



Security Council

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Letter dated 18 November 2019 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 assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, pursuant to paragraph 16 of Security Council resolution [1966 \(2010\)](#).

I should be grateful if you would transmit the present letter and its annexes to the Security Council.

(Signed) Carmel Agius
President



Annex I

[Original: English and French]

Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Carmel Agius, for the period from 16 May 2019 to 15 November 2019

1. The present report, the fifteenth in a series, is submitted pursuant to Security Council resolution [1966 \(2010\)](#), by which the Council established the International Residual Mechanism for Criminal Tribunals and, in paragraph 16 of that resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Council on the progress of the work of the Mechanism.¹ Certain information contained in the present report is also submitted pursuant to paragraph 20 of Council resolution [2256 \(2015\)](#) and paragraph 9 of Council resolution [2422 \(2018\)](#).

I. Introduction

2. The International Residual Mechanism was established by the Security Council to carry out a number of essential residual functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, which closed in 2015 and 2017, respectively. As set forth below, those residual functions include a wide range of judicial activities, enforcing sentences of persons convicted by the two Tribunals or the Mechanism, bringing to trial the remaining fugitives indicted by the International Criminal Tribunal for Rwanda, monitoring cases referred to national jurisdictions, responding to requests for assistance from national jurisdictions, protecting victims and witnesses who gave evidence before the Tribunals and the Mechanism and managing and preserving the archives of the three institutions.

3. In accordance with article 3 of the statute of the Mechanism (see Security Council resolution [1966 \(2010\)](#), annex 1), the Mechanism comprises two branches: one located in Arusha, United Republic of Tanzania, and the other in The Hague, Netherlands. The branch in Arusha commenced operations on 1 July 2012, assuming functions derived from the International Criminal Tribunal for Rwanda, while the branch in The Hague commenced operations on 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia. Following the closure of the latter Tribunal on 31 December 2017, the Mechanism became a fully fledged and self-standing institution on 1 January 2018.

4. Pursuant to Security Council resolution [1966 \(2010\)](#), the Mechanism was tasked to operate for an initial period of four years and, subsequently, for periods of two years, following reviews of its progress, unless the Council decides otherwise. The most recent such review, being the second review by the Council of the progress of the Mechanism's work, was undertaken in 2018, concluding with the issuance on 27 June 2018 of Council resolution [2422 \(2018\)](#). The Council will undertake its third review of the Mechanism's progress in 2020. In the meantime, the Office of Internal Oversight Services (OIOS) commenced a further evaluation of the methods and work of the Mechanism in October 2019, which will carry over into early 2020.

5. During the reporting period, with regard to the core judicial activity, the Mechanism's first review hearing was successfully conducted in *Prosecutor v. Augustin Ndirabatswe* and the Appeals Chamber issued its review judgment in September

¹ Unless otherwise specified, figures discussed in this report are accurate as at 15 November 2019.

2019. Work in the ongoing trial proceedings of *Prosecutor v. Jovica Stanišić and Franko Simatović* and appeal proceedings of *Prosecutor v. Ratko Mladić* continued apace, and both cases were on track for completion at the end of 2020. The pretrial phase in the multi-accused contempt case of *Prosecutor v. Maximilien Turinabo et al.* proved again to be extremely active, and a related indictment for contempt of court against Augustin Ngirabatware was confirmed in October 2019. Numerous other judicial matters had been disposed of, including those related to protective measures, the enforcement of sentences and possible instances of contempt.

6. In addition to the judicial work, as detailed in the present report, the Mechanism made strong headway in its other mandated functions and continued to refine its legal and regulatory framework and to implement the existing recommendations of OIOS. Each organ made efforts to ensure that its activities were carried out as effectively and efficiently as possible. To that end, the principals and management throughout the reporting period continued to focus on identifying ways in which the practices and procedures of the Mechanism's two branches could be further harmonized and streamlined. A number of initiatives were implemented in the months prior to the present report, with further efficiencies to be introduced.

7. The Mechanism is indeed committed to concluding the above-mentioned existing judicial work and fulfilling all other aspects of its mandate as efficiently and effectively as possible, bearing in mind the need to ensure due process and the fundamental rights of the accused and convicted persons subject to its jurisdiction. The Mechanism wishes to clarify, however, that it will not be closing down upon completion of the current caseload. This is because it has been mandated by the Security Council to carry out numerous other residual functions that will, by their very nature, extend into the foreseeable future unless the Council decides otherwise. Having said that, the Mechanism remains cognizant of the nature of its mandate as a judicial institution, and in particular the Council's vision, as set out in its resolution [1966 \(2010\)](#), of a small, temporary and efficient structure, whose functions and size would diminish over time, with a small number of staff commensurate with its reduced functions.

8. Wherever possible, the present report reflects detailed projections of the duration of residual functions entrusted to the Mechanism, in accordance with Security Council resolutions [2256 \(2015\)](#) and [2422 \(2018\)](#). Such projections are based on current data and, as a consequence, may be subject to modification in the event of evolving circumstances.

II. Structure and organization of the Mechanism

A. Organs and principals

9. Article 4 of the statute of the Mechanism provides that the Mechanism shall consist of three organs: the Chambers; the Prosecutor; and the Registry, to provide administrative services for the Mechanism. The respective workloads of the Chambers and the Registry are discussed below.

10. In accordance with its statute, the Mechanism has a single set of principals – the President, the Prosecutor and the Registrar – who have responsibility over the Mechanism's branches in Arusha and The Hague. The President is the institutional head and highest authority of the Mechanism, responsible for the overall execution of its mandate, appointing judges to cases, presiding over the Appeals Chamber and carrying out other functions specified in the Mechanism's statute and Rules of Procedure and Evidence. The Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute of the Mechanism, while the

Registrar has overall responsibility for the administration and servicing of the institution.

11. The President of the Mechanism, Judge Carmel Agius, who took office on 19 January 2019, is based in The Hague, while the Prosecutor, Serge Brammertz, and the Registrar, Olufemi Elias, are based in Arusha. The current terms of all three principals run until 30 June 2020.

B. President

12. During the reporting period, and in line with his previously stated priorities, President Agius remained focused on the timely and efficient conclusion of the Mechanism's existing judicial proceedings, harmonizing practices and procedures between the Mechanism's two branches and fostering high staff morale and performance. In those respects, he continued to manage the roster of judges and oversee the work of Chambers, worked closely with the Prosecutor and Registrar on cross-cutting priorities and operational issues and consulted regularly with management and the staff union in order to stay abreast of staffing concerns.

13. As detailed below, under the leadership of the President, a number of measures were introduced during the reporting period with a view to streamlining working methods across branches and thereby optimizing efficiency. Alongside these harmonization efforts, the President and other principals focused throughout the reporting period on the Mechanism's 2020 budget request, which was submitted earlier in 2019. Approval of that request would allow the Mechanism to conclude much of the existing judicial work in 2020 and position itself for a lean post-2020 scenario.

14. The President, together with the other principals and staff union, also worked to address the results of staff surveys undertaken earlier in 2019 on discrimination, sexual harassment, harassment and abuse of authority, as outlined below. In addition, as a member of the International Gender Champions network with the other principals, the President continued in his efforts to take action on gender issues, providing full support for the activities of the Mechanism's focal points for gender and actively raising staff awareness of the Secretary-General's bulletin of September 2019 on discrimination, harassment, including sexual harassment, and abuse of authority ([ST/SGB/2019/8](#)).

15. President Agius visited the Arusha branch in early November 2019, where he spent time with staff members, met with section chiefs and assessed in person the progress of the harmonization initiatives under way. He and the Registrar hosted a town hall meeting with Arusha-based staff during which they answered questions on staffing and budgetary issues. A similar meeting with section chiefs of the branch in The Hague, as well as a town hall for all staff based in The Hague, would be held in the coming weeks. While in the United Republic of Tanzania, the President took the opportunity of carrying out an official mission to Dar es Salaam, where he met with high-level government officials as well as members of the diplomatic corps.

16. Earlier in the reporting period, the President and other principals travelled to Sarajevo for the purpose of participating in the Fourth International Conference on Stopping Genocide and Holocaust Denial, held on 20 and 21 June 2019. In July 2019, the President returned to Bosnia and Herzegovina to attend the twenty-fourth commemoration of the Srebrenica genocide. He also undertook missions to New York in July and October 2019 for the purposes of presenting the Mechanism's fourteenth progress report to the Security Council and seventh annual report to the General Assembly, respectively. Both missions to New York included bilateral meetings with Member States and high-level representatives of the United Nations and, in October,

the President met with the Secretary-General and the President of the General Assembly, among others.

C. Judges

17. Article 8 (1) of the statute of the Mechanism provides that the Mechanism shall have a roster of 25 independent judges. Pursuant to article 8 (3) of the statute, the judges shall only be present in Arusha or The Hague when necessary, as requested by the President, and insofar as possible will otherwise carry out their functions remotely. According to article 8 (4) of the statute, Mechanism judges are not remunerated for being on the roster, but rather receive compensation only for the days on which they exercise their functions.

18. As at 19 July 2019, the Mechanism had only 24 judges on its roster, following the resignation on that date of Judge Ben Emmerson (United Kingdom of Great Britain and Northern Ireland), whose term of office was to conclude on 30 June 2020. The Mechanism takes this opportunity to thank Judge Emmerson for his sterling contributions to the Mechanism since 2012. In accordance with the established practice at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, which has been followed at the Mechanism, the State of the nationality of the Judge to be replaced will nominate another candidate (see, for example, [S/2019/107](#)). The Mechanism therefore looks forward to welcoming, as soon as possible, another judge from the United Kingdom of Great Britain and Northern Ireland to serve the remainder of Judge Emmerson's term of office.

19. The current roster of Mechanism judges comprises (in order of precedence): Judge Carmel Agius, President (Malta), Judge Theodor Meron (United States of America), Judge Jean-Claude Antonetti (France), Judge Joseph E. Chiondo Masanche (United Republic of Tanzania), Judge William Hussein Sekule (United Republic of Tanzania), Judge Lee G. Muthoga (Kenya), Judge Alphons M.M. 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 (Gambia), Judge Seon Ki Park (Republic of Korea), Judge José Ricardo de Prada Solaesa (Spain), Judge Gberdao Gustave Kam (Burkina Faso), 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) and Judge Claudia Hoefler (Germany). The current terms of office of all judges will expire on 30 June 2020.

20. Further to the successful in-person plenary of judges held in March 2019 in Arusha, in October 2019 President Agius convened a "remote plenary" of judges by written procedure, which was ongoing as at the date of the present report. Such plenaries provide the judges of the Mechanism with an important opportunity to discuss together issues pertaining to the work of Chambers and the legal framework, including proposed amendments to the Rules of Procedure and Evidence of the Mechanism, as well as other current priorities of the institution.

21. Pursuant to his discretion under article 12 (2) of the statute of the Mechanism, the President continued to assign on an alternating basis Judge William Sekule (United Republic of Tanzania) and Judge Vagn Prüsse Joensen (Denmark) as duty judges at the Mechanism's Arusha branch. As previously reported, that decision maximizes efficiency, since both judges reside in United Republic of Tanzania and

their assignment as duty judge is remunerated only to the extent that they exercise judicial functions in that capacity.

D. The branches

22. Article 3 of the statute of the Mechanism states that the Mechanism shall comprise two branches: one located in Arusha and the other in The Hague. The Mechanism continues to enjoy excellent cooperation with both host States, in accordance with the headquarters agreement in place for each branch.

23. While its operations are split across two continents and two time zones, the Mechanism is mindful that it must operate as a single, unified institution if efficiencies are to be optimized. During the reporting period, the President, together with the other principals, continued to emphasize to management and staff the vital importance of greater inter-branch coordination and uniform working methods. As a result, in the months prior to the present report, a number of initiatives were introduced to further harmonize practices and procedures between the two branches. Notably, after seven years, a unified filing system – the judicial database – for both branches was finally launched, the public components of which would also be accessible to those using the Mechanism’s website; a Judicial Records and Court Operations Unit was created in Arusha to operate alongside its existing counterpart in The Hague; and a duty roster of staff in Arusha was likewise established to enable both branches to react to any urgent and unforeseen matters that may arise. In addition, the President encouraged the External Relations Office to develop a more cohesive and coordinated strategy across both branches. Finally, staff members at the Arusha branch were covered by the Mechanism’s flexible work arrangements policy, which previously had been available only to staff in The Hague.

24. The new premises of the Arusha branch had been in use since 5 December 2016. Having been reconfigured during the previous reporting period to better accommodate both single-accused and multi-accused cases, the courtroom was successfully used in the reporting period for status conferences in the *Turinabo et al.* case, as well as the review hearing in the *Ngirabatware* case and the initial appearance in the *Ngirabatware* contempt case. Regarding the construction of the premises as a whole, and as previously reported, the Mechanism remains focused on the appropriate recovery of direct and indirect costs arising from errors and delays where economically feasible to do so, pursuant to General Assembly resolution 73/288. It continued to implement remedial works, particularly in relation to technical defects in the archives building where 95 per cent of the archives holdings of the Arusha branch are housed. The Mechanism is grateful to the United Republic of Tanzania for its generous and steadfast support throughout this construction project.

25. In The Hague, the Mechanism and the International Tribunal for the Former Yugoslavia shared premises until the closure of the Tribunal on 31 December 2017. As previously reported, the host State acquired the premises in April 2019, which would allow the Mechanism to remain in its current location. Since then, negotiations had commenced with the host State on the future lease, which would take into account the Mechanism’s reduced occupancy requirements. The Mechanism is equally grateful for the long-standing commitment and outstanding support of the Netherlands for its work and activities.

26. In addition to its branches in Arusha and The Hague, the Mechanism has two field offices. Its field office in Kigali continued to provide essential support to the Registry, the Office of the Prosecutor (the Prosecution) and the Defence in relation to the ongoing contempt proceedings in the *Turinabo et al.* case, the review proceedings in the *Ngirabatware* case and the new *Ngirabatware* contempt case, as well as

providing support in relation to requests for assistance from national jurisdictions. The Kigali field office also continued to provide protection and support services to witnesses, including liaising with relevant national and local governmental bodies on these issues and providing medical and psychosocial services to witnesses through its medical clinic. Furthermore, it facilitated the activities of the monitors of cases of the International Criminal Tribunal for Rwanda that had been referred to Rwanda, pursuant to article 6 of the statute of the Mechanism.

27. The field office in Sarajevo continued to provide essential support to witnesses in relation to the ongoing *Stanišić and Simatović* case. It also continued to provide protection and support services to witnesses who had previously been called to appear before the Tribunal or the Mechanism and to liaise with national and local authorities on these issues. The Sarajevo field office further facilitated requests for variation of protective measures of witnesses in support of national prosecutions of individuals allegedly implicated in the conflicts in the former Yugoslavia.

E. Administration, staffing and budget

28. The Mechanism's administration has staff working across branches and field offices to provide the Mechanism with the full spectrum of administrative services needed.

29. As at 1 November 2019, 175 of the 186 approved continuous posts were occupied to carry out the Mechanism's continuous functions. An additional 452 personnel were serving as general temporary assistance to assist with ad hoc needs, including judicial work. Those positions were short-term in nature and, consistent with the flexible staffing structure of the Mechanism, the number of such staff would fluctuate depending on the relevant workload. Details concerning the staffing of the Mechanism by division are reflected in enclosure 1.

30. The Mechanism's continuous and general temporary assistance positions included nationals of 77 States: Algeria, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, China, Congo, Croatia, Cuba, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Egypt, Ethiopia, Fiji, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Kenya, Latvia, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Malta, Mexico, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Rwanda, Senegal, Serbia, Sierra Leone, Singapore, South Africa, Spain, Sudan, Sweden, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yemen, Zambia and Zimbabwe.

31. Averaged across the two branches, 52 per cent of professional staff members at the Mechanism were female, which the Mechanism is pleased to note is in line with the Secretary-General's gender parity goals and marks an increase of two per cent from the previous reporting date. However, when general and field services staff are also taken into account, the average percentage of female staff unfortunately remained lower, with a total of 45 per cent overall. The Mechanism recognizes that, despite the limitations imposed by its nature as a downsizing institution, there remains room for improvement in this regard.

32. As a result, during the reporting period, the principals, together with the staff union and the focal points for gender, continued to explore ways in which gender issues could be addressed, and made conscious efforts to reach parity wherever possible. For instance, the Security and Safety Section at the Arusha branch, where roughly 75 per cent of the staff was male, hired and trained 40 female security

officers. While most were recruited on a temporary basis in the light of ad hoc court activity, these Officers represented a significant group of qualified female security personnel who could be recruited by the Mechanism or other United Nations entities if and when future needs required. The Mechanism's focal points for gender were active in recruitment processes generally, where they provided parity-related feedback to the hiring managers. They also launched a training programme for Mechanism staff in The Hague on integrating a gender perspective into professional life.

