



International Residual Mechanism for
Criminal Tribunals

Case No.: MICT-12-17-R

Date: 4 July 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Jean-Claude Antonetti
Judge Mparany Mamy Richard Rajohnson
Judge Gberdao Gustave Kam
Judge Aminatta Lois Runeni N'gum

Registrar: Mr. Olufemi Elias

Decision: 4 July 2018

PROSECUTOR

v.

GÉRARD NTAKIRUTIMANA

PUBLIC

**DECISION ON A REQUEST FOR ASSIGNMENT OF
COUNSEL**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Veronic Wright
Ms. Thembile Segoele
Ms. Sunkarie Ballah-Conteh

Counsel for Gérard Ntakirutimana:

Mr. Vincent Courcelle-Labrousse

Received by the Registry
International Residual Mechanism for Criminal Tribunals
04/07/2018 16:36

Hwaipopo

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively)¹ is seized of a motion filed by Mr. Gérard Ntakirutimana on 16 April 2018 seeking the assignment of counsel at the expense of the Mechanism for the purpose of preparing a request for review.² The Prosecution responded to the Motion on 24 April 2018,³ to which Ntakirutimana did not reply.

I. BACKGROUND

2. On 21 February 2003, Trial Chamber I of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR”, respectively) convicted Ntakirutimana of genocide and murder as a crime against humanity and sentenced him to 25 years of imprisonment.⁴ On 13 December 2004, the Appeals Chamber of the ICTR quashed, in part, his conviction for murder as a crime against humanity, affirmed his conviction for committing and aiding and abetting genocide, entered additional convictions for aiding and abetting genocide and extermination as a crime against humanity, and affirmed his sentence of 25 years of imprisonment.⁵ Ntakirutimana was granted early release by the President of the Mechanism on 26 March 2014.⁶

3. As discussed below, some of Ntakirutimana’s convictions are based, in part, on evidence provided by Prosecution Witness HH. On 20 November 2017, Judge Graciela Susana Gatti Santana, acting as a Single Judge, found that sufficient grounds existed to allow for the initiation of false testimony proceedings against Witness HH.⁷ Judge Gatti observed that Witness HH had expressly recanted aspects of his testimony before the ICTR that were relied upon either by the Trial Chamber and/or the Appeals Chamber of the ICTR in convicting Ntakirutimana.⁸ Notwithstanding, Judge Gatti concluded that the totality of the circumstances weighed against initiating proceedings against the witness under Rule 108(C)(ii) of the Rules of Procedure and Evidence of the Mechanism.⁹

¹ Order Assigning Judges to a Case before the Appeals Chamber, 14 May 2018, p. 1.

² Motion for Order to Assign Counsel to Represent Mr. Gérard Ntakirutimana in His Request for Review, 12 June 2018 (original French version filed on 16 April 2018) (“Motion”).

³ Prosecution Response to “Requête aux fins d’une ordonnance de commission d’office d’un Conseil pour représenter les intérêts de Mr. Gérard Ntakirutimana dans le cadre de sa demande de révision”, 24 April 2018 (“Response”).

⁴ *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10 and ICTR-96-17-T, Judgement and Sentence, 21 February 2003 (filed on 24 February 2003), paras. 878, 922, 924.

⁵ *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004, p. 188.

⁶ *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014, paras. 23, 24.

⁷ *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-R108.1, Decision on Allegations of False Testimony, 20 November 2017 (“Decision on Allegations of False Testimony”), para. 13. See also Decision on Allegations of False Testimony, paras. 12, 23. Judge Gatti had previously ordered the appointment of an *amicus curiae* to investigate allegations that Witness HH may have provided false testimony when testifying against Ntakirutimana before the ICTR. See generally Decision on Allegations of False Testimony, paras. 2-9 (discussing the entire procedural background in relation to the investigation).

⁸ Decision on Allegations of False Testimony, paras. 12, 13, 15.

⁹ Decision on Allegations of False Testimony, para. 23.

