

**Security Council**

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**Letter dated 18 November 2013 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 would be grateful if the present letter and its annexes could be circulated as a document of the Security Council.

*(Signed)* Theodor **Merón**



**Annex I**

[Original: English and French]

**Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the period from 23 May 2013 to 15 November 2013**

1. The present report, the third in a series, is submitted pursuant to Security Council resolution 1966 (2010) of 22 December 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.

**I. Introduction**

2. The Security Council, by its resolution 1966 (2010), established the International Residual Mechanism to carry out a number of essential functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, including the trial of fugitives who are among the most senior leaders suspected of being primarily responsible for crimes, after the closure of the two Tribunals. The Council emphasized that the Mechanism should be a small, temporary and efficient structure. In accordance with its statute (see Security Council resolution 1966 (2010), annex 1), the Mechanism has a single set of principals, a President, a Prosecutor and a Registrar, who have responsibility over two branches, one located in Arusha and the other in The Hague. The Council determined that the Mechanism shall operate for an initial period of four years, and subsequently for periods of two years, following reviews of its progress, unless the Council decides otherwise.

3. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012. This branch covers functions inherited from the International Criminal Tribunal for Rwanda. The Hague branch commenced operations on 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia.

4. Both branches of the Mechanism are now fully operational. They have issued orders and decisions in areas under their competence. They have assumed responsibility over issues related to the enforcement of sentences handed down by both Tribunals. They have also been actively providing witness support and protection functions for those witnesses who have testified in completed cases, and are responding to requests for assistance from States in relation to domestic investigations and prosecutions of individuals charged in relation to the genocide in Rwanda and the conflicts in the former Yugoslavia. In addition, the Mechanism is engaged in the monitoring of cases referred to national jurisdictions by the International Criminal Tribunal for Rwanda, and continues to seek the cooperation of States on the critically important issue of the arrest and surrender of the remaining fugitives indicted by that Tribunal. The Mechanism has also put in place arrangements to monitor any change of status in a case referred by the International Tribunal for the Former Yugoslavia.

## **II. Establishment of the Mechanism**

5. The timely establishment of the two branches of the Mechanism is the result of the close collaboration among officials of the two International Tribunals and the Mechanism. Throughout this initial period, the Mechanism has striven to maintain and build upon the achievements of the Tribunals, while staying focused on its mandate and remaining committed to running as a small and efficient organization.

### **A. Organization and principals of the Mechanism**

6. Article 4 of the statute of the Mechanism provides that the Mechanism shall consist of three organs: (a) the Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber; (b) the Prosecutor; and (c) the Registry, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor. Each organ is headed by a full-time or permanent principal, common to both branches.

7. The first President of the Mechanism is Judge Theodor Meron. President Meron was appointed in 2012 for a term of four years. The President serves as the head of the Mechanism and is responsible for, among other things, presiding over plenary sessions, coordinating the work of the Chambers and supervising the activities of the Registry. President Meron is the Mechanism's only full-time judge. Pursuant to article 8 of the statute of the Mechanism, judges will travel to Arusha or to The Hague only when necessary, as requested by the President. As far as possible, the judges will carry out their functions remotely. The judges are not remunerated for being on the roster, and receive compensation only for the days on which they are called upon to exercise their functions.

8. The Prosecutor for the Mechanism is Mr. Hassan Bubacar Jallow. Prosecutor Jallow was appointed in 2012 for a four-year term. Pursuant to article 14 of the statute of the Mechanism, the Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute, essentially, those persons indicted by the two International Tribunals, as well as individuals who have knowingly and wilfully interfered in the administration of justice or given false testimony before the Mechanism or the Tribunals.

9. The Registrar of the Mechanism is John Hocking. Pursuant to article 15 of the statute of the Mechanism, the Registrar is responsible for the administration and servicing of both the Arusha and Hague branches of the Mechanism. Mr. Hocking was appointed in 2012 for a four-year term.

10. In an arrangement that promotes efficiency and coordination, and consistent with article 7 of the transitional arrangements approved by the Security Council (see Security Council resolution [1966 \(2010\)](#), annex 2), President Meron, Prosecutor Jallow and Registrar Hocking are all currently serving in two positions: President Meron is also President and Registrar Hocking is also Registrar of the International Tribunal for the Former Yugoslavia; Prosecutor Jallow is the serving Prosecutor for the International Criminal Tribunal for Rwanda. Such double-hatting is cost-effective, since each principal receives only one salary.

**B. Branch locations and host State agreements**

11. Pursuant to Security Council resolution [1966 \(2010\)](#) and article 3 of the statute of the Mechanism, the Mechanism has two branches, one located in Arusha and one in The Hague. The Office of Legal Affairs, assisted by the Mechanism and the Tribunals, has made progress in negotiating host country agreements with the Governments of the United Republic of Tanzania and the Netherlands. However, until such agreements are concluded, the host State agreements for the two International Tribunals will apply, provisionally, to the Mechanism.

