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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Secretary-General

Summary

In its resolution [72/270](#), the General Assembly endorsed the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions ([A/72/785](#)), including that the Secretary-General submit to the Assembly at its seventy-third session a final progress report on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch. Following the expiration of the defects liability period, the construction project is now in its closeout phase. As a few outstanding matters are still being addressed by the project team, the current report is being presented as a progress report. A final progress report is expected to be submitted to the Assembly at its seventy-fourth session.

The present report is the eighth progress report on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch, and provides an update on the project since the submission of the previous progress report ([A/72/734](#)). Following substantial completion of the project, achieved on 1 December 2016, the Mechanism has occupied and fully made use of the facility since 5 December 2016. Significant progress has been made with regard to the rectification of remaining punch-list items, with 90 per cent of the items completed as at 1 December 2018. Further, the architect has delivered a redesign for the remediation of defects affecting the heating, ventilation and air conditioning system in the Archives Building and has agreed to supervise and certify the remediation work, while negotiations with the main contractor to carry out the work are in progress. The project team is working closely with the architect and the contractor to complete the remediation work within the shortest time possible. Concurrently, in the context of ongoing activities in the project closeout phase, and in close cooperation with the Global Asset Management Policy Service of the Office



of Programme Planning, Finance and Budget^a and with the Office of Legal Affairs, the Mechanism continues to examine options for the appropriate recovery of direct and indirect costs arising out of delays, pursuant to paragraph 7 of General Assembly resolution [70/258](#).

The General Assembly is requested to take note of the present report.

^a Effective 1 January 2019, the provision of oversight services for major construction projects was transferred from the former Global Property Management Service of the Office of Central Support Services to the Global Asset Management Policy Service of the Office of Programme Planning, Finance and Budget.

I. Introduction

1. Following the adoption by the General Assembly of its resolution [66/240 A](#), the project for the construction of a new facility for the Arusha branch of the International Residual Mechanism for Criminal Tribunals commenced in January 2012. It will be recalled that the Mechanism was mandated by the Security Council in its resolution [1966 \(2010\)](#) to perform a number of essential residual functions of the pioneer International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia. The Arusha branch, which commenced functioning on 1 July 2012, inherited functions from the International Criminal Tribunal for Rwanda, while the branch in The Hague, the Netherlands, which commenced functioning on 1 July 2013, inherited functions from the International Tribunal for the Former Yugoslavia. In its resolution [66/240 A](#), the Assembly appropriated an initial amount of \$3 million to cover expenses related to the conceptual design phase of the project. In its resolution [67/244 B](#), the Assembly authorized the activities related to all phases of the construction of the facility and authorized the Secretary-General to establish a multi-year special account for the project. In its resolution [68/257](#), the Assembly appropriated an additional amount of \$5.8 million, approving a total of \$8.8 million for the project.

2. Seven progress reports have been submitted previously to the General Assembly, outlining, inter alia, the project expenditure and costs, as well as the implementation of the requests and recommendations of the Assembly. The present report constitutes the eighth such update. It describes the progress made since the issuance of the previous report ([A/72/734](#)) and provides updated information on the governance of the project, progress made during the reporting period regarding outstanding matters, and updated expenditure and projected cost to completion.

3. Substantial completion of the project was achieved on 1 December 2016. This marked the conclusion of the construction phase and the beginning of the post-occupancy phase. The Mechanism moved into the facility, the sole seat of its Arusha branch, on 5 December 2016, and has operated from the facility ever since.

4. The project continued to remain within the approved budget of approximately \$8.8 million, inclusive of the contingency provision. The contingency provision is projected to have a final balance of approximately \$200,000.

5. The Secretary-General is grateful to the host State, the United Republic of Tanzania, for its unwavering support and involvement alongside the project team to facilitate the completion of the project.

