

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

Case Nos.: MICT-14-77-ES.1
 MICT-13-30-ES
 MICT-12-15-ES.1
 MICT-16-100-ES

Date: 21 October 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Date: 21 October 2024

**PROSECUTOR v. ALOYS NTABAKUZE
PROSECUTOR v. JEAN-PAUL AKAYESU
PROSECUTOR v. ALFRED MUSEMA
PROSECUTOR v. ILDÉPHONSE NIZEYIMANA**

PUBLIC WITH CONFIDENTIAL ANNEXES

**REGISTRAR'S SUBMISSION ON THE "ORDER FOR
SUBMISSIONS"
OF 8 AND 15 OCTOBER 2024**

Counsel for Mr. Aloys Ntabakuze:

Ms. Sandrine Gaillot

Counsel for Mr. Jean-Paul Akayesu & Mr. Ildéphonse Nizeyimana:

Mr. John Philpot

Counsel for Mr. Alfred Musema:

Mr. Steven Kay, KC

Ms. Gillian Higgins

I. INTRODUCTION

1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Rules” and “Mechanism” respectively), and in compliance with the “Order for Submissions” dated 8¹ and 15² October 2024 (“Orders”), the Registrar respectfully submits this filing to provide information relevant to the subject matter raised in the Orders, as well as to outline the steps taken by his Office, and the responses received from the relevant authorities, in relation to the matter. The Registrar considers it efficient to submit a consolidated submission in view of the common issues raised in the motions.³
2. In accordance with Article 25(2) of the Statute of the Mechanism: “the Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR 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 organisations and bodies.”

II. PROCEDURAL HISTORY

3. Following the judgements of the Appeals Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) concerning the respective convictions of Mr. Jean-Paul Akayesu (“Mr. Akayesu”),⁴ Mr. Alfred Musema (“Mr. Musema”),⁵ Mr. Ildéphonse Nizeyimana (“Mr. Nizeyimana”),⁶ and Mr. Aloys Ntabakuze (“Mr. Ntabakuze”),⁷ the

¹ *Prosecutor v. Jean-Paul Akayesu, Alfred Musema, and Ildéphonse Nizeyimana*, Case Nos. MICT-13-30-ES, MICT-12-15-ES.1, and MICT-16-100-ES, Order for Submissions, public, 8 October 2024 (“First Order for Submissions”).

² *Prosecutor v. Aloys Ntabakuze, Jean-Paul Akayesu, Alfred Musema, and Ildéphonse Nizeyimana*, Case Nos. MICT-14-77-ES.1, MICT-13-30-ES, MICT-12-15-ES.1, and MICT-16-100-ES, Order for Submissions, public, 15 October 2024 (“Second Order for submissions”).

³ This submission is filed publicly. However, the annexes are filed confidentially as they contain confidential information that should not be in the public domain.

⁴ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Appeal Judgement, 1 June 2001, p. 143.

⁵ *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Appeal Judgement, 16 November 2001, p. 137.

⁶ *Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55C-A, Appeal Judgement, 29 September 2014, pp. 164-165.

⁷ *Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-98-41A-T, Judgement and Sentence, 18 December 2008, paras. 2160, 2188, 2196, 2215, 2226, 2247, 2258, 2278. Hereinafter, Mr. Akayesu, Mr. Musema, Mr. Nizeyimana, and Mr. Ntabakuze shall collectively be referred to as the ‘Applicants’.

