

Case no. : ICTR-97-36-T

ICTR-97-36-I
29-5-2001
(314 - 310)

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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS
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**Office of the President
Bureau du Président**

Before: Judge Navanethem Pillay, President

Original: English

Registrar: Adama Dieng

Decision of: 28 May 2001

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

Versus

JOHN YUSUF MUNYAKAZI

ICTR-97-36-T

RESCISSION OF THE NON-DISCLOSURE ORDER

Prosecutor : Ken Fleming

: Don Webster

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I, Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda (the "Tribunal"), hereby consider an *ex parte* Motion (the "Motion"), filed by the Prosecutor on 5 February 2001, requesting a rescission of the Non-Disclosure Order (the "Order") issued by the Confirming Judge and incorporated in the Order of 10 October 1997 which confirmed the Indictment against John Yusuf Munyakazi ("Munyakazi"), Emanuel Bagambiki ("Bagambiki") and Samuel Imanishimwe ("Imanishimwe").

Judge Lennart Aspegren, the Confirming Judge in this case, is no longer a judge at the Tribunal. As President of the Tribunal, I therefore assign myself to consider this motion, in accordance with powers vested in me, pursuant to Rules 15(E), 27(A), (B) and (C) of the Tribunal's Rules of Procedure and Evidence (the "Rules").

I note that the Order pertains to all three Accused and states as follows:

"...after consultation with the Prosecutor during the review of this indictment and pursuant to Rules 53(B) and (C) of the Rules, that there be no public disclosure of the indictment and the supporting material until the warrants of arrest have been served on the said three accused."

I have considered the submissions made by the Prosecutor, *inter alia*, that:

- (i) Although Munyakazi has not been arrested, his name appears to have already been circulated in the public domain in relation to the Indictment against him. The Order no longer serves to protect confidential information obtained by the Prosecutor in respect of Munyakazi;
- (ii) Enforcement of the Order may impede recent initiatives undertaken by the Office of the Prosecutor to seek assistance from international law enforcement organizations, for the purposes of arresting Munyakazi;
- (iii) In light of the above, the Order is no longer in the interest of justice, as envisaged in Rule 53 of the Rules.

On 26 February 2001, the Prosecutor was requested to clarify the following issues:

- (i) Whether the Order was varied in respect of co-accused Bagambiki and Imanishimwe, in light of the fact that the Motion relates solely to the Munyakazi?
- (ii) Whether the Prosecutor intends maintaining the Order in respect of the Supporting Material, since all her submissions relate solely to the Indictment?

These issues were subsequently addressed by the Prosecutor in a brief filed on 18 April 2001, in which she submitted *inter alia* that:

- (i) The Order was “...*not formally varied*...” by any Trial Chamber at any stage of the on-going joint trial of Bagambiki, Imanishimwe and Ntagerura;
- (ii) Her request pertains to the rescission of the Order in respect of all three accused, “...*without distinction as to whether or not they have been arrested or have been judged by a Trial Chamber.*” In this regard the Prosecutor argued that if the Order is rescinded with respect to Munyakazi, who has not been apprehended, it serves no purpose to enforce the Order against the other two accused who are currently on trial before Trial Chamber III;
- (iii) Her request pertains to the rescission of the Order in respect of the Indictment only and not the Supporting Material;
- (iv) Should the President determine that Trial Chamber III is the proper forum for the adjudication of the present motion, the Prosecutor will re-file this Motion before Trial Chamber III.

Article 18 (2) of the Tribunal’s Statute states that:

“Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.”

Rule 52 of the Rules states that:

“Subject to Rule 53, upon confirmation by a Judge of a Trial Chamber, the indictment shall be made public.”

and Rule 53 of the Rules states that:

“(A) In exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice order the non-disclosure to the public of any documents or information until further order.

(B) When confirming an indictment the Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or in case of joint accused, on all accused.

(C) A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.”

Two of the accused, Bagambiki and Imanishimwe, are currently on trial and any orders that may be required for the conduct of this trial fall within the jurisdiction of the Trial Chamber. Where a Trial Chamber is seized of a motion of this nature, it may rule on this motion or, alternatively, it may refer this motion to the Confirming Judge for consideration. In this instance, Trial Chamber III is not seized of the Motion but the Confirming Judge is. In my view, motions applicable to accused persons whose trials have commenced are matters that fall within the jurisdiction of the Trial Chamber. Accordingly, I will therefore not exercise jurisdiction over Bagambiki and Imanishimwe.



Munyakazi has not been arrested and has not made an initial appearance before any Trial Chamber. Therefore, motions arising from his Indictment fall within the jurisdiction of the Confirming Judge. In this regard, I concur with the reasoning of Judge T. H. Khan when he held that:

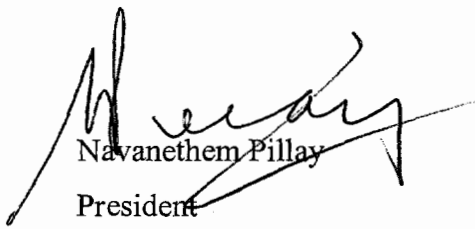
“Because these persons remain at large and have not made an initial appearance before a chamber, it is my opinion that jurisdiction lies with the Judges who confirmed their indictments.”¹

For the reasons advanced by the Prosecutor, I am of the view that it is no longer in the interest of justice to maintain the Order, in so far as it pertains to the Indictment against Munyakazi.

In light of the above, I therefore **ORDER:**

- (i) A rescission of the Non Disclosure Order of 10 October 1997 to allow the Indictment against **John Yusuf Munyakazi** to be made public;
- (ii) That the Non-Disclosure of 10 October 1997 shall remain in force with regard to the Supporting Material.

Arusha, 28 May 2001,



Navanethem Pillay
President

(Seal of the Tribunal)

¹ The Prosecutor versus Theoneste Bagosora and 28 Others; Case Number: ICTR-98-37-I; Dismissal of Indictment; Decision of 31 March 1998; Page 11.