6. The present reporting period, which covers the sixth and final stage of the project (the project closeout), included the defects liability period, which expired on 30 April 2018. A final completion certificate was issued by the architect on 10 July 2018, excluding outstanding punch-list items, which remained to be rectified. The number of such items had been significantly reduced by 1 December 2018: out of the 880 items initially recorded on the punch list, 786 items (90 per cent) had been rectified as at that date. The Mechanism continues to be fully engaged with the contractor and the architect in order to correct any remaining outstanding defects, as most will be considered closed after final review and certification by the architect, which is expected to take place in the first quarter of 2019. Thereafter, any items that may remain unrectified will be considered for inclusion as part of the settlement of final accounts with the contractor.

7. The following are the main activities undertaken since the issuance of the previous report:

(a) Work on site continued during the defects liability period, which commenced on the date of substantial completion, 1 December 2016, and was extended until 30 April 2018, beyond the one-year defects liability period. The project team, in close coordination with the contractor and the architect, continued to closely review and monitor punch-list rectifications in order to complete, in a timely manner, all repairs to the items included in the punch list. The project team also pursued its work to identify defects in the work, including design defects and defects in the construction work. In this regard, the project team has made significant progress since the previous reporting period: as at 1 December 2018, 90 per cent of the punch-list items had been completed, up from 20 per cent in November 2017, as reported in the previous progress report;

(b) Owing to the importance of maintaining the integrity of the archives, the Mechanism has focused on the remediation of the heating, ventilation and air conditioning system (HVAC) in the Archives Building, which did not fully provide the air quality, temperature and humidity levels required for the preservation of the records. In November 2017, the architect agreed to provide the Mechanism with a redesign to rectify the initial installation, including cost estimates for the work by the end of November 2017, at no further cost. Following the Mechanism's repeated attempts to obtain the redesign from the architect, and in consultation with the Office of Central Support Services and the Office of Legal Affairs, the Mechanism finally obtained from the architect in June 2018 a redesign for the cold vault of the HVAC system that is fully compliant with the specifications related to temperature control, air quality and relative humidity standards. The project team consequently engaged with the subcontractor that originally supplied and installed the HVAC system to provide the necessary equipment and carry out the remediation work in the main repository of the Archives Building, which similarly requires remedial work to fully meet the required specifications. Pursuant to the Mechanism's request, in July 2018, the subcontractor provided its own evaluation for the installation of a full-time redundancy system in the Archives Building. In November 2018, however, the subcontractor informed the Mechanism that it would no longer be able to undertake the work, as it was no longer going to be in the HVAC business. The Mechanism devoted substantial time and resources to promptly implementing the most viable alternative solution. As a result, and following protracted negotiations with the architect and the main contractor, the architect has agreed to supervise and certify the HVAC remediation work within the framework of the contract, while the main contractor has expressed its willingness in principle to further engage with the Mechanism and carry out the necessary work. The remediation work is expected to be completed in the first half of 2019;

(c) The Mechanism, in close coordination with the Office of Legal Affairs and the Office of Central Support Services, and in the context of the ongoing activities to fully rectify the project punch list, continued to examine options for the appropriate recovery of direct and indirect costs arising out of delays that may be attributable to the Mechanism's contractual partners, where economically feasible, pursuant to paragraph 7 of General Assembly resolution [70/258](#);

(d) The Office of Internal Oversight Services (OIOS) has completed its third and final audit of the project, covering the immediate post-construction phase. The implementation of the recommendations formulated by OIOS is currently in progress.

II. Governance

Oversight

Audits

8. In accordance with General Assembly resolution [67/244 B](#), OIOS scheduled a three-stage audit process until the immediate post-construction stage. The first formal audit of the project focused on planning and governance in the pre-construction phase and was reported on in a previous report ([A/70/698](#)). The first audit contained satisfactory comments and found no critical or pervasive deficiencies. The second audit, which was concluded on 16 February 2016 and reported on in the subsequent report ([A/71/753](#)), focused on the effectiveness of the management of the construction phase. The overall result was found to be satisfactory.

