United Nations S/2020/309

Security Council

Distr.: General
16 April 2020

Original: English and French

Letter dated 15 April 2020 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 third review report of the International Residual Mechanism for Criminal Tribunals (see annex), submitted pursuant to paragraph 17 of Security Council resolution 1966 (2010) and in accordance with the procedures set out in the statement by the President of the Council of 28 February 2020 (S/PRST/2020/4).

I would be grateful if the present letter and its annexes could be circulated to the members of the Security Council.

(*Signed*) Carmel **Agius**
President

20-05698 (E) 150520

Please recycle

Annex to the letter dated 15 April 2020 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

Third review report of the International Residual Mechanism for Criminal Tribunals

Contents

1. The International Residual Mechanism for Criminal Tribunals was established 10 years ago by the Security Council in accordance with resolution 1966 (2010) to carry out the residual functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.[1] It was established to operate for an initial period of four years, and for subsequent periods of two years following reviews of the progress of its work, unless the Council decided otherwise. Since its establishment, the progress of the work of the Mechanism has been reviewed on two occasions, in 2016 and 2018.[2]

2. The present review report on the progress of the work of the Mechanism was carried out pursuant to paragraph 17 of Security Council resolution 1966 (2010) and in accordance with the procedures set out in the statement by the President of the Council of 28 February 2020 (S/PRST/2020/4), in which the Council requested the Mechanism to present by 15 April 2020 a report on the progress of its work since the previous review of the Mechanism in June 2018.[3] The report provides an overview of the work that the Mechanism has undertaken to complete its functions, detailed schedules for the proceedings currently under consideration, including factors relevant to projected completion dates for the cases, and other matters over which the Mechanism has jurisdiction.[4] In addition, the Mechanism has taken into account the views and recommendations reflected in resolution 2422 (2018), whereby the Council requested the Mechanism, in particular, to further enhance efficiency and effective and transparent management. In that regard, the report also covers the implementation of outstanding recommendations made by the Office of Internal Oversight Services (OIOS) in 2018 in its report on evaluation of the methods and work of the Mechanism (S/2018/206) and other steps identified by the Council in the previous review period.

3. With respect to the request of the Security Council that the Mechanism report on the progress of its work on matters over which it has jurisdiction, including in accordance with the transitional arrangements set out in annex 2 to resolution 1966 (2010), the Mechanism considers that the transitional arrangements are no longer in force. The arrangements were pertinent prior to the closure of the Tribunals and during the period in which they coexisted with the Mechanism. The arrangements served to clarify jurisdictional issues that could arise before the two branches of the Mechanism became fully operational[5] and to delineate how the President, judges, Prosecutor, Registrar and staff could simultaneously serve both the Mechanism and

[1] On 1 January 2018, the Mechanism assumed responsibility for all remaining functions from both Tribunals.

[2] See the report of the Mechanism on the progress of its work in the initial period (S/2015/896) and the report of the Mechanism on the progress of its work in accordance with the statement by the President of the Security Council of 19 March 2018 (S/2018/347).

[3] The present report covers the period from 16 April 2018 to 15 April 2020. Unless otherwise specified, figures discussed in the present report are accurate as at 15 April 2020.

[4] The present report should be read in conjunction with the report of the Mechanism on the progress of its work in the initial period (S/2015/896), the report of the Mechanism on the progress of its work in accordance with the statement by the President of the Security Council of 19 March 2018 (S/2018/347) and previous reports submitted by the Mechanism pursuant to article 32 of its statute during the initial period of its operations: S/2012/849; S/2013/309; A/68/219-S/2013/464; S/2013/679; S/2014/350; A/69/226-S/2014/555; S/2014/826; S/2015/341; A/70/225-S/2015/586; S/2015/883; S/2016/453; A/71/262-S/2016/669; S/2016/975; S/2017/434; A/72/261-S/2017/661; S/2017/971; S/2018/471; A/73/289-S/2018/569; S/2018/1033; S/2019/417; A/74/267-S/2019/622; and S/2019/888.

[5] Resolution 1966 (2010), annex 2, articles 1–6. In accordance with the resolution, the branches of the Mechanism for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia commenced functioning on 1 July 2012 and 1 July 2013, respectively. The International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia closed on 31 December 2015 and 31 December 2017, respectively.

the Tribunals.[6] The arrangements also provided for the coordinated transition of other functions of the Tribunals, which were absorbed by the Mechanism after the commencement date of the functioning of each branch.[7] On 1 January 2018, the Mechanism became a separate, fully operational and independent judicial institution; the transitional arrangements are now, therefore, moot.

4. The report of OIOS on evaluation of the methods and work of the Mechanism during the period from 1 January 2018 to 31 December 2019 (S/2020/236) was taken fully into consideration in the preparation of the present report. More specifically, in its report, OIOS assessed the implementation of the recommendations that it made in 2018, projections of completion timelines, cost savings, the geographical diversity and gender balance of staff, and the implementation of a human resources policy consistent with a temporary mandate.

I. Introduction

5. The Mechanism comprises two branches. Its branch in Arusha, United Republic of Tanzania, assumed functions derived from the International Criminal Tribunal for Rwanda and commenced operations on 1 July 2012, while its branch in The Hague, Netherlands, has been operating since 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia. In accordance with its statute,[8] the Mechanism consists of three organs: (a) the Chambers, from which single judges can be appointed and trial and appeal benches formed as needed, and which are presided over by the President; (b) the Prosecutor; and (c) the Registry.

6. Each organ is headed by a full-time principal, common to both branches. The President of the Mechanism is based in The Hague, while the Prosecutor and the Registrar are based in Arusha. The current terms of office of the three principals run until 30 June 2020. The Prosecutor, Serge Brammertz, and the Registrar, Olufemi Elias, have served in their respective positions throughout the reporting period. However, there was a change in the presidency during the last part of the reporting period, with Judge Carmel Agius (Malta) assuming office on 19 January 2019, succeeding Judge Theodor Meron (United States of America), who served as President for six and a half years from July 2012. President Agius had served as a Mechanism judge on the judicial roster from 2012.

7. The Mechanism began 2018 with significant budgetary constraints, and yet the reporting period featured important judicial activity at both branches, including the retrial in the case of *Prosecutor v. Stanišić and Simatović* and the conduct of appeal proceedings in *Prosecutor v. Radovan Karadžić* and *Prosecutor v. Ratko Mladić* at the branch in The Hague, as well as the hearing of the request for review in *Prosecutor v. Augustin Ngirabatware* and the contempt proceedings in *Prosecutor v. Turinabo et al.* at the Arusha branch.

8. The Mechanism continued to perform its other residual functions in accordance with its statute, including tracking the remaining fugitives from the International Criminal Tribunal for Rwanda, providing assistance to national jurisdictions, protecting witnesses, supervising the enforcement of sentences and managing and preserving the archives of the Mechanism and the Tribunals. In addition, the Mechanism continued to enhance its legal and regulatory framework with regard to detention matters, the protection of victims and witnesses and supervision of the enforcement of sentences, and further developed and refined procedures and working

[6] Ibid., article 7.
[7] Ibid., article 6.
[8] Resolution 1966 (2010), annex 1.

methods that harmonize and build on the best practices of both Tribunals while reflecting the particular operational needs of a smaller institution located on two continents (see enclosure I).

9. In that context, OIOS recognized in its recent evaluation report (S/2020/236) that, "as a self-standing institution, [the Mechanism] made further progress towards realizing the Security Council's vision of a small, temporary and efficient organization". OIOS further concluded that "between 2018 and 2019, the Mechanism implemented most of the recommendations from the 2018 OIOS evaluation". OIOS also found that gender balance targets had been exceeded Mechanism-wide, albeit with gaps at particular grades and between the two branches.

10. By December 2019, the Mechanism had made notable progress since the June 2018 review and was on track to conclude ongoing cases in the course of 2020, with the exception of any potential appeals. The Mechanism was indeed looking forward to closing the current review period as projected in previous reports. Unfortunately, those plans have been affected by the current global health crisis. As news of the coronavirus disease (COVID-19) pandemic unfolded, the Mechanism's leadership recognized the immediate imperative to adapt its working methods to the practical barriers ensuing from the crisis, such as the prohibition of public gatherings, imposition of travel bans and border closures. As a result, the Mechanism set up a COVID-19 crisis management team and adopted strategic measures to ensure business continuity, transitioning its staff to remote working arrangements where possible and enhancing its ability to respond to the evolving circumstances at each branch and field office on a daily basis.

11. The Mechanism, as an independent judicial institution, is focused on delivering the most critical aspects of its mandate, with due regard for the safety and well-being of all staff members and persons under its care. To date, the Mechanism has been able to continue operations across all its areas of responsibility, albeit at a slower pace in certain areas. At the time of writing, the Mechanism was still in the process of fully transitioning and adjusting to its new working arrangements. Details on the measures put in place by the Mechanism in response to the COVID-19 pandemic are described throughout the present report. More information will also be included in the Mechanism's upcoming progress report, due in May 2020.

12. Despite the challenging circumstances bookending the reporting period, the Mechanism remains firmly committed to implementing its overall strategy of finalizing ad hoc judicial activity and further downsizing staff accordingly, consistent with the Security Council's vision of the Mechanism as a small, temporary, efficient structure whose functions and size will diminish over time.

II. President

13. During the reporting period, under the guidance of the two Presidents, the Mechanism continued to make solid progress in its judicial work and other mandated functions. During their respective terms of office, President Meron and President Agius oversaw the work and progress of the Mechanism, focusing on the timely conclusion of residual judicial proceedings by coordinating the work of the Chambers and managing the judicial roster, with a view to ensuring an efficient and broad distribution of judicial work while making best use of the diverse judicial expertise of the judges. Both Presidents continued to work with the Registrar regarding operational matters subject to the President's overall authority. Furthermore, they represented the Mechanism at various external forums and engaged with representatives of international organizations, including the United Nations, as well as State officials and other stakeholders, such as victims' groups and members of civil society.

14. Having taken office in January 2019, President Agius announced the following priorities for his Presidency: (a) to ensure that the residual judicial proceedings of the Mechanism were concluded efficiently and in a timely manner, while ensuring due process and the fundamental fair trial rights of the accused; (b) to enhance the unique mandate of the Mechanism through a unified work culture, better inter-branch coordination and the harmonization of the practices and procedures of the two branches; and (c) to foster a work environment that encourages high staff morale and performance. Those priorities remain in place while the Mechanism continues to advance their effective implementation.

A. Judicial activities

15. The President and the 24 independent judges on the judicial roster are supported by a small team of legal and administrative staff in the execution of their judicial mandates and, in the case of the President, his supervisory and representational responsibilities. During the reporting period, both Presidents worked closely with Chambers management and staff to enhance the smooth and cost-effective functioning of the Chambers more generally. In that regard, the Chambers – under the supervision of the President – were able to maximize efficiency and productivity while maintaining relatively low legal and administrative support staffing levels.

16. Towards the end of the reporting period, the Mechanism's leadership put in place several measures to transition into remote working arrangements as a result of the COVID-19 pandemic. Although the Mechanism has a long-standing practice of judges working remotely from their home countries, staff providing support have primarily worked on site. Consequently, various measures have been put in place to enable staff to carry out their professional duties remotely. While this represents a new challenge for the Mechanism, it has benefited from its previous experience in this area: the groundwork for the transition to remote work was laid by virtue of the adoption of flexible working arrangements, as mentioned in section V below.

17. These remote working arrangements have been critical to ensuring business continuity, which is vital, given the unique nature of the Mechanism as an international criminal tribunal that has a significant impact on the fate and fundamental rights of detained, accused and convicted persons. The Mechanism has continued to secure due process and safeguard fundamental rights, primarily through the uninterrupted adjudication of matters pertaining to these persons. However, where remote working arrangements have not been possible, the Mechanism, with due regard for the safety and well-being of staff, has maintained a minimum presence on site by implementing a rotation system and staggered working hours and optimizing resources through staff reallocation. Matters pertaining to confidentiality, appropriate equipment, enhanced communications technologies and, more importantly, the ability of staff to cope and adapt to this new approach continue to be assessed.

1. Summary

18. In accordance with article 12 (3) of the statute, the President is a member of the Appeals Chamber and presides over its proceedings. During the reporting period, and as outlined in more detail in section III below, the Presidents heard both appeals from trial judgment and a number of interlocutory appeals arising from the retrial proceedings in the *Stanišić and Simatović* case and the *Turinabo et al.* contempt case. Separately, the President presided over the Appeals Chamber in an appeal lodged by a State in relation to the *Jojić and Radeta* contempt case.

19. In accordance with rule 31 (A) of the Rules of Procedure and Evidence of the Mechanism,[9] the President has authority over the Registrar with regard to the latter's responsibilities pertaining to the administration and servicing of the Mechanism. In that context, the President is responsible for the review of certain administrative decisions of the Registrar when they are in dispute, including decisions on legal aid or detention matters and other requests for relief, as provided for in the Mechanism's legal framework.

20. The President has adjudicated several complaints concerning conditions of detention and, in doing so, has applied the new rules and regulations concerning complaints procedures for detainees. The new rules were adopted by then President Meron in November 2018 and entered into force in December 2018. The establishment of a new detention regime was an important development during the reporting period, resulting in the harmonization of the Rules of Detention of the two Tribunals. The new regime also includes a number of regulations refining those rules that relate to the supervision of visits to and communication with detainees and the disciplinary procedure for detainees. It represents an improvement to overall detention management at the Mechanism. More importantly, it draws on the best practices of the two Tribunals, as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and serves as a model for prison administration at other international courts and in national systems.

21. During the reporting period, the President issued 68 decisions or orders related to administrative review or other miscellaneous matters, including 23 in 2018 (7 Arusha branch and 16 The Hague branch), 38 in 2019 (32 Arusha branch and 6 The Hague branch) and 7 at the Arusha branch in the first three and a half months of 2020 (see enclosure II). It is expected that, with the decreasing number of detainees in the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, the number of complaints regarding conditions of detention will also decrease, whereas other requests for administrative review are expected to be ongoing as long as there is other judicial work.

22. Finally, pursuant to article 12 of the statute, the President designates the Mechanism's duty judges and assigns judicial work to single judges or benches as appropriate, bearing in mind equitable distribution of work among the judges, geographical distribution and gender, and any possible conflicts of interest. The President issued 98 assignment orders during the review period: 37 in 2018, 51 in 2019 and 10 in the first three and a half months of 2020. In total, 32 matters arising at the Arusha branch and 66 arising at the branch in The Hague were assigned accordingly. In relation to each of these matters, the President carefully considers, on the basis of past experience of similar assignments, the amount of work required and the amount of time for which remuneration is to be paid, in accordance with what is reasonably necessary.

2. Enforcement proceedings

23. The President is responsible for supervising the enforcement of sentences, including issuing orders designating the State of enforcement for convicted persons, ruling on applications for pardon, commutation of sentence or early release and overseeing the general conditions of imprisonment of convicted persons.

24. Both Presidents have dedicated a substantial amount of time and resources to enforcement-related matters. Between April 2018 and the time of writing, they issued a total of 70 decisions and orders (41 Arusha branch and 29 The Hague branch) related

[9] The Rules of Procedure and Evidence may be found at https://www.irmct.org/en/basic-documents/rules-procedure-and-evidence.

to the enforcement of sentences, including 9 orders designating an enforcement State and 12 decisions on applications or State notifications concerning pardon, commutation of sentence or early release (see enclosure II). The current President is seized of a number of confidential enforcement matters and continues to receive supplemental information in relation to these matters on a regular basis. Because of the case-specific nature of the matters, the issues involved are often unique, unprecedented and complex, and the President is dependent on State cooperation with respect to most of these cases. It is therefore difficult to estimate the length of time necessary to resolve these matters.