**C. Commencement of the Arusha branch**

12. On 1 July 2012, the Arusha branch of the Mechanism assumed certain residual functions from the International Criminal Tribunal for Rwanda. Pursuant to the statute and the transitional arrangements of the Mechanism, those residual functions include: authority to try fugitives from the Tribunal; authority to hear appeals against judgements or sentences handed down by the Tribunal in cases where a notice of appeal was filed after 1 July 2012; authority to conduct reviews of judgements handed down by the Tribunal and to prosecute post-commencement contempt cases; responsibility for the protection of victims and witnesses in completed trial proceedings; supervision of the enforcement of sentences handed down by the Tribunal; decisions on pardon or commutation of sentences; and responsibility for responding to requests for assistance from national jurisdictions related to the investigation or prosecution of those alleged to be responsible for serious violations of international humanitarian law in Rwanda. In addition, the Mechanism assumed responsibility for the management of the archives of both Tribunals. The Tribunals will retain responsibility for the preparation of their records (a process which is ongoing) for transfer to the Mechanism.

13. The Arusha branch of the Mechanism is currently co-located with the International Criminal Tribunal for Rwanda, but is actively engaged in planning for its new permanent premises. Construction of the premises was approved by the General Assembly in its resolution [67/244 B](#) of 2 April 2013, on the basis of a budget and construction timetable that have been reduced from earlier estimates.

14. The construction project is on schedule according to the reduced timetable approved by the General Assembly, with occupancy expected by January 2016. Procurement of the architectural and engineering consultancy services for the new facilities began in May 2013. On 16 July 2013, the Mechanism held a bidders' conference and site visit in Arusha as part of the solicitation process for the request for proposals. Subsequently, the technical and commercial evaluations of the submitted proposals were completed in accordance with United Nations procurement processes, and were submitted to United Nations Headquarters for review.

15. The Mechanism is grateful for the cooperation offered by the Government of the United Republic of Tanzania, which has been excellent to date. The Government has offered to provide, cost-free, both the land and facilities, including electricity, water and a drainage system.

**D. Commencement of the operations of the branch in The Hague**

16. The Hague branch of the Mechanism has been operational since 1 July 2013, when it assumed certain residual functions from the International Tribunal for the

Former Yugoslavia similar to those previously assumed from the International Criminal Tribunal for Rwanda.

17. For certain ongoing work, such as the protection of witnesses and provision of assistance to national jurisdictions, the branch is currently relying on the support of double-hatted staff from the International Tribunal for the Former Yugoslavia to ensure a smooth transition of functions from the Tribunal to the Mechanism. These arrangements will be in place until the end of the current biennium.

18. The Hague branch will be co-located with the International Tribunal for the Former Yugoslavia for the period in which they will overlap. Plans for its eventual location are still under consideration.

#### **E. Administration and facilities**

19. For the current 2012-2013 biennium, administrative services, such as human resources, finance, budget, procurement, logistics, security and information technology services, are provided to the Mechanism by both Tribunals, under the coordination of the Registry of the Mechanism.

20. In late 2012, in preparation for the decreasing capabilities of the Tribunals to support the Mechanism due to the imperatives of their progressive downsizing, the Tribunals and the Mechanism reached a consensus on the basic requirements of a small self-standing administration for the Mechanism, which will be divided between, and will service, both branches. The Mechanism has developed a road map and a list of actions to be taken for the gradual implementation of this administrative component. The requirements for the Mechanism's administration are included in the 2014-2015 budget.

#### **F. Legal and regulatory framework**

21. The Mechanism has established a basic structure to govern its activities, mindful of the need to develop rules, procedures and policies that harmonize and build upon the best practices of both Tribunals.

22. During the reporting period, the Mechanism continued its work in this regard. On 6 August 2013, the President, following consultations with the Prosecutor and the Registrar pursuant to rule 23 of the Rules of Procedure and Evidence, issued two practice directions regarding the conduct of proceedings: the "Practice direction on requirements and procedures for appeals" and the "Practice direction on lengths of briefs and motions". Additional practice directions and policies are planned.

#### **G. Recruitment of staff**

23. The prompt, fair and transparent recruitment of a small staff for the Mechanism continues to be an administrative priority. Under the coordination of the Registrar of the Mechanism, recruitment has been conducted by cross-Tribunal panel members and members of central review bodies, with appropriate geographical and gender-balance representation. The human resources of both Tribunals have shared the burden of this exercise.

24. Of the 60 positions available from 1 July 2012 in both branches of the Mechanism, all but 5 have either been filled or are now under recruitment. Staff who have been recruited or laterally transferred to the Mechanism include nationals of

the following States: Albania, Australia, Belgium, Burundi, Cameroon, Canada, China, Colombia, Croatia, the Democratic Republic of the Congo, France, Germany, India, Italy, Jamaica, Kenya, the former Yugoslav Republic of Macedonia, Mali, Nepal, the Netherlands, New Zealand, Rwanda, Senegal, Serbia, Sweden, Switzerland, the United Republic of Tanzania, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe. Approximately 86 per cent of those recruited were current or former staff of the Tribunals at the time of recruitment. The Mechanism has passed the gender parity goals set by the Secretary-General, with a 70 per cent female gender rate in the Professional category, which exceeds the current 41 per cent average in the Professional category across the United Nations as a whole. The gender parity rate when General Service staff are included is 60 per cent female. The Mechanism has also appointed a gender and sexual harassment focal point.

