

**Security Council**

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**Letter dated 14 April 2022 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 fourth review report of the International Residual Mechanism for Criminal Tribunals (see annex), submitted pursuant to paragraph 17 of Security Council resolution [1966 \(2010\)](#) and in accordance with the procedures set out in the statement by the President of the Security Council of 31 March 2022 ([S/PRST/2022/2](#)).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

*(Signed)* Carmel Agius  
President



**Annex to the letter dated 14 April 2022 from the President of the  
International Residual Mechanism for Criminal Tribunals  
addressed to the President of the Security Council**

**Fourth review report of the International Residual Mechanism for  
Criminal Tribunals**

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## I. Introduction

1. The International Residual Mechanism for Criminal Tribunals was established pursuant to Security Council resolution [1966 \(2010\)](#) to carry out the residual functions of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.<sup>1</sup> In accordance with article 3 of its statute, the Mechanism comprises two branches: one in Arusha, United Republic of Tanzania, and one in The Hague. The Arusha branch commenced operations on 1 July 2012, assuming functions derived from the International Criminal Tribunal for Rwanda. One year later, The Hague branch commenced operations, assuming functions derived from the International Tribunal for the Former Yugoslavia. The Mechanism also has two field offices: one in Kigali and one in Sarajevo.

2. In paragraph 17 of its resolution [1966 \(2010\)](#), the Security Council decided that the Mechanism would operate for an initial period of four years, to be followed by subsequent periods of two years unless the Council decided otherwise, and that after each such period, the Council would review the progress of the work of the Mechanism. To date, such progress has been reviewed on three occasions, in 2016, 2018 and 2020.<sup>2</sup>

3. The fourth review of the Mechanism's progress is in accordance with the aforementioned provision and the procedures set out in the statement by the President of the Security Council of 31 March 2022 ([S/PRST/2022/2](#)), in which the Council requested the Mechanism to present by 14 April 2022 a report on the progress of its work since the previous review of the Mechanism, in June 2020.

4. The present report provides an overview of the work that the Mechanism undertook from 16 April 2020 to 14 April 2022<sup>3</sup> to advance substantially and complete its mandate.<sup>4</sup> It contains detailed schedules for the proceedings currently under way and factors relevant to projected completion dates for the cases and other matters over which the Mechanism has jurisdiction. In addition, it contains an explanation of how the Mechanism has addressed the recommendations made by the Security Council Informal Working Group on International Tribunals as reflected in Security Council resolution [2529 \(2020\)](#), in particular the steps taken to further enhance efficiency and effective and transparent management.

5. In accordance with article 4 of its statute, the Mechanism consists of three organs: the Chambers, the Prosecutor and the Registry.

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<sup>1</sup> On 1 January 2018, the International Residual Mechanism for Criminal Tribunals took over all remaining functions from both Tribunals.

<sup>2</sup> See [S/2015/896](#), [S/2018/347](#) and [S/2020/309](#).

<sup>3</sup> The previous review of the progress of the Residual Mechanism formally concluded in June 2020. The present report covers the two years' period following the submission of the third report (which covered the period from 16 April 2018 to 15 April 2020), which forms part of the fourth review process. All figures and information contained in the present report are accurate as at 14 April 2022.

<sup>4</sup> The present report should be read in conjunction with the Residual Mechanism's biannual progress reports to the Security Council and its annual reports to the Council and the General Assembly submitted pursuant to article 32 of the statute of the Mechanism.

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

7. The current terms of office of the three principals run until 30 June 2022. The President, Judge Carmel Agius (Malta), and the Prosecutor, Serge Brammertz (Belgium), have served in their respective positions throughout the period under review. However, the Mechanism saw a change in the Registrar, with Abubacarr Tambadou (Gambia) taking office on 1 July 2020, succeeding Olufemi Elias (Nigeria).

8. The Mechanism's successes over the past biennium owe much to the close collaboration between the three principals, which ensured that the Mechanism excelled in the fulfilment of its mandate and continued to deliver results. The prevailing coronavirus disease (COVID-19) pandemic continued to strain the Mechanism's operations and required the institution to address numerous challenges. Those included the need to maintain an efficient remote working culture that could meet the critical and fast-paced demands of an international tribunal and allow for an appropriate management of the workforce, as well as to ensure regular communication channels with all staff, provide a safe environment to guarantee their return to premises as promptly as possible, and tackle the impact that the pandemic has had on the physical and mental health of each person working at the Mechanism. A number of judicial proceedings were affected by the pandemic, which resulted in extensive and evolving travel restrictions and the unfortunate deaths of a judge and of an accused person and, more broadly, affected the health and well-being of witnesses, accused persons and their counsel.

9. The leadership of the Mechanism constantly reviewed the response of the institution to the ever-changing situation, including remote working and its limitations. A number of innovative measures, comprehensively described below, were taken to ensure business continuity at all times while safeguarding the health and safety of judges, staff, accused persons, witnesses and other people involved in the Mechanism's operations.

10. In the face of those difficulties, the Mechanism still managed to deliver three landmark judgments, with only a minimal delay due mainly to the pandemic. This was in part possible through the use of enhanced technology allowing for remote participation in judicial hearings and written procedures in lieu of in-person proceedings. In addition, major adjustments were made to the Mechanism's courtrooms to enable physical distancing and augmented hygiene measures for those present, and tailor-made policies and standard operating procedures were adopted to ensure the consistent application of those novel measures.

11. In this regard, the appeal judgment in *Prosecutor v. Ratko Mladić* was delivered on 8 June 2021, and the trial judgment in *Prosecutor v. Jovica Stanišić and Franko Simatović* was pronounced on 30 June 2021 in The Hague. The trial judgment in the multi-accused contempt case of *Prosecutor v. Anselme Nzabonimpa et al.* was pronounced on 25 June 2021, in Arusha.

12. With the completion of those milestones, the Mechanism has substantially reduced the amount of in-court activity, and a new chapter in its judicial workload is already under way. Appeal proceedings started in relation to the judgments delivered

in both the *Stanišić and Simatović* case and the *Nzabonimpa et al.* contempt case. In the *Stanišić and Simatović* case, all parties appealed, whereas in the *Nzabonimpa et al.* case, only one of the co-accused filed an appeal, in addition to the Office of the Prosecutor appealing against the outcome of the judgment in respect of two other co-accused. In the light of this, the contempt case is now named *Prosecutor v. Marie Rose Fatuma and others*.

13. Remarkable progress was also achieved in the area of fugitive tracking. There was a major breakthrough with the arrest in France on 16 May 2020 of Féliçien Kabuga, who had been at large for more than 22 years. On 26 October 2020, Mr. Kabuga was successfully transferred into the Mechanism's custody, and his initial appearance, on 11 November 2020, heralded the beginning of proceedings against him before the Mechanism. As set out in more detail below, questions surrounding Mr. Kabuga's medical fitness have kept the proceedings in the pretrial phase, with the Trial Chamber using that time to ensure that the parties are prepared for an efficient trial.

14. In addition, the case against a different fugitive, Augustin Bizimana, who was indicted by the International Criminal Tribunal for Rwanda and slated for trial at the Mechanism, was terminated in November 2020, following the confirmation of his death. This leaves six fugitives, out of eight at the beginning of the period under review, one of whom is expected to be tried by the Mechanism, while the other five are expected to be tried by Rwanda.

15. Since the previous review report, there have also been developments in the contempt case against Petar Jojić and Vjerica Radeta. Notably, on 11 May 2021, on the basis of a decision by the single judge assigned to the case, the President reported Serbia to the Security Council for non-cooperation after failing to execute the arrest warrants for the accused (see [S/2021/452](#)). This is extremely discouraging, as it constitutes the third time that Serbia has been referred to the Council for breach of its international obligations in the same matter – without Serbia changing its position.

16. Another issue concerning State cooperation produced a major setback for the Mechanism with regard to the situation of the acquitted and released persons residing in a safe house in Arusha for several years. After successfully negotiating and signing the Agreement between the Government of the Republic of the Niger and the United Nations on the Relocation of Persons Released or Acquitted by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals (Relocation Agreement), the Mechanism relocated eight of the nine individuals to the Niger in December 2021. Approximately three weeks after their arrival in that country, the national authorities served the eight individuals with an expulsion order “for diplomatic reasons”, to be executed within seven days. Currently, the eight individuals remain in the Niger. In the light of the seriousness of this development, the present report contains a section dedicated to that topic (sect. VI).

17. Lastly, the Mechanism continued to carry out its other residual functions in accordance with its statutory and regulatory framework, including supervising the enforcement of sentences, providing assistance following requests by national authorities, protecting victims and witnesses and managing the archives of the Tribunals and the Mechanism.

18. In an effort to enhance and refine its regulatory framework and to codify best practices across the branches, the President issued a revised practice direction on the procedure for the determination of applications for pardon, commutation of sentence or early release.<sup>5</sup> The Mechanism also adopted an occupational health and safety policy, amended the Code of Professional Conduct for Defence Counsel Appearing

<sup>5</sup> Residual Mechanism, document MICT/3/Rev.3, 15 May 2020.

before the Mechanism and other Defence Team Members and revised certain remuneration policies for defence counsel and amici curiae. Amendments to three rules of the Rules of Procedure and Evidence were also adopted.

19. In addition to its mandated tasks, the Mechanism dealt with a new evaluation by the Office of Internal Oversight Services (OIOS), which forms part of the current review process, and three separate OIOS audits, as well as a horizontal assessment of its work and practices and two annual audits conducted by the Board of Auditors. The Mechanism appreciates the contributions of OIOS and the Board towards strengthening the Mechanism's efficiency and effectiveness and it is pleased to note their confirmation of its dedication to implementing all their recommendations. Even if the time- and resource-intensive nature of evaluations and audits require the Mechanism to divert a certain portion of its focus away from its core functions, such procedures strengthen its operations through enhanced transparency and accountability. During the period under review, the Mechanism also submitted four biannual progress reports to the Security Council, as well as two annual reports to the General Assembly and the Council detailing steps taken to complete its functions.

20. Even though certain residual functions can be expected to carry on in the years ahead, the Mechanism remains firmly committed to implementing its overall strategy of expeditiously finalizing ad hoc judicial activity and further downsizing staff accordingly, consistent with the Security Council's vision of the Mechanism as a small, temporary and efficient structure, the functions and size of which will diminish over time.

21. With the closing of the period under review, 10 years will have passed since the Mechanism started to operate, in July 2012, signifying a decade of action and success towards the completion of its mandate. There should be no doubt as to the Mechanism's dedication and ability to discharge its mandate. What is presented below amply supports, once again, the high performance and tangible results achieved by the institution.

## **II. President**

### **A. Summary**

22. The President is the highest authority of the Mechanism, acting as its institutional head, and is responsible for the overall execution of the mandate of the Mechanism. The President coordinates the work of the Chambers, presides over proceedings in the Appeals Chamber, supervises the activities of the Registry and the enforcement of sentences, issues practice directions, as appropriate, represents the Mechanism before the Security Council and the General Assembly, and performs other representational functions vis-à-vis Member States, the Secretary-General and other external stakeholders. The President is also responsible for exercising a number of judicial, quasi-judicial and administrative functions conferred by the statute and the Rules of Procedure and Evidence. The President is supported by a small team of legal and administrative staff in the implementation of his mandate.

### **B. Priorities**

23. During the period under review, the President exercised his functions in accordance with the priorities set out at the start of his presidency, namely: (a) to ensure that the residual judicial activities of the Mechanism are concluded efficiently and in a timely manner, with due regard to the fair trial rights of the accused; (b) to further harmonize and improve practices and procedures and enhance inter-branch

coordination and collaboration; and (c) to foster high staff morale and performance. These three priorities take into account the judicial, structural and temporal nature of the Mechanism.

24. In relation to the first priority, determined to retain business continuity throughout the pandemic, the President, together with the other principals, led efforts to minimize as much as possible delays in judicial proceedings, while ensuring that measures were in place to protect the health and safety of staff and other people under the Mechanism's care.

25. The present report provides copious examples of the President's successful efforts to ensure the timely conclusion of judicial proceedings, in particular the delivery of three landmark judgments in 2021 in line with the timelines set, and the steady progress of the *Kabuga* pretrial proceedings. This priority was fully met during the period under review and will continue to be focused on until all cases are completed.

26. With regard to the second priority, it should be noted that the Mechanism's unique features as an international tribunal composed of two branches located on different continents and entrusted with functions concerning two separate conflicts make it ongoing. The Mechanism has continued to establish best practices, examine lessons learned and identify areas in which coordination and collaboration could be improved across both branches. During the period under review, several measures and policies were adopted with a view to harmonizing and streamlining working methods across the branches.

27. In relation to the third priority, staff morale was deeply affected by the pandemic, which persisted throughout the period under review and affected both the professional and personal lives of all staff. In addition, as a downsizing institution, the conclusion of key activities by the Mechanism is inextricably linked with reductions in staffing, which in turn have a detrimental effect on staff morale. This is a challenge that will persist as the Mechanism works towards completing its mandate.

28. In that respect, the President continued to emphasize the importance of timely, clear and reassuring communications with staff at both branches and to initiate town hall and other meetings, including with representatives of the staff union. Unfortunately, throughout most of the pandemic, the President was unable to visit the Arusha branch or the field offices in person. Together with the other principals, he held five virtual town hall meetings for all staff: in June, July and December 2020, May 2021 and February 2022. Those meetings provided valuable opportunities for the principals to inform staff about developments at the Mechanism and for staff to raise any issues of concern and to feel more connected with their colleagues working remotely or in other duty stations. Moreover, the President supported the work of the various focal points designated to foster a harmonious and inclusive work environment at the Mechanism.

### **C. Judicial activities**

29. The President continued to work closely with the Chambers Legal Support Section to enhance the smooth and cost-effective functioning of the Chambers. This included focusing on previously projected timelines for case completion and avoiding delays caused by restrictions related to the pandemic, with full consideration at all times for fair trial rights and due process.

## 1. Coordination of the Chambers

30. In accordance with article 12 of the statute, the President coordinates the work of the Chambers and manages the Mechanism's judicial roster. He designates the Mechanism's duty judges and assigns judicial work to single judges or benches as appropriate, while considering an equitable and geographical distribution of work among the judges, as well as gender balance and any possible conflict of interest. The President endeavoured to assign work in the fairest and most efficient and expeditious way, to ensure steady progress with regard to the disposal of any judicial matter before the Mechanism.

31. The President issued 80 assignment orders during the period under review, namely, 26 between 16 April 2020 and the end of 2020, 39 in 2021 and 15 in the first three-and-a-half months of 2022. In total, 34 matters arising at the Arusha branch and 45 arising at The Hague branch were assigned accordingly. In relation to each of those matters, the President carefully considered, on the basis of past experience of similar assignments, the amount of work required and the time to be remunerated according to what was reasonably necessary.

32. In accordance with article 12, paragraph 2, of the statute, the President maintained the duty roster on an alternating basis between Judge William Hussein Sekule and Judge Vagn Prüsse Joensen at the Arusha branch. In September 2021, the President also included Judge Joseph E. Chiondo Masanche, following the conclusion of his assignment to the *Stanišić and Simatović* case. The decision to assign judges who reside in the United Republic of Tanzania maximizes efficiency, and their assignment is remunerated only to the extent that they exercise judicial functions in that capacity.

## 2. Appeals and review proceedings

33. In accordance with article 12, paragraph 3, of the statute, the President is a member of the Appeals Chamber and presides over its proceedings. During the period under review, and as outlined in more detail in section III.B, the President presided over appeals from trial judgment, as well as a number of appeals from decisions of a Trial Chamber or a single judge. The latter appeals pertained, inter alia, to decisions on contempt matters, frozen assets, the relocation of acquitted and released persons and the assignment of counsel.

34. Separately, the President also presided over a request for review of a final judgment submitted in accordance with article 24 of the statute, as discussed in section III.B.4.

## 3. Cases referred to national jurisdictions

35. In accordance with article 6, paragraph 5, of the statute, the Mechanism is responsible for monitoring cases referred to national jurisdictions, with the assistance of international and regional organizations and bodies.

36. During the period under review, this function was reduced further as the number of cases actively monitored by the Mechanism decreased from four (Jean Uwinkindi, Bernard Munyagishari, Ladislav Ntaganzwa and Laurent Bucyibaruta) to two (Mr. Ntaganzwa and Mr. Bucyibaruta). While the Registry deals with the logistical side of the process, including the appointment of and communication with monitors, as outlined in section V.G, the President is responsible for the overall supervision of the monitoring process.

37. Cases of individuals who were indicted by the International Criminal Tribunal for Rwanda and referred to Rwanda were monitored with the pro bono assistance of

the Kenyan Section of the International Commission of Jurists. Those cases concern Mr. Uwinkindi, Mr. Munyagishari and Mr. Ntaganzwa. During the period under review, the proceedings against Mr. Uwinkindi and Mr. Munyagishari were finalized and the cases are now closed. The *Ntaganzwa* case has entered the appeals stage.

38. The remaining case, referred to France, was monitored by an internal monitor from the Mechanism. It concerns Mr. Bucyibaruta, whose trial is scheduled to commence on 9 May 2022 and is expected to last approximately two months.

39. Unfortunately, as a result of the pandemic, monitoring activities were hindered as of mid-March 2020. Some prisons put access restrictions in place, resulting in a suspension of the monitors' visits to the accused persons. Furthermore, owing to restrictions on international travel to and from the countries to which cases have been referred, the monitors were prevented from travelling during most of the period under review. Upon request from the monitors, the President adjusted the schedule for the submission of monitoring reports and allowed for consolidated reports covering several months at once. At the same time, he encouraged the monitors to seek alternative ways to follow the cases, such as by way of telephone, videoconference or written updates, where possible.

40. With the easing of some restrictions, the President requested the regularization to monthly reports for the remaining case in Rwanda, as envisaged under the applicable memorandum of understanding between the Kenyan Section of the International Commission of Jurists and the Mechanism. With regard to the case in France, the next report is expected at the end of April 2022, in line with the quarterly reporting arrangements originally ordered for that case.<sup>6</sup>

41. In addition, the case of one individual indicted by the International Tribunal for the Former Yugoslavia, Vladimir Kovačević, was referred to Serbia by that Tribunal in March 2007. After the referral, the proceedings were suspended following a determination that the accused was unfit to stand trial. Considering that there have not been any changes since the referral of the case in 2007, the Mechanism has now ceased all active monitoring of the case.

42. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of such cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. In Rwanda, the *Uwinkindi* and *Munyagishari* cases were each on appeal for about five years. This suggests that the *Ntaganzwa* case may last as long to complete. In addition, should any of the fugitives whose cases have been referred to Rwanda for trial be apprehended in the future, the Mechanism is equally required to monitor their proceedings in accordance with article 6, paragraph 5, of the statute, and it can be expected that their proceedings would last as long as those of the people already tried. Further estimates for the duration of the Mechanism's monitoring function with regard to the *Bucyibaruta* case in France will depend on the outcome of the trial and whether any appeal is filed.

#### 4. Enforcement of sentences

43. In accordance with article 25, paragraph 2, of the statute, the Mechanism is responsible for supervising the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism. Considering that this function currently concerns supervising the enforcement of the sentences of 48 convicted persons in 13

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<sup>6</sup> See International Criminal Tribunal for Rwanda, *Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR-2005-85-I, Decision on Prosecutor's Request for Referral of Laurent Bucyibaruta's Indictment to France, 20 November 2007, p. 10.

enforcement States, in addition to two convicted persons detained at the United Nations Detention Unit in The Hague, it is both a very important and time-consuming mandate.

44. The President issues orders designating the State of enforcement for convicted persons, decisions on requests for transfer to another enforcement State and decisions on applications for pardon, commutation of sentence or early release. The President also oversees the general conditions of the convicted persons' imprisonment and communicates with international monitoring bodies that regularly inspect the prisons.

45. During the period under review, the President issued eight orders designating enforcement States in which convicted person were to serve their sentences. In addition, he issued 10 decisions or orders regarding the transfer of convicted persons to or from an enforcement State.

