

**Security Council**

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**Letter dated 20 November 2015 from the President of the  
International Residual Mechanism for Criminal Tribunals  
addressed to the President of the Security Council**

I am pleased to transmit herewith the review report of the International Residual Mechanism for Criminal Tribunals on the progress of its work in the initial period (see annex), submitted pursuant to the statement by the President of the Security Council of 16 November 2015 ([S/PRST/2015/21](#)).

I would be grateful if you could transmit the present report to the members of the Security Council.

*(Signed)* Theodor **Merón**



**Annex**

[Original: English and French]

**Report of the International Residual Mechanism for Criminal  
Tribunals on the progress of its work in the initial period****Contents**

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1. The present report is submitted pursuant to the statement by the President of the Security Council of 16 November 2015 (S/PRST/2015/21), in which the Council requested the International Residual Mechanism for Criminal Tribunals (“Mechanism”) to present, by 20 November 2015, a report on the progress of its work in the initial period, including in completing its functions.<sup>1</sup>

## **I. Introduction**

2. The Security Council, by its resolution 1966 (2010), established the Mechanism to carry out a number of essential functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia after the closure of the Tribunals. As of the commencement date of each of its two branches, one in Arusha for the International Criminal Tribunal for Rwanda, and one in The Hague for the International Tribunal for the Former Yugoslavia, the Mechanism has continued the jurisdiction, rights and obligations and essential functions of both Tribunals, subject to the provisions of resolution 1966 (2010) and of the statute of the Mechanism (see Security Council resolution 1966 (2010), annex 1). Under the terms of the resolution, the Mechanism will operate for an initial period of four years, and subsequently for periods of two years, following reviews of its progress, unless the Council decides otherwise. The present report is submitted to facilitate the review of the Mechanism’s progress during the initial period of its operations.

3. Pursuant to resolution 1966 (2010), the Mechanism commenced operations at its Arusha branch on 1 July 2012 and at its Hague branch on 1 July 2013. Upon the commencement of work at each branch, the Mechanism became responsible for, inter alia, the conduct of certain judicial proceedings, the supervision of enforcement of sentences, assistance to national jurisdictions and the management of archives. The transfer of functions from the two Tribunals to the Mechanism was carried out seamlessly at both branches, with no gap in the provision of services. This was particularly important for certain functions, such as victim and witness protection, where any disruption could have had potentially serious consequences.

4. Since the commencement of operations at each branch, the Mechanism has carried out those functions for which it has already become responsible, including by issuing a wide range of judicial rulings, supervising the enforcement of sentences being served on two continents and providing ongoing protection to victims and witnesses and assistance to national jurisdictions. The Mechanism has also continued to work closely with principals and staff of the Tribunals to ensure a smooth transition of remaining functions and services. In addition, the Mechanism has elaborated a legal and regulatory framework (as set forth in enclosure 1) as well as procedures and working methods that harmonize and build upon the best practices of both Tribunals while reflecting the operational needs of a smaller institution located on two continents. Although it has faced various challenges during the initial period of its operations, as may be expected for any start-up institution, the Mechanism continues, in all that it does, to seek ways to improve its operations so as to facilitate the smooth and efficient fulfilment of its mandate.

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<sup>1</sup> Unless otherwise specified, figures discussed in this report are accurate as of 30 October 2015.

5. In establishing the Mechanism, the Council emphasized that the Mechanism should be a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions. Throughout the initial period of its operations, the Mechanism has consistently conducted itself in line with this vision, retaining only the minimal staffing levels necessary. It has, however, established rosters of qualified potential staff who can be expeditiously recruited when ad hoc activities, such as trials and appeals, so demand.

6. The present report provides an overview of the progress of work of the Mechanism in the initial period, including with regard to the completion of its functions.<sup>2</sup>

## II. Chambers

7. In contrast to the two Tribunals, which have full-time judges, the Chambers of the Mechanism is composed of a full-time President and 24 other independent judges who are called from a single roster of judges elected by the General Assembly, only as needed, to perform the judicial work of the Mechanism either remotely or, when necessary, at one of the seats of the Mechanism. The great majority of the rostered judges have already been called upon to exercise judicial functions in relation to one or more cases. In addition to the President's judicial responsibilities, which include presiding over the Appeals Chamber and coordinating the work of the Chambers, the President has the overall supervisory and representative responsibility for the Mechanism.

8. The President and the judges of the Mechanism are supported by a small team of legal and administrative staff in the execution of their judicial mandates and, in the case of the President, supervisory and representative responsibilities. During the first year and a half of the Mechanism's operations, legal and administrative support to the judges was principally provided by double-hatted staff of both Tribunals to aid the transition of functions to the Mechanism. From 1 January 2014, a small Chambers team of staff was recruited to support the preparation of the Mechanism's first appeal judgement, judicial work on other matters before the Appeals Chamber and the duty judge at the Arusha branch. Gradually, this team has assumed responsibility for supporting all judicial work in matters arising before the Mechanism.

9. By recruiting only highly experienced staff with a proven record of delivering results in relation to all aspects of the judicial work, the Chambers, under the supervision of the President's Office, has been able to maximize efficiency in productivity while maintaining relatively small staffing levels. Staff are also assigned to multiple matters across the branches to ensure maximum flexibility and are capable of facilitating the drafting of orders, decisions and judgements in addition to providing individualized support to judges, as needed, in connection with their judicial work. The creation and elaboration of jurisprudential digests on a

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<sup>2</sup> This report should be read in conjunction with the previous reports submitted by the Mechanism pursuant to article 32 of its statute during the initial period of its operations: [S/2012/849](#); [S/2013/309](#); [A/68/219-S/2013/464](#); [S/2013/679](#); [S/2014/350](#); [A/69/226-S/2014/555](#); [S/2014/826](#); [S/2015/341](#); and [A/70/225-S/2015/586](#). The Mechanism's seventh progress report to the Security Council was submitted on 17 November 2015.

