UNITED NATIONS

Mechanism for International Criminal Tribunals

Case No.: MICT-12-17

Date: 2 March 2016

Original: English

BEFORE A SINGLE JUDGE

Before: **Judge Vagn Joensen**

Registrar: **Mr. John Hocking**

Decision of: **2 March 2016**

PROSECUTOR

v.

ELIZAPHAN and GÉRARD NTAKIRUTIMANA

PUBLIC

DECISION ON MOTION TO APPOINT AN *AMICUS CURIAE* TO INVESTIGATE FALSE TESTIMONY

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa
Mr. Cheickh Bangoura
Ms. Sunkarie Ballah-Conteh

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Counsel for Gérard Ntakirutimana:

Mr. Vincent Courcelle-Labrousse

1. **I, VAGN JOENSEN**, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") am seised of a confidential motion filed on 18 December 2013 by Gérard Ntakirutimana ("Ntakirutimana") seeking the appointment of an *amicus curiae* to investigate allegations of false testimony pursuant to Rule 108(B) of the Rules of Procedure and Evidence of the Mechanism ("Rules").[1] The Prosecution responded on 26 December 2013,[2] and Ntakirutimana replied on 30 December 2013.[3] Pursuant to an order of 13 October 2015,[4] Ntakirutimana filed supplemental submissions in support of the Motion on 17 November 2015,[5] and the Prosecution filed a supplemental response on 3 December 2015.[6]

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.[7] On 13 December 2004, the Appeals Chamber of the ICTR quashed, in part, his conviction for murder as a crime against humanity, affirmed the remainder of his conviction for that crime, 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.[8]

3. On 22 November 2013, the Prosecution disclosed to Ntakirutimana a judgement issued by a domestic court in a criminal trial related to the Rwandan genocide ("Domestic Court" and "Domestic Trial", respectively).[9] According to Ntakirutimana, it follows from the Domestic Court's observations in that judgement that a witness attested to having lied during his testimony in the

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[1] Motion to Appoint an *Amicus Curiae* to Investigate the Apparent Recantation of a Witness Testifying before the ICTR pursuant to Rule 108(B), 18 December 2013 (confidential) ("Motion"), paras. 4, 11, 14. *See also* Order Assigning a Single Judge, 7 January 2014, p. 1; *See* 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), 30 January 2014 (confidential) ("Order of 30 January 2014"), pp. 4, 5.
[2] Prosecution's Response to Gerard 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), 26 December 2013 (confidential).
[3] Reply to the Prosecution's Response to Gérard 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), 30 December 2013 (confidential) ("Reply").
[4] Order for Submissions, 13 October 2015 (confidential) ("Order of 13 October 2015").
[5] Mr. Gérard Ntakirutimana's Response to Order of Single Judge of 13 October 2015, 17 November 2015 (confidential; the English translation of the French original was filed on 17 December 2015) ("Supplementary Submissions").
[6] Prosecution Response to *Réponse de Gérard Ntakirutimana a l'ordonnance du juge unique en date du 13 octobre 2015*, 3 December 2015 (confidential) ("Supplementary Response").
[7] *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Cases No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence, 21 February 2003 ("Trial Judgement"), paras. 878, 922, 924.
[8] *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Cases No. ICTR-96-10 and ICTR-96-17-T, Judgement, 13 December 2004 ("Appeal Judgement"), p. 188.
[9] Motion, para. 1.

