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Mechanism for International Criminal Tribunals

MICT-12-25-R14.1  
16 July 2015  
Original: English

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THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding  
Judge William Hussein Sekule  
Judge Florence Rita Arrey

Registrar: Mr John Hocking

PROSECUTOR

- v. -

JEAN UWINKINDI

UNCLASSIFIED

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APPLICANT'S URGENT REQUEST FOR EXTENSION OF TIME TO  
FILE BRIEF IN SUPPORT OF REVOCATION REQUEST,  
AND FOR EXTENSION OF WORD LIMIT

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Office of the Prosecutor:  
Hassan Bubacar Jallow

Counsel for Jean Uwinkindi:  
Gatera Gashabana

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## I. INTRODUCTION

1. Pursuant to Rule 154(A) of the Mechanism's Rules of Procedure and Evidence ("the Rules"), Jean Uwinkindi ("the Applicant"), represented by counsel, hereby requests an extension of time in which to file his brief in support of the request for revocation of the order referring his case to Rwanda ("Revocation Request"). The Applicant further requests a variation in the word limit of the brief in support of the Revocation Request, pursuant to paragraph 17 of the Mechanism's Practice Direction on Lengths of Briefs and Motions ("the Practice Direction").

## II. PROCEDURAL HISTORY

2. In the Monitoring Report for March 2015,<sup>1</sup> a number of comments made by the Applicant were recorded which were subsequently treated by the President of the Mechanism as a request for revocation of the order referring his case to Rwanda; the matter was assigned to a Trial Chamber.<sup>2</sup>
3. On 22 May 2015, the Pre-Trial Judge ordered, *inter alia*, that the Applicant shall file his brief in support of the Revocation Request no later than 30 days following the assignment of counsel by the Registry, subject to adjustments as appropriate.<sup>3</sup>
4. On 22 June 2015, the Registrar assigned lead counsel to represent the Applicant before the Mechanism, effective as of that date.<sup>4</sup> The brief in support of the Revocation Request should, therefore, be filed no later than 22 July 2015.

<sup>1</sup> *Prosecutor v. Jean Uwinkindi*, MICT-12-25, Monitoring Report for March 2015, 30 April 2015.

<sup>2</sup> *Prosecutor v. Jean Uwinkindi*, MICT-12-25-R14.1, Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda and Assigning a Trial Chamber, 13 May 2015, pp. 2-3.

<sup>3</sup> *Prosecutor v. Jean Uwinkindi*, MICT-12-25-R14.1, Scheduling Order, 22 May 2015, p. 1 ("Scheduling Order").

<sup>4</sup> *Prosecutor v. Jean Uwinkindi*, MICT-12-25-R14.1, Decision of the Registrar, 22 June 2015, p. 2.

### III. SUBMISSIONS

#### A. Request for Extension of Time to File Brief

5. Rule 154(A) of the Rules provides that:

[A] Chamber may, on good cause being shown by motion:  
 (i) enlarge...any time prescribed by or under these Rules...

Although the 30-day time limit ordered in the Scheduling Order was not prescribed by or under the Rules, it was made "subject to adjustments as appropriate." It is submitted that the "good cause" test provided for by Rule 154(A) is an appropriate test to apply.

6. It is submitted that good cause exists to grant a limited extension of time for the filing of a brief in support of the Revocation Request. The extension requested is 14 days from 22 July 2015, that is, to 5 August 2015.
7. The principal ground for seeking a limited extension of time is that until very recently counsel had been unable to visit the Applicant, who is currently detained at the Central Prison of Kigali. From the date of his assignment on 22 June 2015 until 13 July 2015, counsel could not meet with the Applicant to explain that the Revocation Request was before the Mechanism, and to take instructions on the Revocation Request and on the most recent (and most critical) Monitoring Reports.
8. Indeed, from as long ago as 21 January 2015, counsel had been unable to visit the Applicant in prison. Counsel was informed by the Prison Director on that date that, pursuant to verbal instructions from the High Court in Kigali, he was no longer authorised to see the Applicant, ostensibly because his appointment as counsel for

the Applicant in his trial before the High Court in Kigali had been terminated.<sup>5</sup> In addition, there is evidence that the Rwandan National Public Prosecution Authority had taken it upon itself to notify the prison authorities of counsel's change of status as the Applicant's lawyer, amounting to "instructions" that counsel could no longer be allowed access to him.<sup>6</sup>

