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Transfer of the functions under articles 25 (2), 26 and 28 (3) of the Statute of the International Residual Mechanism for Criminal Tribunals

Report of the Secretary-General

I. Introduction

1. The present report is submitted pursuant to paragraph 12 of Security Council resolution 2740 (2024) concerning the International Residual Mechanism for Criminal Tribunals, whereby the Secretary General was requested to report on options for the transfer of the functions of supervision of enforcement of sentences and the pardon or commutation of sentences under articles 25 (2) and 26 of the Statute of the Mechanism (Council resolution 1966 (2010), annex 1), and assistance to national jurisdictions on prosecutions under article 28 (3) of the Statute, including the legal, budgetary, administrative and other implications of such options.

2. While the request to the Secretary-General is limited to certain functions of the Mechanism, it arose in the context of the consideration by the Security Council of the Mechanism's completion strategy that was requested by the Council pursuant to paragraph 11 of resolution 2637 (2022) and subsequently recalled by the Council in resolution 2740 (2024). In Security Council resolution 1966 (2010), the Council emphasized that the Mechanism should be a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions. In view of the considerably reduced nature of its residual functions since the conclusion of all core crime cases in 2023 and of the tracking of fugitives in 2024, and in the light of the current financial context, the present report and the report submitted pursuant to paragraph 11 of resolution 2740 (2024) on the archives, are aimed at a significant reduction in the size and activities of the Mechanism as part of the steps towards its orderly closure.

3. In moving towards such a significant reduction and the eventual closure of the Mechanism, the Secretary-General is cognizant of the need to protect the legal legacy of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Mechanism ("the Tribunals") and to ensure proportionality and efficiency between functions as they remain in place. With this goal in mind, the focus of the present report is on assessing options for transferring the aforementioned functions that would allow for significant reduction during a transitional period, while at the same time ensuring that the legitimacy and credibility of the Tribunals are upheld. These options are intended to form part of a broader

completion plan for the Mechanism, for which the Secretary-General would be prepared to provide further recommendations and implementation plans on the basis of the proposals made by the Mechanism, should the Security Council so require. Budgetary and administrative implications are addressed in the report only in general terms, and insofar as they are relevant to any decisions that the Council may wish to make in relation to the overall completion strategy for the Mechanism.

4. The remainder of the report is in three parts. Part II addresses certain core judicial functions for which transfer to national authorities or the Secretariat is not feasible in view of the applicable legal framework; these include the exercise of ultimate judicial authority concerning the supervision of the enforcement of sentences under article 25 of the Statute, as well as the exercise of judicial authority concerning the pardon, commutation of sentence and early release of prisoners pursuant to article 26 of the Statute. Part III addresses the possible options for the transfer of the day-to-day supervision of the enforcement of sentences under article 25 (2) of the Statute. Part IV addresses the possible options for the transfer of the function of assistance to national jurisdictions under article 28 (3) of the Statute.

II. Continuing judicial functions: ultimate authority concerning sentence enforcement, pardon, commutation of sentence and early release

5. The existing legal framework, which is based on Chapter VII of the Charter of the United Nations, ensures that the ultimate judicial authority over those who were convicted and are imprisoned by the Tribunals, which are subsidiary organs of the Security Council, continues to be exercised at the international level regardless of the place of their detention. This is to ensure that treatment is as fair and uniform as possible and in line with applicable international standards.

6. Currently, the Mechanism retains judicial authority over the supervision of sentence enforcement and over the possible pardon, commutation of sentence or early release of 44 convicted persons: 20 in relation to the former Yugoslavia and 24 in relation to Rwanda. Of these, 38 are incarcerated in eight enforcement States (Belgium, Benin, Estonia, France, Germany, Norway, Senegal and the United Kingdom of Great Britain and Northern Ireland), and two are awaiting transfer to an enforcement State and are being held in the United Nations Detention Unit in The Hague. Four others have been conditionally released but remain under the Mechanism's supervision.

7. Under article 25 (1) of the Statute, imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism. According to paragraph 2, the Mechanism shall have the power to supervise the enforcement of sentences pronounced by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States, and other agreements with international and regional organizations and other appropriate organizations and bodies.

8. The core aspect of the judicial authority that is exercised by the President of the Mechanism in relation to sentence enforcement is that of designating a State where a convicted person is to be imprisoned or remain imprisoned. This includes, for example, the authority to transfer a prisoner to another State based on an enforcement State's inability to continue to enforce sentences for reasons of national law or in the

light of changes in the treatment of prisoners in an enforcement State. In addition to this residual authority, for which no transfer is recommended, the Mechanism also currently exercises certain aspects of day to day supervision of the enforcement of sentences that may be more easily delegated to Member States; these are discussed in part III below.