46. A major development during the period under review was the issuance on 15 May 2020 of the revised Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence or Early Release of Persons convicted by the ICTR, the ICTY, or the Mechanism. The Practice Direction clarifies the Mechanism's procedure for the determination of such applications, with a view to strengthening transparency and coherence. It also codifies, *inter alia*, the notion of early release subject to conditions and the two-thirds eligibility threshold for applications for pardon, commutation of sentence or early release.

47. In consultation with other judges, as required under rule 150 of the Rules of Procedure and Evidence, the President issued 46 orders and decisions relating to applications for pardons, commutations of sentence or early release of persons convicted by the Tribunals or the Mechanism. In two cases, the President granted early release subject to conditions, bearing in mind paragraph 10 of Security Council [2422 \(2018\)](#). As at 14 April 2022, the President remained seized of five requests related to the enforcement of sentences.

48. Considering the particular vulnerability of incarcerated persons during the pandemic, the President continued to request periodic updates from enforcement States regarding the overall situation in the respective prisons and specific measures put in place to prevent any potential exposure to COVID-19 of persons convicted by the Tribunals or the Mechanism. This included detailed information on national vaccination campaigns and their availability for persons serving sentences under the supervision of the Mechanism. In addition, the Mechanism adopted a COVID-19 response plan, presenting the measures that it stands ready to take in the event of an infection or general outbreak of COVID-19 in one of the prisons. In this respect, the President also remained apprised of the situation at the United Nations Detention Facility in Arusha and at the United Nations Detention Unit in The Hague with regard to COVID-19 measures.

49. The Mechanism wishes to take this opportunity to convey its deepest gratitude to all 14 States that, in voluntarily taking on additional responsibilities, provided the Mechanism with invaluable assistance on a daily basis. These States deserve particular acknowledgement and praise for their regular updates regarding the situation at the relevant prisons during the pandemic. Despite assiduous reporting and best efforts on the part of enforcement States to prevent and protect their prisons populations from the pandemic, a very small number of convicted persons have been infected. Nevertheless, the Mechanism is satisfied that enforcement States have excelled in their protection of the convicted persons concerned. The Mechanism will continue to follow the situation closely and request regular updates from all enforcement States.

50. Eighteen individuals sentenced by the Tribunals or the Mechanism are currently serving life sentences, while 15 convicted persons will complete their sentences between 2030 and 2040 and another 8 only after 2040. The last three sentences imposed for a term of years will be fully served in 2044. While most convicted persons serving life sentences will be eligible for consideration for pardon, commutation of sentence or early release after 2030, the eligibility for one convicted person serving a life sentence will not come before 2041. The length of time actually served may be affected by the age or physical and health conditions of the convicted persons, as well as any potential review proceedings. In addition, ongoing trial and appeal proceedings may necessitate further adjustment of those estimates. 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, subject to rule 128 of the Rules of Procedure and Evidence, which provides that the Mechanism is to supervise sentences of imprisonment during the period of its functioning and that the Security Council may designate a body to assist it and to proceed to supervise the sentences after the Mechanism legally ceases to exist.

#### **D. Managerial activities**

51. As head of the institution, the President carries out a range of managerial activities, including convening plenaries of judges and serving as Chair of the Mechanism Coordination Council, as well as supervising activities of the Registry.

##### **1. Plenaries**

52. During the period under review, the President convened two plenaries of judges in accordance with rule 26 of the Rules of Procedure and Evidence. Plenary sessions provide an opportunity for Mechanism judges to, inter alia, adopt and amend the Rules and decide upon matters relating to the internal functioning of the institution.

53. Before each plenary, the President ensures that all judges receive the yearly report of the Rules Committee. In order to enhance the efficiency of plenaries, the Rules Committee, which consists of three judges, the President, as an ex officio member, and non-voting representatives of the prosecution, the Registry and the Association of Defence Counsel practising before the International Courts and Tribunals, carefully considers all proposals for amendments to the Rules of Procedure and Evidence forwarded to it by the President, judges, the Prosecutor, the Registrar or the Association of Defence Counsel, as the case may be, and makes recommendations regarding the proposals.

54. Pandemic-related restrictions regrettably did not allow for an in-person meeting of all judges, as had originally been planned for 2020. Instead, a remote plenary by written procedure was held from 16 October to 4 December 2020. This plenary culminated, inter alia, in amendments to rules 2, 23, paragraph A, and 56, paragraph C (ii), of the Rules of Procedure and Evidence, which the President promptly transmitted to the Security Council.

55. In 2021, the pandemic still did not allow for the judges to meet in person. Therefore, cognizant of the importance of real-time interaction between the judges to discuss and resolve substantive issues, the President convened the Mechanism's first-ever virtual plenary on 28 and 29 September 2021. Thanks to the efforts and ingenuity of the Information Technology Services Section, together with staff from other sections of the Mechanism, the 25 judges of the Mechanism were able to engage in fruitful discussions using a secure online platform, which had been developed in-house earlier in the pandemic to allow court hearings by remote participation and further modified for the plenary. With the judges attending the plenary from 21

different countries and numerous time zones, the smooth running of the confidential session was a significant operational achievement. During the plenary, the judges decided against a proposed amendment of the Rules of Procedure and Evidence.

56. The next in-person plenary, which is scheduled to be held in The Hague in the second half of 2022, will depend on the prevailing circumstances regarding the pandemic. The Mechanism envisages holding annual plenaries throughout its existence; however, it is to be noted that, even if there are no further travel restrictions in the future, the Mechanism will continue to alternate between virtual and in-person plenaries to reduce the costs involved.

## **2. Mechanism Coordination Council**

57. An important and useful tool to enhance inter-organ coordination and communication was the Mechanism Coordination Council, which, in accordance with rule 25 of the Rules of Procedure and Evidence, consists of the President, the Prosecutor and the Registrar. During the period under review, the Council, chaired by the President, met regularly by videoconference between the two branches to discuss the Mechanism's priorities and other cross-cutting topics, including budgetary issues, downsizing and, of course, the management of the pandemic. It was also an effective forum to work further on the implementation of the OIOS recommendations mentioned above and described in detail in section VII.

58. During the period under review, the Mechanism Coordination Council met on 16 occasions.

## **3. Supervision of Registry activities**

59. In accordance with rule 23, paragraph A, of the Rules of Procedure and Evidence, the President has supervisory authority over the activities of the Registry, and in accordance with rule 31, paragraph A, it is under the President's authority that the Registrar is responsible for the administration and servicing of the Mechanism. To accomplish those functions, the President remained in regular and close contact with the Registrar. In addition, the two principals held biweekly meetings, together with their senior advisors, to discuss issues of concern more formally and ensure that any such issues were addressed in a timely and coordinated manner, where necessary.

60. During the period under review, one of the most important areas requiring close cooperation between the President and the Registrar was the management of the pandemic to avoid the disruption of judicial activities. This included the successful implementation of operational measures to ensure both business continuity and the health and safety of staff and other people under the Mechanism's care.

61. The President is responsible for the judicial review of certain administrative decisions of the Registrar when they are in dispute, including decisions on legal aid or detention matters and other requests for relief as provided for in the Mechanism's legal framework. For instance, at the start of the reporting period and with COVID-19 restrictions tightening around the world, the President issued a decision by which he, *inter alia*, ordered the Registrar to make video communications available to detainees at the United Nations Detention Unit on an interim basis, if at all possible. Following the identification by the Registrar of a suitable solution, video communications have remained available to all Mechanism detainees at the Detention Unit and their immediate families since 22 May 2020, thereby meeting and, in fact, exceeding the applicable international standards relating to care for those detainees, bearing in mind paragraph 11 of Security Council resolution [2529 \(2020\)](#).

62. During the period under review, the President adjudicated a total of four complaints on the conditions of detention at the United Nations Detention Unit and

eight requests for review of administrative decisions regarding the allocation of legal aid or other miscellaneous matters. This represents a remarkable decline of such matters in comparison with the period covered by the third report.<sup>7</sup> The decrease in the number of detainees in the United Nations Detention Facility and, eventually, the Detention Unit (see sect. V.E) equally contributes to reducing the number of complaints regarding conditions of detention. Notably, since the transfer of Augustin Ngirabatware to Senegal to serve his sentence, in July 2021, there is no further detainee housed in the Detention Facility.

63. Another area of successful collaboration with the Registrar during the period under review is the enforcement of sentences. In this respect, the President supervised the implementation by the Registry of his decisions and orders in relation to early release, the designation of enforcement States and the transfer of convicted persons, as well as the COVID-19 orders concerning enforcement States.

64. With regard to further harmonizing and improving practices between the two branches, the President encouraged the Registry to continue to develop and update relevant practice directions and policies, in particular where they had an impact on the entire institution. For example, after thorough consultations with the President, the Registrar issued an occupational safety and health policy and a revised Code of Professional Conduct for Defence Counsel Appearing before the Mechanism, and updated remuneration policies for the defence in post-conviction and contempt matters, as well as for *amici curiae*. Moreover, the President engaged with the Registry on proposals concerning a new practice direction on judicial records.

## E. Representational functions

65. The President is responsible for a number of representational duties, including reporting to the Security Council and the General Assembly and serving as the main interlocutor, together with the Prosecutor, in the Security Council Informal Working Group on International Tribunals. He also interacts with the diplomatic community, as well as other external stakeholders. Of particular importance is the President's engagement with the host countries and other countries affected by the Mechanism's work.

66. In accordance with article 32 of the statute, the President reported to the Security Council and the General Assembly, as appropriate. The sixteenth, seventeenth, eighteenth and nineteenth biannual progress reports of the Mechanism were submitted to the Council on 19 May 2020 (S/2020/416, annex I), 16 November 2020 (S/2020/1119, annex I), 17 May 2021 (S/2021/487, annex I) and 16 November 2021 (S/2021/955, annex I), respectively. In addition, the President submitted the eighth annual report of the Mechanism to the Assembly and the Council on 1 August 2020 (A/75/276-S/2020/763) and the ninth annual report on 30 July 2021 (A/76/248-S/2021/694).

67. The President addressed the Security Council by videoconference in June and December 2020 and in June 2021, and in person at United Nations Headquarters in New York in December 2021. He also addressed the General Assembly by videoconference in October 2020 and in person in October 2021. In connection with his briefings to the Council and the Assembly, the President held numerous bilateral meetings with representatives of Member States and met with the Informal Working Group on International Tribunals.

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<sup>7</sup> In the period from 16 April 2018 to 15 April 2020, 68 such decisions were issued (S/2020/309, annex, para. 21).

68. The next biannual progress report to the Security Council is due mid-May 2022; thereafter, the President is expected to address the Council in June 2022.

69. Regrettably, the President was unable to travel to Rwanda and the States of the former Yugoslavia to engage directly with the people and the respective government authorities during most of the period under review. However, he participated in both the twenty-fifth and twenty-sixth commemorations of the Srebrenica genocide and the twenty-seventh commemoration of the genocide against the Tutsi in Rwanda of 1994 by delivering video messages addressed to the surviving victims and the public at large. He also participated in a conference hosted by the International Court of Justice to mark the commemoration of the 100th anniversary of the adoption of the Statute of the Permanent Court of International Justice, and in an online series of open-day activities for international institutions entitled “Just Peace Month”, organized by the city of The Hague. In addition, as soon as travel restrictions were eased, the President conducted an official visit to Croatia, and he recently travelled to Bosnia and Herzegovina to participate in a series of events commemorating the thirtieth anniversary of the start of the siege of Sarajevo.

70. The information centre in Sarajevo, which was established with the support of the Mechanism in May 2018 in accordance with paragraph 15 of Security Council resolution 1966 (2010), continues to provide direct and guided access to the public judicial records of the International Tribunal for the Former Yugoslavia and promotes its legacy. The Mechanism remains available to facilitate the establishment of similar information centres with other stakeholders in the former Yugoslavia.

### III. Chambers

#### A. Judges

71. Article 8 of the statute provides that the Mechanism is to have a roster of 25 independent judges who must, insofar as possible and as decided by the President, exercise their functions remotely (see sect. II.C.1 in this regard). Mechanism judges are not remunerated for being on the judicial roster but instead receive compensation only for the days on which they exercise their functions, as assigned by the President. In carrying out their functions, the judges on the roster are provided with legal and administrative support by staff of the Chambers Legal Support Section. The legal staff are assigned to multiple matters across the branches to ensure maximum flexibility and facilitate legal research, analysis and the drafting of orders, decisions and judgments, in addition to providing individualized support to judges, as needed, in connection with their judicial work.

72. The period under review saw a number of changes in the judicial roster. First, Judge Gberdao Gustave Kam (Burkina Faso) sadly passed away unexpectedly on 17 February 2021. The Secretary-General subsequently appointed Judge Fatimata Sanou Touré (Burkina Faso) to serve the remainder of Judge Kam’s term of office, effective 12 August 2021. Then, effective 17 November 2021, Judge Theodor Meron (United States of America) resigned from his duties as a judge at the Mechanism, and Judge Margaret deGuzman (United States) was appointed in his place, effective 22 December 2021. These two appointments bring the number of female judges on the Mechanism’s roster to eight out of 25. This is a positive step towards gender parity at the highest levels, and the Mechanism encourages nominating States to remain on this path. All judges’ terms of office currently expire on 30 June 2022.

73. The current judicial roster comprises (in order of precedence): Judge Carmel Agius, President (Malta), Judge Jean-Claude Antonetti (France), Judge Joseph E. Chiondo Masanche (United Republic of Tanzania), Judge William Hussein Sekule

(United Republic of Tanzania), Judge Lee G. Muthoga (Kenya), Judge Alphons M.M. Orié (Netherlands), Judge Burton Hall (Bahamas), Judge Florence Rita Arrey (Cameroon), Judge Vagn Prüsse Joensen (Denmark), Judge Liu Daqun (China), Judge Prisca Matimba Nyambe (Zambia), Judge Aminatta Lois Runeni N'gum (Zimbabwe/Gambia), Judge Seon Ki Park (Republic of Korea), Judge José Ricardo de Prada Solaesa (Spain), Judge Graciela Susana Gatti Santana (Uruguay), Judge Ivo Nelson de Caires Batista Rosa (Portugal), Judge Seymour Panton (Jamaica), Judge Elizabeth Ibanda-Nahamya (Uganda), Judge Yusuf Aksar (Turkey), Judge Mustapha El Baaj (Morocco), Judge Mahandrisoa Edmond Randrianirina (Madagascar), Judge Claudia Hofer (Germany), Judge Iain Bonomy (United Kingdom of Great Britain and Northern Ireland), Judge Fatimata Sanou Touré (Burkina Faso) and Judge Margaret M. deGuzman (United States).

## B. Judicial activities

### 1. Summary

74. The Mechanism engaged in a wide variety of judicial work during the period under review, notwithstanding the tremendous challenges posed by the pandemic, including its impact on judicial proceedings resulting from travel restrictions and quarantine requirements and on the health of key personnel in proceedings. The Mechanism overcame those challenges and continued to deliver its judicial mandate with only limited interruptions. This was made possible by the adoption of new health and safety protocols, including modified courtrooms, by making greater use of video technology to conduct hearings and by resorting to written procedures for status conferences where feasible and appropriate. The Mechanism also faced and overcame other key difficulties following the death of a judge of the Appeals Chamber in the final stages of deliberation in the *Mladić* case, and the illness and death of an accused in the *Nzabonimpa et al.* (formerly *Turinabo et al.*) contempt case. While those unfortunate events had the potential to adversely affect the proceedings, significant delays were avoided thanks to the dedicated efforts of judges, staff and other personnel.

75. As stated above, the Appeals Chamber delivered its judgment in the *Mladić* case in June 2021. Moreover, trial proceedings concluded in the *Stanišić and Simatović* case and the *Nzabonimpa et al.* (formerly *Turinabo et al.*) contempt case with the pronouncement of trial judgments in June 2021. In addition, a Trial Chamber conducted pretrial proceedings in the *Kabuga* case, which is trial-ready subject to the finalization of a fitness assessment. All the while, Chambers continued to adjudicate matters related, inter alia, to 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 the classification of documents, and the assignment of counsel.

76. An overview of the judicial activities is set forth below. Detailed schedules for the proceedings in progress are provided in enclosure I. All projections are uniformly made on the basis of past experience with cases of comparable complexity and, in the case of appeals from judgment, take into particular account the complexity of the case at trial. All projections in the present report related to judicial activities are made on the presumption that no extraordinary events that may influence their conduct, such as the prevailing pandemic and any resulting impact, will occur during the course of the proceedings. Other examples of such unforeseen events include the replacement of judges or counsel or the illness of an accused or an appellant. Projections therefore remain subject to periodic updating based on actual developments. With regard to forecasting judicial activities other than trials and appeals from judgment, the Mechanism recalls the observations made in 2009 by the Secretary-General in his

report on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals, namely, that it was not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgments, referral of cases and pardon and commutation of sentence would arise but that such issues were more likely to arise within a period of 10 to 15 years after the closure of the Tribunals and that the level of work involved would inevitably decrease over time.<sup>8</sup>

## 2. Trial proceedings

77. Trial Chambers of the Mechanism are responsible for the conduct of trial proceedings in the event of the arrest of the remaining fugitive indicted by the International Criminal Tribunal for Rwanda whose case remains within the jurisdiction of the Mechanism and any retrial.

78. In the *Stanišić and Simatović* case, the retrial commenced on 13 June 2017, and the prosecution case concluded on 21 February 2019. The defence case for Jovica Stanišić commenced on 18 June 2019, while the defence case for Franko Simatović commenced on 12 November 2019. Both defence cases concluded on 23 February 2021. It was initially projected that the presentation of evidence would conclude in June 2020, with final trial briefs and closing arguments planned for September and October 2020 and the trial judgment for December 2020. The projection for the delivery of the judgment in December 2020 remained unchanged until the pandemic unfolded.

79. Beginning in March 2020, the Trial Chamber, composed of Judges Hall, presiding, Masanche and Park, was forced to postpone the completion of the presentation of evidence on several occasions until restrictions on travel and movement were eased and measures and protocols were put in place to ensure the safe conduct of in-court proceedings. Nevertheless, the Trial Chamber and the parties continued to advance the case and the Trial Chamber issued numerous decisions pertaining to the admission of thousands of exhibits and the written testimony of a number of witnesses. On 1 September 2020, in-court proceedings resumed in a modified courtroom, and the Trial Chamber subsequently heard the final five defence witnesses, concluding the evidentiary hearings on 8 October 2020. It was originally expected that the final trial briefs would be filed on 26 February 2021 and the closing arguments heard during the last week of March 2021. However, the Trial Chamber was required to extend those deadlines owing to health-related difficulties faced by the defence team for Mr. Simatović, which caused certain delays in the litigation concerning the admission of the final exhibits and the preparation of the final submissions. As a result, the final trial briefs were filed on 12 March 2021, and closing arguments were heard from 12 to 14 April 2021.

80. The trial judgment was pronounced on 30 June 2021, in line with adjusted projections to take into account the impact of the pandemic, and the written reasons were filed on 6 August 2021. The Trial Chamber convicted Mr. Stanišić and Mr. Simatović of aiding and abetting the crime of murder, as a violation of the laws or customs of war and a crime against humanity, and the crimes of deportation, forcible transfer and persecution, as crimes against humanity, committed by Serb forces following the takeover of Bosanski Šamac, Bosnia and Herzegovina, in April 1992. The Trial Chamber sentenced the two men to 12 years of imprisonment each.

<sup>8</sup> S/2009/258, para. 102.

Appeals proceedings commenced in September 2021; more information is detailed below.

81. In relation to the *Kabuga* case, Mr. Kabuga was first indicted by the International Criminal Tribunal for Rwanda in 1997. He remained a fugitive for more than 22 years until his arrest in France on 16 May 2020 on the basis of an arrest warrant and order for transfer that directed that he be transferred to the Arusha branch of the Mechanism. The French courts authorized his transfer to the Mechanism on 30 September 2020. On 1 October 2020, the President assigned the *Kabuga* case to a Trial Chamber, composed of Judges Bonomy, presiding, Gatti and Ibanda-Nahamya, effective upon the transfer of Mr. Kabuga to the Mechanism. On 5 October 2020, Mr. Kabuga filed an urgent motion requesting, inter alia, that his arrest warrant and order for transfer be amended to provide for his transfer to The Hague branch, rather than the Arusha branch, citing in particular his medical conditions and the health risks associated with travel. Both the prosecution and the Registrar supported the request. On 21 October 2020, a single judge granted the motion and amended the arrest warrant and order for transfer to allow Mr. Kabuga to be temporarily transferred to the United Nations Detention Unit in The Hague for a detailed medical assessment. Mr. Kabuga was transferred to The Hague branch on 26 October 2020. The presiding judge entered a plea of not guilty on his behalf on all charges during Mr. Kabuga's initial appearance on 11 November 2020.

