure and Evidence until Félicien Kabuga is provisionally released. Moreover, the Mechanism will still be required to enable a number of judicial activities that could involve in-court proceedings, including those following the transfer of the accused in the *Jojić and Radeta* case to the Mechanism; the initiation of possible new review proceedings or contempt proceedings, and any proceedings resulting from a potential revocation of cases referred to national jurisdictions, including those of Fulgence Kayishema, and the two remaining fugitives expected to be tried by Rwanda.

128. The Language Support Services at the two branches collectively translated approximately 8,500 pages. Across the branches, the Language Support Services provided 37 conference interpreter days and produced approximately 430 pages of transcripts in English and French. The Language Support Services also completed the translation of monitoring reports relating to cases referred to France and Rwanda pursuant to article 6 of the statute.

129. Further progress was made in relation to the translation of judgments of the ad hoc Tribunals and the Mechanism. The availability of all judgments in languages that the convicted persons understand is a critical part of ensuring fair and open judicial proceedings and, in the context of the long-term judicial functions of the Mechanism, is also closely linked to the ability of convicted persons to potentially file requests for review of their judgment.

130. With regard to the translation of judgments into French, the Language Support Services in The Hague completed the translation of one trial judgment of the



Mechanism. The translation from English into French of nine judgments – six of the International Tribunal for the Former Yugoslavia and three of the Mechanism – remains to be completed, with a number of translations in progress. Separately, the translation into Bosnian/Croatian/Serbian of the Mechanism’s appeal judgment in the *Stanišić and Simatović* case, the last judgment to be translated into this language, is also in progress. The Language Support Services in Arusha completed the Kinyarwanda translation of three appeal judgments of the International Criminal Tribunal for Rwanda. Seventeen appeal judgments of the International Criminal Tribunal for Rwanda remain to be translated into Kinyarwanda. The translation of judgments into French and Kinyarwanda may be affected by the demands of ongoing work and available resources.

131. The Registry continued to provide financial and administrative assistance as needed to an average of 64 defence and *amicus curiae* teams, comprising a total of approximately 90 team members. The defence teams are principally engaged in pro bono efforts in post-conviction proceedings, whereas the *amicus curiae* and their teams receive remuneration. Relevant staff processed approximately 57 defence and *amicus curiae* invoices, travel requests and expense reports during the reporting period. The list of those eligible for assignment to suspects and accused before the Mechanism now includes 57 admitted counsel, while the number of prosecutors and investigators eligible for assignment as an *amicus curiae* remains at 58.

## **B. Victims and witnesses**

132. The Mechanism is responsible for the protection of witnesses who have testified in cases completed by the ad hoc Tribunals, as well as witnesses who have appeared or may appear before the Mechanism, pursuant to article 20 of the statute. Approximately 3,200 witnesses presently benefit from judicial and/or extrajudicial protective measures. Physical protection by security personnel, beyond facilitating participation in judicial proceedings, is not provided by the Mechanism.

133. The end of in-court proceedings signals a further reduction in responsibilities and expenses in this area. During this new phase no more witnesses are expected to testify, and, for that reason, there will be no more travel expenses for witnesses, accompanying protection officers, payment of daily subsistence allowances, housing of testifying protected witnesses in safe houses, etc. The remaining tasks mostly involve keeping track of protected witnesses and informing them, where necessary, of the release of convicted persons in whose cases they have testified; providing a contact point for protected witnesses who wish to have their protective measures amended or who need additional support; monitoring and assessing threats to ensure that the protective measures for specific victims and witnesses remain effective; and maintaining cooperation with States to where protected witnesses have been relocated.

134. The Witness Support and Protection Unit at both branches conducted threat assessments and coordinated responses to security-related needs in accordance with judicial protection orders and in cooperation with national authorities. The medical clinic at the Kigali field office provided medical, nutritional and psychosocial services to witnesses residing in Rwanda.

135. Pursuant to rule 86 of the Rules of Procedure and Evidence, the Witness Support and Protection Unit also continued to facilitate applications from national jurisdictions for the variation of protective measures and implemented four judicial orders involving seven witnesses. In addition, at The Hague branch, the Unit provided witness-related assessments to the President of the Mechanism in relation to four requests by convicted persons for early release.

### C. Detention facilities

136. The United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague have traditionally provided custodial capacity to persons detained by the Mechanism 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. As previously reported, the United Nations Detention Facility was closed in February 2023.

137. During the reporting period, the United Nations Detention Unit housed four detainees. Further to the indefinite stay of proceedings ordered by the Trial Chamber in September 2023, Félicien Kabuga remains detained at the Detention Unit in The Hague, pending the resolution of the issue of his provisional release. Two convicted persons, Jovica Stanišić and Ratko Mladić, are awaiting transfer to a State for the enforcement of their sentences. Following the President's Order of 12 May 2023, Stojan Župljanin was returned temporarily to the Detention Unit from Poland, where he had been serving his sentence.<sup>17</sup> Another convicted person is expected to be returned before the end of the year, owing to the relevant enforcement State's similar inability to continue to enforce his sentence.

138. The Mechanism wishes to underscore that the situation of convicted persons returning to the United Nations Detention Unit is not sustainable, and as outlined above (see paras. 102–103), the Detention Unit was not intended for the de facto enforcement of sentences. The Mechanism is actively exploring options to avoid such situations in the future, but urgently requires States to come forward to conclude additional enforcement agreements.

139. The United Nations Detention Unit continues to be regularly inspected by the International Committee of the Red Cross to ensure that the Mechanism's Rules of Detention<sup>18</sup> are properly applied and that the facilities operate in accordance with international standards, pursuant to the applicable regulatory framework.

140. The Mechanism takes its duty of care towards detainees very seriously, in keeping with paragraph 13 of resolution 2637 (2022), in which the Security Council recalled the importance of ensuring the rights of persons detained on the authority of the Mechanism in accordance with applicable international standards, including those related to health care. The Mechanism's established legal and regulatory framework supports full compliance with this duty, including through the Mechanism's Regulations on the Complaints Procedure for Detainees,<sup>19</sup> regular status conferences<sup>20</sup> and the above-mentioned inspections by independent monitoring bodies.

### D. Archives and records

141. The Mechanism has responsibility for the management of the archives of the ad hoc Tribunals and the Mechanism under article 27 of the statute. The archives, which are co-located with the respective branches of the Mechanism, contain both physical

<sup>17</sup> *Prosecutor v. Stojan Župljanin*, Case No. MICT-13-53-ES.1, Order for the Transfer of Stojan Župljanin to the United Nations Detention Unit on a Temporary Basis (public), 12 May 2023.

<sup>18</sup> Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism, 5 November 2018 (Rules of Detention).

<sup>19</sup> International Residual Mechanism for Criminal Tribunals Regulations on the Complaints Procedure for Detainees (MICT/25), 5 December 2018. See also Rules of Detention, Rules 91–97; International Residual Mechanism for Criminal Tribunals Regulations on the Disciplinary Procedure for Detainees (MICT/24), 5 December 2018, regulations 8 and 10; International Residual Mechanism for Criminal Tribunals Regulations on the Supervision of Visits to and Communications with Detainees (MICT/23), 5 December 2018, regulation 23.

<sup>20</sup> See Rules of Procedure and Evidence, rule 69.

and digital records, such as documents, maps, photographs, audiovisual recordings and objects.

142. The Mechanism is currently responsible for the management of approximately 4,000 linear metres of physical records and 2.7 petabytes of digital records of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. Management of the archives includes the preservation of and the provision of access to both physical and digital records.

143. Regrettably, during the reporting period the preservation of digital records from the ad hoc Tribunals was limited. Following expert preparation and packaging, a total of 11,840 terabytes of digital records comprising 33,631 files were ingested. In addition, 8,982 terabytes (3,580 files) comprising large audiovisual file formats were prepared and packaged for ingest. These encompassed recordings of judicial proceedings of the International Criminal Tribunal for Rwanda and the Mechanism, including the *Kabuga* case.

144. Owing to persistent technical issues, the rate of ingest continues to be modest. To date, 13.8 per cent of the digital archives in the custody of the Mechanism Archives and Records Section have been ingested. The Section, in partnership with the Mechanism's Information Technology Services Section, continues to implement the Mechanism's digital preservation programme, which strives to safeguard the Tribunals' digital records against technological obsolescence, media degradation and other vulnerabilities. Several other United Nations offices, including the United Nations Archives and Records Management Section and the United Nations Office at Geneva, have shown keen interest in the Mechanism's digital preservation programme.

145. Regarding the work with audiovisual records, 8 per cent of analogue audiovisual recordings of the International Tribunal for the Former Yugoslavia are yet to be digitized, while 85 per cent of digitized recordings need to be quality checked and redacted. Preservation of recordings on optical discs, which are considered to be at higher risk of loss, continued to be prioritized during the reporting period. In this regard, 700 audiovisual exhibits from five cases before the International Tribunal for the Former Yugoslavia and 602 recordings from the *Mladić* case have now been migrated from optical discs and prepared for preservation in the digital preservation system. While approximately 54 per cent of audiovisual records of the International Criminal Tribunal for Rwanda remain to be redacted, during the reporting period 2,326 audio recordings of judicial proceedings before that Tribunal were digitized and prepared for preservation in the Digital Preservation System.

146. More than 378,802 judicial records are currently available through the Unified Court Records database, which brings together all public judicial records of the ad hoc Tribunals and the Mechanism. During the reporting period, these public judicial records were accessed by 8,479 users. Separately, the Mechanism Archives and Records Section received and responded to 55 requests for access to records under the Access Policy for the Records held by the International Residual Mechanism for Criminal Tribunals. In addition, 300 visitors in The Hague and 220 visitors in Arusha were welcomed and provided with briefings about the archives. The visitors included members of the public, students and academics from various universities and institutions, as well as staff from other United Nations offices, law firms, national judicial institutions, embassies/consulates and non-governmental organizations.

147. Efforts to launch a publicly accessible catalogue containing descriptions of the archives, prepared in accordance with international standards, were suspended in January 2023 owing to the downsizing of staff in the Mechanism Archives and Records Section. However, work resumed in May 2023 with the support of an expert consultant, and during the reporting period 884 new catalogue entries were created.

148. Together with other long-term archiving activities, such work cannot be completed until all permanent records of the ad hoc Tribunals and the Mechanism that are currently held by offices or sections have been transferred to the Mechanism Archives and Records Section, or its successor, and will need to continue unless a decision is taken by the Security Council to transfer the Mechanism's archiving functions to another body.

