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25/07/2012  
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**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**OFFICE OF THE PRESIDENT**

**Before:** Judge Vagn Joensen. *President*  
**Registrar:** Adama Dieng  
**Date:** 23 May 2012

**PROSECUTOR v. NTAKIRUTIMANA et al.**  
Case No. ICTR-96-10/17

**PROSECUTOR v. MUHIMANA**  
Case No. ICTR-95-1B

2012 MAY 23 11:51 AM  
UNICTR  
JUDICIAL PROCEEDINGS SECTION

**JACQUES MUNGWARERE'S EXTREMELY URGENT MOTION  
FOR ACCESS TO MATERIAL**

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**Ottawa Superior Court**

C/o The Honorable Louis Z. Charbonneau

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## I. INTRODUCTION

1. Jacques Mungwarere is being prosecuted in Canada by the Public Prosecution Service of Canada (hereinafter “PPSC”) for genocide and crimes against humanity allegedly committed in Kibuye *préfecture*, Rwanda, during the genocide in 1994.<sup>1</sup>
2. On 1 March 2012, the Defence for Mr. Mungwarere filed a motion<sup>2</sup> requesting access to relevant material identified in eleven cases before the ICTR.
3. On 5 March 2012, the Defence for Mr. Mungwarere filed a second motion<sup>3</sup> requesting access to material related to fabrication of evidence, witness tampering and recantation in six cases before the ICTR. That motion also provided notice under Rule 67(D) of potentially discloseable evidence that may be in the hands of the Defence and Prosecution in Mr. Mungwarere’s Canadian case.
4. On 14 March 2012, the President of the Tribunal, Judge Vagn Joensen, designated himself to adjudicate Mr. Mungwarere’s motions.<sup>4</sup>
5. On 19 April 2012, the Defence for Mr. Mungwarere filed a third motion for access to material in the *Nyitegeka* case before the President of the Tribunal,<sup>5</sup> providing as Annex 1 of the motion an official letter of request by the Ontario Superior Court of Justice to this Tribunal, requesting *inter alia* that Mr. Mungwarere be granted

<sup>1</sup> See *Sa majesté la reine et Jacques Mungwarere, acte d’accusation*, dated 12 May 2010, filed 1 June 2010 (“Indictment”).

<sup>2</sup> *Prosecutor v. Kayishema et al., Bagilishema, Muhimana, Ndimbati, Sikubwabo, Niyitegeka, Musema, Munyakazi, Karemera et al., Nchamihigo and Nindabahizi*, Case Nos. ICTR-95-1, ICTR-95-1A, ICTR-95-1B, ICTR-95-1D, ICTR-96-14, ICTR-96-13, ICTR-97-36A, ICTR-98-44, ICTR-01-63, ICTR-01-71, Jacques Mungwarere’s Urgent Motion for Access to Material, 1 March 2012. (“1 March 2012 Motion”)

<sup>3</sup> *Prosecutor v. Niyitegeka, Ntakirutimana et al., Nyiramasuhuko et al., Bizimungu et al., Ndindiliyimana et al., and Nindabahizi*, Case Nos. ICTR-96-14, ICTR-96-10/17, ICTR-98-42, ICTR-99-50, ICTR-00-56, ICTR-01-71, Jacques Mungwarere’s Second Urgent Motion for Access to Material and Notice Under Rule 67(D), 5 March 2012. (“5 March 2012 Motion”)

<sup>4</sup> *Prosecutor v. Ntakirutimana et al., Kayishema et al., Bagilishema, Muhimana, Ndimbati, Sikubwabo, Niyitegeka, Musema, Munyakazi, Karemera et al., Nchamihigo, Nyiramasuhuko et al., Bizimungu et al., Ndindiliyimana et al. and Nindabahizi*, Case Nos. ICTR-95-1, ICTR-95-1A, ICTR-95-1B, ICTR-95-1D, ICTR-96-14, ICTR-96-13, ICTR-96-10/17, ICTR-97-36A, ICTR-98-42, ICTR-98-44, ICTR-99-50, ICTR-00-56, ICTR-01-63 and ICTR-01-71, Designation of a Judge to Consider Jacques Mungwarere’s Motions for Access to Material and Notice Under Rule 67 (D), 14 March 2012. (“Designation Order”)

<sup>5</sup> *Prosecutor v. Nyitegeka*, Case No. ICTR-96-14, Jacques Mungwarere’s Third Urgent Motion for Access to Material and Notice Under Rule 67(D), 19 April 2012.

standing for his pending and potential future disclosure motions before the ICTR. The letter requested as well that he be accorded the same courtesy and cooperation as would be accorded to the Public Prosecution Service of Canada or to an accused being tried before the ICTR. And the letter requested that the Chambers disclose to Mr. Mungwarere, in a timely fashion, such requested material as those Chambers may deem him to be entitled to receive, in accordance with all of their rules governing disclosure motions, and that the disclosure of any such material be subject to any witness protection measures in place at the ICTR, applied *mutatis mutandis* to the parties in the Canadian prosecution of Jacques Mungwarere. To assure compliance with such witness protection measures, included with the letter was an Order of the Superior Court of Ontario binding all the parties in the Mungwarere case to comply with all protective measures in place regarding such material, applied *mutatis mutandis* to the parties in the Canadian prosecution of Jacques Mungwarere.

