



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 Tribunal for the Former Yugoslavia.

In the present evaluation report, the Office of Internal Oversight Services (OIOS) has assessed the implementation of the recommendations of its 2018 evaluation, projections of completion timelines, cost savings, the geographical diversity and gender balance of staff, and the implementation of a human resources policy consistent with a temporary mandate. OIOS relied on qualitative and quantitative sources to support its analysis.

Overall, four recommendations (recommendations 3, 4, 5, and 6) from the 2018 evaluation have been implemented and two recommendations (recommendations 1 and 2) have been partially implemented. The Mechanism was effective in reducing costs and flexibly deploying staff based on the workload and it exceeded the gender balance targets in favour of women in the Mechanism as a whole, although it was continuing to strive to achieve geographical diversity, as well as gender balance at all levels. Of the new issues examined in the present evaluation, it was determined that further effort was needed to coordinate and share information across the three organs on matters that affected them equally, and to present clear and focused projections of completion timelines.

OIOS makes two important recommendations to the Mechanism:

- (a) Ensure systematic thinking and planning about the future and a shared vision of institution-building;
- (b) Provide clear and focused projections of completion timelines at the earliest stage possible in annual and progress reports.



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I. Introduction

1. The Inspection and Evaluation Division of the Office of Internal Oversight Services (OIOS) was mandated by the Security Council in its resolution [2256 \(2015\)](#) to conduct evaluations with respect to the methods and work of the International Residual Mechanism for Criminal Tribunals. The General Assembly endorsed the request in its resolution [70/227](#).
2. The overall objective of the evaluation was to follow up on the implementation of the recommendations made in the 2018 evaluation by OIOS and to assess four other issues, set out in paragraph 8 of Security Council resolution [2422 \(2018\)](#). The evaluation was conducted in conformity with the United Nations Evaluation Group *Norms and Standards for Evaluation*.
3. The comments of the management of the Mechanism were sought on the draft report and were considered in the preparation of the final report. The response of the Mechanism is included in annex I to the present document, and the comments of OIOS thereon are included in annex II.

II. Evaluation framework: scope, purpose and methodology

A. Scope and purpose

4. The evaluation was focused on determining the extent to which: (a) the recommendations from the 2018 evaluation had been implemented (the evaluation was also focused on whether there were any measurable impacts from the implementation and the reasons for non-implementation or partial implementation of recommendations); (b) focused projections of completion timelines had been produced and adhered to in a disciplined manner, including through making the best use of diverse approaches of common and civil law systems; (c) the geographical diversity and gender balance of staff had been enhanced, while ensuring continued professional expertise; (d) human resources policy consistent with the temporary mandate of the Mechanism had been implemented; and (e) costs had been further reduced, including through flexible staff engagement. Pursuant to its mandate, during the evaluation, only the methods and work of the Mechanism were examined, not substantive aspects of international criminal law, such as fairness, legal reasoning, jurisprudential regimes, decision-making, and/or verdict outcomes.
5. The evaluation covered the period from 1 January 2018 to 31 December 2019.

B. Methodology

6. The results are based on a triangulation of diverse data, collected through quantitative and qualitative methods:
 - (a) Thirty semi-structured group interviews with select Mechanism staff;¹
 - (b) Visits to The Hague and Arusha branches;
 - (c) Analysis of staff size, budgets and organizational structure;
 - (d) Content analysis of interview transcripts;
 - (e) Multivariate regression analysis;

¹ A total of 60 individuals were interviewed.

(f) Desk review of documentation, including the Mechanism strategic priorities, workplans, project documents, annual performance reports, progress reports, relevant OIOS and Board of Auditors reports and Mechanism policies, practices and memorandums.

7. During the evaluation, reporting on the items mentioned in paragraph 4 above was prioritized; therefore, not all of the aspects of the mandate of the Mechanism were considered in equal depth.

8. OIOS consulted the Mechanism during the conduct of the evaluation and appreciates its cooperation and assistance. The response of the Mechanism to the report is contained in annex I to the present report.

III. Evaluation results

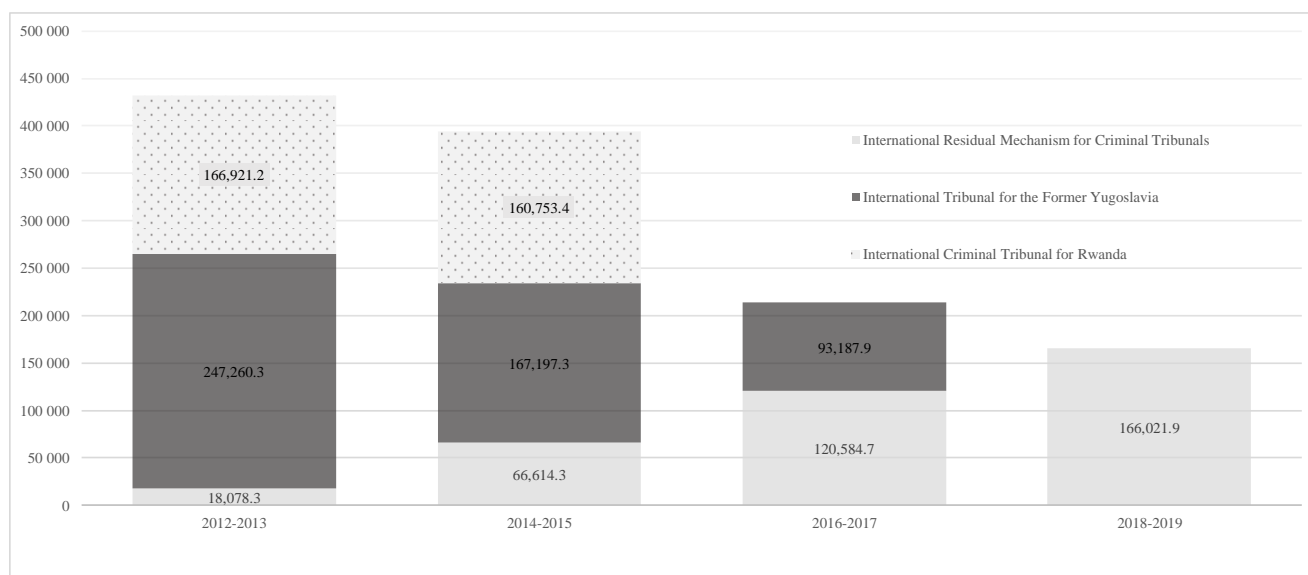
A. Given the sharp reduction in initial commitment authority in 2018, the Mechanism delayed activities until the revised budget was approved, after which operations resumed as planned

9. The Mechanism is financed from assessed contributions in accordance with a hybrid scale of assessments. Half of the budget of the Mechanism is financed according to the regular budget scale and the other half according to the peacekeeping scale. It reports directly to the General Assembly through the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

10. The financial resources of the Mechanism have steadily increased over the past three bienniums, reflecting the gradual transfer of functions from the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (see figure I).

Figure I
Financial resources of the International Residual Mechanism for Criminal Tribunals, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, 2012–2019

(Thousands of United States dollars)



Source: Final appropriation, net of staff assessment. For the Mechanism, see [A/68/594](#), [A/70/558](#), [A/72/604](#) and [A/74/566](#); for the International Tribunal for the Former Yugoslavia, see [A/68/582](#), [A/70/554](#) and [A/72/603](#); and for the International Criminal Tribunal for Rwanda, see [A/68/579](#) and [A/70/553](#).

11. The Mechanism began 2018 with a 33.6 per cent decrease in resources compared with the final net appropriation for the biennium 2016–2017. In its resolution [72/258](#), the General Assembly approved a commitment authority in an amount not to exceed \$87,796,600 gross (\$79,993,400 net) for the maintenance of the Mechanism for the period 1 January to 31 December 2018. The initial proposed resource requirement for the Mechanism for biennium 2018–2019 was 58.9 per cent higher compared with the appropriation for 2016–2017 which, at that level, would have defeated the purpose of closing the International Tribunal for the Former Yugoslavia and replacing it with the Mechanism.² In March 2018, the Mechanism revised its proposed budget for the biennium 2018–2019 to \$183,969,220 gross (\$164,374,400 net), asserting that the approved commitment authority amount would be insufficient to carry out the functions mandated by the Security Council, including trials and appeals.³ Unlike in the biennium 2016–2017, the revised proposed budget for the biennium 2018–2019 omitted provisions for trials of fugitives indicted by the International Criminal Tribunal for Rwanda.⁴

12. Owing to the sharply reduced initial commitment authority, the Mechanism delayed its activities, while reducing and containing expenditure. The revised budget was approved by the General Assembly in July 2018, after which operations resumed to planned levels.⁵ However, by the end of December 2018, the impact of the initial commitment authority, efforts to contain overall expenditure and the subsequent approval of the revised budget resulted in a surplus of \$12 million, which remained unspent.⁶

13. Compared with the revised appropriation for the biennium 2018–2019, Chambers experienced a decrease in non-staff compensation (a decrease of \$1,000,300; encompassing a decrease of \$48,500 at the Arusha branch and a decrease of \$951,800 at the Hague branch) owing to a lower-than-budgeted average number of days required per matter for consideration by a single judge and the delivery of the *Ngirabatware* review judgment three months earlier than anticipated in the Arusha branch (which was offset in part by the cost of the *Turinabo et al.* case).⁷ In The Hague, there was an overall reduction in the number of days used to deliberate on the *Mladić, Karadžić* and *Šešelj* cases.