## **E. External relations**

149. The Mechanism's External Relations Office continued to facilitate public access to court proceedings.

150. At both branches, visitors could view the trial proceedings in the *Kabuga* case, either in the public gallery in The Hague or via broadcast in Arusha. All public proceedings were also streamed on the Mechanism website. In addition, the External Relations Office coordinated the release of the official audiovisual recordings from the *Kabuga* case to media outlets.

151. The External Relations Office coordinated public access to the pronouncement of the appeal judgment in the *Stanišić and Simatović* case on 31 May 2023 at The Hague branch. The pronouncement was also streamed on the Mechanism's website.

152. During the reporting period, the Arusha branch welcomed approximately 180 visitors and the External Relations Office coordinated visits from court officials from Botswana, Malawi, Nigeria, Zanzibar and Zimbabwe and delegations from the East African Court of Justice, the Judiciary Committee on Elections of Kenya, the Economic Community of West African States and the Cameroonian Development Cooperation. The library of the Arusha branch resumed its operations after a period of inactivity.

153. More than 840 visitors visited The Hague branch, including from, inter alia, the Asser Institute, the United Nations Institute for Training and Research, the Hanseatic Higher Regional Court in Germany and the Honourable Society of Lincoln's Inn. The External Relations Office in The Hague branch also organized the Mechanism's participation in The Hague Just Peace Open Day and coordinated briefings for journalists from Serbia, the Rwandan victims' association IBUKA and Rwandan judges and senior court officials.

154. In the Kigali field office, the focus was on raising awareness of the Mechanism's activities and promoting the legacy of the International Criminal Tribunal for Rwanda, including by promoting the court coverage of the *Kabuga* trial.

155. In addition, the Mechanism held a campaign to mark 30 years since the establishment of the International Tribunal for the Former Yugoslavia and continued its presence on social media.

156. During the reporting period, the Mechanism website received almost 400,000 page views.

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

157. By its resolution [77/261](#), the General Assembly appropriated to the special account for the Mechanism a total amount of \$81,945,300 gross (\$74,951,200 net) for 2023. The Mechanism implemented the decision of the General Assembly<sup>21</sup> regarding

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<sup>21</sup> In resolution [77/261](#), the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions to this effect ([A/77/626](#)).

a reduction of requested resources for travel of staff, supplies and materials, general operating expenses, improvement of premises and grants and contributions and continues to actively limit its overall expenditure to that essential to fulfil its mandated functions. The Mechanism expects to fully support its remaining operational and judicial activities in 2023 within the approved budgetary resources.

158. Details and a breakdown of the Mechanism's expenditures in 2023, presented in terms of funds committed, are set forth in enclosure I.

159. The Mechanism's 2024 budget proposal is focused on the Mechanism's mandated continuous activities. While the Mechanism retains jurisdiction over Mr. Kabuga, it will also support ongoing investigations into possible contempt cases, undertake any further judicial activity that may arise, track remaining fugitives, monitor cases referred to national courts, supervise the enforcement of sentences and respond to requests for assistance from national jurisdictions, among other functions. The continuation of efforts to streamline cross-branch cooperation and cross-section collaboration to find more innovative and cost-efficient ways of working is a vital element of the 2024 budget proposal, while changes in the Mechanism's operational modalities through outsourcing various administrative services will also be ongoing.

160. Following consultations with the Programme Planning and Budget Division at United Nations Headquarters on the preparation of the 2024 budget proposal, the budget proposal was submitted to the Advisory Committee on Administrative and Budgetary Questions on 16 October 2023. On 23 October 2023, the Committee held a review meeting, requesting clarifications from the Mechanism on, inter alia: the overall level of resources, downsizing and outsourcing; the completion of the Mechanism's activities and residual functions; the provision of assistance to national jurisdictions; the tracking of fugitives; and the protection of witnesses. The Committee also requested further information on the management of the archives and digitization projects, the Mechanism's interpretation and translation service and the library at the Arusha branch. The Mechanism addressed all questions in a timely manner. It is projected that the Committee's report on the budget proposal for 2024 and the performance report for 2022 will be issued at the end of November 2023, after which it will be subject to review by the Fifth Committee of the General Assembly in December 2023.

161. Regarding staffing levels, following the downsizing of general temporary assistance as part of the 2023 budget implementation, 93 positions have been abolished since January 2023. There has also been a reduction in approved continuous posts, resulting in a current total of 137 such posts.<sup>22</sup>

162. As at 15 November 2023, 129 of the 135 approved continuous posts to carry out the Mechanism's continuous functions were occupied. An additional 230 personnel were serving as general temporary assistance to address ad hoc needs. Consistent with the flexible staffing structure of the Mechanism, these positions are short term in nature and will fluctuate depending on the relevant workload and staff attrition.

163. Details concerning the staffing of the Mechanism by division are reflected in enclosure II.

164. The Mechanism's continuous and general temporary assistance positions include nationals of 69 States: Algeria, Australia, Austria, Bahrain, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, China, Congo, Croatia, Cuba, Democratic Republic of the Congo, Denmark, Egypt, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala,

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<sup>22</sup> This number includes one post made available to the Office of Programme Planning, Budget and Accounts and one post made available to the Office of Internal Oversight Services.

Haiti, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Kenya, Lebanon, Lesotho, Liberia, Madagascar, Malaysia, Nepal, Kingdom of the Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Rwanda, Serbia, Sierra Leone, Slovakia, South Africa, Spain, Sudan, Sweden, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Zambia and Zimbabwe.

165. The Mechanism remained committed to advancing the Secretary-General's gender parity objectives and worked diligently to enhance its efforts in accordance with the relevant administrative instruction,<sup>23</sup> in particular in the context of recruitment processes. Female staff members comprised 54 per cent of staff at the Professional level averaged across the two branches. However, the average percentage of female staff remains lower when General and Field Services staff are also taken into account, with a total of 45 per cent overall. Despite the constraints imposed by its nature as a downsizing institution, further improving gender parity remains a critical priority for the Mechanism, wherever feasible. The Mechanism's principals recently decided to incorporate Mechanism-wide goals for mainstreaming gender perspective and maintaining an inclusive and enabling work environment into the performance evaluations of all staff members, tailored to their respective levels of responsibility. This represents a crucial step in the execution of the Mechanism's gender parity implementation plan for the period 2023–2024.

166. Relatedly, the Mechanism's focal points for gender promoted greater awareness of gender equality and parity issues, standards of conduct, flexible working arrangements and family friendly policies at the Mechanism, as in previous reporting periods. Increased focus is being placed on disseminating information among staff and non-staff personnel on avenues to address situations of gender-based concerns, including sexual harassment. In this context, the President, the Prosecutor and the Registrar maintain their unwavering commitment to upholding the United Nations policy of zero tolerance for sexual harassment and protection against retaliation. The Mechanism's focal points for protection from sexual exploitation and sexual abuse further implemented the Mechanism's action plan to prevent and respond to any situations involving such exploitation and abuse. The Mechanism continued to support all its focal points, in order to facilitate the fulfilment of their mandates.

167. To enhance the well-being of staff members, the Mechanism facilitated the presence of a Stress Counsellor. While the Stress Counsellor is based at the Arusha branch, services are available to staff members across the Mechanism. During the reporting period, the Stress Counsellor visited The Hague branch and the Kigali field office to allow for in-person appointments with staff members. In addition to individual meetings with staff, the Stress Counsellor also facilitated meetings for sections and offices and organizes regular webinars on a variety of psychosocial and mental health issues.

168. As additional support to staff members subject to downsizing measures, an outreach programme has encouraged other United Nations agencies and programmes to prioritize such Mechanism staff in their recruitment processes, where appropriate. This effort resulted in former staff members securing new employment opportunities with other entities, including the United Nations Stabilization Mission in the Democratic Republic of Congo (MONUSCO), the United Nations Truce Supervision Organization (UNTSO), the United Nations Assistance Mission in Somalia (UNSOM), the United Nations Military Observer Group in India and Pakistan (UNMOGIP) and United Nations Headquarters in New York. Overall, the Mechanism pursues a transparent and fair downsizing process through the comparative review

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<sup>23</sup> Administrative instruction on temporary special measures for the achievement of gender parity, 6 August 2020 (ST/AI/2020/5).

platform, while affected staff members are able to voice any concerns through internal mechanisms and the United Nations' internal justice system.

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

169. Earlier in 2023, as previously reported, OIOS commenced its new evaluation of the methods and work of the Mechanism, focusing on services provided in respect of its remaining long-term residual functions. Under the terms of reference of the evaluation, OIOS is primarily assessing the Mechanism's assistance to national jurisdictions in Rwanda and the countries of the former Yugoslavia, and its cooperation with Member States and other stakeholders in relation to key residual activities.

170. This exercise will culminate in the delivery of an evaluation report by OIOS in early 2024 and will feed into the next biennial review of the Mechanism by the Security Council. The Mechanism has been actively engaging with OIOS throughout 2023 and is providing all relevant information and documentation. Separately, as has been set out above (see paras. 26 and 77), the Mechanism continued to work towards full implementation of the two outstanding recommendations from previous OIOS evaluation exercises.<sup>24</sup>

## **XI. Conclusion**

171. With no active or anticipated core crimes cases and only two fugitives remaining, the Mechanism's daily responsibilities now align with its intended nature. Consequently, its workload in a number of areas is poised to undergo a significant reduction, a trend clearly manifested in the submitted budget proposal for 2024.

172. It is crucial to note, however, that the cycle of justice does not end with the pronouncement of a judgment or the end of in-court proceedings. Ongoing attention is imperative for the enforcement of sentences and other essential functions. Equally important is the commitment to solidify the groundbreaking legacy of the ad hoc Tribunals and the Mechanism and to continue to assist national jurisdictions in their adjudication of cases in connection with the conflicts in the former Yugoslavia and in Rwanda. The remaining workload, therefore, is long term and continuous in nature, and the Mechanism will carry it out unless and until the Security Council decides otherwise.

173. The Mechanism's management, led by the President, is cognizant that the shifted focus of its operations demands innovative approaches, effective leadership and a more efficient institutional structure. To maintain the high standards set by the ad hoc Tribunals and the Mechanism, collaborative efforts across the institution are under way to meticulously plan and execute the ongoing winding down of operations.

174. The Mechanism's achievements owe their realization to the unwavering dedication of its outstanding judges and staff. Despite the difficulties posed by the downsizing of the institution, these individuals have consistently performed at the highest standard. Operating in an environment that demands accomplishing more with less and which offers limited job security, the commitment and resilience demonstrated by the staff deserve both admiration and gratitude.

175. As the Security Council prepares for its fifth review of the Mechanism's mandate, the Mechanism eagerly awaits the opportunity to present its comprehensive operational framework. The Mechanism firmly believes that the information and

<sup>24</sup> See [S/2022/148](#). Recommendations 1 and 3 have been partially implemented.

proposals contained therein will serve as valuable resources for the Council in making informed decisions regarding the future trajectory of the Mechanism's mandate and potential transfer of functions. The Mechanism stands ready to navigate these forthcoming changes and uphold its legacy of excellence.

