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**Letter dated 16 November 2021 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 should be grateful if you would transmit the present letter and its annexes to the Security Council.

*(Signed)* Carmel Agius  
President



**Annex I**

[Original: English and French]

**Assessment and progress report of the President of the  
International Residual Mechanism for Criminal Tribunals,  
Judge Carmel Agius, for the period from 17 May to 15 November 2021**

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1. The present report, the nineteenth in a series, is submitted pursuant to Security Council resolution [1966 \(2010\)](#), by which the Council established the International Residual Mechanism for Criminal Tribunals. In paragraph 16 of that resolution, the Council requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Council on the progress of the work of the Mechanism.<sup>1</sup> The same reporting requirement is reflected in article 32 of the statute of the Mechanism (resolution [1966 \(2010\)](#), annex 1). Information contained in the present report is also included pursuant to paragraph 10 of Council resolution [2529 \(2020\)](#).

## I. Introduction

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

3. Pursuant to resolution [1966 \(2010\)](#), the Mechanism was tasked to operate for an initial period of four years and, subsequently, for periods of two years, following reviews of the progress of its work, unless the Security Council decided otherwise. The Council concluded its third such review of the Mechanism's progress in 2020 with the adoption of resolution [2529 \(2020\)](#). It is due to undertake its fourth review in 2022. In connection with that process, in October 2021, the Office of Internal Oversight Services (OIOS) commenced an evaluation of the methods and work of the Mechanism, focusing on the implementation of outstanding recommendations from previous evaluations.

4. The Mechanism looks forward to engaging once more with the Security Council and its Informal Working Group on International Tribunals, as well as with OIOS, for the purposes of assessing the Mechanism's performance and identifying areas in which operations might be further enhanced. In the meantime, it continues to implement the recommendations made in 2020 by the Informal Working Group, as reflected in paragraph 9 of Council resolution [2529 \(2020\)](#), and the recommendations made by OIOS following previous evaluations of the Mechanism ([S/2020/236](#) and [S/2018/206](#); see also paras. 159–165 below).

5. During the reporting period, the Mechanism again made strong progress despite the ongoing vicissitudes of the coronavirus (COVID-19) pandemic. Notably, thanks to the exceptional dedication of its judges and staff, the Mechanism was able to keep its caseload on track and deliver three judgments, in line with earlier projections. In The Hague, the appeal judgment in *Prosecutor v. Ratko Mladić* was delivered on 8 June 2021, while the trial judgment in *Prosecutor v. Jovica Stanišić and Franko Simatović* was pronounced on 30 June 2021. In Arusha, the trial judgment in the multi-accused contempt case of *Prosecutor v. Anselme Nzabonimpa et al.* was pronounced on 25 June 2021.<sup>2</sup>

6. Following those significant events, the Mechanism entered a new chapter in its judicial activities during the reporting period. Appeal proceedings commenced in relation to the judgments delivered in both the *Stanišić and Simatović* case and the

<sup>1</sup> Unless otherwise specified, figures set out in the present report are accurate as at 15 November 2021.

<sup>2</sup> As previously reported, this case was formerly known as *Prosecutor v. Maximilien Turinabo et al.*; see [S/2021/487](#), annex I, paras. 5 and 72.

*Nzabonimpa et al.* case. Given that only one of the co-accused in the *Nzabonimpa et al.* case filed a notice of appeal, in addition to the Office of the Prosecutor (the Prosecution) appealing the outcome of the judgment in respect of two other co-accused, the latter appeal case is now named *Prosecutor v. Marie Rose Fatuma et al.* Separately, the pretrial proceedings in *Prosecutor v. Félicien Kabuga* continued to advance.

7. Alongside those cases, the judges and staff once more worked hard to ensure further progress in the Mechanism's continuous judicial functions. Over the past six months, those judicial functions concerned numerous matters arising from the Mechanism's supervision of the enforcement of sentences, as well as the protection of victims and witnesses, contempt of court issues and *non bis in idem* proceedings. The Mechanism was equally determined to make headway in its other residual functions, which include tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda, providing assistance to national jurisdictions, managing the archives of the ad hoc Tribunals and the Mechanism and monitoring cases referred to national jurisdictions.

8. In detailing the Mechanism's activities and focused efforts in all of the above-mentioned areas, the present report demonstrates its unwavering commitment to realizing the Security Council's vision of the Mechanism as a small, temporary and efficient structure, whose functions and size will diminish over time.

9. The report also reflects the utmost seriousness with which the Mechanism undertakes its responsibilities to the accused, detained and convicted persons under its supervision, both during the pandemic and more generally. As a judicial institution, the Mechanism remains conscious at all times of its duties to safeguard the rights and health of those persons in accordance with the highest international standards. It has continued to proactively monitor the COVID-19 situation as it relates to convicted persons and those detained on the authority of the Mechanism, while also remaining mindful of paragraph 11 of resolution 2529 (2020).

10. At the same time, the well-being of the Mechanism's judges, staff members and non-staff personnel is of paramount importance. Building upon the strong measures already in place to ensure the health and safety of staff and others on site, and following the relaxation of restrictions and the roll-out of vaccination campaigns, the Mechanism moved to a full return of staff to premises at all duty stations in mid-September 2021. The implementation of that process is ongoing. The Mechanism considers this to be an important step towards ensuring the optimal fulfilment of its mandate within the "new normal" of the global health crisis.

11. Wherever possible, the present report reflects detailed projections of the duration of residual functions entrusted to the Mechanism, in accordance with Security Council resolution 2529 (2020), as well as the second recommendation contained in the OIOS evaluation report of 2020 (S/2020/236, para. 67). It must be noted that such projections are based on information available at the time of writing and therefore subject to modification in the event of evolving circumstances.

## II. Structure and 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, which provides administrative services for the Mechanism, including the Chambers and the Prosecutor. The work of the Chambers and the Registry is discussed in the present annex, while the activities of the Prosecution are detailed in annex II.

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, responsible for the overall execution of its mandate, assigning judges to cases, presiding over the Appeals Chamber and carrying out other functions specified in the statute and the Rules of Procedure and Evidence of the Mechanism. The Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute, while the Registrar has overall responsibility for the administration and servicing of the institution, under the authority of the President.

14. The President and the Registrar are appointed by the Secretary-General for terms of two years, as are all of the judges on the judicial roster of the Mechanism. By contrast, the Prosecutor is appointed by resolution of the Security Council for a term of two years.

15. The current terms of the principals and judges run until 30 June 2022. President Carmel Agius is based in The Hague, while Prosecutor Serge Brammertz and Registrar Abubacarr Tambadou are based in Arusha. Further information on the judges of the Mechanism is provided below.

## **B. President**

16. The President oversaw the work and progress of the Mechanism during the reporting period, with a specific focus on maintaining business continuity and preventing any delays in the judicial caseload. Together with the Prosecutor and the Registrar, the President continued to proactively lead the Mechanism through the COVID-19 pandemic, striving to maximize the efficiency and effectiveness of operations while also safeguarding the health and safety of those under the Mechanism's care. Strategic communication and cooperation between the principals and organs once more proved critical to the Mechanism's ability to remain responsive to the changing circumstances and, at the same time, maintain positive momentum. In that context, the recommendation contained in the 2020 report of OIOS to ensure systematic thinking and planning about the future through, *inter alia*, bolstering coordination and information-sharing on matters affecting the principals equally (*ibid.*, para. 66), which is reflected in paragraph 9 of resolution [2529 \(2020\)](#), continued to be of particular value. The collaborative approach of the President and other principals was exemplified by their joint decision to have a full return of staff to premises in mid-September 2021, following advice from the Mechanism's COVID-19 Steering Committee.

17. Throughout the reporting period, and in accordance with rule 25 of the Rules of Procedure and Evidence, the President convened and chaired regular meetings of the Coordination Council, during which the three principals discussed cross-cutting issues affecting all organs. The Office of the President coordinated efforts in relation to the development of the Mechanism's general scenario-based plan to inform decisions on the allocation of resources and preparation for unforeseen and foreseeable events, in line with the same recommendation of OIOS.

18. Against the backdrop of the global health crisis, the President remained firmly committed to making progress with respect to the core priorities of his presidency: the timely and efficient conclusion of the Mechanism's existing judicial proceedings, while ensuring due process and fundamental rights; harmonizing practices and procedures between the Mechanism's two branches; and fostering high staff morale and performance.

19. Concerning his first priority, in accordance with the Mechanism's legal framework, the President was responsible for managing the judicial roster and coordinating the work of the Chambers. Within the parameters of that role, through

close cooperation with the judges and with the superb support of the Chambers Legal Support Section, the President did his utmost to ensure that the projected timelines for the delivery of judgment in the *Mladić* case, *Stanišić and Simatović* case and *Nzabonimpa et al.* case could be met and that the proceedings in the *Kabuga* case could keep advancing. In that regard, the Office of the President again worked closely with the Legal Support Section, as well as with Registry sections that directly support judicial activity, where appropriate, including the Information Technology Services Section, the Judicial Records and Court Operations Unit and the Language Support Services, as well as the General Services Section. That collaboration ensured the optimal use of resources and the provision of all necessary assistance to the relevant judges.

20. In addition to the above-mentioned responsibilities, the President continued to exercise his own judicial functions, including as the presiding judge of the Appeals Chamber and pre-appeal judge in the new appeal proceedings in the *Stanišić and Simatović* case and the *Fatuma et al.* case. In the context of the Mechanism's supervision of persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism, the President dealt with numerous applications for pardon, commutation of sentence or early release. He also issued two further orders for regular COVID-19 updates from enforcement States.<sup>3</sup>

21. With respect to the President's second priority, the Mechanism again focused on identifying areas in which working methods across branches might be further harmonized and streamlined and coordination improved. For example, during the reporting period, the Office of the President and the Registry engaged in working-level consultations on practices and procedures concerning the filing and retention of judicial records, with a view to subsequently updating the relevant practice directions and other policy documents, as necessary.

22. In relation to the President's third priority, the delivery of three judgments during the reporting period is a clear indicator that the performance aspect of this priority was achieved. However, staff morale was once more affected by the COVID-19 pandemic as well as the downsizing and budget cuts on staffing levels. Indeed, as a downsizing institution, the conclusion of key activities by the Mechanism is inextricably linked with reductions in staffing, which in turn have a detrimental effect on morale that is amplified when many of the same persons are instrumental in achieving the results. This is a challenge that will persist as the Mechanism works towards completing its mandate. Further reductions owing to budget cuts have also resulted in remaining staff members being excessively burdened.

23. While enhanced efforts will be required in the coming months to improve staff morale, steps were already taken during the reporting period to mitigate the impact of the above-mentioned factors. Mindful of their concerns, the President continued to emphasize the importance of timely, clear and transparent communications with staff members. In addition to receiving regular broadcast messages and being able to access dedicated information pages on the Mechanism's internal website, staff members were given several opportunities to engage directly with the President, the other principals and senior management. Staff were also able to connect with colleagues and raise issues of concern at a town hall meeting held by videoconference in late May 2020, complemented by detailed information sessions, with another town hall expected before the end of 2021. Lastly, the President and other principals consulted with the staff union in the lead-up to the full return of staff to premises and took the views of staff members into account in reaching their final decision.

<sup>3</sup> In relation to these and other judicial activities of the President, see paras. 74–78 of the present report.

24. Two additional areas of focus were of continued importance to the President, namely, strengthening the relationships between the Mechanism and the Governments and peoples of Rwanda and the countries of the former Yugoslavia and taking action on gender issues within the Mechanism, including in his capacity as an International Gender Champion. With respect to the former, the COVID-19 pandemic again hampered the President's ability to conduct missions in person during the reporting period. However, that did not affect his close communications with the States concerned. On the contrary, the President continued to hold virtual meetings with officials and other stakeholders from the affected communities, including victims' associations, and delivered a pre-recorded video message during the twenty-sixth commemoration of the genocide in Srebrenica in July 2021.

25. In June 2021, the President addressed the Security Council by videoconference to present the Mechanism's eighteenth progress report. During that mission, the President also briefed the Informal Working Group on International Tribunals and held virtual meetings with representatives of Member States and high-level representatives of the United Nations. In October 2021, the President travelled to United Nations Headquarters for the purposes of addressing the General Assembly and presenting the ninth annual report of the Mechanism. While in New York, the President was also pleased to be able to meet with the President of the General Assembly, as well as representatives of Member States and Secretariat officials.

### C. Judges

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

27. During the reporting period, the Mechanism was delighted to welcome Judge Fatimata Sanou Touré (Burkina Faso) onto its judicial roster. Judge Sanou Touré was appointed by the Secretary-General, effective 12 August 2021, to replace Judge Gberdao Gustave Kam (Burkina Faso), who very sadly had passed away in the previous reporting period. In addition to ensuring that the Mechanism has had in recent months a full complement of judges available for assignment to any judicial matters that might arise, the arrival of Judge Sanou Touré brings the number of female judges to seven out of 25. The Mechanism's judicial roster has thus been further enriched by that positive step, although it is clear that more remains to be done by nominating States to address gender parity at the highest levels.

28. The Mechanism wishes to report on a forthcoming additional change to its judicial roster. During the reporting period, Judge Theodor Meron informed the Secretary-General, through the President of the Mechanism, of his intention to resign from the Mechanism as of 17 November 2021. While the departure of Judge Meron thus falls outside the reporting period and will be more fully reflected in the next report, the judicial roster of the Mechanism will need to be supplemented once more. The Mechanism hopes to be able to welcome another judge from the United States of America in the near future to serve the remainder of Judge Meron's term of office and encourages the fullest consideration of qualified female candidates for the position.

29. The current judicial roster comprises (in order of precedence): Judge Carmel Agius, President (Malta), Judge Theodor Meron (United States of America), Judge Jean-Claude Antonetti (France), Judge Joseph E. Chiondo Masanche (United

Republic of Tanzania), Judge William Hussein Sekule (United Republic of Tanzania), Judge Lee G. Muthoga (Kenya), Judge Alphons M.M. Orie (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 Graciela Susana Gatti Santana (Uruguay), Judge Ivo Nelson de Caires Batista Rosa (Portugal), Judge Seymour Panton (Jamaica), Judge Elizabeth Ibanda-Nahamya (Uganda), Judge Yusuf Aksar (Turkey), Judge Mustapha El Baaj (Morocco), Judge Mahandrisoa Edmond Randrianirina (Madagascar), Judge Claudia Hoefer (Germany), Judge Iain Bonomy (United Kingdom of Great Britain and Northern Ireland) and Judge Fatimata Sanou Touré (Burkina Faso).

30. The Mechanism was pleased to hold its first-ever virtual plenary of judges during the reporting period. As mentioned in the previous report, travel restrictions and other measures related to the COVID-19 pandemic prevented the Mechanism from holding an in-person plenary of judges in The Hague in 2020 and made planning for an in-person event in 2021 equally difficult. Given the circumstances, and having consulted the other judges, the President therefore decided to hold a plenary session virtually over two days in late September 2021.

31. Thanks to the efforts and ingenuity of the Information Technology Services Section, together with staff from other sections of the Mechanism, the 25 judges of the Mechanism were able to engage in fruitful discussions using a secure online platform, which was developed in-house earlier in the pandemic to allow court hearings by remote participation and further modified for the plenary. With the judges attending the plenary from 21 different countries and numerous time zones, the smooth running of the confidential session was a significant operational achievement. Following the successful conclusion of the event, the Mechanism nevertheless hopes to be able to hold an in-person plenary in 2022 as previously planned, if circumstances safely allow.

32. Pursuant to his discretion under article 12 (2) of the statute, the President assigned on an alternating basis Judge Sekule and Judge Joensen as duty judges at the Mechanism's Arusha branch, together with Judge Masanche, who returned to the United Republic of Tanzania following the conclusion of his assignment to the *Stanišić and Simatović* case. As previously reported, the decision to assign judges who reside in the United Republic of Tanzania maximizes efficiency, and their assignment is remunerated only to the extent that they exercise judicial functions in that capacity.

## D. The branches

33. As established in article 3 of the statute, the Mechanism has two branches: one located in Arusha and the other in The Hague. The Mechanism continues to enjoy excellent cooperation with the United Republic of Tanzania and the Netherlands and is grateful to both host States for their continued support and engagement in accordance with the respective headquarters agreements. Despite the two branches being in different locations and time zones, the Mechanism constantly endeavours to function as a single, unified institution, optimizing and harmonizing its activities wherever possible and taking full advantage of efficiencies.

34. At the Arusha branch, the measures introduced at the start of the COVID-19 pandemic were continuously reinforced throughout the reporting period, which enabled the Mechanism to successfully complete the hearings in the *Nzabonimpa et al.* case and to deliver the judgment in that case on 25 June 2021. Further changes to



the facilities were introduced in anticipation of the trial in the *Kabuga* case being held at the Arusha branch, pending judicial determination of issues relating to the accused's fitness to travel and stand trial. Those included the development of a small multifunctional facility and the installation of prefabricated offices. Regarding the withholding of delay damages following the construction of the Arusha premises, and in accordance with General Assembly resolution 73/288, the Mechanism withheld a sum related to costs incurred by the delay. The contractor disputed the withholding and submitted a further claim asserting additional costs arising during construction. The contractor's claim was not accepted by the Mechanism. The Mechanism remains grateful to the United Republic of Tanzania for its support in relation to the construction project.

35. Regarding the branch in The Hague, as previously reported, the host State acquired ownership of the rented premises occupied by the Mechanism in April 2019 and has agreed to the Mechanism remaining in its current location. The host State has indicated that there will need to be a major renovation of the premises, originally constructed in the 1950s, and discussions as to the accommodation of the Mechanism during the renovation process are ongoing. In the interim, the current lease agreement has been extended and takes into account the Mechanism's reduced occupancy requirements. The Mechanism remains grateful for the outstanding commitment and support of the Netherlands with respect to the Mechanism's premises in The Hague.

36. In addition to its branches in Arusha and The Hague, the Mechanism's two field offices continued to play a relevant role in the implementation of the Mechanism's mandate. Both field offices adopted a number of measures to be able to continue their activities, despite the applicable COVID-19 restrictions.

37. The field office in Kigali, together with staff from the Witness Support and Protection Unit in Arusha, continued to support the Prosecution and the Defence in the lead-up to the pronouncement of judgment in the *Nzabonimpa et al.* case and similarly supported the Prosecution in the *Kabuga* case. The field office also provided protection and support to witnesses residing in Rwanda, including through the provision of medical and psychosocial services by its medical clinic. Lastly, the Kigali field office provided administrative and logistical support in relation to the monitoring of cases referred to Rwanda by the International Criminal Tribunal for Rwanda, pursuant to article 6 of the statute, and facilitated requests for assistance from national jurisdictions.

38. The field office in Sarajevo, together with staff from the Witness Support and Protection Unit in The Hague, commenced preparations in respect of supporting the provision of witness testimony by special deposition in the contempt case against Petar Jojić and Vjerica Radeta. The field office also continued to provide protection and support services to witnesses who had previously been called to appear before the International Tribunal for the Former Yugoslavia or the Mechanism and to liaise with national and local authorities on those issues. Lastly, the Sarajevo field office facilitated requests for the variation of protective measures for witnesses, in support of national prosecutions of individuals allegedly implicated in the conflicts in the former Yugoslavia.