9. In relation to pardon, commutation of sentence or early release, article 26 of the Statute provides that if, pursuant to the applicable law of the State in which the person convicted by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law. Rule 150 of the Rules of Procedure and Evidence of the Mechanism provides in addition that the President shall determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges. Rule 151 sets out the general applicable standard for such decisions: in determining whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account, inter alia, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor. Separately, applications for early release may also be based on compelling humanitarian grounds.

10. The implementation of article 26 involves the exercise of judicial functions. A pardon sets aside the sentence imposed for a crime, while commutation changes the nature of the sentence by reducing it or otherwise making it less severe. Early release frees prisoners before the end of their sentences, either with or without conditions. The vast majority of the applications related to sentence enforcement received by the Mechanism concern early release, for which the Mechanism has a uniform, judicially established eligibility threshold, namely, a convicted person having served two thirds of the relevant sentence, unless the release is based on compelling humanitarian grounds. In the latter case, the individual circumstances of the prisoner that could render continued detention incompatible with fundamental human rights are central to the adjudication of such requests. Overall, these criteria ensure that all convicted persons under the Mechanism's supervision are treated similarly, regardless of where their sentences are served.

11. The process relies on written submissions only, and the principal resource requirement comes from the President's adjudication of such requests, which involves limited legal staffing support from the President's Office. The Rules provide for the involvement of the President, at least two judges of the Mechanism and the Office of the Prosecutor in relation to assessing substantial cooperation. The President, in line with the relevant practice direction, may also collect any other relevant information from, for example, the Witness Support and Protection Unit, which conducts impact assessments of any potential early release, or from the Office of the Prosecutor, which may provide submissions on whether a convicted person meets the criteria for early release, including the gravity of the crimes and whether a convicted person has demonstrated sincere rehabilitation efforts. The Registry's support includes processing, serving and translating relevant filings.

12. The ultimate judicial authority over the supervision of sentence enforcement and possible pardon, commutation of sentence or early release of convicted persons ought, in principle, to remain at the international level for as long as individuals

remain in prison on the authority that the Security Council vested in the Tribunals. This is to best ensure that the authority that has so far been exercised over these persons on behalf of the Council continues to be perceived as legitimate.

13. It is also essential to maintain overall fairness through similar standards for all convicted persons. In 2009, the Secretary-General observed that the Presidents of the Tribunals apply standard criteria when deciding on pardon or commutation and warned that transferring this function to States would inevitably lead to differing approaches and inconsistency of treatment among those convicted and challenges on the basis that the rights of those convicted are not being effectively and equally protected.[1] These observations remain valid today.

14. Eligibility thresholds for early release vary drastically among the current enforcement States. A prisoner in a country with a low threshold may benefit from early release much sooner than other convicted persons, thereby giving rise to arbitrary enforcement. Likewise, differing domestic sentence remission legislation and practices give rise to similar risks of unequal enforcement. The Mechanism has not accepted that domestic early release eligibility or sentence remissions impact the length of the sentence, a position that could be upended if the function were to be transferred to, for example, enforcement States. In addition, applying domestic practices could further undermine the intended deterrent effect and another unique feature of international criminal sentences – that the punishment reflects the just and collective opprobrium for the extremely grave crimes committed. Any arbitrary, disparate or unequal treatment would undermine the end of justice cycle.

15. Furthermore, transferring this aspect of the sentence supervision function from the Mechanism to Member States would eliminate the judicial consultation process that the President engages in before issuing any early release decision. The consultation process draws on the deep knowledge of the President and the judges who either were members of the chambers that imposed the relevant sentences or have familiarity with the relevant conflicts and sentencing practice. Of the 24 judges currently on the roster, 20 – more than 83 per cent – have been members of one or more trial or appeals chambers in relation to convicted persons whose sentences are still being enforced. Similarly, of the 44 separate judicial consultations conducted in 2024 and 2025 on applications for early release, 34 were with Judges who were members of the sentencing chambers.

16. Accordingly, in the present report, the transfer of these core judicial functions to States is not recommended. Nor is a transfer of these functions to the Secretariat feasible. These are core judicial functions established pursuant to Chapter VII of the Charter of the United Nations, whereas the Secretariat was established under Chapter XV of the Charter as the principal organ of the Organization entrusted with assisting the Secretary General in his or her role as its chief administrative officer (Article 97).

17. A transfer of judicial functions to the Secretariat would entail legal, administrative and financial challenges and would raise significant concerns in terms of its legality and legitimacy. The performance of the judicial functions entrusted to the Mechanism requires independence, which is incompatible with the administrative nature of the Secretariat, which operates under the instruction of the Secretary-General.

