



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)*

New York, 20 October 2021

### **Address to the United Nations General Assembly Judge Carmel Agius, President, International Residual Mechanism for Criminal Tribunals 20 October 2021**

**Mr. President,  
Excellencies,  
Ladies and Gentlemen,**

On behalf of the International Residual Mechanism for Criminal Tribunals it is a great honour to appear before you and present the Mechanism's Ninth Annual Report.

At the outset, allow me to congratulate His Excellency Abdulla Shahid of the Maldives on his election as President of the seventy-sixth session of the General Assembly and wish him every success during his term.

**Mr. President,**

You have integrated into your Presidency the importance of bringing hope, an aspiration I instinctively share on the deepest of levels. I take particular pride in heading an institution whose mission in some ways is inseparably linked with this very ambition. After all, it could be said that international criminal justice is ultimately about bringing a measure of hope - hope to victims, survivors and their loved ones that justice will be done. Hope to all of us that ensuring accountability for the most heinous crimes will also act as a deterrent to others, and prevent future suffering.

Hope has also been the main driving force behind our perseverance in dealing with the global health crisis that has shaken our lives so profoundly. As we slowly emerge from the worst grip of the pandemic, thanks to the wonders and rigours of science, I am pleased to report further progress in the implementation of the Mechanism's unique mandate, including our fulfilment of important duties owed towards the accused and convicted persons, victims and witnesses, and the international community at large.

I would not say this has been easy, by any means. It particularly grieves me to recall the sad passing of Judge Gustave Gberdao Kam of Burkina Faso in February. Judge Kam's death was a shock and a terrible blow to all of us at the Mechanism, as well as to the international legal community more generally. He was an eminent and principled jurist, dedicated to the causes of justice and human rights throughout his



illustrious career. A person who served the United Nations, the African Union, and his country, Burkina Faso, with distinction.

**Mr President,**

Despite the many difficulties encountered during the reporting period, the Mechanism made remarkable headway towards the completion of its core judicial work. Without compromising the rights of the accused or the health and safety of participants in the proceedings, three landmark Judgements were pronounced in the first half of this year. At the Hague branch, the Appeal Judgement in the Mladić case was delivered on 8 June, concluding the proceedings in the case, and the Trial Judgement in the retrial against Jovica Stanišić and Franko Simatović was delivered at the end of the same month, on 30 June. At the Arusha branch, the Trial Judgement in the contempt case against Anselme Nzabonimpa and others was pronounced on 25 June. With regard to the latter, I recall that this was formerly called the Turinabo et al. case, until proceedings against the co-accused Maximilien Turinabo were terminated in April 2021, after his unfortunate passing.

On 6 September 2021, following the filing of notices of appeal by all parties in Stanišić & Simatović, the case moved into the appeals phase. In accordance with Article 12(3) of the Mechanism's Statute, I am presiding over the proceedings and have appointed a bench of five Judges to adjudicate the appeals. In addition, on 27 September I appointed an appeal bench in the Nzabonimpa et al. case, following a joint Defence motion to vary the time limits applicable to the appeals process. Notices of appeal have now been filed. As this is a contempt case, the bench is composed of three Judges, and I likewise preside over the proceedings.

I note that while I, as President, am based at the Mechanism's Hague branch, the other members of the appeal benches will exercise their duties for the most part remotely, consistent with Article 8(3) of the Statute and our cost-efficient, lean structure.

Separately, the pre-trial preparations in the case against Félicien Kabuga have progressed steadily. The last, very productive Status Conference in that case took place on 6 October 2021, with all parties in attendance. In accordance with the pre-trial work-plan, the Prosecution filed its pre-trial brief, with witness and exhibits lists, on 23 August. The Defence is expected to respond by 15 November. I note however that, while the case is otherwise nearly trial ready, the health situation of the accused may continue to have an impact on the start of the proceedings. Following the conclusion of the independent medical examination later this year, the Trial Chamber should be in a position to determine the nature of the impact on the commencement and conduct of the trial.

Unfortunately, progress in the contempt case against Petar Jojić and Vjerica Radeta has not been as promising as in the other cases before the Mechanism. I recall that in May of this year, following a request by the Single Judge seised of the proceedings, I reported Serbia to the Security Council for failing to comply with its international obligations to arrest and surrender the accused and transfer them to the Mechanism. This was the third time that Serbia's non-compliance has been reported to the Council, and follows over six years of inaction on Serbia's part. In the meantime, related litigation has continued before the Mechanism. On 3 September 2021, the Single Judge decided that it was in the interests of justice to secure evidence by special deposition for use in a future trial, in the event that witnesses later become unavailable.



Before this august Assembly, I urge Serbia once more to comply with the decisions of the Mechanism and with its international obligations as established by the Security Council itself.

**Mr. President,**

In relation to the Mechanism's other residual functions, allow me to provide some highlights.

First, we continue to play an active role in supervising the enforcement of sentences imposed by the ICTR, ICTY and the Mechanism. I recall that, while the day-to-day enforcement of sentences is primarily undertaken pursuant to the national law of the respective enforcement States, this is subject to the supervision of the Mechanism. This means that convicted persons may, and in fact do, raise complaints about conditions of imprisonment directly to the Mechanism. Moreover, in order to ensure a level playing field for convicted persons serving their sentences in different States and under myriad national provisions, their requests for pardon, commutation of sentence, or early release are decided in accordance with the Mechanism's legal framework. In this respect, the decision-making power rests with me as President, in consultation with other Judges. Since I last reported to you, I have adjudicated 13 such requests, and currently have another 11 under consideration.

