



UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

The International Residual Mechanism for Criminal Tribunals ("Mechanism") was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY") which closed in 2015 and 2017, respectively.

STATEMENT

PRESIDENT

(Exclusively for the use of the media. Not an official document)

Arusha, The Hague, 11 December 2019

Address to the UN Security Council Judge Carmel Agius President, International Residual Mechanism for Criminal Tribunals 11 December 2019

Mr President, Excellencies, Ladies and Gentlemen,

A very good morning to you all. I am most honoured to present the fifteenth progress report of the International Residual Mechanism for Criminal Tribunals (Mechanism), and to do so under the Presidency of the United States.

At the outset, allow me to sincerely thank all members of the Security Council for their continued support to the Mechanism, and to acknowledge in particular the contributions of the outgoing members during the past two years – namely Côte d'Ivoire, Equatorial Guinea, Kuwait, Poland, and of course Peru, which has so capably chaired the Informal Working Group on International Tribunals. I also take the opportunity to congratulate the incoming members of the Council, who I look forward to working with in 2020, and to thank the Office of Legal Affairs for its wonderful assistance. Further, I would like to acknowledge and sincerely thank the Mechanism's outstanding Host States, the United Republic of Tanzania and the Kingdom of the Netherlands.

Mr President,

I am proud to represent the Mechanism, which was established in 2010 by this august body to carry out the residual functions of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the former Yugoslavia (ICTY). In doing so, the Security Council affirmed the extraordinary role played by the two *ad hoc* Tribunals in carving out a new kind of justice, and the pressing need to protect their precious legacies in order to continue to guard against impunity and ensure the rule of law. Believe me, the Principals, Judges, and staff of the Mechanism are aware of the weight of the responsibilities entrusted to us, and of the importance of succeeding in our mission. We are working tirelessly to ensure that we discharge our duties as effectively and efficiently as possible, and I take this opportunity to thank and praise my Colleagues and all staff at the Mechanism for their ongoing efforts.

The report before you outlines the activities of the Mechanism in the last six months and highlights a number of key developments, as I shall explain. In terms of the existing judicial workload, I am pleased to report that at the Mechanism's Arusha branch, the review hearing in the *Ngirabatware* case was successfully held from 16 to 24 September 2019. This was the first time the courtroom at the Arusha branch had been used for evidentiary

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hearings, and the smooth running of the proceedings represented a remarkable team effort between staff from different sections at both branches. Just a few days later, on 27 September 2019, the Appeals Chamber delivered its review judgement in the case, months ahead of schedule. The Appeals Chamber rejected Mr Ngirabatware's attempt to show that the four key witnesses underpinning his convictions had truthfully recanted their trial testimonies, and decided that the Appeal Judgement against him remains in force.

Another significant development in Arusha also concerns Mr Ngirabatware. Here I am referring to the confirmation by the Single Judge on 10 October 2019 of an indictment against him, concerning allegations of contempt and incitement to commit contempt of the ICTR and the Mechanism. Mr Ngirabatware pleaded not guilty at his initial appearance on 17 October 2019, and the Prosecution requested the following day that this new contempt case be joined to the existing contempt proceedings in the *Turinabo et al.* case. I can share with you that, just yesterday, the request for joinder was granted by the Single Judge. Mr Ngirabatware's contempt case will therefore be joined to the *Turinabo et al.* case, which will now proceed against six accused persons rather than five.

In the *Turinabo et al.* case, the reporting period saw the continuation of an exceptionally active pre-trial phase, with over 53 decisions and orders being issued by the Single Judge. Two status conferences were held and the trial, which was originally scheduled to commence on 7 October 2019, was postponed following a request by the Prosecution to substantially amend the indictment. The joinder of the new *Ngirabatware* contempt case will also have an impact on the start of the trial. However, in the decision issued yesterday, the Single Judge rejected a request by Mr Ngirabatware for an August 2020 start date, and indicated that the trial will commence within months of the date anticipated before the request for joinder was filed. It is therefore expected that the joint contempt trial will commence in the first half of 2020 and conclude by December 2020.

Regarding our judicial activity in The Hague, I am pleased to report that the current caseload remains on track. In the *Stanišić & Simatović* retrial, the Defence case commenced on 18 June 2019. The Defence for Mr Jovica Stanišić concluded the presentation of its evidence in October, and the Defence for Mr Franko Simatović began presenting its evidence on 12 November 2019. In line with previous forecasts, it is expected that the retrial will be concluded and judgement delivered by the end of 2020. Likewise, I can confirm that the appeal proceedings in the *Mladić* case are progressing smoothly. The preparations for the appeal hearing are currently underway and the judgement is anticipated to be delivered by the end of next year.

Mr President,

In addition to the legal work, I would like to draw your attention to some of the Mechanism's other activities during the last six months. In particular, the Mechanism has made significant efforts, indeed great strides, in harmonising practices and procedures between its Arusha and Hague branches. You will recall that this is one of the main priorities of my Presidency, and I am heartened that the Mechanism's Prosecutor and Registrar also share this goal.

Most notably, as you will see in the report, after seven years a common filing system for both branches has finally been launched. I am referring here to the Unified Judicial Database. By the end of the year the transition is expected to be finalised, and the judicial records from ICTR, ICTY, and Mechanism cases will be available through one database, not only to Mechanism staff but also to the general public. I note that the development of a unified database was one of the recommendations arising out of the Office of Internal Oversight Services' (OIOS) 2018 evaluation of the methods and work of the Mechanism, which was of particular interest to the Security Council as reflected in resolution 2422 (2018).



