

MICT-15-90  
16-05-2017  
(3 - 1/176bis)  
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS  
NO: MICT-15-90

3/176bis  
IM

Before the Single Judge: Judge Mparany Mamy Richard Rajohnson  
Registrar: Mr Olufemi Elias  
Filing date: 27 April 2017

**THE PROSECUTOR**

v.

**ELIE NDAYAMBAJE**

*Public*

---

**RESPONSE FROM MR ELIE NDAYAMBAJE TO THE REQUEST OF MR  
EMMANUEL MBARUSHIMANA KUNDA**

---

**Office of the Prosecutor:**

Mr Serge Brammertz

**Requester: Mr Emmanuel Mbarushimana Kunda**

**Elie Ndayambaje**

John Philpot, Attorney

**Received by the Registry  
Mechanism for International Criminal Tribunals  
16/05/2017 17:45**



1. On 14 April 2017, Mr Philpot was officially informed that on 27 March 2017, a certain Emmanuel Mbarushimana Kunda of Rwanda had filed a request in the form of a letter for the disclosure of evidence.
2. Mr Philpot has just received certain relevant documents.
3. Mr Mbarushimana has filed a "Request for statements given by witnesses in the cases of *Elie Ndayambaje, Dominique Ntawukuriryayo, Callixte Kalimanzira, Alphonse Nteziryayo...*"
4. Mr Elie Ndayambaje consents to the request of Mr Mbarushimana.
5. The guiding principle has been established in the "Decision on the Prosecution Urgent *Ex Parte* Motion to Rescind Protective Measures for Witnesses EV, RT, and RV".<sup>1</sup>
6. Pursuant to this principle, transcripts from closed sessions and other confidential documents were disclosed to the Prosecutor's Office in Denmark with the stipulation that the protective measures would also apply in Denmark.
7. The cooperation between States in prosecuting alleged war criminals justified the partial lifting of the protective measures.
8. The rights of the Defence are as important as the rights of the Prosecution and should be applied *mutatis mutandis*.
9. Elie Ndayambaje wants the same principle to be applied in the Mbarushimana case and the relevant documents requested by Mr Mbarushimana to be transmitted to him.
10. Moreover, Mr Elie Ndayambaje seeks reciprocity regarding the witnesses in the Mbarushimana case in Rwanda: for the Prosecution in the Mbarushimana case to be ordered to transmit to the Defence for Mr Ndayambaje all of the witness statements in the Mbarushimana case in Rwanda.
11. The rights of Mr Ndayambaje to the disclosure of evidence remain in effect at all times.

---

<sup>1</sup> *Prosecutor v. Pauline Nyiramasuhuko et al.*, ICTR-98-42-T, 19 May 2011.

12. The existence of contradictory statements would be a ground for the revision of Mr Ndayambaje's trial.
13. Mr Ndayambaje is aware that, if granted, his request would constitute a change in the case-law.
14. It is impossible for Mr Ndayambaje to identify all of the statements in the possession of Rwanda. Nevertheless, it is common knowledge that the Rwandan witnesses from Rwanda in the trials before the ICTR and those in Rwanda and before national courts are a collection of liars who tailor their testimony to the needs of the Prosecutor and the Rwandan State. As a precaution, it is vital that all of the statements are transmitted to Mr Ndayambaje. It would be impossible for Mr Ndayambaje to identify the said statements if he were compelled to do so.
15. It is the duty of the courts to act transparently in order to allow the truth to prevail.
16. Mr Ndayambaje files this response as a public document because the discussion is public and not confidential or secret.
17. Mr Ndayambaje seeks:
  - For the Tribunal to grant Mr Mbarushimana's request in its present form, with the stipulation that the protective measures granted by the International Criminal Tribunal for Rwanda will apply in the proceedings of Mr Mbarushimana in Rwanda.
  - For the Tribunal to order the Government of Rwanda to transmit all of the statements and the evidence in Mr Mbarushimana's case-file in Rwanda to Mr Elie Ndayambaje.

Word count /in original/: 522 words

Respectfully submitted,

*/signed/*

**John Philpot**



**TRANSMISSION SHEET FOR FILING OF TRANSLATIONS  
WITH THE ARUSHA BRANCH OF  
THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

---

<b>To</b>	MICT Registry		
<b>From</b>	<input checked="" type="checkbox"/> ICTY CLSS	<input type="checkbox"/> ICTR LSS	
<b>Original Submitting Party</b>	<input type="checkbox"/> Chambers	<input checked="" type="checkbox"/> Defence	<input type="checkbox"/> Prosecution <input type="checkbox"/> Other
<b>Case Name</b>	NDAYAMBAJE	<b>Case Number</b>	ICTR-15-90 <b>No. of Pages</b> 3
<b>Original Document No.</b>	MICT-15-90-0041	<b>Translation Reference No.</b> REG50148	
<b>Date of Original</b>	27/04/2017	<b>Original Language</b>	<input type="checkbox"/> English <input checked="" type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Date Transmitted</b>	16/05/2017	<b>Language of Translation</b>	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other
<b>Title of original document</b>	Reponse de Monsieur Ndayambaje a la requite de Monsieur Emmanuel Mbarushimana Kunda		
<b>Title of translation</b>	Response from Mr Elie Ndayambaje to the request of Mr Emmanuel Mbarushimana Kunda		
<b>Classification Level</b>	<input checked="" type="checkbox"/> Unclassified <input type="checkbox"/> Confidential <input type="checkbox"/> Strictly Confidential	<input type="checkbox"/> Ex Parte Defence excluded <input type="checkbox"/> Ex Parte Prosecution excluded <input type="checkbox"/> Ex Parte R86(H) Applicant excluded <input type="checkbox"/> Ex Parte Amicus Curiae excluded <input type="checkbox"/> Ex Parte other exclusion (specify) :	
<b>Document type/ Type de document:</b>	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Motion <input type="checkbox"/> Decision	<input type="checkbox"/> Order <input type="checkbox"/> Affidavit <input type="checkbox"/> Correspondence <input type="checkbox"/> Judgement	<input type="checkbox"/> Appeal Book <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Submission from parties <input type="checkbox"/> Book of Authorities

Send completed transmission sheet to: [JudicialFilingsArusha@un.org](mailto:JudicialFilingsArusha@un.org)