Applicants are currently serving their sentences at Akpro-Misséréké prison (“Prison”), in the Republic of Benin (“Benin”) pursuant to the Agreement Between the United Nations and the Government of Benin on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals of 12 May 2017 (“Enforcement Agreement”).⁸

4. On 2 October 2024, Mr. Akayesu⁹ and Mr. Nizeyimana¹⁰ filed similar motions submitting that on or about 16 August 2024, the administration of the Prison confiscated their electronic devices following a search exercise. They requested that the President order the Registrar to instruct the Beninese authorities to return the confiscated items (“seized items”). Failing this, they requested an immediate transfer to another host country, such as Senegal, with all their seized items.
5. On the same day, Mr Musema also filed a motion, submitting that his electronic items were seized during a search by Beninese authorities on 16 August 2024. He similarly requested that the Registrar be ordered to ensure the return of his seized items. Should the Beninese authorities fail to comply, he requested an immediate transfer to another host country, such as Senegal, with his personal belongings and electronic items.¹¹
6. On 8 October 2024, the President of the Mechanism issued an Order instructing the Registrar to: (i) file submissions within 14 days, including relevant information about the subject matter of the Motions and steps undertaken by the Registrar in relation to the matter; (ii) transmit translated versions of the Motions (excluding confidential annexes)

⁸ *Prosecutor v. Jean-Paul Akayesu*, Case No. MICT-13-30-ES, Order Designating State in Which Jean-Paul Akayesu is to Serve the Remainder of his Sentence, 19 December 2018, p. 2; *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Order Designating a State in Which Alfred Musema is to Serve the Remainder of his Sentence, 19 December 2018, p. 2; *Prosecutor v. Ildéphonse Nizeyimana*, Case No. MICT-16-100-ES, Order Designating a State in Which Ideophones Nizeyimana is to Serve his Sentence, 21 September 2017, p. 1; *Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-98-41A-T, Decision on the Enforcement of Sentence, 21 June 2012, p. 2. Mr. Akayesu, serving a life sentence, has been detained at the Prison following his transfer from Mali in 2019; Mr. Nizeyimana, sentenced to 35 years, has been incarcerated at the Prison since April 2018; Mr. Musema has been held at the Prison since 19 December 2018; and Mr. Ntabakuze has been serving a 35-year sentence at the Prison since June 2012.

⁹ *Prosecutor v. Jean-Paul Akayesu*, Case No. MICT-13-30-ES, Urgent Request to the President, public with confidential annexes, 2 October 2024, (“Akayesu Motion”).

¹⁰ *Prosecutor v. Ildéphonse Nizeyimana*, Case No. MICT-16-100-ES, Urgent Request to the President, public with confidential annexes, 3 October 2024, (“Nizeyimana Motion”).

¹¹ *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Urgent Request to the President Concerning Seizure of Electronic Devices of ICTR Prisoners at Akpro-Misséréké Prison in Benin, public, 2 October 2024 (“Musema Motion”).

and the Order to the Government of Benin; and (iii) file on the record, confidentially, the list of seized items from the Beninese authorities, received on 18 August 2024.¹²

7. On 10 October 2024, Mr. Ntabakuze filed a motion submitting that, on 16 August 2024, the administration of the Prison, confiscated the electronic devices belonging to ICTR prisoners, including his own. He requested that the President order the Registrar, pursuant to Rule 67(1) of the Mandela Rules, to compel the Beninese authorities to implement measures ensuring the integrity of the seized items and to provide immediate proof thereof to the Mechanism. He further requested the urgent return of all his equipment within a few days, in accordance with Rule 53 of the Mandela Rules. Should the Beninese authorities fail to comply with these requests, he seeks an order from the President for his immediate transfer to another host country, such as Senegal, along with all his electronic devices and personal belongings.¹³
8. On 15 October 2024, the President issued an additional order following Ntabakuze's Motion instructing the Registrar: "(i) to include any information of relevance with respect to the subject-matter of the Motion in his submissions due per the Order of 8 October 2024; and (ii) to transmit translated versions of the Motion, including its annex, and the present order to the Government of Benin."¹⁴

III. SUBMISSIONS

Search and Seizure of Electronic Items at the Prison

9. On 18 August 2024, the *Regisseur* of the Prison ("*Regisseur*") informed the Registry, via letter, of a search and seizure exercise, conducted on 16 and 17 August 2024, in the prison cells of convicted persons serving their sentences under the Mechanism's supervision at the Prison. This search resulted in the confiscation of various electronic items that the Beninese authorities deemed to be capable of facilitating communication, in violation of their Prison regulations.

