



The International Residual Mechanism for Criminal Tribunals (“Mechanism”) was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) after the completion of their respective mandates.

JUDGEMENT SUMMARY

APPEALS
CHAMBER

(Exclusively for the use of the media. Not an official document)

Arusha, Tanzania, 22 November 2024

Review Judgement Summary in the Case of *Prosecutor v. Gérard Ntakirutimana*

Please find below the summary of the Judgement read out today by Judge Graciela Gatti Santana.

Introduction

As publicly announced in court on 19 November 2024, the Appeals Chamber will now pronounce its review judgement orally. Written reasons for the Judgement will follow later. This procedure is provided for under Rule 122(A) and (C) of the Rules of Procedure and Evidence of the Mechanism (“Rules”). Today’s oral pronouncement is a summary of the central findings of the Appeals Chamber. The written Judgement, when filed, will be the only authoritative version of the Judgement.

This case concerns Mr. Gérard Ntakirutimana’s request for review of his convictions on the basis that Prosecution Witness HH recanted his trial testimony in the *Ntakirutimana* case before the International Criminal Tribunal for Rwanda (“ICTR”). Witness HH’s testimony exclusively underpins Mr. Ntakirutimana’s convictions related to events at Gitwe Hill, near Gitwe Primary School, in late April or beginning of May 1994.

Mr. Ntakirutimana was a medical doctor at the Seventh Day Adventist’s hospital at Mugonero Complex, in Gishyita commune, Kibuye prefecture, Rwanda, between April 1993 and April 1994.

During the trial proceedings in the ICTR, Witness HH testified that he saw Mr. Ntakirutimana at Gitwe Hill on an unspecified day around the end of April or beginning of May 1994. The Witness stated, in



particular, that Mr. Ntakirutimana pursued and shot at Tutsi refugees during an attack at Gitwe Hill, where the Witness had taken refuge from the killings.

On 21 February 2003, Trial Chamber I of the ICTR convicted him of genocide and murder as a crime against humanity. He was sentenced to 25 years of imprisonment. On 13 December 2004, the Appeals Chamber of the ICTR affirmed Mr. Ntakirutimana's convictions for committing genocide and murder as a crime against humanity, entered additional convictions for aiding and abetting genocide and extermination as a crime against humanity, and affirmed his sentence of 25 years of imprisonment. More than 10 years ago, on 26 March 2014, Mr. Ntakirutimana was granted early release by the President of the Mechanism.

On 14 December 2023, Mr. Ntakirutimana filed a motion to review the Appeal Judgement and his convictions. On 21 May 2024, this Appeals Chamber partially granted his request and found that Witness HH's purported recantations, after the Appeal Judgement was issued, constitute a new fact. The Appeals Chamber also considered that, if proved, this new fact could have been decisive in the original decision as Witness HH's evidence exclusively underpins Mr. Ntakirutimana's convictions for aiding and abetting genocide and extermination in relation to an attack at Gitwe Hill, near Gitwe Primary School, in late April or early May 1994. The Appeals Chamber therefore considered that a Review Hearing would be held to allow the parties to present evidence concerning the new fact.

On 18 September 2024, the Appeals Chamber scheduled the Review Hearing and, in doing so, only allowed Mr. Ntakirutimana to call Witness HH to testify. The Appeals Chamber emphasized that the focus of the Review Hearing would be to test the credibility and reliability of Witness HH's purported recantations, and specifically in relation to events at Gitwe Hill, near Gitwe Primary School.

The Review Hearing took place on 18 and 19 November 2024. Following Witness HH's testimony, the Appeals Chamber heard oral submissions by the parties on whether Mr. Ntakirutimana had met his burden of proving the veracity of Witness HH's purported recantation.

Chronology of Recantations

The history of Witness HH's recantation in the *Ntakirutimana* case began during proceedings against Jacques Mungwarere in Canada. In a meeting on 18 November 2011, Witness HH met with Canadian



prosecution and defence representatives in the *Mungwarere* case and stated that he had falsely accused Jacques Mungwarere. When asked by Jacques Mungwarere's defence counsel about his testimony at the ICTR, the Witness confirmed that his testimony against Mr. Ntakirutimana was true and that he did not lie.

In a statement provided to the defence in the *Mungwarere* case dated 3 December 2011, the Witness stated that he testified against Mr. Ntakirutimana a long time ago, that he had not seen Mr. Ntakirutimana shoot anyone, and that his ICTR testimony did not reflect the truth. However, at an interview on 13 February 2012 in relation to the *Mungwarere* case, Witness HH confirmed his ICTR testimony against Mr. Ntakirutimana.

In October and November 2012, Witness HH testified before the Canadian court in the *Mungwarere* case. During those proceedings, he stated that he did not tell the truth at the ICTR, that he had falsely accused Mr. Ntakirutimana and his father, that he did so out of anger and revenge, that he associated Mr. Ntakirutimana to acts of other attackers to make his testimony more plausible, and that he wanted vengeance against Hutus until his release from prison in 2011. The Canadian judge found his testimony very credible.