9. Since the date of his assignment by the Registrar of the Mechanism, counsel has made all reasonable efforts before various Rwandan authorities to secure access to the Applicant in prison pursuant to that assignment. These efforts began the day after his assignment, on 23 June 2015, with counsel seeking authorisation from *inter alios* the Chairman of the Rwandan Bar Association ("the RBA"), the President of the High Court's Specialised Chamber Trying International and Cross-Border Crimes ("the Specialised Chamber"), and the Prison Director. These efforts were unsuccessful despite counsel always making it clear that there was a time limit of 30 days in which his brief in support of the Revocation Request was to be filed.
10. On 24 June 2015, counsel met with the Chairman of the RBA to establish the procedure to be followed in order that the High Court's verbal instructions be discharged. A written request for authorisation to visit the Applicant in prison was sent to the leadership of the RBA by counsel on the same day. Counsel also made complaint to representatives of the Mechanism in Kigali about his difficulties in securing access to his client.
11. On 25 June 2015, counsel met again with the Chairman of the RBA; also present was the Executive Secretary of the RBA. Authorisation to make contact with the

<sup>5</sup> *Prosecutor v. Jean Uwinkindi*, MICT-12-25, Monitoring Report for January 2015, 26 February 2015, para. 77.

<sup>6</sup> *Prosecutor v. Jean Uwinkindi*, MICT-12-25, Monitoring Report for March 2015, 30 April 2015, para. 113.

Applicant was granted by the RBA. However, it was necessary for similar authorisation to be obtained from the High Court and the Prison.

12. On 29 June 2015, counsel transmitted the RBA's authorisation to the President of the Specialised Chamber, the Presidents of the High Court and Supreme Court, the Prosecutor General, officials of the Mechanism, and the Prison Director.
13. On the same day, counsel met with the President of the Specialised Chamber. He also met with the Commissioner General of the Rwanda Correctional Service.
14. On 3 July 2015, counsel met again with the Commissioner General. He provided a signed authorisation permitting counsel to visit the Applicant on 9 July 2015.
15. On 7 July 2015, the President of the Specialised Chamber gave verbal authorisation for counsel to consult the Applicant's dossier.
16. It was only on 13 July 2015 that counsel was finally able to visit the Applicant and to take his instructions. It will be noted that this was a full 21 days after counsel's assignment.
17. Although it is not submitted that counsel was unable to do any work in preparation of the brief in support of the Revocation Request between 22 June 2015 and 13 July 2015, his ability to take instructions during this period was significantly frustrated. The Appeals Chamber of the ICTR has previously held that, in a different but analogous context, the instructions of a client are important for the preparation of a filing, and that an inability of an Appellant in detention to communicate with his counsel for reasons beyond their control amounts to "good cause" within the

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meaning of Rule 116 of the ICTR's Rules of Procedure and Evidence to extend the time for filing written pleadings.<sup>7</sup>

18. It is further submitted that it is in the wider interest of justice for the time limit to be extended. The subject matter of the present litigation is of considerable importance to the Applicant. It will determine if his trial continues in Rwanda – in violation, it will be demonstrated, of his right to a fair trial – or if it takes place *de novo* in Arusha before the Mechanism following revocation. However, the consequences of the Trial Chamber's eventual decision are not limited to the Applicant's case. Revocation of a referral decision is unprecedented in international criminal law and the outcome of this litigation will be felt far beyond the Mechanism itself. It is foreseeable that it may well have a significant impact on other cases that have been referred by the ICTR to Rwanda, as well as on-going extradition and deportation cases around the world. It is therefore in the interest of justice that the Trial Chamber receives written submissions that are as full, complete and accurate as possible. Submissions made on behalf of the Applicant will be fuller and more complete if counsel has the opportunity to spend more time preparing his supporting brief in consultation with the Applicant.
  
