

**ADDRESS TO THE UNITED NATIONS GENERAL ASSEMBLY
JUDGE CARMEL AGIUS, PRESIDENT,
INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS
23 October 2019**

Mr. President,

Excellencies,

Ladies and Gentlemen,

It is my deep honour to address the General Assembly for the first time in my capacity as President of the International Residual Mechanism for Criminal Tribunals, as the Assembly meets to consider the seventh Annual Report of the Mechanism, which covers the period 1 July 2018 to 30 June 2019.

I am particularly pleased to do so today under the Presidency of His Excellency Tijjani Muhammad-Bande of Nigeria. I warmly congratulate His Excellency on his election as President of the seventy-fourth session of this Assembly, and I wish him every success in this distinguished office. Before I start with my report, I wish also to express my sincere gratitude for the unwavering support of the Secretary-General for the Mechanism's work, as well as the continued assistance provided by the Legal Counsel and the Office of Legal Affairs.

I will begin by recalling that the Mechanism's predecessor institutions, the International Criminal Tribunals for Rwanda and for the former Yugoslavia – the ICTR and the ICTY, respectively – were born of a shared commitment to peace, justice and the rule of law. Over almost a quarter of a century, they played a truly groundbreaking role in the global fight against impunity. The Mechanism was equally born of this commitment, and a recognition of the fundamental need to close the impunity gap by concluding the work of the two *ad hoc* Tribunals, including by ensuring that the remaining fugitives who were indicted by the ICTR can, and will, still be tried. I would like to thank all Member States of the United Nations, and the international community as a whole, for their enduring support and assistance to the ICTR, the ICTY and the Mechanism, which has enabled these pioneering institutions to succeed beyond all expectations thus far. At the same time, I must emphasise how crucial it is that the international community, and this august body in particular, continue to support the Mechanism in its vital mission.

Mr. President,

As the Annual Report submitted to you notes, more than half of the period covered by the report fell under the very capable and dedicated leadership of my predecessor, Judge Theodor Meron. On behalf of the Mechanism, I again express sincere thanks to him. I am very pleased that, throughout the reporting period, the Mechanism made solid progress in relation to its mandated functions. Let me assure you, however, that we are not complacent. There are still a number of challenges ahead and, as always, I am committed to doing my utmost to address them diligently and responsibly.

In relation to our current caseload, there have been two main developments since the Annual Report was submitted in August that I wish to apprise you of. At the Mechanism's Arusha branch, the Review Hearing in the case of *Prosecutor v. Augustin Ngirabatware* was successfully conducted from 16 to 24 September 2019, and the Appeals Chamber rendered its Review Judgement on 27 September 2019, months ahead of the anticipated schedule for conclusion of the case. The Appeals Chamber found that Ngirabatware had not proven that witnesses had truthfully recanted their trial testimonies, and it consequently decided that the Appeal Judgement in his case remains in force.

While this was the first review hearing before the Mechanism, it was not the first request for review of an appeal judgement, and it will not be the last. For this reason, the Mechanism will have to be adequately resourced to adjudicate such requests as they arise. At the same time, I draw to your attention the high threshold elaborated in the *Ngirabatware* Review Judgement, where the Appeals Chamber stated that "it will not lightly disturb on review a trial chamber's credibility assessment, which was subjected to appellate review, based on a witness's subsequent conduct occurring [...] years after their original testimony" and that "an applicant bears a heavy burden in showing that the conduct of a witness, occurring significantly post trial testimony, taints their original testimony".

The second recent development at the Arusha branch also relates to Ngirabatware. I am referring here to the confirmation on 10 October 2019 of an indictment against Ngirabatware for contempt, and incitement to commit contempt, of both the ICTR and the Mechanism. The Prosecution alleges that Ngirabatware has interfered with or bribed witnesses, or has incited others to do so, in order to secure the overturn of his convictions, and that he has in addition violated witness protection orders. Ngirabatware's initial appearance took place last week, on 17 October 2019, during which he pleaded not guilty and the Prosecution indicated that it would request the joinder of this new case with the ongoing contempt proceedings against Maximilien Turinabo and others. The request for joinder was filed publicly a day later, on 18 October 2019. Turinabo and his four co-accused are also alleged to have interfered with witnesses in order to secure Ngirabatware's acquittal. The *Turinabo et al.* case is in a very active pre-trial phase and while the start date of the trial is yet to be defined (due largely to the pending request for joinder), it is currently envisaged that the hearings will commence in the first half of next year and the trial will conclude before the end of 2020.

