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**Evaluation of the methods and work of the International Residual Mechanism for Criminal Tribunals****Report of the Office of Internal Oversight Services***Summary*

The International Residual Mechanism for Criminal Tribunals was established by the Security Council in its resolution [1966 \(2010\)](#) to continue the jurisdiction, rights and obligations and carry out the essential functions of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia.

In the present evaluation report, the Office of Internal Oversight Services (OIOS) assessed the relevance, effectiveness and coherence of the outcomes achieved as a result of the Mechanism discharging its residual functions in cooperation with Member States. The evaluation aimed at providing independent evidence regarding the outcomes of the residual functions to inform the next review of the Mechanism by the Security Council in 2024 and to inform management decisions on programming and implementation. It was conducted using semi-structured interviews, case studies, a survey of third-party stakeholders, direct observation, desk reviews and a literature review.

The Mechanism adapted and provided a range of services to Rwanda and the countries of the former Yugoslavia to support these jurisdictions with their national war crimes proceedings. Between January 2021 and August 2023, the Mechanism provided assistance with more than 400 investigations and judicial proceedings in 15 countries related to serious violations of international humanitarian law in Rwanda and the countries of the former Yugoslavia.

In addition, the Mechanism effectively leveraged cooperation with Member States and international organizations to fulfil its responsibilities in tracking fugitives, supervising the enforcement of sentences and facilitating access to information from the archives of the Mechanism. Challenges were most pronounced with regard to the relocation of acquitted and released persons, which affected cooperation between the Mechanism and Member States, as well as internal coordination among the organs of the Mechanism.



OIOS makes four important recommendations for the Mechanism:

- (a) Clarify the respective roles and responsibilities of the Principals of the Mechanism regarding the relocation of acquitted and released persons;
- (b) Further strengthen the ways the Mechanism leverages partnerships with the United Nations system to find long-term solutions to the challenges it faces regarding cooperation with Member States;
- (c) Apply lessons learned and best practices from the closure of the Sarajevo field office, including to the upcoming closure of the Kigali field office;
- (d) Take steps to further client orientation, including by improving statistics on assistance activities and soliciting feedback from those who request assistance and receive capacity-building.

## I. Introduction

1. The overall objective of the present evaluation by the Office of Internal Oversight Services (OIOS) was to determine, as systematically and objectively as possible, the relevance, effectiveness and coherence of the outcomes achieved as a result of the International Residual Mechanism for Criminal Tribunals discharging its residual functions in cooperation with Member States. The evaluation topic emerged from a systematic scoping process.<sup>1</sup> The evaluation aimed at providing independent evidence regarding the outcomes of the residual functions to inform the next review of the Mechanism by the Security Council in 2024 and to inform management decisions on programming and implementation.<sup>2</sup>

2. The evaluation conforms with the norms and standards for evaluation in the United Nations system.<sup>3</sup> The latest evaluation of the Mechanism in 2022 assessed the implementation of recommendations from the previous two OIOS assessments, conducted in 2018 and 2020 (see [S/2020/236](#) and [S/2022/148](#)).

3. The comments of the management of the Mechanism were sought on the draft report and taken into account in the preparation of the final report. The response of the Mechanism is included in the annex to the present document.

## II. Background

### A. Mandate, roles and stakeholders

4. The Mechanism was established by the Security Council in its resolution [1966 \(2010\)](#) to carry out the residual functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. These functions include assuming jurisdiction for proceedings relating to core crimes inherited from the Tribunals and a range of other residual functions.

5. Other residual functions include but are not limited to the tracking, arrest and prosecution of fugitives who are among the most senior leaders suspected of being most responsible for crimes; the monitoring of cases referred to national courts by the Tribunals; the protection of victims and witnesses; the supervision of the enforcement of sentences; the provision of assistance to national jurisdictions; and the management of records and archives.

6. During the evaluation period, the last core crimes case pertaining to the International Tribunal for the Former Yugoslavia concluded in May 2023, and an indefinite stay of proceedings was ordered in the last core crimes case pertaining to the International Criminal Tribunal for Rwanda in September 2023, thus focusing the Mechanism towards its remaining mandated residual objectives.

7. The Mechanism worked closely with various stakeholders in implementing its residual functions, including Member States, international organizations and civil society organizations. Member States included Rwanda, the countries of the former Yugoslavia and other States as assistance requestors, fugitive tracking partners, enforcement and relocation States, States with referred cases and host States.

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<sup>1</sup> Described in the forthcoming inception paper of the Tribunal, entitled “Evaluation of the methods and work of the International Residual Mechanism for Criminal Tribunals”, report No. IED-23-014.

<sup>2</sup> Ibid.

<sup>3</sup> United Nations Evaluation Group, “Norms and standards for evaluation”, 2016.

## **B. Leadership structure**

8. The Mechanism was established with two branches, one in Arusha in the United Republic of Tanzania and the other in The Hague in the Kingdom of the Netherlands, headed by the President and consisting of three organs:

(a) The Chambers, composed of a Trial Chamber for each branch and an Appeals Chamber common to both branches. According to article 8 of its Statute, the Mechanism has a roster of 25 independent judges, no more than 2 of whom are from the same State;

(b) The Office of the Prosecutor, common to both branches, acts as a separate and independent organ. It is responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, and in the territories of Rwanda and of neighbouring States between 1 January and 31 December 1994;

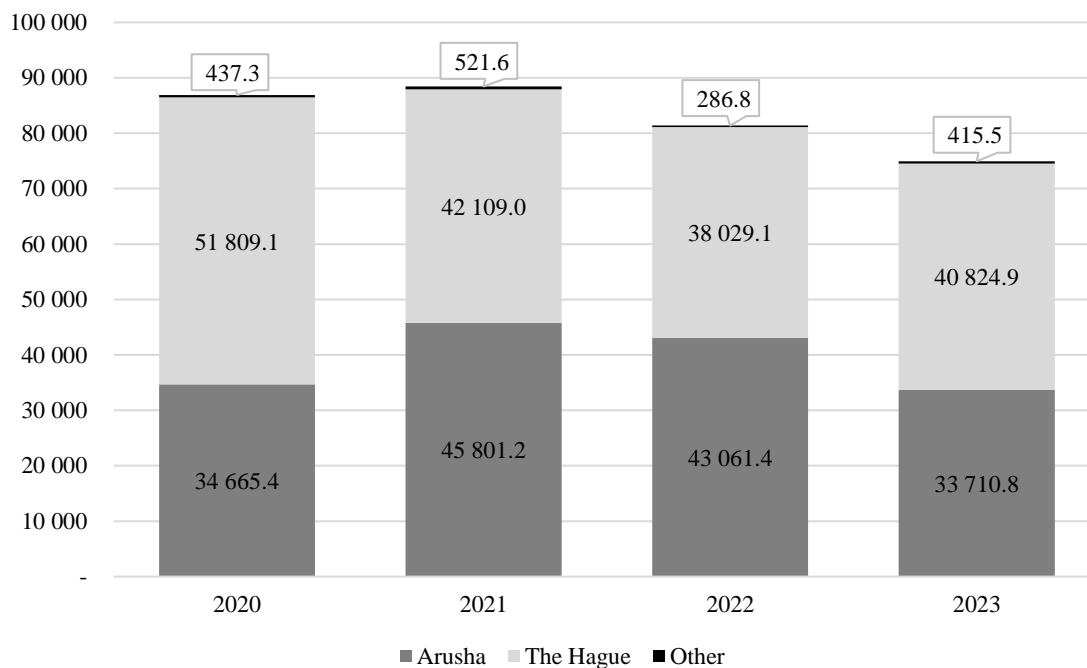
(c) The Registry, common to both branches, provides administrative services for the Mechanism, including to the Chambers and the Office of the Prosecutor.