14. The Office of the Prosecutor experienced a decrease in other staff costs (a decrease of \$1,593,900, encompassing \$1,040,000 in the Arusha branch and \$553,900 in The Hague branch) compared with the revised appropriation for biennium 2018–2019, reflecting a cautious approach to hiring under the limited commitment authority approved by the General Assembly in 2018.⁸

15. The Registry experienced a decrease in general operating expenses (a decrease of \$2,952,400) compared with the revised appropriation for the biennium 2018–2019, owing to lower-than-anticipated requirements for the maintenance of data-processing equipment, lower-than-budgeted communications costs and, for The Hague, fewer claims for medical services for both detainees and witnesses.⁹ Other staff costs in the Registry also decreased (a net decrease of \$1,737,500). The increase at the Arusha branch was attributable to the additional workload in support of the *Turinabo et al.*

² [A/72/654](#), para. 16.

³ See [A/72/813](#).

⁴ *Ibid.*, para. 20.

⁵ OIOS received a compilation of the budget proposals for the biennium 2018–2019 and for 2020 and a memorandum on the downsizing policy, but not an expenditure reduction plan.

⁶ [A/74/5/Add.15](#), chap. V, financial statement II: statement of financial performance for the year ended 31 December 2018.

⁷ [A/74/566](#), para. 9.

⁸ *Ibid.*, para. 12.

⁹ *Ibid.*, para. 25.

case and the decrease at The Hague branch was the result of lower support costs for the *Mladić*, *Karadžić* and *Šešelj* appeals.¹⁰

B. The Mechanism effectively managed human resources flexibly, with good results in geographical diversity and gender balance

16. After the budget reduction in 2018, the Registrar significantly cut the number of P-5 Head of Section posts in the Registry and adopted a Mechanism downsizing policy to guide further staff reductions.¹¹

17. As at 1 November 2019, the Mechanism had 186 approved continuous posts, of which 175 were occupied, and 452 general temporary assistance posts (see table 1).

Table 1
International Residual Mechanism for Criminal Tribunals staff, by category of post

Category	Number of posts			
	1 May 2018	1 November 2018	1 May 2019	1 November 2019
All staff	509	495	516	627
Staff on continuous posts	158	167	168	175
Staff on GTA posts	351	328	348	452
International staff (FS, P and above)	235	231	247	282
Local staff (GS)	274	264	269	345

Source: International Residual Mechanism for Criminal Tribunals progress reports from 2018 and 2019.

Abbreviations: GTA, general temporary assistance; FS, Field Service; P, Professional; GS, General Service.

18. The increase in staff relative to November 2018 represented an increase in staff in the Arusha branch to balance out the structure and workload needs between The Hague and Arusha branches (see table 2).

Table 2
International Residual Mechanism for Criminal Tribunals staff, by category of post and branch

Category	Arusha branch				Hague branch			
	1 May 2018	1 November 2018	1 May 2019	1 November 2019	1 May 2018	1 November 2018	1 May 2019	1 November 2019
All staff	155	165	184	283	354	330	332	344
Staff on continuous posts	98	111	112	119	60	56	56	56
Staff on GTA posts	57	54	72	164	294	274	276	288
International staff (FS, P and above)	82	88	104	133	153	143	143	149
Local staff (GS)	73	77	80	150	201	187	189	195

Source: International Residual Mechanism for Criminal Tribunals progress reports from 2018 and 2019.

Abbreviations: GTA, general temporary assistance; FS, Field Service; P, Professional; GS, General Service.

19. As at 1 November 2019, the Mechanism had 452 personnel in general temporary assistance posts to assist with ad hoc needs, including judicial work. Those posts were

¹⁰ A/74/593, para 4.

¹¹ S/2018/347, paras. 112–115.

short term and consistent with the flexible staffing structure of the Mechanism. The number of staff in that type of post fluctuated depending on the workload.

20. Chambers and the Office of the Prosecutor had lean staffing numbers to represent the ad hoc nature of the judicial activity. In addition, the Office of the Prosecutor determined that the fugitive tracking team had been envisaged as a temporary structure, to be abolished if no results were produced by 2021. The Registry had the most diverse range of functions and the largest number of posts, compared with Chambers and the Office of the Prosecutor. The Hague branch also had a significant number of general temporary assistance posts.

For a downsizing institution with a temporary mandate, the Mechanism performed reasonably well in balancing geographical diversity

21. Only United Nations entities with established posts are subject to the principle of equitable geographical distribution. As the Mechanism is considered a temporary institution, it does not have established posts, merely temporary posts of fixed duration and positions funded through general temporary assistance. Neither temporary posts nor general temporary assistance posts are subject to the principle of equitable geographical distribution. Nevertheless, the Mechanism paid attention to geographical distribution in recruitment.¹² In November 2019, the Mechanism staff represented 77 different Member State nationalities (see table 3).

22. As at 1 November 2019, the Mechanism had over twice as many staff from Western European and other States than staff from Eastern Europe. The least-represented region among the staff was Latin America and the Caribbean (see table 3).¹³ As at 1 November 2019, the Mechanism also had staff from 10 countries that are considered underrepresented Member States within the United Nations system.

Table 3
Geographical representation by regional group (as at 1 November 2019)

	<i>Arusha branch</i>	<i>The Hague branch</i>	<i>Mechanism overall^a</i>
Nationalities	39	63	77 (percentage)
All staff			
African	228	24	252 (40.2)
Asia-Pacific	9	25	34 (5.4)
Eastern European	4	85	89 (14.2)
Latin American and Caribbean	3	8	11 (1.8)
Western European and Other States	39	202	241 (38.4)
International staff (Field Service, Professional and above)			
African	78	8	86 (30.5)
Asia-Pacific	9	9	18 (6.4)
Eastern European	4	34	38 (13.5)
Latin American and Caribbean	3	4	7 (2.5)
Western European and Other States	39	94	133 (47.2)

Source: S/2019/888.

^a As percentages are rounded to the nearest decimal, the total may not add up exactly to 100 per cent.

¹² Interview and correspondence with Registry staff.

¹³ In comparison, United Nations Secretariat staff percentages by regional groups in December 2018 were as follows: Africa (39.3 per cent); Asia-Pacific (20.4 per cent); Eastern Europe (6.1 per cent); Latin America and the Caribbean (7 per cent); and Western Europe and other States (26.8 per cent) (A/74/82, table 4).

23. The higher proportions of staff from Africa and Western Europe and other States corresponded to the location of the two branches of the Mechanism, in Arusha and The Hague.

Mechanism-wide gender balance was exceeded, but with gaps among staff in the Field Service category and the Professional and higher categories, as well as by branch

24. In the Professional category, the Mechanism had a gender breakdown of 52 per cent women to 48 per cent men (see table 4). The entity had achieved parity at the FS-3 level and exceeded gender parity at the P-2 to P-4 levels.¹⁴ Among senior positions, parity was only a few percentage points from being achieved at the P-5 level, and there was only one D-1 post, which was held by a male. However, in the Field Service category, the FS-4 to FS-6 levels also showed a disparity in the gender balance in favour of men. In addition, in the General Service category, there was a ratio of 41 per cent women to 59 per cent men. Meanwhile, there were twice the number of men than women in the Arusha branch and approximately the opposite in The Hague. See paragraphs 57 and 58 below for a further discussion of gender balance and gender parity.

25. Senior appointments to the institution for which the Mechanism does not have direct control remained relatively the same towards the end of 2019 as during the year before, with 6 female judges out of a total of 24 remote judges; in 2017, 5 out of 25 remote judges were women. None of the three elected Mechanism Principals was a woman.