82. The prosecution filed a motion on 15 January 2021 seeking leave to amend the operative indictment that had been filed before the International Criminal Tribunal for Rwanda. The Trial Chamber granted the prosecution's request on 24 February 2021, and the amended indictment was subsequently filed on 1 March 2021.

83. On 4 June 2021, the Trial Chamber issued its pretrial workplan, setting forth robust timelines for the parties to complete, during the second half of 2021, their pretrial obligations relating to the filing of requests for protective measures and adjudicated facts, the prosecution pretrial brief, witness and exhibit lists, related disclosures, expert reports and responsive submissions by the defence. The parties met the deadlines with only minor modifications, ensuring that the case is essentially trial-ready once the medical assessment of Mr. Kabuga is completed. To facilitate trial preparations, status conferences were held by way of written procedure between 9 March and 6 April 2021, as travel restrictions related to the pandemic prevented the holding of in-person status conferences. Subsequently, such conferences were held on 1 June and 6 October 2021 and on 3 February 2022.

84. Mr. Kabuga remains detained in The Hague pending the outcome of the medical assessments ordered by the Trial Chamber to determine his general fitness for trial and his fitness to travel to Arusha and be detained there. Following Mr. Kabuga's transfer to The Hague, the Trial Chamber implemented a medical reporting regimen and has received medical reports fortnightly from the medical officer at the United Nations Detention Unit. In addition, the Trial Chamber has ordered several independent medical examinations of Mr. Kabuga by different experts and authorized the prosecution to appoint its own medical expert to examine him. Those steps were deemed essential in view of Mr. Kabuga's evolving health situation over the course of the past year, which made supplemental and additional medical evaluations necessary, owing to ever-changing circumstances.

85. In the previous report to the Security Council, it was stated that the Trial Chamber expected to take a final decision on Mr. Kabuga's fitness by February 2022 and, if appropriate, to commence trial as soon as March 2022. However, the first expert's supplemental report filed on 26 November 2021 recommended an additional and separate evaluation by a professional with a distinct medical expertise, which in turn led to the Trial Chamber's appointment of two additional independent medical

experts and the authorization given to the prosecution to appoint one of its own. The final medical experts' reports are expected in April 2022, and a hearing and a decision on those issues are expected in May 2022.

86. In the event that a decision is taken to commence trial, it is expected that the trial will begin within one month to allow for the conclusion of any pretrial or logistical formalities. The delay in Mr. Kabuga's final medical assessment was unforeseeable and beyond the control of the Chambers and is the sole reason for the trial not to have commenced in November 2021, 12 months from the initial appearance, as explained in the Mechanism's third report, which contained preliminary projections should a fugitive be apprehended.<sup>9</sup> As a result, the pretrial phase of the case has now been extended by seven months, until June 2022. The Trial Chamber is currently using this time to adjudicate requests for the admission of evidence under rules 110, 111 and 112 of the Rules of Procedure and Evidence, which will facilitate the conduct of trial once commenced.

87. The third report also contained a preliminary projection relating to the trial and judgment-drafting phase, stating that it would last approximately 18 months. The projection was made on the basis of typical single-accused cases, current working methods and the number of special depositions that had been already taken by the International Criminal Tribunal for Rwanda in the case. The prosecution's pretrial brief and current witness list indicate the possibility that the duration of the trial may be significantly longer than previously projected. In addition, Mr. Kabuga's health condition suggests that adjustments may need to be made to the sitting schedule to facilitate his participation. Accordingly, on the basis of the current information and expectations, an additional 12 months may be required for the completion of the trial phase of the case.

88. The Trial Chamber also has the discretion, after hearing the parties at the pretrial conference envisioned for mid-2022, to reduce the number of witnesses, the time for the presentation of a party's case and the scope of the indictment if it is in the interests of justice to do so. Following invitations from the presiding/pretrial judge to consider ways of expediting the presentation of its case, the prosecution has also provided some informal indications that it will significantly reduce the number of hours requested for direct examination. As such, projections will be adjusted if appropriate in future progress reports, after the conclusion of Mr. Kabuga's medical assessment and the finalization of the scope of the prosecution's case.

89. At the time of reporting, the trial was expected to commence by June 2022 and last two-and-a-half years. The projection for any possible appeal following judgment remains the same, that is, two years from the filing of the trial judgment to the issuance of the appeal judgment. As the case remains at the pretrial phase, the judges of the Trial Chamber are all working remotely except when summoned to the seat of the Mechanism, as appropriate, for status conferences and other essential in-person hearings and meetings.

90. Turning to proceedings relating to a different fugitive of the International Criminal Tribunal for Rwanda, on 4 November 2020, proceedings in the *Bizimana* case were terminated. Mr. Bizimana was first indicted by the International Criminal Tribunal for Rwanda in 1998, and the latest version of his indictment was confirmed in 2011. He was one of the remaining fugitives to be tried by the Mechanism if apprehended. Following a motion filed by the prosecution to terminate the proceedings, Judge Muthoga examined the proof of death, including a death certificate from the Congo and the results of a detailed forensic analysis, and determined that there was sufficient proof of Mr. Bizimana's death.

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<sup>9</sup> S/2020/309, annex, para. 62.

### 3. Appeals from judgment

91. The Appeals Chamber of the Mechanism – presided over by the President – is responsible for conducting appeal proceedings in cases in which trials were completed after the commencement of operations at each of the respective branches of the Mechanism, and in any case in which a trial or retrial was conducted by the Mechanism.

92. During the period under review, the Appeals Chamber was seized of appeals from judgment in two cases: the *Mladić* case and the *Stanišić and Simatović* case. After the next review period, the Mechanism expects to receive appeals from judgment, if any, in the *Kabuga* case, which, as detailed above, is currently in pretrial proceedings before a Trial Chamber. Preliminary projections concerning any appeals in the *Kabuga* case are made in paragraph 89.

93. The Appeals Chamber, composed of Judges Nyambe, presiding, N’gum, Panton, Ibanda-Nahamya and El Baaj, pronounced its judgment in the *Mladić* case on 8 June 2021, dismissing the appeals filed by Mr. Mladić and the prosecution against the judgment rendered on 22 November 2017 by a Trial Chamber of the International Tribunal for the Former Yugoslavia. The Appeals Chamber affirmed the convictions of Mr. Mladić for genocide, for persecution, extermination, murder, deportation and other inhumane acts (forcible transfer) as crimes against humanity, as well as for murder, terror, unlawful attacks on civilians and hostage-taking as violations of the laws or customs of war. The Appeals Chamber also affirmed the sentence of life imprisonment imposed by the Trial Chamber. Mr. Mladić is currently awaiting transfer to an enforcement State.

94. While the *Mladić* case was at trial before the International Tribunal for the Former Yugoslavia, in 2015, the Mechanism had projected, on the basis of past experience and the scope of the case, that, should the trial judgment be appealed against, the appeal proceedings would last two-and-a-half to three years (30 to 36 months).<sup>10</sup> Once the trial judgment in this case was issued, Mr. Mladić requested the Appeals Chamber to extend the deadline for filing his notice of appeal, a request to which the prosecution agreed in part. Subsequently, the Appeals Chamber granted Mr. Mladić’s request for further extensions of time in the briefing process. In total, the Appeals Chamber granted seven months of extensions in the briefing process on the basis of the voluminous trial record and judgment, as well as the significant complexity of the case. After Mr. Mladić and the prosecution filed their notices of appeal on 22 March 2018, the Appeals Chamber was apprised of the intended scope of the appeals and the Mechanism updated its projection for completion of the case by the end of 2020, that is, three years and one month after the delivery of the trial judgment (37 months).<sup>11</sup> Following motions brought by Mr. Mladić, three judges were disqualified from the bench in this case on 3 September 2018, owing to the appearance of bias, and were replaced. Subsequently, on 14 September 2018, one of the newly assigned judges was replaced at his request. Despite the substantially changed composition of the bench, the Mechanism maintained its updated projection that the case would be completed by the end of 2020 and reiterated that projection after the conclusion of the briefing on 29 November 2018.<sup>12</sup> The Appeals Chamber scheduled the hearing of the appeals for 17 and 18 March 2020. However, at the end of February 2020, Mr. Mladić requested the Appeals Chamber to reschedule the hearing, owing to a planned surgical procedure.

95. The Appeals Chamber granted that request, staying the hearing until a date approximately six weeks after Mr. Mladić’s surgery, to allow for his recovery. Noting from medical reports that Mr. Mladić was recovering well from the surgery, and

<sup>10</sup> S/2015/896, annex, para. 15.

<sup>11</sup> S/2018/471, annex I, para. 46.

<sup>12</sup> S/2018/1033, annex I, para. 47, S/2019/417, annex I, para. 57, and S/2019/888, annex I, para. 50.

considering the pandemic-related restrictions on travel then in place, on 1 May 2020, the Appeals Chamber, in consultation with the parties, rescheduled the hearing of the appeals to 16 and 17 June 2020. However, on 21 May 2020, Mr. Mladić's defence team gave notice of its unavailability to proceed with the scheduled hearing owing to developments and restrictions related to the pandemic. In view of this, and noting the exceptional circumstances, including that the travel of the judges to attend the hearing was impeded, the Appeals Chamber found that it was not feasible to hold the hearing as scheduled. Consequently, on 28 May 2020, the Appeals Chamber stayed the hearing. The Appeals Chamber ultimately held the appeal hearing on 25 and 26 August 2020, making extensive use of videoconferencing technology to facilitate the remote participation of four of the judges on the bench in view of the travel restrictions in place at the time.

96. Following the hearing of the appeals, the Appeals Chamber proceeded to deliberate and commence judgment preparation. As the Chamber was advancing in its work, Judge Kam tragically passed away on 17 February 2021, which represented a major loss of a distinguished judge to the Mechanism and had an impact on the progress of deliberations in the case. The following day, the President assigned to the bench Judge El Baaj, who showed extreme dedication and commitment, allowing the deliberations to proceed and the judgment to be delivered.

97. In its progress reports, the Mechanism explained that, because the hearing of the appeals had to be postponed by a total of three months, owing to Mr. Mladić's surgery and pandemic-related restrictions on travel, the projection for completing the proceedings in the case had been adjusted by a commensurate amount of time, from the end of December 2020 to the end of March 2021. The Mechanism added that this projection would be closely monitored and updated as necessary. In view of the fact that the appeal hearing was postponed by a further two months as a result of pandemic-related restrictions, the Mechanism had also adjusted its projection for completion of the case by two months, from the end of March 2021 to the end of May 2021. Subsequently, in the progress report of May 2021, the Mechanism further adjusted its projection by one month on the basis of the assignment of Judge El Baaj, from the end of May 2021 to the end of June 2021, ultimately delivering its judgment on 8 June 2021.

98. As noted above, in the *Stanišić and Simatović* case, the trial judgment was pronounced on 30 June 2021, and the written reasons were filed on 6 August 2021. The Trial Chamber convicted Mr. Stanišić and Mr. Simatović of aiding and abetting the crime of murder, as a violation of the laws or customs of war and a crime against humanity, and the crimes of deportation, forcible transfer and persecution, as crimes against humanity, committed by Serb forces following the takeover of Bosanski Šamac in April 1992. The Trial Chamber sentenced both men to 12 years of imprisonment each.

99. All three parties to the case appealed against the trial judgment, filing their notices of appeal on 6 September 2021. Following an extension of one month for the filing of the response briefs, the appeal briefing concluded on 15 February 2022 and the projection is for completion of the appeal proceedings in the case by the end of June 2023, which is six months earlier than initially projected in the previous review report, owing to the assessment of the scope of the appeals following the conclusion of the briefing. The Appeals Chamber is composed of Judges Agius, presiding, Muthoga, N'gum, Aksar and Hofer.

#### 4. Review proceedings

100. In accordance with article 24 of the statute, a convicted person's right to the review of a final judgment issued by the Tribunals or the Mechanism is fundamental.

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

101. During the reporting period, the Appeals Chamber, composed of Judges Agius, presiding, Orié, Liu, Gatti and Rosa, was seized of a request for review and assignment of counsel in the *Lukić* case, which was filed by Milan Lukić on 1 September 2020. Mr. Lukić requested the review of his judgment and the sentence of life imprisonment imposed by a Trial Chamber of the International Tribunal for the Former Yugoslavia on 20 July 2009 and affirmed by the Appeals Chamber of the International Tribunal for the Former Yugoslavia on 4 December 2012. Specifically, Mr. Lukić challenged his conviction for extermination as a crime against humanity, which was based in part on his involvement in the killing of 59 persons. Mr. Lukić advanced a new fact which, in his view, indicated that the number of victims was lower and therefore justified a change in the nature of the characterization of the crime and a reduction in his sentence. On 15 December 2020, the Appeals Chamber dismissed Mr. Lukić's request, finding that the potential ground of review advanced by Mr. Lukić against his conviction had no chance of success. Having so found, the Appeals Chamber also rejected his request for assignment of counsel at the expense of the Mechanism.

102. The threshold for authorizing review is high.<sup>13</sup> On the basis of past experience, it is estimated that the Mechanism will receive between one and four requests for review a year. If a review is authorized, it is estimated that the proceedings will last at a minimum one year from the filing of the initial request for review to the issuance of the review judgment, in the absence of exceptional circumstances.

## 5. Contempt of court and false testimony

103. In accordance with article 12, paragraph 1, of the 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 Tribunals or the Mechanism, provided that such cases are not transferred to a national jurisdiction in accordance with article 1, paragraph 4, of the statute. Any appeals from such trials before a single judge are to be dealt with by a three-judge bench of the Appeals Chamber of the Mechanism.

104. During the period under review, a single judge, Judge Joensen, conducted trial proceedings in the *Nzabonimpa et al.* case (formerly *Turinabo et al.*), which was a complex six-accused case involving allegations of interference with the administration of justice in connection with the *Ngirabatware* review proceedings. On 19 April 2021, the single judge terminated proceedings against Mr. Turinabo following his death near the end of the proceedings and, on 7 May 2021, ordered that the indictment be amended to remove him as an accused person, resulting in the change of name of the case. The trial was unprecedented in size, scope and complexity among contempt cases heard by the ad hoc Tribunals in view of the number of accused, the duration of the alleged interference and the method and means by which it allegedly occurred. The single judge issued around 200 decisions and orders during the course of the proceedings. The trial was originally expected to commence in June 2020 and to conclude by December 2020, but adjustments were required at various stages of the proceedings in view of the pandemic and a delay due to the declining health and death of Mr. Turinabo during the course of the trial.

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<sup>13</sup> Residual Mechanism, *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Review Judgment, 27 September 2019, para. 63.

105. The trial commenced on 22 October 2020, the last prosecution witness was heard on 24 November 2020, and the prosecution case was closed on 2 March 2021. On 8 and 9 March 2021, the single judge heard submissions from three defence teams and the prosecution on the defence requests for a judgment of acquittal. On 12 March 2021, the single judge denied the requests and held the pre-defence conference, and the defence cases subsequently commenced on 15 March 2021. The last defence witness was heard on 9 April 2021, and the defence cases closed on 7 May 2021.

106. The trial in the *Nzabonimpa et al.* case concluded on 25 June 2021, as projected, with the pronouncement of judgment just two days after the end of closing arguments, which were held between 20 and 23 June 2021. The pronouncement of judgment in conjunction with closing arguments was done to avoid travel-related risks associated with the pandemic. The written reasons were filed on 20 September 2021.

107. The single judge convicted Augustin Ngirabatware, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma of contempt for witness interference. Mr. Ngirabatware was also convicted for contempt on the basis of violating court orders. The single judge entered a verdict of not guilty for a co-accused, Dick Prudence Munyeshuli, on a single contempt charge for violations of court orders. The single judge sentenced Mr. Ngirabatware to two years' imprisonment, while Mr. Nzabonimpa, Mr. Ndagijimana and Ms. Fatuma were sentenced to time served, having spent over 11 months in pretrial detention. In parallel with the filing of the trial judgment, the single judge also issued an order on 20 September 2021 in which he considered that there was reason to believe that Mr. Ngirabatware's former counsel might be in contempt of the Mechanism. This matter is currently under investigation by an amicus curiae.

108. On 18 October 2021, Ms. Fatuma appealed against her conviction and sentence, and the prosecution appealed against Mr. Munyeshuli's acquittal and certain aspects of Mr. Ngirabatware's sentence. Mr. Ngirabatware, Mr. Nzabonimpa and Mr. Ndagijimana did not appeal against the trial judgment. As a result of the reduction in the number of parties to the case, the case name was changed to *Fatuma et al.*

109. Following the granting of requests for extension of time amounting to a month and a half, the appeal briefing in the *Fatuma et al.* case concluded on 16 December 2021. The projection is for completion of the appeal proceedings in the case by the end of June 2022, which is five months earlier than initially projected in the previous review report. The Appeals Chamber is composed of Judges Agius, presiding, Orié and Pantón.

110. The *Jojić and Radeta* contempt case, which was transferred from the International Tribunal for the Former Yugoslavia to the Mechanism on 29 November 2017, was referred to the authorities of Serbia for trial by order of a single judge, Judge Akay, on 12 June 2018. The amicus curiae prosecutor in the case appealed against the order of referral. On 12 December 2018, the Appeals Chamber, composed of Judges Meron, presiding, Sekule and Rosa, found that the amicus curiae prosecutor had not raised before the single judge the issue of "the unwillingness of the witnesses to testify if the case [was] tried in Serbia" and remanded the matter for consideration of further submissions on that issue. On 13 May 2019, the single judge, Judge Liu, issued a decision revoking the referral order and requesting Serbia to transfer the two accused to the Mechanism without delay. On the same day, the single judge issued new international arrest warrants, directed to all States Members of the United Nations, for the arrest, detention and transfer to the custody of the Mechanism of the accused. On 24 February 2020, the Appeals Chamber, composed of Judges Agius, presiding, de Prada and Gatti, dismissed the appeal by Serbia and affirmed the single judge's decision to revoke the referral order.

111. On 16 April 2021, the single judge issued a decision finding that Serbia had failed to comply with its obligations under article 28 of the statute to arrest the

accused and transfer them to the Mechanism. Accordingly, the single judge requested the President to notify the Security Council.

112. On 11 May 2021, the President notified the President of the Security Council of the failure by Serbia to comply with its international obligations to arrest and surrender the accused Mr. Jojić and Ms. Radeta.<sup>14</sup>

113. On 3 September 2021, the single judge issued a decision in which he found, *inter alia*, that the execution of the arrest warrants was unlikely to take place within a reasonable time. Having so found, the single judge granted the request of the *amicus curiae* prosecutor to take the evidence of prosecution witnesses by special deposition, in order to preserve evidence for use in a future trial in the event that the witnesses would become unavailable. The special deposition proceedings were held in March 2022.

114. The Mechanism does not hold trials in *absentia* and therefore relies heavily on the cooperation of Member States to secure the presence of the accused. In the event of the accused's arrest and transfer to the Mechanism, on the basis of experience with cases of similar complexity, the trial phase of the *Jojić and Radeta* contempt case would last approximately one year from the initial appearance to the trial judgment, and the appeal phase would last one year from the issuance of the trial judgment to the issuance of the appeal judgment. These projections will be updated following the arrest of either of the accused and then again following the completion of the trial judgment and the filing of the notices of appeal, if any, when it becomes possible to determine more accurately the scope and complexity of the case on appeal.

115. In addition to the aforementioned case, there are five other pending matters related to contempt of court or false testimony proceedings, several of which are confidential. Single judges have issued three decisions and orders related to applications for the commencement of such proceedings. Because of the variable nature of allegations involving contempt of court or false testimony, it is not possible to estimate the length of time for any possible trial or appeal proceedings without knowing the case that may be brought, although such proceedings are expected to be significantly shorter than trials conducted in accordance with article 1, paragraphs 2 and 3, of the statute concerning the core crimes under the Mechanism's jurisdiction. As the Mechanism has a continuing obligation to safeguard the administration of justice, its duty to investigate and prosecute allegations of contempt or false testimony, subject to the provisions of article 1, paragraph 4, of the statute, will continue until its closure.