25. In relation to its ad hoc judicial activity, the Mechanism has also undertaken a number of recruitments. The Mechanism is recruiting a small number of staff to serve in the Mechanism's Chambers and to assist with, inter alia, the International Criminal Tribunal for Rwanda appeal from judgement that is currently before the Mechanism.

### **III. Judicial activities**

26. On 17 July 2013, Judge Vagn Joensen, in his capacity as single judge, rendered a decision on allegations of contempt arising out of the International Criminal Tribunal for Rwanda trial of *The Prosecutor v. Augustin Ndirakobuca*, and, on the same day, denied two related requests for reconsideration of his decision on the legal effect of the contempt decision and order issued by a Trial Chamber of the Tribunal. In his contempt decision, Judge Joensen declined to initiate contempt proceedings or to order further investigations.

27. In addition, Judge Joensen has rendered one decision on a post-appeal request for disclosure of evidence and issued orders to unseal and publicly file amended indictments for the fugitives Augustin Bizimana and Protais Mpiranya who have been indicted by the Tribunal. Judge Joensen is currently seized of two post-appeal motions stemming from the *Niyitegeka* case before the Tribunal.

28. On 5 September 2013, the Appeals Chamber of the Mechanism, noting the decision rendered by Judge Joensen on 17 July 2013, dismissed the appeals related to the Trial Chamber's decision and the order on allegations of contempt in the *Ndirakobuca* case.

29. The Mechanism has also received a number of requests for variation of protective measures of witnesses. At the branch in The Hague, the single judge seized of these requests, Judge Bakone Justice Moloto, has issued five orders in relation to 12 pending requests and a decision on another request. Judge Moloto is also seized of two related requests concerning allegations of contempt.

30. On 16 September 2013, the President of the Mechanism issued a decision on Innocent Sagahutu's petition for early release and the Prosecution's objections thereto. In denying Mr. Sagahutu's request, the President held that Mr. Sagahutu's pending appeals before the International Criminal Tribunal for Rwanda are not final, and, that it is for the Appeals Chamber of the tribunal and not for the Mechanism to

consider any request for release from detention. The President is also seized of requests for the revocation of referral in the *Munyagishari* and *Uwinkindi* cases, a request for review of an administrative decision and other confidential matters.

31. The Appeals Chamber remains seized of one appeal from judgement concerning the *Ngirabatware* case. Mr. Ngirabatware is appealing the trial judgement rendered on 20 December 2012 and issued in writing on 21 February 2013. Mr. Ngirabatware filed his notice of appeal on 9 April 2013, and the briefing on the appeal was completed on 13 August 2013. The President, in his capacity as pre-appeal judge in the case, has dealt with various preliminary motions and held two status conferences pursuant to rule 69(B) of the Rules of Procedure and Evidence of the Mechanism. The Appeals Chamber of the Mechanism is also currently seized of several motions from Mr. Ngirabatware concerning, inter alia, disclosure and admission of additional evidence on appeal. An additional confidential matter and a related motion are currently pending before the Appeals Chamber.

#### **IV. Victims and witnesses**

32. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements, the Mechanism is responsible for witness support and protection functions in relation to the thousands of protected witnesses who have testified in cases completed by the two Tribunals.

33. The Witness Support and Protection Office is now fully operational in both branches of the Mechanism. This has ensured a smooth transition in the provision of protection and support services to witnesses.

34. The Mechanism continues to manage and ensure the safekeeping of confidential witness information and provide security for witnesses by undertaking threat assessments and coordinating responses to security requirements, consistent with judicial protection orders and in close collaboration with domestic authorities. The Mechanism also continues to provide ongoing support services to witnesses, including the provision of medical and psychosocial services to witnesses residing in Rwanda, particularly for psychotrauma and HIV/AIDS patients, many of whom contracted the virus as a result of the genocide.

35. With both branches now operational, the witness protection teams at the two branches have begun to exchange best practices and work has begun to establish a common information technology platform for their respective databases. These efforts will maximize operational efficiencies across both branches and ensure that the Mechanism preserves and develops the best practices established by the two Tribunals.

#### **V. Fugitives and trial readiness**

36. On 1 July 2012, in accordance with Security Council resolution [1966 \(2010\)](#) and the statute of the Mechanism, the responsibility for tracking the remaining fugitives was transferred to the Mechanism. Specifically in its resolution [1966 \(2010\)](#), the Council urged all States, particularly States 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.

37. The arrest and prosecution of the fugitives is and remains a top priority for the Mechanism. The President and Prosecutor, with the support of the Registrar, have agreed to work closely on the associated political issues.