Judge Gatti, however, underlined that her decision not to proceed against Witness HH did not prevent Ntakirutimana from seeking review of his convictions in light of Witness HH's recantation.¹⁰

4. Relying on the Single Judge's findings that aspects of the evidence Witness HH has recanted underpin some of his convictions,¹¹ Ntakirutimana argues that Witness's HH recantation constitute new facts that were unknown and could not have been discovered through an exercise of due diligence during his proceedings.¹² Consequently, and in light of his indigence, Ntakirutimana requests that his *pro bono* counsel, Vincent Courcelle-Labrousse, be remunerated under the auspices of the Mechanism's legal aid scheme in order to effectively assist in the preparation of a request for review.¹³ The Prosecution does not oppose the Motion.¹⁴

II. DISCUSSION

5. The Appeals Chamber recalls that, as a matter of principle, it is not for the Mechanism to assist a convicted person whose case has reached finality with any new investigation he would like to conduct or any new motion he may wish to bring by assigning him legal assistance at the Mechanism's expense.¹⁵ A review under Article 24 of the Statute is an exceptional remedy and an applicant is only entitled to assigned counsel at the expense of the Mechanism if the Appeals Chamber authorizes the review, or, before such an authorization, if it deems it necessary to ensure the fairness of the proceedings.¹⁶ This necessity is, to a great extent, assessed in light of the potential grounds for review put forward by the applicant.¹⁷ The Appeals Chamber has previously confirmed such a necessity where it found itself to be unable to exclude that the potential ground for review invoked by the applicant may have a chance of success and where the particular complexity of the matter justified the granting of legal assistance in order to ensure the fairness of the proceedings.¹⁸ It is only in exceptional circumstances that a convicted person will be granted

¹⁰ Decision on Allegations of False Testimony, para. 21. *See also* Decision on Allegations of False Testimony, para. 17, n. 53.

¹¹ Motion, paras. 12, 15.

¹² Motion, para. 14.

¹³ Motion, paras. 6, 19, 20, 26, 27, 29.

¹⁴ Response, para. 1.

¹⁵ *See Prosecutor v. Vujadin Popović*, Case No. MICT-15-85-R.1, Decision on a Request for Assignment of Counsel, 23 September 2016 ("Popović Decision of 23 September 2016"), p. 2; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Decision on Prosecution's Motion Regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel, 5 May 2016 (confidential) ("Ngirabatware Decision of 5 May 2016"), para. 20; *Elizézer Niyitegeka v. Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka's Request for Review and Assignment of Counsel, 13 July 2015 ("Niyitegeka Decision of 13 July 2015"), para. 8.

¹⁶ *Popović* Decision of 23 September 2016, p. 2; *Ngirabatware* Decision of 5 May 2016, para. 20; *Niyitegeka* Decision of 13 July 2015, para. 8.

¹⁷ *Popović* Decision of 23 September 2016, p. 2; *Ngirabatware* Decision of 5 May 2016, para. 20; *Niyitegeka* Decision of 13 July 2015, para. 8.

¹⁸ *Ngirabatware* Decision of 5 May 2016, para. 20; *Niyitegeka* Decision of 13 July 2015, para. 8.

legal assistance at the expense of the Mechanism after a final judgement has been rendered against him.¹⁹

6. As noted above, Ntakirutimana's justifications for requesting remuneration through the Mechanism's legal aid scheme derive from the Single Judge's conclusions in the Decision on Allegations of False Testimony. The Appeals Chamber observes that the record relied upon by the Single Judge reflects that, well after the conclusion of Ntakirutimana's proceedings before the ICTR, Witness HH recanted evidence he provided against Ntakirutimana in several different contexts, including while testifying in a separate, domestic proceeding and during interviews while being represented by Mechanism-assigned counsel.²⁰ The Appeals Chamber further observes that the Single Judge detailed instances in which aspects of Witness HH's recanted testimony were relied upon either by the Trial Chamber and/or the Appeals Chamber of the ICTR to convict Ntakirutimana.²¹ Having reviewed the record and the relevant findings underpinning Ntakirutimana's convictions, the Appeals Chamber cannot exclude that Ntakirutimana's potential grounds of review based on Witness HH's recantation may have a chance of success.