18. As it is not considered feasible to transfer these judicial residual functions to national authorities or to the United Nations Secretariat, these functions, which are not in themselves cost-intensive, would need to be considered together with the other

[1] S/2009/258, para. 81.

residual judicial functions as a whole, and as part of the overall completion strategy for the Mechanism, especially if there are any other judicial functions that would also need to continue to be exercised at the international level.

19. One option would be for the Mechanism to continue to operate for as long as judicial functions need to be exercised at the international level, at a significantly reduced scale in a reconstructed architecture, until these functions are concluded. In this case, several measures could be taken, including by the Security Council, to significantly reduce the Mechanism's operations and costs, in line with the Council's instructions that the functions and size of the Mechanism would diminish over time. Such measures could include changes to the Mechanism's regulatory framework as follows: (a) allow for a reduction in the Mechanism's geographical and physical footprint and eliminate or amend certain staffing requirements; (b) restrict or eliminate the prospect of (resource-intensive) in-court proceedings; and (c) terminate and/or transfer jurisdiction over certain judicial and prosecutorial functions in a manner that sufficiently protects due process and is in the interests of justice. The Mechanism intends to share proposals with the Council regarding its ongoing judicial activities pursuant to Council resolutions 2637 (2022) and 2740 (2024).

20. The other option would be for the Security Council to transfer the roster of judges that is vested with the judicial authority to carry out the necessary judicial residual functions to a small subsidiary organ of the Council. This body would assume the rights and obligations of the Mechanism necessary to perform these limited functions, with a minimal number of staff, providing specialized legal, technical and other support necessary, including as currently provided by the Registry. Administrative services and premises could be provided by another United Nations entity on a cost-reimbursable basis.[2] As necessary, other required services, such as language services, could be outsourced to other Secretariat departments and offices. This option would catalyse the closure of the Mechanism while ensuring that a minimal structure is in place to support the remaining judicial functions. Insofar as a small subset of judicial functions are required to continue at the international level, corresponding minimal prosecutorial and Registry-type functions may also be required.

III. Transfer of day-to-day supervision of enforcement of sentences function

A. Sentence enforcement description

21. The President of the Mechanism has the authority to designate enforcement States. Sentence enforcement is executed, under the Mechanism's supervision, by such designated States in line with the laws of those States and the relevant sentence enforcement agreements concluded between the United Nations and the States. The sentence enforcement agreements obligate States to ensure that the conditions of imprisonment are in accordance with relevant human rights standards under international law, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules.

22. The conditions of imprisonment are inspected by the International Committee of the Red Cross (ICRC) (36 convicted persons), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

[2] For example, the United Nations Assistance to the Khmer Rouge Trials outsources administrative support to the Economic and Social Commission for Asia and the Pacific. Similarly, the Residual Special Court for Sierra Leone receives certain administrative support from the Mechanism and is co-housed within the Mechanism in The Hague.

(3 convicted persons) or the Registry of the Mechanism (one convicted person).[3] Inspection bodies directly observe conditions on the ground, identify issues and recommend changes based on humanitarian concerns. Inspections are conducted periodically, with subsequent reports sent to the President and/or the enforcement State. The work of the independent monitors is conducted at no or very limited expense to the Mechanism.[4]

23. The President determines whether the conditions are in compliance with the minimum international standards. The President, or the Registrar on behalf of the President, may take action where humanitarian concerns falling short of potential violations of minimum international standards might require a State's response or action.

24. The Registry, under the supervision of the President, liaises with enforcement States, the prisoner population and relevant counsel and provides direct financial, administrative and logistical support to the two current African enforcement States, Benin and Senegal.

25. The President liaises with independent inspection bodies and enforcement States and addresses complaints from prisoners, estimated at three to six complaints annually. When litigation is filed on the judicial record, in particular where there are alleged violations of minimum international standards of imprisonment, the President adjudicates such requests. The Registry further provides support for the filing and translation of correspondence, submissions, decisions and orders. The Registrar provides any submissions that may be required.

B. Transfer options

26. The day-to-day aspects of the supervision of the enforcement of sentences could be transferred to enforcement States, which already oversee the convicted persons daily.

