UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No: MICT-22-124

Date: 21 March 2022

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BEFORE THE APPEALS CHAMBER

Before: **Judge Carmel Agius, Presiding**
Judge Seon Ki Park
Judge Margaret M. deGuzman

Registrar: **Mr Abubacarr Tambadou**

IN THE MATTER OF

FRANÇOIS-XAVIER NZUWONEMEYE
PROSPER MUGIRANEZA
PROTAIS ZIGIRANYIRAZO
ANATOLE NSENGIYUMVA
ALPHONSE NTEZIRYAYO
ANDRE NTAGERURA
THARCISE MUVUNYI
INNOCENT SAGAHUTU

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NZUWONEMEYE AND MUGIRANEZA APPEAL AND MOTION FOR APPEALS HEARING

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Government of the Republic of the Niger

Government of the United Republic of Tanzania

Government of the Kingdom of the Netherlands

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Introduction

1. Francois-Xavier Nzuwonemeye and Prosper Mugiraneza ("the Appellants") are in Day 88 of their unlawful detention in Niger, where the Mechanism arranged for them to relocate following their acquittals at the International Criminal Tribunal for Rwanda ("ICTR"). They are in a desperate state, being without their freedom and identification documents and in constant fear of imminent expulsion to Rwanda, where they are considered genocidaires despite their acquittals.

2. After both the Republic of the Niger ("Niger") and Tanzania refused to comply with his orders, the Single Judge issued his *Further Decision Regarding the Relocated Persons in Niger* (8 March 2022)(the "Impugned Decision"). In that decision, he denied any further relief, declaring that the matter must now be solved diplomatically.

3. The Appellants hereby appeal from that decision. They contend that the Appeals Chamber has jurisdiction to hear their direct appeal and that the Single Judge committed legal errors that caused him to unjustifiably deny them relief. The further urge the Appeals Chamber to hear oral arguments on this appeal.

Relevant Procedural History

4. The Appellants were acquitted by the ICTR in 2013 and 2014 after spending 14 years in detention.[1] They are now 65 and 67 years old.

5. Following their acquittals, the Appellants were released to live in a safe house in Tanzania with the financial and diplomatic assistance of the ICTR, and later the International Residual Mechanism for the Criminal Tribunals ("Mechanism"). Since then, they have been engaged in years-long efforts to reunite with their families, who are citizens and residents of France.[2]

6. On 18 November 2021, the Appellants were informed for the first time about their possible relocation to Niger pursuant to an agreement between Niger and the Mechanism entered into three days earlier.[3] They agreed to the terms of the relocation.[4]

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[1] *Ndindiliyimana et al v Prosecutor*, No. ICTR-00-56-A, *Judgement* (11 February 2014); *Mugenzi & Mugiraneza v Prosecutor*, No, ICTR-99-50-A, *Judgement* (4 February 2013).

[2] See, i.e. *Prosecutor v. Nzuwonemeye*, No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019).

[3] Agreement Between the Government of the Republic of Niger and the United Nations on the Relocation of Persons Released or Acquitted by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals (15 November 2021) as referenced in *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), fn. 3.

[4] *Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* (29 January 2022), Annex A, para. 4.

7. On 5 December 2021, they were transferred to Niger by the Mechanism along with six other acquitted or released persons.[5]

8. On 13 December 2021, the President of the Mechanism commended before the United Nations Security Council the "exemplary cooperation" of Niger and the "major breakthrough" constituted by the signing of this Relocation Agreement and its implementation.[6] In response, Niger's delegate, as President of the Security Council, speaking in his national capacity, welcomed the signing of the Relocation Agreement.[7]

9. On 23 December 2021, the Appellants were suddenly confined to their residence in Niamey, Niger by the police. The identification documents that had been issued to them were confiscated.[8] On 27 December 2021, they were served with a "definitive expulsion order" issued by the authorities of Niger. The order required them and the six other relocated persons to leave the territory of Niger within 7 days for "diplomatic reasons".[9]

10. On 29 December 2021, Nzuwonemeye filed his *Urgent Request for an Order of Cooperation to the Government of the Republic of the Niger*. Mugiraneza joined that request on the same day.[10] The requests were filed by counsel, acting *pro bono*, after having received urgent pleas for help from the Appellants. It was through the intervention of *pro bono* counsel that the Mechanism was alerted to the expulsion order, as Niger had not informed the Mechanism.[11]

11. On 30 December 2021, the President, noting that the expulsion order appeared to be in violation of both the spirit and letter of the relocation agreement with Niger, issued an instruction to the Registrar to, *inter alia*, engage with the Government of Niger and to "take all necessary actions in order to ensure that the Expulsion Order does not cause any prejudice to the fundamental rights of the Relocated Persons."[12]

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[5] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 2.
[6] S/PV.8927, Meeting Record of United Nations Security Council (13 December 2021), pp. 3-4.
[7] *Id*, p. 18.
[8] *Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* (29 January 2022), Annex A, para. 6.
[9] Arrêt 001258 – MI/D/DOPN/DS du 27 décembre 2021 portant expulsion définitive du territoire de la République du Niger de huit (08) ressortissants rwandais ("Expulsion Order") attached as Annex A to *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Urgent Request for an Order of Cooperation to the Government of the Republic of the Niger* (29 December 2021).
[10] *Prosecutor v Mugiraneza*, No. MICT-14-75, *Joinder to Urgent Request for an Order of Cooperation to the Government of the Republic of the Niger* (29 December 2021).
[11] S/2022/36, *Letter dated 19 January 2022 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council*.
[12] *In the Matter of Nzuwonemeye et al*, No. MICT-13-43, *Instruction to the Registrar* (30 December 2021).