Ntakirutimana trial before the ICTR.[10] On this basis, Ntakirutimana requested that the Mechanism ascertain the identity of this witness and obtain the witness's statements and testimony from the Domestic Trial.[11] Ntakirutimana further requested that an *amicus curiae* be appointed pursuant to Rule 108(B) of the Rules to investigate the witness for providing false testimony in the *Ntakirutimana* case.[12]

4. Following the issuance of orders and decisions related to identifying the witness,[13] facilitating the access of this material and information to Ntakirutimana's counsel,[14] and the composition of Ntakirutimana's legal team,[15] the relevant witness was identified as Prosecution Witness HH in the *Ntakirutimana* case[16] and full access to the relevant material was provided to Ntakirutimana's new counsel.[17] In view of the fact that the protective measures in effect when the Motion was filed prevented Ntakirutimana from demonstrating how Witness HH had knowingly and wilfully provided false testimony before the ICTR with relevant references from the Domestic Trial as well as Ntakirutimana's own trial, Ntakirutimana was invited to make further submissions.[18] Ntakirutimana filed his Supplementary Submissions on 17 November 2015, and the Prosecution filed its Supplementary Response on 3 December 2015.

II. SUBMISSIONS

5. Ntakirutimana requests the appointment of an *amicus curiae* to investigate allegations of false testimony pursuant to Rule 108(B) of the Rules because Witness HH testified before the Domestic Court that "he was not truthful when he came to testify in Arusha."[19] In particular, he submits that the witness testified under oath to have knowingly and falsely accused Ntakirutimana and his father, Elizaphan Ntakirutimana, for the purposes of: (i) exacting vengeance; (ii) the "possibility of remaining in a foreign country"; and (iii) receiving financial compensation for

[10] Motion, paras. 8-11.
[11] Motion, para. 13.
[12] Motion, paras. 4, 5, 14. *See also* Reply, paras. 2-4.
[13] Order of 30 January 2014, p. 4.
[14] *See* Decision on the Urgent Motion for the Transmission of the Case File and Disclosed Material to Counsel and for an Extension of Time and Response to the "Registrar's Submissions pursuant to Rule 31(B) in connection with the 'Order for Submission 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)'", 2 December 2014 (confidential), pp. 4, 5.
[15] *See* Decision on Prosecution Motion for a Stay of Decision and for Disqualification of Counsel, 5 December 2014 (confidential); Decision on Motion for Reconsideration of 2 December 2014 Decision or for Certification to Appeal, 9 September 2015 (confidential).
[16] Registrar's Submission in connection with the "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)", 25 February 2014 (confidential and *ex parte*), paras. 3, 4.
[17] Order of 13 October 2015, paras. 5-8, RP. 784.
[18] Order of 13 October 2015, para. 10, p. 3. *See also* 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), 12 November 2014 (confidential) ("Order of 12 November 2014"), paras. 12-14, p. 4.

testifying.[20] He highlights the witness's testimony before the Domestic Court indicating that he lied about having "associated [Ntakirutimana] with other attackers he had seen in order for his lies to seem more plausible".[21]

6. Ntakirutimana submits that the Trial Chamber repeatedly found Witness HH credible and relied upon his evidence in convicting him for: (i) the murder of Charles Ukobizaba; (ii) his convictions for the attack on refugees at Gitwe Hill near Gitwe Primary School at the end of April or the beginning of May 1994 and the murder of Esdras; (iii) the attack on refugees at Muyira Hill and Ku Cyapa in June 1994; and (iv) the attack on refugees at unspecified locations in the Bisesero area.[22] He further observes that the Appeals Chamber affirmed his convictions for the murder of Charles Ukobizaba and the attack at Gitwe Hill near Gitwe Primary School and, in doing so, found that it was not unreasonable for the Trial Chamber to have found Witness HH credible.[23] He contends that, although the Appeals Chamber invalidated other convictions that were supported by Witness HH's testimony, this was "only" because it concluded that insufficient notice had been provided.[24] Ntakirutimana concludes that these factors reveal that the conditions for initiating an investigation into false testimony pursuant to Rule 108(B)(ii) of the Rules have been met.[25]

7. The Prosecution responds that the circumstances surrounding Witness HH's alleged recantation of his ICTR testimony before the Domestic Court cast substantial doubt on its truthfulness.[26] It points out that, prior to testifying before the Domestic Court, the witness met with authorities from the domestic jurisdiction on four occasions and never recanted his testimony against Ntakirutimana.[27] More specifically, during an interview on 18 November 2011 when the witness indicated that, in prior statements, he had falsely accused the defendant in the Domestic Trial, he nonetheless maintained that his previous statements and testimony against Ntakirutimana were true.[28] The Prosecution also points out that, only after having met with the defence team from the Domestic Trial on two occasions less than a month before testifying in the Domestic Trial, did

