

**Security Council**

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**Letter dated 16 May 2014 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council**

I am pleased to transmit herewith the assessments of the President (see annex I) and the Prosecutor (see annex II) of the International Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I would be grateful if you could transmit these assessments to the members of the Security Council.

*(Signed)* Theodor **Merón**  
President



**Annex I**

[Original: English and French]

**Assessment and report of Judge Theodor Meron, President  
of the International Tribunal for the Former Yugoslavia,  
provided to the Security Council pursuant to paragraph 6 of  
Security Council resolution 1534 (2004) and covering the  
period from 19 November 2013 to 16 May 2014**

**Contents**

	<i>Page</i>
I. Introduction . . . . .	3
II. Measures taken to implement the completion strategy . . . . .	4
A. Trial proceedings . . . . .	4
B. Appeal proceedings . . . . .	5
C. Access decisions . . . . .	6
III. Referral of cases . . . . .	7
IV. Outreach . . . . .	7
V. Victims and witnesses . . . . .	8
VI. Cooperation of States . . . . .	9
VII. Judicial support and administration activities . . . . .	9
A. Support for core judicial activities . . . . .	9
B. Downsizing . . . . .	9
C. Budget for 2014-2015 . . . . .	10
VIII. Support for the International Residual Mechanism for Criminal Tribunals . . . . .	10
A. Overview of Mechanism-related activities . . . . .	10
B. Transfer of functions from the Tribunal to the Mechanism . . . . .	10
C. Regulatory framework of the Mechanism . . . . .	10
D. Premises and host State agreement . . . . .	11
E. Information security and access regime for Tribunal and Mechanism records . . . . .	11
F. Preparation of records for migration to the Mechanism . . . . .	11
G. Administrative support provided to the Mechanism . . . . .	12
IX. Legacy and capacity-building . . . . .	13
X. Conclusion . . . . .	13

1. The present report is submitted pursuant to Security Council resolution 1534 (2004), adopted on 26 March 2004, in which the Council, in paragraph 6 of the resolution, requested the International Tribunal for the Former Yugoslavia to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken to implement the completion strategy and what measures remain to be taken, including the transfer of cases involving intermediate- and lower-rank accused to competent national jurisdictions.<sup>1</sup>

2. This report also includes a summary of the measures that the Tribunal is undertaking to ensure a smooth transition to the International Residual Mechanism for Criminal Tribunals.

## I. Introduction

3. The International Tribunal for the Former Yugoslavia continued to make progress in completing its work, rendering two appeal judgements. At the close of the reporting period, four trials, involving 4 individuals, and five appeals, involving 16 individuals, were ongoing. In addition, the judges of the Appeals Chamber delivered two appeal judgements arising from trials conducted by the International Criminal Tribunal for Rwanda.

4. Following the arrests of Ratko Mladić and Goran Hadžić in 2011, there are no outstanding fugitives from the International Tribunal for the Former Yugoslavia. To date, the Tribunal has concluded proceedings against 141 of the 161 individuals it indicted.

5. The judgements rendered during the reporting period demonstrate the Tribunal's progress in completing its mandate. In addition, on 18 November 2013 the General Assembly elected Koffi Kumelio A. Afande as a judge of the Tribunal, returning the Tribunal to its full complement of judges and thus aiding efforts to complete the remaining cases expeditiously.

6. The Tribunal continues to make every effort to meet the deadlines of the completion strategy, and the forecast judgement delivery dates are unchanged for almost all cases. As reported previously, various factors, including late arrests of certain individuals and issues particular to specific cases, mean that some trials and appeals will not have been completed by 31 December 2014. However, the Tribunal's judges and staff members are focused on completing the remaining judicial proceedings as expeditiously as possible, while observing all appropriate procedural safeguards.

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<sup>1</sup> The present report should be read in conjunction with the previous 20 reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; S/2005/343 of 25 May 2005; S/2005/781 of 14 December 2005; S/2006/353 of 31 May 2006; S/2006/898 of 16 November 2006; S/2007/283 of 16 May 2007; S/2007/663 of 12 November 2007; S/2008/326 of 14 May 2008; S/2008/729 of 24 November 2008; S/2009/252 of 18 May 2009; S/2009/589 of 13 November 2009; S/2010/270 of 1 June 2010; S/2010/588 of 19 November 2010; S/2011/316 of 18 May 2011; S/2011/716 of 16 November 2011; S/2012/354 of 23 May 2012; S/2012/847 of 19 November 2012; S/2013/308 of 23 May 2013; and S/2013/678 of 18 November 2013. Except where otherwise noted, this report contains information accurate as of 15 May 2014.

7. During the reporting period, the Tribunal undertook a variety of initiatives aimed at providing assistance and support to victims and pursued a number of legacy and capacity-building projects. The outreach programme continued its efforts to bring the work of the Tribunal closer to communities in the former Yugoslavia. The Tribunal also worked diligently to ensure a smooth transition to the Mechanism.

## **II. Measures taken to implement the completion strategy**

8. The Tribunal remains committed to completing its work expeditiously, while ensuring that its trials and appeals are conducted in a manner that adheres to the fundamental principles of due process and fairness. The Tribunal continues to implement measures that have expedited its work. These include the planning of additional training programmes for legal drafters in the Chambers; the assignment of staff members who have additional capacity to assist on a part-time basis with judicial cases potentially subject to delay; the active management of the translation process for judgements and the assignment of additional resources to key translations; and the maintenance of rosters of qualified applicants to ensure that departing staff can be replaced promptly. In addition, the working group of the Tribunal on trial and appeals schedule, under the chairmanship of the Tribunal's Vice-President, closely monitors the progress of trials and appeals, identifying obstacles that could delay judicial proceedings and allowing best practices to be shared.

9. With a view to providing a more comprehensive overview of the Tribunal's progress in completing its work, summaries of cases currently before the Tribunal are set out below.

### **A. Trial proceedings**

10. In the case of *Prosecutor v. Goran Hadžić*, the accused is charged with 14 counts of crimes against humanity and violations of the laws or customs of war. The trial judgement is expected in December 2015, as previously forecast.

11. In the case of *Prosecutor v. Radovan Karadžić*, the accused is charged with 11 counts of genocide, crimes against humanity and violations of the laws or customs of war. The trial judgement is expected in October 2015, as previously forecast.

12. In the case of *Prosecutor v. Ratko Mladić*, the accused is charged with 11 counts of genocide, crimes against humanity and violations of the laws or customs of war. The prosecution case closed in February 2014, and the defence case is due to start in May 2014. The Chamber is still awaiting submissions by the defence about the number of hours required for the presentation of its case. With that caveat, the trial judgement is still expected in July 2016, as previously forecast.

13. In the case of *Prosecutor v. Vojislav Šešelj*, a scheduling order was issued announcing that the trial judgement would be delivered on 30 October 2013. The scheduling order was, however, subsequently rescinded, owing to an application for the disqualification of Judge Frederik Harhoff, which was filed by Mr. Šešelj. On 7 October 2013, a panel appointed to examine the merits of that request made a final decision upholding Mr. Šešelj's application. On 31 October 2013, Judge Mandiaye Niang was assigned to replace Judge Harhoff. On 13 December 2013, the newly

constituted trial bench unanimously decided that the trial could continue, despite Judge Harhoff's replacement by Judge Niang. On 10 January 2014, Mr. Šešelj filed an appeal against that decision, which is currently before the Appeals Chamber. The trial bench hopes to be in a position to decide on next steps in the case in due course.

14. As indicated by the summary of ongoing trials set out above, the Tribunal will not be able to complete the trial proceedings involving Mr. Karadžić, Mr. Mladić and Mr. Hadžić by 31 December 2014, the date for completion indicated by the Security Council in its resolution 1966 (2010). In these three cases, the late arrests of the indicted individuals made it impossible to meet the time frame requested by the Council.

## **B. Appeal proceedings**

15. The appeal judgement in the case of *Prosecutor v. Vlastimir Đorđević* was delivered on 27 January 2014. The Appeals Chamber affirmed the majority of Mr. Đorđević's convictions, while partially granting certain grounds of appeal raised by Mr. Đorđević and one ground of appeal raised by the prosecution; with respect to that ground, the Chamber entered an additional conviction for persecution (sexual assault). The Chamber reduced Mr. Đorđević's sentence from 27 to 18 years of imprisonment.

16. The appeal judgement in the case of *Prosecutor v. Nikola Šainović et al.* was delivered on 23 January 2014. The Appeals Chamber affirmed the majority of the defendants' convictions, while granting certain grounds of appeal raised by defence appellants. The Chamber reduced Mr. Šainović's sentence from 22 to 18 years of imprisonment; affirmed Nebojša Pavković's sentence of 22 years of imprisonment; reduced Vladimir Lazarević's sentence from 15 to 14 years of imprisonment; and reduced Sreten Lukić's sentence from 22 to 20 years of imprisonment.

17. In the case of *Prosecutor v. Vujadin Popović et al.*, the projected time frame for the delivery of the appeal judgement is unchanged and the appeal judgement is expected in October 2014. An appeal hearing was held in December 2013. The number of requests for additional evidence on appeal increased from 6 to 12 during the reporting period, of which 7 remain to be decided.

18. In the case of *Prosecutor v. Jadranko Prlić et al.*, two convicted individuals and the prosecution have filed notices of appeal, while the other four convicted individuals received extensions of time in which to file those notices. The appeal judgement is expected to be delivered in June 2017. This forecast is based on initial analysis of the trial judgement, notices of appeal and comparisons with similarly sized cases. In particular, as several defence teams do not work in French, briefing cannot be completed until the 2,500-page trial judgement has been translated from French into English. That translation is expected to be completed in June 2014, with briefing in the appeal expected to be completed by January 2015. The projected delivery of the appeal judgement may be revised following the filing and analysis of the remaining notices of appeal.