12. On 31 December 2021, after having been assigned to rule on the motions,[13] Judge Joseph E. Chiondo Masanche (the "Single Judge") ordered Niger to stay the Expulsion Order and to allow the relocated persons to remain on its territory, in accordance with the terms of the relocation agreement, pending final adjudication of the matter. Niger was further invited to file written submissions within 30 days.[14]

13. On 4 January 2022, the Registrar filed a confidential and *ex parte* submission to the Single Judge indicating that he was informed, by a *note verbale* dated 4 January 2022, that the Government of Niger had decided to grant an additional 30 days to the relocated persons to leave the territory of Niger in order to allow the Mechanism to find another relocation country.[15]

14. On 14 January 2021, the Single Judge, having been informed that Niger had placed the relocated persons under house arrest since 23 December 2021 and had not returned their identification documents,[16] issued another order to Niger. He ordered Niger "to continue to execute and apply all dispositions of the Relocation Agreement, in full compliance with their letter and spirit, and to ensure the safety and welfare of the Relocated Persons pending final adjudication of the matter" and "to ensure that the Relocated Persons have their identification documents returned and enjoy freedom of movement on its territory, in accordance with Article 5 of the Relocation Agreement, pending final adjudication of the matter." He further indicated that Niger was obligated not to limit its stay of the expulsion order to 30 days, but until final resolution of the dispute.[17]

15. On 19 January 2022, Mechanism President Carmel Agius wrote to the President of the United Nations Security Council informing him of the failure of Niger to honor its obligations under its agreement with the Mechanism and "seek[ing] the support of the Security Council in impressing upon the Republic of Niger the need to adhere fully to both the letter and spirit of the Agreement."[18]

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[13] *In the Matter of Nzuwonemeye at al*, No. MICT-13-43, *Order Assigning Motions to the Duty Judge of the Arusha Branch* (30 December 2021).
[14] *In the Matter of Nzuwonemeye et al*, No. MICT-13-43, *Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions* (31 December 2021).
[15] *In the Matter of Nzuwonemeye et al.*, No. MICT-13-43, *Registrar's Submission Pursuant to "Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions" of 31 December 2021* (4 January 2022) (confidential and ex parte), as referenced in the *Further Order to the Republic of Niger and to the Registrar* (14 January 2022), para. 11 ("*Further Order"*).
[16] *In the Matter of Protais Zigiranyirazo,* No. MICT-12-27, *Urgent Motion by Protais Zigiranyirazo Concerning Flagrant Violations by Niger of the Mechanism Order and Related Requests* (6 January 2022), paras. 3-4.
[17] *Further Order to the Republic of Niger and to the Registrar* (14 January 2022), pp. 5,7.
[18] S/2022/36, *Letter dated 19 January 2022 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council*.

16. On 25 January 2022, the courts of Niger dismissed an application brought by the acquitted and released persons for restoration of their freedom of movement and identification documents, finding the application to be moot in light of the Single Judge's *Further Order*.[19]

17. On 29 January 2022, Nzuwonemeye filed his *Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* ("*Motion*"). He contended that Niger should be reported to the United Nations Security Council for its continuing refusal to obey the order of the Single Judge to return his identification documents, allow him freedom of movement, and extend the stay of the expulsion order. He requested an oral hearing in The Hague at which he would be present. Mugiraneza joined the Motion on 31 January 2022.[20] Both motions were filed by counsel acting *pro bono*, who felt an obligation to continue to assist the Appellants and the Mechanism by advocating legal avenues that the Mechanism could use to end the Appellants' unlawful detention and save them from expulsion to Rwanda.

18. On 3 February 2022, a law firm based in Niamey filed submissions on behalf of the Government of Niger indicating that the position of Niger is as follows: (i) the Order of 31 December 2021 to stay the Expulsion Order should be quashed as it misapplies Article 28 of the Statute of the Mechanism; and (ii) the Expulsion Order duly complies with Article 6(3) of the Relocation Agreement and Niger was entitled to request the Relocated Persons to leave the country, since their presence on its territory is such as to constitute a threat to public order and national security.[21]

19. On 7 February 2022, the Single Judge declined to report Niger to the United Nations Security Council or hold a hearing. Instead, relying on the Headquarters Agreement with Tanzania,[22] he ordered that the Appellants and the other relocated persons be transferred to Arusha forthwith. He ordered the Registrar to report on the implementation of his order.[23]

20. On 14 February 2022, the Registrar filed a submission indicating that Tanzania was considering the order and had yet to respond.[24] On 28 February 2022, the Registrar filed a further submission indicating that he received a *note verbale* dated 24 February 2022, wherein the Government

[19] The order from the court in Niger is attached as Annex A(1) to Nzuwonemeye's *Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* (29 January 2022).
[20] *Mugiraneza Joinder to Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* (31 January 2022).
[21] *Observations* (3 February 2022) as quoted in the *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 18.
[22] *Agreement Between the United Nations and the United Republic of Tanzania Concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals* (26 November 2013).
[23] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022).
[24] *Registrar's Submission pursuant to "Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch" of* 7 February 2022 (14 February 2022).

of Tanzania stated that it considered that its obligation to facilitate the temporary stay of the acquitted and released persons, pursuant to the Headquarters Agreement, had come to an end upon their transfer to Niger. Therefore it would not presently facilitate the return of the Relocated Persons on its territory.[25]

21. On 1 March 2022, Nzuwonemeye filed a *Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022*. On 4 March 2022, Mugiraneza filed his *Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022* in which he also joined in the relief requested by Nzuwonemeye's request of 1 March 2022.[26] Again, the Appellants were represented by counsel *pro bono*, with the motivation of assisting them and the Mechanism to find a legal solution to their desperate plight.

22. On 8 March 2022, the Single Judge issued the Impugned Decision.

23. On 9 March 2022, the Appellants filed their notice of appeal. They also requested that the Appeals Chamber (1) assign counsel to them to pursue the appeal; (2) extend the time for the filing of the appeal; and (3) hold a status conference in The Hague at which they would be required to be present.[27]

24. On 15 March 2022, President Agius assigned the judges to the appeal.[28] On the same day, the Appeals Chamber denied the motions for assignment of counsel and status conference and granted a seven-day extension for the filing of the appeal.[29]

25. This is that appeal.

26. The Appellants remain detained under house arrest without their identity documents and under an expulsion order that can be executed at any time. The Registrar has been unable to find a State to agree to receive them.

