

**Security Council**

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

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

(Signed) Carmel Agius
President



Annex I

[Original: English and French]

**Assessment and progress report of the President of the International
Residual Mechanism for Criminal Tribunals, Judge Carmel Agius,
for the period from 17 May 2020 to 15 November 2020**

Contents

	<i>Page</i>
I. Introduction	3
II. Structure and organization of the Mechanism	5
A. Organs and principals	5
B. President	5
C. Judges	7
D. The branches	8
E. Budget, staffing and administration	9
F. Legal and regulatory framework	12
III. Judicial activities	13
IV. Registry support for judicial activities	20
V. Victims and witnesses	21
VI. Fugitives and trial and appeal readiness	22
VII. Detention facilities	23
VIII. Enforcement of sentences	25
IX. Relocation of acquitted and released persons	27
X. Cooperation of States	27
XI. Assistance to national jurisdictions	29
XII. Cases referred to national jurisdictions	29
XIII. Archives and records	30
XIV. External relations	31
XV. Reports of the Office of Internal Oversight Services	32
XVI. Conclusion	33

1. The present report, the seventeenth in a series, is submitted pursuant to Security Council resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals and, in paragraph 16 of that resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Council on the progress of the work of the Mechanism.¹ The same reporting requirement is reflected in article 32 of the statute of the Mechanism (resolution 1966 (2010), annex 1). Information contained in the present report is included pursuant to paragraph 10 of Council resolution 2529 (2020), which echoes the similar requirements contained in resolutions 2256 (2015) and 2422 (2018).

I. Introduction

2. The International Residual Mechanism for Criminal Tribunals was established by the Security Council to carry out a number of essential residual functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, which closed in 2015 and 2017, respectively. The Mechanism's branch in Arusha, United Republic of Tanzania, commenced operations on 1 July 2012, assuming functions derived from the International Criminal Tribunal for Rwanda, while the branch in The Hague, Netherlands, commenced operations on 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia. The Mechanism has been a stand-alone institution since 1 January 2018.

3. The Mechanism notes that 22 December 2020 marks the tenth anniversary of its establishment pursuant to Security Council resolution 1966 (2010). Through that resolution, the Council established an innovative new residual institution that would carry on and conclude the crucial work of the two ad hoc Tribunals. In doing so, the Council took an important further step towards advancing international justice, enhancing accountability and strengthening the rule of law, thus adding to the wide array of accomplishments of the United Nations in those areas. The Mechanism is pleased to submit the present report on the eve of that milestone, and during an auspicious year that marks 75 years since the founding of the United Nations itself.

4. Pursuant to resolution 1966 (2010), the Mechanism was tasked to operate for an initial period of four years and, subsequently, for periods of two years, following reviews of its progress, unless the Security Council decided otherwise. During the reporting period, the Council concluded its third such review, following the submission of the Mechanism's review report on 15 April 2020 (S/2020/309, annex). That review culminated in the adoption on 25 June 2020 of Security Council resolution 2529 (2020), which, with reference to the Mechanism's mandate, inter alia, reaffirmed the Council's determination to combat impunity for serious international crimes and the necessity of bringing to justice all persons indicted by the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

5. The Mechanism is most grateful to the Security Council for its continued support of the Mechanism's work and mandate and takes extremely seriously the terms of resolution 2529 (2020), in particular the operative part. It also wishes to acknowledge the ready engagement and dedicated attention of the Council's Informal Working Group on International Tribunals throughout the review process. In that regard, the Mechanism is satisfied that resolution 2529 (2020) focuses on issues of particular concern to the Mechanism, as raised in its third review report. Notably, the Council urges all States to intensify their cooperation with and render all necessary

¹ Unless otherwise specified, figures set out in the present report are accurate as at 15 November 2020.

assistance to the Mechanism in respect of locating the remaining fugitives indicted by the International Criminal Tribunal for Rwanda and reiterates a similar call for cooperation and assistance regarding the nine acquitted and released persons residing in Arusha. In addition, the Council welcomes the Mechanism's third review report, as well as the arrest in May 2020 of the fugitive *Félicien Kabuga*, and commends the Mechanism for its efforts to reduce the costs of judicial activities.

6. Encouraged by the outcome of the third review, the Mechanism is committed to building on the momentum of that exercise by identifying ways to further enhance the efficiency of its operations, as well as the effectiveness and transparency of its management. As requested by the Security Council, the Mechanism is actively taking steps to implement the recommendations made by the Informal Working Group on International Tribunals, as reflected in paragraph 9 of resolution [2529 \(2020\)](#). As mentioned in the previous report, it has already commenced implementing the related recommendations made earlier in the year by the Office of Internal Oversight Services (OIOS) following the OIOS evaluation of the Mechanism's methods and work in connection with the review process ([S/2020/236](#); see paras. 165–168 below).

7. Regarding its core judicial activity, the Mechanism is delighted to be able to report on a number of positive developments during the reporting period. Indeed, in contrast to the rather gloomy picture painted in its previous progress report owing to the impact of the then-unfolding coronavirus disease (COVID-19) crisis, the Mechanism has in recent months been able to make significant progress with respect to its current judicial caseload. With the easing of certain pandemic-related restrictions mid-year and enhanced arrangements for the safe and gradual return to premises of a larger number of staff, the Mechanism was able to get back on track in relation to that core aspect of its mandate.

8. Key events took place on two main fronts. First, the Mechanism was able to commence, resume or conclude in-court hearings that had previously been postponed owing to the COVID-19 pandemic. In that regard, in The Hague the appeal hearing in *Prosecutor v. Ratko Mladić* was successfully held in late August 2020, while in-court proceedings in *Prosecutor v. Jovica Stanišić and Franko Simatović* recommenced in September and the evidentiary hearings in that trial concluded in October. Furthermore, in the multi-accused contempt case of *Prosecutor v. Maximilien Turinabo et al.*, trial proceedings were finally able to begin in October at the Mechanism's Arusha branch.

9. Second, following his arrest in France in May 2020 after evading capture for more than 22 years, Mr. Kabuga was successfully transferred into the Mechanism's custody in October 2020. His initial appearance on 11 November 2020 heralded the commencement of new pretrial proceedings before the Mechanism in the case of *Prosecutor v. Félicien Kabuga*. Further details regarding those and other proceedings are provided in section III below.

10. The Mechanism notes that each of the above-mentioned hearings involved intensive and extensive logistical preparations, including the remodelling of the courtrooms at both branches to ensure the health and safety of those present in court, and technological enhancements to allow for the remote participation of judges, parties and witnesses. It is thanks to the exceptional dedication, hard work and ingenuity of the Mechanism's judges and staff that in-court proceedings were able to resume at all during the global pandemic, and the Mechanism expresses its sincerest gratitude for their efforts.

11. Progress was also made on numerous other judicial matters during the reporting period, such as the variation of protective measures and supervision of the enforcement of sentences, and many of those were finalized. Furthermore, the Mechanism continued to make headway in its remaining residual functions, including

protecting victims and witnesses, tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda, providing assistance to national jurisdictions and managing the archives of the ad hoc Tribunals and the Mechanism. In addition, the Mechanism continued to refine its legal and regulatory framework and progressed further towards the harmonization of practices and procedures between the branches.

12. Despite the ongoing impact of the COVID-19 pandemic on its activities, the Mechanism has made every effort to continue to operate as efficiently and effectively as possible, with due regard for fundamental rights and the responsibilities owed to those under its care. It remains fully committed to realizing the Security Council's vision of the Mechanism as a small, temporary and efficient structure, whose functions and size will diminish over time.

13. Wherever possible, the present report reflects detailed projections of the duration of residual functions entrusted to the Mechanism, in accordance with Security Council resolutions [2256 \(2015\)](#), [2422 \(2018\)](#) and [2529 \(2020\)](#), as well as the second recommendation contained in the report of OIOS ([S/2020/236](#), para. 67). It must be noted that those projections are based on current data and are therefore subject to modification in the event of evolving circumstances.

II. Structure and organization of the Mechanism

A. Organs and principals

14. As established in article 4 of the statute, the Mechanism consists of three organs: the Chambers; the Prosecutor; and the Registry, which provides administrative services for the Mechanism, including the Chambers and the Prosecutor. The work of the Chambers and the Registry is discussed below, while the activities of the Office of the Prosecutor (the Prosecution) are detailed in annex II.

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

16. During the reporting period, the Secretary-General renewed the term of office of the President of the Mechanism, Judge Carmel Agius, for a period of two years commencing on 1 July 2020, and the Prosecutor, Serge Brammertz, was reappointed for the same period pursuant to Security Council resolution [2529 \(2020\)](#). The Mechanism was also pleased to welcome a new Registrar, Abubacarr Tambadou, on 1 July 2020, following his appointment by the Secretary-General. The current terms of all three principals run until 30 June 2022. President Agius is based in The Hague, while Prosecutor Brammertz and Registrar Tambadou are based in Arusha.

B. President

17. Mitigating the impact of the COVID-19 pandemic on the Mechanism's staff and operations continued to be a prime focus for the President and the other principals during the reporting period. Throughout, however, the President carried on with the implementation of his main priorities, as announced when he assumed the presidency

on 19 January 2019: the timely and efficient conclusion of the Mechanism's existing judicial proceedings, with regard to due process and fundamental rights; harmonizing practices and procedures between the Mechanism's two branches; and fostering high staff morale and performance. With those areas of focus, as well as pandemic-related challenges, in mind, the President again managed the judicial roster and oversaw the work of the Chambers; worked closely with the other principals on cross-cutting issues affecting the institution, including through regular meetings of the Mechanism's Coordination Council; and consulted frequently with management and the staff union in order to keep updated on staff concerns. Other long-standing priorities for the President include taking action on gender issues within the Mechanism and further strengthening the relationships between the Mechanism and the Governments and peoples of Rwanda and the States of the former Yugoslavia.

18. Since the previous progress report, the ongoing global health crisis has continued to require proactive leadership, enhanced communication and coordinated, flexible responses to evolving circumstances at the Mechanism's various duty stations. In that context, close collaboration between the President and the other principals has once more been key to effectively prioritizing the welfare of staff members and persons under the Mechanism's supervision, while at the same time maximizing opportunities to resume greater functionality wherever possible, namely, through the gradual return of staff to premises and the resumption of in-court activity. In addition to their monthly Coordination Council meetings, the President and the other principals have stayed abreast of all relevant issues through the COVID-19 crisis management team, which was supplemented in July 2020 by a more streamlined COVID-19 steering committee.²

19. Also in relation to the COVID-19 pandemic, the President has again taken steps to ensure that the Mechanism's supervisory responsibilities vis-à-vis accused, detained and convicted persons continue to be optimally fulfilled. During the reporting period, the President issued further orders for regular updates from enforcement States pertaining to prisons where convicted persons are serving their sentences. Similarly, he requested regular updates from the Registrar on the situation in the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague. The President also continued to deal with enforcement-related motions arising from the COVID-19 pandemic.³

20. Under the leadership of the President and the other principals, and in line with the relevant recommendations of OIOS, the Mechanism continued to focus on implementing measures designed to harmonize and streamline working methods across the branches and to identify areas for further improvement. Significantly in that respect, the unified court records database was launched during the reporting period. Further details are provided below (see para. 28).

21. In relation to staff morale and performance, the President was again unfortunately unable, owing to the COVID-19 pandemic, to travel to the Mechanism's Arusha branch or the two field offices in order to meet with staff there. However, aware of the need for effective, reassuring communications with staff members during these challenging times, he and the other principals continued to issue joint messages to staff concerning the Mechanism's response to the pandemic and to prioritize the sharing of information. For the same reasons, the principals held the first-ever town hall meetings by videoconference for all Mechanism staff in June and July 2020, along with more regular information sessions with management and the staff union,

² For further details of the Mechanism's response to the ongoing pandemic, see, for example, paras. 42–48.

³ In relation to these and other enforcement-related judicial activities of the President, see paras. 82–84.

and there are plans to hold a third town hall meeting before the end of the year. The meetings provide valuable opportunities for staff members to raise any issues of concern and to feel more connected to their colleagues who are working remotely or in other duty stations. In addition, throughout the reporting period the President continued to provide full support for the activities of the Mechanism's focal points for gender and other focal points.

22. Owing to the COVID-19 pandemic, the President likewise undertook his missions to United Nations Headquarters by virtual means, rather than in person. In June 2020, he addressed the Security Council by videoconference to present the Mechanism's sixteenth progress report. That virtual mission to New York also featured a meeting with the Informal Working Group on International Tribunals, as well as bilateral meetings with Member States and high-level representatives of the United Nations. More recently, in late October 2020, the President addressed the General Assembly by pre-recorded video message and met by videoconference with the President of the Assembly, a number of Member States and Secretariat officials. During the reporting period, the President also participated by pre-recorded video message in other events of significance to the Mechanism, including the twenty-fifth commemoration of the Srebrenica genocide in July 2020 and an online series of open-day activities for international institutions entitled "Just Peace Month", organized by the city of The Hague.

C. Judges

23. Article 8 (1) of the statute provides that the Mechanism shall have a roster of 25 independent judges. In accordance with article 8 (3) of the statute, the judges shall only be present at the seat of the Mechanism's branches when necessary, as requested by the President, and insofar as possible will otherwise carry out their functions remotely. In line with article 8 (4) of the statute, Mechanism judges are not remunerated for being on the judicial roster, but rather receive compensation only for the days on which they exercise their functions.

24. In late June 2020, the terms of office of all Mechanism judges were extended by the Secretary-General for a period of two years, from 1 July 2020 to 30 June 2022. The current judicial roster comprises (in order of precedence): Judge Carmel Agius, President (Malta), Judge Theodor Meron (United States of America), Judge Jean-Claude Antonetti (France), Judge Joseph E. Chiondo Masanche (United Republic of Tanzania), Judge William Hussein Sekule (United Republic of Tanzania), Judge Lee G. Muthoga (Kenya), Judge Alphons M. M. Orié (Netherlands), Judge Burton Hall (Bahamas), Judge Florence Rita Arrey (Cameroon), Judge Vagn Prüsse Joensen (Denmark), Judge Liu Daqun (China), Judge Prisca Matimba Nyambe (Zambia), Judge Aminatta Lois Runeni N'gum (Zimbabwe/Gambia), Judge Seon Ki Park (Republic of Korea), Judge José Ricardo de Prada Solaesa (Spain), Judge Gberdao Gustave Kam (Burkina Faso), Judge Graciela Susana Gatti Santana (Uruguay), Judge Ivo Nelson de Caires Batista Rosa (Portugal), Judge Seymour Panton (Jamaica), Judge Elizabeth Ibanda-Nahamya (Uganda), Judge Yusuf Aksar (Turkey), Judge Mustapha El Baaj (Morocco), Judge Mahandrisoa Edmond Randrianirina (Madagascar), Judge Claudia Hoefler (Germany) and Judge Iain Bonomy (United Kingdom of Great Britain and Northern Ireland).

25. As indicated in the previous progress report, the President had hoped to be able to host an in-person plenary of judges in The Hague in September 2020. Unfortunately, this was not possible owing to travel and other restrictions related to the COVID-19 pandemic. Instead, on 16 October 2020, the President convened the fifth remote plenary of judges by written procedure, which is currently ongoing. As with previous plenaries, both in-person and remote, the current plenary by written

procedure allows for valuable discussion of proposed amendments to the Rules of Procedure and Evidence, among other issues of relevance to the judges. The Mechanism remains hopeful that the judges will have an opportunity of engaging in an equally fruitful in-person plenary meeting during 2021.

26. Pursuant to his discretion under article 12 (2) of the statute, the President continued to assign on an alternating basis Judge William Hussein Sekule (United Republic of Tanzania) and Judge Vagn Prüsse Joensen (Denmark) as duty judges at the Mechanism's Arusha branch. As previously reported, that decision maximizes efficiency, since both judges reside in the United Republic of Tanzania, and their assignment as duty judge is remunerated only to the extent that they exercise judicial functions in that capacity.

D. The branches

27. As established in article 3 of the statute, the Mechanism has two branches: one located in Arusha and the other in The Hague. The Mechanism continues to enjoy excellent cooperation with both host States and is grateful for their continued support and cooperation in accordance with the respective headquarters agreements. Despite the two branches being in different locations and time zones, the Mechanism endeavours at all times to function as a single, unified institution, optimizing its activities and taking full advantage of efficiencies. Given that inter-branch coordination remains vital, the advancement of harmonization efforts continued throughout the reporting period.

28. The Mechanism reached a milestone in that regard when, on 1 September 2020, the unified court records database was launched. The database is the public interface of the Mechanism's unified judicial database and brings together, for the first time, all public judicial records of the ad hoc Tribunals and the Mechanism. The new database provides integrated and enhanced public access to a wide array of records from the three institutions, ranging from indictments, trial transcripts, motions, orders, decisions and judgments to public evidence admitted in court and audiovisual recordings of hearings. Moreover, the database has been designed to facilitate legal and other research concerning the work of all three institutions by allowing for searches across both branches of the Mechanism and its predecessor Tribunals and for better tailoring of results via an improved search function. The Mechanism is pleased to note that the database is available not only in English and French, but also in Albanian, Bosnian/Croatian/Serbian, Kinyarwanda and Macedonian.

29. At the Arusha branch, the Mechanism, in accordance with General Assembly resolution [73/288](#) and in close consultation with the Department of Management Strategy, Policy and Compliance and the Office of Legal Affairs, concluded negotiations with the architect of the Lakilaki premises to amicably settle any claims regarding the recovery of direct and indirect costs arising from errors and delays, insofar as these were attributable to the architect. The final settlement agreement was concluded on 9 October 2020. Similar negotiations with the contractor are ongoing. The Mechanism is grateful to the United Republic of Tanzania for its continuous support in relation to the construction project.

30. In The Hague, the Mechanism and the International Tribunal for the Former Yugoslavia shared premises until the closure of the Tribunal on 31 December 2017. As previously reported, the host State acquired ownership of the rented premises occupied by the Mechanism in April 2019, which has allowed the Mechanism to remain in its current location. Negotiations with the host State on the future lease, which takes into account the Mechanism's reduced occupancy requirements, continued to move forward, as did the host State's plans for the full renovation of the

premises. The Mechanism is equally grateful for the outstanding commitment and support of the Netherlands with respect to the Mechanism's premises in The Hague.