9. The third, and final, audit of the project, covering the immediate post-construction phase, concluded on 19 February 2018. OIOS issued eight recommendations, which were accepted by the Mechanism. As at 1 December 2018, the implementation of recommendations of OIOS was under way; most of the pending recommendations were expected to be closed by the second quarter of 2019.

III. Progress made during the reporting period

10. Throughout the reporting period, the Mechanism continued to make full use of the office building. The courtroom successfully hosted the inaugural judicial proceedings at the Arusha branch of the Mechanism: the initial appearances of five co-accused in the *Turinabo et al.* case (Case No. MICT-18-116) on 13 September 2018 and the status conference held in the same case on 13 December 2018. The Arusha branch legal library, located in the Archives Building, welcomed researchers, students and visitors, offering multiple resources related to international law, international criminal law, humanitarian law and human rights law.

11. Concurrently, the Mechanism made significant progress with regard to the rectification of outstanding punch-list items, the remediation of the HVAC system defects and the consideration of contractual remedies relating to design defects and project delays.

A. Stakeholders

Project team

12. The project team is responsible for the overall coordination and oversight of the project. The Assistant Secretary-General and Registrar of the Mechanism has served as the project owner since assuming office on 1 January 2017. Until November 2018, the Registrar was assisted by the Acting Chief of the Registry, Arusha branch, who served as the coordinator for the project during the defects liability period following the separation of the former Chief of the Registry in March 2018. In the light of staff movements within and between The Hague branch and the Arusha branch of the Mechanism during 2018, the Chief Administrative Officer of the Mechanism has been appointed Coordinator for the project for the current closeout phase, to coordinate the contribution of multiple stakeholders on all aspects (i.e. legal, financial, administrative) linked to the completion of the project. As reported in the previous report, a dedicated project manager was recruited in June 2017 to provide a technical overview of the construction project and guide it towards final completion, following the departure of the previous project manager in December 2016. The project manager

was assisted by a team of the Mechanism's regular staff. He was recalled to his parent duty station in July 2018, however, and was replaced by a new project manager in August 2018.

Host State

13. Cooperation between the Mechanism and the Government of the United Republic of Tanzania continued to be excellent throughout the reporting period. The Secretary-General reiterates his deep appreciation for the unwavering support of the Government and its officials during the closeout period and in all earlier phases of the project.

Other stakeholders

14. Following the closure of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia in 2015 and 2017, respectively, the Mechanism has been operating as a fully self-standing institution since 1 January 2018. The project has accordingly been supported by the Registry of the Mechanism (Legal Team, Archives and Records Section, Administration, Budget and Finance Office, Procurement Section and Safety and Security Section).

15. The United Nations Secretariat, in particular through the Office of Central Support Services and the Office of Legal Affairs, continued to provide technical advice and support. The Mechanism and the Global Property Management Service of the Office of Central Support Services continued to liaise on a regular basis, via videoconferences, conference calls, meetings and correspondence. A representative of the Global Property Management Service conducted a mission to Arusha in May 2018 to assist the project manager in finalizing the review of outstanding work (punch-list items) and to provide technical input with respect to the required HVAC remediation work.

Neighbouring institutions and co-location

16. Pursuant to paragraph 4 of General Assembly resolution [70/258](#), the Mechanism continued to engage with other international organizations and judicial institutions that are expected to move to the vicinity of its new premises, including the African Court on Human and Peoples' Rights, the African Union Advisory Board on Corruption and the African Institute of International Law. In this regard, the Mechanism hosted a successful second International Organizations Open Day at its premises on 3 November 2018, which was attended by more than 1,300 visitors. The Open Day was organized in partnership with other international, regional and subregional organizations in Arusha, including the aforementioned ones, the East African Community and its constituent institutions, the East, Central and Southern Africa Health Community, the Eastern and Southern African Management Institute and the Pan-African Postal Union. The Mechanism welcomed Augustine Mahiga, Minister for Foreign Affairs and East African Cooperation of the United Republic of Tanzania, who expressed his appreciation for the organization of the Open Day and reiterated the support of the Government of the United Republic of Tanzania.