Turning to the judicial activities at the Mechanism's Hague branch, I am pleased to report that everything remains on track. In the case of *Prosecutor v. Radovan Karadžić*, the Appeals Chamber delivered its judgement on 20 March 2019, marking another important step towards the fulfilment of the Mechanism's mandate. In its judgement, the Appeals Chamber reversed in part convictions related to certain incidents, and affirmed the remainder of Karadžić's convictions for genocide, crimes against humanity and war crimes. The Appeals Chamber by majority set aside the Trial Chamber's sentence of 40 years of imprisonment and instead imposed on Karadžić a sentence of life imprisonment.

In the re-trial of *Prosecutor v. Stanišić & Simatović*, the presentation of the Prosecution case has concluded, and the Defence case started on 18 June 2019 with the opening statement by the Defence team for Jovica Stanišić. The Defence case for Franko Simatović will commence on 5 November 2019, and it is expected that the trial will be concluded and judgement delivered by the end of 2020.

In *Prosecutor v. Ratko Mladić*, the briefing of the appeals brought by both parties was concluded in November 2018 and the appeals are currently being prepared for a hearing. I am

pleased to report that, even though several Judges on the Bench were replaced in September 2018, the appeal judgement is still on track to be delivered by the end of 2020.

Finally, in the contempt case against Petar Jojić and Vjerica Radeta, which the Mechanism inherited from the ICTY, the Single Judge issued a decision on 13 May 2019 revoking the earlier referral of the case to Serbia. In June, Serbia sought to appeal this decision, and the matter is currently pending before the Appeals Chamber, with myself presiding.

Before moving on to other matters, I wish to thank the Mechanism's dedicated Judges and Chambers staff for their outstanding efforts during the reporting period in relation to the above-mentioned cases. I also wish to express my heartfelt gratitude to all other Mechanism staff, as well as the Mechanism's Prosecutor and Registrar, for their continued excellent and hard work, and their commitment in carrying out the Mechanism's numerous mandated functions on a daily basis.

Mr. President,

While we are making progress in relation to the current caseload, it is important to bear in mind that the Security Council has tasked the Mechanism with a range of other residual functions that will continue once the core judicial work is concluded. For instance, as long as any of our victims or witnesses remain in need of protection, the Mechanism will have a role to play. The same applies to our responsibilities in relation to supervising the enforcement of sentences of persons convicted by the ICTR, the ICTY or the Mechanism, providing assistance to national jurisdictions, monitoring cases referred to national jurisdictions, and preserving and managing the archives of the Mechanism and its predecessor Tribunals.

The enforcement of sentences, which includes matters such as applications for pardon, commutation of sentence, or early release of convicted persons, is a complex and dynamic area to which I dedicate a significant proportion of my time and energy. I recall that, while the day-to-day enforcement of sentences is primarily undertaken pursuant to the national law of the relevant enforcing States, subject to the overall supervision of the Mechanism, requests for early release are decided by myself as President, in accordance with the Mechanism's legal framework and jurisprudence. It is worth noting in this regard that I am currently refining my approach to such requests – not in terms of the existing legal criteria, which of course remain the same, but in terms of the processes involved and the information that I will be collecting and relying upon.

My intention is to ensure a more transparent and open process, which involves meaningful consultation with other Judges as well as external stakeholders, and the collection of comprehensive information on the basis of which I can make a fully-informed determination – including in relation to the rehabilitation of the convicted person, being one of the factors to be taken into account pursuant to the Mechanism's Rules of Procedure and Evidence. In this context, I consider it important to continue and increase the dialogue with victims' groups and members of civil society, as well as the national authorities of Rwanda and the former Yugoslavia, where appropriate.

Mr. President,

Let me now turn to the important topic of Member States' cooperation. First of all, I wish to acknowledge and sincerely thank all Member States that have over the years provided invaluable cooperation in enforcing the sentences of individuals convicted by the ICTR, ICTY or the Mechanism. The number of convicted persons currently serving sentences within enforcement States stands at 50. Your unstinting support in this regard is very much appreciated. I am pleased to

inform you that, since the submission of my written report, the Mechanism has been able to transfer another two convicted persons to Member States to serve their sentences. Currently two persons remain in the United Nations Detention Unit in The Hague awaiting their transfer to an enforcement State, and one person remains in the United Nations Detention Facility in Arusha pending his trial.