7. Furthermore, the extensive record underlying Ntakirutimana's case before the ICTR and the litigation related to Witness HH's recantation as well as the possible implications the witness's false testimony may have on Ntakirutimana's convictions underscore the complexity of the matter. Consequently, the Appeals Chamber finds that Ntakirutimana would benefit from the assistance of counsel to prepare his request for review and that Ntakirutimana has shown that it is necessary, in order to ensure the fairness of the proceedings, that his counsel be remunerated under the auspices of the Mechanism's legal aid program.

8. As to the nature and extent of the remuneration, Ntakirutimana requests that his counsel be provided with the "necessary means" to assist him with the preparation of a request for review and has outlined several tasks that may be required.²² The Appeals Chamber considers that, in the circumstances of the present case, it is appropriate that his counsel be remunerated at this stage at the equivalent rate of three months of work for a lead counsel in order to prepare the request for

¹⁹ *Ngirabatware* Decision of 5 May 2016, para. 20; *Niyitegeka* Decision of 13 July 2015, para. 8.

²⁰ Decision on Allegations of False Testimony, para. 12 and references contained therein.

²¹ Decision on Allegations of False Testimony, paras. 13, 15 and references contained therein. The Prosecution presently does not dispute the Single Judge's conclusions that aspects of Witness HH's recanted testimony were relied upon in support of Ntakirutimana's convictions.

²² Motion, paras. 19-27, 29. In particular, Ntakirutimana submits that his counsel and support staff should be remunerated through the Mechanism's legal aid scheme on the basis that the Defence will need to: (i) travel from France to Africa to meet Ntakirutimana in person; (ii) review the entire case-file and conduct legal research; and (iii) conduct investigations, including possibly travelling to Rwanda and interviewing Witness HH. Motion, paras. 21-25.

review.²³ In the event that any forthcoming request for review is granted, the Appeals Chamber notes that Ntakirutimana may be entitled to additional legal aid.²⁴

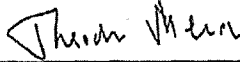
III. DISPOSITION

9. For the foregoing reasons, the Appeals Chamber hereby **GRANTS** the Motion and **DIRECTS** the Registrar to provide Ntakirutimana's counsel with a total remuneration corresponding to a period of three months of work for a lead counsel for the purpose of assisting Ntakirutimana in relation to his anticipated request for review.

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

Done this 4th day of July 2018,
At The Hague,

The Netherlands



Judge Theodor Meron, Presiding

[Seal of the Mechanism]



²³ Three months of remuneration in this instance is comparable to that provided to counsel assigned to assist convicted persons with preparations for requests for review involving issues of similar complexity. *See, e.g.*, para. 22; *Niyitegeka* Decision of 13 July 2015, paras. 12, 14; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-R, Decision on Request for Assignment of Counsel, 12 November 2009 (confidential), paras. 13, 14; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R, Decision on Motion for Legal Assistance, 21 July 2009, paras. 18-20.

²⁴ *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on Ngirabatware's Motion for Review, 19 June 2017 (public and redacted), p. 2; *Niyitegeka* Decision of 13 July 2015, para. 8.



**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**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Grefe du MPTI</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input checked="" type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i> <input type="checkbox"/> Other/ <i>Autre :</i>
Case Name/ Affaire :	Prosecutor v. Gérard Ntakirutimana	Case Number/ Affaire n° :	MICT-12-17-R
Date Created/ Daté du :	4 July 2018	Date transmitted/ Transmis le :	4 July 2018
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	Decision on a Request for Assignment of Counsel		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>	
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>	
		<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :	<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
	<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>					
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)					
<input type="checkbox"/> English/ <i>Anglais</i>	<input checked="" type="checkbox"/> French/ <i>Français</i>	<input checked="" type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>					
Original/ Original en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>					
<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :	

Send completed transmission sheet to/ *Veuillez soumettre cette fiche dûment remplie à :*
JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014