17. Finally, as recommended by the Advisory Committee on Administrative and Budgetary Questions (see [A/71/812](#), para. 22) and endorsed by the General Assembly, and as reported in the previous progress report, the Mechanism continued to engage with the Residual Special Court of Sierra Leone regarding the possibility of accommodating the Residual Special Court within the Arusha facility. In this regard, it will be recalled that the Residual Special Court's comparative assessment in 2017 concluded that co-locating the Residual Special Court with the Mechanism in Arusha would be more expensive than co-locating in The Hague, and that relocating to Arusha

would also have other practical and legal implications that fell within the prerogatives of the judicial authorities of the Residual Special Court. The Mechanism welcomed the Registrar of the Residual Special Court, Binta Mansaray, in Arusha on 10 and 11 October 2018. Ms. Mansaray toured the Arusha facility as part of her further assessment of the possibility of relocating the Residual Special Court's offices to the Mechanism's facility. The Mechanism will continue to engage with the Residual Special Court on the possibility of co-location in Arusha.

B. Review and rectification of punch-list items

18. As at 1 December 2018, 90 per cent of the 880 items originally recorded on the punch list had been successfully completed. It is anticipated that the few remaining punch-list items will be fully addressed by the end of the first quarter of 2019.

19. As noted in the previous progress report (see [A/72/734](#), para. 20), following the re-engagement of the contractor on site, the rectification of punch-list items continued past the contractual one-year defects liability period, which was extended until 30 April 2018, with respect to all of the work to enable the contractor to work on the punch-list items. The Mechanism, while focused on the efficient and timely resolution of the few remaining items, informed the contractor that the United Nations had not excused any delay in the timely completion of the work and that it reserved its contractual rights and remedies.

20. Since the most recent payment, released in December 2017, which allowed for the redeployment of the subcontractors on site and significantly expedited the punch-list rectification process, the Mechanism has not released any new payment to the contractor. The final balance owed to the main contractor under the contract amounts to \$579,251 (notwithstanding ongoing negotiations on amounts to be recouped by the Mechanism as a result of the delays). In the light of the delays in reaching substantial completion, the Mechanism is continuing discussions with the contractor regarding the recovery of delay damages.

21. The resubmission of as-built drawings, updated maintenance manuals, equipment warranties, training certificates and other relevant documentation is still pending, until the few remaining punch-list items are rectified.

C. Design defects regarding the heating, ventilation and air conditioning system

22. As reported in the previous progress report, during the first year of occupancy of the facility, the project team recorded design-related deficiencies, which were communicated to the architect.

23. Specifically, the HVAC system originally designed by the architect and installed at present in the cold vault and the main repository of the Archives Building does not fully meet the air quality, temperature control and relative humidity standards required by the Mechanism.

24. As previously reported, in coordination with the architect, the Office of Legal Affairs and the Office of Central Support Services, the project team explored the options available to properly commission the HVAC system, which could entail the importation of some new, or the replacement of, equipment components. Following these consultations, in June 2018 and at no cost to the United Nations, the architect provided design input only for the cold vault of the HVAC system that will enable the system to fully meet the necessary temperature control, air quality and relative humidity standards. Subsequently, the Mechanism engaged with the main contractor

and its subcontractors to carry out similar remediation work in the main repository as well, including the installation of a full-time redundancy system. The proposal of the contractor and subcontractor in that regard was delivered in July 2018.

25. Concurrently, the Mechanism continued to assess any potential remedies related to loss stemming from the faulty HVAC design, and has clearly emphasized to the architect that it is responsible for the redesign of the HVAC system, and that the redesign must come at no additional cost to the United Nations. The Mechanism is mindful, however, of the key role to be played by the architect in ensuring that the remedial work based on the HVAC system redesign is successful in meeting the temperature control, air quality and relative humidity standards necessary to preserve and manage the archives of the International Criminal Tribunal for Rwanda and the Mechanism, pursuant to the Mechanism's mandate.