## **C. Resources**

9. The Mechanism is primarily financed from assessed contributions. The Mechanism receives extrabudgetary contributions, which complement assessed resources and in 2023 amounted to 1.2 per cent of the overall operating budget. Figure I presents the annual budget appropriations for the period from 2020 to 2023. The overall approved appropriation for the Mechanism in 2023 amounted to \$74,951,200, net of staff assessment. This reflected a decrease of 13.8 per cent since 2020.

Figure I  
**Financial resources of the International Residual Mechanism for Criminal Tribunals,  
 2020–2023**

(Thousands of United States dollars)

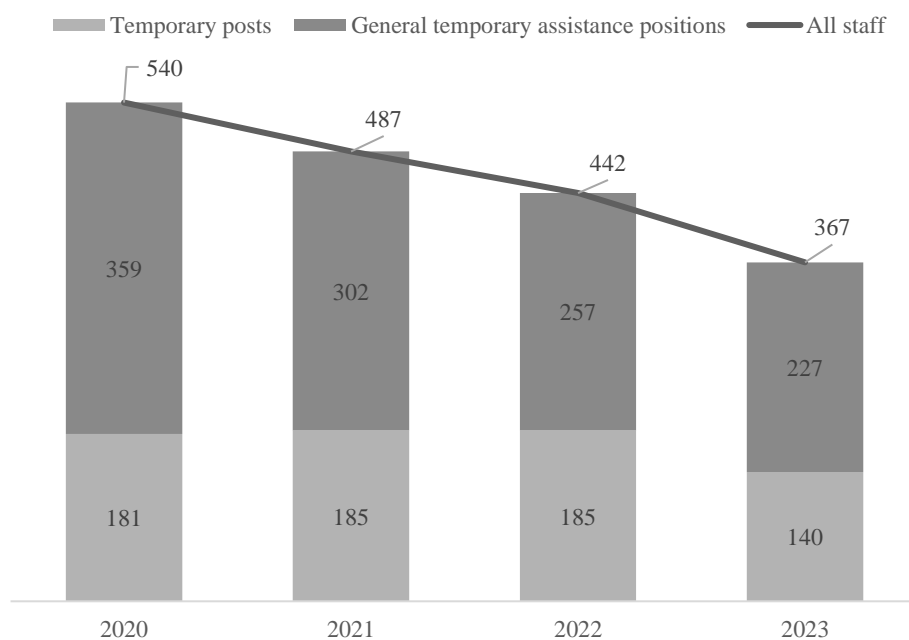


Sources: [S/2020/416](#), [S/2021/487](#), [S/2022/404](#) and [S/2023/357](#).

10. Figure II provides an overview of the staffing resources for the Mechanism from 2020 to 2023. As can be seen, staffing resources consist of temporary posts and general temporary assistance positions. Consistent with the temporary nature of the Mechanism and in view of its residual functions, the Mechanism has primarily relied on general temporary assistance positions to deliver its mandate. In 2023, general temporary assistance positions accounted for 62 per cent of the Mechanism's staff. Overall, staffing resources have decreased by 32 per cent from 2020 to 2023 in line with the downsizing of the Mechanism and the consolidation of functions.<sup>4</sup>

<sup>4</sup> With the further reductions included in the approved budget for 2024, the staffing reductions since 2020 will amount to 54 per cent.

Figure II  
**Distribution of Mechanism staffing resources, 2020–2023**



Sources: [S/2020/416](#), [S/2021/487](#), [S/2022/404](#) and [S/2023/357](#).

### III. Scope and methodology

11. The evaluation covered the period from January 2021 to December 2023 and focused on the following residual activities of the Mechanism in relation to cooperation with Member States:

- (a) Assistance to national jurisdictions;
- (b) Protection of victims and witnesses;
- (c) Tracking of fugitives;
- (d) Supervision of the enforcement of sentences;
- (e) Relocation of acquitted and released persons;
- (f) Outreach and facilitating access to information from the archives.

12. The evaluation employed a mixed-method approach that integrated qualitative and quantitative sources. The findings were validated through the triangulation of evidence from the following methods:

(a) Semi-structured interviews: a total of 71 interviews were conducted, including 29 interviews with representatives of Member States, 22 with staff members from both branches of the Mechanism and 20 with partners and other stakeholders of the Mechanism, including international organizations, civil society organizations, victims' associations and witnesses;

(b) Case study analyses of affected countries, namely Rwanda and the countries of the former Yugoslavia (Bosnia and Herzegovina, Croatia, Montenegro and Serbia), with whom the Mechanism had sustained engagement over the scope of the evaluation;

(c) A survey of third-party stakeholders, including judicial and State authorities outside of Rwanda and the countries of the former Yugoslavia who requested assistance from the Mechanism in relation to investigations or judicial proceedings, as well as stakeholders who collaborated with the Mechanism to enforce sentences of convicted persons, namely enforcement States and enforcement partners. Twenty-seven of 46 (58.6 per cent response rate) stakeholders surveyed provided feedback, with 13 providing feedback on assistance activities and 17 providing feedback on activities relating to the enforcement of sentences;

(d) Direct observation of the annual regional conference of prosecutors on cooperation in war crimes, held in Sarajevo in September 2023;

(e) Desk reviews of key relevant documents and data requested from the Mechanism, including policies, procedures, guidelines, mandates, the budget, progress reports, internal meeting minutes, internal memos, internal communications and other official or unofficial documents;

(f) A grey literature review of available documentation and information on the national context and progress of war crimes proceedings in Rwanda and the countries of the former Yugoslavia, including the number of war crimes prosecutions and cases, the number and types of requests received and processed by the Mechanism and the ways in which the assistance was being used by the various jurisdictions.

13. The evaluation faced the following limitations:

(a) Given its nature as an international judicial institution, the Mechanism produces and handles confidential and sensitive information relating to its judicial and prosecutorial activities. The Mechanism made significant efforts to facilitate access to relevant information and partners for the purpose of the evaluation, while respecting and protecting the confidentiality of materials and stakeholders with whom it engages;

(b) Challenges were experienced with regard to measuring the impact of Mechanism assistance on national investigations and judicial proceedings using objective indicators, given the spectrum of judicial proceedings, from investigations to trials, and the potential for the Mechanism to have an impact on decisions along that spectrum that all contribute to the process of justice;

(c) Assessing collaboration between two or more parties was not always simple, given that challenges to collaboration can occur owing to a variety of reasons, some of which may be outside of the control of the Mechanism.

14. Given these challenges, the evaluation focused on the six immediate outcomes listed below and identified challenges external to the Mechanism, when appropriate:

(a) Tracking of fugitives: the remaining fugitives indicted by the International Criminal Tribunal for Rwanda are prosecuted or accounted for;

(b) Assistance to national jurisdictions: national investigations, prosecutions and trials of those responsible for serious violations of international humanitarian law in Rwanda and the countries of the former Yugoslavia are facilitated in accordance with international due process and fair trial standards;

(c) Protection of victims and witnesses: the safety and security of protected victims and witnesses is ensured;

(d) Enforcement of sentences: sentences are enforced in accordance with international standards;

(e) Relocation of acquitted and released persons: the responsibilities of the Mechanism towards acquitted and released persons are concluded;

(f) Outreach and facilitating access to information from the archives: transparency and access to Mechanism information are strengthened.

## IV. Evaluation results

### A. The Mechanism was responsive to the needs of Member States and effectively adjusted its activities to better service them

#### **The Mechanism offered a range of assistance to respond to the needs of Rwanda and the countries of the former Yugoslavia**

15. The completion strategies (see [S/2015/884](#) and [S/2017/1001](#)) of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia encouraged the ownership by domestic jurisdictions of investigating, prosecuting and adjudicating war crimes. The Tribunals had focused their activities and efforts on those accused persons holding positions of the highest authority and those alleged to have committed the gravest of offenses. The closure of the Tribunals was not the end of accountability but the start of a transition to national authorities becoming primarily responsible for conducting and completing proceedings against the accused, in accordance with the principle of complementarity and national ownership. A key component of both of the completion strategies of the Tribunals was the referral of confirmed indictments of accused persons who were not among the most senior leaders suspected of being most responsible for the crimes to national jurisdictions for trials, which the Mechanism would be responsible for monitoring.<sup>5</sup> Over the period of the evaluation, the Mechanism exercised its monitoring functions in respect of five such cases ([S/2021/487](#), paras. 143–148) and was expected to do so for the International Criminal Tribunal for Rwanda fugitives that were apprehended concurrently.