33. Furthermore, with respect to the elimination of harassment, including sexual harassment, the Mechanism adopted the Code of Conduct to Prevent Harassment, Including Sexual Harassment, at United Nations System Events.² In addition, work was under way on a Mechanism-specific policy on harassment, including sexual harassment, which incorporates the above-mentioned bulletin of September 2019. Such work will be important in addressing the disturbing results of staff surveys on discrimination, sexual harassment, harassment, and abuse of authority that were released earlier in 2019 and mentioned in the Mechanism's previous progress report.³ In line with the above-mentioned bulletin of September 2019, the Registrar has already designated a focal point and alternate for conduct and discipline, who will provide advice and support on these matters.

34. Besides the above-mentioned focal points, the Mechanism has in place dedicated focal points for sexual exploitation and abuse issues; diversity and inclusion issues, including lesbian, gay, bisexual, transgender and intersex issues; and disability and accessibility issues, to provide information and address possible matters that may arise in the workplace. In May 2019, Arusha staff participated in mandatory diversity and inclusion workshops. The same training for staff in The Hague commenced in November 2019. These learning modules address inter alia disability, sexual orientation and gender identity, and substance misuse, in relation to United Nations workplace policies and practices.

35. Finally, in order to acknowledge and thank its dedicated staff members, the Mechanism held ceremonies in Arusha and The Hague for those eligible for Long Service Awards, conferred on United Nations staff in recognition of their continued service within the United Nations common system. At ceremonies timed to coincide with United Nations Day on 24 October 2019, numerous staff members at both branches received awards for periods of service of between 10 and 25 years. The Mechanism is extremely proud of all those who received an award and thanks them for their outstanding service and commitment to the Mechanism and its predecessor Tribunals, and to the values and mission of the United Nations.

36. Regarding budget, the Mechanism continued to operate during the reporting period under its revised and significantly reduced budget for the biennium 2018–2019 (\$196,024,100 gross). It is recalled that this budget was approved by the General Assembly by resolution [72/258 B](#), thereby replacing the commitment authority that the Assembly had initially granted in its resolution [72/258](#), in an amount not to exceed \$87,796,600 gross for the maintenance of the Mechanism from 1 January to 31 December 2018.

37. It is further recalled that, in order to implement the General Assembly's decisions, the Registry developed an expenditure reduction plan and a streamlined downsizing policy for exigent circumstances, through which efficiencies and cost

² See <https://www.un.org/codeofconduct>.

³ See [S/2019/417](#), para. 14; and www.ccisua.org/wp-content/uploads/2019/02/CCISUA-prohibited-conduct-survey-results-report.pdf.

savings were achieved and a considerable number of general temporary assistance positions were abolished.

38. Subsequently, the Registrar adopted a general downsizing policy on 26 June 2018 to implement staff reductions following the completion of judicial proceedings. The general downsizing policy built upon the lessons learned during the downsizing at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia and was updated periodically to guide further downsizing of staff in 2020 and beyond as existing judicial proceedings were envisaged to come to an end.

39. The experiences gained and efficiencies achieved while operating under reduced resource levels were incorporated in the Mechanism's budget proposal for 2020. The Mechanism refers in this respect to the report of the Secretary-General containing the proposed budget ([A/74/355](#) and [A/74/355/Corr.1](#)), which was before the Advisory Committee on Administrative and Budgetary Questions. The Advisory Committee's recommendations on the Mechanism's budget would subsequently be communicated to the General Assembly for its review and approval.

40. Details and a breakdown of the Mechanism's costs, presented in terms of funds committed, are set forth in enclosure 2.

F. Legal and regulatory framework

41. In addition to its statute, the Mechanism has developed over the years a legal structure governing its activities, which comprises its Rules of Procedure and Evidence as well as Practice Directions and other internal policies. During the reporting period, the Mechanism continued to develop rules, procedures and policies that harmonize and build upon the best practices of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, as well as its own practice, in order to more efficiently and effectively carry out its mandate.

42. In particular, the President continued to review proposals by the Registrar to update the Code of Professional Conduct for Defence Counsel Appearing before the Mechanism. That document had been in force since November 2012, and the proposed amendments aimed to further clarify the obligations of defence counsel and support staff. In addition, consultations between the President and Registrar were ongoing in relation to the proposed new Practice Direction, to be issued by the Registrar, relating to the support and protection of victims and witnesses. The Practice Direction was in the process of finalization by the Registrar, taking into consideration further feedback from the President. This draft Practice Direction regulates the Registry's witness management operations and incorporates gender-sensitive and gender-appropriate approaches. Gender considerations would also be reflected in lower-level instruments that continued to be reviewed and amended, as required, as would considerations arising from above-mentioned bulletin of September 2019.

43. Furthermore, the President worked on formulating improvements to the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism, and would seek inputs from the Prosecutor and Registrar on proposed amendments in due course.

44. The legal and regulatory instruments, policies, internal guidelines and operating procedures in effect at the Mechanism provide important clarity and transparency for stakeholders across a broad range of the Mechanism's mandated functions.

III. Judicial activities

45. Throughout the reporting period, the Mechanism was once more seized of a number of complex judicial matters, many of which had been ongoing since the previous reporting period. The President and the judges continued to engage in a wide variety of judicial activity, issuing 1 review judgment and 262 decisions and orders. In accordance with article 8 (3) of the statute of the Mechanism, judicial activity was primarily carried out remotely. As at the present reporting date, all of the judges on the roster were collectively supported by a Chambers team of 25 staff, comprising 21 legal staff and 4 administrative assistants, serving at both branches of the Mechanism.

46. Of the 262 decisions and orders issued during the reporting period, 162 (or approximately three in five) related not to the adjudication of the core crimes enumerated in the statute of the Mechanism but to the adjudication of requests pertaining to the protection of victims and witnesses, assistance to national jurisdictions, enforcement of sentences and investigation and trial of allegations of false testimony or contempt, as well as the management of the work of Chambers and the judicial review of administrative decisions.

47. Chambers leadership continued to employ streamlined working methods and processes within Chambers and, in collaboration with other sections of the Mechanism, to further facilitate the maintenance of an efficient and transparent one-office work environment that draws on the resources at both branches to address judicial workload wherever arising. Moreover, the judges, whose legal backgrounds are roughly evenly split between civil and common law, continued to draw on their expertise and knowledge in the adjudication of the various matters to which they were assigned.

48. With respect to the core crimes enumerated in the statute of the Mechanism, during the reporting period the judges continued their work on a trial, appeals and a request for review, as set forth below.

49. In the *Stanišić and Simatović* case, the trial commenced on 13 June 2017 and the Prosecution case concluded on 21 February 2019. On 9 April 2019, the Trial Chamber dismissed Mr. Simatović's request for judgment of acquittal. The pre-Defence conference was held on 29 May 2019, and the Defence case commenced on 18 June 2019. The *Stanišić* Defence concluded the presentation of its evidence in October, and the *Simatović* Defence began presenting its evidence on 12 November 2019. According to the presiding judge, it was anticipated that the case would be concluded and the trial judgment delivered by the end of 2020. Depending on the outcome of the trial, appeal proceedings may follow. At the current stage of the proceedings, the three judges on the bench in the case were carrying out their work at the seat of the Mechanism in The Hague.

50. The appeal proceedings in the *Mladić* case remained ongoing. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia issued its judgment against Ratko Mladić, finding him guilty of genocide, crimes against humanity and violations of the laws or customs of war and sentencing him to life imprisonment. Both Mr. Mladić and the Prosecution appealed the judgment. Citing the extraordinary breadth and complexity of the case, the length of the trial judgment, the lack of Defence resources and intended medical and legal filings, Mr. Mladić requested the Appeals Chamber to extend the deadlines for the briefing process. The Appeals Chamber partly granted the requests, allowing a total of 210 days of extensions of time. The briefing of the appeals brought by both parties concluded on 29 November 2018 and the appeals were being prepared for a hearing. Following disqualification motions brought by Mr. Mladić, three judges were disqualified from the bench in the case on 3 September 2018, owing to the appearance of bias, and were replaced. However, the replacement of the judges had not delayed the proceedings

and it remained anticipated that the *Mladić* case would be concluded and the appeal judgment delivered by the end of 2020. Apart from the presence of the presiding judge during status conferences, all of the judges on the bench in the *Mladić* case were carrying out their work remotely. Two status conferences were held during the reporting period, on 13 June 2019 and 3 October 2019. The next status conference had been scheduled for 30 January 2020.

51. On 27 September 2019, the Appeals Chamber delivered its review judgment in the *Ngirabatware* case. The Appeals Chamber rejected Mr. Ngirabatware's attempt to show in review proceedings that the four key witnesses underpinning his convictions for direct and public incitement to commit genocide and instigating and aiding and abetting genocide had truthfully recanted their trial testimonies. The Appeals Chamber decided that the appeal judgment against Mr. Ngirabatware, sentencing him to 30 years of imprisonment for these crimes, remained in force. The review hearing was held from 16 to 24 September 2019 at the Arusha branch of the Mechanism, as projected in the previous progress report. The Appeals Chamber heard six witnesses, including the four recanting witnesses, as well as oral arguments from the parties. This was the first use of the courtroom at the Arusha branch for evidentiary hearings. The judges in the *Ngirabatware* case were present at the seat of the Arusha branch for a two-week period to hear evidence, deliberate and deliver the review judgment, but otherwise worked remotely during the pre-review phase of the case.

52. While the review hearing in the *Ngirabatware* case was the first such hearing before the Mechanism, it was not the first request for review of an appeal judgment and will not be the last. Nevertheless, the Mechanism observes the high threshold elaborated in the review judgment, where the Appeals Chamber stated that "it will not lightly disturb on review a trial chamber's credibility assessment, which was subjected to appellate review, based on a witness's subsequent conduct occurring ... years after their original testimony" and that "an applicant bears a heavy burden in showing that the conduct of a witness, occurring significantly post trial testimony, taints their original testimony".⁴

53. In addition to the above proceedings relating to core crimes enumerated in the statute of the Mechanism, during the reporting period the Mechanism was seized of seven matters pertaining to allegations of false testimony or contempt. Notably, a single judge continued to conduct intensive pretrial proceedings in the multi-accused *Turinabo et al.* case, which related to allegations of interference with the *Ngirabatware* case. The five accused persons pleaded not guilty to all counts at their initial appearance on 13 September 2018. Two status conferences were held during the reporting period, on 4 June 2019 and 2 October 2019, respectively. The trial, which originally had been scheduled to commence on 7 October 2019, was postponed following the Prosecution's request in September 2019 to substantially amend the indictment, in order to allow proper consideration of the matter by the single judge. It was anticipated that the trial in the *Turinabo et al.* case would now commence in the first half of 2020 and conclude by December 2020.

54. Furthermore, on 10 October 2019 a single judge confirmed an indictment against Mr. Ngirabatware, which also concerned allegations of interference in his review case. Mr. Ngirabatware pleaded not guilty at his initial appearance on 17 October 2019 and the Prosecution requested that the *Ngirabatware* contempt case be joined to the *Turinabo et al.* case. This request was being considered by the single judge. The Mechanism notes that if the two contempt cases were joined, the anticipated start date of the *Turinabo et al.* case could be affected.

⁴ *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Review Judgment of 27 September 2019, para. 63.

55. The *Jojić and Radeta* contempt case, which had been 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 on 12 June 2018. The *amicus curiae* prosecutor in the case appealed against the order of referral. On 12 December 2018, the Appeals Chamber found that the *amicus curiae* prosecutor had not raised before the single judge the issue of the unwillingness of the witnesses to testify if the case is tried in Serbia and remanded the matter for consideration of further submissions on the issue. On 13 May 2019, the single judge issued a decision revoking the referral order and requesting Serbia to transfer Petar Jojić and Vjerica Radeta 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 4 June 2019, Serbia appealed the single judge's decision, and it was anticipated that the Appeals Chamber would issue its decision on the matter before the end of 2019.

56. During the reporting period, the President, pursuant to his authority in the area of enforcement of sentences, continued to deal with a large number of enforcement matters, including those related to the early release of convicted persons. He adjudicated three early release matters⁵ and continued to give priority to the nine remaining applications that predated his tenure, by actively soliciting a range of relevant information to assist in his determinations. In reaching his decisions on early release, the President consulted judges of the relevant sentencing Chamber who were judges of the Mechanism, as applicable, pursuant to rule 150 of the Rules of Procedure and Evidence of the Mechanism. If none of the judges who imposed the sentence were judges of the Mechanism, the President consulted at least two other judges. As mentioned in the previous report, the President had also engaged in consultations with other stakeholders, as appropriate, in an attempt to ensure greater transparency and to more fully consider the broader impacts of early release. In addition, he had taken into account paragraph 10 of Security Council resolution 2422 (2018), in which the Council encouraged the Mechanism to consider putting in place conditions on early release and, as noted above, he was elaborating potential changes to the relevant Practice Direction.

57. The President issued a total of 55 orders and decisions during the reporting period, including 5 orders and decisions related to requests for review of administrative decisions, 14 related to detention matters and 14 related to enforcement matters. Furthermore, the President issued 22 assignment orders, of which there were 16 assignments to single judges, 1 to a Trial Chamber and 5 to the Appeals Chamber. To the extent possible, in assigning matters to judges, the President endeavoured to ensure an equitable distribution of work, giving due consideration also to geographical representation and gender, as well as possible conflicts of interest arising from previous assignments.

58. With regard to the projections for case completion indicated above, it should be noted that, as provided by the respective presiding judges, these estimates may be affected by unforeseen events during the course of proceedings, such as the replacement of counsel, the disqualification of judges or the illness of an accused person. All projections therefore remain subject to periodic updating based on any new information, and yet the judges and chambers leadership remain fully committed to identifying measures to expedite pending cases and conclude them as soon as

⁵ *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted version); *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release, 7 August 2019; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted version).

possible. In that regard, the Mechanism recalls that the 12 May 2016 evaluation report by OIOS indicated, with respect to cases of the International Tribunal for the Former Yugoslavia, that any changes based on the requirements of a just resolution of a case should not be construed necessarily to reflect slippage in the conduct of the case and that accurate predictions as to completion can only be made at the close of a trial or at the conclusion of briefing on appeal (see [A/70/873-S/2016/441](#), para. 29).

59. With respect to projections for judicial activities other than trials and appeals from judgment, the Mechanism notes that it has a continuing obligation to safeguard the administration of justice. In that regard, its duty to investigate and prosecute allegations of false testimony or contempt, subject to the provisions of article 1 (4) of the statute, will continue until its closure.

60. The Mechanism recalls more broadly the observations made in the report of the Secretary-General of 21 May 2009 that “it is not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgments, referral cases and pardon and commutation of sentences will arise” but that “such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals ... and that the level of work involved ... will inevitably decrease over time” (see [S/2009/258](#), para. 102). Indeed, it is anticipated that such requests will continue to be filed for as long as cases continue to be investigated and prosecuted in domestic jurisdictions, persons convicted by the two Tribunals or the Mechanism continue to serve their sentences, and any of the victims and witnesses who testified before these institutions remain in need of protection.

61. It is therefore important to bear in mind that the Security Council has tasked the Mechanism with a range of residual judicial functions that will continue long after the existing caseload has been concluded. Likewise, certain of the Mechanism’s non-judicial mandated functions, including the management and preservation of archives, will continue for years, if not decades, into the future, unless the Security Council decides otherwise.

62. The current status of the Mechanism’s trial, appeal, and review proceedings is reflected in enclosure 3.

IV. Registry support to judicial activities

63. During the reporting period, the Registry continued to provide support to the Mechanism’s judicial activities at both branches. As mentioned above, to further harmonize court operations and the management of judicial records, a dedicated Judicial Records and Court Operations Unit was created at the Arusha branch. Furthermore, as at 15 August 2019, both branches had been using the unified judicial database filing system. This allowed for further efficiencies and harmonization of best practices in the processing and distribution of filings.

64. The Registry processed and disseminated 1,614 filings, including 185 Registry legal submissions, amounting in total to 20,167 pages. In addition, during the reporting period, in Arusha the Registry facilitated and serviced two status conferences in the multi-accused *Turinabo et al.* case, the review hearing and the subsequent rendering of the review judgment in the *Ngirabatware* case in September 2019, and the initial appearance in the *Ngirabatware* contempt case on 17 October 2019. In The Hague, the Registry facilitated and serviced two status conferences in the *Mladić* case, as well as court hearings in the *Stanišić and Simatović* case, in accordance with the Trial Chamber’s court schedule. In total, 57 court hearing days were serviced during the reporting period.