19. In the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, the projected time frame for the delivery of the appeal judgement is unchanged and the appeal judgement is expected in December 2014.

20. In the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, the projected time frame for the delivery of the appeal judgement has been revised and the appeal judgement is now expected in November 2015, seven months later than previously anticipated.

21. Delay in the delivery of the appeal judgement was caused by a large number of particularly complex pre-appeal motions, relating to the role of Judge Frederik Harhoff, who sat on the trial bench of this case. The appeal bench granted some of those motions and agreed with the request of defence appellants that the scope of the notices of appeal be expanded; accordingly, additional briefing is required.

22. The judges and the legal support team are taking a variety of measures to expedite the preparation of the appeal judgement. Those measures include the addition of more staff members to the legal support team and the coordination of the team's work on related grounds of appeal to ensure early consistency between different sections of the appeal judgement.

23. In the case of *Prosecutor v. Zdravko Tolimir*, the projected time frame for the delivery of the appeal judgement is unchanged and the appeal judgement is expected in March 2015.

24. During the reporting period, the Appeals Chamber of the International Criminal Tribunal for Rwanda delivered two judgements, in the case of *Grégoire Ndahimana v. The Prosecutor* and with respect to three of the four defence appellants in the case of *Augustin Ndindiyimana et al. v. The Prosecutor*. The Appeals Chamber also held appeal hearings in three appeals during the reporting period: *Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor*; *Callixte Nzabonimana v. The Prosecutor*; and *Ildéphonse Nizeyimana v. The Prosecutor*.

25. Despite the Tribunal's continuing efforts, it is currently anticipated, as noted by the Tribunal's reports to the Security Council of May and December 2013, that the Tribunal will have difficulty in completing the appeals in the *Prlić et al.*, *Stanišić and Župljanin* and *Tolimir* cases by 31 December 2014, as requested by the Security Council in resolution 1966 (2010). Appeals in the cases of *Tolimir* and *Stanišić and Župljanin* are anticipated to be completed by March and November 2015, respectively. In the case of *Prlić et al.*, two notices of appeal were filed before 1 July 2013. Accordingly, in accordance with resolution 1966 (2010), jurisdiction over that appeal remained with the Tribunal, and the appeal judgement is expected only in June 2017. In these circumstances, it appears that the Appeals Chamber of the Tribunal will continue to function concurrently with the Appeals Chamber of the Mechanism after 31 December 2014. Appeals in the *Hadžić*, *Karadžić*, *Mladić* and *Šešelj* cases, if any, will be filed after 1 July 2013 and will therefore fall within the jurisdiction of the Mechanism pursuant to resolution 1966 (2010).

### C. Access decisions

26. The bench constituted to decide requests for access to confidential information for use in national proceedings under rules 75(G), 75(H) and 75 bis of the Rules of Procedure and Evidence rendered three decisions during the reporting period. In January 2014, judicial assistance was rendered for the second time pursuant to rule 75 bis of the Rules, whereby prosecutors from a national jurisdiction interviewed a person under the authority of the Tribunal on its premises.

### III. Referral of cases

27. Between 2005 and 2007, the Tribunal referred a total of eight cases, involving 13 accused of intermediate or lower rank, to national jurisdictions in accordance with Security Council resolutions 1503 (2003) and 1534 (2004). This reduced the overall workload of the Tribunal, making it possible to bring the cases of the most senior leaders to trial sooner than would otherwise have been possible. The referral of those cases to national jurisdictions also increased engagement with national judiciaries in the former Yugoslavia and helped to build the capacity of those jurisdictions in the prosecution of violations of international humanitarian law, thus reinforcing the rule of law in these new States.

28. The decisions on the referral of cases were made by a specially appointed referral bench, followed by appeals against the referral decisions in some cases. As a result, 10 accused were transferred to Bosnia and Herzegovina, 2 to Croatia and 1 to Serbia. Requests for the referral of four accused were denied, owing to the level of responsibility of the accused and the gravity of the crimes charged. No cases eligible for referral under the seniority criteria set by the Security Council remain before the Tribunal.

29. With respect to the 13 persons transferred to national jurisdictions, proceedings against 12 have been concluded. The remaining individual, Vladimir Kovačević, was determined not fit to stand trial by the Serbian judiciary in December 2007.

### IV. Outreach

30. The outreach programme continued to work with a wide range of partners to deliver factual information about the Tribunal's work to the communities of the former Yugoslavia. Activities were designed and implemented with the aim of making them sustainable beyond the lifetime of the Tribunal, through cooperation with local partners. The Tribunal's Media Office ensured that journalists had access to accurate, up-to-date information on judicial activities, as well as audiovisual material for use in their reports.

31. In November 2013, the outreach programme completed the production of the third in a series of feature-length documentaries. The documentary, entitled *Through Their Eyes: Witnesses to Justice*, underscores the important role that witnesses play in the work of the Tribunal, by telling the stories of victims of the conflicts in the former Yugoslavia who came to give testimony before the Tribunal. The documentary was screened in Bosnia and Herzegovina, Croatia, Serbia and The Hague, drawing significant media attention.

32. In March 2014, the outreach programme began the third cycle of its youth outreach project, which is financially supported by the Government of Finland. Under the project, presentations and lectures are delivered in high schools and universities across the former Yugoslavia, providing factual information about the Tribunal's mandate, work, achievements and challenges.

33. The Tribunal's field offices in Belgrade and Sarajevo continued liaison and outreach work in their respective countries. This included the organization of or participation in dozens of outreach events. In addition, the Tribunal in The Hague

welcomed thousands of visitors from all over the world, including the countries of the former Yugoslavia.

34. The Tribunal expanded its presence on its social media platforms during the reporting period. On average, roughly 30 per cent of visits to its sites emanate from the former Yugoslavia. The user base of these platforms continues to grow steadily, with Twitter and Facebook platforms both gaining an average of 100 new followers every month, and with YouTube videos being viewed some 30,000 to 40,000 times per month.

35. The Tribunal's website remains a key tool for maintaining the public face of the institution and underscoring its achievements and challenges. During the reporting period, more than 1.1 million website pages were viewed by people from all over the world, with 20 per cent of views originating from the former Yugoslavia. Work is ongoing through the legacy websites project to secure the long-term future of the website.

36. The outreach programme continues to face funding challenges. The programme has applied for additional funding from the European Union; however, these funds would be sufficient only to guarantee the full continuation of the programme until mid-2015. After the upcoming funding cycle ends, the European Union will not continue providing funds to the programme. These funding challenges reflect the difficulty of maintaining stable programming when funds for both staff costs and all outreach activities must be raised independently, separately from general funding for the Tribunal. The outreach programme will continue its fundraising efforts, while underscoring the importance of General Assembly resolution 65/253, in which the Assembly encouraged the Secretary-General to continue to explore measures to raise voluntary funds for outreach activities. The Tribunal calls upon States and other donors to support outreach activities.

## V. Victims and witnesses

37. During the reporting period, the Victims and Witnesses Section provided assistance and support for approximately 110 witness appearances before the Tribunal, including extensive logistical and psychosocial support prior to, during and after testimony in The Hague and other locations, while addressing diverse needs related to age, medical condition, psychosocial well-being and physical security. As the Tribunal works towards the completion of its activities, it also continues to face challenges related to the relocation of witnesses.

38. During the last months of the *Karadžić* trial, high weekly numbers of defence witnesses placed heavy demands on the operational and support services of the Victims and Witnesses Section. In addition, the increased number of detainees called to testify before the Tribunal required extensive legal and logistical coordination with local authorities and enforcement States.

39. The consultations of the Victims and Witnesses Section with witnesses in response to requests for the rescission, variation or augmentation of witness protection measures intensified owing to increases in both the frequency of requests and the number of witnesses per request. Moreover, the Section was required to contact some witnesses more than once within a relatively short period, owing to requests in different cases before national courts or in different phases of the



proceeding. With the passage of time, locating and verifying the identity of some witnesses is presenting new challenges.

40. In order to increase efficiency and ensure the accuracy and completeness of witness records, the Victims and Witnesses Section allowed for shared access to the Tribunal's victims and witnesses database between the Sarajevo field office and The Hague. This initiative served as a case study for the further development of shared access to Section databases between the Hague and Arusha branches of the Mechanism.

41. With the impending closure of the Tribunal, the Victims and Witnesses Section and the University of North Texas launched a joint initiative to carry out research into the long-term impact on witnesses of being called to testify about the crimes committed in the former Yugoslavia. During the reporting period, the Section conducted approximately 60 in-person interviews with witnesses in the region of the former Yugoslavia and partially secured external funding for the remaining project activities.

42. As at 1 January 2014, the Mechanism's victims and witnesses protection staff were "double hatting" to provide for the protection of witnesses in ongoing trials before the Tribunal, in addition to witnesses from completed Tribunal cases. The relocation of witnesses continues to be the main challenge.

## **VI. Cooperation of States**

43. There are no outstanding fugitives. This milestone is the result of successful efforts by States and the Prosecutor to locate and transfer fugitives to the jurisdiction of the Tribunal.

## **VII. Judicial support and administration activities**

### **A. Support for core judicial activities**

44. A key priority of the Registry during the reporting period was providing full support for the Tribunal's ongoing judicial activities, thereby assisting the Tribunal in achieving its completion strategy targets. During the reporting period, the Registry processed and disseminated more than 1,600 internal and external filings, translated more than 21,000 pages and provided more than 800 conference interpreter days.

### **B. Downsizing**

45. The Tribunal continues to implement its planned downsizing process. During the biennium 2014-2015, the Tribunal expects to downsize 361 posts, in line with the trial and appeal schedule. Using the comparative review process, staff members are placed against specific posts selected for downsizing and staff members' contract validity dates are synchronized with the dates set for the abolishment of their posts. The comparative review process for post reductions in the biennium 2014-2015 was completed in 2013. The Office of Internal Oversight Services stated that it considered the Tribunal's downsizing process to be best practice in the leadership of a change process.

