



Mechanism for International  
Criminal Tribunals

Case No: MICT-12-16

Date: 27 May 2015

Original: FRENCH

**IN THE BENCH**

**Before:** Judge Theodor Meron, Presiding  
Judge Jean-Claude Antonetti  
Judge Carmel Agius  
Judge Christoph Flügge  
Judge Burton Hall

**Registrar:** Mr John Hocking

**Order of:** 27 May 2015

**ELIÉZER NIYITEGEKA**

**v.**

**THE PROSECUTOR**

***PUBLIC DOCUMENT***

**STATEMENT OF JUDGE JEAN-CLAUDE ANTONETTI ATTACHED TO THE  
ORDER OF 26 MAY 2015 ON RECLASSIFICATION OF FILING**

**Applicant:**

Mr Eliézer Niyitegeka

**The Office of the Prosecutor:**

M. Hassan Bubacar Jallow, Prosecutor

Received by the Registry  
Mechanism for International Criminal Tribunals  
17/06/2015 15:33

A handwritten signature in black ink, appearing to read 'McCall Smith', written over a horizontal line.

On 19 May 2015, pursuant to Rule 31 (B) of the Rules of Procedure and Evidence, the Registrar asked the Bench to reclassify the request for review from public to confidential.<sup>1</sup> According to the Registrar, the request contains confidential material, in particular the identity of a protected witness who testified in the Eliézer Niyitegeka trial. According to the Registrar, the submission has to be classified as confidential to preserve the protective measures that were ordered.

As the Bench has been informed about this request, I wish to announce my objection to the Registrar's submission and the manner in which it was dealt with.

On 26 May 2015, the President of the Chamber **personally** issued an Order reclassifying the request for review as confidential.<sup>2</sup> As this Order was issued **contrary to my opinion**, it is in my view **unlawful** because, firstly, it does not mention the names of the judges, failing to note that in addition to the President of the Chamber, the Registrar's submission was also submitted to us, in our capacity as the Bench in charge of deciding on Eliézer Niyitegeka's request for review. Furthermore, it should be noted that the Registrar calls the judges members of the "Appeals Chamber", whereas we are actually a "Bench".

As for the part of the disposition under (ii), wherein organisations and the media in possession of the request for review are prohibited from reporting on it, the Bench was not informed about it, nor did it receive a draft Order as is the practice. Moreover, the provisions of the Order do not mention Rule 146 of the Rules of Procedure and Evidence, whereas the document at the subject of the Order is based on this Rule.

I believe that **everyone** must observe the procedures arising from the Rules of Procedure and Evidence in order to avoid creating a **zone of legal uncertainty**, which is the case in the present instance.

With regard to the public status of the request for review, I wish to point out that such a request must be **public** and that there are no grounds to conceal it. If this request contains material that might allow the identification of a protected witness, the Bench could just as well keep the request accessible to the public while redacting the names of protected witnesses.

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<sup>1</sup> Quoted in *Eliézer Niyitegeka v. The Prosecutor*, MICT-12-16, "Order on Registrar's Submission Requesting Reclassification of Filing", Public, 26 May 2015, p. 2.

<sup>2</sup> *Eliézer Niyitegeka v. The Prosecutor*, MICT-12-16, "Order on Registrar's Submission Requesting Reclassification of Filing", Public, 26 May 2015.

I wanted to make this statement because of the technical error in the Order issued by the President of the Chamber, without prejudice to my concerns about the outcome of this procedure.

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

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Jean-Claude Antonetti  
President

Done this twenty-seventh day of May 2015,

At The Hague,  
The Netherlands

**[Seal of the Tribunal]**