## 6. Other judicial workload

116. The Mechanism conducted substantial judicial activity during the period under review, in addition to the functions described above.

117. Beyond appeals from judgment and review proceedings, the Appeals Chamber is responsible for considering appeals from decisions of a Trial Chamber or a single judge. During the period under review, the Appeals Chamber has considered appeals pertaining to, *inter alia*, decisions on contempt matters, frozen assets, the relocation of acquitted and released persons and the assignment of counsel. 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.

118. Lastly, single judges are responsible for dealing with a wide variety of requests in the first instance in accordance with article 12, paragraph 1, of the statute. Apart from requests related to contempt of court and false testimony, single judges have addressed, *inter alia*, requests related to the variation of witness protection measures, access to materials, disclosure, changes in classification of documents, frozen assets,

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<sup>14</sup> S/2021/452.

*non bis in idem* issues, requests for the relocation of acquitted and released persons, and the assignment of counsel. The majority of matters before single judges relates to witness protection matters and requests for access to confidential material for use in cases before national jurisdictions or in proceedings before the Mechanism. There has recently been a marked increase in judicial activity in this area.

119. During the period under review, single judges issued 40 decisions or orders (12 in the Arusha branch and 28 in The Hague branch) in 2020 and 64 (9 in the Arusha branch and 55 in The Hague branch) in 2021. Single judges issued 20 decisions or orders (8 in the Arusha branch and 12 in The Hague branch) in the first three and a half months of 2022. 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 Tribunals and the Mechanism and potential requests for review from convicted persons.

#### IV. Prosecutor<sup>15</sup>

120. During the period under review, the Office of the Prosecutor achieved significant results across its three strategic priorities: (a) the expeditious completion of trials and appeals; (b) locating and arresting the eight remaining fugitives indicted by the International Criminal Tribunal for Rwanda; and (c) assisting national jurisdictions prosecuting crimes committed during the conflict in the former Yugoslavia and Rwanda. The Office further carried out its responsibilities in relation to a number of other residual functions, as mandated in the statute.

121. The Office of the Prosecutor continues to manage its staff and resources in accordance with the Security Council's instructions and expectations. As found by OIOS in its report on the evaluation of the methods and work of the Mechanism, steps taken by the Office during the reporting period reflected a focus on operationalizing the Council's mandate.<sup>16</sup> OIOS again favourably assessed the Office's methods and work, noting that, even with a "skeletal staff number",<sup>17</sup> it flexibly reconfigured operations as necessary to deliver results<sup>18</sup> and redeployed its resources to where they were most required.<sup>19</sup> OIOS further concluded that, as the office had downsized, the smaller team benefited from management's efforts to promote a more positive working culture.<sup>20</sup>

##### A. Expeditious completion of trials and appeals

122. During the period under review, the Office of the Prosecutor worked to finalize the remaining ad hoc judicial activities expeditiously and achieved key results. The Office secured convictions at trial in two cases – *Stanišić and Simatović* and *Nzabonimpa et al.* – and a final conviction on appeal in *Mladić*. In the *Kabuga* case, the prosecution rapidly completed post-arrest investigations, prepared a more streamlined amended indictment and met all pretrial objectives in furtherance of expeditious and effective trial proceedings in a timely manner.

123. On 8 June 2021, the Appeals Chamber of the Mechanism affirmed the conviction of Mr. Mladić, former Commander of the Main Staff of the Republika Srpska Army, for genocide, persecution, extermination, murder, terror, unlawful

<sup>15</sup> This section reflects the views of the Prosecutor, who acts independently as a separate organ, pursuant to article 14 of the statute.

<sup>16</sup> S/2022/148, para. 62.

<sup>17</sup> Ibid., paras. 27 and 32.

<sup>18</sup> Ibid., para. 34.

<sup>19</sup> Ibid.

<sup>20</sup> S/2022/148, para. 38.

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

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

125. On 30 June 2021, the Trial Chamber orally delivered its judgment in the *Stanišić and Simatović* retrial, entering convictions against Mr. Stanišić and Mr. Simatović for aiding and abetting the crimes of murder, deportation, forcible transfer and persecution as crimes against humanity and murder as a war crime. Both men were each sentenced to 12 years of imprisonment.

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

127. On 15 February 2022, the Office of the Prosecutor completed its written appellate arguments in the *Stanišić and Simatović* appeal. The prosecution filed two grounds of appeal, while the defence teams together filed 12 grounds of appeal. In its first ground of appeal, the prosecution argued that the Trial Chamber had erred in fact and/or law in failing to hold Mr. Stanišić and Mr. Simatović criminally responsible as members of a joint criminal enterprise. In its second ground of appeal, the prosecution argued that the Trial Chamber had erred in law and/or fact in failing to hold Mr. Stanišić and Mr. Simatović criminally responsible for aiding and abetting the crimes in the Serb autonomous areas of Krajina, Eastern Slavonia, Baranja, Western Sirmium, Zvornik, Doboj and Sanski Most.

128. On 25 June 2021, the single judge orally delivered his judgment in the *Nzabonimpa et al.* trial, entering convictions against Mr. Nzabonimpa, Mr. Ndagijimana and Ms. Fatuma for contempt of court for witness interference. The single judge further convicted Mr. Ngirabatware for contempt of court for witness

interference and violating court orders protecting witnesses. Mr. Ngirabatware was sentenced to two years of imprisonment, while Mr. Nzabonimpa, Mr. Ndagijimana and Ms. Fatuma were sentenced to time served. Mr. Munyeshuli was acquitted.

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

130. On 16 December 2021, the Office of the Prosecutor completed its written appellate arguments in the *Fatuma et al.* appeal. The prosecution filed three grounds of appeal, while Ms. Fatuma filed seven grounds of appeal. In its first ground of appeal, the prosecution argued that the single judge had erred in fact and/or law in failing to find that Mr. Munyeshuli was criminally responsible for committing contempt by disclosing protected information in violation of court orders. In its second ground of appeal, the prosecution argued that the single judge had erred in fact and/or law in declining to enter a conviction against Mr. Munyeshuli for committing contempt through prohibited indirect contact with protected witnesses, in spite of having found that the prosecution had proved all the elements of the offence. In its third ground of appeal, the prosecution argued that the single judge had erred in fact and/or law in determining that Mr. Ngirabatware's contempt sentence should run concurrently with the sentence that Mr. Ngirabatware was already serving for genocide.

131. On 16 May 2020, the Office of the Prosecutor secured the arrest of Mr. Kabuga in Asnières-sur-Seine, France, following a joint investigation with many national partners. Following the arrest, the Office rapidly established a pretrial team, chiefly based in Kigali, to move forward the pretrial proceedings in the case. The prosecution achieved two significant results during the reporting period.

132. First, on 24 February 2021, the Trial Chamber granted the prosecution's request to amend the indictment in the *Kabuga* case. The prosecution's amendments reflect four key changes: (a) additional evidence gathered, in particular since Mr. Kabuga's arrest on 16 May 2020; (b) more specific descriptions of the crimes charged; (c) streamlined charges for a more expeditious trial; and (d) updates based on jurisprudential developments since 2011. The charges against Mr. Kabuga are now presented in two components, first in relation to Radio-Télévision Libre des Mille Collines, and second concerning crimes committed by Interahamwe. Importantly, the prosecution's amendments detailed specific incidents of sexual violence with which Mr. Kabuga is charged. Ultimately, by streamlining, clarifying and particularizing the charges, the amended indictment will promote a more expeditious trial while appropriately reflecting the scale of the crimes committed and Mr. Kabuga's alleged criminal responsibility.

133. Second, the Office of the Prosecutor achieved key pretrial objectives to promote the swift commencement of trial proceedings in a timely manner. In full accordance with the deadlines established by the Trial Chamber, the Office filed its motion for admission of adjudicated facts on 16 August 2021, and its pretrial brief on 23 August 2021. The Office further completed its disclosure, under rule 71, paragraph A (ii), of the Rules of Procedure and Evidence, of witness statements and transcripts by 23 August 2021, and its disclosure, under rule 116, paragraph A, of expert reports by

30 August 2021, while also completing its review of disclosable confidential material from other proceedings before the International Criminal Tribunal for Rwanda. The Office took additional steps to promote expeditious trial proceedings by filing seven motions for the admission of written evidence in lieu of oral testimony.

134. During the reporting period, the Office of the Prosecutor submitted a total of 60 filings and responded to 10 filings by the defence. In particular, it was required to litigate effectively critical matters raised by the defence, including a requested stay of proceedings, issues related to the accused's health and access by the defence team to confidential records. The Office disclosed over 15,320 documents comprising approximately 290,000 pages to the defence. It was also required to respond to significant additional ancillary litigation initiated by Mr. Kabuga's family members and associated third parties concerning seized assets and frozen funds.

135. As shown by the results achieved during the reporting period, the Office of the Prosecutor continues to meet all of its trial- and appeal-related obligations effectively and in a timely manner, and it is taking all possible measures within its control to promote expeditious proceedings. The Office remains committed to finalizing the remaining ad hoc judicial activities promptly and completing this critical residual function.

## **B. Fugitives**

136. The decisive results in tracking fugitives achieved by the Office of the Prosecutor during the reporting period concretely demonstrate the Office's significant progress in the achievement of its mandate.

137. At the beginning of the period under review, eight fugitives indicted by the International Criminal Tribunal for Rwanda for crimes committed during the genocide against the Tutsi in Rwanda in 1994 remained at large. Two of those – Mr. Kabuga and Mr. Bizimana, both so-called major fugitives – have now been accounted for. Consistent with previous reporting that priority efforts with regard to other fugitives had been advancing significantly, the Office of the Prosecutor fully expects that additional results will be achieved shortly after the end of the period under review. With the full support of the Security Council and the international community, the remaining fugitives can be accounted for and this important residual function brought to a close. The survivors and victims of the genocide deserve nothing less.

138. Mr. Kabuga was arrested on 16 May 2020 and now faces trial on charges of genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, persecution, extermination and murder. The arrest was the ultimate result of the revised fugitive tracking strategy and internal reforms of the Office of the Prosecutor since 2016. Two key methods were critical. First, the Office implemented an analysis-driven investigation using advanced techniques, in particular in the areas of telecommunications, financial and network investigations. By leveraging cutting-edge tools, the Office identified Mr. Kabuga's family members as the core of his support network and was ultimately able to trace them to his hiding location in an apartment near Paris. Second, intensive diplomatic engagement and partnerships with national authorities, including through the establishment of a European task force, enabled the Office to both enhance its collection of intelligence and evidence and ensure that arrest operations swiftly moved forward once Mr. Kabuga was located. This example demonstrated the impressive results that can be achieved through international law enforcement and judicial cooperation.

139. Similarly, on 22 May 2020, the Office of the Prosecutor announced that it had confirmed the death of Mr. Bizimana, who had been charged with 13 counts of genocide, complicity in genocide, extermination, murder, rape, torture, other inhumane

acts, persecution, cruel treatment and outrages upon personal dignity. As with the arrest of Mr. Kabuga, this result was achieved through technological excellence, analysis-driven investigations and strong law enforcement cooperation. Using the latest advancements in DNA technology, the Office was able to establish a DNA profile from highly-degraded remains that it had identified as being potentially those of Mr. Bizimana. This profile matched the mitochondrial DNA profile of Mr. Bizimana's mother. Through intensive cooperation with partners, the Office then verified the whereabouts of all of Mr. Bizimana's male maternal relations, allowing it to determine conclusively that it had located Mr. Bizimana's remains and that he was deceased.

140. Throughout the period under review, the Office of the Prosecutor continued to achieve meaningful progress in its investigations into the historical and current whereabouts of the remaining fugitives. The Fugitives Tracking Team's capacities were further strengthened, including through the appointment of a new team leader, the redeployment of the Chief of Staff to fugitive tracking and the recruitment of staff with relevant skills in complex investigations and advanced analytical tools. Through analysis-driven investigations using multi-source evidence and supported by intense diplomatic engagement, the Office is moving forward on promising lines of inquiry.

141. As repeatedly reported in the past, challenges in obtaining full and effective cooperation from key Member States remain the chief obstacle to successful results. As the failure to arrest the fugitive Fulgence Kayishema in South Africa demonstrates, while the Office of the Prosecutor is able to locate fugitives, cooperation from Member States is required to secure their arrest. In addition, critical intelligence and evidence are in the possession of or available to key Member States, without which the Office's investigations is significantly impeded. During the reporting period, the Office, led by the Prosecutor, developed and vigorously pursued diplomatic strategies to build trust with national interlocutors and encourage them to provide their full cooperation.

142. With regard to Zimbabwe, the Office of the Prosecutor has confirmed that the fugitive Protais Mpiranya fled to Zimbabwe following his indictment in 2002 and found sanctuary there, as did other former members of the Forces armées rwandaises and Forces démocratiques de libération du Rwanda. While the Government of Zimbabwe historically denied Mr. Mpiranya's presence in its territory, sustained engagement by the Office, in particular since May 2021, achieved important breakthroughs. The Office obtained vital intelligence and evidence from Zimbabwe, including through investigations on the ground. This, combined with critical information obtained in other countries, has allowed the Office to gain an even more detailed understanding of Mr. Mpiranya's presence and activities in Zimbabwe. In November 2021, the Prosecutor was pleased to have the opportunity to meet with the Vice-President, the Minister of Home Affairs and the Prosecutor General for open and productive exchanges of views, during which the unreserved commitment of Zimbabwe to providing full and effective cooperation to the Office was reaffirmed.

143. More recently, two missions proposed by the Office of the Prosecutor, including a high-level visit in mid-March by the Prosecutor in preparation for the present report, were not undertaken for lack of facilitation by the Ministry of Foreign Affairs and International Trade. Similarly, since November 2021, the Office has not received meaningful responses to its many outstanding requests for further evidence. Those challenges have impeded investigations and precluded discussions of certain matters of importance with Zimbabwean interlocutors. On 24 March 2022, the Office delivered to the Government of Zimbabwe a decisive request for assistance, which needs to be executed shortly after the end of the reporting period. The Office hopes to be able to inform the Security Council in the Prosecutor's forthcoming progress report that the necessary cooperation has ultimately been provided.

144. With regard to South Africa, the period under review has been marked by the repeated failure of its Government to cooperate. As previously noted, the situation with South Africa over the past several years has been among the most severe instances of non-cooperation faced by the Office of the Prosecutor since the establishment of the Mechanism. The matter of Mr. Kayishema is long-standing and of grave concern. In addition, the Office is identifying an increasing number of other leads related to South Africa, and it has become evident that many former members of the Forces armées rwandaises and Forces démocratiques de libération du Rwanda have found safe haven in South Africa.

145. On 6 September 2021, the Office of the Prosecutor submitted to South Africa a request to establish an investigative team, from the Directorate for Priority Crime Investigation, and authorize it to work directly with the Office's Fugitives Tracking Team. The Prosecutor further undertook an official mission to Pretoria from 8 to 10 November 2021 to discuss this urgently needed solution and resolve outstanding challenges. Finally, on 4 April 2022, the Office was officially informed that the requested investigative team had been established, under the leadership of the Directorate for Priority Crime Investigation, and comprised members from a range of national departments. The Office welcomes this development, which it hopes will at last allow the Office's investigations in relation to leads in South Africa to move forward. The Office will quickly engage with the team and report on progress achieved.

146. While the Office of the Prosecutor deeply regrets that some Member States would not provide full and effective cooperation in the pursuit of justice for the victims of genocide, many national authorities and partners have provided invaluable support and assistance to the Office during the reporting period, including Australia, Belgium, France, Germany, the Netherlands, Spain, the United Kingdom, the United Republic of Tanzania, the United States and United Nations entities. In particular, the strong partnership between the Office and the Government of Rwanda continues to be the example par excellence of international and national cooperation. The Office deeply appreciates the broad range of support that Rwandan authorities at every level continue to provide to its fugitive tracking efforts.

147. The Office of the Prosecutor underscores its commitment to arresting the remaining fugitives as soon as possible. To ensure the success of these efforts and achievement of this important mandate, the Security Council should encourage all Member States to provide their full support and cooperation to the Office. When international and national authorities work together, fugitives can be located and arrested. The Office also reiterates that, under the War Crimes Rewards Programme of the United States, individuals who provide information leading to the arrest of a fugitive may be eligible for a monetary reward in an amount of up to \$5 million.

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

148. In accordance with article 28, paragraph 3, of the statute, the Office of the Prosecutor is mandated to respond to requests for assistance from national authorities in relation to the crimes committed during the conflicts in Rwanda and the former Yugoslavia. With the closure of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, further accountability for crimes committed in Rwanda and the former Yugoslavia now entirely depends on national justice sectors. The Office places a high priority on monitoring, supporting and advising national judicial authorities prosecuting war crimes cases arising out of the conflicts in Rwanda and the former Yugoslavia. The International Committee of the Red Cross (ICRC) and national missing persons institutions still searching for those persons missing as a result of the conflict in the former Yugoslavia also request the Office's

support. The Office maintains an ongoing dialogue with counterparts and undertakes a range of initiatives to assist and build capacity in national criminal justice sectors.

149. The Office of the Prosecutor is uniquely placed to provide such assistance. The Office's evidence collection contains approximately 1 million pages of documents from the investigations of crimes that occurred in Rwanda in 1994 and 9.3 million pages of evidence in relation to the crimes committed in the former Yugoslavia from 1991 onwards. In addition, it holds tens of thousands of artefacts, audio and video recordings and other evidentiary materials.

150. National authorities value the support received from the Office of the Prosecutor, as reflected in the continuing large number of requests for assistance received. During the period under review, the previously reported trend of significantly greater-than-expected workload persisted. In 2013, 111 requests were received. However, since 2018, an average of 362 requests for assistance have been submitted each year, a 226 per cent increase.

151. With the already lean staffing number in the Office of the Prosecutor, it has not been possible to fully address the increased workload. OIOS recognized this in noting that, given the dynamic level of ad hoc judicial activity, the Office had a shortfall of capacity to address ongoing activities.<sup>21</sup> As a result, a backlog of approximately 344 requests older than six months has developed, and the total number of outstanding requests at the end of the reporting period reached 436. The Office underlines that national authorities heavily rely on its support to meet their important responsibilities to achieve further justice for serious international crimes committed in Rwanda and the former Yugoslavia. It is vital that sufficient resources be provided for those activities.

152. The Office of the Prosecutor expects that, for at least the next several years, the volume of requests for assistance received will continue at the current high rate or further increase. In relation to Rwanda, the National Public Prosecution Authority of Rwanda is currently pursuing more than 900 fugitives worldwide. In relation to the former Yugoslavia, Member States throughout the region have adopted national war crimes strategies to address a backlog of thousands of cases in total. ICRC is currently implementing a five-year strategy to determine the fates of those still missing from the conflict in the former Yugoslavia, and the Office will continue to respond to many complex requests for assistance from ICRC and national missing-person authorities for the next several years. Third-party States around the world are still investigating and prosecuting persons in their territories for crimes committed in Rwanda and the former Yugoslavia.

153. During the period under review, the Office of the Prosecutor achieved significant results in responding to requests from national partners for strengthened support for their accountability efforts. To process their own complex cases, national prosecutors are increasingly seeking to benefit from the Office's developed expertise, knowledge and practical skills.

154. For example, at the request of the Montenegrin authorities, in November 2020, the Office of the Prosecutor handed over to the Special State Prosecutor's Office of Montenegro an investigative dossier concerning more than 15 Montenegrin citizens suspected of involvement in war crimes. Many of those persons are suspected of horrific crimes of sexual violence, including sexual slavery, rape, torture, enforced prostitution and trafficking in persons for sexual exploitation, while others are suspected of the torture and execution of civilians. On the basis of that dossier, Montenegrin prosecutors initiated a wide-ranging preliminary investigation. At the same time, in cooperation with the Ministry of Justice and Human and Minority Rights of Montenegro, the Office, drawing on its expertise, identified legislative reform that

<sup>21</sup> S/2020/236, para. 41.

would allow for the introduction of evidence from the International Tribunal for the Former Yugoslavia and Mechanism in Montenegrin proceedings and facilitate the effective prosecution of conflict-related sexual violence cases. These efforts can be expected to enhance capacities and results in Montenegro for war crimes justice.