46. In order to ensure continued high-quality support for judicial activities in the midst of downsizing, all Registry sections continued to consolidate and streamline operations. On 1 March 2014, five pre-existing sections were merged into four. The new Court Support Services Section is composed of the Courtroom Operations Unit, the Victims and Witnesses Section and the Office for Legal Aid and Defence.

### **C. Budget for 2014-2015**

47. The International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Mechanism have worked together to prepare the budgets for the biennium 2014-2015. These reflect the distribution of functions among the three institutions, maximizing economies of scale while fully supporting the Mechanism and both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda as they downsize.

## **VIII. Support for the International Residual Mechanism for Criminal Tribunals**

### **A. Overview of Mechanism-related activities**

48. During the reporting period, all sections of the Registry of the International Tribunal for the Former Yugoslavia supported the Mechanism, as needed, with a variety of processes, including recruitment, communications, information technology (IT) support and Registry management. The Registry also provided the Hague branch of the Mechanism with judicial support services, which included assistance with court management, language services, detention services and witness support services.

### **B. Transfer of functions from the Tribunal to the Mechanism**

49. On 1 July 2012, the Tribunal transferred the records and archives management function to the Mechanism. The Mechanism Archives and Records Section of the Registry assumed responsibility for the Tribunal's central records repositories, which then contained approximately 700 linear metres of non-judicial records from all organs of the Tribunal. The same repositories now contain approximately 500 linear metres of records, as certain records have been destroyed in the intervening two years as their retention periods have expired.

50. On 1 July 2013, in accordance with the transitional arrangements annexed to resolution 1966 (2010), the Tribunal transferred to the Mechanism certain judicial and prosecutorial functions, as well as other functions of the Tribunal, including the supervision of sentence enforcement, assistance requests by national authorities and the protection of victims and witnesses in closed cases and cases in which a witness is relevant to judicial activities of both the Tribunal and the Mechanism.

### **C. Regulatory framework of the Mechanism**

51. The International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda continued to assist the Mechanism in drafting its

regulatory framework for the provision of judicial services. The extensive involvement of the International Tribunal for the Former Yugoslavia in the drafting process ensured that the lessons learned and best practices from the Tribunal's 20 years of operation, along with those of the International Criminal Tribunal for Rwanda, are captured in relevant Mechanism documents.

#### **D. Premises and host State agreement**

52. The Statute of the Mechanism, contained in annex I to resolution 1966 (2010), identifies the seats of the branches of the Mechanism as The Hague and Arusha. In order to realize cost savings and maximize efficiency, the branches of the Mechanism are co-located with the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively. On 26 November 2013, the United Nations and the Government of the United Republic of Tanzania signed an agreement concerning the headquarters of the Mechanism in Arusha. It entered into force on 1 April 2014 and also applies to the International Criminal Tribunal for Rwanda. It is expected that an agreement between the Netherlands and the United Nations concerning the headquarters of the Mechanism in The Hague will soon be concluded. Upon its entry into force, it will apply *mutatis mutandis* to the Tribunal. Until such a headquarters agreement is concluded, the Tribunal's host State agreement provisionally applies to the Hague branch of the Mechanism.

#### **E. Information security and access regime for Tribunal and Mechanism records**

53. The Registry is leading the development and implementation of record-keeping policies for the Tribunal. Since the issuance of the Secretary-General's bulletin entitled "International Criminal Tribunals: information sensitivity, classification, handling and access" (ST/SGB/2012/3), the Mechanism Archives and Records Section and the Office of the Registrar have provided training for designated Tribunal staff. The aim is to ensure the efficient and effective implementation of the policy. To that end, the Section is also leading the process of determining appropriate classifications for Tribunal records and is guiding the revision and updating of the Tribunal's existing retention schedules for administrative records.

54. The Mechanism Archives and Records Section is collaborating with the Tribunal's Information Technology Services Section and other Tribunal offices to develop an IT backup policy and is leading the implementation of the Tribunal's emergency response and disaster recovery plan for physical records. The Mechanism Archives and Records Section has prepared guidance documents and provided training for designated Tribunal staff, and is coordinating the procurement of specialist equipment and services to enable the Tribunal to respond to and recover from an emergency affecting physical records and archives.

#### **F. Preparation of records for migration to the Mechanism**

55. The Tribunal continues to prepare its digital and hard-copy records for transfer to the Mechanism. This includes actions to be taken by particular Tribunal offices prior to closure, and audits of key collections of digital and physical records to

improve the quality of their indexes, thereby ensuring that they will be accessible and usable in the future.

56. In support of these efforts, the Mechanism Archives and Records Section has provided training and prepared guidelines to ensure, to the maximum extent possible, that Tribunal records are prepared in conformity with the applicable standards. The training comprises executive briefings for Tribunal managers and half-day training sessions for designated staff who will carry out the detailed work of preparing and transferring records. The first training was delivered in March 2014, and sessions will be offered regularly in the future.

## **G. Administrative support provided to the Mechanism**

57. The budget of the Mechanism stipulates that administrative support services will be provided by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Accordingly, the International Tribunal for the Former Yugoslavia has been working in close cooperation with the International Criminal Tribunal for Rwanda to ensure that both branches of the Mechanism are provided with effective administrative services throughout the biennium 2014-2015.

58. The Human Resources Section of the International Tribunal for the Former Yugoslavia continues to administer all Inspira recruitments to fill Professional posts for the Mechanism. As at 15 May 2014, recruitment exercises across both branches had resulted in the filling of 120 posts: 34 in the Office of the Prosecutor and 86 in the Registry, including a small number of staff who will serve in the Mechanism's Chambers and assist with the ongoing judicial work.

59. The Mechanism's staff includes nationals of 46 States: Albania, Australia, Belgium, Bosnia and Herzegovina, Bulgaria, Burundi, Cameroon, Canada, China, Colombia, Croatia, Cyprus, the Democratic Republic of the Congo, Denmark, Fiji, France, Germany, Greece, Ireland, Italy, Kenya, Latvia, Lebanon, Liberia, Malawi, Malaysia, Mali, Nepal, the Netherlands, New Zealand, Niger, Pakistan, Poland, the Republic of Korea, Rwanda, Senegal, Serbia, Spain, Sudan, Sweden, the former Yugoslav Republic of Macedonia, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America and Zimbabwe. At the time of reporting, approximately 88 per cent were current or former staff of the Tribunals. Fifty-six per cent of Professional staff are female, surpassing the Secretary-General's gender parity goals and exceeding the 42 per cent average across the United Nations, and 53 per cent of all staff are female. In addition, the Mechanism has appointed a gender and sexual harassment focal point.

60. The IT services of the International Tribunal for the Former Yugoslavia have devoted significant time and effort to the development of proposals for IT systems and infrastructure for the Mechanism. The Finance Sections of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have worked to identify practices and methods for the Mechanism's accounting and finance arrangements. The General Services Sections have identified appropriate office space for Mechanism staff and are providing travel, visa, mail and transportation services.

61. The International Tribunal for the Former Yugoslavia continues to provide the Mechanism's Hague branch with administrative support services. The use of the existing staff and resources of the Tribunal will allow the Hague branch of the Mechanism to operate efficiently, while minimizing staff funding requirements and general operating expenses.

## **IX. Legacy and capacity-building**

62. As part of a modest series of events marking its twentieth anniversary, the International Tribunal for the Former Yugoslavia convened a two-day conference, held in Sarajevo on 26 and 27 November, to consider aspects of its legacy in the former Yugoslavia. The conference was jointly sponsored by the European Union and the Governments of Switzerland, Luxembourg, the Netherlands and the Republic of Korea, as well as the Open Society Justice Initiative. It was focused on a variety of topics, including the overall accomplishments of the Tribunal, the challenges it had encountered and its contribution to the promotion of the rule of law in the region. Participants also discussed the accessibility of Tribunal documents and other materials to the people of the former Yugoslavia.

63. The Tribunal continued working with local authorities and international partners on the establishment of information centres in the region of the former Yugoslavia. As a part of those efforts, a meeting of the working group on the establishment of information centres was held on 26 November in Sarajevo, where local authorities confirmed their support for the establishment of two such centres in Bosnia and Herzegovina, one in Sarajevo and one in Banja Luka.

64. In addition, Croatian authorities have confirmed to the Tribunal that they are interested in participating in the information centre project. In February 2014, representatives of the Government of Serbia expressed interest in establishing an information centre in Belgrade. The Tribunal is planning to meet soon with Serbian representatives to discuss the modalities of creating an information centre.

65. As discussions on the creation of information centres move forward, it is already clear that the provision of adequate financial support is crucial to the success of the centres; accordingly, the Tribunal asks the international community to support the project by allocating the necessary funds.

## **X. Conclusion**

66. The Tribunal has now completed almost all its cases; fewer than 10 trials and appeals remain, involving the last 20 defendants and appellants of the 161 indicted. The near-completion of the Tribunal's work, and the full accounting of all individuals indicted, are a bright symbol of the international community's determination to end impunity and of its commitment to the rule of law.

67. The Tribunal's achievements owe much to the hard work of judges, staff members, prosecutors and defence lawyers. However, they rest, fundamentally, on the support of the United Nations and the broader international community. In particular, the Tribunal benefits from the assistance of the Security Council, the Office of Legal Affairs of the Secretariat and other United Nations organs, national

Governments, non-governmental and transnational organizations and other supporters.

68. As the Tribunal completes its last judicial processes, challenges remain. While every effort has been made to avoid delays, the forecast delivery date of one appeal judgement has changed. The Tribunal will continue to make every effort to keep to its completion targets and minimize any delays. This setback should not, however, obscure the impressive successes of the Tribunal and its trailblazing contributions to the development of substantive and procedural international criminal law, while assisting rule of law efforts in the former Yugoslavia.