range of key topics as well as the adoption of templates and protocols for the processing of common requests, such as requests for the variation of witness protection measures, serve to further facilitate efficient support to the Mechanism's judges. Furthermore, with staff drawn from both Tribunals, the Chambers has been able to capitalize on staff expertise and knowledge of institutional history in identifying and implementing best practices in relation to the drafting of orders, decisions and judgements as well as the development of policies, practice directions and internal guidelines on a wide range of issues. Early communication difficulties with judges working remotely are continually being addressed through improved working methods to ensure the greatest possible efficiency in relation to judicial activities. In addition, the Chambers maintains and regularly refreshes its rosters of qualified candidates at all professional and key administrative staffing levels to ensure ongoing capacity for rapid recruitment in response to an increase in the judicial workload. The rosters include a number of current and former staff members of both Tribunals, who, if recruited, would require little training and would be able to contribute quickly and meaningfully to the work of the Chambers.

#### **A. Judicial activities**

10. The Mechanism engaged in a wide variety of judicial work during the initial period of its operations. In addition to delivering its first appeal judgement in December 2014, in accordance with projections, the Mechanism has adjudicated matters related to, inter alia, the enforcement of sentences, administrative review, assignment of cases, review proceedings, appeal proceedings, contempt, requests for revocation of the referral of cases to national jurisdictions, the variation of witness protection measures, access to materials, disclosure, changes in classification of documents, requests for compensation and assignment of counsel. As set forth in enclosure 2 to the present report, the President and judges of the Mechanism have delivered a total of 467 decisions and orders from the commencement of the Mechanism on 1 July 2012 through 30 October 2015.

11. The judicial work has steadily increased during the existence of the Mechanism. In 2012, the Mechanism issued 23 decisions and orders in the first six months of the operation of the Arusha branch. In 2013, a period that includes the first six months of the operation of the branch in The Hague, the Mechanism issued 83 decisions and orders (39 Arusha branch and 44 The Hague branch). In 2014, the Mechanism issued one appeal judgement and 190 decisions and orders (101 Arusha branch and 89 The Hague branch). Already, in the first 10 months of 2015, the Mechanism has issued 171 decisions and orders (82 Arusha branch and 89 The Hague branch).

12. It is anticipated that the level of judicial work will increase further over the course of the next several years, as, in addition to the usual caseload, the Mechanism anticipates that it may receive appeals from the judgements, if any, of the final trials being conducted by the International Tribunal for the Former Yugoslavia in the *Karadžić*, *Šešelj*, *Hadžić*, and *Mladić* cases and from any possible fugitive trials or retrials ordered by the Appeals Chambers of either Tribunal.

13. An overview of the Mechanism's judicial activities during the initial period, including its progress in completing its functions, is set forth below, with detailed schedules for the proceedings currently under consideration as well as factors relevant to projected completion dates for the cases and other matters over which

the Mechanism has jurisdiction, including in accordance with the Transitional Arrangements (Security Council resolution 1966 (2010), annex 2). All estimates in this report related to judicial activities presume that no extraordinary events occur during the course of the proceedings that may impact their conduct, such as, for example, the death of counsel or the illness of an accused.

## 1. Appeals from judgements

14. The Appeals Chamber of the Mechanism is responsible for conducting appeal proceedings in cases in which trials were completed after the commencement of operations at each branch and in any case in which a trial or retrial was conducted by the Mechanism.

15. The Appeals Chamber issued one appeal judgement, in the *Ngirabatware* case, in 2014. The Mechanism anticipates receiving appeals from judgements, if any, in the four ongoing trials at the International Tribunal for the Former Yugoslavia in the *Karadžić*, *Šešelj*, *Hadžić* and *Mladić* cases. Based on past experience, the scope of the case, and the efficient working methods of the Mechanism Chambers, it is anticipated that the *Karadžić* case will take approximately three years to complete from the issuance of the trial judgement to the issuance of the appeal judgement. The *Šešelj* case is also estimated at three years, which takes into account a one-year period for the translation of the trial judgement into Bosnian/Croatian/Serbian, which is required in view of Vojislav Šešelj's *pro se* status. It is anticipated that the *Hadžić* and *Mladić* cases will take, respectively, two years and two and a half to three years from the issuance of the trial judgement to the issuance of the appeal judgement.

16. In each case, approximately two thirds of the projected time for completion will be required for briefing and preparation of the case for the appeals hearing, including adjudication of pre-appeal matters such as requests for admission of additional evidence. During this phase, it is anticipated that only the presiding judge, who is normally the President and who also acts as the pre-appeal judge, will be required at one of the seats of the branch of the Mechanism to oversee the preparatory work in the case. The other judges on the bench would be expected to work remotely and would only be remunerated for each day on which they exercise their functions, in accordance with the President's indication of time reasonably necessary for the assignment.<sup>3</sup> When the case is ready for hearing, the judges will be called to the relevant seat of the Mechanism to hear the parties and conduct deliberations. The estimates above are set forth in enclosure 3. Prior to issuance of the trial judgements concerned and the filing of any notices of appeal, it is difficult to provide greater detail with regard to these estimates. Nevertheless, for comparison purposes, it is estimated that a month of pre-appeal activity and a month of appeal activity at the Mechanism would produce savings in judicial expenses of close to one half as compared to the expenses incurred for the same judicial activity at the two Tribunals.

<sup>3</sup> The judges of the Mechanism receive remuneration in accordance with the statute and as set forth in the internal Guidelines on Remuneration and Entitlements for Judges of the Mechanism (revised, June 2015).