155. Similarly, the Office of the Prosecutor made important progress during the reporting period in responding to the request of the Prosecutor General of Rwanda for additional assistance in identifying, locating and building case files against alleged “génocidaires” responsible for crimes committed during the genocide against the Tutsi in Rwanda. At the request of the Rwandan authorities, the Office is currently reviewing lists and files concerning suspects who were investigated but not indicted by the Prosecutor of the International Criminal Tribunal for Rwanda in the light of the completion strategy of the institution. It is expected that these efforts will result in the handover of investigative dossiers that will significantly advance the efforts of Rwanda to ensure more comprehensive accountability for genocide crimes.

156. In a more recent development, the Office of the Prosecutor and the Prosecutor General of Rwanda have initiated discussions concerning suspected génocidaires who have so far evaded justice by hiding in other countries, in particular in Africa. Historically, while the Rwandan authorities have processed many cases against perpetrators present in Rwanda, accountability has been more limited for those who fled abroad in the aftermath of the genocide. This accountability gap is particularly concerning, as it includes persons who were part of the Forces armées rwandaises or the genocidal regime. The Office obtained valuable intelligence on the past and current whereabouts of such persons, as well as their support networks, during its own fugitive tracking activities. The Office is committed to working with the Prosecutor General of Rwanda and other national counterparts to ensure that such suspected génocidaires do not continue to enjoy safe haven and evade accountability for their crimes.

157. The mandate of the Office of the Prosecutor under article 28, paragraph 3, of the statute to assist national authorities prosecuting crimes committed during the genocide against the Tutsi and the conflict in the former Yugoslavia is essential to secure more justice for more victims of atrocity crimes. The Office places a high priority on undertaking activities that are highly valued by national partners and generate concrete results. It will continue to support and assist national accountability efforts, in accordance with the statute and the completion strategies of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

## **D. Management**

158. The Office of the Prosecutor is committed to managing its staff and resources in line with the instruction of the Security Council that the Mechanism be a “small, temporary and efficient structure”. The Office continues to be guided by the views and requests of the Council, as set forth in, inter alia, paragraphs 18 to 20 of Council resolution [2256 \(2015\)](#), paragraphs 7 and 8 of Council resolution [2422 \(2018\)](#) and paragraphs 8 and 9 of Council resolution [2529 \(2020\)](#). An important part of those efforts is the Prosecutor’s “one office” policy to integrate the staff and resources of the Office across both branches. Under the policy, staff and resources are available to be deployed flexibly at either branch as necessary.

159. The Office of the Prosecutor demonstrated again during the reporting period the efficacy of its management efforts and continued adherence to the Security Council’s expectations, in particular across four important areas identified by the Council: (a) implementation of a human resources policy consistent with its temporary mandate; (b) further reduction of costs, including through flexible staff engagement; (c) ensuring the geographical diversity and gender balance of staff, while ensuring

continued professional expertise; and (d) coordination and information-sharing across the three organs of the Mechanism on matters that affected them equally in order to ensure systematic thinking and planning about the future.

160. With regard to point (a), as recognized by OIOS, the Office of the Prosecutor continues to have “a small, temporary and efficient structure with a small number of staff commensurate with its reduced functions”, with OIOS concluding that the Office is operating with a “skeletal staff number”<sup>22</sup> which “precluded further major downsizing”.<sup>23</sup> Even so, as OIOS also recognized, the Office continued appropriate downsizing during the period under review, in particular at The Hague branch,<sup>24</sup> with two P-5, three P-4 and one P-3 professional posts released in 2021 following the completion of the *Stanišić and Simatović* retrial and the *Mladić* appeal,<sup>25</sup> and a further three posts in The Hague released in early 2022. In this regard, given the “skeletal” staff and continued high workload across its mandated functions, future downsizing will be gradual over time and driven by decreases in the total workload across the office.

161. With regard to point (b), the Office of the Prosecutor was able to generate results while maintaining its lean staffing structure – even when confronted with a significant increase in workload with the *Turinabo et al.* trial and the arrest of Mr. Kabuga – through its flexible staff engagement practices. As OIOS recognized, the Office’s Fugitives Tracking Team “was reconfigured to deliver results”, demonstrated with the arrest of Mr. Kabuga and the confirmation of Mr. Bizimana’s death.<sup>26</sup> Similarly, as again highlighted by OIOS, the Office “pivoted human resources to where they were most required”, as demonstrated by the fact that the *Kabuga* pretrial team in Kigali “was mobilized from other duty stations with the apprehension of the fugitive so that they could begin gathering evidence and preparing witnesses”.<sup>27</sup>

162. In relation to points (a) and (b), the Office of the Prosecutor would further draw attention to an important example of an initiative taken during the reporting period to achieve efficiencies while maintaining effectiveness through appropriate human resources measures. Consistent with those goals and the “one office” policy, the Office reassigned all legal advisory functions and workload to its appeals team, alleviating the need to have separate legal advisory resources within each of its teams. While this consolidation has placed additional demands on the appeals team, which was already “lean”<sup>28</sup> and “already stretched”,<sup>29</sup> it has ensured that all legal advisory requirements throughout the office, at both branches, have been met with more streamlined resources. Moving forward, as the Office continues to make every effort to achieve its mandate successfully in a manner consistent with the Security Council’s expectations, the consolidated appeals and legal advisory team will play an important role in ensuring that all legal advisory requirements are met efficiently and effectively.

163. With regard to point (c), the Office of the Prosecutor, like the Mechanism as a whole, has ensured the geographical diversity of staff. The Office has also achieved overall gender parity, with 54 per cent female staff and 46 per cent male staff. Among professional staff in the Office, women encumber 3 out of 8 positions at the P-5 level, 4 out of 9 positions at the P-4 level, 15 out of 23 positions at the P-3 level and 5 out of 12 positions at the P-2 level. During the reporting period the Office saw significant progress towards gender parity in its Fugitives Tracking Team, with three out of the

<sup>22</sup> S/2022/148, paras. 27 and 32.

<sup>23</sup> Ibid., para. 27.

<sup>24</sup> Ibid., para. 31.

<sup>25</sup> Ibid., para. 24.

<sup>26</sup> Ibid., para. 34.

<sup>27</sup> Ibid.

<sup>28</sup> S/2020/236, para. 41.

<sup>29</sup> S/2018/206, para. 23.

four most recent recruitment exercises resulting in the selection of women, who are nationals of Bahrain, Japan and Malaysia.

164. Lastly, with regard to point (d), the Office of the Prosecutor played an active role in Mechanism-wide activities in response to the pandemic, including by participating in the COVID-19 Steering Committee. As recognized by OIOS, this group was able to promote more cross-branch and cross-organ coordination and harmonization across the Mechanism, including by updating policies to ensure business continuity and the health and safety of staff.<sup>30</sup> As part of the COVID-19 Steering Committee, Office representatives took responsibility for preparing scenario-based planning for the return to in-office working, as well as a cross-organ review of operations during the pandemic and a lessons-learned exercise.

165. The success of the efforts by the Office of the Prosecutor to respond to the pandemic, both internally and in the context of the cross-organ and cross-branch COVID-19 Steering Committee, has been concretely demonstrated by the results achieved despite the pandemic. In May 2020, amid lockdown measures and travel bans, the Office was nonetheless able to secure the arrest of Mr. Kabuga and confirm the death of Mr. Bizimana, two of the Mechanism's three top priority fugitives. Throughout the pandemic, the Office has continued to make significant progress in accounting for other fugitives and expects further results to be achieved shortly after the end of the present reporting period. Similarly, the Office trial and appeals teams have maintained full business continuity during the pandemic and continued to meet all their case-related obligations. The success of those efforts is demonstrated by the convicting judgments obtained in three cases, namely, *Stanišić and Simatović*, *Nzabonimpa et al.* and *Mladić*. In addition, the *Kabuga* team was rapidly established during the pandemic, conducted necessary on-the-ground investigations, prepared a more streamlined indictment and completed all key pretrial objectives to promote the swift commencement of trial proceedings in a timely manner. Those important results could not have been achieved without the dedication and commitment of all Office staff, who continued to fully perform their responsibilities despite immense challenges.

## **E. Implementation of the recommendations of the Office of Internal Oversight Services**

166. In its report on the evaluation of the methods and work of the Mechanism, OIOS concluded that the Office of the Prosecutor had successfully implemented recommendation 2, which was the only outstanding recommendation specifically addressed to the Office.<sup>31</sup> In this regard, OIOS noted that the steps taken by the Office reflected a focus on operationalizing the Security Council's mandate.<sup>32</sup>

167. Recommendation 2 provided that the Office of the Prosecutor should support and strengthen staff morale through the conduct of a survey to identify key concerns to manage downsizing and upsizing. The recommendation had arisen from the previous findings by OIOS that already-stretched Office teams had to work simultaneously on outstanding cases of the International Tribunal for the Former Yugoslavia, an unforeseen retrial and unexpected litigation arising out of completed Mechanism cases, and that the Office encountered difficulties related to recruitment, retention and job security, due in part to the temporary nature of judicial activities and the limited pool from which staff were recruited.<sup>33</sup> The Office welcomed the helpful analysis by OIOS of the challenges in staff morale that resulted from

<sup>30</sup> S/2022/148, para. 45.

<sup>31</sup> Ibid., para. 42.

<sup>32</sup> Ibid., para. 62.

<sup>33</sup> S/2018/206, para. 23.

maintaining its lean and cost-effective structure despite unexpectedly high level of judicial activity amid organizational downsizing.

168. In response to the recommendation by OIOS, the Office of the Prosecutor conducted an analysis of staff morale and developed strategies to address morale issues. Twenty-five measures were identified related to various topics, including better management of downsizing, professional development, cross-branch issues and communications. As OIOS noted, during the period under review, 21 of those measures were implemented,<sup>34</sup> as the pandemic hindered implementation of the remaining four.

169. OIOS identified concrete indicators demonstrating the success of the Office of the Prosecutor in ensuring positive morale within the office despite the challenges presented by downsizing, job insecurity and the pandemic. OIOS recognized that, as the office downsized, the smaller team benefited from management's efforts to promote a more positive work culture.<sup>35</sup> This was evidenced by interviews conducted by OIOS, during which all Office staff interviewed referred to senior leadership's attempts to promote a more collegial environment.<sup>36</sup> In addition, a Mechanism-wide survey conducted by OIOS revealed that the Office staff had the strongest morale within the Mechanism, with 51 per cent of Office staff rating their morale as good or very good on a five-point scale. Forty-six per cent of Office staff provided positive comments reflecting their commitment to the Office's mission, positive teamwork and good management in the Office.<sup>37</sup> Accordingly, OIOS concluded that, in the Office, progress towards increasing staff morale had been made and the recommendation thus implemented.<sup>38</sup>

170. The Office of the Prosecutor is grateful to OIOS for its report and recognition of the steps that the Office has taken to adhere to the Security Council's expectations. The Office is pleased that OIOS continues to recognize, as it had in past reports, the Office's commitment to the Council's vision of the Mechanism as "a small, temporary and efficient structure". OIOS acknowledged the significant results achieved by the Office during the period under review, including the arrest of Mr. Kabuga and securing convictions in three cases, despite the enormous challenges posed by the pandemic. OIOS further continued to assess the Office's work and innovative methods favourably, noting that, while the Office maintained only a "skeletal" staff number, it used flexible staff engagement to deliver results and pivoted human resources to where they were most needed. Lastly, OIOS concluded that the outstanding recommendation addressed to the Office had been implemented, highlighting the Office management's efforts to promote a more positive working culture and improve staff morale despite challenges intrinsic to the Mechanism's mandate.

## V. Registry

### A. Summary

171. The Registry is responsible for the administration and servicing of the branches of the Mechanism, as prescribed in article 15 of the statute. Under the leadership of the Registrar, it carries out a number of key functions, such as the provision of support to judicial activities; assistance with the monitoring of cases referred to national jurisdictions under article 6 of the statute; and the preservation and management of the archives of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. Responsibilities related to

<sup>34</sup> S/2022/148, para. 37.

<sup>35</sup> Ibid., para. 38.

<sup>36</sup> Ibid.

<sup>37</sup> S/2022/148, para. 39.

<sup>38</sup> Ibid., para. 42.

the administration of the Mechanism include all matters pertaining to human resources, safety and security, and facility management, as well as procurement, information technology support services, budget and finance.

172. Support for judicial activities entails the facilitation of all court operations, ranging from making necessary organizational and judicial arrangements to preparing transcripts of court proceedings; processing documents, filings and exhibits presented in court; managing and implementing technology applications for court proceedings, interpretation and translation services; managing the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague; the protection of victims and witnesses; and the administration of the Mechanism's legal aid programme. The preservation and management of the archives of the Tribunals and the Mechanism involve managing physical and digital storage repositories, instituting measures to protect archives from loss or damage and ensuring that they remain trustworthy, accessible and usable in the future.

173. In accordance with article 25 of the statute, the Registry also supports the supervision of the enforcement of sentences pronounced by the Tribunals and the Mechanism. Those sentences are served in different States that have signed an agreement for that purpose with the United Nations, the Tribunals or the Mechanism. The Registry liaises with the enforcement States, the convicted persons and their respective counsel, and international monitoring bodies, such as ICRC and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. At the direction of the President, in accordance with the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentences, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, the Registry obtains relevant information to assist the President in his decisions on requests by convicted persons for pardon, commutation of sentence or early release.

174. Against the backdrop of the pandemic, the Registry successfully developed practices and adapted procedures, as described below, to ensure its continued capacity to carry out all of its key functions. This was greatly aided by the Mechanism's general ability to remain flexible and to adjust its working methods to the prevailing circumstances, a critical aspect in ensuring progress.

## **B. Support for judicial activities**

175. The Registry continued to provide support to the Mechanism's judicial activities at both branches, including the facilitation of a number of court hearings and the delivery of three judgments, namely, in the *Stanišić and Simatović* retrial, the *Nzabonimpa et al.* contempt trial and the *Mladić* appeal case. The Registry also provided support in the context of the *Kabuga* pretrial, the *Stanišić and Simatović* appeal and the *Jojić and Radeta* special deposition proceedings. The Judicial Records Unit played a key role in supporting judicial activities, including by coordinating the filing, distribution and translation of documents, liaising with the Chambers and parties to the proceedings and preparing in-court hearings.

176. A specific focus of the Registry was to minimize the risk of exposure to COVID-19 of court participants through significant alterations to the courtrooms; the implementation of practical safety and preventive measures, including the issuance of policies and guidelines; and the facilitation of the remote participation in proceedings of judges, parties and witnesses, as necessary.

177. Particularly noteworthy in this regard was the *Mladić* appeal case, in which the Registry enabled the remote participation of four of five judges from various countries and time zones, as well as that of several other participants. In the *Stanišić and*

*Simatović* retrial, measures implemented by the Registry allowed for in-court proceedings to be resumed swiftly. In the *Nzabonimpa et al.* contempt trial, which commenced in Arusha in 2020, the presentation of evidence was completed in April 2021. The Registry enabled defence counsel in the case to participate remotely, thus ensuring that travel and quarantine restrictions did not hamper the conduct of the proceedings. In addition, following the transfer of Mr. Kabuga to the United Nations Detention Unit in October 2020, both Registry branches worked closely together in supporting pretrial proceedings, including in-person hearings in the case, which to date have been held in The Hague. This illustrates the committed efforts of the Registry to foster cross-branch coordination, which remains a strategic priority for the Registrar.

178. In support of the aforementioned proceedings, as well as the other judicial procedures pursuant to the Rules of Procedure and Evidence, such as enforcement matters and requests for variation, rescission or augmentation of protective measures for witnesses, the Judicial Records Unit processed and disseminated more than 4,178 judicial filings in relation to all cases before it, including 830 Registry legal submissions, and managed court hearings for a total of 68 sitting days.

179. Across the two branches, the Language Support Services provided approximately 40,000 pages of translations in support of ongoing judicial proceedings and the general work of the Mechanism. In addition, during the period under review, the Section at the Arusha branch, inter alia, completed the translation into Kinyarwanda of all trial judgments of the International Criminal Tribunal for Rwanda, two appeal judgments of the International Criminal Tribunal for Rwanda, one appeal judgment of the Mechanism and the Review Judgment in the *Ngirabatware* case, as well as the translation from Kinyarwanda into French of the trial judgment issued in Rwanda in the referred case against Mr. Ntaganzwa. The translation into Kinyarwanda of an additional three appeal judgments will be completed by the end of April 2022. At The Hague branch, the Section, inter alia, finalized all translations of judgments by the International Tribunal for the Former Yugoslavia into Bosnian-Croatian-Serbian and also translated one appeal judgment of the International Criminal Tribunal for Rwanda (in the *Bizimungu* case) and one Mechanism appeal judgment (in the *Šešelj* case) into French. A further appeal judgment of the International Criminal Tribunal for Rwanda, in the *Nzabonimana* case, is expected to be translated into French by the end of April 2022. Efforts have been made to tackle the backlog of translations, in particular those that will be needed for further proceedings, such as potential reviews of judgments. At the time of reporting, 27 appeal judgments of the International Criminal Tribunal for Rwanda were awaiting translation into Kinyarwanda, along with 10 trial or appeal judgments of the Tribunals into French. Furthermore, the Mechanism trial judgment in the *Stanišić and Simatović* retrial is pending translation into Bosnian-Croatian-Serbian, along with one trial and two appeal judgments of the Mechanism to be translated into French.

180. During the period under review, the Office for Legal Aid and Defence Matters provided administrative and logistical assistance to nearly 150 defence personnel, constituted of 17 remunerated defence teams and 50 pro bono teams. In addition, the Office provided comparable assistance to three amici curiae teams. In so doing, the unit processed 860 invoices for legal aid and 415 travel requests and related expense reports. Throughout the period under review and in the light of the pandemic, the Office maintained frequent communication with all active defence and amici curiae teams, continually offering updates on safety and health measures implemented by the Mechanism, along with any relevant travel advisories. Lastly, the Office ensured that counsel was in place to represent Mr. Kabuga prior to his transfer into the custody of the Mechanism on 26 October 2020. The future workload for the Office is dependent on ongoing judicial activity before both branches of the Mechanism, which

includes legal aid remuneration as well as support for the defence in pro bono post-conviction matters (e.g. early release, potential requests for review of judgment and relocation). The latter has increased over the previous biennium as more and more convicted persons are approaching or passing the date on which they will have served two thirds of their sentences.

181. Another significant accomplishment during the period under review was the launch of the unified court records database on 1 September 2020, after several years in the making. This database, managed by the Judicial Records Unit, is the public interface of the Mechanism's unified judicial database and brings together, for the first time, all public judicial records of the Tribunals and the Mechanism. To allow Internet users easy access to selected judicial records, the Registry has enabled direct access to selected documents for each case through the Mechanism website. To ensure that access to documents can be effectively restricted in case of a reclassification, documents are being provided as a link to the unified court records database, instead of being uploaded to the website. As a result, any change to the classification of a document in the unified court records database will automatically remove that document from the website.

### **C. Policies and regulatory framework**

182. The Registry further strengthened the Mechanism's legal and regulatory framework by revising and updating several important existing policy documents. On 14 May 2021, following close consultation with the Association of Defence Counsel practising before the International Courts and Tribunals and the Prosecutor, and upon approval of the President, the Registrar adopted a revised Code of Professional Conduct for Defence Counsel Appearing before the Mechanism. The Code further clarifies the obligations of counsel and defence team members. The Registrar adopted amendments to three remuneration policies relying on an hourly payment system with a view to limiting monthly maximum remuneration appropriately, namely, on 2 June 2020, the Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the International Residual Mechanism for Criminal Tribunals and, on 12 April 2021, both the Remuneration Policy for Persons Representing Indigent Convicted Persons in Post-Conviction Proceedings, upon Issuance of a Judicial Order Granting Assignment of Counsel at the Expense of the International Residual Mechanism for Criminal Tribunals and the Policy for the Appointment and Remuneration of Amici Curiae Investigators and Prosecutors in Proceedings before the International Residual Mechanism for Criminal Tribunals. Moreover, a Mechanism-specific occupational health and safety policy was adopted by the Registrar on 11 April 2022. In addition, during the period under review, the Mechanism continued its revision of the practice direction on judicial filings, a process that has advanced steadily and is expected to be completed soon. The revised practice direction will include best-practices in relation to the handling of transcripts and audiovisual records related to judicial proceedings.

