



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, 12 December 2022

Address to the UN Security Council Judge Graciela Gatti Santana, President, International Residual Mechanism for Criminal Tribunals 12 December 2022

**Madam President,
Excellencies,
Ladies and Gentlemen,**

Good morning, it is a great honour and privilege to appear before you today and present the twenty-first progress report of the International Residual Mechanism for Criminal Tribunals. I do so in my new capacity as President of the Mechanism. Mindful of this unique opportunity, I wish to express my gratitude for the trust placed in me and pledge to lead in exemplary and effective ways. I follow in the footsteps of my predecessor, Judge Carmel Agius, whom I want to publicly praise. His generosity of spirit, combined with his able stewardship and pragmatic approach to solving problems, should serve as an example for our discordant times.

Madam President,

I am happy to report that the Mechanism -one entity with two branches- remains strong, delivering tangible results in the fulfilment of its mandate and becoming a truly residual body. Institutions are only as effective as the individuals who constitute them. In my first five months, I have witnessed first-hand the tireless efforts of Judges and staff alike, all working tirelessly to make further significant progress in relation to the Mechanism's pending judicial caseload. In this regard, after disposing of the *Fatuma et al.* contempt case on 29 June 2022, in line with the original projection, we are left with only two main cases, both relating to core crimes.

I refer first to the trial against Mr. Félicien Kabuga which commenced in The Hague on 29 September and is progressing apace. Before the Mechanism's end of the year judicial recess, starting on 26 December, the Trial Chamber expects to have heard 20 of the approximately 50 witnesses who will testify in court for the Prosecution. The innovative conduct of this case displays excellent inter-branch coordination and the determined will of the Trial Chamber to move trial proceedings along as expeditiously as possible, with full respect for due process and fair trial rights of the accused. In addition to the Hague courtroom, witnesses and Counsel can securely participate from the Arusha branch and the Kigali Field Office, and the accused is able to attend the trial in person or remotely from the United Nations Detention Unit. The Judges are supported by a dedicated team of lawyers working from across



all duty stations. I have appointed a Reserve Judge to ensure continuity, should one of the Judges on the bench become unavailable. The projection for completion of the trial phase of this case remains by September 2024.

Equally, the *Stanišić and Simatović* appeal proceedings, over which I have presided since July, continue to be on track. The next status conference will be held on 19 January 2023 and the in-person appeal hearing has now been scheduled for 24 and 25 January 2023. With these key hearings in place, I am confident, with the full support of the judges on the bench, in confirming that the appeal judgement will be delivered by June 2023. Notably, in this case, all of the Judges on the bench, except for me, carry out their work remotely.

Additionally, the Mechanism made important strides with respect to its other continuous judicial activities, arising from functions such as the protection of victims and witnesses, assistance to national jurisdiction and the monitoring of cases referred to national courts, as well as the enforcement of sentences. These matters regularly call for decisions by Mechanism Judges or the President and require sustained efforts and resources to see the full cycle of justice through to the end. The recent in-person Plenary session of Judges, held from 28 to 30 November 2022, provided an apt forum to discuss these matters in greater depth.

Madam President,

Earlier this year, the Security Council reviewed the progress of the work of the Mechanism, resulting in the adoption of resolution 2637 (2022) in June. Review processes and evaluations present unique opportunities for improvement and self-calibration. Having this resolution in place from the very start of my mandate has helped me define the priorities of my presidency and other important areas of focus. In that connection, please allow me to make a few remarks.

First, the resolution contains a strong call to all States to fully cooperate with the Mechanism. This is a compelling call for action which applies to all crimes contained in Article 1 of the Mechanism's Statute. And contempt is among these crimes, not a mere violation of procedural discipline as has been previously suggested by one delegation. Respect for the proper administration of justice constitutes an integral part of our system and is *sine qua non* for the existence of the rule of law. Interference cannot be tolerated. It threatens the bedrock of the international system of justice and the legacy of our court. In the *Jojić and Radeta* case, the Republic of Serbia has an unequivocal obligation to cooperate with the Mechanism. Recently, the national authorities have informed me that they have no intention of complying with the Single Judge's order from 13 May 2019, which the Appeals Chamber affirmed on 24 February 2020. Let me say that while I am disappointed, I am not discouraged. I will continue to raise this matter in the expectation that the Republic of Serbia will ultimately fulfil its international duties under the Charter of the United Nations, as it has done in the past on a number of occasions relating to contempt of court.