[19] Supplementary Submissions, para. 22. *See also* Supplementary Submissions, para. 34; Motion, paras. 4, 11, 14; Reply, paras. 2, 3.
[20] Supplementary Submissions, paras. 28-32. *See also* Supplementary Submissions, paras. 27, 33.
[21] Supplementary Submissions, para. 29. Ntakirutimana points to other contexts outside of the ICTR in which Witness HH gave false statements against other individuals in genocide related proceedings as well as to the witness's motivation for doing so. *See* Supplementary Submissions, paras. 19-28.
[22] Supplementary Submissions, paras. 11-14. *See also* Supplementary Submissions, paras. 9, 10.
[23] Supplementary Submissions, paras. 9-11, 14, 16-18.
[24] Supplementary Submissions, para. 15. *See also* Supplementary Submissions, para. 10.
[25] Supplementary Submissions, para. 34. Ntakirutimana also submits that his interests necessitate a review of his judgement before the ICTR and that I "should ensure, above all else, that the substantive requirements of Rule 146(A) of the Rules [...] have been met in this case, and that first and foremost the injustice [Ntakirutimana] has suffered is redressed." Supplementary Submissions, para. 35.
[26] Supplementary Response, para. 17.
[27] Supplementary Response, paras. 10-12.
[28] Supplementary Response, para. 11.

Witness HH testify that "he had lied against Gérard Ntakirutimana during his testimony as a Prosecution witness in the *Ntakirutimana* trial".[29]

8. In addition, the Prosecution contends that, even if Witness HH's recantation during the Domestic Trial were true, it would not impact Ntakirutimana's convictions for genocide and crimes against humanity.[30] It asserts that the Trial Chamber's factual findings and Ntakirutimana's convictions for genocide and murder as a crime against humanity for the killing of Charles Ukobizaba on 16 April 1994 were based on the testimony of Witnesses HH and GG and could be sustained on the latter's evidence alone.[31] The Prosecution also asserts that Ntakirutimana's convictions for aiding and abetting genocide and extermination as a crime against humanity, which were based on the events at Gitwe Hill in late April or early May 1994 and the attack at Mubuga Primary School, would be sustained on the basis of the latter attack which was not based on Witness HH's evidence.[32]

III. DISCUSSION

9. Rule 108(B) of the Rules provides:

> If a Chamber or Single Judge has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it shall refer the matter to the President who shall designate a Single Judge who may:
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> > (i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or
> >
> > (ii) where the Prosecutor, in the view of the Single Judge, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Single Judge as to whether there are sufficient grounds for instigating proceedings for false testimony.

10. What constitutes "strong grounds" represents a heightened threshold for initiating investigations into allegations of false testimony,[33] and has been distinguished from the "sufficient grounds" standard applied to initiating the prosecution of an individual for false testimony or

[29] Supplementary Response, paras. 13, 16. *See also* Supplementary Response, para. 14.
[30] Supplementary Response, paras. 4-6.
[31] Supplementary Response, paras. 4, 5.
[32] Supplementary Response, para. 6.
[33] *See The Prosecutor v. Eliézer Niyitegeka*, Case No. MICT-12-16, Decision on Request to Initiate Proceedings against Witness GGH in Niyitegeka for Giving False Testimony under Solemn Declaration and for Interfering with the Administration of Justice, 26 February 2014 ("*Niyitegeka* Decision of 26 February 2014"), para. 10; *The Prosecutor v. Eliézer Niyitegeka*, Case No. MICT-12-16, Decision on Request to Initiate Proceedings against Witness KJ in Niyitegeka for Giving False Testimony under Solemn Declaration and for Interfering with the Administration of Justice, 28 January 2014 ("*Niyitegeka* Decision of 28 January 2014"), para. 17.

