

**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)

The Hague, 17 May 2017

Remarks of Judge Theodor Meron President, Mechanism for International Criminal Tribunals Diplomatic briefing The Hague, 17 May 2017

Excellencies, Colleagues, Ladies and Gentlemen:

It is a pleasure to welcome all of you here to our second diplomatic briefing and I am delighted so many of you could join us here today. I note that it is nearly one year since our first meeting and I am happy to be able to share with you an update on how the Mechanism has progressed with its work since our last meeting and some of the challenges it has encountered along the way.

I am particularly pleased to welcome all of you today, as this occasion affords us the opportunity to introduce our new Registrar, Mr. Olufemi Elias, to the diplomatic community. Mr. Elias was appointed by the Secretary-General as the second Registrar of the Mechanism on 28 November 2016 and took office on 1 January 2017, replacing the outgoing Registrar, Mr. John Hocking. Mr. Elias brings a wealth of experience to his new position from his previous employment, including at the World Bank and the OPCW. Mr. Elias will, of course, address you later today following the remarks of our Prosecutor, Mr. Brammertz.

Following presentations by each of the three Principals, the floor will be open so that we may hear from

you. This will provide us with a valuable opportunity to hear your insights and reflections and to answer any questions you may have.

* * *

During our last briefing, I outlined some of the key and novel aspects of the Mechanism's mandate and approach to its work, both in general and in relation to its judicial activities in particular. For those who were not in attendance at last year's meeting, I will briefly cover some of these same points before proceeding to offer an update as to more recent events.

As you will recall, the Mechanism is the successor institution to both the now-closed International Criminal Tribunal for Rwanda (or "ICTR"), as well as the International Criminal Tribunal for the former Yugoslavia (or "ICTY"), which is due to complete its work at the end of this year.

The Mechanism is mandated to carry out certain essential functions inherited from each of these two pioneering Tribunals. These essential functions include a variety of judicial activities—such as the conduct of appeals proceedings, retrials, contempt of court and false testimony proceedings, review proceedings, and the adjudication of requests to vary protective measures granted to vulnerable witnesses—as well as certain other key functions, including the supervision of the enforcement of sentences, the provision of assistance to national jurisdictions, and the preservation and management of the Tribunals' archives.

As you may also recall, in creating the Mechanism, the Security Council stated 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". Thus, by establishing the Mechanism as a new institution, separate from its predecessors, and expressly calling upon it to be small, temporary, and efficient, the Security Council enabled us to build an institution that follows a different model—one that allows us to seek greater efficiencies, costs reductions and economies.

And as you will be aware, in terms of institutional structure, the Mechanism is somewhat unique, having

two equal branches: One in Arusha, Tanzania, which is tasked with responsibilities related to the ICTR, and the other here in The Hague. Managing one institution across two continents is, as I am sure you will appreciate, not without its managerial challenges. But we are guided in our vision of the Mechanism as truly one institution with two branches, and our management and work streams seek to bridge the distance between the two continents so that we operate as intended by the Security Council and are unified in everything we seek to do.

With respect to the branch in Arusha, I am pleased to inform you that the new premises were completed in November of last year with staff moving in late last year. Built by local companies and incorporating iconic local shapes and materials, 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.

Since the opening of these new premises on a hilltop in an area known as Lakilaki, the Mechanism has received already many groups of visitors from East Africa—from school children to high-level dignitaries—who are given briefings by representatives of the three Principals on the work of the Mechanism. In addition, earlier this month, a judicial colloquium was held in the new Courtroom with Judges from the African Court on Human and People's Rights, the East African Court of Justice, the High Court of Tanzania, and the Mechanism itself in attendance. This colloquium represented an important opportunity to examine possibilities for closer partnerships in the rule of law field and to seek to draw on best practices to strengthen judicial methodologies, and it was made possible due to a generous grant I secured from the Planethood Foundation. It is hoped that it will be the first in a series of knowledge-sharing activities and initiatives undertaken by the Mechanism in East Africa and the former Yugoslavia.

Here at the Mechanism's branch in The Hague, negotiations continue with the owners of the building in which we find ourselves today and we are hopeful that the Mechanism will be able to stay in this iconic building. Although renovations may be required during the coming biennium, we have been assured that these renovations will in no way impact upon the Mechanism's ability to carry out its work.

