

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 24 January 2017

Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Theodor Meron, Presiding
Judge William Hussein Sekule
Judge Vagn Prūsse Joensen
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana**

Registrar:

Mr. Olufemi Elias

Decision of:

24 January 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON A MOTION
FOR REDACTED VERSIONS OF RULE 86(F) FILINGS**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Mr. Radovan Karadžić:

Mr. Peter Robinson
Ms. Kate Gibson

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);¹

NOTING the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 24 March 2016;²

BEING SEISED OF the “Motion for Redacted Versions of Rule 86(F) Filings”, filed on 17 November 2016 in which Mr. Radovan Karadžić (“Karadžić”) requests the issuance of redacted versions of any filings made in his case pursuant to Rule 86(F) of the Rules of Procedure and Evidence of the Mechanism (“Rules”);³

NOTING the Prosecution’s response filed on 28 November 2016;⁴

NOTING Karadžić’s reply filed on 29 November 2016;⁵

NOTING the Prosecution’s motion for leave to file a sur-reply to answer “new arguments” raised by Karadžić in his reply;⁶

NOTING Karadžić’s response to the Prosecution’s Motion for Leave to File a Sur-Reply in which he opposes the Prosecution’s request;⁷

NOTING Karadžić’s submission that he has a legitimate forensic purpose for accessing any filings made in his case pursuant to Rule 86(F) of the Rules as they can alert him to the possible testimony or statements by Prosecution witnesses in subsequent domestic proceedings and thus may enable him to uncover contradictory or exculpatory additional evidence;⁸

NOTING Karadžić’s further submission that the exclusion of the defence from Rule 86(F) proceedings undermines transparency for no good reason and that the President of the Mechanism

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016.

³ Motion for Redacted Versions of Rule 86(F) Filings, 17 November 2016 (“Motion”), paras. 1, 10.

⁴ Prosecution’s Response to Karadžić’s Motion for Redacted Versions of Rule 86(F) Filings, 28 November 2016 (“Response”).

⁵ Reply Brief: Motion for Redacted Versions of Rule 86(F) Filings, 29 November 2016 (“Reply”).

⁶ Prosecution’s Motion for Leave to File Sur-Reply and Sur-Reply to Karadžić’s Reply Brief: Motion for Redacted Versions of Rule 86(F) Filings, 1 December 2016 (“Motion for Leave to File a Sur-Reply” and “Sur-Reply”, respectively), para. 1.

⁷ Response to Prosecution Motion for Leave to File Sur-Reply: Motion for Redacted Versions of Rule 86(F) Filings, 6 December 2016, paras. 2, 4, 7.

⁸ Motion, para. 7. *See also* Reply, paras. 4-7, 14, 16. Karadžić also submits that he has a particular interest in the Prosecution’s submissions concerning witnesses who testified at the trial as findings based upon their testimony are “likely” the subject of his appeal. *See* Reply, para. 13.

should ensure that no future Rule 86(F) applications are considered *ex parte* by ordering the filing of public redacted versions of such applications;⁹

NOTING that the Prosecution does not oppose the issuance of public redacted versions of any Rule 86(F) decisions in this case as long as all information that potentially identifies the relevant domestic authorities and witnesses involved, including witness pseudonyms, is redacted;¹⁰

NOTING that the Prosecution opposes the request for public redacted versions of submissions or other “non-decision filings” that may have been filed pursuant to Rule 86(F), as such filings contain extensive information about the identity of the applicant and the proceedings at issue that, due to their *ex parte* status, enjoy a high degree of confidentiality and argues that, as a result, the extent of sensitive information that would need to be redacted would deprive the redacted versions of any purpose;¹¹

NOTING the Prosecution submission that any orders for public redacted versions of Rule 86(F) applications would have to be made on a case-by-case basis bearing in mind the particular sensitivities of such applications and the applicant’s trust that *ex parte* material will not be disclosed;¹²