The Impugned Decision

27. In the Impugned Decision, the Single Judge first dealt with Niger's non-compliance with his orders to allow the Appellants freedom of movement, return their identification, and lift the expulsion order. He declined to report Niger to the United Nations Security Council or hold an oral hearing. He reasoned that the President of the Mechanism had proactively referred the matter of Niger's non-compliance to the Security Council by the President's 19 January 2022 letter, obviating

[25] Impugned Decision, p. 2
[26] *Prosper Mugiraneza's Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022* (4 March 2022).
[27] *Nzuwonemeye and Mugiraneza Notice of Appeal and Related Motions* (9 March 2022).
[28] *Order Assigning Judges to a Bench of the Appeals Chamber* (15 March 2022).
[29] *Decision on Joint Request for Assignment of Counsel, Extension of Time to File an Appeal, and Scheduling a Status Conference* (15 March 2022).

the need for a further order to do so.[30] As a result, there was no need to hold an oral hearing on that motion.[31]

28. Turning to Tanzania's non-compliance with his order that the Appellants be returned to Arusha pending their permanent location to another State, the Single Judge held that the difference between his interpretation of the Headquarters Agreement and that of the Government of Tanzania could not be resolved by a further judicial order. Instead, pursuant to Article 44 of the Headquarters Agreement, it had to be "settled by consultation, negotiation, other agreed mode of settlement or, failing that, arbitration".[32]

29. Although recognizing the duty of the Mechanism to ensure the welfare of the acquitted or released persons, first established by the ICTR Appeals Chamber in the *Ntagerura* case,[33] the Single Judge nevertheless found that "all appropriate and available judicial relief has been extended to the Relocated Persons and that the primary avenue for redressing this crisis lies in political, diplomatic, and administrative efforts undertaken by the Registrar under the supervision of the President and with the President's referral of this matter to the Security Council".[34]

30. The Single Judge ordered the Registrar to "intensify his efforts and actively engage with Niger and other possible relocation States until an acceptable resolution of this matter is found in order to ensure the respect of the fundamental rights of the Relocated Persons".[35]

31. He dismissed the Appellants' motions.

Applicable Provisions

32. The provisions of the Mechanism's Statute, Rules of Procedure and Evidence, Practice Directions, and Headquarters Agreements with Tanzania and The Netherlands that are applicable to this appeal are set forth in Annex A.

Jurisdiction

33. Neither the Mechanism's Statute nor its Rules explicitly provide for an appeal as of right from a decision related to the proper interpretation of Article 28 of the Statute.

34. However, in a 2019 decision in an appeal brought by Nzuwonemeye seeking an order to France to allow him to re-join his family and receive him on its territory, the Appeals Chamber held that it may exercise jurisdiction where the appeal raised questions as to the scope of the

[30] Impugned Decision, p. 3.
[31] *Id*, pp. 3-4.
[32] *Id*, p. 4.
[33] *In Re Andre Ntagerura* , No. ICTR-99-46-A28, *Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008*, (18 November 2008), para.19.
[34] Impugned Decision, p. 4.
[35] *Id.*

Mechanism's power to order cooperation of States pursuant to Article 28 and implicated a clearly defined right of the Appellant. It exercised its jurisdiction and heard the appeal on the merits, finding that such issues concerned the proper functioning of the Mechanism.[36]

35. There is even greater reason for the Appeals Chamber to exercise its jurisdiction over the instant appeal. Not only does it involve a deprivation of the Appellants' family life, but Niger's violation of its obligations under Article 28 of the Statute continues to deprive the Appellants of their liberty, on an ongoing daily basis.

36. The Appeals Chamber has exercised its jurisdiction over a claim of third persons to release of assets frozen by the Mechanism,[37] access to confidential information in another case by a convicted person,[38] and the interpretation of protective measures for deceased witnesses.[39]

37. Therefore, the Appeals Chamber should find it consistent with its precedents and in the interests of justice to hear this direct appeal.

Grounds of Appeal

38. The Appellants contend that the Single Judge erred in the Impugned Decision as follows:

(A) In denying the *Motion to Report the Government of Niger to the United Nations Security Council and for an Oral Hearing* by equating the President's 19 January 2022 letter with a "report to the Security Council" within the meaning of Rule 8(A) of the Rules

(B) In finding that the remedy for Tanzania's refusal to comply with the order that the appellants be transferred to Arusha was limited to "consultation, negotiation, other agreed mode of settlement, or failing that, arbitration".

(C) In refusing to take available judicial action to comply with the Mechanism's duty to ensure the welfare of the acquitted or released persons

Standard of Review

39. An appellant must demonstrate that the Single Judge committed a discernible error in that the Impugned Decision was based on an incorrect interpretation of the governing law, a patently incorrect conclusion of fact, or that it was so unfair or unreasonable as to constitute an abuse of discretion.

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[36] *Prosecutor v. Nzuwonemeye*, No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019), para. 7.
[37] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.2, *Decision on Appeal of Decision on Motion for Order Concerning Frozen Assets* (10 January 2022), para. 12.
[38] *Niyitegeka v Prosecutor*, No. ICTR-96-14-R75, *Decision on Motion for Clarification* (20 June 2008), para. 14.
[39] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016), para. 6.

40. In this respect, the Appeals Chamber will consider whether the Single Judge has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching the Impugned Decision.[40]

Argument

(A) The Single Judge made an incorrect interpretation of the governing law when equating the President's 19 January 2022 letter with a "report to the Security Council" within the meaning of Rule 8(A) of the Rules

41. The Single Judge denied the Appellants' request to report Niger to the United Nations Security Council on the sole ground that the President had already done so in his 19 January 2022 letter to the President of the Security Council.[41] This was an error. The Single Judge misunderstood the framework for formal reports of a State's noncompliance in the Mechanism's Statute and Rules of Procedure and Evidence based on a judicial finding.

42. That framework is found first in Article 28(2) of the Statute. That provision requires States to "comply without undue delay" with any request or order issued by a Judge of the Mechanism. Rule 8(A) of the Mechanism's Rules of Procedure and Evidence then provides what happens when a State fails to comply with an order issued by a Mechanism Judge. Where a Judge concludes that a State has failed to comply, they may request the President of the Mechanism to report the matter to the Security Council. The President is then obligated to notify the Security Council.

43. In the first challenge to this framework in 1998, brought by Croatia, the ICTY Appeals Chamber emphasised that the proper predicate to a report to the United Nations Security Council was a judicial finding:

> [T]he International Tribunal is endowed with the inherent power to make a judicial finding concerning a State's failure to observe the provisions of the Statute or the Rules. It also has the power to report this judicial finding to the Security Council. The power to make this judicial finding is an inherent power: the International Tribunal must possess the power to make all those judicial determinations that are necessary for the exercise of its primary jurisdiction. This inherent power inures to the benefit of the International Tribunal in order that its basic judicial function may be fully discharged and its judicial role safeguarded.[42]

[40] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016), para. 7.
[41] Impugned Decision, p. 3.
[42] *Prosecutor v Blaskic*, No. IT-95-14-AR108 *bis*, *Judgement on the Request of the Republic of Croatia for Review of the Decision of the Trial Chamber II of 18 July 1997* (29 October 1997), para. 33.