16. There was a large backlog of cases to be processed in the countries of the former Yugoslavia and in Rwanda, illustrating the challenges of processing war crimes. While progress was achieved in holding individuals accountable for the crimes committed in Rwanda and in the countries of the former Yugoslavia, continued challenges were faced in processing the remainder of such cases. Rwanda had issued more than 1,100 indictments for individuals who were believed to reside outside of Rwanda. In the countries of the former Yugoslavia, available data from international organizations and civil society organizations that monitored war crimes proceedings pointed to more than 300 ongoing war crimes cases (post-indictment) at the end of 2022 across the countries of Bosnia and Herzegovina,<sup>6</sup> Croatia,<sup>7</sup> Serbia<sup>8</sup> and Montenegro,<sup>9</sup> with many more cases in the pre-investigation or investigation phases.

17. The Mechanism implemented a range of activities to address the needs of Rwanda and the countries of the former Yugoslavia. The Mechanism was mandated to support national authorities in the investigation and prosecution of war crimes. This included responding to requests for assistance from national authorities in accordance with article 28 of the Statute of the Mechanism, as well as rule 86 and rule 87 of the

<sup>5</sup> Statute of the International Residual Mechanism for Criminal Tribunals, art. 6, para. 5 (Security Council resolution [1966 \(2010\)](#)).

<sup>6</sup> Organization for Security and Cooperation in Europe (OSCE), “War crimes case processing in Bosnia and Herzegovina (2004–2022)”, fact sheet, 2023.

<sup>7</sup> Document, “Report on the monitoring of war crimes trials for 2022”, 2023 (in Croatian).

<sup>8</sup> Marina Kljaić, *Report on War Crimes Trials in Serbia During 2022* (Belgrade, Humanitarian Law Centre Foundation, 2023).

<sup>9</sup> Human Rights Action, “Implementation of the war crimes investigation strategy of the State Prosecutor’s Office of Montenegro 2021–2022”, 2023.



Rules of Procedure and Evidence, which respectively establish the procedures to be followed to vary protective measures related to victims or witness, and when requesting the assistance of the Mechanism in obtaining testimony. All three organs were engaged in providing such assistance to national authorities.

18. Member States interviewed provided positive feedback on the role of the Mechanism in supporting national war crimes proceedings, noting the practical contributions of the Mechanism by sharing evidence that would otherwise not be available to national judiciary actors, as well as providing experience in prosecuting complex cases. Multiple sources indicated that regional cooperation in the countries of the former Yugoslavia did not yield the intended impact on the fight against impunity given that a large portion of suspects indicted were unavailable to be tried in domestic court systems, often due to being located in another country from which they could not be extradited. In other instances, the prosecutions could not proceed owing to increased politicization in recent years, such as the denial of war crimes and the glorification of suspects as well as of those who had completed their sentences.<sup>10</sup> Member States and partners interviewed highlighted the political weight carried by the Mechanism, given its Chapter VII mandate for enforcement, in accordance with the Charter of the United Nations, in addressing such non-cooperation at the highest levels of government. In collaboration with partners such as the European Union and the United Nations Development Programme (UNDP), the Office of the Prosecutor played an active role in facilitating regional cooperation, including advocacy for cooperation, requests for mutual legal assistance and the transfer of cases between jurisdictions, where applicable.

#### **The Mechanism responded to changing contexts in its assistance and tracking activities**

19. The Mechanism made efforts to prioritize its support to national jurisdictions. Despite having to downsize over the course of several years in tandem with the reduction in core judicial activities, the Office of the Prosecutor registered a significant growth in requests for assistance compared with the Tribunals (S/2022/866, annex II, para. 100). This increase in the number of requests, which was driven by the imperative of national jurisdictions to conduct investigations and judicial proceedings of war crimes, did not result in a corresponding increase in resources. As such, the Office of the Prosecutor addressed the requests within existing resources, leading to a backlog that was at its highest in May 2022 at 352 cases that had not been responded to before the six-month deadline (*ibid.*). To limit the impact of the backlog on the processing of war crimes in national jurisdictions, the Office of the Prosecutor actively worked with requestors to avoid delays in national cases by prioritizing urgent requests. Furthermore, the Arusha branch of the Office of the Prosecutor implemented a file-sharing software platform to speed up the transfer of documents.

20. To further facilitate access to relevant information, the Office of the Prosecutor provided judicial and State authorities in the former Yugoslavia direct access to its evidence collection along with associated training sessions on its use. In addition, the Office of the Prosecutor took steps to proactively engage with countries to meet their needs. This included direct case assistance in the form of expertise and advice to domestic investigations and prosecutions, as well as the preparation and handing over of dossiers of evidence on potential war crimes cases which had emerged from the

<sup>10</sup> OSCE, *A Race Against Time: Successes and Challenges in the Implementation of the National War Crimes Processing Strategy of Bosnia and Herzegovina* (Sarajevo, 2022); notes from the regional conference of prosecutors on cooperation in war crimes, 18–19 September 2023; S/2023/357; and OSCE, “War crimes proceedings in Serbia (2020–2021), summary of the OSCE mission to Serbia’s monitoring results”, June 2022.

prosecutions conducted by the International Tribunal for the Former Yugoslavia and the Mechanism.<sup>11</sup> Both of these activities prioritized support for cases of sexual and gender-based crimes.

21. The evidence collection of the Office of the Prosecutor was also used to support the work of international organizations, primarily the International Committee of the Red Cross (ICRC), and the Kosovo Specialist Chambers and the Specialist Prosecutor's Office. In October 2018, the Office of the Prosecutor signed a memorandum of understanding with ICRC enabling it to access the Office's evidence collection to assist with clarifying the fate and whereabouts of persons who were missing in relation to the conflicts in the countries of the former Yugoslavia. The Mechanism was expected to support the ICRC project until 2024. In addition, the Mechanism also assisted the Specialist Prosecutor's Office by facilitating access to information and records from the Mechanism's extensive collection of evidence and addressing rule 86 applications from the Specialist Prosecutor's Office.

22. With regard to Rwanda, changes to the Office of the Prosecutor's tracking team were made to address the slow progress from previous years. At the beginning of 2021, six of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda remained at large. The Prosecutor, therefore, appointed new co-leaders of the tracking team. Additional staff with relevant skills in complex investigations and advanced analytical tools were recruited to ensure the team had the skill set to match its investigative requirements. Methodologies were also updated to develop plans for multi-source investigations, according to internal documentation. Rwandan authorities expressed interest in receiving training from the Mechanism with regard to tracking techniques and methodologies to aid their own activities in this arena.

## **B. Assistance activities were well received and contributed to investigations and judicial proceedings in different jurisdictions**

### **The Mechanism responded to numerous requests from Member States and other stakeholders, which provided positive feedback on assistance received**

23. The Mechanism received and responded to a substantial volume of requests for assistance. The Office of the Prosecutor received and responded to requests for assistance from judicial and State authorities investigating and prosecuting war crimes, crimes against humanity or genocide, and provided information collected by prosecutors of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and/or the Mechanism. In the countries of the former Yugoslavia, national assistance memorandums of understanding had previously been signed between the Office of the Prosecutor and eight entities, covering jurisdictions in Bosnia and Herzegovina, Croatia, Serbia and Montenegro.<sup>12</sup> The Registry processed requests for certified copies of public court documents and statements or testimony from detainees, accused persons on provisional release and/or convicted persons. In addition, with the support of the Witness Support and Protection Unit, the Chambers adjudicated rule 86 requests regarding the identification, confirmation or variation of protective measures of a victim or witness and requests for confidential judicial records. The table below offers an overview of processed requests for assistance since January 2021, encompassing both branches and the three distinct types of requests.