## **2. Review proceedings**

17. During the initial period, the Appeals Chamber has been seized with a number of requests for review of final judgements issued by the two Tribunals and related requests for the assignment of counsel. A convicted person's right to review of a final judgement is fundamental, and is provided for in the statute of the Mechanism. The Prosecution also has the ability to seek review in the first year after the issuance of a final judgement. Review proceedings require a threshold determination by the Appeals Chamber of whether the applicant has identified a new fact that was unknown during the original proceedings, which, if established, would have been a decisive factor in reaching the verdict. If the threshold is met, a review of the judgement is authorized, further proceedings are held, and a review judgement is issued.

18. During the initial period, the Appeals Chamber issued decisions or orders on six applications for review or related requests for assignment of counsel (4 Arusha branch and 2 The Hague branch). In addition, it is currently seized of an additional application for review arising out of an Arusha branch case, which is expected to be completed by the end of the year. In disposing of these matters efficiently, the President has presided over each case and prepared the case for deliberations, while non-double-hatted judges have worked remotely. Based on past experience, it is estimated that the Mechanism will receive three requests for review a year in the coming bienniums. If a review is authorized, it is estimated that the proceedings will last one year from the filing of the initial request for review to the issuance of the review judgement.

## **3. Trial proceedings**

19. The Trial Chambers of the Mechanism are responsible for the conduct of trial proceedings in the event of the arrest of any of the three remaining fugitives indicted by the International Criminal Tribunal for Rwanda and any retrial ordered by the Appeals Chambers of the Mechanism, or of either of the two Tribunals.

20. To date, the Mechanism has not conducted any trial proceedings in cases of fugitives or retrials. However, the Mechanism is planning for the possibility of at least two fugitive trials at the Arusha branch and has budgeted for them. Bearing in mind the complexity of these cases and the past experience of trials at the International Criminal Tribunal, it is estimated that each trial may last two and a half years from arrest until the delivery of the trial judgement. Approximately 12 months of this period would be focused on pretrial activity, which is principally handled by a pretrial judge. The involvement of the full bench would only be necessary in relation to certain key decisions during this phase of the proceedings. In those circumstances, the members of the trial bench, other than the pretrial or presiding judge, would carry out their functions remotely for each discrete assignment, away from the seat of the Mechanism. As provided for in the statute, the judges would only be remunerated for days on which they exercise their functions, in accordance with the President's indication of time reasonably necessary for the assignment. The trial, deliberations and judgement-drafting phase of the case, which involves the full bench, would last approximately 18 months. It is estimated that any resulting appeal from judgement would take two years from the filing of the trial judgement to the delivery of the appeal judgement. For comparison purposes, it is estimated that a month of pretrial activity and a month of trial activity



at the Mechanism would produce savings in judicial expenses of close to one third of the cost at the International Criminal Tribunal.

21. Experience shows that, as a general matter, any retrial ordered by the Appeals Chambers of the Mechanism or by either of the two Tribunals may be expected to be of a more limited duration than full-scale trial proceedings. The scope of any retrial is defined on a case-by-case basis and is, in the absence of exceptional circumstances, usually limited to certain specific allegations or issues to be adjudicated at first instance.

#### **4. Contempt of court and false testimony**

22. In accordance with its statute, a single judge of the Mechanism is responsible for conducting any trials for contempt of court or false testimony related to cases before the two Tribunals or the Mechanism, with any appeals from such trials to be dealt with by a three-judge bench of the Appeals Chamber of the Mechanism.

23. To date, the Mechanism has not conducted any trial proceedings in cases involving contempt of court or false testimony allegations, although single judges have disposed of seven applications for the commencement of such proceedings. Because of the variable nature of allegations involving contempt of court or false testimony, it is difficult to estimate the length of time for any possible trial or appeal proceedings, although such proceedings are expected to be significantly shorter than trials conducted pursuant to article 1(2) and (3) of the statute.

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

24. The Mechanism is responsible for monitoring cases referred to domestic jurisdictions for trial. The President is responsible for supervising the monitoring of such cases. Pursuant to the statute, the Rules of Procedure and Evidence and applicable jurisprudence, the Prosecutor and, in certain cases, the accused may request the revocation of the referral before the case reaches final judgement in the domestic proceedings. In the event of a request for revocation, or acting *proprio motu*, the President may assign a Trial Chamber to decide whether to revoke the referral.

25. During the initial period, the President issued 10 decisions concerning cases referred to national jurisdictions and the Appeals Chamber issued one such decision. In addition, the Trial Chamber at the Arusha branch issued one decision dismissing a request to revoke the referral of a case to Rwanda. In connection with this request, the Trial Chamber also issued 11 other decisions and orders. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of such cases.

#### **6. Enforcement proceedings**

26. The President is responsible for supervising the enforcement of sentences, including issuing orders designating the state of enforcement for convicted persons and ruling on requests for early release and similar relief. During the initial period, the President issued a total of 45 decisions and orders related to the enforcement of sentences, including requests for early release. In 2012, the President issued two decisions or orders related to Arusha branch enforcement matters. In 2013, he issued six enforcement-related decisions or orders (4 Arusha branch and 2 The Hague branch). In 2014, the President issued 19 such decisions or orders (6 Arusha branch

and 13 The Hague branch). In the first 10 months of 2015, the President issued 18 decisions or orders related to enforcement matters (1 Arusha branch and 17 The Hague branch).

27. The President is currently seized of a number of confidential enforcement matters. Because of the case-specific nature of the issues involved and the dependence on State cooperation in relation to most of these cases, it is difficult to estimate the length of time necessary to resolve these matters. It is expected that the President's activities in relation to the supervision of the enforcement of sentences will continue until the last prison sentence has been served.

## **7. Additional judicial workload**

28. The Mechanism has been responsible for substantial judicial activity during the initial period in addition to the functions described above.