NOTING Karadžić’s reply that disclosing to him the pseudonym of the witness whose material is sought would not lead to the disclosure of confidential information as he already knows the identity of all witnesses in his case, that there is no reason for redactions where information is sought during domestic proceedings conducted in public, and that, where disclosure is sought during an investigation, confidential information that he does not need can be “properly” redacted;¹³

NOTING the Prosecution submission in support of its Motion for Leave to File a Sur-Reply that Karadžić raises “new arguments” in his reply, namely that conducting the Rule 86(F) proceedings *ex parte* strikes at the legitimacy of the Mechanism, that the disclosure of witness pseudonyms in Rule 86(F) applications would not lead to the disclosure of confidential information to Karadžić,

⁹ See Motion, paras. 7, 9, 10. See also Reply, paras. 5, 13.

¹⁰ Response, para. 1. The Prosecution also submits that the Appeals Chamber should seek the input of the relevant domestic authorities, the Witness Support and Protection Unit of the Mechanism (“WISP”) and the Prosecution on proposed redactions to address the risk of revealing confidential information. See Response, para. 1.

¹¹ Response, paras. 2, 4.

¹² Response, para. 2.

¹³ Reply, paras. 10-12. Karadžić also submits that any information identifying the current location of a witness can also be redacted. See Reply, para. 12.

and that the President should ensure that no new Rule 86(F) applications are filed and considered on an *ex parte* basis in this case;¹⁴

CONSIDERING that Karadžić's reply expands on his submissions made in the Motion to which the Prosecution had sufficient opportunity to respond;¹⁵

FINDING, therefore, that Karadžić's reply contains no new issue that would justify granting leave to file a sur-reply;

RECALLING the "Order on a Motion for Redacted Versions of Rule 86(F) Filings" issued confidentially and *ex parte* on 2 December 2016 in which the Appeals Chamber invited the WISP to identify any portions of decisions on applications made in this case pursuant to Rule 86(F) of the Rules requiring redaction to ensure the effective protection of protected witnesses in the event that such decisions would be issued in redacted form;¹⁶

NOTING the Registrar's confidential and *ex parte* submission, which sets out proposed redactions to decisions on applications made pursuant to Rule 86(F) of the Rules in this case;¹⁷

RECALLING that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;¹⁸

RECALLING that, with regard to confidential material, the Mechanism must find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses and the confidentiality of sensitive information;¹⁹

RECALLING that a request for access to confidential *ex parte* material can only be granted when the requesting party demonstrates a heightened showing of a legitimate forensic purpose in order to

¹⁴ Motion for Leave to File Sur-Reply, para. 1.

¹⁵ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 2 May 2014 Decision on Vujadin Popović's Third and Fifth Motions for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 23 May 2014, para. 14 ("leave to file a sur-reply may be granted where the reply raises a new issue to which the respondent has not already had the opportunity to respond").

¹⁶ Order on a Motion for Redacted Versions of Rule 86(F) Filings, 2 December 2016 (confidential and *ex parte*) ("Order of 2 December 2016"), p. 1.

¹⁷ Registrar's Submission in Compliance with the Order of 2 December 2016, 15 December 2016 (confidential and *ex parte* with confidential and *ex parte* annex).

¹⁸ *Prosecutor v. Naser Orić*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015, 17 February 2016, para. 8 referring to Article 18 of the Statute of the Mechanism and Rules 92 and 131 of the Rules.

¹⁹ See Decision on Motion for Access to *Ex Parte* Filings in Completed Cases, 10 May 2016 ("Decision of 10 May 2016"), p. 2 and references cited therein.

protect the interests of the party who designated its filing as *ex parte* and who enjoys a protected degree of trust that the *ex parte* material will not be disclosed;²⁰

RECALLING that, pursuant to Rule 86(F)(i) of the Rules, once protective measures have been ordered in proceedings before the ICTY, they shall continue to have effect *mutatis mutandis* in any proceedings before the Mechanism or another jurisdiction unless and until they are rescinded, varied, or augmented;

NOTING that applications under Rule 86(F) of the Rules are typically filed by domestic authorities or defence counsel seeking to ensure compliance with protective measures ordered by the ICTY in domestic proceedings that may involve persons subject to such measures;

