

UNITED
NATIONS

MICT-13-33
11-07-2017
(5 - 1/1549bis)

5/1549bis
ZS



Mechanism
for International Criminal Tribunals

Case No.: MICT-13-33

Date: 8 June 2017

Original: French

SINGLE JUDGE

Before: Judge Gberdao Gustave Kam

Registrar: Mr Olufemi Elias

Decision of: 8 June 2017

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

ORDER FOR SUBMISSIONS

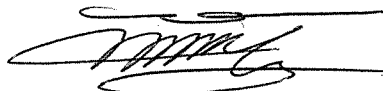
The Office of the Prosecutor

Mr Serge Brammertz
Mr Richard Karegyesa
Ms Sunkarie Ballah-Conteh

Counsel for Jean de Dieu Kamuhanda

Mr Peter Robinson

**Received by the Registry
Mechanism for International Criminal Tribunals
11/06/2017 10:58**



I, GBERDAO GUSTAVE KAM, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case,¹

NOTING the Decision rendered on 21 March 2017 wherein Judge Jean-Claude Antonetti ordered the Prosecution to disclose to the Defence certain confidential documents concerning protected Prosecution Witness GEK in Case No. ICTR-95-54A-T, *The Prosecutor v. Jean de Dieu Kamuhanda* (“Kamuhanda Case”) tried before the International Criminal Tribunal for Rwanda,²

SEISED of a Motion filed on 12 May 2017 wherein Mr Jean de Dieu Kamuhanda seeks: (i) judicial authorisation to interview Witness GEK, if he consents, in order to confront the witness with his alleged lies and to convince him that his testimony for the Prosecution, during the trial and appeal proceedings in the *Kamuhanda Case* was false;³ and (ii) a modification to the document presented to witnesses by the Registry’s Witness Support and Protection Unit in relation to requests for an interview,⁴

NOTING the Response filed on 25 May 2017 wherein the Prosecution submits that: (i) Mr Kamuhanda has failed to provide sufficient justification to warrant intrusion into Witness GEK’s privacy, especially considering that his case has been tried to final judgement; (ii) the Appeals Chamber has already ruled on the matters raised in the Motion concerning the testimony of Witness GEK; and (iii) alternatively, should the Single Judge decide to grant the Motion, a Prosecution representative should be present during the interview,⁵

CONSIDERING that the present order concerns solely the request to seek consent from the witness to be interviewed by Counsel for Mr Kamuhanda and that it is not a ruling on the merits of this motion or on the arrangements to interview the witness, should this take place,

¹ “Order Assigning a Single Judge to Consider a Motion”, 22 May 2017 (French version filed on 24 May 2017), p. 1.

² “Decision on Third Motion to Compel Disclosure of Witness GEK Material”, 21 March 2017, p. 6.

³ “Motion to Interview Prosecution Witness GEK”, 12 May 2017 (French version filed on 24 May 2017) (“Motion”), paras 1, 3 and 8 to 14.

⁴ Motion, paras 4 to 7 and 15 to 18.

CONSIDERING that, in light of the Decision of 10 July 2000 rendered by Trial Chamber II of the ICTR in the *Kamuhanda* Case ordering protective measures limiting contact with, notably, the potential protected Prosecution witnesses and requiring judicial authorisation to be granted before a member of Mr Kamuhanda's Defence team can contact the individuals who are at the subject of that decision,⁶ and that the requirement for such prior judicial authorisation was upheld by a decision of the Mechanism,⁷

CONSIDERING that, pursuant to Rule 86 (F) of the Rules of Procedure and Evidence ("Rules"), protective measures ordered before the ICTR shall continue to have effect *mutatis mutandis* in any other proceedings before the Mechanism or another jurisdiction, unless and until they are rescinded, varied or augmented,

FINDING that, under the circumstances, the Registry's Witness Support and Protection Unit should inquire with the witness in question to see whether he consents to being interviewed by Counsel for Mr Kamuhanda,