29. In connection with his responsibility to coordinate the work of the Chambers, the President has issued 155 assignment orders during the initial period, including 10 in 2012, 26 in 2013, 67 in 2014 and 52 in the first 10 months of 2015. In total, 89 matters have been assigned to the Arusha branch and 66 have been assigned to The Hague branch. In addition to those matters described above, the President is also responsible for the administrative review of Registry decisions and certain other miscellaneous requests for relief. During the initial period, the President issued 11 decisions or orders related to administrative review or other miscellaneous matters, including two at the Arusha branch in 2012, five at the Arusha branch in 2013, three in 2014 (2 Arusha branch and 1 The Hague branch), and one in the first 10 months of 2015 at the branch in The Hague. This judicial activity is expected to continue in future bienniums in step with the levels of other judicial activity described in this report.

30. In addition to appeals from judgement and review proceedings, the Appeals Chamber of the Mechanism is responsible for considering appeals from decisions of a Trial Chamber or a single judge. During the initial period, the Appeals Chamber has considered appeals in relation to decisions on contempt matters, review decisions and, as discussed above, requests for revocation of referral. The Appeals Chamber is expected to continue such judicial activity in line with the levels of judicial activity of the Trial Chambers and single judges.

31. Finally, single judges are responsible for dealing with a wide variety of requests in the first instance pursuant to article 12(1) of the statute. During the initial period, and in addition to requests related to contempt of court and false testimony, single judges have addressed requests related to the variation of witness protection measures, access to materials, disclosure, changes in classification of documents, requests for compensation and assignment of counsel. The majority of matters before single judges relates to requests for access to confidential material for use in cases before national jurisdictions or in proceedings before the either of the two Tribunals or the Mechanism.

32. The workload of single judges in relation to these matters has steadily increased during the initial period: in 2012, single judges issued six decisions or orders related to the Arusha branch; in 2013, they issued 31 decisions or orders (8 Arusha branch and 23 The Hague branch); in 2014, they issued 74 decisions or orders (34 Arusha branch and 40 The Hague branch); and in the first 10 months of

2015, they issued 73 decisions or orders (31 Arusha branch and 42 The Hague branch). A total of 138 of these decisions or orders relate to the variation of witness protection measures. Seven confidential and public matters that are currently pending before single judges at the two branches are expected to be completed by the end of 2015. It is expected that judicial activity before single judges will remain constant over the next several years, in particular in view of ongoing national proceedings related to cases heard before the two Tribunals and the Mechanism and requests from convicted persons in relation to potential requests for review.

#### **B. Other activities**

33. In addition to his judicial duties, the President has been responsible for a range of supervisory and representational activities during the initial period, including addressing matters related to conditions of detention, serving as chair of the Mechanism Coordination Council, reporting to the Security Council and the General Assembly and communicating with external and diplomatic stakeholders. He also presided over two plenaries of the judges conducted by remote written procedure, which led to the adoption of the Rules of Procedure and Evidence and the Code of Professional Conduct for the Judges of the Mechanism. In addition, and in consultation with the Prosecutor and the Registrar, the President promulgated a number of practice directions and oversaw the further development of the Mechanism's legal and regulatory framework.

### **III. Prosecutor**

34. In accordance with the statute of the Mechanism, the Prosecutor is responsible for the investigation and prosecution of cases before the Mechanism and acts independently as a separate organ of the Mechanism. The Office of the Prosecutor supports the Prosecutor in the execution of his functions and responsibilities, including fugitive tracking, the prosecution of cases and other litigation before the Mechanism, as well as the rendering of assistance to national jurisdictions.

35. The staff of the Office of the Prosecutor is largely made up of former staff members of the two Tribunals, which allows for the development and deployment of best practices in certain areas by drawing upon their long experience. In addition, from the beginning of its operations, the Office has employed various strategies to maximize efficiency, including fiscal prudence, double-hatting arrangements and multitasking. For example, the Office has delayed recruitments to adapt to changes in the trial schedule of the International Tribunal for the Former Yugoslavia. In addition, while the Office relied on double-hatting arrangements with staff from the Offices of the Prosecutor at both Tribunals during the initial period of the Mechanism, it has increasingly relied on multitasking staff members within its own Office to carry out a wide variety of tasks. Office staff recruited to perform particular functions have also been deployed to carry out additional tasks outside their core functions. For instance, the Documents Control Assistants, whose primary duty is to control access to and retrieval of material from the Office's databases, have also been used as information technology personnel or given tasks associated with archiving activities where they have the necessary skills. Similarly, the processing of requests for assistance from national authorities and international organizations has been streamlined, permitting Legal Assistants to be deployed to help process requests for assistance that would otherwise need to be handled by

Documents Managers. This multitasking strategy provides for greater flexibility in the use of the Office's resources and allows for sufficient coverage when needed.

#### **A. Fugitive tracking**

36. One of the most important functions of the Office of the Prosecutor is to track and secure the arrest of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda. The tracking and arrest of these nine fugitives, including the three expected to be tried by the Mechanism — Félicien Kabuga, Protais Mpiranya and Augustin Bizimana — remain an ongoing challenge. The Office continues to work closely with Rwandan authorities and various national and international partners in the tracking of three of the fugitives as well as the six fugitives whose cases have been referred to Rwanda: Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Ladislav Ntaganzwa, Ryandikayo and Charles Sikubwabo.

37. With particular focus on southern Africa and the Great Lakes region, on 24 July 2014 the Prosecutor launched the International Fugitives Initiative in Kigali, in collaboration with the Rwandan National Public Prosecution Authority, INTERPOL and the United States Department of State through its War Crimes Rewards Program. This renewed vigorous strategy has resulted in actionable information and strong leads on the whereabouts of the fugitives.

38. However, despite these efforts, a combination of factors continues to hinder the apprehension of the fugitives. These factors include lack of full cooperation from some States where the fugitives are believed to be hiding and lack of access to areas that are not under the control of the Government in some States. The Office nevertheless remains hopeful that, with the necessary support from national Governments and international organizations, the fugitives will be apprehended and put on trial at the Mechanism and in Rwanda.