31. The Mechanism's two field offices continued to play an important role in the implementation of the Mechanism's mandate at both branches. The field office in Kigali continued to provide support to the Prosecution, the Defence and the Registry in relation to the ongoing contempt proceedings in the *Turinabo et al.* case and monitored the unconditional release of four accused persons in Rwanda. In addition, it provided support to the pretrial team for investigations by the Prosecution in the *Kabuga* case, following Mr. Kabuga's arrest on 16 May 2020. In order to be able to support both of those cases, the staffing of the field office was increased during the reporting period. The field office further provided protection and support to witnesses, including through the provision of medical and psychosocial services by its medical clinic. Lastly, the Kigali field office also facilitated requests for assistance from national jurisdictions and supported the activities of the independent monitors of cases of the International Criminal Tribunal for Rwanda that have been referred to Rwanda, pursuant to article 6 of the statute (see paras. 146 and 147).

32. The field office in Sarajevo continued to provide support to witnesses in relation to the ongoing *Stanišić and Simatović* case. It also provided protection and support services to witnesses who had previously been called to appear before the International Tribunal for the Former Yugoslavia or the Mechanism, and to liaise with national and local authorities on those issues. 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.

E. Budget, staffing and administration

33. The Mechanism continued to operate under its approved 2020 budget throughout the reporting period. However, owing to the COVID-19 pandemic and the resulting travel restrictions and previously reported delays in judicial proceedings, budget consumption levels have been lower than anticipated. Moreover, the recruitment of staff expected to be required earlier in 2020 has only just begun, following the resumption of in-court judicial activity in the second half of 2020. Given those developments, the Mechanism will be fully able to support the remaining judicial activity in 2020, as well as requirements related to the new *Kabuga* case, within its approved resource levels.

34. For 2021, the Mechanism has included in its budget submission the resources required to finalize the judicial proceedings that were delayed because of the COVID-19 pandemic. As indicated below, those proceedings are now expected to conclude in the first part of 2021.⁴ The resources required to proceed with the *Kabuga* pretrial and trial phases in 2021 are also included in the proposal. The Mechanism refers in that regard to the report of the Secretary-General on the proposed budget for the Mechanism for 2021 (A/75/383), which was before the Advisory Committee on Administrative and Budgetary Questions on 13 November 2020. The Advisory Committee's recommendations on the Mechanism's budget will subsequently be communicated to the General Assembly for its review and approval.

35. During the reporting period, the downsizing of staff in 2020 was scheduled to proceed in accordance with the Registrar's downsizing policy of June 2019. However, as a result of delays in judicial proceedings due to the COVID-19 pandemic, the

⁴ See paras. 61–63 regarding the *Stanišić and Simatović* case, 68–72 regarding the *Mladić* case and 74–77 regarding the *Turinabo et al.* case.

planned downsizing of the branch in The Hague between June and December 2020 has been postponed until those proceedings are completed in the first half of 2021. Downsizing at the Arusha branch was likewise postponed owing to delays in the *Turinabo et al.* case, while further staffing requirements in Arusha are subject to developments in the *Kabuga* case. As for the downsizing of staff in 2021, the Mechanism commenced the comparative review exercise as soon as the proposed 2021 budget had been submitted; the exercise is ongoing at the time of writing. The Mechanism is conscious of the fact that the COVID-19 pandemic, with its unprecedented and unexpected consequences, may further affect judicial activities and, in turn, related staffing levels. Accordingly, the Registry will continue its efforts to enhance cross-branch collaboration and the transfer of skills and staff between the branches, where feasible, to ensure the efficient provision of judicial support to both Chambers and the Prosecution.

36. Details and a breakdown of the Mechanism's expenditures in 2020, presented in terms of funds committed, are set forth in enclosure II.

37. As at 1 November 2020, 181 of the 187 approved continuous posts were occupied to carry out the Mechanism's continuous functions, while an additional 359 personnel were serving as general temporary assistance to assist with ad hoc needs, including judicial work. Consistent with the flexible staffing structure of the Mechanism, those positions are short term in nature and the number of staff will fluctuate depending on the relevant workload.

38. Details concerning the staffing of the Mechanism by division are reflected in enclosure I.

39. The Mechanism's continuous and general temporary assistance positions included nationals of 75 States: Algeria, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, China, Congo, Croatia, Cuba, Czechia, Democratic Republic of the Congo, Denmark, Egypt, Ethiopia, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Kenya, Latvia, Lebanon, Lesotho, Liberia, Madagascar, Mexico, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Rwanda, Serbia, Sierra Leone, Slovakia, South Africa, Spain, Sudan, Sweden, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yemen, Zambia and Zimbabwe.

40. Averaged across the two branches, as at 1 November 2020, 51 per cent of Professional staff members at the Mechanism were female, which meets the Secretary-General's gender parity goals. However, when General and Field Services staff are also taken into account, the average percentage of female staff unfortunately remains lower, with a total of 43 per cent overall. Despite the limitations imposed by its nature as a downsizing institution, the Mechanism continues to strive for improvement in that regard, taking into consideration the recently issued administrative instruction on temporary special measures for the achievement of gender parity (ST/AI/2020/5).

41. As previously reported, the Mechanism at both branches has dedicated focal points for gender, sexual exploitation and abuse issues; diversity, inclusion, and LGBTIQ+ issues; disability and accessibility issues; and conduct and discipline issues. The focal points provide information and engage with staff and senior management to address matters that may arise in the workplace. For example, during the reporting period the gender focal points continued to provide advice on gender parity in recruitment and staffing matters. Unfortunately, many activities planned by the focal points, such as gender awareness training for the Mechanism's Safety and

Security Section and diversity and inclusion workshops, had to be postponed owing to the COVID-19 pandemic. The possibility of offering training and workshops remotely is currently being explored.

42. More generally, the evolving COVID-19 pandemic continued to require the Mechanism to act swiftly and to adjust its working methods to the prevailing circumstances when necessary. As previously reported, in order to ensure a coordinated approach and enhance the Mechanism's responsiveness to the changing situation at its premises in Arusha and The Hague and the Kigali and Sarajevo field offices, a COVID-19 crisis management team was established earlier in the year, with representatives from all organs and relevant sections. The team was supplemented in July 2020 by a more streamlined COVID-19 steering committee, which provides information and direct policy advice to the principals pending their final decision on pandemic-related matters. The COVID-19 steering committee proved extremely useful in facilitating timely decision-making by the principals on pressing issues requiring an institutional response. In setting up those cross-organ initiatives, the Mechanism has been guided by the recent recommendation of OIOS to bolster coordination and information-sharing between the principals and organs on matters affecting the institution (S/2020/236, para. 66).

43. In the previous reporting period, bearing in mind the relevant communications on COVID-19 issued by United Nations Headquarters, the Mechanism focused on implementing a series of measures aimed at ensuring business continuity while minimizing the possible exposure of staff and non-staff personnel at all duty stations to COVID-19. As reported in May, working methods were quickly adapted to allow for remote work by most staff members, and on-site risk was mitigated where possible through the use of staggered working hours, rotation systems and the reallocation of staff. While the implementation of telecommuting for most staff was not without challenges, the Mechanism was able to draw from its experience with judges working remotely from their home countries and to expand the flexible working arrangements already available to staff.

44. During the reporting period, the Mechanism continued to maintain a reduced presence on site in comparison with pre-pandemic staffing levels. While most staff continued to work from home earlier in the period, from August 2020 onwards the Mechanism was in a position to allow for the gradual, phased and safe return of approximately 30 per cent of staff members to the office, depending on the duty station. That process was the result of intensive coordination and preparation across organs and sections, as well as frequent communication with staff. In that respect, the Mechanism's premises were modified to adhere to social distancing and heightened hygiene requirements for those staff members physically present. In addition, videos containing information on the physical changes to the premises, as well as newly established measures and rules of behaviour, were produced and shared with all staff members, and surveys at both branches were undertaken to gauge staff reactions and morale.

45. Furthermore, as detailed below, following the return to premises of a larger number of staff, as well as the lifting of certain pandemic-related restrictions, the Mechanism was pleased to be able to resume in-court proceedings in the *Mladić* case, the *Stanišić and Simatović* case and the *Turinabo et al.* case during the reporting period.⁵ A number of modifications were introduced to the layout of the courtrooms to allow for social distancing and other hygiene measures, and information technology systems were extended to facilitate the remote participation of judges, parties and witnesses. That achievement would not have been possible without the

⁵ See paras. 61–63 regarding the *Stanišić and Simatović* case, 68–72 regarding the *Mladić* case and 74–77 regarding the *Turinabo et al.* case.

determination and commitment of the Mechanism's judges, staff and all other participants involved, which the Mechanism recognizes and appreciates.

46. As the COVID-19 pandemic remains unpredictable, the Mechanism continues to monitor developments extremely closely and to plan and prepare for different scenarios so as to be able to respond rapidly to any change in circumstances.

47. The Division of Administration has continued to provide support across branches and field offices. In addition to fulfilling their regular responsibilities, administrative sections – in particular, the Information Technology Services Section, the Facilities Management Unit, the Human Resources Section and the Medical Units – have risen to the challenges presented by the pandemic in order to meet the needs of staff and ensure business continuity. Besides continuously improving the Mechanism's information technology and communication systems and equipment, as well as the staff's remote access to relevant applications and networks, particular efforts have been made to advise staff on entitlement and other administrative matters and to provide medical advice and psychosocial support.

48. Regarding the well-being and self-care platform mentioned in the previous report, emphasis was placed during the reporting period on ensuring services to staff in Arusha through a tele-health element covering both physical and mental health. Additional psychological consulting services are now being introduced for staff at all duty stations, which will include the implementation of an employee assistance programme. As part of the programme, a psychologist working on a part-time basis, together with a staff welfare consultant, will, inter alia, offer facilitated group discussions and a series of webinars.

F. Legal and regulatory framework

49. The legal and regulatory framework of the Mechanism provides important guidance, clarity and transparency for stakeholders across a broad range of the Mechanism's mandated functions. During the reporting period, the Mechanism continued to develop rules, procedures and policies that harmonize and build on the best practices of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, as well as its own practice, in order to more efficiently and effectively carry out its mandate.

50. As mentioned above, the judges of the Mechanism are currently considering proposed amendments to the Rules of Procedure and Evidence during their remote plenary by written procedure. Following the conclusion of the plenary, the President will report any amendments to the President of the Security Council, in accordance with article 13 of the statute.

51. On 2 June 2020, following consultation with the President and the Association of Defence Counsel practising before the International Courts and Tribunals, the Registrar adopted a revised Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the Mechanism, which is aimed at further balancing and enhancing flexibility in the remuneration of certain contempt cases. Comparable amendments are under active consideration for those remuneration policies that are also based on hourly payment schemes. It is expected that the amended policies will be issued by the Registrar soon.

52. Significant progress has been made towards updating the Code of Professional Conduct for Defence Counsel Appearing before the Mechanism, and agreement has been reached on amendments aimed at further clarifying the professional obligations of Defence counsel and their support staff. While some further consultations are required, mostly with regard to allowing a prospective complainant to make a

complaint without disclosing his or her identity, it is anticipated that the amended Code will be approved and ready for issuance by the Registrar during the next reporting period.

53. Moreover, to further streamline and harmonize practices across the two branches, the Registry continued its review of cross-branch policy instruments regulating court operations and judicial records management functions, including with regard to the submission and processing of filings and requests for assistance received from national jurisdictions. In that regard, a revised short guide on the filing of documents before the Mechanism will soon be issued, updating and clarifying processes related to the submission of documents to the Judicial Records and Court Operation Units at the respective branches.

54. Finally, work continued during the reporting period on a Mechanism-specific policy incorporating the Secretary-General's bulletin on addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8), as well as the Mechanism's policy on occupational safety and health.

55. In addition to those developments, the Mechanism wishes to note that certain aspects of its legal framework assumed a heightened significance during the reporting period. Indeed, thanks to provisions within the Mechanism's existing Rules of Procedure and Evidence, court hearings were able to resume with the remote participation of judges, parties and witnesses, and important progress was made in the core judicial caseload despite the ongoing COVID-19 pandemic. In that respect, the Mechanism's judges were able to utilize rule 96 of the Rules of Procedure and Evidence, which provides that proceedings may be conducted by way of videoconference, if consistent with the interests of justice. Separately, rule 69 of the Rules of Procedure and Evidence was also of relevance during the reporting period, in allowing for status conferences to take place by written procedure.

56. With this flexibility inherent in its very structure, as inherited from the ad hoc Tribunals, the Mechanism is fortunate that no amendments to the existing legal framework were necessary and that it was possible to employ creative solutions in ensuring maximized operations. The main challenges, therefore, were of a practical nature, such as the need to facilitate a sufficient number of secure, stable videoconference connections for remote proceedings involving many participants.

III. Judicial activities

57. Throughout the reporting period, the Mechanism was seized of a number of complex judicial matters, many of which had been ongoing since the previous progress report. The President and the judges continued to engage in a wide variety of judicial activity, issuing 194 decisions and orders. In accordance with article 8 (3) of the statute, judicial activity was primarily carried out remotely. Currently, judges on the roster are supported by a Chambers Legal Support Section of 20 staff, comprising 17 legal officers and 3 administrative assistants, serving at both branches of the Mechanism.

58. Of the 194 decisions and orders issued during the reporting period, 129 (or approximately three in five) related to the adjudication of requests pertaining to the protection of victims and witnesses, assistance to national jurisdictions, enforcement of sentences, and investigation and trial of allegations of false testimony or contempt, as well as the management of the work of the Chambers and the judicial review of administrative decisions, rather than to the adjudication of the core crimes reflected in the statute.

59. Chambers leadership continued to employ streamlined working methods and processes, in collaboration with other sections of the Mechanism, to facilitate an efficient and transparent one-office work environment that draws on the resources at both branches to address judicial workload wherever arising. During the reporting period, Chambers leadership collaborated with colleagues throughout the Mechanism, in particular to overcome COVID-19 pandemic-related challenges in order to advance judicial proceedings. As detailed below, that approach enabled the Mechanism to hold the appeal hearing in the *Mladić* case despite the remaining restrictions on travel, with four of the five judges participating by videoconference. Similarly, it enabled the conduct of the status conference in the same case, with the pre-appeal judge participating by videoconference. In addition, enhanced safety protocols allowed the Trial Chamber in the *Stanišić and Simatović* case to hear in person the testimony of the final five Defence witnesses and to conclude the presentation of the oral evidence in the case. The single judge in the *Turinabo et al.* case also made use of written procedure to conduct the final status conference before the commencement of trial. Finally, proceedings in the case of *Prosecutor v. Augustin Bizimana* were terminated and new proceedings commenced in the *Kabuga* case following the accused's transfer to the Mechanism and initial appearance.

60. With respect to the core crimes reflected in the statute, the judges, whose individual legal backgrounds are roughly evenly split between civil and common law, continued their work on a trial and an appeal from judgment, as set forth below.

61. In the *Stanišić and Simatović* case, the retrial commenced on 13 June 2017 and the Prosecution case concluded on 21 February 2019. The Defence case commenced on 18 June 2019 and the testimony of the final Defence witness concluded on 8 October 2020. Initially, it was projected that the presentation of evidence would recommence at the end of April 2020 and conclude in June 2020, with final trial briefs and closing arguments expected to be held in September and October 2020 and the trial judgment in December 2020. Those timelines were based on the time frames from the prior trial before the International Tribunal for the Former Yugoslavia and were subject to change on the basis of the actual circumstances in the current retrial.

62. The initial projection for the delivery of the judgment in December 2020 remained unchanged until the global health crisis unfolded. As detailed in the previous report, beginning in March 2020, the Trial Chamber was forced to postpone the completion of the presentation of evidence on several occasions until restrictions on travel and movement were eased and measures and protocols could be put in place to ensure the safe conduct of in-court proceedings. Nevertheless, the Trial Chamber and the parties continued to advance the case even though in-court proceedings were postponed, and the Trial Chamber issued numerous decisions related to the admission of thousands of exhibits and the written testimony of a number of witnesses. On 1 September 2020, in-court proceedings resumed in a modified courtroom and the Trial Chamber subsequently heard the final five Defence witnesses, concluding the evidentiary hearings on 8 October 2020. Currently, litigation concerning the admission of the final exhibits is ongoing. The final trial briefs are due on 26 February 2021 and closing arguments are expected to be held in the last week of March in 2021.

63. On the basis of those circumstances, it is currently projected that the trial judgment will be issued by the end of May 2021 instead of April 2021, as indicated in the previous progress report. It was also previously reported that major courtroom activity, involving the hearing of the remaining witness, would conclude in 2020 – as has already transpired – and that only final arguments, deliberations and the delivery of the judgment would take place in 2021, thus minimizing the financial impact of those developments. During the reporting period, the three judges on the bench in the case carried out their work at the seat of the Mechanism in The Hague.

64. In relation to the *Kabuga* case, Félicien Kabuga was first indicted by the International Criminal Tribunal for Rwanda in 1997, and the operative version of his indictment was confirmed in 2011. Mr. Kabuga remained a fugitive for more than 22 years until his arrest in France on 16 May 2020 on the basis of an arrest warrant and order for transfer that directed that he be transferred to the Arusha branch. The French courts authorized his transfer to the Mechanism on 30 September 2020.

65. On 1 October 2020, the President assigned the *Kabuga* case to a Trial Chamber, effective upon the transfer of Mr. Kabuga to the Mechanism. On 5 October 2020, Mr. Kabuga filed an urgent motion requesting, inter alia, that his arrest warrant and order for transfer be amended to provide for his transfer to the branch of the Mechanism in The Hague rather than the Arusha branch, citing in particular his medical conditions and the health risks associated with travel. Both the Prosecution and the Registrar supported the request. On 21 October 2020, the single judge granted the motion and amended the arrest warrant and order for transfer to allow Mr. Kabuga to be temporarily transferred to the United Nations Detention Unit in The Hague for a detailed medical assessment.

66. Following Mr. Kabuga's transfer to the United Nations Detention Unit on 26 October 2020, the pretrial judge ordered a preliminary medical assessment in order to facilitate the scheduling of the initial appearance and to determine what further assessments might be required. The initial appearance was subsequently held on 11 November 2020 in The Hague before the pretrial judge, who is the presiding judge of the Trial Chamber. At the request of Mr. Kabuga's counsel, the pretrial judge entered a plea of not guilty on Mr. Kabuga's behalf. On the basis of the projected time frame for fugitive trials indicated in the third review report (S/2020/309, annex, para. 62), the pretrial phase is expected to last 12 months from the initial appearance, that is, until November 2021. The trial and judgment-drafting phase is expected to last an additional 18 months, until May 2023. Those projections will be adjusted as further information concerning Mr. Kabuga's health becomes available, because that may impact the pace of proceedings. All judges are currently working remotely, except when their temporary presence may be required.