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

39. The Mechanism continued to operate under its approved 2021 budget amounting to \$97,519,900 gross throughout the reporting period. Of particular relevance during the current reporting period was the conclusion of key judicial activities through the delivery of judgments in the aforementioned cases. As previously reported, the COVID-19 pandemic and corresponding travel restrictions did impact the judicial

activities of the Mechanism to some degree, which required the Mechanism to retain staff for longer so as to ensure the completion of the judicial proceedings that had been delayed. While that led to higher than anticipated budget consumption levels for staffing, these are being offset through lower than anticipated levels in certain operational costs. The Mechanism is able to fully support the remaining judicial activities in 2021, as well as to proceed with requirements related to the *Kabuga* case, within its approved budgetary resources.

40. Details and a breakdown of the Mechanism's expenditures in 2021, presented in terms of funds committed, are set forth in enclosure I.

41. For 2022, the Mechanism has set out in its budget proposal the resources required to address its remaining judicial caseload, including those necessary to conduct the trial in the *Kabuga* case at the Arusha branch, pending judicial determination of issues relating to the accused's fitness to travel and stand trial. In that regard, the Mechanism refers to the report of the Secretary-General on the proposed budget for the Mechanism for 2022 ([A/76/411](#)), which was before the Advisory Committee on Administrative and Budgetary Questions on 5 November 2021. The recommendations of the Advisory Committee on the budget for the Mechanism will subsequently be communicated to the General Assembly for its review and approval.

42. After some of the planned downsizing of staff in The Hague in 2021 was postponed pending the conclusion of certain judicial activities, staffing reductions are currently being implemented. The downsizing also reflects the proposed budget for the Mechanism for 2022, which outlines significant staffing reductions at both branches but nevertheless takes into account judicial activity in the *Kabuga* case. In preparation for the downsizing anticipated to take place during 2022, the Mechanism commenced the comparative review exercise as soon as the budget proposal for 2022 was submitted. The exercise is ongoing at the time of writing.

43. As at 1 November 2021, 185 of the 187 approved continuous posts were occupied to carry out the Mechanism's continuous functions, while an additional 302 personnel were serving as general temporary assistance to assist with ad hoc needs, including judicial work. Consistent with the flexible staffing structure of the Mechanism, such positions are short-term in nature and will fluctuate depending on the relevant workload.

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

45. The Mechanism's continuous and general temporary assistance positions included nationals of 71 States: Algeria, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, China, Congo, Croatia, Cuba, Democratic Republic of the Congo, Denmark, Ethiopia, Fiji, Finland, France, Gambia, Germany, Ghana, Guatemala, Haiti, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Kenya, Latvia, Lebanon, Lesotho, Liberia, Madagascar, Malaysia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Rwanda, Serbia, Sierra Leone, Slovakia, South Africa, Spain, Sudan, Sweden, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yemen, Zambia and Zimbabwe.

46. The Mechanism continues to meet the Secretary-General's gender parity goals, with female staff members comprising 52 per cent of staff at the Professional level as at 1 November 2021, averaged across the two branches. However, when General and Field Services staff are also taken into account, the average percentage of female staff

unfortunately remains lower, with a total of 43 per cent overall. Despite the limitations imposed by its nature as a downsizing institution, the Mechanism continues to strive for improvement in that regard, taking into consideration the relevant administrative instruction on temporary special measures for the achievement of gender parity ([ST/AI/2020/5](#)).

47. As previously reported, the Mechanism at both branches has dedicated focal points for gender; protection from sexual exploitation and sexual abuse; diversity, inclusion and LGBTIQ+ issues; disability and accessibility issues; and conduct and discipline. The focal points provide information and engage with staff and management to address matters that may arise in the workplace. During the reporting period, the Mechanism's focal points continued their virtual awareness-raising campaigns, conducted online surveys to better understand potential issues faced by staff and offered support on matters pertaining to their portfolios. They also continued to work together to integrate into their respective programmes relevant aspects of the Secretary-General's bulletin on discrimination, harassment, including sexual harassment, and abuse of authority ([ST/SGB/2019/8](#)), pending finalization of the Mechanism's related policy.

48. On 7 October 2021, the Mechanism benefited from an online town hall meeting with the Director and staff of the Ethics Office, who provided an update on the work of the Office and responded to questions from staff. Subsequently, from 19 to 21 October 2021, representatives of the Office of the United Nations Ombudsman and Mediation Services paid an official visit to the Arusha branch of the Mechanism and met with staff and managers as part of the Office's overall conflict resolution outreach.

49. In the light of the evolving COVID-19 pandemic, the ability of the Mechanism to remain flexible and to adjust its working methods to the prevailing circumstances once more proved invaluable in ensuring its ongoing progress. To facilitate the decision-making of the principals on pandemic-related matters, the COVID-19 Steering Committee, which comprises a small number of senior representatives of the different organs, continued to provide information and advice. Part way through the reporting period, the Steering Committee commenced a review of the Mechanism policies that had been put in place earlier in the pandemic, revising them where necessary so as to better reflect the current situation while also ensuring the continued safety of those on premises. In turn, the Steering Committee was supported as required by the larger, Registry-based COVID-19 crisis management team. Those cross-organ initiatives again played an important role in further bolstering coordination and information-sharing between the principals and the organs on matters affecting the institution, in line with the relevant 2020 recommendation of OIOS ([S/2020/236](#), para. 66). Indeed, during weekly meetings of the Steering Committee, members took the opportunity to raise broader matters addressing systemic issues, where appropriate, in order to be able to better inform and advise the principals.

50. Notably, given the roll-out of vaccinations, the lowering of infection rates in most duty stations and associated changes in pandemic-related restrictions, the principals of the Mechanism decided that there should be a full return of staff to premises at all duty stations in mid-September 2021. That decision, which is still in the process of being implemented, was taken with due regard to the health and safety of all concerned and followed consultations with the staff union. Allowances were made for staff members who had not yet had the opportunity to get fully vaccinated and for those with underlying health concerns that prevented their vaccination. Indeed, the return of staff was based on a detailed scenario-based plan developed by the Steering Committee and implemented under the guidance of both the Steering Committee and the COVID-19 crisis management team, with a view to ensuring a safe work environment at the Mechanism premises. The Mechanism will pay close

attention to further developments in relation to the COVID-19 situation as it pertains to the various duty stations.

51. The Division of Administration continued to provide support across branches and field offices. In addition to fulfilling their regular responsibilities, administrative sections addressed the challenges presented by the COVID-19 pandemic in order to meet the needs of staff and ensure business continuity. While during previous reporting periods, the focus was on facilitating remote work and the remote access of judges, staff and others to relevant information technology applications and networks, the emphasis during the current reporting period was on facilitating the full return of staff to the office. The Division of Administration continued to ensure that staff were kept abreast of the frequently changing measures taken by the host States to limit the spread of COVID-19, including the roll-out and implementation of vaccination programmes accessible to staff and their dependants.

52. With regard to the well-being of staff, telehealth services for both physical and mental health support continue to be made accessible to staff at all duty stations, including access to an employee assistance programme, which offers counselling on a broader range of issues that affect quality of life and resilience. Building on a webinar series held in early 2021, facilitated discussions on self-care and resilience are being offered as the year draws to a close. In addition, relevant resources and information are regularly made available to staff on the Mechanism's intranet.

53. Lastly, the Mechanism is grateful for the assistance offered by the United Nations Secretariat-led COVID-19 medical evacuation framework, upon which the Mechanism had to rely during the reporting period, and for the cooperation of counsellors from the Department of Safety and Security in providing trauma support and services to its staff when required.

### **III. Judicial activities**

54. Throughout the reporting period, the Mechanism was seized of a number of complex judicial matters, concluding trial proceedings in two cases and completing the appeal proceedings in another case. The President and the judges continued to engage in a wide variety of judicial activity which, in accordance with article 8 (3) of the statute, was primarily carried out remotely. Currently, judges on the roster are supported by a Chambers Legal Support Section of 19 staff members, comprising 16 legal officers and three administrative assistants, serving at both branches of the Mechanism.

55. The President and judges issued a total of 111 decisions and orders during the reporting period. Of those, 83 (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, enforcement of sentences, and the investigation and trial of allegations of false testimony or contempt, as well as the management of the work of Chambers and the judicial review of administrative decisions – rather than to the adjudication of the core crimes incorporated into the statute.

56. The leadership of the Chambers Legal Support Section continued to employ streamlined working methods and processes, in collaboration with other sections of the Mechanism, to facilitate an efficient and transparent one-office work environment that draws on the resources at both branches to address judicial workload wherever arising. That resulted in the successful delivery of judgments in three cases, in line with the projections set out in the previous report.

57. With respect to the core crimes reflected in the statute of the Mechanism, during the reporting period, the judges, whose individual legal backgrounds are roughly evenly split between civil and common law, worked on two trials, at various stages of proceedings, and on an appeal from judgment, as set forth below.

58. In accordance with the indication given in the previous progress report, the appeal proceedings in the *Mladić* case concluded with the issuance of the appeal judgment on 8 June 2021. In its judgment, the Appeals Chamber dismissed the appeals filed by Ratko Mladić and the Prosecution against the judgment rendered on 22 November 2017 by a Trial Chamber of the International Tribunal for the Former Yugoslavia. The Appeals Chamber affirmed the convictions of Mr. Mladić for genocide, persecution, extermination, murder, deportation and other inhumane acts (forcible transfer) as crimes against humanity, as well as for murder, terror, unlawful attacks on civilians and hostage-taking as violations of the laws or customs of war. The Appeals Chamber also affirmed the sentence of life imprisonment imposed by the Trial Chamber. Following the conclusion of the case, the Mechanism is working on the designation of an enforcement State in which Mr. Mladić will serve his sentence.

59. In the *Stanišić and Simatović* case, the trial judgment was pronounced on 30 June 2021, in line with the previous projection, and the written reasons were filed on 6 August 2021. The Trial Chamber convicted Jovica Stanišić and Franko Simatović of aiding and abetting the crime of murder, as a violation of the laws or customs of war and a crime against humanity, and the crimes of deportation, forcible transfer and persecution, as crimes against humanity, committed by Serb forces following the takeover of Bosanski Šamac, Bosnia and Herzegovina, in April 1992. The Trial Chamber sentenced Mr. Stanišić and Mr. Simatović to 12 years of imprisonment each.

60. All three parties to the case appealed against the trial judgment, filing their notices of appeal on 6 September 2021. On 29 October 2021, the pre-appeal judge granted the Prosecution's request for an extension of time for the filing of all parties' respondent's briefs by one month, based in part on the size of the trial record subject to appeal. Accordingly, the appeal briefing is expected to conclude on 15 February 2022 and the pre-briefing projection for completion of the appeal proceedings in the case remains by the end of June 2023. In the meantime, the first status conference to be held since the parties filed their notices of appeal has been scheduled for 16 December 2021. Currently, all of the judges on the bench in the case are carrying out their work remotely, with the exception of the President, who serves as the presiding judge of the Appeals Chamber and pre-appeal judge.

61. In the *Kabuga* case, the Trial Chamber expeditiously conducted pretrial proceedings during the reporting period. On 4 June 2021, the Trial Chamber issued its pretrial workplan, setting forth robust timelines for the parties to complete, during the second half of 2021, their pretrial obligations relating to the filing of requests for protective measures and adjudicated facts, the Prosecution pretrial brief, witness and exhibit lists, related disclosures, expert reports and responsive submissions by the Defence. The parties have met the deadlines with only minor modifications, ensuring that the case is essentially trial-ready once the medical assessment of Mr. Kabuga is completed. To facilitate trial preparation, status conferences were held on 1 June and 6 October 2021. In addition, the Trial Chamber and/or pretrial judge have issued 14 decisions or orders in relation to the admission of adjudicated facts, witness protection, disclosure, the medical examination of the accused, provisional release and Defence counsel matters.

62. Mr. Kabuga remains detained in The Hague pending the outcome of the medical assessments ordered by the Trial Chamber to determine his fitness to travel to Arusha and be detained there and his general fitness for trial. Following Mr. Kabuga's transfer

to The Hague, the Trial Chamber implemented a medical reporting regimen and has received medical reports fortnightly. It has also ordered two independent medical assessments. Mr. Kabuga required an additional unforeseen medical procedure following the filing in June 2021 of the report for the first assessment. That circumstance has delayed the final assessment by some five months because of difficulties in scheduling the procedure owing to Mr. Kabuga's evolving health situation and because of the limited ability to conduct the procedure in the host State in view of backlogs for treatment resulting from the ongoing pandemic. The medical assessment should be completed in November 2021, and a report to the Trial Chamber is expected before the end of the year. In view of that, a decision on Mr. Kabuga's fitness is expected by February 2022.

63. Once a decision is taken to commence trial, it is expected that the trial will begin within one month to allow for the conclusion of any pretrial or logistical formalities. The delay in Mr. Kabuga's final medical assessment was unforeseen and beyond the control of the Mechanism and is the sole reason why the pretrial phase of the case will not be completed and the trial will not commence in November 2021, 12 months from his initial appearance, as projected in the Mechanism's review report of 16 April 2020 (S/2020/309, para. 62). That situation has resulted in the extension of the pretrial phase by four months, until March 2022. The Trial Chamber will use that time to closely review the proposed Prosecution case and identify ways to streamline the presentation of the evidence that may yield future savings of time.

64. In the third review report, it was projected that the trial and judgment-drafting phase would last approximately 18 months. The projection was made on the basis of typical single-accused cases, current working methods and the number of special depositions that had been already taken by the International Criminal Tribunal for Rwanda in the case. The Prosecution's pretrial brief and current witness list indicates the possibility that the duration of the trial may be significantly longer than previously projected. In addition, Mr. Kabuga's health condition suggests a further possibility that adjustments may need to be made to the sitting schedule to accommodate his participation. Accordingly, on the basis of the current information and expectations, an additional 12 months may be required for the completion of the trial phase of the case. Importantly, in conjunction with the most recent status conference, the presiding/pretrial judge has already met with the parties and invited the Prosecution to consider ways of expediting the presentation of its case. The Trial Chamber also has the discretion, after hearing the parties at the pretrial conference envisioned for early 2022, to reduce the number of witnesses, the time for the presentation of a party's case, and the scope of the indictment if it is in the interests of justice to do so. As such, projections will be adjusted if appropriate in the next progress report, after the conclusion of Mr. Kabuga's medical assessment and the finalization of the scope of the Prosecution's case. At present, the trial is expected to commence by March 2022 and last two and a half years. The judges of the Trial Chamber are all working remotely except when summoned to the seat, as appropriate, for status conferences.

65. In addition to these proceedings relating to the core crimes reflected in the statute, the Mechanism was seized of several matters pertaining to allegations of false testimony or contempt.

66. The trial in the *Nzabonimpa et al.* case concluded on 25 June 2021, in line with the previous projection, with the pronouncement of judgment just two days after the end of closing arguments, which were held from 20 to 23 June 2021. The pronouncement of judgment in conjunction with closing arguments was done to avoid travel-related risks associated with the COVID-19 pandemic. The written reasons were filed on 20 September 2021. The single judge convicted Augustin Ndirabatswe, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma of contempt for witness interference. Mr. Ndirabatswe was also convicted of contempt

for violation of court orders. The single judge entered a verdict of not guilty for a co-accused, Dick Prudence Munyeshuli, on a single contempt charge for violation of court orders. The single judge sentenced Mr. Ngirabatware to two years' imprisonment, while Mr. Nzabonimpa, Mr. Ndagijimana and Ms. Fatuma were sentenced to time served, having spent over 11 months in pretrial detention.

67. Separately, on 20 September 2021, the single judge requested the President to assign to another single judge a contempt matter related to a former counsel in the review proceedings against Mr. Ngirabatware that came to light during the *Nzabonimpa et al.* case. On 25 October 2021, a single judge directed the Registrar to appoint an *amicus curiae* to investigate the matter and to submit the conclusions of the investigation within 120 days of the appointment.

68. On 23 September 2021, Mr. Nzabonimpa, Mr. Ndagijimana, Ms. Fatuma and Mr. Ngirabatware filed a request for extension of time to file their notices of appeal against the trial judgment and their appeal briefs. On 28 September 2021, the pre-appeal judge granted the request owing to the length and complexity of the trial judgment. On 18 October 2021, Ms. Fatuma filed a notice of appeal against her conviction and sentence. The Prosecution filed its notice of appeal on the same day, appealing against Mr. Munyeshuli's acquittal and Mr. Ngirabatware's sentence. The case therefore now concerns four parties, namely, Ms. Fatuma, Mr. Munyeshuli, Mr. Ngirabatware and the Prosecution. The filing of appellants' and respondents' briefs in the *Fatuma et al.* case is expected to conclude by 1 December 2021. Currently, the pre-briefing projection is for completion of the appeal proceedings by the end of June 2022. Currently, all of the judges on the *Fatuma et al.* case are carrying out their work remotely, with the exception of the President, who serves as the presiding judge of the Appeals Chamber and pre-appeal judge.

69. Activity related to the *Jojić and Radeta* case continued during the reporting period. The case was transferred from the International Tribunal for the Former Yugoslavia to the Mechanism on 29 November 2017 and referred to the authorities of Serbia for trial by order of a single judge on 12 June 2018. The *amicus curiae* prosecutor in the case appealed against the order of referral. On 12 December 2018, the Appeals Chamber found that the *amicus curiae* prosecutor had not raised before the single judge the issue of "the unwillingness of the witnesses to testify if the case is tried in Serbia" and remanded the matter for consideration of further submissions on that issue. On 13 May 2019, the single judge issued a decision revoking the referral order and requesting Serbia to transfer the two accused to the Mechanism without delay. On the same day, the single judge issued new international arrest warrants, directed to all States Members of the United Nations, for the arrest, detention and transfer to the custody of the Mechanism of the accused. On 24 February 2020, the Appeals Chamber dismissed Serbia's appeal and affirmed the single judge's decision to revoke the referral order.

70. More recently, on 16 April 2021, the single judge issued a decision finding that Serbia had failed to comply with its obligations under article 28 of the statute to arrest the accused and transfer them to the Mechanism, emphasizing that the obligation to cooperate extends to cases of contempt and that it prevails over any domestic legal impediment. Accordingly, the single judge requested the President to notify the Security Council.

71. As previously reported, on 11 May 2021, the President of the Security Council was notified of Serbia's failure to comply with its international obligations to arrest and surrender the accused Mr. Jojić and Ms. Radeta ([S/2021/452](#)). Specifically, President Agius called upon the Council to take the measures necessary to secure Serbia's fulfilment of its obligations under the statute of the Mechanism and Council resolution [1966 \(2010\)](#). In addition, he appealed to all Member States to do their



utmost to ensure that the international arrest warrants and orders for surrender issued on 13 May 2019 were executed as soon as possible.

72. During the reporting period, the single judge issued a decision on 3 September 2021 in which he found, *inter alia*, that execution of the arrest warrants was unlikely to take place within a reasonable time. Having so found, the single judge granted the request of the *amicus curiae* prosecutor to take evidence of prosecution witnesses by special deposition, in order to preserve evidence for use in a future trial in the event that the witnesses became unavailable. Preparations for the special deposition are currently in progress.

73. The Mechanism once more reiterates that all States Members of the United Nations, including Serbia, must abide by their obligations under Chapter VII of the Charter 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. The Mechanism does not hold trials in absentia and therefore relies heavily on cooperation from Member States to secure the presence of accused persons.

74. Regarding the judicial activity of the President, during the reporting period, the President issued a total of 32 decisions and orders, including 13 decisions and orders relating to enforcement matters (discussed below), as well as 16 assignment orders. Of the assignment orders, nine related to rule 86 of the Rules of Procedure and Evidence. As has been the case throughout his presidency, in assigning matters to judges, the President endeavoured to ensure an equitable distribution of work, giving due consideration also to geographical representation and gender, as well as possible conflicts of interest arising from previous assignments.