39. In the meantime, the Office has established rosters of potential staff in anticipation of the arrest and trial of these fugitives. The rosters have been created for all professional levels for trial and appeal lawyers as well as for Legal Assistants and Document Managers (at the General Service G-6 level). The rosters are largely made up of former staff members of the two Tribunals who may be called upon to perform particular tasks without the need for training and at very short notice.

#### **B. Litigation**

40. The Mechanism is responsible for completing appeal proceedings in cases tried by the two Tribunals in cases where the notice of appeal was filed after the date of the commencement of operations of the relevant branch. After completing its first appeal, in the *Ngirabatware* case, the Office abolished the team responsible for that case. As a result of changes in the projected completion dates of certain trials at the International Tribunal for the Former Yugoslavia, the Office deferred the recruitment of staff to handle appeals in cases that are expected to come to the Mechanism from that Tribunal. In anticipation of those cases coming to the Mechanism during the first part of 2016, a team preparing for those cases is currently being established.

41. In addition to appeals, during the initial period there has been substantial motion practice in post-appeal proceedings and litigation related to cases referred to

national jurisdictions. For example, between January and October 2015 alone, there have been 32 substantive defence motions eliciting responses. The Office also provides information for the handling of requests for early release by persons convicted by either of the two Tribunals and, when required, makes submissions in relation to such requests. Moreover, the Office has responded to a considerable number of requests for the variation of protective measures by national authorities and makes applications before the Chambers for the variation of protective measures on behalf of national authorities.

42. Handling of all these requests requires substantial litigation by the Office. This will remain the case as long as persons serving their sentences continue to make applications for review of judgement, and while national authorities and international organizations continue to request assistance from the Office in order to access witnesses or evidence.

### **C. Assistance to national jurisdictions**

43. Over the course of their existence, the two Tribunals have collected more than 10 million pages of documents and statements, as well as thousands of audio recordings, video recordings, electronic records and artefacts. This unique collection of material contains evidence of numerous crimes that were not prosecuted by the Tribunals, and it is therefore of singular importance to national and international authorities investigating and prosecuting crimes committed in Rwanda and the former Yugoslavia. This is reflected in the fact that between 1 July 2012 and October 2015, the Office of the Prosecutor has handled over 850 requests for assistance from 15 countries and international organizations. Although some national authorities have been given online access to parts of the collection, and the Office has streamlined the processing of requests for assistance, the management of such requests remains resource-intensive. The Office also provides other forms of assistance, such as facilitating access to prosecution witnesses in order to obtain their consent for the variation of protective measures. It is expected that these activities will continue for a considerable time.

44. More recently, the Office has received other kinds of requests for assistance, such as requests to monitor proceedings in Rwanda with regard to genocide-related cases in which the accused have been extradited to Rwanda from other countries. While the Office cannot provide such assistance outside its mandate, this example nevertheless indicates the increasing number and variety of requests for assistance that it is called upon to provide.

### **D. Other activities**

45. In addition to the functions identified above, the Office has, during the initial period, established systems and procedures to streamline its operations, monitored cases referred to national jurisdictions and engaged in diplomatic and other external relations in relation to the mandate of the Prosecutor. The Prosecutor has also issued regulations concerning standards of professional conduct of Office counsel and received requests for assistance from national authorities or international organizations.

#### **IV. Registry**

46. In accordance with its statute, the Registry provides administrative services for the Mechanism, including the Chambers and the Prosecutor. Under the leadership of the Registrar, the Registry is responsible for carrying out a number of essential functions, including the preservation and management of the archives and the protection of victims and witnesses, as well as for providing administrative and other support to the Mechanism to ensure its effective and efficient operations.

47. Following the initial assumption of responsibilities by the Mechanism at both branches, the Registry has continued to progressively assume responsibility for other functions, pursuant to article 6 of the Transitional Arrangements, in close coordination with the Tribunals and the other organs of the Mechanism. This phased transfer, which has been reflected in the biennial budget submissions of the Tribunals and the Mechanism, is ongoing and is set forth in enclosure 4.

48. In carrying out its various responsibilities, the Registry has sought to maximize efficiencies in a number of different ways. First, the Registry has fostered greater efficiency by creating an environment where the Mechanism's two branches can operate as a single organizational entity. This has been enabled by the creation of a unified information technology structure, allowing staff in both branches to be connected to a single network. In addition, common governance documents and operating procedures have been developed, and a single unified set of records has been established for some functions. Requests for assistance from national jurisdictions, for example, can be received and processed by staff at either branch, because handling procedures have been harmonized and a single database for tracking requests created. The common information technology infrastructure has also supported the streamlining, oversight and centralization of administrative services. Thus, an administrative process undertaken in one branch can be completed or approved in the other, largely eliminating the need for duplication of roles. A substantive decision can be made, for example, on the assignment of a defence counsel for a hearing in Arusha, but the administrative payment of the funds can be handled from The Hague.

49. Because of its small size, the Registry has been structured with flexibility as a priority. Staff have been recruited with wide and diverse experience, and portfolios and work tasks are arranged flexibly so that resources can be redeployed easily according to operational needs. Staff are expected to provide advice across the full range of the Mechanism's work, including assisting the work of both branches. For example, an expert in administrative law in The Hague works on administrative law matters arising at both branches, while a senior lawyer responsible for the administration of legal aid matters in Arusha supervises the work of more junior staff assigned to those issues in The Hague.

50. In developing common governance documents for both branches of the Mechanism, the Registry has largely sought to harmonize the precedents of the two Tribunals, in each case seeking to preserve best practices or to innovate where updates or adjustments were needed to reflect the operational needs of a smaller institution located on two continents. Mechanism guidelines for audiovisual recordings of hearings follow the best practice established by the International Tribunal for the Former Yugoslavia, which provide for dual recordings, rather than a single recording, as had been the practice at the International Criminal Tribunal for

Rwanda. This allows for one continuous, confidential recording of an entire hearing, with a duplicate public recording that stops when a hearing goes into closed session, avoiding the resource-intensive process of redacting a full recording for public release. Similarly, in comparing the procedures for the processing and filing of judicial documents, a decision has been taken to use the commercial database software used by the International Criminal Tribunal, since this will require fewer resources to support than the system built in-house by the International Tribunal for the Former Yugoslavia.