Table 4
Gender representation

	<i>Arusha branch</i>		<i>The Hague branch</i>		<i>Mechanism Overall (percentage)</i>
	<i>Arusha</i>	<i>Kigali Field Office</i>	<i>The Hague</i>	<i>Sarajevo Field Office</i>	
Professional staff (all levels)	69	1	147	2	219
Male	46	1	56	2	105 (47.9)
Female	23	0	91	0	114 (52.1)
Professional staff (P-4 and above)	21	0	50	1	72
Male	16	0	21	1	38 (52.8)
Female	5	0	29	0	34 (47.2)
Field Service staff (all levels)	58	5	0	0	63
Male	34	3	0	0	37 (58.7)
Female	24	2	0	0	26 (41.3)
General Service (all levels)	135	15	192	3	345
Male	76	12	114	2	204 (59.1)
Female	59	3	78	1	141 (40.9)
All staff	262	21	339	5	627
Male	156	16	170	4	346 (55.2)
Female	106	5	169	1	281 (44.8)

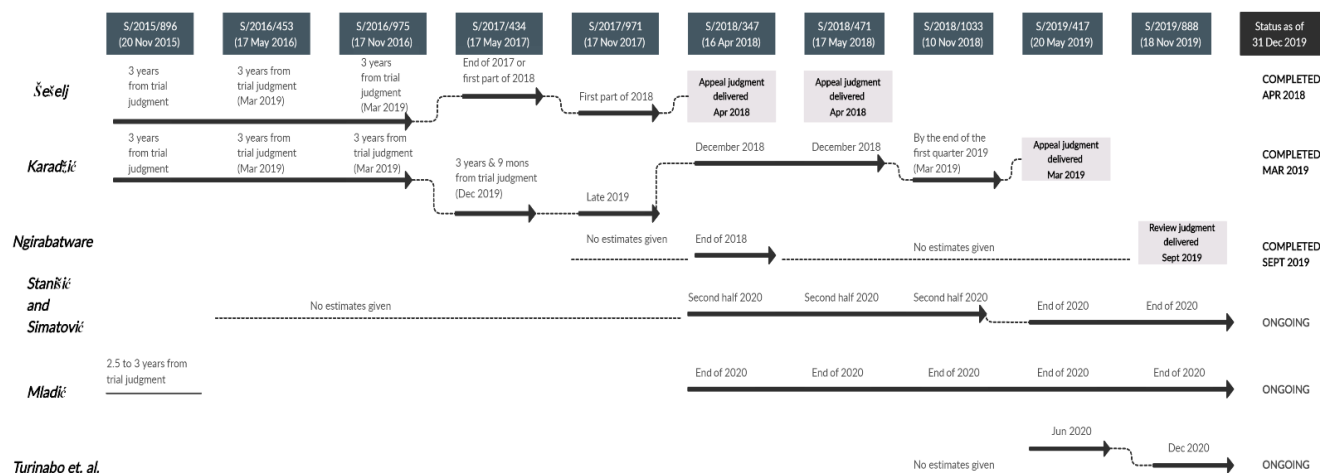
Source: S/2019/888.

¹⁴ United Nations, Secretariat Gender Parity Dashboard, available at www.un.org/gender/content/un-secretariat-gender-parity-dashboard (accessed on 13 February 2020).

C. The Mechanism was not systematic in how it presented focused projections of completion timelines, although projections since the latter half of 2018 improved, with further procedural efficiency gains in using diverse approaches from common or civil law systems unlikely to accrue

26. An analysis of the six cases of which the Mechanism was seized in 2018 and 2019 (*Šešelj, Karadžić, Mladić, Ngirabatware, Stanišić and Simatović* and *Turinabo et. al.*), as reported in Security Council progress reports,¹⁵ indicated that the Mechanism was not systematic in presenting focused projections, insofar as they declined to methodically predict the future progress of a trial or estimate a completion date at the start of proceedings (see figure II).¹⁶ The *Karadžić, Mladić* and *Šešelj* appeals were given broad estimated completion dates throughout the reporting period, including before proceedings commenced, whereas the Mechanism demonstrated a reluctance to commit to specific time frames from the outset for the *Ngirabatware, Stanišić and Simatović* and *Turinabo et. al.* proceedings, or even as the cases progressed, although it did provide reasons for that. In the *Stanišić and Simatović* retrial and the *Ngirabatware* review, the first projection of a completion timeline appeared 11 months after the start of proceedings.

Figure II
Projected completion timelines



Source: International Residual Mechanism for Criminal Tribunals progress reports from 2015 to 2019.

27. The reluctance in committing to and presenting more specific timelines for trials and review proceedings appeared to stem from an assumption that accurate predictions could only be made at later stages in proceedings, when information was available.¹⁷ Parties to the cases noted that, while average timelines were provided and helpful, specific timelines and projections of completion timelines would be more

¹⁵ S/2016/453, S/2016/975, S/2017/434, S/2017/971, S/2018/347 (periodic report), S/2018/471, S/2018/1033, S/2019/417 and S/2019/888. The report dated 20 November 2015 (S/2015/896) was excluded owing to insufficient information on focused projections: the three relevant trial judgments, the appeals relating to which the Mechanism expected to be seized, had not yet been issued. A separate comparative analysis of information in the progress reports and annual reports yielded less information in the latter type.

¹⁶ Defined as a clear and accurate forecast and, in this context, with an estimated completion date for each case.

¹⁷ S/2018/347, para. 14, in which A/70/873-S/2016/441 is quoted.

useful.¹⁸ However, initial projections could be made at an earlier stage, based on the judges' assessment of the complexity and scope of the case, in consultation with the parties.

28. Research has demonstrated that the single most important predictor of the length of time it takes to issue an appeal judgment is the complexity of the case at trial.¹⁹ While factors such as the number of grounds of appeal and the length of trial judgment has a bearing on the length of the appeal judgment, their effect is smaller than trial complexity.²⁰ This relationship between trial complexity and the duration of the appeal suggests that it should be possible to make reasonably accurate predictions on when an appeal judgment will be issued, shortly after a trial is finished.

29. The Security Council requested the Mechanism to provide focused projections on two occasions.²¹ On the basis of the request made by the Council in 2018, it appeared that the clarity and specificity of progress reports improved somewhat over the course of the evaluation period. One notable improvement was the inclusion of a table in the April 2018 periodic report²² and a figure depicting judicial progress in both of the 2019 progress reports.²³ Such graphical representations enhanced clarity on the overall duration of judicial activity and estimated completion timelines.

The pace of ad hoc judicial proceedings in the Mechanism was comparable to that of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, with notable efficiencies

30. Given the pared-down nature of the Mechanism's judicial model and the specificity of the context in which it operates, simplistic comparisons with the timelines of predecessor tribunals were deemed inappropriate. International criminal cases demonstrate exceptional complexity and, consequently, trial complexity has a direct effect on the duration of proceedings and on efficiency. Nevertheless, an analysis of cases of similar trial complexity from the predecessor tribunals was useful in assessing the progress of cases before the Mechanism (see tables 5–10 below). The six cases were compared against cases of similar complexity in the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (and, in one case, the International Criminal Court).²⁴ The comparison showed that the *Šešelj* appeal ran at a similar pace when compared with equivalent proceedings in the International Tribunal for the Former Yugoslavia, with some efficiency estimated for the *Stanišić and Simatović* retrial.²⁵ The two cases with the

¹⁸ Interviews with staff and parties, December 2019.

¹⁹ Based on new and unpublished multivariate regression analysis in 2020. Trial complexity encompasses factual complexity (when facts necessary to decide the case are voluminous, technical, contradictory or incompatible); legal complexity (when law is complex, hard to ascertain or existing precedents are inconsistent); and participant complexity (participants in the legal process can have an effect on complexity).

²⁰ Trial complexity is a subjective characteristic that can be measured by a proxy variable known as the complexity score, which incorporates the number of trial days, the number of trial witnesses and the number of exhibits used in a trial as a composite score. The scores range from 0 to 3, from least to most complex. This enables a systematic comparison of cases. For 2014–2015 calculations, see Stuart Ford, "Complexity and efficiency at international criminal courts", *Emory International Law Review*, vol. 29, No. 1 (2014); and to understand why three factors were selected relative to other factors, see Stuart Ford, "The complexity of international criminal trials is necessary", *The George Washington International Law Review*, vol. 48, No. 1 (2015), table 2. In February 2020, those calculations were updated, incorporating actual data from the *Mladić* and *Karadžić* trials; those updated scores are used in the present report.

²¹ Security Council resolutions 2256 (2015), para. 19, and 2422 (2018), para. 8.

