



United Nations  
Nations Unies

Mechanism for  
International  
Criminal  
Tribunals

Mécanisme pour  
les Tribunaux  
Pénaux  
Internationaux

<b>CASE/AFFAIRE NO.</b> MICT-13-55-A		<b>DATE</b> 17 November 2016
<b>FROM/DE</b> RAM DORAISWAMY, COURT OFFICER <i>fy</i>		
<b>TO/A</b>		
<input checked="" type="checkbox"/> President MICT/ <i>Président du MTPI</i>	<input checked="" type="checkbox"/> Prosecutor MICT/ <i>Procureur du MTPI</i>	<input checked="" type="checkbox"/> Defense Counsel/ <i>Conseil de la Défense</i>
<input checked="" type="checkbox"/> MICT Chambers/ <i>Chambres MTPI</i>	<input checked="" type="checkbox"/> Prosecutor Team MICT/ <i>Équipe du Procureur du MTPI</i>	MR PETER ROBINSON MS KATE GIBSON
0 Single Judge/ <i>Juge unique</i>		
0 Embassy/ <i>Ambassade</i>		
<input checked="" type="checkbox"/> Registrar/Deputy Registrar/ <i>Greffier/Greffier adjoint</i>	<input checked="" type="checkbox"/> Witness Support and Protection Unit/ <i>Service d'appui et de protection des témoins</i>	
<input checked="" type="checkbox"/> MICT Arusha Registry/ <i>Greffe de la Division du MTPI à Arusha</i>	0 UNDU / <i>QPNU</i>	
<input checked="" type="checkbox"/> Courtroom Operations/ <i>Opérations en salle d'audience</i>	<input checked="" type="checkbox"/> OLAD/ <i>Bureau de l'aide juridictionnelle et de la défense</i>	
<input checked="" type="checkbox"/> Judicial Records Unit/ <i>Service des dossiers judiciaires</i>	0 Other/ <i>Autre</i>	
<input checked="" type="checkbox"/> Communications Service/ <i>Service Communication</i>		
<b>PLEASE FIND ATTACHED/VEUILLEZ TROUVER CI-JOINT</b>		
0 Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/ <i>Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ___/___/___</i>		
0 Order/Decision issued by the President on/ <i>Ordonnance/Décision émise par le Président le ___/___/___</i>		
<input checked="" type="checkbox"/> Motion/ <del>Request</del> Application submitted by Prosecution/Defence Counsel on/ <i>Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le 16/11/2016</i>		
0 Response/reply/brief submitted by Prosecution/Defence Counsel on/ <i>Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ___/___/___</i>		
0 Decision of the Registrar on/ <i>Décision du Greffier le ___/___/___</i>		
0 Other/ <i>Autre</i>		
<b>RECEIVED/RECU</b>		<b>FILED/ENREGISTRE</b>
<input checked="" type="checkbox"/> Office hours/ <i>heures ouvrables</i> Date: 17/11/2016		<input checked="" type="checkbox"/> Office hours/ <i>heures ouvrables</i> Date: 17/11/2016
0 Outside Office hours/ <i>en dehors des heures ouvrables</i> Date: ___/___/___ Time/Heure: ___ h		0 Outside Office hours/ <i>en dehors des heures ouvrables</i> Date: ___/___/___ Time/Heure: ___ h

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**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/  
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE  
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	MICT Registry/ Greffe du MPTI	<input type="checkbox"/> Arusha/ Arusha	<input checked="" type="checkbox"/> The Hague/ La Haye
<b>From/ De :</b>	<input type="checkbox"/> Chambers/ Chambre	<input checked="" type="checkbox"/> Defence/ Défense Peter Robinson	<input type="checkbox"/> Prosecution/ Bureau du Procureur <input type="checkbox"/> Other/ Autre :
<b>Case Name/ Affaire :</b>	Prosecutor v Radovan Karadzic	<b>Case Number/ Affaire n° :</b>	MICT-13-55-A
<b>Date Created/ Daté du :</b>	16 November 2016	<b>Date transmitted/ Transmis le :</b>	16 November 2016
<b>Original Language / Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
<b>Title of Document/ Titre du document :</b>	MOTION FOR REDACTED VERSIONS OF RULE 86 (F) FILINGS		
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
	<input type="checkbox"/> Strictly Confidential/ Strictement confidentiel	<input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/préciser) :	
<b>Document type/ Type de document :</b>	<input checked="" type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Submission from parties/ Écritures déposées par des parties	<input type="checkbox"/> Indictment/ Acte d'accusation
	<input type="checkbox"/> Decision/ Décision	<input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers	<input type="checkbox"/> Warrant/ Mandat
	<input type="checkbox"/> Order/ Ordonnance	<input type="checkbox"/> Book of Authorities/ Recueil de sources	<input type="checkbox"/> Notice of Appeal/ Acte d'appel
	<input type="checkbox"/> Judgement/ Jugement/Arrêt	<input type="checkbox"/> Affidavit/ Déclaration sous serment	