25. A notable jurisprudential development during the current reporting period related to conditional early release. While the discretion to impose conditions on early release has always rested with the President, it has been guided by Security Council resolution 2422 (2018), in which the Council, noting the concerns expressed by some Member States, encouraged the imposition of such conditions, where appropriate. In early to mid-January 2019, two convicted persons were released early, subject to conditions. One of these persons subsequently argued that the imposition of conditions was ultra vires, a claim that the President dismissed in a reasoned decision, explaining the authority under which early release may be made contingent on the fulfilment of conditions. The President will continue to build on these decisions when contemplating whether to exercise his discretion to grant early release to a convicted person.

26. It is expected that the President's activities in relation to the supervision of the enforcement of sentences will continue until the last prison sentence has been served, subject to rule 128 of the Rules of Procedure and Evidence, which provides that the Mechanism will supervise sentences of imprisonment during the period of its functioning and that the Security Council may designate a body to assist it and to proceed to supervise the sentences after the Mechanism legally ceases to exist.

27. In his report dated 21 May 2009, the Secretary-General noted that the two Tribunals had estimated that applications for commutation of sentence, pardon or early release could be anticipated until at least 2027 for the International Tribunal for the Former Yugoslavia and until around 2030 for the International Criminal Tribunal for Rwanda (S/2009/258, footnote 24). The Mechanism considers that the 2009 estimate needs to be revised to reflect the numerous sentences imposed since that time. Notably, 18 individuals are currently serving life sentences, while 14 convicted persons will complete their sentences between 2030 and 2040 and another 8 not until after 2040. The last three sentences imposed will have been fully served in 2044. While most convicted persons serving life sentences will be eligible for consideration for pardon, commutation of sentence or early release after 2030, two other convicted persons serving life sentences will not be eligible until after 2038. The length of time actually served may be affected by the age or physical and health condition of the convicted persons, as well as any potential review proceedings. In addition, ongoing trial and appeal proceedings may necessitate further adjustment of these estimates.

28. The Mechanism wishes to take the opportunity to convey its gratitude to all 14 enforcement States for their ongoing support 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. The Mechanism also takes the opportunity to acknowledge and praise the immediate reaction from enforcement States in response to its request for information regarding the measures that have been put in place by their respective prison authorities to contain the spread of COVID-19 and to prevent any potential exposure of persons convicted by the Mechanism to the virus. According to the information received from enforcement States to date, no cases have been reported in any of the prisons housing persons convicted by the Mechanism, and national plans for prisons are being adopted in several enforcement States to combat

the spread of the pandemic. The Mechanism will continue to monitor the situation and request regular updates from all enforcement States.

3. Cases referred to national jurisdictions

29. In accordance with article 6 (5) of the statute, the Mechanism is responsible for monitoring cases referred to domestic jurisdictions for trial, with the assistance of international and regional organizations and bodies. While the Registry deals with the logistical side of the process, including communication with monitors as outlined in more detail below, the President is responsible for the overall supervision of the monitoring process. Pursuant to the statute, the Rules of Procedure and Evidence and applicable jurisprudence, the Prosecutor and, in certain cases, the accused may request the revocation of the referral before the case reaches final judgment in the domestic proceedings. In the event of a request for revocation, or acting *proprio motu*, the President may assign a Trial Chamber to decide whether to revoke the referral.

30. During the reporting period, the Mechanism continued to monitor the cases of *Jean Uwinkindi*, *Bernard Munyagishari* and *Ladislas Ntaganzwa*, who were indicted by the International Criminal Tribunal for Rwanda and whose cases were referred by that Tribunal to Rwanda, as well as the cases of *Laurent Bucyibaruta* and *Wenceslas Munyeshyaka*, whose cases were referred by the International Criminal Tribunal for Rwanda to France. In Rwanda, the *Uwinkindi* and *Munyagishari* cases are currently on appeal, and trial proceedings are ongoing in the *Ntaganzwa* case. The Mechanism has continued to receive regular reports for these five cases from monitors who follow the proceedings in the cases, as further detailed below.

31. On 24 December 2018, the investigating judge in France issued an indictment in the *Bucyibaruta* case, confirming some charges and rejecting or requalifying others. Proceedings are ongoing, and the next hearing in the case is provisionally planned for 13 May 2020. As to the *Munyeshyaka* case, on 30 October 2019, the Cour de cassation issued a decision bringing the case to a close. The monitoring mission planned for December 2019 was cancelled owing to large-scale strikes in France, which impeded the monitor's ability to travel. The monitoring mission planned for March 2020 was also cancelled owing to the restrictions put in place as a result of the COVID-19 pandemic.

32. In addition, the case of one individual indicted by the International Tribunal for the Former Yugoslavia, Vladimir Kovačević, was referred to Serbia by that Tribunal in March 2007. After the referral, the proceedings were suspended following a determination that the accused was unfit to stand trial. The Mechanism continues to monitor for any changes in the status of this referred case.

33. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of those cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. In Rwanda, the *Uwinkindi* and *Munyagishari* cases have been on appeal for six and five years, respectively, since their transfer. This suggests that the *Ntaganzwa* case and the proceedings in respect of the remaining fugitives whose cases have been referred to Rwanda may take as long to complete. Further estimates for the continuation of the Mechanism's monitoring function with respect to the *Bucyibaruta* case in France will depend on the decisions of the French judicial authorities in that regard.

B. Managerial activities

34. In addition to his judicial duties, the President, as the head of the institution, carries out a range of managerial activities, including convening plenaries of judges and serving as chair of the Mechanism Coordination Council, as well as supervising

all Registry functions, including with regard to matters related to the preparation of the budget, the enforcement of sentences, conditions of detention, the allocation of legal aid and the remuneration of judges. With regard to the latter, the President addressed a number of issues raised by judges, such as entitlements and working conditions, at the in-person plenary held in March 2019, and on 21 February 2020 issued revised internal guidelines for the remuneration of judges.

1. Plenaries

35. During the reporting period, a total of three plenaries of judges were convened. From 26 September to 6 November 2018, then President Meron convened a remote plenary conducted by written procedure. On 4 and 5 March 2019, President Agius convened an in-person plenary of judges at the Mechanism's premises in Arusha, which was only the second time that all judges had met since the establishment of the Mechanism, and the first time it was held in Arusha. This provided a crucial opportunity for the judges not only to familiarize themselves with the newly operational courtroom at the Arusha branch, but also to meet one another in person and thereafter engage in face-to-face discussions aimed at raising and resolving substantive issues relating to the functioning of the Mechanism's judiciary. A further remote plenary was convened by President Agius from 18 October to 18 December 2019.

36. The two remote plenaries are examples of the Mechanism's unique structure and cost-efficient working methods. In addition, conducting remote plenaries has provided judges with a dynamic opportunity to interact and discuss the working methods of the Chambers and the challenges of working remotely, as well as to identify areas for improvement. The Mechanism will continue to alternate between remote and in-person plenaries and in this way will continue to reduce costs. Whether the next in-person plenary can take place as scheduled in The Hague in the second half of 2020 will depend on the prevailing circumstances regarding the COVID-19 pandemic.

37. In order to enhance the efficiency of the plenaries, a procedure has been established whereby a committee consisting of three judges, the President ex officio and non-voting representatives of the Office of the Prosecutor, the Registry and the Association of Defence Counsel practising before the International Courts and Tribunals considers all proposals forwarded to it by the President, judges, the Prosecutor, the Registrar or the Association of Defence Counsel. After careful consideration by its members, the committee submits a report, which includes recommendations for action regarding the proposals, to the President for transmittal to the judges. Such reports are submitted yearly; each of the three plenaries resulted in amendments to the Rules of Procedure and Evidence, which the President promptly transmitted to the Security Council.[10] The amendments concerned contempt, false testimony, the assignment of defence counsel and the process for determining an application seeking the disqualification of a judge.

2. Coordination Council

38. Pursuant to rule 25 of the Rules of Procedure and Evidence, the President chairs regular meetings of the Mechanism Coordination Council. The Council is composed of the President, the Prosecutor and the Registrar. These periodic meetings are conducted in person or, when necessary, by videoconference between the two branches. The Council met on numerous occasions during the reporting period to coordinate the activities of the three organs, share information, discuss the current priorities and internal functioning of the Mechanism, including the budget and

[10] Letters to the President of the Security Council dated 20 November 2018, 13 May 2019 and 20 December 2019.

renovations of the premises and, more recently, to adopt measures in response to the COVID-19 pandemic.

3. Supervision of Registry functions

39. In accordance with rule 31 of the Rules of Procedure and Evidence, the President has authority over the Registrar with regard to the latter's responsibilities for the administration and servicing of the Mechanism. During the reporting period, the President focused above all on the streamlining of work and the harmonization of practices between the two branches and urged the Registry to continue to develop and update relevant practice directions and policies and to implement a common filing system for both branches. In particular, the President reviewed proposals by the Registrar to update and improve the Code of Professional Conduct for Defence Counsel Appearing before the Mechanism. Moreover, after thorough consultations between the President and the Registrar, a Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses was issued by the Registrar in November 2019.[11]

40. In addition, the President is currently finalizing the consultation process with the other two principals to update the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism.

41. Furthermore, as a result of the President's focus on greater inter-branch coordination and uniform working methods, a Judicial Records and Court Operations Unit was established 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. Another significant development in that regard was the launch of a unified filing system for both branches – the unified judicial database – after the project had been pending for seven years. More details on the status of the project are provided in section V below.

42. Having joined the Prosecutor and the Registrar of the Mechanism as a member of the International Gender Champions network, the President worked closely with the other principals, the Mechanism focal points[12] and the staff union of the Mechanism on issues of gender equality, harassment and abuse of authority in the workplace. This included actively raising staff awareness of the Secretary-General's bulletin of September 2019 on addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8), which is currently being incorporated into the Mechanism's policy framework.

43. Finally, the President also oversees the activities of the External Relations Office to ensure the accurate and timely communication of the Mechanism's objectives, priorities and activities to the public at large and target audiences. This includes providing information to promote understanding of and support for the Mechanism's work and facilitating access to judicial proceedings and archives. Particularly important in that regard was the support provided by the Mechanism for the opening of the Sarajevo Information Centre on the International Criminal Tribunal for the Former Yugoslavia in May 2018. The Information Centre provides direct and guided access to the public judicial records of the Tribunal and promotes the

[11] This Practice Direction (MICT/40, 26 November 2019) replaces the Policy for the Provision of Support and Protection Services to Victims and Witnesses, first issued on 26 June 2012.

[12] The Registrar has appointed focal points for gender, for protection from sexual exploitation and sexual abuse, for diversity, inclusion and LGBTIQ+ issues, for disability and accessibility issues, and for conduct and discipline.

Tribunal's legacy. The Mechanism remains available to facilitate the establishment of similar information centres with other stakeholders in the former Yugoslavia.

C. Representational functions

44. The President is also responsible for a number of representational duties, including reporting to the Security Council and the General Assembly, as well as interacting with the Informal Working Group on International Tribunals and communicating with external and diplomatic stakeholders. Of particular importance is the President's engagement with the host States and other countries affected by the Mechanism's work.

45. Pursuant to the statute and during their respective terms of office, President Meron and President Agius reported to the Security Council and the General Assembly, as appropriate. The thirteenth, fourteenth and fifteenth six-monthly reports on the progress of the Mechanism's work were submitted to the Council in November 2018 (S/2018/1033, annex I), May 2019 (S/2019/417, annex I) and November 2019 (S/2019/888, annex I), respectively. In addition, President Meron submitted the sixth annual report of the Mechanism to the Assembly and the Council on 1 August 2018 (A/73/289-S/2018/569) and addressed the Assembly in October 2018. He further reported to the Council and briefed the Informal Working Group on International Tribunals in person in December 2018. President Agius submitted the seventh annual report of the Mechanism to the Assembly and the Council on 1 August 2019 (A/74/267-S/2019/622). He reported to the Council and briefed the Informal Working Group in July 2019 rather than June, in line with the Council's programme of work, to mark the World Day for International Justice. He subsequently addressed the Council again in December 2019, having already addressed the Assembly in October 2019. As previously mentioned, the next sixth-monthly progress report is due in May 2020; thereafter, the President hopes to address the Council in June 2020, either in person, travel conditions permitting, or by videoconference.

46. Both Presidents also continued to actively engage with the diplomatic and wider international community during the reporting period. In that regard, President Meron undertook an official visit to Serbia, Bosnia and Herzegovina and Croatia from 19 to 22 November 2018, and a visit to the United Republic of Tanzania at the beginning of January 2019, where he met with the diplomatic corps and high-level government officials.

47. President Agius, in accordance with his commitment to foster stronger relationships with the States most affected by the work of the Mechanism, undertook an official mission to Rwanda in April 2019 on the occasion of the twenty-fifth commemoration of the genocide against the Tutsi, where he participated in the commemoration events and met with high-level government officials and members of civil society, including representatives of victims. Regrettably, owing to the COVID-19 pandemic, the travel restrictions banning commercial flights and the current Rwandan prohibition on all public gatherings, the President was unable to attend this year's twenty-sixth commemoration of the genocide against the Tutsi in person. However, on the occasion of the commemoration he delivered a video message, which was organized by the Embassy of Rwanda to the Netherlands and disseminated using social media.

48. On 20 and 21 June 2019, the President participated in the fourth International Conference on Stopping Genocide and Holocaust Denial, held in Sarajevo. In July of the same year, the President visited Bosnia and Herzegovina for the second time, to attend the twenty-fourth commemoration of the Srebrenica genocide. At the time of writing, owing to the COVID-19 pandemic, it is likely that the President will not be

able to attend the upcoming events to be held on the occasion of the twenty-fifth commemoration of the Srebrenica genocide, if indeed they are held, given the restrictions in place in Bosnia and Herzegovina. The Mechanism is determined nevertheless to mark this important event.

49. In addition, in order to keep the members of the diplomatic corps accredited to each host State abreast of the work of and developments at the Mechanism, President Agius, together with the other principals, held a number of diplomatic briefings, in The Hague, Dar es Salaam and Sarajevo. During his visit to Dar es Salaam in November 2019, the President also took the opportunity to meet with high-level government officials.

50. A negative development during the reporting period is the lack of progress with respect to the situation of the nine acquitted and released persons residing in a safe house in Arusha. President Agius has increased efforts to raise awareness of this untenable situation and to find a sustainable solution. One of the men has remained in this predicament since his acquittal in 2004, almost 16 years ago. Despite numerous calls by the Security Council to cooperate and render all necessary assistance to the Mechanism with regard to these individuals,[13] only a limited number have been successfully relocated so far, including one during the reporting period. The Mechanism takes this opportunity to remind the Council and all Member States of their shared responsibility for the fate of these persons.

III. Chambers

51. The Mechanism's Chambers are composed of a full-time President and 24 other independent judges who are called upon as needed to perform the judicial work of the Mechanism either remotely or, when necessary, at one of the seats of the Mechanism. In exercising their functions, the judges on the roster are provided with legal and administrative support by staff of the Chambers Legal Support Section. The legal staff are assigned to multiple matters across the branches to ensure maximum flexibility and facilitate legal research, analysis and the drafting of orders, decisions and judgments, in addition to providing individualized support to judges, as needed, in connection with their judicial work.

52. The current judicial roster comprises nationals of the Bahamas, Burkina Faso, Cameroon, China, Denmark, France, the Gambia, Germany, Jamaica, Kenya, Madagascar, Malta, Morocco, the Netherlands, Portugal, the Republic of Korea, Spain, Turkey, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Uruguay, Zambia and Zimbabwe.[14]

53. Several changes to the judicial roster have taken place during the reporting period. On 1 July 2018, the Secretary-General reappointed 23 of the 25 previous Mechanism judges for a new two-year term until 30 June 2020. The two remaining judicial vacancies were filled: Judge Yusuf Aksar (Turkey) and Judge Mustapha El Baaj (Morocco) were elected by the General Assembly to the judicial roster on 21 December 2018 and 15 January 2019, respectively. In addition, following the passing of Judge Mparany Mamy Richard Rajohnson (Madagascar) on 2 October 2018, Judge Mahandrisoa Edmond Randrianirina (Madagascar) was appointed by the Secretary-General on 28 January 2019 to serve the remainder of Judge Rajohnson's

[13] Resolution 2422 (2018), para. 3. See also resolutions 1995 (2011), para. 7; 2029 (2011), para. 5; 2054 (2012), para. 6; and 2080 (2012), para. 4; S/PRST/2018/6; and S/PRST/2020/4.