Witness HH also made a statement on 18 November 2013 in relation to domestic proceedings in the United Kingdom. He confirmed the recantation of his testimony against Mr. Ntakirutimana before the ICTR. According to Witness HH, he decided to tell the truth after being imprisoned in 2011 on false murder allegations and did so despite risks to himself.

A month later, on 18 December 2013, Mr. Ntakirutimana filed a motion before the Mechanism requesting assignment of an *amicus curiae* to investigate Witness HH for having provided false testimony in the *Ntakirutimana* case. The matter was assigned to a Single Judge on 7 January 2014. On 2 March 2016, the Single Judge found that strong grounds existed for believing that Witness HH knowingly and wilfully gave false testimony in the *Ntakirutimana* case and referred the matter to the President of the Mechanism, who then, in accordance with the Rules, assigned another Single Judge to determine whether to initiate false testimony proceedings against the Witness.



On 13 June 2016, the Single Judge ordered the appointment of an *amicus curiae* to investigate whether Witness HH gave false testimony in the *Ntakirutimana* case as well as whether Witness HH's recantation in Canada was fabricated. The *Amicus Curiae* was appointed on 10 October 2016.

In his investigations, the *Amicus Curiae* considered extensive documentary evidence and interviewed representatives of the Canadian prosecution and defence in the *Mungwarere* case as well as Witness HH. In an interview with the *Amicus Curiae* on 9 May 2017, Witness HH confirmed that he recanted his testimony against Mr. Ntakirutimana.

The *Amicus Curiae* concluded his investigations on 28 August 2017. The *Amicus Curiae* observed that Witness HH was consistent in his explanations for falsely accusing Mr. Ntakirutimana and for deciding to recant. The *Amicus Curiae* concluded that Witness HH knowingly and wilfully provided false testimony before the ICTR in the *Ntakirutimana* case and that there were sufficient grounds to initiate false testimony proceedings against him. The *Amicus Curiae* also concluded that the recantation of his testimony against Mr. Ntakirutimana was not fabricated.

On 20 November 2017, the Single Judge issued a decision observing that Witness HH expressly recanted his testimony against Mr. Ntakirutimana and that sufficient grounds existed to initiate false testimony proceedings against the Witness. However, the totality of the circumstances weighed against initiating such proceedings, and the case was terminated. The Single Judge further stated that declining to proceed against Witness HH did not prevent Mr. Ntakirutimana from seeking review of his convictions in light of the Witness's recantation.

On 17 November 2019, Witness HH was interviewed by Mr. Ntakirutimana's Defence team. Witness HH stated that, among other things, his ICTR testimony against Mr. Ntakirutimana, including events at Gitwe Hill, were false. In a statement dated 18 and 19 November 2019 to Mr. Ntakirutimana's Defence team, Witness HH confirmed his recantation.

Review Hearing

In his testimony at the Review Hearing, Witness HH acknowledged that, during the *Ntakirutimana* trial, he testified that Mr. Ntakirutimana was among the attackers at Gitwe Hill and that Mr. Ntakirutimana had shot at a man named Esdras. Witness HH stated that his trial testimony was false and that he never



saw Mr. Ntakirutimana during the attack on the hill. Witness HH explained that he gave this testimony because “[t]he genocide made us suffer a great deal as Tutsis whose families were exterminated by the Hutus.” As a survivor who felt angry, Witness HH stated that he saw providing false testimony as an opportunity to take revenge against Hutus.

According to Witness HH, he was imprisoned between January and April 2011 after being falsely accused of murder. Witness HH testified that, during this time, he suffered a great deal and felt isolated as he was imprisoned with other Hutus who he had testified against in Gacaca proceedings. According to Witness HH, he prayed, and God spoke to him and told him that his sentence was nothing in comparison to the people he had testified against who died in prison. Witness HH continued that he heard a voice asking him: “If [...] justice was rendered in your regard, what would you do in your turn?”. Witness HH stated that he told the voice: “If I lied against anyone and if that person died, I will ask for forgiveness from God. If I testified falsely against someone who is still in detention, I promise not to do this again.” Witness HH testified that, at some point after this experience, the Public Prosecutor dropped the charges against him and that he was released. According to Witness HH, after leaving prison, he felt weak because of his false testimony and decided to begin recanting his prior testimony in a court setting.

The Defence submits that Witness HH’s recantation is genuine and that, among other things, there is no credible evidence on the record showing that the Witness had been corrupted during the process where he retracted his testimony in this or other cases. The Defence also highlights that his evidence was found credible by a Canadian court in the *Mungwarere* case, where he also retracted prior incriminating statements, and that the *Amicus Curiae* determined that there was a sufficient basis to prosecute him for false testimony after a thorough investigation. The Prosecution submits that, among other things, Witness HH’s recantation is neither credible nor reliable, that it is the product of incentives and manipulation, and that his evidence is insufficient to meet the high threshold for reversing a final judgement. The Prosecution also requested more time to investigate the recantation.