38. None of the accused indicted by the International Tribunal for the Former Yugoslavia remain at large. However, to date, nine of the accused who were indicted by the International Criminal Tribunal for Rwanda for their participation in the genocide in Rwanda in 1994 remain at large. Currently, the Mechanism will retain jurisdiction over three of those indictees: Félicien Kabuga, Augustin Bizimana and Protais Mpiranya (the cases of the following six fugitives have been referred to Rwanda: Fulgence Kayishema, Charles Sikubwabo, Ladislas Ntaganzwa, Aloys Ndimbati, Charles Ryandikayo and Phénéas Munyarugarama).

39. In April 2013, at the request of the Prosecutor, the Mechanism's duty judge at the Arusha branch vacated the Tribunal's warrants for the arrest of Mr. Kabuga, Mr. Bizimana and Mr. Mpiranya, replacing them with public warrants for their arrest and transfer to the Mechanism. These warrants and orders are addressed to all States Members of the United Nations. Member States are obliged under article 28 of the statute of the Mechanism to comply with these requests without undue delay.

40. Consistent with its commitment to efficiency, the Mechanism is working to ensure that it is prepared to commence a trial when a fugitive is apprehended. Consequently, the Registrar is ensuring the necessary facilities and services will be in place and continues to prepare a roster of qualified potential staff, pursuant to article 15 (4) of the statute of the Mechanism. The Prosecutor is preparing a similar roster of potential staff for his office in accordance with article 14 (5) of the statute.

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

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

42. During the reporting period, the Mechanism has been monitoring, with the assistance of the International Criminal Tribunal for Rwanda on an interim basis, four cases referred by that Tribunal<sup>a</sup> to national jurisdictions, pursuant to rule 11 bis of the Rules of the Tribunal, including two cases referred to Rwanda and two cases referred to France.

43. The Mechanism previously reported that negotiations with the African Commission on Human and Peoples' Rights regarding the monitoring of the two cases referred to Rwanda were continuing. The African Commission and the Mechanism were, however, unable to reach an agreement, and they have decided to close their negotiations. Consequently, the Mechanism is negotiating with another international body that has expressed an interest in assisting with the monitoring of the cases.

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<sup>a</sup> A total of eight cases of accused have been referred to Rwanda since 2011, but six of these individuals remain at large.



44. Two individuals accused by the International Criminal Tribunal for Rwanda, Jean Uwinkindi and Bernard Munyagishari, were transferred to Kigali on 19 April 2012 and 24 July 2013, respectively, following the referral of their cases to Rwanda. The trial in the *Uwinkindi* case is expected to commence on 18 November 2013. The *Munyagishari* case is in the pre-trial phase. The first monitoring report in the case was filed on 19 September 2013 and the second monitoring report was filed on 31 October 2013. The most recent monitoring report in the *Uwinkindi* case was filed on 31 October 2013. These monitoring reports are available on the Mechanism's website (www.unmict.org).

45. Mr. Munyagishari and Mr. Uwinkindi filed requests for revocation of referral on 30 August 2013 and 16 September 2013, respectively. Their requests are currently pending. Pursuant to article 6 (6) of the statute of the Mechanism, a Trial Chamber may revoke a referral order if it is clear that the conditions for referral are no longer being met and if it is in the interests of justice.

46. Two cases before the International Criminal Tribunal for Rwanda, the *Bucyibaruta* and *Munyeshyaka* cases, were referred to France in November 2007 and remain pending before the French judiciary. Monitoring reports in both cases were filed on 15 July 2013 and 7 November 2013, and are available on the Mechanism's website.

47. The *Kovačević* case, which was before the International Tribunal for the Former Yugoslavia, was referred to Serbia in March 2007. The proceedings were subsequently suspended following a determination that the transferred accused was unfit to stand trial. The Mechanism has put in place arrangements to monitor any change of status in this referred case.

## VII. Enforcement of sentences

48. In accordance with article 25 of the statute of the Mechanism, the President has assumed jurisdiction over enforcement issues related to the Mechanism, and the two Tribunals, including the authority to designate the States in which convicted persons are to serve their sentence, to supervise the enforcement of sentences and to decide on requests for pardon or commutation of sentence.

49. The Mechanism relies on the cooperation of States for the enforcement of its sentences. Sentences are served within the territory of States Members of the United Nations that have concluded enforcement-of-sentence agreements. Agreements concluded by the two Tribunals remain in force for the Mechanism. The Mechanism is also actively engaged in efforts to secure additional agreements for the enforcement of sentences in order to increase its enforcement capacity, and it welcomes the cooperation of States in this regard.

50. In addition to exploring the possibility of entering into enforcement-of-sentence agreements with additional States, the Mechanism is reviewing existing agreements with States currently enforcing sentences. In this connection, the Mechanism has prepared a new model agreement, largely based on the more recently concluded agreement with Senegal, which provides greater clarity over financial matters and the respective responsibilities of the enforcing States and the Mechanism.