44. The Appeals Chamber went on to hold that the collective action that might be taken by the Security Council upon receipt of a report under Rule 8 "may only be taken after a judicial finding has been made by the International Tribunal."[43]

45. President Meron, sitting as a Pre-Review Judge in the Mechanism's Appeals Chamber, has applied this principle at the Mechanism.[44] He also held that reporting a State's non-compliance to the Security Council pursuant to Rule 8(A) is the sole means of enforcement of a Mechanism order.[45]

46. Rule 8(A) thus provides the formal procedure for reporting the non-compliance of a State to the Security Council. By first requiring that the Judge be satisfied that the State has failed to comply with an obligation, the Rule provides an opportunity for the parties, and the State, to be heard and for a judicial finding to be made.

47. Judge Agius' letter to the Security Council, while greatly appreciated, was not a judicial finding—that is, a product of this formal procedure. It did not result from a process in which the parties and the State had an opportunity to be heard. The letter made no reference to Article 28 or Rule 8. It was written in his personal capacity as President of the Mechanism, rather than as a formal report of Niger's non-compliance under Rule 8 of the Rules.[46] Nor did the letter purport to seek any formal action by the Security Council, other than to "[impress] upon the Republic of Niger the need to adhere fully to both the letter and spirit of the Agreement."

48. If the President's "proactive" letters to the President of the Security Council are considered to be the equivalent of an official report of a State's non-compliance with an order of the Mechanism, the procedure of Rule 8(A) is circumvented. The State has no opportunity to be heard. The judicial finding required by the Appeals Chamber precedent is absent. Conceivably, a President can even make such a report where a Judge before whom the matter is heard doesn't believe a State has violated their order.

49. The emphasis on a judicial finding in the Appeals Chamber's jurisprudence demonstrates that the President's letter, as important and well-intentioned as it was, was not a substitute for a judicial finding under Rule 8 of the Rules. The Single Judge's conclusion that the President's letter obviated the need to engage in the procedure envisioned by Rule 8 was erroneous.

50. Even if the President's letter had constituted a report of a State's non-compliance with a Mechanism judge's order as envisioned by Rule 8, that letter was written at an early stage of the

[43] *Id*, para. 36, referring to ICTY Rule 7 *bis*, the equivalent of Mechanism Rule 8.
[44] *Prosecutor v. Ngirabatware*, No. MICT-12-29-R, *Decision on a Motion to Initiate Contempt Proceedings* (26 April 2017), p. 3.
[45] *Id*.
[46] i.e. "I am deeply troubled by the present circumstances and their potentially severe impact on the fundamental human rights of the relocated persons, as well as on the rule of law more generally."

crisis, when Niger's unlawful detention of the Appellants had been ongoing for 27 days. Since that letter, Niger had filed observations with the Single Judge indicating that it would not comply with his orders. Nothing precluded the Single Judge from asking the President to report Niger's continuing non-compliance with his orders, which had now been made explicit by Niger's written observations and had extended to 76 days at the time of the Impugned Decision.

51. The Single Judge's error resulted in three kinds of harm. First, since the Security Council has not been formally seised of a report of Niger's non-compliance with its obligations to the Mechanism, Niger has not been fully called to account for its unlawful detention of the Appellants, its confiscation of their identification documents, and its issuance of an illegal expulsion order. This promotes the notion that States can violate their obligations to the Mechanism with impunity.

52. Second, by bypassing the procedure called for in Rule 8, the Single Judge failed to take advantage of an opportunity to engage with the government in Niger by holding a hearing and pressing Niger for a satisfactory explanation for its violation of its agreement. Notably, Niger had engaged with the Mechanism by filing a written submission.[47] Having rejected the arguments set forth in those submissions in his order of 7 February 2022,[48] the Single Judge lost an opportunity to further engage with Niger through the procedure envisioned in Rule 8. This may have resulted in negotiations or an agreement that would have allowed the Appellants to remain in Niger under the conditions envisioned by the relocation agreement.

53. Third, by declining to order an oral hearing as requested by the Appellants, the Single Judge squandered an opportunity to actually put an end to their unlawful detention. Under the Headquarters Agreements with both The Netherlands and Tanzania, had the Single Judge held a hearing under Rule 8 on the *Motion*, and ordered the Appellants to be present,[49] those States would have been obligated to allow the Appellants to enter their territory and remain as long as their presence at the seat of the Mechanism remained necessary.

54. Once on the territory of the host State, the Appellants would have freedom of movement and no longer be detained. The Single Judge had the power to end their unlawful detention. He failed to do so because of his legal error in equating the President's letter with a formal report to the Security Council.

[47] *Observations* (3 February 2022).
[48] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022).
[49] While the Single Judge noted that such a hearing could be held without the Appellants being present (Impugned Decision, footnote 17), his error concerning the President's letter precluded him from deciding whether to hold a hearing in the first place. Additionally, in the case he cited, the issue was the State's detention of a Mechanism Judge, about which the detained person had no information. In this case, the issue was the Appellants' detention, about which they had submitted factual declarations and that affected them personally and profoundly.

55. Because the Single Judge erred when denying the Appellant's *Motion*, the Impugned Decision must be reversed, and the matter remanded to the Single Judge to consider the Appellants' motion anew.

(B) The Single Judge erred in finding that the remedy for Tanzania's refusal to comply with the order that the appellants be transferred to Arusha was limited to "consultation, negotiation, other agreed mode of settlement, or failing that, arbitration"

56. On 7 February 2022, the Single Judge ordered the immediate return of the Appellants to Arusha.[50] In response, Tanzania informed the Registrar that it would not presently facilitate the Appellants' return onto its territory,[51] thereby failing to comply with the Single Judge's order.

57. In addressing this non-compliance in the Impugned Decision, the Single Judge held that the difference between his interpretation of the Headquarters Agreement and that of the Government of Tanzania could not be resolved by a further judicial order, and instead, had to be "settled by consultation, negotiation, other agreed mode of settlement or, failing that, arbitration" pursuant to Article 44 of the Headquarters Agreement.[52] On that basis, he concluded that "all appropriate and available judicial relief" had been extended to the Appellants, [53] and shifted the burden back to the Registrar as the primary avenue for addressing the crisis.