65. The Registry's Language Support Services translated approximately 11,000 pages, provided 350 conference interpreter days and produced 7,000 pages of transcripts in English and French. This includes, inter alia, the support provided to the *Stanišić and Simatović* case, the *Turinabo et al.* case and the *Ngirabatware* case, as well as the translation of monitoring reports with regard to cases referred to Rwanda and France.

66. As previously reported, reductions undertaken pursuant to the expenditure reduction plan continued to have an impact on the Registry's ability to support courtroom functions in the ongoing cases. For example, holding more than one proceeding a day or sitting for extended hours was only possible with significant advance notice and would incur additional resources. In addition, the preparation of transcripts and audiovisual recordings had occasionally been delayed, and the increased strain on the limited resources of the Language Support Services had delayed the completion of translation of a number of judgments.

67. The Registry's Office for Legal Aid and Defence Matters administered the Mechanism's legal aid system and provided various forms of assistance, financial and otherwise, to an average of 60 Defence teams comprising a total of approximately 195 Defence team members. In particular, the Office for Legal Aid and Defence Matters processed more than 465 Defence invoices, travel requests and expense reports during the reporting period. In addition, the Office for Legal Aid and Defence Matters maintained the number of counsel admitted to the list of those eligible for assignment to suspects and accused before the Mechanism at 60 and further increased the number of prosecutors and investigators eligible for assignment as an *amicus curiae* to 38.

V. Victims and witnesses

68. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements (see Security Council resolution 1966 (2010), annex 2), the Mechanism is responsible for the protection of the witnesses who have testified in cases completed by the two Tribunals, as well as those witnesses who have appeared or may appear before the Mechanism. In practice, this entails the protection and support of approximately 3,150 witnesses.

69. During the reporting period, consistent with judicial protection orders, and in close collaboration with national authorities and other United Nations entities, the Witness Support and Protection Unit provided security for witnesses by undertaking threat assessments and coordinating responses to security related requirements. The Unit also ensured that protected witness information remained confidential and continued to contact witnesses when orders to seek their comments in relation to requests for the continuation, rescission, variation or augmentation of witness protective measures were received. Furthermore, the Unit facilitated contact between parties and relocated witnesses or witnesses of opposing parties when so required.

70. The witness protection teams at the two branches continued to exchange best practices and use a common information technology platform for their respective witness databases. This platform maximizes operational efficiency across both branches.

71. During the reporting period, the Witness Support and Protection Unit filed numerous submissions concerning witness related matters and implemented 46 judicial orders related to protected witnesses, including orders in relation to requests for the variation of protective measures. The Unit in The Hague continued to receive new referrals for assessment and implementation of protective measures and provided

assistance to national courts, including by facilitating the provision of evidence by relocated witnesses.

72. As part of the provision of support services to witnesses by the Mechanism in Arusha, witnesses residing in Rwanda continued to receive medical and psychosocial services from the medical clinic located at the Kigali field office. These services are particularly focused on the witnesses experiencing psychotrauma or living with HIV/AIDS, as many of those who contracted the virus did so as a result of crimes committed against them during the 1994 genocide against the Tutsi in Rwanda. In addition, the Witness Support and Protection Unit continued to support 85 protected witnesses who testified before the International Criminal Tribunal for Rwanda in resolving refugee status and residency related issues.

73. In providing support to the Mechanism's judicial caseload, the Witness Support and Protection Unit in Arusha, together with its counterpart in The Hague, undertook administrative and logistical arrangements for witness activity in relation to the *Ngirabatware* case. Similarly, the Unit in The Hague continued to support witness activity in the *Stanišić and Simatović* case.

74. It is expected that victim and witness protection will continue to be required in the coming years in the light of the multitude of judicial protection orders covering 3,150 victims and witnesses that will remain in force unless rescinded or waived. It is difficult to assess precisely for how long the Mechanism's victim and witness protection function would need to remain operational. The provision of support may be required until the last victim or witness is deceased, or, where applicable, until the cessation of protective measures covering a victim's or witness' immediate family members. In relation to relocated witnesses, support may be required until the last member of the immediate family is deceased.

VI. Fugitives and trial and appeal readiness

75. The responsibility for tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda was transferred to the Mechanism on 1 July 2012, in accordance with article 6 of the transitional arrangements. In its resolution [1966 \(2010\)](#), the Security Council urged all States, particularly those where fugitives are suspected to be at large, to further intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible. The Council has repeated this call to States in subsequent resolutions, including most recently in resolution [2422 \(2018\)](#). The Mechanism is deeply grateful for the Council's support in relation to this vital matter and emphasizes that it will continue to rely on the cooperation and political will of Member States in order for the fugitives to be apprehended and prosecuted.

76. Eight accused indicted by the International Criminal Tribunal for Rwanda remained fugitives during the reporting period. Of the eight fugitives, the Mechanism retains jurisdiction over three: Augustin Bizimana, Félicien Kabuga and Protais Mpiranya. The cases of the other five fugitives, namely, Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Ryandikayo (first name unknown) and Charles Sikubwabo, were referred to Rwanda by the International Criminal Tribunal for Rwanda, subject to the conditions set out in the relevant referral decisions. The arrest and prosecution of all eight individuals remains a top priority for the Mechanism. The fugitive tracking function is within the responsibility of the Prosecutor and is discussed in his report (see annex II). In particular, as noted below and detailed by the Prosecutor, one of the eight fugitives was confirmed to have been located in South Africa in August 2018. Most regrettably, South Africa has since that

time failed to cooperate with the Mechanism in securing the arrest and surrender of the individual.

77. Consistent with its commitment to efficiency, the Mechanism continues to ensure that it is prepared to conduct a trial or appeal in the event of a fugitive being apprehended or of any other ad hoc judicial activity. Trial readiness continues to be a priority for the Mechanism, which must remain trial-ready as long as the cases of the remaining fugitives are pending before it, there is a possibility that a retrial may be ordered in any ongoing appeal proceedings before the Mechanism, additional contempt or false testimony proceedings may be initiated or the referral of a case to a national jurisdiction for trial may be revoked. As evidenced by the successful completion of the review hearing in the *Ngirabatware* case, the Arusha branch of the Mechanism is prepared for trial at any time, with its fully functional and state-of-the-art courtroom, its fully staffed Judicial Records and Court Operations Unit and its new offices to accommodate Defence counsel.

78. Furthermore, in accordance with article 15 (4) of the statute of the Mechanism, rosters of qualified potential staff have been established to enable the expeditious recruitment, as necessary, of the additional staff required to support these judicial functions.

VII. Detention facilities

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

80. The United Nations Detention Facility in Arusha housed one individual. In relation to the ongoing contempt proceedings in the *Turinabo et al.* case, the Facility maintains custodial capacity for four individuals who were on provisional release, while one individual was recently released with an order to appear before the Mechanism when required. The Facility will continue to be required until the detained persons are either released or transferred to enforcement States. The Facility will also retain an area commensurate to the detention of the remaining three fugitives expected to be tried by the Mechanism after they are apprehended, and will provide a residual custodial capacity for other individuals potentially appearing before the Mechanism.

81. The United Nations Detention Unit in The Hague housed four detainees while maintaining custodial capacity for one individual who was on provisional release. The services of the Unit will continue to be required until all trials and appeals in ongoing cases are concluded and all detained persons are released or transferred to enforcement States, after which a reduced, residual custodial capacity for other individuals potentially appearing before the Mechanism may have to be arranged.

82. Both detention facilities are regularly inspected by the International Committee of the Red Cross to ensure that the Mechanism's Rules of Detention are properly applied and that both facilities are operating in accordance with international standards.

VIII. Enforcement of sentences

83. Pursuant to article 25 of the statute of the Mechanism, the Mechanism has jurisdiction to supervise the enforcement of sentences. Following delivery of a final judgment, the President decides where a convicted person will serve his or her sentence in accordance with article 25 of the statute, rule 127 of the Rules of

Procedure and Evidence and the Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve His or Her Sentence of Imprisonment. There is no prescribed time limit for the decision of the President. However, rule 127 (B) of the Rules of Procedure and Evidence of the Mechanism provides that the transfer of the convicted person to an enforcement State shall be effected as soon as possible. According to the relevant Practice Direction, the President designates the State of imprisonment on the basis of a range of information, which may include any relevant views expressed by the convicted person. In line with the Mechanism's agreements with the host States, there is no possibility for convicted persons to be detained indefinitely at the United Nations Detention Facility in Arusha or the United Nations Detention Unit in The Hague.

84. In addition, and according to article 26 of the statute of the Mechanism, the President has the authority to decide on requests for pardon or commutation of sentence. While article 26 of the statute, like the statutes of the two Tribunals, does not specifically mention requests for early release of convicted persons, the Rules of Procedure and Evidence of the Mechanism reflect the President's powers to deal with such requests and the long-standing practice of the two Tribunals and the Mechanism in that regard.

85. The Mechanism relies on the cooperation of States for the enforcement of sentences. Sentences are served within the territory of States Members of the United Nations that have concluded enforcement of sentence agreements or indicated their willingness to accept convicted persons under any other arrangement. The agreements concluded by the United Nations for the two Tribunals continue to apply to the Mechanism, *mutatis mutandis*, unless superseded by subsequent agreements. During the reporting period, the Mechanism continued its efforts, through bilateral meetings and other communications of both the President and Registrar, to increase its enforcement capacity for both branches, and it welcomes the cooperation of States in that regard.

86. Of the 30 persons convicted by the International Criminal Tribunal for Rwanda who were serving their sentences, 18 are in Benin, 7 in Mali and 5 in Senegal. One convicted person remains at the United Nations Detention Facility in Arusha.

87. In August 2019, two convicted persons were transferred from the United Nations Detention Unit in The Hague to Poland to serve their sentences. Following that transfer, 20 persons convicted by the International Tribunal for the Former Yugoslavia were serving their sentences under the supervision of the Mechanism. Those individuals are serving their sentences in 11 States: Austria (1), Denmark (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (4), Sweden (1) and United Kingdom of Great Britain and Northern Ireland (1). Two convicted persons remain at the United Nations Detention Unit in The Hague, awaiting transfer to enforcement States.

88. The Mechanism again expresses its deep gratitude to all of the above-mentioned States for their ongoing support to the Mechanism and engagement in the enforcement of sentences. Without such support, this crucial – but less visible – aspect of the Mechanism's work would not be possible.

89. During the reporting period, the Mechanism, in coordination with national authorities and the United Nations Development Programme, continued its efforts to address the recommendations of the relevant inspecting bodies charged with examining the conditions of detention in enforcement States, as well as recommendations of an independent prison management expert engaged by the Mechanism.

90. In particular, sentences pronounced by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia, and the Mechanism

are enforced in accordance with the applicable law of the enforcing State and with international standards of detention, subject to the supervision of the Mechanism. Conditions of imprisonment shall be compatible with relevant human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Recognized organizations, such as the International Committee of the Red Cross and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, regularly monitor the conditions of imprisonment to ensure international standards are being met, and the Mechanism is grateful for their continued assistance in that regard.

91. As previously reported, the Mechanism engaged an expert on ageing in prison and associated vulnerabilities. In March 2018, the expert inspected the prison conditions of the persons serving their sentences in Mali and Benin under the supervision of the Mechanism, and has subsequently issued recommendations to the Mechanism. The Mechanism continued to implement relevant recommendations during the reporting period.

92. The Mechanism also continued to monitor closely the particular security situation in Mali and to receive advice and reports from the Department of Safety and Security of the Secretariat and the designated security official in Mali.

93. It should be noted that the functions related to supervision of the enforcement of sentences carried out under the authority of the President will continue until the last prison sentence has been served, subject to the application of rule 128 of the Rules of Procedure and Evidence of the Mechanism. That rule allows for the possibility of another body being designated to supervise the enforcement of sentences after the Mechanism ceases to exist, in the event that any convicted person remains imprisoned in an enforcement State at that time.

94. In the report of the Secretary-General mentioned above, it was observed that the two Tribunals had estimated that applications for pardon, commutation of sentence or early release could be expected until at least 2027 for cases of the International Tribunal for the Former Yugoslavia, and until around 2030 for cases of the International Criminal Tribunal for Rwanda (see [S/2009/258](#), footnote No. 24). The Mechanism notes that the 2009 estimate requires some adjustment, given the sentences imposed since that time and the fact that a majority of the individuals who were serving life sentences will only be eligible for consideration of pardon, commutation of sentence or early release after 2030, even if they may seek such relief beforehand. Two individuals serving a life sentence will not become eligible for consideration of pardon, commutation of sentence or early release before 2038.

IX. Relocation of acquitted and released persons

95. The Mechanism regrets that, despite its continued efforts to find a sustainable solution for the resettlement of the nine acquitted and released persons presently residing in Arusha, the situation remains unresolved.

96. As previously reported, the nine individuals find themselves in an unacceptable and untenable legal limbo. They have been either acquitted by the International Criminal Tribunal for Rwanda or have already served their sentences as imposed by that Tribunal, but are unable or afraid to return to their country of citizenship. The Mechanism's headquarters agreement with the United Republic of Tanzania provides that the released and acquitted persons shall not permanently remain in the United Republic of Tanzania except with its consent. The United Republic of Tanzania has therefore permitted those persons to stay on its territory temporarily, pending their relocation to another country. The status quo thus presents a humanitarian crisis that

profoundly affects the fundamental rights of the nine persons, one of whom has remained in this predicament since his acquittal by the International Criminal Tribunal for Rwanda in 2004. A permanent solution must be found.

97. Bearing in mind Security Council resolution [2422 \(2018\)](#), in which the Council called upon all States to cooperate with and render all necessary assistance to the Mechanism for increased efforts towards the relocation of the nine persons, the President of the Mechanism again raised the issue in numerous meetings with Member States during the reporting period. The Registrar also continued to pursue high-level exploratory contacts and to engage with those States that had earlier, in principle, indicated willingness to accept one or more of these persons. However, most unfortunately, little concrete progress has been made since the submission of the previous progress report.

98. The Mechanism emphasizes that it is unable to resolve the situation without the support and goodwill of Member States, who bear ultimate responsibility for the fate of the nine individuals. In the meantime, however, the Mechanism continues to shoulder the administrative and financial burden of having to provide for their accommodation and daily needs.

99. While the Mechanism is grateful to the Security Council and individual States for their support for relocation efforts to date, it notes that this serious humanitarian challenge will exist until such time as all acquitted and released individuals are appropriately relocated or are deceased. In the meantime, the situation will continue to reflect poorly on both the Mechanism and the United Nations more broadly. The Mechanism therefore urges Member States to continue to support it in finding a permanent solution.

X. Cooperation of States

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

101. The arrest and surrender of the remaining fugitives are a priority of the Mechanism. The Mechanism requires the full cooperation of States in relation to the ongoing fugitive-tracking operations conducted by the Prosecutor and it continues the practice of the International Criminal Tribunal for Rwanda by calling for the assistance of relevant States in that respect.

102. As previously reported by the Prosecutor and detailed in annex II, since August 2018 the Prosecution has been seeking urgent cooperation from South Africa in relation to the arrest and transfer of a fugitive located on its territory, but to no avail. Despite receiving three urgent requests for assistance by the Prosecution, South Africa has failed to cooperate with the Mechanism in securing the arrest and transfer of the individual. The Mechanism sincerely regrets this lack of cooperation on the part of South Africa, which is a current member of the Security Council. It reminds South Africa of its obligations under article 28 of the Mechanism's statute, as well as the Council's numerous calls to all Member States to intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible. If the present situation

continues, the Mechanism may have no choice but to refer this matter to the Security Council for action.

103. The Mechanism further relies on the cooperation of States for the enforcement of sentences and the resettlement of the acquitted and released persons who are living in Arusha, as discussed above.

104. In line with the President's previously stated priority of fostering stronger relationships between the Mechanism and the Governments and peoples of Rwanda and the States of the former Yugoslavia, the Mechanism continued to promote communication and cooperation with those Governments and other key stakeholders. Representatives of the Mechanism, up to and including the level of the principals, engaged with government officials and met with victims' groups during the reporting period.

105. The Mechanism will continue to discuss matters of mutual interest with the Rwandan authorities, including the means by which the cooperation with the Government of Rwanda can be enhanced, in line with paragraph 23 of Security Council resolution [2256 \(2015\)](#). In that regard, the Mechanism's Kinyarwanda Unit, established at the beginning of 2016, has continued to translate judgments of the International Criminal Tribunal for Rwanda into Kinyarwanda. During the reporting period, the Kinyarwanda Unit completed the translation of two further judgments, a number of decisions and orders, as well as monitoring reports concerning three cases referred to Rwanda that are discussed below.