67. In other proceedings relating to a fugitive indicted by the International Criminal Tribunal for Rwanda, on 4 November 2020 a single judge issued an order closing the *Bizimana* case. Augustin Bizimana was first indicted by the International Criminal Tribunal for Rwanda in 1998, and the latest version of his indictment was confirmed in 2011. He was one of the three fugitives indicted by that Tribunal who were to be tried by the Mechanism if apprehended. Following a motion filed by the Prosecution on 26 October 2020 to terminate the proceedings, the single judge examined the proof of death, including a death certificate from the Congo and the results of a detailed forensic analysis, and determined that there was sufficient proof that Mr. Bizimana was deceased. Following those major developments in both the *Kabuga* case and the *Bizimana* case, one remaining fugitive indicted by the International Criminal Tribunal for Rwanda is expected to be tried by the Mechanism, as detailed below (see para. 107).

68. The appeal proceedings in the *Mladić* case progressed significantly during the reporting period, moving from the pre-appeal stage to the hearing of the appeals and then to judicial deliberations and judgment preparation. As set out in earlier reports, the appeal proceedings followed the 22 November 2017 judgment against Ratko Mladić by a Trial Chamber of the International Tribunal for the Former Yugoslavia, which found him guilty of genocide, crimes against humanity and violations of the laws or customs of war, and sentenced him to life imprisonment. Both Mr. Mladić and the Prosecution appealed against the judgment. The Appeals Chamber partly granted Mr. Mladić's requests for extensions of filing deadlines, allowing a total of 210 days of extensions of time in the appeal briefing process. The briefing of the appeals

concluded on 29 November 2018. Following disqualification motions brought by Mr. Mladić, three judges were disqualified from the bench in the case on 3 September 2018, owing to the appearance of bias, and were replaced. Subsequently, on 14 September 2018, one of the newly assigned judges was replaced at his request. The replacement of the judges has not delayed the proceedings.

69. On 16 December 2019, 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 to allow him to undergo surgery. The Appeals Chamber granted the request, staying the hearing until a date approximately six weeks after Mr. Mladić's surgery to allow for his recovery. At the same time, the Appeals Chamber requested to be provided with weekly status reports to facilitate an expeditious rescheduling of the hearing.

70. Noting medical reports that Mr. Mladić was recovering well from the surgery, and considering the pandemic-related restrictions on travel then in place, on 1 May 2020 the Appeals Chamber, in consultation with the parties, rescheduled the hearing of the appeals to 16 and 17 June 2020. However, on 21 May 2020, Mr. Mladić's Defence team gave notice of its unavailability to proceed with the scheduled hearing owing to developments and restrictions related to the COVID-19 pandemic. In view of this, and noting the exceptional circumstances, including the fact that the travel of the judges to attend the hearing was impeded, the Appeals Chamber found that it was not feasible to hold the hearing as scheduled. Consequently, on 28 May 2020, the Appeals Chamber stayed the hearing, which was to be rescheduled as soon as circumstances would allow. To that end, the Appeals Chamber requested the Registrar to provide it with periodic feasibility reports. The Appeals Chamber ultimately held the appeal hearing on 25 and 26 August 2020, with four of the five judges participating by videoconference owing to pandemic-related restrictions on travel.

71. During the reporting period, the Appeals Chamber also held one status conference, on 24 July 2020, with the pre-appeal judge participating by videoconference owing to restrictions on travel. On 28 October 2020, a further status conference was scheduled for 19 November 2020, with the presiding judge again to participate by videoconference. Subsequently, however, the Defence filed a submission indicating that, as Defence counsel could not be present in The Hague on the scheduled date, and as Mr. Mladić did not consent to their or his own participation by videoconference, Mr. Mladić would prefer to defer the status conference. As a result, on 10 November 2020, the presiding judge stayed the status conference until such time as Defence counsel would be available to appear with Mr. Mladić in court. With the exception of the physical presence of one judge at the appeal hearing in The Hague, the judges on the bench in the *Mladić* case carried out their work remotely during the reporting period.

72. In the previous progress report, the Mechanism explained that, because the hearing of the appeals had had to be postponed by a total of three months owing to Mr. Mladić's surgery and pandemic-related restrictions on travel, the projection for completing the proceedings in the case had been adjusted by a commensurate amount of time, from the end of December 2020 to the end of March 2021. The Mechanism added that the projection would be closely monitored and updated as necessary. In view of the fact that the appeal hearing was postponed owing to pandemic-related restrictions by a further two months, to 25 and 26 August 2020, the Mechanism has also adjusted its projection for completion of the case by two months, from the end of March 2021 to the end of May 2021. However, it should be noted that the Appeals Chamber is now actively engaged in deliberations and the preparation of the judgment and that the proceedings will conclude as soon as the judges' deliberations allow.

73. The Appeals Chamber is also currently seized of a request for review and assignment of counsel in the case of *Prosecutor v. Milan Lukić*, which was filed by Milan Lukić on 1 September 2020. The request also sought the disqualification of a number of prospective members of the bench, which had yet to be assigned. Following the assignment of the bench on 1 October 2020, the President, whose disqualification was sought, referred the request for disqualification to the most senior judge able to act. The senior judge referred the request to a panel of three judges, who dismissed the request for disqualification on 28 October 2020. The matter is now under consideration by the bench, and a decision is expected by the end of the year. All judges, with the exception of the President, who is the presiding judge, are working remotely.

74. In addition to the proceedings relating to core crimes reflected in the statute, the Mechanism was also seized of five matters pertaining to allegations of false testimony or contempt. Notably, until late October 2020, a single judge continued to conduct intensive pretrial proceedings in the multi-accused *Turinabo et al.* case, which relates to allegations of interference connected with the previously concluded review proceedings in the case of *Prosecutor v. Augustin Ngirabatware*.

75. The trial in the joint 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 contempt case against Augustin Ngirabatware, as well as consultations with the parties concerning the time needed for preparation. The projection for the duration of the case was based principally on the parameters set by the single judge for the length of the Prosecution case, given its complexity, as well as the current working methods in the Chambers.

76. As previously reported, in view of the COVID-19 pandemic and related restrictions on travel and movement, the single judge decided to postpone the commencement of the trial in the *Turinabo et al.* case to at least 24 August 2020, which meant that the projection for the delivery of the trial judgment was moved to March 2021. Since then, pandemic-related circumstances have necessitated a further two-month postponement of the start of the trial. Throughout, the pretrial phase proved to be exceptionally busy, with the single judge issuing 180 written decisions and orders between the initial appearances of the accused and the start of the trial.

77. Finally, on 22 October 2020 the trial in the case was able to commence with the Prosecution's opening statements, and the first witness was heard on 26 October 2020. The presentation of the Prosecution's witnesses is expected to conclude by December 2020 and the single judge has emphasized in court the importance of concluding the Prosecution case by that time. The Defence case will commence in the first part of next year. Given the further delay in the commencement of trial proceedings, the trial judgment is now expected in May 2021. This adjusted projection may be further affected by the evolving global health crisis. Moreover, it is noted that counsel for the accused, support staff and witnesses are located on three different continents, which makes the case particularly susceptible to restrictions on travel and especially reliant on technology.

78. The contempt case against Petar Jojić and Vjerica Radeta, 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 two accused to the Mechanism without delay. On the same day, the single judge issued new international arrest warrants, directed to all States Members of the United Nations, for the arrest, detention and transfer to the custody of the Mechanism of the accused. On 4 June 2019, Serbia appealed the single judge's decision. As previously reported, 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.

79. New litigation in the *Jojić and Radeta* case continued throughout the reporting period, mostly on a confidential basis. Meanwhile, the Mechanism reiterates that all United Nations 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.

80. With regard to the judicial activity of the President, during the reporting period the President issued a total of 48 orders and decisions, including 5 orders and decisions related to the review of administrative decisions, 2 of which addressed detention matters, and 11 orders and decisions related to enforcement matters.

81. Furthermore, the President issued 22 assignment orders, of which 13 related to the assignment of single judges, 2 related to the assignment of a Trial Chamber and 7 concerned the Appeals Chamber, 6 of which were assignments relating to rule 86 of the Rules of Procedure and Evidence. To the extent possible, in assigning matters to judges, the President endeavoured to ensure an equitable distribution of work, giving due consideration also to geographical representation and gender, as well as possible conflicts of interest arising from previous assignments.

82. As in previous reporting periods, the President, pursuant to his authority in the area of enforcement of sentences, continued to dedicate a substantial amount of time and resources to numerous enforcement matters, including those related to the early release of convicted persons. Such matters are dependent on the circumstances specific to each convicted person and case and, in addition, necessarily relate to questions of State support and cooperation. As a result, they can be extremely complex and time-consuming.

83. The President adjudicated three applications for early release during the reporting period⁶ and remains seized of 14 more. To assist in his determination of those applications, and consistent with the revised Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, issued at the close of the last reporting period, the President continued to actively solicit a range of relevant information in order to ensure greater transparency and allow for full consideration of the broader impacts of early release. The President also consulted judges of the relevant sentencing Chamber who remain judges of the Mechanism, as applicable, pursuant to rule 150 of the Rules of Procedure and Evidence. Where no other judges who had imposed the sentence remained judges of the Mechanism, the President consulted at least two other judges, consistent with rule 151 of the Rules.

⁶ See *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision on the Early Release of Dragomir Milošević, 29 July 2020; *Prosecutor v. Milan Martić*, Case No. MICT-14-82-ES, Decision on the Early Release of Milan Martić, 7 August 2020; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza's Application for Early Release, 17 September 2020 (public redacted version).

84. The COVID-19 pandemic again gave rise to increased judicial activity in relation to enforcement matters. Having issued an order in April 2020, inter alia directing the Registrar to liaise with enforcement States so as to receive updated information at least every 14 days until the end of June 2020, the President issued three subsequent orders during the reporting period for updated information from enforcement States.⁷ Most recently, acknowledging that requiring fortnightly updates might become overly burdensome for enforcement States, particularly in the context of the ongoing pandemic, on 30 October 2020 the President issued an order instead requiring updated information every month, or sooner if there was a relevant change in circumstances warranting the urgent attention of the Mechanism.⁸ In addition to those orders, the President continued to request information from the Registrar on measures taken in the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, where Mechanism detainees are housed. Furthermore, the President continued to deal with enforcement-related requests arising from the COVID-19 pandemic.

85. Having detailed its current judicial activities, the Mechanism notes that the projections for case completion indicated above 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. The Mechanism will closely monitor and adjust the projections as necessary to reflect developments, including those arising from any extraordinary events during the course of the proceedings that would affect their conduct. Such events could include continuation of the COVID-19 pandemic, the replacement of judges or counsel, or the illness of an accused or an appellant.

86. In relation to the calculation of projections for any possible fugitive trial, the Mechanism refers to its third review report, in which it indicated that such a trial might last two and a half years from arrest until the delivery of the trial judgment, and that approximately 12 months of that period would be focused on pretrial activity, handled principally by a pretrial judge (S/2020/309, annex, para. 62; see para. 66 above). Furthermore, the Mechanism will continue to bear in mind the recommendation made by OIOS in relation to clear and focused case projections, which it takes very seriously (S/2020/236, para. 67 and annex I, and S/2020/309, annex, paras. 204 and 214). As always, the judges and Chambers leadership remain fully committed to expediting pending matters and concluding them as soon as possible, in accordance with due process and fundamental rights.

87. With respect to projections for judicial activities other than trials and appeals from judgment, the Mechanism notes that it has a continuing obligation to safeguard the administration of justice. In that regard, its duty to investigate and prosecute allegations of contempt or false testimony, subject to the provisions of article 1 (4) of the statute, will continue until its closure. The Mechanism recalls more broadly the observations made in the report of the Secretary-General of 21 May 2009 that “it is not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgments, referral of cases and pardon and commutation of sentences will arise” but that “such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals ... and that the level of work

⁷ Case No. MICT-12-01-ES, Order for COVID-19 Updates from Enforcement States, 24 April 2020 (public redacted version); Case No. MICT-12-01-ES, Second Order for COVID-19 Updates from Enforcement States, 26 June 2020 (public redacted version); Case No. MICT-12-01-ES, Third Order for COVID-19 Updates from Enforcement States, 28 August 2020 (public redacted version); Case No. MICT-12-01-ES, Fourth Order for COVID-19 Updates from Enforcement States, 30 October 2020 (public redacted version).

⁸ Case No. MICT-12-01-ES, Fourth Order for COVID-19 Updates from Enforcement States, 30 October 2020 (public redacted version).

involved ... will inevitably decrease over time” (S/2009/258, para. 102). Indeed, it is anticipated that such requests will continue to be filed for as long as cases continue to be investigated and prosecuted in domestic jurisdictions, persons convicted by the ad hoc Tribunals or the Mechanism continue to serve their sentences, and any of the victims and witnesses who testified before those institutions remain in need of protection.

88. It is therefore important to remain mindful that the Security Council has tasked the Mechanism with a range of residual judicial functions that will continue after the existing caseload has been concluded, unless the Security Council decides otherwise.

89. The current status of the Mechanism’s trial and appeal proceedings is reflected in enclosure III.

IV. Registry support for judicial activities

90. The Registry continued to provide support for the Mechanism’s judicial activities at both branches. Specifically, the Registry processed and disseminated 1,096 filings, including 151 Registry legal submissions, amounting in total to 10,340 pages during the reporting period.

91. As mentioned earlier, after a necessary suspension of courtroom proceedings due to the COVID-19 pandemic and resulting restrictions, the Mechanism was able to successfully resume said proceedings while minimizing the risk of exposure to COVID-19 of judges, staff and all other participants. At the branch in The Hague, Registry staff supported the status conference and appeal hearing in the *Mladić* case, as well as the resumption and conclusion of in-court evidentiary hearings in the *Stanišić and Simatović* case. Following the transfer of Mr. Kabuga to the United Nations Detention Unit in The Hague, the two branches worked closely together in supporting the ensuing pretrial proceedings in the new *Kabuga* case, while the branch in The Hague hosted the initial appearance on 11 November 2020. At the Arusha branch, the Registry provided support for the commencement and running of the trial in the *Turinabo et al.* case. In total, 34 court hearing days were serviced during the reporting period.

92. Those courtroom proceedings required significant planning and preparation, both logistical and technological. To guide the seamless support for the courtroom proceedings and ensure the implementation of practical safety measures by all participants, the Registry at both branches issued COVID-19 pandemic-related safety measures for the Mechanism’s court proceedings, aimed at ensuring the implementation of practical preventive measures by all participants. In line with the measures, special arrangements and modifications were made in the courtrooms to implement social distancing, hygiene requirements and other expert advice relating to COVID-19. Examples include the application of social-distancing markings, the installation of Plexiglas separators where social distancing is not possible and the introduction of one-way systems for foot traffic. This was accompanied by a reduction of maximum occupancy in the courtrooms and the maintenance of daily occupancy lists both to ensure adherence to the maximum number and to facilitate contact tracing. Additional specific measures have been taken to protect those at higher risk of complications from a COVID-19 infection, such as elderly witnesses.

93. Furthermore, to enable full remote participation where necessary, including of judges, parties and witnesses, the number of videoconference connections available in the courtrooms was increased. Facilities for privileged communication by telephone and videoconference were installed to allow for communication between the accused and the Defence teams, with the aim of reducing movement within the

courtroom. Temporary interpreter booths were added to allow for single occupancy and sanitization at the time of changeovers of interpretation personnel, while at the Arusha branch, the courtroom's public gallery was used to expand the capacity of the courtroom and to provide additional workstations for the *Turinabo et al.* Defence teams. More generally, special cleaning regimes were put in place to sanitize the courtrooms before and after hearings, as well as the videoconference room in The Hague used by members of the *Turinabo et al.* Defence teams.

94. The Mechanism is grateful to all staff, non-staff personnel and courtroom proceeding participants for adhering to the expert advice and the guidelines. This has ensured that the risk of COVID-19 exposure is kept to a minimum while allowing a smooth resumption of courtroom proceedings and further progress towards completion of the Mechanism's mandate.

95. During the reporting period, the Registry's Language Support Services at the two branches translated approximately 11,500 pages, provided 268 conference interpreter days and produced 2,759 pages of transcripts in English and French. This includes, inter alia, the support provided in the *Kabuga, Mladić, Ngirabatware, Stanišić and Simatović* and *Turinabo et al.* cases, as well as the translation of monitoring reports with regard to cases referred to Rwanda and France. In addition, the Language Support Services completed the translation of two judgments, one into Kinyarwanda and one into Bosnian/Croatian/Serbian. At the time of writing, 35 judgments of the International Criminal Tribunal for Rwanda or the Mechanism are awaiting translation into Kinyarwanda, and one judgment of the International Tribunal for the Former Yugoslavia is awaiting translation into Bosnian/Croatian/Serbian. In addition, 14 judgments of the Tribunals and the Mechanism are yet to be translated into French.

96. The Registry's Office for Legal Aid and Defence Matters provided financial and other assistance to an average of 58 Defence teams comprising a total of approximately 130 Defence team members. In particular, the Office for Legal Aid and Defence Matters processed more than 520 Defence invoices, travel requests and expense reports during the reporting period. In addition, the Office for Legal Aid and Defence Matters updated the list of those eligible for assignment to suspects and accused before the Mechanism, which now includes 55 admitted counsel, and increased the number of prosecutors and investigators eligible for assignment as an *amicus curiae* to 46.

97. In response to the international travel restrictions adopted owing to the global health crisis, the Office for Legal Aid and Defence Matters continued to diligently and cautiously facilitate the travel of Defence team members with respect to official Mechanism activity. Previously scheduled Defence investigative missions that were deferred as a result of travel prohibitions have now been completed, which represents a positive step towards ensuring the timely completion of ongoing proceedings. Finally, the Office for Legal Aid and Defence Matters continues to maintain open lines of communication with all Defence teams, offering regular updates on the COVID-19 pandemic and related measures implemented by the Registry.

V. Victims and witnesses

98. Pursuant to article 20 of the statute, the Mechanism is responsible for the protection of the witnesses who have testified in cases completed by the ad hoc Tribunals, as well as those witnesses who have appeared or may appear before the Mechanism. In practice, approximately 3,150 witnesses benefit from judicial and/or non-judicial protective measures.

99. During the reporting period, the Witness Support and Protection Unit continued to provide, in accordance with judicial protection orders, security for witnesses by undertaking threat assessments and coordinating responses to security-related requirements. In doing so, the Unit worked closely with national authorities and other United Nations entities. The Unit also ensured that protected witness information remained confidential and continued to contact witnesses in relation to requests for the continuation, rescission, variation or augmentation of judicial protective measures. Furthermore, the Unit facilitated contact between parties and relocated witnesses or witnesses of opposing parties when so required.

100. During the reporting period, the Witness Support and Protection Unit implemented 16 judicial orders related to protected witnesses, including orders in relation to requests for the variation of protective measures, and filed numerous submissions concerning witness-related matters.

