

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-12-17-R

Date: 13 November 2024

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Graciela Gatti Santana, Pre-Review Judge

**Registrar:** Mr. Abubacarr M. Tambaou

**Decision of:** 13 November 2024

**PROSECUTOR**

**v.**

**GÉRARD NTAKIRUTIMANA**

***PUBLIC REDACTED***

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**DECISION ON PROSECUTION MOTION  
FOR REGISTRY INFORMATION**

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**The Office of the Prosecutor**

Mr. Serge Brammertz  
Ms. Thembile Segoete  
Ms. Laurel Baig

**Counsel for Mr. Gérard Ntakirutimana**

Mr. Vincent Courcelle-Labrousse

**I, GRACIELA GATTI SANTANA**, Presiding Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively), and Pre-Review Judge in this case;<sup>1</sup>

**RECALLING** the judgement rendered by Trial Chamber I of the International Criminal Tribunal for Rwanda (“ICTR”) in the case of *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10 and ICTR-96-17 (“*Ntakirutimana* case”) on 21 February 2003,<sup>2</sup> and the judgement rendered by the Appeals Chamber of the ICTR in this case on 13 December 2004;<sup>3</sup>

**RECALLING** that, on 21 May 2024, the Appeals Chamber partially granted Mr. Gérard Ntakirutimana (“Ntakirutimana” or “Defence”)’s request for review based on Witness HH’s purported recantations of his testimony in the *Ntakirutimana* case, and in relation to events at Gitwe Hill, near Gitwe Primary School in late April or beginning of May 1994 (“Review Proceedings”);<sup>4</sup>

**RECALLING** that, on 4 June 2024, the Appeals Chamber observed that protective measures were granted to Witness HH on 22 August 2000 by the ICTR and modified them for the purposes of the Review Proceedings;<sup>5</sup>

**RECALLING** that, on 18 September 2024, the Appeals Chamber scheduled a review hearing to be held at the Mechanism’s branch in Arusha, Tanzania, from 18 to 22 November 2024 (“Review Hearing”) to hear the testimony of only Witness HH in relation to his purported recantations;<sup>6</sup>

**BEING SEISED OF** a motion, filed confidentially and *ex parte* on 5 November 2024,<sup>7</sup> wherein the Office of the Prosecutor of the Mechanism (“Prosecution”) requests that, in order to prepare for the Review Hearing, the Registry be ordered to provide the Prosecution with: (i) a complete list of dates, between 27 September 2001 and 18 December 2013, that Witness HH was in contact with the ICTR

<sup>1</sup> Order Assigning a Request for Review to a Bench of the Appeals Chamber, 29 December 2023, p. 1; Order Designating a Pre-Review Judge, 12 January 2024, p. 1.

<sup>2</sup> *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement and Sentence, 21 February 2003 (filed on 24 February 2003).

<sup>3</sup> *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004.

<sup>4</sup> See Application for Review, 14 December 2023 (originally filed in French, English translation filed on 5 September 2024) (confidential); Decision on Request for Review, 21 May 2024 (“Review Decision”), pp. 5-7. See also Decision on Gérard Ntakirutimana’s Motion for Reconsideration of “Decision on Request for Review”, 18 September 2024, pp. 5-8 (wherein the Appeals Chamber, by majority, dismissed Ntakirutimana’s motion to reconsider the Review Decision).

<sup>5</sup> Decision on Prosecution Motion for Enforcement of Protective Measures, 4 June 2024 (“Decision of 4 June 2024”), pp. 2, 4, referring to, *inter alia*, *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Decision on Witness Protection, 22 August 2000, para. 7, p. 4.

<sup>6</sup> Order on Scheduling and Scope of the Review Hearing, 18 September 2024 (“Order on Scheduling and Scope”), p. 5.

