

MICT-12-25-R14.1  
08-09-2015  
(4 - 1/1065bis)

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UNITED  
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Mechanism for International Criminal Tribunals

MICT-12-25-R14.1  
23 August 2015  
Original: FRENCH

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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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**REPLY TO THE PROSECUTOR'S MOTION OF 14 AUGUST 2015**

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**Office of the Prosecutor:**  
Hassan Bubacar Jallow

**Counsel for Jean Uwinkindi:**  
Gatera Gashabana

**Received by the Registry**  
**Mechanism for International Criminal Tribunals**  
**08/09/2015 12:11**



## I. INTRODUCTION

1. On 11 August 2015, the Presiding Judge rendered an Order entitled: “ORDER FOR EXPEDITED RESPONSES AND REPLY TO JEAN UWINKINDI’S REQUEST FOR STAY OF PROCEEDINGS”.<sup>1</sup>
2. Pursuant to Rule 72 (D) of the Rules of Procedure and Evidence, the Applicant filed a supplementary brief with regard to the referral Order in which he requested the present Chamber to take into consideration new evidence brought by the Accused before staying proceedings no. RP 0002/12/HCCI in the case of *The Prosecution v. Jean Uwinkindi*.<sup>2</sup>
3. In a document of 14 August 2015 entitled, “Motion to Strike Uwinkindi’s Supplementary Brief”, unusually, the Prosecution argues that that the conditions of Order of 22 July 2015 had been violated by the addition of a 1,800-word supplement to the Supplementary Brief.<sup>3</sup>
4. Consequently, it requested that the Chamber not take into account the additional evidence presented by the Applicant.
5. In reply to this submission, the Applicant presented the following arguments:

## II. LEGAL DISCUSSION

6. Rule 72 (D) of the Rules of Procedure and Evidence (“RPE”) states:
 

“ [...] If either Party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose that evidence or material to the other Party and the Trial Chamber.”
7. In this case, in item 15 of the Supplementary Brief the Applicant presented the following additional elements:
  - Correspondence from Attorneys Joseph Ngabonziza and Isaacar Hishamunda asking Lead Counsel to forward to them the entire Uwinkindi case-file in his possession.

<sup>1</sup> “Order for Expedited Responses and Reply to Jean Uwinkindi’s Request for Stay of Proceedings”, 11 August 2015. *The Prosecutor v. Jean UWINKINDI*, Case no. MICT-12-25-14.1.

<sup>2</sup> See Supplementary Brief, Request for a Stay of Proceedings in Case RP0002/12/HCCI Pending before the High Court..

<sup>3</sup> “Motion to Strike Uwinkindi’s Supplementary Brief”, 14 August 2015, *The Prosecutor v. Jean UWINKINDI*, MICT-12-25-R14.1.

- Decision rendered by the Supreme Court in RPA 011/15/CS of which the Applicant had not been notified, as well as the new assignment of Isaacar Hishamunda and Joseph Ngabonziza as Counsel for the Accused.
  - A reply from Attorney Gatera Gashabana notifying them of the complete impossibility of honouring their request, considering the latest developments in the case.
  - Copies of all the correspondence were forwarded to the President of the Bar Association.
  - A letter from the President of the Mechanism informing the Accused of having sent to the present Chamber his request seeking a stay of proceedings before the High Court ([...] **Requesting a stay of proceedings in your going trial pending a decision**) followed by the Order of 11 August 2015.
8. When the first submission was being drafted on 4 August 2015, the Applicant was not yet aware of the additional evidence, thus he resorted to Rule 72 (D) of the Rules of Procedure and Evidence.
  9. Therefore, this concerns evidence and additional information that should have been disclosed to the other party and the Chamber.
  10. Therefore, the Prosecutor is not justified in holding them to the conditions of the Order of 22 July 2015 which only fixed the deadline and number of words for the first submission and not for the aforementioned additional evidence.
  11. Consequently, the provisions under Rule 72 (D) of the Rules of Procedure and Evidence should be applied.
  12. Thus the claims of the Prosecution are void of legal basis.
  13. The Chamber will not take them into account and will reject them pure and simple.

FOR THE FOREGOING REASONS

RESPECTFULLY ASKS THE CHAMBER TO

- To take note of the Prosecution motion and to declare it unfounded.
- Declare the Prosecution's attempt to have the supplementary brief rejected as erroneous, as it was disclosed in conformity with the procedure set out in Rule 72 (D) of the Rules of Procedure and Evidence.

WORD COUNT (in original): 766  
ENSURING FAIR AND PROPER JUSTICE

FOR THE ACCUSED  
HIS COUNSEL  
GATERA GASHABANA  
LEAD COUNSEL  
*/signed and stamped/*



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

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