Another serious matter, which the Council has asked all States to cooperate with, and render the necessary assistance to, the Mechanism concerns the eight relocated persons who have been acquitted or who have completed their sentences. The best way to resolve this situation would be for the existing agreement between the United Nations and Niger to be observed. The fact that this has not happened has resulted in these persons living under *de facto* house arrest, despite them being free men. The Mechanism, and the International Criminal Tribunal for Rwanda before it, has time and again brought the urgent need to resolve the matter of acquitted and released persons to the attention of the Security



Council. A year ago in this Chamber, my predecessor announced a breakthrough, thinking the matter had reached its conclusion. At that time, he praised the representative of Niger, serving as President of the Security Council for December 2021, for his country's having accepted to relocate these persons onto its territory. A year later, our collective inability to find a durable solution not only reflects negatively on the Organisation but also on the credibility of international justice as a whole. State assistance in identifying and implementing an acceptable solution to this crisis will go a long way to help the Mechanism move ahead with its transition plans.

Second, the Council has requested that the Mechanism provide options regarding the transfer of its remaining activities in due course. We have taken this request seriously and that is why developing a strategy for the future has become one of the priorities of my presidency. Last Friday, I presented the Security Council's Informal Working Group on International Tribunals with a roadmap to develop a Mechanism-wide scenario-based workforce plan. This roadmap lays out the remaining residual functions with preliminary projections involving three drawdown phases. Phase One would be the period during which *ad hoc* judicial activity and the tracking of fugitives are expected to be completed. Phase Two would be the period during which the Mechanism will focus exclusively on discharging its continuous residual functions, which require more complex and long-term consideration. And then finally, in the third and last Phase, it is anticipated that our continuous residual functions will have a greatly-reduced workload, for which specific projections are not available at present. The Mechanism will continue to work collaboratively on crafting options for any transfer of functions, as well as timelines for expected durations. With the roadmap as a first marker, the Mechanism will provide updates on the development of a comprehensive strategy to guide the Mechanism's continuing transition to a truly residual court.

As this Council has previously noted, there can be no "exit without strategy". While this is true, I would underscore that our planning for the future is dependent on our addressing the challenges of the present. Any delay on this front will have an impact on our transition plans. One clear example is the area of enforcement of sentences. Compared to other international courts or tribunals, we have the largest number of convicted persons, 51 in total, serving the lengthiest sentences, including 17 life sentences. Currently, 13 States have gone above and beyond demonstrating their strong commitment to international justice by willingly assuming the additional and weighty responsibilities to enforce sentences. Their ongoing support and cooperation are critical to the Mechanism's ability to carry out this aspect of its mandate and I commend and sincerely thank them. I urgently appeal to other States to follow their lead in sharing the burden of enforcing the sentences of persons convicted by the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism. Unless additional States come forward, the Mechanism will struggle to continue to fulfil its duties in this important area.

Finally, I refer to this body's continued emphasis that our residual tribunal should remain guided by the premise of operating as a small, temporary and efficient structure. The ability to appreciate what "residual" truly means has become clearer, now that we are dealing with the last trial and appeal proceedings. The reality, however, is that the scope of our responsibilities and the volume of our activities extends far beyond what was envisaged back in 1993 and 1994 when the *ad hoc* tribunals were established. In that sense, the term "residual" should not give the impression that we no longer matter. On the contrary, our residual mandated functions, including judicial functions, remain essential. Indeed, that is why this institution was created in the first place. Even after the completion of our pending caseload, we will be left with a number of valuable long-term responsibilities aimed at consolidating our achievements and results. I am referring to the enforcement of sentences, preservation of archives,



protection of witnesses, assistance to national jurisdictions and other judicial activity. As a result, I urge the international community to remain steadfast in its commitment to fight impunity; to embrace the reality that justice does not end with final judgments; and to acknowledge that our residual functions require continuous efforts to ensure that the legacy of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Mechanism is not derailed.

I would also underscore the need to redouble our efforts to counter genocide denial, revisionism and the glorification of war criminals. By defending and disseminating the truth we can help prevent genocides and other heinous crimes from occurring again. The information centres envisioned by the Security Council in resolution 1966 (2010) are geared in this direction, and as demonstrated by the existing centre in Sarajevo, will play a vital role in making our work more comprehensible and accessible to affected communities. For this reason, the international community is encouraged to work together with the countries of the former Yugoslavia and Rwanda and support the establishment of these valuable platforms.

Madam President,

Through the establishment of the Residual Mechanism over a decade ago, the Security Council sent a strong message against impunity: That high-level fugitives indicted by the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda cannot escape justice and that the legacy of these two courts must be protected. Justice, together with peace, are the most pressing needs of today's world. I can tell you without doubt, that we have done our part. The Mechanism is proud of its contribution and should be considered one of the best investments of the United Nations.