### **D. Victim and witness protection**

183. In accordance with article 20 of the statute, and as of the date of this the present report, the Registry was responsible for implementing the judicial and non-judicial protective measures granted to 3,150 witnesses who had given evidence in cases before the Tribunals or the Mechanism, as well as those who might yet appear before the Mechanism. Pursuant to judicial protection orders, the Witness Support and Protection Unit provided security for witnesses by, inter alia, undertaking threat assessments and coordinating responses to security-related requirements, in

collaboration with national authorities and other United Nations entities. The Unit also implemented judicial orders concerning requests for the rescission, variation or augmentation of witness protective measures by contacting witnesses subject to such requests. In addition, the Unit facilitated contact between parties and witnesses in relation to ongoing judicial proceedings.

184. Furthermore, the Witness Support and Protection Unit continued to review its internal standards and procedures to ensure the provision of support and protection services to the highest possible standard. In September 2020, the Mechanism adopted a Witness Safety Protocol, governing physical interactions between its staff and witnesses during official Mechanism activities outside the Mechanism premises, to ensure the safety and security of both staff and witnesses in the context of the pandemic.

185. At The Hague branch, the Witness Support and Protection Unit supported judicial activity during the *Stanišić and Simatović* retrial, facilitating the testimony of the six remaining witnesses from 27 August to 9 October 2020. The Unit also enabled the testimony of one witness from 21 February to 5 March 2022 in the *Jojić and Radeta* special deposition proceedings. At the Arusha branch, the Unit supported judicial activity in the *Nzabonimpa et al.* contempt trial, facilitating the movement and testimony of 10 witnesses. Furthermore, the Unit undertook administrative arrangements for witness activity related to the pretrial proceedings in the *Kabuga* case. This included assisting the parties with the certification process in accordance with rule 110 of the Rules of Procedure and Evidence, as well as providing on-the-ground support to facilitate meetings between the parties and the witnesses. Such activities are expected to increase in anticipation of the commencement of trial, which is still subject to judicial determination. Lastly, the Unit continued to provide medical and psychosocial care to victims and witnesses residing in Rwanda, in particular those living with HIV as a result of crimes committed against them during the genocide.

186. The responsibilities of the Witness Support and Protection Unit in relation to the protection of victims and witnesses will be significantly relied upon well into the future, in accordance with judicial protection orders that must continue to be implemented unless rescinded or waived. Specifically, as concerns relocated witnesses, support may be required until the last member of the witnesses' immediate family members has passed away.

## **E. Detention facilities**

187. Persons detained by the Mechanism are housed at the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague while they await trial, appeal or other judicial proceedings before the Mechanism. These facilities also house persons otherwise detained on the authority of the Mechanism, such as convicted persons awaiting designation of an enforcement State.

188. Considering the vulnerability of detained persons, the detention facilities were particularly susceptible to the pandemic during the period under review. Both the United Nations Detention Facility and the United Nations Detention Unit successfully implemented appropriate mitigating measures to reduce the risk of infection of detainees, especially those who fell into a high-risk category because of their age and comorbidities. Those mitigating measures were continuously assessed in consultation with the medical officers of both units.

189. At the beginning of the period under review, the United Nations Detention Facility housed one detainee who was successfully transferred to Senegal in July 2021. Following the departure of this last detainee, the Detention Facility remains operational in anticipation of the possible transfer of Mr. Kabuga from the United Nations

Detention Unit to the Detention Facility. The Detention Facility also maintains custodial capacity, to accommodate potential detained witnesses in the *Kabuga* case, or any other potential detainees who may be transferred to Arusha in future.

190. The United Nations Detention Unit currently houses five detainees. During the period under review, the Unit experienced an unexpected rise in the scale of its operations. In April 2020, it held three detainees, two of whom were successfully transferred to enforcement States that same year or in 2021. Subsequently, two detainees who were previously serving their sentences in an enforcement State returned to the Unit. One of the detainees who had returned from an enforcement State was granted conditional early release in 2021. Following his arrest in France by national authorities in May 2020, and upon order of the Trial Chamber, Mr. Kabuga was transferred to the Unit in October 2020, pending a full medical assessment. The Unit also maintained custodial capacity for Mr. Stanišić and Mr. Simatović, who had been on provisional release, were ordered back to the Unit prior to the issuance of the retrial judgment in their case and may remain in the Unit pending their appeal.

191. Detention facilities in Arusha and The Hague will be required in line with current core trial and appeal projections. It should be noted, however, that some transfers to enforcement States have taken as long as three years, in particular when exequatur proceedings are required. In addition, and as explained above, convicted persons serving their sentences have returned to the detention facilities from enforcement States. The Mechanism will enhance its efforts to plan for future needs in this area.

## F. Supervision of the enforcement of sentences

192. Under the supervision of the President, the Registry continued to support the enforcement of sentences pronounced by the Tribunals and the Mechanism. Sentences are enforced within the territory of Member States that have concluded agreements to that effect or indicated their willingness to accept convicted persons under any other arrangement.

193. At the Arusha branch, at the beginning of the period under review, the Mechanism was supervising the enforcement of 30 sentences in three States.<sup>39</sup> Following the death of three convicted persons<sup>40</sup> and the transfer of one convicted person from the United Nations Detention Facility to Senegal<sup>41</sup> and of three convicted persons from Mali to Senegal,<sup>42</sup> the Mechanism supervises the enforcement of 28 sentences in three States,<sup>43</sup> with no convicted persons remaining at the Facility.

194. At The Hague branch, the Mechanism was supervising the enforcement of 20 sentences in 11 States at the beginning of the period under review,<sup>44</sup> with two convicted persons at the United Nations Detention Unit waiting for transfer to an enforcement State. As of mid-April 2022, the Mechanism supervised the enforcement of 19 sentences in 10 States,<sup>45</sup> with two convicted persons at the Unit currently awaiting transfer to an enforcement State and three persons detained pending the outcome of the judicial proceedings against them. During the period under review, two convicted

<sup>39</sup> Benin (18), Mali (7) and Senegal (5).

<sup>40</sup> Édouard Karemera, on 31 August 2020, Yusuf Muniyazaki, on 12 December 2020, and Théoneste Bagosora, on 25 September 2021.

<sup>41</sup> Mr. Ngirabatware, on 18 July 2021.

<sup>42</sup> Jean Kambanda, Jean de Dieu Kamuhanda and Tharcisse Renzaho on 16 December 2021.

<sup>43</sup> Benin (18), Mali (2) and Senegal (8).

<sup>44</sup> Austria (1), Denmark (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (4), Sweden (1) and the United Kingdom of Great Britain and Northern Ireland (1).

<sup>45</sup> Austria (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (3), Sweden (1) and the United Kingdom (2).

persons were transferred to serve their sentences in enforcement States. A new challenge that arose was that of European enforcement States returning convicted persons to The Hague branch prior to the completion of their sentences, relying on specific provisions in the respective enforcement agreements. This occurred twice during the period under review, and there are indications that it may continue.

195. The Registry has fostered close cooperation with the relevant authorities in the enforcement States with a view to implementing the existing enforcement agreements efficiently. In this connection, it enabled inspections of the relevant prisons by highly reputable international monitoring bodies. The Registry further continued to implement recommendations issued in October 2018 by an expert on ageing prison populations and associated vulnerabilities, in relation to the prison conditions of the convicted persons serving sentences in Benin and Mali.

196. As outlined above, the President issued regular orders instructing the Registry to liaise with the enforcement States to receive information on the COVID-19 situation within the prisons where the convicted persons served their sentences.<sup>46</sup> Accordingly, the Registry increased its regular engagements with enforcement States to ascertain what measures were being taken in their respective prisons to prevent the contraction of the virus. Hence, State-specific information on the COVID-19 situation, including the vaccination status of the detainees at the relevant prisons, has been regularly provided to the President in submissions on the record and by means of internal memorandums. In addition, the Mechanism adopted a detailed COVID-19 response plan for convicted persons in enforcement States, setting out various possible scenarios that could arise in an enforcement State as a result of the pandemic and providing guidance for situations requiring urgent medical attention.

197. The projections for the duration of any enforcement-related activities by the Registry are aligned with those of the President as outlined in paragraph 50.

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

198. In accordance with article 6, paragraph 5, of the statute, the Mechanism is responsible for monitoring cases referred to national courts by the Tribunals and the Mechanism, with the assistance of international and regional organizations and bodies.

199. During the period under review, the Registry continued to support the Mechanism's monitoring of four cases referred to national jurisdictions, ensuring in particular regular communications and exchange of information with the respective monitors.

200. Three cases referred to Rwanda by the International Criminal Tribunal for Rwanda were monitored with the pro bono assistance of the Kenyan Section of the International Commission of Jurists. The referred cases concerned Mr. Ntaganzwa, Mr. Uwinkindi and Mr. Munyagishari. On 28 May 2020, Mr. Ntaganzwa was sentenced to life imprisonment by the High Court of Rwanda. The case is now at the appellate

<sup>46</sup> See Case No. MICT-12-01-ES, Order for COVID-19 Updates from Enforcement States, 24 April 2020 (public redacted version); Case No. MICT-12-01-ES, Second Order for COVID-19 Updates from Enforcement States, 26 June 2020 (public redacted version); Case No. MICT-12-01-ES, Third Order for COVID-19 Updates from Enforcement States, 28 August 2020 (public redacted version); Case No. MICT-12-01-ES, Fourth Order for COVID-19 Updates from Enforcement States, 30 October 2020 (public redacted version); Case No. MICT-12-01-ES, Fifth Order for COVID-19 Updates from Enforcement States, 23 February 2021 (public redacted version); Case No. MICT-12-01-ES, Sixth Order for COVID-19 Updates from Enforcement States, 25 June 2021 (public redacted version); Case No. MICT-12-01-ES, Seventh Order for COVID-19 Updates from Enforcement States, 1 October 2021 (public redacted version); and Case No. MICT-12-01-ES, Eighth Order for COVID-19 Updates from Enforcement States, 1 February 2022 (public redacted version).

stage, with an appeal hearing yet to be scheduled as a result of backlogs caused by the pandemic. In the *Uwinkindi* case, on 24 December 2020, the appeal judgment was delivered by the Court of Appeal of Rwanda, upholding the trial judgment. On 21 January 2021, Mr. Uwinkindi filed a notice for review of the appeal judgment before the Supreme Court of Rwanda. The Supreme Court delivered its review judgment on 25 June 2021, by which it reaffirmed the decision of the Court of Appeal, denied Mr. Uwinkindi's applications for review and brought the Rwandan proceedings to a close. On 7 May 2021, the Court of Appeal of Rwanda upheld the trial judgment in the *Munyagishari* case. On 4 June 2021, Mr. Munyagishari filed a notice for review of the appeal judgment before the Supreme Court of Rwanda. The Supreme Court delivered its review judgment on 25 November 2021, by which it reaffirmed the decision of the Court of Appeal, also bringing the Rwandan proceedings to a close. Both Mr. Uwinkindi and Mr. Munyagishari are currently serving life sentences in Rwanda.

201. The trial proceedings in the case against Mr. Bucyibaruta as referred by the International Criminal Tribunal for Rwanda to France are scheduled to start in May 2022. The Registrar has formally appointed a Mechanism staff member, who previously served as interim monitor, as the monitor in the case.

202. The projections for the duration of activities related to the monitoring of cases referred to national jurisdictions by the Registry are aligned with those of the President as outlined in paragraph 42.

## H. Assistance to national jurisdictions

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

204. During the period under review, the Registry received, and responded to, over 67 requests for assistance. This is equivalent to 6,605 judicial records provided to national authorities or parties and used in domestic proceedings related to the conflict in the former Yugoslavia and the genocide of 1994 against the Tutsi in Rwanda. In The Hague, there was an increased number of requests to vary protective measures ordered in proceedings before the Tribunals or the Mechanism – during the period under review, such requests were received for 13 witnesses. The Registry in The Hague branch has experienced an upsurge in workload due to the high volume of the requests received.

205. The Registry provides guidance to external stakeholders wishing to submit a request for assistance, both on its website and, upon request, through the Judicial Records Unit at both branches. On the basis of the recent increase in requests for assistance, in particular at The Hague branch, the Registry expects that the demand for this type of assistance will continue for the foreseeable future.

## I. Archives and records management

206. In accordance with article 27 of the statute, the Mechanism is responsible for the management of the archives of the Tribunals and the Mechanism, including in relation to their preservation and the provision of access to the public records contained therein. The archives are co-located in the respective branches of the Mechanism and procedures for their management are harmonized across the branches as far as is practical. On 9 March 2022, the Registry successfully migrated all the remaining archives from the Arusha International Conference Centre to the current Mechanism premises.

207. The Mechanism Archives and Records Section currently manages more than 4,000 linear metres of physical records and approximately three petabytes of digital records. During the period under review, the Section continued to transfer digital records into a digital repository that is designed to maintain their long-term integrity, reliability and usability. To date, 325 terabytes of digital records have been transferred. This work will continue in the coming years.

208. Equally, the preservation of audiovisual records is an ongoing activity at both branches. This is a high priority owing to the obsolescence of the audiovisual format and the associated risk of permanent loss. The digitization of recordings and the transfer of the resulting digital versions to the digital repository continue. To date, approximately 75,000 recordings have been ingested, and work to generate publicly accessible copies of recordings will continue in the coming years.

209. The Mechanism Archives and Records Section continued with the preparation of a catalogue of the archives. It expects to complete the cataloguing of the Tribunals archives by 2026. However, this depends on the transfer to the Section of the remaining Tribunal archives still held by other Mechanism offices. The cataloguing of the Mechanism's archives is expected to continue for as long as the Mechanism is in place, with the final archives being catalogued as it liquidates. The launch of the catalogue for the public is expected in June 2023, subject to the availability of funds for external hosting services.

210. The Registry continued to produce physical and online exhibitions featuring materials from the archives, stimulating public interest and underscoring to all stakeholders that the archives remain preserved, accessible and relevant decades after the events that triggered the creation of the Tribunals. As the archives are, by definition, records deemed to be of permanent value, it is imperative that their management be ensured accordingly for the future.<sup>47</sup>

211. The Mechanism Archives and Records Section also continued to provide training and advice on record-keeping for Mechanism staff and administered the Mechanism's Electronic Document and Records Management System. This system supports cross-branch coordination, cooperation and collaboration by enhancing information-sharing and record-keeping practices. It will be available for use by all Mechanism offices to store and manage Mechanism non-judicial digital records. To date, it has been successfully implemented in 10 Mechanism offices and systematic roll-out will continue across the remaining offices of the Mechanism. In addition, the Section facilitated the development of the Mechanism's records retention schedules, which contain instructions for the retention of records according to their administrative, fiscal, legal, historical or informational value. With all retention schedules now finalized, records disposition plans will be created and finalized to ensure the correct disposition of records across the Mechanism and, wherever possible, include time frames.

## **J. Budget and staffing**

212. For the period from 16 April 2020 to 14 April 2022, the Mechanism operated under its annual budgets for 2020 and 2021 and part of its annual budget for 2022. The amounts of \$96,924,500 for 2020 and \$97,519,900 for 2021 were approved by the General Assembly in its resolutions [74/259](#) and [75/249](#), respectively. The gross amount of \$89,690,200 for the budget for 2022 was approved by the Assembly in its resolution [76/243](#).

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<sup>47</sup> See [ST/SGB/2007/5](#), in which "archives" is defined as "records to be permanently preserved for their administrative, fiscal, legal, historical or informational value".

213. The Registry has formulated budget proposals reflecting a decrease in resource levels in line with the completion of judicial proceedings, as well as the implementation of efficiency measures. As a result, significant reductions have been made, in particular at The Hague branch, in relation to both post and non-post resources. The Registrar has implemented a downsizing framework and methodology governing staff reductions commensurate with the completion of judicial proceedings. This framework is assessed and adjusted periodically as proposed by the Mechanism's Joint Negotiating Committee, an advisory body to the Registrar comprised of representatives of both management and the staff union. With regard to reductions in non-post resources, the Registry has identified and implemented measures to reduce its general operating expenses. It continues to maintain these cost reduction measures within its current operations. The experience gained and the efficiencies achieved under the reduced resource levels were incorporated in the Mechanism's budget proposal for 2022.

214. The table below gives an overview of the evolution of the budgets of the Mechanism from 2016 to 2022.

### Evolution of the budgets of the Mechanism, 2016–2022

(Thousands of United States dollars)

	2016–2017	2018–2019	2020	2021	2022
<b>Total</b>	<b>137 404.2<sup>a</sup></b>	<b>196 024.1</b>	<b>96 924.5</b>	<b>97 519.9</b>	<b>89 690.2</b>

<sup>a</sup> In that period, the International Tribunal for the Former Yugoslavia was coexisting with the Mechanism, with a separate budget amount of \$93,187,900. The total budget for both institutions was hence \$230,592,100.

215. As at 31 March 2022, 184 of the 187 approved continuous posts have been filled and carry out the Mechanism's core functions. An additional 281 personnel are serving as general temporary assistance to assist with ad hoc needs, including judicial work. The latter positions are short-term in nature and the number fluctuates depending on the relevant workload. Continuous and general temporary assistance positions at the Mechanism include nationals of 73 States. Even though the Mechanism has met the gender parity goals set by the Secretary-General, with 50 per cent of current staff at the professional level overall being female, efforts are being undertaken to ensure full gender parity across all categories, in both the Arusha and The Hague branches.

216. During the period under review, the Registrar supported a number of initiatives to promote a positive work environment for staff. For example, staff were encouraged to work remotely as a result of the pandemic, until the situation allowed for a return to the premises. On 23 July 2020, soon after his appointment, the Registrar, together with the other principals, organized a town hall for all staff. The principals have since then held three more town hall meetings together. In addition, the Registrar has organized several information sessions, which serve as effective platforms to disseminate information about specific developments and provide a safe space for staff to raise issues of concern with senior management. These efforts have fostered and encouraged open and transparent communication with staff members.

217. Furthermore, the Mechanism continued to support staff with the active engagement of various focal points (on the issues of gender, sexual exploitation and abuse; diversity and inclusion; disability and accessibility; and conduct and discipline). All focal points have been allocated eight hours per month to support this important work. In addition, it encouraged managers and staff to participate in training on unconscious bias, to ensure fairness during recruitment and performance management. Lastly, following the issuance of the occupational health and safety

policy, a committee was established with the mandate to coordinate and oversee the implementation of said policy.

218. The Registrar further supported visits to the Mechanism by both the Ombudsman and Ethics Offices as additional channels for staff to raise any concerns. Steps were also taken to support staff on psychosocial issues through the implementation of an employee assistance programme, a confidential external programme that provides counselling and advising services to staff members and their households on emotional, financial, legal and other issues. Additional support for staff was provided through a workshop on secondary trauma. Furthermore, as of the second quarter of 2022, Mechanism staff have the opportunity to participate in the Well-being Platform of the World Food Programme. Unfortunately, owing to the pandemic, the Mechanism was unable to hold its usual award ceremony for staff members eligible for the United Nations Long Service Award in person during the reporting period. Regardless, the Mechanism is very proud of the 63 staff members who have received the award for a period of service of between 10 and 30 years with the United Nations and looks forward to resuming the practice of holding a ceremony for its dedicated staff in this regard.

## **K. Administration**

219. The Division of Administration of the Registry has continued to provide high-quality support to ensure the continuity of the Mechanism's operations.

220. A particular focus during the period under review was to support the management of the pandemic. To that end, the Mechanism established the COVID-19 Management Team in February 2020, which is chaired by the Chief Administrative Officer and composed of senior representatives of the Mechanism's three organs, including the section chiefs of the Registry. The Team met regularly and shared updates on COVID-19 developments within the United Nations system, as well as within the Mechanism's duty stations and field offices. In addition, the Team developed the Mechanism's governance framework (including policies and measures in response to the health crisis) and discussed and coordinated strategic initiatives, such as the return of all staff to the Mechanism premises.

