

**MICT**

UNITED NATIONS

Mechanism for International Criminal Tribunals

The Mechanism for International Criminal Tribunals (“MICT” or “Mechanism”) was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) after the completion of their respective mandates. The MICT has two branches, one in Arusha, Tanzania, and one in The Hague, Netherlands.

STATEMENT

PRESIDENT

(Exclusively for the use of the media. Not an official document)

Arusha, The Hague, 8 December 2016

Address to the UN Security Council

Judge Theodor Meron

President, Mechanism for International Criminal Tribunals

8 December 2016

Mr. President, Excellencies, Ladies and Gentlemen:

It is an honour to appear before the Council once again and I wish to extend my congratulations to Spain on its assumption of the Presidency of the Security Council this month. I also remain deeply grateful to the Security Council’s Informal Working Group for its support of the Mechanism, and to Uruguay for its able leadership of that Group. Finally, I express my deep gratitude to the Under Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Miguel de Serpa Soares, the Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias, and their colleagues in the Office of Legal Affairs for their ongoing and critically important assistance.

Mr. President, Excellencies,

Not even two weeks ago we opened the Mechanism's new premises for the Arusha branch. Her Excellency Samia Suluhu Hassan, Vice President of the United Republic of Tanzania, presided over the opening ceremony, with Mr. Serpa Soares representing the Secretary-General. The new premises would not have been possible without the exceptional generosity of the Government of Tanzania.

The success of this project has also been due in very large part to the dedication of the Mechanism's Registrar, Mr. John Hocking, and his staff. I would like to take this opportunity to express my deep gratitude to Mr. Hocking for his exceptional service to the Mechanism since 2012, and to extend my sincere welcome to Mr. Olufemi Elias, who was recently appointed to serve as the Mechanism's next Registrar.

The new premises include a dedicated archives facility, allowing for co-location of the ICTR and Mechanism archives at the Arusha branch, as directed by the Council. I note that the Government of the Republic of Rwanda has recently conveyed to me, at senior level, its firm view that the archives should be physically located in Rwanda, while accepting of UN management and ownership of the archives as set out in the Mechanism's Statute. Our new premises in Arusha are minimalist in design, efficient in their use of resources, and reflect best practices in myriad ways, as, indeed, we strive to do in the Mechanism in all aspects of our work. It is significant in that regard that they were completed under budget. For we recognize that the Mechanism stands not only as a symbol of accountability and the rule of law but as a new model of and for international justice—a modest, efficient, and cost-effective model that must succeed if international justice and the fight to end impunity are themselves to succeed in the long run.

Mr. President, Excellencies,

As detailed in my written report, the past six months have seen the Mechanism make good progress on a number of fronts, from its cases to the development of its regulatory framework. In the appeal cases of *Karadžić* and *Šešelj*, briefing is ongoing before the Mechanism's Appeals Chamber, while the pretrial conference in the *Stanišić & Simatović* retrial is anticipated in the first quarter of 2017. Of the 214 judicial decisions and orders issued during the reporting period, nearly 40 per cent related to requests for access to confidential information—just one of the many ways in which the Mechanism provides assistance to national jurisdictions. This work has been supported by an exceedingly lean staffing structure in Chambers. The Mechanism has also taken steps to be fully self-standing by the end of 2017, whilst continuing to carry out key functions such as the protection of vulnerable witnesses.

The Mechanism is able to do a great deal on its own but it is also dependent on cooperation from others. The Mechanism has been deeply grateful for the assistance provided to it by the ICTY and for the support provided by its Host States. The Mechanism also remains reliant on cooperation from Member States when it comes to the apprehension of the remaining fugitives, the enforcement of sentences, and the identification of a resolution for the difficult situation involving those acquitted or released individuals currently present in Arusha. I call upon all Member States to support our efforts in these regards.

Mr. President, Excellencies,

It is in this context that I am compelled, by virtue of my role as President, to raise the serious matter of the continuing detention of Judge Aydin Sefa Akay, a situation that is impacting upon the effective

discharge of the Mechanism's mandate and about which I have previously briefed the Members of this Council.

Judicial independence is a cornerstone of the rule of law, and it is a longstanding and consistent practice to afford international Judges privileges and immunities in order to protect the independent discharge of their judicial functions. The Statute of the Mechanism, adopted by this Council acting under Chapter VII of the UN Charter, follows this same practice in according the Judges of the Mechanism diplomatic immunity for those periods of time in which they are engaged on the business of the Mechanism. As a result of this legal framework, Judge Akay enjoyed diplomatic immunity from the time of his assignment to the *Ngirabatware* proceedings on 25 July 2016, and continues to enjoy such immunity through to the conclusion of those proceedings. To my great regret, notwithstanding the diplomatic immunity to which Judge Akay is entitled, he remains detained and unable to carry out his duties as a Judge in that case.

Some may believe that, from the Mechanism's perspective, the resolution of this situation might be found by replacing Judge Akay on the bench of the *Ngirabatware* case, thereby enabling that case to proceed. Let me be clear: This option is simply not open to me as a matter of law and justice. I do not consider it possible, under the circumstances, to reconcile full respect for the fundamental principle of judicial independence, on the one hand, with, on the other hand, the removal of Judge Akay from the bench to which he has been assigned.

I therefore, respectfully, call upon the Members of this Council to do their utmost to bring about a timely and satisfactory resolution of this situation.

In closing, I wish to assure the Government of Turkey that, in raising in the Council the matter of Judge Akay's detention, I do nothing more than what is compelled by my duties as the President of the Mechanism: to defend the institution and the law governing it. It pains me to do so. I wish to underscore my full respect for the right of all States—including Turkey—to address legitimate law enforcement concerns in accordance with the rule of law. At the same time, all States must respect their obligations arising under resolutions of this Council adopted under Chapter VII of the UN Charter. In this context, I appeal to the Government of Turkey, with its strong legal traditions stretching back for many centuries, to release Judge Akay in the spirit of humanitarianism so as to enable him to perform his judicial duties in the *Ngirabatware* case. In doing so, the Government of Turkey will not only demonstrate its support for a Chapter VII tribunal but will play a vital part in enabling the Mechanism to carry out the important mandate entrusted to it.

Thank you.