NOTING Mr Kamuhanda's argument that the following paragraph, included in the document presented to witnesses by the Registry's Witness Support and Protection Unit, should not be presented to the witness because it contains language likely to discourage him from consenting to the requested interview:

"I fully understand the meaning and implications of my personal decision and therefore commit myself, through this document, not to hold WISP and the Mechanism in general accountable for any moral and material prejudice which I might suffer from my decision as to whether to participate in such an interview."⁸

⁵ "Prosecution Response to Defence Motion to Interview Prosecution Witness GEK", 25 May 2017 ("Response") (French version filed on 12 June 2017, paras 1, 3 and 7.

⁶ *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-50-I, "Decision on the Prosecutor's Motion for Protective Measures for Witnesses", 10 July 2000, paras 2 (i), 9 and p. 6.

⁷ "Decision on Motion for Contact with Persons Benefitting from Protective Measures", 10 March 2016 (French version filed on 31 March 2016), paras 6, 14, 19 and 24.

⁸ Motion, paras 15 and 16. *See also* Motion, paras 17 and 18.

CONSIDERING that Mr Kamuhanda argues that a Single Judge ruling in this case on another request regarding the same contested paragraph ordered, on 13 September 2016, the Witness Support and Protection Unit to contact the witness in question once again to explain, *inter alia*, that the request from Counsel for Jean de Dieu Kamuhanda would not be exposing him to any danger, as Counsel is required to protect all information likely to allow the witness to be identified,⁹

CONSIDERING that the Order of 13 September 2016 does not contain any findings that the contested paragraph is likely to discourage the witness from consenting to an interview and that, furthermore, this paragraph conforms to the general responsibility of the Witness Support and Protection Unit to inform witnesses about their rights and duties¹⁰ and the responsibility of the Mechanism to ensure the protection of victims and witnesses,¹¹

FINDING that Mr Kamuhanda has failed to show how the contested paragraph would be likely to have a negative impact on the witness and that, consequently, the form should be presented to the witness without any modifications,

FOR THE FOREGOING REASONS,

PURSUANT to Article 20 of the Statute and Rules 55 and 86 of the Rules,

HEREBY ORDER:

1. The Registry's Witness Support and Protection Unit to contact Witness GEK to inquire whether he consents to being interviewed by Counsel for Mr Kamuhanda, after being advised of the purpose and voluntary nature of the interview,

⁹ "Interim Order for Filing of Submissions", 13 September 2016 ("Order of 13 September 2016"), p. 3. See also "Decision on a Request to Re-Contact Witness GAE", 14 October 2016 (French version filed on 31 October 2016) ("Decision of 14 October 2016"), pp. 1 to 2.

¹⁰ Policy for the Provision of Support and Protection Services to Victims and Witnesses, 26 June 2012, Articles 6.3 and 10.2. See also Decision of 14 October 2016, p. 2.

¹¹ See Article 20 of the Statute of the Mechanism ("Statute").

2. The Registry's Witness Support and Protection Unit to inform me, within fourteen (14) days of the present order, of the witness's response to these questions,
3. The Registry's Witness Support and Protection Unit to provide me with any other relevant information within the same deadline.

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

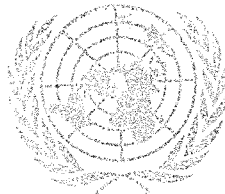
Single Judge

/signed/

Gberdao Gustave Kam

Done this eighth day of June 2017,
Arusha (Tanzania)

[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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Original Submitting Party	<input checked="" type="checkbox"/> Chambers	<input type="checkbox"/> Defence	<input type="checkbox"/> Prosecution <input type="checkbox"/> Other
Case Name	KAMUHANDA	Case Number	MICT-13-33 No. of Pages 5
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Date Transmitted	11/07/2017	Language of Translation	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of original document	Ordonnance aux fins du dépôt d'observations		
Title of translation	Order for Submissions		
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