Over the past year, we have also been intensifying our preparations for the expected closure of the ICTY at the end of this year. As of 1 January 2018, the Mechanism will be responsible for all residual ICTY functions, just as it already is for the ICTR, which closed in December 2015. Among other things, as the Registrar will no doubt inform you, the Mechanism will be responsible for ensuring that the ICTY's liquidation is carried out in 2018 in an efficient and effective manner.

In the meantime, the Mechanism has continued to make good progress in establishing itself as a self-standing institution in anticipation of the final closure of the ICTY and has continued to make important progress in the establishment of our regulatory framework, which draws upon the best practices of our predecessor institutions covering a myriad of subjects such as legal aid, translations, filing practices, and the like. This merging of best practices from both predecessor institutions has served to solidify the Mechanism as a single, unified institution.

Indeed, while we have made tremendous progress in that regard, in a sense, the work of building the Mechanism as an institution is far from done. We must constantly look for ways to make improvements—to learn from our past experiences and from those of our predecessors and other courts and institutions—so that we may truly establish ourselves as a new, more efficient, and more economical model of international criminal justice.

* * *

As you may recall, one of the most novel aspects of the Mechanism's structure concerns the Judges.

In accordance with our Statute and with the vision of the Mechanism as a lean and efficient body, the majority of the motions and requests at first instance are handled at the Mechanism not by a Trial Chamber of three Judges, as was the case at the ICTR or the ICTY, but by a Single Judge. Appeals from rulings by a Single Judge would go, in turn, to an Appeals Chamber panel of three, rather than five, Judges.

Moreover, unlike our predecessor institutions, where Judges served at the seat of the Court full-time,

Mechanism Judges, with the exception of the President, are on a roster and are assigned to specific matters as they arise. For the most part, they carry out their work remotely in their national countries and are paid per day of work. It is only when the President deems it necessary that Judges are called to the seat of the Mechanism.

This system is not without its complications—as I will highlight later when updating you on proceedings in the *Ngirabatware* case—but some problems I anticipated early on have not arisen. For example, as Judges do not serve full-time, they are entitled to carry out other employment in their national jurisdictions, so it is not obvious that Judges on the roster would be available or willing to take on Mechanism matters. However, this has not been the case. On all but very few occasions, Judges have been available and willing to take on assignments for the Mechanism on the terms on which they are offered, thereby supporting the expeditious and efficient completion of judicial work. In this regard, I would like to express my appreciation to the Judges of the Mechanism for their steadfast commitment to the work of the Mechanism.

While this model of remote judging does pose other challenges—including ensuring the integrity of remote deliberations, and the administrative challenge of reaching out to Judges situated across the globe for assignment where internet services are not always reliable—we have, with an eye to efficiency, managed to streamline our proceedings so that the process of remote judging operates smoothly and seamlessly while continuing to constantly seek ways to further increase managerial efficiencies by reviewing our internal working practices.

* * *

To illustrate the important progress made by the Mechanism with regard to its core judicial responsibilities since our last briefing I would now like to provide you with an update on the judicial work.

You may recall that the ICTY Appeals Chamber ordered the re-trial of Mr. Franko Simatović and Mr. Jovica Stanišić in December 2015 and, in accordance with the transitional arrangements adopted by the

Security Council, the case transferred to the Mechanism for the conduct of that re-trial. While most of the pre-trial preparation in that case was carried out by Judges working remotely, I am pleased to inform you that the Judges assigned to the case have now been called to the seat of The Hague. The pre-trial phase of the case is coming to a conclusion, and the Trial Chamber is convening a pre-trial conference this afternoon. Subject to the outcome of that hearing, and any other pending litigation, it is envisioned that the trial will commence shortly thereafter or in any case by the end of June. This step marks a milestone for the Mechanism as a judicial institution.

Turning to the major appeal cases pending before the Mechanism, the briefing has been completed in the appeals of Mr. Radovan Karadžić and Mr. Vojislav Šešelj. With respect to both cases, preparation for the appeal hearing is underway and all Judges with the exception of the President are carrying out their work remotely. Once those appeals are ready for hearing the Judges will be called to the seat of the Mechanism in The Hague. Now that briefing has been completed, it is currently expected that the judgement in the *Karadžić* case will be delivered in 2019. (This projection follows the granting of a total of 217 days of extensions of time for the filing of the notices of appeal and the appeal, response, and reply briefs.) In the *Šešelj* case, where briefing has also concluded, a judgement is expected by the end of 2017 or in the first part of 2018.