## Annex II

[Original: English and French]

### **Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)**

#### Contents

	<i>Page</i>
I. Overview .....	17
II. Completion of trials and appeals .....	18
A. Overview of the ongoing challenges .....	18
B. Update on the progress of trials .....	19
1. <i>Šešelj</i> .....	19
2. <i>Karadžić</i> .....	20
3. <i>Mladić</i> .....	20
4. <i>Hadžić</i> .....	20
C. Update on the progress of appeals and the work of the Appeals Division .....	21
III. State cooperation with the Office of the Prosecutor .....	22
Cooperation between the States of the former Yugoslavia and the Office of the Prosecutor . . . .	22
1. Cooperation between Serbia and the Office of the Prosecutor .....	22
2. Cooperation between Croatia and the Office of the Prosecutor .....	23
3. Cooperation between Bosnia and Herzegovina and the Office of the Prosecutor . . .	23
4. Cooperation between other States and organizations and the Office of the Prosecutor .....	23
IV. Transition from the Tribunal to national war crimes prosecutions .....	23
A. Challenges in establishing accountability for war crimes in Bosnia and Herzegovina . . .	24
1. Investigation files transferred by the Office of the Prosecutor to Bosnia and Herzegovina .....	24
2. Bosnia and Herzegovina National War Crimes Strategy .....	24
3. Prosecution of sexual violence cases .....	25
4. European Court of Human Rights ruling in <i>Maktouf and Damjanović</i> .....	25
B. Investigating and identifying missing persons .....	26

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C.	Cooperation between States of the former Yugoslavia on war crimes investigations and prosecutions. . . . .	27
D.	Support of the Office of the Prosecutor for national war crimes prosecutions. . . . .	27
1.	Access to information in databases of the Office of the Prosecutor and in case records of the Tribunal . . . . .	27
2.	European Union/Tribunal training project . . . . .	28
3.	Legacy paper on prosecuting sexual violence and other legacy projects . . . . .	28
4.	Regional training . . . . .	29
5.	Regional outreach . . . . .	29
V.	National capacity-building on a global scale . . . . .	29
VI.	Downsizing . . . . .	30
A.	Downsizing of posts of the Office of the Prosecutor and support to staff for career transition . . . . .	30
B.	Supporting and sharing resources with the International Residual Mechanism for Criminal Tribunals (The Hague branch) . . . . .	30
VII.	Conclusion . . . . .	30



## I. Overview

1. The Prosecutor submits this twenty-first completion strategy report pursuant to Security Council resolution 1534 (2004), covering developments from 16 November 2013 to 15 May 2014.

2. During the reporting period, the Office of the Prosecutor remained focused on ensuring that the remaining trials proceeded expeditiously and that the Appeals Division prepared effectively for the large volume of ongoing and anticipated future appellate work, in spite of escalating staff attrition. At the end of the period, four cases remained in the trial phase. Following the close of the presentation of evidence by the defence in *Karadžić*, the parties are currently drafting their final trial briefs. In *Mladić* and *Hadžić*, the presentation of defence evidence is scheduled to begin on 19 May 2014 and 24 June 2014, respectively. *Šešelj* is awaiting judgement at the Trial Chamber level. In the reporting period, appeal judgements were issued in two cases (*Šainović et al.* and *Đorđević*). Five cases remain on appeal (*Popović et al.*, *Tolimir*, *Stanišić and Župljanin*, *Prlić et al.* and *Stanišić and Simatović*).

3. The Prosecutor is satisfied with the level of cooperation between the Office of the Prosecutor and the authorities in Bosnia and Herzegovina, Serbia and Croatia, and notes efforts to improve the level of cooperation among these countries of the former Yugoslavia. On 29 April 2014, a Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide was concluded between the prosecutor's offices of Bosnia and Herzegovina and Montenegro. This protocol is the most recent of a number of regional cooperation agreements in the area of war crimes investigations. Similar protocols on the exchange of evidence and information are already in place between the Office of the Prosecutor of Bosnia and Herzegovina and its Serbian and Croatian counterparts. The Prosecutor will continue to follow closely the developments in the region related to cooperation. He encourages the relevant authorities to translate the commitments in the protocols into concrete results by, for example, issuing indictments based on evidentiary material exchanged pursuant to the protocols.

4. The processing of war crimes cases by national institutions in the former Yugoslavia, particularly in Bosnia and Herzegovina, remains the Prosecutor's main area of concern. In the reporting period, and following another round of in-depth consultations with the Office of the Prosecutor of Bosnia and Herzegovina, the Prosecutor expressed his dissatisfaction with the very limited progress in the category II cases transferred by his Office to Bosnia and Herzegovina. The slow progress with respect to the investigation and prosecution of other war crimes cases, in particular sexual violence cases, also continues to be a source of concern. Little progress has been made in the many cases transferred from the Bosnia and Herzegovina State Court to entity-level authorities, and it is clear that the authorities of Bosnia and Herzegovina will not meet the end-of-2015 deadline prescribed in the National War Crimes Strategy for completing the most complex cases.

5. The Office of the Prosecutor continues its efforts to transfer expertise and information to national authorities in order to develop capacity-building measures in the former Yugoslavia. In the reporting period, the joint European Union/Tribunal training project for national prosecutors and young professionals from the former Yugoslavia has continued to facilitate contacts between the Office and regional

authorities, as well as to provide training for young legal professionals regarding the best practices of the Office.

6. In addition, within the confines of available resources, the Office of the Prosecutor is looking into additional ways to develop measures for building national capacity for war crimes cases, including by assessing, analysing and documenting the key lessons learned from its experience in investigating and prosecuting war crimes cases over the past 21 years. In particular, it is in the process of completing a first edition of a substantial paper concerning lessons learned in investigating and prosecuting conflict-related crimes of sexual violence. It is also in the process of documenting the procedures used and lessons learned in the tracking of fugitives, as well as a number of other topics of interest.

7. The Office of the Prosecutor has continued to assist officials and personnel of the International Residual Mechanism for Criminal Tribunals in transferring functions in accordance with the transitional arrangements prescribed by the Security Council.

## **II. Completion of trials and appeals**

### **A. Overview of the ongoing challenges**

8. The pressures of the workload of the Office of the Prosecutor are intensifying as staff attrition continues, while at the same time staff are dealing with some of the most complex and important cases tried before the International Tribunal for the Former Yugoslavia. The remaining trial proceedings are at an advanced stage, with closing arguments in *Karadžić* scheduled for the end of September and the start of the presentation of evidence by the defence in *Mladić* and *Hadžić* scheduled for mid-May and the end of June, respectively. The Office is also managing the work arising out of the remaining appeals, which are at different stages of the appellate process, in addition to actively supporting and sharing resources with the Mechanism. The Office is also engaging in legacy-related work to promote increased national capacity-building for war crimes cases.

9. The Office of the Prosecutor continues to expend resources to ensure compliance with trial and appeal decisions granting accused persons access to confidential material in related cases. Ongoing access-related review work is required in relation to the *Karadžić*, *Mladić*, *Popović* and *Stanišić and Simatović* cases, including the review of confidential transcripts, filings and decisions in these cases, as well as the filing of periodic notices of compliance with access orders for the duration of the cases.

10. Ongoing staff attrition is placing the remaining staff members under increasing amounts of strain as they continue to meet the many competing demands of the work of the Office of the Prosecutor by carrying out multiple functions. As noted in the reports on the previous reporting periods, additional solutions are needed to give staff members an incentive to remain until their work has been completed. At the same time, the Office recognizes the importance of supporting its loyal staff members with their impending career transitions. The Office is identifying training and networking opportunities, as well as other initiatives that may assist its staff members who face career transitions.

## B. Update on the progress of trials

### 1. *Šešelj*

11. The projected date for the issuance of the judgement in the *Šešelj* case is currently unclear, following the disqualification of one of the judges on 28 August 2013. On 13 December 2013, the newly constituted Trial Chamber determined that the proceedings should continue as soon as the newly assigned judge had familiarized himself with the record. In his separate opinion, the newly assigned judge indicated that he would need “an initial period of six months after the resumption of activity in January 2014” in order to familiarize himself with the record, but noted that he would review this estimate “according to the requirements of the task”.

12. On 30 December 2013, *Šešelj* appealed the decision to proceed, requesting either his release or a new trial. The prosecution has responded, and the decision of the Appeals Chamber is pending.

### 2. *Karadžić*

13. The defence case in the *Karadžić* trial ended on 1 May 2014, upon the issuance of the final decision of the Trial Chamber on the remaining evidence-related motion by the defence. As at 20 February 2014, when the last defence witness completed his testimony, *Karadžić* had used 308 of the 325 hours allocated to him to lead evidence from 238 witnesses. *Karadžić* made extensive use of written evidence pursuant to rule 92 ter, thereby using relatively little time for examination-in-chief. The prosecution used approximately 398 hours for cross-examination, and the Chamber used approximately 66 hours to question witnesses and for procedural and administrative matters.

14. The request by the Office of the Prosecutor to reopen its case to admit recently available evidence concerning the Tomašica mass grave was denied in a decision dated 20 March 2014. Similarly, the prosecution’s motion to present evidence to rebut defence evidence in relation to adjudicated facts was denied in a decision dated 21 March 2014. Accordingly, on 21 March 2014, the *Karadžić* Trial Chamber set a deadline for filing the final trial briefs of no later than 29 August 2014. Closing arguments will start on 29 September 2014.

15. There were no delays and no major disclosure or access problems in the reporting period. The trial team has been prioritizing updated disclosure-related reviews and searches so that the search capacities of the Office of the Prosecutor can be released in a timely way for the needs of the *Mladić* and *Hadžić* trial teams prior to the commencement of their respective defence cases.

