



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)

Address to the United Nations Security Council Judge Graciela Gatti Santana President, International Residual Mechanism for Criminal Tribunals 12 December 2023

Thank you very much, Mr President,

At the outset, I wish to congratulate you for taking over the presidency of the Security Council and to convey my appreciation for the support provided to the Residual Mechanism.

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

On 9 December 1948, the United Nations General Assembly adopted the Genocide Convention. A day later, it adopted the Universal Declaration of Human Rights. The ripples of hope sent forth by these instruments formed a wave when this august Council made them a cornerstone of the Yugoslav and Rwanda Tribunals. These pioneering institutions showed for the first time since Nuremberg that society's opprobrium for hate and its crimes, and the corresponding desire for fairness in ascertaining responsibility in the aftermath of conflict, were not mere aspirations, but something the international community would guarantee. The *ad hoc* Tribunals held to account hundreds of high-profile offenders, many of whom at the time were beyond the reach of national justice.

The Mechanism is a living reminder of the promises made by the General Assembly 75 years ago, and the action taken by this body some 30 years ago to put them into effect in response to the havoc wreaked on the former Yugoslavia and Rwanda in the 1990s. We continue to show that justice will be delivered when the international community makes a collective commitment to do so, that such justice will be fair, and that we will stay the course until our work is complete. I am here today to affirm these ideals, to pay tribute to the mandate given to the Mechanism, and to express my resolve to finish the job. I am proud to say that we are getting there.

Mr President,

When I last addressed this esteemed Council in June, the Mechanism was in a very different position. Decisive events have taken place since then and the Mechanism has finally transitioned to its new, truly residual phase. We have no more active trials and appeals related to core crimes, following the indefinite stay of proceedings in the case against Félicien Kabuga in September. In the meantime,



Mr Kabuga remains in the United Nations Detention Unit in The Hague while the Trial Chamber is seized of the issue of his provisional release. Defence Counsel, assisted by the Registrar, are actively engaged in trying to identify an appropriate release destination, and a status conference will be held tomorrow, 13 December, where these matters will be discussed. In addition, it was conditionally determined in October that Mr Kabuga is non-indigent and would be capable of funding his entire defence, if given access to assets previously frozen by the ICTR and Mechanism. Establishing the feasibility of recovering expenses incurred in connection with his defence, and ultimately recovering them, are key for the Mechanism.

Separately, thanks to the Office of the Prosecutor, the Mechanism is one step closer to completing its fugitive tracking responsibilities. On 14 November, it announced the death of fugitive Aloys Ndimbati, who was first indicted by the ICTR in 1995 and whose case had been referred to Rwanda. While the termination of Mr Ndimbati's case will be subject to adjudication, I wish to heartily congratulate the Prosecutor and his tracking team for this result, which brings some measure of closure. Now, only two fugitives of the ICTR remain, both of whom are expected to be tried in Rwanda in line with the relevant referral decisions.

With the main judicial workload inherited from the *ad hoc* Tribunals substantively concluded and strong progress made in other areas, the Mechanism is focused on planning for the future and ultimately winding down its operations. We are working hard to meet your expectations and fully respond to the related elements of resolution 2637 (2022), as well as recommendations previously made by OIOS.

I have adapted the priorities of my Presidency to better reflect this new chapter in the Mechanism's life. Just yesterday, I presented to the Informal Working Group on International Tribunals a draft 'Framework of Operations to Complete Functions', in line with my first priority. My second priority is effective leadership and good governance. I intend to demonstrate the value of transparency and responsibility and show that a resource-constrained institution can still maintain the highest standards of performance. My third priority, especially as the Mechanism's core crimes cases are concluded, is to ensure that our shared legacy in the context of accountability is preserved and sends a strong message of deterrence.

While each of these priorities reveals a more future-oriented approach, evidence of the Mechanism's meticulous planning is found in the draft Framework. Taking into account the report prepared by the Panel on Judicial Functions and other inputs, this comprehensive document sets out the Mechanism's remaining functions, their expected completion dates, and scenarios for what might be expected in the future, including options and recommendations on the potential transfer of these activities. It further indicates that the Mechanism is working to identify areas where efficiencies can be increased by merging, restructuring, and streamlining our internal framework and processes.