¹² First Order for Submissions, p. 3 - 4.

¹³ *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77-R90.1, Public Motion to the President concerning Seizure and Imminent Destruction of Electronic Devices of ICTR Prisoners at Akpro-misserete Prison in Benin – With Annex, public with public annexes, 10 October 2024, ("Ntabakuze Motion").

¹⁴ Second Order for Submissions, p. 4.

10. The letter to the Registry included a detailed list of the items seized by the Prison authorities during the searches conducted. The seized items included various electronic equipment and related items, such as USB keys, computers, phones, SIM cards, scanners, external hard drives, and printers. The list of these seized items is annexed confidentially to this submission in compliance with the Orders.¹⁵
11. On 19 August 2024, the Registry notified the President, via email, about the search and seizure exercise at the Prison.

Steps undertaken by the Registry regarding the Seizure

12. On 20 August 2024, the Registry requested the prison authorities to ensure that the seized items are secured particularly as they may contain attorney-client privileged information. The *Regisseur* of the Prison confirmed on the same date that the seized items were securely stored at the Prison and would remain secure upon transfer to the *Agence pénitentiaire du Bénin*.
13. On 28 August 2024, the Registry sent an official letter to the *Directeur Général* of the *Autorité pénitentiaire du Bénin* (“*Directeur Général*”), seeking clarification concerning the seized items. In the letter, the Registry, *inter alia*, acknowledged that although the Convicted Persons are required to adhere to prison regulations in accordance with the Enforcement Agreement,¹⁶ there are concerns that some of the seized items, such as computers (without Wi-Fi), USB keys and external hard drives may not be used for communication purposes. Additionally, the Registry conveyed the concerns raised by Counsel that the seized items contain attorney-client privileged information.
14. On 20 August 2024, the Registry received two letters from Mr. John Philpot (“Mr. Philpot”) dated 19 August 2024 regarding the search of the cells of Mr. Akayesu, and Mr. Nizeyimana respectively, and the seizure of some of their items. Mr. Philpot requested the immediate return of the seized items. On 29 August 2024, the Registry responded to Mr. Philpot’s letters. In its response, the Registry informed him of its ongoing communication with the Prison authorities concerning this matter.

¹⁵ See Annex A, Tableau des objets prohibés saisis dans les cellules des détenus du MTPI.

¹⁶ See Article 3(1) of the Enforcement Agreement, which states that: “[t]he conditions of imprisonment shall be governed by the law of the requested State and be subject to the supervision of the Mechanism”.

15. On 6 September 2024, the Registry formally requested, via email, a copy of the Rules and Regulations governing the prohibition of items in the prison from the *Directeur Général*. The Registry has not yet received the document as at the date of this filing.
16. On 16 September 2024, the Registry received a *Note Verbale* from the Ministry of Foreign Affairs of Benin, dated 13 September 2024, which transmitted a letter from the Convicted Persons addressed to Mr. Philpot, in his capacity as president of the RAPP/Support Network for Rwandan Political Prisoners Association, concerning the search and seizure.
17. On 26 September 2024, the Registry received a *Note Verbale* dated 24 September 2024 from the Ministry of Foreign Affairs of Benin conveying a letter from the Minister of Justice and Legislation of Benin addressed to the President, of the Mechanism regarding the search and seizure of electronic items.
18. On 1 October 2024, the Registry received a letter from Mr. Steven Kay K.C (“Mr. Kay”) and Ms. Gillian Higgins (“Ms. Higgins”) regarding the search and seizure and a request for the seized items to be returned. On 4 October 2024, the Registry replied to the letter, and informed them of the Registry’s ongoing communication with the Prison authorities concerning the matter.
19. Since being informed of the search and seizure of the electronic equipment and related items on 18 August 2024, the Registry has diligently made efforts to engage with the relevant Beninese authorities to seek clarification regarding the seizure of the items, and the pertinent prison regulations on prohibited items in the prison.
20. As the Registry was undertaking an official mission concerning medical matters from 3 to 4 October 2024 in Benin, a Registry official used the opportunity, during the mission, to follow up on the search and seizure of the electronic items with the newly appointed *Regisseur* of the Prison. The previous *Regisseur* who was in office during the search exercise had been transferred elsewhere shortly before the mission.
21. The Registry official reiterated the concerns expressed by the Convicted Persons whose items were seized during the search. The Registry official observed that the Convicted Persons had previously been allowed to possess computers prior to the search and stated that some of the seized items might contain privileged information. Following a joint meeting with the Convicted Persons, the Registry representative informed the new *Regisseur* that the Convicted persons reported that the situation was causing them stress,