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<sup>11</sup> International Residual Mechanism for Criminal Tribunals, "War crimes accountability" (IPA/2020/420-784) – Annex I: Description of action.

<sup>12</sup> There were five memorandums of understanding signed with different jurisdictions in Bosnia and Herzegovina.

### Number of requests for assistance processed since January 2021

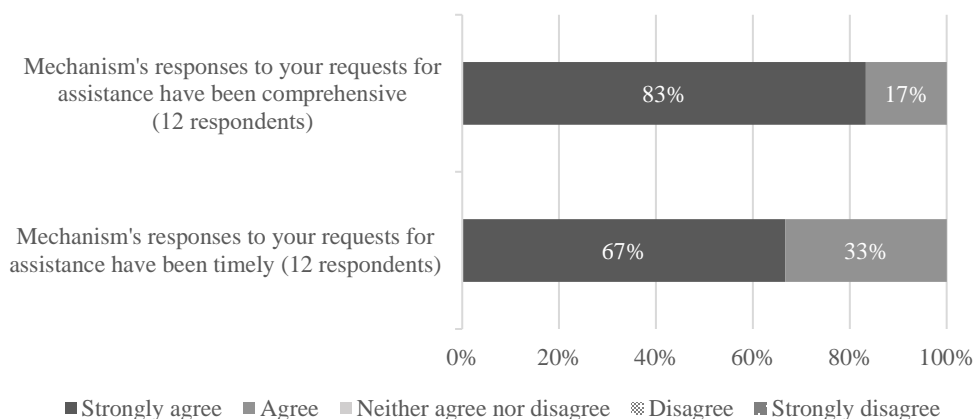
	Arusha	The Hague	Total
Requests for assistance addressed to the Office of the Prosecutor as at 26 April 2023 <sup>a</sup>	–	–	696
Public requests for assistance addressed to the Registry as at 31 August 2023	5	70	75
Requests related to rule 86 as at 24 August 2023	6	70	76

Source: Internal Mechanism data.

<sup>a</sup> Requests for assistance addressed to the Office of the Prosecutor include submissions from international organizations such as ICRC and are not categorized by branch due to inconsistencies in the data sets and sources provided by the Office of the Prosecutor.

24. Stakeholders provided positive feedback on the assistance they received from the Mechanism. Representatives of Member States and partners and stakeholders interviewed explicitly praised the Mechanism for its timely, extensive and high-quality support. They specifically commended the practicality of utilizing the Electronic Disclosure System of the Office of the Prosecutor, the familiarity of the Mechanism with national legal systems and the provision of services in regional languages. This was echoed by respondents to the third-party survey of stakeholders, who all agreed or strongly agreed that Mechanism responses to requests for assistance had been both timely and comprehensive, as indicated in figure III.

Figure III  
Views of third-party stakeholders on Mechanism responses to requests for assistance



Source: Survey of third-party stakeholders.

25. The capacity development activities of the Mechanism also received positive feedback. These were delivered within existing resources or through funding from donors. In September 2023, the President of the Mechanism hosted, in Sarajevo, a round table for judges and legal staff of the Court of Bosnia and Herzegovina that discussed the challenges faced by the national judiciary and shared best practices developed by the International Tribunal for the Former Yugoslavia and the Mechanism. This initiative was followed by a workshop held by the Chambers Legal Support Section in Sarajevo in December 2023, familiarizing legal staff at the Court

of Bosnia and Herzegovina with the Mechanism's Case Law Database<sup>13</sup> and sharing best practices in providing legal support to judges. The Registry provided training and/or shared best practices with regard to witness support and protection (with judicial and State authorities in the former Yugoslavia and third-party States); preserving, managing, searching and providing access to judicial archives and records (with various judicial and State authorities); and detention management pursuant to international standards (with Tanzanian prison officers and other law enforcement). Between January 2021 and November 2023, the Office of the Prosecutor delivered 16 training sessions covering four distinct topics, reaching approximately 250 participants; 5 of these training sessions included Rwanda and the countries of former Yugoslavia, as can be seen in figure IV. Representatives of Member States described the training sessions for prosecutors as relevant, useful and satisfying, contributing to the processing of numerous cases at lower-level courts. Both Member States and staff of the Mechanism affirmed the effectiveness of having national jurisdictions learn from concrete cases that had been processed by the Tribunals and the Mechanism, citing it as a unique contribution of the Mechanism compared with other capacity-building providers in the region. However, feedback on capacity development initiatives was not consistently gathered by the Mechanism.

Figure IV

#### Overview of capacity-building efforts by the Office of the Prosecutor

##### Five training sessions regarding the use of the Office of the Prosecutor's Electronic Disclosure System

- Participants: judicial and State authorities in Bosnia and Herzegovina and in third-party States

##### Three training sessions regarding assistance to national jurisdictions provided by the Office of the Prosecutor

- Participants: judicial and State authorities in third-party States

##### Seven training sessions regarding key concepts in international criminal law and the prosecution of conflict-related sexual violence

- Participants: judicial and State authorities in Rwanda and the countries of the former Yugoslavia; judicial and State authorities in third-party States

##### One training session regarding case management and plea bargaining

- Judicial and State authorities in Rwanda

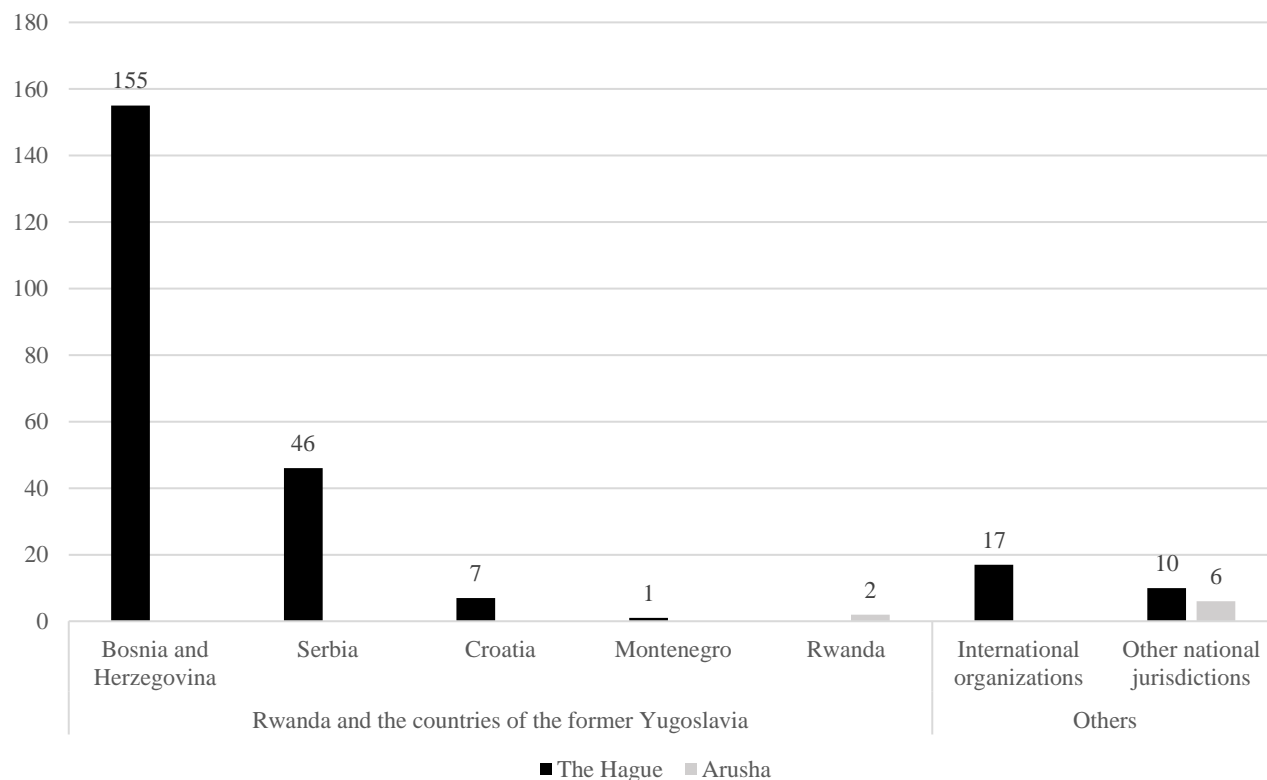
#### Mechanism assistance activities effectively supported investigations and judicial proceedings in a range of jurisdictions