CONSIDERING that, to date, the five proceedings in this case pursued on the basis of Rule 86(F) of the Rules concerned investigations, pre-trial proceedings, and the conduct of a defence case in domestic jurisdictions and that the Appeals Chamber does not have information on whether any of the persons identified in the Rule 86(F) applications have provided statements or testimony in domestic proceedings;

FINDING that Karadžić has not demonstrated the heightened showing required to justify access to the confidential *ex parte* information included in the filings made in this case to date pursuant to Rule 86(F) of the Rules;

REITERATING the Prosecution's positive and continuous obligation under Rule 73(A) of the Rules to disclose to the Defence as soon as practicable any material which "in its actual knowledge" may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;²¹

FINDING that issuing public redacted versions of the decisions and orders issued in this case pursuant to Rule 86(F) of the Rules as well as four filings made by the Registry of the Mechanism and the Prosecution²² will ensure the public nature of these proceedings to the extent possible and

²⁰ See *The Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006, para. 17. See also Decision of 10 May 2016, p. 3 and references cited therein.

²¹ *Augustin Ngirabatware v. Prosecutor*, Case No. MICT-12-29-A, Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order for Disclosure, 15 April 2014, para. 12.

²² *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.2, Registrar's Submission in Relation to the Order of 20 September 2016, 27 September 2016 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.3, 27 September 2016, Registrar's Submission in Relation to the Order of 20 September 2016 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.2, Prosecution Request for Leave to File Further Submission in Response to Registrar's Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.3, Prosecution Request for Leave to File Further Submission in Response to Registrar's Submission in Relation to the

that the interests of the parties who designated their filings as *ex parte* can be adequately protected by appropriate redactions;²³

CONSIDERING that, in light of the varied circumstances of applications made under Rule 86(F) of the Rules, access to any future confidential *ex parte* materials in such cases should be determined upon any application made on a case-by-case basis;

PURSUANT to Article 20 of the Statute of the Mechanism and Rule 55 of the Rules,

HEREBY

GRANTS the Motion, in part, and **ISSUES**, as an annex to the present decision, public redacted versions of the decisions and orders issued pursuant to Rule 86(F) of the Rules in this case;

DENIES the Motion in all other respects;

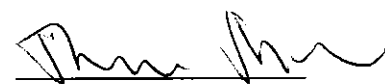
DENIES the Motion for Leave to File Sur-Reply;

INSTRUCTS the Registry to reclassify the Order of 2 December 2016 as public; and

INSTRUCTS the Registry and the Prosecution to file public redacted versions of their respective filings specified in footnote 22 of this Decision.

Done in English and French, the English text being authoritative.

Done this 24th day of January 2017,
At The Hague,
The Netherlands


Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

Order for Submissions of 20 September 2016, 29 September 2016 (confidential and *ex parte*). The Appeals Chamber notes that its finding does not extend to the confidential *ex parte* annexes attached to the Registry's submissions of 29 September 2016.

²³ The Appeals Chamber notes that, with regard to two of the five proceedings at issue, Case No. MICT-13-55-R86.F.2, Case No. MICT-13-55-R86.F.3, the *ex parte* status of the requests made under Rule 86(F) of the Rules was lifted in these instances with respect to the Prosecution as the requests concerned Prosecution witnesses. The request filed as Case No. MICT-13-55-R86.F.1 was dismissed for lack of jurisdiction. Two other proceedings, Case No. MICT-13-55-R86.F.4 and Case No. MICT-13-55-R86.F.5, are currently pending and only assignment orders have been issued to date.

ANNEX

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-55-R86F.1

Date: 31 October 2013

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Order of: 31 October 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

**ORDER ASSIGNING A SINGLE JUDGE TO CONSIDER AN
APPLICATION PURSUANT TO RULE 86**

Third Party
[REDACTED]

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the confidential and *ex parte* “Request for Assistance”, filed on 28 October 2013 (“Application”), by [REDACTED], Counsel for [REDACTED], which requests information regarding protective measures granted to a witness in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-I (“*Karadžić* case”);¹

RECALLING Article 12(1) of the Statute of the Mechanism;

NOTING that no Chamber or Single Judge in the Mechanism is currently seised of proceedings in the *Karadžić* case;

PURSUANT to Rules 23(A) and 86 of the Rules of Procedure and Evidence of the Mechanism;

HEREBY ASSIGN the Application to Judge Bakone Justice Moloto.