19. Finally, it is submitted that the limited extension of time sought, in combination with the lack of prejudice such an extension would cause to the Mechanism Prosecution or to the authorities of the Republic of Rwanda, militate in favour of a finding that it would be in the interest of justice to grant the extension requested.

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<sup>7</sup> *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Decision on Notice of Leave to File Extremely Urgent Motion for Permission to Supplement Defense's Detailed Explanation Filed on May 24 2004, 15 June 2004, pp. 3-4.

## B. Request for Variation from Word Limit

20. In the absence of any provision contained in the Practice Direction that specifically applies to an Applicant's brief in support of a Revocation Request, it would appear the default position is that such a brief shall not exceed 3,000 words.<sup>8</sup>

21. Paragraph 17 of the Practice Direction provides that:

A party must seek authorization in advance to exceed the word limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing. Upon the filing by a party of a motion for an extension of the word limit, a Chamber or, as applicable, a Judge may dispose of the motion without hearing the other party, unless it is considered that there is a risk that the other party may be prejudiced.

22. It is submitted that exceptional circumstances exist in the instant case that would justify a variation in the word limit from 3,000 words to 12,000 words.

23. These are:

- (i) the exceptional legal complexity of the submissions to be made, which will include an in-depth analysis of the original Referral Chamber's and Appeals Chamber's decisions;
- (ii) the exceptional factual complexity of the submissions to be made, which will involve a detailed analysis of the background to and substance of the unfairness of the trial thus far suffered by the Applicant in Rwanda;
- (iii) the exceptional novelty of the litigation at issue, notably, the unprecedented nature of the relief sought in requesting revocation of referral;
- (iv) the exceptional importance of the outcome of this litigation to the Applicant;

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<sup>8</sup> Practice Direction, para. 15.

- (v) the exceptional impact the outcome of this litigation will have on other cases that have been referred by the ICTR to Rwanda, as well as on-going extradition and deportation cases around the world; and
- (vi) the voluminous nature of the many Monitoring Reports upon which the Applicant will rely in support of his submissions.

24. In summary, the brief in support of the Revocation Request is far more complex than an ordinary motion filed before a Chamber of the Mechanism. The nature of the submissions to be developed is such that they cannot be adequately contained in a filing of only 3,000 words. It is worth reiterating the submission made at paragraph 18 above: it is in the interest of justice that the Trial Chamber receives written submissions that are as full, complete and accurate as possible. The question the Trial Chamber has to answer is sufficiently important and exceptional to justify a significant variation in the word limit. Finally, it is submitted that there is no risk that any other party could be prejudiced by the granting of this request.
25. The Applicant relies on a decision of the Trial Chamber of the ICTY in the *Orić* case in which an extension of word limits was granted, "Considering the undisputed complexity of the issues in the case [...] and that the Trial Chamber may be assisted by thorough briefs in relation to these issues by both parties."<sup>9</sup> The Applicant would not, of course, oppose any similar request for an extension of the word limit were one to be filed by the Mechanism Prosecution.

### C. Request for Expedited Decision

26. In the circumstances, it is respectfully requested that the Trial Chamber deliver an expedited decision in this matter.

<sup>9</sup> *Prosecutor v. Orić*, IT-03-68-T, Order on Defence Motion for Variation of the Word Limit for Final Trial Brief, 9 March 2006.



#### IV. RELIEF REQUESTED

27. For the foregoing reasons, the Applicant respectfully requests that the Trial Chamber:

**GRANT** an extension of time for the filing of a brief in support of the Revocation Request to 5 August 2015;

**GRANT** a variation in the word limit of the brief in support of the Revocation Request from 3,000 words to 12,000 words; and

**DELIVER** an expedited decision in this matter.

Word count: 2,092

Respectfully submitted, 16 July 2015

**Gatera Gashabana**

Lead Counsel