16. Although senior management has secured extensions of contracts for temporary staff members and reallocated certain resources from within the Office of the Prosecutor, in particular from the Appeals Division, staff attrition continues to increase the burden on the remaining *Karadžić* trial team staff members. Given the tight schedule for the final trial brief and closing arguments, team members are working extensive hours and are under significant restrictions in terms of access to annual leave.

### 3. *Mladić*

17. The prosecution called its last witness on 12 December 2013 and formally closed its case-in-chief on 24 February 2014, upon the issuance of the last decision of the Trial Chamber concerning outstanding evidentiary matters. The prosecution adduced the evidence of a total of 357 witnesses, using 207.5 hours to present the evidence of 164 witnesses in court and adducing the remaining witnesses' evidence in written form. The defence used approximately 412 hours for cross-examination, and the Chamber used approximately 123 hours to question witnesses and for procedural and administrative matters.

18. The *Mladić* Trial Chamber heard submissions on the sufficiency of the prosecution case pursuant to rule 98 bis on 17 and 18 March 2014. It entered its decision on 15 April 2014, finding that sufficient evidence had been introduced by the prosecution to sustain each of the 11 counts in the indictment. On 23 April 2014, the defence sought certification to appeal the decision of the Trial Chamber on rule 98 bis.

19. The Trial Chamber scheduled the defence case to commence on 13 May 2014. On 24 April 2014, the *Mladić* defence filed an urgent motion seeking a delay of the start of the defence case, asserting that technical problems related to the Tribunal's computer systems had impeded and continued to impede their preparations. On 2 May 2014, the Chamber entered a decision deferring the start of the defence case until 19 May 2014.

20. On 28 April 2014, the *Mladić* defence filed the list of witnesses it intends to call during the defence case. It indicates that it will call 336 witnesses, of whom 330 would present their evidence in court, and use approximately 300 hours of hearing time (approximately 150 per cent of the time used by the prosecution). However, at the pre-defence conference on 12 May 2014, the Trial Chamber granted the defence 207.5 hours to present its evidence, the same amount of time that had been granted to the prosecution.

21. The prosecution continues to advocate innovative solutions to expedite trial proceedings and is exploring possibilities for using cross-examination transcripts from previous trials as a means of reducing the time used in court.

### 4. *Hadžić*

22. The prosecution concluded the presentation of its evidence in the *Hadžić* case on 17 October 2013, with the caveat that one final witness would be called at a later date. The *Hadžić* Trial Chamber heard submissions on the sufficiency of the prosecution case pursuant to rule 98 bis on 16 and 18 December 2013. On 20 February 2014, the Trial Chamber issued its decision, denying the defence's motion for a judgement of acquittal under rule 98 bis, and found that sufficient evidence had been introduced by the prosecution to sustain each of the counts in the indictment. On 8 April 2014, the prosecution called its last witness in the *Hadžić* case. Despite the prosecution's diligence, the witness had not been available to testify at an earlier time.

23. Pursuant to the order of the Trial Chamber, on 13 May 2014 the defence filed its submissions on the witnesses it intends to call and the exhibits it intends to use during trial. The presentation of evidence by the defence will begin on 24 June

2014, four months after the issuance of the decision on rule 98 bis, in accordance with an order issued by the *Hadžić* Trial Chamber on 18 July 2013.

24. Since closing its case, the prosecution has been preparing for the commencement of the defence case and carrying out preliminary preparations for the final trial brief.

### **C. Update on the progress of appeals and the work of the Appeals Division**

25. Appeals hearings in the multi-accused *Popović et al.* case took place between 2 and 6 December 2013. Based on the current appeals schedule, the final judgement in this case will be issued in late October 2014.

26. On 23 January and 27 January 2014, respectively, the Appeals Chamber issued its judgements in the *Šainović et al.* and *Dorđević* appeals, bringing each of those proceedings to a conclusion. The Appeals Chamber partially granted the prosecution's appeals relating to the acquittal of four high-ranking Serbian officials for persecution based on sexual assaults. It found that these officials were criminally responsible for the sexual assaults, as such crimes had been reasonably foreseeable to them in the course of the violent campaign to forcibly displace the Kosovo Albanian population. However, the *Šainović et al.* Appeals Chamber exercised its discretion not to enter convictions regarding the crimes. In correcting the errors of the Trial Chamber, the *Dorđević* Appeals Chamber emphasized that sexual crimes must not be treated differently from other crimes simply because of their sexual component.

27. On 3 February 2014, the prosecution filed a motion requesting that the Appeals Chamber reconsider its 25 February 2013 judgement acquitting the former Chief of Staff of the Yugoslav Army, Momčilo Perišić. The acquittal was based on the majority's holding that his actions had not been "specifically directed" to the commission of the crimes committed in Sarajevo and Srebrenica and therefore did not meet the elements of aiding and abetting. The prosecution filed its motion in the light of the *Šainović et al.* appeal judgement, as well as the appeal judgement of 26 September 2013 by the Special Court for Sierra Leone in the *Charles Taylor* case, both of which had concluded that "specific direction" is not an element of aiding and abetting liability and that the *Perišić* appeal judgement was therefore in conflict with prevailing jurisprudence. The prosecution motion was rejected on 20 March 2014 on the grounds that the Appeals Chamber does not have power to reconsider its final judgements.

28. In the reporting period, appeal briefings were completed in *Stanišić and Simatović*. Based on the current appeals schedule, the oral hearings in *Stanišić and Simatović* and *Tolimir* will take place in September and October 2014, respectively, and in *Stanišić and Župljanin* in early 2015.

29. The appeal briefing schedule for the multi-accused *Prlić et al.* case has been suspended pending the translation of the trial judgement into English. The prosecution has been informed that the English version is expected to be completed in June 2014, at which time the appeal briefing schedule will resume.

30. The Appeals Division continues to assist trial teams with briefing major legal issues, drafting final trial briefs and closing submissions. The Appeals Division also continues to manage several essential trial-related functions, including digesting and

communicating substantive and procedural decisions of interest to the trial teams, assisting with management of the internship programme of the Office of the Prosecutor and managing the periodic meetings of legal advisers.

### **III. State cooperation with the Office of the Prosecutor**

31. The Office of the Prosecutor continues to rely on the full cooperation of States to successfully complete its mandate, as set out in article 29 of the Statute of the Tribunal.

#### **Cooperation between the States of the former Yugoslavia and the Office of the Prosecutor**

32. During the reporting period, cooperation from Serbia, Croatia and Bosnia and Herzegovina remained satisfactory. The Prosecutor met with officials in Sarajevo from 8 to 10 April 2014 and is scheduled to meet with officials in Belgrade from 26 to 28 May 2014. He will visit Croatia from 28 to 30 May for the annual conference of prosecutors from the former Yugoslavia held in Brijuni, Croatia, to discuss issues of mutual relevance. In addition, throughout the reporting period, the Office of the Prosecutor maintained a direct dialogue with government and other authorities of Serbia, Croatia and Bosnia and Herzegovina, including officials in national prosecution offices. The field offices of the Office of the Prosecutor in Sarajevo and Belgrade continued to facilitate the work of the Office in Bosnia and Herzegovina and Serbia, respectively.

33. In the period from 16 November 2013 to 15 May 2014, the Office of the Prosecutor sent 24 requests for assistance, of which 15 were sent to Bosnia and Herzegovina, 4 to Croatia and 3 to Serbia. The remaining two were sent to the judicial authorities and law enforcement agencies in other States. The Office has received responses to all its requests. Given that the presentation of evidence by the *Mladić* and *Hadžić* defence is scheduled to start on 19 May and 24 June, respectively, it is expected that the Office will continue to rely on cooperation from Serbia, Croatia and Bosnia and Herzegovina in the future.

#### **1. Cooperation between Serbia and the Office of the Prosecutor**

34. Serbia continues to play an important role in ensuring the successful completion of the last trials and appeals at the Tribunal. The Office of the Prosecutor notes the formation of the new Government of Serbia and expresses its hope and expectation that any resultant restructuring of government offices will not affect the good cooperation that has been established between Serbia and the Office in recent times.

35. The access of the Office of the Prosecutor to documents and archives in Serbia remains important for ongoing trial and appeals proceedings at the Tribunal. Serbia has shown continued diligence in processing the requests for assistance sent by the Office through the National Council for Cooperation, the central authority in charge of facilitating this correspondence. In the reporting period, the Office sent three requests for assistance to Serbia, and none are presently outstanding.

## **2. Cooperation between Croatia and the Office of the Prosecutor**

36. The Office of the Prosecutor continues to rely on the cooperation of Croatia to efficiently complete trials and appeals. In the reporting period, the Office sent four requests for assistance to Croatia, and responses have been received with respect to all four.

## **3. Cooperation between Bosnia and Herzegovina and the Office of the Prosecutor**

37. The Office of the Prosecutor continues to rely on cooperation with Bosnia and Herzegovina to efficiently complete trials and appeals. In the reporting period, the Office sent 15 requests for assistance to Bosnia and Herzegovina, and responses have been received for all. The authorities of Bosnia and Herzegovina, at both the State and entity levels, responded promptly and adequately to the Office's requests for documents and access to government archives. The authorities also provided valuable assistance with witness protection matters and facilitated the appearance of witnesses before the Tribunal.

## **4. Cooperation between other States and organizations and the Office of the Prosecutor**

38. Cooperation and support from States outside the former Yugoslavia, as well as from international organizations, remains integral to the successful completion of the Tribunal's cases. Assistance continues to be needed to gain access to documents, information and witnesses, as well as in matters related to witness protection, including witness relocation. Assistance is also increasingly needed to assist with the prosecution of war crimes cases in the former Yugoslavia.

39. 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 (OSCE) and the Council of Europe.

40. The international community continues to play an important role in providing incentives for States of the former Yugoslavia to cooperate with the Tribunal. The European Union policy of conditionality, linking progress in accession to membership to full cooperation with the Tribunal, remains an effective tool for ensuring continued cooperation with the Tribunal and consolidating the rule of law in the former Yugoslavia.