[14] One judge was elected as a dual national of the Gambia and Zimbabwe. Two judges are nationals of the United Republic of Tanzania.

term of office. Further, Judge Christoph Flügge (Germany) resigned as a judge of the Mechanism on 7 January 2019 and Judge Claudia Hoefer (Germany) was appointed by the Secretary-General, effective 21 February 2019, to serve the remainder of his term of office. Finally, following the resignation of Judge Ben Emmerson (United Kingdom) on 19 July 2019, the Secretary-General appointed Judge Iain Bonomy (United Kingdom) to replace him for the remainder of his term, effective 6 February 2020.

54. With the exception of the most recent appointment to the judicial roster, all judges have been called upon to exercise judicial functions in relation to one or more cases during the reporting period.

A. Judicial activities

1. Summary

55. The Mechanism engaged in a wide variety of judicial work during the reporting period. Notably, the Appeals Chamber deliberated on the appeals from judgment in the *Karadžić* case and delivered its judgment in March 2019, in accordance with the Mechanism's initial projection, three years after the delivery of the trial judgment.[15] In addition, the Appeals Chamber conducted a review hearing and delivered its judgment in the *Ngirabatware* case in September 2019. The Appeals Chamber also prepared the appeals in the *Mladić* case for a hearing scheduled for March 2020, which had to be postponed owing to Mr. Mladić's medical treatment. With respect to trial activity, the Trial Chamber at the branch in The Hague conducted trial proceedings in the *Stanišić and Simatović* case, and a single judge conducted pretrial proceedings in the *Turinabo et al.* contempt case at the Arusha branch. All the while, the Chambers continued to adjudicate matters related to, inter alia, review proceedings, appeal proceedings, contempt, requests for revocation of the referral of cases to national jurisdictions, the variation of witness protection measures, access to materials, disclosure, changes in classification of documents, and assignment of counsel.

56. An overview of the judicial activities of the Chambers is set forth below. Detailed schedules for the proceedings currently under consideration are also provided in enclosure III. Separately, section VI of the present report covers the preparation of more focused projections of completion timelines and adherence thereto by the Chambers in the light of the most recent evaluation results. All projections are uniformly made on the basis of past experience with cases of comparable complexity and, in the case of appeals from judgment, take into particular account the complexity of the case at trial. All projections in the present report related to judicial activities are based on the presumption that no extraordinary events, such as the prevailing COVID-19 pandemic, occur during the course of the proceedings that may have an impact on their conduct. Other examples of such unforeseen events include the replacement of judges or counsel and the illness of an accused or an appellant. Projections therefore remain subject to periodic updating based on actual developments. With respect to forecasting judicial activities other than trials and appeals from judgment, the Mechanism recalls the observations made in the report of the Secretary-General dated 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 of cases and pardon and commutation of sentence will arise" but that "such issues are more likely to arise within a period of 10 to 15 years after the closure of

[15] See S/2015/896, para. 15 and enclosure 3; and S/2019/888, enclosure 3.

the Tribunals … and that the level of work involved … will inevitably decrease over time” (S/2009/258, para. 102).

2. Trial proceedings

57. The Trial Chambers of the Mechanism are responsible for the conduct of trial proceedings in the event of the arrest of any of the three remaining fugitives indicted by the International Criminal Tribunal for Rwanda whose cases remain within the jurisdiction of the Mechanism, and any retrial.

58. On 15 December 2015, the Appeals Chamber of the International Tribunal for the Former Yugoslavia pronounced its judgment in the *Stanišić and Simatović* case, quashing the acquittals entered by a Trial Chamber and ordering a retrial on all counts. The Trial Chamber of the Mechanism for the branch in The Hague is seized of the case. The accused pleaded not guilty at their initial appearance on 18 December 2015. This case is unique among the trials that have been conducted before the ad hoc Tribunals in that it is a full retrial, the first ever ordered, and involves accused who require health accommodations during the hearing of evidence, thus extending the time needed for the trial.

59. The Trial Chamber conducted pretrial proceedings during 2016 and the first half of 2017. It held six trial preparation hearings and heard expert medical evidence in order to assist it in formulating the modalities for the trial. The trial commenced on 13 June 2017, and the presentation of the Prosecution’s case concluded on 21 February 2019. The Defence case commenced on 18 June 2019, and at the time of writing the Trial Chamber had heard all the witnesses for the *Stanišić* Defence and approximately half of the witnesses for the *Simatović* Defence. Initially, it was projected that the presentation of evidence would conclude in June 2020, with final trial briefs and closing arguments envisioned for September and October 2020, and the trial judgment delivered by the end of December 2020. These timelines were based on the time frame of the prior trial and have been reviewed regularly in the light of the actual circumstances in the present trial. The projection for this case to conclude in the second half of 2020 has remained unchanged since April 2018 and has been maintained notwithstanding a delay in the hearing of the final prosecution witness as a result of the latter’s health issues and the domestic legal requirements, which caused a delay of several months that the Chamber attempted to absorb. Furthermore, the Trial Chamber was prevented from hearing a *Simatović* Defence witness who was scheduled to appear on 19 and 20 March 2020, following the advice issued on 12 March 2020 by the Witness Support and Protection Unit and the Medical Unit of the Mechanism not to travel to The Hague in view of the potential health risks to the witness related to the COVID-19 pandemic. Owing to the short notice and the restrictions that Serbia subsequently put in place to contain the spread of the virus, it was not possible to make alternative arrangements to hear the witness testify from Belgrade by videoconference.

60. Shortly after the postponement of the hearing of this Defence witness in March 2020, in view of the global health crisis and the restrictions on travel and movement resulting from the COVID-19 pandemic, the Trial Chamber also decided to postpone hearing the final set of *Simatović* Defence witnesses until at least 2 June 2020. Further progress in the case will depend on the public health situation permitting the resumption of trial proceedings. The current postponement of the presentation of evidence necessitates an adjustment in the projection for the filing of the final trial briefs and closing arguments, which will be delayed until at least the fourth quarter of 2020. If proceedings can resume in line with this adjusted schedule, it is currently projected that the trial judgment will be issued by March 2021. On the basis of the information currently available, the Mechanism anticipates that major courtroom activity in the case will be able to conclude in 2020 and that only the deliberations

and the delivery of the judgment will be deferred to 2021, which will minimize the financial impact of these developments. In the event that a further postponement of completion of the presentation of evidence is required in view of the COVID-19 pandemic, a new projection will be made once it is determined when the presentation of evidence can be completed. On 23 March 2020, Serbia informed the Trial Chamber that it had declared a state of emergency to prevent the spread of COVID-19, which could prevent the relevant authorities from responding to requests from the Mechanism. Serbia, however, confirmed that it would continue to monitor the provisional release of the accused, who are both temporarily on provisional release in Belgrade, in accordance with the conditions set out in the relevant Trial Chamber decisions. At the current stage of the proceedings, all the judges on the bench in this case continue to carry out their work at the seat of the Mechanism in The Hague.

61. In the event of appeals in the *Stanišić and Simatović* case, the Mechanism projects that the appeal judgment will be rendered 30 months after the delivery of the trial judgment. This projection is based principally on the complexity of the trial, together with the possibility of appeals from each party, the timeline of the original case and the current working methods in the Chambers. The time needed to prepare the case for the hearing, based on past experience in appeals, is approximately two thirds of the time needed for the completion of the entire case, or 20 months. This projection will be updated following the issuance of the trial judgment and the filing of the notices of appeal, if any, in order to more accurately determine the scope and complexity of the case on appeal.

62. The Mechanism is also planning for the possibility of trying one or more fugitives at the Arusha branch. Bearing in mind the anticipated complexity of the fugitive cases, including the fact that they are likely to be single-accused cases, as well as past experience of trials at the International Criminal Tribunal for Rwanda and the current working methods of the Chambers, it is estimated that each trial may last two and a half years from arrest until the delivery of the trial judgment. Approximately 12 months of this period would be focused on pretrial activity, which is handled principally by a pretrial judge. The involvement of the full bench would be necessary only in relation to certain key decisions during this phase of the proceedings. In those circumstances, the members of the trial bench other than the pretrial or presiding judge would carry out their functions remotely for each discrete assignment, away from the seat of the Mechanism in Arusha. As provided for in the statute, the judges would be remunerated only for each day on which they exercise their functions, in accordance with the President's indication of the time reasonably necessary for the assignment. The trial, deliberations and judgment-drafting phase of the case, which involves the full bench, may last approximately 18 months. It is estimated that any resulting appeal from judgment may take two years from the filing of the trial judgment to the delivery of the appeal judgment. Prior to actual arrests and any developments in pretrial or pre-appeal proceedings, however, these estimates are necessarily tentative.

3. Appeals from judgment

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

64. During the period under review, the Appeals Chamber was seized of appeals from judgment in two cases: *Karadžić* and *Mladić*. In addition, on 27 November 2018, the Appeals Chamber rejected as unfounded Vojislav Šešelj's request to appeal his appeal judgment, issued on 11 April 2018, in which he was convicted of crimes against humanity and sentenced to 10 years of imprisonment. In the next review

period, the Mechanism anticipates that it may receive appeals from judgment in the *Stanišić and Simatović* case, which, as outlined above, is presently proceeding before a Trial Chamber at the branch in The Hague, and in the *Turinabo et al.* case, which is in the pretrial phase before a single judge at the Arusha branch. Projections concerning any appeals in the *Stanišić and Simatović* and *Turinabo et al.* cases are set forth in the sections in which the present trial and contempt proceedings are addressed.

65. Radovan Karadžić and the Prosecution appealed against the trial judgment issued on 24 March 2016 by a Trial Chamber of the International Tribunal for the Former Yugoslavia. While the *Karadžić* case was at trial before that Tribunal, in 2015, the Mechanism projected, on the basis of past experience and the scope of the case, that, should the eventual trial judgment be appealed, the appeal proceedings would last three years (36 months) (S/2015/896, para. 15). As the Appeals Chamber partly granted the requests of the parties for an extension of time for the briefing process, the Mechanism maintained its initial projection of three years for the completion of the appeal proceedings in the case, pending receipt of the appeal filings (S/2016/453, para. 31, and S/2016/975, para. 36). When the briefing process concluded, the Mechanism adjusted its projection for the completion of the appeal proceedings, adding nine months to the initial projection on the basis of the magnitude and complexity of the case, as well as the briefing period, which had been extended by over seven months (S/2017/434, para. 36). The Mechanism adjusted the projection again when it prepared the case for a hearing, indicating that the appeal proceedings would be concluded earlier than projected, in December 2018 (S/2018/347, para. 16). The Mechanism maintained this projection (S/2018/471, para. 44) until the presiding judge in the case withdrew in September 2018, necessitating the assignment of a new judge to the bench at a late stage in the proceedings (S/2018/1033, para. 46). At that time, in order to allow the new judge on the bench to become fully familiar with the case and to take part in the deliberations, the Mechanism reverted to the initial projection made while the case was still at trial, indicating that the appeal proceedings would be concluded by the end of the first quarter of 2019 (S/2018/1033, para. 46). The Appeals Chamber concluded the proceedings in three years (36 months), as projected, delivering its judgment in the *Karadžić* case on 20 March 2019. The Appeals Chamber reversed in part some of Mr. Karadžić's convictions on the basis of certain incidents, while affirming his remaining convictions for genocide, persecution, extermination, murder, deportation and other inhumane acts (forcible transfer) as crimes against humanity, as well as for murder, terror, unlawful attacks on civilians and hostage-taking as violations of the laws or customs of war, in relation to his participation in four joint criminal enterprises. The Appeals Chamber found that the Trial Chamber had abused its discretion in imposing a sentence of only 40 years of imprisonment and instead imposed on Mr. Karadžić a sentence of life imprisonment. Apart from the appeal hearing, in-person deliberations, status conferences and the pronouncement of the judgment, the judges on the bench in this case carried out their work remotely.[16]

66. Ratko Mladić and the Prosecution appealed against the trial judgment issued on 22 November 2017 by a Trial Chamber of the International Tribunal for the Former Yugoslavia. While the *Mladić* case was at trial before that Tribunal, in 2015, the Mechanism projected, on the basis of past experience and the scope of the case, that, should the eventual trial judgment be appealed, the appeal proceedings would last two and a half to three years (30 to 36 months) (S/2015/896, para. 15). Once the trial judgment in the case was issued, Mr. Mladić requested the Appeals Chamber to extend the deadline for filing his notice of appeal, a request to which the Prosecution agreed

[16] However, during the period when the President was the presiding judge in the case, he was present at the Mechanism in accordance with article 11 (2) of the statute.

in part. Subsequently, the Appeals Chamber granted Mr. Mladić's request for further extensions of time in the briefing process. In total, the Appeals Chamber granted seven months of extensions in the briefing process on the basis of the voluminous trial record and judgment and the significant complexity of the case. After Mr. Mladić and the Prosecution filed their notices of appeal on 22 March 2018, the Appeals Chamber was apprised of the intended scope of the appeals, and the Mechanism updated its projection, estimating that the case would be completed by the end of 2020, that is, three years and one month after the delivery of the trial judgment (37 months) (S/2018/471, para. 46). Following 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. Subsequently, on 14 September 2018, one of the newly assigned judges was replaced at his own request. Despite the substantially changed composition of the bench, the Mechanism maintained its updated projection that the case would be completed by the end of 2020 and reiterated that projection after the conclusion of the briefing on 29 November 2018.[17] The Appeals Chamber scheduled the hearing of the appeals for 17 and 18 March 2020. However, at the end of February 2020, Mr. Mladić requested the Appeals Chamber to reschedule the hearing owing to his upcoming surgery. The Appeals Chamber granted the request, staying the hearing to a date approximately six weeks after Mr. Mladić's surgery to allow for recovery. Mr. Mladić is currently recovering from the surgery; however, the COVID-19 pandemic and the restrictions on travel and movement currently affecting the bench make any projection of the hearing date highly tentative. At the time the stay was granted, it was estimated for planning purposes that the hearing of the appeals would take place two months later than scheduled. Accordingly, the Mechanism has adjusted its projection for the completion of the case by a commensurate amount of time, from the end of December 2020 to the end of February 2021. This projection will be closely monitored and will be updated as necessary on the basis of when the hearing actually takes place. Apart from the presence of the presiding judge during status conferences, the judges on the bench in this case are continuing to carry out their work remotely.

4. Review proceedings

67. A convicted person's right to review of a final judgment issued by the Mechanism or one of the Tribunals is fundamental and is provided for in the statute. The Prosecution also has the ability to seek review in the first year after the issuance of a final judgment. Review proceedings require a threshold determination by the Appeals Chamber of whether the applicant has identified a new fact that was unknown during the original proceedings which, if established, would have been a decisive factor in reaching the verdict. If the threshold is met, a review of the judgment is authorized, further proceedings are held and a review judgment is issued.

68. During the reporting period, the Appeals Chamber conducted an extensive review proceeding of a final judgment issued by the Mechanism in the *Ngirabatware* case. This proceeding concluded in September 2019 with the holding of a review hearing and the issuance of a review judgment. The Appeals Chamber also issued a decision on a request for the assignment of counsel in anticipation of the filing of a request for review in another case.

69. On 8 July 2016, Augustin Ngirabatware filed a request for review. His trial judgment was pronounced by the International Criminal Tribunal for Rwanda on 20 December 2012, and his appeal judgment of 18 December 2014 was the Mechanism's first judgment. Following the filing of Mr. Ngirabatware's request, the proceedings in the case were delayed because a member of the bench was arrested by

[17] See S/2018/1033, para. 47; S/2019/417, para. 57; and S/2019/888, para. 50.

his Government, notwithstanding the assertion of immunity by the United Nations, and could not perform his judicial functions until his provisional release from detention on 14 June 2017. On 19 June 2017, the Appeals Chamber granted the request for review and ordered the parties to file their lists of proposed witnesses and exhibits to be introduced at a review hearing. The Appeals Chamber was forced to postpone the scheduled hearings owing to a change in defence counsel in January 2018 and the disclosure of voluminous material from the *Turinabo et al.* case in September 2018.