176. Finally, the steadfast backing by Member States remains a cornerstone in fulfilling the Mechanism's mandate. In particular, the challenges faced with regard to the enforcement of sentences and the relocated persons in the Niger necessitate a concerted approach. The Mechanism therefore encourages Member States to sustain and even increase their vital support, to allow the Mechanism to successfully complete its mandate.



## Enclosure I

## International Residual Mechanism for Criminal Tribunals: approved appropriations and expenditures for 2023

Table 1

### Approved appropriations for the period 1 January to 31 October 2023 (net of staff assessment)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	<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>	Mechanism
Arusha	Post	–	2 957 300	8 424 700	–	11 382 000
	Non-post <sup>a</sup>	86 200	4 248 200	12 749 100	5 426 200	22 509 700
<b>Subtotal</b>		<b>86 200</b>	<b>7 205 500</b>	<b>21 173 800</b>	<b>5 426 200</b>	<b>33 891 700</b>
The Hague	Post	–	1 166 500	4 515 700	–	5 682 200
	Non-post	1 798 500	5 415 100	27 668 900	–	34 882 500
<b>Subtotal</b>		<b>1 798 500</b>	<b>6 581 600</b>	<b>32 184 600</b>	<b>–</b>	<b>40 564 700</b>
New York	Post	–	–	199 000	–	199 000
	Non-post	–	–	1 600	–	1 600
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>200 600</b>	<b>–</b>	<b>200 600</b>
Office of Internal Oversight Services	Post	–	–	153 600	–	153 600
	Non-post	–	–	142 400	–	142 400
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>296 000</b>	<b>–</b>	<b>296 000</b>
Overall	Post	–	4 123 800	13 293 000	–	17 416 800
	Non-post	1 884 700	9 663 300	40 562 000	5 426 200	57 536 200
<b>Total</b>		<b>1 884 700</b>	<b>13 787 100</b>	<b>53 855 000</b>	<b>5 426 200</b>	<b>74 953 000</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 1 November 2023 (from Umoja)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	<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>	Mechanism
Arusha	Post	–	2 422 892	7 141 729	–	9 564 621
	Non-post	40 300	3 081 915	9 160 279	4 845 455	17 127 949
<b>Subtotal</b>		<b>40 300</b>	<b>5 504 807</b>	<b>16 302 008</b>	<b>4 845 455</b>	<b>26 692 570</b>

		<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>
		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>		
The Hague	Post	–	1 190 555	4 532 002	–	5 722 557
	Non-post	1 640 826	4 124 926	23 268 188	–	29 033 940
<b>Subtotal</b>		<b>1 640 826</b>	<b>5 315 481</b>	<b>27 800 190</b>	<b>–</b>	<b>34 756 497</b>
New York	Post	–	–	153 433	–	153 433
	Non-post	–	–	–	–	–
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>153 433</b>	<b>–</b>	<b>153 433</b>
Office of Internal Oversight Services	Post	–	–	64 468	–	64 468
	Non-post	–	–	109 754	–	109 754
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>174 222</b>	<b>–</b>	<b>174 222</b>
Overall	Post	–	3 613 447	11 891 632	–	15 505 079
	Non-post	1 681 126	7 206 841	32 538 221	4 845 455	46 271 643
<b>Total</b>		<b>1 681 126</b>	<b>10 820 288</b>	<b>44 429 853</b>	<b>4 845 455</b>	<b>61 776 722</b>

Table 3  
Percentage of the annual budget expended as at 1 November 2023

		<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>
		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>		
Arusha	Post	–	81.9	84.8	–	84.0
	Non-post	46.8	72.5	71.9	89.3	76.1
<b>Subtotal</b>		<b>46.8</b>	<b>76.4</b>	<b>77.0</b>	<b>89.3</b>	<b>78.8</b>
The Hague	Post	–	102.1	100.4	–	100.7
	Non-post	91.2	76.2	84.1	–	83.2
<b>Subtotal</b>		<b>91.2</b>	<b>80.8</b>	<b>86.4</b>	<b>–</b>	<b>85.7</b>
New York	Post	–	–	77.1	–	77.1
	Non-post	–	–	–	–	–
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>76.5</b>	<b>–</b>	<b>76.5</b>
Office of Internal Oversight Services	Post	–	–	42.0	–	42.0
	Non-post	–	–	77.1	–	77.1
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>58.9</b>	<b>–</b>	<b>58.9</b>
Overall	Post	–	87.6	89.5	–	89.0
	Non-post	89.2	74.6	80.2	89.3	80.4
<b>Total</b>		<b>89.2</b>	<b>78.5</b>	<b>82.5</b>	<b>89.3</b>	<b>82.4</b>

## Enclosure II

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

Table 1  
Staff numbers by branch and organ

<i>Category</i>	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Mechanism overall</i>
All staff	151	208	33	102	224	359
Staff on continuous posts	80	48	9	28	91	128
Staff on general temporary assistance positions	71	160	24	74	133	231
International (Field Service and Professional and higher categories)	90	97	26	63	98	187
Local (General Service)	61	111	7	39	126	172

Table 2  
Geographical representation by regional group

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall (percentage)</i>
Nationalities	33	56	69
All staff	–	–	359
African	115	23	138 (38.4)
Asia-Pacific	7	15	22 (6.1)
Eastern European	1	41	42 (11.7)
Latin American and Caribbean	0	8	8 (2.2)
Western European and other States	29	120	149 (41.4)
International (Field Service and Professional and higher categories)	–	–	187
African	54	6	60 (32.1)
Asia-Pacific	7	7	14 (7.4)
Eastern European	1	18	19 (10.1)
Latin American and Caribbean	–	5	5 (2.7)
Western European and other States	29	60	89 (47.3)
Local (General Service)	–	–	172
African	61	17	78 (45.3)
Asia-Pacific	–	8	8 (4.7)
Eastern European	–	23	23 (13.4)
Latin American and Caribbean	–	3	3 (1.7)
Western European and other States	–	60	60 (34.9)

(Footnotes on following page)

\* The data in the tables in the present enclosure represent the number of staff employed as at 15 November 2023.

(Footnotes to Table 2)

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

**Group of Asia-Pacific States:** Bahrain, China, Fiji, India, Indonesia, Iraq, Japan, Lebanon, Malaysia, Nepal, Pakistan, Philippines, Republic of Korea, Uzbekistan.

**Eastern European Group:** Bosnia and Herzegovina, Bulgaria, Croatia, North Macedonia, Poland, Russian Federation, Serbia, Slovakia, Ukraine.

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

**Group of Western European and Other States:** Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands (Kingdom of the), 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 (percentage)</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)	47	10	96	1	154
Male	24 (51)	8 (80)	38 (39.6)	1 (100)	71 (46.1)
Female	23 (49)	2 (20)	58 (60.4)	–	83 (53.9)
Professional staff (P-4 and above)	19	3	32	1	55
Male	12 (60)	3 (100)	13 (40.6)	1 (100)	29 (52.7)
Female	7 (40)	–	19 (59.4)	–	26 (47.2)
Field Service staff (all levels)	29	5	–	–	34
Male	16 (55.2)	3 (60)	–	–	19 (55.9)
Female	13 (44.8)	2 (40)	–	–	15 (44.1)
General Service staff (all levels)	36	24	111	–	171
Male	24 (66.7)	20 (83.3)	64 (57.7)	–	108 (63.2)
Female	12 (33.3)	4 (16.7)	47 (42.3)	–	63 (36.8)
All staff	112	39	207	1	359
Male	64 (57.1)	31 (79.5)	102 (49.3)	1 (100)	198 (55.1)
Female	48 (42.8)	8 (20.5)	105 (50.7)	–	161 (44.8)

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)	8	25	33
Office of the Prosecutor	50	52	102
Registry	94	130	224
Immediate Office of the Registrar	2	2	4
Legal Team	8	8	16
Mechanism Archives and Records Section	6	5	11
Witness Support and Protection Unit	14	3	17
Judicial Records Unit	2	4	6

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	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Language Support Services	7	19	26
External Relations Office	4	6	10
Division of Administration	29	56	85
Security and Safety Section	21	23	44
United Nations Detention Facility and United Nations Detention Unit	1	4	5

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**Annex II to the letter dated 16 November 2023 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council**

[Original: English and French]

**Progress report of Serge Brammertz, Prosecutor of the International Residual Mechanism for Criminal Tribunals, provided to the Security Council under paragraph 16 of Security Council resolution 1966 (2010)**

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## Overview

1. The Prosecutor submits the present twenty-third progress report pursuant to Security Council resolution 1966 (2010), covering developments from 16 May to 15 November 2023.

2. During the reporting period, the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals completed one of its strategic priorities and most important residual functions, namely, the expeditious prosecution of core crime trials and appeals. On 31 May 2023, the Appeals Chamber issued its judgment in the *Stanišić and Simatović* case. The Appeals Chamber accepted some of the prosecution's arguments and granted the prosecution's appeal in part, while dismissing the defence appeals in full. The Appeals Chamber accordingly entered additional convictions, and increased Stanišić's and Simatović's sentences to 15 years' imprisonment each. In the *Kabuga* case, on 7 August, the Appeals Chamber affirmed that Kabuga was not fit to stand trial and was very unlikely to regain fitness. The Appeals Chamber remanded the matter to the Trial Chamber, which, on 8 September, stayed the trial proceedings indefinitely. These final two cases mark the conclusion of the mandate of the Office to prosecute core crime trials and appeals transferred from the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

3. The Office of the Prosecutor also achieved significant progress in another of its strategic priorities, locating and accounting for the remaining fugitives indicted by the International Criminal Tribunal for Rwanda. On 24 May 2023, the fugitive tracking team of the Office of the Prosecutor arrested Fulgence Kayishema in Paarl, South Africa. Kayishema, who had been a fugitive since 2001, is alleged to have orchestrated the killing of approximately 2,000 Tutsi refugees – women, men, children and elderly people – at Nyange Catholic Church during the 1994 genocide against the Tutsi in Rwanda. Following his transfer to Kigali, via Arusha, Kayishema will be prosecuted in a Rwandan national court. On 14 November, the Office announced that it had confirmed the death of Aloys Ndimbati. Ndimbati, who was indicted on 28 November 1995, was charged with three counts of genocide and four counts of crimes against humanity for killings and other crimes against Tutsis in Kibuye prefecture. There are now only two final Tribunal fugitives remaining.