106. In its resolution [1966 \(2010\)](#), the Security Council requested the Mechanism to cooperate with Rwanda and the countries of the former Yugoslavia to facilitate the establishment of information and documentation centres. With respect to the former Yugoslavia, the first such information centre was opened on 23 May 2018 in Sarajevo with the support of the Mechanism. Since then, the Mechanism has further supported the work of the Sarajevo information centre by, inter alia, providing certified copies of judgments and more than 700 books. The Mechanism is available to facilitate the establishment of similar information centres with other stakeholders in the former Yugoslavia. Representatives of the Mechanism continued to engage in dialogue with relevant authorities in that regard during the reporting period.

107. Since January 2019, the Mechanism and the European Union have been working together on a project focused on informing affected communities and younger generations in the former Yugoslavia about the legacy of the International Tribunal for the Former Yugoslavia and the ongoing work of the Mechanism, and on facilitating access to the Tribunal and Mechanism archives. Workshops on using the Tribunal's archives have been organized for secondary school teachers and a series of video lectures intended for law schools in the region of the former Yugoslavia has been developed. The President delivered the first of those lectures by videoconference link to six universities in the region on 30 October 2019. The project has been well received, with its inaugural social media campaign reaching more than 1 million users in less than 10 days. The Mechanism wishes to thank the European Union and its member States for its generous support.

XI. Assistance to national jurisdictions

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

109. During the reporting period, the Mechanism continued routinely to receive requests from national authorities or parties to national proceedings for assistance in relation to domestic proceedings concerning individuals allegedly implicated in the genocide against the Tutsi in Rwanda or the conflicts in the former Yugoslavia. It also received and considered numerous requests to vary the protective measures granted to witnesses who had testified in cases before the two Tribunals or the Mechanism, in order to disclose their testimony and evidence. Comprehensive information and guidance for those who wish to request assistance are available on the Mechanism's website.

110. The Registry processed 62 requests for assistance from national jurisdictions and provided over 3,693 documents since the previous reporting date.

111. In addition to processing such requests, the data concerning requests for assistance submitted to both branches of the Mechanism continued to be centralized into one repository. Both branches also continued to exchange best practices for the development of policies and training programmes with a view to maximizing operational efficiency and ensuring that the Mechanism provides effective assistance to national jurisdictions.

112. It was expected that activities linked to requests for assistance from national jurisdictions would continue concomitant to the investigation and prosecution of cases related to the genocide against the Tutsi in Rwanda and the conflicts in the former Yugoslavia in domestic jurisdictions.

XII. Cases referred to national jurisdictions

113. Pursuant to article 6 (5) of its statute, the Mechanism is responsible for monitoring cases referred to national courts by the two Tribunals and the Mechanism, with the assistance of international and regional organizations and bodies.

114. During the reporting period, the Mechanism exercised its monitoring functions in respect of three cases that had previously been referred to Rwanda. These cases concern Jean Uwinkindi, Bernard Munyagishari and Ladislav Ntaganzwa, who had been indicted by the International Criminal Tribunal for Rwanda and subsequently apprehended. The proceedings in *Prosecutor v. Jean Uwinkindi* and *Prosecutor v. Bernard Munyagishari* were at the appeal stage. Trial proceedings were ongoing in the case of *Prosecutor v. Ladislav Ntaganzwa*. Consistent with Security Council resolution 2256 (2015), the Mechanism continued to monitor those three cases in Rwanda with the pro bono assistance of monitors from the Kenyan section of the International Commission of Jurists, pursuant to a memorandum of understanding concluded on 15 January 2015 and subsequently amended on 16 August 2016.

115. Two additional individuals indicted by the International Criminal Tribunal for Rwanda, Laurent Bucyibaruta and Wenceslas Munyeshyaka, had previously had their cases referred to France for trial. An interim monitor continued to monitor those proceedings. In the case of *Prosecutor v. Laurent Bucyibaruta*, the Public Prosecutor had previously filed his final submission asking for partial discharge and transfer of the case to the Criminal Court of Paris. In that same submission, the Public Prosecutor had further requested that the investigating judge issue an order for an indictment against Mr. Bucyibaruta. On 24 December 2018, the investigating judge had issued an indictment against Mr. Bucyibaruta confirming some charges and rejecting or re-qualifying others. A hearing in the case was provisionally planned for the last quarter of 2019. In the case of *Prosecutor v. Wenceslas Munyeshyaka*, on 21 June 2018, the Investigative Chamber of the Paris Court of Appeals had upheld the decision to dismiss the proceedings on the basis of insufficient evidence to prosecute

Mr. Munyeshyaka. Several appeals had been filed against that decision. The Mechanism was informed that, on 30 October 2019, the Cour de cassation issued a decision dismissing all of the appeals, thereby bringing the case to a close.

116. The Mechanism also continued to follow the status of the case of *Prosecutor v. Vladimir Kovačević*, which had been referred to Serbia by the International Tribunal for the Former Yugoslavia in March 2007.

117. The Mechanism's activities in relation to cases referred to national jurisdictions were expected to continue for the duration of the cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. The *Ntaganzwa* case was at trial, three years after the accused was transferred to Rwanda. Mr. Uwinkindi was transferred to Rwanda for trial in 2012 and Mr. Munyagishari transferred for trial in 2013. Both the *Uwinkindi* case and the *Munyagishari* case were at the appeal stage. If any of the five remaining fugitives whose cases have been referred to Rwanda for trial were arrested, the estimate for the continuation of the Mechanism's monitoring function with respect to Rwanda would need to be assessed at that time. The two cases referred to France have been at the investigative/pretrial phase for more than 10 years and, as set forth above, remain ongoing. Further estimates for the continuation of the Mechanism's monitoring function with respect to France will depend on decisions of the French judicial authorities in those cases.

XIII. Archives and records

118. In accordance with article 27 of its statute, the Mechanism has responsibility for the management, including preservation and access, of the archives of the Mechanism and the two Tribunals, which are co-located with the respective branches of the Mechanism. The management of the archives includes responsibility for the preservation, arrangement and description of records, their security and the provision of access thereto.

119. The archives include records concerning: investigations, indictments and court proceedings; the protection of witnesses; the detention of accused persons; and the enforcement of sentences. The archives also include documents from States, other law enforcement authorities, international and non-governmental organizations and other stakeholders. The records exist in both digital and physical formats and consist of documents, maps, photographs, audiovisual recordings and objects. The Mechanism Archives and Records Section has been tasked with preserving these records and facilitating the widest possible access to them, while ensuring the continued protection of confidential information, including information concerning protected witnesses.

120. The Mechanism Archives and Records Section is responsible for the management of more than 2,000 linear metres of physical records and 1.2 petabytes of digital records of the International Criminal Tribunal for Rwanda and the Mechanism's Arusha branch, as well as more than 2,400 linear metres of physical records and approximately 1.5 petabytes of digital records from the International Tribunal for the Former Yugoslavia and the Mechanism's branch in The Hague.

121. The Mechanism Archives and Records Section is also responsible for the periodic disposition of the records that have temporary value, in accordance with established retention policies. During the reporting period, that entailed the authorized destruction of 157 linear metres of records. The Mechanism will remain responsible for the management of records of the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia that have been

designated for permanent retention, as well as for records of archival value generated by the Mechanism.

122. During the reporting period, the preservation of audiovisual recordings stored on obsolete physical media in The Hague continued. This project was initially delayed as a result of the expenditure reduction plan. Approximately 9,200 physical audiovisual records were assessed to determine preservation needs.

123. The digital records of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia continued to be incorporated into the Mechanism's digital preservation system to safeguard their long-term integrity, reliability and usability, in accordance with the Mechanism's policy on retention and preservation of documents. During the reporting period, a total of 44.84 terabytes of digital records were ingested, including more than 29,495 files in a variety of formats. In 2020, both branches will continue the work of strengthening the Mechanism's digital preservation programme by continuing to develop institutional capacity and capability for digital preservation.

124. The uploading of records to the public databases of the two Tribunals and the Mechanism continued throughout the reporting period. Over 350,000 judicial records, including approximately 26,000 hours of audiovisual recordings, are available to the public through these interfaces, and the records were accessed by nearly 11,000 users during the reporting period.

125. The Mechanism received and responded to 91 requests for access to records under the Mechanism's access policy during the reporting period. Many of those requests were for copies of audiovisual recordings of courtroom proceedings.

126. The Mechanism Archives and Records Section continued its programme of exhibitions and events to draw attention to the Tribunals' and Mechanism archives. An online exhibition entitled "Worth a Thousand Words" was launched in collaboration with the External Relations Office. The exhibition explores the various ways in which drawings and sketches were used in judicial proceedings before the Tribunals. The exhibition was well received and reached nearly 10,000 people across the Mechanism's social media channels during its launch week.

XIV. External relations

127. The core tasks of the External Relations Office, which has staff at both branches of the Mechanism, include informing the public about the Mechanism's work through the Mechanism's website and social media channels and by responding to media inquiries, organizing public events, developing and implementing external relations activities in relation to various stakeholders and producing informational materials.

128. During the reporting period, the External Relations Office at the Arusha branch facilitated the attendance of the general public and the media at the review hearing and, subsequently, the rendering of the review judgment in the *Ngirabatware* case on 27 September 2019, as well as the two status conferences in the *Turinabo et al.* case. The online streaming of the respective court sessions received more than 1,600 views.

129. At the branch in The Hague, the External Relations Office continued to facilitate the attendance of the general public and the media at a number of public judicial hearings during the reporting period, including in the ongoing trial in the *Stanišić and Simatović* case and at status conferences in the *Mladić* case. The hearings in those cases were attended by more than 380 visitors, while the online streaming of the respective court sessions received more than 7,500 views.

130. In relation to other special events, on 5 June 2019 the Arusha branch welcomed the Chief Justices from the Gambia, Ghana, Mauritius, Nigeria, Sierra Leone, the United Republic of Tanzania and Zambia, as part of their working visit to the United Republic of Tanzania, organized by the African Institute of International Law and the African Foundation for International Law. On 24 October 2019, the Mechanism's Arusha branch marked United Nations Day by welcoming students from various international schools in Arusha to its premises and holding the above-mentioned award ceremony for long-serving staff.

131. On 3 September 2019, the branch in The Hague welcomed a delegation of 15 legal professionals, including judges, prosecutors, defence lawyers, victims' representatives and witness protection staff, involved in war crimes cases before the national courts in Serbia, for a study visit organized by the Organization for Security and Cooperation in Europe. The study visit included training sessions and presentations on the work of the Mechanism, the jurisprudence of the International Tribunal for the Former Yugoslavia and requests for assistance from national jurisdictions. In addition, on 22 September 2019, the External Relations Office coordinated the Mechanism's participation in an international open day in The Hague. More than 700 members of the public visited the branch and benefited from presentations on the work of the Mechanism and the two ad hoc Tribunals.

132. In addition to visitors attending special events or court proceedings, the Mechanism continued to welcome visitors to its premises and to provide library services at both branches. The Arusha branch welcomed 825 visitors during the reporting period, including members of the diplomatic community, researchers and members of the public from the Great Lakes region and beyond. The Arusha library processed a total of 3,310 research requests, loans and other enquiries. In The Hague, the External Relations Office welcomed 1,540 visitors during the reporting period, while the library of branch in The Hague processed 625 research requests, loans and other enquiries. Furthermore, the Mechanism's website recorded 545,000 page views and 122,000 visitors over the reporting period. This represents an increase of 23 per cent and 35 per cent, respectively, compared with the same p period in 2018.

XV. Reports of the Office of Internal Oversight Services

133. In a previous reporting period, OIOS completed an evaluation of the methods and work of the Mechanism. In its evaluation report of 8 March 2018, OIOS assessed the relevance, efficiency and effectiveness of the methods and work of the Mechanism in implementing its mandate during the period 2016–2017, with a focus on its consolidation, coordination and organizational arrangements in becoming a self-standing institution across two branches. OIOS observed that the Mechanism had made significant progress towards establishing itself as a small, temporary and efficient structure, whose functions and size would diminish over time, with the capacity to respond to varying workloads and to balance immediate demands against longer-term priorities, and that the Mechanism had achieved much of what the Security Council envisaged in resolution 1966 (2010) (see S/2018/206).

134. As previously reported, OIOS made six recommendations, which the Mechanism has taken seriously. Three of the recommendations were previously closed, and the Mechanism continued with the implementation of the remaining open recommendations during the reporting period. Actions taken included addressing gender balance and parity by creating a detailed dashboard containing up-to-date information on gender balance to monitor parity across the branches, the recruitment of more female staff members at the Arusha branch, as well as a survey among staff of the Office of the Prosecutor on managing down- and upsizing.

135. As mentioned above, a further OIOS evaluation of the methods and work of the Mechanism commenced in October 2019 and would continue into the first quarter of 2020. The Inspection and Evaluation Division of OIOS was to visit the Hague and Arusha branches during the first and second weeks of December 2019, respectively, for the purposes of field data collection and conducting interviews.

136. During the reporting period, the Mechanism continued to benefit from regular audits by OIOS and the implementation of its recommendations. One audit report was issued, relating to the management of safety and security at the Mechanism's Arusha branch and the Kigali field office. In the report, which was classified by OIOS as strictly confidential, four recommendations were issued, one of which was implemented by the time the final audit report was issued. Work continued on the implementation of the other recommendations. Separately, an audit of the enforcement and monitoring of sentences was ongoing. In addition, a horizontal audit of the management of data classification and data privacy had commenced. The entry conference took place on 15 November 2019.

137. With regard to earlier OIOS audits, the Mechanism continued diligently to follow up on and implement remaining recommendations. Actions taken in that respect included the recovery of certain education grant expenses, commencing the procurement to address technical defects in the Arusha branch archives facility and following up on the reimbursement of outstanding value-added tax claims. In addition, the Mechanism was in the process of implementing the remaining recommendation related to the audit of the unified judicial database project. As previously reported, that audit was conducted in the context of implementing a recommendation resulting from the above-mentioned 2018 evaluation of the methods and work of the Mechanism. In that regard, the two branches were further reviewing and updating the cross-branch guidelines on judicial filings and the processing of transcripts, exhibits and audiovisual recordings, resulting in a further harmonization of filing and distribution practices across the Mechanism branches. As noted above, both Mechanism branches had been using the unified judicial database filing system since 15 August 2019.

138. Finally, in addition to OIOS audits, the Mechanism is audited annually by the United Nations Board of Auditors. Accordingly, on 18 November 2019, the Board commenced a three week visit to The Hague, which would be followed by a two-week visit to Arusha.

139. The Mechanism welcomes and appreciates the work of OIOS and the Board of Auditors, as well as the opportunity to enhance its operations through regular audits and evaluations. However, it should be noted that the ongoing processes require extensive resources and efforts on the part of Mechanism staff in order to be fully supported and implemented, sometimes at the expense of the Mechanism's residual functions.

XVI. Conclusion

140. At the end of another very busy reporting period, and as it nears the completion of its first biennium as a stand-alone institution, the Mechanism is proud of the progress made in relation to each of its mandated functions. Over the past two years, the Mechanism has managed to bridge the gap left by the closure of the ad hoc Tribunals and to successfully navigate new territory as a fully functional, independent organization. The past six months have seen a further consolidation of its learning in that regard and a push towards increased harmonization between the two branches, which is already yielding results. At the same time, the Mechanism continues to adjudicate the remaining casework of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia as efficiently as it can, while protecting the rights of its accused and convicted persons. It is again thanks to the

Mechanism's dedicated principals, judges and staff – whether on-site at its branches in Arusha or The Hague or in the Kigali or Sarajevo field offices, or working remotely – that the Mechanism has been able to make such progress. Despite those achievements, however, the Mechanism is not complacent. It will continue to identify areas where efficiencies may be further optimized, in particular by applying only the best, most effective practices of the ad hoc Tribunals across operations and striving to function as a truly unified institution.

141. As set out in the present report, the bulk of the Mechanism's existing judicial work is anticipated to conclude by the end of 2020. After that time, the Mechanism expects to be able to focus almost exclusively on its other residual responsibilities, as mandated by the Security Council in resolution 1966 (2010). These longer-term residual functions will be crucial to safeguarding the precious legacies of the two ad hoc Tribunals and upholding the international community's commitments to the rule of law, to the affected communities and to victims and witnesses. However, they will diminish over time and, with the exception of any new trials for fugitives, will require significantly fewer resources than the existing caseload. The Mechanism underscores that 2020 will therefore be key to its success and to its ability to downsize meaningfully thereafter. While it stands ready to do the necessary work, the Mechanism will require the continued support of Member States in securing adequate funding for the upcoming budgetary cycle and ensuring that this post-2020 scenario becomes a reality.