Done in English and French, the English version being authoritative.

Done this 31st day of October 2013,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

¹ Application, p. 3.

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-55-R86F.1

Date: 21 November 2013

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Order of: 21 November 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

**DECISION ON APPLICATION PURSUANT TO
RULE 86(F)**

Applicant

[REDACTED]

I, BAKONE JUSTICE MOLOTO, Judge of the Mechanism for International Criminal Tribunals (“Mechanism”);

BEING SEISED of the “Request for assistance in obtaining information on protective measures granted for a witness in course of Mr. Karadžić trial” filed confidentially and *ex parte* on 28 October 2013 by [REDACTED] (“Applicant”) in the case against [REDACTED] before the Court of [REDACTED], seeking information as to the protective measures granted to a witness in the *Prosecutor v. Karadžić* case, Case No. IT-95-05;

NOTING the “Order assigning a Single Judge to consider an application pursuant to Rule 86” issued confidentially and *ex parte* by the President of the Mechanism on 31 October 2013, assigning the above mentioned application to me;

CONSIDERING that proceedings in this matter have been ongoing since before the date of commencement of the Mechanism with a Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”);

CONSIDERING that Articles 1 and 5 of the Transitional Arrangements at Annex 2 of the United Nations Security Council Resolution 1966 22 December 2010, provide that the ICTY shall have jurisdiction over all matters relating to the protection of witnesses in cases which are pending with it as of the date of commencement of the Mechanism;

CONSIDERING therefore, that I lack jurisdiction to adjudicate on the Application;

PURSUANT TO Article 12(2) of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

DISMISS the Application for lack of jurisdiction.

Done in English and French, the English version being authoritative.

Judge Bakone Justice Moloto

Dated this twenty first day of November 2013
At The Hague
The Netherlands

[Seal of the Mechanism]

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.2

Date: 16 September 2016

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Order of: 16 September 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

**ORDER ASSIGNING A CHAMBER TO CONSIDER AN
APPLICATION PURSUANT TO RULE 86**

Prosecutor's Office of [REDACTED]

[REDACTED]

[REDACTED]

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the confidential and *ex parte* “Prosecutor’s Office of [REDACTED] Motion for Extension of Protective Measures in Accordance with the Rule 86 (F) of the Rules of Procedure and Evidence of MICT” filed on 8 September 2016 (“Application”), which requests information regarding the protective measures assigned to a certain witness in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18;¹

RECALLING Article 12(1) of the Statute of the Mechanism;

NOTING that a Chamber is currently seised of proceedings in the case of *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A (“*Karadžić case*”);

PURSUANT to Rules 23(A) and 86 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY ASSIGN the Application to the Bench of the Appeals Chamber seised of the proceedings in the *Karadžić case*.

Done in English and French, the English version being authoritative.

Done this 16th day of September 2016,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

¹ Application, paras. 6, 11.

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.2

Date: 20 September 2016

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge

Registrar: Mr. John Hocking

Order of: 20 September 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

**ORDER FOR SUBMISSIONS
ON AN APPLICATION PURSUANT TO RULE 86(F)**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Presiding Judge in this case;¹

BEING SEISED OF a confidential and *ex parte* application filed on 9 September 2016, in which the Prosecutor’s Office of [REDACTED] requests information about the nature of protective measures granted to a witness by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95/18;²

CONSIDERING that it is appropriate for the Witness Support and Protection Unit of the Mechanism (“WISP”) to ascertain whether any protective measures have been granted to the witness and remain in force;

CONSIDERING that it is also appropriate to give notice of the Application to the Office of the Prosecutor of the Mechanism (“Prosecution”) to afford it an opportunity to note any concern therewith;

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

HEREBY ORDER:

1. The Registry to lift the *ex parte* status of the Application with respect to the Prosecution and serve a copy of the Application on the Prosecution;
2. The WISP to inform me within seven days of the issuance of this Order, whether any protective measures have been granted by the ICTY to the person identified in the Application as a witness and, if so, whether these have been subsequently continued or varied; and
3. The Prosecution to file a submission, if any, on the Application by the same date.