4. During the reporting period, the Office of the Prosecutor continued to move forward its other two strategic priorities: assisting national jurisdictions prosecuting international crimes committed in the former Yugoslavia and Rwanda; and effectively litigating mandated residual matters.

5. Regarding national prosecutions of war crimes committed in Rwanda, the upcoming commemoration of the thirtieth anniversary of the genocide is a reminder that there are still more than 1,000 accused who have not yet been prosecuted for their alleged crimes. Cooperation between the Office of the Prosecutor, the Prosecutor General of Rwanda and other national prosecutors to address this accountability gap continues to strengthen and increase. During the reporting period, the Office of the Prosecutor, at the request of the Prosecutor General, handed over evidence and investigative leads, while also providing direct support to ongoing investigations. The Prosecutor General is also requesting the Office of the Prosecutor to assist his office in locating and ultimately bringing to trial fugitives wanted by his office. More justice for crimes committed during the 1994 genocide against the Tutsi in Rwanda is still urgently needed. In furtherance of article 28 (3) of the statute and the completion strategy of the International Criminal Tribunal for Rwanda, the Office of the Prosecutor will continue to provide needed support for the accountability process.



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 Criminal Tribunal for the Former Yugoslavia. With the completion of the final Tribunal case at the end of May 2023, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. During the reporting period, the Office continued to respond to a wide range of requests for assistance from national prosecutors. In addition to providing access to its evidence collection, the Office is responding to requests for direct case assistance, which entails providing legal, investigative and prosecutorial support for ongoing cases. The Office is also on request reviewing its evidence and preparing investigative dossiers concerning notable accountability gaps for national prosecutors to utilize. Lastly, the Office continued its efforts to improve regional judicial cooperation in war crimes cases. All these efforts, pursuant to article 28 (3) of the statute, are highly valued by national prosecutors in the region and produce meaningful results in the justice process.

7. In managing its work, the Office of the Prosecutor continued to be guided by the Security Council's views and requests as set forth in, inter alia, paragraphs 18, 19 and 20 of resolution 2256 (2015) and paragraphs 7 and 8 of resolution 2422 (2018). The Office continued to manage its work appropriately during the reporting period.

## I. Trials and appeals

8. During the reporting period, the Office of the Prosecutor completed one trial (*Kabuga*) and one appeal proceeding (*Stanišić and Simatović*).

9. With the conclusion of these final cases, the Office of the Prosecutor has now successfully completed its mandate to expeditiously prosecute core crime cases transferred from the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia.

### A. Update on the progress of trials

#### *Kabuga*

10. On 16 May 2020, Félicien Kabuga was arrested in Paris, after more than two decades as a fugitive. He is charged with six serious international crimes: genocide; direct and public incitement to commit genocide; conspiracy to commit genocide; persecution as a crime against humanity; extermination as a crime against humanity; and murder as a crime against humanity. In its decision of 13 June 2022, the Trial Chamber rejected the defence's claim that Kabuga was unfit for trial and ordered that the trial be conducted in The Hague, which was confirmed by the Appeals Chamber on 12 August. The prosecution presented its opening statement on 29 September and called its first witness on 5 October.

11. During the reporting period, the prosecution litigated the fitness of the accused to stand trial. At the direction of the Trial Chamber, on 9 May 2023, the prosecution submitted its position regarding the further course of proceedings should the accused be found unfit to stand trial. The prosecution argued that, in this circumstance, the Trial Chamber should move forward with an "examination of the facts" procedure. On 6 June, the Trial Chamber found, by majority, that Kabuga was not fit to stand trial and decided to continue the proceedings with an alternative finding procedure. The prosecution appealed the conclusion that Kabuga was not fit to stand trial, while the defence appealed the decision to utilize an alternative finding procedure. On 7 August, the Appeals Chamber issued its decision granting the defence appeal and

rejecting the prosecution's appeal. Accordingly, the Appeals Chamber upheld the finding that Kabuga was not fit to stand trial and remanded the matter to the Trial Chamber to impose an indefinite stay of proceedings. On 8 September, the Trial Chamber issued its decision staying the proceedings indefinitely, effectively bringing the trial to an end.

12. While the Office of the Prosecutor accepts this outcome, it cannot be satisfied with it. Even more, the victims and survivors in Rwanda are bitterly disappointed that Kabuga will not face judgment for his alleged crimes, in particular because he was one of the world's most wanted fugitives for more than two decades, during which he was harboured by his family and associates. This outcome underscores the decisive importance of efforts to account for fugitives and the need for cooperation from Member States in this regard. The Office is reviewing options to preserve and make available to the public the trial record and the evidence of Kabuga's alleged crimes.

13. During the course of pretrial and trial proceedings, the prosecution presented the evidence of 24 witnesses, 7 in The Hague, 12 in Arusha and 5 in Kigali. To expedite the proceedings, the prosecution introduced 99 witnesses under rules 110, 111, 112 and 116, such that the prosecution utilized only 12 hours of courtroom time for the presentation of its evidence, while the defence utilized 40 hours in cross-examination. The prosecution's case is set out in its pretrial brief, filed on 23 August 2021, which totals 537 pages and was accompanied by the prosecution's exhibit list of 3,259 pieces of evidence. From the arrest of Kabuga on 16 May 2020 until the imposition of the indefinite stay on 8 September 2023, the prosecution made 121 filings on matters related to the case and responded to 30 filings by the defence. In total, from the commencement of the trial, the prosecution disclosed more than 17,000 documents comprising approximately 336,000 pages.

14. This was the final case transferred by the International Criminal Tribunal for Rwanda to the Mechanism for trial, bringing to an end international prosecutions for the crimes committed during the 1994 genocide against the Tutsi in Rwanda. However, there are still more than 1,000 accused *génocidaires* to be brought to justice in national courts. The Office of the Prosecutor will continue to support national prosecutors in Rwanda and countries around the world to achieve more justice for the crimes committed.

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

### ***Stanišić and Simatović***

15. On 31 May 2023, the Appeals Chamber issued its judgment in this case. The Appeals Chamber accepted the prosecution's arguments that Stanišić and Simatović are criminally liable as participants in a joint criminal enterprise for a significant number of horrific crimes committed against innocent civilians. The Appeals Chamber confirmed that this joint criminal enterprise comprised, in addition to Stanišić and Simatović, many senior Serbian, Croatian Serb and Bosnian Serb political, military and police leaders, including Slobodan Milošević, Milan Martić, Milan Babić, Goran Hadžić, Radovan Karadžić, Ratko Mladić, Momčilo Krajišnik, Biljana Plavšić, and Željko Ražnatović (also known as Arkan). The purpose of this joint criminal enterprise was to forcibly and permanently remove, through the commission of the crimes of persecution, murder, deportation and inhumane acts (forcible transfers), the majority of non-Serb civilians, predominantly Croats, Bosnian Muslims and Bosnian Croats, from large areas of Croatia and Bosnia and Herzegovina. The Appeals Chamber also dismissed the defence appeals in full. Lastly, the Appeals Chamber increased Stanišić's and Simatović's sentences to 15 years each.

16. This marks the final case of the International Criminal Tribunal for the Former Yugoslavia transferred to the Mechanism for trial, and thus the last international prosecution for crimes committed during the conflicts in the former Yugoslavia. However, there are still thousands of war crimes suspects throughout the countries of the former Yugoslavia who remain to be prosecuted. The Office of the Prosecutor will continue its intensive efforts to provide support and assistance to national counterparts to ensure that more justice is achieved for more victims.

### **C. Other proceedings**

17. On 11 August 2023, the single judge confirmed the indictment against Vojislav Šešelj, Miljan Damjanović, Miroljub Ignjatović, Ljiljana Mihajlović and Ognjen Mihajlović for contempt of the International Criminal Tribunal for the Former Yugoslavia and the Mechanism, pursuant to article 1 (4) (a) of the statute and rule 90 of the Rules of Procedure and Evidence of the Mechanism. The indictment alleges that the accused are responsible for publicizing a large volume of confidential Tribunal information, which included information revealing the identities of dozens of protected witnesses, as well as breaches of Mechanism orders. On 12 October, the single judge ordered the Republic of Serbia and the prosecution to make submissions on whether the case should be referred to Serbia for trial pursuant to articles 1 (4) and 6 of the statute. The prosecution filed its submission on 10 November.

18. In addition, the Office of the Prosecutor continues to receive and monitor information concerning suspected contempt crimes within the Mechanism's jurisdiction and take appropriate steps in accordance with the Prosecutor's mandate under article 14 of the Mechanism statute. Utilizing the "one office" policy, the Office has absorbed the related requirements for these investigations within existing resources.

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

19. The Office of the Prosecutor continues to rely on the full cooperation of States to successfully and efficiently complete its mandate. The access of the Office of the Prosecutor to documents, archives and witnesses is critical in relation to its mandated residual functions.

20. During the reporting period, cooperation with the Office of the Prosecutor was generally satisfactory.

21. Cooperation and support from States outside the former Yugoslavia and Rwanda, as well as from international organizations, remain integral to the successful completion of Mechanism activities. The Office of the Prosecutor again acknowledges the support that it received during the reporting period from Member States and international organizations, including the United Nations and its agencies, the European Union, the Organization for Security and Cooperation in Europe and the International Criminal Police Organization (INTERPOL).

22. 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 European Union's support 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 the countries of the former Yugoslavia.

## E. Conditional early release

23. The Office of the Prosecutor continues to actively engage with applications for early release by providing its views on applications to the President. During the reporting period, five early release applications were filed. The Office provided comments and information in connection with one early release applications. The President granted one and denied two early release applications. The Office will continue to closely follow the implementation of the conditional early release regime.

## II. Fugitives

24. During the reporting period, the Office of the Prosecutor achieved a notable result by locating and arresting Fulgence Kayishema on 24 May 2023 in Paarl, South Africa.

25. Kayishema was indicted in 2001, and he had been a fugitive from justice for more than two decades. He is charged with genocide, complicity in genocide, conspiracy to commit genocide and crimes against humanity for killings and other crimes committed in Kivumu Commune, Kibuye Prefecture, during the 1994 genocide against the Tutsi in Rwanda. The indictment alleges that, on 15 April 1994, Kayishema, together with other co-perpetrators, murdered more than 2,000 men, women, elderly people and children who had sought refuge at Nyange Church in Kivumu commune. Kayishema directly participated in the planning and execution of this massacre, including by procuring and distributing petrol to burn down the church with the refugees inside. When this failed, Kayishema and others used a bulldozer to collapse the church, burying and killing the refugees inside. Kayishema and others then supervised the transfer of corpses from the church grounds into mass graves.

