



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, 12 June 2023

Address to the UN Security Council Judge Graciela Gatti Santana President, International Residual Mechanism for Criminal Tribunals 12 June 2023

Madam President,

Excellencies,

Ladies and Gentlemen,

Nothing encourages crime more than impunity.

In May 1993, the Security Council agreed unanimously to take exceptional action regarding the former Yugoslavia and establish an international criminal tribunal. This bold act asserted the rule of law and served as a warning to others elsewhere that violations of international humanitarian law would not be tolerated and, more importantly, that they should not go unpunished.

What the Security Council realized back then, and what continues to be true today, is that criminal conduct affecting and offending humanity requires global accountability. This same sentiment also prevailed in 1994 with the establishment of the International Criminal Tribunal for Rwanda. And in 2010, a successor body of the *ad hoc* tribunals - the residual Mechanism which I have the honour to lead - was conceived as an expression of the ongoing collective commitment to an indispensable system of international justice.

Madam President,

Within the framework of the Mechanism's wide-ranging mandate, particular attention has been paid to delivering justice, establishing the truth, upholding international standards of due process and fair trial rights, and ultimately convicting those who have been proven guilty beyond reasonable doubt of the most horrific crimes.

Two weeks ago, the Appeals Chamber handed down its last judgement concerning crimes committed during the conflicts in the former Yugoslavia, in the case against Jovica Stanišić and Franko Simatović. With this judgement, the ambitious journey of the International Criminal Tribunal for the former Yugoslavia has come to an end, in so far as the cases against all 161 persons indicted by that tribunal have concluded.



This leaves only one case related to core crimes committed in Rwanda - the trial against Félicien Kabuga.

Before I update you on those proceedings, I wish to pay tribute to Judge Elizabeth Ibanda-Nahamya, who was a member of the *Kabuga* Trial Chamber. Her sad passing in January of this year was devastating not only to the Mechanism, but also to the wider international legal community. Judge Ibanda-Nahamya was a great Judge and an even greater human being who garnered tremendous respect. Her dedication, professionalism and kindness as a colleague are terribly missed. I am, however, pleased that Uganda has nominated another experienced female jurist, Judge Lydia Mugambe Ssali, who joined our judicial roster in late May.

Coming back to the case, on 6 June the Trial Chamber rendered its decision on the fitness and future of the trial of Félicien Kabuga. After months of carefully examining the issues at stake, the Judges on the Bench have decided by majority that he is not fit to stand trial and is very unlikely to regain fitness, but that nevertheless the Chamber will continue the proceedings through an “alternative findings procedure” to provide Mr. Kabuga with an opportunity to establish his innocence of the charged offences and in view of the strong public interest to make findings in relation to allegations of conduct attributed to Mr. Kabuga. It is expected that this decision will be appealed.

Madam President,

Turning to the Mechanism’s other important functions, I wish first to praise the outstanding quality of the Prosecutor’s fugitive tracking team. Their work is another example of the Mechanism’s strong commitment to realizing its mandate. The recent arrest in South Africa of Fulgence Kayishema, one of the four remaining ICTR fugitives, serves as a stark reminder that even after all these years, justice remains achievable, especially when shouldered by the power of state cooperation.

Another significant development concerns the monitoring of three cases referred to the Republic of Rwanda by the ICTR. The proceedings against Jean Uwinkindi and Bernard Munyagishari were completed in 2022, prior to my appointment as President. I am pleased to note that in March of this year, the appeal proceedings in the third case, against Ladislas Ntaganzwa, were also completed. Based on the reports of this last case submitted by our monitors, I would like to commend the efforts of the Rwandan judicial authorities towards guaranteeing due process, and I also acknowledge the cooperation and responsiveness of the Rwandan Ministry of Justice, as well as the Rwandan Correctional Services. I further note the professionalism of the national prosecutorial authorities and the active role undertaken by the Rwandan Bar Association in this regard.

The Mechanism observes the encouraging advancements in Rwanda’s ability to discharge cases relating to international crimes efficiently and effectively. It is therefore confident that the Rwandan judiciary will be similarly steadfast during the proceedings of Fulgence Kayishema, which we will be following closely in line with our monitoring function as set out in Article 6(5) of the Statute.

Madam President,

I now turn to three main areas which require your urgent attention and vigorous backing.