70. The Appeals Chamber conducted the review hearing in the *Ngirabatware* case from 16 to 24 September 2019 at the Arusha branch of the Mechanism and issued the review judgment three days later, on 27 September 2019. In the review judgment, the Appeals Chamber rejected Mr. Ngirabatware's attempt to show 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, in which Mr. Ngirabatware was sentenced to 30 years of imprisonment for those crimes, remained in force. The *Ngirabatware* review proceedings were different from any other case before the Mechanism or the Tribunals, owing to the unforeseen circumstances outside the Mechanism's control, described above, which have made it difficult to make consistent and accurate projections. Nonetheless, whenever it was possible, the Mechanism projected dates for the hearing and, where it did not, it explained the extenuating circumstances.

71. The threshold for authorizing review is high; the Appeals Chamber stated in the *Ngirabatware* review judgment that "an applicant bears a heavy burden in showing that the conduct of a witness, occurring significantly post trial testimony, taints their original testimony."[18] On the basis of past experience, it is estimated that the Mechanism will receive between one and four requests for review a year. If review is authorized, it is estimated that the proceedings will last, at a minimum, one year from the filing of the initial request for review to the issuance of the review judgment, in the absence of exceptional circumstances. In that regard, the Mechanism remains mindful of the backlog in translations of judgments of the International Tribunal for the Former Yugoslavia, to which a number of convicted persons have already indicated their intention to file requests for review. The Mechanism regrets that, owing to resource constraints, the translations will not become available until the end of 2020, and is doing its utmost to avoid further delays.

5. Contempt of court and false testimony

72. In accordance with the statute, a single judge of the Mechanism is responsible for conducting any trials for contempt of court or false testimony related to cases before the Tribunals or the Mechanism, provided that such cases are not transferred to a national jurisdiction in accordance with article 1 (4) of the statute. Any appeals from such trials before a single judge are to be dealt with by a three-judge bench of the Appeals Chamber of the Mechanism.

73. A single judge at the Arusha branch of the Mechanism is currently seized of a complex six-accused case, *Turinabo et al.*, involving allegations of interference with the administration of justice in connection with the *Ngirabatware* review proceedings. On 13 September 2018, five accused persons pleaded not guilty to all counts in the initial indictment. The trial, which was scheduled to commence on 7 October 2019, was postponed following the Prosecution's request in September 2019 to substantially

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

amend the indictment. On 17 October 2019, the single judge granted the Prosecution's motion to amend the indictment.

74. On 10 October 2019, a single judge confirmed an indictment against Mr. Ngirabatware for interference with the administration of justice. On 10 December 2019, Mr. Ngirabatware's case was joined to the *Turinabo et al.* case.

75. The *Turinabo et al.* case is of unprecedented size, scope and complexity among the contempt cases heard by the ad hoc Tribunals, in view of the number of accused, the duration of the alleged interference, and the method and means by which it occurred. There have also been a considerable number of novel challenges to jurisdiction, the means and method by which the anticipated evidence was obtained, search and seizure, and the provisional or unconditional release of the accused. The single judge has issued more than 140 decisions and orders during the course of the proceedings. The case was originally expected to commence in June 2020 and to conclude by the end of December 2020. The projection for the start of the case was based primarily on the time required under the Rules of Procedure and Evidence for the filing of key pretrial submissions following the Prosecution's amendment of the indictment and the joinder of the *Ngirabatware* case, as well as consultations with the parties concerning the time needed for preparation. The projection for the duration of the case is based principally on the parameters set by the single judge for the length of the Prosecution case on the basis of its complexity and the current working methods in the Chambers. In view of the COVID-19 pandemic and the restrictions on travel and movement, the single judge decided to postpone the commencement of the trial until at least 24 August 2020; accordingly, the trial judgment is now expected in March 2021. Pretrial litigation and trial preparation remain ongoing. The adjusted projection for the commencement of the trial may be further impacted by the evolving global health crisis. In that respect, it is noted that counsel for the accused, support staff and witnesses are located on three different continents, which makes this case particularly susceptible to the travel restrictions related to COVID-19. At the current stage of the proceedings, the single judge conducting the case is working remotely but is based part-time in Arusha because he also serves as the duty judge at the Arusha branch on a rotating basis.

76. In the event of appeals in the *Turinabo et al.* case, the Mechanism projects that the appeal judgment will be rendered 15 months after the delivery of the trial judgment. This projection is based on the complexity of the trial, the possibility of appeals from each party, comparison with other contempt appeals adjusted for the complexity of this case, and the current working methods in the Chambers. In accordance with rule 143 (A) of the Rules of Procedure and Evidence, there is no requirement to hold a hearing or to publicly pronounce a judgment. However, if it is decided to hold a hearing, the time needed to prepare the case for it, on the basis of past experience in appeals, will be approximately two thirds of the time needed for the completion of the entire case (nine months). Any revision to this projection will be made following the completion of the trial judgment and the filing of the notices of appeal, if any, when it will become possible to more accurately determine the scope and complexity of the case on appeal.

77. The *Jojić and Radeta* contempt case, which was transferred from the International Tribunal for the Former Yugoslavia to the Mechanism on 29 November 2017, was referred to the authorities of Serbia for trial by order of a single judge 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 the

accused to the Mechanism without delay. On the same day, the single judge issued new international arrest warrants, directed to all States Members of the United Nations, for the arrest, detention and transfer to the Mechanism's custody of the accused, Petar Jojić and Vjerica Radeta.

78. On 4 June 2019, Serbia appealed the single judge's decision. On 24 February 2020, the Appeals Chamber dismissed the appeal of Serbia and affirmed the single judge's decision of 13 May 2019 to revoke the referral order. All Member States, including Serbia, must abide by their obligations under Chapter VII of the Charter of the United Nations and are therefore expected to act in accordance with the outstanding warrants against the two accused and to secure their arrest, detention and transfer to the custody of the Mechanism without delay. The Mechanism does not hold trials in absentia and therefore relies heavily on cooperation from Member States to secure the presence of the accused. In the event of their arrest and transfer to the Mechanism, on the basis of experience with cases of similar complexity, the trial phase of the case would last approximately one year from the initial appearance to the trial judgment, and the appeal phase would last one year from the issuance of the trial judgment to the issuance of the appeal judgment. These projections will be updated following the arrest of either of the accused and then again following the completion of the trial judgment and the filing of the notices of appeal, if any, when it will become possible to more accurately determine the scope and complexity of the case on appeal.

79. In addition, single judges have issued 38 decisions and orders related to applications for the commencement of proceedings involving contempt of court or false testimony. Because of the variable nature of allegations in such cases, it is not possible to estimate the length of time for any possible trial or appeal proceedings without knowing the case that may be brought, although such proceedings are expected to be significantly shorter than trials conducted pursuant to article 1 (2) and (3) of the statute concerning the core crimes under the Mechanism's jurisdiction. As the Mechanism has a continuing obligation to safeguard the administration of justice, its duty to investigate and prosecute allegations of contempt or false testimony, subject to the provisions of article 1 (4) of the statute, will continue until its closure.

6. Other judicial workload

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

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

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

83. Single judges issued 112 decisions or orders in 2018 (43 Arusha branch and 69 The Hague branch), 183 in 2019 (121 Arusha branch and 62 The Hague branch) and

39 in the first three and a half months of 2020 (20 Arusha branch and 19 The Hague branch) (see enclosure II). It is expected that judicial activity before single judges will remain constant over the next several years, in particular, in view of ongoing national proceedings related to cases heard before the Tribunals and the Mechanism, and requests from convicted persons in relation to potential requests for review.

IV. Prosecutor[19]

84. In accordance with article 14 of the statute, the Prosecutor is responsible for the investigation and prosecution of cases before the Mechanism and acts independently as a separate organ of the Mechanism.

85. During the review period, the Office of the Prosecutor focused 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 the former Yugoslavia and in Rwanda. The Office further carried out its responsibilities in relation to a number of other residual functions, as mandated by the statute.

86. The Office has undertaken all efforts to manage its staff and resources in line with the Security Council's instructions. As OIOS found in its report on the evaluation of the methods and work of the Mechanism, the Office of the Prosecutor "had lean staffing numbers to represent the ad hoc nature of judicial activity" (S/2020/236, para. 20).

A. Expeditious completion of trials and appeals

87. During the review period, the Office of the Prosecutor worked to expeditiously finalize the remaining ad hoc judicial activities. Two proceedings – the *Karadžić* appeal and the *Ngirabatware* review – were completed. The Office further completed the presentation of its evidence in the *Stanišić and Simatović* retrial and submitted its written arguments in the *Mladić* appeal.

88. On 20 March 2019, the Appeals Chamber of the Mechanism affirmed the conviction of Radovan Karadžić, the former President of Republika Srpska, for genocide, crimes against humanity and war crimes. The Appeals Chamber granted the Prosecution's appeal against the sentence imposed by the Trial Chamber and entered a sentence of life imprisonment. The Appeals Chamber thus confirmed Mr. Karadžić's individual criminal responsibility for: (a) crimes against humanity and war crimes, including persecution, murder, extermination, deportation and forcible transfer, committed pursuant to an overarching criminal plan to ethnically cleanse Bosnian Muslims and Bosnian Croats from part of Bosnia and Herzegovina between October 1991 and November 1995; (b) crimes against humanity and war crimes committed pursuant to a campaign of sniping and shelling in Sarajevo, the primary purpose of which was to spread terror among the civilian population of the city; (c) the war crime of hostage-taking for his role in the detention of United Nations peacekeepers and military observers in May and June 1995 in order to compel the North Atlantic Treaty Organization to cease air strikes on Bosnian Serb military targets; and (d) genocide, the crimes against humanity of persecution, extermination, murder and forcible transfer, and the war crime of murder, committed after the fall of Srebrenica in July 1995.

[19] The present section reflects the views of the Prosecutor of the Mechanism.

89. Mr. Karadžić was among the first individuals indicted by the International Tribunal for the Former Yugoslavia, only two years after its establishment by the Security Council. He was one of the world's most wanted fugitives for almost 13 years, until his arrest by the Serbian authorities on 21 July 2008. The completion of his trial and appeal is an important milestone in international criminal justice and vividly demonstrates what has been achieved in the implementation of resolution 827 (1993).

90. On 27 September 2019, the Appeals Chamber of the Mechanism rejected the attempt by Augustin Ngirabatware, former Minister of Planning of the interim Government of Rwanda, to secure reversal of his genocide conviction entered by the International Criminal Tribunal for Rwanda and affirmed the appeal judgment against him. During a review hearing held from 16 to 25 September 2019, the Prosecution illustrated through its cross-examination and submissions that the alleged recantations by witnesses were the result of a coordinated effort to change their testimonies. 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 might not in fact have been entirely their own and that the circumstances led to the impression that the recantations were orchestrated. The Appeals Chamber 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.

91. This important outcome demonstrates to witnesses who have testified before either of the Tribunals or the Mechanism that they continue to enjoy the Mechanism's protection.

92. On 21 February 2019, the Office completed the presentation of its case-in-chief in the *Stanišić and Simatović* case, in which the two accused are former senior officials of the State Security Service of the Republic of Serbia. From 1 January 2018 to 21 February 2019, the Prosecution led the evidence of 26 witnesses in court, all of whom were cross-examined by the defence teams, litigated 33 motions for the admission of evidence and responded to 13 motions and requests filed by the defence teams in the case. The defence phase of the proceedings commenced on 18 June 2019 with the presentation of evidence by the *Stanišić* Defence. The Prosecution cross-examined 24 witnesses and responded to 49 motions and requests, including motions for the admission of evidence. The Prosecution also responded to three bar table motions containing 310 exhibits filed by the Defence, and litigation regarding additional Defence bar table motions is ongoing. On 17 October 2019, the *Stanišić* Defence completed the testimony of its last in-court witness. The *Simatović* Defence case commenced with the testimony of the first witness on 12 November 2019. The Prosecution continues to endeavour to conduct the litigation in a pragmatic manner in order to expedite the proceedings and narrow the issues in dispute, as guided by the Trial Chamber's decisions.

93. On 28 November 2018, the Office completed the preparation of its written appellate briefings in the case of Ratko Mladić, former Commander of the Main Staff of the Army of Republika Srpska. The Office filed two grounds of appeal, while the Defence filed nine grounds of appeal. The Office also litigated a high volume of other matters in the *Mladić* case, including five defence motions for the admission of new evidence on appeal. On 6 March 2020, following an urgent motion by the Defence seeking to stay the oral appeal hearings initially scheduled for 17 and 18 March 2020, the Appeals Chamber vacated the scheduling order and stayed the appeal hearing until further notice to allow Mr. Mladić to undergo surgery. The Prosecution's motion of 9 March 2020 seeking reconsideration of the Appeal Chamber's decision was dismissed on 11 March 2020.

94. Finally, during the review period the Office also indicted six accused for contempt of court in the *Turinabo et al.* case. Under article 14 of the statute, 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 Tribunals and the Mechanism.

95. On 25 August 2018, a single judge of the Mechanism confirmed the Office's indictments against five Rwandan nationals, Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma and Dick Prudence Munyeshuli, for contempt of court. On 7 December 2018, the single judge decided not to refer the *Turinabo et al.* case to Rwanda and ordered that the case be conducted by the Mechanism. Subsequently, on 9 August 2019, the Prosecutor submitted an additional 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 2019, the single judge confirmed the indictment. On 17 October, Mr. 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 ordered that the Mechanism would retain jurisdiction over the case. 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. On 10 December 2019, the single judge granted the Prosecution's motion and ordered a joinder of the cases.

96. In its amended indictment, the Prosecution alleges that five of the accused directly and through intermediaries interfered with witnesses who had given evidence in Mr. Ngirabatware's trial and in the related *Ngirabatware* review proceeding. In particular, the evidence gathered by the Office in its investigations reveals 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 the five accused were involved in this pervasive and lengthy criminal conduct. The Prosecution further alleges that Mr. Ngirabatware, from his cell at the United Nations Detention Facility in Arusha, knowingly disclosed confidential information and had prohibited contact with a protected witness in violation of a court order. The Prosecution also alleges that the accused Munyeshuli, an investigator on Mr. Ngirabatware's former defence team, and the accused Turinabo violated court orders protecting witnesses.

97. *Turinabo et al.* is the first major contempt case prosecuted before the Mechanism. The pretrial litigation has been notably voluminous, 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 submitted 352 filings, while the Prosecution submitted 237 filings. There were 140 orders and decisions by the single judge, 25 orders and decisions by the Appeals Chamber, and 37 orders and decisions by the President. There were also 99 filings by the Registry. The Prosecution responded to more than 257 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.

98. The Office of the Prosecutor is taking all steps within its control to expedite the completion of these ad hoc judicial proceedings.

B. Fugitives

99. Eight fugitives indicted by the International Criminal Tribunal for Rwanda remain at large. During the period under review, the Office of the Prosecutor

continued its efforts to locate and arrest the three fugitives whose cases will be tried by the Mechanism: Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The Office also continued the search for information on the whereabouts of the five fugitives who are currently expected to be brought to trial in Rwanda: Fulgence Kayishema, Charles Sikubwabo, Aloys Ndimbati, Ryandikayo and Phénéas Munyarugarama.

100. During the review period, the Office built on the structural reforms and operational changes that were put in place from 2016 to 2018 and carried out extensive intelligence, analytical and investigative activities in the search for the fugitives. Having developed specific strategies for each of the fugitives, the Office first reviewed prior intelligence and closed past leads, allowing it to exclude a number of possibilities and further focus its efforts on the most promising lines of inquiry. The Office also prioritized the development of a clearer picture of the tactics that the fugitives have used to evade detection, including creating support networks and seeking the protection of influential persons. Finally, by developing new sources and strengthening its cooperation with partners, the Office was able to generate a number of important and actionable new leads.

