

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case no.: MICT-17-109-R108.1
Date: 11 May 2020
Original: French

BEFORE A SINGLE JUDGE

Before: Judge Jean-Claude Antonetti
Registrar: Mr Olufemi Elias
Decision of: 11 May 2020

**IN PROCEEDINGS AGAINST
[REDACTED]**

PUBLIC REDACTED DOCUMENT

**SEISING THE MECHANISM PRESIDENT ON THE MATTER OF THE REPUBLIC
OF BURUNDI'S FAILURE TO COMPLY WITH ITS OBLIGATION TO
COOPERATE WITH THE MECHANISM**

Government of the Republic of Burundi

Amicus Curiae Prosecutor

[REDACTED]

I, JEAN-CLAUDE ANTONETTI, judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING that [REDACTED], gave evidence [REDACTED] before the International Criminal Tribunal for Rwanda (“ICTR”) in the [REDACTED] case;²

RECALLING that, in a letter sent to the ICTR President dated [REDACTED], [REDACTED] had expressed his wish to recant his entire testimony in the [REDACTED] Case and that, following an investigation, Trial Chamber II of the ICTR issued an order for an indictment on [REDACTED] asking the Registrar of the ICTR to designate an *amicus curiae* to instigate proceedings against [REDACTED] for false testimony;³

NOTING the order for an indictment against [REDACTED] for false testimony, issued on [REDACTED] ordering the Registrar of the Mechanism to appoint an *amicus curiae* charged with, *inter alia*: (i) submitting a report within six months of his appointment, and subsequently whenever I order him to do so, to inform me of the efforts undertaken to determine the whereabouts of [REDACTED], and (ii) prosecuting [REDACTED] for false testimony when arrested;⁴

NOTING the Warrant of Arrest of [REDACTED], and order for transfer, transmitted to all the States (“Warrant of Arrest”);⁵

NOTING the Report of [REDACTED] submitted by the *amicus curiae* stating that the Order of [REDACTED] and Warrant of Arrest were transmitted to the Ministry of Justice of the Republic of Burundi (“Burundi”) on [REDACTED], but that despite numerous efforts by the Registry of the Mechanism to get in touch with the Minister of Justice of Burundi or any other Burundian official on this matter, no response was forthcoming;⁶

¹ Order Assigning a Single Judge to Consider a Matter, 8 September 2017 (strictly confidential and *ex parte*) (the English original was filed on 30 August 2017), p. 2.

² [REDACTED].

³ [REDACTED]. I recall that the order for an indictment was never executed.

⁴ Order in Lieu of an Indictment Pursuant to Rule 108 (C) (ii) of the Rules of Procedure and Evidence, [REDACTED] (strictly confidential), pp. 2 and 3.

⁵ Warrant of Arrest and Order for Transfer Addressed to All States Pursuant to Rule 57 of the Rules of Procedure and Evidence, [REDACTED] (strictly confidential).

⁶ Report from [REDACTED], for the attention of Jean-Claude Antonetti, Single Judge, [REDACTED].

RECALLING that the information in my possession in relation to locating [REDACTED] dates [REDACTED] and that it seems that he was in Burundi at the time [REDACTED];⁷

RECALLING that under the terms of Article 1.4 (b) of the Statute of the Mechanism (“Statute”) the Mechanism has the power to prosecute any person who knowingly and wilfully gives false testimony before the Mechanism or the Criminal Tribunals;

RECALLING that Article 28.2 (a) of the Statute applies in cases of false testimony as, according to the terms of this Article, States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to, the identification and location of persons;

NOTING that the report of [REDACTED] specifies that it “is apparent that Burundi has utterly failed” to fulfil its obligation to comply without undue delay with any requests for assistance from the Mechanism sent pursuant to Article 28 of the Statute;⁸

RECALLING that, pursuant to Rule 8 (A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), when the Trial Chamber is satisfied that a State has failed to fulfil its obligations under Article 28 of the Statute in relation to a case in which it is sitting, it may ask the President to notify the United Nations Security Council (“Security Council”) of this failure and the President informs the Security Council;

RECALLING also that, pursuant to Rule 61 (B) of the Rules, if, within a reasonable time, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer and the Mechanism, through the President, may notify the Security Council accordingly;

OBSERVING that the orders of [REDACTED] and [REDACTED] sent to the Government of Burundi seeking its cooperation in the present case have not been complied with,⁹ in contravention of Article 28 of the Statute;

⁷ [REDACTED].

⁸ Report of [REDACTED]

⁹ Order to the Republic of Burundi, [REDACTED]; Second Order to the Republic of Burundi, [REDACTED].

CONSIDERING that, in order to guarantee that persons who have been indicted by the Mechanism are able to respond to charges against them in a fair and impartial trial, I, the Single Judge, deem that it is necessary to resort to the procedure set out in Rules 8 (A) and 61 (B) of the Rules;

CONCLUDE that, in accordance with Rules 1.4 (b), 28.2 (a), 8 (A) and 61 (B) of the Rules, it would be appropriate to seise the President of the Mechanism so that he can notify the Security Council of this problem.

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

Done this eleventh day of May 2020
in Arusha (Tanzania)

Single Judge
/signed/
Jean-Claude Antonetti

[Seal of the Mechanism]