75. In addition to those decisions and orders, the President issued eight decisions and orders in his separate capacity as presiding judge of the Appeals Chamber, including as pre-appeal judge in the *Stanišić and Simatović* case and the *Fatuma et al.* case.

76. Matters relating to the enforcement of sentences of persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism continued to demand much of the President's attention. Such matters are dependent on the circumstances specific to each convicted person and, in addition, frequently relate to questions of State support and cooperation. As a result, they can be extremely complex and time-consuming. To assist in his determination of applications for pardon, commutation of sentence or early release of convicted persons, and consistent with the relevant Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, the President continued to actively solicit a range of relevant information in order to ensure greater transparency and allow for full consideration of the broader impacts of early release. In that respect, he issued seven orders or invitations. The President also consulted judges of the relevant sentencing Chamber who remain judges of the Mechanism, as applicable, pursuant to rule 150 of the Rules of Procedure and Evidence. Where no other judges who imposed the sentence remained judges of the Mechanism, the President consulted at least two other judges, consistent with rule 150.

77. During the reporting period, the President disposed of three applications for commutation of sentence or early release, and one new application was filed. He is currently seized of 10 pending applications, in connection with which six ancillary orders were issued during the reporting period. On top of those, in the same particularly resource-intensive case that was mentioned in the previous report, the



Mechanism received approximately 50 further communications from the relevant convicted person.

78. Alongside that activity, the President again regularly monitored the situation of convicted persons in respect of the COVID-19 pandemic, given the particular vulnerability of prison populations. In the first part of the reporting period, he received pandemic-related updates from enforcement States in line with an order issued during the previous period<sup>4</sup> and subsequently issued two further orders for updates, on 25 June and 1 October 2021.<sup>5</sup> In addition, the President remained apprised of COVID-19 issues as they related to the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, where Mechanism detainees are housed.

79. In detailing its current judicial activities and the projections for completion of the relevant proceedings, the Mechanism has strived to provide the fullest information in line with the recommendation made in 2020 by OIOS concerning clear and focused case projections, which it takes very seriously ([S/2020/236](#), para. 67 and annex I; and [S/2020/309](#), annex, paras. 204 and 214). In that respect, the Mechanism will continue to closely monitor and adjust its projections as necessary to reflect developments, including those arising from any extraordinary events during the course of the proceedings that would affect their conduct. That could include the imposition of new pandemic-related measures, the replacement of judges or counsel or the illness of an accused or an appellant. As always, the judges and the leadership of the Chambers Legal Support Section remain fully committed to expediting pending matters and concluding them as soon as possible, in accordance with due process and fundamental rights.

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

<sup>4</sup> See Case No. MICT-12-01-ES, Fifth Order for COVID-19 Updates from Enforcement States, 23 February 2021 (public redacted version); See also Case No. MICT-12-01-ES, Order for COVID-19 Updates from Enforcement States, 24 April 2020 (public redacted version); Case No. MICT-12-01-ES, Second Order for COVID-19 Updates from Enforcement States, 26 June 2020 (public redacted version); Case No. MICT-12-01-ES, Third Order for COVID-19 Updates from Enforcement States, 28 August 2020 (public redacted version); and Case No. MICT-12-01-ES, Fourth Order for COVID-19 Updates from Enforcement States, 30 October 2020 (public redacted version).

<sup>5</sup> Case No. MICT-12-01-ES, Sixth Order for COVID-19 Updates from Enforcement States, 25 June 2021 (public redacted version); and Case No. MICT-12-01-ES, Seventh Order for COVID-19 Updates from Enforcement States, 1 October 2021 (public redacted version).

81. It is therefore important to remain mindful that the Security Council has tasked the Mechanism with a range of residual judicial functions that will continue after the existing main caseload has been concluded, unless the Council decides otherwise.

82. The current status of the Mechanism's trial and appeal proceedings, as discussed above, is reflected in enclosure III.

#### IV. Registry support for judicial activities

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

84. The Judicial Records and Court Operations Unit at both branches processed and disseminated 767 filings, including 191 Registry legal submissions, amounting to a total of 12,702 pages during the reporting period. Staff from both branches continued to collaborate in supporting the pretrial proceedings in the *Kabuga* case, with status conferences held in The Hague on 1 June and 6 October 2021. In The Hague, the Unit also supported the rendering of judgments in the *Mladić* case on 8 June 2021 and the *Stanišić and Simatović* case on 30 June 2021. Separately, the Judicial Records and Court Operations Unit, together with other Registry sections, provided support to the *Jojić and Radeta* case, including in relation to preparing for the proceedings by special deposition. At the Arusha branch, the Unit supported the *Nzabonimpa et al.* case, including the closing arguments held from 21 to 23 June 2021 and the pronouncement of trial judgment on 25 June 2021. In total, eight court hearing days were serviced during the reporting period.

85. In-court proceedings in the above-mentioned continued to be subject to the branch-specific COVID-19 pandemic-related safety measures for the Mechanism's court proceedings, to ensure the implementation of practical preventive measures by all participants.

86. During the reporting period, the Registry's Language Support Services at the two branches translated approximately 9,124 pages, provided 76 conference interpreter days and produced 1,270 pages of transcripts in English and French. That includes, inter alia, the support provided to the *Kabuga*, *Mladić*, *Nzabonimpa et al.* and *Stanišić and Simatović* cases and the translation of monitoring reports in respect of cases referred to France and Rwanda, pursuant to article 6 of the statute.

87. Regarding the translation of judgments, the Mechanism is pleased to report that the Bosnian/Croatian/Serbian Unit of the Language Support Services completed the translation of the last appeal judgment of the International Tribunal for the Former Yugoslavia during the reporting period, leaving at the time of writing one trial and one appeal judgment of the Mechanism to be translated into Bosnian/Croatian/Serbian. Following the completion of the translation of two appeal judgments of the International Criminal Tribunal for Rwanda and one appeal judgment of the Mechanism by the Kinyarwanda Unit during the reporting period, 29 appeal judgments of that Tribunal, as well as one trial judgment of the Mechanism, are awaiting translation into Kinyarwanda at the time of writing. In addition, 12 judgments of the Tribunals and two trial and two appeal judgments of the Mechanism are yet to be translated into French.

88. The Registry's Office for Legal Aid and Defence Matters provided financial and other assistance to 58 Defence and *amicus curiae* teams comprising a total of approximately 90 Defence team members. In particular, the Office processed some 200 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 55 admitted counsel, and the number of

prosecutors and investigators eligible for assignment as an *amicus curiae* increased to 48.

89. As during recent reporting periods, the Office for Legal Aid and Defence Matters continued to diligently and cautiously facilitate the travel of Defence team members with respect to official Mechanism activity. Those efforts enabled Defence team members to participate as required in Mechanism hearings, thereby supporting the timely conclusion of trial proceedings in the *Nzabonimpa et al.* case and the *Stanišić and Simatović* case. In addition, travel was facilitated for the *amicus curiae* Prosecutor's team as part of the preparatory efforts for the special deposition proceedings in the *Jojić and Radeta* case. Lastly, the Office continued to offer regular updates to all Defence and *amicus curiae* team members on the COVID-19 pandemic and related safety and health measures implemented by the Registry.

## V. Victims and witnesses

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

91. During the reporting period, the Witness Support and Protection Unit continued to provide, in accordance with judicial protection orders, security for witnesses by undertaking threat assessments and coordinating responses to security-related requirements, in cooperation with national authorities. The Unit also ensured that protected witness information remained confidential and assisted with the review of material potentially breaching protective measures.

92. At the Arusha branch, following liaison with the Prosecution and the Judicial Records and Court Operations Unit, the Witness Support and Protection Unit commenced preparations for the admission of written statements or transcripts of witnesses in lieu of oral testimony in the Kabuga case, pursuant to rule 110 of the Rules of Procedure and Evidence. In The Hague and at the Sarajevo field office, the Witness Support and Protection Unit commenced preparations in respect of supporting the provision of witness testimony by special deposition in the *Jojić and Radeta* case. Lastly, as part of the measures taken and policies adopted in response to the COVID-19 pandemic, the Witness Support and Protection Unit at the branch in The Hague followed up with the witnesses who testified in the *Stanišić and Simatović* case, to address any possible issues resulting from the provision of in-court testimony during the COVID-19 pandemic.

93. The Witness Support and Protection Unit further facilitated contact with relocated witnesses or witnesses of opposing parties, when so required. When faced with COVID-19 pandemic-related travel restrictions, the Unit relied on new technologies to enable secure and confidential video calls for that purpose.

94. Implementing judicial orders to such effect, the Witness Support and Protection Unit continued to provide support in relation to applications for the variation of protective measures for witnesses in accordance with rule 86 of the Rules of Procedure and Evidence. The Chambers continue to deal with a higher than usual number of such applications, making that a priority for the Hague branch of the Witness Support and Protection Unit during the reporting period.

95. Witnesses residing in Rwanda continued to receive medical and psychosocial services from the medical clinic located at the Kigali field office. Such services focus on witnesses experiencing psychotrauma or living with HIV/AIDS, given that many

of those who contracted the virus did so as a result of crimes committed against them during the 1994 genocide against the Tutsi in Rwanda. In addition, the Witness Support and Protection Unit continued to support protected witnesses who testified before the International Criminal Tribunal for Rwanda in resolving refugee status and residency-related issues.

96. It is expected that victim and witness protection will continue to be required in the coming years in the light of the multitude of judicial protection orders that will remain in force unless rescinded or waived. The provision of support may be required until the last victim or witness is deceased or, where applicable, until the protective measures covering the immediate family members of victim or witness are rescinded or waived. In relation to relocated witnesses, support may be required until the last member of the immediate family is deceased. Lastly, requests for the variation of protective measures are expected to be received for as long as national jurisdictions pursue prosecutions of individuals allegedly implicated in the 1994 genocide against the Tutsi in Rwanda or the conflicts in the former Yugoslavia.

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

97. Since the adoption of its resolution [1966 \(2010\)](#) and as recently as the adoption of its resolution [2529 \(2020\)](#), the Security Council has been calling upon all States, particularly those in which fugitives are suspected to be at large, to intensify cooperation with and render all assistance necessary to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives indicted by the International Criminal Tribunal for Rwanda as soon as possible. The Mechanism continues to appreciate the support of the Council in that regard and reiterates that it relies on the cooperation and political will of Member States for the apprehension and prosecution of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda.

98. The fugitive tracking function is within the responsibility of the Prosecutor and the relevant progress made and challenges faced during the reporting period are discussed in detail in annex II to the present report. There are currently six remaining fugitives indicted by the International Criminal Tribunal for Rwanda. Of those individuals, only one, Protais Mpiranya, is expected to be tried before the Mechanism.

99. The cases of the other five fugitives, namely, Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Charles Ryandikayo and Charles Sikubwabo, were referred to Rwanda by the International Criminal Tribunal for Rwanda, subject to the conditions set out in the relevant referral decisions.

100. The arrest and prosecution of all fugitives continue to be a top priority for the Mechanism and it is committed to remaining ready for trial for as long as the case of any remaining fugitive is pending before it.

101. Similarly, the Mechanism stands ready to deal with other proceedings as necessary. It remains mindful of the possibility that a retrial may be ordered in any appeal proceedings before the Mechanism, that new contempt or false testimony proceedings may be initiated at any time or that the referral of a case to a national jurisdiction for trial may be revoked. In accordance with article 15 (4) of the statute, rosters of qualified potential staff are in place to enable the expeditious recruitment, as necessary, of the additional staff required to support those potential judicial proceedings.

## VII. Detention facilities

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

103. In relation to the United Nations Detention Facility, following the pronouncement of the judgment in the *Nzabonimpa et al.* case, the Registry transferred the last remaining detainee of that Facility to Senegal for the enforcement of his sentence. The Mechanism is extremely grateful to Senegal for its continuous and steadfast support in the enforcement of sentences.

104. The United Nations Detention Facility will continue to be required for the detention of Mr. Kabuga in anticipation of his potential transfer from the United Nations Detention Unit in The Hague to Arusha, as well as for the remaining fugitive of the International Criminal Tribunal for Rwanda expected to be tried by the Mechanism once apprehended, and any other fugitive of that Tribunal whose case referral is revoked in accordance with article 6 (6) of the statute. The Mechanism must also provide a residual custodial capacity for other individuals potentially appearing before its Arusha branch, such as detained witnesses.

105. Turning to the United Nations Detention Unit in The Hague, in accordance with an order of the President,<sup>6</sup> one convicted person was returned to the Unit in September 2021 on a temporary basis while a new enforcement State is sought, following the inability of the previous enforcement State to continue enforcing the sentence for reasons of national law. Conversely, pursuant to a decision issued by the President, another convicted person who had been temporarily housed in the United Nations Detention Unit was conditionally released in October 2021.<sup>7</sup> Following those transfers, and taking into account the continued detention of Mr. Kabuga at the branch in The Hague<sup>8</sup> and the return of the two accused in the *Stanišić and Simatović* case for the pronouncement of the trial judgment,<sup>9</sup> the Detention Unit is currently housing five detainees in total.<sup>10</sup> Two of the detainees are convicted persons awaiting transfer to States for the enforcement of their sentence.<sup>11</sup>

106. The United Nations Detention Unit will continue to be required for the duration of the appeal proceedings in the *Stanišić and Simatović* case and until all detained persons are acquitted, released or transferred to enforcement States, after which a reduced, residual custodial capacity for other individuals potentially appearing before the Mechanism may have to be arranged. At that stage, it may become appropriate for

<sup>6</sup> *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Order for the Transfer of Radoslav Brđanin to the United Nations Detention Unit on a Temporary Basis, 25 August 2021.

<sup>7</sup> *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision on the Application for Early Release of Sreten Lukić, 7 October 2021.

<sup>8</sup> As stated in paragraph 62 of the present report, Mr. Kabuga remains detained at the United Nations Detention Unit pending the outcome of the medical assessments ordered by the Trial Chamber to determine his fitness to travel to Arusha and be detained there and his general fitness for trial.

<sup>9</sup> See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Stanišić's Thirteenth Motion for Further Extension of Provisional Release, 1 March 2021, and *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Simatović's Motion for Extension of Provisional Release, 1 March 2021, whereby Mr. Stanišić and Mr. Simatović were granted an extension of their provisional release until a date to be determined by the Trial Chamber at the time of scheduling the delivery of the trial judgment.

<sup>10</sup> The five current detainees are Brđanin, Kabuga, Mladić, Simatović and Stanišić.

<sup>11</sup> The two convicted persons awaiting transfer to enforcement States are Brđanin and Mladić.

the Mechanism to consider entering into a cost-sharing agreement with other international courts in The Hague that have custodial capacity or to explore other arrangements.

107. Both detention facilities are regularly inspected by the International Committee of the Red Cross to ensure that the Mechanism's Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism are properly applied and that both facilities are operating in accordance with international standards. While at the height of the COVID-19 pandemic, the International Committee of the Red Cross carried out a virtual inspection of the United Nations Detention Unit in The Hague, an in-person inspection is scheduled to take place before the end of 2021.

108. As previously reported, the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague maintained a regime aimed at preventing, to the greatest extent possible, the risk of infection of its detainees. At the United Nations Detention Facility, the potential easing of preventive measures became moot after the above-mentioned transfer of the last remaining detainee to Senegal in July 2021. At the United Nations Detention Unit in The Hague, the COVID-19 pandemic continues to pose a risk. However, the roll-out of vaccinations and the lowering of infection rates within the host State have allowed for the easing of several pandemic-related restrictions. Conscious of the underlying health conditions that detainees may have, the Detention Unit is cautiously moving towards a regime closer to that in place prior to the pandemic, bearing in mind that a possible reintroduction of restrictions may be required at any time, should the easing of measures increase the risk of detainee infection. Therefore, while restricted in-person visiting has been reintroduced and occupational therapy options have recommenced, other preventive measures remain in place and all activities continue to be subject to additional mitigating measures.

109. As outlined above, the Mechanism takes its duty of care towards detainees very seriously, in particular as it relates to their health situation and even more so considering the COVID-19 pandemic. It remains cognizant of paragraph 11 of resolution 2529 (2020), 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. In that respect, the Mechanism underscores its established legal and regulatory framework, which supports full compliance with that duty, including the Mechanism's Regulations on the Complaints Procedure for Detainees,<sup>12</sup> as well as through regular status conferences<sup>13</sup> and the above-mentioned inspections by the International Committee of the Red Cross.

## VIII. Enforcement of sentences

110. Pursuant to article 25 of the statute, the Mechanism supervises the enforcement of sentences pronounced by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism.

<sup>12</sup> See also rules 91–97 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism; regulations 8 and 10 of the International Residual Mechanism for Criminal Tribunals Regulations on the Disciplinary Procedure for Detainees; and regulation 23 of the International Residual Mechanism for Criminal Tribunals Regulations on the Supervision of Visits to and Communications with Detainees.

<sup>13</sup> See rule 69 of the Rules of Procedure and Evidence.

111. In connection with that area of responsibility, and according to article 26 of the statute, the President has the authority to decide on requests for pardon or commutation of sentence by 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 requests for early release of convicted persons, the Rules of Procedure and Evidence reflect the President's powers to deal with such requests and the long-standing practice of the ad hoc Tribunals and the Mechanism in that regard.

112. The Mechanism relies greatly on the cooperation of States for the enforcement of sentences. Sentences are served within the territory of States Members of the United Nations that have concluded enforcement of sentence agreements or indicated their willingness to accept convicted persons under any other arrangement. The agreements concluded by the United Nations for the ad hoc Tribunals continue to apply to the Mechanism, *mutatis mutandis*, unless superseded by subsequent agreements.

113. Regarding the designation of the State in which a convicted person is to serve his or her sentence, following delivery of a final judgment, the President makes that decision in accordance with article 25 of the statute, rule 127 of the Rules of Procedure and Evidence and the Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve His or Her Sentence of Imprisonment, on the basis of information provided by the Registrar and any other enquiries the President chooses to make. While there is no prescribed time limit for the designation of an enforcement State, rule 127 (B) of the Rules of Procedure and Evidence provides that the transfer of the convicted person to an enforcement State shall be effected as soon as possible. In line with the Mechanism's agreements with the host States, the convicted persons are not to be detained indefinitely at the United Nations Detention Facility in Arusha or the United Nations Detention Unit in The Hague.

114. During the reporting period, the Mechanism continued to actively engage with potential enforcement States to increase its enforcement capacity for both branches. Both the President and the Registrar undertook efforts in that regard, including through bilateral meetings and other communications. The Mechanism welcomes the valuable cooperation of States in relation to those matters and underscores the need for such cooperation to continue into the foreseeable future. Indeed, securing the enforcement of all sentences, including those that may be rendered in the future, continues to be of paramount importance to the Mechanism.

115. Regarding the Arusha branch, following the transfer of a convicted person from the United Nations Detention Facility to Senegal for the enforcement of his sentence, and the death of one other convicted person,<sup>14</sup> 28 persons convicted by the International Criminal Tribunal for Rwanda are currently serving their sentences under the supervision of the Mechanism in three States: Benin (18), Mali (5) and Senegal (5).

116. Regarding the branch in The Hague, following the transfer of a convicted person from the United Nations Detention Unit to the United Kingdom for the enforcement of his sentence, 20 persons convicted by the International Tribunal for the Former Yugoslavia are currently serving their sentences under the supervision of the Mechanism in 11 States: Austria (1), Belgium (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (3), Sweden (1) and the United Kingdom (2).