26. Kayishema was located and arrested as a result of a detailed, methodical and thorough investigation conducted by the fugitive tracking team of the Office of the Prosecutor. The investigation spanned multiple countries across Africa and elsewhere. During his flight from justice, Kayishema utilized many aliases and false documents to conceal his identity and presence. He also relied upon a network of trusted supporters, including family members, members of the *ex-Forces armées rwandaises* and *ex-Forces démocratiques de libération du Rwanda*, and those aligned with the genocidal Hutu Power ideology. To overcome these challenges, the fugitive tracking team undertook an analysis-driven investigation exploiting multi-source evidence with both traditional and leading-edge methodologies.

27. The full and effective cooperation of Member States was essential to this result. The fugitive tracking team of the Office of the Prosecutor established joint task forces with a number of African countries, including notably Eswatini, Mozambique and South Africa. Rwandan authorities under the leadership of the Prosecutor General also provided essential assistance. Lastly, other countries, including the United States of America, Canada and the United Kingdom of Great Britain and Northern Ireland, gave important help. Kayishema's arrest demonstrates yet again that justice can be secured, no matter the challenges, through direct, operational cooperation between international and national law enforcement agencies. It further underscores that fugitives can be located and arrested despite the passage of time, so long as the commitment to justice remains firm.

28. The Office of the Prosecutor also accounted for another fugitive during the reporting period. On 14 November 2023, the Office announced that it had confirmed the death of Aloys Ndimbati. Ndimbati, who was indicted on 28 November 1995, was charged with three counts of genocide and four counts of crimes against humanity for killings and other crimes against Tutsis in Kibuye prefecture.

29. There are now only two fugitives from the International Criminal Tribunal for Rwanda remaining: Charles Ryandikayo and Charles Sikubwabo. The Office of the Prosecutor is making important progress on both investigations. Consistent with proven practices, the Office has developed narratives, based on credible, reliable and multi-source evidence, for the movement and activities of both fugitives after the 1994 genocide against the Tutsi in Rwanda. Persons of interest have been identified who have information about the fugitives' past and present whereabouts. The Office continued to obtain and rigorously review a large volume of intelligence and data, enabling constant refinement of tracking strategies. The Office anticipates that both remaining fugitives will be accounted for by the end of 2024.

30. The Security Council entrusted the Office of the Prosecutor with the critical mandate to account for all remaining fugitives indicted by the International Criminal Tribunal for Rwanda. Accounting for all fugitives demonstrates that impunity for serious international crimes will not be tolerated. The Office remains grateful to the Council, the United Nations and the international community for their continued support for this critical work.

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

31. National prosecutions remain essential to achieving greater justice for the victims of war crimes, crimes against humanity and genocide committed in the former Yugoslavia and Rwanda. The effective prosecution of these crimes 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.

32. The Office of the Prosecutor is mandated to assist and support national prosecutions of these crimes, in accordance with the completion strategies of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, resolution 1966 (2010) and the Mechanism statute. During the reporting period, the Office continued to receive a high volume of requests for assistance from national judiciaries and international organizations. These requests for assistance address three related areas where support from the Office is needed: first, requests for access to evidence and information; second, requests for substantive legal, investigative and prosecutorial direct case assistance, including through the preparation and transfer of investigation dossiers; third, requests for assistance in resolving strategic and/or cross-cutting issues affecting the accountability process, including the challenges presented by fugitives and international cooperation.

33. The Office of the Prosecutor also continued to monitor and assess the implementation of the completion strategies of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia and national justice processes, including cases referred by the International Criminal Tribunal for Rwanda under rule 11 bis, so-called "category II" cases transferred by the International Criminal Tribunal for the Former Yugoslavia and related cases initiated by national prosecutors. The Office provides strategic advice, feedback and support to national prosecution services and justice sectors to assist them in meeting their immense responsibilities and the legitimate expectations of victims. In addition, the Office continued to assist and engage with a range of stakeholders concerning issues directly related to the accountability process such as denial and glorification, missing persons and capacity-building.

## A. Provision of evidence and expertise to national prosecutors

34. Pursuant to article 28 (3) of the statute, the Office of the Prosecutor is mandated to respond to requests from national authorities for assistance in relation to justice for international crimes committed in Rwanda and the former Yugoslavia. During the reporting period, in implementing this mandate, the Office provided assistance to a total of 110 case files.

35. National authorities desire, require and request such assistance because the Office of the Prosecutor possesses extensive evidence and invaluable expertise that can greatly benefit national justice efforts. The Yugoslavia-related evidence collection comprises more than 9 million pages of documents, tens of thousands of hours of audio and video records and thousands of artefacts, most of which was not introduced into evidence in any proceeding before the International Criminal Tribunal for the Former Yugoslavia and thus is available only from the Office. The Rwanda-related evidence collection comprises more than 1 million pages of documents. These large evidence collections are partly available remotely. In addition, Office staff members have unique insight into the crimes and the cases that can assist national prosecutors in preparing and proving their indictments.

36. The volume and complexity of requests for assistance received, as well as the wide range of authorities who are submitting requests for assistance, clearly demonstrate both the large number of cases still to be processed and that continued assistance from the Office of the Prosecutor is vital for greater accountability.

37. During the reporting period, the Office of the Prosecutor consulted intensively with national prosecutors in Rwanda and the former Yugoslavia to discuss their needs and the provision of assistance from the Office for national criminal cases.

38. In relation to Rwanda, the Office of the Prosecutor and the National Public Prosecution Authority of Rwanda, under the leadership of the Mechanism Prosecutor and the Prosecutor General of Rwanda, convened a series of in-depth meetings in early October 2023 and again in early November regarding national efforts to achieve more accountability for crimes committed during the 1994 genocide against the Tutsi in Rwanda. The Authority has identified more than 1,000 accused *génocidaires* currently residing outside Rwanda, as well as a large number of potential suspects who have not been prosecuted. To process these cases, the Authority is requesting that the Office provide intensive investigative, legal, prosecutorial and strategic assistance.

39. The National Public Prosecution Authority of Rwanda and the Office of the Prosecutor agreed to identify a list of the highest priority cases, and will work together to advance the goal of significantly increasing the number of accused brought to trial. This cooperation will involve tracking and locating priority accused, reviewing the evidence supporting the charges, planning and conducting investigations as required, preparing indictments, engaging with other national authorities to extradite the accused or transfer the relevant case file and supporting national prosecutions in national courts. At the request of the Authority, the Office will further review its evidence and judgments of the International Criminal Tribunal for Rwanda to identify and prepare investigative dossiers concerning senior- and mid-level officials who are reasonably suspected of having committed crimes during the 1994 genocide against the Tutsi in Rwanda but who have not yet been investigated and prosecuted. Lastly, the Office will assist the Authority in developing partnerships with national prosecutors, in particular in Africa, Europe and North America, in support of the accountability process.

40. During the reporting period, pursuant to its cooperation with the National Public Prosecution Authority of Rwanda and other national prosecution services, the Office of the Prosecutor received 18 requests for assistance from five Member States. Eight requests were submitted by Rwanda, six were from the United Kingdom, two were from the Netherlands, one was from France and one was from the United States.

41. With respect to requests for access to evidence, the Office of the Prosecutor received 10 requests for access to evidence and information from four Member States. In total, the Office handed over more than 4,846 documents comprising approximately 227,000 pages of evidence. In addition, the Office identified and confirmed the whereabouts of 24 witnesses to support national authorities.

42. With respect to requests for direct case assistance concerning Rwanda, during the reporting period, the Office of the Prosecutor presented to the National Public Prosecution Authority of Rwanda investigative leads regarding three individuals suspected of genocide and other international crimes who were identified in the course of the Office's fugitive tracking investigations. The Office also provided intelligence and evidence concerning the whereabouts of five fugitives currently being sought by the Authority.

43. In relation to the former Yugoslavia, the Office of the Prosecutor met with national prosecutors from Bosnia and Herzegovina, Croatia, Montenegro and Serbia regarding their efforts to investigate and prosecute the more than 1,000 war crimes suspects whose cases are still to be processed. In September, the Office participated in the regional conference of war crimes prosecutors in Sarajevo. The participating prosecutors concluded that continued assistance from the Office is vital to the success of their work, in particular in relation to the most complex cases, and requested the Office to strengthen its engagement with resolving the large number of fugitives. In October, the Office held productive discussions with the Chief Special State Prosecutor of Montenegro, who requested the Office to intensify its assistance so that a number of important war crimes case files can be expeditiously and effectively brought to trial in Montenegro.

44. During the reporting period, the Office of the Prosecutor received 194 requests for assistance from four Member States and four international organizations. One hundred and eighteen requests for assistance were submitted by authorities in Bosnia and Herzegovina, 15 were from Serbia and one was from Montenegro.

45. With respect to requests for access to evidence, the Office of the Prosecutor received 175 requests for access to evidence and information from three Member States and four international organizations. In total, the Office handed over more than 5,800 documents comprising more than 243,000 pages of evidence and 18 audiovisual records and shared additional information with national authorities. In addition, the Office filed two submissions related to witness protective measures and/or access to evidence in support of national authorities.

46. With respect to requests for direct case assistance concerning the former Yugoslavia, during the reporting period, the Office of the Prosecutor provided legal, evidentiary and strategic assistance with respect to 19 requests for direct case assistance from three Member States. This work entailed 10 crime base reports, 4 memorandums and analytical reports and 8 operational meetings, as well as the transfer of 2,404 documents comprising 45,007 pages of material. The Office of the Prosecutor also transferred an investigative dossier to the Special State Prosecutor's Office of Montenegro concerning the involvement of one Montenegrin national in the commission of crimes during the conflict in Bosnia and Herzegovina, which included more than 5,000 pages of evidence.

47. The significant growth in requests for assistance received by the Office of the Prosecutor was not matched in recent years by concomitant increases in related resources. As a result, a backlog of requests for assistance older than six months developed. That backlog has been reduced from 280 in 2021 to 117 as at 15 November 2023. To avoid critical risk to the success of national investigations and prosecutions, as well as the search for missing persons, it is vital for the Office to receive support for its reasonable resource requests to carry out its mandate under article 28 (3) of the statute.

## **B. National justice for crimes committed in Rwanda**

### **1. Rwanda Tribunal completion strategy**

48. The completion of the International Criminal Tribunal for Rwanda and Mechanism trials is not an end to the justice process for the victims of the 1994 genocide against the Tutsi in Rwanda. All those who participated in the genocide must be held accountable.

49. National authorities now have primary responsibility for the continued implementation of the completion strategy of the International Criminal Tribunal for Rwanda. Courts in countries around the world continue to process cases of crimes committed during the Rwandan genocide. 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.