142. The Mechanism is deeply grateful for the assistance provided thus far by Member States who, together with other stakeholders, have enabled the Mechanism to reach this important threshold in the fulfilment of its mandate. It wishes to thank in particular the outstanding host States, the United Republic of Tanzania and the Netherlands, as well as Rwanda and the States of the former Yugoslavia, the Member States of the United Nations, the European Union and the Office of Legal Affairs and Department of Management, for their ongoing cooperation and support during the reporting period and throughout the Mechanism's operations. The Mechanism is confident that it can count on the continued support of these stakeholders in discharging the weighty responsibilities entrusted to it by the international community. It looks forward to working with them during the critical year ahead as it prepares to become an even leaner residual institution.

Enclosure 1

International Residual Mechanism for Criminal Tribunals: staffing*

Table 1
Staff Numbers by branch and organ

Category	Arusha branch	The Hague branch	Chambers ¹	Office of the Prosecutor	Registry ²	Mechanism overall
All staff	283	344	38	97	492	627
Staff on continuous posts	119	56	9	25	141	175
Staff on general temporary assistance positions	164	288	29	72	351	452 ³
International (Field Service, Professional and above)	133	149	30	67	185	282
Local (General Service)	150	195	8	30	307	345

¹ Chambers staffing data include the Office of the President and excludes judges.

² Registry staffing data include: Immediate Office of the Registrar, Archives and Records Section, Witness Support and Protection, Court Support Services, Language Support Services, External Relations, Office of Legal Aid and Defence, Judicial Records Unit, Administration, Security, and United Nations Detention Facility and United Nations Detention Unit.

³ This represents an increase of 104 staff on general temporary assistance positions since the previous progress report, 92 of which are in the Arusha branch. The increase in such positions is largely driven by the ad hoc judicial activity related to the *Turinabo et al.* case and the review hearing in the *Ngirabataware* case. The positions are therefore temporary in nature, and – in the absence of inclusion of positions in the Mechanism’s budget for the biennium 2018–2019 for such judicial activity – are absorbed within available resources. The additional general temporary assistance positions in Arusha include General Service-level positions for the Safety and Security Section, which were hired specifically to provide the required security posture related to ad hoc judicial proceedings. In addition, a number of Security Officers were hired on temporary contracts for the explicit purpose of building a cadre of qualified people for expedient future recruitment in the event of apprehension of a fugitive.

Table 2
Geographical representation by regional group

	Arusha branch	The Hague branch	Mechanism overall ¹
Nationalities	39	63	77 (percentage)
All staff			
African	228	24	252 (40.2)
Asia-Pacific	9	25	34 (5.4)
Eastern European	4	85	89 (14.2)
Latin American and Caribbean	3	8	11 (1.8)
Western European and Other States	39	202	241 (38.4)
International staff (Field Service, Professional and above)			
African	78	8	86 (30.5)
Asia-Pacific	9	9	18 (6.4)
Eastern European	4	34	38 (13.5)
Latin American and Caribbean	3	4	7 (2.5)
Western European and Other	39	94	133 (47.2)

* The data in the tables below represents the number of staff employed as at 1 November 2019.

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall¹</i>
Local (General Service)			
African	150	16	166 (48.1)
Asia-Pacific	0	16	16 (4.6)
Eastern European	0	51	51 (14.8)
Latin American and Caribbean	0	4	4 (1.2)
Western European and Other States	0	108	108 (31.3)

¹ As percentages are rounded to the nearest decimal, the total may not add up exactly to 100 per cent.

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

Asia-Pacific Group: Cambodia, China, Cyprus, Fiji, India, Indonesia, Iraq, Lebanon, Nepal, Pakistan, Republic of Korea, Philippines, Singapore, Thailand, Yemen.

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

Latin American and Caribbean Group: Brazil, Cuba, Guatemala, Haiti, Jamaica, Mexico.

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

Table 3
Gender representation

	<i>Arusha branch</i>		<i>The Hague branch</i>		<i>Mechanism</i>
	<i>Arusha</i>	<i>Kigali Field Office</i>	<i>The Hague</i>	<i>Sarajevo Field Office</i>	<i>Overall (percentage)</i>
Professional staff (all levels)	69	1	147	2	219
Male	46	1	56	2	105 (47.9)
Female	23	0	91	0	114 (52.1)
Professional staff (P4 and above)	21	0	50	1	72
Male	16	0	21	1	38 (52.8)
Female	5	0	29	0	34 (47.2)
Field Service staff (all levels)	58	5	0	0	63
Male	34	3	0	0	37 (58.7)
Female	24	2	0	0	26 (41.3)
General Service (all levels)	135	15	192	3	345
Male	76	12	114	2	204 (59.1)
Female	59	3	78	1	141 (40.9)
All staff	262	21	339	5	627
Male	156	16	170	4	346 (55.2)
Female	106	5	169	1	281 (44.8)

Table 4
Staff by organ

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Chambers (including the Office of the President)	6	32	38
Office of the Prosecutor	36	61	97
Registry:	242	250	492
Immediate Office of the Registrar	15	12	27
Archives and Records Section	17	13	30
Witness Support and Protection	20	15	35
Court Support Services	1	4	5
Language Support Services	15	46	61
External Relations	8	10	18
Office of Legal Aid and Defence	0	4	4
Judicial Records Unit	4	6	10
Administration	49	82	131
Security	97	53	150
United Nations Detention Facility and United Nations Detention Unit	16	5	21

Enclosure 2

International Residual Mechanism for Criminal Tribunals: revised appropriations and expenditures for the biennium 2018–2019

Table 1

Revised appropriations for the biennium 2018–2019 (net of staff assessment)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	Mechanism
Arusha	Post		5 302 400	19 470 200		24 772 600
	Non-post ¹	769 800	4 773 400	22 384 900	4 915 350	32 843 450
Sub-total		769 800	10 075 800	41 855 100	4 915 350	57 616 050
The Hague	Post		2 963 100	11 776 400		14 739 500
	Non-post	4 257 700	13 422 100	78 835 800	4 915 350	101 430 950
Sub-total		4 257 700	16 385 200	90 612 200	4 915 350	116 170 450
New York ²	Post			410 500		410 500
	Non-post					
Sub-total				410 500		410 500
Office of Internal Oversight Services ³	Post			168 800		168 800
	Non-post			325 000		325 000
Sub-total				493 800		493 800
Overall	Post		8 265 500	31 825 900		40 091 400
	Non-post	5 027 500	18 195 500	101 545 700	9 830 700	134 599 400
Total		5 027 500	26 461 000	133 371 600	9 830 700	174 690 800

¹ Non-post includes all commitment items other than posts, such as general temporary assistance, travel and rental of premises.

² Included in the allotment for the branch in The Hague in the biennium 2016–2017.

³ Included in the budget for the International Tribunal for the Former Yugoslavia in the biennium 2016–2017.

Table 2

Expenditures (net of staff assessment) as at 1 November 2019 (per Umoja)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	Mechanism
Arusha	Post		4 367 530	17 844 703		22 212 233
	Non-post	563 579	3 243 588	20 344 113	3 545 966	27 697 246
Sub-total		563 579	7 611 118	38 188 816	3 545 966	49 909 479

		<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>				<i>Mechanism</i>
		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>		
The Hague	Post		2 295 348	9 819 330		12 114 678
	Non-post	3 013 901	11 290 476	66 271 789	4 303 181	84 879 347
Sub-total		3 013 901	13 585 824	76 091 119	4 303 181	96 994 025
New York	Post			333 442		333 442
	Non-post					
Sub-total				333 442		333 442
Office of Internal Oversight Services	Post			206 114		206 114
	Non-post			153 407		153 407
Sub-total				359 521		359 521
Overall	Post		6 662 878	28 203 589		34 866 467
	Non-post	3 577 480	14 534 064	86 769 309	7 849 147	112 730 000
Total		3 577 480	21 196 942	114 972 898	7 849 147	147 596 467

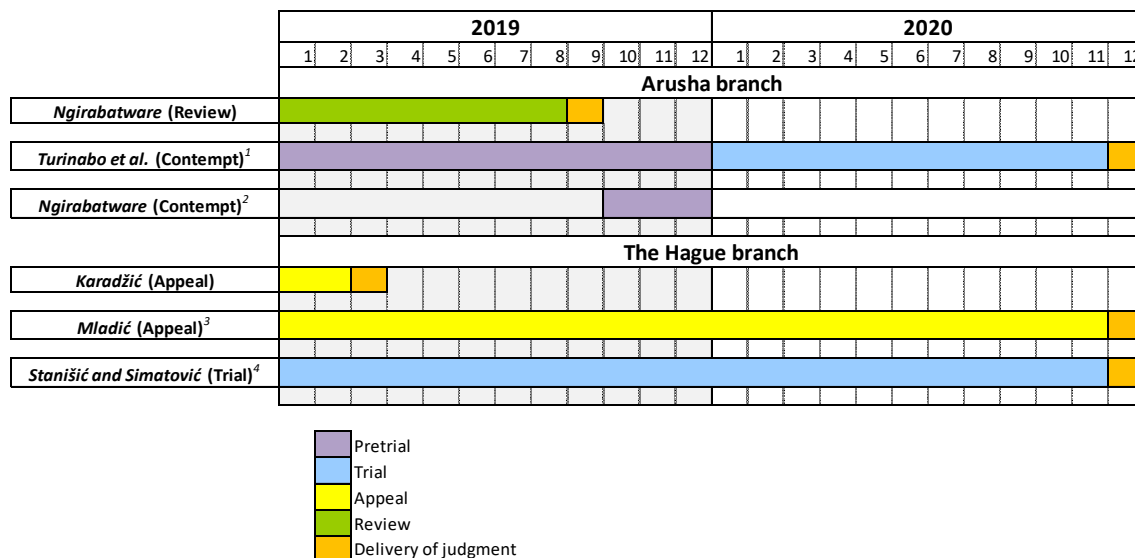
Table 3
Percentage of biennial budget expended as at 1 November 2019

		<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>				<i>Mechanism</i>
		<i>Chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>		
Arusha	Post		82.4	91.7		89.7
	Non-post	73.2	68.0	90.9	72.1	84.3
Sub-total		73.2	75.5	91.2	72.1	86.6
The Hague	Post		77.5	83.4		82.2
	Non-post	70.8	84.1	84.1	87.5	83.7
Sub-total		70.8	82.9	84.0	87.5	83.5
New York	Post			81.2		81.2
	Non-post					
Sub-total				81.2		81.2
Office of Internal Oversight Services	Post			122.1		122.1
	Non-post			47.2		47.2
Sub-total				72.8		72.8
Overall	Post		80.6	88.6		87.0
	Non-post	71.2	79.9	85.4		83.8
Total		71.2	80.1	86.2	79.8	84.5

Enclosure 3

International Residual Mechanism for Criminal Tribunals: status of trial, appeal and review proceedings, 2019-2020

(On the basis of information available as at 15 November 2019 and subject to change)



¹ The trial in *Turinabo et al.* is expected to commence in the first half of 2020 and conclude by December 2020. Due to the potential joinder to this case of the new contempt case against Mr. Augustin Ngirabatware, a more specific indication of start date cannot be given at this stage. Furthermore, subject to the outcome of the trial, an appeal may follow.

² An Indictment for contempt of court and incitement to commit contempt was confirmed against Mr. Augustin Ngirabatware in October 2019. The Prosecution has requested that this case be joined to the *Turinabo et al.* case and a single judge is considering the request. Due to the potential joinder of the two cases, it is premature to provide an independent projection for the contempt case against Mr. Ngirabatware. Furthermore, subject to the outcome of the trial, an appeal may follow.

³ The appeal is expected to be concluded and the appeal judgment delivered in the second half of 2020.

⁴ The trial is expected to be concluded and the trial judgment delivered in the second half of 2020. Subject to the outcome of the trial, an appeal may follow.

Annex II

[Original: English and French]

Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Serge Brammertz, for the period from 16 May to 15 November 2019

I. Overview

1. The Prosecutor submits the fifteenth progress report pursuant to Security Council resolution 1966 (2010), covering developments between 16 May and 15 November 2019.
2. During the reporting period, the Office of the Prosecutor of the Mechanism continued to focus on three 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 international crimes committed in Rwanda and the former Yugoslavia. The Office relies on the full cooperation of States to carry out its mandate successfully in those areas.
3. The Office of the Prosecutor remained engaged in intense litigation during the reporting period. At the Arusha branch, on 27 September 2019, the Appeals Chamber issued its judgment on review in the *Ngirabatware* case, rejecting Augustin Ngirabatware's application to overturn his genocide convictions. The Appeals Chamber did not accept submissions by the Defence that four key witnesses had truthfully recanted their trial testimonies. In addition, on 10 October, a single judge also confirmed the Office of the Prosecutor's indictment against Ngirabatware on two counts of contempt and one count of incitement to contempt. At The Hague branch, on 18 June 2019, the defence phase began in the *Stanišić and Simatović* retrial with the opening statement by the Stanišić Defence. In the *Mladić* case, the Prosecution continued preparations for the oral appeals hearing. As previously reported, in addition to the trial and appeal activity in Arusha and The Hague, at both branches the Office processed a high volume of other litigation arising from completed cases.
4. The Office of the Prosecutor continued its efforts to track, locate and arrest the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda. As previously reported, the Office has faced a number of challenges in obtaining needed cooperation from national authorities, which has in turn hampered its efforts. The Office of the Prosecutor deeply regrets that more than one year after a fugitive was located in South Africa, the South African authorities have still not yet executed the Mechanism's warrant of arrest and order for transfer. At present, despite extensive attempts by the Office to engage with the South African authorities and resolve the matter, no other conclusion can be drawn except that South Africa is failing to provide cooperation in accordance with the statute of the Mechanism and numerous resolutions of the Security Council. In addition, while a number of Member States are providing invaluable assistance and intelligence, other Member States have not yet appropriately responded to important requests for assistance in relation to the fugitives. The Office of the Prosecutor underscores that full and timely cooperation is needed from Member States and other relevant authorities to bring the fugitives to justice.
5. Regarding national prosecutions of war crimes committed in Rwanda, the Office of the Prosecutor, within existing resources, continued to monitor cases referred to the Rwandan and French authorities, provide national justice sectors with access to the Mechanism's collection of evidence and support national accountability for those

crimes. More justice regarding crimes committed during the Rwandan genocide is still urgently needed, and a large number of suspects have yet to be prosecuted. The Office calls upon Member States to continue providing full support to the accountability process, whether in the courtrooms of the Mechanism, Rwanda or third-party States.

6. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Office of the Prosecutor continued to support the further implementation of the completion strategy of the International Tribunal for the Former Yugoslavia. With the closure of the Tribunal, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. At the request of Governments and stakeholders in the region, the Office of the Prosecutor continued to provide vital assistance during the reporting period, in particular by providing access to its evidence and expertise.

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

II. Trials and appeals

8. During the reporting period, the Office of the Prosecutor worked on one review proceeding (*Ngirabatware*), two cases at pretrial (*Turinabo et al.* and *Ngirabatware*), one retrial (*Stanišić and Simatović*) and one appeals proceeding (*Mladić*).

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

A. Update on the progress of the review proceeding

Ngirabatware

10. On 19 June 2017, the Appeals Chamber granted Augustin Ngirabatware's request for review of the appeal judgment against him, by which he was convicted of direct and public incitement to commit genocide and instigating and aiding and abetting genocide, and sentenced to 30 years of imprisonment. The Ngirabatware Defence argued that the purported recantations of four witnesses who provided evidence against Ngirabatware constituted a new fact, which, if proved, could have been a decisive factor in the convicting judgment. The Appeals Chamber accepted that argument. A review hearing scheduled to take place from 24 to 28 September 2018 was adjourned at the request of the Ngirabatware Defence for additional time to review voluminous material disclosed by the Prosecution, gathered during its investigations into the related *Turinabo et al.* contempt proceeding.