<sup>14</sup> *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Registrar's Filing of Death Certificate in Relation to the Death of Mr. Théoneste Bagosora (public with confidential and *ex parte* annex), 28 September 2021.

As reported in paragraph 105 above, there are currently two convicted persons at the United Nations Detention Unit who are awaiting transfer to an enforcement State, one of whom was returned to the Unit on a temporary basis during the reporting period.<sup>15</sup>

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

118. During the reporting period, the Mechanism, in coordination with national authorities and/or the United Nations Development Programme, continued its efforts to address the recommendations of the relevant inspecting bodies, as well as the recommendations of an independent expert on ageing in prison and associated vulnerabilities engaged by the Mechanism.

119. Bearing in mind the particular vulnerability of prison populations, the Mechanism also continued to carefully monitor the COVID-19 pandemic as it pertains to the situation of its convicted persons. Pursuant to the orders issued by the President on 23 February, 25 June and 1 October 2021 (see para. 78 above), the Registry continued to engage with all enforcement States during the reporting period to regularly obtain updated and relevant information on measures taken, including the provision of vaccinations, in their respective prisons to prevent the potential spread of COVID-19, as part of the Mechanism's supervision of the enforcement of sentences.

120. The Mechanism continues to be deeply grateful to each of the above-mentioned 14 States, particularly in the context of the ongoing pandemic, which has now strained resources at the national and international levels for more than 18 months. Their generous support and cooperation, and willingness to assume the weighty responsibilities of enforcement, remain critical to the Mechanism's ability to carry out its mandate in that important area.

121. It is expected that the functions related to the supervision of the enforcement of sentences carried out under the authority of the President will continue until the last prison sentence has been served. Of relevance here is rule 128 of the Rules of Procedure and Evidence, which provides that all sentences shall be supervised by the Mechanism during the period of its functioning and that the Security Council may designate another body to supervise the enforcement of sentences after the Mechanism ceases to exist.

122. In that respect, the Mechanism notes that 18 individuals are currently serving life sentences, while 15 convicted persons will complete their sentences between 2030 and 2040 and another 8 not until 2040. Of the latter group, the longest three sentences will have been fully served in 2044. Furthermore, a majority of the individuals currently serving life sentences will not be eligible for consideration of pardon, commutation of sentence or early release until after 2030, even if they may seek such

<sup>15</sup> Information in relation to the Mechanism's enforcement functions, including the locations where convicted persons are serving their sentences, may be found at <https://www.irmct.org/en/about/functions/enforcement-of-sentences>.



relief beforehand. Three individuals serving a life sentence will not become eligible for consideration of pardon, commutation of sentence or early release until 2038.

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

123. Despite the Mechanism's continued efforts, the relocation of the nine acquitted and released persons currently residing in Arusha who are unable or afraid to return to their country of citizenship remains pending. As previously reported, those persons were either acquitted by the International Criminal Tribunal for Rwanda or were convicted and released after having served their sentences.

124. During the reporting period, the Mechanism continued to engage with States bilaterally on the possible resettlement of the affected individuals, with both the President and the Registrar extending efforts to further raise the international community's awareness of the issue. The Registrar continued to pursue high-level contacts, with a special focus on States that have been identified by the Mechanism or the acquitted and released persons as potential relocation States, and followed up on previous requests for relocation made by the International Criminal Tribunal for Rwanda and the Mechanism.

125. In that regard, the Mechanism is pleased to report that some positive developments are expected in the coming months, following recent fruitful exchanges with certain States. As emphasized in previous reports, the goodwill, cooperation and support of States is essential for the Mechanism in finding a place to resettle such individuals. The Mechanism is therefore grateful to the Security Council for its call upon all States, in resolutions [2422 \(2018\)](#) and [2529 \(2020\)](#), to cooperate with and render all assistance necessary to the Mechanism in relation to this serious matter.

## **X. Cooperation of States**

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

127. The Mechanism depends upon the cooperation of States in order to be able to fulfil many of its mandated functions, including those related to the tracking, arrest and surrender of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda. Following the successful arrest and transfer of Mr. Kabuga in 2020, the Mechanism is committed to making further breakthroughs in that area. However, such progress will only be possible with meaningful cooperation and support from States, particularly those States on whose territory fugitives are suspected of being located. In that context, the Mechanism regrets that, yet again, there were significant challenges in obtaining full and effective cooperation from South Africa during the reporting period, as well as challenges with respect to other States. Details are provided in annex II to the present report. The Mechanism reminds all States of their continuing obligations under article 28 of the statute, as well as the most recent call by the Security Council, in its resolution [2529 \(2020\)](#), to intensify cooperation with and render all assistance necessary to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible. In particular, the Mechanism strongly urges South Africa to provide full and effective cooperation to the Prosecution in relation to all outstanding requests.

128. Following the President's referral of Serbia to the Security Council during the previous reporting period, the support of all Member States also remains crucial in ensuring that the accused persons in the *Jojić and Radeta* case are finally brought to justice. Indeed, the Mechanism notes with regret that that was the third time that Serbia's non-cooperation in relation to the *Jojić and Radeta* case had been referred to the Council, whether by the Mechanism or the International Tribunal for the Former Yugoslavia, and that Serbia has since taken no action in response. The Mechanism once more urges all States Members of the United Nations to honour their responsibilities under Chapter VII of the Charter of the United Nations and do their utmost to ensure that the outstanding arrest warrants and orders of surrender are executed as soon as possible.

129. Separately, the Mechanism will continue to rely on the ongoing support of Member States in relation to enforcement matters, including in relation to identifying enforcement States for the convicted persons currently housed in the United Nations Detention Unit in The Hague. The Mechanism expresses its heartfelt gratitude to all States that are currently enforcing the sentence of one or more persons convicted by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism, for their outstanding cooperation and assistance in that crucial area.

130. Turning to the Mechanism's relationship with the States most directly affected by its work, strengthening communication and cooperation between the Mechanism and the Governments and peoples of Rwanda and the countries of the former Yugoslavia continues to be an important priority.

131. The Mechanism continued to discuss matters of mutual interest with the Rwandan authorities, including means by which cooperation with the Government of Rwanda could be enhanced, in line with paragraph 23 of Security Council resolution [2256 \(2015\)](#). In that regard, the Mechanism's Kinyarwanda Unit, having completed the translation of all trial judgments of the International Criminal Tribunal for Rwanda, is now focusing on the appeal judgments. During the reporting period, the Unit translated two such appeal judgments and one appeal judgment of the Mechanism, as well as several monitoring reports concerning the three cases referred to Rwanda discussed below (see paras. 139–141 below).

132. In its resolution [1966 \(2010\)](#), the Security Council requested the Mechanism to cooperate with Rwanda and the countries of the former Yugoslavia to facilitate the establishment of information and documentation centres. With respect to the former Yugoslavia, the first such information centre was opened on 23 May 2018 in Sarajevo, with the support of the Mechanism. A memorandum of understanding was signed on 5 October 2017 in respect of a second information centre, in Srebrenica-Potočari, Bosnia and Herzegovina. The Mechanism remains available to facilitate the establishment of similar information centres with other stakeholders in the region of the former Yugoslavia and continued its dialogue with relevant authorities in that regard during the reporting period.

133. The Mechanism, together with the European Union and with additional support from Switzerland, also continued its Information Programme for Affected Communities, which focuses on informing affected communities and younger generations in the region of the former Yugoslavia about the legacy of the International Tribunal for the Former Yugoslavia and the ongoing work of the Mechanism and on facilitating access to the Tribunal and Mechanism archives.<sup>16</sup> During the reporting period, as part of the Programme, a total of 120 secondary-school

<sup>16</sup> Further information about the Mechanism Information Programme for Affected Communities is available on the Mechanism's website.

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 October 2021, the Mechanism commenced the third cycle of its video lecture series entitled “International Law and Facts Established before the ICTY”, benefiting postgraduate law students from 12 universities across the former Yugoslavia. In connection with the series, the seven winners of an essay competition for students participating in the first cycle of the series undertook a month-long fellowship at the Mechanism’s branch in The Hague, commencing in mid-October 2021. Lastly, the Mechanism contributed to four lectures on the Tribunal’s legacy, which were hosted by local groups or organizations and addressed to young people, journalists and researchers from the region.

134. The Mechanism is pleased that its Information Programme for Affected Communities continues to be well received, with its social media campaigns having reached nearly 4,000,000 people since January 2019. The Mechanism wishes to sincerely thank the European Union and its member States, as well as Switzerland, for their generous support.

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

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

136. During the reporting period, the Registry processed 27 requests for assistance from national authorities or parties to domestic proceedings in relation to domestic proceedings concerning individuals allegedly implicated in the 1994 genocide against the Tutsi in Rwanda or the conflicts in the former Yugoslavia. It also provided 683 documents during the reporting period. The Mechanism also received and considered numerous requests, pursuant to rule 86 of the Rules of Procedure and Evidence, for the variation of protective measures granted to witnesses who had testified in cases before the ad hoc Tribunals or the Mechanism. Comprehensive information and guidance regarding the submission of requests for assistance are available on the Mechanism’s website. In addition, details regarding the Prosecution’s activity in relation to requests for assistance are provided in annex II.

137. It is expected that activities linked to requests for assistance from national jurisdictions will continue alongside the investigation and prosecution of cases in domestic jurisdictions related to the 1994 genocide against the Tutsi in Rwanda and the conflicts in the former Yugoslavia.

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

138. Pursuant to article 6 (5) of the statute, 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. During the reporting period, the Mechanism continued to exercise its monitoring function in respect of three cases referred to Rwanda and one case referred to France.

139. The Mechanism continued to monitor the cases referred to Rwanda with the pro bono assistance of monitors from the Kenyan section of the International Commission of Jurists, pursuant to a memorandum of understanding concluded on 15 January 2015 and subsequently amended on 16 August 2016. The referred cases concern Bernard

Munyagishari, Ladislas Ntaganzwa and Jean Uwinkindi, who were indicted by the International Criminal Tribunal for Rwanda.

140. In the *Munyagishari* case, there have been no further developments since the confirmation of the trial judgment by the Court of Appeal of Rwanda on 7 May 2021. The *Ntaganzwa* case remains in the appeal phase, with hearings yet to be scheduled following the Court of Appeal of Rwanda's admission of the appeal in January 2021. The appeal judgment in the *Uwinkindi* case was delivered on 24 December 2020 by the Court of Appeal of Rwanda. On 21 January 2021, Mr. Uwinkindi filed a notice for review of the appeal judgment before the Supreme Court of Rwanda, which remains under consideration.

141. In the case of Laurent Bucyibaruta referred to France, on 21 January 2021, the Investigating Chamber ordered an indictment and referral to the Paris criminal court. The trial has been scheduled to take place from 9 May to 1 July 2022 at the Paris criminal court, following the rejection by the Court of Cassation of the Defence's cassation appeal and the confirmation of the referral. Proceedings in the *Bucyibaruta* case are exceptionally monitored by an internal monitor from the Mechanism.

142. While travel restrictions owing to the COVID-19 pandemic continued to affect the direct, in-person monitoring of the above-mentioned cases, the monitors were able to follow the proceedings and communicate with relevant stakeholders remotely. Considering the challenges encountered during the pandemic, the President had previously agreed to accept consolidated reports covering multiple months, instead of the monthly reporting required under the above-mentioned memorandum of understanding for the cases referred to Rwanda. During the reporting period, monthly reporting was resumed where possible, following the lifting of certain restrictions.

143. In relation to the case against Vladimir Kovačević, which was referred to Serbia by the International Tribunal for the Former Yugoslavia in March 2007, the accused was found unfit to stand trial shortly thereafter. While the Prosecution still remains apprised of any developments concerning the health of the accused, there is no expectation that his status will change and the case is not being actively monitored.

144. The Mechanism's monitoring of cases referred to national jurisdictions is expected to continue for the duration of those cases. Furthermore, should any of the five remaining fugitives indicted by the International Criminal Tribunal for Rwanda and expected to be tried in Rwanda be arrested in the future, the Mechanism will be required to monitor the conduct of the cases in accordance with its statutory obligation.

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

145. In accordance with article 27 of the statute, the Mechanism has responsibility for the management of the archives of the Mechanism and the ad hoc Tribunals. The archives, which are co-located with the respective branches of the Mechanism, contain both physical and digital records such as documents, maps, photographs, audiovisual recordings and objects. The records concern, inter alia, investigations, indictments and court proceedings; the protection of witnesses; the detention of accused persons; and the enforcement of sentences. In addition, they include documents from States, other law enforcement authorities, international and non-governmental organizations and other stakeholders.

146. The Mechanism Archives and Records Section is currently responsible for the management of approximately 4,400 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. The management of the archives includes the preservation, arrangement and description of records, their

security and the provision of access, while ensuring the continued protection of confidential information, including information concerning protected witnesses.

147. Regarding preservation, the digital records of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia continued to be incorporated into the Mechanism's digital preservation system to safeguard their long-term integrity, reliability and usability, in accordance with the Mechanism's policy on retention and preservation of records. During the reporting period, a total of 70.27 terabytes of digital records were ingested, including more than 17,455 files in a variety of formats. The Archives and Records Section will continue the work of strengthening the Mechanism's digital preservation programme by further developing institutional capacity and capability for digital preservation.

148. Furthermore, the preservation of audiovisual recordings stored on obsolete physical media in The Hague continued. More than 14,585 physical audiovisual records were assessed to determine preservation needs. At the Arusha branch, the review of audiovisual recordings from judicial proceedings of the International Criminal Tribunal for Rwanda and the Mechanism progressed. During the reporting period, more than 250 hours of recordings were prepared for final review and approval, after which they will be made accessible to the public.

149. The Mechanism continued to facilitate the widest possible access to the public judicial records in its custody through the unified court records database. As previously reported, the database, which was launched in 2020, brings together all public judicial records of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. More than 355,000 judicial records, including approximately 29,000 hours of audiovisual recordings, are currently available to the public through the database. The public judicial records were accessed by more than 11,500 users during the reporting period.

150. During the reporting period, the Mechanism received and responded to 74 requests for access to records under the Access Policy for the Records Held by the International Residual Mechanism for Criminal Tribunals. Many of the requests were for copies of audiovisual recordings of courtroom proceedings, including from documentary filmmakers.

151. Regarding the archives of the ad hoc Tribunals and the Mechanism, the Mechanism Archives and Records Section continued its work on developing a publicly accessible catalogue containing descriptions of the archives, prepared in accordance with international standards. More than 2,000 new catalogue entries were created during the reporting period.

152. Together with the Mechanism's External Relations Office, the Mechanism Archives and Records Section developed an online feature for the World Day for Audiovisual Heritage on 27 October 2021 and a social media campaign for World Digital Preservation Day on 4 November 2021, highlighting the work of the Mechanism's audiovisual and digital preservation programmes, respectively.

## **XIV. External relations**

153. The External Relations Office is responsible for the dissemination of timely and accurate information on the judicial work and activities of the Mechanism. This includes supporting the Mechanism's principals in their interactions with stakeholders where appropriate, hosting visits, organizing meetings and public events, liaising with the media, creating information materials and facilitating the general public's access to information, including through the Mechanism's website and social media channels, as well as through its library.

154. While on-site visits remained mostly suspended owing to the ongoing pandemic, the implementation of strict COVID-19 protocols allowed the External Relations Office to facilitate public and media access to the Mechanism's premises for the rendering of judgments. On 8 June 2021, approximately 150 journalists, representatives of victims' groups, diplomats and others observed the delivery of the appeal judgment in the *Mladić* case from designated areas inside the building and a specially constructed media centre adjacent to the premises. Similarly, the External Relations Office facilitated limited public and media attendance at the pronouncement of the trial judgment in the *Nzabonimpa et al.* case in Arusha on 25 June 2021 and the trial judgment in the *Stanišić and Simatović* case in The Hague on 30 June 2021. In addition, the pronouncement of the judgments and other court sessions were streamed on the Mechanism's website and the External Relations Office coordinated the release and transmission of the official audiovisual recordings to international and regional media outlets. During the reporting period, the Mechanism's website recorded over 580,000 page views and almost 165,000 visitors.

155. The External Relations Office continued its virtual visits programme by hosting a number of online visits and presentations for legal professionals and students from around the world, including Rwanda and the countries of the former Yugoslavia. In The Hague, on 19 September 2021, the External Relations Office also presented the Mechanism's work as part of the annual "Just Peace Month" organized by the city of The Hague. On that occasion, the Mechanism hosted approximately 120 visitors on its outdoors premises, under strict COVID-19 protocols.

156. In addition to the above-mentioned activities, in 2021, the Mechanism developed social media campaigns to mark International Day of Innocent Children Victims of Aggression (4 June), International Archives Week (7–11 June), World Day for International Justice (17 July), Just Peace Month (19 September), International Day for Universal Access to Information (28 September), International Translation Day (30 September), United Nations Day (24 October), World Day for Audiovisual Heritage (27 October), World Digital Preservation Day (4 November) and the anniversary of the establishment of the International Criminal Tribunal for Rwanda (8 November).

157. Lastly, the Mechanism's libraries in Arusha and The Hague processed over 1,200 research requests, loans and other enquiries. While still lower than before the COVID-19 pandemic, the figure is significantly higher than during the previous reporting period.

## **XV. Reports of the office of internal oversight services**

158. As mentioned above, in October 2021, OIOS commenced a new evaluation of the methods and work of the Mechanism. In accordance with Security Council resolution [2529 \(2020\)](#) and past practice, the current evaluation will form part of the 2022 review of the progress of the work of the Mechanism by the Council.

159. In the meantime, during the reporting period, the Mechanism continued its dedicated efforts towards the full implementation of the recommendations contained in the OIOS evaluation report of 2020 ([S/2020/236](#), paras. 66–67) and those contained in the 2018 evaluation report that had been partially implemented ([S/2018/206](#), paras. 43–44). Information concerning the 2018 recommendation on staff morale within the Prosecution is contained in annex II.

160. Regarding the first recommendation in the 2020 evaluation report (para. 66), which also relates to the partially implemented first recommendation in the 2018 evaluation report (para. 43), the Mechanism has significantly advanced towards

developing a general scenario-based plan to inform decisions on the allocation of resources and preparation for unforeseen and foreseeable events. In March 2020, a cross-organ group was promptly set up and started to meet until the Mechanism's focus was directed elsewhere in response to the COVID-19 pandemic. Although progress on the plan was stalled, the concept of scenario-based planning formed the basis of the Mechanism's approach to tackling pandemic-related challenges. In June 2021, the cross-organ group resumed its work on the implementation of the recommendation.

161. The Office of the President coordinated efforts in that regard, cooperating closely with the Prosecution and the Registry at a working level. An internal concept note that reflects the collective thinking of the organs regarding the future operations of the Mechanism is being finalized. The note conceptualizes future contingent events with respect to the Mechanism's various residual functions, sets out appropriate projections based on the Mechanism's experiences in recent years and outlines plans relating to workload and resources for the identified functions. On the basis of the concept note, a specific workplan will be concluded soon. The Mechanism looks forward to communicating the plan to OIOS shortly. The plan is intended to be a living document, which will be updated at regular intervals and will assist the principals and senior managers of the Mechanism in making informed decisions in a collaborative manner on how best to strategically and methodically allocate staff and resources.