26. In responding to requests for assistance, the Mechanism supported more than 200 investigations or judicial proceedings during the evaluation period. Data on requests for assistance from the Chambers, the Office of the Prosecutor and the Registry indicated support to at least 244 investigations and judicial proceedings in

<sup>13</sup> The Case Law Database provided legal practitioners and researchers with direct access to over 2,500 excerpts and corresponding full-text versions of key judgments and decisions rendered by the Appeals Chambers of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Mechanism.

various jurisdictions.<sup>14</sup> As can be seen in figure V, the Hague branch supported the majority of investigations and judicial proceedings, which were in relation to the former Yugoslavia. In comparison, the Arusha branch provided support for a relatively lower number of proceedings overall related to the crimes committed in Rwanda. This was attributed, in part, to the large number of open indictments of persons whose whereabouts were unknown but were suspected of residing outside Rwanda.

Figure V  
Number of investigations or judicial proceedings supported



Source: Internal Mechanism data.

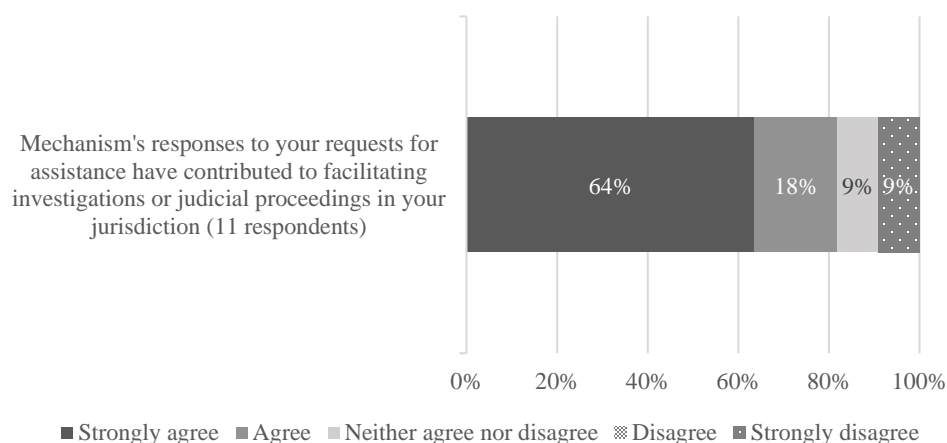
27. Member States' representatives and stakeholders interviewed in the affected regions provided positive feedback on the support of the Mechanism to national proceedings. More specifically, they commended the contributions of the Mechanism towards providing crucial evidence and revising war crimes processing strategies, resulting in indictments of improved quality and better management of the case load, ultimately leading to transitional justice. In one specific instance, a notebook provided by the Office of the Prosecutor proved to be crucial evidence in a particular case, which also led to the initiation of more cases at a higher level. Notably, the Office of the Prosecutor possessed data on the command structure of the perpetrators, which assisted in establishing command responsibility beyond individual cases,

<sup>14</sup> The figure includes requests for assistance for which a unique case or reference number was available and is likely an undercount of Mechanism support, as this information was not available for a large proportion of requests for assistance addressed to the Mechanism. The figure also does not include Office of the Prosecutor support to ICRC, as highlighted in paragraph 21 of the present report.

thereby underscoring the distinctive role of Mechanism assistance. In addition, 82 per cent of respondents to the survey of third-party stakeholders strongly agreed or agreed that the assistance received had contributed to facilitating investigations and judicial proceedings in their jurisdictions (see figure VI).

Figure VI

**Views of third-party stakeholders on Mechanism contributions to national efforts towards investigating, prosecuting and adjudicating national war crimes**



Source: Survey of third-party stakeholders.

28. Stakeholders expressed mixed views on the impact of the closure of the Sarajevo field office. On 1 April 2023, the Sarajevo field office ceased its operations in anticipation of the imminent conclusion of Mechanism trials and appeals in The Hague. Although counterparts of the Office of the Prosecutor in the region indicated that the closure did not significantly affect their ability to engage and receive support, concerns were raised regarding the processing of rule 86 requests, which the Sarajevo field office had played a key role in with regard to receiving and expediting the transmitting of confidential records. Prior to the closure, the Judicial Records Unit would send the records and information to the Sarajevo field office for in-person delivery to the intended recipients. Since the closure, the Judicial Records Unit had relied on courier services or registered mail to transmit relevant materials directly, according to internal Mechanism communications. Judicial and State authorities in one country in the region indicated that the closure had caused delays in the processing of rule 86 requests and was negatively affecting their local activities. Similarly, certain concerns were identified regarding the upcoming closure of the Kigali field office, but explicit plans or detailed arrangements had yet to be established or communicated to concerned stakeholders. One such concern related to the continued provision of medical and psychosocial services to victims and witnesses who had testified in the context of International Criminal Tribunal for Rwanda and Mechanism cases. While no further core trials were expected to be heard by the Mechanism, the testimony of those witnesses and victims may nevertheless be required for the ongoing war crimes proceedings in Rwanda, which were expected to continue in the foreseeable future, thereby making it imperative for the Mechanism to explore alternative modalities for continuing the provision of the services to the affected persons.

## C. The Mechanism effectively cooperated with Member States to largely fulfil its residual functions

### Cooperation with Member States contributed to the success of multiple residual functions

29. Between January 2021 and November 2023, the Office of the Prosecutor accounted for four of the six remaining fugitives indicted by the International Criminal Tribunal for Rwanda, illustrating the effectiveness of its tracking function. In addition to the arrest of Félicien Kabuga and the confirmation of the death of Augustin Bizimana on 16 and 22 May 2020, respectively, this represented a relatively high rate of success for the Office of the Prosecutor compared with previous periods.<sup>15</sup> The success was the result of reforms implemented by the Office of the Prosecutor and recognition of the critical need for diplomatic engagement and securing partnerships with relevant Member States. One such example was the joint investigation team established in April 2022 between the Mechanism and various law enforcement agencies in South Africa to conduct investigations and intelligence-gathering activities related to the tracking of Fulgence Kayishema, who was suspected to be living there. Furthermore, the Mechanism had engaged with a wide range of Rwandan agencies in its tracking activities in order to gather information and intelligence about related persons of interest, in coordination with the Prosecutor General of Rwanda. Stakeholders interviewed from both Rwanda and South Africa confirmed the importance of this collaborative approach to the success of the activities in recent years. This was also echoed by Mechanism staff working on tracking activities.