11. During the reporting period, the review hearing was held before the Appeals Chamber from 16 to 24 September 2019. The Ngirabatware Defence called six witnesses, four of whom were cross-examined by the Prosecution. The Appeals Chamber did not consider it necessary to hear the Prosecution's rebuttal evidence. Two of the witnesses who had purportedly recanted their trial testimony renounced those recantations and affirmed the truth of their prior testimony, while the other two witnesses confirmed their recantations. The Prosecution illustrated through its cross-examination and submissions that the witnesses only recanted their prior testimony because they were bribed and coached to do so as part of a coordinated effort. The Appeals Chamber accepted the Prosecution's arguments, noting that the circumstances surrounding the recantations raised considerable suspicion, that the evidence raised concerns that the decision of the witnesses to recant may not in fact

have been entirely their own and that the circumstances led to the impression that the recantations were orchestrated. The Appeals Chamber accordingly concluded that the Ngirabatware Defence had not advanced sufficient believable evidence to prove the existence of a new fact that the witnesses had truthfully recanted their trial testimonies, and affirmed the appeal judgment.

12. The Office of the Prosecutor is satisfied with the decision of the Appeals Chamber. The result demonstrates to witnesses who testified before the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism that they continue to enjoy the Mechanism's protection.

13. Under article 14 of the statute of the Mechanism, the Office of the Prosecutor is mandated to investigate and prosecute contempt of court offences under article 1 (4) of the statute. The effective investigation and prosecution of contempt of court and breaches of witness protection measures are essential to protecting witnesses and maintaining the integrity of proceedings conducted by the Mechanism, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. In that regard, the Office of the Prosecutor has issued indictments for contempt of court against Ngirabatware, as well as five persons accused in the *Turinabo et al.* case, based on the evidence gathered during the course of investigations for the purposes of the *Ngirabatware* review proceeding.

B. Update on the progress of trials

1. *Turinabo et al.*

14. On 24 August 2018, the single judge confirmed the indictment in the case *Prosecutor vs. Turinabo et al.* and issued warrants of arrest. The indictment charges four Rwandan nationals – Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma – with contempt of court in an effort to overturn Augustin Ngirabatware's conviction. It is alleged that they directly, and through intermediaries, interfered with witnesses who had given evidence in Ngirabatware's trial and interfered with witnesses in the related *Ngirabatware* review proceeding. In addition, the indictment charges Dick Prudence Munyeshuli, an investigator on Ngirabatware's former defence team, and Turinabo with violation of court orders protecting witnesses. On 7 December 2018 the single judge decided not to refer the case of *Turinabo et al.* to Rwanda and ordered that the case be conducted by the Mechanism.

15. During the reporting period, the Prosecution was engaged in extensive pretrial preparation and litigation. As *Turinabo et al.* is the first major contempt case prosecuted before the Mechanism, and with five accused, the pretrial litigation was notably demanding, with many significant issues of law and a wide range of procedural issues involved. From the date of arrest until the end of the reporting period, the defence teams made 284 filings, while the Prosecution submitted 203 filings. There were 121 orders and decisions by the single judge, 25 orders and decisions by the Appeals Chamber and 34 orders and decisions by the President. There were also 89 filings by the Registry. The Prosecution responded to 193 items of correspondence from the defence teams and disclosed more than 1.8 terabytes of material. It is expected that litigation will remain at a high level throughout the pretrial and trial phases of the case.

16. On 8 July 2019, the Prosecution submitted its pretrial brief in accordance with court-ordered deadlines. On 23 August, the Prosecution submitted an amended indictment against the *Turinabo et al.* accused, holding them responsible for a more complete range of crimes committed. In particular, new evidence revealed that efforts to offer and pay bribes to witnesses took place over at least a three-year period, that the accused instructed witnesses over a time period of at least two years and that

additional individuals, including Ngirabatware, were involved in the pervasive and lengthy criminal conduct. On 19 October, the single judge granted the Prosecution's request to amend the indictment.

17. On 18 October 2019, the Prosecution submitted a motion requesting the joinder of the *Turinabo et al.* contempt case with the new *Ngirabatware* contempt case so that the cases could be tried together. The Prosecution argued that a joint trial was warranted because the two cases concerned crimes committed in the course of the same transaction: a criminal scheme to overturn Ngirabatware's genocide convictions in review proceedings before the Mechanism. A decision on that motion was still pending as of the end of the reporting period.

2. *Ngirabatware*

18. On 9 August 2019, the Prosecutor submitted a confidential indictment against Augustin Ngirabatware, charging him with two counts of contempt of court and one count of incitement to commit contempt of court. On 10 October, the single judge confirmed the indictment, and the Prosecution filed a public version of the indictment on the same day. On 17 October, Ngirabatware pleaded not guilty on all charges, and the single judge issued an oral decision not to refer the case to a national jurisdiction and ordering that the Mechanism would retain jurisdiction over the case.

19. The Prosecution alleged in its indictment that from at least August 2015 through September 2018, Ngirabatware directly and through Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and/or Marie Rose Fatuma sought to influence protected witnesses to recant their trial testimonies, thereby interfering with the administration of justice. In addition, or in the alternative, the Prosecution alleged that Ngirabatware knowingly and wilfully incited Turinabo, Nzabonimpa, Ndagijimana and/or Fatuma to commit contempt of the Mechanism and of the International Criminal Tribunal for Rwanda. Furthermore, the Prosecution alleged that Ngirabatware, from his jail cell, knowingly disclosed confidential information and had prohibited contact with a protected witness in violation of a court order.

20. On 18 October 2019, the Prosecution submitted a motion requesting the joinder of the *Ngirabatware* contempt case with the *Turinabo et al.* contempt case so that the cases could be tried together, as noted above.

3. *Stanišić and Simatović*

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

22. The Prosecution completed the presentation of its case-in-chief on 21 February 2019. On 18 June, as planned, the defence phase of the proceedings commenced with the presentation of evidence by the Stanišić Defence. During the reporting period, the Prosecution cross-examined 14 witnesses in court. The Prosecution also litigated 21 motions for the admission of evidence and responded to another 30 motions filed by the defences in the case. The Prosecution continues to endeavour to conduct cross-examinations within the minimum time necessary to fulfil its obligations.

23. On 17 October 2019, the Stanišić Defence completed the testimony of its last scheduled witness, although it provided notice that it may seek to call one additional witness. The *Simatović* defence case commenced with the testimony of the first witness on 12 November.

C. Update on the progress of appeals

Mladić

24. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia unanimously convicted Ratko Mladić of genocide, terror, persecution, extermination, murder, unlawful attacks on civilians, deportation, inhumane acts and hostage-taking, and sentenced him to life imprisonment. On 22 March 2018, the Office of the Prosecutor filed its notice of appeal against the trial judgment. The Office identified two grounds of appeal, both of which related to the acquittal for genocide in relation to events in 1992. On the same date, the Defence also filed its notice of appeal, in which nine grounds of appeal were set out.

25. During the reporting period, the Office of the Prosecutor continued preparations for the oral appeals hearing in the case, which is expected to be held in the first quarter of 2020.

D. Other proceedings

26. At the order of single judges of the Mechanism, the Office of the Prosecutor is currently conducting two investigations into alleged crimes under the Mechanism's jurisdiction. The Office is complying with directions from the court and submitting regular progress reports as directed and anticipates that both investigations will be completed before the end of 2019. Utilizing the "One Office" policy, the Office of the Prosecutor has absorbed the related requirements for the investigations within existing resources.

E. Cooperation with the Office of the Prosecutor

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

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

29. The Office is grateful for the support provided to date by Rwanda, in particular by the Office of the Prosecutor General and heads of law enforcement agencies. The continued cooperation and assistance from the Rwandan authorities has been instrumental to the Prosecution's efforts in the *Ngirabatware* review hearing, the *Turinabo et al.* contempt case and the *Ngirabatware* contempt case.

30. In relation to Serbia, there have been some significant delays in responses to requests for assistance from the Office of the War Crimes Prosecutor in relation to the *Stanišić and Simatović* case. At recent meetings, Serbian government officials committed to meaningfully improving the expeditiousness of responses to the requests of the Office of the Prosecutor of the Mechanism. The timely provision of such assistance is necessary to prevent any further delays in the ongoing proceedings.

31. Cooperation and support from States outside Rwanda and the former Yugoslavia, as well as from international organizations, remain integral to the successful completion of Mechanism activities. The Office of the Prosecutor again acknowledges the support it received during the reporting period from Member States and international organizations, including the United Nations and its agencies, the

European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and the International Criminal Police Organization (INTERPOL). The Office would like to highlight in particular the important assistance provided by authorities in the Netherlands and the United Kingdom of Great Britain and Northern Ireland in relation to proceedings at the Arusha branch.

32. The international community continues to play an important role in providing incentives for States to cooperate with the Mechanism and undertake national prosecutions of war crimes. The support of the European Union remains a key tool for ensuring continued cooperation with the Mechanism. Assistance is also increasingly needed to support the national prosecution of war crimes cases in Rwanda and in the countries of the former Yugoslavia.

F. Conditional early release

33. As previously reported, the Office of the Prosecutor proposed in early 2016 to amend rule 151 of the Rules of Procedure and Evidence of the Mechanism in order to establish a programme for conditional early release. The Office is gravely concerned that the vast majority of convicted persons have been released unconditionally upon or soon after serving only two thirds of their sentences. While the Office's proposal to amend rule 151 was not adopted by the plenary of judges, the Office took note of the Security Council debate on 6 June 2018. The Office also welcomed Council resolution [2422 \(2018\)](#), in which the Council encouraged the Mechanism to consider a conditional early release regime.

34. During the reporting period, in the light of the Council's guidance, the Office of the Prosecutor made five submissions regarding applications for the early release of specific convicted persons, and no convicts were granted early release. The Office will continue to urge consideration of the views of the victims and affected States and communities before granting early release, in particular without conditions, and bring its views and concerns to the attention of the President of the Mechanism in response to applications for the early release of persons convicted of genocide, crimes against humanity and war crimes.

III. Fugitives

35. As of the end of the reporting period, eight fugitives indicted by the International Criminal Tribunal for Rwanda remain at large. During the reporting period, the Office of the Prosecutor continued to develop and follow actionable leads based on intelligence, analytical and investigative activities by the Office and its partners. The Office continues to submit requests for assistance and cooperation to Member States in support of its efforts to track, locate and arrest the fugitives.

36. As previously reported in the thirteenth progress report ([S/2018/1033](#), annex II), the authorities of South Africa have not provided cooperation in securing the arrest and transfer of a fugitive whose presence in South Africa was confirmed by the INTERPOL National Central Bureau for South Africa in August 2018. The Office had submitted an urgent request for assistance to South Africa on 16 August 2018 on that basis. After no response was received and in the light of further developments, the Office submitted a second urgent request for assistance on 15 March 2019. The Office engaged in intensive efforts to discuss its urgent requests for assistance with the South African authorities, without result.

37. Following a session of the Security Council on 17 July 2019 during which the South African representative confirmed the country's intent to cooperate, the Prosecutor wrote to the Minister for Justice and Corrections and the Minister for International Relations and Cooperation of South Africa requesting to be informed by 15 August of the date scheduled for the fugitive's arrest. No response was received and the arrest did not take place. Finally, on 16 September, the Office received the official response of South Africa to its request for assistance of 15 March, wherein South Africa informed the Office that it could not execute the Mechanism's warrant of arrest and order for transfer because South African legislation only provided for the extradition of persons to States, not to United Nations international criminal tribunals. It was the first time that rationale had been offered, after more than a year of discussions. In response, on 19 September the Office sent a third request for assistance to South Africa, pointing to its international obligation to cooperate with the Mechanism. As of the end of the reporting period, South Africa had not responded to the third request and the fugitive remained at large.

38. South Africa has not provided valid legal grounds for failing to execute the Mechanism's warrant of arrest and order for transfer. Under article 28 of the statute of the Mechanism, adopted by the Security Council acting under Chapter VII of the Charter of the United Nations, Member States are required to "comply without undue delay with any request for assistance", including "the arrest or detention of persons" (see resolution [1966 \(2010\)](#)). Rule 60 of the Rules of Procedure and Evidence of the Mechanism provides that a Member State's obligation to comply with a Mechanism warrant of arrest "shall prevail over any legal impediment to the surrender or transfer of the accused...that may exist under the national law or treaties of the State concerned". In addition, it must be noted that South Africa has previously complied with warrants of arrest issued by the International Criminal Tribunal for Rwanda, as confirmed by its 1999 arrest and transfer of Ignace Bagilishema and the 2004 arrest and transfer of Gaspard Kanyarukiga.

39. The Prosecutor deeply regrets that South Africa has not yet arrested and transferred a wanted fugitive indicted for the crime of genocide. For more than a year, and with the full knowledge of the South African authorities, the fugitive has remained at liberty in South Africa, facing no judicial proceedings and seemingly under no measures to ensure he does not have the opportunity to flee again. As of the time of writing, despite extensive attempts by the Office to engage with the South African authorities and resolve the matter, no other conclusion can be drawn except that South Africa is failing to provide cooperation in accordance with the statute of the Mechanism and numerous resolutions of the Security Council. The Office of the Prosecutor requests the Council to take note.

40. With regard to Zimbabwe, it was previously agreed that the Office of the Prosecutor and the Zimbabwean authorities would establish a joint task force to coordinate further investigative activities. The Zimbabwean authorities have consistently stated their full commitment to cooperation and adherence to the country's international legal obligations. The Office has continued to work with the joint task force, although unfortunately there has been little progress. Efforts remain ongoing, and the Office trusts that the task force will receive full support from the Zimbabwean authorities to pursue any leads necessary to locate and arrest fugitives.

41. During the reporting period, the Office submitted a number of requests for assistance to national authorities, in particular in Africa and Europe, for information related to open leads that it is actively pursuing. Overall, while the Office recognizes the commitment by Member States to provide cooperation, many responses were received late or not at all, thus preventing the Office from obtaining urgently needed information that is vital to locating fugitives.

42. As provided for in the statute of the Mechanism and reinforced by the Security Council in numerous resolutions, including most recently its resolution 2422 (2018), all Member States have an international legal obligation to provide cooperation to the Office of the Prosecutor in its efforts to locate and apprehend the remaining fugitives. The Office expresses its appreciation to all Member States that support its efforts, and looks forward to continuing to work in close cooperation with them. The Office also reiterates that under the War Crimes Rewards Program of the Government of the United States of America, individuals (other than government officials) 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.

IV. Assistance to national war crimes prosecutions

43. National prosecutions remain essential to achieving greater justice for the victims of war crimes, crimes against humanity and genocide committed in Rwanda and the former Yugoslavia. The Office of the Prosecutor is mandated to assist and support national prosecutions of those crimes, in accordance with the completion strategies of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Former Yugoslavia, Security Council resolution 1966 (2010) and the statute of the Mechanism. The effective prosecution of the crimes committed is fundamental to building and sustaining the rule of law, establishing the truth of what occurred and promoting reconciliation in the affected countries. Third-party States are also undertaking prosecutions against suspects who are present in their territory for crimes committed in Rwanda and the former Yugoslavia.

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

A. War crimes committed in Rwanda

1. Completion strategy of the International Criminal Tribunal for Rwanda

45. The twenty-fifth anniversary of the Rwandan genocide was an important opportunity to commemorate the victims and reflect on the shared commitment to prevent others from suffering the horrors of genocide. It was also a reminder that the victims of Rwanda are still waiting for more justice and that the closure of the International Criminal Tribunal for Rwanda was not an end to that process. All those who committed crimes during the Rwandan genocide must be held accountable. The Mechanism and national courts are responsible now for continuing the work of the Tribunal and ensuring the full implementation of its completion strategy by bringing more perpetrators to justice.

46. The Office of the Prosecutor is fully committed to undertaking all efforts to locate and arrest the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda. As reported above, the Office is generating and pursuing active leads. Full cooperation and support from Member States are urgently needed to enable the Office's efforts to achieve results. The Mechanism further continues to monitor the five cases referred by the Tribunal to the national courts of France and Rwanda under rule 11 bis of the Rules of Procedure and Evidence of the Tribunal. The cases against Wenceslas Munyeshyaka and Laurent Bucyibaruta were referred to France in 2007. Jean Uwinkindi, Bernard Munyagishari and Ladislas Ntaganzwa were transferred to Rwanda in 2012, 2013 and 2016, respectively. The *Munyeshyaka* case

has now been closed without charges being brought. All other proceedings remain ongoing.

47. At the same time, national authorities now have primary responsibility for the continued implementation of the completion strategy of the International Criminal Tribunal for Rwanda. The Prosecutor General of Rwanda is currently searching for approximately 500 fugitives. Courts in countries around the world continue to process cases of crimes committed during the Rwandan genocide. For example, during the reporting period, trial proceedings commenced in Belgian courts with regard to the prosecution of Fabien Neretse, a former Rwandan official, for genocide and war crimes committed during the Rwandan genocide. In addition to the cases referred by the International Criminal Tribunal for Rwanda, courts in France continue to process a number of additional cases involving those suspected of committing crimes during the Rwandan genocide. With the implementation of “no safe haven” policies, courts in other countries are also pursuing immigration enforcement actions against those suspected of participating in the genocide.