162. Also in relation to the first recommendation in the 2020 evaluation report, the principals of the Mechanism have repeatedly expressed their commitment to promoting cross-organ cooperation and decision-making and have implemented that vision in relation to a range of strategic issues. Regular meetings of the Coordination Council, together with frequent informal communications among the principals, again proved valuable in that respect during the reporting period, allowing for rolling discussions on cross-cutting issues, including the COVID-19 pandemic, as well as budget, downsizing and staffing matters, among other things.

163. As mentioned above, the Mechanism undertook cross-organ scenario- planning and strategic coordination in responding to the COVID-19 pandemic. Throughout this difficult chapter, all three organs have worked together closely and the principals have taken active steps to bolster coordination and information-sharing among themselves and laterally, across the organs, on matters that affect them equally. The COVID-19 Steering Committee, established in July 2020, continued to play an important role in coordinating the Mechanism's response to the ongoing global health crisis during the reporting period. Weekly meetings of the Committee ensured a full exchange of views and information among senior representatives of all three organs and the efficient provision of advice to the principals regarding not only the pandemic but also other systemic issues where appropriate. Those experiences and the related lessons learned were recognized by OIOS in its horizontal audit of the Mechanism's response to the COVID-19 pandemic and will be invaluable to the Mechanism as it continues to implement the first recommendation.

164. Regarding the specific recommendation of OIOS to rationalize the reporting lines of the external relations function (S/2020/236, para. 66), arrangements are being put in place to optimize operations and communication channels, thus avoiding duplication and ensuring adequate oversight.

165. With respect to the second recommendation in the 2020 evaluation report (*ibid.*, para. 67), namely, to provide clear and focused projections of completion timelines, the Mechanism has provided that information above<sup>17</sup> and in enclosure III. Indeed, the Mechanism has once more provided and met projections for the completion of its

<sup>17</sup> See paras. 60 regarding the *Stanišić and Simatović* case, 62–64 regarding the *Kabuga* case and 68 regarding the *Fatuma et al.* case.

pending judicial caseload and has fully explained any adjustments to the projections contained in the previous report. In that regard, the progress made by the Mechanism during the reporting period, as detailed above, demonstrates its determination to advance and conclude its pending judicial caseload as expeditiously as possible, with full regard for due process and fair trial rights.

166. In addition to implementing the OIOS evaluation recommendations, the Mechanism continued to benefit from regular audits by OIOS. In that respect, the above-mentioned audit of the response of the Mechanism to COVID-19, which was conducted as part of a system-wide audit of the response of United Nations entities to the pandemic, was completed and resulted in the issuance of three recommendations. OIOS found that the Mechanism had effectively responded to the pandemic, ensuring staff well-being and business continuity.<sup>18</sup> In October 2021, OIOS commenced the field work for a new audit of judicial records and court operations at the Mechanism, which is still ongoing.

167. With regard to earlier OIOS audits, the Mechanism continued to diligently follow up on and implement any open or outstanding recommendations. One recommendation from the audit of translation and interpretation services was closed and action on the remaining three recommendations is ongoing. In addition, in relation to the audit of post-construction and occupancy of the Arusha branch facility, implementation continued with the presentation of the final draft of the space allocation guidelines to the Registrar for his approval.

168. In addition to the Mechanism's engagement with OIOS, the Mechanism is annually audited by the Board of Auditors. On 25 October 2021, the Board commenced a five-week site visit to the Mechanism's branch in The Hague ahead of its audit of the 2021 financial statement.

169. The Mechanism welcomes and appreciates the work of OIOS and the Board of Auditors and remains committed to further improving efficiency and ensuring effective and transparent management.

## **XVI. Conclusion**

170. Having concluded proceedings in one appeal case and two trial cases during the reporting period, the Mechanism stands in a considerably different position than it did six months ago. In terms of its current caseload, the Mechanism now has on its docket only two pending cases relating to the core crimes reflected in its statute, as well as appeal proceedings in an ongoing contempt case. While the Mechanism's remaining residual functions, as set out in the present report, will continue until the Security Council deems otherwise, the reporting period signifies the beginning of a new, leaner chapter with respect to the Mechanism's judicial activity and the life cycle of the Mechanism more generally.

171. During this next phase of its operations, the Mechanism will not stop striving for further success. On the contrary, it will press ahead towards the optimal fulfilment of its mandate, focusing on efficiency and effectiveness in every aspect of its functioning, while constantly bearing in mind the touchstones of independence, fairness and due process that must guide its conduct as a court of law. In that context, the Mechanism acknowledges that, as for any institution, there will be areas in which its practices can be refined and further efficiencies identified. For that reason, the Mechanism is keen to again engage actively with the Security Council, the Informal Working Group on International Tribunals and OIOS over the coming months, as part

<sup>18</sup> Office of Internal Oversight Services, "Audit of the response of the International Residual Mechanism for Criminal Tribunals to the COVID-19 pandemic", report 2021/042, 15 September 2021, para. 24.



of its periodic evaluations and reviews. It enters those processes with a willingness to constantly learn and improve.

172. At the same time, the Mechanism already takes heart from being one of the only international criminal courts or tribunals of the modern era to have consistently demonstrated concrete results such as those produced during the reporting period. It notes also that few other international judicial institutions have maintained the pace of business continuity that the Mechanism has been able to achieve throughout the COVID-19 pandemic, and fewer still are engaged in simultaneous reporting, review, evaluation and auditing processes as numerous or onerous as those to which the Mechanism continues to be subject. For all those reasons, and despite the challenges faced and the constraints on its resources, the Mechanism is particularly satisfied with the progress it has been able to make during the past six months.

173. Such progress is testament not only to what can be achieved through hard work and dedicated service, but also to what is possible when those who believe in the mission of the Mechanism join together. Indeed, the Mechanism has been fortunate to be able to count on the sterling support and cooperation of its partners during these times of continued global uncertainty. In that regard, the Mechanism wishes to express heartfelt gratitude to its superb host States, the Netherlands and the United Republic of Tanzania, as well as the 14 enforcement States that, in voluntarily assuming additional responsibilities, provide the Mechanism with invaluable assistance on a daily basis. In addition, the Mechanism is most grateful to Switzerland and the European Union for their generous support of the Mechanism's legacy- and education-related activities and wishes to acknowledge Rwanda and the countries of the former Yugoslavia as key stakeholders in the ultimate success of its mandate. Deep appreciation must also be expressed to the United Nations Legal Counsel and the Office of Legal Affairs, as well as the broader United Nations membership.

174. Lastly, the Mechanism is immensely proud of its judges and staff, as well as non-staff personnel, who have again excelled in their duties and shown outstanding dedication to the cause of justice. It sincerely thanks them all. Although the pending judicial caseload will further decrease in future and the Mechanism's corridors will gradually empty, the intellectual vigour and professional commitment of those individuals must always be acknowledged, nurtured and valued. Undeniably, it is their contributions to the judgments delivered and to the other activities detailed in the present report that allow the Mechanism, like its predecessor Tribunals, to lead the way in the ongoing fight against impunity. As the progress made during the reporting period demonstrates, the Mechanism will continue to draw on all of its resolve to stay at the forefront of this crucial endeavour.

## Enclosure I

### International Residual Mechanism for Criminal Tribunals: approved appropriations and expenditures for 2021

Table 1

#### Approved appropriations for the period from 1 January to 31 December 2021 (net of staff assessment)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	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	Mechanism
Arusha	Post	–	3 302 300	12 312 000	–	15 614 300
	Non-post <sup>a</sup>	643 200	5 864 100	19 386 800	4 292 800	30 186 900
<b>Subtotal</b>		<b>643 200</b>	<b>9 166 400</b>	<b>31 698 800</b>	<b>4 292 800</b>	<b>45 801 200</b>
The Hague	Post	–	1 545 800	6 668 000	–	8 213 800
	Non-post	1 126 000	5 303 200	27 466 000	–	33 895 200
<b>Subtotal</b>		<b>1 126 000</b>	<b>6 849 000</b>	<b>34 134 000</b>	<b>–</b>	<b>42 109 000</b>
New York	Post	–	–	178 300	–	178 300
	Non-post	–	–	–	–	–
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>178 300</b>	<b>–</b>	<b>178 300</b>
Office of Internal Oversight Services	Post	–	–	208 400	–	208 400
	Non-post	–	–	134 900	–	134 900
<b>Subtotal</b>		<b>–</b>	<b>–</b>	<b>343 300</b>	<b>–</b>	<b>343 300</b>
Overall	Post	–	4 848 100	19 366 700	–	24 214 800
	Non-post	1 769 200	11 167 300	46 987 700	4 292 800	64 217 000
<b>Total</b>		<b>1 769 200</b>	<b>16 015 400</b>	<b>66 354 400</b>	<b>4 292 800</b>	<b>88 431 800</b>

Table 2

#### Expenditures (net of staff assessment) as at 1 November 2021 (per Umoja)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	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	Mechanism
Arusha	Post	–	2 123 901	9 427 596	–	11 551 497
	Non-post	469 055	3 280 690	11 094 613	3 838 786	18 683 144
<b>Subtotal</b>		<b>469 055</b>	<b>5 404 591</b>	<b>20 522 209</b>	<b>3 838 786</b>	<b>30 234 641</b>
The Hague	Post	–	1 107 763	4 899 548	–	6 007 311
	Non-post	969 025	4 905 708	23 723 107	–	29 597 840
<b>Subtotal</b>		<b>969 025</b>	<b>6 013 471</b>	<b>28 622 655</b>	<b>–</b>	<b>35 605 151</b>

		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	<i>Mechanism</i>
New York	Post	–	–	88 750	–	88 750
	Non-post	–	–	–	–	–
	<b>Subtotal</b>	<b>–</b>	<b>–</b>	<b>88 750</b>	<b>–</b>	<b>88 750</b>
Office of Internal Oversight Services	Post	–	–	149 305	–	149 305
	Non-post	–	–	36 090	–	36 090
	<b>Subtotal</b>	<b>–</b>	<b>–</b>	<b>185 395</b>	<b>–</b>	<b>185 395</b>
Overall	Post	–	3 231 664	14 565 199	–	17 796 863
	Non-post	1 438 080	8 186 398	34 853 810	3 838 786	48 317 074
	<b>Total</b>	<b>1 438 080</b>	<b>11 418 062</b>	<b>49 419 009</b>	<b>3 838 786</b>	<b>66 113 937</b>

Table 3  
Percentage of annual budget expended as at 1 November 2021

		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	<i>Mechanism</i>
Arusha	Post	–	64.3	76.6	–	74.0
	Non-post	72.9	55.9	57.2	89.4	61.9
	<b>Subtotal</b>	<b>72.9</b>	<b>59.0</b>	<b>64.7</b>	<b>89.4</b>	<b>66.0</b>
The Hague	Post	–	71.7	73.5	–	73.1
	Non-post	86.1	92.5	86.4	–	87.3
	<b>Subtotal</b>	<b>86.1</b>	<b>87.8</b>	<b>83.9</b>	<b>–</b>	<b>84.6</b>
New York	Post	–	–	49.8	–	49.8
	Non-post	–	–	–	–	–
	<b>Subtotal</b>	<b>–</b>	<b>–</b>	<b>49.8</b>	<b>–</b>	<b>49.8</b>
Office of Internal Oversight Services	Post	–	–	71.6	–	71.6
	Non-post	–	–	26.8	–	26.8
	<b>Subtotal</b>	<b>–</b>	<b>–</b>	<b>54.0</b>	<b>–</b>	<b>54.0</b>
Overall	Post	–	66.7	75.2	–	73.5
	Non-post	81.3	73.3	74.2	89.4	75.2
	<b>Total</b>	<b>81.3</b>	<b>71.3</b>	<b>74.5</b>	<b>89.4</b>	<b>74.8</b>

## Enclosure II

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

Table 1  
Staff numbers by branch and organ

Category	Arusha branch	The Hague branch	Chambers <sup>a</sup>	Office of the Prosecutor	Registry <sup>b</sup>	Mechanism overall
All staff	227	260	31	104	352	487
Staff on continuous posts	128	57	9	28	148	185
Staff on general temporary assistance positions	99	203	22	76	204	302
International (Field Service, Professional and above)	126	109	24	65	146	235
Local (General Service)	101	151	7	39	206	252

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

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

Table 2  
Geographical representation by regional group

	Arusha branch	The Hague branch	Mechanism overall (percentage) <sup>a</sup>
<b>Nationalities</b>	<b>40</b>	<b>58</b>	<b>71</b>
All staff			
African	172	18	190 (39.0)
Asia-Pacific	10	21	31 (6.4)
Eastern European	2	53	55 (11.3)
Latin American and Caribbean	2	7	9 (1.8)
Western European and Other States	41	161	202 (41.5)
International (Field Service, Professional and above)			
African	71	4	75 (31.9)
Asia-Pacific	10	6	16 (6.8)
Eastern European	2	19	21 (8.9)
Latin American and Caribbean	2	3	5 (2.1)
Western European and Other States	41	77	118 (50.2)
Local (General Service)			
African	101	14	115 (45.6)
Asia-Pacific	0	15	15 (6.0)
Eastern European	0	34	34 (13.5)
Latin American and Caribbean	0	4	4 (1.6)
Western European and Other States	0	84	84 (33.3)

(Footnotes on following page)

\* The data in the tables below represent the number of staff employed as at 1 November 2021.

(Footnotes to table 2)

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

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

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

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

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

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

Table 3  
**Gender representation**

	<i>Arusha branch</i>		<i>The Hague branch</i>		<i>Mechanism</i>
	<i>Arusha (percentage)</i>	<i>Kigali field office (percentage)</i>	<i>The Hague (percentage)</i>	<i>Sarajevo field office (percentage)</i>	<i>Overall (percentage)</i>
Professional staff (all levels)	66	9	107	2	184
Male	37 (56)	8 (89)	42 (39)	2 (100)	89 (48)
Female	29 (44)	1 (11)	65 (61)	0 (0)	95 (52)
Professional staff (P-4 and above)	20	4	32	1	57
Male	14 (70)	3 (75)	12 (38)	1 (100)	30 (53)
Female	6 (30)	1 (25)	20 (62)	–	27 (47)
Field Service staff (all levels)	45	6	–	–	51
Male	27 (60)	4 (67)	–	–	31 (61)
Female	18 (40)	2 (33)	–	–	20 (39)
General Service (all levels)	83	18	148	3	252
Male	55 (66)	14 (78)	86 (58)	2 (67)	157 (62)
Female	28 (34)	4 (22)	62 (42)	1 (33)	95 (38)
All staff	194	33	255	5	487
Male	119 (61)	26 (79)	128 (50)	4 (80)	277 (57)
Female	75 (39)	7 (21)	127 (50)	1 (20)	210 (43)

Table 4  
**Staff by organ**

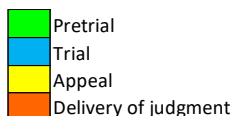
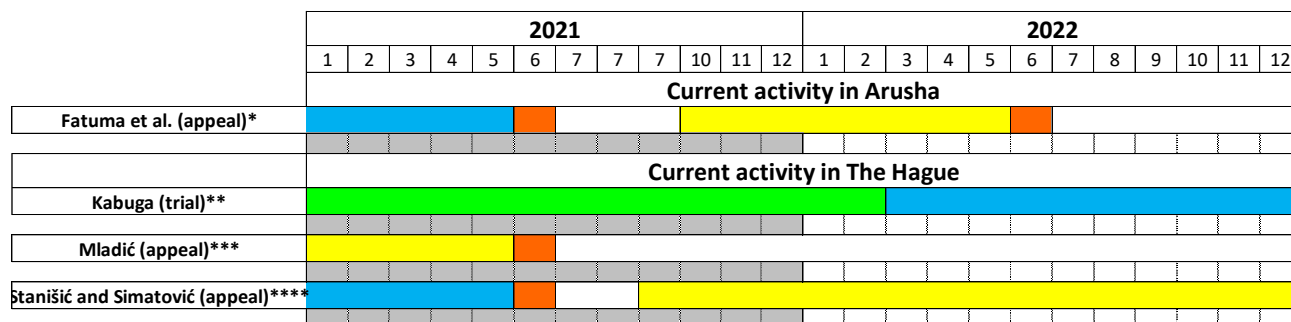
	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Chambers (including the Office of the President)	10	21	31
Office of the Prosecutor	44	60	104
Registry	173	179	352
Immediate Office of the Registrar	3	3	6
Legal Team	10	7	17
Archives and Records Section	13	14	27

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Witness Support and Protection Unit	12	7	19
Judicial Records and Court Operations Unit	3	5	8
Language Support Services	15	26	41
External Relations Office	5	4	9
Office for Legal Aid and Defence Matters	0	3	3
Division of Administration	45	67	112
Security and Safety Section	59	38	97
United Nations Detention Facility and United Nations Detention Unit	8	5	13

## Enclosure III

### International Residual Mechanism for Criminal Tribunals: status of trial and appeal proceedings, 2021–2022

(On the basis of information available as at 15 November 2021 and subject to change)



\* The trial judgment was delivered in June 2021, as projected, and written reasons were filed in September 2021. The appeal briefing is expected to conclude in December 2021 and the pre-briefing projection for completion of the appeal proceedings is June 2022.

\*\* Following the single judge's order of 21 October 2020, the accused was temporarily transferred to the branch in The Hague on 26 October 2020 for a detailed medical assessment. The medical assessments related to the accused's fitness to travel to Arusha and to stand trial are ongoing.

\*\*\* The appeal judgment was delivered in June 2021, as projected.

\*\*\*\* The trial judgment was delivered in June 2021, as projected, and written reasons were filed in August 2021. The appeal briefing is expected to conclude in January 2022 and the pre-briefing projection for completion of the appeal proceedings is June 2023.

## Annex II

**Progress report of the Prosecutor of the International Residual  
Mechanism for Criminal Tribunals, Serge Brammertz, for the  
period from 17 May to 15 November 2021**

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## I. Overview

1. The Prosecutor of the International Residual Mechanism for Criminal Tribunals submits the nineteenth progress report pursuant to Security Council resolution [1966 \(2010\)](#), covering developments from 17 May to 15 November 2021.
2. During the reporting period, the Office of the Prosecutor continued to focus on its three priorities: (a) completing trials and appeals expeditiously; (b) locating and arresting the remaining fugitives indicted by the International Criminal Tribunal for Rwanda; and (c) assisting national jurisdictions prosecuting international crimes committed in Rwanda and the former Yugoslavia. The Office relies on the full cooperation of States to carry out its mandate successfully in those areas.
3. During the reporting period, the Office of the Prosecutor continued its progress towards completion of its ad hoc residual functions. At the Arusha branch, the Prosecution in the *Kabuga* case completed key pretrial responsibilities in accordance with the workplan issued and is ready to commence trial when ordered by the Trial Chamber. At the branch in The Hague, the Prosecution commenced appeal proceedings in the *Stanišić and Simatović* and *Fatuma et al.* cases.
4. The Office of the Prosecutor is intensively working to account for the remaining six fugitives indicted by the International Criminal Tribunal for Rwanda. The highest priority target is Protais Mpiranya, former commander of the Presidential Guard of the Rwandan Armed Forces, while the Office is also actively pursuing the five other fugitives. The Office of the Prosecutor continued to achieve significant progress during the reporting period in its investigations into the historical and current whereabouts of the fugitives. The coming period will be of decisive importance, given that the Office's current strategies with respect to priority targets are approaching critical junctures. If the Office is able to obtain the intelligence and evidence it requires, it is expected that there will be significant developments. At the same time, the lack of timely and effective cooperation from States Members of the United Nations, in particular from Central, Eastern and Southern Africa, is preventing successful results. The Office undertook significant efforts during the reporting period to ensure that Member States provide full and effective cooperation.
5. Regarding national prosecutions of war crimes committed in Rwanda, the Office of the Prosecutor and national authorities have been identifying persons living outside Rwanda who may be reasonably suspected of being responsible for participating in the 1994 genocide against the Tutsi in Rwanda, but who have not yet been investigated and/or prosecuted. More justice for crimes committed during the 1994 genocide is still urgently needed. During the reporting period, the Office of the Prosecutor and the Prosecutor General of Rwanda commenced discussions concerning the request by Rwandan authorities for assistance in locating, investigating and prosecuting Rwandan nationals suspected of genocide. The Office of the Prosecutor has now initiated an extensive review of its collection of evidence to identify suitable cases. The Office calls upon Member States to continue providing full support to the accountability process, whether in the courtrooms of the Mechanism, Rwanda or third-party States.
6. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Office of the Prosecutor continued to support the further implementation of the completion strategy of the International Tribunal for the Former Yugoslavia. With the Tribunal's closure, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. At the request of Governments and stakeholders in the region, the Office of the Prosecutor continued to provide vital assistance during the reporting period, in particular by providing access to its evidence and expertise. The Office is pleased to report that important progress was achieved in regional judicial cooperation following discussions between the Prosecutor

and the President of Serbia. At the same time, progress in national justice initiatives has been slow in recent years, in particular given the large backlog of cases that remain. Similarly, commitments made by Governments of the region to support war crimes justice, the search for missing persons and reconciliation remain unrealized.