## **IV. Transition from the Tribunal to national war crimes prosecutions**

41. As the Tribunal nears the completion of its mandate, the Office of the Prosecutor remains committed to promoting effective war crimes prosecutions in the former Yugoslavia by engaging in efforts to build the capacity of its national counterparts to carry on the accountability process started by the Tribunal. The effective prosecution of war crimes committed during the conflicts in the former Yugoslavia is fundamental for the truth-seeking and reconciliation process. Accountability for these crimes depends as much on the success of national

prosecutions as it does on the effective completion of the last cases by the Tribunal and the Mechanism.

42. While progress has been made in the prosecution of war crimes in the countries of the former Yugoslavia, significant deficiencies remain, particularly in Bosnia and Herzegovina.

## **A. Challenges in establishing accountability for war crimes in Bosnia and Herzegovina**

43. The processing of war crimes cases in Bosnia and Herzegovina is currently not proceeding in a satisfactory way, and significant effort is needed on the part of all those involved in the process to rectify the situation. The Office of the Prosecutor of Bosnia and Herzegovina must expend more effort to meet its long-established targets. The Prosecutor hopes that the increased material support for the entity-level judicial institutions will lead to increased prosecutorial activity.

### **1. Investigation files transferred by the Office of the Prosecutor to Bosnia and Herzegovina**

44. There has been little progress to report with respect to the investigation and prosecution of the so-called category II cases (investigation files), the last of which the Office of the Prosecutor transferred to the authorities of Bosnia and Herzegovina in December 2009.

45. During his visit to Sarajevo in April 2014, the Prosecutor met with representatives of the Office of the Prosecutor of Bosnia and Herzegovina and established that, in spite of assurances given during the previous meetings, only one prosecutorial decision had been taken during the reporting period, resulting in the issuance of one indictment. No prosecutorial decisions have been taken to close or complete an investigation, or to issue any other indictments in any of the outstanding cases. This continues to be highly problematic. While the Office of the Prosecutor of Bosnia and Herzegovina undeniably faces challenges in carrying out its work, these do not explain why most cases are still under investigation some five years after the last investigative material was transferred to Bosnia and Herzegovina.

46. This is the fourth consecutive time that the Prosecutor has had to report unsatisfactory progress regarding the category II cases. The Prosecutor calls upon the Office of the Prosecutor of Bosnia and Herzegovina to devote serious time and attention to these cases and to make good on their commitment to resolving the outstanding category II caseload.

### **2. Bosnia and Herzegovina National War Crimes Strategy**

47. During the reporting period, it was again clear that the implementation of the Bosnia and Herzegovina National War Crimes Strategy is facing considerable delays and a large backlog of cases remain to be prosecuted. The Prosecutor hopes that the recent increase in the number of staff of the Office of the Prosecutor of Bosnia and Herzegovina, including the near-doubling of the number of prosecutors in the war crimes department (from 19 to 37), will advance the implementation of the Strategy in the upcoming period.



48. The Strategy, adopted in 2008, had set firm deadlines, namely, seven years, to process the most complex and highest-priority cases, and 15 years for all other war crimes cases. The Office of the Prosecutor of Bosnia and Herzegovina has indicated to the Steering Board that monitors the implementation of the Strategy that it will need a further three years, taking through until the end of 2018, to complete the complex cases on which it is currently working. It reports a total of 352 such cases.

49. The status of war crimes cases transferred from the judicial institutions of the State to the entities remains problematic. Although there has been some progress in the transfer of cases, the number of indictments issued by the entities remains low. Continued attention is needed regarding the resources available for the investigation and prosecution of cases at the entity level.

50. While the Office of the Prosecutor of the Tribunal has received no requests for assistance in relation to ongoing Tribunal cases from the entity-level authorities, the Office of the Prosecutor of the Mechanism received four in the reporting period. This is somewhat encouraging, as it suggests that the recent seminars conducted by the Office of the Prosecutor of the Tribunal to promote more effective access to Tribunal materials have had an effect. However, the Prosecutor encourages the entities to make far greater use of the material available.

51. In this respect, the Prosecutor welcomes the budgetary support for the justice sector under the Instrument for Pre-accession Assistance funded by the European Union, aimed at strengthening the resources available at both the State and entity levels for the processing of war crimes. The Prosecutor also recognizes the efforts of the OSCE mission in Bosnia and Herzegovina in setting up a coordinated training programme for the judicial staff recruited with these funds.

### **3. Prosecution of sexual violence cases**

52. In February 2014, the OSCE mission in Bosnia and Herzegovina issued a report concerning the progress and challenges with respect to the prosecution of conflict-related sexual violence crimes in Bosnia and Herzegovina between 2005 and 2013. The report notes that, of a total of 256 completed war crimes cases, 36 cases involving charges of sexual violence have been completed before the Court of Bosnia and Herzegovina and 30 before the entity courts. In addition, another 35 cases are ongoing, and a number of investigations into sexual violence allegations are ongoing.

53. Considering the reported magnitude of sexual violence that took place during the conflict, and based upon discussions with victims' associations that have voiced unhappiness with the dearth of sexual violence cases prosecuted thus far, the Prosecutor urges the authorities of Bosnia and Herzegovina to pay particular attention to sexual violence cases.

### **4. European Court of Human Rights ruling in *Maktouf and Damjanović***

54. In the reporting period, there continued to be challenges in processing war crimes cases arising out of the July 2013 decision by the European Court of Human Rights in the *Maktouf and Damjanović* case. The Court found that the criminal verdicts issued by the Court of Bosnia and Herzegovina against the two applicants to the European Court of Human Rights were in violation of article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights). This was because they retroactively

applied sentencing provisions from the 2003 Criminal Code of Bosnia and Herzegovina instead of applying the applicable provisions from the 1976 Criminal Code of the former Socialist Federal Republic of Yugoslavia, which contained more lenient provisions in some respects. Since then, several more individuals, also convicted of war crimes under the 2003 Code of Bosnia and Herzegovina, have taken their case to the Constitutional Court of Bosnia and Herzegovina, which confirmed that their verdicts were also in violation of the European Convention. The second instance judgements in all these cases were quashed, including in cases where individuals had been convicted of genocide and crimes against humanity, resulting in the release of the convicts when their sentences were suspended. This controversial result caused an outcry among victim communities affected by the crimes in question.

55. The Court of Bosnia and Herzegovina reopened 15 cases and has so far issued new sentences in seven of them (of which three sentences have been enforced). The other defendants are currently not in custody, either because no new sentence has been imposed or because their sentences have not yet been enforced. No sentences have yet been imposed for defendants who were convicted of genocide. It is likely that more individuals convicted under the 2003 Criminal Code will take their case to the Constitutional Court of Bosnia and Herzegovina.

56. The implementation of this ruling by the European Court of Human Rights has created challenges for the processing of war crimes in Bosnia and Herzegovina, and measures are needed to restore the trust of victims in the Bosnia and Herzegovina judiciary.

## **B. Investigating and identifying missing persons**

57. The issue of missing persons remains a challenge. In the Prosecutor's meetings with victims' associations, lack of information concerning missing family members is constantly underscored as being the most important outstanding issue. As reported previously, the search for and exhumation of mass graves and the subsequent identification of the remains need to be accelerated. It is fundamental to reconciliation in the former Yugoslavia. All victims need to be identified and deserve a dignified burial. The authorities in the region are called upon to heighten their focus on investigating and identifying missing persons and to intensify their cross-border cooperation, if necessary.

58. In the reporting period, the assistance of the international community was instrumental in assisting the national authorities in this important task. By providing financial assistance and equipment necessary for exhumations, including excavators and refrigerators, the international community ensured that continued exhumations of the Tomašica mass grave, spearheaded by the International Commission on Missing Persons in the former Yugoslavia and national authorities, could proceed under proper conditions. In this regard, the Prosecutor reiterates his full support for the work of the International Commission.

### **C. Cooperation between States of the former Yugoslavia on war crimes investigations and prosecutions**

59. Regional cooperation progressed with the adoption of a new protocol on the exchange of information and evidence in war crimes cases between Bosnia and Herzegovina and Montenegro on 29 April 2014. This followed the signing of similar protocols with Serbia in January 2013 and with Croatia in June 2013. As a result of the protocols, investigative files have been transferred. However, no indictments have yet been transferred, nor have any indictments been issued based on the transferred investigative material. Although the protocols have been commended as an improvement in regional cooperation, it is difficult to judge any improvements made in this area without concrete results.

60. The protocols came under public scrutiny in Bosnia and Herzegovina when Serbia and Croatia issued international arrest warrants against citizens of Bosnia and Herzegovina in January and February 2014. One of the motivating factors for the protocols was to avoid such warrants with respect to citizens of another State, as this has the potential to threaten the stability of the region. Timely action by Bosnia and Herzegovina prevented the arrest warrants from becoming binding on States members of the International Criminal Police Organization (INTERPOL). In the future, the channels described in the protocols should be the primary avenue for concluding any investigations concerning individuals in other States.

61. The Constitutional Court of Croatia has not yet decided on the petition of the Government of Croatia regarding a law adopted by the former Government of Croatia that annuls all indictments issued by the Serbian authorities against citizens of Croatia. If the law remains in force, it would be detrimental to regional cooperation between Serbia and Croatia.

### **D. Support of the Office of the Prosecutor for national war crimes prosecutions**

62. The Office of the Prosecutor continues to intensify its efforts to assist countries of the former Yugoslavia to more successfully handle their remaining war crimes cases. The Transition Team under the Prosecutor's direction is leading the work of the Office to facilitate domestic war crimes cases through transfers of information and expertise.

#### **1. Access to information in databases of the Office of the Prosecutor and in case records of the Tribunal**

63. During the reporting period, the Office of the Prosecutor continued to provide information to assist national jurisdictions in prosecuting crimes arising out of the conflict in the former Yugoslavia.

