



Mechanism for International Criminal Tribunals

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

Date: 14 November 2016

Original: English

**BEFORE A SINGLE JUDGE**

Before: Judge Graciela Susana Gatti Santana  
Registrar: Mr. John Hocking  
Order of: 14 November 2016

PROSECUTOR

v.

GÉRARD NTAKIRUTIMANA

*PUBLIC*

**ORDER ON *AMICUS CURIAE*'S REQUEST FOR ACCESS TO  
DOCUMENTS**

**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Richard Karegyesa

**Counsel for Gérard Ntakirutimana:**

Mr. Vincent Courcelle-Labrousse

**Amicus Curiae:**

Mr. Martin Petrov

**Received by the Registry  
Mechanism for International Criminal Tribunals  
14/11/2016 16:40**

*Thwaiipopo*

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

RECALLING the “Order Appointing an *Amicus Curiae* to Investigate False Testimony”, filed on 13 June 2016, in which I ordered the Registrar to appoint an *amicus curiae* to investigate, *inter alia*, whether Witness HH 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 (“*Ntakirutimana* case” and “ICTR”, respectively) in light of information arising from the witness’s participation in proceedings before a domestic court in a criminal trial related to the Rwandan genocide (“Domestic Case”);<sup>2</sup>

NOTING the appointment of the *amicus curiae* by the Registrar on 10 October 2016;<sup>3</sup>

BEING SEISED OF the “*Amicus Curiae*’s Request for Access to Documents”, filed confidentially on 4 November 2016 (“Motion”), in which the *amicus curiae* states that, in order to conduct a full and objective investigation into the matter, he requires access to: (i) materials identified in paragraph 8 of the Motion, which include open and closed session transcripts from Witness HH’s testimony in the Domestic Case, audio recordings and transcripts of previous statements made by the witness to domestic authorities in relation to that case, and correspondence from the domestic court seised of that proceeding to the Prosecution of the Mechanism (“Prosecution”) as well as an order issued by that court; (ii) Witness HH’s statement provided to ICTR investigators on 2 April 1996; and (iii) any other statement provided by Witness HH to the Prosecution or Ntakirutimana’s defence (“Defence”) prior to the witness’s testimony in the *Ntakirutimana* case;<sup>4</sup>

CONSIDERING that providing material related to the Domestic Case to the *amicus curiae* is consistent with a prior order of the domestic court, which permitted the disclosure of such material on a confidential basis to the relevant parties involved in this matter;<sup>5</sup>

<sup>1</sup> Order Assigning a Single Judge, 11 March 2016, p. 1.

<sup>2</sup> Order Appointing an *Amicus Curiae* to Investigate False Testimony, 13 June 2016, p. 3.

<sup>3</sup> Registrar’s Decision, 10 October 2016 (confidential), p. 2.

<sup>4</sup> Motion, paras. 6, 8-11.

<sup>5</sup> See *In Re Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. MICT-12-17, Registrar’s Submission pursuant to Rule 31(B) in connection with the “Order for Submissions in relation to the Motion to Appoint an *Amicus Curiae* to Investigate the Apparent Recantation of a Witness Testifying before the ICTR Pursuant to Rule 108(B)”, 19 November 2014 (confidential), paras. 4, 6. See also Internal Memorandum from the Office of the Prosecutor to the Registrar, Reference No. MICT-OTP/2014/RK/001, Transmission of Materials pursuant to the Chamber’s Preliminary Order in relation to the Motion to Appoint an *Amicus Curiae* to Investigate the Apparent Recantation of a Witness Testifying before the ICTR pursuant to Rule 108(B), 13 February 2014 (confidential), paras. 2-4.

**CONSIDERING** that, in order to conduct an objective and comprehensive investigation, it is necessary to provide the *amicus curiae* with: (i) material related to Witness HH's participation in the Domestic Case as outlined in paragraph 8 of the Motion; and (ii) any statement(s) provided by the witness to the Prosecution and/or the Defence in the *Ntakirutimana* case;

**FOR THE FOREGOING REASONS,**

**ORDER** the Registrar to serve the *amicus curiae* with the material identified in paragraph 8 of the Motion on a confidential basis within 14 days of this Order;

**ORDER** the Prosecution and Ntakirutimana's present Counsel to provide the Registrar with any statement(s) given by Witness HH during the *Ntakirutimana* case or inform me in writing that no such statement exists within 14 days of this Order;

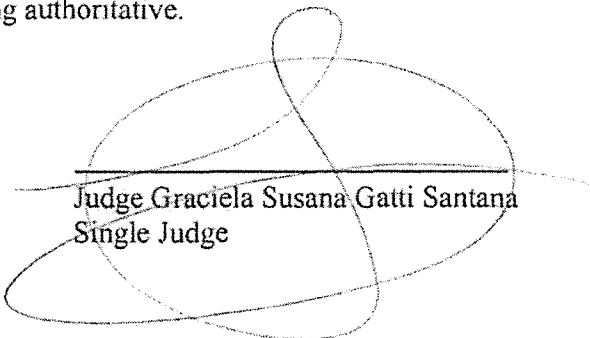
**ORDER** the Registrar to serve the *amicus curiae* as soon as practicable with any statement(s) provided by the Prosecution and Ntakirutimana's present Counsel pursuant to this Order;

**DIRECT** the *amicus curiae*, if the conclusions of the investigation have not been communicated to me within 60 days of the filing of this Order, to provide a progress report on the status of the investigation 60 days from the filing of this Order and every 30 days thereafter until the investigation conclusions have been communicated to me; and

**REMAIN SEISED** of the matter.

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

Done this 14th day of November 2016,  
At Arusha,  
Tanzania

  
Judge Graciela Susana Gatti Santana  
Single Judge

[Seal of the Mechanism]





**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/  
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE  
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

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From/ De :	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur
Case Name/ Affaire :	Prosecutor v. Gérard Ntakirutimana	Case Number/ Affaire n° :	MICT-12-17-R108.1
Date Created/ Daté du :	14 November 2016	Date transmitted/ Transmis le :	14 November 2016
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) :
Title of Document/ Titre du document :	Order on Amicus Curiae's Request for Access to Documents		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu
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Rev: April 2014/Rév. : Avril 2014