#### **A. Support to judicial activities**

51. Since the respective commencement of each branch of the Mechanism, the Registry has provided support to all of the Mechanism's judicial activities. To date it has, *inter alia*, processed more than 750 judicial filings, managed court hearings, including the delivery of the first Mechanism judgement, assigned and remunerated defence teams and provided over 10,000 pages of translations of correspondence and judicial documents.

52. The Registry has increasingly refined its operating procedures to ensure maximum efficiency in support of judicial functions. In addition, and together with the other organs of the Mechanism, the Registry has methodically created or supported the creation of rosters of qualified potential staff at each level and job family to ensure that the Mechanism is able to promptly conduct a trial when a fugitive is apprehended and/or when any ongoing proceedings of either Tribunal result in an appeal or retrial. Large numbers of candidates have been interviewed at each level and in each job family, allowing for candidates to be formally rostered following the endorsement by central review bodies in Inspira, consistent with United Nations rules with regard to human resources. The results of technical tests and interview reports are retained for future reference. In addition to the rosters established in Chambers and the Office of the Prosecutor, rosters have been created of P-2, P-3 and P-4 legal officers to serve in the Registry and for support staff, including, *inter alia*, translators.

53. Additionally, the Registry has supported the Mechanism's monitoring of cases referred to national jurisdictions by the Tribunals. In keeping with article 6 (5) of the statute, the Registry has engaged monitors from international bodies and interim monitors from the two Tribunals and the Mechanism. In 2015, the Registry facilitated the establishment of an agreement with the Kenyan section of the International Commission of Jurists to assist the Mechanism in the monitoring of two cases referred for trial to Rwanda by the International Criminal Tribunal for Rwanda. Pending the conclusion of a similar monitoring agreement for two cases of the Criminal Tribunal referred to France, the Registry has ensured continued monitoring through interim monitoring arrangements.

54. The Registry will continue to provide this support to the President, the judges and the Prosecutor for as long as the judicial activities of the Mechanism require.

#### **B. Victim and witness protection**

55. The Witness Support and Protection Unit has been fully operational since the commencement of operations at each branch and has offered support and protection for thousands of protected witnesses who have testified in cases completed by the Tribunals. The great majority of the witnesses receive some form of protection.

56. The Unit has ensured that witnesses continue to receive the same level of protection and security that was previously offered by the Tribunals, consistent with judicial protection orders and in close collaboration with domestic authorities and other United Nations entities. It has also ensured and has continued to strengthen the safekeeping of confidential witness information. Whenever required, it has assisted with requests for the rescission, variation or augmentation of witness protection measures.

57. At the Arusha branch, the Unit provides ongoing support services to witnesses, including medical and psychosocial care to victims and witnesses residing in Rwanda, particularly those living with HIV/AIDS as a result of crimes committed against them during the genocide.

58. It is expected that victim and witness protection will be required in future bienniums, in step with the many judicial protection orders that must continue to be implemented unless rescinded or waived.

### **C. Archives and records management**

59. Pursuant to article 27 of its statute, the Mechanism is responsible for the management, including preservation and access, of the archives of the two Tribunals and the Mechanism.

60. The initial focus of the Mechanism Archives and Records Section has been the coordinated transfer of custody of the Tribunals' archives to the Mechanism, in close cooperation with the two Tribunals. The transfer is progressing according to schedule and will be completed at the Arusha branch by the time that the International Criminal Tribunal for Rwanda is liquidated. Similarly, the transfer of archives and records from the International Tribunal for the Former Yugoslavia is also proceeding on schedule for completion by the time of its closure.

61. The Section preserves the archives in accordance with international standards and provides secure storage for physical and digital records. It also facilitates the widest possible access to records while ensuring the strictest protection of confidential information. Access will receive increasing attention in the future, including through a revamped fully searchable online judicial database, public exhibitions and participation in archives awareness events. The Section is also responsible for the management of the Mechanism's library in Arusha, which is one of the premier international law research resources in East Africa.

62. As the archives are by definition records deemed to be of long term to permanent value, their management will have to be ensured accordingly.

### **D. Supervision of the enforcement of sentences**

63. Since the establishment of each branch, the Registry has implemented the supervision of the enforcement of sentences pronounced by the two Tribunals and the Mechanism. Sentences are enforced within the territory of Member States that have concluded agreements to this effect or have indicated their willingness to accept convicted persons under other arrangements.



64. As of 13 November 2015, the Arusha branch is supervising the enforcement of 28 sentences in two States,<sup>4</sup> and the branch in The Hague is doing so in respect of 17 sentences in nine States.<sup>5</sup> In addition, seven convicted persons at the United Nations Detention Facility in Arusha and three convicted persons at the United Nations Detention Unit in The Hague are awaiting transfer to an enforcement State.

65. The Registry has continued to implement existing enforcement agreements, and has sought their amendment where this may result in further efficiencies. At the same time, the Registry has made significant efforts to expand the Mechanism's enforcement capacity. Additionally, the Registry has fostered close cooperation with relevant authorities in the enforcing States, facilitated the inspections by highly reputable international monitoring bodies and coordinated the action of partners on the ground, as required. The Registry, with the assistance of an independent international expert, has also implemented or is in the process of implementing changes aimed at further strengthening safety, security and health-related measures at prisons in Benin and Mali where individuals are serving sentences handed down by the International Criminal Tribunal for Rwanda.

66. It is expected that the supervision of the enforcement of sentences, carried out under the authority of the President, will be required in future bienniums, until the last prison sentence has been served.