Another area where the Mechanism continues to require the cooperation of Member States, in order to be able to fulfil a crucial part of its mandate, is the tracking and arrest of the remaining fugitives indicted by the ICTR. Prosecutor Serge Brammertz and his team are undertaking intensive efforts to locate the fugitives, and the Mechanism stands ready to try them. However, these individuals will only be brought to justice if Member States provide the necessary cooperation and take measures to secure their apprehension and arrest. The Prosecutor has reported that a fugitive has been located in South Africa, but unfortunately South African authorities have not yet executed the Mechanism's arrest warrant. I urge every Member State to adhere to its international legal obligations and provide full cooperation to the Prosecutor in this regard.

As you will have read in the Annual Report, your support is also needed to resolve the untenable situation of the nine individuals in Arusha who were either acquitted, or who have already served their sentence imposed by the ICTR, but are unable or afraid to return to their country of citizenship. While one individual was successfully relocated during the reporting period, the Mechanism relies greatly on the cooperation and assistance of Member States, as indeed called for by the Security Council, to find a sustainable solution for the remaining nine. The rights of these persons are gravely affected by the *status quo*, and it is vital to the credibility of the Mechanism, as well as the United Nations as a whole, that these individuals be appropriately relocated and able to rebuild their lives.

Mr. President,

In the spirit of enhancing cooperation and optimising efficiency, I can report that the Mechanism has been focusing on the harmonisation of practices and procedures between Arusha and The Hague. I am pleased to report that we have made tremendous headway since the submission of the Mechanism's written report in August. A major milestone is the implementation of a Unified Judicial Database, through which the same system for judicial filings is now applied at both branches, thereby allowing for greater synergies. By the end of the year the transition is expected to be finalised, and the full record of ICTR, ICTY and Mechanism jurisprudence will be available through one database, not only to Mechanism staff but also to the general public.

In addition, a specialised Judicial Records and Court Operations Unit has been established within the Registry legal section of the Arusha branch. This Unit, like its existing counterpart in The Hague, is responsible for court operations and the processing, management, and distribution of judicial filings. In this context, the Registry is working on establishing cross-branch guidelines and standard operating procedures for court management and filing processes that are based on best practices at both branches. I note also that in the *Ngirabatware* case last month, Registry staff worked hand-in-hand at the two branches to ensure the smooth conduct of the Review Hearing. This included the sharing and cross-training of staff to ensure the most efficient use of knowledge and skills.

Even with these excellent new initiatives, our push for efficiency will continue unabated. In this context, I draw your attention to our budget submission for 2020, which is particularly restrained in view of the amount of work yet to be done. I can tell you that next year will be an extremely busy year for the Mechanism, with at least two major judgements expected to be issued and a large proportion of the existing judicial workload set to conclude. In order to achieve this goal

and avoid any delays, the Mechanism will require the necessary resources and all the support you can provide. This year's budget submission is therefore crucial and, if approved, will position the Mechanism for a lean post-2020 scenario.

Mr President,

Looking back at the achievements of the *ad hoc* Tribunals, and more recently the Mechanism, I feel a responsibility to tell you how much I care for the journey that started back in 1993, in which I have had the enormous privilege of taking part. However, I can understand the doubts that arise from time to time, when members of the international community question whether the results of international criminal justice are worth the efforts expended and the money invested. And I know that, particularly now, a sense of fatigue has set in amongst certain Member States as regards international criminal justice, if not also an attitude of pessimism and cynicism. I can understand these views, even if I do not share them. But I dare to say that international criminal justice is worth this investment of our time and resources, and will continue to be worth it. And further, I believe that the principles, processes and frameworks established by the ICTR, the ICTY, the Mechanism, the International Criminal Court and many other courts and tribunals that have followed, are resilient. In fact, I believe they will outlast all of us. I see this as an extraordinary success for the United Nations as a whole, as these institutions have contributed to the realisation of some of the Organisation's most fundamental goals, including the fight against impunity for serious crimes.

This does not mean there is no room for improvement – on the contrary, I am sure that efficiency can be increased within any international organisation – but to interrupt the journey of international criminal justice at this stage would be a betrayal to the victims, an encouragement to the perpetrators, and a turning back from the international community's stated commitments to the rule of law and accountability. For all of these reasons, I urge you to continue to support the Mechanism, as well as other international courts and tribunals, to the fullest extent possible, both now and into the future, so that we may together continue to uphold the values that led to the establishment of the United Nations 74 years ago tomorrow.

In closing, allow me to express, on behalf of the entire Mechanism, our deep gratitude to your Governments for your support thus far, and our hope that you will allow us the additional resources we need to keep carrying out our mandate as efficiently and effectively as possible.

Thank you.