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

8. With respect to the coronavirus disease (COVID-19) pandemic, the Office began to return to on-site working during the reporting period, with a full return to on-site working arrangements having been completed on 13 September 2021. The decision to return to on-site working was made in the light of operational requirements, with the assurance that all reasonable measures had been taken to protect the health of staff in the workplace. The Office's continued progress in achieving its strategic goals and mandate in such challenging circumstances is owing to, in significant measure, the dedication of its staff to the cause of justice.

## II. Trials and appeals

9. During the reporting period, the Office of the Prosecutor completed two trials (*Nzabonimpa et al.* and *Stanišić and Simatović*) and one appeal (*Mladić*). In addition, the Office is litigating one case at pretrial (*Kabuga*) and two appeal proceedings (*Fatuma et al.*, formerly *Nzabonimpa et al.*, and *Stanišić and Simatović*).

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

### A. Update on the progress of trials

#### 1. *Kabuga*

11. 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. On 24 February 2021, the Trial Chamber granted the Prosecution's request to amend the indictment in the *Kabuga* case. The amended indictment will promote a more expeditious trial while appropriately reflecting the scale of the crimes committed and Kabuga's alleged criminal responsibility.

12. During the reporting period, the Prosecution achieved key pretrial objectives to promote swift commencement of trial proceedings as to be determined by the Trial Chamber. On 4 June 2021, the Trial Chamber issued its pretrial workplan. In full accordance with the established deadlines, the Prosecution filed its motion for admission of adjudicated facts on 16 August and its pretrial brief on 23 August. The Prosecution completed its disclosure of witness statements and transcripts in accordance with rule 71 (A) (ii) of the Rules of Procedure and Evidence by 23 August and its disclosure of expert reports in accordance with rule 116 (A) by 30 August, while also completing its review of disclosable confidential material from other proceedings before the International Criminal Tribunal for Rwanda. On 6 October, the Trial Chamber issued its decision on the Prosecution's motion for admission of adjudicated facts, taking judicial notice of the large majority of the adjudicated facts proposed by the Prosecution. Through those and other steps, the Prosecution continues to meet all of its pretrial obligations, take steps to promote expeditious trial proceedings and ensure its readiness to start trial whenever ordered by the Trial Chamber.

13. During the reporting period, the Prosecution made 10 filings on matters related to the case and responded to filings by the Defence. Notably, the Prosecution was required to effectively litigate critical matters raised by the Defence, including a requested stay of proceedings, issues related to the accused's health and access by the Defence team to confidential records. The Prosecution disclosed more than 5,000 files comprising approximately 74,000 pages to the Defence. The Prosecution is currently awaiting the Defence's pretrial brief and response to the Prosecution's expert witness reports, which are due on 15 November.

14. The Prosecution is facing an immense workload in relation to the case, arising from both the complexity of the charges against Kabuga and the significant ancillary litigation concerning matters such as the accused's health. During the reporting period, the Prosecution was further required to respond to significant additional ancillary litigation initiated by Kabuga's family members and associated third parties concerning seized assets and frozen funds. The Office is making every effort to manage the workload through the flexible redeployment of resources from throughout the Office in accordance with its "one office" policy.

## **2. *Nzabonimpa et al. (formerly Turinabo et al.)***

15. On 24 August 2018, the single judge confirmed the indictment in the *Prosecutor v. Turinabo et al.* case and issued warrants of arrest. On 9 August 2019, the Prosecutor submitted an indictment against Augustin Ngirabatware, which was confirmed on 10 October 2019. On 10 December 2019, the single judge granted the Prosecution's motion and ordered that the two cases be joined. The indictments charge five accused – Augustin Ngirabatware, Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma – with contempt of court in an effort to overturn Ngirabatware's conviction. In addition, the indictments charge Dick Prudence Munyeshuli, an investigator on Ngirabatware's former defence team, Ngirabatware and Turinabo with violation of court orders protecting witnesses. Maximilien Turinabo passed away in the course of the trial and proceedings against him were terminated.

16. On 25 June 2021, the single judge orally delivered his judgment in the trial, entering convictions against Nzabonimpa, Ndagijimana and Fatuma for contempt of court for witness interference. The single judge also convicted Ngirabatware for contempt of court for witness interference and violation of court orders protecting witnesses. Ngirabatware was sentenced to two years of imprisonment, while Nzabonimpa, Ndagijimana and Fatuma were sentenced to time served, representing over 11 months of imprisonment. The single judge entered a judgment of acquittal for Munyeshuli. The single judge's written judgment was issued on 20 September 2021.

17. The single judge accepted in large measure the Prosecution's charges and evidence. The single judge found that, as alleged by the Prosecution, the four convicted accused had engaged in a highly organized effort to manipulate and improperly influence potential witness evidence in the context of Ngirabatware's review proceeding. The criminal scheme proven at trial extended over three years and involved extensive planning and coordination, including concealing the source of funds transmitted from Europe to the accused in Rwanda for use in bribing witnesses. Those efforts, which the convicted accused sought to conceal, were aimed at obtaining the recantations of key witnesses in the review proceeding. Thousands of euros made available by Ngirabatware were paid or offered to witnesses and intermediaries in order to facilitate such recantations.

18. The Office of the Prosecutor is satisfied that the core of its charges was found to have been proved beyond a reasonable doubt and that four accused were convicted for their participation in a complex criminal scheme to subvert justice in an effort to overturn Ngirabatware's convictions for direct and public incitement to commit genocide and aiding and abetting genocide. The effective investigation and

prosecution of witness interference and breaches of witness protection measures are essential to protecting witnesses and maintaining the integrity of proceedings conducted by the Mechanism, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. The Office of the Prosecutor will continue to carry out its mandate under article 14 of the statute to ensure that contempt of court offences under article 1 (4) of the statute are detected and prosecuted.

19. The Prosecution's case relied on advanced technological evidence, including electronic devices seized from the accused, telecommunications records and content, and financial records. The Office of the Prosecutor is grateful to Member States, in particular Germany, the Netherlands, Rwanda and the United Kingdom of Great Britain and Northern Ireland, for having provided vital assistance in obtaining and processing such evidence.

### **3. *Stanišić and Simatović***

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

21. On 30 June 2021, the Trial Chamber orally delivered its judgment, entering convictions against Jovica Stanišić and Franko Simatović for aiding and abetting the crimes of murder, deportation, forcible transfer and persecution as crimes against humanity and murder as a war crime. Stanišić and Simatović were both sentenced to 12 years of imprisonment. The Trial Chamber's written judgment was issued on 6 August 2021.

22. The Trial Chamber found that from at least August 1991, there was a joint criminal enterprise to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through the commission of crimes against humanity and war crimes, including persecution, murder, deportation and forcible transfer. The members of the joint criminal enterprise were senior political, military and police leaders in Serbia, in the Serb autonomous regions of Krajina and Slavonija, Baranja and Western Srem, and in the Serb Republic of Bosnia and Herzegovina, including the then-President of Serbia, Slobodan Milošević, Radovan Karadžić and Ratko Mladić. The Trial Chamber further concluded that Stanišić and Simatović had aided and abetted the crimes committed in Bosanski Šamac in April 1992 by providing practical assistance through training and the deployment of members of a special unit of the Serbian State Security Service and local Serbs from Bosanski Šamac to participate in the takeover of the municipality.

23. The Office of the Prosecutor has taken note that the Trial Chamber accepted its evidence in part by finding Stanišić and Simatović guilty beyond a reasonable doubt of crimes against humanity and war crimes. The Office underscores the Trial Chamber's conclusion that as senior officials in the Serbian State Security Service, Stanišić and Simatović contributed to the commission of crimes against non-Serbs.

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

### **1. *Mladić***

24. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia unanimously convicted Ratko Mladić of genocide, terror, persecution, extermination, murder, unlawful attacks on civilians, deportation, inhumane acts and hostage-taking and sentenced him to life imprisonment.

Specifically, the Trial Chamber found that Mladić had committed the crimes through his “leading and grave role” in four joint criminal enterprises: (a) the “overarching joint criminal enterprise”, aimed at permanently removing Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia and Herzegovina between May 1992 and November 1995; (b) the “Sarajevo joint criminal enterprise”, aimed at spreading terror among the civilian population of Sarajevo through a campaign of sniping and shelling between May 1992 and November 1995; (c) the “Srebrenica joint criminal enterprise”, aimed at eliminating the Bosnian Muslims in Srebrenica between July and at least October 1995; and (d) the “hostage-taking joint criminal enterprise”, aimed at capturing United Nations peacekeepers deployed in Bosnia and Herzegovina and detaining them in strategic military locations to prevent the North Atlantic Treaty Organization from launching further air strikes against Bosnian Serb military targets from May to June 1995.

25. On 8 June 2021, the Appeals Chamber issued its judgment, affirming the convictions and sentence entered at trial. The Appeals Chamber dismissed the grounds of appeal filed by the Defence and also rejected the Prosecution’s appeal against the Trial Chamber’s acquittal of Mladić for the crime of genocide committed in certain municipalities in Bosnia and Herzegovina in 1992.

26. The Office of the Prosecutor is satisfied with the judgment of the Appeals Chamber, which confirms Mladić’s extensive responsibility for some of the gravest crimes known to humankind. The trial and appeal judgments in the case establish beyond a reasonable doubt that Mladić ranks among the most notorious war criminals in modern history. He intentionally used his military command to attack, kill, torture, rape and expel innocent civilians for no reason other than their ethnicity and religion, culminating in the Srebrenica genocide.

## 2. *Fatuma et al. (formerly Nzabonimpa et al. and Turinabo et al.)*

27. On 24 June 2021, the single judge convicted Augustin Ngirabatware, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma for contempt of court, while acquitting Dick Prudence Munyeshuli.

28. On 18 October 2021, the Prosecution filed its notice of appeal asserting three grounds of appeal against the single judge’s judgment. In its first ground of appeal, the Prosecution argues that the single judge erred in fact and/or law in failing to find that Munyeshuli was criminally responsible for committing contempt by disclosing protected information in violation of court orders. In its second ground of appeal, the Prosecution argues that the single judge erred in fact and/or law in declining to enter a conviction against Munyeshuli for committing contempt through prohibited indirect contact with protected witnesses. In its third ground of appeal, the Prosecution argues that the single judge erred in fact and/or law in determining that Ngirabatware’s contempt sentence should run concurrently with the sentence that Ngirabatware is already serving for genocide. Fatuma also filed a notice of appeal on the same day, asserting seven grounds of appeal against the single judge’s judgment.

## 3. *Stanišić and Simatović*

29. On 30 June 2021, the Trial Chamber convicted Jovica Stanišić and Franko Simatović for having aided and abetted the crimes of murder, deportation, forcible transfer and persecution as crimes against humanity and murder as a war crime. Stanišić and Simatović were both sentenced to 12 years of imprisonment.

30. On 6 September 2021, the Prosecution filed its notice of appeal asserting two grounds of appeal against the Trial Chamber’s judgment. In its first ground of appeal, the Prosecution argues that the Trial Chamber erred in fact and/or law in failing to hold Stanišić and Simatović criminally responsible as members of a joint criminal

enterprise. In its second ground of appeal, the Prosecution argues that the Trial Chamber erred in law and/or fact in failing to hold Stanišić and Simatović criminally responsible for aiding and abetting the crimes in the Serbian autonomous region of Krajina, the Serbian autonomous region of Eastern Slavonia, Baranja and Western Srem, Zvornik, Doboj and Sanski Most. On the same day, Stanišić filed a notice of appeal asserting eight grounds of appeal against the Trial Chamber's judgment and Simatović filed a notice of appeal asserting four grounds of appeal.

### **C. Other proceedings**

31. At the order of a single judge of the Mechanism, during the reporting period, the Office of the Prosecutor continued conducting one investigation into alleged contempt crimes under the Mechanism's jurisdiction. The Prosecution is complying with directions from the court and submitting regular progress reports as directed. Owing to delays in receiving responses to requests for assistance submitted to Serbia, the Prosecution anticipates that the investigation will be completed in the first half of 2022. In addition, the Prosecution 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 statute. In accordance with the "one office" policy, the Office of the Prosecutor has absorbed the related requirements for those investigations within existing resources.

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

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

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

34. In relation to Rwanda, the Office is grateful for the support provided to date, in particular by the Office of the Prosecutor General and heads of law enforcement agencies. The continued cooperation and assistance from Rwandan authorities have been instrumental in the Prosecution's efforts in the *Kabuga* case, as well as the tracking of fugitives.

35. In relation to Serbia, there have been some significant delays in responses to requests for assistance from the Office of the Prosecutor in relation to court-ordered investigations. During his visit to Belgrade in September, the Prosecutor raised the matter with the Serbian Minister of Justice, recalling prior commitments to urgently provide responses and Serbia's obligation to provide cooperation in relation to the Office of the Prosecutor's requests for assistance. It was agreed that responses would be provided swiftly. The Office is pleased to report that although formal responses to three requests are still pending, the majority of the requests that were unanswered as of the beginning of the reporting period have now been addressed. The Office notes, however, that important court orders issued in March and May 2021 at the Prosecution's request have not yet been executed. The Office encourages Serbia to promptly implement those court orders and trusts that, moving forward, similar issues will not arise.

36. 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 it received during the reporting period from States

Members of the United Nations and international organizations, including the United Nations and its agencies, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and the International Criminal Police Organization.

37. 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**

38. As previously reported, the Office of the Prosecutor proposed in early 2016 to amend rule 151 of the Mechanism's Rules of Procedure and Evidence to establish a programme for conditional early release. The Office was gravely concerned that in the past, the vast majority of persons convicted of the most serious international crimes had been released unconditionally upon or soon after serving only two thirds of their sentence. While the Office's proposal to amend rule 151 was not adopted by the plenary of judges, the Office welcomed the adoption of Security Council resolution [2422 \(2018\)](#), in which the Council encouraged the Mechanism to consider a conditional early release regime.

39. During the reporting period, Pauline Nyiramasuhuko's application for early release was denied on 11 November 2021 and Élie Ndayambaje was denied early release or commutation of sentence on 15 November 2021. One convict, Sreten Lukić, was granted early release by the President on 7 October 2021. The Office has taken note of the extensive conditions that Lukić must comply with until the completion of the remainder of his sentence on 7 January 2026. The Office has also taken note that Serbia is responsible for monitoring compliance with those conditions, was required to register Lukić's criminal conviction in his Serbian criminal record and is required to submit quarterly reports to the Mechanism on compliance with the conditions. The Office will also closely follow the implementation of this new conditional early release regime.

40. The Office will continue to urge consideration of the views of the victims and affected States and communities before granting early release and bring its views and concerns to the attention of the President in response to applications for early release of persons convicted of genocide, crimes against humanity and war crimes.

## **III. Fugitives**

41. With the arrest of Félicien Kabuga and the confirmation of the death of Augustin Bizimana on 16 and 22 May 2020, respectively, the Office of the Prosecutor has accounted for two of the three major fugitives indicted by the International Criminal Tribunal for Rwanda. One major fugitive – Protais Mpiranya, former commander of the Presidential Guard of the Rwandan Armed Forces – and five other fugitives – Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Charles Ryandikayo and Charles Sikubwabo – remain at large. The Office has viable leads and is implementing strategies for each of the six men.

42. The Office of the Prosecutor continues to achieve significant progress in its investigations into the historical and current whereabouts of the remaining fugitives. Consistent with the improved methodologies and practices instituted by the Prosecutor, which led to the arrest of Kabuga, the Office is implementing analysis-driven



investigations utilizing both information gathered from human sources and advanced analytical techniques, including financial, telecommunications and movement information. The Office has identified important persons of interest for further investigation and is actively pursuing viable leads with a view to confirming or closing them. During the reporting period, the Office's tracking team fully resumed its activities, including travel, and is now working in a number of countries around the world.

43. The Office of the Prosecutor took further steps during the reporting period to strengthen its efforts. The Prosecutor appointed as the new leader of the tracking team a senior investigator with extensive experience and demonstrated results from more than two decades of work in international criminal justice. Recognizing the critical need for diplomatic engagement and strategic legal direction to support tracking activities, the Prosecutor also directed his Chief of Staff to serve as co-leader. Additional staff with relevant skills in complex investigations and advanced analytical tools were recruited, ensuring that the Office has the skill sets to match its investigative requirements.

44. In the light of key advancements in its investigations during the reporting period, the Office of the Prosecutor emphasizes that the coming period will be of decisive importance. The Office's current strategies with respect to priority targets are approaching critical junctures. If the Office is able to obtain the intelligence and evidence it requires, it is expected that there will be significant advancements.

45. The Office has repeatedly reported that the success of its efforts depends on the full and effective cooperation of Member States. As the failure to arrest Kayishema three years ago demonstrates, the Office is able to locate fugitives, but cooperation from Member States is required to secure their arrest. In addition, critical intelligence and evidence are in the possession of or available to key Member States, without which the Office's investigations will be significantly impeded. During the reporting period, the Prosecutor and the tracking team leaders undertook extensive efforts to obtain required cooperation.

46. With respect to Zimbabwe, the Office of the Prosecutor continued its active engagement with the task force established to assist the Office's investigations, an engagement premised on the clear and substantiated understanding that at least one fugitive has been present in Zimbabwe. During the reporting period, the Office submitted extensive lists of requests for intelligence and evidence and conducted on-the-ground investigations during three missions, including interviews of persons of interest. A review of the results achieved by the task force and Zimbabwean authorities identified both positive developments and outstanding issues. The Office appreciates the efforts made by the task force, including its responses to requests and facilitation of the Office's visits. At the same time, there have been significant delays in obtaining critical information and some requests were not accurately processed, challenges that have arisen in part because the task force communicates with the Office through diplomatic channels. In addition, critical requests related to information in the possession of Zimbabwean military and intelligence authorities were not answered.