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

102. In providing support with regard to the Mechanism's judicial caseload, the Witness Support and Protection Unit in Arusha supported witness activity in relation to the *Turinabo et al.* case, which commenced on 22 October 2020. The Unit in The Hague continued to support witness activity in the *Stanišić and Simatović* case, which, after the COVID-19-related postponement, recommenced on 2 September 2020 and concluded on 8 October 2020.

103. In the light of the ongoing pandemic, at both branches a number of policies were developed and significant measures were taken to facilitate witness testimony, either in person or remotely, and to reduce to the greatest extent possible the risk of exposure to COVID-19 of witnesses and staff. Both branches also continued to work towards providing appropriate support and protection for witnesses at this unique time. New technologies are being implemented to enable secure and confidential video calls to be held with witnesses when required, in a manner that would not compromise personal information.

104. It is expected that victim and witness protection will continue to be required in the coming years in the light of the multitude of judicial protection orders that will remain in force 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.

VI. Fugitives and trial and appeal readiness

105. In its resolution [1966 \(2010\)](#), the Security Council urged all States, particularly those where fugitives are suspected to be at large, to further intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible. The Council has repeated that call to States in subsequent resolutions, including most recently in resolution [2529 \(2020\)](#). The Mechanism is deeply grateful for the Council's support

in relation to this vital matter, as it continues to rely on the cooperation and political will of Member States in order for the remaining fugitives indicted by the International Criminal Tribunal for Rwanda to be apprehended and prosecuted.

106. The fugitive tracking function is within the responsibility of the Prosecutor and is discussed in detail in his report (see annex II). As reported above, significant developments took place during the reporting period in the *Kabuga* case and the *Bizimana* case, with Mr. Kabuga being transferred to the custody of the Mechanism and having his initial appearance, and the *Bizimana* case finally being closed (see paras. 64–67).

107. As a result, there remain six fugitives whose arrest and prosecution continue to be a top priority for the Mechanism. One of those individuals, Protais Mpiranya, is expected to be tried before the Mechanism, while the cases of the other five, namely, Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Ryandikayo (first name unknown) and Charles Sikubwabo, were referred to Rwanda by the International Criminal Tribunal for Rwanda, subject to the conditions set out in the relevant referral decisions.

108. Notwithstanding the COVID-19 pandemic, the Mechanism demonstrated during the reporting period its readiness to conduct proceedings in the event of a fugitive being apprehended or of any other ad hoc judicial activity. Indeed, the successful transfer of Mr. Kabuga and the commencement of pretrial proceedings in the *Kabuga* case are examples of the Mechanism's commitment to efficiently fulfilling that crucial aspect of its mandate. The Mechanism will not stop here, however, and trial readiness will continue to be a priority for as long as the case of any remaining fugitive is pending before it.

109. Regarding trial and appeal readiness more generally, the Mechanism remains mindful of the possibility that a retrial may be ordered in any appeal proceedings before the Mechanism or that new contempt or false testimony proceedings may be initiated at any time. Likewise, the referral of a case to a national jurisdiction for trial may be revoked. In accordance with article 15 (4) of the statute, rosters of qualified potential staff are in place to enable the expeditious recruitment, as necessary, of the additional staff required to support those potential judicial proceedings.

VII. Detention facilities

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

111. During the reporting period, the United Nations Detention Facility in Arusha housed one individual, who was convicted on appeal and is awaiting transfer to an enforcement State. That person is also an accused in the *Turinabo et al.* case. The other five co-accused persons in the *Turinabo et al.* case have been unconditionally released, subject to an order to appear before the Mechanism when required.

112. The United Nations Detention Facility will continue to be required until the detained person is either released or transferred to an enforcement State and until the other five co-accused persons currently on trial are acquitted, released or transferred to enforcement States. In addition, the Facility must retain an area for the detention of the remaining fugitive who is expected to be tried by the Mechanism once apprehended, as well as provide a residual custodial capacity for other individuals potentially appearing before the Mechanism's Arusha branch.

113. As discussed above, on 21 October 2020 a judge of the Mechanism ordered that Mr. Kabuga be transferred to the United Nations Detention Unit in The Hague on a temporary basis (see paras. 65 and 66). Hence, since Mr. Kabuga's transfer on 26 October 2020, the Unit has been housing three detainees while maintaining custodial capacity for two individuals who were on provisional release.

114. The services of the United Nations Detention Unit will continue to be required until all trials and appeals in ongoing cases are concluded and all detained persons are acquitted, released or transferred to enforcement States, after which a reduced, residual custodial capacity for other individuals potentially appearing before the Mechanism may have to be arranged.

115. Both detention facilities are regularly inspected by the International Committee of the Red Cross to ensure that the Mechanism's Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism are properly applied and that both facilities are operating in accordance with international standards.

116. Furthermore, in order to reduce the risk of COVID-19 contamination for persons currently in detention, the Commanding Officers of both detention facilities, in cooperation with the respective host State authorities, continued to implement strict preventive measures during the reporting period. At both facilities, non-essential activities and services were suspended and the number of personnel in direct contact with the detainees was reduced to a minimum. While most visits were suspended, detainees continued to benefit from unhindered communication with their families, Defence counsel and diplomatic representatives through alternative means of communication, including telephone, mail, video communication and email, where available. Similarly, the detainees continued to have access to medical care and fresh air. Some activities and services that became increasingly important to the detainees as time passed were reinstated during the reporting period, subject to additional mitigating measures.

117. Also of note in relation to communications at the United Nations Detention Unit is the Registrar's implementation of a decision issued by the President during the previous reporting period. On 16 April 2020, the President, *inter alia*, ordered the Registrar to implement an interim solution to make video communications available for detainees at the Unit by 14 May 2020 or otherwise report on specific impediments and provide a timeline for subsequent implementation, and issue a final decision on the matter by 15 June 2020.⁹ In line with the President's decision, on 15 June 2020 the Registrar decided to make video calls available to detainees at the Unit while COVID-19 restrictions on visits were still in place.¹⁰

118. Finally, the Mechanism assures the Security Council that it remains acutely aware of its duty of care towards detainees and takes the health situation of all detainees extremely seriously, especially during the current pandemic. In that respect, the Mechanism notes in particular paragraph 11 of resolution [2529 \(2020\)](#), in which the Council recalls the importance of ensuring the rights of persons detained on the authority of the Mechanism in accordance with applicable international standards, including those related to health care. The Mechanism further notes that detention-related concerns may be addressed in accordance with its legal and regulatory framework, including the Mechanism's Regulations on the Complaints Procedure for

⁹ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-ES, Decision on Request for Review of Registrar's Decision on Video Communications, 16 April 2020 (confidential; made public on 1 May 2020).

¹⁰ See *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-ES, Registrar's Submission in Compliance with "Decision on Request for Review of Registrar's Decision on Video Communications" of 16 April 2020, 15 June 2020 (public with confidential and *ex parte* annex).

Detainees,¹¹ as well as through regular status conferences¹² and the above-mentioned inspections by the International Committee of the Red Cross.

VIII. Enforcement of sentences

119. Pursuant to article 25 of the statute, the Mechanism has jurisdiction to supervise the enforcement of sentences. Following delivery of a final judgment, the President decides where a convicted person will serve his or her sentence in accordance with article 25 of the statute, rule 127 of the Rules of Procedure and Evidence and the Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve His or Her Sentence of Imprisonment. There is no prescribed time limit for the decision of the President. However, rule 127 (B) of the Rules of Procedure and Evidence provides that the transfer of the convicted person to an enforcement State shall be effected as soon as possible. In accordance with the relevant Practice Direction, the President designates the State of imprisonment on the basis of a range of information which may include any relevant views expressed by the convicted person. In line with the Mechanism's agreements with the host States, there is no possibility for convicted persons to be detained indefinitely at the United Nations Detention Facility in Arusha or the United Nations Detention Unit in The Hague.

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

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

122. In relation to the Arusha branch, on 31 August 2020, one person convicted by the International Criminal Tribunal for Rwanda passed away while serving his sentence in an enforcement State. Currently, 29 persons convicted by the International Criminal Tribunal for Rwanda are serving their sentences under the supervision of the Mechanism in three States: Benin (18), Mali (7) and Senegal (4). One convicted person remains at the United Nations Detention Facility in Arusha, awaiting transfer to the designated enforcement State.

123. Regarding the branch in The Hague, during the reporting period Belgium generously agreed to enforce the sentence of a convicted person, who was successfully

¹¹ See also rules 91–97 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism; regulations 8 and 10 of the International Residual Mechanism for Criminal Tribunals Regulations on the Disciplinary Procedure for Detainees; and regulation 23 of the International Residual Mechanism for Criminal Tribunals Regulations on the Supervision of Visits to and Communications with Detainees.

¹² See rule 69 of the Rules of Procedure and Evidence.

transferred to its custody from the United Nations Detention Unit in September 2020. Currently, 21 persons convicted by the International Tribunal for the Former Yugoslavia are serving their sentences under the supervision of the Mechanism in 12 States: Austria (1), Belgium (1), Denmark (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (4), Sweden (1) and the United Kingdom of Great Britain and Northern Ireland (1). One convicted person remains at the United Nations Detention Unit in The Hague, awaiting transfer to an enforcement State. Enforcing that sentence as soon as possible, as well as any future sentences, is of paramount importance to the Mechanism.

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

125. Sentences pronounced by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism are enforced in accordance with the applicable law of the enforcing State and with international standards of detention, subject to the supervision of the Mechanism. Conditions of imprisonment shall be compatible with relevant human rights standards, which include the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Recognized organizations such as the International Committee of the Red Cross and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment serve as independent inspecting bodies and regularly monitor the conditions of imprisonment to ensure that international standards are being met.

126. During the reporting period, the Mechanism, in coordination with national authorities and/or the United Nations Development Programme, continued its efforts to address the recommendations of the relevant inspecting bodies, as well as the recommendations of an independent expert on ageing in prison and associated vulnerabilities engaged by the Mechanism.

127. Furthermore, in response to the COVID-19 pandemic and pursuant to the orders issued by the President on 24 April, 26 June, 28 August and 30 October 2020 (see para. 84 and footnote 7), the Registry continued to engage with all enforcement States to regularly obtain updated information on measures taken in their respective prisons to prevent the potential spread of COVID-19, as part of the Mechanism’s supervision of the enforcement of sentences.

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

129. In that respect, the Mechanism notes that 17 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. Of the latter group, the longest three sentences will have been fully served in 2044. Furthermore, a majority of the individuals currently serving life sentences will not be eligible for consideration of pardon, commutation of sentence or early release until after 2030, even if they may seek such relief beforehand. Two individuals serving a life sentence will not become eligible for consideration of pardon, commutation of sentence or early release until 2038.

IX. Relocation of acquitted and released persons

130. The resettlement of the nine acquitted and released persons currently residing in Arusha who are unable or afraid to return to their country of citizenship unfortunately remains unresolved. As reported on several prior occasions, those persons either were acquitted by the International Criminal Tribunal for Rwanda or have already served their sentences as imposed by that Tribunal, and the current dilemma constitutes a humanitarian crisis that profoundly affects their rights.

131. In addition, the matter continues to be an enormous challenge for the Mechanism, in particular since the Mechanism's headquarters agreement with the United Republic of Tanzania provides that the released and acquitted persons shall not permanently remain in the United Republic of Tanzania except with its consent. The United Republic of Tanzania has therefore generously permitted those persons to stay on its territory temporarily, pending their relocation to another country.

132. The Mechanism was heartened to note the concern expressed by the Security Council in relation to that issue in resolution [2529 \(2020\)](#), in which the Council *inter alia* emphasized the importance of finding an expeditious and durable solution, including as part of a reconciliation process, and reiterated its call upon all States to cooperate with and render all necessary assistance to the Mechanism.

133. On the Mechanism's part, during the reporting period both the President and the Registrar continued to raise the possible resettlement of the nine individuals with potential receiving States. In addition, since assuming office in July, the new Registrar has taken a number of proactive steps towards entering negotiations with other relevant stakeholders. The Mechanism is cautiously optimistic that those new efforts may in time bear fruit.

134. The Mechanism is indeed committed to finding a durable solution for the relocation of those nine persons. However, it once more emphasizes that it cannot resolve the situation on its own. As recognized by the Security Council, the Mechanism will continue to rely on the goodwill, cooperation and support of Member States until such time as all acquitted and released individuals are appropriately relocated.

X. Cooperation of States

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

136. As mentioned above, the arrest and surrender of the remaining fugitives of the International Criminal Tribunal for Rwanda are a top priority for the Mechanism, and the Mechanism requires the full cooperation of States in relation to the ongoing fugitive-tracking operations conducted by the Prosecutor. Such cooperation was exemplified in the previous reporting period by the concerted joint efforts of numerous States and organizations that led to the arrest of Mr. Kabuga and the confirmation of the death of Mr. Bizimana. Following those developments, the Mechanism continued to make progress in the tracking of the remaining six fugitives during the current reporting period. The Mechanism reminds all States of their continuing obligations under article 28 of the statute, as well as the Security Council's most recent call to States, in resolution [2529 \(2020\)](#), to intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible.

137. Separately, the Mechanism urges Member States to provide full cooperation in respect of the arrest, detention and transfer to the custody of the Mechanism of the accused in the *Jojić and Radeta* case, outlined above (see paras. 78 and 79). In particular, it again calls upon Serbia to honour its obligations under Chapter VII of the Charter by executing the outstanding arrest warrants against those individuals.

138. In relation to other aspects of its mandate requiring State cooperation, the Mechanism again expresses gratitude for the robust support provided by States in relation to the enforcement of sentences. However, it continues to call for greater cooperation in relation to the resettlement of the nine acquitted and released persons currently living in Arusha, as discussed above (see section IX).

139. Fostering stronger relationships and promoting communication and cooperation between the Mechanism and the Governments and peoples of Rwanda and the States of the former Yugoslavia also continue to be a priority for the Mechanism. To the extent feasible in the light of travel and other restrictions resulting from the COVID-19 pandemic, representatives of the Mechanism, up to and including the level of the principals, engaged with government officials and met or communicated with victims' groups during the reporting period.

140. The Mechanism will continue to discuss matters of mutual interest with the Rwandan authorities, including means by which cooperation with the Government of Rwanda can be enhanced, in line with paragraph 23 of Security Council resolution [2256 \(2015\)](#). In that regard, the Mechanism's Kinyarwanda Unit, established at the beginning of 2016, has continued the translation of judgments of the International Criminal Tribunal for Rwanda into Kinyarwanda. During the reporting period, the Kinyarwanda Unit completed the translation of one voluminous further judgment and a number of decisions and orders, as well as monitoring reports concerning three cases referred to Rwanda that are discussed below (see paras. 146, 147, 150 and 151).

141. In its resolution [1966 \(2010\)](#), the Security Council requested the Mechanism to cooperate with Rwanda and the countries of the former Yugoslavia to facilitate the establishment of information and documentation centres. With respect to the former Yugoslavia, the first such information centre was opened on 23 May 2018 in Sarajevo, with the support of the Mechanism. The Mechanism remains available to facilitate the establishment of similar information centres with other stakeholders in the former Yugoslavia and continued its dialogue with relevant authorities in that regard during the reporting period.

142. During the reporting period, the Mechanism and the European Union continued to work together on a project focused on informing affected communities and younger generations in the former Yugoslavia about the legacy of the International Tribunal for the Former Yugoslavia and the ongoing work of the Mechanism, and on facilitating access to the Tribunal and Mechanism archives.¹³ More than 200 secondary-school teachers from across the region of the former Yugoslavia participated in seven workshops on using the archives. Furthermore, in October 2020 the Mechanism commenced the second cycle of its lecture series for postgraduate law students from the former Yugoslavia, entitled "International Law and Facts Established before the ICTY". With the additional support of Switzerland, the Mechanism was able to further strengthen the project's engagement with young people in the former Yugoslavia. The Mechanism is pleased to report that the project continues to be well received, with its social media campaigns reaching more than 2 million users, and wishes to thank the European Union and its member States, as well as Switzerland, for their generous support.

¹³ Further information about the Mechanism Information Programme for Affected Communities is available on the Mechanism's website.

XI. Assistance to national jurisdictions

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

144. During the reporting period, the Registry processed 34 requests for assistance from national authorities or parties to domestic proceedings in relation to domestic proceedings concerning individuals allegedly implicated in the 1994 genocide against the Tutsi in Rwanda or the conflicts in the former Yugoslavia. It also provided over 2,412 documents. The Mechanism also received and considered numerous requests, pursuant to rule 86 of the Rules of Procedure and Evidence, for the variation of protective measures granted to witnesses who had testified in cases before the ad hoc Tribunals or the Mechanism. Comprehensive information and guidance regarding the submission of requests for assistance are available on the Mechanism's website.¹⁴

145. It is expected that activities linked to requests for assistance from national jurisdictions will continue alongside the investigation and prosecution of cases in domestic jurisdictions related to the genocide against the Tutsi in Rwanda and the conflicts in the former Yugoslavia.

XII. Cases referred to national jurisdictions

146. Pursuant to article 6 (5) of the statute, the Mechanism is responsible for monitoring cases referred to national courts by the ad hoc Tribunals and the Mechanism, with the assistance of international and regional organizations and bodies. During the reporting period, the Mechanism continued to exercise its monitoring function in respect of three cases referred to Rwanda, one to France and one to Serbia.

147. Regarding the Rwandan cases, consistent with Security Council resolution [2256 \(2015\)](#), the Mechanism exercised its monitoring function with the pro bono assistance of monitors from the Kenyan section of the International Commission of Jurists, pursuant to a memorandum of understanding concluded on 15 January 2015 and subsequently amended on 16 August 2016. The referred cases concern Jean Uwinkindi, Bernard Munyagishari and Ladislav Ntaganzwa, who were indicted by the International Criminal Tribunal for Rwanda. On 28 May 2020, the High Court Chamber for International Crimes in Nyanza, Rwanda, issued a life sentence in the *Ntaganzwa* case. The accused subsequently filed a notice of appeal. The *Uwinkindi* case and the *Munyagishari* case remained on appeal during the reporting period.

148. The case of Laurent Bucyibaruta, who was indicted by the International Criminal Tribunal for Rwanda, is being tried in France. Proceedings in the case continued to be monitored by an interim monitor. The most recent hearing took place on 7 October 2020 before the Investigation Chamber and a judgment is expected to be issued by the end of January 2021.

149. The Mechanism also continued to follow the status of the case against Vladimir Kovačević, which was referred to Serbia by the International Tribunal for the Former Yugoslavia in March 2007.

150. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of the cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. With the delivery of the trial judgment on 28 May 2020, the *Ntaganzwa* case is now in the

¹⁴ Available at www.irmct.org/en/about/functions/requests-assistance.

appeal phase, more than four and a half years after the transfer of the accused to Rwanda. The *Uwinkindi* case and the *Munyagishari* case, referred to Rwanda in 2012 and 2013, respectively, are also at the appeal stage. If any of the five remaining fugitives whose cases have been referred to Rwanda for trial are arrested, the estimate for the continuation of the Mechanism's monitoring function with respect to Rwanda will need to be assessed at that time. The *Bucyibaruta* case, which was referred to France, has been at the investigative/pretrial phase for more than 10 years. Hence, further estimates regarding the expected duration of the Mechanism's monitoring function will depend on the decisions of the French judicial authorities in the case.

151. Unfortunately, the monitoring of the above-mentioned cases continues to be affected by the COVID-19 pandemic. Given the travel restrictions that are in place, some monitoring missions were delayed. However, arrangements have been made, where possible, for the monitors to attend hearings and meetings remotely. Furthermore, upon request of the monitors, the President has adjusted the schedule for the submission of monitoring reports and allowed for consolidated reports covering several months, where necessary. Meanwhile, the President continues to receive regular COVID-19-related updates regarding the situation in Rwanda and France as it pertains to the above-mentioned accused and appellants.

XIII. Archives and records

152. In accordance with article 27 of the statute, the Mechanism has responsibility for the management of the archives of the Mechanism and the ad hoc Tribunals. The archives, which are co-located with the respective branches of the Mechanism, include records in both digital and physical formats and consist of documents, maps, photographs, audiovisual recordings and objects. The records concern investigations, indictments and court proceedings; the protection of witnesses; the detention of accused persons; and the enforcement of sentences. The archives also include documents from States, other law enforcement authorities, international and non-governmental organizations and other stakeholders.

153. The Mechanism Archives and Records Section is currently responsible for the management of approximately 4,400 linear metres of physical records and 2.7 petabytes of digital records of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism's two branches. The management of the archives includes the preservation, arrangement and description of records, their security and the provision of access, along with measures to ensure the continued protection of confidential information, including information concerning protected witnesses.

154. As concerns preservation, the digital records of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia continue to be incorporated into the Mechanism's digital preservation system to safeguard their long-term integrity, reliability and usability, in accordance with the Mechanism's policy on retention and preservation of records. During the reporting period, a total of 72.75 terabytes of digital records were ingested, including more than 16,442 files in a variety of formats. The Mechanism Archives and Records Section will continue the work of strengthening the Mechanism's digital preservation programme by continuing to develop institutional capacity and capability for digital preservation.

155. Furthermore, the preservation of audiovisual recordings stored on obsolete physical media in The Hague continued. Approximately 39,200 physical audiovisual records were assessed to determine preservation needs. At the Arusha branch, the creation of publicly accessible audiovisual recordings of the judicial proceedings of

the International Criminal Tribunal for Rwanda continued. A total of 550 hours of recordings were made accessible during the reporting period.

156. One notable step towards facilitating the widest possible access to the public records in the custody of the Mechanism was the launch of the unified court records database on 1 September 2020. As reported above (see para. 28), the database brings together all public judicial records of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. More than 353,000 judicial records, including approximately 28,500 hours of audiovisual recordings, are currently available to the public through the database. The public judicial records were accessed by over 11,900 users during the reporting period.

157. During the reporting period, the Mechanism received and responded to 93 requests for access to records under the Access Policy for the Records Held by the International Residual Mechanism for Criminal Tribunals. Many of the requests were for copies of audiovisual recordings of courtroom proceedings.

158. Regarding the Tribunal and Mechanism archives, the Mechanism Archives and Records Section continued its work on developing a publicly accessible catalogue containing descriptions of the archives, prepared in accordance with international standards. Furthermore, together with the Mechanism's External Relations Office, the Section continued its programme of exhibitions and events to draw attention to the archives. For example, videos were released to mark the World Day for Audiovisual Heritage and World Digital Preservation Day in October and November 2020, respectively.

159. While the COVID-19 pandemic also affected the Mechanism Archives and Records Section, progress was made on a number of projects during the reporting period, thanks to the implementation of information technology solutions and the return of some staff to the office on a rotational schedule. It is also on that basis that the Mechanism Archives and Records Section continues to provide, to the greatest extent possible, full services to other Mechanism sections and the public.

XIV. External relations

160. The External Relations Office is responsible for the dissemination of timely and accurate information on the judicial work and activities of the Mechanism. This includes supporting the Mechanism's principals in their interactions with stakeholders where appropriate, hosting visits, organizing meetings and public events, liaising with the media, creating information materials and facilitating the general public's access to information, including through the Mechanism's website and social media channels, as well as through its library.

161. In view of the COVID-19 pandemic, several on-site activities were suspended until the end of the year. However, the External Relations Office intensified its efforts to facilitate public and media access to proceedings, including by streaming court sessions on the Mechanism's website and coordinating the release and transmission of official audiovisual recordings to international and regional media outlets. In that regard, the online streaming of the status conference on 24 July 2020 and the appeal hearing on 25 and 26 August 2020 in the *Mladić* case, the proceedings in the *Stanišić and Simatović* case, as well as the proceedings in the *Turinabo et al.* case, received almost 8,800 views. Furthermore, the recordings of the appeal hearing in the *Mladić* case received over 40,500 views on the Mechanism's YouTube channel. In relation to the *Kabuga* case, the website received over 34,000 visitors on the day of Mr. Kabuga's arrest and an additional 25,000 visitors in the following week, while the initial appearance on 11 November 2020 was viewed by 7,000 visitors to the website and reached over 17,000 social media users. More generally, the Mechanism's website

recorded almost 640,000 page views and more than 161,000 visitors during the reporting period.

162. During the reporting period, the Mechanism also continued its social media campaign marking the twenty-sixth commemoration of the 1994 genocide against the Tutsi in Rwanda. Moreover, in July, the Mechanism launched a dedicated web page on the twenty-fifth commemoration of the Srebrenica genocide, inter alia highlighting the related cases of the International Tribunal for the Former Yugoslavia and featuring an online exhibition entitled “Timeline of a Genocide”. The Srebrenica commemoration campaign reached over 1 million social media users.

163. The External Relations Office further coordinated the Mechanism’s participation in “Just Peace Month”, a mostly virtual event organized by the city of The Hague in lieu of the annual open day of international institutions located in The Hague. The Mechanism’s digital media campaign, which included videos and interactive presentations, reached more than 72,000 online visitors globally. More recently, in relation to the seventy-fifth anniversary of the United Nations, the External Relations Office launched a social media project entitled “#UN75 and international justice: the contributions of the UN criminal tribunals”, to highlight the instrumental role of the United Nations in promoting the international justice system.

164. During the reporting period, the Mechanism’s libraries in Arusha and The Hague processed a total of 1,275 research requests, loans and other enquiries. That number is lower than usual as a result of the COVID-19 pandemic.

XV. Reports of the Office of Internal Oversight Services

165. As previously reported, OIOS concluded its most recent evaluation of the methods and work of the Mechanism in March 2020 with the formal issuance of the OIOS evaluation report, to which the Mechanism responded in detail in its third review report.¹⁵

166. During the reporting period, the Mechanism continued to implement the recommendations made in the OIOS evaluation report, along with recommendations from the OIOS evaluation of 2018 that had been partially implemented.¹⁶ The recommendation of 2018 concerning staff morale in the Office of the Prosecutor is addressed in detail in annex II. With respect to the other outstanding recommendation of 2018, the Mechanism is actively engaged in preparing a general scenario-based plan and expects to be able to submit the plan to OIOS in the near future.

167. Furthermore, and as mentioned earlier (see para. 42), all three organs of the Mechanism worked together closely during the reporting period to identify additional scenarios and develop protocols in response to the COVID-19 pandemic. In doing so, the principals have taken active steps to bolster coordination and information-sharing among themselves and laterally, across the organs, on matters that affect them equally (S/2020/236, para. 66). Separately, the President and the Registrar are holding consultations on how to optimize efficiency and improve reporting lines with respect to the Mechanism’s external relations activities.

168. Regarding the OIOS recommendation to provide clear and focused projections of completion timelines (S/2020/236, para. 67), the Mechanism has set out such information above¹⁷ and in enclosure III. In particular, the Mechanism has provided

¹⁵ See S/2020/309, annex, paras. 189–210. See also S/2020/236, annex I.

¹⁶ See S/2020/236, paras. 36–44, and S/2018/206, paras. 43 and 44.

¹⁷ See paras. 61–63 regarding the *Stanišić and Simatović* case, 66 regarding the *Kabuga* case, 68–72 regarding the *Mladić* case and 74–77 regarding the *Turinabo et al.* case.

projections for the completion of its pending judicial caseload. Where there have been adjustments to those projections since the previous report, following delays caused by the COVID-19 pandemic or other factors such as the health of the accused, these have been fully explained. Moreover, the present report illustrates that the Mechanism has done its utmost to mitigate the impact of any such delays and to bring all proceedings back on track. Given that the next reporting period will be critical for the Mechanism, it is prepared to redouble its efforts to adhere to the projected timelines and conclude the relevant cases in a timely fashion.

169. In addition to implementing OIOS recommendations, the Mechanism continued to benefit from regular audits by OIOS. In that respect, an audit of the management of translation and interpretation services at the Mechanism was ongoing during the reporting period. Furthermore, the detailed results and recommendations from the horizontal assessment by OIOS of the management of data classification and data privacy at the Mechanism were issued in July 2020 in the form of an advisory opinion. The Mechanism has taken the recommendations under advisement.

170. With regard to earlier OIOS audits, the Mechanism continued to diligently follow up on and implement any open or outstanding recommendations. The Mechanism closed two recommendations from previous audits on the construction and occupancy of the Arusha facilities and made good progress towards implementing another recommendation pertaining to those audits. Moreover, as previously reported, the Mechanism continued its implementation of the sole recommendation issued in the strictly confidential report on the audit of the enforcement and monitoring of sentences of convicted persons under the supervision of the Mechanism.

171. Further to the Mechanism's engagement with OIOS, the Mechanism is audited annually by the Board of Auditors. On 26 October 2020, the Board of Auditors commenced a seven-week "virtual audit" of both the Arusha branch and the branch in The Hague, including the Kigali and Sarajevo field offices. The audit was conducted entirely remotely owing to the measures and travel restrictions in place regarding the COVID-19 pandemic.

172. The Mechanism welcomes and appreciates the work of OIOS and the Board of Auditors, as well as the opportunity to further enhance its operations through regular audits and evaluations. Referring to Security Council resolutions [2256 \(2015\)](#), [2422 \(2018\)](#) and [2529 \(2020\)](#), the Mechanism is pleased to continue to make progress in closing outstanding recommendations, which contributes to further enhancing its efficiency and ensuring effective and transparent management.

XVI. Conclusion

173. The Mechanism reflects with satisfaction on its performance during the reporting period, especially in the context of the evolving COVID-19 pandemic. Despite the challenges presented, the Mechanism has made strong progress with regard to its existing judicial caseload and has commenced new proceedings in the *Kabuga* case, while continuing to prioritize the safety of staff and protect the fundamental rights of persons under its supervision. Certainly, as demonstrated by the present report, the ongoing pandemic has not dampened the Mechanism's spirit. On the contrary, it has catalysed the Mechanism's ability to find innovative solutions to new problems. The Mechanism is buoyed by these significant developments, as well as the outcome of the Security Council's third review of its progress. It intends to take full advantage of such impetus during the next reporting period, which will indeed be crucial. In the coming months, the Mechanism will spare no effort to complete all relevant proceedings in a fair and expeditious manner, while discharging other aspects of its mandate as efficiently and effectively as possible.

174. The Mechanism is particularly grateful to its judges and staff, who have shown remarkable resilience, determination and resourcefulness throughout. Their hard work and outstanding commitment have allowed the Mechanism not only to keep functioning but also to deliver results over and above those imagined earlier in the global health crisis. The Mechanism sincerely thanks and commends all judges and staff for their service, as well as non-staff personnel, including members of Defence teams.

175. The Mechanism also wishes to thank the Security Council and its Informal Working Group on International Tribunals, the Office of Legal Affairs and OIOS for their ongoing support and assistance in relation to the third review of the Mechanism's progress, as well as more generally. The Mechanism greatly values their views and recommendations, which will enable it to further improve and refine working methods, and looks forward to engaging with the Council in December with regard to the present report. In addition, it acknowledges with gratitude the cooperation and contributions provided by the United Nations membership, in particular the Mechanism's outstanding host States, the United Republic of Tanzania and the Netherlands, together with key stakeholders such as Rwanda, the States of the former Yugoslavia and the Mechanism's 15 enforcement States. Finally, the Mechanism expresses sincere thanks to Switzerland and the European Union for their generous support of projects connected to the Mechanism's mandate.

176. In closing, the Mechanism reaffirms its commitment to fulfilling the weighty responsibilities entrusted to it by the Security Council almost 10 years ago through the adoption of resolution [1966 \(2010\)](#). It remains mindful that its establishment was a manifestation of the international community's will to continue the important work of the ad hoc Tribunals in advancing international criminal justice, accountability and the rule of law, and thereby further contribute to the maintenance of peace and security. In this way, the Mechanism shares many of the same values that led to the establishment of the United Nations itself more than 75 years ago. The Mechanism is proud of that history and of the contributions it has made thus far to the overarching aims of the Organization.

177. While the ongoing COVID-19 pandemic will continue to present challenges to all aspects of our daily lives, the Mechanism will remain resolute in its focus. Moreover, the progress made in its work over the past six months has given the Mechanism cause for optimism. The Mechanism is therefore confident that, with the valuable support of Member States and other stakeholders, as well as the continued dedication of its judges and staff, further breakthroughs are well within reach.

Enclosure I

International Residual Mechanism for Criminal Tribunals: staffing*

Table 1
Staff numbers by branch and organ

<i>Category</i>	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Chambers^a</i>	<i>Office of the Prosecutor</i>	<i>Registry^b</i>	<i>Mechanism overall</i>
All staff	244	296	35	102	403	540
Staff on continuous posts	125	56	9	28	144	181
Staff on general temporary assistance positions	119	240	26	74	259	359
International (Field Service, Professional and above)	134	127	28	69	164	261
Local (General Service)	110	169	7	33	239	279

^a Chambers staffing data include the Office of the President and exclude judges.

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

Table 2
Geographical representation by regional group

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall (percentage)^a</i>
Nationalities	38	60	75
All staff			
African	182	22	204 (37.8)
Asia-Pacific	9	21	30 (5.6)
Eastern European	4	76	80 (14.8)
Latin American and Caribbean	3	9	12 (2.2)
Western European and Other States	46	168	214 (39.6)
International staff (Field Service, Professional and above)			
African	72	6	78 (29.9)
Asia-Pacific	9	7	16 (6.1)
Eastern European	4	32	36 (13.8)
Latin American and Caribbean	3	5	8 (3.1)
Western European and Other States	46	77	123 (47.1)
Local (General Service)			
African	110	16	126 (45.2)
Asia-Pacific	–	14	14 (5.0)
Eastern European	–	44	44 (15.8)
Latin American and Caribbean	–	4	4 (1.4)
Western European and Other States	–	91	91 (32.6)

(Footnotes on following page)

* The data in the tables below represent the number of staff employed as at 1 November 2020.

(Footnotes to table 2)

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

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

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

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

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

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

Table 3
Gender representation

	<i>Arusha branch</i>		<i>The Hague branch</i>		<i>Mechanism Overall (percentage)</i>
	<i>Arusha (percentage)</i>	<i>Kigali field office (percentage)</i>	<i>The Hague (percentage)</i>	<i>Sarajevo field office (percentage)</i>	
Professional staff (all levels)	60	14	124	3	201
Male	38 (63.3)	9 (64.3)	48 (38.7)	3 (100)	98 (48.8)
Female	22 (36.7)	5 (35.7)	76 (61.3)	–	103 (51.2)
Professional staff (P-4 and above)	18	4	44	1	67
Male	13 (72.2)	2 (50)	17 (38.6)	1 (100)	33 (49.3)
Female	5 (27.8)	2 (50)	27 (61.4)	–	34 (50.7)
Field Service staff (all levels)	53	7	–	–	60
Male	33 (62.3)	4 (57.1)	–	–	37 (61.7)
Female	20 (37.7)	3 (42.9)	–	–	23 (38.3)
General Service staff (all levels)	94	16	166	3	279
Male	60 (63.8)	14 (87.5)	96 (57.8)	2 (66.7)	172 (61.6)
Female	34 (36.2)	2 (12.5)	70 (42.2)	1 (33.3)	107 (38.4)
All staff	207	37	290	6	540
Male	131 (63.3)	27 (73.0)	144 (49.7)	5 (83.3)	307 (56.9)
Female	76 (36.7)	10 (27.0)	146 (50.3)	1 (16.7)	233 (43.1)

Table 4
Staff by organ

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Chambers (including the Office of the President)	7	28	35
Office of the Prosecutor	44	58	102
Registry:	193	210	403
Immediate Office of the Registrar	2	2	4
Office of the Registrar	11	8	19

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall</i>
Archives and Records Section	18	15	33
Witness Support and Protection	16	12	28
Judicial Records and Court Operations Unit	5	8	13
Language Support Services	10	36	46
External Relations	6	7	13
Office for Legal Aid and Defence Matters	–	3	3
Administration	43	70	113
Security	65	45	110
United Nations Detention Facility and United Nations Detention Unit	17	4	21

Enclosure II

International Residual Mechanism for Criminal Tribunals: approved appropriations and expenditures for 2020

Table 1
Approved appropriations for the period from 1 January to 31 December 2020 (net of staff assessment)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	Mechanism
Arusha	Post	–	3 040 100	11 148 100	–	14 188 200
	Non-post ^a	213 300	2 692 700	15 186 300	2 384 900	20 477 200
Subtotal		213 300	5 732 800	26 334 400	2 384 900	34 665 400
The Hague	Post	–	1 364 300	5 899 400	–	7 263 700
	Non-post	1 852 200	6 267 000	34 041 300	2 384 900	44 545 400
Subtotal		1 852 200	7 631 300	39 940 700	2 384 900	51 809 100
New York	Post	–	–	164 100	–	164 100
	Non-post	–	–	–	–	–
Subtotal		–	–	164 100	–	164 100
Office of Internal Oversight Services	Post	–	–	195 000	–	195 000
	Non-post	–	–	78 200	–	78 200
Subtotal		–	–	273 200	–	273 200
Overall	Post	–	4 404 400	17 406 600	–	21 811 000
	Non-post	2 065 500	8 959 700	49 305 800	4 769 800	65 100 800
Total		2 065 500	13 364 100	66 712 400	4 769 800	86 911 800