51. Currently, 30 persons convicted by the International Criminal Tribunal for Rwanda are serving their sentences in two countries: Mali (17 convicted persons)

and Benin (13 convicted persons). One additional convicted person is at the United Nations Detention Facility in Arusha, awaiting transfer to an enforcement State. At the time of reporting, the Registrar has submitted his confidential report to the President, who is responsible for designating an enforcement State, pursuant to rule 127 of the Rules of the Tribunal, and the President has requested additional information from the Registrar.

52. In addition, at present 16 persons convicted by the International Tribunal for the Former Yugoslavia are serving their sentences in 11 countries: Austria (2 convicted persons), Belgium (1 convicted person), Denmark (3 convicted persons), Estonia (2 convicted persons), Finland (1 convicted person), France (1 convicted person), Germany (2 convicted persons), Italy (1 convicted person), Norway (1 convicted person), Portugal (1 convicted person) and Sweden (1 convicted person). During the reporting period, two convicted persons were transferred to Portugal and Norway for the enforcement of their sentences. Two convicted persons are at the United Nations Detention Unit in The Hague, awaiting transfer to an enforcement State.

53. As previously reported, in November 2012, the Mechanism engaged the services of an independent expert in prison management to assess the needs of the prisons in Benin and Mali enforcing sentences imposed by the International Criminal Tribunal for Rwanda. The expert proposed a number of context-based solutions to address physical and non-physical security related matters. The Registry is currently working on the implementation of those recommendations.

54. The Mechanism has continued to seek advice from the Department of Safety and Security of the Secretariat and the designated official in Mali on the national security situation, and it is closely monitoring the security situation of the convicts in that country.

## **VIII. Archives and records**

55. In accordance with article 27 of its statute, the Mechanism has responsibility for the management, including preservation and access, of the archives of the two Tribunals. Pursuant to article 27 (2) of the statute of the Mechanism, the archives of the International Criminal Tribunal for Rwanda are to be located in Arusha, and the archives of the International Tribunal for the Former Yugoslavia are to be located in The Hague.

56. The archives of the Tribunals include materials concerning: investigations, indictments and court proceedings; work relating to the detention of accused persons, the protection of witnesses and enforcement of sentences; and documents from States, other law enforcement authorities, international and non-governmental organizations and the general public. The materials consist of documents, maps, photographs, audiovisual recordings and objects.

57. The Mechanism, which has been tasked to preserve these materials and to facilitate the widest possible access to them while ensuring the continued protection of confidential information, including information concerning protected witnesses, has established the Mechanism Archives and Records Section for that purpose.

58. During the reporting period, the Section has certified that all three interim records repositories in Arusha meet minimum requirements for the preservation of

records, allowing the Mechanism to take over custody of those repositories from the International Criminal Tribunal for Rwanda. The Section has also developed and implemented records-transfer and accessioning procedures, provided support and guidance to the Tribunal in the preparation of records for transfer and, in September 2013, taken custody of 370 linear metres of records. To date, the Tribunal has transferred approximately 450 linear metres of records of long-term value into permanent archives.

59. The Section also continues to review and develop recordkeeping policies and guidelines for the Mechanism on various aspects of records management, including on the operation of the repositories where these records will be preserved. With respect to the preservation of the digital archives, the Section is developing a dependable digital repository designed to ensure secure storage for the digital records in order to ensure their long-term preservation and access for current and future generations.

## **IX. Cooperation of States**

60. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate with it in relation to the investigation and prosecution of persons covered under the statute, as well as with orders and requests for assistance in relation to cases before the Mechanism. The Mechanism, like the two Tribunals, is dependent upon the cooperation of States.

61. The arrest and surrender of the remaining fugitives is a priority of the Mechanism. As described above, the Mechanism requires the full cooperation of States in relation to the ongoing fugitive-tracking operations being conducted by the Prosecutor, and it continues the practice of the International Criminal Tribunal for Rwanda by calling for the assistance of relevant States in this respect.

62. The Mechanism has also sought to promote communication and cooperation with the Governments of the affected States and to keep relevant officials in those States updated on the transition of responsibilities from the Tribunals to the Mechanism. The principals and the staff of the Mechanism have visited the countries of the former Yugoslavia, and have met with diplomatic representatives in The Hague. Most recently, in November 2013, the principals and representatives of the Mechanism made an official visit to Rwanda to meet with the principals and representatives of the International Criminal Tribunal for Rwanda. The delegation met with relevant Rwandan officials to provide an update on the ongoing transition of responsibilities and functions, and had very constructive discussions on issues of common interest.

## **X. Assistance to national jurisdictions**

63. The Mechanism routinely receives requests made by national authorities for assistance in relation to national investigations, prosecutions and trials of individuals charged in relation to the genocide in Rwanda and the conflicts in the former Yugoslavia. The Mechanism has continued to consider such requests for the provision of assistance to national courts, including requests for evidence and/or variation or the rescission of protective measures for witnesses, as well as requests to question detained persons. Comprehensive information and guidance for those

requesting assistance is available on the Mechanism's website. In addition, the Mechanism, prior to assuming responsibility for requests for assistance related to the International Tribunal for the Former Yugoslavia on 1 July 2013, conducted briefing sessions with national authorities in the former Yugoslavia.