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

49. It is essential that those who bear individual criminal responsibility for crimes committed during the genocide are prosecuted. Twenty-five years after the genocide, significant steps towards justice have been achieved, but more remains to be done. The Office of the Prosecutor stands ready to provide support and assistance to the Rwandan authorities and third-party States prosecuting, in their own domestic courts, Rwandan nationals suspected of genocide. The Office calls upon all Member States to ensure that all possible efforts are undertaken to continue the implementation of the completion strategy of the International Criminal Tribunal for Rwanda and to support more justice for more victims of the Rwandan genocide.

2. Genocide denial

50. In 2006, the Appeals Chamber of the International Criminal Tribunal for Rwanda held that the facts of the genocide committed in Rwanda were established beyond any dispute and thus constituted facts of common knowledge. In particular, the Appeals Chamber concluded that it was a universally known fact that, between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group. Establishing that and other facts about the Rwandan genocide was one of the Tribunal’s most important contributions to re-establishing peace and security in Rwanda and promoting reconciliation between the affected communities.

51. However, genocide denial, in all its forms and manifestations, continues today. Efforts to minimize the scale of the death and destruction or point to other factors to detract attention from the facts of the genocide are intolerable and unacceptable. There are no other facts or circumstances that in any way alter the truth that in the course of just 100 days in Rwanda, hundreds of thousands of innocent people were senselessly murdered, tortured, raped and forced to flee their homes. At the same time, genocide ideology continues to present clear risks to international peace and security. Ideologies of discrimination, division and hate are promoting conflict and crimes in places around the globe.

52. The Office of the Prosecutor of the Mechanism firmly rejects genocide denial, and is committed to promoting education and remembrance as key tools in the fight

against genocide ideology. In such efforts, the Office will zealously investigate and prosecute all those who interfere with witnesses with the aim of undermining the established facts of the genocide committed in Rwanda. Such contempt of court is a form of genocide denial and must be opposed.

3. Cases referred to France

53. Wenceslas Munyeshyaka, an ordained Catholic priest, was indicted by the International Criminal Tribunal for Rwanda in July 2005 on four counts, namely, genocide, rape as a crime against humanity, extermination as a crime against humanity and murder as a crime against humanity. The indictment was referred by the Tribunal to France for trial on 20 November 2007. As previously reported, the investigation by the French authorities in the *Munyeshyaka* case did not result in charges being brought. On 21 June 2018, the Investigation Chamber of the Court of Appeals of Paris confirmed the discharge order on the grounds that there was insufficient evidence to prosecute. The appeal hearing before the Court of Cassation was held on 18 September 2019, and that Court confirmed the decision to dismiss the case on 30 October.

54. The *Bucyibaruta* case continued to progress in a more positive direction. Laurent Bucyibaruta, prefect of Gikongoro Prefecture, was indicted by the International Criminal Tribunal for Rwanda in June 2005 on six counts, namely, direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. The indictment was referred by the Tribunal to France for trial on 20 November 2007. The investigation by the French authorities has been completed. On 4 October 2018, the Public Prosecutor filed his final submission, asking for partial discharge and transfer to the criminal court and requesting the investigating judge to order an indictment for genocide, complicity in genocide and complicity in crimes against humanity. On 24 December, the judge issued a decision that the case should proceed to trial, which was appealed by the accused and civil parties. A hearing before the Investigation Chamber of the Court of Appeals is expected in the first half of 2020.

55. Although the Office of the Prosecutor recognizes the challenges the French judiciary has faced, significant time has been required to process the cases. The Office hopes to be able to report in the next progress report regarding the schedule for commencement of the trial in the *Bucyibaruta* case.

4. Cases referred to Rwanda

56. Jean Uwinkindi, a pastor in the Pentecostal Church, was indicted by the International Criminal Tribunal for Rwanda in September 2001 on three counts, namely, genocide, conspiracy to commit genocide and extermination as a crime against humanity. He was transferred to Rwanda for trial on 19 April 2012, and the trial commenced on 14 May. On 30 December 2015, the High Court of Rwanda issued its trial judgment, convicting Uwinkindi and sentencing him to life imprisonment. Appeals proceedings are under way.

57. Bernard Munyagishari, a local leader in the Mouvement républicain national pour la démocratie et le développement, was indicted by the International Criminal Tribunal for Rwanda in September 2005 on five counts, namely, conspiracy to commit genocide, genocide, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 24 July 2013. The High Court issued its trial judgment on 20 April 2017, convicting Munyagishari of genocide and murder as a crime against humanity, acquitting him of

rape as a crime against humanity, and sentencing him to life imprisonment. Appeals proceedings are under way.

58. Ladislav Ntaganzwa, mayor of Nyakizu commune, was indicted by the International Criminal Tribunal for Rwanda in June 1996, with the amended indictment charging him with five counts, namely, genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 20 March 2016. Trial proceedings are under way.

59. The Office of the Prosecutor encourages the Rwandan authorities to ensure that the cases are processed as expeditiously as possible.

B. War crimes committed in the former Yugoslavia

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

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

61. More than 15 years after the adoption of the completion strategy, national judiciaries have achieved progress in accountability for war crimes, albeit unevenly among different countries. They continue to face a very large backlog of war crimes cases to process, with several thousand cases remaining across the region. Most importantly, much more remains to be done to bring to justice senior- and mid-level suspects who worked together with or were subordinate to senior-level war criminals prosecuted and convicted by the International Tribunal for the Former Yugoslavia.

2. Challenges to accountability at the domestic level: the *Djukić* case

62. For the past several years, the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism have called attention to the two main challenges to accountability at the domestic level in the former Yugoslavia: regional judicial cooperation, and the denial of crimes and glorification of convicted war criminals.

63. Judicial cooperation between the countries of the former Yugoslavia is essential to ensuring that those responsible for war crimes are held accountable. Many suspects may not be present in the territory where they are alleged to have committed the crimes, and Governments in the region refuse to extradite their citizens on war crimes charges. As reported in the thirteenth progress report (S/2018/1033), regional judicial cooperation in war crimes matters among the countries of the former Yugoslavia is at its lowest level in years and faces immense challenges. Decisive action is needed to reverse the current negative trends and ensure that war criminals do not find safe haven in neighbouring countries.

64. Acceptance of the truth of the recent past is the foundation for reconciliation and healing in the communities of the former Yugoslavia. The Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism have regularly reported, however, that the denial of crimes and the non-acceptance of the facts established in the judgments of the

Tribunal are widespread throughout the region. Convicted war criminals are often glorified as heroes. Students in different countries, as well as within Bosnia and Herzegovina itself, are taught widely different and irreconcilable versions of the recent past. The Office of the Prosecutor of the Mechanism has expressed its grave concern in that regard and called for urgent attention to those issues.

65. During the reporting period, the negative trends in regional judicial cooperation and the denial of crimes were exemplified in the matter of Novak Djukić, a convicted war criminal who continues to remain free in Serbia five years after fleeing from justice in Bosnia and Herzegovina.

66. Djukić was prosecuted and convicted by the Court of Bosnia and Herzegovina for ordering the attack by shelling on the “safe area” of Tuzla, Bosnia and Herzegovina, on 25 May 1995, in which more than 70 civilians were killed and 130 wounded. Following his trial and appeal, Djukić was released pending resentencing, and ultimately received a sentence of 20 years of imprisonment. Upon release, Djukić travelled to Serbia, where he also holds citizenship, purportedly for medical reasons. Djukić subsequently refused to return to Bosnia and Herzegovina to serve his sentence. Bosnia and Herzegovina issued an INTERPOL Red Notice for his arrest in October 2014, and in 2015 requested Serbia to enforce Djukić’s sentence pursuant to the agreement between Serbia and Bosnia and Herzegovina on the mutual execution of court decisions in criminal matters. Since that time, Djukić has remained at liberty in Serbia and the sentence against him has not been enforced.

67. That Djukić, after five years, continues to enjoy safe haven in Serbia from his final conviction and sentence in Bosnia and Herzegovina is a clear and deeply troubling failure of regional judicial cooperation. The Office of the Prosecutor has repeatedly raised the matter with the Serbian authorities at the highest level, as regularly reported in previous reports of the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and of the Office of the Prosecutor of the Mechanism, beginning with the completion strategy report of the Tribunal dated 19 November 2014 (S/2014/827). Unfortunately, the process has been unjustifiably delayed and is far from being completed. The initial obstacle was an initiative to essentially retry the case in Serbian courts, which was inconsistent with European standards for mutual legal assistance and the agreement between Serbia and Bosnia and Herzegovina. Subsequently, judicial proceedings have been effectively brought to a halt by Djukić’s repeated refusal to attend court hearings. The Office of the Prosecutor has previously reported that Djukić has regularly entered Serbian military hospitals immediately prior to scheduled court sessions, only to be discharged later.

68. While Djukić remains free in Serbia, there have been concerted efforts for several years to deny the crimes for which he was convicted – efforts that have been and continue to be supported by some official institutions of Serbia and the Republika Srpska. Those efforts reached a new height during the reporting period. On 6 November 2019, the Serbian Ministry of Defence hosted an event promoting the denial of the crimes and the denial of Djukić’s guilt. Most notably, Djukić was in attendance, even as he continues to claim he is medically unfit to participate in the proceedings for enforcement of his sentence. The summary of the event published on the Ministry of Defence’s website confirmed the intention to spread the denial among the public in Serbia and the Republika Srpska. The event was condemned by the Commissioner for Human Rights of the Council of Europe, who correctly characterized it as another attempt to deny or relativize war crimes. In response, the Minister for Defence issued a press release criticizing the Commissioner.

69. The *Djukić* case is emblematic of how the intricately linked challenges of regional judicial cooperation and the denial of crimes significantly hinder accountability for war crimes committed in the former Yugoslavia. Judicial

cooperation fails or is delayed because war crimes justice is politicized and resisted strenuously when it contradicts nationalist narratives. In turn, the denial of crimes and the glorification of war criminals contribute greatly to a climate that delegitimizes the accountability process, reduces trust in the courts of neighbouring countries and regards war crimes fugitives as local heroes. The evident results are impunity and a standstill – if not outright regression – with regard to reconciliation in the region.

70. Challenges are by no means limited to Serbia and the Republika Srpska. The Office of the Prosecutor has regularly reported on the significant difficulties judicial authorities in Bosnia and Herzegovina and Serbia face in obtaining cooperation from Croatia, as clearly demonstrated by the 2015 conclusion of the Government of Croatia directing the Ministry of Justice not to provide judicial cooperation in certain war crimes cases. In addition, a Bosnian Croat convicted of rape as a war crime fled to Croatia in 2018 and has enjoyed safe haven since that time, despite an INTERPOL Red Notice and a request by Bosnia and Herzegovina to enforce his sentence in Croatia. The denial of crimes and the glorification of war criminals can be found in every country and every community, including among Bosniak, Croatian and Serbian communities in Bosnia and Herzegovina.

71. At the same time, steps in a more positive direction are being made. Overall, judicial cooperation between Bosnia and Herzegovina and Serbia, in particular with regard to low-level accused, is the most effective in the region. With the assistance of the Office of the Prosecutor of the Mechanism, the Chief War Crimes Prosecutor of Bosnia and Herzegovina and the Chief War Crimes Prosecutor of Serbia have agreed to increase the transfer of complex war crimes cases between their offices to secure greater justice. The Croatian authorities also committed to processing some cases transferred from Bosnia and Herzegovina. Local civil society and international partners continue to promote acceptance of the truth of the recent past and reconciliation.

72. Nonetheless, it is impossible to expect domestic accountability for war crimes to succeed, in particular for senior- and mid-level accused, in the face of such significant challenges. Unfortunately, current momentum and trends are heading in a negative direction. Urgent action is needed at the highest political levels. The practice of treating war crimes as political in nature and different from all other crimes must end. The ongoing impunity enjoyed by those accused of war crimes in neighbouring countries should be seen for what it is: a serious threat to the rule of law and an insult to the victims. Government institutions and officials should publicly condemn the denial of crimes and the glorification of war criminals, rather than supporting them with public rhetoric and funds.

3. Bosnia and Herzegovina

73. The Office of the Prosecutor of the Mechanism continued to enjoy positive discussions with the Chief War Crimes Prosecutor of Bosnia and Herzegovina about cooperation in war crimes justice. The Chief War Crimes Prosecutor underlined her desire for even closer cooperation and collaboration with the Office of the Prosecutor, including through assistance on concrete cases, strategic support and activities to transfer lessons learned. The Office is committed to continuing to support the work of the Prosecutor's Office of Bosnia and Herzegovina, in particular with regard to the mutual goal of successfully implementing the national war crimes strategy.

74. During the reporting period, the Prosecutor's Office of Bosnia and Herzegovina filed 5 indictments, with 20 more indictments expected before the end of 2019. The number of new cases initiated in 2019 is lower than in previous years, but the Office of the Prosecutor of the Mechanism is aware that the Prosecutor's Office of Bosnia and Herzegovina is also actively undertaking investigations in complex cases, which

should result in additional indictments in the upcoming reporting period. In response to questions regarding the results of prosecutions initiated in past years, the Prosecutor's Office of Bosnia and Herzegovina has committed to continuing to review its practices and pursuing additional reforms as needed. The Office of the Prosecutor of the Mechanism stands ready to provide assistance and to work with the Chief War Crimes Prosecutor to ensure her Office meets the public's high expectations for war crimes justice.

75. In the upcoming period, the Prosecutor's Office of Bosnia and Herzegovina will need to address two issues. The first is regional judicial cooperation. The scale of the challenge is immense: currently, there are more than 50 persons indicted for war crimes before the Court of Bosnia and Herzegovina who are currently known or believed to be at large in neighbouring countries. It is obvious that improved regional judicial cooperation is essential to pursuing meaningful accountability for war crimes committed in Bosnia and Herzegovina. The revised national war crimes strategy, which has yet to be adopted, does not address the matter, and victims have expressed their concerns that the transfer of complex cases from Bosnia and Herzegovina to the region requires much greater attention. The Office of the Prosecutor of the Mechanism is working closely with the Prosecutor's Office of Bosnia and Herzegovina and other prosecution offices in the region to transfer those indictments to the country in which the accused is present and can be brought to trial. During the reporting period, four cases were jointly identified as the first cases to be transferred, and intensive activities are being undertaken to ensure the transfers are successful.

76. The second issue is the "rules of the road" files initially reviewed by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia. The Chief War Crimes Prosecutor of Bosnia and Herzegovina understands the importance of preparing and making public a report on the results achieved. The Office of the Prosecutor of the Mechanism is providing support and assistance with that process, and looks forward to the presentation of relevant information in the upcoming period.

77. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, significant results have been achieved so far in accountability for war crimes in Bosnia and Herzegovina, but it is clear that much more remains to be done. There is a strong foundation for continued justice in Bosnia and Herzegovina. In recent years, the Prosecutor's Office of Bosnia and Herzegovina has issued a large number of significant indictments in complex cases involving senior- and mid-level suspects. The Office of the Prosecutor of the Mechanism and the Prosecutor's Office of Bosnia and Herzegovina continue to strengthen their cooperation. Yet there remains an enormous backlog of cases, and efforts still need to be further intensified. The Office of the Prosecutor of the Mechanism encourages further progress to prevent any regression and will continue to work with the Prosecutor's Office of Bosnia and Herzegovina and other prosecution offices in Bosnia and Herzegovina.

4. Croatia

78. As in its eleventh (S/2017/971), twelfth (S/2018/471), thirteenth (S/2018/1033) and fourteenth (S/2019/417) progress reports, the Office of the Prosecutor is required to report to the Security Council that the Government of Croatia, by failing to withdraw its 2015 conclusion directing the Ministry of Justice not to provide judicial cooperation in certain war crimes cases, regrettably continues to interfere politically in the justice process. As a result, a large and continually growing number of war crimes cases against former members of Croatian and Bosnian Croat forces are frozen. No satisfactory explanations have been provided for the maintenance of the policy, and indeed none could be provided, in particular by a State member of the

European Union. The Government of Croatia should withdraw the conclusion immediately and allow the justice process to continue without further interference.

