

**UNITED
NATIONS**

**MICT-15-90
19-05-2017
(3 - 1/179bis)**

**3/179bis
IM**



Mechanism
for International Criminal Tribunals

Case no: MICT-15-90

Date: 3 May 2017

Original: French

SINGLE JUDGE

Before: Judge Mparany Mamy Richard Rajohnson

Registrar: Mr Olufemi Elias

Decision of: 3 May 2017

THE PROSECUTOR

v.

ÉLIE NDAYAMBAJE

PUBLIC DOCUMENT

**DECISION ON A REQUEST FOR TRANSMISSION OF
DOCUMENTS**

Office of the Prosecutor

Mr Serge Brammertz

Counsel for Mr Élie Ndayambaje

Mr John Philpot

**Received by the Registry
Mechanism for International Criminal Tribunals**

19/05/2017 12:00

I, MPARANY MAMY RICHARD RAJOHNSON, judge of the Residual Mechanism for International Criminal Tribunals (“Mechanism”) and Single Judge in this case,¹

BEING SEISED of the request filed on 14 April 2017 by Mr Philpot, counsel for Mr Ndayambaje, wherein he points out that certain procedures relating to a request filed by Mr Mbarushimana Kunda seeking to obtain access to evidence from Mr Ndayambaje’s case-file, had not been disclosed to him and requests that all of the relevant documents in his client’s case-file be transmitted to him,²

NOTING the confidential submission filed on 21 April 2017 by the Registrar pursuant to Rule 31 (B) of the Rules of Procedure and Evidence of the Mechanism, wherein he explains that, after having received clarification from Mr Ndayambaje regarding the nature and scope of the representation by his counsel, the documents mentioned in the Request were provided to Mr Philpot,³

NOTING that the Prosecution did not respond to the Request,⁴

RECALLING that, in order to be able to carry out their duties in full, counsel recognised, assigned or appointed by the Registrar as acting for an accused or convicted person must, in principle, automatically have access to the *complete* record of the proceedings to which their client is entitled,⁵

CONSIDERING that the Registrar does not object to Mr Philpot having access to the complete case-file of his client and that it appears that the failure to provide the documents identified in the Request was due to a misunderstanding that has now been clarified,⁶

¹ “Order Assigning a Single Judge to Consider an Application”, 5 April 2017 (confidential), p. 2.

² “Request for All Documentation Ever Filed in Proceedings in His Case”, 14 April 2017 (“Request”), para. 4. Mr Philpot also requests that “all proceedings be suspended for one week” after he receives the “complete case file” of Mr Ndayambaje. *See* Request, para. 5.

³ “Registrar’s Submission Pursuant to Rule 31 (B) of the Rules”, 21 April 2017 (confidential) (“Registrar’s Submission”), paras 2 to 4.

⁴ Pursuant to Rule 153 of the Rules of Procedure and Evidence of the Mechanism, the maximum deadline by which to respond to a motion filed by a party is within fourteen days of the filing of the motion. As the Request was filed on 14 April 2017, the deadline by which to respond has expired.

⁵ *The Prosecutor v. Eliézer Niyitegeka*, Case No. MICT-12-16, “Decision on Niyitegeka’s Urgent Request for Orders Relating to Prosecution Witnesses”, 29 January 2016, para. 10; *The Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48, “Decision on Request for Access”, 3 August 2015), p. 1.

⁶ Registrar’s Submission, para. 4.

CONSIDER, therefore, the Request to be moot,

FOR THE FOREGOING REASONS,

DISMISS the Request as being null and void,

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

Single Judge

*/signed/*_____

Mparany Mamy Richard Rajohnson

Done this third day of May 2017
in Arusha, Tanzanie

[Seal of the Mechanism]





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

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| Case Name | NDAYAMBAJE | Case Number | ICTR-15-90 No. of Pages 3 |
| Original Document No. | MICT-15-90-0042 | Translation Reference No. REG50157 | |
| Date of Original | 03/05/2017 | Original Language | <input type="checkbox"/> English <input checked="" type="checkbox"/> French <input type="checkbox"/> Kinyarwanda |
| Date Transmitted | 19/05/2017 | Language of Translation | <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other |
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