101. As a result, the Office approached Member States for assistance and cooperation. The Office is grateful for the support that it has received from some partners, which has included significant amounts of useful raw data and access to important tools. Having analysed the information received and shared the results, the Office reached agreement with some partners to undertake joint operations to follow up on the leads generated. The Office hopes to be able to report in the future on the progress of these operations.

102. Unfortunately, despite progress in some areas, the Office has largely struggled to obtain the necessary cooperation from a number of relevant Member States, which has significantly hindered its efforts.

103. For example, in mid-2018 the Office received confirmation from the International Criminal Police Organization (INTERPOL) National Central Bureau for South Africa that a fugitive had been located in South Africa, and submitted an urgent request for assistance to the South African authorities on 16 August 2018. After no response was received and in the light of further developments, a second urgent request for assistance was submitted on 15 March 2019. The Office engaged in intensive efforts to discuss its urgent requests with the South African authorities. Unfortunately, it was not until December 2019 that South Africa attempted to execute the Office’s requests, and those efforts were unsuccessful owing to the significant delay. On 18 December 2019, the Office submitted another urgent request for assistance to the South African authorities to obtain vital information that would allow its continuous tracking of the fugitive but, as at the end of the reporting period, that request also remains unanswered.

104. Similarly, in 2018 the Prosecutor visited Harare to discuss with senior Zimbabwean officials relevant intelligence obtained by the Office and ways to strengthen cooperation. It was agreed that the Office and the Zimbabwean authorities would establish a joint task force to coordinate further investigative activities. The Office has continued to work with the task force, although unfortunately there has been little to no progress. Many important lines of inquiry have not yet been followed up, and the Office has not yet received expected information. In order to demonstrate the stated commitment to providing full cooperation to the Office, it is critical that the task force receives full support from the Zimbabwean authorities to pursue any leads and obtain information from any source.

105. As a final example, the Office has obtained reliable information on many of the numerous false or illegally procured passports that the fugitives have obtained and

used to travel internationally. For obvious reasons, this is a vital line of inquiry, and the Office has submitted many requests for assistance to the relevant authorities for information on these passports. Regrettably, however, after more than a year, the Office has received almost no additional information, as the relevant authorities have failed to answer its requests, despite numerous in-person meetings to discuss the matter and repeated follow-up reminders.

106. The Office deeply regrets the lack of cooperation from some Member States. As provided for in the statute and reinforced by the Security Council in numerous resolutions, all Member States have an international legal obligation to provide cooperation to the Office in its efforts to locate and apprehend the fugitives. The Office will continue to engage directly with national authorities to build support and ensure that its requests for assistance are promptly answered. The Office also reiterates that, under the United States War Crimes Rewards Program, individuals who provide information leading to the arrest of a fugitive may be eligible for a monetary reward in an amount up to $5 million.

107. The Office underscores its commitment to arresting the remaining fugitives as soon as possible. As a reflection of that commitment, the Office has stated its position that fugitive tracking should be regarded as an ad hoc function, as the Office believes that it is a temporary activity that must be brought to a close in a reasonable time period, consistent with other ad hoc functions of the Mechanism. The Office is further convinced that, when determining how long fugitive tracking will continue to be needed as an ad hoc function, it is necessary to consider not only how many fugitives remain at large, but also the results that are being achieved. The Mechanism cannot continue tracking fugitives ad infinitum. The Prosecutor has reiterated that if no fugitive is located and arrested by the end of 2020, the Office will begin winding down its fugitive tracking operations and fully transferring responsibility for such operations to national authorities.

C. Assistance to national war crimes prosecutions

108. Pursuant to article 28 (3) of the statute, the Office of the Prosecutor is mandated to respond to requests for assistance from national authorities in relation to the crimes committed during the conflicts in Rwanda and the former Yugoslavia. With the closure of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, further accountability for crimes committed in Rwanda and the former Yugoslavia now depends entirely on national justice sectors. The Office places a high priority on monitoring, supporting and advising national judicial authorities prosecuting war crimes cases arising out of the conflicts in Rwanda and the former Yugoslavia. The Office also provides support to authorities such as the International Committee of the Red Cross (ICRC) and national missing persons institutions still searching for those persons missing as a result of the conflicts in the former Yugoslavia. The Office maintains an ongoing dialogue with counterparts and undertakes a range of initiatives to assist and build capacity in national criminal justice sectors.

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

110. National authorities immensely value the support received from the Office, as reflected in the continuing high number of requests for assistance received. During

the review period, the previously reported trend of significant growth in requests for assistance submitted to the Office persisted. For example, at the branch in The Hague, the number of requests received increased from 111 in 2013 to 329 in 2019, a nearly threefold increase that far exceeds the initial workload projections prepared when the Mechanism was established. In the first three months of 2020 alone, the Office received a further 100 requests for assistance despite the COVID-19 pandemic; if that rate is maintained, some 400 requests for assistance will be received in 2020. From 1 January 2018 to 31 March 2020, the Office received 788 requests for assistance. In response, it handed over 39,058 documents comprising 643,739 pages, as well as 692 audiovisual files and other materials.

111. In addition, the requests for assistance received continued to increase in complexity and size during the reporting period. This development indicates that national authorities are both processing more complex cases and relying on the Office for greater assistance in their work. The Office received and responded to particularly complex requests for assistance from the Kosovo Specialist Prosecutor's Office, the Prosecutor's Office of Bosnia and Herzegovina, the French judiciary and others. In addition, the requests submitted by ICRC are particularly voluminous and resource-intensive, as each request may concern up to 200 persons missing from a related occurrence or place.

112. The Office of the Prosecutor anticipates that, for at least the next several years, the number of requests for assistance received will continue at the current high rate or further increase.

113. In relation to Rwanda, the Office continues to work closely with the Rwandan authorities responsible for investigating and prosecuting crimes committed during the genocide. In addition to prosecuting the indictments referred to the Rwandan courts by the International Criminal Tribunal for Rwanda, the National Public Prosecution Authority of Rwanda is currently pursuing more than 900 fugitives worldwide. Rwandan fugitives continue to be located in foreign countries and extradited to Rwanda for trial. In addition, a number of third-party States are prosecuting in their courts Rwandan nationals for crimes linked to the genocide. In an important recent development, several European countries, together with Eurojust, have commenced preparations to establish an international investigative task force focusing on Rwandan genocide suspects present in Europe. The Office of the Prosecutor anticipates that all these national efforts to bring to justice accused génocidaires will require substantial support from the Office and result in a considerable increase in the number of requests for assistance submitted to it.

114. In order to meet these needs, the Office has initiated a number of steps to facilitate greater access to the evidence collection related to Rwanda. Although delayed as a result of the sharply reduced initial commitment authority in 2018, a project is now under way to redact confidential and sensitive information from evidence so that it can more readily be provided to national authorities to enable them to pursue leads and for other purposes. In addition, the Office has begun planning to establish a secure remote search mechanism for its databases in order to bring its capabilities into line with those available for the Yugoslavia-related evidence.

115. In relation to the former Yugoslavia, all information available indicates that the demand by national authorities for the Office's assistance will continue to increase in the next several years. Throughout the region, Member States have expressed their commitment to fully processing outstanding war crimes cases and have adopted national war crimes strategies to fulfil those commitments. For example, Bosnia and Herzegovina still needs to prosecute several thousand cases, including several hundred of the most complex and highest-priority cases. Similarly, Serbia, in its national war crimes strategy and its prosecutorial strategy for the investigation and

prosecution of war crimes, foresees a significant increase in investigations and prosecutions in the coming years. Croatia likewise continues to prosecute war crimes cases, and Montenegro has adopted a national strategy and requested the Office's assistance in its implementation. Third-party States further continue to prosecute in their national courts crimes linked to the conflicts in the former Yugoslavia, and the Office anticipates that it will continue to receive requests for assistance from countries including Belgium, Canada, France, Germany, the Netherlands, Sweden, the United Kingdom and the United States. The Office further notes that ICRC is currently implementing a five-year strategy to determine the fates of those still missing from the conflicts and will continue to submit a large number of complex requests for assistance to the Office for the next several years.

116. The significant growth in requests for assistance received by the Office has only partially been met by increases in related resources. The Office has sought to absorb the additional requirements by flexibly redeploying staff. Unfortunately, given that the Office already has "lean staffing numbers" (S/2020/236, para. 20), it has not been possible to fully address the increased workload, as OIOS recognized in noting that "given the dynamic level of ad hoc judicial activity, the Office of the Prosecutor had a shortfall of capacity to address ongoing activities" (S/2020/236, para. 41). As a result, a backlog of approximately 150 requests has developed. As the Office continues to downsize in the future, it will prioritize ensuring that sufficient resources are made available so that the Office can fully carry out its mandate under article 28 (3) of the statute.

D. Management

117. 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 at either branch as necessary.

118. During the reporting period, the Office faced a major test of its preparations and readiness to manage unexpected ad hoc judicial activity. When the review proceedings commenced in the *Ngirabatware* case, the Office absorbed the additional requirements within existing resources by flexibly deploying staff from both branches. During the course of the preparations, the Office uncovered evidence of a common criminal scheme to overturn Mr. Ngirabatware's genocide convictions in the review proceedings by influencing witnesses and committing contempt of court. The Office further redeployed additional staff, in particular from its core teams at both branches responsible for continuous functions, to advance the investigations. The *Turinabo et al*. indictment against five accused, confirmed in September 2018, is evidence of the success of the Office's efforts.

119. While the Office anticipated that the *Turinabo et al*. proceeding would be referred to Rwanda for trial, it was required to respond quickly to the single judge's order that the trial should be conducted by the Mechanism. It took a number of steps. First, staff in Arusha and The Hague were quickly redeployed to *Turinabo et al*. from other assignments, including appeals, fugitive investigations and the core teams. Other staff were asked to take on additional workload to absorb these redeployments. Second, a cost plan was prepared and approved, which allowed the Office to rapidly commence recruitment exercises. By using lateral transfers, selecting rostered candidates and advertising temporary job openings, the Office was able to recruit new

staff with the necessary skills in a matter of months, while continuing to rely primarily on existing resources. Third, using the "one office" policy, the Office widely distributed the workload related to *Turinabo et al*. among different teams, in accordance with their capacities. This allowed the trial team to focus its attention on pretrial preparations, while the appeals team took responsibility for the voluminous pretrial litigation.

120. As a result of all of these efforts, the Office was able to fully meet all court-imposed deadlines in *Turinabo et al*., while also continuing its investigations, which ultimately led to the submission of an indictment against Mr. Ngirabatware in August 2019. The Office further successfully litigated the *Ngirabatware* review proceeding. The Office is confident that this experience has prepared it to react in the future to any similar unanticipated developments, such as the arrest of a fugitive.

121. During the reporting period, the Office of the Prosecutor otherwise continued to maximize its resources and "do more with less" through extensive multitasking and cross-training. In order to meet its responsibilities in the light of its lean staffing, members of the Office were also regularly requested to take on exceptional workloads. The Office is grateful for the continued dedication and commitment of its staff.

122. The reporting period marked the commencement of downsizing in the Office. Following the sharply reduced initial commitment authority in 2018, the Office accelerated planned downsizing and further reduced its staffing at the branch in The Hague. There were additional post reductions at the end of 2019 at the branch in The Hague. The Office faced significant attrition during the reporting period, particularly in the light of budget uncertainties in 2018, including the departure of a senior appeals counsel, an officer-in-charge, an appeals counsel, legal officers and associate legal officers, which OIOS recognized (S/2020/236, para. 41). The Office continues to manage downsizing and attrition to ensure that it can meet all of its responsibilities inside and outside the courtroom, and is drawing heavily in this regard on lessons learned at the Tribunals.

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

123. In its report on the evaluation of the methods and work of the Mechanism, OIOS recognized that the Office's methods and work were consistent with the expectations set by the Security Council, including in resolution 2422 (2018).

124. In accordance with the Council's expectation that the Mechanism would be a small, temporary and efficient structure with a small number of staff commensurate with its reduced functions, OIOS concluded that the Office of the Prosecutor had "lean staffing numbers to represent the ad hoc nature of judicial activity" (S/2020/236, para. 20) and that "both trial and appeals teams were lean" (S/2020/236, para. 41).

125. Consistent with the Council's request that the Mechanism implement a human resources policy consistent with its temporary mandate and ensure flexible staff engagement, OIOS concluded that "when the unexpected contempt case arose, the Office of the Prosecutor flexibly deployed staff to work on the case" (S/2020/236, para. 41). In that regard, OIOS further noted that the Office sought to absorb these additional unanticipated requirements within existing resources by deferring activities where possible, including post-judgment case archiving and transition activities. In these and other respects, the Office prioritized its limited resources for

deployment to ad hoc judicial activity to ensure that the remaining trials and appeals could be completed expeditiously.

126. Regarding the Council's request that the Mechanism enhance the geographic diversity and gender balance of staff, the Office has achieved gender parity in Professional, Field Service and General Service posts, including at the senior (P-5/P-4) level. In addition, following the review by OIOS, the Office completed recruitment exercises that continued to demonstrate its commitment to gender balance, including the appointment of women to four of seven Professional posts at the Arusha branch.

127. During the reporting period, the Office worked to implement the recommendation specifically addressed to it, namely that it should "support and strengthen staff morale through conduct of a survey to identify key concerns to manage downsizing and upsizing" and that it should "identify the root causes of low morale to enable better planning for the likely effects of such changes" (S/2020/236, para. 40). That recommendation arose from the previous findings of OIOS that "already-stretched Office teams had to work simultaneously on outstanding cases [of the International Tribunal for the Former Yugoslavia], an unforeseen retrial and unexpected litigation arising out of completed Mechanism cases", and that the Office "encountered difficulties related to recruitment, retention and job security, due in part to the temporary nature of judicial activities and the limited pool from which staff were recruited" (S/2018/206, para. 23). The Office welcomed the helpful analysis by OIOS of the challenges in staff morale that result from maintaining its lean and cost-effective structure despite an unexpectedly high level of judicial activity amid organizational downsizing.

128. In its report, OIOS indicated that the Office had already taken measures to address the situation, noting that "staff morale appeared to have improved in comparison with previous years" (S/2020/236, para. 42). OIOS further agreed with the Office's conclusion that the main drivers of negative morale were downsizing and job insecurity. In that regard, it should be noted that the improvements acknowledged by OIOS were achieved despite the persistence of the negative factors previously identified.

129. As noted by OIOS, in 2019 the Office carried out an extensive confidential survey of morale in the Office to identify the negative factors that have an impact on staff morale, assess the Office's efforts to promote positive staff morale in the previous two years and solicit suggestions for further steps that could be taken. The anonymous results were shared with Office management, OIOS and all Office staff. According to the survey results, morale in the Office is currently positive, and certainly more positive than might be expected in the circumstances. Staff reported positive job satisfaction, consider their work to be meaningful and believe that they are contributing to something important and the achievement of the Office's mandate. The survey results also indicated that morale had generally improved in recent years. Staff reported positive views about the Office's successful transition to a residual institution, the way in which downsizing had been conducted and the Office's successful response to the sharply reduced initial commitment authority in 2018. Overall, staff were positive about change management in the Office and place a great deal of trust in the Office's senior management.

130. At the same time, the Office fully appreciates that maintaining positive staff morale will be a significant challenge in the future, particularly as downsizing continues, with the completion of trials and appeals. It is an operational necessity to maintain a highly motivated group of staff to complete a significant volume of complex litigation work. Promoting positive staff morale will therefore be a key priority for the Office's senior management in 2020 and beyond. There will be a

continuing process in the Office to identify measures to promote positive morale, mitigate factors driving negative morale and ensure that the Office is a positive work environment.

131. In close consultation with staff, the Office has already identified a list of 25 preliminary measures to be implemented. As at the submission date of the present report, the Office has implemented or commenced implementation of many of these measures, including to establish a staff-led focal point group for professional development, to provide staff at all levels with new opportunities to take on different assignments, to promote joint branch assignments where possible, and to continue transparent communication with staff on important issues. The Office will keep OIOS informed and looks forward to the closure of the recommendation concerned in the near future.