¹ Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 September 2016 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. In accordance with Rule 86(K) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), an application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber.

² Prosecutor’s Office of [REDACTED] Motion for Extension of Protective Measures in Accordance with the Rule 86(F) of the Rules of Procedure and Evidence of MICT, 9 September 2016 (confidential and *ex parte*) (“Application”), paras. 6, 9, 11.

Done in English and French, the English version being authoritative.

Done this 20th day of September 2016,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.2

Date: 30 September 2016

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge

Registrar: Mr. John Hocking

Decision of: 30 September 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86(F)

Prosecutor's Office of [REDACTED]:

[REDACTED]

[REDACTED]

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Presiding Judge in this case;¹

BEING SEISED OF a confidential and *ex parte* application filed on 9 September 2016 pursuant to Rule 86(F) of the Rules, in which the Prosecutor’s Office of [REDACTED] requests information about the nature of protective measures granted to a witness by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95/18;²

RECALLING that on 20 September 2016, I ordered, *inter alia*, that: (i) the Witness Support and Protection Unit of the Mechanism (“WISP”) inform me whether the ICTY granted any protective measures to the person identified in the Application, and if so, whether these were subsequently continued or varied; and (ii) the Prosecution file a submission, if any, on the Application;³

NOTING the Prosecution’s submission filed confidentially and *ex parte* on 23 September 2016;⁴

NOTING the Registrar’s submission filed confidentially and *ex parte* on 27 September 2016;⁵

NOTING the Prosecution’s further submission filed confidentially and *ex parte* on 29 September 2016;⁶

CONSIDERING that the Applicant knows the identity of the individual identified in the Application as a witness and only seeks information about the nature of the protective measures accorded to the witness by the ICTY in order to request the assignment of identical protective measures before the court of [REDACTED] in the [REDACTED];⁷

¹ Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 September 2016 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. In accordance with Rule 86(K) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), an application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber.

² Prosecutor’s Office of [REDACTED] Motion for Extension of Protective Measures in Accordance with the Rule 86(F) of the Rules of Procedure and Evidence of MICT, 9 September 2016 (confidential and *ex parte*) (“Application”), paras. 6, 9, 11.

³ Order for Submissions on an Application Pursuant to Rule 86(F), 20 September 2016 (confidential and *ex parte*), p. 1.

⁴ Prosecution’s Submission in Relation to Application of the Prosecutor’s Office of [REDACTED] Pursuant to Rule 86(F), 23 September 2016 (confidential and *ex parte*).

⁵ Registrar’s Submission in Relation to the Order of 20 September 2016, 27 September 2016.

⁶ Prosecution Request for Leave to File Further Submission in Response to Registrar’s Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016. Considering the outcome of this Decision, it is not necessary to grant the Prosecution leave for filing further submissions on this matter.

⁷ Application, paras. 5-7, 9, 11, RP. 1.

CONSIDERING, therefore, that, for the purposes of rendering this Decision, it is not necessary to seek the concerned person's consent pursuant to Rule 86(I) of the Rules;⁸

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

GRANT the Application; and

INFORM the Applicant that, based on the information received from the WISP, the protective measures that apply to the person identified in the Application are pseudonym and image and voice distortion;

ORDER that the Applicant may not disclose the information that is released in this Decision to anyone, except to the judicial authorities in [REDACTED];

ORDER that the Applicant may not disclose the information that is released pursuant to this Decision except to parties or persons involved in the preparation or conduct of the proceedings in [REDACTED] and provided that the Applicant obtains assurances under the threat of criminal sanctions that such parties or persons will strictly maintain the confidentiality of the information; and

ORDER that the Applicant shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the individual named in the Application and shall ensure the same level of protection as that granted to the individual by the ICTY.