Deliberation and Findings

At the outset, the Prosecution’s suggestion that it should be given more time to investigate Witness HH’s recantation is without merit. The Prosecution has been aware of the allegation that Witness HH



recanted since at least December 2013 when Mr. Ntakirutimana requested the Mechanism to investigate Witness HH for false testimony. Additionally, in 2018, Mr. Ntakirutimana was assigned counsel to assist him in the preparation of a review application on the basis of a finding that there was a sufficient basis to initiate a prosecution for false testimony. The Appeals Chamber further notes that, since the scheduling of the Review Hearing, the Prosecution has not sought extensions of time or to postpone the hearing. The fact that the Prosecution waited until the last minute to begin its investigation is not a reasonable basis to prevent reaching finality in these proceedings.

Turning to the central issue before us, the Appeals Chamber has carefully examined Witness HH's testimony and the circumstances surrounding his recantation. The rationale behind his decision to testify falsely and then to later recant on its face appears plausible. The Appeals Chamber can, therefore, fully understand why the *Amicus Curiae* in this case determined that there was a *prima facie* case for instituting proceedings for false testimony against Witness HH.

However, accepting that Witness HH's recantation is indeed false and, as a result, overturning a final conviction demands a much higher threshold of scrutiny. The Appeals Chamber finds particularly troubling that, on 18 November 2011, when Witness HH was interviewed by a Canadian prosecutor and defence lawyer about his testimony against Mr. Ntakirutimana, he affirmed that his testimony in the *Ntakirutimana* case was true. This was just a few months after his religious experience in prison. This is particularly surprising as, during this interview, Witness HH retracted prior incriminating statements against Jacques Mungwarere based on his "promise" not to lie again and to tell the truth. When questioned on this point during the Review Hearing, Witness HH did not provide a reasonable explanation about why he did not recant his testimony during the interview. His answers were notably evasive.

The Appeals Chamber further observes that Witness HH did not consistently affirm his recantation after this point. As previously mentioned, he informed the defence in the *Mungwarere* case during an interview on 3 December 2011 that his testimony against Mr. Ntakirutimana before the ICTR was not truthful, but in a subsequent interview in February 2012 confirmed his ICTR testimony against Mr. Ntakirutimana.



The Appeals Chamber is mindful that Witness HH would subsequently go on to consistently affirm that his testimony in this case was false and that he even maintained this position under threat of prosecution. Nonetheless, bearing in mind his powerful account of why he began recanting, the Appeals Chamber considers that his response affirming his testimony in the *Ntakirutimana* case during the November 2011 interview raises considerable doubts about the truthfulness as to why he decided to recant in this case and serious questions about the veracity of his recantation itself. In this respect, the Appeals Chamber notes that Witness HH acknowledged truthfully testifying against other ICTR accused persons, reflecting that he took his oath before the ICTR seriously at the relevant time when he testified in this case.

Other circumstances surrounding Witness HH's recantation are also noteworthy. This includes his close ties with Jacques Mungwarere's brother Gérard Muhayimana and, in particular, his admission to receiving a few payments from Gérard Muhayimana and his wife. These payments are not necessarily significant sums, and the evidence does not demonstrate that he was paid to give false testimony specifically. Importantly, however, the Appeals Chamber notes that the Witness expressly confirmed that he never received payments from Gérard Muhayimana or his wife. It was only after the Prosecution indicated that it had proof of payments that the Witness acknowledged this fact. He stated: "I didn't know that you had the transcripts of those transactions". This raises questions about his candour on a sensitive topic. Witness HH was also charged with Gérard Muhayimana and others, who all shared the same lawyer, for bribery in connection with the conduct of the *Mungwarere* case. Although the Witness was acquitted, he did acknowledge being aware of information that some witnesses were receiving money from Jacques Mungwarere's family. Although not decisive, this raises some additional concerns about the context in which he began recanting his testimonies in various cases, including this one, which began during the *Mungwarere* case.

In view of the foregoing, the Appeals Chamber is not satisfied that the Defence has shown that Witness HH's recantation is sufficiently credible to prove that the Witness falsely testified against him during the *Ntakirutimana* trial. The Appeals Chamber notes in particular his affirmation of telling the truth against Mr. Ntakirutimana during the November 2011 interview and his subsequent inconsistent positions in December 2011 and February 2012 as to whether he recanted his ICTR testimony.



Conclusion

The Appeals Chamber recalls that the review proceedings were authorized to test the veracity of Witness HH's purported recantations. For the reasons already discussed, the Appeals Chamber finds that Mr. Ntakirutimana has failed to prove the new fact that Witness HH truthfully recanted his testimony in the *Ntakirutimana* case before the ICTR.

The evidence provided at the Review Hearing equally raises questions about Witness HH's credibility. However, the Appeals Chamber will not lightly disturb a trial chamber's assessment, which was subject to appeal, based on Witness HH's subsequent conduct that occurred more than 10 years after his original testimony.

Accordingly, the Appeals Chamber, pursuant to Article 24 of the Statute of the Mechanism and Rule 147 of the Rules, unanimously finds that Mr. Ntakirutimana has failed to prove the new fact.

Judge Antonetti will append a concurring opinion to the written Judgement.

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