

MICT-12-20
15-04-2015
(6 - 1/424bis)

6/424bis
ZS

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

THE PRESIDENT

Before: Judge Theodor Meron, President

Registrar: Mr John Hocking

Date : 23 March 2015

BERNARD MUNYAGISHARI Case

Case: No. MICT- 12-20

PUBLIC

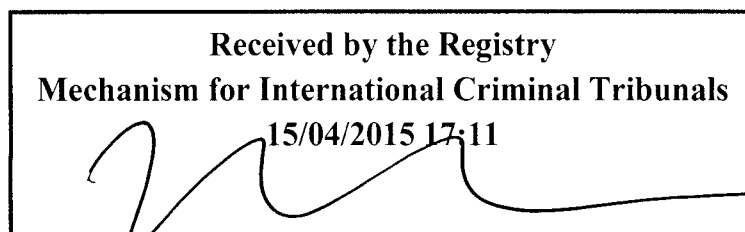
**Bernard Munyagishari's Reply to the Response of the Prosecutor to the
Third Request to Revoke Referral Order**

Office of the Prosecutor:

Hassan Bubacar Jallow

Defence Counsel:

Ms Natacha Fauveau Ivanovic



I. INTRODUCTION

1. On 3 March 2015, Bernard Munyagishari (“Accused”) filed his third request to have the referral of his case to Rwanda revoked (“Request”), reiterating the continued violations of his fundamental rights and, in particular, the absence of the funds necessary for his Defence.¹
2. On 17 March 2015, the Prosecutor filed his response² opposing the Request of the Accused.
3. The Accused is filing the present reply in order to clarify certain points that the Prosecutor distorted in his Response.

II. ARGUMENTS

(a) The excessive duration of the proceedings constitutes a violation of the fundamental rights of the Accused

4. In his Response, the Prosecutor indicated that the Accused is repeating arguments raised in his request filed on 21 May 2014³ and claims that, apart from the passage of the time between the filing of the second and third request, the situation has not changed.⁴
5. In its request, the Defence clearly indicated that all the arguments set out in the second request remained valid.⁵ However, a new request was required because of the time that had elapsed since the Decision of the President of the Mechanism for International Criminal Tribunals (“Mechanism”),⁶ during which none of the problems were resolved.
6. The right to be tried without undue delay is one of the fundamental rights of all accused, guaranteed under Article 14.3 (c) of the International Covenant on Civil and Political Rights

¹ “Bernard Munyagishari’s Request to Revoke Referral Order”, filed on 3 March 2015.

² “Prosecution Opposition to Bernard Munyagishari’s Third Request for Revocation of Referral Order” (“Response”).

³ Response, paragraph 1.

⁴ Response, paragraph 2.

⁵ Request, paragraph 6.

⁶ “Decision on Second Request for Revocation of an Order Referring a Case to the Republic of Rwanda” (“Decision of 26 June 2014”).

(“Covenant”), Article 19.4 (c) of the Statute of the Mechanism and Article 14.5 of the Law on the transfer of cases to Rwanda.

7. The Prosecutor himself acknowledged that since the second request of the Accused the situation has not changed.⁷ Therefore, the Prosecutor acknowledged that since last May, that is, a period of 10 months, the Rwandan judicial institutions and authorities were not able to resolve the question of remunerating the Defence and of adequate representation for the Accused. This delay is in itself a violation of the fundamental rights of the Accused, especially since the Rwandan courts have refused to intervene in the remuneration of the Defence.⁸

8. The Prosecutor concedes that the protracted negotiations on the remuneration of Counsel are, to an extent, prolonging the proceedings.⁹ However, he claims that the delays are due to the submissions of the Accused who sought more time for the preparation of his case.¹⁰ This allegation is completely unfounded because even the Prosecutor acknowledged that these requests were, at least in part, based on the absence of Counsel,¹¹ an absence that was entirely due to insufficient means. Moreover, it is logical and inevitable that an accused who does not have the necessary means seeks additional time.

9. The fact that nine months after the Decision of the President of the Mechanism, in which he acknowledged that the problems raised by the Accused could have an impact on the rights of the Defence,¹² and 20 months after the transfer of the Accused to Rwanda, the Rwandan authorities have still not resolved the question of remuneration of the Defence, shows their unwillingness and/or their inability to guarantee an expeditious and fair trial to the Accused.

(b) The scope and gravity of the violations of the rights of the Accused justify a revocation of the referral to Rwanda

⁷ Response, paragraph 2.

⁸ Request, paragraph 15. Monitoring Report November 2014, 19 November 2014, paras 7 and 13.

⁹ Response, paragraph 20.

¹⁰ Response, paragraph 20.

¹¹ Response, paragraph 20.

¹² Decision, 26 June 2014, page 3.

10. The Defence admits that the revocation of referral should be a remedy of last resort and that it is only applicable when the Accused is deprived of the fundamental rights secured by international law.¹³ However, in the present case, all the violations set out in the request regard the fundamental rights of the Accused, guaranteed under the International Covenant, the Statute of the ICTR and the Statute of the Mechanism.

11. Moreover, the President of the Mechanism acknowledged that the questions raised by the Defence were questions that fell within the competence of the Mechanism and confirmed the right of the Defence to file a request for revocation based on these questions.¹⁴

(c) The Accused does not benefit from adequate legal aid

12. According to the Prosecutor, the Accused would be completely satisfied with the services provided by assigned Counsel.¹⁵ This claim is unfounded because the accused considers that his Defence is not guaranteed.¹⁶ Moreover, the Prosecutor himself acknowledges the absence of Counsel.¹⁷ However, the Accused considers that Counsel assigned to him are not responsible for this situation and that the responsibility lies entirely with the Rwandan authorities, who have not ensured funds for the Defence.

