

MICT-12-25-R14.1  
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Mechanism for International Criminal Tribunals

MICT-12-25-R14.1  
25 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

**THE PROSECUTOR**

v.

**JEAN UWINKINDI**

*PUBLIC*

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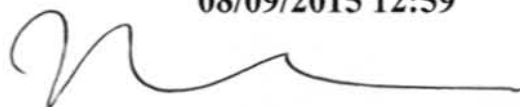
**REQUEST FOR A STAY OF PROCEEDINGS IN CASE  
RP0002/12/HCCI, *THE PROSECUTOR V. JEAN UWINKINDI*,  
PENDING BEFORE THE HIGH COURT**

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

**Counsel for Jean Uwinkindi:**  
Gatera Gashabana

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## I. INTRODUCTION

1. On 28 May 2015, the Accused filed a request before the President of the Mechanism, Judge Theodor Meron, seeking a stay of the proceedings in RP 0002/12/HCCI, in the case of the *The Prosecutor v. Jean Uwinkindi* before the High Court of Rwanda.<sup>1</sup>
2. This request was based on the disposition in the decision of the Trial Chamber of the International Criminal Tribunal for Rwanda, rendered on 28 June 2011 in Case No. ICTR-2005-89-R11bis.
3. Pursuant to that decision, the Accused has the right to seize the present Chamber but his request will not act as an automatic stay of proceedings before Rwandan courts unless expressly directed by the Tribunal.<sup>2</sup>
4. On 22 July 2015, the President of the Mechanism granted this request and sent the case-file to the present Chamber for consideration with the following sentence: “[...] I refer to my decision in which I assigned your request for revocation to a trial chamber [...]”.<sup>3</sup>
5. The request of the Applicant was reiterated with conviction and in detail in the Brief in Support of the Request for Revocation of the Order, and in other documents containing additional facts.
6. In a legal decision dated 11 August 2015, the Presiding Judge of the Chamber, pursuant to Rule 55 of the Rules of Procedure and Evidence, ordered the

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<sup>1</sup> See correspondence from the Applicant sent to the President of the Mechanism on 28 June, page 1 of the annex.

<sup>2</sup> *The Prosecutor v. Jean UWINKINDI*, ICTR-05-075-AR11bis, Decision rendered by the ICTR Trial Chamber on 28 June 2012.

<sup>3</sup> See letter of 22 July 2015 sent by the President of the Mechanism to Jean UWINKINDI, page 2 of the annex.

Prosecution and the Republic of Rwanda to file their replies to this request in a document not exceeding 3,000 words by 21 August 2015, while the Applicant had to reply by 26 August 2015.<sup>4</sup>

7. As the Prosecution and the Republic of Rwanda failed to comply with the Court's instructions, the Applicant hereby requests the present Chamber to take note and to order a stay of proceedings in RP 0002/12/HCCI, in the case of *The Prosecutor v. Jean Uwinkindi* before the High Court of Rwanda.
8. Furthermore, in the interest of the proper administration of justice, the Applicant seeks a decision granting this request on the basis of arguments supported by the following texts:

## II. LEGAL DISCUSSION

### II.1. VIOLATION BY THE OPPOSING PARTIES OF THE INSTRUCTIONS IN THE ORDER

9. Rule 153 of the Rules of Procedure and Evidence provides that:

**“In respect of trial proceedings, unless otherwise ordered by a Chamber or Single Judge [...] a response [...] filed by a Party shall be filed within fourteen days of the filing of the motion...”**

10. Rule 154 goes a step further and provides that:

“[...] a Chamber may, on good cause being shown by motion:

- (i) enlarge or reduce any time prescribed by or under these Rules; or

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<sup>4</sup> “Order for Expedited Responses and Reply to Jean Uwinkindi’s Request for Stay of Proceedings”, 11

- (ii) recognise as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired.”

11. In this case, not only did the Prosecution and the Republic of Rwanda fail to file their submissions within the time prescribed by the Presiding Judge of the Present Chamber, but worse than that, they did not file before 21 August 2015 any submission seeking a decision to modify the deadline or to have the Chamber acknowledge the validity of any steps they took before the expiry of the deadlines set by the Chamber.

12. Consequently, this constitutes an obvious agreement with the request and the Applicant’s brief.

13. It is well known that in judicial law, procedural rules are a mandatory element of public policy and must be interpreted strictly.

14. Therefore, the present Chamber must take note of these failures and grant the Applicant’s request in its entirety.

## **II. JEAN UWINKINDI’S PRESENT REQUEST IS WELL-FOUNDED**

15. The foregoing shows that the Prosecution and the Republic of Rwanda failed to comply with the instructions of the Chamber.

16. Such failure constitutes an obvious acceptance of the well-founded nature of the request for a stay of the proceedings in RP 0002/12/HCCI, in the case of *The Prosecutor v. Jean Uwinkindi* before the High Court of Rwanda.

17. The Chamber should take note of this and order a stay of these proceedings in order to allow the proceedings on the revocation of the Referral Order to continue uninterrupted.

**FOR THE FOREGOING REASONS**

**MAY IT PLEASE THE CHAMBER TO**

- **Admit the request and declare it well founded**
- **Note that the Prosecution and the Republic of Rwanda failed to comply with the Chamber's instructions**
- **Find that the opposing parties violated Rules 153 and 154 of the Rules of Procedure and Evidence**
- **Order a stay of proceedings before the High Court pending a ruling from the present Chamber.**

**Done in Kigali on 25 August 2015,**

**FOR THE APPLICANT**

**LEAD COUNSEL**

**Gatera Gashabana**

**/signed and stamped/**



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

<b>To</b>	MICT Registry		
<b>From</b>	<input checked="" type="checkbox"/> ICTY CLSS	<input type="checkbox"/> ICTR LSS	
<b>Original Submitting Party</b>	<input type="checkbox"/> Chambers	<input checked="" type="checkbox"/> Defence	<input type="checkbox"/> Prosecution <input type="checkbox"/> Other
<b>Case Name</b>	Uwinkindi	<b>Case Number</b>	MICT-12-25 <b>No. of Pages</b> 5
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<b>Title of translation</b>	REQUEST FOR A STAY OF PROCEEDINGS IN CASE RP0002/12/HCCI, THE PROSECUTOR V. JEAN UWINKINDI, PENDING BEFORE THE HIGH COURT		
<b>Classification Level</b>	<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):	
<b>Document type/ Type de document:</b>	<input type="checkbox"/> Indictment	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book <input type="checkbox"/> Notice of Appeal
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