²² S/2018/347, enclosure 3.

²³ S/2019/417, enclosure 3; and S/2019/888, enclosure 3.

²⁴ The complexity score enables a systematic comparison of cases.

²⁵ Provided that the trial judgment is delivered on time and as planned.

highest complexity scores, *Karadžić* and *Mladić*,²⁶ were completed significantly more quickly than the two most complex multi-accused cases at the International Tribunal for the Former Yugoslavia, *Prlić et al.* and *Popović et al.*, despite being more complex.

Table 5
***Mladić* and *Karadžić* appeals**

<i>Case</i>	<i>Trial complexity</i>	<i>Trial judgment to appeal hearing</i>	<i>Appeal hearing to appeal judgment</i>	<i>Total time: trial judgment to appeal judgment</i>
<i>Karadžić</i> (Residual Mechanism)	2.94	2 years, 1 month	11 months	3 years
<i>Mladić</i> (Residual Mechanism)	2.51	2 years, 4 months (estimated)	9 months (estimated)	3 years, 1 month
<i>Prlić et al.</i> (International Tribunal for the Former Yugoslavia)	2.08	3 years, 9 months	8 months	4 years, 6 months
<i>Popović et al.</i> (International Tribunal for the Former Yugoslavia)	1.81	3 years, 7 months	1 year, 1 month	4 years, 7 months

Table 6
***Šešelj* appeal**

<i>Case</i>	<i>Trial complexity</i>	<i>Trial judgment to appeal hearing</i>	<i>Appeal hearing to appeal judgment</i>	<i>Total time: trial judgment to appeal judgment</i>
<i>Šešelj</i> (Residual Mechanism)	0.59	1 year, 8 months	4 months	2 years
<i>Haradinaj et al.</i> (International Tribunal for the Former Yugoslavia)	0.46	1 year, 6 months	9 months	2 years, 3 months
<i>Milošević (Dragomir)</i> (International Tribunal for the Former Yugoslavia)	0.54	1 year, 7 months	4 months	1 years, 11 months

²⁶ Provided that the appeal judgment is delivered on time and as planned. The calculations assumed an appeals hearing in *Mladić* to occur in March 2020 and judgment to be delivered in December 2020.

Table 7
***Stanišić and Simatović* retrial²⁷**

<i>Case</i>	<i>Prosecution case</i>	<i>Defence case</i>	<i>Start of trial to trial judgement</i>
<i>Stanišić and Simatović</i> (Residual Mechanism)	1 year, 8 months	to be confirmed (6 months to December 2019)	3 years, 6 months (estimated)
<i>Stanišić and Simatović</i> (International Tribunal for the Former Yugoslavia)	1 year, 9 months	1 year, 3 months	3 years, 11 months

31. *Ngirabatware* was only the second review judgment of a final appeal judgment issued in the history of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Residual Mechanism. The only other case in which a review judgment was issued was that of *Šljivančanin*, before the International Tribunal for the Former Yugoslavia, which was significantly less complex and thus not a good comparator. The delays in the *Ngirabatware* proceedings were attributable to unforeseeable events, many of which were outside the control of the Mechanism. These included the arrest of one member of the Appeals Chamber bench in his home country, the change in defence counsel at a late stage in proceedings and the indictment of five individuals in the *Turinabo et al.* case (and, later, Mr. Ngirabatware himself), in relation to alleged witness interference pertaining to the review proceedings. Several adjournments to the review hearings were ordered considering the change in defence counsel and the disclosure of material from the *Turinabo et al.* case. The review judgment itself was issued remarkably quickly – just four days after the review hearing ended. Given the unique circumstances surrounding the *Ngirabatware* case, it was difficult to generalize about the Mechanism’s ability to adhere to its timelines from the lengthy nature of those review proceedings.

Table 8
***Ngirabatware* review**

<i>Case</i>	<i>Application for review to decision on application for review</i>	<i>Review hearing to review judgment</i>	<i>Decision on application to review judgment</i>
<i>Ngirabatware</i> (Residual Mechanism)	11 months	4 days	3 years, 2 months
<i>Šljivančanin</i> (International Tribunal for the Former Yugoslavia)	5.5 months	5 months	11 months

32. While the predecessor tribunals heard a number of contempt cases, *Turinabo et al.* (recently joined with the *Ngirabatware* contempt case) was unprecedented in its complexity, novel legal issues for consideration (such as the appropriateness of referral to Rwanda for contempt cases) and the scope and number of defendants. Thus, no easy comparator from the Mechanism itself or the predecessor tribunals could be found. The nearest comparator from the International Criminal Tribunal for Rwanda was that of *Nshogoza*, who had been convicted of having violated a witness protection

²⁷ Calculating from the restart of the trial, in June 2009 (the trial had been originally scheduled to commence in April 2008 but was postponed owing to the non-attendance and ill-health of one of the accused, Mr. Stanišić).

order in the *Kamuhanda* case. There had been two multi-accused trials before the International Tribunal for the Former Yugoslavia with claims of attempted improper interference with witnesses, although neither of those cases approached the complexity of *Turinabo et al.*

Table 9

***Turinabo et al.* contempt case**

<i>Case</i>	<i>No. of accused</i>	<i>Duration: indictment to trial judgment</i>
<i>Turinabo et al.</i> (Residual Mechanism)	6	To be confirmed (1 year, 4 months to 31 December 2019; still at pretrial stage)
<i>Nshogoza</i> (International Criminal Tribunal for Rwanda)	1	1 year, 6 months
<i>Simić and Avramović</i> (International Tribunal for the Former Yugoslavia)	2	8 months
<i>Haraqija and Morina</i> (International Tribunal for the Former Yugoslavia)	2	11 months

33. Indeed, the closest comparison would appear to be the *Bemba et al.* case before the International Criminal Court, given the many parallels between the two cases. On the basis of the timing of the *Bemba et al.* case, the estimated completion timeline for *Turinabo et al.* appeared to be reasonable. Both cases involved multiple accused alleged to have improperly interfered with witnesses. The profile of defendants, who included defence team investigators and the accused from the main trial, was another similarity. In both cases, many complex and novel evidentiary and legal issues were grappled with, including the use of evidence extracted from electronic devices.²⁸ On that basis, *Bemba et al.* provided a suitable baseline comparator for the *Turinabo et al.* case. However, given the differences between the confirmation of charges stage at the International Criminal Court with the confirmation of indictment stage before the Mechanism, and the procedural differences between the two systems more generally, any comparison of timelines should be treated with caution. In assessing this comparison, it must be noted that the joinder of *Turinabo et al.* with *Ngirabatware* in December 2019 was likely to have a negative impact on the projected start date for trial.²⁹

²⁸ *Prosecutor v. Bemba et al.*, prosecution's first request for the admission of evidence from the Bar table, Case No. ICC-01/05-01/13-1013-Red (16 June 2015); and *Prosecutor v. Turinabo et al.*; *Prosecutor v. Ngirabatware*, decision on prosecution motion for joinder of the *Ngirabatware* and *Turinabo et al.* contempt cases, cases Nos. IRMCT-18-116-PT and IRMCT-19-121-PT, 10 December 2019.

²⁹ S/2019/888, para. 54.

Table 10
Turinabo et al. contempt case

Case	Confirmation ^a	Start of trial	Trial judgment and sentence	Appeal judgment	Duration: confirmation to sentence
<i>Turinabo et al.</i> (Residual Mechanism)	24 August 2018 (of indictment)	First half of 2020 (estimated) ^b	31 December 2020 (estimated)	To be confirmed	2 years, 4 months (estimated)
<i>Bemba et al.</i> (International Criminal Court)	11 November 2014 (of charges)	29 September 2015	22 March 2017 ^c	8 March 2018	2 years, 4 months

^a Confirmation of indictment at the Residual Mechanism; confirmation of charges at the International Criminal Court.

^b In the November 2019 report, the estimated start date was given as the “first half of 2020” (S/2019/888, enclosure 3). By 12 January 2020, the trial had not yet commenced.

^c The trial judgment was issued on 19 October 2016 (*Prosecutor v. Bemba et al.*, public redacted version of judgment pursuant to Article 74 of the Statute, case No. ICC-01/05-01/13-1989-Red, 19 October 2016). The sentence was issued on 22 March 2017 (*Prosecutor v. Bemba et al.*, decision on sentence pursuant to Article 76 of the Statute, case No. ICC-01/05-01/13-2123-Corr, 22 March 2017).