64. As of 1 July 2013, the Hague branch of the Mechanism assumed responsibility for requests for assistance regarding completed Tribunal cases. The Office of the Prosecutor of the Tribunal, however, retained the responsibility in relation to requests for assistance regarding the ongoing cases. Tribunal personnel continued to provide assistance to the staff members of the Mechanism in dealing with the requests for assistance. In the period from 16 November 2013, the Office of the

Prosecutor of the Tribunal received four requests for assistance regarding the ongoing cases, of which two came from the Office of the Prosecutor of Bosnia and Herzegovina and one each from the Offices of the Prosecutor of Croatia and Serbia. The Office of the Prosecutor of the Tribunal has responded to all of them.

65. In the period from 16 November 2013, the Office of the Prosecutor responded to five rule 75 (H) applications from judicial authorities in the region in relation to ongoing cases. In addition, the Mechanism has assumed responsibility for applications seeking variation of protective measures for completed cases pursuant to rule 86 (H) of the Rules of Procedure and Evidence of the Mechanism.

## **2. European Union/Tribunal training project**

66. The joint European Union/Tribunal training project for national prosecutors and young professionals from the former Yugoslavia continues to form a central component of the strategy of the Office of the Prosecutor to strengthen the capacity of national criminal justice systems in the former Yugoslavia for war crimes cases. Their continuing presence facilitates contacts between the trial teams of the Office of the Prosecutor and the regional judicial authorities. This is of utmost importance for the ongoing Tribunal trial and appeals cases, as well as for the cases that are prosecuted at the local level.

67. Another part of the project involves bringing young legal professionals from the former Yugoslavia with a commitment to war crimes cases to work as interns with the Office of the Prosecutor in The Hague. In February 2014, a new group of nine young legal professionals from Bosnia and Herzegovina, Croatia and Serbia commenced their five-month internship. By investing in the education and training of these young legal professionals, the Office is transferring expertise that can build capacity in domestic institutions to progress their war crimes cases.

68. The Office of the Prosecutor is grateful to the European Union for supporting this very important project, thereby recognizing the imperative of building capacity by investing in the education and training of the young lawyers from the region. The European Union and the Office are currently negotiating the continuation of the project in 2015 and beyond.

## **3. Legacy paper on prosecuting sexual violence and other legacy projects**

69. The Office of the Prosecutor is in the process of finalizing a first edition of a paper recording its best practices and lessons learned for the prosecution of sexual violence crimes, crafted with a capacity-building focus in mind. Following consultations with current and former staff members, and using the compilation of documentation generated over the past 21 years that forms an integral part of the Office's archive and the basis for its transfer of knowledge, a team of staff members is working on a practical resource reflecting the Tribunal's experience.

70. Other legacy-related papers are also in progress at this time, covering topics including: lessons learned by the Office of the Prosecutor in tracking fugitives; the use of intercepted conversations as evidence at the Tribunal; the development and progress of investigations in the Office, including through the use of multidisciplinary teams of experts; and a number other topics relevant to investigating and prosecuting complex crimes. The Office hopes to publish a number of these legacy papers in the

course of the biennium to the extent compatible with operational requirements for the completion of the remaining trials and appeals.

#### **4. Regional training**

71. In the light of the knowledge developed over the past two decades in relation to investigating and prosecuting war crimes, the Office of the Prosecutor is uniquely placed to provide training to its regional counterparts on a range of issues, including evidentiary requirements for proving war crimes, crimes against humanity and genocide; organizing a complex investigation concerning international crimes; special challenges in investigating and prosecuting sexual violence crimes; witness interviewing techniques; witness protection; legal drafting; effective use of information technology; and other highly relevant topics.

72. To ensure that the training resources of the Office of the Prosecutor are used in an effective manner, and as reported previously, the Office last year circulated its report assessing the training needs of personnel in Bosnia and Herzegovina working on war crimes cases. Having reviewed this assessment, OSCE and its partners are currently looking into the issue of implementing the proposed strategy for improving national war crimes proceedings in Bosnia and Herzegovina through the creation of a comprehensive training programme. The Prosecutor hopes that the key recommendations contained in the training needs assessment report will be integrated into the proposed new strategy.

#### **5. Regional outreach**

73. The Office of the Prosecutor supports training programmes for local prosecutors in the former Yugoslavia and shares knowledge and expertise through its staff in various training capacities. In the reporting period, representatives of the Office participated in lectures organized by the youth outreach project by lecturing students on topics related to the work of the Tribunal, including the prosecution of sexual violence crimes, investigations and other issues.

### **V. National capacity-building on a global scale**

74. In addition to its work in the former Yugoslavia, the Office of the Prosecutor has increasingly engaged with national justice institutions throughout the world that are prosecuting war crimes in post-conflict contexts or are developing their capacity to address complex criminality in challenging environments. The Office of the Prosecutor aims to ensure that the lessons learned from its work and the best practices that have been developed for international prosecutions are widely shared with national counterparts working across a range of criminal justice sectors. While many training and experience-sharing sessions have focused on war crimes issues, the Office has also sought to show that its varied experiences may be beneficial to the investigation and prosecution of other transnational and complex crimes, including terrorism and organized crime.

75. Over the past year, the Office of the Prosecutor has worked directly with national counterparts from South America, North and East Africa, the Middle East and Europe, as well as participated in a number of international events hosted by the European Union, INTERPOL and the International Association of Prosecutors, among others. In the reporting period, a staff member of the Office assisted in a

programme sponsored by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) in relation to prosecuting sexual violence crimes. In addition, staff members of the Office have continued to play an important role in training personnel to become experts on the Justice Rapid Response roster in relation to investigating crimes of sexual and gender-based violence in conflict and post-conflict settings.

## **VI. Downsizing**

### **A. Downsizing of posts of the Office of the Prosecutor and support to staff for career transition**

76. At the beginning of the biennium, the Office of the Prosecutor had a total of 170 staff members. Twenty-two posts were downsized in the reporting period, bringing the current total of staff to 148. Of the downsized posts, eight were investigative posts that were downsized upon the completion of the *Karadžić* defence case.

77. The Office of the Prosecutor continues to actively support measures to assist staff in making the transition from their work at the Tribunal to the next step in their careers. In the reporting period, the Office continued to support training to enable its staff members to become registered members of the Justice Rapid Response roster of personnel available for deployment for investigation commissions. The Office also supported the Tribunal's ongoing initiatives to assist staff through career counselling and assistance offered by the Career Transition Office.

78. To this end, the Office of the Prosecutor is developing a detailed strategy regarding training programmes and networking opportunities for its staff members. The Office is also facilitating, within the limits of its operational demands, opportunities for its staff members to work for short periods with other United Nations bodies, particularly UN-Women and the Office of the United Nations High Commissioner for Human Rights, on issues regarding which they have valuable expertise to contribute, such as accountability for international crimes.

### **B. Supporting and sharing resources with the International Residual Mechanism for Criminal Tribunals (The Hague branch)**

79. In the reporting period, the Office of the Prosecutor continued to provide support and share resources with the Office of the Prosecutor of the Mechanism. In particular, work proceeded on providing assistance to national authorities, including with respect to incoming requests for assistance unrelated to ongoing Tribunal trials, and the procedures regarding the variation of protective measures for witnesses pursuant to rules 75 (G) and (H).

## **VII. Conclusion**

80. The Office of the Prosecutor remains firmly focused on its challenge of ensuring the maintenance of the highest standards of international justice while successfully completing its mandate.

81. Effective and efficient national war crimes prosecutions will be a critical component of the Tribunal's legacy. Given that significant difficulties remain with respect to regional prosecutions, particularly in Bosnia and Herzegovina, the Office of the Prosecutor will continue to encourage a dramatic improvement in the processing of national war crimes cases by the authorities in the former Yugoslavia and will continue developing additional measures to build national capacity for war crimes cases, including through assessing and documenting the lessons learned by and best practices of the Office.

82. The Office of the Prosecutor continues to encourage improved regional cooperation on war crimes matters.

83. To ensure the successful completion of its mandate in the next reporting period, the Office of the Prosecutor will continue to allocate resources flexibly so as to most effectively manage work on the remaining trials and appeals while coping with staff attrition and downsizing. The Office will also continue to support and share resources with the Office of the Prosecutor of the Mechanism in order to ensure a successful transition of its functions.

## Enclosures

### Enclosure I

#### A. Trial judgements, 16 November 2013 to 15 May 2014 (by individual)

<i>Name</i>	<i>Former title</i>	<i>Initial appearance</i>	<i>Trial judgement</i>
None			

#### B. Appeal judgements, 16 November 2013 to 15 May 2014 (by individual)

<i>Name</i>	<i>Former title</i>	<i>Initial appearance</i>	<i>Appeal judgement</i>
Vlastimir Đorđević	Assistant Minister of the Serbian Ministry of Internal Affairs and Chief of the Public Security Department of the Ministry of Internal Affairs	19 June 2007 16 July 2007 (further) 17 July 2008 (further)	27 January 2014 Sentenced to 18 years of imprisonment
Nikola Šainović	Deputy Prime Minister of the Federal Republic of Yugoslavia	3 May 2002	23 January 2014 Sentenced to 18 years of imprisonment
Nebojša Pavković	Commander of the Third Army of the Yugoslav Army and Chief of the General Staff of the Yugoslav Army	28 April 2005	23 January 2014 Sentenced to 22 years of imprisonment
Vladimir Lazarević	Chief of the Staff/Commander of the Priština Corps of the Yugoslav Army; Chief of the Staff/Commander of the Third Army of the Yugoslav Army	7 February 2005	23 January 2014 Sentenced to 14 years of imprisonment
Sreten Lukić	Head of the Serbian Ministry of Internal Affairs Staff for Kosovo and Metohija	6 April 2005 4 May 2005 (further)	23 January 2014 Sentenced to 20 years of imprisonment