27. This would disperse this aspect of the sentence enforcement function to various, existing enforcement States, which could raise concerns as to the equality of treatment of the prisoners should there no longer be centralized, international supervision by the Mechanism. Notably, in the 2024 report by the Office of Internal Oversight Services (OIOS) on the methods and work of the Mechanism, OIOS concluded that the Mechanism played a positive role in ensuring that international minimum standards were met for the convicted persons over whom it exercises jurisdiction.[5] To reduce the risk of unequal treatment, the Security Council may oblige enforcement States to ensure that the conditions of imprisonment are in accordance with relevant human rights standards under international law, such as the Nelson Mandela Rules. In addition, the transfer of this function to enforcement States, in principle, would involve continued inspections by the International Committee of the Red Cross or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which would then raise issues directly with the States (rather than conveying them through the Mechanism). Domestic courts could supplant the Mechanism as the judicial bodies that address prisoner complaints related to conditions of imprisonment that involve compliance with minimum international standards. This also includes the possibility of bringing a claim against the State

[3] The other four are on conditional early release.

[4] ICRC does not charge the Mechanism for inspecting conditions of imprisonment. The Mechanism and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have agreed that the Committee may seek reimbursement for such activities; however, the Committee has not sought reimbursement in recent history.

[5] S/2024/199, para. 39.

before existing regional human rights courts and tribunals, as applicable, including those of the European Union, the European Court of Human Rights, the African Commission on Human and Peoples' Rights and the African Court on Human and People's Rights. However, it would be essential to retain, as a measure of last resort, international judicial authority over the function of sentence enforcement, including the authority to remove a prisoner from an enforcement State and to conclude enforcement agreements pursuant to paragraph 1 of article 25 of the Statute.[6] This would necessarily include the ability to hold a prisoner in detention until a suitable relocation State can be found. The Mechanism has consulted with three European States to see if they can provide temporary detention facilities for this purpose. One State has declined, and responses from the two others are pending.

28. In principle, the Mechanism could immediately seek to transfer to each enforcement State the supervision of the conditions of imprisonment for the respective prisoners. The transfer would require each State's willingness to accept this responsibility and the necessary amendments to the Statute, the Rules of Procedure and Evidence and relevant enforcement agreements. All European enforcement States have formally indicated to the Mechanism that there are no legal or practical barriers to taking over this aspect of the function.

29. With respect to the possible transfer to the States of the former Yugoslavia, this would first require a transfer of the convicted persons. It is recalled that the Security Council, when creating the International Tribunal for the Former Yugoslavia, endorsed the Secretary-General's position that sentences should not be enforced in the region of the former Yugoslavia.[7] As a result, there are no existing sentence enforcement agreements with any of those States. The Council may, nonetheless, decide otherwise for the future.

30. In the case of the International Criminal Tribunal for Rwanda, the Mechanism has enquired with Benin and Senegal about the possibility of assuming the responsibility of supervising day-to-day conditions of imprisonment. Both rely on significant financial contributions and considerable logistical and administrative support from the Mechanism. Further consultations will be required.

31. An option would be to transfer this function to Rwanda, which has expressed its willingness to receive prisoners and highlighted that it has facilities used to house prisoners convicted of international crimes and by internationalized tribunals (including the prisoners from the Residual Special Court for Sierra Leone)[8] and that sentence enforcement of international convicted persons is inspected by ICRC.[9] In the Statute of the International Criminal Tribunal for Rwanda it was envisioned that sentences would be enforced in Rwanda,[10] and the United Nations and Rwanda have already entered into a sentence enforcement agreement. For this transfer to achieve the intended reductions in the Mechanism, Rwanda would need to absorb costs that would be borne by the Mechanism under the existing sentence enforcement agreement and take on greater administrative responsibilities than Benin and Senegal. Further consultations will be required with Rwanda in this regard.

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[6] If an existing enforcement State determines that it is unable to continue to enforce the sentence of a prisoner on behalf of the Mechanism or if medical evacuation to another State is required, then there needs to be an international authority that can take action. This has happened on six occasions previously.

[7] Security Council resolution 827 (1993), para. 1; and S/25704, para. 121.

[8] See statement of Rwanda at the 9805th meeting of the Security Council, held on 10 December 2024 (S/PV.9805, p. 23).

[9] See *Tenth Annual Report of the President of the Residual Special Court for Sierra Leone* (Residual Special Court for Sierra Leone, 2022–2023), p. 28.

[10] See article 26 of the Statute of the International Criminal Tribunal for Rwanda.

32. The President of the Mechanism has the authority to designate Rwanda as an enforcement State, and the Security Council may opt to encourage the President to do so or adopt a binding decision to that effect.

33. Were any new enforcement State to be designated, the transfer of the supervision of the day-to-day conditions of imprisonment could be considered after a period of enforcement reflecting compliance with the relevant enforcement agreement, including imprisonment consistent with minimum international standards.

34. In any solution requiring new sentence enforcement agreements, consideration would need to be given to the fact that time is required to negotiate and conclude such agreements.