contempt.[34] False testimony has been defined by the Appeals Chamber of the ICTR as "a deliberate offence which requires wilful intent on the part of the perpetrator to mislead the Judge and thus to cause harm".[35]

11. A party seeking to institute proceedings for false testimony bears "the onus to prove the alleged falsehood".[36] Despite having been instructed to provide references to transcripts from the *Ntakirutimana* case that, in his view, amounted to false testimony,[37] Ntakirutimana does not specify which portions of Witness HH's testimony he alleges are false. This omission weighs against establishing that strong grounds exist for believing that Witness HH knowingly and wilfully gave false testimony before the ICTR.

12. Nonetheless, while testifying in the Domestic Trial, Witness HH conceded that he did not tell the truth when testifying before the ICTR as a Prosecution witness in the *Ntakirutimana* case.[38] Witness HH further specified that he did not see Ntakirutimana participate in the genocide and that the witness had associated Ntakirutimana with attackers that the witness had seen during the events to make his account more believable.[39] One such attack involved Mathias Ngirinshuti.[40] Furthermore, Witness HH testified that, in the context of testifying before the ICTR, vengeance was what motivated him to lie.[41]

13. Having reviewed the references to the Trial Judgement provided by Ntakirutimana as well as conducted my own review of it in an attempt to discern what evidence of Witness HH's in the *Ntakirutimana* case might be false based on his testimony before the Domestic Court, I observe that the Trial Chamber relied upon aspects of Witness HH's evidence, which reflected that he saw Ntakirutimana, to find that Ntakirutimana participated in: (i) the 16 April 1994 attack at the

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[34] *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR.91, Decision on "Joseph Nzirorera's Appeal from Refusal to Investigate [a] Prosecution Witness for False Testimony" and on Motion for Oral Arguments, 22 January 2009 ("*Karemera et al.* Decision of 22 January 2009"), paras. 17-20.

[35] *Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007, n. 68. The elements of false testimony have also been defined by trial chambers of the ICTR and the International Criminal Tribunal for the former Yugoslavia ("ICTY") as: (i) the witness must make a solemn declaration; (ii) a false statement must be contrary to the solemn declaration; (iii) the witness must believe at the time that it was false; and (iv) there must be a relationship between the statement and a material matter within the case. *See, e.g., The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonyunkiza for False Testimony, 29 December 2006, para. 6; *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Decision on Reconsideration of the Decision on Protective Measures for Witness P024 and Initiation of the Proceedings pursuant to Rule 91, 13 July 2006 (confidential), para. 3.

[36] *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004, para. 253.

[37] *See* Order of 13 October 2015, para. 10; Order of 12 November 2014, paras. 12, 13.

[38] *See* Record Number MICT/COU-031-0058\03 ("T. 22 October 2012") pp. 12, 13; Record Number MICT/COU-031-0058\06 ("T. 1 November 2012") pp. 55, 56. *Cf.* Record Number MICT/COU-031-0058\05 ("T. 31 October 2012") pp. 33-35 (explaining the circumstances in which he made his first false allegations against an individual in relation to the genocide in 1995 and noting that he subsequently testified against, among others, Ntakirutimana and his father).

[39] T. 1 November 2012 pp. 55, 56.

[40] T. 1 November 2012 p. 56.

[41] T. 1 November 2012 pp. 55, 56.

