

MICT-14-77
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UNITED
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Mechanism for International Criminal Tribunals

Case No.: MICT-14-77-R

Date: 22 March 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Joseph E. Chiondo Masanche

Registrar: Mr. John Hocking

Decision of: 22 March 2016

PROSECUTOR

v.

ALOYS NTABAKUZE

PUBLIC

**DECISION ON NTABAKUZE'S MOTION FOR DISCLOSURE
OF EXCULPATORY MATERIAL**

Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa
Ms. Sunkarie Ballah-Conteh

Counsel for Mr. Aloys Ntabakuze:

Ms. Sandrine Gaillot

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23/03/2016 19:35

A handwritten signature in black ink, appearing to be 'T. J. D. O.', written over a white background within a black rectangular box.

I, JOSEPH E. CHIONDO MASANCHE, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

NOTING the final Judgement against Aloys Ntabakuze issued by the Appeals Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) on 8 May 2012, affirming Ntabakuze’s convictions for genocide, extermination and persecution as crimes against humanity, and violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, and imposing a sentence of 35 years of imprisonment;²

BEING SEISED OF Ntabakuze’s request for: (i) disclosure of exculpatory material, including a statement given by a member of the 1st Muvumba Battalion (“Statement”); (ii) a finding that the Prosecution has breached its disclosure obligations under Rule 73 of the Mechanism’s Rules of Procedure and Evidence (“Rules”); and (iii) an appropriate remedy pursuant to Rule 74 of the Rules;³

NOTING the Prosecution’s response that the Statement was disclosed to Ntabakuze on at least two occasions during trial⁴ and that Ntabakuze fails to specify any other allegedly exculpatory material in the Prosecution’s possession which has not been disclosed;⁵

NOTING that, in reply, Ntabakuze appears to agree that the Statement was disclosed to him during trial, but submits that it is not part of the record, his former counsel did not share it with him, and he should not be held accountable for counsel’s negligence;⁶

CONSIDERING that the Statement was disclosed to Ntabakuze during the trial proceedings⁷ and, therefore, Ntabakuze fails to show that the Prosecution breached its disclosure obligations in this regard;

¹ Order Assigning a Single Judge to Consider an Application, 3 March 2016 (confidential).

² *Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012, paras. 5, 313, 317.

³ Ntabakuze’s Motion for Disclosure of Exculpatory Mater[ial] in the Prosecution’s Custody pursuant to Rules 71(B) and (C), 72(D), 73 and 74 of MICT Rules, 28 February 2016 (confidential) (“Motion”), para. 34. I recall that, under Rules 2(C), 92, and 131 of the Rules, all proceedings shall be public unless there are exceptional reasons for keeping them confidential (see *Augustin Ndirabatware v. Prosecutor*, Case No. MICT-12-29-A, Decision on Ndirabatware’s Motions for Relief for Rule 73 Violations and Admission of Additional Evidence on Appeal, 21 November 2014 (“*Ndirabatware* Appeal Decision of 21 November 2014”), para. 10). Although the submissions were filed confidentially, I am satisfied that there are no exceptional reasons for the present decision to be confidential.

⁴ Prosecution Response to Motion for Disclosure of Exculpatory Material in the Prosecution[’s] Custody, 10 March 2016 (confidential) (“Response”), paras. 1, 3, referring to *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, T 3 May 2005 pp. 3-6, 29, 30; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, T 13 November 2006, pp. 23-39. The Prosecution indicates that Ntabakuze may have been unaware that the Statement was the same document that was filed as an exhibit in another ICTR case since it was filed under seal (see Response, n. 7).

⁵ Response, n. 1.

⁶ Ntabakuze’s Reply to the Prosecution’s Response to Confidential Motion for Disclosure of Exculpatory Material in the Prosecution’s Custody pursuant to Rules 71(B) and (C), 72(D), 73 and 74 of the MICT Rules, 14 March 2016 (confidential), paras. 10-12.

CONSIDERING that Ntabakuze has not identified any other potentially exculpatory material in the custody or under the control of the Prosecution which has not been disclosed to him in accordance with the Rules;⁸

NOTING that, to the extent that Ntabakuze does not have a copy of the Statement, he could have requested it from his former counsel;⁹

CONSIDERING, however, that, in the interests of expediency, the Prosecution could provide Ntabakuze with an additional copy of the Statement;

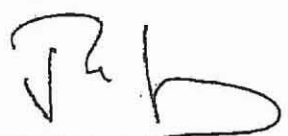
FOR THE FOREGOING REASONS

HEREBY DISMISS the Motion in its entirety; and

ORDER the Prosecution to provide Ntabakuze with an additional copy of the Statement.

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

Done this 22nd day of March 2016.
At Arusha,
Tanzania.



Judge Joseph E. Chiondo Masanche
Single Judge

[Seal of the Mechanism]



⁷ See *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, T 3 May 2005, pp. 29, 30; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, T 13 November 2006, pp. 23 (closed session), 35. It appears that the Statement was dated 18 February 1999. The author of the statement was called as a witness by Ntabakuze.

⁸ In order to establish that the Prosecution is in breach of its disclosure obligations, the applicant must: (i) identify specifically the material sought; (ii) present a *prima facie* showing of its probable exculpatory nature; and (iii) prove that the material requested is in the custody or under the control of the Prosecution. In the absence of evidence to the contrary, it is presumed that the Prosecution is acting in good faith in discharging its disclosure obligations. See *Ngirabatware* Appeal Decision of 21 November 2014, paras. 15, 16, and references cited therein.

⁹ See ICTR Directive on the Assignment of Defence Counsel, 14 March 2008, Article 20(B). See also Directive on the Assignment of Defence Counsel, MICT/5, 14 November 2012, Article 16(I).



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