50. The prior success of the International Criminal Tribunal for Rwanda and Rwandan domestic efforts may give the misleading impression that justice for crimes committed during the 1994 genocide against the Tutsi has largely been achieved. In reality, there are many cases yet to be processed, and many Rwandan victims are still waiting for justice. The Office of the Prosecutor strongly supports the continued efforts by the Prosecutor General of Rwanda to ensure that all those responsible for the genocide are held accountable. The Office also works with law enforcement and prosecutorial authorities in third-party countries around the world to detect, and extradite or prosecute, suspected *génocidaires*.

### **2. Fugitives**

51. The Prosecutor General of Rwanda is currently searching for more than 1,000 fugitives. In the course of its activities to track the remaining fugitives under its jurisdiction and provide assistance to national authorities, the Office of the Prosecutor has been identifying persons who may be reasonably suspected to be responsible for participating in the 1994 genocide against the Tutsi in Rwanda, but who have not yet been investigated and/or prosecuted by judicial authorities in the countries where they may currently be residing. Similarly, law enforcement and prosecutorial authorities, as well as civil society, inter alia, also continue to identify such persons, in particular in Europe.

52. That so many suspected perpetrators of genocide have fled to third countries where they enjoy seeming impunity should be of significant concern. Victims and survivors of the genocide cannot understand how those who wronged them now live in new homes in new countries. It is evident that there has been and continues to be extensive and ongoing abuse of the refugee process by Rwandan nationals who have provided false or misleading information concerning their activities during the 1994 genocide against the Tutsi in Rwanda and/or with the Forces démocratiques de libération du Rwanda.



53. At the request of the Prosecutor General of Rwanda, the Office of the Prosecutor is providing essential assistance to find solutions to this ongoing challenge, including by supporting national efforts to locate, investigate and prosecute Rwandan nationals suspected of genocide, in particular those living outside Rwanda.

54. It is essential that those who bear individual criminal responsibility for crimes committed during the 1994 genocide against the Tutsi in Rwanda are investigated, located and prosecuted. Nearly 30 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 Rwandan authorities, as well as other national justice sectors. 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 support more justice for more victims of the Rwandan genocide.

### **3. Cases referred to France**

55. Laurent Bucyibaruta, the prefect of Gikongoro, was indicted by the International Criminal Tribunal for Rwanda in June 2005 on six counts of genocide, direct and public incitement to commit 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, as Bucyibaruta had already been located in France. The investigation by French authorities was completed in 2018.

56. The trial proceedings commenced on 9 May 2022. On 12 July 2022, Bucyibaruta was convicted of complicity in genocide and crimes against humanity and sentenced to 20 years' imprisonment. It is not currently known when appeals proceedings will be completed.

### **4. Cases referred to Rwanda**

57. Following his arrest on 24 May 2023, Fulgence Kayishema will be brought to trial in Rwanda, as his case was referred to Rwanda by the International Criminal Tribunal for Rwanda on 22 February 2012. The operative arrest warrant provides that Kayishema shall be initially transferred to the custody of the Mechanism in Arusha, whereafter he will be transferred to Rwanda.

58. Legal proceedings for his transfer to the custody of the Mechanism are under way in South Africa. This matter has been significantly delayed by the absence of domestic legislation implementing the obligation of South Africa to cooperate with the Mechanism and surrender Mechanism fugitives. Hearings were conducted before the High Court in Cape Town in August and November, and the case has now been further postponed until March 2024. The Office of the Prosecutor strongly encourages South African authorities to promptly carry out their international legal obligations under the statute and transfer Kayishema to the custody of the Mechanism so that he can then be transferred to Rwanda for trial.

59. The Office of the Prosecutor applauds the efforts of Rwandan authorities to expeditiously complete trial and appeal proceedings in cases referred by the International Criminal Tribunal for Rwanda under rule 11 bis. The *Ntaganzwa* case was fully completed within seven years following his arrest and transfer to Rwanda, while the *Uwinkindi* and *Munyagishari* cases were each completed within approximately eight years following the transfer of the accused to Rwanda. This is a positive demonstration of the capacity of the Rwandan justice sector to efficiently and expeditiously process cases referred by the Tribunal. The Office fully trusts that the prosecution of Kayishema will likewise be expeditiously completed in accordance

with international fair trial standards and will provide support to the National Public Prosecution Authority of Rwanda for this case as requested.

## **C. National justice for crimes committed in the former Yugoslavia**

### **1. Yugoslavia Tribunal completion strategy**

60. As emphasized by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia in his final completion strategy report (S/2017/1001, annex II), the end of the Tribunal's mandate was always envisaged in the completion strategy not as the end of justice for war crimes committed in the former Yugoslavia but as the beginning of the next chapter. Further accountability for the crimes now depends fully on national authorities in the countries of the former Yugoslavia. The work of the Tribunal has created a solid foundation for national judiciaries to continue to implement the completion strategy and secure more justice for more victims.

61. National judiciaries have achieved progress in accountability for war crimes, albeit unevenly among different countries. Looking forward, national judiciaries 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 war criminals prosecuted and convicted by the International Criminal Tribunal for the Former Yugoslavia.

### **2. Regional judicial cooperation**

62. Judicial cooperation among the countries of the former Yugoslavia is essential to ensure that those responsible for war crimes are held accountable. Many suspects are not present in the territory where they are alleged to have committed the crimes, and extradition is blocked. Cooperation to transfer investigations and indictments is thus essential to achieve justice. As reported in the Mechanism's thirteenth progress report (S/2018/1033), regional judicial cooperation in war crimes matters among the countries of the former Yugoslavia has been at its lowest level in recent years.

63. With regional prosecutors and authorities, the Office of the Prosecutor has been working intensively over the past several years to reverse this trend. As noted in the twenty-first progress report (S/2022/866), these efforts continue to generate notable improvements in regional cooperation in war crimes cases among Bosnia and Herzegovina, Montenegro and Serbia. However, cooperation remains challenging with Croatia, owing to political interference in the justice process and a policy to not provide judicial cooperation in war crimes cases.

64. The regional conference on war crimes prosecutions held in Sarajevo in September 2023 was productive. Notably, unlike in 2022, a delegation from Croatia participated in the conference as observers. The participants acknowledged that regional judicial cooperation in relation to complex war crimes cases is not satisfactory and committed to accelerating efforts to improve cooperation. It was agreed that continued engagement and support from the Office of the Prosecutor is critical to this work. Concrete steps to improve regional judicial cooperation were identified and agreed upon. The Office will engage intensively with partners to support and monitor their implementation in the coming period.

65. More remains to be done to strengthen regional judicial cooperation in war crimes cases. Hundreds of cases, including complex cases against senior- and mid-level accused, are yet to be transferred from Bosnia and Herzegovina for prosecution elsewhere, predominately in Croatia and Serbia. The transfer process for many cases has not even been initiated, and, even where it has begun, far too much

time is required to finalize the transfer and for prosecutions to commence. In the cases already transferred through regional judicial cooperation, there is a notable trend of victims and witnesses failing to appear to testify in courts in neighbouring countries. While this trend is understandably attributable to the frailty of many witnesses owing to old age and illness, it also reflects a measure of distrust in regional accountability efforts. Prosecutors, judges and other justice authorities all have a vital responsibility to move forward and facilitate the process, build witnesses' understanding of the transfer process and improve their confidence in the proceedings in order to ensure justice for the victims. The number of cases transferred and witnesses appearing in trials will demonstrate whether they are meeting this responsibility.

66. As previously reported, a large backlog of pending requests developed in Croatia owing to the previous decision to refuse to provide cooperation in war crimes cases. In early 2023, following intensive engagement by the Office of the Prosecutor, the Ministry of Justice of Croatia began to transfer these pending requests to the competent authorities for execution. Nineteen such requests have been processed, but more than sixty are still pending. New requests are also being submitted. The Office trusts that Croatian authorities will more expeditiously process pending and new requests so that the justice process can move forward.

67. Cooperation between Croatia and Serbia is another critical area where there is unfortunately still no progress to report. The Office of the Prosecutor has previously noted the standstill in long-standing bilateral negotiations between Croatia and Serbia to establish agreement on a framework for war crimes cases, including in the Mechanism's fourteenth progress report (S/2019/417). The status quo only ensures effective impunity and is untenable. The Office reiterates its willingness to assist in finding a solution so that the transfer of cases between these two countries can finally begin.

68. The Office of the Prosecutor urges prosecution offices, judiciaries and justice ministries throughout the former Yugoslavia to urgently and proactively ensure that regional judicial cooperation in war crimes matters is on the right track.

### **3. Bosnia and Herzegovina**

69. In preparation for the present report and to continue engagement with national authorities, the Prosecutor visited Sarajevo from 13 to 20 September, and met with the High Representative for Bosnia and Herzegovina, the Chief Prosecutor, Milanko Kajganić, representatives of victims and survivors and members of the diplomatic community. The Office of the Prosecutor otherwise continued its close cooperation with the Prosecutor's Office of Bosnia and Herzegovina, including through assistance on concrete cases, strategic support and activities for the transfer of lessons learned.

70. During the reporting period, the Prosecutor's Office of Bosnia and Herzegovina filed 7 indictments against 29 suspects, while 12 cases against 314 persons were terminated or closed owing to insufficient evidence. In addition, the Prosecutor's Office of Bosnia and Herzegovina transferred four cases against four suspects to foreign countries. The remaining backlog at the Prosecutor's Office comprises 259 cases against 2,811 persons. Of these, 125 cases against 785 persons are under investigation, and the remaining cases are in the pre-investigative phase.

71. The Office of the Prosecutor is committed to continuing to support the work of the Prosecutor's Office of Bosnia and Herzegovina, in particular in the mutual goal of successfully implementing the National War Crimes Strategy. The Office of the Prosecutor is already providing direct case assistance to the Prosecutor's Office of Bosnia and Herzegovina, as well as responding to large numbers of requests for assistance. The Office of the Prosecutor continues to develop this collaboration and cooperation in three key areas.

72. First, there is a significant backlog of more than 115 investigations in Bosnia and Herzegovina that concern more than 344 suspects known to reside outside the country, primarily in Serbia and Croatia. In addition, there are 45 confirmed indictments in Bosnia and Herzegovina that concern 48 accused known to reside outside the country, again primarily in Serbia and Croatia. This constitutes a total of more than 450 individuals suspected of or indicted for war crimes yet to be extradited to Bosnia and Herzegovina or prosecuted in their country of current residence. The Office of the Prosecutor is working to facilitate the transfer of the proceedings, in particular key cases and case files involving senior- and mid-level officials, to the jurisdictions where the suspects or accused reside for further processing. The Office of the Prosecutor hopes to report on concrete progress in this area in the next reporting period.