The Mechanism had a blended procedural model that combined different features of adversarial and inquisitorial procedural traditions

34. Like its predecessors, the Mechanism adopted a blended procedural model that combined different features of adversarial and inquisitorial procedure traditions.³⁰ Both scholarship and practice have moved beyond the dichotomy of adversarial and inquisitorial paradigms for two reasons. The procedural traditions have converged to such an extent that there is no such thing as a pure civil-law or common-law approach to criminal procedure in most domestic jurisdictions.³¹ In addition, the blended model of international criminal procedure has matured to such an extent that it could be considered a procedural system in its own right.³²

35. There was little evidence to suggest that adopting an approach that is more adversarial or inquisitorial in nature would enhance efficiency and enable the Mechanism to complete its cases in a fairer or more efficient manner. While the Mechanism held remote plenaries to discuss the matter,³³ studies have also demonstrated that the adoption of some procedural reforms, including managerial judging, the use of written witness testimony in lieu of oral testimony and inquisitorial

³⁰ Fausto Pocar, “Common and civil law traditions in the ICTY criminal procedure: does oil blend with water?” in *Common Law, Civil Law and the Future of Categories*, Janet Walker and Oscar G. Chase, eds. (Markham, Ontario, LexisNexis, 2010); O-Gon Kwon, “The challenge of an international criminal trial as seen from the bench”, *Journal of International Criminal Justice*, vol. 5, No. 2 (May 2007); Yvonne McDermott, “International criminal procedure and the false promise of an ideal model of fairness”, in *Obstacles to Fairness in Criminal Proceedings*, John Jackson and Sarah Summers, eds. (Portland, Oregon, Hart Publishing, 2018); and Alex Whiting, “The ICTY as a laboratory of international criminal procedure”, in *The Legacy of the International Criminal Tribunal for the Former Yugoslavia*, Bert Swart, Alexander Zahar and Göran Sluiter, eds. (Oxford, Oxford University Press, 2011).

³¹ Craig Bradley, “The convergence of the continental and the common law model of criminal procedure”, *Criminal Law Forum*, vol. 7, No. 2 (1996); and John Jackson and Sarah Summers, *The Internationalisation of Criminal Evidence* (Cambridge, Cambridge University Press, 2012).

³² Gideon Boas, *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge, Cambridge University Press, 2007); and Goran Sluiter and others, eds., *International Criminal Procedure: Principles and Rules* (Oxford, Oxford University Press, 2013).

³³ According to interviews, the plenary was held on 9 April 2018.

procedures at the Extraordinary Chambers in the Courts of Cambodia, had limited to no effect.³⁴

D. Four recommendations (recommendations 3, 4, 5 and 6) from the 2018 evaluation were implemented and two recommendations (recommendations 1 and 2) were partially implemented

36. In 2018, OIOS made six recommendations to the Mechanism. The first recommendation read as follows:

Recommendation 1: Develop scenario-based workforce plans to enhance responsiveness to a surge in workload. Given the budget reduction in the 2018–2019 biennium, the Mechanism should develop and use scenario planning to inform decisions on the allocation of resources, staff training and preparation for unforeseen and foreseeable events (i.e., trial activities and requests for assistance) to ensure its ability to scale up quickly and effectively, including: (a) analysing the implications of different scenarios for Mechanism functions; and (b) developing actionable plans to mitigate risk.

Indicator(s) of achievement: Scenarios are identified and plans and protocols developed to respond to changes in workload.

37. A scenario-based workforce plan with three potential scenarios that identified risk mitigation plans and protocols to respond to changes in the workload, and procedures for the Registry in the Arusha branch on trial readiness, were submitted to OIOS in February 2019. An initial desk review of the evidence led to a prima facie assessment that the recommendation had been implemented.³⁵ The scenario-based workforce plan had been created on the basis of the different levels of work arising from three different levels of judicial activities (from lowest to highest), indicating the associated risks and mitigating measures. However, in December 2019, it was determined through interviews during the course of the evaluation that the scenario-based workforce plan had been developed without a Mechanism-wide consultative process.³⁶

38. As the Mechanism is not a one-court system, in that the Registry, Chambers and Office of the Prosecutor operate relatively independently of each other, the recommendation had deliberately targeted the entire Mechanism to reinforce coordination, information-sharing and coherence across organs and branches, as well as to lend credibility to the scenario-based workforce plan exercise and the decisions emanating therefrom. The plan was also intended to be a live document, updated at regular intervals, to help all senior leaders and management make informed decisions in a collaborative manner on how best to strategically and methodically allocate

³⁴ Maximo Langer and Joseph Doherty, “Managerial judging goes international, but its promise remains unfulfilled: an empirical assessment of the ICTY reforms”, *Yale Journal of International Law*, vol. 36, No. 2 (2011); Yvonne McDermott, “The admissibility and weight of written witness testimony in international criminal law: a socio-legal analysis”, *Leiden Journal of International Law*, vol. 26, No. 4 (December 2013); and Sergey Vasiliev, “Trial process at the ECCC: the rise and fall of the inquisitorial paradigm in international criminal law?”, in *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law*, Simon Meisenberg and Ignaz Stegmiller, eds. (The Hague, T.M.C. Asser Press, 2016).

³⁵ The recommendation was subsequently cited in the progress reports of the Mechanism as “closed” (S/2019/417, para. 137, and S/2019/888, para. 134).

³⁶ Correspondence on 13 November 2019 with the Registry indicated that only five Registry staff members had been involved in developing the plan. Interviews with staff members in the Office of the President, Chambers and the Office of the Prosecutor in December 2019 confirmed that staff were unaware of the plan.

existing resources and recruit, train and retain staff in preparation for various types of contingencies. However, in December 2019, updates had not been incorporated into the plan.³⁷

39. The recommendation was partially implemented.

40. The second recommendation read as follows:

Recommendation 2: Support and strengthen staff morale through conduct of a survey to identify key concerns to manage downsizing and upsizing.

The Office of the Prosecutor should identify the root causes of low morale to enable better planning for the likely effects of such changes.

Indicator(s) of achievement: Analysis of staff morale is conducted and strategies to manage institutional changes are developed and implemented in consultation with staff of the Office of the Prosecutor.

41. Both trial and appeals teams were lean, and any situation resulting in short staffing, coupled with intense judicial workloads, affected productivity and morale.³⁸ When the unexpected contempt case arose, the Office of the Prosecutor flexibly deployed staff to work on the case although, as a result, other activities, including but not limited to post-judgment case archiving and transition activities, were deferred. Given the dynamic level of ad hoc judicial activity, the Office of the Prosecutor had a shortfall of capacity to address ongoing activities.³⁹

42. The Office of the Prosecutor launched a 166-question staff morale survey that was open from late October to November 2019. Out of a total of 100 staff, 90 responded. The results of the survey were shared with the management of the Office of the Prosecutor in December 2019 and with all staff of the Office in January 2020. Subsequently, discussions were held between management and staff. Overall, the results of the survey indicated that staff morale appeared to have improved in comparison with previous years, although downsizing and job insecurity were key drivers of negative morale across both branches, compounded by the 2018 Mechanism budget crisis, the corresponding late contract extensions and a lack of professional development opportunities.⁴⁰

43. Senior management of the Office of the Prosecutor held a staff retreat in late January 2020 to discuss specific measures. The outcome of the retreat was a list of 25 preliminary measures to be implemented in four categories: (a) downsizing, budget and job security; (b) professional development; (c) cross-branch issues; and (d) communications. However, at the time of the review, only measures in the category of professional development had been initiated.

44. The recommendation was partially implemented.

45. The third recommendation read as follows:

Recommendation 3: Enhance efforts in strengthening the harmonization and unification of offices as one institution.

The Registry should engage in more strategic planning by: (a) offering the same high-quality services throughout the Mechanism. Administrative support services should reorient itself as a service provider that offers a high standard across both branches and remains sensitive to different commercial environments; (b) deepening internal efforts to coordinate across branches within specific Registry sections to foster

³⁷ Interviews with senior Registry staff in December 2019.

³⁸ The Appeals team had the most attrition owing to the prospect of downsizing at the end of a case (interviews with staff in the Office of the Prosecutor in December 2019).

³⁹ Discussions with staff in the Office of the Prosecutor, January 2020.

⁴⁰ Correspondence with staff in the Office of the Prosecutor, 18 January 2020.

a unified office, particularly in the Mechanism Archives and Records Section and the Language Services Section.

Indicator(s) of achievement: Strategic plans and operational procedures, developed in consultation with Registry staff, reflect an intensification of cross-branch coordination and harmonization of service delivery.