particularly those in the process of preparing early release requests with their lawyers. The Registry official also relayed the Convicted Persons' concern that the condition of the seized items could deteriorate while in the custody of the Beninese authorities which would render the information in the devices useless. The new *Régisseur* assured the Registry official that he would forward these concerns to his superiors.

22. Subsequent to the Registry's mission to Benin, on 14 October 2024, the Registrar had a telephone conversation with the *Directeur Général* regarding the search and seizure of the Convicted Persons' items and further conveyed the Applicants' concerns. The *Directeur Général* informed the Registrar that while the prohibition of all electronic devices has always been the rule in Benin's prisons, enforcement had been lax over the years, leading to the current situation. He informed the Registrar that the prison authorities have decided to strictly enforce the rule moving forward. As a gesture of goodwill towards the Mechanism, the *Directeur Général* offered to release the seized items either to the Mechanism or to a relative of the Convicted Persons in Benin. He also committed to providing the Registrar with a copy of the Prison regulations as well as a list of prohibited items at the Prison, as soon as possible.
23. On 15 October 2024, the Officer-in-Charge of the Registry sent a letter to Mr. Kay, Ms. Higgins, and Mr. Philpot, communicating the offer made by the *Directeur Général*. On 16 October 2024, Mr. Kay, Ms. Higgins, and Mr. Philpot responded, formally declining the offer. They indicated that the seized items contain privileged material and must be promptly returned to the Applicants.
24. On 17 October 2024, in compliance with the First Order for Submissions, the Registry sent a Note Verbale to the Government of Benin, transmitting French translated versions of the Akayesu Motion, Nizeyimana Motion, (excluding their confidential annexes), Musema Motion, and the First Order for Submissions.¹⁷
25. On 21 October 2021, pursuant to the Second Order for Submissions, the Registry transmitted a Note Verbale to the Government of Benin along with the French translations of both the Ntabakuze Motion and the Second Order for Submissions.¹⁸
26. As of the date of this submission, the Registry has not received any further response from the Beninese authorities.

¹⁷ See Annex B, DHL Proof of Delivery of Akayesu Motion, Nizeyimana Motion, (excluding their confidential annexes), Musema Motion, and the First Order for Submissions.

¹⁸ The Registry notes that it has not yet received the proof of delivery from DHL as of the time of this filing.

27. The Registry has expressed concerns to the relevant Beninese authorities regarding the seizure of specific electronic items, including computers, USB keys, and external hard drives, which may not have been used for communication purposes. Additionally, the Registry highlighted concerns that some of these items may contain privileged information. These concerns were communicated through written correspondence¹⁹ and were further addressed during an official mission to Benin,²⁰ where a Registry official followed up directly with the newly appointed *Regisseur* of the prison.
28. In conclusion, the Registry continues to make sustained efforts to seek clarification from the prison authorities regarding the seizure of the electronic items.
29. The Registrar remains at the President's disposal should additional information or action be required.

Respectfully submitted,



Abubacarr M. Tambaou
Registrar

Done this 21st day of October 2024

At Arusha,

Tanzania.

¹⁹ See para. 12, 13, and 15.

²⁰ See para. 20.



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