13. With respect to the cases in which Counsel agreed to the remuneration proposed by the Rwandan authorities,¹⁸ the Prosecutor refers to documents that are not yet available to the Defence. The Monitoring Report for January 2015 is still not available on the site of the Mechanism and *pro bono* Counsel has not had any possibility to examine it.

14. Moreover, these two cases are not comparable to the present case. Unlike in the present case, in the Uwinkindi Case Counsel received considerable remuneration which allowed it to prepare the case. With respect to the Accused extradited from Norway, even though his Defence may have the same requirements as the Defence in the present case, there will be a better balance between the Accusation and the Defence because the Prosecution will rely

¹³ Response, paragraph 3.

¹⁴ Decision, 26 June 2014, page 3.

¹⁵ Response, paragraph 7.

¹⁶ Request, paragraph 8.

¹⁷ Response, paragraph 19.

¹⁸ Response, paragraph 11.

PUBLIC

entirely on the Rwandan Prosecutor while, in the present case, the Rwandan Prosecutor has benefited from the assistance of the ICTR Prosecutor.

15. The Prosecutor considers that the Rwandan Bar Association will be able to assign new Counsel to the Accused if present Counsel do not manage to reach an agreement with the Ministry of Justice.¹⁹ To change Counsel at this stage of proceedings can only lead to more delays in the proceedings, and international jurisprudence acknowledges that the replacement of Counsel leads to violations of the rights of the Accused to be tried expeditiously.²⁰

d. The conditions in which Rwandan attorneys practise are not adequate and contravene international standards

16. Contrary to the claims of the Prosecutor,²¹ the Accused had never claimed that he was unable to contact his ICTR Counsel. The Accused complained that he did not have the possibility to consult Counsel, assigned in Rwanda, in complete confidentiality,²² which constitutes a violation of his rights, and he raised concerns that they have had in contacting his pro bono Counsel.²³

III. CONCLUSION

17. For the foregoing reasons, the Accused requests that the Mechanism grants his request and that

- a Trial Chamber be appointed to rule in the present case;
- the referral order be revoked; and
- Rwanda is removed from the case.

¹⁹ Response, paragraph 12.

²⁰ ICTY, *The Prosecutor v. Vidoje Blagojević* (IT-02-60-AAR73.4), “Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team”, 7 November 2003, paragraph 50.

²¹ Response, paragraph 27.

²² Request, paragraph 24; Monitoring Report for October 2014, 18 November 2014, paras 10-11.

²³ Request, paragraph 28; Second Monitoring Report, November 2014, 17 December 2014, paragraph 31.

In the alternative, the Accused requests that the Mechanism takes measures to restore equality between the means available to the Prosecution and the Defence by providing assistance to the Defence and appointing an Advisor to serve alongside the Defence team.

Number of words (in the original): 1,428

Done in Paris, 23 March 2015

Natacha Fauveau Ivanovic

*Pro bono Counsel
for Bernard Munyagishari*



**TRANSMISSION SHEET FOR FILING OF TRANSLATIONS
WITH THE ARUSHA BRANCH OF
THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

To	MICT Registry				
From	<input checked="" type="checkbox"/> ICTY CLSS		<input type="checkbox"/> ICTR LSS		
Original Submitting Party	<input type="checkbox"/> Chambers	<input checked="" type="checkbox"/> Defence	<input type="checkbox"/> Prosecution	<input type="checkbox"/> Other	
Case Name	MUNYAGISHARI	Case Number	MICT-12-20	No. of Pages	6
Original Document No.	MICT-12-20-0047		Translation Reference No.	REG43163	
Date of Original	23/03/2015	Original Language	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Date Transmitted	15/04/2015	Language of Translation	<input type="checkbox"/> English	<input checked="" type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Title of original document	RÉPLIQUE DE BERNARD MUNYAGISHARI À LA RÉPONSE DU PROCUREUR REATIVE À LA TRISIÈME REQUÊTE AUX FINS D'OBTENIR L'ANNULATION DE L'ORDONNANCE DE RENVOI				
Title of translation	BERNARD MUNYAGISHARI'S REPLY TO THE RESPONSE OF THE PROSECUTOR TO THE THIRD REQUEST TO REVOKE REFERRAL ORDER				
Classification Level	<input checked="" type="checkbox"/> Unclassified <input type="checkbox"/> Confidential <input type="checkbox"/> Strictly Confidential		<input type="checkbox"/> Ex Parte Defence excluded <input type="checkbox"/> Ex Parte Prosecution excluded <input type="checkbox"/> Ex Parte R86(H) Applicant excluded <input type="checkbox"/> Ex Parte Amicus Curiae excluded <input type="checkbox"/> Ex Parte other exclusion (specify):		
Document type/ Type de document:	<input type="checkbox"/> Indictment	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Notice of Appeal	
	<input type="checkbox"/> Warrant	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Submission from non-parties		
	<input type="checkbox"/> Motion	<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Submission from parties		
	<input type="checkbox"/> Decision	<input type="checkbox"/> Judgement	<input type="checkbox"/> Book of Authorities		

Send completed transmission sheet to: JudicialFilingsArusha@un.org