Mugonero Complex during which he shot and killed Charles Ukobizaba;[42] (ii) a late April or early May 1994 attack on Gitwe Hill, near Gitwe Primary School, where he pursued and shot at Tutsis, as well as shot and killed an individual named Esdras;[43] (iii) various attacks at locations in Bisesero;[44] and (iv) a June 1994 attack on Muyira Hill.[45] The Trial Chamber convicted Ntakirutimana of genocide and murder as a crime against humanity, in part, on the basis of these findings.[46]

14. Moreover, elements of Witness HH's evidence before the Trial Chamber, which he subsequently recanted before the Domestic Court, remained material to Ntakirutimana's convictions that were affirmed or entered on appeal. Although the Appeals Chamber of the ICTR overturned the Trial Chamber's findings related to the killing of Esdras during the Gitwe Hill attack and his participation in the Muyira Hill attack,[47] it nonetheless upheld Ntakirutimana's convictions for having pursued and shot at Tutsis while participating in the Gitwe Hill attack[48] and for killing Charles Ukobizaba while participating in the Mugonero Complex attack.[49] In upholding these convictions, the Appeals Chamber of the ICTR dismissed various challenges to Witness HH's credibility.[50] Moreover, the Appeals Chamber of the ICTR relied, in part, on Ntakirutimana's participation in the Gitwe Hill attack when entering a conviction on appeal for extermination as a crime against humanity.[51]

15. I find that Witness HH's evidence before the Domestic Court that he generally lied when testifying in the *Ntakirutimana* case and that he was motivated by vengeance provide an indicia of the witness's deliberate and wilful intent to mislead and cause harm in relation to his testimony before the ICTR. This recantation was given as testimony in domestic court proceedings, which gives it significant weight. Furthermore, I find 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.

16. In so finding, I am mindful that certain elements of Witness HH's recantation of his ICTR testimony before the Domestic Court are problematic. In particular, the witness testified before the Domestic Court that he was arrested and detained on baseless charges in Rwanda from January to

[42] Trial Judgement, paras. 364, 366, 368, 370-374, 384.
[43] Trial Judgement, paras. 552-559.
[44] Trial Judgement, paras. 702-704.
[45] Trial Judgement, paras. 664, 666-668.
[46] Trial Judgement, paras. 791-795, 806-810, 832(ii), (iii), (viii), (x), 833-836, 845, 848, 849, 864, 878.
[47] Appeal Judgement, paras. 82-85, 92-99, 292, 504.
[48] Appeal Judgement, paras. 505, 507, 556(i).
[49] Appeal Judgement, paras. 506, 557(i).
[50] Appeal Judgement, paras. 214-235, 259-262, 292, 417, 424, 425.
[51] Appeal Judgement, paras. 535-537, 560.

April 2011,[52] and that, having experienced this unjust suffering, he decided to start telling the truth with respect to individuals he had falsely accused.[53] Subsequently, in interviews conducted in November 2011 and February 2012 in relation to the Domestic Trial, the witness recounted in detail the false allegations that he had made against the defendant in that Domestic Trial and several others with respect to the genocide.[54] However, in both of these interviews, Witness HH continued to implicate Ntakirutimana and his father in attacks he witnessed during the genocide.[55] Indeed, during the Interview of 18 November 2011, the witness affirmed that he had not lied when he previously testified that Ntakirutimana killed Charles Ukobizaba and confirmed that he saw Ntakirutimana do this.[56]

17. The record paints an imperfect picture. Nonetheless, my task is not to adjudicate whether or not Witness HH provided false testimony before the ICTR, nor do I possess the discretion at this stage to decide whether or not to direct the Prosecution, or to determine that an *amicus curiae* should be appointed, to investigate allegations of false testimony before the ICTR.[57] I am also not tasked with determining the impact of this new information on Ntakirutimana's convictions.[58] Instead, the question presented is whether Ntakirutimana has made a sufficient showing that strong grounds exist for believing that a witness has knowingly and wilfully given false testimony before the ICTR. In light of Witness HH's attestation before the Domestic Court that he lied while testifying before the ICTR, Ntakirutimana has met this burden.