46. To strengthen the quality of administrative support services across both branches, the Chief Administrative Officer was relocated from The Hague to Arusha in 2019. The Mechanism also received funding for six additional posts in Administration to balance out the function in the Arusha branch. Most of the administrative challenges experienced from 2017 by staff in the Arusha branch appeared to have been resolved.⁴¹ In addition, the intranet, Tribunet, was revised to harmonize content across the branches and to provide tailored information based on the needs of each branch.

47. The management reporting lines were restructured in the Language Services Section such that the Section was managed separately in both branches by a Reviser at the P-4 level, each reporting to their respective Chief of Registry. In prior years, the Section had been managed by a double-hatted International Tribunal for the Former Yugoslavia P-5 Chief of the Conference and Language Services Section based in The Hague. The policies, procedures and productivity standards were harmonized across both branches.⁴² Performance objectives for Language Services Section management at both branches included cross-branch cooperation and development of workplans. In 2019, the Language Services Section Unit Heads gauged the impact of the change in management structure through discussions with their staff. Staff members in Arusha confirmed that they had closer contact with management and experienced faster decision-making on contract extensions, recruitment and resource planning.⁴³ Staff in The Hague experienced no change or detriment to their work.

48. The management reporting lines of the Mechanism Archives and Records Section were restructured so that, instead of two separate Heads in each branch, the Section had one Chief Archivist at the P-5 level based in The Hague who supervised activities across both branches, with a Head of the Mechanism Archives and Records Section at the P-4 level in Arusha who reported to the Chief. That was akin to the organizational structure of the Section from 2012 to 2014.⁴⁴ To further harmonize the structure of and processes across the branches, the judicial filings function and the management of the library were no longer the responsibility of the Mechanism Archives and Records Section in the Arusha branch, which was consistent with the arrangements in The Hague branch. While responsibilities differed in both branches, several additional measures were introduced to further deepen cross-branch coordination and harmonization in line with goal 5 in the Mechanism Archives and Records Section Strategic Plan for the period 2017–2021. Those measures included, but were not limited to, tools to facilitate internal communications and practices to improve cross-branch coordination, cooperation and collaboration, such as training and joint project groups.

49. The recommendation was implemented.

⁴¹ Interviews in The Hague and Arusha branches in December 2019.

⁴² Both branches have a productivity standard of, on average, 5.5 pages of translation and 13 pages of revision per day.

⁴³ As indicated in the response to the follow-up questions provided by the Language Services Section on 8 January 2020.

⁴⁴ Internal memorandum from the Registrar on furthering harmonization of the work of the Mechanism Archives and Records Section. The change in management structure became effective in April 2019; it was therefore too early to measure tangible change.

50. However, one matter that arose during the evaluation was the harmonization of the External Relations Office. While cross-branch coordination functioned well in that Office, the dual reporting lines to the Registrar and the Office of the President led to lags in deliverables, gaps in oversight and gaps in internal communication.⁴⁵ The external relations function was managed separately by the Head, at the P-4 level, in each branch, with resources larger in the Hague branch than in the Arusha branch. The reporting structure was not aligned to ensure a consistent and Mechanism-wide approach to optimize efficiency and effectiveness.

51. The fourth recommendation read as follows:

Recommendation 4: Ensure institution-building projects are supported by consistent leadership, inclusive engagement and, where necessary, third-party expertise. To address resistance to change and encourage end user satisfaction, the Registrar should: (a) on the Arusha facilities: prioritize certain areas of the Lakilaki building affecting staffing working conditions and identify means to address them in a timely manner; (b) on the unified judicial database: engage a neutral entity to provide an independent assessment of the current state of the project and the feasibility of integrating custom-built International Tribunal for the Former Yugoslavia applications. The Registrar should also broaden and deepen engagement with all project stakeholders.

Indicator(s) of achievement: Evidence of broad Mechanism representation on project management teams; evidence of consultation with Mechanism stakeholders at all stages of project design, implementation and assessment; and evidence of a prompt and structured handover process to ensure continuity of project leadership and management during transitions, as applicable.

52. The Registrar prioritized areas in the Lakilaki building where conditions posed a risk to health and safety, including exposure to dust, rain, pooling water in the office, intense sunlight exposure, insufficient sound barriers between the offices and other structural deficiencies. In 2018 and 2019, some of the improvements carried out included: (a) the installation of blinds in all offices and meeting rooms to protect against direct sunlight; (b) corrective action on balconies to avoid pooling of rain water and rain ingress into office buildings; (c) installation of safari tents with wooden floors to serve as temporary meeting and training rooms; (d) rerouting the water pipe from the data centre; (e) the modification of containers for storage, defence offices and holding cells; (f) the creation of retaining walls and the installation of plantings to prevent dust; (g) modification of the Mechanism Archives and Records Section office and the Security locker rooms and lounge space; and (h) improvements to the service road. While some minor issues remained, the work appeared prioritized, organized, consultative and addressed in a timely manner.

53. Following the 2019 independent assessment of the unified judicial database through an OIOS audit,⁴⁶ the terms of references were defined for the Project Board and the Project Manager; the Project Board members and the Project Manager were appointed; and the Information and Communications Technology Committee reviewed the functional and technical requirements of four options, including whether a unified judicial database was needed at all.⁴⁷ The Information and Communications Technology Committee eventually chose to expand the use of The Hague Judicial

⁴⁵ Interviews with staff in the Registry and the Office of the President, December 2019.

⁴⁶ OIOS, "Audit of the unified judicial database project at the International Residual Mechanism for Criminal Tribunals", report 2019/009 (5 March 2019).

⁴⁷ The technical options review matrix contained the following options: option 1: "suspend the UJDB" (unified judicial database); option 2: use the court management system (CMS) Trim; option 3: use The Hague Judicial Database; and option 4: do nothing.

Database to the Arusha branch⁴⁸ and, in endorsing that recommendation, the Registrar subsequently revalidated the business case for the project.

54. The recommendation was implemented.

55. However, while the unified judicial database project was in progress at the time of the review, OIOS suggests that the Mechanism pay close attention to cost-control issues and information security risks. None of the documents provided, including the 2019 technical options review matrix, contained a rigorous costing analysis to concretely inform decision-making. It was also noted in the review matrix that The Hague Judicial Database option would enable the system to be used with full functionality nearly immediately. Upon review of documents and in interviews, it was evident that, while many of the customized judicial software developed in The Hague functioned well, other functionalities (namely, the search function for internal research, public access and record-keeping) still did not work as at 31 December 2019.⁴⁹ What had worked best as a result of extending The Hague Judicial Database to Arusha was the automation of the judicial filing system, even with unexpected judicial activity in Arusha. All key users interviewed in both branches praised the efficiency gains of the judicial filing system. Only a limited number of staff voiced concern over the choice of using The Hague Judicial Database and the potential loss of certain search functions available in the erstwhile Arusha system for external access.⁵⁰ At the same time, risks in using a legacy records management system as a unified database that lacked updated technology and considerations of the extent and cost of the information technology support needed to be maintained over time had not been addressed.⁵¹ These remained considerations critical to a downsizing institution. The initial unified judicial database project cost an estimated \$466,023, but an asset valuation as of December 2017 reflected an expenditure of \$1,810,037, indicating an overexpenditure of \$1,344,014 from the initial estimate. It cost the Mechanism \$110,000 to turn the unified judicial database into The Hague Judicial Database.⁵²

56. The fifth recommendation read as follows:

Recommendation 5: Monitor gender balance and parity by conducting analysis across branches and sub-offices, as well as actively appoint qualified female candidates in Arusha during the 2018–2019 biennium. To advance the 2017 gender parity strategy of the Secretary-General, the Mechanism should monitor and use a human resources dashboard for up-to-date information on the gender and geographical distribution of staff. Incorporate a general overview of gender-sensitive and gender-appropriate approaches in Witness Support and Protection Unit policy. The Registrar should ensure that the Witness Support and Protection Unit policy reflects, across both branches, up-to-date and relevant information and guidance on gender-sensitive and gender-appropriate approaches, while also considering social and cultural specificities related to the support and protection of victims and witnesses.

Indicator(s) of achievement: (a) Improved gender balance across branches and sub-offices in the upcoming budget cycle as reported in progress and annual

⁴⁸ The results from the OIOS audit comparative benchmarking of solutions used by the Special Tribunal for Lebanon, the International Criminal Court and the Kosovo Specialist Chambers and Specialist Prosecutor's Office also contributed to the decision.

⁴⁹ On the basis of a comparison of project timelines from the July and December 2019 project initiation documents.

⁵⁰ Interviews in Arusha and over Skype in December 2019.