132. In its report, OIOS issued one new recommendation that also pertains to the Office, specifically that "the principals should bolster coordination and information-sharing among each other and laterally, across the organs, on matters that affect them equally" and "continuously update Mechanism-wide scenario workload-planning" (S/2020/236, para. 66). The Office welcomes this recommendation, which aligns with its own ongoing strategic review process.

133. Overall, the Office is grateful for the OIOS report and recommendations. The Office is pleased that its commitment to the Security Council's vision of the Mechanism as "a small, temporary and efficient structure" was recognized and that OIOS favourably assessed the Office's work and innovative methods, including flexibly deploying staff to address the dynamic level of ad hoc judicial activity while maintaining lean staffing. The Office appreciates the important recommendation by OIOS that the Mechanism ensure systematic thinking and planning about the future and a shared vision of institution-building, and looks forward to further discussions with the Chambers and Registry in that regard.

V. Registry

134. Pursuant to article 15 of the statute, the Registry is responsible for the administration and servicing of the Mechanism. More specifically, under the leadership of the Registrar, the Registry is responsible for carrying out a number of key functions, including the provision of support to judicial activities, the preservation and management of the archives and the administration of the Mechanism. The provision of support to judicial activities ranges from facilitating all court operations, including by providing interpretation and translation services and managing the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, to the protection of victims and witnesses and the provision of support to the President in his functions related to the enforcement of sentences of convicted persons. The Registry is further responsible for the preservation and management of the archives of the Tribunals and the Mechanism. Lastly, the Registry is responsible for the administration of the Mechanism, which includes all matters pertaining to human resources, safety and security, facility management, procurement, information technology support services, budget and finance. In a reflection of this broad variety of functions, the Registry has been affected by and has reacted to the recent COVID-19 pandemic in different ways, which are outlined below towards the end of each subsection, as relevant. More generally, the Registry has continued to maximize efficiencies by further enhancing and streamlining cross-branch cooperation with a view to operating as a single organizational entity to the extent feasible.

135. Concerning the premises of the Arusha branch, the state-of-the art courtroom successfully hosted its first judicial proceedings, including initial appearances, status conferences and a review hearing, during the reporting period. The Mechanism continued to implement remedial works, including in relation to technical defects in the archives building, and has made significant progress towards finalizing the construction project by, for example, formally closing the punch list and withholding delay damages, following close consultation with relevant offices at United Nations Headquarters. Further details on the status of the finalization of the construction project are contained in the report of the Secretary-General on construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/74/662). The Mechanism is grateful for the continuous outstanding support of the United Republic of Tanzania for its work and activities, including the support provided throughout the construction project.

136. With regard to the branch in The Hague, the host State in 2019 acquired ownership of the rented premises occupied by the Mechanism, which allows the Mechanism to remain in its current location. Negotiations are progressing with the host State on the future lease, which takes into account the reduced occupancy requirements of the Mechanism. The Mechanism is equally grateful for the continuous outstanding support of the Netherlands for its work and activities.

137. The Mechanism field office in Kigali continued to provide essential support to the Registry, the Office of the Prosecutor and the Defence in relation to the ongoing contempt proceedings in the *Turinabo et al*. case and, previously, the review proceedings in the *Ngirabatware* case. It further provided support in relation to requests for assistance from national jurisdictions and continued to provide protection and support services to witnesses, which included medical and psychosocial assistance. Furthermore, it facilitated the activities of the monitors of the International Criminal Tribunal for Rwanda cases that had been referred to Rwanda, pursuant to article 6 of the statute.

138. The Mechanism field office in Sarajevo continued to provide essential support to witnesses in relation to the ongoing *Stanišić and Simatović* case and continued to provide protection and support services to witnesses who have previously been called to testify before the International Tribunal for the Former Yugoslavia or the Mechanism. The Sarajevo field office further facilitated requests for the variation of protective measures for witnesses in support of national prosecutions of individuals allegedly implicated in the conflicts in the former Yugoslavia.

139. Towards the end of the reporting period, the Registry had to quickly adapt its working methods to the unprecedented circumstances resulting from the COVID-19 pandemic. In order to ensure a coordinated response, a COVID-19 crisis management team was established with representation from all three organs, and the Registrar appointed an Outbreak Coordinator in accordance with guidance from United Nations Headquarters. Response measures and information broadcasts to staff are coordinated through this forum.

140. In line with the administrative guidelines for offices on the novel coronavirus (COVID-19) pandemic, first issued on 13 February 2020,[20] the Registry has implemented a series of mitigating measures that are aimed at ensuring business continuity while minimizing the possible exposure of staff to COVID-19 at all duty stations, most notably by encouraging flexible and alternative working arrangements

[20] United Nations System Chief Executives Board for Coordination (CEB) Human Resources Network, “Administrative guidelines for offices on the novel coronavirus (COVID-19) outbreak: framework for the management of staff members in United Nations common system headquarters and field duty stations”, version 1.0, 13 February 2020. Version 2.0 issued on 10 March 2020; version 3.0 issued on 21 March 2020.

such as remote working. As a result, albeit with some delay, most of the Registry's day-to-day operations were able to continue.

A. Support for judicial activities

141. During the reporting period, the Arusha branch of the Registry supported the pretrial proceedings in the *Turinabo et al*. contempt case, the *Ngirabatware* review hearing and judgment and the pretrial proceedings in the *Ngirabatware* contempt case (joined with the *Turinabo et al.* contempt case as from 10 December 2019). At the branch in The Hague, the Registry provided support for the *Stanišić and Simatović* case and the *Mladić* and *Karadžić* appeal cases, including by facilitating the delivery of the appeal judgment in the *Karadžić* case on 20 March 2019. The Registry processed and disseminated more than 6,250 judicial filings, including 686 Registry legal submissions, managed court hearings on 154 sitting days and provided approximately 50,000 pages of translations in support of ongoing judicial proceedings and the general work of the Mechanism.

142. The recently established Judicial Records and Court Operations Unit in the Arusha branch of the Registry provides appropriate support for court operations arising out of ad hoc judicial activities and allows for further harmonization of the management of judicial records across the branches. In addition, as from 15 August 2019, the unified judicial database has been operational, allowing for a unified and more efficient system for the processing and distribution of filings at both branches. The launch of the unified court records database, the public interface of the unified judicial database, which was developed to grant access for the public at large to the unified judicial records of the Tribunals and the Mechanism through one interface, was initially scheduled for the end of March 2020. However, owing to the COVID-19 pandemic and the redirection of the staff of the Information Technology Services Section to implement important business continuity initiatives – mainly to set up tools and facilities to enable Mechanism staff to work remotely, as described below – the launch of the unified court records database has been delayed. The Registry is currently assessing a new timeline for the launch, taking into consideration the impact of the measures related to the COVID-19 pandemic on staff capacity.

143. The Registry further increased cross-branch coordination and harmonization in response to recommendation 3 in the OIOS evaluation report of 2018 (S/2018/206) by strengthening and harmonizing the legal framework applicable to the operations of the Registry. In that regard, the Registry drafted and amended a number of cross-branch policy documents and regulations. Particularly important were those regarding judicial records and detention matters, such as the regulation on the complaints procedure for detainees and the regulation on the disciplinary procedure for detainees, intended to replace prior policy documents and regulations of the two Tribunals.

144. During the reporting period, the Mechanism's Office for Legal Aid and Defence Matters provided administrative and logistical assistance to nearly 180 defence personnel, who make up 21 remunerated defence teams, 43 pro bono teams and three *amici curiae* teams. In so doing, the Office has processed 1,233 invoices for legal aid and 602 travel requests and related expense reports. Furthermore, the Office has redrafted those remuneration policies that rely on an hourly payment system with a view to implementing amendments focused on reasonably limiting monthly remuneration. The Registrar's formal adoption of one of these policies, the contempt remuneration policy, is forthcoming and the Office will soon commence the requisite consultative process in relation to the other remuneration policies that rely on an hourly payment system. Finally, OIOS conducted an audit of the management of legal aid and defence matters during the reporting period and did not make any

recommendations or identify any opportunities for improvement – a rare outcome which continues to guide and motivate the Office's operations.[21]

145. Towards the end of the reporting period, and as explained in section III above, owing to the COVID-19 pandemic and the resulting restrictions on travel and movement of witnesses, defence counsel and staff, a number of courtroom proceedings have had to be postponed. The uncertainties arising from such postponements pose challenges to the timing of the recruitment of court reporters, interpreters and other staff necessary to support the upcoming trial proceedings in the *Turinabo et al*. contempt case, as such staff are recruited on a rolling basis, if and when needed, in line with the Mechanism's flexible staffing structure. Meanwhile, the judicial activities of the Chambers, other than the postponed courtroom proceedings, progress on the basis of the remote working arrangements in place for both judges and staff, and the Registry continues to provide full support to these judicial activities. Such support includes the processing and distribution of judicial filings across branches, as usual, although the staff of the Judicial Records and Court Operations Unit have been operating remotely, where possible, or on a reduced rotational basis, as needed, to perform essential tasks.

146. In response to the international travel restrictions adopted owing to the COVID-19 pandemic, the Office for Legal Aid and Defence Matters was instrumental in facilitating the urgent travel of defence team members back to their home base between 13 and 18 March 2020. Considering the prevailing uncertainty in international travel, all previously scheduled defence investigative missions have been deferred until at least May 2020, pending further assessment at a later date. Such circumstances may also have an impact on the timelines for the *Turinabo et al*. and *Stanišić and Simatović* cases. The Office has maintained direct communications with all defence teams, offering regular updates on the COVID-19 pandemic and measures implemented by the Registry. The Office has not been informed by defence counsel of any difficulties regarding continued communication with their clients in detention and continues to closely monitor this important matter.

B. Victim and witness protection

147. Pursuant to article 20 of the statute, the Mechanism is responsible for the protection of 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, approximately 3,150 witnesses benefit from judicial or non-judicial protective measures.

148. Consistent with judicial protection orders and in close collaboration with domestic authorities and other United Nations entities, the Witness Support and Protection Unit provided security for witnesses during the reporting period by undertaking threat assessments and coordinating responses to security-related requirements. The Unit has also ensured and continued to strengthen the safekeeping of confidential witness information. Whenever required, it has assisted with requests for the rescission, variation or augmentation of witness protection measures and facilitated contact between parties and relocated witnesses.

149. During the reporting period, alleged witness interference was at the heart of contempt proceedings at both branches of the Mechanism, specifically the *Turinabo et al*. case and the amicus investigations involving *Jojić and Radeta*. In continuing to

[21] See report of OIOS entitled "Audit of management of legal aid and defence matters at the International Residual Mechanism for Criminal Tribunals" (report 2018/149, 31 December 2018).

build on best practices, the Witness Support and Protection Unit has been reviewing its internal standards and procedures to ensure the provision of support and protection services to the highest possible standard, while minimizing witness dependency.

150. At the branch in The Hague, the Witness Support and Protection Unit continued to support judicial activity in the *Stanišić and Simatović* case, facilitating the testimony of 40 witnesses in the case. Similarly, the Witness Support and Protection Unit at the Arusha branch supported judicial activity in the *Ngirabatware* review hearing, facilitating the movement and testimony of eight witnesses in the case, and undertook administrative and logistical arrangements for witness activity related to the anticipated hearing in the *Turinabo et al*. case. As part of its ongoing support to witnesses involved in earlier cases, the Unit continued to provide medical and psychosocial care to victims and witnesses residing in Rwanda, particularly those living with HIV/AIDS as a result of crimes committed against them during the genocide.

151. In October 2018, the Witness Support and Protection Unit at the branch in The Hague released an anonymized dataset for "Echoes of Testimonies", a pilot study in which the long-term impact on witnesses of testifying before the International Tribunal for the Former Yugoslavia is examined. By publishing this information on its website, the Mechanism is aiming to increase recognition of the importance of supporting witnesses who testify before international criminal tribunals and to encourage further research and development in that field.

152. In response to recommendation 5 in the OIOS evaluation report of 2018, the Registrar issued a new Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses in November 2019, following consultation with the President. As previously mentioned, the Practice Direction now explicitly incorporates gender-sensitive and gender-appropriate approaches into the operations of the Registry's victim and witness management.

153. It is expected that victim and witness protection will be required for the foreseeable future, in line with judicial protection orders that must continue to be implemented unless rescinded or waived. 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's immediate family members. In relation to relocated witnesses, support may be required until the last member of the immediate family is deceased.

C. Detention facilities

154. At the United Nations Detention Facility and the United Nations Detention Unit, 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.

155. While the United Nations Detention Facility at the beginning of the reporting period had a population of two detainees, one of whom was transferred to Senegal in July 2018 for the enforcement of her sentence, in September 2018 five accused persons were transferred to the Facility in connection with the *Turinabo et al*. contempt case, necessitating an increase both in operations and in the number of staff at the Facility. Currently, the Facility houses one convicted person while the contempt case against him before the Arusha branch is pending. In addition, the Facility maintains custodial capacity for four individuals who were provisionally released in August 2019, while one individual was released with an order to appear before the Mechanism when required. The overall scale of operations and staffing has been reduced accordingly.

156. A continuous decrease in the scale of operations and staffing at the United Nations Detention Unit reflected the progress of the branch in The Hague in relation to the Mechanism's docket. Specifically, at the beginning of the reporting period, the Unit had eight detainees in custody and maintained custodial capacity for one detainee on provisional release, whereas it currently has three detainees in custody and maintains custodial capacity for two detainees on provisional release. Following the transfer of three detainees to their respective enforcement States and the release of one convicted person pursuant to a judicial order for his conditional early release, the Unit's facilities, scale of operations and staffing have been reduced, and the Unit has adapted its operations to an individualized detainee supervision model as part of these changes.

157. In order to reduce the risk of COVID-19 contamination for persons currently in detention, the Commanding Officers of the United Nations Detention Facility and the United Nations Detention Unit, in cooperation with the respective host State authorities, have implemented strict preventive measures. As a result, all non-essential activities and services such as non-urgent medical care and social and recreational activities have been suspended. Furthermore, at both detention facilities, the number of personnel in direct contact with the detainees has been reduced to the minimum, while all visits have been suspended, including those of defence counsel. Detainees continue to benefit from unhindered communication with their families and defence counsel through alternative means facilitated by both detention facilities (telephone, mail and email, where available). Despite the situation, access by detainees to medical care, fresh air and fresh meals has not been impeded.

D. Supervision of enforcement of sentences

158. Since the establishment of the branches in Arusha and The Hague and under the supervision of the President, the Registry has facilitated the enforcement of sentences pronounced by the Tribunals and the Mechanism. Sentences are enforced within the territory of Member States that have concluded agreements to that effect or indicated their willingness to accept convicted persons under any other arrangement.

159. At the Arusha branch, the Mechanism is supervising the enforcement of 30 sentences in three States,[22] with one convicted person remaining at the United Nations Detention Facility while the contempt case against him before the Arusha branch is ongoing.

160. At the branch in The Hague, the Mechanism is supervising the enforcement of 20 sentences in 11 States,[23] with two convicted persons at the United Nations Detention Unit currently awaiting transfer to an enforcement State.

161. In implementing the existing enforcement agreements, the Registry has fostered close cooperation with the relevant authorities in the enforcement States and facilitated inspections by highly reputable international monitoring bodies. The Registry, in close consultation with the authorities in the enforcement States, has also engaged in the implementation of the recommendations issued in October 2018 by an expert on ageing in prison and associated vulnerabilities regarding the prison conditions of the persons convicted by the International Criminal Tribunal for Rwanda who are serving sentences in Mali and Benin.

162. During the reporting period, OIOS conducted an audit of enforcement and monitoring of sentences of convicted persons at the Mechanism. In the resulting

[22] Benin (18), Mali (7) and Senegal (5).

[23] Austria (1), Denmark (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (4), Sweden (1) and the United Kingdom (1).

strictly confidential report,[24] only one recommendation was issued, and the Mechanism is working towards its implementation. This very positive outcome will continue to guide the Registry's activities in the area of enforcement of sentences.