58. Article 44 of the Headquarters Agreement is titled "Settlement of differences on the interpretation or application of this Agreement". It governs how disputes arising from the interpretation or application of the Headquarters Agreement should be settled "between the Parties", being "the United Nations and the host State".[54]

59. A difference in the interpretation or application of the Headquarters Agreement between the Parties cannot be understood as extending to include to the non-compliance of a State with a judicial order. If Article 44 were to be read in this way, this would mean a host State could disobey an order of the Mechanism, following which it would potentially face arbitration, but only after "consultation, negotiation, other agreed mode of settlement" with the Mechanism had failed. Only then, would the "difference" be referred to a Tribunal of three arbitrators, but only after either the State itself or the United Nations had made a written request for this referral.

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[50] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 29.
[51] *Registrar's Submission pursuant to "Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch" of 7 February 2022* (28 February 2022) as referenced by the Impugned Decision, p. 2.
[52] *Id*, p. 4.
[53] Impugned Decision, p. 4.
[54] Headquarters Agreement, Article 1(e).

60. What if the host State refused to receive on its territory a political ally indicted by the Mechanism? Would the Mechanism be precluded from making a judicial finding of non-compliance and reporting this refusal to the Security Council and instead be required to engage in a lengthy arbitration proceeding while the indicted person remained free? This example illustrates the error in the reasoning of the Impugned Decision.

61. Article 44 is procedurally impossible to invoke in the case of a State's non-compliance with a judicial order. The three appointed arbitrators would, in effect, serve as a kind of appellate body sitting above the Mechanism Judges, with the power to decide either in favour of the Judges who issued the order, or the non-compliant State who disobeyed it, and issue a final and binding arbitral award. This would require the Judges to delegate their judicial authority in Article 28 of the Statute to this panel of arbitrators, which is an impermissible abrogation of their judicial functions, and cannot have been the intention of the Headquarters Agreement drafters.

62. The Single Judge appeared to recognize this in the case of the Relocation Agreement with Niger, which has a similar settlement clause that had been invoked by the government of Niger in its submissions.[55] The Single Judge specifically noted the existence of this settlement clause in his decision of 7 February 2022, but held that "judicial intervention is and was required, and the powers that flow from Article 28 of the Statute and Security Council Resolution 1966 may be and were invoked to prevent any further or future harm."[56] Yet he inexplicably changed course in the Impugned Decision with Tanzania.

63. As explained above, where a Trial Chamber [or Single Judge] is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute, the procedure to be followed is not dispute resolution, but that set out in Rule 8 of the Rules; the Judge may request the President to report the matter to the United Nations Security Council, and the President is then obligated to do so. By invoking the dispute resolution clause of the Headquarters Agreement, the Single Judge erroneously circumvented this Rule 8 framework, thereby stripping the Mechanism of the sole means of enforcement of its judicial orders.[57] This approach arguably encourages future non-compliance with Mechanism orders, by dramatically watering down the penalty for non-compliance from being reported to the United Nations Security Council, to potentially facing arbitration but only after "consultation, negotiation, other agreed mode of settlement" has failed.

64. The powers of the Mechanism's Judges to make orders that are binding on States derive from Article 28 of the Mechanism's Statute. That Statute was adopted by Resolution 1966 of the

[55] *Observations* (3 February 2022) at p. 4.
[56] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 25
[57] *Id*.

United Nations Security Council in 2010. Should there be any limitations or derogation of that power, it would also have to come from the Security Council. The Headquarters Agreement was a document signed in 2013 by the United Nations' Under-Secretary General for Legal Affairs. This individual, acting for the Secretary General, could not diminish the powers given to the Mechanism's Judges by the Security Council.

65. In the *Karadzic* case, the ICTY Appeals Chamber held that the Statute could only be amended or derogated by a resolution of the United Nations Security Council.[58] As the Appeals Chamber observed:

> As the ambit of the Tribunal's primary jurisdiction is defined in the Statute, it follows that the only basis for limiting or amending the Tribunal's jurisdiction is a UNSC resolution.[59]

66. The Appeals Chamber went on to find that even if the Security Council was involved in concluding an agreement that limited the right of the Tribunal to prosecute an individual, it would not be operative unless the agreement were ratified by the Security Council. In the absence of such ratification, the agreement could not have any impact on the Tribunal's jurisdiction, even if it were entered into by a person with the actual authority of the Security Council.[60]

67. The Headquarters Agreement was entered into by a duly authorised United Nations official. However, like the agreement in the *Karadzic* case, it could not operate to derogate from the powers given to the Mechanism's judges in the Statute.

68. For these reasons, the Single Judge's holding that "the difference between my interpretation of the Headquarters Agreement and that of the Government of Tanzania cannot be resolved by a further judicial order" [61] was a legal error, warranting the intervention of the Appeals Chamber.

69. Even if Article 44 of the Headquarters Agreement could somehow be considered to supersede Article 28, the Single Judge erred in finding that there was a "difference in interpretation between his Order and the position of the government of Tanzania. In reality, there was no "difference in interpretation" of the Headquarters Agreement between the Single Judge and Tanzania. Tanzania's unwillingness to accept the Appellants was grounded in its concern that their return will likely be permanent.[62]

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[58] *Prosecutor v Karadzic*, No. IT-95-5/18-AR73.4, *Decision on Karadzic's Appeal of Trial Chamber Decision on Alleged Holbrooke Agreement* (12 October 2009), para. 35.
[59] *Id*, para. 36.
[60] *Id*, paras. 36-37.
[61] Impugned Decision, p.4.
[62] *Registrar's Submission pursuant to "Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch" of 7 February 2022* (28 February 2022) as referenced by the Impugned Decision, p. 2.

70. However, in his Order, the Single Judge specified that the return of the Appellants was "on a temporary basis until their transfer to another State".[63] The Single Judge referred to Article 39 of the Headquarters Agreement, which provides that the person shall not permanently remain on the territory of the Host State. This evidences the fact the Single Judge was aware that the Appellants' stay in Tanzania was not intended to be permanent, and therefore did not violate the Headquarters Agreement.

71. However, despite explicitly being requested to do so by the Appellants,[64] the Single Judge failed to comply with the requirement in Article 23(2) of the Headquarters Agreement that there be a "document certifying that their presence is required at the seat of the Mechanism and specifying a time period during which such presence is necessary," as required under Article 23(2) of the Headquarters Agreement.

