

UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No.: MICT-12-17-R108.1

Date: 13 June 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Graciela Susana Gatti Santana

Registrar: Mr. John Hocking

Order of: 13 June 2016

PROSECUTOR

v.

GÉRARD NTAKIRUTIMANA

PUBLIC

**ORDER APPOINTING AN *AMICUS CURIAE* TO
INVESTIGATE FALSE TESTIMONY**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa
Mr. Cheickh Bangoura

Counsel for Gérard Ntakirutimana:

Mr. Vincent Courcelle-Labrousse

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Mechanism for International Criminal Tribunals
13/06/2016 16:55

A handwritten signature in black ink, appearing to be 'J. D. B.', written over a white background within a black rectangular box.

I, GRACIELA SUSANA GATTI SANTANA, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING the “Decision on Motion to Appoint an *Amicus Curiae* to Investigate False Testimony”, filed on 2 March 2016, in which Judge Vagn Joensen concluded that strong grounds exist for believing that Prosecution Witness HH knowingly and wilfully gave false testimony in the case of *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10 & ICTR-96-17-T before the International Criminal Tribunal for Rwanda (“ICTR”) and, in accordance with Rule 108(B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), referred the matter to the President to designate a Single Judge to determine whether to order an investigation;²

RECALLING the “Order for Submissions” filed on 4 April 2016 in which I instructed Gérard Ntakirutimana and the Prosecution to file further submissions on whether I should exercise my discretion to: (i) order an investigation into whether Witness HH gave false testimony in the *Ntakirutimana* case; and, if so, (ii) instruct the Prosecutor to investigate the alleged false testimony, or, due to a conflict of interest, direct the Registrar to appoint an *amicus curiae* to investigate it;³

NOTING the “*Réponse de M. Gérard Ntakirutimana à l’ordonnance du Juge unique en date du 4 avril 2016*”, filed confidentially on 22 April 2016, in which Ntakirutimana argues that it is necessary to order an investigation under Rule 108(B) of the Rules given that Witness HH: (i) admitted that he falsely testified in the *Ntakirutimana* case; (ii) explained that he was motivated to do so based on vengeance, the possibility of remaining in a foreign country, and receiving financial compensation; and (iii) provided evidence that supports Ntakirutimana’s convictions and sentence;⁴

NOTING FURTHER that Ntakirutimana submits that, in view of the fact that Witness HH is a Prosecution witness, a conflict of interest requires the appointment of an *amicus curiae* to conduct the investigation;⁵

NOTING the “Prosecutor’s Response to the Order for Submissions of 4 April 2016”, filed on 6 May 2016, in which the Prosecutor: (i) does not oppose the appointment of an *amicus curiae*;

¹ Order Assigning a Single Judge, 11 March 2016, p. 1.

² *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. MICT-12-17, Decision on Motion to Appoint an *Amicus Curiae* to Investigate False Testimony, 2 March 2016 (“Decision of 2 March 2016”), paras. 11-18.

³ Order for Submissions, 4 April 2016, p.1.

⁴ Mr. Gérard Ntakirutimana’s Response to the Order of the Single Judge of 4 April 2016, 22 April 2016 (confidential; the English translation of the French original was filed on 12 May 2016) (“Ntakirutimana’s Submission of 22 April 2016”), paras. 2, 3, 10, 13, 19-21, 24, 31.

⁵ Ntakirutimana’s Submission of 22 April 2016, paras. 26-31.

(ii) requests that any investigation, if ordered, establish whether the purported recantation was “corruptly obtained”; and (iii) argues that the recantation would not materially impact Ntakirutimana’s convictions;⁶

CONSIDERING the observations in the Decision of 2 March 2016 that Witness HH testified in a domestic trial that he lied when testifying in the *Ntakirutimana* case and that vengeance motivated him to lie;⁷

CONSIDERING the observations in the Decision of 2 March 2016 that elements of Witness HH’s evidence underpinned, in part, Ntakirutimana’s convictions at trial and on appeal for genocide, murder, and extermination as crimes against humanity;⁸

CONSIDERING the findings in the Decision of 2 March 2016 that: (i) Witness HH’s testimony in the domestic trial that he generally lied when testifying in the *Ntakirutimana* case and that he was motivated by vengeance provide an indicia of his deliberate and wilful intent to mislead and cause harm in relation to his testimony before the ICTR; and (ii) that Witness HH’s recantation of his evidence that he saw Ntakirutimana participate in attacks concerns material matters in the *Ntakirutimana* case as evidence of this nature supports Ntakirutimana’s convictions at trial and on appeal;⁹

CONSIDERING the observations in the Decision of 2 March 2016 that the circumstances surrounding Witness HH’s recantation are also indicative of the possibility that his recantation was fabricated;¹⁰

FINDING that an investigation into Witness HH’s recantation of his evidence in the *Ntakirutimana* case is the most effective and efficient way of determining: (i) whether Witness HH lied when testifying before the ICTR or during the domestic proceedings when he recanted his testimony in the *Ntakirutimana* case; and (ii) accordingly, whether sufficient grounds exist to initiate proceedings against Witness HH for giving false testimony under Rule 108(C) of the Rules;

FINDING that an investigation is further justified in light of the possible ramifications the alleged false testimony may have on Ntakirutimana’s convictions and sentence;¹¹

⁶ Prosecutor’s Response to the Order for Submissions of 4 April 2016, 6 May 2016, paras. 1, 2.

⁷ Decision of 2 March 2016, para. 12.

⁸ Decision of 2 March 2016, paras. 13, 14.

⁹ Decision of 2 March 2016, para. 15. *See also* Decision of 2 March 2016, paras. 12-14.

¹⁰ *See* Decision of 2 March 2016, paras. 16-18.

¹¹ *See* Decision of 2 March 2016, paras. 12-15.

CONSIDERING that, in the present circumstances, it would be appropriate to appoint an *amicus curiae* to conduct an investigation, which should also take into account the rights afforded suspects under the Rules and the Statute of the Mechanism;

CONSIDERING that the Registrar should take any action required to facilitate the investigation by the *amicus curiae* in this respect;

PURSUANT to Rules 55, 86, and 108(B)(ii) of the Rules;

ORDER the Registrar to appoint an *amicus curiae* to investigate whether Witness HH gave false testimony before the ICTR in the *Ntakirutimana* case as well as the possibility that the witness's recantation in the domestic proceeding of his testimony in the *Ntakirutimana* case was fabricated with a view to reporting back as to whether there are sufficient grounds for initiating proceedings for false testimony;

ORDER the Registrar to provide the appointed *amicus curiae* with all closed session transcripts of Witness HH's testimony and confidential exhibits admitted during his testimony in the *Ntakirutimana* case as well as all confidential filings in Case Nos. MICT-12-17 and MICT-12-17-R108.1 from the filing of Ntakirutimana's "Motion to Appoint an *Amicus Curiae* to Investigate the Apparent Recantation of a Witness Testifying before the ICTR Pursuant to Rule 108(B)" on 18 December 2013 onwards; and

REMAIN SEISED of the matter.

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

Done this 13th day of June 2016,
At Arusha,
Tanzania

Judge Graciela Susana Gatti Santana
Single Judge

[Seal of the Mechanism]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
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Case Name/ Affaire :	Prosecutor v. Gérard Ntakirutimana		Case Number/ Affaire n° :	MICT-12-17-R108.1	
Date Created/ Daté du :	13 June 2016	Date transmitted/ Transmis le :	13 June 2016	No. of Pages/ Nombre de pages :	4
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
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