26. As requested by the Advisory Committee on Administrative and Budgetary Questions (see [A/72/785](#), para. 8) and endorsed by the General Assembly in its resolution [72/270](#), the Mechanism has pursued the most efficient solutions to properly commission the entire redesign of the HVAC system. The Mechanism initially engaged with the subcontractor that supplied and installed the HVAC system to carry out the remedial work. Prior to commencing the work, however, the subcontractor informed the Mechanism that it would no longer be able to undertake the work, which caused an unfortunate delay in the implementation of the most viable solution.

27. Subsequently, in the context of ongoing negotiations regarding the recovery of delay damages and the settlement of final accounts, the Mechanism approached the original main contractor to determine its availability and willingness to supply and install the HVAC system redesign for the cold vault and carry out similar remedial work in the main repository in place of the initial subcontractor. The Mechanism has pursued the most efficient solutions to properly commission the entire HVAC system redesign, and has identified the contractor as the most suitable partner to undertake this project, given the contractor's familiarity with the premises and thorough knowledge of the construction project. The contractor has responded positively to this approach, and the Mechanism is currently assessing and negotiating the contractual framework within which the renewed partnership may be implemented.

28. Following consultations with the Mechanism, in December 2018, the architect conveyed to the project team its willingness to fulfil its obligations under the contract by supervising and certifying the remedial work on the HVAC system. Further, it has been agreed that the payment for the final closeout stage of the project will not be released before the successful installation and certification of the HVAC system redesign for the cold vault.

29. In the light of these positive developments, the Mechanism expects the remedial work to be completed by mid-2019.

D. Consideration of contractual remedies regarding design defects and project delays

30. Concurrently, in line with the recommendation of the Advisory Committee on Administrative and Budgetary Questions (see [A/72/785](#), para. 21) endorsed by the General Assembly, in close coordination with the Office of Legal Affairs and the Office of Central Support Services and in the context of the ongoing activities in the project's closeout phase, the Mechanism continued to examine options for the appropriate recovery of direct and indirect costs arising out of delays that may be attributable to the Mechanism's contractual partners, where economically feasible, pursuant to paragraph 7 of General Assembly resolution [70/258](#).

31. In particular, the Mechanism has been carefully considering its options for potential remedies in the context of ongoing negotiations regarding the rectification of the outstanding punch-list items and the completion of the remedial work on the HVAC system.

IV. Project schedule

32. The project to construct the facility for the Arusha branch of the Mechanism commenced in January 2012. It was initially estimated to last five years and three months, with occupancy in the first quarter of 2017 ([A/66/754](#)). The project length was shortened to four years, in response to a request by the General Assembly, as reported in the report of the Secretary-General ([A/67/696](#)). Owing to the delayed delivery of the curtain wall, substantial completion was delayed; however, completion was still achieved significantly ahead of the originally estimated completion date ([A/71/753](#)), and the Mechanism has subsequently enjoyed full occupation and use of the premises since December 2016.

33. As reported in the previous report, the Mechanism has faced delays regarding the rectification of the remaining punch-list items. Nonetheless, the Mechanism has taken proactive measures to minimize the delays. Specifically, the Mechanism brought on board experienced closeout project managers to see the project to final completion, which led to a significant reduction in outstanding punch-list items, as 90 per cent of the items had been closed as at 1 December 2018. The Mechanism also took the action necessary to facilitate the redeployment of the subcontractors on site and engaged with the architect to address design defects in the shortest time possible.

34. As noted above, in coordination with the architect, the project team is prioritizing the rectification of the HVAC system in the Archives Building. The project team estimates that the rectification of the HVAC system will be completed by mid-2019.