The first relates to the enforcement of sentences. The Mechanism is extremely grateful for the willingness of those 13 States that are currently enforcing sentences imposed by the *ad hoc* tribunals or the Mechanism. This represents a major contribution to the fulfilment of our mandate. However, the burden is not shared equally. More than half of the 45 convicted persons who are serving their sentences in enforcement States are imprisoned in two African countries. In Europe, 10 enforcement States are enforcing the sentences of 18 convicted persons.



In addition, there are four convicted persons at the United Nations Detention Unit in The Hague awaiting transfer to an enforcement State. The domestic legislation of some enforcement States limits their ability to enforce lengthy sentences. As a result, the Mechanism has recently been faced with situations where convicted persons had to be returned to our Detention Unit while awaiting the designation of a new enforcement State. Unfortunately, these situations are expected to continue to occur in the future. This development also has a detrimental impact on the Mechanism's detention function. While the Detention Unit is meant to serve as a remand facility, 80% of its occupants are now convicted persons. This not only has financial repercussions for the Mechanism but also burdens the Host State significantly.

Second, there is the situation of the acquitted or released persons who were relocated to Niger in December 2021. Let me begin with news I received over the weekend concerning the passing of one of these individuals, Mr. Tharcisse Muvunyi, on Friday evening. As a matter of priority, the Mechanism is obtaining more information on the particular circumstances of his death. I wish to underscore that the situation in Niger contravenes the relocation agreement concluded with the United Nations and that the Mechanism is simply not in a position to resolve this predicament alone. Indeed, the Security Council has called on all States to provide the necessary assistance. Any decision on the relocation of these persons should be consistent with resolution 2637 (2022), and is without prejudice to their own personal efforts to find a solution. In the meantime, I urge you to appreciate how the *status quo* is untenable in every respect.

The third issue I wish to bring to your attention today, and arguably the biggest threat we face, comprises the relentless attempts to undermine our current work and also the judgements issued by the ICTR, the ICTY and the Mechanism. This includes the flagrant disregard by Serbia of its international legal obligations set forth by the Security Council itself and its persistent failure to arrest and surrender Petar Jojić and Vjerica Radeta for their alleged interference with the administration of justice. It bears repeating that such non-cooperation prevents the Mechanism from fulfilling its mandated functions. Moreover, there is the disturbing trend of genocide denial, the glorification of war criminals, the purported re-writing of history, and even provocative statements by convicted persons shamelessly admitting that they would do it all over again. In the face of these challenges, one of my key priorities is to consolidate, safeguard and make more accessible the invaluable legacy of the *ad hoc* Tribunals and the Mechanism.

Madam President,

It is for the first time that a Mechanism President stands before this Council and can announce that in-court proceedings are all but concluded. The Mechanism only has the *Kabuga* case on its docket in this respect, with its future currently unclear. This represents a watershed moment in the life of the Mechanism and for international criminal justice more generally. As a result, the Mechanism is poised to enter the next phase of its operations; one in which the reality of its daily responsibilities will be more closely aligned with its name and intended nature.

Having said that, the fact that the Mechanism is drawing down does not mean that it is ready to close down. We are not finished; rather, we are preparing to start a new phase. While decisions on bigger institutional changes and the transfer of our mandated activities will ultimately lie with this Council, the Mechanism will continue to streamline its activities wherever it can. As detailed in the progress report, the Mechanism has made great strides over the last six months towards the planning of its future. Based on the roadmap we developed last year, senior managers from all three organs are working on a scenario-based workforce plan. Furthermore, a Panel on Judicial Functions will produce recommendations with regard to the Mechanism's continuous judicial activities. These efforts are bolstered by ongoing exchanges with officials of other judicial institutions which shed light on how our residual functions might look like in the years to come.



Madam President,

In exactly one year, the Security Council will be conducting its fifth review of the Mechanism's progress of work. I am determined to continue pursuing innovative, more efficient ways of operating and to take all necessary steps to keep achieving positive results. In this respect, I look forward to a constructive collaboration with the Office of Internal Oversight Services, which is in the process of conducting another evaluation exercise. While we do not presume to do everything to perfection, I can assure you that we do our very best. I end by expressing deep appreciation to all those whose support has been fundamental to our progress so far. The efforts we have invested in getting there are rivalled only by the satisfaction of being here to report on such results.

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