<sup>7</sup> Urgent Motion for Registry Information, 5 November 2024 (confidential and *ex parte*) (“Motion”). The Prosecution submits that [REDACTED]. Motion, paras. 1, 2. The Prosecution also submits that it has made three requests to the Registrar of the Mechanism (“Registrar” or “Registry”) to provide basic information in the Registrar’s possession that would assist the Prosecution in preparing for the Review Hearing, and that the Registrar has indicated that the information requested cannot be disclosed without a court order. See Motion, para. 4, n. 6.

or the Mechanism, particularly with the Witness Support and Protection Unit of the Mechanism (“WISP”) or its ICTR predecessor, and specifying the means of communication and location of contact (“Witness HH Information”); and (ii) [REDACTED];<sup>8</sup>

**NOTING** the Prosecution submission that, *inter alia*: (i) the Witness HH Information is relevant to the Review Hearing as the Prosecution intends to ask the witness about interactions with the Registry, which Witness HH might not recall;<sup>9</sup> and (ii) [REDACTED];<sup>10</sup>

**NOTING** the submission, filed confidentially and *ex parte* on 12 November 2024, wherein the Registrar submits, *inter alia*, that: (i) the Witness HH Information sought is considered strictly confidential and defers to the Appeals Chamber;<sup>11</sup> and (ii) [REDACTED];<sup>12</sup>

**NOTING** that, given the imminent nature of the Review Hearing, the present Decision is being issued without awaiting the Prosecution’s reply;

**RECALLING** that, pursuant to Rule 55 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), at the request of either a party or *proprio motu*, a Judge or a Trial Chamber may issue such orders as may be necessary for the purposes of an investigation or for the preparation or conduct of trial, and that this provision applies *mutatis mutandis* to proceedings in the Appeals Chamber;<sup>13</sup>

**CONSIDERING** that an order pursuant to Rule 55 of the Rules is “necessary” where the Prosecution demonstrates a reasonable basis for its belief that there is a good chance that the information sought will likely assist its case materially in relation to clearly identified issues relevant to the forthcoming Review Hearing;<sup>14</sup>

<sup>8</sup> Motion, paras. 1, 5, 6, 9, 12. [REDACTED]. See Motion, para. 9.

<sup>9</sup> Motion, para. 7. According to the Prosecution, the information it requests is “historical information about institutional contact” which does not prejudice Ntakirutimana, and during a period when the witness was a protected Prosecution witness. See Motion, para. 8.

<sup>10</sup> Motion, para. 10.

<sup>11</sup> Registrar’s Submission on the Prosecution “Urgent Motion for Registry Information”, 12 November 2024 (confidential and *ex parte*) (“Registrar Submission”), paras. 4, 5, n. 7. See also Registrar Submission, paras. 2, 3.

<sup>12</sup> See Registrar Submission, paras. 2, 6, 7, 12, 13. According to the Registrar, in response to the Prosecution’s initial request for information, the Registry provided, *inter alia*, that [REDACTED]. See Registrar Submission, para. 7. The Registrar further provides that [REDACTED]. See Registrar Submission, para. 12.

<sup>13</sup> See Rule 131 of the Rules; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003 (“*Krstić* Decision of 1 July 2003”), para. 2. See also *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019 (confidential; public redacted version filed on the same date) (“*Karadžić* Appeal Judgement”), paras. 148, 277.

<sup>14</sup> See *Krstić* Decision of 1 July 2003, para. 10 (wherein the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia stated that an order would become “necessary” where a “legitimate forensic purpose” is shown, and that “[a]n applicant [...] before or during the trial would have to demonstrate a reasonable basis for his belief that there is a good chance that the prospective witness will be able to give information which will materially assist him in his case, in relation to clearly identified issues relevant to the forthcoming trial”). See also *Karadžić* Appeal Judgement, paras. 148, 277, referring to, *inter alia*, *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas, 21 June 2004, paras. 6, 7.