C. Budgetary and administrative implications

35. Supervision of the day-to-day conditions of imprisonment for persons convicted by the International Tribunal for the Former Yugoslavia does not have substantial staffing or direct financial cost implications for the Mechanism. However, the cost in the context of the International Criminal Tribunal for Rwanda is substantial. This is largely attributable to the considerable administrative, logistical and financial support that the Mechanism provides to Benin and Senegal.

36. The International Criminal Tribunal for Rwanda committed to directly funding African enforcement States to ensure that minimum international standards of imprisonment were maintained,[11] a practice that has continued at the Mechanism. The Mechanism's 2025 budget provided nearly $500,000 directly related to this function for persons convicted by the International Criminal Tribunal for Rwanda. The transfer of supervision to Benin and Senegal would not achieve the intended financial efficiencies unless the two States were in a position to assume these costs.

37. Further discussions would be required with Rwanda to confirm its willingness to take on these costs if the convicted persons were transferred to its prisons.[12]

IV. Options for the transfer of assistance to national jurisdictions

38. According to article 28 (3) of its Statute, the Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism.

39. The present report is focused solely on the assistance to national authorities provided by the Office of the Prosecutor. It does not include support provided by the Registry or Chambers, either directly or in support of the Office of the Prosecutor.

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[11] Report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals (S/2009/258), paras. 181 and 182. This provision of support is also reflected in the relevant enforcement agreements with Benin and Senegal.

[12] The Residual Special Court for Sierra Leone requested $65,000 for five prisoners in Mpanga prison for 2024, which would correspond to $312,000 for 24 International Criminal Tribunal for Rwanda prisoners.

A. Description

40. The Office of the Prosecutor responds to requests for assistance in three primary, related areas: (a) requests for evidence and information in its possession; (b) requests for substantive legal, investigative and prosecutorial direct case assistance, drawing upon the knowledge and expertise of the Office's investigators and prosecutors, which includes preparing dossiers addressing investigative sources, avenues and recommendations, analytical reports related to key evidentiary issues and legal memorandums about issues of international criminal law; and (c) requests for assistance to resolve strategic and/or cross-cutting issues, such as locating fugitives and strengthening cooperation between law enforcement and prosecutors from different countries, whereby the Office utilizes its good offices and privileged relationships with national prosecutors and international bodies to respond to such requests.

41. In 2024, OIOS evaluated the execution of this function by the Office of the Prosecutor. For the evaluation, OIOS solicited the views of national authorities which had submitted requests for assistance. Eighty-two per cent of respondents strongly agreed or agreed that the assistance received had contributed to facilitating investigations and judicial proceedings in their jurisdictions.[13] OIOS noted in the evaluation that the Office shared evidence that would otherwise not be available to national judiciary actors and provided its experience in prosecuting complex cases.[14]

42. This function is dependent on evidence collection of the Office of the Prosecutor and its internal records of investigations and prosecutions, which comprise more than 10 million pages of documents, tens of thousands of hours of audio and video records and thousands of artefacts. In total, the Office possesses approximately 80 terabytes of digital evidence and approximately 4,500 linear metres of physical evidence, most of which was not introduced into criminal proceedings and did not become part of the judicial records. As a result, the evidence collection is distinct from and contains significantly more evidence relevant to national investigations and prosecutions than the judicial records and archives held by the Registry. In some cases, the performance of the function of assistance to national jurisdictions might also require access to specific records held in the Mechanism archives, such as documents that are subject to protective orders.

43. The management of an evidence collection entails adherence to international criminal law standards to enable its use in criminal proceedings. The Office of the Prosecutor maintains extensive information on the origin, chain-of-custody, conditions, use and provision of the evidence in its collection. The evidence collection is not publicly accessible.

44. The Office of the Prosecutor endeavours to share evidence to the greatest extent possible to support investigations and prosecutions. Upon request, the Office searches its evidence collection for relevant evidence and provides it to national authorities. In addition, the Office maintains a remote access system that enables national authorities to directly search a portion of the evidence collection containing less sensitive material.

45. A significant component of the evidence collection is restricted. Restricted evidence is subject to conditions agreed with information providers, including witnesses, national authorities and international organizations, and it cannot be shared with national authorities unless authorization is obtained. Continued adherence to these conditions is essential. Information providers relied on the commitments made in deciding to provide the evidence sought, and important interests, including national

[13] S/2024/199, para. 27.
[14] S/2024/199, para. 18.

security and safety interests, would be violated if those commitments were disregarded. Where the Office of the Prosecutor identifies that evidence subject to conditions is relevant to an investigation or prosecution, it contacts and consults with the information provider, to obtain consent to share the evidence. The Office may also provide a redacted version of the evidence without protected information.

