



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

PROSECUTOR

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

The Hague, 14 December 2020

## Address of Mr. Serge Brammertz Prosecutor, International Residual Mechanism for Criminal Tribunals to the United Nations Security Council 14 December 2020

Mister President, Excellencies,

Thank you for this opportunity to remotely address you about the activities of the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals.

My written report provides details about our activities and results during the reporting period in relation to our strategic priorities. Today, I would like to highlight a few important issues.

At the outset, I would like to bring to your attention the continued commitment of OTP staff, who remain fully focused on completing our important work despite the disruptions and difficulties resulting from the global COVID-19 pandemic.

The last nine months have been a test for all of us. Yet my Office has maintained full business continuity and is achieving important results inside and outside the courtroom.

I would also like to express my appreciation to President Agius and Registrar Tambadou. As Principals, we have worked closely together this year to lead the Mechanism through the challenges it has confronted. I can say without hesitation that cross-Organ cooperation is at its highest level in years.

Mister President, Excellencies,

In relation to our trials and appeals, I am pleased to report that in-court proceedings recommenced in late August, only five months after the pandemic forced the Mechanism to shift to remote working.

My Office presented its oral appellate arguments in *Mladić*, and we are now awaiting the judgment in that case.



In *Turinabo et al.*, my Office expeditiously presented its witness evidence in only six weeks, consistent with the directions of the Single Judge. We are readying now to respond to the defense cases, and then make our final submissions.

The presentation of evidence in the *Stanišić and Simatović* re-trial is now completed. The Prosecution team is working quickly to prepare its final trial brief and closing oral arguments.

In our newest case, *Kabuga*, our work has proceeded well. By August, only two and a half months following the arrest, we established a team in Kigali to ready the case for trial. We are in the process of contacting witnesses, and the team is reviewing the evidence collected. Travel and other pandemic-related restrictions are posing challenges that we are working to overcome.

The Prosecution is also meeting its pre-trial obligations. The initial appearance of Kabuga was held on 11 November in The Hague. Disclosure of material to the defense is already underway. We will file a request for leave to amend the indictment by 15 January, and will adhere to further deadlines set by the Pre-Trial Judge.

My Office would like to extend its gratitude to the Government of Rwanda for its strong cooperation in relation to the *Kabuga* case. Our requests for assistance are being promptly and fully answered, and we are being granted swift access to witnesses and documentary records. The efforts of Rwandan authorities are having a direct and positive impact on the expeditious preparation of this case for trial.

So for my Office, we remain firmly focused on completing the remaining *ad hoc* judicial activity as quickly as possible. We look forward to receiving judgments in three cases by the end of May next year, which will mark important steps towards achievement of our goals.

Mister President, Excellencies,

With respect to the remaining fugitives indicted by the ICTR, my Office has viable leads and is implementing our strategies, with a particular focus on Protais Mpiranya, who will be tried by the Mechanism upon his arrest.

In the last three years, my Office confirmed the death of Augustin Bizimana and located two other fugitives.

This Council knows the story of one of them - Félicien Kabuga. As I reported to you, earlier this year my Office identified Kabuga's likely location following an intensive analysis of telecommunications and other data. Thanks to efficient cooperation from French authorities, Kabuga was arrested just a few months later on 16 May 2020.

But the story of the other – Fulgence Kayishema – is that he remains at large following South Africa's failure to provide effective cooperation over the last two and a half years.

My Office alleges that Kayishema, the local police inspector, played an important role in the 16 April 1994 massacre at Nyange Church. In the days leading up to the massacre, 2,000 Tutsi civilians – women, men, children and elderly – sought refuge in the church.



Initially, militias surrounded the church and launched an attack, including throwing hand grenades into the packed building. While many were wounded and killed, the refugees resisted, forcing the attackers to retreat.

Determined to murder these innocent civilians, local leaders, including Kayishema, brought a bulldozer to the church grounds. In an act of unimaginable brutality and sacrilege, the bulldozer was used to demolish the church with the refugees still inside. More than 1,500 were crushed to death. Survivors who escaped were hunted down and killed.

Kayishema fled from justice, and remained a fugitive for years. But almost three years ago, my Office finally located him.

Relying on records and sources, my Office concluded in early 2018 that Kayishema was living in Cape Town, South Africa. This was confirmed by South African authorities via INTERPOL in August 2018. We immediately submitted an urgent request for assistance to South Africa seeking his prompt arrest.

So we were surprised to be informed that because Kayishema had been granted refugee status in South Africa, he could not be handed over to the Mechanism. This excuse was withdrawn months later, replaced with a new argument that South Africa lacked a legal basis to cooperate with the Mechanism.

After sixteen months of intense negotiations, in December 2019, South Africa finally submitted the UN arrest warrant for execution, which a local magistrate approved. However, by then, Kayishema could no longer be found.

It is important to note that my Office has reliable information that Kayishema was present in South Africa as late as October and November 2019, so merely weeks before South Africa reported in the Security Council that the arrest operation was unsuccessful.

Little has improved since.

A year ago, after the failed arrest, my Office submitted an extensive request for assistance detailing information we required to continue the pursuit of Kayishema. Yet our request still has not been satisfactorily answered.