72. Therefore, the Appeals Chamber should reverse the Single Judge's finding that he lacked the authority to order Tanzania to receive the Appellants on its territory. It should remand the matter to the Single Judge and direct him to consider a further order that specifies a time period during which the presence of the Appellants at the seat of the Mechanism is necessary and directs the Registrar to certify that their presence is so required. By issuing such an order, the Single Judge will have addressed Tanzania's objections to his 7 February order, clearing any obstacle for the Appellants' return.

73. The Appeals Chamber should further direct that before issuing such a further order, the Single Judge should consider holding an oral hearing at which the government of Tanzania can be heard and at which the Appellants can be present. Holding a hearing before issuing an order to a State pursuant to Article 28 has been a good practice at the Mechanism and ICTY.[65] It can also serve in this case to put an immediate end to the unlawful deprivation of the Appellants' liberty in Niger.

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[63] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 29.
[64] *Alphonse Nteziryayo Request for Leave to Respond and Response to Registrar's Submission of 28 February 2022* (3 March 2022); *Prosper Mugiraneza's Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022* (4 March 2022).
[65] *Prosecutor v. Ngirabatware*, MICT-12-29-R, *Order for Oral Hearing* (21 December 2016); *Prosecutor v Milutinovic et al*, No. IT-05-87-PT, *Scheduling Order for Hearing on General Ojdanic's Second Application for Orders to NATO and States for Production of Information* (7 September 2005); *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Order Scheduling a Hearing pursuant to Rule 54 bis* (29 January 2010); *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Order Scheduling a Hearing pursuant to Rule 54 bis (Bolivarian Republic of Venezuela)*(22 March 2011); *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Order Scheduling a Hearing pursuant to Rule 54 bis (Bosnia and Herzegovina)*(7 September 2010).

(C) The Single Judge erred in refusing to take available judicial action to comply with the Mechanism's duty to ensure the welfare of the acquitted or released persons

74. The Appellants' urgent need for help from the Mechanism to ensure their welfare cannot be disputed. Every day, they wake up in Niamey knowing that they are confined to their house, with no access to identity documents or any source of funds, and would be met with force by armed police should they attempt to leave. Every night, they go to bed, not knowing if they will be awoken by a sharp knock on their door from those same armed police with orders to take them to the airport for a flight to Rwanda. They live in a state of fear and confusion, susceptible to panic and rumours, with no independent assessment of their mental health, or any kind of psychosocial support.

75. The impact on the Appellants of again being detained, following years of imprisonment by the ICTR prior to their acquittals, is undoubtedly significant. Despite their age and vulnerability, they have been visited once by an ICRC doctor who had heard about their situation and wanted to check if they were alright. Their families in France exist in a similar state of fear and confusion. It is unrealistic for them to try to visit the Appellants in Niger, given that it is unclear whether their fathers would still be there when they arrived.

76. That the Mechanism has a "duty to ensure the welfare of acquitted or released persons" is also beyond dispute.[66] In practical terms, this duty gives rise to an obligation on the part of the Mechanism to invoke "every practicable facility it is capable of granting under the Rules and Statute" when faced with a request for assistance.[67]

77. Against this backdrop, and with this duty in mind, the Single Judge acted swiftly and decisively in the three orders he issued prior to the Impugned Decision.

78. On 31 December 2021, he found that the government of Niger was in breach of its obligations under the Relocation Agreement and ordered it to refrain from expelling the Appellants and to restore their freedom of movement and identification documents.[68]

79. On 14 January 2022, he issued another order to Niger to ensure that the Appellants have their identification documents returned and enjoy freedom of movement on its territory, and not to limit its stay of the expulsion order to 30 days, but until final resolution of the dispute.[69]

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[66] See, e.g. *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 22 "the Mechanism has a duty to ensure the welfare of the acquitted or released persons pending their relocation and to enquire whether their life or liberty would be at risk upon relocation." Citing *n Re. Andre Ntagerura*, Case No. ICTR-99-46-A28, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, 18 November 2008, para. 19.

[67] *Prosecutor v. Nahimana et al*. No. ICTR-99-52-A, Judgment, 28 November 2007, para. 220, citing *Prosecutor v. Tadic*, No. IT-94-1-A Judgment, 15 July 1999, para. 52.

[68] *In the Matter of Nzuwonemeye et al*, No. MICT-13-43, *Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions* (31 December 2021).

80. On 7 February 2022, he issued yet another order, again finding Niger in violation of the Relocation Agreement, and directing the Registrar to remove the Appellants from the territory of Niger and return them to Tanzania. This was, as he compellingly described, "guided by our jurisprudence, legal framework, the rule of law, human rights, what is possible, and what hopefully is fair."[70]

81. The Appellants remain deeply grateful for these decisions of the Single Judge. However, he erred in the Impugned Decision by giving up on them too soon.

82. The Single Judge still had the ability to act to remove the Appellants from their present situation. He could have reported Niger to the United Nations Security Council, which may have been sufficient to encourage Niger to comply with the terms of the relocation agreement;[71] he could have held a hearing at one of the seats of the Mechanism and ordered that the Appellants be present,[72] which would have extricated them from their current situation of extreme insecurity;[73] or found that the temporary presence of the Appellants at the seat of the Mechanism was necessary, regardless of a hearing, to liberate them from detention, and issuing an order to Tanzania to accept them onto its territory on that basis.

83. These options were all available to the Single Judge. They did not require the Mechanism to violate the territorial sovereignty of third states, nor were they contrary to the statutory regime of the Mechanism, or the Headquarters Agreements with both The Netherlands and Tanzania.

84. Acting to ensure the Appellants' welfare would have been consistent with past Mechanism practice. General Krstic was attacked and left for dead while serving his ICTY sentence in the United Kingdom.[74] The ICTY President issued an order transferring him to the seat of the ICTY, thereby acting to ensure the welfare of a person in the custody of a State with whom it had an agreement.[75] General Krstic remained in the host State for approximately two years before a State was found in which he could safely serve his sentence. The same could have been done to

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[69] *Further Order to the Republic of Niger and to the Registrar* (14 January 2022), pp. 5,7.
[70] *Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022), para. 21
[71] *Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* (29 January 2022); *Mugiraneza Joinder to Motion for Order to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing* (31 January 2022); *Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022* (1 March 2022); *Prosper Mugiraneza's Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022* (4 March 2022).
[72] *Ibid.*
[73] *Alphonse Nteziryayo Request for Leave to Respond and Response to Registrar's Submission of 28 February 2022* (3 March 2022); *Prosper Mugiraneza's Request for Leave to Respond and Response to the Registrar's Submission of 28 February 2022* (4 March 2022).
[74] See https://www.theguardian.com/uk/2011/feb/21/srebrenica-general-revenge-prison-attack
[75] *Prosecutor v Krstic*, No. IT-98-33-ES, *Decision on Application of Radislav Krstic for Transfer* (4 October 2011)(confidential and ex parte), referred to in *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Order Designating the State in which Radislav Krstic is to Serve the Remainder of his Sentence* (19 July 2013), p. 1.

ensure the welfare of the Appellants and end their unlawful detention, transferring them temporarily to the host State until a State where they can safely reside is found.