**OBSERVING** that, in principle, records and information that are likely to endanger the safety or security of any individual, including protected witnesses, shall be exempt from disclosure,<sup>15</sup> and all records kept by the WISP shall be considered sensitive and classified as strictly confidential and shall be managed in accordance with the Mechanism’s and the United Nations’ record keeping policies;<sup>16</sup>

**CONSIDERING** the Prosecution’s submission that the requested Witness HH Information relates to the period after the witness returned to Rwanda and leading up to Ntakirutimana’s motion alleging false testimony, and that it intends to ask Witness HH about interactions with the Registry within this period;<sup>17</sup>

**CONSIDERING** that, given the Prosecution does not seek disclosure of any sensitive information about the content of meetings with the WISP<sup>18</sup> as well as the extant protective measures in place for Witness HH,<sup>19</sup> the limited disclosure of the Witness HH Information to the Prosecution would not undermine interests that the Access Policy and the Practice Direction seek to protect;

**FINDING** that the Prosecution has demonstrated a reasonable basis that the Witness HH Information will likely assist its case materially in relation to clearly identified issues relevant to the forthcoming Review Hearing, and that it is therefore appropriate to grant the Motion in relation to the Witness HH Information;

**FINDING FURTHER** that, in the interests of fairness and judicial economy, it is appropriate to also disclose the Witness HH Information to Ntakirutimana;

**CONSIDERING** the Prosecution’s submission that [REDACTED];<sup>20</sup>

**RECALLING** the Appeals Chamber’s explicit consideration that details related to the Prosecution’s investigations into Witness HH’s recantation are collateral to the central issue of the Review Hearing – the reliability and credibility of Witness HH’s testimony concerning his purported recantations – which will be directly tested through examination-in-chief and cross-examination during the hearing;<sup>21</sup>

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<sup>15</sup> Article 10(3)(b) of the Access Policy for the Records Held by the International Residual Mechanism for Criminal Tribunals, MICT/17/Rev.1, 4 January 2019 (“Access Policy”).

<sup>16</sup> Article 7(2) of the Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses, MICT/40, 26 November 2019 (“Practice Direction”).

<sup>17</sup> Motion, para. 6.

<sup>18</sup> Motion, para. 7.

<sup>19</sup> See Decision of 4 June 2024, p. 4.

<sup>20</sup> Motion, para. 10.

<sup>21</sup> Order on Scheduling and Scope, p. 4.

**CONSIDERING** that submissions in the Motion reflect that [REDACTED] rather than to the narrow scope of the Review Hearing;

**FINDING** that the Prosecution has not demonstrated a reasonable basis that [REDACTED] will likely assist its case materially in relation to clearly identified issues relevant to the forthcoming Review Hearing, and that it is therefore not appropriate to grant the Motion in relation to [REDACTED];

**FOR THE FOREGOING REASONS,**

**HEREBY GRANT**, in part, the Motion;

**ORDER** the Registry to disclose the Witness HH Information to the Prosecution and Ntakirutimana; and

**DISMISS** the Motion in all other respects.

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

Done this 13th day of November 2024,  
At The Hague,  
The Netherlands




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Judge Graciela Gatti Santana  
Pre-Review Judge

**[Seal of the Mechanism]**



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À : IRMCT Registry/ Greffe du MIFRTP		<input checked="" type="checkbox"/> Arusha/ Arusha		<input type="checkbox"/> The Hague/ La Haye	
From/ De :	<input type="checkbox"/> President/ Président	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Registrar/ Greffier
Case Name/ Affaire : Prosecutor v. Gérard Ntakirutimana			Case Number/ Affaire n° : MICT-12-17-R		
Date Created/ Daté du :	13 November 2024		Date transmitted/ Transmis le :	13 November 2024	
				Number of Pages/ Nombre de pages : 5	
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 : Decision on Prosecution Motion for Registry Information					
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue			
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu			
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<input type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Judgement/ Jugement/Arrêt	<input type="checkbox"/> Book of Authorities/ Recueil de sources	<input type="checkbox"/> Warrant/ Mandat		
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II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

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<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word du document est jointe)					
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