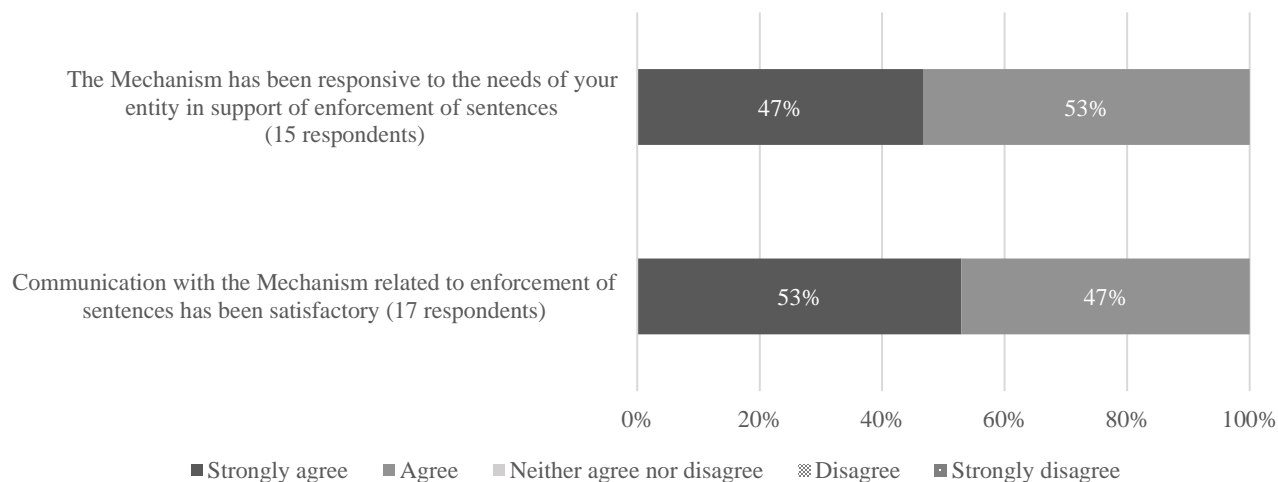
30. The long-term function of supervising the enforcement of sentences of persons convicted by the Mechanism and the Tribunals was effectively carried out in collaboration with Member States. As of November 2023, the list of persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism who were under the responsibility of the Mechanism comprised 50 individuals, 42 of whom were serving their sentences across 10 enforcement States in Europe and 2 in Africa.<sup>16</sup> The supervisory role of the Mechanism included liaising with enforcement States, ICRC and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and responding to any issues that were brought to its attention. The respondents to the survey of third-party stakeholders strongly agreed or agreed that the Mechanism had been responsive to the needs of their entities in support of enforcement of sentences, and that related communications with the Mechanism had been satisfactory (see figure VII). The respondents included 6 of the 10 enforcement States in Europe along with 3 African States,<sup>17</sup> in addition to UNDP counterparts who collaborated closely with the Mechanism on procurement and finance issues related to enforcement in African States. These survey findings were corroborated by staff members of the Mechanism, who commended the collaboration with Member States in enforcing sentences.

<sup>15</sup> By comparison, between 2016 and 2019, none of the eight remaining fugitives at the time had been accounted for.

<sup>16</sup> International Residual Mechanism for Criminal Tribunals, “Draft framework of operations to complete functions”, 2023.

<sup>17</sup> In January 2021, 50 individuals were serving sentences across 10 enforcement States in Europe and 3 in Africa. The last convicted person in one of the States passed away in October 2023.

Figure VII  
Views of third-party stakeholders on Mechanism response with regard to enforcement of sentences



Source: Survey of third-party stakeholders.

31. Efforts by the Mechanism to resolve the situation of some of the acquitted and released persons achieved short-term success and resulted in their relocation. Following the closure of the International Criminal Tribunal for Rwanda on 31 December 2015, the Mechanism inherited the responsibility of assisting in the relocation efforts of those persons released and acquitted by the Tribunal who did not wish to return to their country of origin for a variety of reasons. In 2021, nine persons were under the care of the Mechanism in an Arusha safe house following their acquittal or release. These individuals were allowed to remain in the United Republic of Tanzania temporarily until their relocation to another country could be arranged. As such, they lacked a formally recognized immigration status, travel documents and the ability to work and travel, which had a negative impact on their fundamental human rights. At least one of the acquitted and released persons had been in this indeterminate state since 2004. This situation was reflected in multiple reports of the Mechanism to the Security Council as well as in Security Council resolution [2529 \(2020\)](#) and previous Council resolutions.

32. The Registry had previously identified a three-pronged approach to the issue that consisted of (a) pursuing efforts with countries to which the released and acquitted persons had expressed a preference to be relocated; (b) pursuing efforts with other countries that the Mechanism had identified as potential countries of relocation; and (c) pursuing a return to Rwanda under certain conditions. The Registrar and the President made extensive efforts to further raise awareness of the issue and engage Member States bilaterally on the possible resettlement of the affected individuals. The Registrar's new strategy culminated in the signing of an agreement between the United Nations and the Government of the Niger in late 2021 for the relocation of the acquitted and released persons. The signing was followed by the relocation of eight of the nine released or acquitted persons on 6 December 2021 from Arusha. Further updates related to this relocation are described in paragraph 35 below.

### **The Mechanism continued to face challenges in its enforcement of sentences and in the relocation of acquitted and released persons**

33. Challenges to cooperation with Member States prevented the effective enforcement of sentences for some convicted persons. The Mechanism was faced with



two related challenges in relation to cooperation with States regarding the enforcement of sentences. The first was the reluctance of States to agree to serve as enforcement States. The Mechanism had enforcement agreements with 22 States; however as indicated in paragraph 30 above, only 12 were enforcing sentences at the end of the evaluation period. Furthermore, the burden of States varied, particularly in Africa, with some States hosting multiple convicted persons. As of November 2023, two convicted persons were in the United Nations Detention Unit in The Hague awaiting their first designation of and transfer to an enforcement State.

34. The second challenge related to the enforcement of sentences was the premature return of some convicted persons to the Mechanism from enforcement States. These situations occurred when the sentences of these individuals did not align with the national laws of an enforcement State. During the evaluation period, four convicted persons were returned from the State in which they were serving their sentences, as they had reached the limit of the respective domestic law on the maximum duration of a sentence. As of November 2023, two such persons were temporarily housed at the Detention Unit awaiting the designation of a new enforcement State and their subsequent transfer. Their return created additional work for the Mechanism in facilitating the transfer of these individuals back to the Detention Unit, and raised implications with regard to the designation and operational capacity of the Detention Unit, which was being used as a de facto prison. Furthermore, the return of these individuals to the Detention Unit also created financial implications for the Mechanism, such as the need to provide food, security and medical services, especially in the light of the ongoing downsizing of the Mechanism. Given the sizeable population of convicted persons under the responsibility of the Mechanism and the length of some of their sentences, this challenge was expected to continue or become exacerbated in the future.

35. Similarly, cooperation challenges with Member States prevented the Mechanism from concluding its responsibilities towards the acquitted and released persons in the Niger. Unexpectedly, on 27 December 2021, three weeks after eight acquitted and released persons had been relocated, the Government of the Niger issued an order expelling the relocated persons from its territory. The affected individuals had their identity documents confiscated and effectively lived under house arrest. The Mechanism engaged with the Government and the counsel for the relocated persons, and continued to seek a viable solution through regular contact with stakeholders, such as the United Nations Resident Coordinator in the Niger, ICRC and potential safe and willing third States for a second relocation, but to no avail. The Rwandan authorities interviewed indicated that these persons were free to return and live in their country of origin, as some others had done so safely. Nevertheless, the individuals were reluctant to return. Following litigation initiated by the relocated persons, a single judge decided that in this situation, where the relocation appeared not to have been carried out in accordance with the full terms of the relocation agreement and, in particular, where the relocated persons had not been put in a position to identify opportunities to support themselves, the duty of care of the Mechanism continued and was deemed to encompass financial assistance. He accordingly instructed the Registry to provide each of them with an additional lump-sum payment to ensure the respect of their fundamental rights.<sup>18</sup> However, a long-term solution to this protracted situation has yet to be found. A lack of in-country presence of the Mechanism, challenges to finding a third relocation State, the limited relationship with the Government of the Niger and limited interaction with Rwanda on the issue were all considered obstacles for the Mechanism towards fulfilling its responsibilities in this regard. Challenges to the conclusion of the Mechanism's duty

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<sup>18</sup> International Residual Mechanism for Criminal Tribunals, Decision on Motions for an Order for Substance Funds, Case No. MICT-22-124, 12 January 2023.

of care towards acquitted and released persons were expected to continue unless there were improvements in cooperation with Member States.