35. A revised project schedule, which takes into account the above, is presented in the annex to the present report.

V. Project expenditure and costs

A. Financial implication of addressing design defects

36. The discovery of design defects has resulted in additional expenditure, particularly to rectify the design error of the HVAC system in the Archives Building (see paras. 30 and 31 above). The Mechanism is confident, however, that repairs can be completed through utilization of a portion of the contingency provision.

B. Use of contingency funds

37. On the basis of lessons learned from other capital projects, and in line with industry best practice, the General Assembly approved, as proposed by the Secretary-General, a contingency provision of \$1,050,371, representing 15 per cent of the estimated project cost.

38. A total of approximately \$850,000 in expenditure is expected to be charged to the contingency funds. This amount represents an approximate increase of \$280,000 as compared with the estimate indicated previously. The difference reflects additional requirements for construction and project supervision and management as a result of

the HVAC remediation efforts, with final figures expected to be known when ongoing negotiations as to the actual costs of remediation have been completed.

39. The project team remains confident that the final project costs, in particular the remedial work linked to the redesign of the HVAC system, will be met within the approved budget (including the use of part of the remaining contingency funds, if required). Consistent with the guidance of the General Assembly in resolution [71/272](#) A and the conclusions of the Advisory Committee on Administrative and Budgetary Questions (see [A/72/785](#), para. 20), any remaining unused contingency funds would be returned to Member States at the conclusion of the project.

C. Projected costs to completion

40. The total budget approved for the project amounts to \$8,787,733 (inclusive of a contingency provision in the amount of \$1,050,371). Substantial completion of the project was achieved within the total approved budget. Tables 1 and 2 below provide actual expenditure up to 31 December 2018 and projected expenditure during the remainder of the project. Actual and projected expenditure from 2013 to 2019 (excluding contingency), as well as expenditure against the contingency, are detailed in the tables.

Table 1
Disbursements and obligations for the period 2013–2018 (excluding contingency)

(United States dollars)

Description	Expenditures										
	Approved ^d	2013	2014 actual disbursements as per 2014 financial statements	2015 actual disbursements as per 2015 financial statements	2016 final disbursements	2017 final disbursements	2018 final disbursements	Total expenditure 2013–2018	Projected expenditure from January 2019 until completion of the project ^e	Total projected expenditure	Revised deficit to be covered by contingency
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)=sum of (2) to (7)	(9)	(10)=(8)+(9)	(11)=(1)-(10)
I. Construction ^b	6 365 887	–	2 912	1 104 044	4 416 024	493 075	–	6 016 055	579 251	6 595 306	(229 419)
II. Architect and project management											
Architect fees ^c	636 589	–	399 222	77 470	174 308	221 201	–	872 201	77 472	949 673	(313 084)
Project supervision and management ^d	635 800	155 919	143 172	154 582	179 598	–	–	633 271	–	633 271	–
Travel ^e	99 086	12 396	54 475	59 092	–	–	–	125 963	–	125 963	(24 348)
Subtotal	1 371 475	168 315	596 869	291 144	353 906	221 201	–	1 631 435	77 472	1 708 907	(337 432)
Total project cost (excluding contingency)	7 737 362	168 315	599 781	1 395 188	4 769 930	714 276	–	7 647 490	656 723	8 304 213	(566 851)

^a Approved budget as presented in A/67/696, annex II.

^b Corresponds to that estimated portion of the contract not obligated against the previous budget, to be obligated in 2019, subject to revision based on revised punch-list costs, delay damages and actual costs of HVAC remediation.

^c Reflects the cost of hiring an external architectural consultant firm to produce detailed construction documents, perform construction administration duties and assume the responsibility of the architect of record.

^d Reflects the cost of hiring a project manager for day-to-day management and coordination of project activities.

^e Reflects the cost of the travel of staff between New York, The Hague and Arusha to provide technical assistance to the project.