47. To resolve those challenges and strengthen the Office's cooperation with Zimbabwe, the Prosecutor undertook an official mission to Harare from 2 to 4 November 2021. The Prosecutor was pleased to have the opportunity to meet with the Vice-President, the Minister of Home Affairs and Cultural Heritage and the Prosecutor-General for open and productive exchanges of views, during which Zimbabwe's unreserved commitment to providing full and effective cooperation to the Office of the Prosecutor was reaffirmed. As a result of the discussions and recognizing that the Office will have even more intense requirements moving forward, the Office submitted a set of recommendations for concrete measures to enable the tracking team to directly engage at the operational level with relevant

Zimbabwean authorities. It was further agreed that the Office's pending requests for military and intelligence information would be discussed at the highest levels. The Office of the Prosecutor fully acknowledges Zimbabwe's sovereign interests and strong desire to demonstrate its full respect for international justice and the rule of law. The Office hopes to receive shortly a positive response to its recommendations and requests and to be able to report in the coming period that Zimbabwe is providing full and effective cooperation in the Office's efforts.

48. With respect to South Africa, the Office of the Prosecutor regrets to report that for yet another reporting period, there were significant challenges in obtaining full and effective cooperation. The present situation with South Africa is among the most severe instances of non-cooperation faced by the Office since the establishment of the Mechanism. As previously reported, the Office's request for assistance from December 2019 still has not been satisfactorily answered. In addition, earlier in 2021, the Office submitted two important new requests for assistance. One remains unanswered in any part. The other request, submitted in February, concerned time-sensitive intelligence that the Office was actively pursuing to identify a fugitive's current whereabouts and activities. Regrettably, the Office did not receive a response until early October and, even then, only a small part of the requested information was initially provided, with the remainder given in November after further follow-up. It is obvious that an eight-month delay in providing critical information has blocked the Office's work, with the result that fugitives have been able to evade detection again. Otherwise, the Office received no additional information during the reporting period from South African authorities concerning a fugitive's long-standing presence in the country, which, as became apparent, was because South Africa authorities had not conducted their own further investigations on the matter in more than a year. Those challenges have been compounded and have become even more serious in the light of the rapidly increasing number of leads related to South Africa concerning multiple fugitives that the Office is identifying in its investigations.

49. In a continued effort to find a way forward and finally secure South Africa's full and effective cooperation, on 6 September 2021, the Office submitted to the Government a request to establish a South African Police investigative team and authorize it to work directly with the Office's tracking team at an operational level. The Prosecutor also undertook an official mission to Pretoria from 8 to 10 November 2021 to discuss this urgently needed solution and resolve outstanding challenges. While regrettably, not all South African ministries made their senior officials available, the Prosecutor welcomed the direct engagement by the Minister of Home Affairs. Following the Prosecutor's frank presentation of the situation, the Minister agreed that those matters had to be resolved and pledged to ensure that the Office's request was promptly discussed at the highest levels of Government. Meetings with responsible officials from the Department of International Relations and Cooperation and the South African Police similarly resulted in a consensus that the Office's proposal to establish a South African Police investigative team and authorize it to work directly with the Office's tracking team was the best way forward and represented an important chance for South Africa to finally provide full and effective cooperation. The Prosecutor trusts that the Minister of International Relations and Cooperation will join her colleague, the Minister of Home Affairs, to ensure that the Office's request of 6 September 2021 is approved by the highest level authorities of the Government as quickly as possible. The Office hopes to receive a positive response prior to the scheduled briefing by the Prosecutor to the Security Council.

50. The Office has previously reported on its efforts to confirm intelligence that one fugitive is deceased. Unfortunately, the Office's planned exhumation of the identified grave site has been repeatedly stalled owing to the absence of a response to its request for support to the Democratic Republic of the Congo. Recognizing the importance of

continued progress towards accounting for all remaining fugitives, the Office hopes that the Security Council will strongly encourage the Government of the Democratic Republic of Congo to quickly approve the Office's request.

51. More broadly, the Office continues to face significant challenges in obtaining critical information from Member States in Central, Eastern and Southern Africa. For example, Uganda still has not responded to important requests, some of which have been pending for years, and no explanation has been provided. As with South Africa, the apparent non-cooperation from Uganda is substantially impeding the Office's investigations. The Office will continue engaging with relevant Ugandan authorities, but it is clear that a willingness to cooperate must be expressed at the highest levels of government to get the matter on the right track.

52. To resolve all the challenges the Office is facing in obtaining cooperation, the support of Security Council members is critical. In bilateral discussions, relevant Member States should be reminded of their international legal obligation to cooperate with the Office of the Prosecutor in locating the fugitives. To secure that cooperation, serious consideration should be given to linking cooperation with the Office to other forms of support and assistance. With the full support of the Council and the international community, the fugitives can be arrested and this important residual function brought to a close. The survivors and victims of the 1994 genocide against the Tutsi in Rwanda deserve nothing less.

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

53. 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 Office of the Prosecutor is mandated to assist and support national prosecutions of such crimes, in accordance with the completion strategies of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, resolution 1966 (2010) and the Mechanism statute. The effective prosecution of such 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.

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

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

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

55. The closure of the International Criminal Tribunal for Rwanda was 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. The Mechanism and national courts are now responsible for continuing the Tribunal's work and ensuring the full implementation of the Tribunal's completion strategy by bringing more perpetrators to justice.

56. The Office of the Prosecutor is fully committed to undertaking all efforts to locate and arrest the remaining six fugitives indicted by the International Criminal

Tribunal for Rwanda. As reported above, the Office is generating and pursuing active leads. Full cooperation and support from Member States are urgently needed to enable the Office's efforts to achieve results. The Mechanism further continues to monitor the progress of the two ongoing cases referred under rule 11 bis of the Rules of Procedure and Evidence to the national courts of France and Rwanda. The case against Laurent Bucyibaruta was referred to France in 2007. Ladislas Ntaganzwa was transferred to Rwanda in 2016, following the referral of his case in 2012.

57. At the same time, national authorities now have primary responsibility for the continued implementation of the completion strategy of the Tribunal. The Prosecutor General of Rwanda is currently searching for more than a thousand fugitives. Courts in countries around the world continue to process cases of crimes committed during the Rwandan genocide.

58. 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 of being responsible for participating in the 1994 genocide against the Tutsi, but who have not yet been investigated and/or prosecuted by judicial authorities in the countries where they may currently be found. Similarly, law enforcement and prosecutorial authorities as well as civil society and others continue to identify such persons. For example, in July 2020, a French investigative journalist located and identified Aloys Ntwiragabo in Orléans, France. Ntwiragabo served as Chief of Military Intelligence in the ex-Rwandan Armed Forces during the genocide. Ntwiragabo later served as Chief of Staff of the Forces démocratiques de libération du Rwanda, an armed group sanctioned by the Security Council and responsible for serious international crimes committed in the Democratic Republic of the Congo. It is believed that Ntwiragabo may have been living in France since as early as 2006. A preliminary investigation against him has been opened by French authorities. Ntwiragabo is only one of a number of persons residing in France and other countries in Africa, Europe and North America against whom investigations could be opened. The Office of the Prosecutor underscores that it stands ready to assist national authorities, including French investigators and prosecutors, to fully and expeditiously investigate those suspected of committing crimes during the Rwandan genocide, including through the provision of evidence and its expertise in the investigation and prosecution of such crimes.

59. During the reporting period, the Office of the Prosecutor and the Prosecutor General of Rwanda commenced discussions concerning the request by Rwandan authorities for assistance in locating, investigating and prosecuting Rwandan nationals suspected of genocide, in particular those living outside Rwanda. The Office of the Prosecutor has now commenced an extensive review of its collection of evidence and the results of prior investigations to identify suitable cases for which it can provide expert assistance to the Prosecutor General. The Office hopes to be able to report progress in response to Rwanda's request for assistance in the coming period.

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

61. It is essential that those who bear individual criminal responsibility for crimes committed during the 1994 genocide against the Tutsi in Rwanda be prosecuted. Twenty-seven 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 and third-party States prosecuting in their own domestic courts Rwandan nationals suspected of genocide. The Office calls upon all Member States to ensure that all possible efforts are undertaken to continue the implementation of the completion strategy of the International Criminal Tribunal for Rwanda and support more justice for more victims of the Rwandan genocide.

## 2. Genocide denial

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

63. Yet today, genocide denial continues. Efforts to minimize the scale of the death and destruction or detract 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.

64. 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. During the recent commemoration of the twenty-seventh anniversary of the genocide against the Tutsi in Rwanda, the Prosecutor participated in events held in New York and The Hague to highlight the importance of those efforts. Participants noted that in the light of continuing genocide denial, serious consideration should be given to criminalizing such behaviour, whether directly or as a form of hate speech, in order to ensure that genocide denial is repressed. The Office further 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.

## 3. Cases referred to France

65. The trial proceedings in the *Bucyibaruta* case have not yet commenced. Laurent Bucyibaruta, prefect of Gikongoro Prefecture, 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. After many years of delay, the investigation by French authorities was completed in 2018. On 4 October 2018, the Public Prosecutor filed his final submission asking for partial discharge and transfer to the criminal court and requesting the investigating judge to order an indictment for genocide, complicity in genocide and complicity in crimes against humanity. On 24 December 2018, the investigating judge issued a decision that the case should proceed to trial, which was appealed by the accused and civil parties. On 21 January 2021, the appellate court confirmed the decision, changing the charges from complicity to direct perpetration of genocide for certain criminal facts and adding others that had been rejected by the investigating judge. The final appeal to the Court

of Cassation was heard on 14 April 2021 and a decision rejecting the appeal was issued on the same date. It is expected that the trial will commence in May 2022.

66. If the trial commences as expected in May 2022, that will be fourteen and a half years after the case was referred to France for trial and almost seventeen years after the indictment against Bucyibaruta was confirmed by the International Criminal Tribunal for Rwanda. If convicted, further appeal proceedings can be expected. The Office of the Prosecutor encourages the French authorities to expeditiously process investigations and prosecutions for crimes committed during the 1994 genocide against the Tutsi in Rwanda.

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

67. With two referred cases already completed, the only remaining ongoing referred case in Rwanda is against Ladislas Ntaganzwa, mayor of Nyakizu commune. He was indicted by the International Criminal Tribunal for Rwanda in June 1996, with the amended indictment charging him with five counts of genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 20 March 2016. On 28 May 2020, the High Court issued its trial judgment, convicting Ntaganzwa of genocide and the crimes against humanity of extermination, rape and murder, acquitting him of incitement to commit genocide and sentencing him to life imprisonment. The date of the appeal hearing has not yet been scheduled.

68. The Office of the Prosecutor recognizes 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 *Uwinkindi* and *Munyagishari* cases were each completed within approximately eight years of the transfer of the accused to Rwanda. The Office continues to seek the arrest of additional fugitives indicted by the Tribunal for Rwanda whose cases have also been referred to Rwanda and fully expects that their trials and appeals will be expeditiously completed in accordance with international fair trial standards.

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

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

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

70. More than 15 years after the adoption of the completion strategy, national judiciaries have achieved progress in accountability for war crimes, albeit unevenly among different countries. 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-level war criminals prosecuted and convicted by the International Tribunal for the Former Yugoslavia.

## 2. Denial and glorification

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

72. Unfortunately, negative developments continued during the reporting period. In Serbia, convicted war criminal General Vladimir Lazarević was praised for his military dedication and professionalism and made an honorary citizen of a municipality in the city of Niš. In addition, high-level Serbian officials publicly delegitimized the Mechanism's judgments in the *Mladić* and *Stanišić and Simatović* cases, claiming that they had been rendered in revenge against the Serbs. In Croatia, on the anniversary of the murder of more than a dozen Serbian prisoners of war, a convicted war criminal was praised and honoured at the very site where the victims were executed.

73. At the same time, important measures promoting respect for victims and the truth were taken in Montenegro and Bosnia and Herzegovina during the reporting period. In Montenegro, the Minister of Justice and Human and Minority Rights was dismissed for his comments denying the Srebrenica genocide, and legislation was passed prohibiting the denial of genocide. The Prime Minister of Montenegro further demonstrated great respect by publicly apologizing to all victims of the Srebrenica genocide. Similarly, the former High Representative for Bosnia and Herzegovina amended the Criminal Code of Bosnia and Herzegovina to prohibit the denial of genocide, crimes against humanity and war crimes in an effort to address rampant denial and glorification. The prohibition applies to all such crimes committed against victims from all communities. Decisive steps such as those are vital to promoting reconciliation and respect for all victims of crimes committed during the conflicts.

74. The Office of the Prosecutor calls upon all officials and public figures in the region to act responsibly and put the victims and civilian suffering at the forefront in all activities marking anniversaries of crimes and events during the conflicts in the former Yugoslavia. 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.

## 3. Regional judicial cooperation

75. Judicial cooperation among the countries of the former Yugoslavia is essential to ensuring that those responsible for war crimes are held accountable. Many suspects are not present in the territory in which they are alleged to have committed the crimes. Yet, Governments in the region refuse to extradite their citizens on war crimes charges, despite regularly extraditing persons accused of committing other serious crimes, such as organized crime, corruption and economic crimes. As reported in the Mechanism's thirteenth progress report ([S/2018/1033](#)), regional judicial cooperation in war crimes matters among the countries of the former Yugoslavia is at its lowest level in years and faces immense challenges. Decisive action is needed to reverse the current negative trends and ensure that war criminals do not find safe haven in

neighbouring countries. Solutions are available and well known; the commitment and willingness to use them are now required.

76. During the reporting period, the Mechanism Office of the Prosecutor continued its efforts to improve regional judicial cooperation in war crimes matters. The Office is pleased to report that notable progress was achieved following discussions between the Mechanism Prosecutor and the President of Serbia. During his recent visit to Belgrade, the Prosecutor raised the issue of recent arrests of Bosnian nationals who were suspected of having committed war crimes crossing the border into Serbia. Agreeing that such arrests undermined trust and regional cooperation, the President of Serbia undertook to strongly encourage Serbian authorities to end that practice and address such cases by ensuring that evidence and investigations were transferred to prosecutors in Bosnia and Herzegovina for further processing. The prosecution offices of Serbia and Bosnia and Herzegovina should now build on that positive development by realizing previous commitments to exchanging information on relevant ongoing investigations and transferring appropriate indictments. The Mechanism Office of the Prosecutor will continue advocating for and providing support to that process, which will bring regional cooperation closer to European standards. While serious challenges persist, the Office hopes to report on further concrete progress in the coming period.

77. In a similar positive development, in October 2021, the Court of Bosnia and Herzegovina transferred a confirmed indictment to the Special State Prosecutor's Office of Montenegro for further processing. Based on the transferred file, the Office issued an indictment and arrested the Montenegrin suspect, who is alleged to have committed sexual violence crimes in Bosnia and Herzegovina in 1992.

78. Unfortunately, in other important areas, there was little improvement during the reporting period. There has been no progress in the matter of Novak Djukić, which was covered extensively in the Mechanism's fifteenth progress report (S/2019/888, annex II). The category II case against Mirko Vručinić, who absconded to Serbia in 2020 before the completion of his trial in Bosnia and Herzegovina, remains stalled, with Vručinić continuing to evade accountability for his alleged crimes. Similarly, Milomir Savčić, who was standing trial in Bosnia and Herzegovina for his alleged involvement in the Srebrenica genocide, has fled to Serbia, from where he cannot be extradited. Judicial cooperation between Serbia and Kosovo<sup>19</sup> in war crimes matters has not improved. Long-standing negotiations between Croatia and Serbia to establish an agreement on a framework for war crimes cases, previously reported in the Prosecutor's fourteenth progress report (S/2019/417, annex II), remain at a standstill. The Office of the Prosecutor urges prosecution offices, judiciaries and justice ministries throughout the former Yugoslavia to urgently resolve those and other matters and put regional judicial cooperation in war crimes matters on the right track.

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

79. In its previous reports, the Office of the Prosecutor touched upon the need for the countries in the former Yugoslavia to register criminal convictions entered by the International Tribunal for the Former Yugoslavia and the Mechanism into domestic criminal records. Today, in the countries of the former Yugoslavia, the domestic criminal records of many international war criminals do not reflect their convictions. In that sense, from the perspective of domestic legal orders, it is almost as if the crimes never happened, and the perpetrators were never convicted. The matter is

<sup>19</sup> All references to Kosovo shall be understood as being in full compliance with Security Council resolution 1244 (1999).



vitaly important for the rule of law, reconciliation and stability in the former Yugoslavia, as well as a fundamental issue of cooperation with the Mechanism.

80. The Office of the Prosecutor can report that progress is being made, although more remains to be done. As previously noted, authorities in Serbia have begun that process, with a second conviction by the International Tribunal for the Former Yugoslavia having been registered during the reporting period, and Croatia has registered all relevant Tribunal judgments in its domestic criminal records. However, there has not yet been similar progress in Bosnia and Herzegovina, where no judgments from the Tribunal for the Former Yugoslavia or the Mechanism had been recorded in domestic criminal records as of the end of the reporting period. While the established working group of the Ministry of Justice is active, its efforts are focused on entering into an agreement with the Mechanism regulating the registration of judgments. This is despite the fact that the Mechanism clearly informed the Ministry that the judgments had already been transmitted officially and the matter was fully within Bosnia and Herzegovina's competence. The Office hopes that all efforts in Bosnia and Herzegovina will be urgently directed towards ensuring that judgments are registered in domestic criminal records.

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

## **5. Bosnia and Herzegovina**

82. During the reporting period, the Office of the Prosecutor engaged in positive discussions with the Prosecutor's Office of Bosnia and Herzegovina on cooperation in war crimes justice. The Office of the Prosecutor looks forward to its continued close cooperation and collaboration with the newly appointed Acting Chief Prosecutor and his staff, including through assistance on concrete cases, strategic support and activities to transfer lessons learned. The Office of the Prosecutor is committed to continuing to support the work of the Prosecutor's Office of Bosnia and Herzegovina, particularly in the mutual goal of successfully implementing the national war crimes strategy.

83. The revised national war crimes strategy provides the framework for intensified efforts to achieve greater justice for war crimes in Bosnia and Herzegovina. For the Prosecutor's Office of Bosnia and Herzegovina, the revised strategy further enshrines its focus on the most complex remaining cases, involving senior- and mid-level accused and/or grave crimes such as sexual violence. Reporting on the implementation of the strategy has been impeded by the failure to appoint the supervisory body responsible for overseeing its application.

84. According to the workplan of the Prosecutor's Office of Bosnia and Herzegovina, 200 to 300 cases remain to be processed by the Prosecutor's Office, while the remaining less complex cases are being transferred. The transfer of less complex cases will be an important indicator for the implementation of the revised strategy. In the reporting period, the Prosecutor's Office filed three indictments against five suspects. The remaining backlog at the Prosecutor's Office consists of 378 cases against 3,833 perpetrators. Of those, 198 cases against 2,758 persons are in the criminal report phase, while 180 cases against 1,045 persons are under investigation. There are also 244 cases against unknown perpetrators. The Prosecutor's Office reports that it expects better results in the upcoming reporting periods. The Mechanism Office of the Prosecutor will closely monitor and report on the processing of cases by the Prosecutor's Office of Bosnia and Herzegovina as well

as provide requested support to assist the Prosecutor's Office in meeting its important responsibilities.

85. 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 intends to further develop that collaboration and cooperation in two key areas.

86. First, of the cases against identified suspects, 307 suspects in 122 investigations and 25 accused in 23 indicted cases are known to be currently living outside of Bosnia and Herzegovina. Of the indicted accused, 19 are believed to be residing in Serbia and six in Croatia. Of the cases in the investigation phase, 214 suspects are believed to be residing in Serbia, Croatia and Montenegro. As noted above, to address this challenge, the Office of the Prosecutor has already assisted the Prosecutor's Office of Bosnia and Herzegovina in transferring key case files involving senior- and mid-level accused to other countries in the region and will continue to work to address the large number of cases that now need to be transferred.