#### **D. The Mechanism effectively leveraged partnerships with external stakeholders; however, internal cooperation among the organs remained uneven**

##### **There were positive examples of the Mechanism leveraging partnerships with external stakeholders for enhanced reach and impact**

36. The Mechanism effectively used partnerships with both international organizations and civil society organizations to fulfil its residual activities that involve cooperation with Member States. Figure VIII provides a list of some the key partners of the Mechanism by function.

Figure VIII

##### **Key Mechanism partners**

###### Assistance to national jurisdictions

- **UNDP** – Regional cooperation
- **European Commission** – Project funding
- **International Commission of Jurists, Kenyan Section** – Monitoring of cases referred to national jurisdictions
- **ICRC** – Accounting for missing persons

###### Supervision of the enforcement of sentences

- **European Committee for the Prevention of Torture** – Independent inspections
- **ICRC** – Independent inspections
- **UNDP** – Payment and logistical support

###### Relocation of acquitted and released Persons

- **ICRC** – Facilitation and visits in the Niger

###### Outreach activities and facilitation of access to information from the archives

- **City of Sarajevo** – Information Centre on the International Tribunal for the Former Yugoslavia
- **European Commission** – Project funding

37. One notable example was the European Commission-funded “Enhancing war crimes accountability in the Western Balkans” project. The project had two distinct components. The first sought to enhance the prosecution of war crimes at the domestic level through the Office of the Prosecutor,<sup>19</sup> whose activities focused on complementing its response to requests for assistance with the provision of direct case assistance, the preparation and handing over of dossiers on complex war crimes cases concerning crimes and suspects in the Western Balkans (as discussed in para. 20 above), and the establishment of a peer-to-peer mentoring programme between the Mechanism and domestic prosecutors. The second component leveraged the archives of the Mechanism and sought to increase public knowledge and understanding of the facts established in cases of the International Tribunal for the Former Yugoslavia and the Mechanism through the Registry. This component was delivered through the Mechanism Information Programme for Affected Communities, comprising three key areas of engagement (youth outreach through the training of secondary school teachers and the delivery of university video lectures; social media campaigns and media outreach; and support to local stakeholders), as well as the Information Centre

<sup>19</sup> International Residual Mechanism for Criminal Tribunals, “War crimes accountability”.

on the International Tribunal for the Former Yugoslavia located in Sarajevo. Key outputs of the Mechanism Information Programme are summarized below:

(a) Since 2021, two cycles and 26 lectures for approximately 400 postgraduate law students;<sup>20</sup>

(b) Since 2019, more than 200 short videos and other media content, reaching over 5,500,000 persons (S/2023/881, para. 124);

(c) The War Crimes Trials Database project: the first worldwide database designed to contain all trial and appeal judgments from all war crimes cases from all domestic and international courts adjudicating such crimes.<sup>21</sup>

38. The Information Centre has been successful in facilitating access to information and content from the archives of the Mechanism. Since the inception of the Information Centre in Sarajevo in 2018, the Mechanism has provided certified copies of all publicly available judgments issued by the International Tribunal for the Former Yugoslavia and the Mechanism, a collection of public information material previously produced by the Tribunal's Outreach Programme and more than 700 relevant books and publications. The Mechanism Information Programme for Affected Communities supported the Centre by providing training with regard to searching archival material, assisting in fundraising efforts, helping in the creation of exhibitions and organizing a range of events for the public. Furthermore, the Mechanism sought to replicate this model in other affected States, and discussions were at an advanced stage to establish similar information centres in other countries in the region.

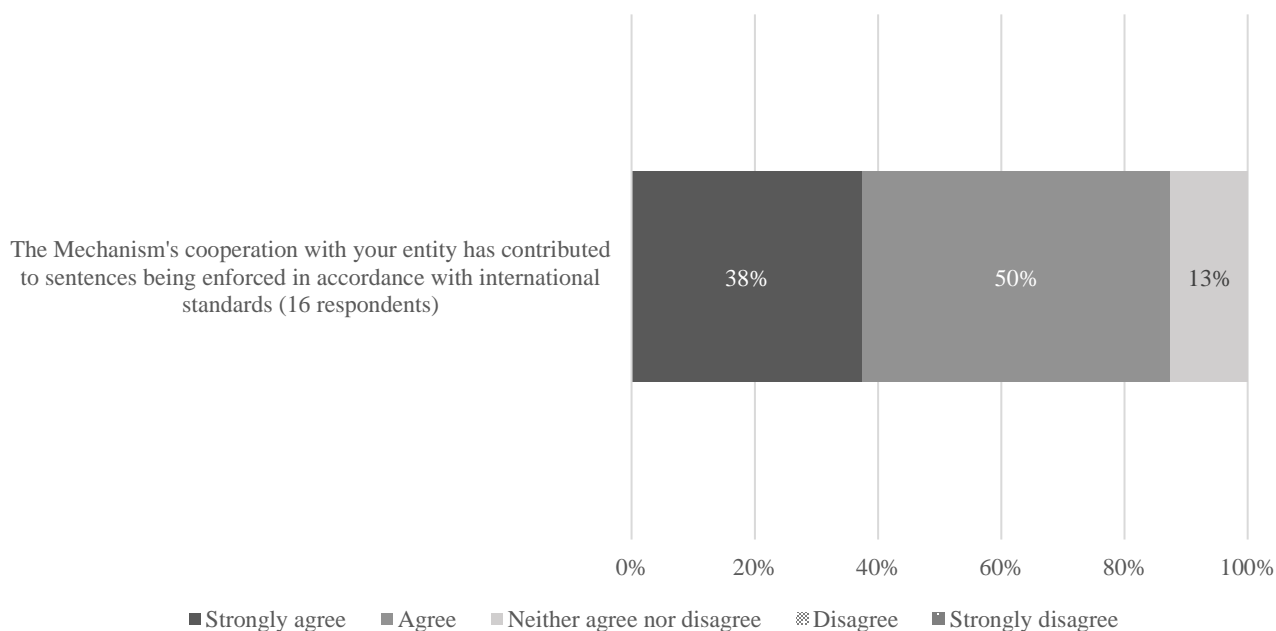
39. ICRC and the European Committee for the Prevention of Torture were critical partners for the enforcement of sentences. Both organizations served as independent inspecting bodies and regularly monitored the conditions of imprisonment to ensure that international standards were being complied with. The recommendations of these inspecting bodies were considered and addressed by the Mechanism, in coordination with national authorities. According to the third-party stakeholder survey results, 88 per cent of the respondents agreed or strongly agreed that the cooperation of the Mechanism with the respondents' entities had contributed to sentences being enforced in accordance with international standards (see figure IX). ICRC also played a critical role in relation to the relocated persons in the Niger by being a key liaison counterpart of the Mechanism on the ground, visiting the relocated persons and regularly reporting to the Mechanism on their situation. In addition, ICRC covered the medical costs of the relocated persons for a period of time.

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<sup>20</sup> Mechanism Information Programme for Affected Communities report, 30 October 2023.

<sup>21</sup> Ibid.

Figure IX

**Views of third-party stakeholders on Mechanism collaboration with regard to enforcement of sentences**

Source: Survey of third-party stakeholders.

**Cooperation among the different organs was uneven across functions**

40. Mechanism staff provided generally positive feedback on the ongoing collaboration among the organs, highlighting some good examples of cooperation. Notably, the Registry and the Office of the President worked in tandem to review and approve products of the Mechanism Information Programme for Affected Communities, with the latter ensuring that the information contained in the products reflected judicial findings and could be disclosed, thereby contributing to their improved quality. Furthermore, the collaboration between the Registry and the Office of the Prosecutor in relation to assistance activities was acknowledged by staff as functioning well. The two organs collaborated in responding to and referring requests from national jurisdictions to the relevant organ within the Mechanism. The two organs also often communicated regarding witnesses. An additional illustration of effective internal coordination involved the Registry and the Chambers, which worked closely in the context of judicial proceedings, with the Registry seamlessly implementing judicial orders and decisions in relation to protective measures for witnesses and confidential material. Furthermore, during the evaluation period, the Registry and the Chambers successfully rectified inter-branch inconsistencies in the process of the Registry providing the judges relevant information when deciding on requests for variation of protective measures.