Table 2
**Breakdown of contingency provisions and expenditure against the contingency
 for the period 2013–2018**

(United States dollars)

<i>Description</i>	<i>Approved contingency^a</i>	<i>Total projected expenditure against contingency</i>	<i>Total remaining contingency</i>
	<i>(1)</i>	<i>(2)</i>	<i>(3)=(1)-(2)</i>
I. Construction^b	954 883	229 419	725 464
II. Architect and project management^b			
Architect fees	95 488	313 084	(217 596)
Travel	–	24 348	(24 348)
Subtotal	95 488	337 432	(241 944)
Total	1 050 371	566 851	483 520

^a Approved contingency provision as presented in A/67/696, annex II.

^b Calculated at 15 per cent of the construction costs and architect fees.

VI. Other matters

41. As reported previously, the Advisory Committee on Administrative and Budgetary Questions requested that the Mechanism provide information concerning the prescribed space per staff member in the Arusha facility and comparisons with standard Secretariat ratios (see A/71/812, para. 19).

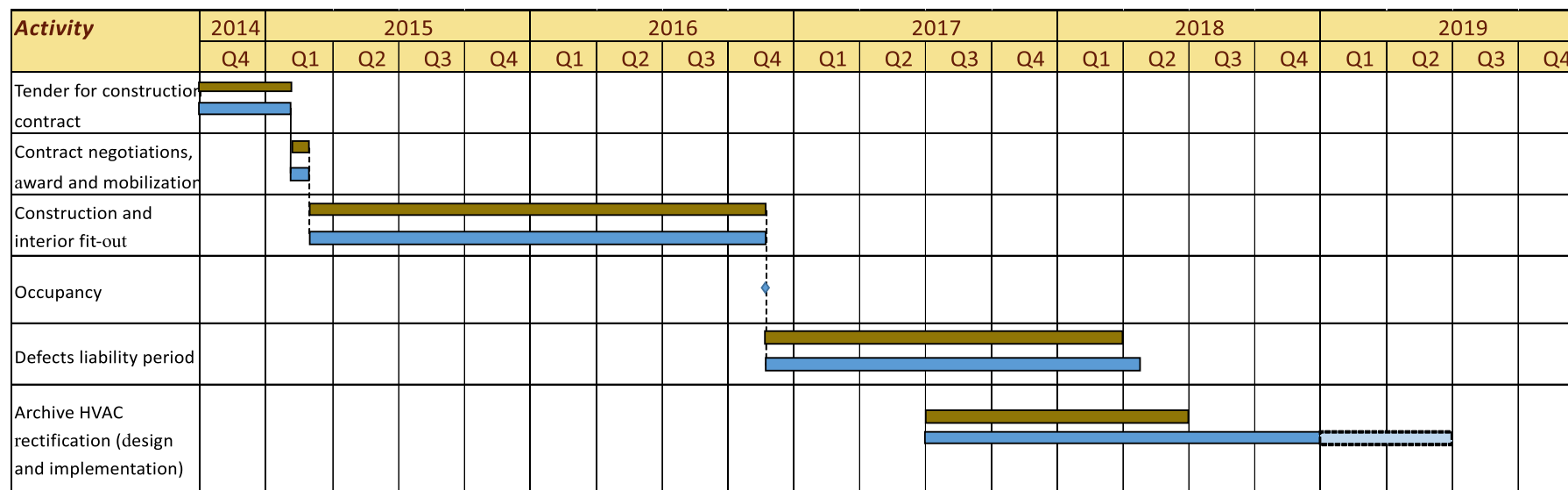
42. The Mechanism has been considering these matters in the context of the Arusha facility and the space available for staff, and has been considering requesting the assistance of a space planner from the United Nations Office at Nairobi for the purpose of developing, promulgating and implementing space allocation guidelines. The Secretary-General will include the outcome of these consultations pertaining to this matter in his final progress report on the project.

VII. Actions to be taken by the General Assembly





43. The General Assembly is requested to take note of the present report.

Annex

Project schedule for the International Residual Mechanism for Criminal Tribunals, Arusha branch



Legend

	A/72/734
	Actual progress
	Occupancy
	Anticipated completion