## **XI. External relations**

64. The principals and officials of the Mechanism have provided briefings to diplomatic representatives of Member States in the United Republic of Tanzania and the Netherlands and have held discussions with interested groups on the mandate and priorities of the Mechanism.

65. The Mechanism's website explains the Mechanism's mandate and provides essential information about its functions and operations. The website has content in English, French, Kinyarwanda and Bosnian/Croatian/Serbian to ensure that information on the Mechanism is more accessible to individuals in Rwanda and the States of the former Yugoslavia. The website also features links to the public records databases of the Tribunals, as well as links to all public filings of the Mechanism. During the reporting period, additional material was added, including information relating to: witness protection; the tracking of fugitives; the provision of guidance for national authorities and others who are seeking access to materials of the Mechanism or the Tribunals; and the construction of the new facilities in Arusha. Additional information is being developed, including a page for defence counsel.

## **XII. Conclusion**

66. Consistent with Security Council resolution [1966 \(2010\)](#) and its mandate, the Mechanism has now commenced its work in both Arusha and in The Hague. The Mechanism has received extensive cooperation and assistance from both International Tribunals and other offices and organizations, including the Office of Legal Affairs of the Secretariat. Throughout, the Mechanism has remained mindful of the Security Council's injunction that it be a small and efficient organization, and it will continue to take steps to ensure the fulfilment of its mandate consistent with this injunction.

## Annex II

[Original: English and French]

### **Assessment and progress report of Justice Hassan Bubacar Jallow, Prosecutor of the Mechanism for International Criminal Tribunals, for the period from 16 May 2013 to 15 November 2013**

#### **I. Introduction**

1. The present report, the third report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, covering the period 16 May 2013 to 15 November 2013, is submitted pursuant to paragraph 16 of Security Council resolution [1966 \(2010\)](#) and article 32 (2) of the statute of the Mechanism.

#### **II. Background**

2. On 22 December 2010, the Security Council adopted resolution [1966 \(2010\)](#), by which it established the International Residual Mechanism for Criminal Tribunals. In doing so the Council acknowledged the considerable contribution made by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to international criminal justice and accountability for serious international crimes, and reaffirmed the necessity that all persons indicted by the Tribunals are brought to justice. The Mechanism is tasked with continuing the jurisdiction, rights and obligations and essential functions of the two Tribunals following the completion of their respective mandates. In this regard, the Council emphasised that the Mechanism should be a small, temporary and efficient structure. The Mechanism comprises two branches. One branch, which commenced operations in Arusha on 1 July 2012, deals with functions inherited from the International Criminal Tribunal for Rwanda. The other branch, located in The Hague, assumed responsibility for functions and activities devolved from the International Tribunal for the Former Yugoslavia on 1 July 2013. By Security Council resolution [2038 \(2012\)](#), the Council decided to appoint the Prosecutor of the International Criminal Tribunal for Rwanda, Justice Hassan Bubacar Jallow, as Prosecutor of the International Residual Mechanism, with effect from 1 March 2012.

3. The reporting period has been one of intense activity for the Mechanism, involving, in addition to the work related to its core mandate, the establishment of The Hague branch, the recruitment of staff, preparation of the budget for the 2014-2015 biennium and the setting up of systems and procedures to streamline operations and ensure greater coordination between the two branches.

#### **III. Arusha branch of the Office of the Prosecutor of the Mechanism**

4. The Arusha branch of the Office of the Prosecutor of the Mechanism is fully functional. Since the last reporting period, the Office has continued to discharge its mandate with respect to both core and ad hoc activities, including the tracking of fugitives, the rendering of assistance to national authorities, the monitoring of cases referred to national jurisdictions, the updating of the files of fugitives in anticipation of their arrest and the prosecution of an appeal and related litigation before the

Appeals Chamber of the Mechanism. During the reporting period, the Office has continued to receive the support of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda in ensuring a smooth transition of functions and activities.

#### **A. Staffing**

5. It was previously reported that all but one of the 14 core staff of the Office at the Arusha branch had been appointed by the Registrar and had assumed office. Recruitment of the remaining post was completed early in the current reporting period, although one post has since become vacant. Staff now on board comprise three (3) Investigators, one (1) Crime Analyst and two (2) Language Assistants, all based in Kigali, as well as one (1) Senior Legal Officer, one (1) Legal Officer, one (1) Legal Adviser, one (1) Documents Control Assistant and three (3) Administrative Assistants stationed in Arusha. The Administrative Officer post is currently under recruitment and is expected to be filled by the end of 2013. In addition, the Prosecutor has designated three staff of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda to formally double-hat in the Office of the Mechanism until the end of their tenures at the Tribunal. These include a Special Assistant to the Prosecutor, an Investigator and a Documents Control Assistant. In order to ensure a smooth transition of functions and activities, and as an interim measure, this staff complement has been supported, where necessary, by 52 double-hatted staff in the Professional category at the Office of the Prosecutor of the International Criminal Tribunal for Rwanda designated by the Prosecutor under article 14 (3) of the statute of the Mechanism.