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[52] T. 22 October 2012 p. 16; T. 31 October 2012 pp. 71, 72.
[53] T. 31 October 2012 pp. 68-71.
[54] Record Number MICT/COU-031-0058\14 ("Interview of 18 November 2011"), pp. 6-8, 11, 15, 16, 19, 23, 24, 34, 35, 42, 43; Record Number MICT/COU-031-0058\16 ("Interview of 13 February 2012"), Electronic Registration Number ("ERN.") L003-6773, 6777-6783, 6788-6790, 6793-6796, 6799, 6810, 6812-6815, 6818-6821, 6831, 6832.
[55] Interview of 18 November 2011, pp. 19, 20; Interview of 13 February 2012, ERN. L003-6778.
[56] *See* Interview of 18 November 2011, pp. 19, 20 ("*P. LAROCHELLE: Est-ce qu'il a menti que... quand il dit dans ses témoignages antérieurs, quand il dit qu'il a vu le Docteur GÉRARD NTAK[IR]UTI[]MANA tuer le comptable de l'hôpital à MUGONERO CHARLES UKOBIZABA, est-ce que c'est un mensonge aussi ça? [...] P. LAROCHELLE: Non c'est pas grave. Il a dit dans le passé qu'il a vu le Docteur GÉRARD NTAK[IR]UTI[]MANA tuer CHARLES UKOBIZABA. [...] INTERPRÈTE: Ça c'est vrai je n'ai pas menti. P. LAROCHELLE: Donc il a vu ça de ses propres yeux. [...] INTERPRÈTE: Oui j'ai vu ça.*").
[57] In prior decisions, I have noted a material distinction between Rule 108(B) of the Rules and its equivalent, Rules 91(B) of the ICTR and ICTY Rules of Procedure and Evidence. *See Niyitegeka* Decision of 28 January 2014, paras. 10-13; *Niyitegeka* Decision of 26 February 2014, paras. 8, 9. Rule 108(B) of the Rules states that I "shall refer the matter to the President" if there are strong grounds for believing that a witness has knowingly and wilfully given false testimony whereas the latter two rules grant the relevant chamber of the ICTR or ICTY with the discretion of deciding whether or not to initiate investigations if this burden is met. *See, e.g., Karemera et al.* Decision of 22 January 2009, para. 21.
[58] I reject Ntakirutimana's contention that it is my obligation to "ensure, above all else, that the substantive requirements for the filing of a motion pursuant to Rule 146(A) of the Rules [...] have been met in this case, and that first and foremost the injustice [Ntakirutimana] has suffered is redressed." Supplementary Submissions, para. 35. I also find it is unnecessary to reach any conclusion in respect of the Prosecution's position that disregarding Witness HH's testimony would not impact Ntakirutimana's convictions. *See* Supplementary Response, paras. 4-6. While my inquiry pursuant to Rule 108(B) of the Rules may ultimately be relevant to a subsequent request for review pursuant to Rule 146 of the Rules, it is, nonetheless, a separate and distinct exercise.

18. That said, the circumstances highlighted above[59] are also indicative of the possibility that his recantation was fabricated. Although these or other concerns may be relevant to the ultimate conclusion of whether to institute an investigation, they do not detract from my overall conclusion that strong grounds exist for believing that Witness HH has knowingly and wilfully given false testimony before the ICTR.[60]

IV. DISPOSITION

19. Accordingly, in accordance with Rule 108(B) of the Rules, **I HEREBY REFER** the matter to the President who shall designate a Single Judge who may:

(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or

(ii) where the Prosecutor, in the view of the Single Judge, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Single Judge as to whether there are sufficient grounds for instigating proceedings for false testimony.

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

Done this 2nd day of March 2016,
At Arusha,
Tanzania

Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]

[59] *See supra* para. 16.
[60] In view of this conclusion it is unnecessary to consider in detail the arguments and references provided by Ntakirutimana of Witness HH's testimony in the Domestic Trial about the witness having falsely accused others and in proceedings unrelated to the *Ntakirutimana* case. *See, e.g.*, Supplementary Submissions, paras. 20, 22, 23, 28 *referring to* T. 22 October 2012 pp. 6, 7, 14, 15, 42; Supplementary Submissions, para. 28, *referring to* T. 1 November 2012 p. 5.

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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