6. Mr. Mungwarere hereby seeks the disclosure of a prior statement made to the ICTR by witness TIP 105 in the Canadian proceeding, who is due to testify against him in the upcoming weeks.<sup>6</sup>
7. The trial of Mr. Mungwarere is scheduled to start on 28 May 2012. The Defence for Mr. Mungwarere therefore stresses the importance that these requests be addressed extremely urgently.

## II. APPLICABLE LAW

8. The Defence for Mr. Mungwarere mostly relies on the applicable law cited in his previous motions in support of the present. For the sake of judicial economy, the jurisprudence cited and the arguments elaborated in the applicable law section of these motions will not be reproduced here and we hereby refer to them as an integral part of the present motion.
9. However, it must be added that, on 17 May 2012, the Appeals Chamber in the *Nyiramasuhuko et al.* case issued a decision on Mr. Mungwarere's motion filed

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<sup>6</sup> The identity of witness TIP 105 is mentioned at confidential Annex "A".

before it on 22 March 2012,<sup>7</sup> finding that, based on the letter by the Ontario Superior Court of Justice provided to them, “Mr. Mungwarere has standing to apply for access to the Confidential Requested Material pursuant to Rule 75 of the Rules.”<sup>8</sup>

### III. SUBMISSIONS

10. The PPSC and the Office of the Prosecutor of the ICTR (hereinafter “OTP”) have already had exchanges regarding the prior statement of witness TIP 105. On 1 April 2011, the OTP acknowledged the existence of this statement, as well as that of two other individuals (Confidential Annex “B”).
11. Thereafter, on 21 July 2011, the PPSC sought the disclosure from the OTP of the prior statement of witness TIP 105 and that of the two other individuals mentioned on the correspondence of 1 April 2011. (Confidential Annex “C”, correspondence of 21 July 2011).
12. The consents of witness TIP 105 and of the two other individuals mentioned in Annexes “B” and “C” regarding the disclosure of their prior statements was appended to the correspondence of 21 July 2011.
13. On 16 August 2011, the OTP transmitted to the PPSC the statements of the two other individuals, but with regards to that of witness TIP 105, the OTP indicated that it was confidential material and therefore has not communicated the statement to the PPSC to date (Confidential Annex “D”, letter of 16 August 2011).
14. By the present motion, the Defence of Mr. Mungwarere seeks an order from the President directing the OTP to disclose the prior statement(s) of witness TIP 105 forthwith to the PPSC and to Mr. Mungwarere.
15. It is submitted that the reluctance observed in disclosing the statement sought could be related to what appears to be a broader pattern of questionable conduct by the OTP

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<sup>7</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Jacques Mugwarere’s Urgent Motion for Access to Material in the Nyiramasuhuko et al. Case, 22 March 2012.

<sup>8</sup> Decision on Jacques Mugwarere’s Motion for Access to Confidential Material, 17 May 2012

regarding its handling of the *Muhimana* case as well as its duties to cooperate with the PPSC regarding material from that case.

#### **Witness 104**

16. Witness TIP 104, testified in two cases before the ICTR, those of *Ntakirutimana et al.* and *Muhimana*.<sup>9</sup>
17. The Prosecutor in *Ntakirutimana et al.*, and then in *Muhimana*, seemingly withheld statements of witness TIP 104 from the Defence in these two cases, as can be seen from Confidential Annex "E".<sup>10</sup>

#### **Witness 111**

18. Witness TIP 111 also testified in the *Ntakirutimana et al.* and *Muhimana* cases.<sup>11</sup>
19. As it appears from Confidential Annex "F", the Prosecutor seemingly withheld statements of witness TIP 111 from *Muhimana*, and continues to withhold material from the *Muhimana* case.
20. Moreover, despite compelling evidence to the contrary, the Prosecutor indicated in a letter dated 10 January 2012 that witness TIP 111 did not give evidence in the *Muhimana* case (Confidential Annex "G");

#### **IV. CONCLUSION**

21. In view of the reluctance demonstrated in the past by the OTP concerning the disclosure of material clearly relevant for its case, Mr. Mungwarere respectfully requests the President to order the OTP to disclose forthwith the prior statement of witness TIP 105;

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<sup>9</sup> The identity of witness TIP 104 is mentioned at confidential Annex "A"

<sup>10</sup> Of course, the Defence acknowledges the possibility that these statements were disclosed to the Defendants in these cases, but that they simply failed to make use of them during their respective cross examinations, in which case Mr. Mungwarere simply withdraws paragraphs 16 and 17 of the present motion.

<sup>11</sup> The identity of witness TIP 111 is mentioned at confidential Annex "A"

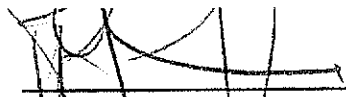
22. The Defence for Mr. Mungwarere submits that there are no obstacles to such disclosure, the Prosecution acknowledging the existence of the prior statement of witness TIP 105 and the witness having agreed to the disclosure;

**FOR ALL THE ABOVE REASONS, MAY IT PLEASE THE HONOURABLE CHAMBER TO:**

**GRANT** the present motion;

**ORDER** the Prosecution to disclose to the parties in the Mungwarere case the prior statement of witness TIP 105

23 May 2012



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Me. Philippe Larochelle



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