46. Some evidence of the Office of the Prosecutor is also subject to judicial orders concerning the confidentiality and dissemination of protected information and records. Rule 86 of the Mechanism's Rules of Procedure and Evidence provides a procedure for the variation of relevant judicial orders. Where the Office of the Prosecutor or a national authority identifies that evidence protected by judicial order is relevant to an investigation or prosecution, the Office assists national authorities in litigation under rule 86.

47. This function is also dependent on the knowledge and expertise of the staff of the Office of the Prosecutor, who have extensive, invaluable experience in the investigation and prosecution of genocide, crimes against humanity and war crimes committed in Rwanda and the former Yugoslavia and can leverage their cooperation with stakeholders, in particular national law enforcement and prosecution services.

B. Projections

48. The majority of requests for assistance are from Rwanda and the countries of the former Yugoslavia, which are investigating and prosecuting the crimes committed in their territories or by their citizens. Requests are also received from third countries that are enforcing national immigration law, conducting extradition proceedings and prosecuting crimes consistent with international obligations and national criminal law. In addition, the Office of the Prosecutor has received requests from international tribunals and organizations.

49. From its establishment in June 2012 until the end of 2024, the Office of the Prosecutor received nearly 4,000 requests for assistance from more than 15 countries on three continents and seven international organizations. It has shared more than 120,000 documents comprising nearly 3 million pages of evidence, as well as more than 2,000 audiovisual records. It has responded to more than 175 requests for substantive legal, investigative and prosecutorial direct case assistance to specific national investigations and prosecutions, sharing dossiers, analytical reports, memorandums and other work products.

50. The number and complexity of requests for assistance submitted has increased over time. In 2024 there were 387 requests for assistance from authorities in 13 countries and three international organizations. A significant number of these requests concerned direct assistance to prosecutorial efforts, going beyond requests for evidence or documents.

51. The Office of the Prosecutor projects that this workload will continue at the present level for at least the next 5 to 10 years. National authorities in the affected countries have adopted national war crimes strategies to fulfil their obligations to achieve justice, while third countries are processing cases concerning suspects located in their territories. There are still more than 1,000 Rwandan fugitives to be located and brought to trial, while there are more than 1,000 suspects in the countries of the former Yugoslavia to be investigated and prosecuted, as appropriate.

52. The remaining cases are expected to be challenging, particularly given the passage of time. There are still many senior- and mid-level suspects, as well as other complex crimes, such as crimes of sexual violence, which all present evidentiary,

investigative and prosecutorial challenges. Continued access to the evidence collection of the Office of the Prosecutor and the expertise of its staff will be required.

C. Transfer to the United Nations Secretariat

53. The function of assistance to national authorities involves the provision of technical assistance by the Office of the Prosecutor to national authorities and, as such, is distinct from other residual functions, which entail the independent execution of prosecutorial or judicial authority granted by the Security Council. While the transfer of this function would entail the transfer of prosecutorial expertise, it would not involve the transfer of prosecutorial authority or require the Council to grant legal jurisdiction to any country or body.

54. Two transfer options were identified for consideration: (a) transfer to national authorities; or (b) transfer to the United Nations Secretariat. The option of transfer to national authorities is not deemed feasible as the evidence collection of the Office of the Prosecutor is the property of the United Nations, and access to such evidence is subject to restrictions, including restrictions concerning national security and the safety of persons, as well as the fact that it is not possible to transfer to national authorities the expertise upon which this function depends.

55. The transfer of this function to the United Nations Secretariat is considered feasible. To provide the type of assistance currently provided by the Office of the Prosecutor, the Secretariat would need a mandate: (a) to manage and share evidence with national authorities; (b) to collect and receive evidence collected by others, including upon request from the receiving entity, so that it could continue to serve as the repository of evidence for serious violations of international humanitarian law committed in the countries of the former Yugoslavia and Rwanda; and (c) to analyse evidence and provide substantive legal, investigative and prosecutorial direct case assistance.

56. From a practical and logistical perspective, the United Nations Secretariat would require custody of and access to the evidence collection of the Office of the Prosecutor and internal records, as well as the transfer of staff of the Office with the necessary expertise to continue this function. This would entail that the Secretariat be authorized by the Security Council to assume this function, including accessing the Office’s evidence collection on the same terms as the Office.

57. Furthermore, the Secretariat would require additional resources for the administrative services required in support of this function which are currently performed by the Mechanism’s Registry.