221. In July 2020, as it became clear that the pandemic would last longer than initially thought, the Mechanism principals decided that they would benefit from having a smaller committee to articulate strategic priorities, further develop the governance framework and review proposals from the COVID-19 Management Team. Accordingly, they established the COVID-19 Steering Committee, composed of senior advisors to the principals. The Committee met regularly, steering the Mechanism's response to the pandemic.

222. As an international tribunal, with responsibilities towards accused persons, as well as victims and witnesses, ensuring business continuity without risking the health and safety of its staff and other people during the entirety of the pandemic remained a key concern for the Mechanism. In this respect, the Division of Administration was instrumental in implementing facility alterations to ensure that physical distancing was possible on all Mechanism premises and in facilitating remote working for all staff whose duties allowed for telecommuting. The Division also ensured that the judges and staff at the Arusha branch were able to benefit from the United Nations System-Wide Task Force on Medical Evacuations in Response to COVID-19, which was established in mid-2020 and set up COVID-19 medical evacuation operation centres. Unfortunately, the Mechanism was required to avail itself of their services six times.

223. During the initial stage of the pandemic, the Mechanism maintained a reduced presence of between 30 and 50 per cent of staff members on site. This number fluctuated depending on in-court judicial activity. When, in September 2021, most of the staff

members at all duty stations had an opportunity to be fully vaccinated, the Mechanism principals set the strategic policy of a full return to the office, exempting staff members with exceptional medical conditions. While a full return was the overarching goal, the Mechanism's management demonstrated flexibility in the implementation of the return policy by considering the different COVID-19 situations at the various duty stations. In December 2021, as a result of the rapid spread of the Omicron variant of COVID-19, a decision was made to revert to a remote-working approach until the end of February 2022, by which point the daily number of new cases was assessed by management to be at a level of little risk to the Mechanism staff and operations.

224. In the context of the pandemic, the Mechanism relied heavily on the critical services provided by the Information Technology Services Section, the Facilities Management Unit, the Security and Safety Section and the Medical Unit. These sections materially assisted in enabling and maintaining the pace of judicial activities during the pandemic.

225. In particular, the Information Technology Services Section supported the Mechanism's work by developing and implementing an innovative, cross-branch infrastructure allowing for remote presence for standard office work as well as for complex and technology-intensive judicial proceedings and the sensitive virtual plenary of judges. In particular, in addition to providing audio and video communications, as well as facilitating simultaneous interpretation, the Section enabled the electronic presentation of evidence, real-time language transcription and secure private communication between counsel and accused persons, ensured the implementation of witness protection measures and enhanced security to ensure confidentiality.

226. Other measures taken by the Division of Administration concerned the modification of the physical premises to support hygiene measures and physical distancing, the amendment of security practices to promote health protection and the ramping up of medical services through policy support, staff counselling, medical evacuation and contact tracing. Those services successfully provided the means by which staff could continue to perform their functions at an optimum level while protecting their health and safety.

227. Beyond the pandemic-related measures, the Registry engaged in more general activities aimed at improving the health and safety of its staff and affiliated personnel and ensuring that the facilities remain fit for purpose. Those activities included engagement with the host country of The Hague branch on the renovation of the premises, which was acquired by the host country in 2018. The host country estimates that the renovation will commence by 2025 and be completed by 2029. At the Arusha branch, the Mechanism is currently in the process of conducting a sustainability study aimed at providing direction in optimizing energy, water, waste management and materials, such as generators, water pumps and firefighting system. Slight modifications and improvements to the premises were completed during the period under review. The Mechanism would like to take this opportunity to reiterate its appreciation for the support received from the respective host countries, the Netherlands and the United Republic of Tanzania.

228. Essential administrative support was also provided by the Mechanism field offices in Kigali and Sarajevo. This included, for example, the transportation of witnesses to one of the seats of the Mechanism and facilitating requests for judicial assistance submitted by national jurisdictions.

## L. External relations activities

229. In addition to the functions and responsibilities above, the Registry, through the External Relations Office, engaged in a number of activities in support of the Mechanism's mandate. These activities included informing the public about the Mechanism's work, responding to media enquiries and facilitating access by stakeholders during major judicial hearings and other judicial activities. In addition, the Office developed and implemented external relations activities in relation to various stakeholders, primarily aimed at communities in the former Yugoslavia and in Rwanda, for example, the Mechanism's Information Programme for Affected Communities, which is funded by the European Union and Switzerland. The implementation of the external relations strategy covering the period from October 2020 to the end of 2021 resulted in increased visibility of the Mechanism through expanded social media campaigns, including the annual commemoration of international days recognized by the United Nations. Lastly, in view of the ongoing pandemic, the Office digitalized many of its activities, allowing for continued access and visibility of Mechanism activities to the public.

## VI. Relocation of acquitted and released persons

230. The present section addresses the Mechanism's efforts throughout the period under review to find a durable solution to the relocation of acquitted persons and convicted persons who had completed serving their sentences, in accordance with resolution [2529 \(2020\)](#), and provides an update on the turn of events that was first communicated to the Security Council by the President on 19 January 2022 (see [S/2022/36](#)).

231. As the Council may recall,<sup>48</sup> until December 2021, the situation of the aforementioned individuals had reached an impasse. From 2004, the United Republic of Tanzania generously permitted those acquitted or released to remain on its territory temporarily, pending their relocation to another country. From that period on, the United Nations has been responsible for their security, well-being, and maintenance.

232. In July 2020, soon after his appointment, the Registrar prepared and implemented an ambitious, multifaceted strategy aimed at securing the relocation of the nine remaining acquitted or released persons. His strategy at all stages reflected numerous consultations with the acquitted or released persons and the Member States in which they had family links. As part of the strategy, and alongside his many other responsibilities at the Mechanism, the Registrar identified numerous potential relocation States, taking into account language and geographical considerations and the previous efforts of the International Criminal Tribunal for Rwanda and the Mechanism. The Registrar contacted representatives in over 10 Member States and was able to personally meet with more than five senior officials, sharing detailed, updated profiles and the overall plight of each acquitted or released person for their review. Notwithstanding several non-committal responses and unforeseen complications with the onset of the pandemic, the Registrar maintained his commitment to resolving this quagmire once and for all.

233. Following 18 months of exhaustive diplomatic efforts, the Registrar succeeded in identifying a potential relocation State, the Niger, for all nine acquitted or released persons. Following a meeting with the Head of State and detailed negotiations with government officials, the Relocation Agreement between the Niger and the United Nations was concluded and signed on 15 November 2021.

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<sup>48</sup> See resolutions: [1995 \(2011\)](#); [2029 \(2011\)](#); [2054 \(2012\)](#); [2080 \(2012\)](#); [2194 \(2014\)](#); [2256 \(2015\)](#); [2422 \(2018\)](#); and [2529 \(2020\)](#). See also [S/PRST/2018/6](#) and [S/PRST/2020/4](#).

234. Relying on the Relocation Agreement, and with the consent of the acquitted or released persons, the Mechanism transferred eight of the nine individuals from the United Republic of Tanzania to the Niger on 6 December 2021. The ninth person declined the offer to relocate to the Niger owing to health concerns and remains in the United Republic of Tanzania.

235. On 13 December 2021, the Niger, as Chair of the Security Council, welcomed the report of the President on the successful relocation. Two weeks later, however, the relocated persons were presented with an order expelling them from the Niger “for diplomatic reasons”. This expulsion order made no reference to the Relocation Agreement. Under article 6 of the Agreement, in the event that the Niger deemed it necessary to take any measures against the relocated persons, it was under an obligation to inform and consult the Registrar.

236. On 28 December 2021, the Registry was informed of the expulsion order by the acquitted or released persons. Since then, the Mechanism has taken a number of steps, in both the judicial and diplomatic spheres, towards finding a collective resolution to the situation and protecting the rights of the relocated persons. The Registry, in particular, has had to redirect its limited resources, both human and financial, to the finding of a suitable relocation State. Similarly, the judicial activity triggered by this matter has required significant time, efforts and attention from the judges and staff involved, who are simultaneously working towards the completion of core judicial work.

237. On 29 December 2021, the relocated persons filed several motions claiming that the Niger might not honour its commitments in the Relocation Agreement. On 30 December 2021, the President immediately assigned the incoming motions to the relevant duty judge, who, upon consideration of the situation, issued an order directed to the Niger the very next day, 31 December 2021, followed by further orders to the Niger on 14 January, 7 February and 8 March 2022.<sup>49</sup>

238. Pursuant to article 28 of the statute concerning State cooperation, the order of the duty judge requested that the Niger, inter alia: (a) stay the expulsion order and allow the relocated persons to remain on its territory in accordance with the terms of the Relocation Agreement, pending the final adjudication of this matter;<sup>50</sup> (b) continue to execute and apply all provisions of the Agreement, in full compliance with their letter and spirit, and ensure the safety and welfare of the relocated persons;<sup>51</sup> and (c) ensure that the relocated persons have their identification documents returned and enjoy freedom of movement on its territory, in accordance with article 5 of the Agreement.<sup>52</sup>

239. Expressing the view that the situation was “a crisis” that had “turned into a possible human rights violation and turned the rule of law and the norm where States adhere to

<sup>49</sup> See the following cases from the Residual Mechanism: *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-13-43, Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions, 31 December 2021, p. 3; *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Further Order to the Republic of Niger and to the Registrar, 14 January 2022, para. 22; *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Decision on Motions regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch, 7 February 2022, para. 30; *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Further Decision regarding the Relocated Persons in Niger, 8 March 2022, p. 4 (reiterating an earlier order to the Niger).

<sup>50</sup> Residual Mechanism, *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-13-43, Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions, 31 December 2021, p. 3.

<sup>51</sup> *Ibid.*, *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Further Order to the Republic of Niger and to the Registrar, 14 January 2022, para. 22.

<sup>52</sup> *Ibid.*

treaties on its head”,<sup>53</sup> the duty judge ordered the Registrar to take all measures necessary to return the relocated persons to the Arusha branch of the Mechanism on a temporary basis in line with the Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals.<sup>54</sup> On the basis of the position of the United Republic of Tanzania on the nature of its obligations towards acquitted or released persons, the duty judge considered that the relocated persons had exhausted all appropriate and available judicial relief and that the primary avenue for redressing this situation lay with the Mechanism’s political, diplomatic and administrative efforts.<sup>55</sup>

240. This decision by the duty judge is currently under appeal, and the Appeals Chamber expects to render its decision in the near future. Regardless of the outcome, the Mechanism continues to receive submissions from the relocated persons concerning their status in the Niger, and further recourse to the Mechanism’s judicial forums can be expected until the underlying issues are finally resolved.

241. In addition to giving rise to judicial activity, the present matter continues to affect the sections of the Mechanism that support such activity and to divert resources away from existing cases. At the conclusion of the period under review, the Registry had processed no fewer than 103 separate filings and 75 translations in this case.

242. The Registrar immediately commenced to intervene at the diplomatic level and continues to date to strategize and lead the Mechanism’s efforts to resolve this predicament.<sup>56</sup> Accordingly, the Registrar is using his good offices in diplomatic efforts with more than 30 Member States to encourage the Niger to comply fully with its obligations under the Relocation Agreement. Simultaneously, the Registry has redoubled its endeavours to identify other relocation States in the event that further relocation may be necessary. The Registrar maintains regular contact with the Niger concerning this matter and, together with the President, has sought the support of the Security Council and other stakeholders in impressing upon the Niger the need to adhere fully to both the letter and the spirit of the Relocation Agreement. In addition, the Registry has designated a focal point who can be contacted by the relocated persons.<sup>57</sup>

243. Notwithstanding the efforts already undertaken by a number of Member States, the Secretariat and others contributing to the goals of the United Nations, the situation remained unresolved at the time of reporting. In addition to the Mechanism’s mandated activities, this predicament presents a major increase in the Mechanism’s workload. The Mechanism respectfully reiterates its request for support to the Security Council in impressing upon the Niger the need to adhere fully to both the letter and the spirit of the Relocation Agreement. The Mechanism would also welcome any other support or guidance from the Council that is deemed appropriate under the current circumstances.

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<sup>53</sup> Residual Mechanism, *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Decision on Motions regarding the Relocation Agreement with the Niger and Order for Transfer of the Relocated Persons to the Arusha Branch, 7 February 2022, paras. 20, 21 and 25.

<sup>54</sup> *Ibid.*, para. 30. See also Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals, dated 26 November 2013.

<sup>55</sup> Residual Mechanism, *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Further Decision regarding the Relocated Persons in Niger, 8 March 2022, pp. 2 and 4.

<sup>56</sup> See, for example, Residual Mechanism, *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-13-43, Instruction to the Registrar, 30 December 2021.

<sup>57</sup> See [S/2022/36](#).

## VII. Evaluation and audits

### A. Summary

244. The Mechanism takes very seriously the need to complete its residual functions in an efficient and effective manner and values the role that the oversight bodies play in assisting management to do so. During the period under review, the Mechanism's practices continued to be under close scrutiny. Not only did OIOS perform its biennial evaluation of the methods and work of the Mechanism in preparation for the current mandate review, but the OIOS Internal Audit Division performed a number of audits of specific sections or topics. Separately, the Board of Auditors conducted its regular annual audit.

### B. Office of Internal Oversight Services

245. The Mechanism continued its work with OIOS on the evaluation of the Mechanism's methods and work. The Mechanism is grateful to the evaluation team for the important insights gained from its findings and recommendations in assisting the Mechanism with successfully fulfilling its mandate in a timely and effective manner.

246. The Mechanism was particularly satisfied with OIOS finding that it had achieved major accomplishments towards the completion of its mandate during the period under review. OIOS highlighted in this regard that, first, three landmark judgments had been delivered, and, second, that with the arrest of Mr. Kabuga and the confirmation of the death of Mr. Bizimana, all but one fugitive to be tried by the Mechanism were accounted for.<sup>58</sup>

247. The general objective of the evaluation exercise carried out in the fourth quarter of 2021<sup>59</sup> was to follow up on the implementation of open recommendations following two prior evaluations.<sup>60</sup> The focus of the review remained on the four open recommendations, with other issues that might have emerged subsequently out of its scope.

248. The overall result of the evaluation was the full closure of two of the four open recommendations by OIOS. Markedly, no new recommendations have been issued. In addition, the Mechanism notes with satisfaction the recognition by OIOS that significant efforts have been made and accomplishments achieved with regard to the two remaining recommendations, despite the fact that the period under review was marked by the pandemic.

249. The Mechanism is also pleased that, in its report, the evaluation team identified the many positive practices that the Mechanism implemented during the period under review. Generally, the findings demonstrate the Mechanism's commitment to implementing the recommendations and to successfully and concretely moving towards the completion of its important judicial mandate. In respect of the detailed treatment of the recommendations by OIOS, the Mechanism notes the following.

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<sup>58</sup> S/2022/148, para. 11.

<sup>59</sup> S/2022/148.

<sup>60</sup> S/2018/206 and S/2020/236.

## 1. Fully implemented recommendations

### (a) Recommendation: Support and strengthen staff morale through conduct of a survey to identify key concerns to manage downsizing and upsizing

250. The Mechanism is pleased to observe that, despite unexpected demands encountered by staff during the height of the pandemic, OIOS assessed that this recommendation had been fully addressed, noting, however, that there should be an ongoing focus on staff morale in the face of further downsizing. The Mechanism attaches the utmost importance to fostering high staff morale, while acknowledging that concerns related to long-term job security exist in all downsizing institutions. These anxieties are amplified when contracts are linked to annual budgets, as is the case for the Mechanism. The Mechanism has mitigated such concerns to the greatest extent possible by instigating a fair and transparent downsizing process, developed in consultation with staff representatives. This process has been praised by the OIOS Internal Audit Division and identified as a best practice. Furthermore, the principals held regular town hall meetings and information sessions in order to enhance open and transparent communications with staff, which were particularly relevant during the pandemic, considering the impact that the health crisis has had on both the personal and professional lives of all staff.

### (b) Recommendation: Provide clear and focused projections of completion timelines of judicial activities

251. The Mechanism is pleased to report that OIOS closed this recommendation. The evaluation team considered the methodologies developed and employed to project and manage the progressive completion of the ad hoc judicial activities to be comprehensive and effective. The evaluation team also noted that the methodologies were successfully employed in revising projections on account of unforeseen events, such as the illness of an accused or the general disruption caused by the pandemic. This reaffirms the flexibility and reliability of the strategies employed by the Mechanism in discharging its mandate.

## 2. Recommendations in progress

### (a) Recommendation: Develop scenario-based workforce plans to enhance responsiveness to a surge in workload

252. In its assessment, OIOS recognized the Mechanism's proactive planning, execution and ultimately successful response to the arrest of a fugitive. This included the tracking of Mr. Kabuga, the participation in his apprehension, securing his transfer and the near conclusion of the pretrial phase of the proceedings against him. This was a major accomplishment for the Mechanism towards the completion of its mandated judicial activities. It demonstrates that the Mechanism has the resilience and capacity to position itself effectively to fully respond to sudden changes in activity and workload.

253. In its evaluation report, OIOS observed the successful development of a concept note as a basis for the institution-wide scenario-based workforce plan. While the concept note does not delve into detailed scenarios and plans, it constitutes a solid foundation based on the collective understanding of all three organs on which all future scenario planning can be constructed. The note establishes a comprehensive inventory of all the mandated functions of the Mechanism, fully referencing the legislative sources of those functions, as well as their implementing frameworks. The note also includes some functions the timing of which cannot fully be determined at this point. For those, an attempt has been made to provide reasonable planning assumptions about workload over different time periods. The development of the note represents the collective vision of all three organs necessary to forecast and develop all future scenarios.

254. In particular, OIOS also observed that the Mechanism had developed and adopted methodologies to adhere to the judicial calendar for trials and appeals. Those methodologies take into account a complex array of scenarios, planning assumptions and adjustments for unforeseeable events. In its conclusion, OIOS affirmed that the Mechanism had developed adequate tools to analyse the implications of different scenarios for its ad hoc judicial functions, to establish actionable plans to mitigate risk and to respond to changes in workload, with a view to ensuring the completion of judicial activities in as short a time frame as possible.

255. While the Mechanism regrets that the final scenario-based workforce plan has not been submitted yet, it notes that the exercise fell during a period of very high workload, during which the limited senior management capacity needed to be directed to intense prosecutorial and judicial activity, the presentation of the budget submission before the General Assembly and its subcommittees, the conduct of a full review by the Board of Auditors and the response to the dynamic situation of the pandemic. It is expected that this exercise will be fully completed in due course.

- (i) *Subrecommendation: Ensure geographical diversity and gender balance of staff, while ensuring continued professional expertise*

256. The Mechanism is pleased that OIOS reported on the Mechanism's successes in striving for the geographical diversity and gender balance of staff, while ensuring continued professional expertise. The Mechanism particularly appreciates the conclusion reached by OIOS that it has succeeded in managing geographical diversity by maintaining a workforce that is reflective of 71 different nationalities. In addition, OIOS noted in its report that the proportions of staff nationalities from Africa and Western European and other States corresponded to the location of the two branches of the Mechanism in Arusha and The Hague, respectively.

257. In its report, OIOS also recognized the importance that the Mechanism placed on reaching the target of gender parity and noted the monthly tracking of gender parity captured on a dashboard accessible to all staff with figures disaggregated by duty station, category of staff and organ. As the Mechanism conducts its downsizing exercises, it will continue in its efforts to attain cross-branch gender parity across categories and at all levels.

- (ii) *Subrecommendation: Continue implementation of a human resources policy consistent with its temporary mandate*

258. OIOS found that flexible general temporary assistance staffing mechanisms were successfully employed to respond to short-term requirements and fluctuating workload, consistent with the temporary nature of the Mechanism. In terms of downsizing, the Mechanism agrees with the statement by OIOS that any downsizing needs to be applied with due consideration for ongoing operational requirements of the long-term administration of justice.