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

Table 2
Expenditures (net of staff assessment) as at 1 November 2020 (per Umoja)

(United States dollars)

		Chambers	Office of the Prosecutor	Registry	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	Mechanism
Arusha	Post	–	2 169 090	8 904 973	–	11 074 063
	Non-post	187 528	2 591 080	10 704 744	3 756 923	17 240 275
Subtotal		187 528	4 760 170	19 609 717	3 756 923	28 314 338
The Hague	Post	–	1 118 529	4 824 096	–	5 942 625
	Non-post	1 312 161	4 966 658	28 156 987	194	34 436 000
Subtotal		1 312 161	6 085 187	32 981 083	194	40 378 625
New York	Post	–	–	163 283	–	163 283
	Non-post	–	–	1 535	–	1 535
Subtotal		–	–	164 818	–	164 818
Office of Internal Oversight Services	Post	–	–	139 249	–	139 249
	Non-post	–	–	47 974	–	47 974
Subtotal		–	–	187 223	–	187 223
Overall	Post	–	3 287 619	14 031 601	–	17 319 220
	Non-post	1 499 689	7 557 738	38 911 240	3 757 117	51 725 784
Total		1 499 689	10 845 357	52 942 841	3 757 117	69 045 004

Table 3
Percentage of annual budget expended as at 1 November 2020

		Chambers	Office of the Prosecutor	Registry	<i>Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance of former staff of both Tribunals</i>	Mechanism
Arusha	Post	–	71.3	79.9	–	78.1
	Non-post	87.9	96.2	70.5	157.5	84.2
Subtotal		87.9	83.0	74.5	157.5	81.7
The Hague	Post	–	82.0	81.8	–	81.8
	Non-post	70.8	79.3	82.7	–	77.3
Subtotal		70.8	79.7	82.6	–	77.9
New York	Post	–	–	99.5	–	99.5
	Non-post	–	–	-	–	-
Subtotal		–	–	100.4	–	100.4
Office of Internal Oversight Services	Post	–	–	71.4	–	71.4
	Non-post	–	–	61.3	–	61.3
Subtotal		–	–	68.5	–	68.5
Overall	Post	–	74.6	80.6	–	79.4
	Non-post	72.6	84.4	78.9	–	79.5
Total		72.6	81.2	79.4	78.8	79.4

Enclosure III

International Residual Mechanism for Criminal Tribunals: status of trial and appeal proceedings, 2020–2021

(On the basis of information available as at 15 November 2020 and subject to change)

	2020												2021											
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
	Current activity in Arusha																							
Turinabo et al. (contempt)*	Pretrial										Trial		Delivery of judgment	Appeal										
	Current activity in The Hague																							
Kabuga (trial)**												Pretrial											Trial	
Mladić (appeal)***	Appeal											Delivery of judgment												
Štanišić and Simatović (trial)****	Trial											Delivery of judgment	Appeal											

	Pretrial
	Trial
	Appeal
	Delivery of judgment

- * The trial commenced on 22 October 2020. The trial judgment is expected to be delivered in May 2021. Subject to the outcome of the trial, an appeal may follow.
- ** Following the single judge's order of 21 October 2020, the accused was temporarily transferred to The Hague on 26 October 2020 for a detailed medical assessment. The initial appearance took place in The Hague on 11 November 2020.
- *** The appeal is expected to be concluded and the appeal judgment delivered in May 2021.
- **** The evidentiary hearings concluded in October 2020 and the filing of final briefs is expected to conclude in February 2021. Closing arguments are expected in March 2021 and the trial judgment is expected in May 2021. Subject to the outcome of the trial, an appeal may follow.

Annex II

**Progress report of the Prosecutor of the International Residual
Mechanism for Criminal Tribunals, Serge Brammertz, for the
period from 17 May to 15 November 2020**

Contents

	<i>Page</i>
I. Overview	44
II. Trials and appeals	45
A. Update on the progress of trials	45
1. <i>Kabuga</i>	45
2. <i>Turinabo et al.</i>	46
3. <i>Stanišić and Simatović</i>	46
B. Update on the progress of appeals	47
<i>Mladić</i>	47
C. Other proceedings	47
D. Cooperation with the Office of the Prosecutor	48
E. Conditional early release	48
III. Fugitives	49
IV. Assistance to national war crimes prosecutions	50
A. War crimes committed in Rwanda	50
1. Completion strategy of the International Criminal Tribunal for Rwanda	50
2. Genocide denial	51
3. Cases referred to France	52
4. Cases referred to Rwanda	52
B. War crimes committed in the former Yugoslavia	53
1. Completion strategy of the International Tribunal for the Former Yugoslavia	53
2. Denial and glorification	53
3. Regional judicial cooperation	54
4. Registration of judgments	55
5. Bosnia and Herzegovina	56
6. Croatia	57
7. Montenegro	58
8. Serbia	59
C. Access to information and evidence	61
D. Capacity-building	62
E. Missing persons	62

V.	Other residual functions	63
VI.	Management	63
	A. Overview	63
	B. COVID-19 pandemic response	64
	C. Audit reports	64
VII.	Conclusion	65

I. Overview

1. The Prosecutor of the International Residual Mechanism for Criminal Tribunals submits the seventeenth progress report pursuant to Security Council resolution [1966 \(2010\)](#), covering developments between 17 May and 15 November 2020.
2. During the reporting period, the Office of the Prosecutor continued to focus on its three priorities: (a) expeditiously completing trials and appeals; (b) locating and arresting the remaining fugitives indicted by the International Criminal Tribunal for Rwanda; and (c) assisting national jurisdictions prosecuting international crimes committed in Rwanda and the former Yugoslavia. The Office relies on the full cooperation of States to carry out its mandate successfully in those areas.
3. The most notable development for the Office of the Prosecutor during the reporting period was the resumption of courtroom proceedings in August. The Office presented its oral appellate submissions in the *Mladić* case in support of its two grounds of appeal and in response to the Defence's grounds of appeal. In the *Stanišić and Simatović* retrial, the Prosecution efficiently cross-examined the final Defence witnesses and is now focused on the preparation of its final written and oral arguments. At the Arusha branch, the Prosecution made its opening arguments in the *Turinabo et al.* case and commenced the presentation of its case-in-chief. The Office further commenced pretrial activities in the *Kabuga* case, including participating in the initial appearance of the accused and commencing subsequent steps. The Office rapidly established an investigation team in Kigali, and efforts are well under way to contact witnesses and confirm evidence for the case.
4. Following the arrest of Félicien Kabuga on 16 May 2020 and the public confirmation of the death of Augustin Bizimana on 22 May 2020, the Office of the Prosecutor concentrated its efforts on accounting for the remaining six fugitives indicted by the International Criminal Tribunal for Rwanda. The highest priority target is Protais Mpiranya, former commander of the Presidential Guard of the Rwandan Armed Forces, while the Office continues to actively pursue the other five fugitives, Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Ryandikayo and Charles Sikubwabo. The Office has viable leads on the location of all six fugitives and is actively working to obtain the necessary cooperation from Member States to confirm their whereabouts and take the necessary action. The Office underscores that – as Kabuga's arrest has again demonstrated – full, timely and effective cooperation from Member States is necessary to achieve further progress and meet the victims' and survivors' legitimate expectations for justice.
5. Regarding national prosecutions of war crimes committed in Rwanda, the Office of the Prosecutor, within existing resources, continued to monitor cases referred to the Rwandan and the French authorities, provide national justice sectors with access to the Mechanism's collection of evidence and support national accountability for those crimes. More justice regarding crimes committed during the Rwandan genocide is still urgently needed, and a large number of suspects have yet to be prosecuted. The Office calls upon Member States to continue to provide full support to the accountability process, whether in the courtrooms of the Mechanism, Rwanda or third-party States.
6. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Office of the Prosecutor continued to support the further implementation of the completion strategy of the International Tribunal for the Former Yugoslavia. Following the closure of the Tribunal, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. At the request of Governments and stakeholders in the region, the Office continued to provide vital assistance during the reporting period, in particular by

providing access to its evidence and expertise. In a notable development, the Office handed over to the Montenegrin authorities, as requested, an investigative dossier involving more than 15 Montenegrins suspected of war crimes.

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

8. The Office of the Prosecutor would like to highlight the successful work undertaken together by all organs of the Mechanism to enable the resumption of courtroom proceedings in August 2020, only five months after the outbreak of the COVID-19 pandemic required the Mechanism to move to remote working arrangements. That result demonstrates again the Mechanism's commitment to completing its remaining trials and appeals as expeditiously as possible, consistent with the Security Council's expectations. The Office of the Prosecutor expresses its appreciation to all Mechanism staff and judges, who have continued to fully perform their responsibilities despite significant challenges.

II. Trials and appeals

9. During the reporting period, the Office of the Prosecutor worked on one case at pretrial (*Kabuga*), two trials (*Turinabo et al.* and *Stanišić and Simatović*) and one appeal proceeding (*Mladić*).

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

A. Update on the progress of trials

1. *Kabuga*

11. On 16 May 2020, Félicien Kabuga was arrested in Paris. He was transferred to the Mechanism's custody on 26 October 2020. The initial appearance was held on 11 November 2020 in The Hague, where he has been temporarily transferred pending further judicial decision.

12. Following Kabuga's arrest, the Office of the Prosecutor rapidly established a pretrial team, principally based in Kigali, to move forward the pretrial proceedings in the case, in line with the Security Council's expectation that the Mechanism would quickly respond in the event of a fugitive arrest. The Prosecution is in the process of recontacting witnesses, reviewing the large collection of evidence relevant to the case and preparing to carry out its responsibilities following the initial appearance of the accused. The Prosecution has further commenced a review of the operative indictment with a view to clarifying its legal and factual allegations underpinning the accused's individual criminal responsibility, as well as streamlining the scope of the criminal conduct alleged based on the most recent jurisprudence. The Prosecution is committed to an efficient and expeditious presentation of its case, including by utilizing tools such as judicial notice of adjudicated facts and facts of common knowledge to reduce the amount of evidence that must be adduced through live witness testimony during the trial.

13. The Prosecution is facing an immense workload, which it is making every effort to manage through the flexible redeployment of resources from throughout the Office in accordance with its "one office" policy. Unfortunately, the COVID-19 pandemic is directly hindering the Prosecution's work owing to, inter alia, limitations on the availability of witnesses and travel.

2. *Turinabo et al.*

14. On 24 August 2018, the single judge confirmed the indictment in the case *Prosecutor v. Turinabo et al.* and issued warrants of arrest. On 9 August 2019, the Prosecutor submitted an indictment against Augustin Ngirabatware, which was confirmed on 10 October 2019. On 10 December 2019, the single judge granted the Prosecution's motion requesting the joinder of the *Turinabo et al.* case with the *Ngirabatware* case and ordered that the cases be joined.

15. The indictments charge five accused – Augustin Ngirabatware, Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma – with contempt of court in an effort to overturn Augustin Ngirabatware's conviction. It is alleged that they directly, and through intermediaries, interfered with witnesses who had given evidence in Ngirabatware's trial and interfered with witnesses in the related *Ngirabatware* review proceeding. In addition, the indictment charges Dick Prudence Munyeshuli, an investigator on Ngirabatware's former Defence team, Ngirabatware and Turinabo with violation of court orders protecting witnesses.

16. Following delays due to the COVID-19 pandemic, the trial in the case commenced on 22 October 2020 with opening statements. The first Prosecution witness was heard on 26 October 2020. As at the end of the reporting period, the Prosecution had completed the presentation of five out of nine witnesses, utilizing 9.5 hours for its direct examination, while the Defence teams utilized 24 hours for cross-examination. Consistent with the directions of the single judge, the Prosecution has streamlined the presentation of its evidence by reducing the number of witnesses it intends to call and utilizing tools such as rules 110 and 111 to limit the in-court time required for witness testimony. It is currently anticipated that the Prosecution case-in-chief will be completed by the end of the year.

17. From the date of arrest until the end of the reporting period, the Defence teams made 470 filings, while the Prosecution submitted 295 filings. There were 189 orders and decisions by the single judge, 25 orders and decisions by the Appeals Chamber and 39 orders and decisions by the President. There were also 119 filings by the Registry. The Prosecution responded to 392 items of correspondence from the Defence teams and disclosed more than 2 terabytes of material. It is expected that litigation will remain at a high level throughout the trial phase of the case.

3. *Stanišić and Simatović*

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

19. The Prosecution completed the presentation of its case-in-chief on 21 February 2019. On 18 June, the Defence phase of the proceedings commenced with the presentation of evidence by the *Stanišić* Defence. The *Stanišić* Defence called its last witness on 17 October 2019, and the *Simatović* Defence began the presentation of its evidence on 12 November. Owing to the COVID-19 pandemic, the trial proceedings were suspended in March 2020. On 1 September 2020, courtroom proceedings resumed with the final *Simatović* Defence witnesses, and witness testimony in the case was concluded on 8 October. The *Simatović* Defence filed its final documentary evidence motions on 13 November.

20. During the reporting period, the Prosecution cross-examined five witnesses in court. The Prosecution also litigated one motion for the admission of evidence, is

responding to another 10 motions filed by the Defence teams and litigated another motion related to the case. Notably, as at the end of the reporting period, the Prosecution was responding to a voluminous bar table motion filed by the *Simatović* Defence seeking the admission of 640 documents, having already responded to similar motions from the *Stanišić* Defence that sought the admission of 902 documents totalling more than 20,000 pages of evidence. The Prosecution continues to endeavour to carry out all its responsibilities as efficiently as possible.

21. Final written submissions are scheduled to be filed by 26 February 2021. It is currently anticipated that closing oral arguments will be heard before the end of March 2021. As previously reported, the Prosecution utilized the postponement of court hearings due to the COVID-19 pandemic to advance its preparations for closing submissions. The Office of the Prosecutor will adhere to the court-imposed deadlines for the completion of proceedings in the case.

B. Update on the progress of appeals

Mladić

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

23. On 25 and 26 August 2020, the Prosecution presented its oral arguments in support of its two grounds of appeal and in response to the Defence's nine grounds of appeal. The hearing marked the culmination of months of preparation that were pushed back when the scheduled hearing dates of 17 and 18 March 2020 and 16 and 17 June 2020 were postponed. During the reporting period, the Office dealt with 22 filings submitted by the Defence, primarily addressing the timing and conduct of the appeal hearing.

C. Other proceedings

24. At the order of a single judge of the Mechanism, during the reporting period, the Office of the Prosecutor continued to conduct one investigation into alleged contempt crimes under the Mechanism's jurisdiction. The Office is complying with directions from the court and submitting regular progress reports as directed. Owing to delays as a result of the COVID-19 pandemic, as well as delays in receiving responses to requests for assistance submitted to Serbia, the Office anticipates that the investigation will be completed early next year. In addition, the Office continues to receive and monitor information concerning suspected contempt crimes within the Mechanism's jurisdiction and take appropriate steps in accordance with the Prosecutor's mandate under article 14 of the statute of the Mechanism. During the reporting period, the Office opened one investigation, having concluded that there were reasonable grounds to believe that contempt of court had been committed. Utilizing the "one office" policy, the Office of the Prosecutor has absorbed the related requirements for the investigations within existing resources.

D. Cooperation with the Office of the Prosecutor

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

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

27. The Office is grateful for the support provided to date by Rwanda, particularly by the Office of the Prosecutor General and the heads of law enforcement agencies. The continued cooperation and assistance from the Rwandan authorities has been instrumental in the Prosecution's efforts in the *Turinabo et al.* contempt case, and the Office is already receiving similar cooperation in relation to the *Kabuga* case.

28. In relation to Serbia, there have been some significant delays in responses to requests for assistance from the Office of the Prosecutor in relation to the *Stanišić and Simatović* case and court-ordered investigations. The Office trusts that there will be meaningful improvements in the expeditiousness of responses to its requests. The timely provision of such assistance is necessary to prevent any further delays in the ongoing proceedings.

29. Cooperation and support from States outside Rwanda and the former Yugoslavia, as well as from international organizations, remain integral to the successful completion of Mechanism activities. The Office of the Prosecutor again acknowledges the support it received during the reporting period from Member States and international organizations, including the United Nations and its agencies, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and the International Criminal Police Organization. The Office would like to highlight, in particular, the important assistance provided by the authorities in the Netherlands and the United Kingdom in relation to proceedings at the Arusha branch.

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

E. Conditional early release

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

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

III. Fugitives

33. With the arrest of Félicien Kabuga and the confirmation of the death of Augustin Bizimana on 16 and 22 May 2020, respectively, the Office of the Prosecutor has accounted for two of the three major fugitives indicted by the International Criminal Tribunal for Rwanda. One major fugitive – Protais Mpiranya, former commander of the Presidential Guard of the Rwandan Armed Forces – and five other fugitives – Fulgence Kayishema, Phénéas Munyarugarama, Aloys Ndimbati, Ryandikayo and Charles Sikubwabo – now remain. The Office has viable leads and is implementing strategies for each of the six.

34. The Office is actively working to confirm the reported deaths of several fugitives. The work has been delayed by the COVID-19 pandemic, but the Office hopes that in the next reporting period it will conduct exhumation and DNA testing to verify information received in the course of investigations. As with the confirmation of Bizimana's death, key partner institutions in the Netherlands, Rwanda, the United States of America and elsewhere have offered assistance in the process, for which the Office remains grateful.

35. With respect to those fugitives who the Office believes are still at large, the Office is actively pursuing promising lines of inquiry, narrowing down possible locations and preparing arrest plans. Some Member States are providing essential support for those efforts and rapidly responding to requests for assistance, including with respect to financial, telecommunications and travel matters. The Office appreciates that the arrest of Kabuga has spurred some States to further strengthen their cooperation with the Mechanism.

36. At the same time, the Office is compelled to note that, despite progress in important areas, it has otherwise struggled to obtain the necessary cooperation from a number of relevant Member States, which has significantly hindered its efforts to track the remaining fugitives. The Office has discussed those challenges in the Mechanism's previous reports, including the third review report (S/2020/309, annex). Currently, 13 requests for assistance from the Office in relation to the fugitives are pending with the authorities of five important Member States in Central, Eastern and Southern Africa. One such request for assistance, which is of great importance to the search for Protais Mpiranya, has been pending for two years despite extensive outreach by the Office to obtain a response.