#### **E. Assistance to national jurisdictions**

67. Since the commencement of operations at each branch, the Registry has received and responded to over 250 requests for assistance by national authorities or parties to national proceedings in connection with domestic proceedings related to the genocide in Rwanda or the conflicts in the former Yugoslavia. In order to facilitate the efficient handling of such requests, the Registry has produced and made available on the Mechanism's website comprehensive information and guidance related to this function. Additionally, the Registry has fostered the establishment of best practices across both branches and strengthened the use of databases to ensure confidentiality and promote efficiencies.

68. In the light of the increasing number of requests for assistance, this function is expected to continue over the next bienniums.

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

69. On 1 October 2015, the Registry completed the progressive transition to the Mechanism of the responsibility for the upkeep and relocation of 11 individuals acquitted and released by the International Criminal Tribunal for Rwanda who currently remain in Arusha. The Mechanism has adopted a strategic plan, which builds on the valuable lessons learned by the Criminal Tribunal, to guide its approach in the performance of this responsibility within its tight resource constraints. The Registry will continue to support the implementation of this plan.

70. The Mechanism anticipates that this humanitarian challenge will remain until all 11 individuals are relocated, and is grateful for the support of the Security Council and the international community towards its resolution.

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<sup>4</sup> Benin and Mali.

<sup>5</sup> Denmark, Estonia, Finland, France, Germany, Italy, Norway, Poland and Sweden.

### G. Staffing, administration and premises of the Mechanism

71. During the initial period, and pursuant to articles 14(5) and 15(4) of its statute, the Mechanism has retained only the minimal staffing levels necessary to perform mandated functions, relying to a great extent on the support of the two for a range of services and extensive “double-hatting” arrangements. The Mechanism’s current size at both branches, including continuous and ad hoc positions, represents a small fraction of the size of its predecessors.

72. Recruitment of Mechanism staff is proceeding well, with a vacancy rate of only 5 per cent for its continuous posts. As at 2 November 2015, 120 of the 126 approved continuous posts for the biennium have been filled to carry out the Mechanism’s continuous functions (with one remaining position funded by the International Tribunal for the Former Yugoslavia). An additional 118 personnel are also serving as general temporary assistance to assist with ad hoc needs, including judicial work, litigation and transition issues. These positions are short term in nature and the number may fluctuate depending on the relevant workload. Continuous and general temporary assistance positions at the Mechanism include nationals of 63 States. Approximately 80 per cent of the Mechanism’s staff have previously worked at one of the two Tribunals. As 56 per cent of current staff at the Professional level and above are female, the Mechanism has surpassed the Secretary-General’s gender parity goals, as it has done consistently since its inception.

73. While the number of continuous posts has increased over the three biennial budgets (as set forth in table 1 below), this growth reflects the phased transfer of functions as the Tribunals downsize and prepare for closure, and is within the originally forecast numbers of staff for the Mechanism. The increase of 51 positions proposed for the biennium 2016-2017 relates mainly to new positions required to provide security services in Arusha, which, up until 2014, were covered under the budget of the International Criminal Tribunal for Rwanda.

Table 1  
**Evolution of continuous posts**

	2012-2013 <sup>a</sup>	2014-2015 <sup>b</sup>	2016-2017 <sup>c</sup>
Arusha	53	70	119
The Hague	44	57	58
New York	0	0	1
<b>Total</b>	<b>97</b>	<b>127</b>	<b>178</b>

<sup>a</sup> Includes 30 double-hatted positions charged to the Tribunals’ budgets.

<sup>b</sup> Includes one double-hatted (ASG, Registrar) position charged to the budget of the International Tribunal for the Former Yugoslavia.

<sup>c</sup> Proposed number of temporary posts, plus one double-hatted (ASG, Registrar) position charged to the budget of the International Tribunal for the Former Yugoslavia.

74. During the initial period, the Registry has also ensured the uninterrupted provision of all required administrative services to the Mechanism, first by coordinating the support generously offered by the Tribunals to achieve savings for Member States and, more recently, as the Tribunals’ ability to offer such support decreased due to their progressive downsizing, through the ongoing establishment of a small, self-standing administration.

75. In addition, and in coordination with the other organs of the Mechanism and the Tribunals, the Registry has prepared and overseen the implementation of the Mechanism's budget. Notably, the Board of Auditors found "no material managerial issues to draw to the attention of the General Assembly" in their audit of the financial statements of the Mechanism, concluded in December 2013. This unqualified assessment is particularly significant considering that it relates to the first biennium — a period that is critical for any start-up institution.

76. As set forth in table 2 below, the evolution of the Mechanism's budget reflects an increase since 2012, in line with the transfer of functions from the Tribunals to the Mechanism, including the phased reduction in reliance on the Tribunals' post and non-post resources.

Table 2  
**Evolution of the budget of the Mechanism**

(in thousands of United States dollars)

	2012-2013 <sup>a</sup>	2014-2015 <sup>a</sup>	2016-2017 <sup>b</sup>
Arusha	49 226.9	67 655.0	72 232.7
The Hague	2 680.4	40 690.0	58 222.3
<b>Total</b>	<b>51 907.3</b>	<b>108 345.0</b>	<b>130 455.0</b>

<sup>a</sup> Revised appropriations (net).

<sup>b</sup> Proposed net requirements before recosting.

77. The Registry has gone to great lengths to ensure that the shift of workload and related resources from the Tribunals to the Mechanism has been done in the most efficient manner in order to avoid an increase in the overall budget of all three institutions. Indeed, as shown in table 3 below, the overall budget of all three institutions has been gradually declining since the biennium 2012-2013. In other words, the increases in the Mechanism budget have been more than offset by decreases in the budgets of the two Tribunals.<sup>6</sup>

Table 3  
**Evolution of the budgets of the Mechanism and the Tribunals**

(In thousands of United States dollars)

	2012-2013 <sup>a</sup>	2014-2015 <sup>b</sup>	2016-2017 <sup>b</sup>
Mechanism	51 907.3	108 345.0	130 455.0
International Criminal Tribunal for Rwanda	175 219.6	80 877.6	2 376.9
International Tribunal for the Former Yugoslavia	257 792.7	179 074.2	101 805.0
<b>Total</b>	<b>484 919.6</b>	<b>368 296.8</b>	<b>234 636.9</b>

<sup>a</sup> Revised appropriations (net).