73. Second, the Office of the Prosecutor continues to collaborate with Prosecutor's Office of Bosnia and Herzegovina to advance its ongoing investigations and prosecutions. The Chief Prosecutor of Bosnia and Herzegovina has identified 24 priority cases for which investigations should be completed and prosecutorial decisions made before the end of the year. The Office of the Prosecutor is directly assisting the Prosecutor's Office of Bosnia and Herzegovina with a large number of these priority investigations and has provided legal and analytical memorandums, evidentiary materials and strategic advice in response to nine priority cases.

74. Third, there are still significant impunity gaps that remain to be addressed by the Prosecutor's Office of Bosnia and Herzegovina. To address this challenge, the Prosecutor's Office of Bosnia and Herzegovina has requested the Office of the Prosecutor to prepare an investigative dossier for one notable crime base for which further prosecutions are urgently needed. The Office of the Prosecutor is currently preparing the requested dossier and will be collaborating intensively in the coming period with Bosnian prosecutors on this matter.

75. Overall, and taking into account the completion strategy of the International Criminal Tribunal for the Former Yugoslavia, the next few years will be critical to delivering more justice for war crimes in Bosnia and Herzegovina. There remains a significant backlog of cases to investigate and prosecute, and it is clear that the remaining cases are likely to be among the most challenging. Completing this work, even under ideal circumstances, will take many years, and the passage of time only heightens the urgency of working more expeditiously. The Office of the Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina will also continue to strengthen their cooperation.

#### **4. Croatia**

76. During the reporting period, the Office of the Prosecutor continued to engage with the State Attorney's Office and the Ministry of Justice.

77. In its twenty-first progress report (S/2022/866), which built on previous reports, the Office of the Prosecutor detailed its highly negative assessment of war crimes justice in Croatia. Over the past decade, cooperation by Croatia regarding war crimes cases with national judiciaries in the region has significantly worsened, while the efforts of the Croatian justice sector have been concentrated on in absentia prosecutions of ethnic Serbs. As a result, Croatian victims do not receive real justice, while Croatian perpetrators continue to enjoy impunity.

78. The Office of the Prosecutor has extensively engaged with Croatian authorities to find a better path forward. In a notable development earlier in 2023, the Ministry of Justice of Croatia acknowledged that, first, Croatia has not been processing numerous requests for assistance from neighbouring countries, and, second, that there is a meaningful number of war crimes cases against Croatian citizens, in particular

for crimes committed in Bosnia and Herzegovina, still to be processed. In addition, it was symbolically important that Croatian prosecutors resumed their participation in processes such as the annual conference of regional war crimes prosecutors, albeit as observers rather than as full participants as in the past.

79. The next steps will be even more critical. While 19 long-pending requests for cooperation have now been answered by Croatian authorities, there is still a backlog of more than 60 requests for assistance from prosecutors in the region. The process of executing and responding to these requests needs to be expedited. All these requests represent cases to be transferred to Croatia for prosecution. The large majority involve Bosnian Croats now residing in Croatia who are suspected of committing war crimes and crimes against humanity against Bosnians in Bosnia and Herzegovina. As Croatia will not extradite the suspects to Bosnia and Herzegovina, they can be prosecuted only in Croatia. Justice demands that Croatian prosecutors proactively cooperate with their counterparts in Bosnia and Herzegovina to ensure that the case files are swiftly transferred and the indictment decisions promptly made. The Office of the Prosecutor fully expects that the State Attorney's Office will dedicate resources to effectively processing transferred cases and will report on future developments.

80. Relatedly, the Office of the Prosecutor has been monitoring four important pending cases in which there have been significant delays. During the reporting period, a first instance judgment was issued in the *Glavaš* case, a category II case referred to the State Attorney's Office of Croatia, retried following the revocation by the Constitutional Court, on formalistic grounds, of a 2009 convicting judgment. former Major General in the Croatian Army and Member of the Croatian Parliament, Branimir Glavaš was found guilty of the torture and execution of Croatian Serb civilians and sentenced to seven years' imprisonment. The Office of the Prosecutor welcomes the completion of this trial, which concerns grave crimes committed against Croatian Serb civilians. Three category II case files involving Croatian suspects remain under investigation, notwithstanding that extensive investigations have already been undertaken by the Office of the Prosecutor and the alleged criminality of the suspects is well-documented in International Criminal Tribunal for the Former Yugoslavia judgments. The Office of the Prosecutor urges the Croatian State Attorney to ensure that prosecutorial decisions are made expeditiously and reiterates its past offers to assist.

81. Overall, and taking into account the completion strategy of the International Criminal Tribunal for the Former Yugoslavia, war crimes accountability in Croatia is not currently on the right track. The Office of the Prosecutor calls upon the Government of Croatia to serve as the model that it should be and live up to its international obligations.

## **5. Montenegro**

82. In preparation for the present report and to continue engagement with national authorities, the Office of the Prosecutor visited Podgorica from 17 to 19 November and met with the Chief Special State Prosecutor Vladimir Novović, the State Secretary of the Ministry of Justice, civil society and members of the diplomatic community. At the request of the Montenegrin authorities, the Office 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. It is well understood that, to date, insufficient justice for war crimes has been achieved in Montenegro.

83. The Special State Prosecutor's Office currently has seven war crimes cases in the pre-investigative phase. Three relate to crimes committed in Bosnia and Herzegovina, and three relate to war crimes committed in Croatia. Two of these

pre-investigations relate to the investigative dossiers prepared by the Office of the Prosecutor. One case against one accused is currently at trial.

84. Recognizing the challenges to efficiently and effectively completing the ongoing investigations, the Chief Special State Prosecutor requested the Office of the Prosecutor to strengthen its assistance to Montenegrin war crimes prosecutors. The Special State Prosecutor's Office and the Office of the Prosecutor agreed to establish a joint task force to further increase their cooperation and move these investigations forward. It was also agreed that the Special State Prosecutor's Office would prioritize these investigations and allocate additional resources to them. Lastly, it was agreed that the Special State Prosecutor's Office would work intensively, with the assistance of the Office of the Prosecutor, to complete a meaningful number of investigations in the next two to three years, with the full expectation that indictments will be filed and trials would commence thereafter. It is anticipated that the first operational meeting of the task force will be held in The Hague shortly after the end of the reporting period.

85. During the reporting period, and as previously requested, the Office of the Prosecutor reviewed its evidence to identify Montenegrin nationals who are suspected of involvement in war crimes and crimes against humanity. The Office of the Prosecutor prepared and handed over to the Special State Prosecutor's Office a second investigative dossier concerning one individual suspected of having participated in the unlawful detention, systematic mistreatment and/or killings of civilians and the forcible transfer of civilian groups. The Office of the Prosecutor will continue to provide assistance and support to the Special State Prosecutor's Office to ensure the effective and efficient processing of this case file.

86. Important reforms in domestic law to support war crimes justice are currently under way. As previously reported, drawing on its expertise, the Office of the Prosecutor identified legislative changes that would allow for the introduction of evidence from the International Criminal Tribunal for the Former Yugoslavia and the Mechanism in Montenegrin proceedings, and facilitate the effective prosecution of conflict-related sexual violence cases. The proposed legal amendments have been prepared and await adoption by Parliament. The Office will continue to provide support, as requested, to ensure progress in these and other important areas.

87. Overall, and taking into account the completion strategy of the International Criminal Tribunal for the Former Yugoslavia, war crimes justice in Montenegro is only at the beginning. There has been almost no accountability for Montenegrin citizens who committed crimes during the conflicts. Nonetheless, the Montenegrin authorities have accepted that far more needs to be done and continue to take steps towards ensuring that Montenegro can secure much more justice and meet its commitments. The Office of the Prosecutor is committed to providing needed support and hopes to be able to report in the future that war crimes justice in Montenegro is achieving concrete results.

## **6. Serbia**

88. The Office of the Prosecutor continued its engagement and cooperation with Serbian authorities, including the Chief War Crimes Prosecutor of Serbia. Serbian authorities reiterated their commitment to strengthening cooperation with the Office as a means of supporting the implementation of the National War Crimes Strategy and the prosecutorial strategy.

89. During the reporting period, the Serbian War Crimes Prosecutor's Office issued no new indictments. As at the end of the reporting period, the Serbian War Crimes Prosecutor's Office was conducting 29 active investigations against 81 suspects. In Serbia, as at the end of the reporting period there were 18 ongoing war crimes trials

involving 20 accused. One first instance judgment and one second instance judgment were issued during the reporting period.

90. As previously reported, proceedings in the three category II cases transferred to Serbia from Bosnia and Herzegovina are ongoing, and the Office of the Prosecutor continues to monitor their progress. In addition, the Office continues to actively engage with the Serbian War Crimes Prosecutor's Office in relation to two case files involving senior-level accused that had previously been handed over by the Office of the Prosecutor. One investigation is still ongoing, while the trial against Milenko Živanović, a former commander of the Drina Corps of the Bosnian Serb Army and the highest-ranking person in Serbia to be charged with war crimes, continues.

91. As previously reported, in April 2023 the Office of the Prosecutor handed over to the Serbian War Crimes Prosecutor's Office a comprehensive investigative dossier concerning two Serbian citizens suspected of serious crimes, including forcible transfer and deportation, murder, inhumane treatment, plunder and wanton destruction (S/2023/357, para. 86). During the reporting period, the Office of the Prosecutor transferred accompanying crime-base reports detailing the extensive crimes committed in 10 villages and towns linked to the suspects. The handover of the investigative dossier is an important opportunity for Serbian prosecutors to demonstrate their commitment to addressing impunity and prosecuting cases against senior- and mid-level officials. The Office of the Prosecutor will continue to assist the Serbian War Crimes Prosecutor's Office in conducting investigations and moving the case file forward.

92. Looking forward, there are more than 100 cases to be transferred from Bosnia and Herzegovina to Serbia for prosecution. In the past several years, cooperation among Bosnian, Serbian and Office of the Prosecutor prosecutors has demonstrated that such cases can be successfully transferred and prosecuted in Serbian courts. What is needed now is a dramatic increase in the number of cases transferred, as well as a focus on complex cases. The Office of the Prosecutor has encouraged the Serbian Ministry of Justice to ensure that the Serbian War Crimes Prosecutor's Office and Serbian courts have the material and legal capacity to expeditiously and effectively manage this very significant workload in the coming years.

93. Overall, and taking into account the completion strategy of the International Criminal Tribunal for the Former Yugoslavia, Serbia finds itself at an important juncture. There are still hundreds of cases to be prosecuted in Serbia, in particular involving senior- and mid-level officials and complex crime campaigns. These individuals have enjoyed impunity in Serbia for decades, and significant efforts must be made if meaningful accountability is to be achieved. Victims, the public and other stakeholders rightly hope to see further signs that there is the will to realize the commitments made in the National War Crimes Strategy. Future developments in key case files will be an important indicator in that regard.