37. To resolve those challenges, the Office has been seeking to engage directly with relevant authorities. With respect to South Africa, recent discussions produced agreement that the response of 11 May 2020 by the South African authorities to the Mechanism's urgent request for assistance of 9 December 2019 had been insufficient, and that members of the Office's tracking team should visit South Africa in order to obtain all the information requested. The Office is pleased to report that the visit in early November was productive. The Office discussed important matters with representatives of the relevant authorities. The South African authorities further

informed the Office that they were finally working to provide the requested information as soon as possible. As there continue to be important lines of inquiry and leads in relation to South Africa, cooperation from the South African authorities will continue to be essential. The Prosecutor and the tracking team are planning additional missions in the near future – as the pandemic situation permits – to Harare, Kampala, Nairobi and the capitals of other States in the region to seek support and resolve outstanding cooperation issues.

38. The arrest of Félicien Kabuga after he evaded justice for nearly 23 years should encourage all Member States to provide their full support and cooperation to the Office of the Prosecutor. It proves that, when international and national authorities work together, fugitives such as Kabuga can be located and arrested. The Office also reiterates that, under the War Crimes Rewards Program of the United States, individuals who provide information leading to the arrest of a fugitive may be eligible for a monetary reward in an amount up to \$5 million.

IV. Assistance to national war crimes prosecutions

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

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

A. War crimes committed in Rwanda

1. Completion strategy of the International Criminal Tribunal for Rwanda

41. The closure of the International Criminal Tribunal for Rwanda was not an end to the justice process for the victims of the 1994 genocide against the Tutsi in Rwanda. All those who committed crimes during the Rwandan genocide must be held accountable. The Mechanism and national courts are now responsible for continuing the work of the Tribunal and ensuring the full implementation of its completion strategy by bringing more perpetrators to justice.

42. The Office of the Prosecutor is fully committed to undertaking all efforts to locate and arrest the remaining six fugitives indicted by the International Criminal Tribunal for Rwanda. As reported above, the Office is generating and pursuing active leads. Full cooperation and support from Member States are urgently needed to enable the Office to achieve results. The Mechanism further continues to monitor the four ongoing cases referred by the Tribunal to the national courts of France and Rwanda under rule 11 bis of the Rules of Procedure and Evidence of the Tribunal. The case against Laurent Bucyibaruta was referred to France in 2007. Jean Uwinkindi, Bernard

Munyagishari and Ladislas Ntaganzwa were transferred to Rwanda in 2012, 2013 and 2016, respectively.

43. At the same time, national authorities now have primary responsibility for the continued implementation of the completion strategy of the International Criminal Tribunal for Rwanda. The Prosecutor General of Rwanda is currently searching for hundreds of fugitives. Courts in countries around the world continue to process cases of crimes committed during the Rwandan genocide.

44. The arrest of Félicien Kabuga has brought greater attention to efforts in European countries to enforce “no safe haven” policies and investigate allegations against suspects present in their territories. In late September 2020, the Belgian authorities arrested three Rwandan nationals as part of an ongoing investigation into alleged crimes committed by the suspects during the genocide. Similarly, on 26 October 2020, the Dutch authorities arrested a Rwandan national pursuant to an arrest warrant and extradition request issued by the Rwandan authorities, following the execution of similar requests last year. The arrests are consistent with recent efforts by several European countries to establish an international investigative task force focusing on Rwandan genocide suspects present in Europe. Those developments demonstrate both the need for further justice and the positive international legal cooperation between the Rwandan and the European authorities.

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

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

2. Genocide denial

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

48. However, genocide denial continues today. Efforts to minimize the scale of the death and destruction or detract attention from the judicially established facts of the genocide are intolerable and unacceptable. There are no other facts or circumstances that in any way alter the truth that, in the course of just 100 days in Rwanda, hundreds of thousands of innocent people were senselessly targeted, murdered, tortured, raped and forced to flee their homes because they were Tutsi. Genocide ideology continues

to present clear risks to international peace and security. Ideologies of discrimination, division and hate are promoting conflict and crimes in places around the globe.

49. The Office of the Prosecutor of the Mechanism firmly rejects genocide denial and is committed to promoting education and remembrance as key tools in the fight against genocide ideology. In such efforts, the Office will vigorously investigate and prosecute those who interfere with witnesses with the aim of falsely undermining the established facts of the genocide committed in Rwanda. Such contempt of court is a form of genocide denial and must be opposed.

3. Cases referred to France

50. The *Bucyibaruta* case has not significantly progressed since previous reports, and trial proceedings have not yet commenced. Laurent Bucyibaruta, prefect of Gikongoro Prefecture, was indicted by the International Criminal Tribunal for Rwanda in June 2005 on six counts, namely, direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. The indictment was referred by the Tribunal to France for trial on 20 November 2007. The investigation by the French authorities has been completed. On 4 October 2018, the Public Prosecutor filed his final submission, asking for partial discharge and transfer to the criminal court and requesting the investigating judge to order an indictment for genocide, complicity in genocide and complicity in crimes against humanity. On 24 December 2018, the judge issued a decision that the case should proceed to trial, which was appealed by the accused and civil parties. The decision on that appeal is expected to be delivered on 21 January 2021, following which a final appeal to the Court of Cassation may be filed.

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

4. Cases referred to Rwanda

52. Jean Uwinkindi, a pastor in the Pentecostal Church, was indicted by the International Criminal Tribunal for Rwanda in September 2001 on three counts, namely, genocide, conspiracy to commit genocide and extermination as a crime against humanity. He was transferred to Rwanda for trial on 19 April 2012, and the trial commenced on 14 May 2012. On 30 December 2015, the High Court of Rwanda issued its trial judgment, convicting Uwinkindi and sentencing him to life imprisonment. The appeal judgment in the case is expected to be announced before the end of 2020.

53. Bernard Munyagishari, a local leader in the Mouvement républicain national pour la démocratie et le développement, was indicted by the International Criminal Tribunal for Rwanda in September 2005 on five counts, namely, conspiracy to commit genocide, genocide, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 24 July 2013. The High Court issued its trial judgment on 20 April 2017, convicting Munyagishari of genocide and murder as a crime against humanity, acquitting him of rape as a crime against humanity and sentencing him to life imprisonment. As at the end of the reporting period, Munyagishari was seeking to change his plea to guilty, which is currently under judicial consideration.

54. Ladislas Ntaganzwa, mayor of Nyakizu commune, was indicted by the International Criminal Tribunal for Rwanda in June 1996. In the amended indictment, he was charged with five counts, namely, genocide, direct and public incitement to

commit genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 20 March 2016. The High Court issued its trial judgment on 28 May 2020, convicting Ntaganzwa of genocide and the crimes against humanity of extermination, rape and murder, acquitting him of incitement to commit genocide and sentencing him to life imprisonment. Appeal proceedings are expected to commence shortly.

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

B. War crimes committed in the former Yugoslavia

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

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

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

2. Denial and glorification

58. The Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism have regularly reported that the denial of crimes and the non-acceptance of the facts established in the judgments of the Tribunal are widespread throughout the region of the former Yugoslavia. Convicted war criminals are often glorified as heroes. Students in different countries, including within Bosnia and Herzegovina itself, are taught widely different and irreconcilable versions of the recent past. The Office of the Prosecutor of the Mechanism has expressed its grave concern in that regard and called for urgent attention to those issues. Acceptance of the truth of the recent past is the foundation for reconciliation and healing between communities in the former Yugoslavia.

59. The year 2020 marks the twenty-fifth anniversaries of many notable crimes and events that occurred during the conflicts in the former Yugoslavia, including the shelling of Tuzla on 25 May 1995, the Srebrenica genocide, Operation Storm, the shelling of the Markale market in Sarajevo on 28 August 1995 and the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina.

60. Those anniversaries should be solemn moments to commemorate the victims on all sides of the conflicts. They are also an opportunity to recall the devastating humanitarian consequences of the conflicts for all the peoples of the former Yugoslavia, including the massive displacement of civilians. Victims from all sides deserve to have their suffering recognized and acknowledged. Societies should speak

with one voice to condemn those responsible for war crimes, crimes against humanity and genocide.

61. Unfortunately, as the Office of the Prosecutor has reported regularly, major anniversaries are more likely to be marked by the denial of crimes and the glorification of convicted war criminals than empathy for the victims. Too often, the narratives in regard to such events promoted by politicians and public officials throughout the region drive a wedge between societies, rather than bringing them together through reconciliation.

62. The Office of the Prosecutor calls upon all officials and public figures in the region to act responsibly and put the victims and civilian suffering at the forefront in all activities marking anniversaries of crimes and events that occurred during the conflicts in the former Yugoslavia. They should publicly condemn the denial of crimes and the glorification of war criminals, rather than supporting them with public rhetoric, divisive actions and funds. A break with the rhetoric of the past is long overdue, and leadership in favour of reconciliation and peacebuilding is urgently needed.

3. Regional judicial cooperation

63. Judicial cooperation among the countries of the former Yugoslavia is essential to ensuring that those responsible for war crimes are held accountable. Many suspects are not present in the territory in which they are alleged to have committed the crimes. Yet Governments in the region refuse to extradite their citizens on war crimes charges, despite regularly extraditing persons accused of committing other serious crimes, such as organized crime, corruption and economic crimes. As reported in the Prosecutor's thirteenth progress report (S/2018/1033, annex II), regional judicial cooperation in war crimes matters among the countries of the former Yugoslavia is at its lowest level in years and faces immense challenges. Decisive action is needed to reverse the current negative trends and ensure that war criminals do not find safe haven in neighbouring countries. Solutions are available and well known; the commitment and willingness to use them are now required.

64. The Office of the Prosecutor can report that there has been some progress in regard to the transfer of some confirmed indictments against senior- and mid-level accused from Bosnia and Herzegovina to Croatia and Serbia, respectively. As previously noted, the Office facilitated an agreement between the chief war crimes prosecutors to commence the transfer, through mutual legal assistance, of an initial set of four such indictments that had been confirmed by the Court of Bosnia and Herzegovina, two of which were transferred to Croatia and two of which were transferred to Serbia. In Serbia, an indictment was issued during the reporting period concerning one transferred file, while an investigation is ongoing in the other. In Croatia, investigations were initiated during the reporting period for both transferred files. The Office hopes to be able to report continued progress in the upcoming period on the four files.

65. Those developments have clearly demonstrated that regional judicial cooperation is possible with respect to cases against senior- and mid-level accused. With that positive example, national prosecutors in the region can now begin to address the large backlog of such cases. It is still the case that many senior- and mid-level suspects enjoy impunity because of ineffective regional judicial cooperation. As just one example, three senior- and mid-level officials under indictment in Bosnia and Herzegovina for crimes committed in the Srebrenica genocide, namely Tomislav Kovač, Radoslav Janković and Svetozar Kosorić, are residing in Serbia. The indictments are supported by extensive evidence and directly relate to prosecutions at the International Tribunal for the Former Yugoslavia and the

Court of Bosnia and Herzegovina. Additional suspects residing in Serbia are under investigation in Bosnia and Herzegovina. The Office will work with the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of Serbia to develop and implement a plan for the transfer of the cases. The Office will further continue to engage with all prosecution offices in the region to ensure that the progress made over the past year continues.

66. Even though there are positive developments, many issues previously identified in relation to regional judicial cooperation in war crimes matters remain unresolved. There has been no progress in the matter of Novak Djukić, which was covered extensively in the Prosecutor's fifteenth progress report (S/2019/888, annex II). In October 2020, Bosnia and Herzegovina requested Serbia to enforce the sentence of another fugitive convict, Dragomir Kezunović, who participated in the murder of 28 civilians. Judicial cooperation between Serbia and Kosovo¹ in war crimes matters has not improved and creates an undeniable barrier to justice. Long-standing negotiations between Croatia and Serbia to establish an agreement on a framework for war crimes cases, previously reported in the Prosecutor's fourteenth progress report (S/2019/417, annex II), remain at a standstill. The Office of the Prosecutor urges prosecution offices, judiciaries and justice ministries throughout the former Yugoslavia to urgently resolve these and other matters and get regional judicial cooperation in war crimes matters on the right track.

4. Registration of judgments

67. In its previous reports, the Office of the Prosecutor has touched upon the need for the countries in the former Yugoslavia to register criminal convictions entered by the International Tribunal for the Former Yugoslavia and the Mechanism into domestic criminal records. This matter is vitally important for the rule of law, reconciliation and stability in the former Yugoslavia, as well as a fundamental issue of cooperation with the Mechanism.

68. Today, in the countries of the former Yugoslavia, while the domestic records of ordinary criminals reflect their crimes, the domestic records of most international war criminals do not. From the perspective of domestic legal orders, it is therefore almost as if the crimes never happened and the perpetrators were never convicted. The registration of international criminal judgments in domestic criminal records is important in both principle and practice. Respect for the rule of law entails giving effect to judicial decisions, including, in particular, criminal convictions. Understanding the need to address the situation, the Office ensured that the Registry formally transmitted all criminal convictions of the Tribunal and the Mechanism to the countries in the region and further opened discussions with national authorities to move the issue forward.

69. To date, some important progress has been made, but much more remains to be done. The most notable advances have been in Croatia, where the authorities have confirmed that many Tribunal judgments have been registered in its domestic criminal records, including the convictions entered in the *Prlić et al.* case. However, in both Bosnia and Herzegovina and Serbia, the authorities have informed the Office that there is no domestic legal basis for registering international criminal convictions in domestic criminal records. The Ministry of Justice of Bosnia and Herzegovina has reported that it is actively pursuing the matter, and a working group has been established. Discussions are ongoing concerning modalities for transmitting the

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

Tribunal judgments to local authorities. The Ministry of Justice of Serbia has not yet informed the Office of the steps that it is taking to address the issue.

70. The Office of the Prosecutor strongly encourages all countries of the former Yugoslavia to swiftly resolve any national obstacles and ensure that the convictions entered by the Tribunal or the Mechanism against their nationals are registered in domestic criminal records. The Office hopes to be able to report in the near future that this matter has been fully addressed.

5. Bosnia and Herzegovina

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

72. During the reporting period, the Prosecutor's Office of Bosnia and Herzegovina filed four indictments. The cases meet the complexity criteria to be prosecuted at the State level, although it is noted that two of them cannot be prosecuted in Bosnia and Herzegovina because the accused are known to be residing elsewhere. The limited number of new indictments filed can be partially attributed to the COVID-19 pandemic. The number of new cases initiated has been declining over the previous few reporting periods, which is of concern. The Office of the Prosecutor of the Mechanism has raised with the Prosecutor's Office of Bosnia and Herzegovina the need to more swiftly complete investigations in complex cases, which should result in additional indictments in the next reporting period. The Office of the Prosecutor of the Mechanism stands ready to provide assistance and work with the Chief Prosecutor to ensure that her Office meets the public's high expectations for war crimes justice.

73. The major developments during the reporting period in relation to war crimes justice in Bosnia and Herzegovina were the adoption of the revised national war crimes strategy and the publication of the expert review report by Judge Joanna Korner, formerly a Senior Trial Attorney in the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia.

74. The revised national war crimes strategy provides the framework for intensified efforts to achieve greater justice for war crimes. For the Prosecutor's Office of Bosnia and Herzegovina, the revised strategy further enshrines its focus on the most complex remaining cases, involving senior- and mid-level accused and/or grave crimes such as sexual violence. There are between 200 and 300 such cases, while less complex cases will be transferred to lower courts. The transfer of less complex cases will be an important indicator for the implementation of the revised strategy, and the Prosecutor's Office of Bosnia and Herzegovina should swiftly and transparently carry out the transfer process. The Office of the Prosecutor of the Mechanism will continue to assist the Prosecutor's Office of Bosnia and Herzegovina in successfully processing the most complex cases, as well as finalizing the issue of the outstanding so-called "rules of the road" cases that were reviewed by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia.

75. The expert review report by Judge Joanna Korner provides a comprehensive and thorough analysis of challenges faced by the Prosecutor's Office of Bosnia and Herzegovina and identifies key areas in which its work can be strengthened. A number of those challenges were identified in previous reports, while additional issues have now been identified. Of particular importance are issues of strategic management, the

organization of prosecutors into regional teams, and practices to align the work of prosecutors with the national war crimes strategy. Those topics take on increasing importance as the Prosecutor's Office of Bosnia and Herzegovina more fully dedicates its resources to the investigation and prosecution of senior- and mid-level suspects. The Chief Prosecutor of Bosnia and Herzegovina welcomed the expert review report. In further discussions with the Office of the Prosecutor of the Mechanism, she expressed her belief that her Office could best achieve progress on those issues by using as a model the regulations and practices implemented by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism. The Office of the Prosecutor of the Mechanism agreed to partner with and support the Prosecutor's Office of Bosnia and Herzegovina in that area, including in relation to implementing the recommendations in the report.

76. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, significant results have been achieved so far in accountability for war crimes in Bosnia and Herzegovina, but it is clear that much more remains to be done. There is a strong foundation for continued justice in Bosnia and Herzegovina. The Office of the Prosecutor of the Mechanism and the Prosecutor's Office of Bosnia and Herzegovina continue to strengthen their cooperation. However, there remains an enormous backlog of cases, and efforts still need to be further intensified. The Office of the Prosecutor of the Mechanism encourages further progress to prevent any regression and will continue to work with the Prosecutor's Office of Bosnia and Herzegovina and other prosecution offices in Bosnia and Herzegovina. The Office further encourages the Prosecutor's Office of Bosnia and Herzegovina to continue to strengthen its engagement with the victim community, including in relation to the so-called "rules of the road" files.

6. Croatia

77. After several years of stalemate, developments during the reporting period may suggest a positive change in approach by the Croatian authorities, which have long placed barriers on regional judicial cooperation in war crimes matters. The Office of the Prosecutor has reported for several years that the Government of Croatia, by failing to withdraw its 2015 conclusion directing the Ministry of Justice not to provide judicial cooperation in certain war crimes cases, was politically interfering in the justice process. As a result, a large and continually growing number of war crimes cases against former members of Croatian and Bosnian Croat forces have been frozen. In particular, the Croatian authorities refused to accept indictments against Croatian nationals transferred from Bosnia and Herzegovina, enabling the accused to enjoy safe haven in Croatia, and further blocked progress in investigations of other Croatian nationals by refusing to process requests for judicial cooperation. The blocked cases included five category II cases and other complex cases involving horrific war crimes.

78. After five years of sustained engagement, the Office of the Prosecutor of the Mechanism can report that a positive step has been taken towards the resumption of regional judicial cooperation in war crimes matters between the Croatian authorities and Bosnia and Herzegovina. During the reporting period, the State Attorney's Office of Croatia finally opened investigations in two of the category II cases that have been pending since 2015. Both cases concern serious crimes committed by Bosnian Croat forces against Bosnian Muslim and Bosnian Serb civilians and are supported by extensive compelling evidence, and the suspects are living openly in Croatia. The Office of the Prosecutor welcomes the steps taken and calls upon the Croatian authorities to build on that progress by opening an investigation in the remaining category II case it has received, facilitating another pending category II case and working with their Bosnian counterparts to resolve the more than 50 other cases that

have been blocked over the past five years. While the Government of Croatia has not yet withdrawn its 2015 conclusion, the Office of the Prosecutor trusts that it will not have further effect or be relied upon to refuse requests for regional judicial cooperation.