85. The Single Judge's order the Registrar in the Impugned Decision to "intensify his efforts and actively engage with Niger and other possible relocation States until an acceptable resolution of this matter is found in order to ensure the respect of the fundamental rights of the Relocated Persons"[76] was not a substitute for employing one of the judicial means available to him to ensure their welfare. The Registrar was already making tremendous efforts, day and night, to resolve this crisis—efforts for which the Appellants remain extremely grateful. The Single Judge's order for him to intensify his efforts was unnecessary and could not be a substitute for one of the multiple means at the Single Judge's disposal to ensure the Appellants' welfare by ending their stay in Niger.

86. In finally declining, in the Impugned Decision, to use the practicable facilities available to him, when in a position to do so, the Single Judge fell short in his duty to ensure the welfare of the acquitted or released persons. The welfare of the Appellants remained the responsibility of the Mechanism, and the objections raised by Tanzania were not a legal obstacle to ensuring their welfare. Because the Single Judge erred in prematurely ceasing his efforts to ensure their welfare, the Appeals Chamber should reverse the Impugned Decision and remand to the Single Judge to take further steps to ensure the Appellants' welfare consistent with the Appeals Chamber decision.

Motion for Oral Hearing

87. The Appellants respectfully request the Appeals Chamber to hold an oral hearing to hear arguments on the merits of this appeal.

88. Rule 141 of the Rules of Procedure and Evidence provides for the Appeals Chamber to hold a hearing on an appeal after the expiry of the time-limits for filing the briefs. While this provision has normally been applied to appeal from final judgements, nothing in the text precludes the Appeals Chamber from holding an oral hearing in other appeals properly before it.

89. Indeed, the ICTY Appeals Chamber held an oral hearing in the *Blaskic* case on the issue of cooperation with orders of the Tribunal by multiple States.[77] This appeal likewise involves issues of cooperation with orders of the Mechanism by multiple States.

90. The *Practice Direction on Requirements and Procedures for Appeals* (20 February 2019) provides that in the case of appeals other than those from a final judgement, "the Appeals Chamber may thereafter decide the appeal without further submissions from the parties."[78]

[76] *Id.*
[77] *Prosecutor v Blaskic*, No. IT-95-14-AR108 *bis*, *Judgement on the Request of the Republic of Croatia for Review of the Decision of the Trial Chamber II of 18 July 1997* (29 October 1997), para. 18.
[78] para. 20.

91. The Appeals Chamber will only grant a request for oral arguments on interlocutory appeals if such arguments are deemed necessary for the Appeals Chamber to reach an informed decision.[79] While this brief has extensively set forth Appellants' position, the Appeals Chamber has not heard any opposing views. Holding an oral hearing will provide the Governments of Niger, Tanzania, and The Netherlands an opportunity to be heard on the myriad of issues raised in this appeal that affect their interests and will greatly assist the Appeals Chamber in reaching an informed decision on the merits of the appeal.

92. Holding an oral hearing at which the Appellants are present, at either seat of the Mechanism, is yet another way in which the Appeals Chamber can put an end to the Appellants' unlawful detention in Niger.

Conclusion

93. The Appeals Chamber has several tools available to it to end the unlawful detention of the Appellants. It can:

(A) hold a status conference at which the Appellants are ordered to be present at the seat of the Mechanism;[80]

(B) hold an oral hearing on the merits of the appeal at which the Appellants are ordered to be present at the seat of the Mechanism;

(C) reverse the Impugned Decision and order the Single Judge to reconsider his denial of the *Motion to Report the Government of the Niger to the United Nations Security Council and for Oral Hearing*;

(D) reverse the Impugned Decision and order the Single Judge to reconsider his decision not to enforce his order that the Appellants be returned to Arusha.

94. The Mechanism is not powerless to ensure the welfare of the Appellants and relieve them from their unlawful detention in Niger. This is a meritorious appeal from two innocent men, wrongfully detained. The Appeals Chamber should act swiftly and decisively to end this injustice.

[79] *Prosecutor v. Haradinaj et al.*, No. IT-04-84*bis*-AR73.1, *Decision on Request for Oral Argument* (16 March 2011); *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Decision on a Joint Motion for an Oral Appeal Hearing* (4 February 2022).
[80] See *Nzuwonemeye and Mugiraneza Motion for Reconsideration* (21 March 2022).

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Respectfully submitted,

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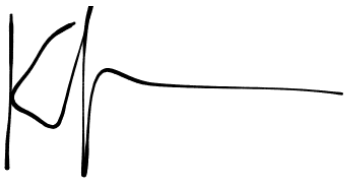

KATE GIBSON
Counsel for Prosper Mugiraneza

ANNEX A

APPLICABLE PROVISIONS

Article 28(2) of the Mechanism Statute provides that:

> 1. States shall cooperate with the Mechanism in the investigation and prosecution of persons covered by Article 1 of this Statute.
>
> 2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to:
>
> (a) the identification and location of persons;
> (b) the taking of testimony and the production of evidence;
> (c) the service of documents;
> (d) the arrest or detention of persons;
> (e) the surrender or the transfer of the accused to the Mechanism.
>
> 3. The Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the ICTY, the ICTR, or the Mechanism.

Rule 8 of the Mechanism' Rules of Procedure and Evidence provides that:

> (A) Except in cases to which Rules 13, 16, 61, or 63 apply, where the Trial Chamber is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Trial Chamber, the Trial Chamber may request the President to report the matter to the Security Council, who shall notify the Security Council thereof.
>
> (B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 28 of the Statute in respect of a request by the Prosecutor under Rules 9, 36, or 37, the President shall notify the Security Council thereof.

Rule 141 provides that:

> After the expiry of the time-limits for filing the briefs provided for in Rules 138, 139, and 140, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the Parties.