A Judicial Records and Court Operations Unit has also been created in Arusha, increasing the capacity of that branch to seamlessly manage court hearings and filings, and forming an important counterpart to the Hague unit. A duty roster of Arusha staff members has likewise been established. These changes will ensure greater consistency between branches and more streamlined operations, and they are extremely welcome. However, we will not stop there. Let me assure you that the Principals, management and staff of the Mechanism – as well as its Judges – are committed to identifying further areas where harmonisation can be enhanced and efficiencies optimised.

Mr President,

Having outlined just some of the Mechanism's activities and achievements in the last six months, allow me to share with you what the Mechanism is looking forward to in the coming year. As you will appreciate, 2020 is shaping up to be a crucial year for the Mechanism, and therefore also for the Security Council. There are many milestones within our grasp.

First, we look forward to completing most of our judicial caseload in 2020, and to thereafter becoming a leaner residual institution. Indeed, with the exception of any potential appeals, the Mechanism expects to conclude all *existing* cases within the next twelve months. To clarify, this does not mean that the Mechanism will close once the cases are done. On the contrary, the Mechanism was tasked by the Security Council to perform numerous residual functions that will continue for many years into the future, unless you, the Members of the Council, decide otherwise. The Mechanism will therefore be in a position to focus primarily on its continuous residual functions after 2020, in the absence, I should add, of any fugitive trials or review proceedings. In so doing, it will be able to truly fulfil the Security Council's vision of the institution as a "small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions". I am sure you will agree that this is a very appealing prospect.

Second, we look forward to engaging in 2020 with the Security Council regarding its forthcoming review of the Mechanism. As the Council will recall, 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 by the Council. The third such review of the Mechanism's progress by the Security Council will take place in 2020. In addition, OIOS commenced a further evaluation of the methods and work of the Mechanism in October 2019, which will carry into next year. Officials from the OIOS' Inspection and Evaluation Division visited the Hague premises last week and are currently in Arusha. These processes will be complemented by several ongoing and pending audits by OIOS, as well as the Board of Auditors.

As in the past, the Mechanism takes such accountability processes extremely seriously. It therefore looks forward to opportunities to assess its progress and find new ways of increasing the efficiency and effectiveness of its operations – including through further harmonisation between branches, and measures to improve staff morale and performance. The Mechanism is ready to engage in frank discussions for the purposes of identifying areas where improvements can be made, as well as areas where best practices have already been implemented. It notes, however, that these processes are time- and resource-intensive, and take away from the Mechanism's ability to perform core functions.

Third, Mr President, the Mechanism looks forward to the continued – and increased – cooperation of Member States in relation to key aspects of its residual functions. I will mention here the enforcement of sentences. Currently, 50 persons convicted by the ICTR, the ICTY, or the Mechanism are serving their sentences in 14 Member States, and the Mechanism is deeply grateful for their ongoing assistance. It welcomes the cooperation of these and other States as it endeavours to expand its enforcement capacity and to identify enforcement States



for the convicted persons who await transfer. Separately in relation to enforcement, I also look forward to continuing to improve the quality and transparency of the Mechanism's approach to early release and related matters. An updated Practice Direction will be forthcoming once the usual consultation process is complete.

I will also mention the eight remaining fugitives indicted by the ICTR. The arrest and prosecution of these individuals is a top priority of the Mechanism and a primary focus of the Office of the Prosecutor. The Mechanism is prepared to conduct a trial in the event that a fugitive is apprehended, but in order to do so will require the continued cooperation and assistance of Member States, as indeed called for by this Council on several occasions. In this regard, the Mechanism trusts that South Africa, being one of the current Member States of the Council, will decide to honour its Chapter VII obligations, as well as the values that unite this Council, by securing the arrest of the fugitive that was located on its territory in 2018, almost 18 months ago. South Africa has done so in the past by arresting and transferring ICTR fugitives on two occasions, in 1999 and 2004. The Mechanism strongly regrets the current lack of progress, particularly since, as we all heard in this very Chamber in July of this year, South Africa believes that States have an international obligation to cooperate with the Mechanism and the Prosecutor.

The issue of the nine persons who were acquitted or released by the ICTR, but remain in a Tanzanian safe house, is another area where the Mechanism looks forward to the meaningful cooperation of Member States. As I have stated before, the Mechanism finds itself with the day-to-day responsibility for these persons, even though this was never part of the Mechanism's mandated functions. As time passes, the situation of these men becomes more and more untenable. A permanent solution must be found on an urgent basis and the Mechanism will be relying on the Council's renewed interest and resolve to take action.

Fourth and finally, Mr President, we look forward to counting on the continued support and assistance of the Security Council and of the broader United Nations membership, particularly in respect of the Mechanism's budgetary requirements, as we work together towards our common goals. In this respect, Members of the Council will be aware that the Mechanism's budget proposal for 2020 will soon be under consideration by the Fifth Committee of the General Assembly. As I have outlined, the Mechanism is poised to complete the bulk of its existing caseload in 2020. It is striving every day to meet the expectations of the Security Council, which are indeed high. The Mechanism is prepared to do the work, and to dispose of the remaining cases as efficiently and effectively as possible. But it will require the necessary resources to do so, and all the support that you can provide.

Just as in the past, I have confidence that the international community will not let us down, and that it will remember why the *ad hoc* Tribunals and the Mechanism were established in the first place. We were vividly reminded why these institutions were – and still are – necessary earlier this year, which marked 25 years since the 1994 Genocide against the Tutsi in Rwanda, just as we will be reminded in 2020 when we gather to commemorate 25 years since the Genocide in Srebrenica. For all of these reasons, I trust that the prevailing scepticism regarding international criminal justice will be set aside so that the mandate of the Mechanism, as determined by this very Council, can continue to be fulfilled. I thank you all in advance, and I look forward to our joint achievements in the coming year.

Thank you very much, Mr President, for your kind attention.