<sup>b</sup> Proposed net requirements before recosting.

<sup>6</sup> In addition, funds allocated for the trials of fugitives indicted by the International Criminal Tribunal for Rwanda who are expected to be tried by the Mechanism have been returned at the end of each biennium when such funds have not been used.

78. The Registry has also taken a number of steps in relation to host State relations and the premises of the Mechanism at each of the two branches. Headquarters agreements for each of the Mechanism's branches have been signed and the agreement for the Arusha branch entered into effect in April 2014. In addition, in early 2012, the Registry started to manage a project for the construction of purpose-built premises for the Mechanism in Arusha. The construction phase started in early 2015 and work continues to progress. Discussions and negotiations are ongoing regarding the possibility for the branch in The Hague to continue to occupy the current premises of the International Tribunal for the Former Yugoslavia.

## **H. Other activities**

79. In addition to the functions and responsibilities identified above, the Registry has engaged in a number of other activities in support of the Mechanism's mandate during the initial period. These activities include engaging in diplomatic and other external relations, assuming responsibility for the United Nations Detention Facility in Arusha as of 1 October 2015, ensuring effective communications surrounding the transition of responsibilities from the Tribunals to the Mechanism and supporting efforts to make the Mechanism's work more accessible to audiences worldwide, including by means of the Mechanism's website.

## **V. Conclusion**

80. During the initial period, the Mechanism has carried out its mandate in accordance with Security Council resolution 1966 (2010), providing necessary continuity with respect to essential functions transferred from the two Tribunals while remaining focused on conducting its operations in an efficient and cost-effective manner. The Mechanism has received vital support, since before the commencement of operations at each of its branches, from the two Tribunals, the Office of Legal Affairs and the Department of Management of the Secretariat, the Netherlands, Rwanda, the United Republic of Tanzania, and States of the former Yugoslavia and individual Member States of the United Nations. This support is crucial to the success of the Mechanism as it continues to fulfil its mandate and to ensure the timely completion of its functions.

## Enclosure 1

### **Selected legal and regulatory instruments and policies promulgated by the Mechanism<sup>a</sup>**

(in effect as of 30 October 2015)

Rules of Procedure and Evidence (MICT/1), 8 June 2012

Policy for the Provision of Support and Protection Services to Victims and Witnesses (MICT), 26 June 2012

Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism (MICT/3), 5 July 2012

Directive on the Assignment of Defence Counsel (MICT/5), 14 November 2012

Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism (MICT/6), 14 November 2012

Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86(H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material (MICT/8), 23 April 2013

Practice Direction on Formal Requirements for Requests for Review of Administrative Decisions (MICT/9), 23 April 2013

Practice Direction on Requirements and Procedures for Appeals (MICT/10), 6 August 2013

Practice Direction on Lengths of Briefs and Motions (MICT/11), 6 August 2013

Prosecutor's Regulation No. 1 (2013) Standards of Professional Conduct of Prosecution Counsel (MICT/12), 29 November 2013

Prosecutor's Regulation No. 2 (2013) Requests for Assistance by National Authorities or International Organisations to the Prosecutor (MICT/13), 29 November 2013

Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve his or her Sentence of Imprisonment (MICT/2 Rev.1), 24 April 2014

Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals (MICT/7 Rev.1), 16 February 2015

Code of Professional Conduct for the Judges of the Mechanism (MICT/14), 11 May 2015

<sup>a</sup> As of 30 October 2015, there are individuals detained at the United Nations Detention Facility in Arusha or the United Nations Detention Unit in The Hague under the jurisdiction of the Mechanism. The respective detention rules and procedures of the two Tribunals apply *mutatis mutandis* to those individuals held under the Mechanism's authority.

**Enclosure 2****Judgements, decisions and orders issued in the initial period**

(as of 30 October 2015)

**Appeal judgements**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Arusha	0	0	1	0	1
The Hague	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>

**President's decisions and orders**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Arusha	14	19	55	33	121
The Hague	0	20	38	42	100
<b>Total</b>	<b>14</b>	<b>39</b>	<b>93</b>	<b>75</b>	<b>221</b>

**Appeals Chamber decisions and orders**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Arusha	3	11	10	6	30
The Hague	0	0	8	5	13
<b>Total</b>	<b>3</b>	<b>11</b>	<b>18</b>	<b>11</b>	<b>43</b>

**Trial Chamber decisions and orders**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Arusha	0	0	0	12	12
The Hague	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>12</b>

**Single judge decisions and orders**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Arusha	6	9	36	31	82
The Hague	0	24	43	42	109
<b>Total</b>	<b>6</b>	<b>33</b>	<b>79</b>	<b>73</b>	<b>191</b>

**All decisions and orders<sup>a</sup>**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Arusha	23	39	101	82	245
The Hague	0	44	89	89	222
<b>Total</b>	<b>23</b>	<b>83</b>	<b>190</b>	<b>171</b>	<b>467</b>

<sup>a</sup> Judgements are not included in this table.

**Enclosure 3****Projected timeline for completion of anticipated appeals  
from judgement**

<i>Case</i>	<i>Pre-appeal phase (months)</i>	<i>Deliberations/ judgement drafting (months)</i>	<i>Total time (months)</i>
<i>Karadžić</i>	24	12	36
<i>Šešelj</i>	24	12	36
<i>Hadžić</i>	16	8	24
<i>Mladić</i>	20-24	10-12	30-36



Enclosure 4

**Phased transfer of Registry function from the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia to the International Residual Mechanism for Criminal Tribunals**