**II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT**

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise
<input type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word est jointe)
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<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :
<b>Original/ Original en</b> <input type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
<b>Translation/ Traduction en</b> <input type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
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Rev: April 2014/Rév. : Avril 2014

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: 16 November 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR REDACTED VERSIONS OF  
RULE 86 (F) FILINGS

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The Office of the Prosecutor:

Ms Laurel Baig  
Ms Barbara Goy  
Ms Katrina Gustafson

Counsel for Radovan Karadzic:

Mr Peter Robinson  
Ms Kate Gibson

1. Dr Radovan Karadzic hereby moves 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).

2. Rule 86(F) provides in pertinent part that:

Once protective measures have been ordered in respect of a victim or witness in any proceedings before the ICTY, the ICTR, or the Mechanism (the “first proceedings”), such protective measures:

(i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Mechanism (“second proceedings”) or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule...

3. This Rule is the vehicle for national prosecutorial authorities, and parties to national proceedings, to obtain access to the identity and private or closed session testimony of witnesses who have testified at the Tribunal with protective measures.

4. Experience has shown that these proceedings have been almost exclusively conducted on an *ex parte* basis among the national applicant, the Office of the Prosecutor, and the Chamber or Single Judge. The defence has been excluded from notice of such proceedings and an opportunity to be heard.

5. After counsel for Dr Karadzic inadvertently learned of the existence of 11 such applications entertained by the Trial Chamber in his case, the Appeals Chamber ordered the issuance of public redacted versions of decisions on those applications.<sup>1</sup> The issuance of public redacted versions of those decisions demonstrates that there is no good reason for conducting such proceedings entirely in secret.

6. Dr Karadzic has no way of knowing whether any similar applications have been filed since March when the Mechanism assumed jurisdiction over his case. However, in the President’s 2016 Annual Report to the United Nations General Assembly, the Registry reported that:

During the reporting period, the Registry processed 120 requests for assistance, including requests to question detained persons and protected witnesses, to rescind, vary or augment protective measures for witnesses and to retrieve and transmit confidential and certified material to national authorities.<sup>2</sup>

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<sup>1</sup> *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18 July 2016)

<sup>2</sup> UN Doc A/71/262, para. 80

7. The exclusion of the defence from such proceedings undermines transparency and the well-established principle that “all proceedings before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential.”<sup>3</sup> Dr. Karadzic has a legitimate forensic purpose for accessing such filings, as they can alert him that prosecution witnesses may have subsequently testified or provided statements in national proceedings and may enable him to uncover contradictory or exculpatory additional evidence.<sup>4</sup>

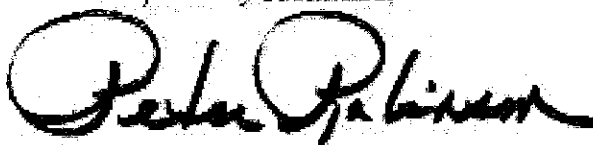
8. Indeed, the defence can contribute to the Mechanism and the applicant by making submissions on the applications when warranted, and perhaps even bringing to the attention of the applicant contradictory evidence that might assist it in evaluating the information it receives from the witness and the Prosecution.

9. As stated at the 15 November 2016 Status Conference, this problem can be solved if the MICT President, when assigning Rule 86(F) applications to a Single Judge, simultaneously orders the applicant to file a public redacted version.<sup>5</sup> While such a global solution is beyond the scope of any motion to be made in this case, one hopes it could be considered.

10. Therefore, Dr. Karadzic respectfully requests that the Appeals Chamber order a public redacted version of all Rule 86(F) filings in his case to be filed.

Word count: 767

Respectfully submitted,



PETER ROBINSON  
Counsel for Radovan Karadzic

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<sup>3</sup> *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 8; *Prosecutor v Kamuhanda*, No. MICT-12-33-R86.1, *Decision on a Motion to Reclassify a Submission by the Registry* (5 February 2016), p. 2; *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 8

<sup>4</sup> Dr Karadzic requested the subsequent statements and testimony of the witnesses covered by the 11 decisions made available to him by the Appeals Chamber and is currently working with the Bosnian government to obtain those materials.

<sup>5</sup> T26