## Enclosure II

### A. Persons on trial as at 16 November 2013

<i>Name</i>	<i>Former title</i>	<i>Initial appearance</i>	<i>Start of trial</i>
Vojislav Šešelj	President, Serbian Radical Party	26 February 2003	Trial commenced on 7 November 2007
Radovan Karadžić	President, Republika Srpska	31 July 2008	Trial commenced on 26 October 2009
Ratko Mladić	Commander of the Main Staff of the Bosnian Serb Army	3 June 2011	Trial commenced on 16 May 2012
Goran Hadžić	President, Serbian Autonomous District Slavonia, Baranja and Western Srem	25 July 2011	Trial commenced on 16 October 2012

### B. Persons on appeal as at 16 November 2013

<i>Name</i>	<i>Former title</i>	<i>Date of trial judgement</i>
Vujadin Popović	Lieutenant Colonel and Chief of Security of the Drina Corps of the Bosnian Serb Army	10 June 2010
Ljubiša Beara	Colonel and Chief of Security of the Bosnian Serb Army Main Staff	10 June 2010
Drago Nikolić	Second Lieutenant who served as Chief of Security for the Zvornik Brigade of Bosnian Serb Army	10 June 2010
Radivoje Miletić	Chief of Operations and Training Administration of the Bosnian Serb Army Main Staff	10 June 2010
Vinko Pandurević	Lieutenant Colonel and Commander of the Zvornik Brigade of the Drina Corps of the Bosnian Serb Army	10 June 2010
Mičo Stanišić	Minister, Internal Affairs, Republika Srpska	27 March 2013
Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre, Banja Luka	27 March 2013
Zdravko Tolimir	Assistant Commander for Intelligence and Security, Main Staff, Bosnian Serb Army	12 December 2012
Jadranko Prlić*	President, Croatian Republic of Herceg-Bosna	29 May 2013
Bruno Stojić*	Head of Department of Defence, Croatian Republic of Herceg-Bosna	29 May 2013

<i>Name</i>	<i>Former title</i>	<i>Date of trial judgement</i>
Milivoj Petković*	Deputy Overall Commander, Croatian Defence Council	29 May 2013
Valentin Ćorić*	Chief of Military Police Administration, Croatian Defence Council	29 May 2013
Berislav Pušić	Military Police Commanding Officer, Croatian Defence Council	29 May 2013
Slobodan Praljak	Assistant Minister of Defence, Croatian Republic of Herceg-Bosna	29 May 2013
Franco Simatović	Commander, Special Operations Unit, State Security Services, Republic of Serbia	30 May 2013 (Acquitted)
Jovica Stanišić	Head, State Security Services, Republic of Serbia	30 May 2013 (Acquitted)

\* An extension of time to file the notice of appeal was granted for this person.

### **C. Trial judgements for contempt, 16 November 2013 to 15 May 2014 (by individual)**

<i>Name</i>	<i>Former title</i>	<i>Date of (order in lieu of) indictment</i>	<i>Trial judgement</i>
None			

### **D. Appeal judgements for contempt, 16 November 2013 to 16 May 2014 (by individual)**

<i>Name</i>	<i>Former title</i>	<i>Date of trial contempt judgement</i>	<i>Appeal judgement</i>
None			

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**Enclosure III****Proceedings completed in the period 16 November 2013 to  
15 May 2014**

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**A. Trial judgements rendered in the period  
16 November 2013 to 15 May 2014**

None

**B. Contempt judgements rendered in the period  
16 November 2013 to 15 May 2014**

None

**C. Appeals from judgements rendered in the period  
16 November 2013 to 15 May 2014**

1. Šainović et al. IT-05-87-A (23 January 2014)
2. Đorđević IT-05-87/1-A (27 January 2014)

**D. Appeals from contempt rendered in the period  
16 November 2013 to 15 May 2014**

None

**E. Final interlocutory decisions rendered on appeal in  
the period 16 November 2013 to 15 May 2014**

Mladić IT-09-92-Ar73.2 (28 November 2013)

**F. Review, referral and other appeal decisions rendered  
in the period 16 November 2013 to 15 May 2014**

1. Delić IT-04-83-R.1 (17 December 2013)
  2. Perišić IT-04-81-A (20 March 2014)
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**Enclosure IV**

**Proceedings ongoing as at 15 May 2014**

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**A. Trial judgements pending as at 15 May 2014**

1. Šešelj IT-03-67-T
2. Karadžić IT-95-5/18-T
3. Mladić IT-09-92-T
4. Hadžić IT-04-75-T

**B. Contempt judgements pending as at 15 May 2014**

None

**C. Appeals from judgements pending as at 15 May 2014**

1. Popović et al. IT-05-88-A
2. Tolimir IT-05-88/2-A
3. Stanišić and Župljanin IT-08-91-A
4. Prlić et al. IT-04-74-A
5. Stanišić and Simatović IT-03-69-A

**D. Appeals from contempt pending as at 15 May 2014**

None

**E. Interlocutory decisions pending as at 15 May 2014**

1. Šešelj IT-03-67-Ar15bis
2. Karadžić IT-95-5/18-Ar73.13

**F. Review, referral and other appeal decisions pending as at 15 May 2014**

None

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**Enclosure V**

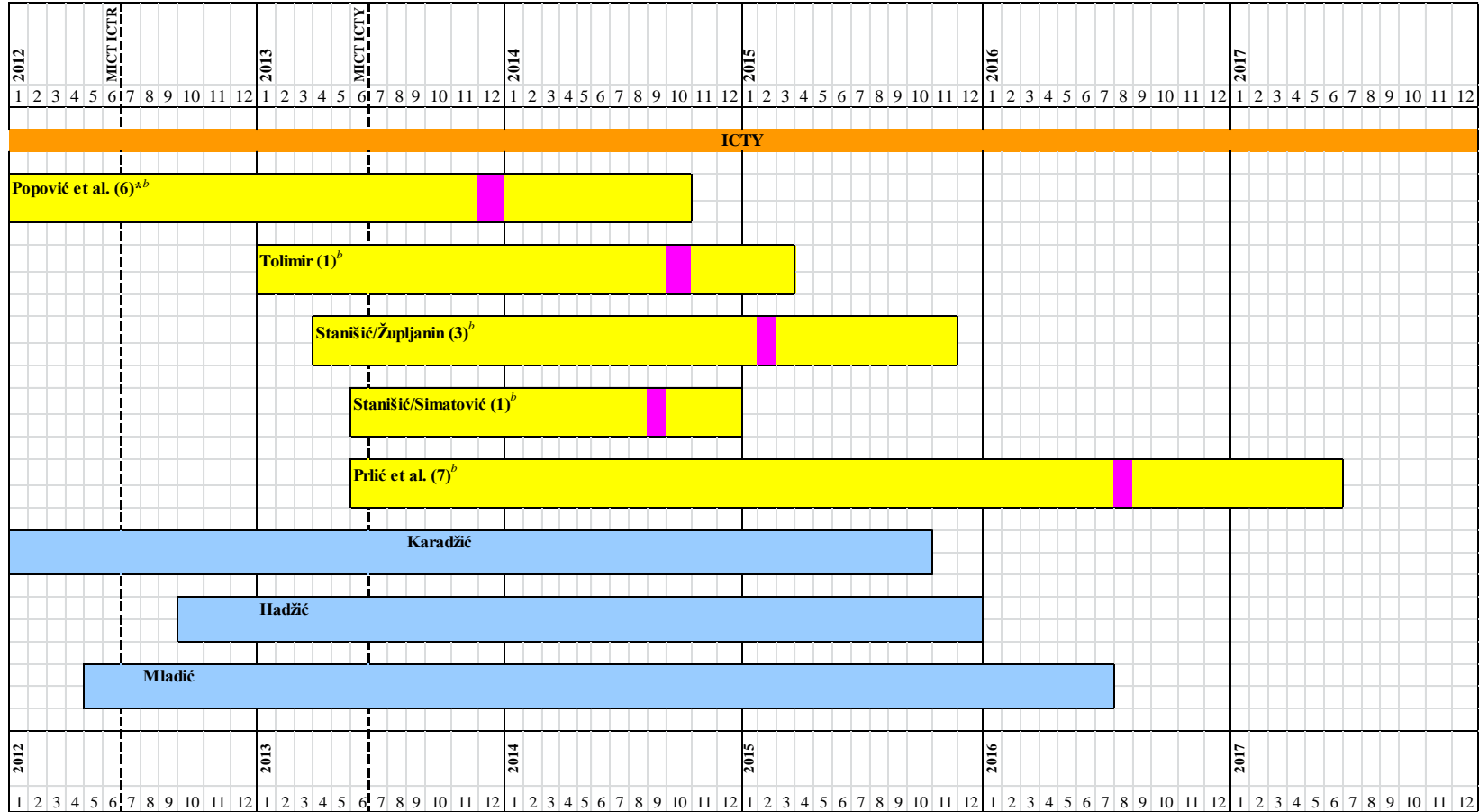
**Decisions and orders rendered during the period 16 November  
2013 to 15 May 2014**

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1. Total number of decisions and orders rendered before the Trial Chambers: 93
  2. Total number of decisions and orders rendered before the Appeal Chambers: 59
  3. Total number of decisions and orders rendered by the President of the  
Tribunal: 45
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Enclosure VI

Trial and appeals schedule of the International Tribunal for the Former Yugoslavia<sup>a</sup>



Abbreviations: MICT, International Residual Mechanism for Criminal Tribunals; ICTR, International Criminal Tribunal for Rwanda; ICTY, International Tribunal for the Former Yugoslavia.

Note: A forecast for the issuance of the judgement in the *Šešelj trial*.

<sup>a</sup> Contempt matters are not included.

<sup>b</sup> Number of accused/appellants, including the prosecution.