We have already begun discussions on this paper with the Informal Working Group and eagerly await the opportunity to collaborate closely throughout the upcoming fifth review of our progress of work. Because the issues involved are complex, the Mechanism did its utmost to present the Framework to the Informal Working Group in a timely manner. We trust that the information and proposals presented will form a useful basis for the Council's decision-making on the future of our various operations. The Mechanism has also been proactively cooperating with OIOS on its evaluation of the Mechanism's methods and work, which this time focuses on the Mechanism's engagement with stakeholders. Just last week, OIOS presented some of the preliminary findings on a working level and we look forward to receiving its full report in due course.



Alongside our dedicated future-planning activities, we are responding to national requests for assistance, monitoring referred cases, managing the archives, ensuring ongoing protections for victims and witnesses, and performing other continuous judicial functions. In other words, ensuring that the weighty tasks you entrusted to us are completed to the best of our ability. Though we are winding down, much work remains, and even if the strides in our progress become shorter, we are conscious of the need to keep moving forward.

Mr President,

Last week's anniversaries of the Genocide Convention and the Universal Declaration remind us of what the international community can achieve when it responds collectively to threats to our very humanity. At the same time, the decades since 1948 have shown that international law can be slow to take hold, that principles are not always supported in practice, and that the arc of justice is long. A measure of time must therefore be allowed to ensure that the process can run its course.

At the *ad hoc* Tribunals and the Mechanism, we have experienced these dynamics first-hand. We have seen that securing international criminal justice is a lengthy and painstaking journey, a long-term investment that necessitates support well beyond the delivery of a judgement. In the rush to commence investigations and prosecutions, it appears the international community underestimated the importance of the end-of-justice cycle for the integrity of the entire project. And this was understandable, given there were no existing international criminal tribunals to guide the way.

Mr President,

This brings me to some of the post-judgement difficulties that can arise, and which the Mechanism currently faces.

In relation to the enforcement of sentences, for example, complexities that were unforeseen 30 years ago have led to acute challenges in recent times. Several convicted persons have been returned to the United Nations Detention Unit in The Hague by States that are unable to keep enforcing the relevant sentences, thereby burdening both the Mechanism and the host State and essentially rendering the Unit a prison. Unfortunately, we expect to encounter this problem repeatedly in the coming years. The solution is a political one. The Mechanism urgently needs additional States to volunteer to assist with this mandated function, or existing enforcement States to take on more convicted persons. We recognise that the responsibilities of enforcement can be heavy and we pay tribute to our 12 enforcement States, whose demonstrated commitment to international criminal justice is inspiring.

I also wish to recall the seven relocated persons in Niger; another challenge that could not have been predicted when the *ad hoc* Tribunals were created, and which requires robust State intervention. The 27th of December will mark two years since the relocated persons were placed under *de facto* house arrest, an unacceptable situation that could easily have been avoided had Niger respected the agreement it made with the United Nations to host them. Despite the Mechanism's efforts, there is still no solution in sight. We continue to work to find one, and we require your support. I again urge States to assist in any way possible towards resolving the matter once and for all.

Then there are the disturbing attempts to undermine our work and judgements. I refer to the ever-growing trends of genocide denial and revisionism, as well as the glorification of war criminals. These



take many forms, including the use of social media to deny, trivialise or justify what happened in Rwanda and the former Yugoslavia. Genocide denial concerns us all and protecting the truth is the best way to prevent atrocities from occurring again. States play a pivotal role in countering these narratives, and access to information forms a crucial component of the process. The Mechanism is doing what it can, including by facilitating information centres in line with resolution 1966 (2010), and through its valuable outreach activities funded by the European Union.

Of course, these challenges occur alongside others, such as the outright refusal of States to cooperate with orders of the Mechanism issued at earlier stages of proceedings. Here, I mention Serbia's ongoing failure to execute the arrest warrants and orders for transfer of the accused in the *Jojić and Radeta* contempt case. Such behaviour, especially in the context of contempt of court, seeks to weaken the judicial process before the Mechanism. It also directly challenges the authority of the Security Council. In this respect, too, we call on your help.

Mr President,

In closing, the Mechanism stands ready to cooperate during the 2024 review. We are committed to doing everything within our power to ensure the optimal conclusion of our remaining activities. Whether these long-term residual functions are completed by the Mechanism itself, or following a proper handover to another suitable body, they must be diligently seen through to the end. Our valuable legacy – your valuable legacy – requires that the ground-breaking work started by the *ad hoc* Tribunals be completed in a way that honours the promises made by the United Nations 75 years ago.

I thank you for your attention and welcome your comments on the way forward.