58. Within the Secretariat, three offices were considered on the basis that they cooperate with and provide information to national authorities: (a) the Office of Legal Affairs; (b) the Office of the High Commissioner for Human Rights (OHCHR); and (c) the United Nations Office on Drugs and Crime (UNODC).

59. The Office of Legal Affairs is the central legal service of the Organization. Its functions include preparing legal opinions, studies and advice on all legal matters, including international criminal law and international humanitarian law. It is mandated to develop the legal framework for the establishment of judicial and non-judicial accountability mechanisms, assisting in their practical implementation and providing continuous legal advice for their duration. In addition, the Office serves as the focal point within the United Nations system for cooperation in all judicial matters, including criminal matters. It has a mandate to ensure that the sharing and disclosure of sensitive information within the United Nations is conducted in accordance with the privileges and immunities of the Organization and applicable

rules, policies and procedures concerning information sensitivity, classification and handling. The Office is the focal point for the cooperation of the Organization with the International Criminal Court pursuant to the Relationship Agreement with the Court. The Office is also the substantive office for requests for documents and information in relation to the former Special Tribunal for Lebanon and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD).

60. OHCHR engages with national authorities, including prosecutorial and judicial authorities, in the implementation of international human rights law and standards. In close coordination with the Office of Legal Affairs, it provides assistance to Member States so requesting in the context of specific criminal proceedings, including through the provision of investigative material acquired through current or former human rights investigative processes, in accordance with the applicable United Nations Secretariat framework. Since 2021, the Human Rights Council has made explicit reference to the provision of support by OHCHR to relevant judicial and other proceedings in Member States. OHCHR has also developed digital platforms for the collection, processing, analysis, preservation and sharing of large scale digital evidence.

61. UNODC supports Member States in implementing, among other international instruments, the conventions on transnational organized crime, corruption, terrorism and cybercrime, and in strengthening national capacities towards implementation of these instruments. An important part of its functions is a focus on technical assistance to Member States to foster crime prevention, criminal justice reform, international cooperation in criminal matters, addressing the drug problem and the promotion of the rule of law in general in relation to national law enforcement and judicial responsibilities. While UNODC does not exercise any of the functions exercised by the Office of the Prosecutor in respect of the national assistance function, UNODC could contribute in some specific areas related to its own mandate and activities.

62. All three entities have identified Vienna as a possible location for this function as they already have a presence there, and in the light of logistical and resource considerations. If based in Vienna, synergies could be found through the provision of administrative support by the United Nations Office at Vienna. The Office would be ready to provide the necessary technical, logistical, information technology, security and administrative support as a common back-office solution, as already extended to a number of other United Nations entities in Vienna, as long as necessary resources are provided.

D. Budgetary and administrative implications

63. The Office of the Prosecutor preliminarily estimates that this function, if transferred, could be implemented with a budget of approximately $6.5 million, which would include: 30 to 35 staff (approximately $5.75 million annually) in a centralized office with a small presence in Kigali; costs for maintenance of the digital evidence collection (approximately between $500,000-$600,000 annually); and travel (approximately $100,000) a year. This would represent an approximate 40 per cent reduction in staffing as compared with 2025, which would be achievable, in part, owing to efficiency and streamlining measures that could be taken outside of the Mechanism administrative structure. It would not include the costs for premises, staffing costs related to the administration of this office or other ancillary costs.

64. In terms of budgetary resources, none of the three United Nations entities are in a position to absorb the costs associated with this function within their existing resources, which would require the establishment of a dedicated budget line for the costs associated with the transfer and performance of this function, as well as

additional resources for the regular administrative overheads caused by an increase in their respective staffing tables. There may also be certain non-recurring costs associated with the transfer, including for harmonizing information technology infrastructure.

65. Consideration would also need to be given to the possibility of transferring the necessary staff of the Office of the Prosecutor to the Secretariat. This may entail certain administrative costs and would need to be carried out in accordance with applicable regulations, rules, policies and procedures.

66. If this function were to be transferred, arrangements would need to be made to ensure coordination between the entity carrying out the function and the Mechanism regarding joint access to the Office of the Prosecutor evidence collection. The remaining size and scope of the Office at the Mechanism would be significantly reduced and would depend on the Security Council's decisions regarding the Mechanism's judicial functions moving forward.

67. In addition, the assistance to national authorities would also require continued access to the Mechanism archives. Consideration would need to be given to a process for ensuring coordination in this regard should this function be transferred to the Secretariat.

68. Lastly, if this function is transferred, there would also need to be consideration as to whether the Security Council wishes to continue to have oversight or some form of reporting in relation to this activity.

V. Conclusions and recommendations

69. The present report responds to the request in Security Council resolution 2740 (2024) as far as possible at the current stage of the Security Council's consideration of the issues. A fuller answer would require the Council to take some key decisions, and it would fall to the General Assembly to consider in detail staffing and other costs.