163. As part of the supervision of the enforcement of sentences by the Mechanism, the Registry, following the outbreak of the COVID-19 pandemic, took immediate steps to engage with all enforcement States in order to obtain information on measures taken in their respective prisons to prevent the spread of the pandemic.

E. Relocation of acquitted and released persons

164. During the reporting period, the Mechanism continued to deploy focused efforts, including bilateral engagement with potential receiving States and assistance in private relocation efforts, to facilitate sustainable solutions for the relocation of acquitted and released persons and to provide those still residing in Arusha with relevant assistance. Successful relocation relies on the support and cooperation of Member States. No progress has been made pursuant to Security Council resolution 2422 (2018), in which the Council reiterated its call upon Member States to cooperate with and render all necessary assistance to the Mechanism, for increased efforts towards the relocation of acquitted and released persons. In July 2018, one acquitted person was relocated to a European country through private relocation efforts, supported by the Mechanism, thereby reducing the number of persons for whose upkeep the Mechanism remains responsible from 10 to 9.

165. The Mechanism anticipates that this humanitarian challenge will persist until all nine remaining individuals are relocated and is grateful for the continuous support of the Security Council and the international community towards its resolution.

F. Cases referred to national jurisdictions

166. Pursuant to article 6 (5) of the 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.

167. During the reporting period, the Registry continued to support the Mechanism's monitoring of cases referred to national jurisdictions. Three cases referred to Rwanda by the International Criminal Tribunal for Rwanda were being monitored with the pro bono assistance of the Kenyan section of the International Commission of Jurists. The monitors regularly visited the accused persons in prison, liaised with the Rwandan authorities and attended court hearings. Pending the conclusion of a similar monitoring agreement for the two International Criminal Tribunal for Rwanda cases referred to France, the Registry has ensured continued monitoring through interim monitoring arrangements.

168. Unfortunately, as a result of the COVID-19 pandemic, the ongoing monitoring of the cases was impeded towards the end of the reporting period. Some prisons have put access restrictions in place, resulting in a suspension of the above-mentioned visits by monitors to the accused persons in prison. Furthermore, owing to restrictions on international travel into and out of the countries to which cases have been referred, the monitors are currently prevented from travelling. Upon request of the monitors for the cases referred to Rwanda, the President has therefore adjusted the schedule for

[24] Report of OIOS entitled "Audit of enforcement and monitoring of sentences of convicted persons at the International Residual Mechanism for Criminal Tribunals" (report 2019/136, 20 December 2019).

the submission of monitoring reports and allowed for the provision of a consolidated report once the travel restrictions have been lifted.

G. Assistance to national jurisdictions

169. Pursuant to article 28 (3) of the statute, the Mechanism is mandated to respond to requests for assistance from national authorities in relation to the investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of the former Yugoslavia and Rwanda. During the reporting period, the Registry received and responded to over 215 requests from national authorities or parties to national proceedings for assistance in connection with domestic proceedings related to the conflicts in the former Yugoslavia or the genocide in Rwanda. This includes requests to vary protective measures ordered in proceedings before the two Tribunals or the Mechanism.

170. The Mechanism provides comprehensive information and guidance for those who wish to request assistance on its website, and through the Judicial Records and Court Operations Unit upon request at both branches.

171. The Registry expects that, for the foreseeable future, the sustained demand for assistance experienced thus far will continue and that this will be reflected in the number and comprehensiveness of the requests for assistance that it receives.

H. Archives and records management

172. Pursuant to article 27 of the statute, the Mechanism is responsible for the management, including preservation and access, of the archives of the Tribunals and the Mechanism. The archives are co-located with the respective branches of the Mechanism and procedures for their management are harmonized across the branches as far as is practical.

173. The Mechanism Archives and Records Section manages more than 4,500 linear metres of physical records and approximately 3 petabytes of digital records. During the reporting period, the Section continued to ingest digital records into a digital repository that is designed to maintain their long-term integrity, reliability and usability. To date, 119.79 terabytes of digital records have been ingested. This work will continue over the coming years.

174. The preservation of audiovisual records is also an ongoing activity at both branches. The fragile nature of audiovisual formats makes them a high priority for preservation, and projects are under way at both branches to digitize analogue content and to generate publicly accessible copies of recordings.

175. The Mechanism continues to facilitate the widest possible access to records while ensuring the strictest protection of confidential information. This includes ongoing work to develop a publicly accessible catalogue containing descriptions, prepared according to international standards, of the archives in the custody of the Mechanism and the organization of exhibitions at both branches and online.

176. The Mechanism Archives and Records Section continues to provide training and advice on record-keeping for Mechanism staff and administers the Mechanism's electronic document and records management system. The system is being systematically rolled out across the Mechanism and its successful implementation will support cross-branch coordination, cooperation and collaboration by enhancing information-sharing and record-keeping practices. The Section also continues to lead the development and implementation of the Mechanism's records retention schedules,

which contain instructions for the disposition of its records to ensure that they are retained for as long as necessary on the basis of their administrative, fiscal, legal, historical or informational value. To date, 21 schedules for Registry functions have been approved for implementation, and work is under way to prepare schedules for the Office of the Prosecutor, the Chambers and cross-cutting functions.

177. As the archives are by definition records deemed to be of permanent value, their management will have to be ensured accordingly.[25]

I. Budget and staffing

178. For the period from 16 April 2018 to 31 December 2019, the Mechanism operated under its revised and significantly reduced budget for the 2018–2019 biennium ($196,024,100 gross). It is recalled that this budget was approved by the General Assembly in its resolution 72/258 B, thereby replacing the commitment authority that had initially been granted in an amount not to exceed $87,796,600 gross for the maintenance of the Mechanism from 1 January to 31 December 2018 by the Assembly in its resolution 72/258 A.

179. In order to implement the decisions of the General Assembly, the Registry developed and implemented expenditure reduction measures to allow the Mechanism to fulfil the core elements of its mandate – mainly judicial activity. Reductions were made in both post and non-post resources, with the great majority of reductions at the branch in The Hague. The Registrar adopted a general downsizing policy to implement staff reductions following the completion of judicial proceedings. This general downsizing policy is periodically updated to guide further downsizing of staff and was based on a proposal by the Joint Negotiating Committee, which serves as an advisory body to the Registrar and is comprised of management and staff union representatives. In terms of non-post resources, the Mechanism reduced its general operating expenses and has maintained many of the resulting cost reduction measures since.

180. The experience gained and efficiencies achieved under the reduced resource levels were incorporated in the Mechanism's budget proposal for 2020, which was approved by the General Assembly in its resolution 74/259 and under which the Mechanism has been operating since 1 January 2020.

181. Table 1 gives an overview of the evolution of the budgets of the Mechanism and the two Tribunals from 2012–2020. The steady increase of the financial resources of the Mechanism reflects the gradual transfer of functions from the Tribunals.

Table 1
Evolution of the budgets of the Mechanism and the two Tribunals, 2012–2020
(Thousands of United States dollars)

	2012–2013	*2014–2015*	*2016–2017*	*2018–2019*	*2020*
Mechanism	18 078.3	66 614.3	120 584.7	166 021.9	86 911.8
International Criminal Tribunal for Rwanda	166 921.2	160 753.4	N/A	N/A	N/A
International Tribunal for the Former Yugoslavia	247 260.8	167 197.3	93 187.9	N/A	N/A
Total	**432 260.3**	**394 565.0**	**213 772.6**	**166 021.9**	**86 911.8**

Abbreviation: N/A, not applicable.

[25] See ST/SGB/2007/5, which contains the United Nations definition of "archives": "records to be permanently preserved for their administrative, fiscal, legal, historical or informational value."

182. As at 1 April 2020, 182 of the 187 approved continuous posts had been filled to carry out the Mechanism's continuous functions. An additional 370 personnel were also serving as general temporary assistance to assist with ad hoc needs, including judicial work. These positions are short-term in nature and the number may fluctuate depending on the relevant workload. Continuous and general temporary assistance positions with the Mechanism are filled by nationals of 76 States. As 53 per cent of current staff at the professional level are female, the Mechanism has surpassed the gender parity goals of the Secretary-General.

183. Rosters of qualified staff at each level, established at all three organs, continue to be maintained and updated to allow for quick recruitment of staff in the event of the apprehension of a fugitive.

184. During the reporting period, the Registrar took a range of staffing measures conducive to an inclusive and harmonious working environment. The Registrar issued guidance on the Mechanism's flexible working arrangements, inter alia, increasing the number of days of remote work that may be granted per week and introducing the option of remote work away from the duty station, to accommodate compelling personal circumstances. In addition to dedicated focal points for gender issues, sexual exploitation and abuse issues, diversity and inclusion issues, including lesbian, gay, bisexual, transgender and intersex issues, and disability and accessibility issues, the Registrar appointed focal points for conduct and discipline issues. As a result, key focal points are now all represented at both branches, to provide information and address matters that may arise in the workplace. Mindful of the importance of creating a working environment free from discrimination, the Registrar approved mandatory diversity and inclusion workshops. Furthermore, in support of the Secretary-General's focus on civility in the workplace and at the Registrar's invitation, a workshop on community, civility and communication was held, and individual consultations were offered to staff at the Arusha branch by the Office of the United Nations Ombudsman and Mediation Services, with similar activities currently being organized for staff at the branch in The Hague. Building on the OIOS evaluation finding in 2018 that "staff were largely satisfied with their working conditions", it is hoped that all the above-mentioned measures will further consolidate staff satisfaction, given the challenges of working in a downsizing institution.

185. In order to acknowledge and thank its dedicated staff members, the Mechanism held ceremonies at both branches for those eligible for the United Nations long-service award, timed to take place in the same week as United Nations Day, 24 October 2019. Staff members received awards for periods of service 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.

J. Administration

186. The Division of Administration has continued to provide high-quality support to ensure the continuity of the Mechanism's operations during the COVID-19 pandemic. Further, as the Mechanism's health services have been under enormous pressure, the pandemic has necessitated the temporary expansion of their capacity.

187. Throughout the reporting period, the Information Technology Services Section supported the Mechanism's work from behind the scenes, for instance by implementing the information technology of the state-of-the-art courtroom at the Arusha branch and the unified judicial database, and by setting up a modern cross-branch infrastructure while absorbing the systems and data of the two Tribunals. However, any such ongoing or planned operations of the Section had to be put on

hold in order to ensure the business continuity of the Mechanism following the COVID-19 pandemic outbreak. Bearing in mind the stringent information security controls required to ensure the confidentiality of the data entrusted to the Mechanism, the Section has excelled in quickly ensuring that all designated staff have remote access to their emails, the Mechanism's information technology network and nearly all the bespoke applications that staff may require to fulfil their duties. Business continuity in this respect has been assured. At the time of writing, the Section had issued 350 remote access tokens to staff at both branches. Likewise, the prior adoption of the Umoja and Inspira platforms has made it possible to use those supporting applications remotely, ensuring that nearly all activities relating to finance, procurement, budget and human resources continue undisturbed. Challenges have been faced when some transactions have required the use of hard-copy documents, but up to now those transactions have only been delayed.

K. Other activities

188. In addition to the functions and responsibilities mentioned above, the Registry has engaged in a number of other activities in support of the Mechanism's mandate. These activities include informing the public about the Mechanism's work, responding to media enquiries, organizing public events, and developing and implementing external relations activities in relation to various stakeholders, primarily communities in Rwanda and the countries of the former Yugoslavia.

VI. Evaluation by the Office of Internal Oversight Services

A. Summary

189. The Mechanism welcomes the mandate given to OIOS to evaluate its methods of work. The Mechanism takes very seriously the need to complete its residual functions in an efficient and effective manner. In line with Security Council resolution 2422 (2018), the Mechanism carried out an in-depth review of its extensive efforts to implement outstanding OIOS recommendations and engage constructively with OIOS on the two new recommendations contained in its evaluation report of 26 March 2020 (S/2020/236).

190. In the recent evaluation, OIOS recognized that the Mechanism had been effective in reducing costs and flexibly deploying staff on the basis of the workload, and that it had exceeded the Mechanism-wide gender balance targets, while continuing to strive to achieve geographical diversity, as well as gender balance at all levels. Overall, four recommendations (recommendations 3, 4, 5, and 6) from the 2018 evaluation report have been implemented and two recommendations (recommendations 1 and 2) have been partially implemented.[26]

191. OIOS also acknowledged the significant challenges that the Mechanism was able to overcome during the review period, noting in particular that, "given the sharp reduction in initial commitment authority in 2018, the Mechanism delayed activities until the revised budget was approved, after which operations resumed as planned". Despite the disruption incurred by delaying activities and reducing staff, the

[26] Progress in the implementation of these recommendations was described in the six-monthly reports of the Mechanism to the Security Council (see S/2018/1033, paras. 121–125; S/2019/417, paras. 137–142; and S/2019/888, paras. 133–139) and in the sixth annual report of the Mechanism to the General Assembly and the Council (see A/73/289-S/2018/569, para. 18). See also report of OIOS entitled "Audit of the unified judicial database project at the International Residual Mechanism for Criminal Tribunals" (report 2019/009, 5 March 2019).

Mechanism fully and rapidly responded to unanticipated judicial activity in the *Turinabo et al.* contempt case and remained on track to complete ongoing trials and appeals in accordance with the projected timelines. This was achieved notwithstanding the lean staffing in the Chambers and the Office of the Prosecutor observed by OIOS, which is consistent with the ad hoc nature of the judicial activity.[27]

192. In its evaluation report, OIOS presented the Mechanism with new recommendations after determining that additional effort was needed in two spheres, first with respect to coordination and information-sharing across the three organs on matters that affect them equally and, second, with respect to providing clear and focused projections of completion timelines.

193. The Mechanism appreciates and accepts the two new recommendations, is fully committed to implementing them and has already taken steps to that effect. Detailed information concerning the implementation of OIOS recommendations is set forth in the management response to the evaluation report contained in annex I to the report.

B. Implementation of 2018 recommendations

194. In its evaluation report, OIOS concluded that the Mechanism had implemented the majority of the six recommendations made in its previous evaluation report in 2018.

195. The Registry has closed the gaps in inter-branch harmonization highlighted in the 2018 evaluation and has ensured that high-quality administrative support services are offered throughout the Mechanism, in part thanks to budgetary resources being made available to support this process. With a view to ensuring the harmonization of standards and processes across the branches, the Mechanism Archives and Records Section and the Language Services Section have been restructured and, in the coming reporting period, the External Relations Office will also be examined to ensure consistency and a Mechanism-wide approach, as suggested in the 2020 OIOS evaluation report. In addition, and as outlined in more detail above, the Mechanism's legal and regulatory framework has been further harmonized and streamlined.

196. The Mechanism's institution-building projects have been supported by consistent leadership and inclusive engagement, and third-party expertise has been relied on in appropriate circumstances. OIOS found that the improvements to the premises of the Arusha branch undertaken by the Registry to address the working conditions of staff appeared prioritized, organized, consultative and addressed in a timely manner. In line with one of the 2018 recommendations, and following an independent assessment, the filing system and database used at the branch in The Hague were extended to the Arusha branch. This step towards harmonization has in turn led to the adoption of a unified system to process, distribute and store filings. The efficiency resulting from using the same system at both branches has been felt throughout the Mechanism, as this Registry-led service is essential to the work of all three organs. The Mechanism remains mindful of the OIOS suggestion to pay close attention to cost control issues and information security risks related to the unified judicial database project.

197. Overall, the Mechanism has been at the forefront in the United Nations system in meeting or exceeding the gender parity goals of the Secretary-General for many years but, in line with the OIOS recommendation, it has endeavoured to improve gender balance across branches and sub-offices. Awareness of those areas needing

[27] OIOS in this context noted that the Registry had the largest number of posts in comparison with the Chambers and the Office of the Prosecutor, since it "had the most diverse range of functions" (see S/2020/236, para. 20).

improvement was enhanced by a gender dashboard that was made available to all hiring managers and staff in March 2019. Thanks in part to this dashboard, the Mechanism has increased the number of women appointed at all levels in the Arusha branch, where the ratio of female to male staff was lower than in the branch in The Hague. A further important achievement related to the 2018 recommendations on gender is the adoption and publication of the Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses, in which gender-sensitive and gender-appropriate approaches are explicitly incorporated, and the further integration of these approaches in the updated victim and witness management governance framework.