Done in English and French, the English version being authoritative.

Done this 30th day of September 2016,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

⁸ See, e.g., *Prosecutor v. Rasim Delić*, Case No. MICT-14-74-R86F.2, Public Redacted Version of the 12 November 2015 Decision on an Application pursuant to Rule 86, 11 February 2016, p. 1.

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.3

Date: 16 September 2016

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Order of: 16 September 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

**ORDER ASSIGNING A CHAMBER TO CONSIDER AN
APPLICATION PURSUANT TO RULE 86**

Prosecutor's Office of [REDACTED]

[REDACTED]

[REDACTED]

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the confidential and *ex parte* “Prosecutor’s Office of [REDACTED] Motion for Extension of Protective Measures in Accordance with the Rule 86 (F) of the Rules of Procedure and Evidence of MICT” filed on 8 September 2016 (“Application”), which requests information regarding the protective measures assigned to a certain witness in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18;¹

RECALLING Article 12(1) of the Statute of the Mechanism;

NOTING that a Chamber is currently seised of proceedings in the case of *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A (“*Karadžić case*”);

PURSUANT to Rules 23(A) and 86 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY ASSIGN the Application to the Bench of the Appeals Chamber seised of the proceedings in the *Karadžić case*.

Done in English and French, the English version being authoritative.

Done this 16th day of September 2016,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

¹ Application, paras. 6, 11.

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.3

Date: 20 September 2016

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge

Registrar: Mr. John Hocking

Order of: 20 September 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

**ORDER FOR SUBMISSIONS
ON AN APPLICATION PURSUANT TO RULE 86(F)**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Presiding Judge in this case;¹

BEING SEISED OF a confidential and *ex parte* application filed on 8 September 2016, in which the Prosecutor’s Office of [REDACTED] requests information about the nature of protective measures granted to a witness by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95/18;²

CONSIDERING that it is appropriate for the Witness Support and Protection Unit of the Mechanism (“WISP”) to ascertain whether any protective measures have been granted to the witness and remain in force;

CONSIDERING that it is also appropriate to give notice of the Application to the Office of the Prosecutor of the Mechanism (“Prosecution”) to afford it an opportunity to note any concern therewith;

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

HEREBY ORDER:

1. The Registry to lift the *ex parte* status of the Application with respect to the Prosecution and serve a copy of the Application on the Prosecution;
2. The WISP to inform me within seven days of the issuance of this Order, whether any protective measures have been granted by the ICTY to the person identified in the Application as a witness and, if so, whether these have been subsequently continued or varied; and
3. The Prosecution to file a submission, if any, on the Application by the same date.

¹ Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 September 2016 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. In accordance with Rule 86(K) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), an application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber.

² Prosecutor’s Office of [REDACTED] Motion for Extension of Protective Measures in Accordance with the Rule 86(F) of the Rules of Procedure and Evidence of MICT, 8 September 2016 (confidential and *ex parte*) (“Application”), paras. 6, 9, 11.

Done in English and French, the English version being authoritative.

Done this 20th day of September 2016,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.3

Date: 30 September 2016

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge

Registrar: Mr. John Hocking

Decision of: 30 September 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86(F)

Prosecutor's Office of [REDACTED]:

[REDACTED]

[REDACTED]

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Presiding Judge in this case;¹

BEING SEISED OF a confidential and *ex parte* application filed on 8 September 2016 pursuant to Rule 86(F) of the Rules, in which the Prosecutor’s Office of [REDACTED] requests information about the nature of protective measures granted to a witness by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95/18;²

RECALLING that on 20 September 2016, I ordered, *inter alia*, that: (i) the Witnesses Support and Protection Unit of the Mechanism inform me whether the ICTY granted any protective measures to the person identified in the Application, and, if so, whether these were subsequently continued or varied; and (ii) the Office of the Prosecutor of the Mechanism (“Prosecution”) file a submission, if any, on the Application;³