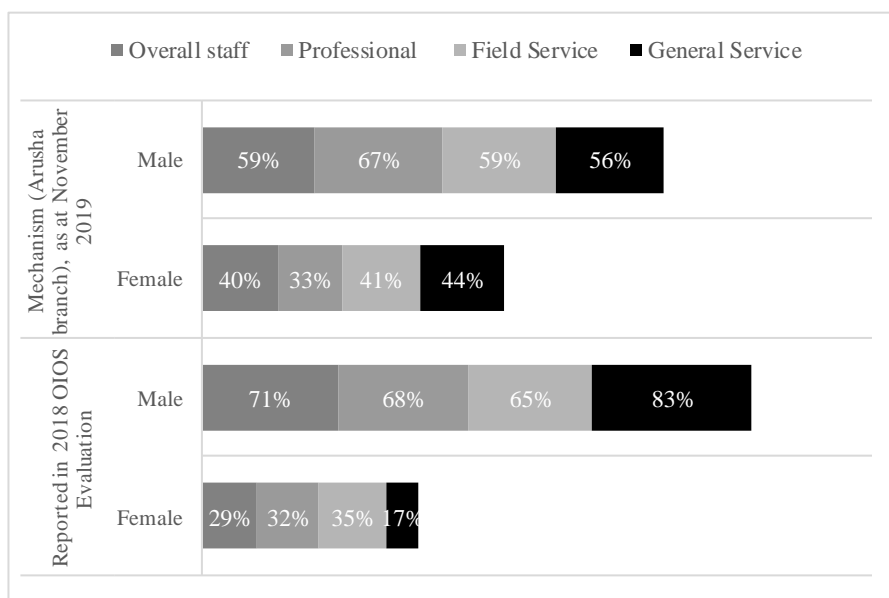
⁵¹ The technological refreshment was slated for phase II of the project and was outside the temporal scope of the evaluation. It was also unclear if phase II had been considered in the additional cost for the technical options review matrix.

⁵² Correspondence with the Registry, February 2020.

reports; and use of a human resources dashboard; (b) revisited and updated Witness Support and Protection Unit policy with detailed guidance as necessary.

57. The Mechanism developed a human resources dashboard on gender balance and parity, which went live on March 2019, with monthly updates displayed on the Focal Point for Gender's intranet page. The dashboard was disaggregated by gender, duty station, category of staff (General Service, Field Service and Professional) and organ, and contained clear and detailed information about gender balance within the institution for staff and hiring managers. The Mechanism experienced a modest increase in women appointed at all levels in the Arusha branch, a duty station where the ratio of female staff across different levels and by organ was lower than male staff relative to The Hague (see figure III).⁵³ The largest increase that affected overall staff levels in the Arusha branch was the addition of 15 short-term female security officers in the General Service category, whose contracts expired at the end of 2019.

Figure III
Gender balance in the Arusha branch



Source: S/2019/888.

58. Secondly, the 2019 annual report and the May and November 2019 progress reports contained the table on gender representation and parity ratios by duty station and levels (see table 4 above). In prior years, gender representation and parity had been presented in both types of reports only as overall male to female ratios across the entire institution, masking gender imbalances by branch and organ.⁵⁴ The 2019 progress reports contained more detailed discussions on gender balance, emphasizing strengths, weaknesses and progress toward addressing weaknesses.

59. While the updated Witness Support and Protection Unit policy from January 2019 contained no mention of gender-sensitive and gender-appropriate approaches, the 2019 Witness Support and Protection Unit practice direction document⁵⁵

⁵³ In Arusha, women were appointed as the Head of Registry, the Head of the Office of the President and in the Office of the Prosecutor.

⁵⁴ The 2018 annual report and the 2018 progress reports (from April, May, and November) contain only information on overall gender balance.

⁵⁵ International Residual Mechanism for Criminal Tribunals, "Practice direction on the provision of support and protection services to victims and witnesses" (MICT/40).

incorporated and defined the term “gender-sensitivity” in the introduction (article 1), the mandate (article 5) and responsibilities of the Unit (article 6). The content of the gender and Witness Support and Protection Unit training held in December 2018 and the draft support service standard showed progress in integrating and adapting gender-sensitive approaches in witness protection. Article 7 of the draft support service standard was focused entirely on gender-sensitive measures in witness protection. It is critical to reflect updated and evolving practices on gender-sensitive approaches to witness protection using a thorough analysis of the prevailing forms of inequality, discrimination and violence on the basis of sex and gender and ensuring that psychological assistance needs are tailored to the cultural specificities of the client’s communities and free from harmful gender stereotypes. OIOS suggests that the Mechanism incorporate periodic reviews of its policies and standards in this regard.

60. The recommendation was implemented.

61. The sixth recommendation read as follows:

Recommendation 6: Take a proactive approach to strengthening the supervision and provision of medical care and payments on behalf of prisoners. The Mechanism should eliminate out-of-pocket expenses incurred by prisoners; this includes: (a) ensuring universal cost coverage for medical care, and improved monitoring and assessment when alternative measures are utilized, including out-of-pocket payments by prisoners; (b) a holistic review of the medical needs of an ageing prisoner population, to inform a robust plan for meeting these needs where the Mechanism is responsible for medical costs.

Indicator(s) of achievement: Monitoring and analysis of out-of-pocket expenses incurred by prisoners; and an assessment of and plan for meeting the medical needs of an ageing prison population.

62. The Mechanism had 5 convicted persons serving their sentence in Senegal, 7 in Mali and 18 in Benin.⁵⁶ In 2018, the Mechanism received an independent external expert assessment of the needs of the ageing International Criminal Tribunal for Rwanda prisoners in Benin and Mali. Recommendation 3 from the external assessment, in which the Mechanism was requested to improve the speed of payment and reimbursement of medical bills (similar to OIOS recommendation 6) was self-assessed by the Mechanism as fully implemented in December 2019. The Mechanism used a tracking tool to follow up on the status of incoming medical invoice claims and paid invoices to medical service providers. The Registry designated two members of staff to focus on prisoners in sub-Saharan enforcement States. One was an associate legal officer who liaised with the United Nations Development Programme, the prison directors and financial administration and tracked the implementation of the external prison expert’s recommendations. The second was an administrative staff member who raised financial authorizations for the expenses incurred. The Registrar also permitted any outstanding medical invoices from January 2015 to December 2018 to be submitted with appropriate supporting documentation for reimbursement, to clear any backlog. While the tracking tool enabled the follow-up of invoices from receipt to final payment, the tool did not always lend itself to a more efficient method of payment. This is due to the fact that the Mechanism relied on external partners for the actual disbursement to occur. According to the Immediate Office of the Registrar in Arusha, while the Umoja system recorded the payment when funds were disbursed, there was sometimes a month-long lag between when the external partner disbursed the financial authorization and when the action was reflected in the system. OIOS suggests that the resident auditor assess the internal control of the tracking tool on a

⁵⁶ Interviews indicated that five prisoners had been moved by the former Mechanism President from Mali to Benin.

periodic basis to ensure that there are no significant backlogs in payment and a decreasing volume of out-of-pocket expenses incurred by prisoners.

63. The recommendation was implemented.

IV. Conclusion

64. Between 2018 and 2019, the Mechanism implemented most of the recommendations from the 2018 OIOS evaluation. As a self-standing institution, it made further progress towards realizing the Security Council's vision of a small, temporary and efficient organization, with staff in the Professional category that reflected geographical diversity and gender balance. In anticipation of a period of intense judicial activity for the Mechanism in 2020, followed by a significant downsizing exercise in 2021, activities such as scenario-based workforce planning, clear and accurate projection of completion timelines and a shared vision of harmonization and institution-building become essential to plan for unforeseen or unexpected situations.

V. Recommendations

65. OIOS makes two important recommendations to the Mechanism.

Recommendation 1 (see section III, result D, specifically 2018 recommendations 1 and 3)

66. **Ensure systematic thinking and planning about the future and a shared vision of institution-building.** The Principals should bolster coordination and information-sharing among each other and laterally, across the organs, on matters that affect them equally, continuously update Mechanism-wide scenario workload-planning and rationalize the reporting lines of the external relations function.

Indicator(s) of achievement: Establishment of a cross-organ process for continuously updating the Mechanism-wide scenario-based workforce plan, a clear process owner for this plan, and restructured reporting lines that optimize the efficiency of the external relations function.

Recommendation 2 (see section III, result C)

67. **Provide clear and focused projections of completion timelines at the earliest stage possible in annual and progress reports.** Chambers should identify the most important factors for making projections, apply a systematic method for analysing and reporting on timelines and share detailed judicial activity timelines and projections among parties.