On top of these matters, and considering the particular vulnerability of prison populations during the pandemic, I have continued to regularly monitor the situation of our convicted persons in the context of COVID-19. In this regard, I issued a further order on 1 October 2021 requesting relevant updates from enforcement States. I take this opportunity to reiterate my sincere gratitude to the 14 Member States who currently support the Mechanism by enforcing the sentence of one or more convicted persons, for their cooperation throughout and especially for the extra efforts made to ensure the health and safety of these persons in the current circumstances.

Also in connection with enforcement matters, I have continued to designate States in which convicted persons are to serve their sentences. During the reporting period, the Mechanism was able to transfer two persons to their designated enforcement States and we are working hard to identify suitable enforcement States for two more convicted persons who are currently detained in The Hague. At present we have five detainees in our detention unit in The Hague, including two appellants, while the facility in Arusha is empty. Both detention facilities maintain additional custodial capacity in the event that a fugitive is apprehended.

Turning to the Mechanism's monitoring of cases referred to national jurisdictions, advancements have also been made in this area. During the reporting period, two appeal judgements were issued in cases referred to Rwanda: In December 2020, in the case against Jean Uwinkindi, and in May 2021 in the case against Bernard Munyagishari. Both these judgements upheld the life sentences imposed at first instance. Uwinkindi filed a notice for review of the appeal judgement before the Supreme Court of Rwanda in January 2021, which is under consideration. Aside from this case, only two cases are currently being actively monitored by the Mechanism: the trial proceedings against Laurent Bucyibaruta in France, and the appeal proceedings in the case against Ladislas Ntaganzwa in Rwanda.

Separately, with regard to the long-standing issue of the resettlement of the nine acquitted and released persons still residing in a safe house in Arusha, I can report that we expect positive developments in the coming months.



**Mr. President,**

Just last month, on 28 and 29 September, the Mechanism carried out its first-ever ‘virtual Plenary’ of Judges. The in-person Plenary that had originally been planned for the Hague branch was postponed twice as a result of pandemic-related restrictions. However, thanks to the dedication and ingenuity of our Information Technology Services Section, and the fantastic efforts of other staff, we were able to proceed with a virtual event using a secure online platform developed in-house. Logistically speaking, this was quite an achievement given that our 25 Judges were located in 21 different countries and numerous time-zones during the confidential meetings. I am satisfied to report that the Plenary went smoothly and my Colleagues and I were able to hold very fruitful discussions.

Significantly, it also provided Judges with a timely opportunity to welcome Judge Fatimata Sanou Touré of Burkina Faso, who was appointed by the Secretary-General on 12 August 2021 to fill the vacancy left by the late Judge Kam for the remainder of his term of office. The Mechanism will greatly benefit from Judge Sanou Touré’s experience as a judge in her home country and a long-time defender of human rights. Her arrival also enriches the judicial roster by further improving gender balance amongst Mechanism Judges.

**Mr. President,**

We are steadily advancing in the furtherance of our mandate. In doing so, we are aware that there is always room for improvement, and that the funds available to us to see our work through are finite. For these reasons, all three organs of the Mechanism continuously strive to further harmonise practices and streamline activities, in order to ensure the optimal use of our limited financial and human resources, while continuing to deliver at the highest international standards. We therefore welcome the recently-initiated evaluation by the Office of Internal Oversight Services with regard to the Mechanism’s implementation of recommendations from previous evaluations. This evaluation will feed into next year’s fourth review of our mandate by the Security Council.

Our unreserved commitment to efficiency of operations is also reflected in the decision of the Principals to have a full return of staff to premises. Indeed, despite the pandemic, business continuity towards the achievement of our mandate must be a top priority. This is of course done with due regard for the health and safety of all concerned, and in light of the availability of vaccinations against COVID-19 at all of our duty stations. I take this opportunity to praise all staff and Judges, as well as the Prosecutor and the Registrar, for their dedication and outstanding efforts, particularly during these difficult times.

**Mr. President,  
Excellencies,**

In closing, the Secretary-General has recently reminded us that the purposes and principles of the Charter of the United Nations and international law remain timeless, universal, and an indispensable foundation for a more peaceful, prosperous and just world. I am invigorated by the role that the Mechanism plays in strengthening this foundation, not only with regard to the conflicts in the former Yugoslavia and Rwanda, but also through our important contributions to the landscape of international criminal justice more generally. However, we cannot do so alone.

We will continue to rely on the steadfast support of Member States who believe in our important mission, including our outstanding Host States and the 14 States who enforce the sentences of our



convicted persons, as well as Rwanda and the countries of the former Yugoslavia. To these States and to all of the other stakeholders who cooperate with and assist us in so many ways, I express my deepest gratitude. Last but not least, I wish to acknowledge and praise the valuable assistance provided by the Legal Counsel and the Office of Legal Affairs. Together, we can keep transforming hope into reality.

I thank you for your attention.

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