NOTING the Prosecution’s submission filed confidentially and *ex parte* on 23 September 2016, in which it submits that a chamber of the ICTY is seised of proceedings involving the person identified in the Application as a witness and that, as a result, the Application should be dismissed for lack of jurisdiction;⁴

NOTING the Registrar’s submission filed confidentially and *ex parte* on 27 September 2016;⁵

NOTING the Prosecution’s further submission filed confidentially and *ex parte* on 29 September 2016;⁶

RECALLING Articles 1(1) and 5(1) of the Transitional Arrangements⁷ and Article 20 of the Statute of the Mechanism;

¹ Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 September 2016 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. In accordance with Rule 86(K) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), an application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber.

² Prosecutor’s Office of [REDACTED] Motion for Extension of Protective Measures in Accordance with the Rule 86(F) of the Rules of Procedure and Evidence of MICT, 8 September 2016 (confidential and *ex parte*) (“Application”), paras. 6, 9, 11.

³ Order for Submissions on an Application Pursuant to Rule 86(F), 20 September 2016 (confidential and *ex parte*), p. 1.

⁴ Prosecution’s Submission in Relation to Application of the Prosecutor’s Office of [REDACTED] Pursuant to Rule 86(F), 23 September 2016 (confidential and *ex parte*), para. 1.

⁵ Registrar’s Submission in Relation to the Order of 20 September 2016, 27 September 2016 (confidential and *ex parte*).

⁶ Prosecution Request for Leave to File Further Submission in Response to Registrar’s Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016. Considering the outcome of this Decision, it is not necessary to grant the Prosecution leave for filing further submissions on this matter.

⁷ U.N. Doc. S/RES/1966, 22 December 2010, Annex 2.

FINDING that because the ICTY remains seised of proceedings involving the person identified in the Application as a witness, the Appeals Chamber lacks jurisdiction over the Application;

HEREBY DISMISS the Application; and

INFORM the Applicant that it can file an application for the requested information before the President of the ICTY.

Done in English and French, the English version being authoritative.

Done this 30th day of September 2016,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.4

Date: 16 January 2017

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Order of: 16 January 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL ANDEX PARTE

**ORDER ASSIGNING A CHAMBER TO CONSIDER AN
APPLICATION PURSUANT TO RULE 86**

Prosecutor's Office of [REDACTED]

[REDACTED]

[REDACTED]

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the confidential and *ex parte* “Application of the Prosecutor’s Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86 (F) of the MICT Rules of Procedure and Evidence” filed on 13 January 2017 (“Application”), which requests, *inter alia*, certain documents related to a witness who testified in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18;¹

RECALLING Article 12(1) of the Statute of the Mechanism;

NOTING that a Chamber is currently seised of proceedings in the case of *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A (“*Karadžić case*”);

PURSUANT to Rules 23(A) and 86 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY ASSIGN the Application to the Bench of the Appeals Chamber seised of the proceedings in the *Karadžić case*.

Done in English and French, the English version being authoritative.

Done this 16th day of January 2017,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

¹ Application, para. 13.

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.5

Date: 16 January 2017

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Order of: 16 January 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL AND EX PARTE

**ORDER ASSIGNING A CHAMBER TO CONSIDER AN
APPLICATION PURSUANT TO RULE 86**

Prosecutor's Office of [REDACTED]

[REDACTED]

[REDACTED]

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the confidential and *ex parte* “Application of the Prosecutor’s Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86 (F) of the MICT Rules of Procedure and Evidence” filed on 13 January 2017 (“Application”), which requests, *inter alia*, certain documents related to a witness who testified in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18;¹

RECALLING Article 12(1) of the Statute of the Mechanism;

NOTING that a Chamber is currently seised of proceedings in the case of *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A (“*Karadžić* case”);

PURSUANT to Rules 23(A) and 86 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY ASSIGN the Application to the Bench of the Appeals Chamber seised of the proceedings in the *Karadžić* case.

Done in English and French, the English version being authoritative.

Done this 16th day of January 2017,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Mechanism]

¹ Application, para. 12.