The Mechanism's *Practice Direction on Requirements and Procedures for Appeals* (20 February 2019) provides in relevant part that:

> 20. The Appellant may file a reply within four days of the filing of the response. The Appeals Chamber may thereafter decide the interlocutory appeal without further submissions from the parties.

Article 24 of the *Agreement between the United Nations and the Kingdom of The Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals* (23 February 2015)(the "Netherlands Headquarters Agreement") provides:

> 1. Other persons required to be present at the seat of the Mechanism shall, to the extent necessary for the proper functioning of the Mechanism, be accorded the following privileges, immunities, and facilities, subject to the production of the document referred to in paragraph 2 of this Article:
>
> a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
>
> b) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;
>
> c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Mechanism, which immunity shall continue to be accorded even after they are no longer present at the seat of the Mechanism;
>
> d) inviolability of all official papers and documents in whatever form and materials: and
>
> e) exemption from immigration restrictions and alien registration when they travel to and from the Mechanism for purposes of their presence at the seat of the Mechanism.
>
> 2. Persons referred to in this Article shall be provided by the Registrar with a document certifying that their presence is required at the seat of the Mechanism and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Mechanism is no longer required.
>
> 3. The privileges, immunities and facilities referred to in paragraph 1 of this Article, except for that referred to in paragraph 1(c) of this Artice, shall cease to apply after fifteen (15) consecutive days following the date on which the presence of the person concerned is no longer required by the Mechanism, provided that the person had an opportunity to leave the host State during that period.
>
> 4. Persons referred to in this Article who are nations or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, as is necessary for the proper functioning of the Mechanism, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Mechanism. Such immunity shall continue to be accorded even after their presence at the seat of the Mechanism is no longer required.
>
> 5. Persons referred to in this Article shall not be subjected by the host State to any measure which may affect their presence at the seat of the Mechanism.

Article 31(1) of the Netherlands Headquarters Agreement provides:

> All persons referred to in Articles 21, 23, and 24 of this Agreement, as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from, and subject to paragraph 3 of this Article, movement within the host State, as appropriate and for the purposes of the Mechanism.

Article 23 of the *Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals* (26 November 2013)("Tanzania Headquarters Agreement" or "Headquarters Agreement") provides:

> 1. Other persons required to be present at the seat of the Mechanism shall, to the extent necessary for their presence at the seat of the Mechanism, be accorded the following privileges, immunities and facilities, subject to production of the document referred to in paragraph 2 of this Article:
> a) immunity from personal arrest or detention or any other restriction of their liberty and from seizure of their personal baggage;
> b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Mechanism, which immunity shall continue to be accorded even after they are no longer present at the seat of the Mechanism;
> c) inviolability of all papers and documents in whatever form and materials relating to their presence at the seat of the Mechanism;
> d) exemption from immigration restrictions and alien registration when they travel to and from the Mechanism for purposes of their presence at the seat of the Mechanism;
> e) for the purpose of their communications in connection with their presence at the seat of the Mechanism, the right to receive and send papers in whatever form; and
> f) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.
>
> 2. Persons referred to in this Article shall be provided by the Registrar with a document certifying that their presence is required at the seat of the Mechanism and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Mechanism is no longer required.
>
> 3. The privileges, immunities and facilities referred to in paragraph 1 of this Article, except for that referred to in paragraph 1 (b) of this Article, shall cease to apply after 15 consecutive days following the date on which the presence of the person concerned is no longer required by the Mechanism, provided that the person had an opportunity to leave the host State during that period.
>
> 4. The privileges, immunities and facilities provided for in paragraphs led) and l(t) and the provision relating to seizure of personal baggage provided for in paragraph l(a) of this Article do not apply to such other persons required to be present at the seat of the Mechanism who are nationals or permanent residents of

the host State.

5. Persons referred to in this Article shall not be subjected by the host State to any measures which may affect their presence at the seat of the Mechanism.

Article 30(1) of the Tanzania Headquarters Agreement provides:

Officials of the Mechanism, defence counsel and persons assisting defence counsel, witnesses and persons accompanying them, experts on mission for the Mechanism, suspects or accused, interns, legal researchers, and other persons required to be present at the seat of the Mechanism as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from, and movement within the host State, including unimpeded access to the premises of the Mechanism.

Article 39 of the Tanzania Headquarters Agreement provides:

1. Where a person is released from the custody of the Mechanism following the person's acquittal at trial or on appeal, or for any other reason, the Mechanism shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to another State.

2. The provisions of Article 35 of this Agreement shall apply, mutatis mutandis, to the transport of persons referred to in this Article within the host State.

3. A person referred to in this Article shall not permanently remain on the territory of the host State except with the latter's consent. The host State shall facilitate the temporary stay of the person on its territory until the transfer under paragraph 1 of this Article takes place.

Article 44 of the Tanzania Headquarters Agreement provides:

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Parties shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this Article within three months following a written request by one of the Parties to the difference, it shall, at the request of either Party, be referred to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If, within 30 days of the request for arbitration, a Party has not appointed an arbitrator, or if, within 15 days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the arbitrator referred to. The Tribunal shall determine its own procedures, provided that any two arbitrators shall constitute a quorum for all purposes, and all decisions shall require the agreement of any two arbitrators. The expenses of the Tribunal shall be borne by the Parties as assessed by the Tribunal. The arbitral award shall contain a statement of the reasons on which it is based and shall be final and binding on the Parties.

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- ☐ Ex Parte other exclusion/ *autre(s) partie(s) exclue(s)* (specify/*préciser*) :

Document type/ *Type de document* :

- ☐ Motion/ *Requête*
- ☐ Decision/ *Décision*
- ☐ Order/ *Ordonnance*
- ☐ Judgement/ *Jugement/Arrêt*
- ☒ Submission from parties/ *Écritures déposées par des parties*
- ☐ Submission from non-parties/ *Écritures déposées par des tiers*
- ☐ Book of Authorities/ *Recueil de sources*
- ☐ Affidavit/ *Déclaration sous serment*
- ☐ Indictment/ *Acte d'accusation*
- ☐ Warrant/ *Mandat*
- ☐ Notice of Appeal/ *Acte d'appel*

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

☐ Translation not required/ *La traduction n'est pas requise*

☒ 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)*

☐ English/ *Anglais* ☒ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre*(specify/*préciser*) :

☐ 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 :

Original/ *Original en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :
Translation/ *Traduction en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :

☐ Filing Party will be submitting the translated version(s) in due course in the following language(s)/
La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :

☐ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre* (specify/*préciser*) :

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