87. Second, although some of the recommendations made by Judge Joanna Korner in her expert review report, aimed at strengthening the Prosecutor's Office of Bosnia and Herzegovina, have been implemented, other important recommendations remain outstanding. To support progress by the Prosecutor's Office of Bosnia and Herzegovina in relation to the outstanding recommendations, the Office of the Prosecutor has agreed to share its experience as well as regulations and practices of the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism as a model for the Prosecutor's Office of Bosnia and Herzegovina to adapt and build on. The Office of the Prosecutor will continue to assist the Prosecutor's Office of Bosnia and Herzegovina in relation to implementing the outstanding recommendations in the report.

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

## **6. Croatia**

89. The Office of the Prosecutor continued to engage with the Ministry of Justice and the State Attorney's Office of Croatia regarding continued war crimes justice in Croatia and the region. This direct engagement has produced concrete results, and the Office of the Prosecutor will continue to work with and assist Croatian authorities to ensure greater accountability moving forward, in respect of both war crimes committed in Croatia and war crimes committed by Croatian nationals in neighbouring countries.

90. As previously reported, with the assistance of the Office of the Prosecutor, the State Attorney's Office of Croatia took over the prosecution of three category II cases received from Bosnia and Herzegovina. The investigations relating to all three cases are ongoing.

91. Despite those developments, there were concerning steps backward during the reporting period, with seemingly renewed political interference in judicial processes. The Prosecutor's Office of Bosnia and Herzegovina sent an international legal assistance request to transfer to Croatia a case against 14 high- and mid-level Croatian commanders, consistent with the principles of regional judicial cooperation. The individuals are suspected of having committed crimes in the municipalities of Gradiška and Dubica during Operation Bljesak (Flash). Unfortunately, in Croatia, the request was not submitted to the State Attorney's Office for processing. Rather, the Government took a political decision itself to reject the case, after the Prime Minister and four other ministers met with the commanders concerned. Without the cooperation of Croatia, it will be extremely difficult for the case to be appropriately processed. The direct involvement of the Government in the matter regrettably raises the appearance that war crimes accountability in Croatia is subject to political interference, undermining the rule of law and European values. As has been previously reported, the Government has not yet withdrawn its 2015 conclusion providing for political interference in war crimes justice. The Office of the Prosecutor urges the Government of Croatia to revisit the policy and ensure the independence of criminal justice processes.

92. Similarly, there has been no progress on the large backlog of pending cases requiring judicial cooperation from Croatia. Croatian authorities have not yet facilitated the transfer of another important pending category II case and have reported that there is currently a backlog of approximately 200 requests for assistance from Bosnia and Herzegovina. However, Croatian authorities have committed that requests to interview witnesses and suspects will be granted if submitted in accordance with inter-State agreements and if other requisite conditions are met. The Office of the Prosecutor will continue to engage with Croatian authorities to ensure that the justice process is not impeded and will monitor and report accordingly.

93. Separately, the *Glavaš* case, a category II case previously referred by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to the State Attorney's Office of Croatia, remains at retrial. The retrial finally recommenced in July 2021. The proceedings have now been ongoing for 14 years. Formerly Major General in the Croatian Army and Member of the Croatian Parliament, Branimir Glavaš is accused of responsibility for the torture and execution of Croatian Serb civilians, including one victim who was forced to drink car battery acid and then shot. His initial conviction in 2009, upheld on appeal by the Supreme Court of Croatia in 2010, was quashed on formalistic grounds by the Constitutional Court in 2015, which ruled that he should have been charged with war crimes committed in an international armed conflict rather than war crimes committed in an internal armed conflict. The Office of the Prosecutor will continue to monitor developments and hopes to report that the retrial is being expeditiously conducted.

94. More generally, war crimes trials in Croatia face significant challenges. Hearings in many war crimes proceedings were not conducted during the reporting period. The large majority of cases, which concern Serb perpetrators accused of committing crimes against Croatian victims, continue to be conducted in absentia because Serbian authorities will not extradite the accused to Croatia and Croatian authorities will not transfer the cases to Serbia. The Office of the Prosecutor will continue to engage to find solutions to the stalemate.

95. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, it is clear that more justice for war crimes is urgently needed in Croatia. Fewer cases are being prosecuted each year and significant accountability gaps remain, particularly in relation to Croatian nationals who committed crimes in neighbouring countries and the responsibility of Croatian commanders for crimes committed by their subordinates. Victims have high

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

## 7. Montenegro

96. At the request of Montenegrin authorities, the Office of the Prosecutor has, over the past few years, developed its assistance to Montenegro in relation to justice for war crimes committed in the conflicts in the former Yugoslavia. The Office agreed to significantly strengthen their cooperation in war crimes justice, including through the transfer of evidence, assistance on concrete cases, training and capacity-building. Subsequently, Montenegrin authorities and the Office of the Prosecutor have had further positive engagement and will continue working closely together to improve the processing of war crimes cases in Montenegro. It is well understood that to date, insufficient justice for war crimes has been achieved in Montenegro.

97. As previously reported, at the request of Montenegrin authorities, in November 2019, the Office prepared and handed over to the Special State Prosecutor's Office an investigative dossier concerning more than 15 suspects. Many of these persons are suspected of horrific crimes of sexual violence, including sexual slavery, rape, torture, enforced prostitution and human trafficking for sexual exploitation, and others are suspected of the torture and execution of civilians.

98. The preliminary investigation by the Special State Prosecutor's Office into the crimes set out in the dossier continued to progress during the reporting period and was focused on compiling essential materials required for the investigation. The Special State Prosecutor's Office has continued to cooperate with the Prosecutor's Office of Bosnia and Herzegovina, which is in possession of relevant evidence and has already prosecuted related cases. The Mechanism Office of the Prosecutor will continue to provide assistance to the Special State Prosecutor's Office so that the investigations may be swiftly completed and indictments prepared.

99. However, the Special State Prosecutor's Office urgently needs additional support. The capacity of the Office needs to be increased to process the transferred files, including an increase in human resources, as only two prosecutors are currently assigned to war crimes cases. Important reforms in domestic law to support war crimes justice are also needed. Meetings convened by the European Commission involving the Montenegrin Ministry of Justice and Human and Minority Rights and the Mechanism Office of the Prosecutor have led to positive developments. Drawing on its expertise, the Office of the Prosecutor identified legislative changes that would allow for the introduction of evidence from the International Tribunal for the Former Yugoslavia and the Mechanism in Montenegrin proceedings and facilitate the effective prosecution of conflict-related sexual violence cases. The Ministry of Justice and Human and Minority Rights committed to supporting the necessary changes and has reported that initial drafts of the legislative reforms have been prepared. The Office of the Prosecutor will continue to provide requested support to ensure progress in those and other important areas. Diplomatic partners, in particular the European Union, will continue to play a decisive role in enabling the further steps needed to support increased war crimes justice in Montenegro.

100. Overall, and taking into account the completion strategy of the International 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, Montenegrin authorities have accepted that far more needs to be done and took some steps during the reporting period towards ensuring that Montenegro can achieve 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.

## **8. Serbia**

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

102. During the reporting period, the Office of the War Crimes Prosecutor of Serbia filed three indictments against low- to mid-level suspects. Two are based on investigations conducted by the Office and the third was transferred from Bosnia and Herzegovina. As of the end of the reporting period, the Office also had 15 active investigations against known suspects and 14 investigations against unknown suspects. Judgments were issued in three cases during the reporting period, all of which resulted in convictions.

103. The Office of the Prosecutor takes note that the Government of Serbia adopted a revised national war crimes strategy for the period from 2021 to 2026. However, with limited progress achieved under the previous strategy, numerous challenges remain. A large number of cases have yet to be prosecuted, including the cases concerning senior- and mid-level suspects. The Office of the Prosecutor stands ready to support the Office of the War Crimes Prosecutor in advancing accountability in those more complex cases and in successfully implementing the revised national war crimes strategy.

104. The direct engagement of the Office of the Prosecutor with the Office of the War Crimes Prosecutor continues to have a positive impact. As noted previously, three category II cases were transferred to the Office of the War Crimes Prosecutor through mutual legal assistance from Bosnia and Herzegovina. Two of the three cases have proceeded to trial, while the third was terminated following the death of the accused. In addition, the Mechanism Office of the Prosecutor continued to actively engage with the Office of the War Crimes Prosecutor in the analysis and processing of two case files involving senior-level accused that had previously been handed over. The Office of the War Crimes Prosecutor continues its investigation in relation to both case files. In respect of all these cases, the Mechanism Office of the Prosecutor and the Office of the War Crimes Prosecutor of Serbia continue to hold detailed technical discussions, and the Mechanism Office continues to provide a range of other assistance, including case strategies, assistance in understanding the evidence available, the provision of additional evidence and support in respect of witness protection issues. The tangible progress made demonstrates both the value of intensified cooperation between the two Offices and that prosecutions of complex cases involving senior- and mid-level officials for serious crimes are possible in Serbia. The further progress of the cases will be an important indicator for the future.

105. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, Serbia finds itself at an important juncture. With few results having been achieved during the period of the previous national war crimes strategy and impunity for many well-established crimes continuing, Serbia has the opportunity to put war crimes justice on the right course. Victims, the public and other stakeholders rightly expect clear signs that war crimes justice in Serbia is heading in the right direction, and decisive steps are urgently needed to show that investments are bearing fruit and that there is the will to realize the commitments made in the national war crimes strategy. Important case files involving senior- and mid-level officials have been transferred to Serbia and the Office of the Prosecutor will provide all requested assistance, including training, direct case assistance and other forms of support, needed to appropriately process those files. The next reporting periods will be critical to understanding the trajectory of war crimes justice in Serbia, including in particular whether the Office of the War Crimes Prosecutor is investigating, processing, indicting and prosecuting more cases, particularly against senior- and mid-level officials, at a higher rate and to a higher quality.

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

106. The Office of the Prosecutor possesses extensive evidence and invaluable expertise that can greatly benefit national justice efforts. The collection of evidence relating to the former Yugoslavia comprises more than 9 million pages of documents, tens of thousands of hours of audio and video records and thousands of artefacts, most of which were not introduced into evidence in any proceeding before the International Tribunal for the Former Yugoslavia and thus is available only from the Office of the Prosecutor. The collection of evidence relating to Rwanda comprises more than 1 million pages of documents. The evidence is highly valuable to national authorities prosecuting serious international crimes committed in Rwanda and the countries of the former Yugoslavia, as well as in the search for missing persons. In addition, the Office's staff members have unique insight into the crimes and the cases that can assist national prosecutors in preparing and proving their indictments.

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

108. In relation to Rwanda, during the reporting period, the Office of the Prosecutor received six requests for assistance from four Member States, five of which have been processed. Two requests were submitted by Belgian authorities, two requests were submitted by French authorities, one request was submitted by American authorities and one request was from Rwandan authorities. In total, the Office handed over more than 1,500 documents comprising more than 90,000 pages of evidence.

109. In relation to the former Yugoslavia, the Office of the Prosecutor received 232 requests for assistance from five Member States and two international organizations. Thirty-six requests for assistance were submitted by authorities in Bosnia and Herzegovina, two were from Serbia, two were from the United States of America, one was from Belgium and one was from Canada. In total, the Office handed over more than 5,700 documents comprising more than 115,400 pages of evidence and 88 audiovisual records. In addition, the Office filed eight submissions related to witness protective measures and/or access to evidence. The Office continued to receive a high volume of requests for assistance during the reporting period and expects that an even larger volume of requests will be received in the future.

110. The significant growth in recent years in requests for assistance received by the Office – for example, at the branch in The Hague, the number of requests received

increased from 111 in 2013 to 383 in 2020, a nearly fourfold increase – has not been met by proportional increases in related resources. The Office has sought to absorb the additional requirements by flexibly redeploying staff. Unfortunately, with the Office already having lean staffing numbers, it has not been possible to fully address the increased workload. OIOS recognized this in noting that “given the dynamic level of ad hoc judicial activity, the Office of the Prosecutor had a shortfall of capacity to address continuous activities” (S/2020/236, para. 41). The Office is exerting best efforts to provide timely responses to pending requests by liaising with partners and prioritizing requests to mitigate negative impacts. However, it has reached the limit of what it can achieve without additional resources.

111. As a result, a backlog of approximately 280 requests older than six months has developed and the total number of outstanding requests at the end of the reporting period was 470. The Office underlines that national authorities heavily rely on support from the Office to meet their important responsibilities to achieve further justice for serious international crimes committed in Rwanda and the former Yugoslavia. 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 in relation to those activities.

112. The joint European Union-Mechanism project supporting domestic accountability for war crimes continued during the reporting period. Under the project, national authorities can request direct assistance from the Office of the Prosecutor on concrete investigations and prosecutions, including in regard to regional judicial cooperation. In addition, the Office is preparing additional investigative dossiers concerning unindicted suspects for transfer to relevant prosecution services. During the reporting period, legal, evidentiary and strategic assistance was provided under the project with respect to four requests that entailed handing over 1,100 documents comprising 26,000 pages of evidence and 33 audiovisual records. Memorandums on legal, evidentiary and strategic issues were also handed over and assistance in securing the cooperation of witnesses for domestic proceedings was provided.

## **D. Capacity-building**

113. The Office of the Prosecutor continued its efforts, within its existing limited resources, to build capacity in national judiciaries prosecuting war crimes. The Office’s capacity-building efforts focus on the Great Lakes region, East Africa and the former Yugoslavia. Strengthening national capacities supports the principle of complementarity and national ownership of post-conflict accountability. Owing to the COVID-19 pandemic, the Office delayed some training activities that were planned during the reporting period, yet was still able to provide virtual training programmes to national counterparts to facilitate their access to the Office’s collection of evidence.

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

## **E. Missing persons**

115. 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 10,000 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 those 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.

116. During the reporting period, the Office and the International Committee of the Red Cross (ICRC) continued their cooperation pursuant to the memorandum of understanding signed in October 2018. That important agreement enables ICRC to access the Office of the Prosecutor's collection of evidence 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 files to domestic missing persons authorities for action. From 16 May to 15 November 2021, the Office responded to 26 requests for assistance from ICRC and handed over 368 documents comprising more than 15,000 pages, as well as eight audiovisual records. The Office of the Prosecutor further continued to provide extensive investigative assistance and operational support to national authorities searching for missing persons. Such efforts included reviewing 4,700 documents and 917 audiovisual files so that they could be shared with a national authority.

117. Support provided by the Office of the Prosecutor contributed to the important results achieved during the reporting period, including clarification of the fate and whereabouts of 51 missing persons and the exhumation of the remains of 17 persons in Bosnia and Herzegovina. Overall, in the three years since initiating its cooperation with ICRC in October 2018, the Office has provided information from its collection of evidence on approximately 3,000 missing persons.

## **V. Other residual functions**

118. The Office of the Prosecutor continued to perform its responsibilities in respect of other residual functions.

119. During the reporting period, the Office continued preparing a large volume of records for archiving, while also engaging in an extensive process to finalize its retention schedules. It further continued to respond to requests for access, research requests and other enquiries. The Office will continue to monitor the volume of activities and litigation and report as appropriate.

## **VI. Management**

### **A. Overview**

120. 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 \(2015\)](#) and paragraphs 7 and 8 of resolution [2422 \(2018\)](#). An important part of those efforts is the Prosecutor's "one office" policy to integrate the staff and resources of the Office across both branches. Under the policy, staff and resources are available to be flexibly deployed to work on matters arising from either branch as necessary.



121. During the reporting period, the Office of the Prosecutor continued to redeploy resources as possible using the “one office” policy to meet all its obligations. It also continued to maximize the use of its resources and “do more with less” through extensive multitasking and cross-training. The Office further continued to manage downsizing and staff attrition to ensure that it can meet all of its responsibilities inside and outside the courtroom. The first stage of the downsizing of the *Stanišić and Simatović* trial team was completed on 30 September 2021 and the remainder of the team will be downsized on 31 December 2021.

122. However, the Office is regularly confronting workloads that exceed its resources, placing a heavy burden on staff during an already challenging global pandemic. As the Office cannot defer mandated activities and must continue to meet its legal responsibilities in accordance with judicially ordered timelines, staff members of the Office 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, it underscores that full approval of its limited budget requests is necessary to ensure the expeditious completion of trials and appeals and the achievement of the Office’s other mandated functions.

## **B. Response to the coronavirus disease (COVID-19) pandemic**

123. With respect to the COVID-19 pandemic, the Office began returning to on-site working during the reporting period, with a full return to on-site working arrangements having been completed on 13 September. The only exception was at the Kigali duty station, where full office occupancy was not permissible under the host State’s policies. In preparation for the process of returning to the office, the Prosecutor and senior management engaged in extensive consultations with Office staff and provided transparent information. The decision to return to on-site working was made in the light of operational requirements, with the assurance that all reasonable measures had been taken to protect staff health in the workplace, including social distancing and mandatory mask use and hygiene policies. Accommodations were made for staff who had not yet had the opportunity to be fully vaccinated. The process was completed smoothly and successfully. The Office continues to closely monitor staff morale and welfare.

124. The Office continues to play an active role in Mechanism-wide activities in response to the COVID-19 pandemic, including participating in the COVID-19 Steering Committee established by the principals to develop policies and strategies to address the pandemic’s impact on the Mechanism.

125. The Office will continue to cooperate with the other organs to ensure that the Mechanism responds appropriately to the COVID-19 pandemic and any future changes.

## **C. Audit reports**

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

recommendation by OIOS to support and strengthen staff morale. As of the submission date of the present report, the Office had implemented or commenced the implementation of many of those measures. The Office will keep OIOS informed and looks forward to the closure of the recommendation in the near future.

127. With the commencement during the reporting period of the 2022 evaluation process, the Office of the Prosecutor is providing full information and cooperation to OIOS. The Office looks forward to robust and productive discussions with OIOS concerning the implementation of previous recommendations and its evaluation of the Office's methods and work. The Office fully expects that OIOS will again recognize the Office's commitment to the Security Council's vision of the Mechanism as "a small, temporary and efficient structure" and will favourably assess the Office's work and innovative methods. The Office express its appreciation to OIOS for its continued assistance and constructive engagement.

## VII. Conclusion

128. The Office continued to undertake all efforts to contribute to the expeditious completion of the remaining trials and appeals. The Office swiftly undertook and completed its key pretrial responsibilities in the *Kabuga* case, and appeal proceedings are fully under way in the *Stanišić and Simatović* and *Fatuma et al.* cases.

129. With respect to the remaining fugitives, the Office is undertaking immense efforts to bring the fugitives to justice and complete this residual function. New co-team leaders have been appointed. Important investigative activities are under way in a number of key countries, supported by the use of advanced analytical tools. The Prosecutor undertook high-level missions to engage with important interlocutors and resolve challenges. The Office's ultimate success in those efforts, as always, will depend on full and effective cooperation from Member States to provide needed intelligence and evidence and take necessary action. The Office of the Prosecutor needs the full support of the Security Council in those efforts.

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

131. With the continued roll-out of vaccinations and improved health responses to the COVID-19 pandemic, the Office completed the full return of its staff to on-site working during the reporting period. The Office also resumed critical missions in support of the tracking of fugitives that had been delayed by the COVID-19 pandemic. The ability of the Office to maintain full business continuity in the face of a global pandemic is in large measure attributable to the commitment of the Office's staff.

132. In all of its endeavours, the Office of the Prosecutor relies upon and gratefully acknowledges the support of the international community and of the Security Council in particular.