6. As previously reported, an ad hoc appeals team consisting of one (1) Senior Appeals Counsel, one (1) Appeals Counsel, one (1) Assistant Appeals Counsel and one (1) Associate Appeals Counsel is in place to handle the appeal against judgement and sentence before the Appeals Chamber of the Mechanism in the *Prosecutor v. Augustin Ndirabatware* case. The Prosecutor is also preparing a roster of potential staff for his Office, in the event of an arrest and subsequent trial, in accordance with article 14 (5) of the statute.

#### **B. Ad hoc functions**

##### **1. Fugitive tracking and trial readiness**

7. Pursuant to Security Council resolution [1966 \(2010\)](#), the responsibility for tracking the remaining fugitives from the International Criminal Tribunal for Rwanda devolved to the Mechanism on 1 July 2012, with the arrest and prosecution of the three (3) top fugitives being a key priority for the Office of the Prosecutor. The Office is also required, under article 28 (3) of its statute, to render assistance, where appropriate, in the tracking of the other six (6) fugitives whose files were referred to the national authorities of Rwanda.

8. In this regard, the Office of the Prosecutor has intensified its efforts to track the top three fugitives, namely Félicien Kabuga, Protais Mpiranya and Augustin Bizimana, with particular focus on the Great Lakes and Southern African regions. The Office continues to receive the support of INTERPOL, the U.S. Department of State, through its War Crimes Rewards Program, international organizations and a number of Member States in its efforts to apprehend these three top-level fugitives. The Office will continue its contacts with the authorities of Kenya and Zimbabwe,

and requests the Security Council to call on all States in the Great Lakes region to cooperate with the Mechanism in the tracking and apprehension of the fugitives.

9. With regard to the six fugitive cases that have been referred to Rwanda (Charles Sikubwabo, Fulgence Kayishema, Ladislav Ntaganzwa, Aloys Ndimbati, Ryandikayo and Pheneas Munyarugurama) the Office, in conjunction with INTERPOL and the Office of Global Criminal Justice of the U.S. Department of State, continues to lend support, when required, to the tracking efforts of the Government of Rwanda.

## **2. Appeal and post-appeal proceedings**

10. Briefing on the appeal of Augustin Ndirabatware was completed by the parties during the period and an oral argument is anticipated in the first half of 2014. A status conference, held on 17 July 2013, was the first hearing to be conducted by the Mechanism. In addition, the appeals team responded to several motions filed by Ndirabatware, including motions for stay of deadlines, the extension of word limits and the admission of additional evidence on appeal.

11. The appeals team has continued to work on the collateral contempt proceedings in the *Sebureze* and *Turinabo* cases. On 17 July 2013, the single judge of the Mechanism dismissed the motion of the Prosecutor of the International Criminal Tribunal for Rwanda for reconsideration of the 20 March 2013 decision holding that the decision of the Tribunal's Trial Chamber to initiate contempt proceedings against Sebureze and Turinabo had no legal effect before the Mechanism. Also on 17 July 2013, the single judge declined to initiate contempt proceedings or any other investigations. Subsequently, the Appeals Chamber dismissed all pending appeals linked to these contempt cases filed by the Prosecutor of the Tribunal, Turinabo and Sebureze.

12. In addition, the Office of the Prosecutor responded to two post-appeal applications filed by Eliézer Niyitegeka regarding disclosure, the appointment of counsel and the initiation of proceedings for false testimony against a prosecution witness. These motions remain pending.

13. During the reporting period the Office of the Prosecutor has also responded to two requests for early release by Obed Ruzindana and Innocent Sagahutu.

## **C. Continuing functions**

### **1. Assistance to national jurisdictions**

14. The servicing of foreign requests for assistance, formally transferred to the Mechanism from July 2012, has been discharged by the core staff since November 2012. During the reporting period, the Office has responded to 24 requests for assistance from 17 Member States and international organizations. Now that the branch in The Hague is operational, the Prosecutor intends to issue a regulation governing requests to the Office and will make guidelines available on the Mechanism's website to assist foreign authorities seeking to access confidential material held by the International Criminal Tribunal for Rwanda and the Mechanism, in accordance with the President's practice direction of 23 April 2013.

## **2. Preservation and management of archives**

15. The hand-over of the records of the Office of the Prosecutor of the Mechanism to the Registrar of the Mechanism continues, and 512 boxes, relating to 21 completed case files, are expected to be handed over by the end of the reporting period. The full archives of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda will be transferred, in due course, to the Office of the Prosecutor of the Mechanism upon completion of all appeals and related litigation before the Tribunal. In the meantime, the Office of the Prosecutor of the Mechanism has full access to the active records being kept by the Prosecutor's Office at the Tribunal. Materials of the Office of the Prosecutor of the Tribunal no longer in active use will be transferred to the archives of the Mechanism on an ongoing basis.