- (iii) *Subrecommendation: Further reduction of costs, including through, but not limited to, flexible staff engagement*

259. The evaluation team confirmed that the Mechanism had employed strategies to leverage flexible staff engagement, pivoting human resources to where they were most required and relying on limited-term appointments to fulfil its mandate of a small and efficient structure, further noting that the Mechanism had undergone significant downsizing, with the Registry bearing the greatest impact.

**(b) Recommendation: Systematic thinking and a shared vision of institution-building**

260. The Mechanism notes that the implementation of this recommendation is closely linked to the implementation of the recommendation on the development of a scenario-based workforce plan addressed above. In that respect, a working group consisting of senior advisers from each of the three organs has been established with the task of creating and periodically updating the scenario-based planning. This group operates under the auspices of the principals, who own the overall process, ensuring the embodiment of their views on systematic thinking and a shared vision of institution-building in the process.

261. However, OIOS assessed that, already, the establishment of the cross-organ Steering Committee successfully promoted more cross-branch and cross-organ coordination and harmonization at the Mechanism and that, overall, the Mechanism's response to the pandemic ensured both staff safety and health, as well as business continuity.

262. OIOS also found that the unification and formalization of reporting lines in the External Relations Office optimized its efficiency and effectiveness, improving coordination across the respective organs.

**C. Audits**

263. During the period under review, the OIOS Internal Audit Division issued two audit reports. In the first report, an audit of management of translation and interpretation services at the Mechanism, OIOS found that the Mechanism had accumulated a backlog of translations of judgments and decisions and was having trouble meeting the deadlines that had been agreed with internal clients. OIOS noted that the significant cuts to the translation and interpretation budget in 2018–2019 had required that earlier plans to address the backlog be set aside to allow for the focus to remain on ongoing activities, in particular judicial proceedings. OIOS issued four important recommendations, namely, implementing performance monitoring tools to improve compliance with internal deadlines, preparing a new action plan to address the backlog of translations, improving the internal tracking and monitoring of translation requests and structurally receiving feedback from clients in order to improve performance continuously. Of those recommendations, the last three have been implemented, and the remaining recommendation is under implementation.

264. The second audit report issued during the reporting period was an audit of the response of the Mechanism to the pandemic. OIOS found that the Mechanism had implemented satisfactory measures in response to the pandemic and that it had strengthened its governance mechanisms to ensure proper oversight of the response. In addition, OIOS found that the Mechanism had implemented effective measures to minimize delays to the judicial proceedings, ensured that convicted persons in enforcement States were monitored with regard to their COVID-19-related situations and used remote work arrangements that facilitated business continuity when many staff members were working off-site in line with host country recommendations. OIOS issued three important recommendations, namely, strengthening business continuity contingency planning, improving support for the psychological well-being of staff members and ensuring that lessons learned during the health crisis were systematically documented. Of those recommendations, the third has been implemented, and the first two are under implementation.

265. Furthermore, in the previous reporting period, OIOS had conducted an audit of the enforcement and monitoring of sentences of convicted persons at the Mechanism, which had resulted in a strictly confidential OIOS report, containing one recommendation. The

draft implementation of that recommendation is currently under review with a special representative of the Secretary-General in one of the enforcement States. The Registry continues to take measures to implement the recommendation.

266. As of April 2022, OIOS was conducting an audit of the management of judicial records and court support activities at the Mechanism. A final report from that audit is expected for May 2022.

267. Lastly, OIOS undertook a horizontal assessment of the management of data classification and data privacy at the Mechanism. Detailed results and recommendations were issued in July 2020 in the form of an advisory opinion, which the Mechanism has taken under advisement.

## VIII. Conclusion

268. The period under review was characterized by the delivery of three judgments, in the cases of *Mladić, Stanišić and Simatović* and *Nzabonimpa et al.*, as well as the long-awaited arrest of Mr. Kabuga and the termination of proceedings against another fugitive, Mr. Bizimana. At the time of reporting, the Mechanism retained on its docket the *Kabuga* case, as well as the appeal proceedings in the *Stanišić and Simatović* case and the *Fatuma et al.* contempt case. The Mechanism looks forward to concluding the latter proceedings in June 2022.

269. These results have been accomplished during a very trying biennium. Having to operate in a virtual and physically distanced world has meant great shifts in the way the Mechanism works as a whole. Throughout the period, the Mechanism continued to implement the Security Council's vision of a small, temporary and efficient organization. It remained focused on optimizing the use of its limited resources by further streamlining operations and enhancing its "one Mechanism" approach.

270. Significant steps were also taken to advance the remainder of the Mechanism's mandated and longer-term functions. These other residual responsibilities are no less important and require sustained efforts and resources alike. Supervising the enforcement of over 45 sentences ensures that the Mechanism continues to serve justice and fully implement the mandate entrusted to it by the Security Council. Failure to provide that oversight would jeopardize the Mechanism's reputation as a just institution and undermine the authority of its work. Ensuring the protection of witnesses who appeared before the Tribunals and the Mechanism encourages more people to come forward and appear as witnesses before other courts involved in the fight against impunity. Failing to ensure their protection will guarantee the opposite result. Preserving the archives ensures that the role of the Mechanism and its predecessors is understood by the general public and that their work remains accessible and, more importantly, an indisputable historical record. Failing to preserve them invites revisionist narratives and denial of the suffering endured by the peoples of Rwanda and the countries of the former Yugoslavia.

271. Crucial to this success has been the ongoing backing provided by Member States in key areas, such as cooperation and the enforcement of sentences, and support that started when the Tribunals were operational and which has endured long after the completion of core trials and appeals. The Mechanism recalls that the consistent and steadfast cooperation of all Member States is essential if its weighty responsibilities are to be fulfilled to the highest possible standards. It will also prove critical to the resolution of the situation of the acquitted persons and convicted persons who have completed their sentences.

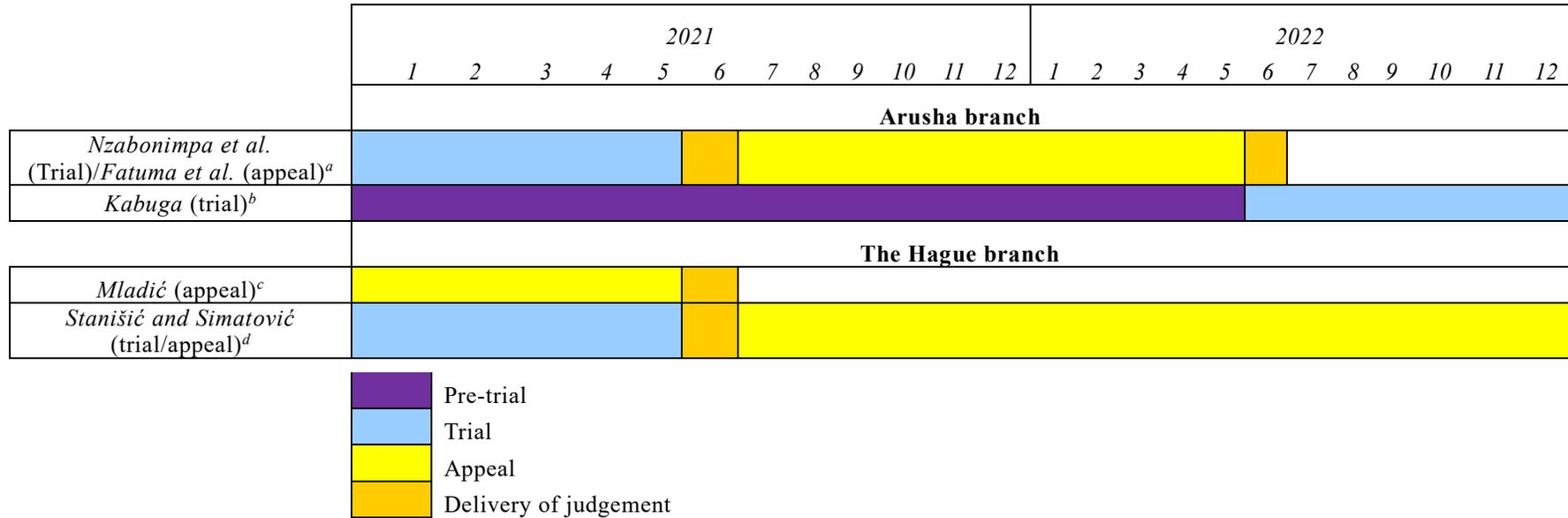
272. The present report is a fitting testament to the Mechanism's resilience and determination, as well as to the hard work of its dedicated principals, judges and staff.

The Mechanism takes this opportunity to sincerely thank and acknowledge the valuable contributions of the enforcement States, the Office of Legal Affairs and other offices of the United Nations, as well as the United Republic of Tanzania and the Netherlands, together with key stakeholders, such as Rwanda and the States of the former Yugoslavia, and regional organizations, including the European Union.

273. As was the case during the period under review, the Mechanism will continue to make every effort to complete its mandate as expeditiously as possible. In this regard, the Mechanism is eager to work constructively with the Security Council and its Informal Working Group on International Tribunals on a fruitful review of the progress of its work.

## Enclosure I

**Status of trial and appeal proceedings of the International Residual Mechanism for Criminal Tribunals, 2021–2022, based on information available as at 11 April 2022 and subject to change**



<sup>a</sup> The contempt trial judgement in the *Nzabonimpa et al.* (formerly *Turinabo et al.*) case was pronounced in June 2021 and filed in writing in September 2021. The prosecution and Ms. Fatuma filed their notices of appeal in October 2021, and the appeal in the *Fatuma et al.* case is expected to conclude with the delivery of the appeal judgement in June 2022.

<sup>b</sup> At the time of reporting, the trial was expected to commence by June 2022.

<sup>c</sup> The appeal judgement was delivered in June 2021.

<sup>d</sup> The trial judgement was pronounced in June 2021 and filed in writing in August 2021. All three parties to the case appealed against the judgement, and appeal proceedings are expected to conclude by June 2023.

## Enclosure II

### Judgments, orders and decisions issued by the International Residual Mechanism for Criminal Tribunals as at 14 April 2022

#### I. President

##### A. Orders of the President assigning a single judge or bench

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	10	9	43	30	42	28	16	19	15	12	5	229
The Hague	–	16	27	31	54	45	42	32	23	21	10	301
<b>Total</b>	<b>10</b>	<b>25</b>	<b>70</b>	<b>61</b>	<b>96</b>	<b>73</b>	<b>58</b>	<b>51</b>	<b>38</b>	<b>33</b>	<b>15</b>	<b>530</b>

##### B. Orders and decisions of the President on enforcement

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	2	1	5	1	5	10	32	7	15	24	2	104
The Hague	–	2	13	18	16	14	14	15	17	21	3	133
<b>Total</b>	<b>2</b>	<b>3</b>	<b>18</b>	<b>19</b>	<b>21</b>	<b>24</b>	<b>46</b>	<b>22</b>	<b>32</b>	<b>45</b>	<b>4</b>	<b>236</b>

##### C. Orders and decisions of the President related to cases referred to national jurisdictions

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	2	2	4	4	4	6	–	–	–	–	–	22
The Hague	–	–	–	–	–	–	–	–	–	–	–	–
<b>Total</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>6</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>22</b>

##### D. Orders and decisions of the President (other)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	2	5	2	–	3	2	8	32	11	8	3	76
The Hague	–	–	1	1	7	10	27	6	9	2	–	63
<b>Total</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>10</b>	<b>12</b>	<b>35</b>	<b>38</b>	<b>20</b>	<b>10</b>	<b>3</b>	<b>139</b>

## II. Appeals Chamber

### A. Appeal or review judgments

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	–	–	1	–	–	–	–	1	–	–	–	2
The Hague	–	–	–	–	–	–	1	1	–	1	–	3
<b>Total</b>	<b>–</b>	<b>–</b>	<b>1</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>1</b>	<b>2</b>	<b>–</b>	<b>1</b>	<b>–</b>	<b>5</b>

### B. Orders and decisions of the Appeals Chamber related to review proceedings

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	1	–	1	4	11	30	28	38	–	–	–	113
The Hague	–	–	–	3	1	–	1	–	1	–	–	6
<b>Total</b>	<b>1</b>	<b>–</b>	<b>1</b>	<b>7</b>	<b>12</b>	<b>30</b>	<b>29</b>	<b>38</b>	<b>1</b>	<b>–</b>	<b>–</b>	<b>119</b>

### C. Orders and decisions of the Appeals Chamber (other)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	2	11	9	9	10	2	8	13	–	6	6	76
The Hague	–	–	8	5	48	46	83	24	35	19	4	272
<b>Total</b>	<b>2</b>	<b>11</b>	<b>17</b>	<b>14</b>	<b>58</b>	<b>48</b>	<b>91</b>	<b>37</b>	<b>35</b>	<b>25</b>	<b>10</b>	<b>348</b>

## III. Trial Chambers and single judges

### A. Trial or contempt judgments

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	–	–	–	–	–	–	–	–	–	1	–	1
The Hague	–	–	–	–	–	–	–	–	–	1	–	1
<b>Total</b>	<b>–</b>	<b>2</b>	<b>–</b>	<b>2</b>								

### B. Orders and decisions of the Trial Chambers related to trial proceedings

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	–	–	–	–	–	–	–	–	13	42	11	66
The Hague	–	–	–	5	31	114	108	93	59	19	–	429
<b>Total</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>5</b>	<b>31</b>	<b>114</b>	<b>108</b>	<b>93</b>	<b>72</b>	<b>61</b>	<b>11</b>	<b>495</b>

**C. Orders and decisions of the Trial Chambers related to cases referred to national jurisdictions**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	–	–	–	12	–	–	–	5	–	–	–	17
The Hague	–	–	–	–	–	–	–	–	–	–	–	–
<b>Total</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>12</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>5</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>17</b>

**D. Three-judge panels**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	–	–	–	–	–	–	–	–	–	–	–	–
The Hague	–	–	–	–	–	–	–	1	1	–	–	2
<b>Total</b>	<b>–</b>	<b>1</b>	<b>1</b>	<b>–</b>	<b>–</b>	<b>2</b>						

**E. Orders and decisions of single judges related to witness protection measures**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	5	3	27	18	27	6	2	12	6	5	2	113
The Hague	–	22	32	41	54	54	33	31	25	51	16	359
<b>Total</b>	<b>5</b>	<b>25</b>	<b>59</b>	<b>59</b>	<b>81</b>	<b>60</b>	<b>35</b>	<b>43</b>	<b>31</b>	<b>56</b>	<b>18</b>	<b>472</b>

**F. Orders and decisions of single judges related to the commencement of proceedings on contempt of court and false testimony**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	–	1	2	–	21	7	31	105	101	61	2	331
The Hague	–	1	3	–	5	2	13	24	11	20	2	81
<b>Total</b>	<b>–</b>	<b>2</b>	<b>5</b>	<b>–</b>	<b>26</b>	<b>9</b>	<b>44</b>	<b>129</b>	<b>112</b>	<b>81</b>	<b>4</b>	<b>412</b>

**G. Orders and decisions of single judges (other)**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 (as at 14 April)	Total
Arusha	1	5	7	17	47	21	10	4	6	4	8	130
The Hague	–	1	8	10	19	9	23	7	3	4	–	84
<b>Total</b>	<b>1</b>	<b>6</b>	<b>15</b>	<b>27</b>	<b>66</b>	<b>30</b>	<b>33</b>	<b>11</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>214</b>

**IV. Total****A. Total judgments: 7****B. Total orders and decisions**

	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022 (as at 14 April)</i>	<i>Total</i>
Arusha	25	37	100	95	170	112	135	235	167	162	38	1 276
The Hague	–	42	92	114	235	294	344	233	184	157	35	1 730
<b>Total</b>	<b>25</b>	<b>79</b>	<b>192</b>	<b>209</b>	<b>405</b>	<b>406</b>	<b>479</b>	<b>468</b>	<b>351</b>	<b>319</b>	<b>73</b>	<b>3 006</b>

## Enclosure III

### **Public legal and regulatory instruments and policies promulgated by the Mechanism, as at 14 April 2022**

#### **A. Rules of Procedure and Evidence**

- Rules of Procedure and Evidence (MICT/1/Rev.7), 4 December 2020
- Practice Direction on the Procedure for the Implementation of Rule 110 (B) of the Rules of Procedure and Evidence (MICT/15/Rev.1), 4 January 2019
- Practice Direction on Procedure for the Proposal, Consideration, and Publication of Amendments to the Rules of Procedure and Evidence of the Mechanism (MICT/16/Rev.2), 24 May 2018

#### **B. Judges**

- Code of Professional Conduct for the Judges of the Mechanism (MICT/14/Rev.1), 9 April 2018

#### **C. Judicial activities**

- Practice Direction on the Use of the Electronic Court Management System (MICT/21/Rev.1), 20 February 2019
- Practice Direction on Lengths of Briefs and Motions (MICT/11/Rev.1), 20 February 2019
- Practice Direction on Requirements and Procedures for Appeals (MICT/10/Rev.1), 20 February 2019
- Practice Direction on Formal Requirements for Requests for Review of Administrative Decisions (MICT/9/Rev.1), 20 February 2019
- Practice Direction on Filings Made before the International Residual Mechanism for Criminal Tribunals (MICT/7/Rev.3), 4 January 2019
- Interim Procedures on Restricted Access Filings [Rev.1], 4 January 2019

#### **D. Enforcement of sentences**

- Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism (MICT/3/Rev.3), 15 May 2020
- 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

#### **E. Victims and witnesses**

- Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses (MICT/40), 26 November 2019

- 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

## **F. Archives and records**

- Access Policy for the Records Held by the International Residual Mechanism for Criminal Tribunals (MICT/17/Rev.1), 4 January 2019

## **G. Office of the Prosecutor**

- Prosecutor's Regulation No. 2 (2013): Requests for Assistance by National Authorities or International Organisations to the Prosecutor (MICT/13), 29 November 2013
- Prosecutor's Regulation No. 1 (2013): Standards of Professional Conduct of Prosecution Counsel (MICT/12), 29 November 2013

## **H. Defence**

- Code of Professional Conduct for Defence Counsel Appearing before the Mechanism and Other Defence Team Members (MICT/6/Rev.1), 14 May 2021
- Directive on the Assignment of Defence Counsel (MICT/5), 14 November 2012
- Remuneration Policy for Persons Representing Indigent Accused: Revised Amounts as of January 2022, 1 January 2022
- Hourly Rates Applicable to Defence Teams as of January 2022, 1 January 2022
- Remuneration Policy for Persons Representing Indigent Convicted Persons in Post-Conviction Proceedings, upon Issuance of a Judicial Order Granting Assignment of Counsel at the Expense of the International Residual Mechanism for Criminal Tribunals, 12 April 2021
- Policy for the Appointment and Remuneration of Amici Curiae Investigators and Prosecutors in Proceedings before the International Residual Mechanism for Criminal Tribunals, 12 April 2021
- Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the International Residual Mechanism for Criminal Tribunals, 2 June 2020
- Remuneration Policy for Persons Representing Indigent Accused in Pre-Trial Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Representing Indigent Accused in Trial Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019

- Remuneration Policy for Persons Assisting Indigent Self-Represented Accused before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Guidelines for Determining the Extent to Which an Applicant for Legal Aid is Able to Remunerate Counsel, 13 November 2017
- Guidelines on the Submission of Hourly Invoices and Remunerable Activities for Assistants to Self-Represented Accused, 25 May 2016
- Guidelines on the Submission of Hourly Invoices and Remunerable Activities, November 2015

## **I. Translation and interpretation**

- Code of Ethics for Interpreters and Translators Employed by the International Residual Mechanism for Criminal Tribunals (MICT/20/Rev.1), 4 January 2019
- Policy on Interpretation (MICT/18/Rev.1), 4 January 2019
- Policy on Translation for the Conduct of Judicial Activity of the International Residual Mechanism for Criminal Tribunals (MICT/22), 5 April 2018
- Guidelines for Requesting and Working with Interpretation Services (MICT/19), 2 November 2017

## **J. Detention**

- Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism, adopted on 5 November 2018, entered into force on 5 December 2018
- Regulations on the Complaints Procedure for Detainees (MICT/25), 5 December 2018
- Regulations on the Disciplinary Procedure for Detainees (MICT/24), 5 December 2018
- Regulations on the Supervision of Visits to and Communications with Detainees (MICT/23), 5 December 2018