

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-55-A

THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge William Hussein Sekule
Judge Vagn Prusse Joensen
Judge Jose Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. John Hocking

Date: 29 November 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REPLY BRIEF: MOTION FOR REDACTED VERSIONS
OF RULE 86 (F) FILINGS

The Office of the Prosecutor:

Laurel Baig
Barbara Goy
Katrina Gustafson

Counsel for Radovan Karadzic:

Peter Robinson
Kate Gibson

1. Radovan Karadzic has moved for the issuance of redacted versions of any filings that may have been made in his case at the Mechanism pursuant to Rule 86(F). On 28 November 2016, there was filed the *Prosecution's Response to Karadzic's Motion for Redacted Versions of Rule 86(F) Filings*. President Karadzic now replies.

2. President Karadzic appreciates that the Prosecution does not oppose the motion as it pertains to decisions on such motions.¹

3. Why are these motions being filed *ex parte* in the first place?

4. Such a practice provides the appearance of a Mechanism for prosecutors only. National prosecutors request disclosure of protected information of Prosecution and Defence witnesses. The MICT Office of the Prosecutor submits its views. The Appeals Chamber takes a decision—all without notice to the Defence or an opportunity to be heard.

5. Excluding President Karadzic from a stream of *ex parte* communication between his adversaries and the judges who will decide his case on the merits strikes at the legitimacy of this institution and is counter to the transparency with which it professes to operate.

6. This needs to be fixed.

7. The first step is the disclosure of redacted versions of the pleadings in *ex parte* proceedings that have already commenced in this case before the Mechanism.

8. President Karadzic disagrees in part with the Prosecution's opposition to disclosure of the application, the prosecution's response, and other filings of the parties in Rule 86(F) proceedings.²

9. The first pleading normally filed is the application by the national prosecutor or defendant. The application will contain two components—the pseudonym of the witness whose material is sought and the nature of the national proceeding in which the material is needed.

10. Disclosing the pseudonym to President Karadzic will not lead to the disclosure of confidential information. He already knows the identity of all witnesses in his case.

¹ *Response* at para. 1

² *Response* at para. 2

11. Disclosure of the details of the proceeding in which the material is needed may, in some circumstances, reveal information of a confidential nature that President Karadzic does not have and does not need. That information can be properly redacted where it is sought during an investigation. Where it is sought during national proceedings that have already commenced and are public, there is no reason for such redactions. This should be decided on a case-by-case basis.

12. The second pleading normally filed is a submission by the Registrar on whether the witness consents to the disclosure. There is no reason to keep this information from the Defence, which already knows the identity of the witness. Annexes that might reveal the current location of the witness can be redacted.

13. The third pleading normally filed is the response of the Prosecution. There is no reason why the position of the Prosecution should not be disclosed to the Defence. The Defence has a particular interest in knowing what the Prosecution's representations are concerning witnesses who testified at the trial. Findings based upon the testimony of these very witnesses are likely the subject of President Karadzic's appeal.

14. Therefore, a blanket prohibition on disclosure of the pleadings in Rule 86(F) is unwarranted and unjustified.

15. The final issue is whether public or confidential redacted versions should be filed. This also requires a case-by-case approach. President Karadzic favours the issuance of both confidential and public redacted versions when redactions needed for the public are not needed for the Defence, who already knows the identity of the witness.

16. President Karadzic reiterates the need for timely notice of Rule 86(F) applications in his case so that he can be a party to them. He would like to contribute to the Chamber's decision-making process. It saddens his counsel that his contribution is thought to have so little value that the Chamber is happy to make these decisions without hearing from the Defence.

17. The Prosecution's reference to fulfilling the expectation of a "degree of trust" of the party who files the application *ex parte*³ demonstrates the fallacy of allowing Rule 86(F) proceedings to be *ex parte* in the first place. If applicants are aware that Rule 86(F)

³ *Response* at para. 2

applications must be filed on an *inter partes* basis, there will be no disappointment when redacted versions are properly disclosed.

18. The Appeals Chamber should order disclosure of redacted versions of all Rule 86(F) filings in this case before the MICT and the President should ensure that no such applications are filed and considered on an *ex parte* basis in the future.

Word count: 848

Respectfully submitted,

A handwritten signature in cursive script that reads "Peter Robinson". The signature is written in a dark grey or black ink.

PETER ROBINSON

Counsel for Radovan Karadzic