70. With respect to the transfer of sentence enforcement, the day-to-day supervision of sentence enforcement can be feasibly transferred to Member States. Any transfer of this function would require amendments to the Mechanism's Statute. Furthermore, as enforcement is based on legal agreements with the United Nations, should an enforcement State decide that it can no longer continue to carry out the sentence, there must be an independent judicial authority at the international level that has the authority to order the removal of the convicted person and designate a new enforcement State.

71. European enforcement States generally appeared to be in favour of a possible transfer of day-to-day supervision. If the Security Council requested the transfer of this function, the Mechanism could enter into negotiations with European enforcement States to amend their enforcement agreements so that these States would be responsible for day-to-day supervision of the enforcement of sentences.

72. With respect to the two current African enforcement States, further consultations would be required but transfer of the day-to-day supervision function to Benin and Senegal would not achieve the intended financial efficiencies unless the two States were in a position to assume the related costs. Rwanda has indicated that it is ready to take on this function, but further discussions would be needed concerning the significant costs and administrative support that the Mechanism provides in relation to this function. If the Security Council were inclined that this part of the function should eventually be transferred to Rwanda, it could encourage or instruct the President to designate Rwanda as an enforcement State. If Rwanda were designated,

the Council could, following a limited period of enforcement that demonstrated full compliance by Rwanda with the enforcement agreement, including ensuring international minimum guarantees of conditions of imprisonment, first instruct the Mechanism to engage with Rwanda to facilitate the transfer of day-to-day supervision to Rwanda and then transfer the function.

73. Early release, commutation of sentence and pardon are judicial functions that must be performed by an international, independent judicial entity and cannot be transferred to a Member State or the United Nations Secretariat.

74. The Secretary-General has been requested to consider the transfer of only certain judicial functions of the Mechanism. It is the Secretary-General's view that, in any completion plan for the Mechanism, all the judicial functions as a whole should be taken into consideration and that there must be a smooth, efficient and orderly process for the closure of the Mechanism. Restricting or eliminating the prospect of resource-intensive in-court proceedings while sufficiently protecting due process and the rights of the convicted persons would be a significant step in reducing the footprint of the Mechanism. In addition, solutions must be found for several of the outstanding obligations of the Mechanism, including the transfer of the two convicted persons and Félicien Kabuga currently in the United Nations Detention Unit in The Hague, and the resolution of the issues concerning the released and acquitted persons in the Niger.

75. The existence of two branches and the administrative architecture around them is one of the most significant drivers of the costs of the Mechanism. At this late stage of the Mechanism's existence, the Security Council could consider eliminating the physical branch requirement and decide that the Mechanism should consolidate into a single location that is the most cost-effective and able to support the limited judicial functions.

76. More generally, the Mechanism's administrative functions will need to be significantly reduced to proportionally and efficiently adapt to the Mechanism's reduced needs upon the reduction, completion or transfer of its functions.

77. Alternatively, the Security Council could consider, in the near term, transferring to another subsidiary body of the Council the limited judicial functions that must remain at the international level with the President, the roster of judges, a minimal prosecution team and a minimal number of experienced, specialized legal, technical and other staff providing Registry-type support. This body could be co-located with, as well as receive administrative support from, another United Nations entity or other United Nations entities. Such a transfer could catalyse the closure of the Mechanism, which at its core is a judicial institution, and immediate focus could be placed on transferring or terminating the remaining non-judicial functions of the Mechanism, as well as on liquidating and terminating the institution's various other obligations and liabilities.

78. Requests from Member States for the s assistance of the Office of the Prosecutor in national investigations have been increasing exponentially over the years. This assistance has been instrumental in prosecution efforts in Rwanda and the former Yugoslavia and enhances domestic accountability for international crimes. This function cannot be transferred to a Member State as it is dependent on strictly confidential records that cannot be provided wholesale to any Member State and on the expertise and skill of the prosecutors of the Office who have access to those records. It would, however, be possible to transfer this function to the Secretariat on the basis of a Security Council mandate and with the necessary regular budget funding for the transfer and continuation of this function. Should the Council deem it desirable for such a transfer to occur in the short term as another important step in the orderly

process towards the closure of the Mechanism, it is recommended that a transfer to the United Nations Secretariat be considered.

79. It is recommended that the Security Council make the appropriate strategic decisions on these matters as part of the review of the work of the Mechanism in 2026 and, once decisions are made, request the Secretary-General to submit a report detailing the required steps for the Secretariat to implement the decisions and make appropriate legal arrangements.