198. Finally, the Registry has implemented recommendation 6 by achieving further efficiencies in the processing of medical bills for convicted persons to ensure full conformity with international standards of detention, and continues to take active measures in that regard.

199. The Mechanism is working towards the full implementation of the recommendation to develop a scenario-based workforce plan to enhance responsiveness to a surge in workload. Once such a plan is developed, the Mechanism will be able to rely on this valuable tool to plan, prepare and efficiently allocate resources in the coming years. To that end, the Mechanism's three organs have initiated a cross-organ process to prepare, and eventually update, the Mechanism-wide scenario-based workforce plan, which will pave the way towards closing recommendation 1 of 2018 and advancing the implementation of the new recommendation 1 of 2020.

200. Finally, the Mechanism has made substantive progress on the partially implemented recommendation to support and strengthen morale, as detailed in section IV above.

C. Implementation of 2020 recommendations

201. Looking forward, the Mechanism appreciates the opportunity to provide the Security Council with further comments pertaining to the evaluation report.

202. In that regard, the Mechanism highly values the new recommendation 1 of OIOS, which will assist in realizing a common vision and ensuring systematic planning in the next reporting period, during which further resource reductions will be required, along with a more singular focus on the remaining residual functions. The principals look forward to continuing discussions in this regard, and to exploring further opportunities to enhance cross-organ cooperation

203. Evidence of the recommended systematic thinking and planning can be seen in the Mechanism's response to the COVID-19 pandemic. All three organs are working together at the highest level to ensure that unified messages based on the best information available are disseminated in a timely manner to those concerned, including staff. The recently established COVID-19 crisis management team, with representation from all three organs, meets regularly by videoconference to coordinate policies and update ongoing measures to ensure the efficient and effective implementation of the Mechanism's mandate while fully adhering to public health guidance and safeguarding the welfare of staff.

204. The Mechanism has taken on board recommendation 2, set out in the 2020 evaluation report, that it make focused projections in its cases. The Mechanism is mindful of the great importance that the Security Council attaches to such projections, which have been identified as a tool "to further enhance efficiency and effective and transparent management".

205. OIOS has raised concerns about the form of the Mechanism's projections, the consistency of the language used and the lack of graphics and charts. It has questioned the use of cautious and partial projections in outlier cases that have no guiding precedent in the history of the ad hoc Tribunals, such as the *Stanišić and Simatović* retrial, which is the first full retrial and a case requiring significant health accommodations that have been difficult to forecast and translate into projections; *Turinabo et al.*, the largest and most complex contempt case involving an unprecedented six accused; and the *Ngirabatware* review proceedings, which involve ongoing allegations of contempt.

206. Where the Mechanism could rely on prior experience to make accurate projections, it did so: in November 2015, in the first review report, the Mechanism provided projections for all of its major appeals, clearly identifying the basis for those projections. The initial projections were sound and were updated as needed with explanations in subsequent reports.

207. It is also important to emphasize that, while OIOS is critical of the projections provided to date, these projections have not been detrimental to the Mechanism's efficiency. In its 2020 report, OIOS concluded, when comparing the pace of ad hoc judicial proceedings in the Mechanism with that of the Tribunals, that notable efficiencies had been achieved. In fact, had OIOS projection models been used, the *Karadžić* and *Mladić* cases would have been projected to last much longer. For example, the *Karadžić* case, which concluded in March 2019, precisely as projected by the Mechanism in its first review report, would have been projected to last until April 2021 – 25 months longer.

208. Projections are an important tool to drive efficiency, but inaccurate projections may skew recruitment and ultimately lead to increases in the costs of judicial activities. The previous OIOS evaluation report should not be forgotten: in that report, the Chambers were applauded for their efficiency, systematic planning, financial prudence in staffing levels, practice of hiring individuals who fitted the work culture, and seamless integration between the branches in Arusha and The Hague, which enabled staff to support remote judges to their great satisfaction.

209. The Mechanism nevertheless considers that the provision of clear and focused projections may increase transparency and that the provision of detailed judicial activity timelines and projections may assist the parties to proceedings. In the present report, the Mechanism has made detailed projections and provided charts of timelines for its major cases, based on current information.

210. Of course, as with all projections, those included in the present report will be adjusted as necessary to reflect developments in the individual cases, as well as those caused by the COVID-19 pandemic and the resulting uncertainty.

VII. Conclusion

211. The Mechanism's ability to innovate and adapt is evident not only in the present reporting period but can be traced back to its establishment by the Security Council almost a decade ago. It should be recalled that, when the Mechanism was being contemplated, it was not meant to operate in tandem with the ad hoc Tribunals for a prolonged period of time, although of course a transitional phase was expected. Yet, for the first three and a half years of its life, the Mechanism functioned alongside the International Criminal Tribunal for Rwanda and, for four and a half years, it operated in parallel to the International Tribunal for the Former Yugoslavia. The Mechanism was able to adjust to this extended period of coexistence by finding ways to increase efficiencies and minimize costs, such as through the double-hatting of personnel.

212. Having concluded its first full reporting period as a stand-alone institution, the Mechanism takes pride in its accomplishments: major cases from both Tribunals have come to a close; a filing system that unifies the two very different systems left by the ad hoc Tribunals has been launched; a state-of-the-art courtroom is fully operational in Arusha; and a modern detention framework now applies to detainees in both the United Nations Detention Facility and the United Nations Detention Unit. Significantly, the Mechanism has succeeded in safeguarding the precious legacies of the two Tribunals and upholding the international community's commitment to peace, justice and the rule of law.

213. The present report contains numerous examples of the Mechanism's resilience during a reporting period that was marked by two major crises: it began with a sharp reduction in the Mechanism's budget and ended with a global health pandemic with far-reaching ramifications. Undeterred by these challenges, the Mechanism has delivered results and kept residual judicial work on track to the greatest extent possible by staying flexible, focused and dedicated to its core mandate. Throughout, it has continued to carry out to the highest standards the essential functions entrusted to it by the Security Council.

214. In the coming period, the Mechanism will continue to strive to expeditiously fulfil its functions and implement in full the valuable recommendations made by OIOS. Moreover, the Mechanism will continue to work constructively with the Security Council and the Informal Working Group on International Tribunals and looks forward to discussing with them the progress outlined in the present report. The Mechanism also looks forward to strengthened cooperation from Member States in relation to the arrest and surrender of all remaining fugitives indicted by the International Criminal Tribunal for Rwanda, and to finding a sustainable solution for the relocation of the nine acquitted and released persons who remain in Arusha.

215. In closing, the Mechanism wishes to express its heartfelt thanks to the Security Council and the General Assembly, the Office of Legal Affairs and the United Nations more broadly, as well as individual Member States whose support has been vital to the Mechanism's continued ability to discharge its mandate. An enormous debt of gratitude is also owed to the judges, staff and non-staff personnel whose hard work, steadfastness and drive have enabled the Mechanism to find innovative solutions to the challenges faced and have ensured the institution's ongoing functionality, particularly during these unprecedented times.

Enclosure I

Public legal and regulatory instruments and policies promulgated by the Mechanism, as at 1 April 2020

A. Rules of Procedure and Evidence

- Rules of Procedure and Evidence (MICT/1/Rev.6), 18 December 2019
- Practice Direction on the Procedure for the Implementation of Rule 110 (B) of the Rules of Procedure and Evidence (MICT/15/Rev.1), 4 January 2019
- Practice Direction on Procedure for the Proposal, Consideration, and Publication of Amendments to the Rules of Procedure and Evidence of the Mechanism (MICT/16/Rev.2), 24 May 2018

B. Judges

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

C. Judicial Activities

- Practice Direction on the Use of the Electronic Court Management System (MICT/21/Rev.1), 20 February 2019
- Practice Direction on Lengths of Briefs and Motions (MICT/11/Rev.1), 20 February 2019
- Practice Direction on Requirements and Procedures for Appeals (MICT/10/Rev.1), 20 February 2019
- Practice Direction on Formal Requirements for Requests for Review of Administrative Decisions (MICT/9/Rev.1), 20 February 2019
- Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism (MICT/3/Rev.2), 20 February 2019
- Practice Direction on Filings Made before the International Residual Mechanism for Criminal Tribunals (MICT/7/Rev.3), 4 January 2019
- Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve his or her Sentence of Imprisonment (MICT/2/Rev.1), 24 April 2014
- Interim Procedures on Restricted Access Filings [Rev.1], 4 January 2019

D. Victims and Witnesses

- Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses (MICT/40), 26 November 2019
- Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86 (H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material (MICT/8), 23 April 2013

E. Archives and Records

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

F. Office of the Prosecutor

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

G. Defence

- Directive on the Assignment of Defence Counsel (MICT/5), 14 November 2012
- Remuneration Policy for Persons Representing Indigent Accused: Revised Amounts as of January 2020, 1 January 2020
- Remuneration Policy for Persons Representing Indigent Accused in Pre-Trial Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Representing Indigent Accused in Trial Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Representing Indigent Convicted Persons in Post-Conviction Proceedings, upon Issuance of a Judicial Order Granting Assignment of Counsel at the Expense of the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Remuneration Policy for Persons Assisting Indigent Self-Represented Accused before the International Residual Mechanism for Criminal Tribunals, 4 January 2019
- Hourly rates applicable to Defence teams as of January 2020, 1 January 2020
- Guidelines for Determining the Extent to Which an Applicant for Legal Aid is Able to Remunerate Counsel, 13 November 2017
- Guidelines on the Submission of Hourly Invoices and Remunerable Activities for Assistants to Self-Represented Accused, 25 May 2016
- Guidelines on the Submission of Hourly Invoices and Remunerable Activities, 10 November 2015
- Code of Professional Conduct for Defence Counsel Appearing before the Mechanism (MICT/6), 14 November 2012

H. Translation and Interpretation

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

I. Detention

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

Enclosure II

Judgments, orders and decisions issued by the Mechanism, as at 10 April 2020

I. The President

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	10	9	43	30	42	28	16	19	1	198
The Hague	0	16	27	31	54	45	42	32	9	256
Total	**10**	**25**	**70**	**61**	**96**	**73**	**58**	**51**	**10**	**454**

B. Orders and decisions of the President on enforcement

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	2	1	5	1	5	10	32	7	2	65
The Hague	0	2	13	18	16	14	14	15	3	95
Total	**2**	**3**	**18**	**19**	**21**	**24**	**46**	**22**	**5**	**160**

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	2	2	4	4	4	6	0	0	0	22
The Hague	0	0	0	0	0	0	0	0	0	0
Total	**2**	**2**	**4**	**4**	**4**	**6**	**0**	**0**	**0**	**22**

D. Orders and decisions of the President (other)

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	2	5	2	0	3	2	8	32	7	61
The Hague	0	0	1	1	7	10	27	6	0	52
Total	**2**	**5**	**3**	**1**	**10**	**12**	**35**	**38**	**7**	**113**

II. The Appeals Chamber

A. Appeal or review judgments

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	0	0	1	0	0	0	0	1	0	2
The Hague	0	0	0	0	0	0	1	1	0	2
Total	**0**	**0**	**1**	**0**	**0**	**0**	**1**	**2**	**0**	**4**

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	1	0	1	4	11	30	28	38	0	113
The Hague	0	0	0	3	1	0	1	0	0	5
Total	**1**	**0**	**1**	**7**	**12**	**30**	**29**	**38**	**0**	**118**

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	2	11	9	9	10	2	8	13	0	64
The Hague	0	0	8	5	48	46	83	24	11	225
Total	**2**	**11**	**17**	**14**	**58**	**48**	**91**	**37**	**11**	**289**

III. The Trial Chambers and single judges

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	0	0	0	0	0	0	0	0	0	0
The Hague	0	0	0	5	31	114	108	93	15	366
Total	**0**	**0**	**0**	**5**	**31**	**114**	**108**	**93**	**15**	**366**

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	0	0	0	12	0	0	0	5	0	17
The Hague	0	0	0	0	0	0	0	0	0	0
Total	**0**	**0**	**0**	**12**	**0**	**0**	**0**	**5**	**0**	**17**

C. Three-judge panels

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	0	0	0	0	0	0	0	0	0	0
The Hague	0	0	0	0	0	0	0	1	0	1
Total	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**0**	**1**

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	5	3	27	18	27	6	2	12	0	100
The Hague	0	22	32	41	54	54	33	31	18	285
Total	**5**	**25**	**59**	**59**	**81**	**60**	**35**	**43**	**18**	**385**

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

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	0	1	2	0	21	7	31	105	20	187
The Hague	0	1	3	0	5	2	13	24	1	49
Total	**0**	**2**	**5**	**0**	**26**	**9**	**44**	**129**	**21**	**236**

F. Orders and decisions of single judges (other)

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	1	5	7	17	47	21	10	4	0	112
The Hague	0	1	8	10	19	9	23	7	0	77
Total	**1**	**6**	**15**	**27**	**66**	**30**	**33**	**11**	**0**	**189**

IV. Total

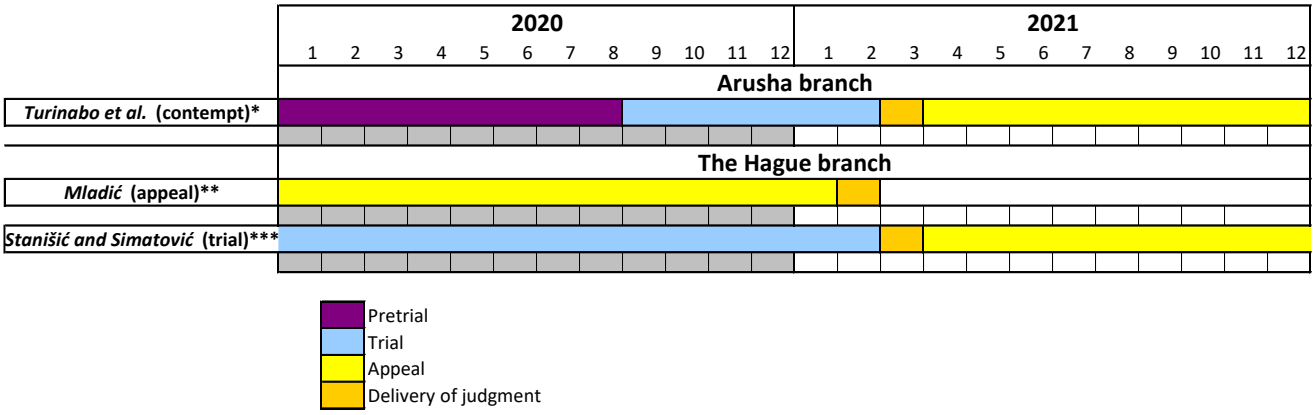
A. Total judgments: 4

B. Total orders and decisions

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Total*
Arusha	25	37	100	95	170	112	135	235	30	939
The Hague	0	42	92	114	235	294	344	233	57	1 411
Total	**25**	**79**	**192**	**209**	**405**	**406**	**479**	**468**	**87**	**2 350**

Enclosure III

Status of trial and appeal proceedings of the International Residual Mechanism for Criminal Tribunals, 2020–2021, based on information available as at 15 April 2020 and subject to change



* The trial in Turinabo et al. is expected to commence no sooner than the end of August 2020. The presentation of evidence is expected to conclude by December 2020, with final arguments in February 2021. The trial judgment is expected to be delivered in March 2021. Subject to the outcome of the trial, an appeal may follow.

** The appeal is expected to be concluded and the appeal judgment delivered in February 2021.

*** The presentation of evidence and the closing arguments are expected to conclude by December 2020. The trial judgment is expected to be delivered in the first quarter of 2021. Subject to the outcome of the trial, an appeal may follow.