79. Separately, the *Glavaš* case, a category II case previously referred by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to the State Attorney's Office of Croatia, remains at retrial, following the earlier revocation of a convicting judgment by the Supreme Court of Croatia.

80. During the reporting period, war crimes indictments brought by the State Attorney's Office of Croatia continued to predominantly, if not exclusively, concern Serb perpetrators accused of committing crimes against Croatian victims and continued to be largely conducted in absentia. The Office of the Prosecutor of the Mechanism continues to engage with the Ministry of Justice of Croatia and the State Attorney's Office to enable indictments against unavailable accused to be transferred to the country in which the accused is present and thereby obviate the need for in absentia proceedings. That challenge is particularly salient to cooperation in war crimes justice between Croatia and Serbia. As reported above and in previous reports, negotiations between the Croatian and the Serbian authorities to establish a framework for cooperation in war crimes cases remain at a standstill. The Croatian authorities have further consistently reported that they are unable to transfer cases to the Serbian authorities because Serbia will not apply the doctrine of command responsibility in war crimes cases. The Office of the Prosecutor will continue to engage to find solutions to the stalemate.

81. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, it is clear that more justice for war crimes is urgently needed in Croatia. Given that fewer cases are being prosecuted each year, significant accountability gaps remain, particularly in relation to Croatian nationals who committed crimes in neighbouring countries and the responsibility of Croatian commanders for crimes committed by their subordinates. Victims have high expectations for justice that the Croatian authorities will need to meet. The Office of the Prosecutor of the Mechanism has continued to offer its support to the State Attorney's Office of Croatia in terms of training, capacity-building and assistance on concrete cases. The State Attorney's Office faces a number of key challenges, including insufficient resources and staff, that will need to be overcome in order to achieve improved results. The State Attorney's Office may also benefit from exchanging experiences and knowledge with international prosecutors. The Office of the Prosecutor of the Mechanism stands ready to provide assistance to the State Attorney's Office as requested.

7. Montenegro

82. At the request of the Montenegrin authorities, the Office of the Prosecutor has, over the past few years, developed its assistance to Montenegro in relation to justice for war crimes committed in the conflicts in the former Yugoslavia. In January 2019, the Prosecutor visited Podgorica for discussions with the President, the Minister for Foreign Affairs, the Minister of Justice and the Supreme State Prosecutor of Montenegro. Also at the request of the Montenegrin authorities, the Office agreed to significantly strengthen cooperation in war crimes justice, including through the transfer of evidence, assistance on concrete cases, training and capacity-building. Subsequently, the Montenegrin authorities and the Office have had further positive engagement and will continue to work together closely to improve the processing of war crimes cases in Montenegro.

83. It is well understood that, to date, sufficient justice for war crimes has not been achieved in Montenegro. In the four major cases that have been completed, 28 accused were acquitted and only 4 were convicted. Those cases were marred by a number of problems, including insufficient evidence and the inconsistent application of international law. The Special State Prosecutor's Office, which is mandated to investigate and prosecute war crimes, faces significant challenges, in particular insufficient resources. At the same time, positive trends can be found, most notably the recently concluded *Zmajević* case, which was the first successful war crimes prosecution in Montenegro in a number of years. It is hoped that those trends represent the beginning of steps towards reinvigorating accountability for war crimes in Montenegro.

84. During the reporting period, and as previously agreed with the Montenegrin authorities, the Office of the Prosecutor of the Mechanism reviewed its evidence to identify Montenegrin citizens who are suspected of involvement in war crimes. The Office prepared and handed over to the Special State Prosecutor's Office an investigative dossier concerning more than 15 suspects. Many of those persons are suspected of horrific crimes of sexual violence, including sexual slavery, rape, torture, enforced prostitution and human trafficking for sexual exploitation, while others are suspected of the torture and execution of civilians. The Office of the Prosecutor of the Mechanism will continue to provide assistance to the Special State Prosecutor's Office to initiate investigations and prepare indictments for those suspects.

85. The handover of the investigative dossier is an important opportunity for the Montenegrin authorities to demonstrate their stated commitment to achieving more justice for war crimes in Montenegro. To take advantage of that opportunity, the Office of the Prosecutor of the Mechanism will provide legal and evidentiary support to the Special State Prosecutor's Office. However, additional support is needed from other stakeholders as well. The Special State Prosecutor's Office urgently needs additional capacity to process the transferred files, including an increase in human resources, as only one prosecutor is currently assigned to war crimes cases. In addition, the Office of the Prosecutor of the Mechanism has commenced discussions with the Montenegrin authorities with a view to introducing important reforms in domestic law to support war crimes justice. While the COVID-19 pandemic has prevented planned follow-up discussions, the Office and the Montenegrin authorities remain committed to working together on the reform efforts. In that regard, diplomatic partners, in particular the European Union, can play a decisive role in enabling the further steps needed to support increased war crimes justice in Montenegro, as it has done successfully elsewhere in the region.

86. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, war crimes justice in Montenegro is still just beginning. There has been almost no accountability for Montenegrin citizens who committed crimes during the conflicts. Nonetheless, the Montenegrin authorities accept that far more needs to be done and have requested the assistance of the Office of the Prosecutor to ensure that Montenegro can achieve much more justice and meet its commitments. The Office is committed to providing the support needed and hopes to be able to report in the future that war crimes justice in Montenegro has begun to produce concrete results.

8. Serbia

87. The Office of the Prosecutor of the Mechanism continued its engagement and cooperation with the Serbian authorities, including the Chief War Crimes Prosecutor of Serbia. The Serbian authorities reiterated their commitment to strengthening cooperation with the Office as a means to support the implementation of the national war crimes strategy and the prosecutorial strategy. The Serbian authorities acknowledge

that regional judicial cooperation in war crimes matters has not been satisfactory and that efforts need to be made to improve cooperation as an important element in regional relations. The Serbian authorities and the Office of the Prosecutor will continue to work together closely to expedite the processing of war crimes cases in Serbia.

88. During the reporting period, the Office of the War Crimes Prosecutor of Serbia filed two indictments. The limited number of new indictments filed can be partially attributed to the COVID-19 pandemic. In the five-year period since the adoption of the Serbian national war crimes strategy, the Office of the War Crimes Prosecutor has filed 27 indictments, nearly all of which concerned low-level perpetrators whose cases were transferred from Bosnia and Herzegovina. As at the end of the reporting period, the Office of the War Crimes Prosecutor also had 8 active investigations concerning known suspects and 11 investigations concerning unknown suspects. Judgments were issued in three cases during the reporting period, all of which resulted in convictions.

89. It was initially foreseen that the national war crimes strategy of Serbia, adopted in 2016, would continue until the end of 2020. On the basis of a review of the results, it is difficult to conclude that the goals of the strategy have been achieved in a meaningful measure. Five years later, only 27 new indictments have been filed. This represents a slower pace than in the period prior to the adoption of the strategy. Moreover, the overwhelming majority of cases since 2016 have been less complex, contrary to the aim of the strategy, which is to ensure that complex cases against senior- and mid-level suspects are prioritized. In the areas of trial efficiency, witness protection and elsewhere, it is not clear that there have been meaningful improvements in practice. While Serbia has improved its cooperation with Bosnia and Herzegovina in many respects, cooperation with Croatia and Kosovo remains largely blocked, while important matters such as the *Djukić* case have still not been resolved after five years. Finally, the issues of glorification of convicted war criminals and denial of crimes in Serbia have been regularly reported. Serious consideration should be given to the many factors that led to the achievement of fewer results than expected.

90. Nevertheless, the direct engagement by the Office of the Prosecutor of the Mechanism with the Office of the War Crimes Prosecutor of Serbia is having a meaningful impact, and developments during the reporting period indicate possibilities of getting war crimes justice in Serbia on the right track. As noted previously, the Office of the Prosecutor of the Mechanism has undertaken significant efforts to ensure the transfer of complex cases to Serbia. In the past year, three indictments in category II cases against three accused, currently in Serbia, for crimes committed in Bosnia and Herzegovina were transferred through mutual legal assistance to the Office of the War Crimes Prosecutor of Serbia. In addition, the Office of the Prosecutor of the Mechanism previously handed over to the Office of the War Crimes Prosecutor two complex case files involving senior-level accused for analysis and processing. During the reporting period, an indictment was filed in one category II case. Investigations are under way in the other four cases, and it is expected that indictments will be filed soon after the end of the reporting period. The Office of the Prosecutor of the Mechanism and the Office of the War Crimes Prosecutor of Serbia have been engaged in detailed technical discussions concerning all five cases, and the Office of the Prosecutor of the Mechanism has already provided a range of assistance, including case strategies, assistance in understanding the evidence available, the provision of additional evidence, and support with respect to witness protection. Those developments demonstrate the value of intensified cooperation between the Office of the Prosecutor of the Mechanism and the Office of the War Crimes Prosecutor of Serbia, and the fact that prosecutions of complex cases

involving senior- and mid-level officials for serious crimes are possible in Serbia. The further progress of the cases will be an important indicator for the future.

91. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, five years after the adoption of the national war crimes strategy, few results have been achieved and impunity for many well-established crimes continues in Serbia. Stakeholders rightly expect to see clear signs that war crimes justice in Serbia is heading in the right direction, and decisive steps are urgently needed to show that investments are bearing fruit and that there is the will to realize the commitments made in the national war crimes strategy. Important case files involving senior- and mid-level officials have been transferred to Serbia, and the Office of the Prosecutor of the Mechanism will provide all requested assistance, including training, direct case assistance and other forms of support, needed to appropriately process those files. The next reporting period will be critical to demonstrating whether the Office of the War Crimes Prosecutor of Serbia is investigating, processing, indicting and prosecuting more cases, particularly against senior- and mid-level officials, at a higher rate and to a higher quality.

C. Access to information and evidence

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

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

94. In relation to Rwanda, the Office of the Prosecutor received four requests for assistance from two Member States, which have been processed. One request was submitted by the German authorities and three requests were from the French authorities. In total, the Office handed over more than 4,000 documents comprising more than 17,000 pages of evidence.

95. In relation to the former Yugoslavia, the Office of the Prosecutor received 160 requests for assistance from four Member States and three international organizations. Sixty requests for assistance were submitted by the authorities in Bosnia and Herzegovina, six came from Serbia, seven came from the United States and one came from Switzerland. In total, the Office handed over more than 3,800 documents comprising nearly 110,000 pages of evidence and 39 audiovisual records. In addition, the Office filed five submissions related to witness protection measures and one submission related to access to evidence. The Office continued to receive a large volume of requests for assistance during the reporting period and expects to receive an even larger volume of requests in the future.

96. The significant growth in recent years in requests for assistance received by the Office – 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 – has only partially been met by increases in related resources. As at early November, the Office had already received more than 350 requests for assistance in 2020, more than the total for any previous year. The Office has sought to absorb the additional

requirements by flexibly redeploying staff. Unfortunately, as the Office already has lean staffing numbers, it has not been possible to fully address the increased workload. OIOS recognized this in noting that “given the dynamic level of ad hoc judicial activity, the Office 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 dating back longer than six months has developed, while the total number of outstanding requests at the end of the reporting period was 275.

97. The joint European Union-Mechanism project supporting domestic accountability for war crimes continued during the reporting period. Under the project, national authorities can request direct assistance from the Office of the Prosecutor in concrete investigations and prosecutions, including in regard to regional judicial cooperation. The Office is also preparing additional investigative dossiers concerning unindicted suspects for transfer to the relevant prosecution services. During the reporting period, the Project transferred investigative files concerning more than 15 suspects to national authorities, while providing legal, evidentiary and strategic assistance with respect to seven requests, which entailed handing over 6,105 documents comprising 122,836 pages of evidence and 75 audiovisual records.

D. Capacity-building

98. The Office of the Prosecutor continued its efforts, within its existing limited resources, to build capacity in national judiciaries prosecuting war crimes. The Office’s capacity-building efforts were focused on the Great Lakes region, East Africa and the former Yugoslavia. Strengthening national capacities supports the principle of complementarity and national ownership of post-conflict accountability. Owing to the COVID-19 pandemic, the Office delayed training activities that were planned for the reporting period.

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

E. Missing persons

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

101. During the reporting period, the Office of the Prosecutor and the International Committee of the Red Cross (ICRC) continued their cooperation pursuant to the memorandum of understanding that they signed in October 2018. That important agreement enables ICRC to gain access to the Office’s collection of evidence to obtain information that may assist in clarifying the fate and whereabouts of persons who are still missing. The Office and ICRC are also working jointly, in accordance with their

respective mandates, to analyse information, identify new leads and provide files to domestic missing persons authorities for action. From 17 May to 15 November 2020, the Office responded to 39 requests for assistance from ICRC and handed over 512 documents comprising more than 27,000 pages, as well as five audiovisual records. During the reporting period, evidence, analysis and other support provided by the Office contributed to the identification and exhumation of four sites containing seven missing persons.

V. Other residual functions

102. The Office of the Prosecutor continued to carry out its responsibilities in respect of other residual functions.

103. During the reporting period, one convicted person filed a request for review of the final judgment and related motions, to which the Office responded. The Office filed six additional submissions related to post-conviction matters other than early release and the classification of filings or evidence. The Office will continue to monitor the volume of litigation and report as appropriate.

VI. Management

A. Overview

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

105. During the reporting period, the Office of the Prosecutor rapidly responded to the arrest of Félicien Kabuga. By redistributing responsibilities within the Office and asking staff to take on an even greater workload, the Office was able to redeploy some existing staff to the *Kabuga* case from the *Turinabo et al.* and *Mladić* cases, while quickly recruiting a small number of additional staff. In that way, the Prosecutor's "one office" policy continued to enable the Office to respond to unexpected developments, as the Office had done earlier when required to litigate unexpected ad hoc judicial activity in relation to the *Turinabo et al.* contempt case. As a result, as at the beginning of August 2020, only two and a half months following the arrest, the Office had established an initial team comprised of current and new staff to move forward the pretrial proceedings in the case.

106. In general, the Office of the Prosecutor continued to maximize the use of its resources and "do more with less" through extensive multitasking and cross-training. In order to meet the Office's responsibilities in the light of its lean staffing, staff members of the Office have been regularly requested to take on exceptional workloads. The Office is grateful for the continued dedication and commitment of its staff.

107. The Office continued to manage downsizing and staff attrition to ensure that it can meet all of its responsibilities inside and outside the courtroom.

B. COVID-19 pandemic response

108. In response to the COVID-19 pandemic, the Office, together with the other organs of the Mechanism, rapidly shifted in mid-March to remote working arrangements. During that process and subsequently, the Office has remained in close daily communication with its staff and has provided regular updates on developments in the Office and the Mechanism. The Office has effectively maintained full business continuity across all of its functions, as demonstrated by the arrest of Félicien Kabuga on 16 May 2020 and the resumption of courtroom proceedings in August 2020. The Office is further closely monitoring staff morale and welfare, including appointing staff welfare focal points, taking the initiative to organize remote social events and advocating for Mechanism-wide staff welfare programmes. The Office is consistently identifying lessons learned and is committed to continuous improvement in its response to the COVID-19 pandemic and the implementation of remote working arrangements.

109. The Office has further taken an active role in Mechanism-wide activities in response to the COVID-19 pandemic, including participating in the COVID-19 steering committee established by the principals to develop policies and strategies to address the impact of the pandemic on the Mechanism. Through that forum and others, the Office has strongly advocated and supported the implementation of a range of measures to enable the resumption of courtroom proceedings. The Mechanism's joint efforts towards that goal successfully resulted in the holding of the appeal hearing in *Mladić* on 25 and 26 August 2020, the resumption of trial hearings in *Stanišić and Simatović* on 1 September 2020 and the commencement of the *Turinabo et al.* trial on 22 October 2020.

110. The Office will continue to cooperate with the other organs to ensure that the Mechanism responds appropriately to the COVID-19 pandemic and any future changes.

C. Audit reports

111. 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, inter alia, resolution 2422 (2018). 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 the judicial activity" (S/2020/236, para. 20) and that "both trial and appeals teams were lean" (ibid., para. 41). During the reporting period, the Office worked to implement the recommendation by OIOS to support and strengthen staff morale. As at the submission date of the present report, the Office had implemented or commenced implementation of many of the measures concerned. The Office will keep OIOS informed and looks forward to the closure of the recommendation in the near future.

112. In its report, OIOS issued one new cross-organ recommendation, namely that the Mechanism should bolster coordination and information-sharing to continuously update Mechanism-wide scenario planning. The Office welcomed that recommendation, which was aligned with the Office's own ongoing strategic review process, and looked forward to further discussions with the Chambers and the Registry. In that regard, it should be noted that the COVID-19 pandemic has already prompted a significant increase in Mechanism-wide coordination, information-sharing and scenario planning. The Office fully anticipates that the improvements in cross-organ

collaboration required for pandemic response will greatly facilitate the implementation of the recommendation.

113. The Office expresses its appreciation to OIOS for its continued assistance. 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.

VII. Conclusion

114. The Office of the Prosecutor continued to undertake all efforts to contribute to the expeditious completion of the remaining trials and appeals. Courtroom hearings in all four remaining cases resumed during the reporting period, notwithstanding the COVID-19 pandemic. The Office looks forward to the completion of two trials (*Stanišić and Simatović* and *Turinabo et al.*) and one appeal (*Mladić*) in the first half of 2021, following which only one trial (*Kabuga*) and two likely appeals (*Stanišić and Simatović* and *Turinabo et al.*) will remain.

115. The arrest of Félicien Kabuga has spurred even more intense efforts by the Office of the Prosecutor to account for the remaining six fugitives indicted by the International Criminal Tribunal for Rwanda. The highest priority target is Protais Mpiranya, former commander of the Presidential Guard of the Rwandan Armed Forces. Just as with the arrest of Kabuga and the confirmation of Augustin Bizimana's death, the most critical factor to further success will be full and effective cooperation from Member States to confirm the fugitives' whereabouts and take necessary action. The Office of the Prosecutor is engaging intensively with relevant States to obtain that cooperation.

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

117. In response to the COVID-19 pandemic, the Office was able to quickly transition to remote working arrangements at all its duty stations, while effectively ensuring full business continuity in all of its operations. The Office further successfully resumed courtroom hearings during the reporting period. Those achievements in the face of a global pandemic are in large measure attributable to the commitment of the Office's staff. The Office will continue to cooperate with the other organs to ensure that the Mechanism is prepared to continue to carry out its mandate in the light of further developments.

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