In addition, I note that appeals, if any, from the trial judgement issued in the ICTY trial proceeding in the case of Mr. Ratko Mladić would also be heard by the Mechanism. Judgement by the ICTY in that case is expected before the end of this year.

In the meantime, the Mechanism stands ready to commence proceedings should any of the three remaining fugitives indicted by the ICTR who are expected to be tried by the Mechanism be arrested and transferred to our custody. I am sure that the Prosecutor will address the matter of the remaining fugitives in his remarks.

I should underscore here that the judicial work of the Mechanism is not limited to the major cases just identified. Indeed, I think most people would be surprised by the volume of judicial work being undertaken by the Mechanism, relating to everything from allegations of contempt and challenges

pertaining to the *non bis in idem* principle, to requests for review of judgement, applications for early release, and, in particular, requests by authorities and others in national jurisdictions for access to confidential information held by the Mechanism considered relevant to domestic proceedings before their courts. Indeed, from the opening of the Arusha branch in July 2012 until this past Monday, 15 May 2017, the Mechanism has issued more than 1,000 decisions and orders, many of which were rendered in cases other than the major cases I have previously identified. Thus, for example, of the 366 decisions and orders issued in the past year alone, 164—or approximately 45%—related to requests for the variation of protective measures and other motions seeking access to confidential evidence or information.

While this voluminous judicial work is less visible than the other cases identified above, it is fundamental to the mandate of the Mechanism. The Security Council, by providing a specific provision in the Mechanism's Statute that it assist national judiciaries in their pursuit of accountability for core international crimes, recognized the importance of facilitating the broad engagement of national judiciaries in the fight against impunity. Indeed, as the principle of complementarity underpinning the Rome Statute underscores, the burden of ending impunity cannot be carried out by international courts alone. National courts must take up cases arising in relation to international crimes if real and sustained progress towards this shared goal is to be made. The number of requests made to the Mechanism for access to confidential information reflects national judiciaries in the former Yugoslavia, Rwanda, and elsewhere doing just that.

While, as all of this suggests, the Judges of the Mechanism have made excellent progress in carrying out their judicial work, aided by a small Chambers team of some 25 staff members across the two branches of the Mechanism, efficiency in one judicial matter has been adversely affected by external factors.

In this respect, I draw your attention to the matter pending before the Mechanism, the request for review of judgement filed by Mr. Augustin Ndirabatware in July 2016. As you may be aware, this case has come to a standstill due to the arrest of one of the Judges assigned to the panel in that case. Judge Akay was arrested by the Turkish authorities in Turkey on or around 21 September 2016 in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey,

and he remains in detention.

As you will appreciate, 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 discharge of their judicial functions. The Statute of the Mechanism, adopted by the Security 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.

On 31 January 2017, in my capacity as Pre-Review Judge in the *Ngirabatware* case, and in response to a motion by Defence Counsel, I ordered the Government of the Republic of Turkey to cease all legal proceedings against Judge Akay and to take all necessary measures to ensure his release from detention no later than 14 February 2017. On 9 March 2017, in my capacity as President of the Mechanism, I notified the Security Council of the non-compliance by the Government of Turkey with that order.

I note that until the situation of Judge Akay is resolved, proceedings in the *Ngirabatware* case cannot progress. But more fundamentally, the situation that has arisen with respect to Judge Akay, if not resolved appropriately, renders vulnerable the remote judging model of the Mechanism mandated by the Security Council, whereby Judges are for the most part carrying out their judicial activities for the Mechanism in their countries of nationality. The Mechanism is not alone in following this model—the remote model of judging was also adopted recently by the Kosovo Specialist Chambers. For all of us concerned about judicial economies in international criminal justice—economies that are needed to secure its future—there can be no doubt that the situation of Judge Akay is deeply troubling.

* * *

In closing, I would just like to emphasize that for the Mechanism to be successful, as was the case for the ICTR and the ICTY, it is dependent on the cooperation of States. The importance of that cooperation for the integrity of the model of remote judging established by the Mechanism has been starkly brought into play by the situation of Judge Akay. But that cooperation is also needed for such matters as enforcement of sentences and the relocation of the acquitted and released people currently situated in a safe house in Tanzania. For those of you whose Governments have already offered cooperation to the Mechanism, I express my deep gratitude, and for those whose Governments are seeking new ways to contribute to international criminal justice and the fight to end impunity, I would encourage you to contact me or the Registrar.

I would like to thank you all for your attendance here today and for your interest and engagement in the Mechanism.