## **3. Monitoring of cases transferred to national jurisdictions**

16. The Mechanism, pursuant to article 6 (5) of its statute, is responsible for monitoring cases transferred by the two Tribunals or by itself to national jurisdictions. Independent of the monitors appointed by the Registrar on orders of the Trial Chambers, the Prosecutor continues to monitor the *Munyeshyaka* and *Bucyibaruta* cases, which were transferred to France in 2007, together with the *Uwinkindi* and *Munyagishari* cases transferred to Rwanda in 2012 and 2013, respectively.

17. During the reporting period, Bernard Munyagishari was physically transferred to Rwanda on 24 July 2013 following the Appeals Chamber's affirmation of the referral order. His case is now in pretrial proceedings before the Rwandan courts. The trial of *Jean Uwinkindi* case has been scheduled to start on 18 November 2013 by the High Court in Rwanda. Despite the referral orders, the Office of the Prosecutor has been required to respond to various post-referral filings by both Munyagishari and Uwinkindi, who are seeking revocation or reconsideration of their referral orders. Two requests for revocation remain pending.

## **IV. The Hague branch of the Office of the Prosecutor of the Mechanism**

18. The Hague branch of the Office of the Prosecutor began operations on 1 July 2013. With the cooperation of the principals and staff of both the International Tribunal for the Former Yugoslavia and the Mechanism in planning for the commencement of the branch's operations, a seamless transition of functions has taken place. Throughout the reporting period, the Office of the Prosecutor of the Mechanism has benefited immensely from the support of the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia. In the same manner, the staff of the branch have continued to assist the Office of the Prosecutor at the Tribunal.

### **A. Staffing**

19. Most of the core staff for the branch have been recruited, including one (1) Senior Legal Officer/Officer-in-Charge, one (1) Legal Adviser, two (2) Document Managers, one (1) Personal/Administrative Assistant and one (1) Administrative Assistant stationed in The Hague. The recruitment of one (1) Legal Officer is nearing completion. In addition, the Prosecutor of the International Tribunal for the Former Yugoslavia has designated a number of staff members as double-hats to



support the operations of the branch. This, notably, includes members of the immediate Office of the Prosecutor, the Appeals Division, the Transition Team and the Request Unit. In the same manner, the Prosecutor of the Mechanism has authorized his staff to assist the Office of the Prosecutor of the Tribunal in dealing with issues relating to appeals, requests for assistance, drafting of motions and on various practical matters.

## **B. Ad hoc functions**

20. The branch of the Office of the Prosecutor of the Mechanism in The Hague has responded to the appeal of Radovan Stanković against a decision of the Referral Bench of the International Tribunal for the Former Yugoslavia. In June 2013, the Referral Bench denied a request by Stanković for revocation of the decision to refer his case to Bosnia and Herzegovina. Stanković appealed the decision. The appeal is now before the Appeals Chamber of the Mechanism. Furthermore the branch in The Hague has responded to a motion for contempt by Radovan Karadžić over which the International Tribunal for the Former Yugoslavia has declined jurisdiction in favour of the Mechanism.

21. The previously anticipated appeals in the *Prlić* and *Šešelj* cases have not come to The Hague branch during the reporting period. The first notices of appeal in the *Prlić* case were filed prior to 1 July 2013 and therefore fell within the jurisdiction of the International Tribunal for the Former Yugoslavia. The anticipated judgement in the *Šešelj* case was not rendered on 30 October 2013, as originally scheduled, due to the disqualification of one of the judges of the Trial Chamber.

## **C. Continuing functions**

### **1. Assistance to national jurisdictions**

22. As at 1 July 2013, the servicing of requests for assistance from States and international organizations in relation to cases before the International Tribunal for the Former Yugoslavia was moved to The Hague branch, with the exception of requests relating to ongoing cases. Since July 2013, the Office of the Prosecutor has received 70 requests for assistance from seven Member States and one international organization. The Office has responded to 52 incoming requests. The Office also works with liaison prosecutors from Bosnia and Herzegovina, Croatia and Serbia, who are embedded with the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia. In responding to those requests, the Office has undertaken various activities, including locating relevant evidence, certifying documents, contacting witnesses, requesting variation of protective measures and seeking the consent of rule 70 providers for disclosure of restricted materials. As a result, The Hague branch has filed two motions for variation of protective measures and four responses to motions for access to evidence.

### **2. Requests from the Registrar of the International Tribunal for the Former Yugoslavia**

23. The Hague branch of the Office of the Prosecutor has responded to two requests for conflict of interest investigations from the Registrar of the International Tribunal for the Former Yugoslavia in relation to the assignment of staff to defence teams in the Tribunal's cases. In addition, the Office has responded to three requests for information concerning early-release requests.

## **V. Conclusion**

24. The reporting period continued to be one of much activity: the Arusha branch of the Office of the Prosecutor is now firmly established, while the branch in The Hague, which commenced operations on 1 July 2013, is well under way to becoming fully operational. The commitment and cooperation extended to the Office of the Prosecutor by both Tribunals has been instrumental in ensuring a relatively smooth transition of functions and activities, and the Prosecutor is particularly grateful for the support of the staff of the Tribunals, who continue to serve both the Tribunals and the Mechanism, as and when required.

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