41. However, some staff members expressed frustration with the overall low level of internal coherence and with issues of collaboration, particularly in relation to the relocation of acquitted and released persons. Both the Office of the President and the Registry were engaged in the relocation of acquitted and released persons. Internal communications reviewed indicated challenges in agreeing and allocating the roles and responsibilities for this function, which is not explicitly mandated in the Statute of the Mechanism or those of the Tribunals. The Rules of Procedure and Evidence of the Mechanism and the Tribunals were also silent on the issue of relocation. As such,

the existing roles and responsibilities of the President, the Registrar and their respective offices had evolved from the practice of previous Principals but were not formalized, leaving room for various interpretations. The challenging situation that arose with the relocated persons in the Niger, compounded by the political upheaval in that country in 2023, revealed an opportunity to improve coordination between the relevant staff of the two organs.

## V. Recommendations

42. As the Mechanism finds itself at the point of becoming a truly residual mechanism, the Inspection and Evaluation Division of OIOS makes four important recommendations to the Mechanism to enhance its utility in the service of Member States and to address the current challenges it faces in discharging its residual functions, all of which the Mechanism has accepted.

### **Recommendation 1 (see section IV, result D)**

43. Building on previous efforts, the Registrar and the President should clarify and document their respective roles and responsibilities regarding the relocation of acquitted and released persons to streamline engagement with relevant stakeholders and to enhance the efficiency of their efforts on the issue.

**Indicators of achievement:** Documentation that defines the roles and responsibilities of the Principals with respect to the relocation function; evidence of dissemination among relevant staff to build common understanding.

### **Recommendation 2 (see section IV, results C and D)**

44. As it transitions into a truly residual institution, the Mechanism should further strengthen how it leverages partnerships with the United Nations system to find long-term solutions to the challenges it faces regarding cooperation with Member States.

**Indicator of achievement:** Advocacy plan developed by the Mechanism to engage the broader United Nations system, including human rights principals and those with country presence such as resident coordinators.

### **Recommendation 3 (see section IV, result B)**

45. With the approval of the General Assembly of the closure of the Kigali field office, employ lessons learned and best practices from the closure of the Sarajevo field office, including to the upcoming closure of the Kigali field office. This should include:

(a) Further developing planning for the closure of the Kigali field office that includes a clear strategy for communication and consultation with relevant stakeholders in Rwanda;

(b) Developing alternative processes for the functions previously carried out by field offices that mitigate disruptions in services, including addressing the issue of appropriate support to witnesses and victims in Rwanda.

**Indicators of achievement:** Kigali field office closure plans; documentation on alternative processes for the functions carried out by the Sarajevo and Kigali field offices, including mitigation measures.

**Recommendation 4 (see section IV, result B)**

46. As it transitions to its next phase, the organs of the Mechanism should take steps to further client orientation, including:

(a) Continuing to improve the statistics they gather on the various types of assistance provided to national jurisdictions and others;

(b) Regularly soliciting feedback from those who submit requests for assistance, including through surveys;

(c) Systematically soliciting feedback from recipients of capacity-building activities, including through surveys.

**Indicators of achievement:** Evidence of updated statistics gathered; evidence of surveys implemented targeting service users.

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**Annex<sup>1</sup>****Comments received from the International Residual Mechanism for Criminal Tribunals**

1. The International Residual Mechanism for Criminal Tribunals is grateful for the collaborative approach employed by the Inspection and Evaluation Division of the Office of Internal Oversight Services (OIOS) throughout its evaluation of the methods and work of the Mechanism. The Mechanism values the cooperation and support of the evaluation team, while its important and astute observations as to the Mechanism's operations assist in the overarching goal of fulfilling its mandate.

2. Furthermore, the Mechanism is pleased with the overall result of the evaluation, which assesses the relevance, effectiveness and coherence of the Mechanism's residual activities. Notably, the evaluation report acknowledges the robust assistance being provided to national jurisdictions by the Mechanism, alongside an effective leveraging of cooperation with Member States and international organizations with regard to its residual functions. Simultaneously, the evaluation team has made four important recommendations to the Mechanism.

**Recommendation 1**

3. Recommendation 1 urges the Registrar and the President, building on previous efforts, to clarify and document their respective roles and responsibilities regarding the relocation of acquitted and released persons to streamline engagement with relevant stakeholders and to enhance the efficiency of their efforts on the issue.

4. The Mechanism recognizes that practices regarding the issue of the relocation of acquitted and released persons have developed over time and that a memorialization of the division of responsibilities may enhance clarity for those involved in finding a durable solution to the matter.

5. The Mechanism accepts this recommendation, and the President and Registrar will take steps to document the defined roles and responsibilities of each with respect to the situation of relocated persons.

**Recommendation 2**

6. Recommendation 2 suggests that the Mechanism, as it transitions into a truly residual institution, should continue to leverage and explore partnerships with the United Nations system to find long-term solutions to the challenges it faces regarding cooperation with Member States.

7. The Mechanism welcomes the focus of OIOS on improving Member States' cooperation with the Mechanism. Given that the identified challenges relate to the enforcement of sentences and the relocation of acquitted and released persons, the President and the Registrar will jointly develop a plan to engage broader support for resolution of the challenges that the Mechanism faces in these areas. The Mechanism notes, however, that while outreach and partnership with other United Nations system entities could raise awareness of these challenges, satisfactory resolution of the issues will rely exclusively on the cooperation of Member States.

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<sup>1</sup> In the present annex, the Office of Internal Oversight Services presents the full text of the comments received from the International Residual Mechanism for Criminal Tribunals. This practice has been instituted in line with General Assembly resolution [64/263](#), following the recommendation of the Independent Audit Advisory Committee.

8. The Mechanism accepts this recommendation and will develop a support plan to engage the broader United Nations system, including human rights principals and those with a country presence such as resident coordinators, with regard to improving Member States' cooperation with the Mechanism in relation to the enforcement of sentences and the relocation of acquitted and released persons.

### **Recommendation 3**

9. Recommendation 3 urges the Mechanism to employ lessons learned and best practices from the closure of the Sarajevo field office in 2023 when closing the Kigali field office in 2024.

10. The Mechanism is cognizant that closing field offices can impact stakeholders and give rise to concerns that relevant services will be discontinued. The Registrar is actively drawing up closure plans, in coordination particularly with the Prosecutor, and with due regard to concerns expressed by the Rwandan authorities and victims' associations. Naturally, lessons learned and best practices from the closure of previous field offices are guiding this process.

11. The Mechanism accepts this recommendation, and the Registrar will draw up and implement relevant closure plans that take into account the alternative provision of services, where necessary.

### **Recommendation 4**

12. Recommendation 4 suggests that, as it transitions to its next phase, the organs of the Mechanism should take steps to adopt a further client orientation, including by continuing to improve the statistics they gather on the various types of assistance provided to national jurisdictions and others; regularly soliciting feedback from assistance requestors, including through surveys; and systematically soliciting feedback from recipients of capacity-building activities, including through surveys.

13. The Mechanism realizes that providing assistance to national jurisdictions will become increasingly important during this phase of its lifespan. While it would not be appropriate for the Chambers, as the judicial organ, to solicit feedback in relation to judicial decisions, the other two organs will take the recommended actions with regard to improving their client orientation. The Chambers will, however, take the necessary actions in relation to workshops and trainings. With regard to statistics, all organs will continue to improve their statistics in this area.

14. The Mechanism accepts this recommendation.

### **Two outstanding recommendations from previous Office of Internal Oversight Services evaluations**

15. Two recommendations from the previous evaluations by OIOS in 2018 and 2020 remain outstanding. The Mechanism is in the final stages of submitting documentation to OIOS to seek the formal closure of these two recommendations. The Mechanism hopes that OIOS will acknowledge its efforts in this respect so that these longstanding recommendations can be considered to have been met in time for the Security Council's fifth review of the progress of the work of the Mechanism in June 2024.