Indicator(s) of achievement: Development of and adherence to clear criteria for focused projections; provision of clear and focused projections of completion timelines at the outset of judicial activity that are systematically updated; reporting, using consistent language and presentation, on progress, duration and projected completion of judicial activities in all reports; and development of strategies to increase the responsive sharing of detailed judicial timelines on a timely basis.

Annex I*

Comments received from the International Residual Mechanism for Criminal Tribunals

1. The International Residual Mechanism for Criminal Tribunals appreciates the contribution of the Inspection and Evaluation Division of the Office of Internal Oversight Services (OIOS) in producing a report that forms part of the Security Council's consideration in its review of the work of the Mechanism pursuant to Security Council resolution 1966 (2010), paragraph 17. The Mechanism further appreciates the professional conduct of the evaluation of its methods and work, and welcomes the opportunity to provide formal comments on the evaluation report.

2. The Mechanism is pleased with the outcome of the evaluation – not only because of the finding that most of the 2018 evaluation recommendations have been implemented, but also because the evaluation recognizes the further progress the Mechanism has made, in this and other ways, towards realizing the Security Council's vision of it as a small, temporary and efficient institution.

3. The Mechanism appreciates and accepts the issuance of two new recommendations; it is committed to their implementation and has already begun taking steps towards implementing both recommendations. The Mechanism continues working towards achieving full implementation of the two remaining 2018 recommendations and welcomes the additional OIOS guidance obtained during the evaluation in this regard.

Evaluation results: part B

4. As noted in the evaluation, the Mechanism effectively managed human resources flexibly with good results in geographical diversity and gender balance, and it remains committed to working towards closing any gaps noted.

5. The Office of the Prosecutor and Chambers are grateful that OIOS recognized that their staffing numbers are lean, in accordance with the Security Council's instructions. OIOS further concluded (para. 41) that the Office of the Prosecutor was able, during the evaluation period, to rapidly respond to unanticipated ad hoc judicial activity by redeploying resources and deferring planned activities, and Chambers did as well. Nonetheless, with lean staffing, this and similar situations place immense burdens on the staff of the Office of the Prosecutor and Chambers.

Evaluation results: part C

6. The Mechanism has carefully considered paragraphs 26 to 33 of the report, together with recommendation 2, on providing clear and focused projections of completion timelines at the earliest stage possible in annual and progress reports.

7. The Mechanism disagrees with the report that it provided broad estimated completion dates for its appeal cases. As OIOS suggests, it is possible to make reasonably accurate projections for appeals (para. 28), and the Mechanism did so. Consistent with recommendation 2 from the 2020 evaluation, the Mechanism will provide clear and focused projections for all of its cases.

8. In December 2015, while the cases were still at trial, the Mechanism projected the duration of any appeals in the *Karadžić*, *Šešelj* and *Mladić* cases and provided focused projections in terms of the number of months needed to conduct appeal

* 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.

proceedings in each case. In providing these initial projections, the Mechanism explained the basis for making them, particularly the complexity of the case. During the subsequent appeal proceedings, the Mechanism provided periodic explanations for any adjustments.

9. The *Stanišić and Simatović*, *Ngirabatware* and *Turinabo et al.* cases are outliers as they are the first full retrial, a review fraught with procedural complexities, and a contempt case of unprecedented complexity, respectively. In respect of these cases, projections were made when possible and, where not possible to project, explanations were provided.

10. The Mechanism values the OIOS recognition of notable efficiencies in some of its cases when compared to the ad hoc tribunals. The appeal proceedings in the *Karadžić* and *Mladić* cases have advanced significantly faster than the most complex multi-appellant cases at the International Tribunal for the Former Yugoslavia, despite being more complex. Significantly, the Mechanism achieved this with minimal staffing, owing to Chambers' working method of assigning staff to multiple cases at the same time. While the OIOS report recognizes that some efficiency is estimated for the *Stanišić and Simatović* retrial, namely that it is expected to be completed five months faster than the original trial, it does not reflect the significant efficiency gained in the pretrial phase before the Mechanism, which was completed three and a half years faster than the same phase before the International Tribunal for the Former Yugoslavia.

11. Furthermore, while the report notes that the *Šešelj* appeal proceeded at a similar pace to comparable International Tribunal for the Former Yugoslavia cases, it does not recognize that that pace was achieved despite delays from the refusal of Mr. Šešelj, a *pro se* respondent, to attend the hearing and the consequent need to extend the proceedings for several months to provide for duty counsel at the hearing. Without this, the *Šešelj* proceedings would have exceeded the pace of similar cases. Finally, while OIOS recognizes that the *Turinabo et al.* case was unprecedented in terms of its scope, it omits to note that it has exceeded the pace of a similar case at the International Criminal Court by one year, when taking into account the time from arrest and initial appearances.

12. In sum, the Mechanism has made focused and accurate projections for its appeals and has met them; it has explained the circumstances where it was not able to do so for other cases and it has greatly exceeded the pace of the predecessor tribunals in major cases with far fewer staff. Its flexible and dynamic working method has resulted in significant cost savings for the United Nations and the international community as a whole.

Evaluation results: part D

13. The Office of the Prosecutor is grateful for the OIOS assessment that staff morale in the Office has improved since the issuance of its recommendation. OIOS further agreed with the Office that the main drivers of negative morale were downsizing and job insecurity, which were further compounded by the 2018 Mechanism budget crisis. The results of the staff morale survey conducted by the Office in 2019 demonstrated that its staff had positive views about the Office's management of institutional change, and placed a great deal of trust in the Office to continue successfully managing change in the future. To maintain and further improve staff morale, the Office has already taken many of the measures agreed at a staff retreat of its senior management in January 2020 across all four areas identified at the retreat, in close consultation with staff, and will continue to do so. The Office will keep OIOS informed and looks forward to the closure of this recommendation in the

near future. The Office again expresses its thanks to OIOS for its helpful analysis and support.

2018 and 2020 recommendation 1

14. Noting that these two recommendations both relate to a scenario-based workforce plan (either in the recommendation or the indicators of achievement), the Registry welcomes the clarity added by the 2020 recommendation 1. Achieving full implementation of the 2018 recommendation 1 will pave the way for working towards implementing the 2020 recommendation 1, in that the cross-organ process in place for the development of the scenario-based plan will remain in place thereafter. This cross-organ process is intricately familiar with the plan and accordingly best placed to review it regularly with the aim of continuously updating the plan. To this end, the cross-organ process provides for regular review of the plan, every six months, or earlier as necessary or upon request.

15. A meeting with representatives of all three organs took place in February 2020, allowing for an initial exchange of views. Further deliberations on the way forward are being discussed by representatives of the three organs and an update was provided at the meeting of the Coordination Council in March – all of which are also efforts towards bolstering coordination and information-sharing, as envisaged in paragraph 66 under the 2020 recommendation 1.

16. Furthermore, in order to effectively bolster coordination and information-sharing laterally across organs on matters that affect them equally, with a view to continuously updating the Mechanism-wide scenario-based plan, the process owners for the plan are the representatives of the three organs collectively. This captures the essence of the recommendation of using the plan as a tool for a shared vision of institution-building.

17. Lastly, in relation to the external relations function, discussions will first take place with senior staff of the External Relations Office to clearly identify areas of improvement. These will be followed by discussions between the offices concerned to reach an agreement that will increase efficiency.

Annex II

Comment by the Inspection and Evaluation Division of the Office of Internal Oversight Services on the management response contained in annex I

1. OIOS thanks the Mechanism for its thoughtful response to the evaluation report and acknowledges the concerns expressed in paras. 7–12 of the management response presented in annex I.
2. Throughout the evaluation process, OIOS carefully considered the comments raised by the Mechanism during the report drafting phase and the comments on the revisions to the final report. It also provided ample time for discussions at each stage. OIOS maintains that it has acknowledged judicial efficiencies in the present report where evidence robustly supported it, and that it recognized the flexible and dynamic working method of the Mechanism. Where specific judicial efficiencies were not acknowledged in completed and ongoing cases, it was mainly owing to inadequate evidence to support the claim or the desire to maintain methodological rigor. Similarly, the term “broad” was retained to describe the completion timelines of the appeals proceeding because the projections varied in degrees of specificity and consistency across the Mechanism’s annual and progress reports. There was also no effort to compare preceding projections for accuracy in each successive report.
3. Nevertheless, OIOS is pleased that the Mechanism fully accepts recommendation 2, with a commitment to provide clear, consistent and accurate focused projections in all future reports.