79. With respect to the category II case files from Bosnia and Herzegovina to be prosecuted in Croatia, which have been previously discussed in the progress reports of the Mechanism, the Office of the Prosecutor continued its engagement with the Croatian authorities. During the previous reporting period, Croatian authorities made a commitment to the Office that war crimes cases from Bosnia and Herzegovina would be accepted for transfer and could swiftly proceed if they were officially transmitted through mutual legal assistance. During the present reporting period, the Prosecutor's Office of Bosnia and Herzegovina agreed to pursue the transfer of cases to Croatia with the assistance of the Office of the Prosecutor of the Mechanism. It is clear, however, that victims lack trust in the willingness of Croatia to independently and impartially prosecute those cases after so many years of delay, which poses challenges. Separately, the *Glavaš* case, a category II case previously referred by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to the State Attorney's Office of Croatia, remains at trial following the earlier revocation of a convicting judgment by the Supreme Court of Croatia.

80. During the reporting period, the Supreme Court of Croatia acquitted two former members of the police antiterrorism unit for the killing of six elderly Croatian Serb civilians in the aftermath of Operation Storm. The Supreme Court found that the murders had been committed by members of the police antiterrorism unit, but was not satisfied that there was sufficient evidence establishing the guilt of the accused for those crimes beyond a reasonable doubt. In its judgment, the Supreme Court pointed to certain deficiencies in the prosecution of the case, noting that the first witnesses were questioned 15 years or more after the crime, although the crimes had been immediately reported to the Croatian authorities. The Supreme Court further found that the superior officers of the antiterrorism unit had failed to take the necessary steps to punish the perpetrators of the crimes, although it did not enter convictions, as the commanders were not charged in the case.

81. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, it is clear that more justice for war crimes is urgently needed in Croatia. Although fewer cases are being prosecuted each year, significant accountability gaps remain, in particular in relation to the responsibility of commanders for crimes committed by their subordinates. Victims have high expectations for justice that the Croatian authorities will need to meet.

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

5. Montenegro

83. At the request of the Montenegrin authorities, the Office of the Prosecutor has, over the past few years, developed its assistance to Montenegro in relation to justice for war crimes committed in the conflicts in the former Yugoslavia. In January 2019, the Prosecutor visited Podgorica for discussions with the President, the Minister for Foreign Affairs, the Minister for Justice and the Supreme State Prosecutor of Montenegro. Also at the request of the Montenegrin authorities, the Office agreed to significantly strengthen cooperation in war crimes justice, including through the

transfer of evidence, assistance in concrete cases, training and capacity-building. Subsequently, the Montenegrin authorities and the Office have had further positive engagement, and will continue working together closely to improve the processing of war crimes cases in Montenegro.

84. It is well understood that, to date, sufficient justice for war crimes has not been achieved in Montenegro. In the four major cases that have been completed, 28 accused were acquitted and only 4 were convicted. Those cases were marred by a number of problems, including insufficient evidence and the inconsistent application of international law. At the same time, the Special State Prosecutor's Office, which is mandated to investigate and prosecute war crimes, faces significant challenges, in particular insufficient resources. In 2015, Montenegro adopted a strategy for war crimes investigations.

85. During the reporting period, the Special State Prosecutor's Office achieved its first conviction at trial for a war crimes case in a number of years. Vlado Zmajević, whose case was transferred to Montenegro from the Office of the War Crimes Prosecutor of Serbia, was convicted by the High Court in Podgorica for war crimes against the civilian population and sentenced to 14 years in prison. Zmajević, a former member of the Yugoslav Army, was found guilty for the murder of four Kosovar Albanian civilians in the village of Žegra during the conflict in Kosovo.¹ The Office of the Prosecutor of the Mechanism, which provided extensive documentation to support the investigation, welcomes this result as a step towards reinvigorating accountability for war crimes in Montenegro. The Office of the Prosecutor of the Mechanism is assisting the Special State Prosecutor's Office with other ongoing investigations, and it was agreed that the Office of the Prosecutor would review its evidence to identify additional suspects. Additional cases to be transferred to Montenegro from other countries in the region have also begun to be identified, and the Montenegrin authorities have committed to process such cases once they are transferred.

86. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, war crimes justice in Montenegro is still just beginning. There has been almost no accountability for Montenegrin citizens who committed crimes during the conflicts. On a more positive note, the Montenegrin authorities have accepted that far more needs to be done and have requested the assistance of the Office of the Prosecutor of the Mechanism to ensure that Montenegro can achieve far more justice and meet its commitments. During the reporting period, the Special State Prosecutor's Office took a positive step with its first war crimes conviction at trial in several years, and can now build on that result as a foundation for greater efforts. The Office of the Prosecutor is committed to providing the support needed, and hopes to be able to report in the future that war crimes justice in Montenegro has begun producing concrete results.

6. Serbia

87. The Office of the Prosecutor held open and concrete discussions with the President, the Minister for Justice and the Chief War Crimes Prosecutor of Serbia about outstanding issues and the continued cooperation of the Serbian authorities with the Mechanism and its Office of the Prosecutor. There was agreement that the Serbian authorities would continue to strengthen cooperation with the Office of the Prosecutor as a means to support the implementation of the national war crimes strategy and prosecutorial strategy. It was further agreed that regional judicial cooperation in war crimes matters has not been satisfactory, and that efforts needed to be taken to

¹ All references to Kosovo shall be understood as being in full compliance with Security Council resolution 1244 (1999).

improve cooperation as an important element in regional relations. The Serbian authorities and the Office of the Prosecutor will continue to work together closely to expedite the processing of war crimes cases in Serbia.

88. During the reporting period, the Office of the War Crimes Prosecutor of Serbia filed three indictments. The Office of the War Crimes Prosecutor also secured the convictions of three accused at trial and the convictions of two accused on appeal. In the three-year period since the adoption of the Serbian national war crimes strategy, the Office of the War Crimes Prosecutor has filed 23 indictments, nearly all of which concerned low-level perpetrators. As of the end of the reporting period, the Office of the War Crimes Prosecutor also had five active investigations.

89. During the reporting period, important steps were taken towards the initiation in Serbia of some complex war crimes cases involving senior- and mid-level officials. The Office of the War Crimes Prosecutor had initiated one such complex investigation. In a positive sign of regional judicial cooperation, the Chief War Crimes Prosecutor of Serbia and the Chief War Crimes Prosecutor of Bosnia and Herzegovina agreed to the transfer of two indictments, confirmed by the Court of Bosnia and Herzegovina, against two accused currently in Serbia, for crimes committed in Bosnia and Herzegovina. It is anticipated that the transfer will be completed in the coming months. Also during the reporting period, the Office of the Prosecutor of the Mechanism handed over two complex case files involving senior-level accused to the Office of the War Crimes Prosecutor of Serbia for analysis and processing. The Office of the Prosecutor of the Mechanism will provide full assistance to the Office of the War Crimes Prosecutor in processing all cases, and looks forward to being able to report in the future that they are moving forward.

90. As reported in the previous progress reports of the Mechanism, the Office of the Prosecutor of the Mechanism and the Serbian authorities have had ongoing discussions regarding a number of issues. The Office had previously been informed that Serbia had received the judgments of the International Tribunal for the Former Yugoslavia and of the Mechanism from the Mechanism's Registry. As of the time of writing, the judgments against Serbian nationals had not yet been entered into the domestic criminal records of Serbia. The Office will continue to engage with the Ministry of Justice to find a solution to the issue. The Office also discussed regional judicial cooperation, including the lack of progress in bilateral negotiations with Croatia and the ongoing challenges in obtaining cooperation from Kosovo.

91. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, though few results have been achieved and impunity for many well-established crimes continues in Serbia, the upcoming reporting period will demonstrate whether war crimes justice in Serbia is heading in the right direction. With the adoption of the prosecutorial strategy and the strengthening of its human resources, the Office of the War Crimes Prosecutor has the tools to begin achieving positive results. Important case files involving senior- and mid-level officials are being transferred to Serbia, and the Office of the Prosecutor of the Mechanism will provide all requested assistance, including training, direct case assistance and other forms of support, needed to appropriately process those files. The Office of the War Crimes Prosecutor is also undertaking a number of important investigations. During the next reporting period it will become increasingly evident whether the Office of the War Crimes Prosecutor is investigating, processing, indicting and prosecuting more cases, particularly against senior- and mid-level officials, at a higher rate and a higher quality.

C. Access to information and evidence

92. The Office of the Prosecutor possesses extensive evidence and invaluable expertise that can greatly benefit national justice efforts. The collection of evidence relating to the former Yugoslavia comprises more than 9 million pages of documents and thousands of hours of audio and video records, most of which were not introduced into evidence in any proceeding of the International Tribunal for the Former Yugoslavia and are therefore only available from the Office of the Prosecutor. The collection of evidence related to Rwanda comprises more than 1 million pages of documents. The Office's staff members have unique insight into the crimes and the cases that can assist national prosecutors in preparing and proving their indictments.

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

94. In relation to Rwanda, the Office of the Prosecutor received six requests for assistance from three Member States, which have been processed. One request was submitted by the Canadian authorities, one request was from the United Kingdom and five requests were submitted by the French authorities. In total, the Office handed over more than 5,000 documents comprising more than 16,000 pages of evidence. In addition, the Office facilitated access to two witnesses, and filed one submission in relation to a request for assistance.

95. In relation to the former Yugoslavia, the Office of the Prosecutor received 158 requests for assistance from five Member States and two international organizations. Seventy-seven requests for assistance were submitted by the authorities in Bosnia and Herzegovina, one came from Croatia and three came from Serbia. In total, the Office handed over more than 10,000 documents comprising nearly 180,000 pages of evidence and 201 audiovisual records. In addition, the Office filed one submission in relation to a request for the continuation of witness protective measures, concerning a proceeding in Bosnia and Herzegovina. The Office continued to receive a large volume of requests for assistance during the reporting period, and expects to receive an even larger volume of requests in the future.

96. The joint European Union-Mechanism training project for national prosecutors and young professionals continued during the reporting period. Liaison prosecutors from Bosnia and Herzegovina and Serbia worked with the Office of the Prosecutor to support the transfer of evidence and expertise to their home offices and the national prosecutions of war crimes committed in the former Yugoslavia.

D. Capacity-building

97. During the reporting period, the Office of the Prosecutor continued its efforts, within existing resources, to build capacity in national judiciaries prosecuting war crimes. The Office's capacity-building efforts focused on the Great Lakes region, East Africa, and the former Yugoslavia. Strengthening national capacities supports the principle of complementarity and the national ownership of post-conflict accountability.

98. Shortly after the end of the reporting period, the Office of the Prosecutor will host new deputy prosecutors and legal assistants from the Office of the War Crimes Prosecutor of Serbia for an intensive five-day induction training in The Hague. The topics covered will include an introduction to building complex cases, training on accessing evidence from the Office of the Prosecutor and discussions regarding accountability for war crimes in Serbia and the region. The induction training was

requested by the Office of the War Crimes Prosecutor, with the support of the Ministry of Justice of Serbia, and is being generously funded by the Netherlands.

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

E. Missing persons

100. The search for persons who are still missing as a result of the conflicts in the former Yugoslavia continued to be consistently identified as one of the most important outstanding issues. Significant results have been achieved, with approximately 30,000 missing persons found and identified. Unfortunately, more than 10,000 families still do not know the fates of their loved ones. The search for and exhumation of mass graves and the subsequent identification of the remains need to be accelerated. Further progress on those issues is a humanitarian imperative and fundamental to reconciliation in the countries of the former Yugoslavia. Victims from all sides of the conflicts must be located, identified and returned to their families.

101. During the reporting period, the Office of the Prosecutor and the International Committee of the Red Cross (ICRC) continued their cooperation pursuant to the memorandum of understanding signed in October 2018. That important agreement enables ICRC to gain access to the Office's collection of evidence to obtain information that may assist in clarifying the fate and whereabouts of persons who are still missing. The Office and ICRC are also working together, in accordance with their respective mandates, to analyse information, identify new leads and provide files to domestic missing persons authorities for action. From 16 May to 15 November 2019, the Office responded to 10 requests for assistance from ICRC and handed over 1,000 documents comprising 15,000 pages, as well as 14 audiovisual records.

V. Other residual functions

102. During the reporting period, the Office of the Prosecutor continued to carry out its responsibilities in respect of other residual functions.

103. The volume of litigation before the Mechanism arising from completed cases continues to be higher than anticipated, which puts strain on the Office's limited resources. The Office was nonetheless able to address those unforeseen requirements within existing resources, in particular thanks to the "One Office" policy. The Office will continue to monitor the volume of litigation and report as appropriate.

VI. Management

A. Overview

104. 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 resolution [2256 \(2015\)](#) and paragraphs 7 and 8 of resolution [2422 \(2018\)](#). An important part of those efforts is the Prosecutor's "One Office" policy to integrate the staff and

resources of the Office across both branches. Under the policy, staff and resources are available to be flexibly deployed to work at either branch as necessary.

105. During the reporting period, the Office of the Prosecutor continued to litigate unexpected ad hoc judicial activity in relation to the *Ngirabatware* review proceeding, the *Turinabo et al.* contempt case and the *Ngirabatware* contempt case. The Office was able to absorb the related requirements within existing resources by taking a number of steps. First, staff in Arusha and The Hague were permanently or temporarily redeployed from other assignments to work on *Turinabo et al.* and *Ngirabatware*, in particular the preparation of the fugitive case files, while other staff were required to take on additional workload to absorb those redeployments. Second, by selecting rostered candidates and advertising temporary job openings, the Office was able to recruit sufficient new staff who had the necessary skills within a matter of months, while also continuing to rely only on existing resources. Third, pursuant to the “One Office” policy, the workload relating to the *Turinabo* and *Ngirabatware* cases were distributed throughout the Office as appropriate, which allowed the trial and review teams to focus their attention on pretrial and review preparations while the appeals team contributed to the voluminous pretrial litigation and complex appeals. As a result of those efforts, the Office continued to meet all court-imposed deadlines.

B. Audit reports

106. The Office of Internal Oversight Services (OIOS) had previously conducted a confidential audit of the management of tracking team resources. OIOS made five recommendations, all of which were accepted. All recommendations were closed during the previous reporting period. The Office of the Prosecutor appreciates the assistance and constructive advice received from OIOS.

107. In its previous report on the evaluation of the methods and work of the International Residual Mechanism for Criminal Tribunals (S/2018/206), OIOS made one recommendation specifically relating to the Office of the Prosecutor. The Office accepted the recommendation to conduct a survey on staff morale, which was delayed by the recruitment of additional staff in Arusha. The survey was completed during the present reporting period, and the Office is reviewing the results with a view to preparing recommendations.

VII. Conclusion

108. During the reporting period, the Office of the Prosecutor engaged in intensive efforts to locate and arrest the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda. As previously reported, the Office has been pursuing actionable leads generated from its intelligence, analysis and investigative activities. However, the Office is now facing serious challenges in obtaining cooperation from national authorities. Most significantly, South Africa has still not arrested and transferred a genocide fugitive who had been located in its territory more than one year ago. The only conclusion that can be drawn is that South Africa is failing to cooperate with the Mechanism and to adhere to its international legal obligations. The Office requests the Security Council to take note, and underscores that full and timely cooperation is needed from Member States and other relevant authorities to bring the fugitives to justice.

109. At the Arusha branch, the Office of the Prosecutor took important steps in pursuit of its efforts to hold accountable those who interfere with witnesses. On 9 August 2019, the Prosecutor submitted a confidential indictment against Augustin

Ngirabatware, charging him with two counts of contempt of court and one count of incitement to commit contempt of court. On 23 August, the Prosecution submitted a motion to amend the indictment against the *Turinabo et al.* accused, based on new evidence obtained since their arrest. On 27 September, the Appeals Chamber issued its judgment on review in the *Ngirabatware* case, upholding Augustin Ngirabatware's convictions and his sentence of 30 years of imprisonment. On 10 October, the single judge confirmed the indictment against Ngirabatware. On 19 October, the single judge granted the Prosecution's motion to amend the indictment in *Turinabo et al.*, and a motion by the Prosecution to join the *Ngirabatware* contempt case with the *Turinabo et al.* contempt case is now pending. The Office of the Prosecutor continues to work as expeditiously as possible to prosecute those it alleges participated in a criminal scheme to overturn the convictions of Ngirabatware in review proceedings before the Mechanism. Based on the evidence gathered, the Prosecution has now charged the accused with a complex, coordinated three-year effort to influence protected witnesses to recant their trial testimonies, thereby interfering with the administration of justice. The Office of the Prosecutor underscores its commitment to investigate and prosecute all those who interfere with witnesses who have appeared before the Mechanism and its predecessors, as mandated by the Security Council and the statute of the Mechanism.

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

111. In all of its endeavours, the Office of the Prosecutor relies upon and gratefully acknowledges the support of the international community and especially that of the Security Council.