#### **D. Denial and glorification**

94. During the reporting period, the Prosecutor and the Special Adviser on the Prevention of Genocide, with the International Nuremberg Principles Academy, organized a conference on genocide denial and its criminalization, held in Nuremberg, Germany, from 19 to 21 October 2023. The conference addressed genocide denial in the context of the Holocaust, the 1994 genocide against the Tutsi in Rwanda and the Srebrenica genocide and included the participation of survivors and victims. Discussions reviewed international and national efforts to address genocide denial, including prevention and punishment, as well as legal responses to denial, including speech crimes.

## **1. Rwanda**

95. 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, from 6 April to 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group. Establishing that and other facts relating to 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.

96. Nonetheless, genocide denial continues today. Efforts to minimize the scale of the death and destruction or distract attention from the judicially established facts of the genocide are intolerable and unacceptable. There are no other facts or circumstances that in any way alter the truth that, over just 100 days in Rwanda, hundreds of thousands of innocents were senselessly targeted, murdered, tortured, raped and forced to flee their homes because they were Tutsi. Genocide ideology continues to present clear risks to international peace and security. Ideologies of discrimination, division and hate are factors promoting conflict and crimes in places around the globe.

97. The Office of the Prosecutor firmly rejects genocide denial and is committed to promoting education and remembrance as key tools in the fight against genocide ideology. The Prosecutor continues to highlight the importance of these efforts. The Office also reiterates its commitment to vigorously investigating and prosecuting those who interfere with witnesses with the aim of falsely undermining the established facts of the genocide committed in Rwanda.

## **2. Former Yugoslavia**

98. The Office of the Prosecutor has regularly reported that the denial of crimes and the non-acceptance of facts established in the judgments of the International Criminal Tribunal for the Former Yugoslavia are widespread throughout the region of the former Yugoslavia. Convicted war criminals are often glorified as heroes. Students in different countries, including within Bosnia and Herzegovina itself, are taught widely different and irreconcilable versions of the recent past. Anniversaries of crimes committed during the conflict, which should be used as opportunities for remembrance and reconciliation, are often co-opted to promote denial, revisionism and the glorification of war criminals. Throughout the region, convicted war criminals regularly appear in the media, at round tables and at other public events as experts and featured speakers. The Office has expressed its grave concern in this regard and has 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.

99. Unfortunately, negative developments continued during the reporting period. In Croatia, the President decorated a unit of the Bosnian Croat Army responsible for war crimes, whose commander was convicted by the International Tribunal for the Former Yugoslavia. In the Republika Srpska, the President continued to deny the Srebrenica genocide and other war crimes. In Serbia, senior public officials persist with their denials of war crimes and glorify convicted war criminals, including during debates in Parliament. Cities throughout Serbia are covered with murals of Ratko Mladić; more than 300 have now been counted, most of them in Belgrade. Adding to these alarming trends is the prosecution in Serbia of individuals who protest the public glorification of war criminals.



100. These are not the words and acts of the margins, but of the political and cultural centres of the region's societies. The glorification of war criminals and revisionist denials of recent atrocities have been mainstreamed to a shocking degree, encouraged and supported by leaders from all communities.

101. 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. They should publicly condemn the denial of crimes and glorification of war criminals, rather than supporting them with public rhetoric, divisive actions and funds. A break with the rhetoric of the past is long overdue, and leadership in favour of reconciliation and peacebuilding is urgently needed.

## **E. Missing persons**

102. The search for persons still missing from the conflicts in the former Yugoslavia continues 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 more than 12,000 missing persons still do not know the fates and whereabouts of their loved ones. The search for and exhumation of remains from mass graves and the subsequent identification of the remains need to be accelerated. Further progress on these issues is a humanitarian imperative and fundamental to reconciliation in the former Yugoslavia. Missing persons from all sides of the conflicts must be located, identified and returned to their families.

103. 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 signed in October 2018. This important agreement enables ICRC to access the evidence collection of the Office to obtain information that may assist for purely humanitarian purposes 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 case files to domestic missing persons authorities for action. From 16 May to 15 November 2023, the Office responded to 129 requests for assistance from ICRC and handed over 4,000 documents comprising nearly 131,000 pages, as well as six audiovisual records. The Office also continued to provide extensive investigative assistance and operational support to national authorities searching for missing persons.

104. Support provided by the Office of the Prosecutor contributed to the overall process of clarifying the fate and whereabouts of missing persons. During the reporting period, information from the Office assisted in locating five grave sites, where at least 13 individuals were exhumed. The DNA identification process is ongoing. The information from the Office also assisted in clarifying the fate and whereabouts of an additional 38 missing persons. Overall, in the five years since initiating its cooperation with ICRC in October 2018, the Office has searched for information in its evidence collection concerning approximately 10,000 missing persons.

## **F. Capacity-building**

105. The Office of the Prosecutor continued its efforts, within its existing limited resources, to build capacity in national judiciaries prosecuting war crimes. The focus of the Office is on the Great Lakes region and the former Yugoslavia. Strengthening national capacities supports the principle of complementarity and national ownership

of post-conflict accountability. During the reporting period, the Office conducted a training programme on international crimes for prosecutors from Kenya, Rwanda, South Sudan, Uganda and the United Republic of Tanzania. The Office also conducted seminars on the prosecution of conflict-related sexual violence crimes for prosecutors from Eswatini and Ghana. These were financed by the Konrad Adenauer Stiftung.

106. 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 its capacity-building and training efforts.

#### **IV. Other residual functions**

107. In its twenty-first progress report (S/2022/866), the Office of the Prosecutor noted challenges that are arising in the application of rule 86 of the Rules of Procedure and Evidence of the Mechanism. Rule 86 governs the variation of protective measures granted to the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia and Mechanism witnesses to enable national prosecutors and courts to access that evidence. As the Office noted, in the course of their own investigations, national investigators and prosecutors often realize that a protected witness of the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia or the Mechanism has provided testimony critical to those investigations. To obtain access to that evidence, the national prosecutor must then file a motion under rule 86.

108. Through feedback from national counterparts, the Office of the Prosecutor identified that, in many situations, rule 86 motions have been denied and national prosecutors have not been granted access to the evidence of protected witnesses. In some situations, the case was delayed, but national prosecutors were able to find alternative witnesses to assist in their investigations and prosecutions. In other situations, however, the national investigation was ultimately suspended or charges for some crimes were dropped because there was insufficient evidence without the evidence of the protected witness.

109. Recognizing that, under the completion strategies of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, national prosecutions are essential to continue the justice process begun by the ad hoc tribunals, the Office of the Prosecutor considered it critical to bring this issue to the attention of the plenary, as well as to seek amendments to the rules to better support national justice efforts. However, the plenary decided to maintain the status quo and did not adopt the proposed rule amendments.

110. The Office of the Prosecutor continues to believe that the protection of witnesses and the provision of assistance to national jurisdictions are complementary functions, in particular as national authorities already have primary responsibility in practice for safeguarding protected witnesses of the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia and the Mechanism. The Office also recognizes that national prosecutors cannot meet their responsibilities and victims' desire for justice without full support from the Mechanism. The Office will continue to advocate that the Mechanism, in performing its residual functions, do its utmost to promote more justice for victims and survivors.

## V. Management

111. The Office of the Prosecutor is committed to managing its staff and resources in line with the Security Council's instructions that the Mechanism be a small, temporary and efficient structure. The Office continues to be guided by the Council's views and requests as set forth in, inter alia, paragraphs 18 to 20 of resolution 2256 (2015), paragraphs 7 and 8 of resolution 2422 (2018) and paragraphs 7, 9 and 10 of resolution 2637 (2022). 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 from either branch as necessary.

112. The Office of the Prosecutor reduced its resources and staff consistent with the completion of the final case transferred from the International Criminal Tribunal for the Former Yugoslavia, *Stanišić and Simatović*. On 30 April 2023, the Office officially closed its Sarajevo field office, the final remaining field office in the former Yugoslavia. Additional positions were downsized on 30 June following the delivery of the *Stanišić and Simatović* appeal judgment. To ensure that the Office can continue to carry out its mandate following the closure of the Sarajevo Field Office, the Office will, from The Hague, maintain contact with relevant interlocutors in the region and travel regularly to the region for engagement and activities in relation to mandated functions.

113. As the Office of the Prosecutor continues to maintain "lean" staffing, the Office is regularly confronting workloads that exceed its resources, placing a heavy burden on staff. As the Office cannot defer mandated activities and must continue to meet its legal responsibilities in accordance with judicially ordered timelines, Office staff members have been required to take on additional responsibilities and work extensive hours. The Office is grateful for the continued dedication and commitment of its staff. Nonetheless, the Office underscores that full approval of its limited budget requests is necessary to ensure the expeditious completion of trials and appeals and the achievement of its other mandated functions.

## VI. Conclusion

114. During the reporting period, the Office of the Prosecutor completed one of its most important residual functions with the delivery of the appeal judgment in the *Stanišić and Simatović* case and the issuance of an indefinite stay of proceedings in the *Kabuga* case. This marks the conclusion of the final war crimes, crimes against humanity and genocide trials of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia. While international trials in Arusha and The Hague have now ended, the accountability process continues for crimes committed during the 1994 genocide against the Tutsi in Rwanda and the conflicts in the former Yugoslavia.

115. The Prosecutor General of Rwanda and national war crimes prosecutors in the former Yugoslavia continue to emphasize that assistance from the Office of the Prosecutor is vital and necessary for them to investigate and prosecute more cases in national courts. Rwandan authorities are still seeking to bring to justice more than 1,000 fugitive *génocidaires*, while prosecutors in the former Yugoslavia still have more than 1,000 suspected war criminals to investigate and prosecute. By responding to requests for assistance and providing a wide range of legal, investigative, prosecutorial and strategic support, the Office enables Member States to achieve more justice for the crimes committed, implement their national priorities and strengthen the rule of law.

116. The arrest of Fulgence Kayishema on 24 May 2023 is of immense importance to the victims and survivors of his crimes, the Rwandan people and the Government of Rwanda. Having also announced on 14 November its conclusion that Aloys Ndimbati is deceased, the Office of the Prosecutor closed two more fugitive files during the reporting period, in addition to the four files closed from 2020 to 2022. There are now only two fugitives remaining, Charles Ryandikayo and Charles Sikubwabo. The Office anticipates completing this work by the end of 2024, in advance of previous projections. The Office trusts that it will continue to enjoy the full support of the Security Council to deliver on the commitment to account for all persons indicted by the International Criminal Tribunal for Rwanda for crimes committed during the 1994 genocide against the Tutsi. The victims deserve nothing less.

117. 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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