Two months ago in October, it was agreed that my Office would send a technical team to Pretoria to finally receive the requested material. The foreign affairs and justice ministries convened a number of joint meetings with responsible officials. But the Department of Home Affairs, which has responsibility for key information, did not attend as scheduled.

My Office was then again requested to send last week another mission to specifically meet with the Department of Home Affairs and receive outstanding documents. To our great surprise, on the last day of the mission, Home Affairs representatives informed us that Kayishema's refugee file and fingerprints do not exist. This is difficult to understand.



Mister President, Excellencies,

I report on these facts to explain why, despite all my Office's efforts, Kayishema remains at large.

The situation raises many questions.

How can it be that South Africa refused to arrest Kayishema two and a half years ago based on a refugee file that it is now claimed doesn't exist?

And why didn't authorities take obvious measures after being informed that an internationally wanted fugitive indicted for genocide was present in their country? Despite a UN warrant calling for Kayishema's immediate arrest, South African authorities did not provisionally detain him or put him under any surveillance to prevent his escape.

Yet what remains most important is that we move forward and finally secure Kayishema's arrest.

So today, let me make this request to the distinguished representative of South Africa.

Empower your operational services – particularly police and prosecutors – to work directly with us on a day-to-day basis. And truly give them your full political and diplomatic support, as well as the resources they require to help us.

I am prepared to visit Pretoria in the new year to discuss our further cooperation and agree on a clear joint strategy and operational arrangements.

This would also send the right message to other capitals.

I have previously mentioned my Office's efforts to engage with Zimbabwean authorities, and I intend to travel soon to Harare for further discussions. To move cooperation in the right direction, we would expect to see a more pro-active approach by the Zimbabwean Task Force. In this regard, effective investigations would need to begin with the acknowledgment that a fugitive is known to have sheltered in Zimbabwe and has deep, long-standing connections with Zimbabwean persons.

Similarly, my team and I will need to return again to Kampala to engage in open and frank discussions about the urgent steps needed to remedy long-standing issues. Authorities have acknowledged that a fugitive obtained an official Ugandan passport, but our requests for investigation records and access to persons of interest have not been answered after more than a year.

Mister President, Excellencies,

My Office is determined to account for the remaining fugitives as quickly as possible so that our tracking activities can finally be brought to an end. I know this Council fully shares and supports that goal.

But the absence of effective cooperation continues to set back our work and prevent the completion of this critical residual function.



As my Office works to resolve the challenges we face, the firm support of the Council will be vital. Member States should understand that when my Office requests their cooperation, we are acting with the authority given to us by the Security Council.

All of us owe nothing less to the victims and survivors of the 1994 genocide.

Mister President, Excellencies,

My Office's third strategic priority is to assist national jurisdictions prosecuting international crimes committed in the former Yugoslavia and Rwanda. We also provide support to authorities searching for persons still missing as a result of the conflicts.

I would like to briefly update you on three important developments.

First, the arrest of Félicien Kabuga has brought renewed attention to continuing national efforts to prosecute alleged *génocidaires*. Arrests conducted by Belgian and Dutch authorities in September and October, respectively, demonstrate both that international cooperation is essential and that justice can be achieved in courtrooms around the world.

My Office continues to urge full cooperation with the work of the Prosecutor General of Rwanda as he seeks to account for hundreds more fugitives who remain at large.

Second, my Office continues to strengthen our direct support to national prosecutors in the countries of the former Yugoslavia. As a result of our efforts, a number of important complex case files have been transferred to Croatia and Serbia. During the reporting period we also handed over to Montenegrin authorities a requested dossier concerning more than fifteen suspects who can now be investigated for serious crimes including sexual violence.

These developments present an important opportunity for the concerned States to clearly demonstrate their commitment to full accountability, particularly with respect to senior- and mid-level suspects who have enjoyed safe haven and impunity up to now. My Office will continue to directly engage with our counterparts to support further investigations and prosecutions. Diplomatic support from the European Union and other partners will remain critical.

Finally, I would like to take this opportunity to reiterate the importance of the search for missing persons in the former Yugoslavia.

My Office continues to work closely with the International Committee of the Red Cross and national missing persons authorities. We can report that our efforts are producing significant results.

Through this cooperation between international and national organizations, just a few weeks ago a new mass grave for Kosovo Albanians victims was found at Kizevak, Serbia, with exhumations now underway. Similarly, in Bosnia and Herzegovina, assistance from my Office contributed to locating four new grave sites during the reporting period.



More than two decades after the end of the conflicts, 10,000 families are still waiting to learn the fates of their loved ones. Accounting for all missing persons is a humanitarian imperative.

Mister President, Excellencies,

In conclusion, my Office is pleased that courtroom proceedings have now resumed, and congratulates all Mechanism staff for making this possible despite the COVID-19 pandemic. We are undertaking all efforts to expeditiously complete our work, and look forward to the delivery of three judgments in the first half of next year.

The search for the remaining six fugitives indicted by the ICTR continues to be a critical priority. My Office is grateful for the strong support it is receiving from some Member States. But we are deeply concerned that the lack of cooperation from others is significantly hindering our efforts. In order for this work to be successfully completed, it is critical that the Security Council sends an unmistakable message that Member States treat this matter as an urgent priority and offer my Office their full cooperation.

We are grateful for the continued support of this Council in all of our efforts. Thank you for your attention.

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