

UNITED
NATIONS

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

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

THE TRIAL CHAMBER

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

Registrar: Mr John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**REPLY TO PROSECUTION'S SUBMISSION RECEIVED ON 25
AUGUST 2015 AT 1430 HOURS**

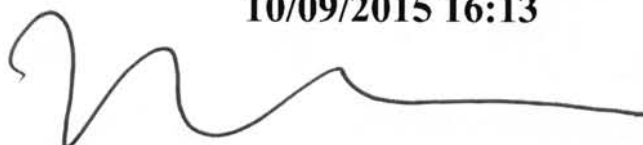
Office of the Prosecutor:

Hassan Bubacar Jallow

Counsel for Jean Uwinkindi:

Gatera Gashabana

**Received by the Registry
Mechanism for International Criminal Tribunals
10/09/2015 16:13**



I. EXPIRY OF DEADLINES

1. The Applicant requested that the Chamber take note of the fact that the opposing party failed to file its submission within the deadline prescribed.¹
2. The Applicant received a submission from the Prosecution on 25 August 2015 at 1430 hours, after the deadline had expired.²
3. Consequently, due to the Prosecution's actions, the Applicant was forced to file his submission in the space of a few hours.
4. May it please the Chamber to reject this submission on the ground of expiry of the deadline.

II. ALTERNATIVELY, ON THE MERITS

1. On the Prosecution's position

5. The mandate of the Mechanism does not provide for interference in domestic proceedings. Article 6 (6) of the Statute sets out the procedure for a deferral, while Article 28 sets out the procedure for cooperation with states. Jean Uwinkindi cannot use the Mechanism as a court of appeals to challenge the decision of the High Court to refuse his request.³
6. Uwinkindi failed to provide proof of the prejudice he would suffer if the proceedings before the High Court continue as scheduled. His request is nothing more than a stalling tactic.⁴

¹ "Request for a Stay of Proceedings in Case RP0002/12/HCCl., *The Prosecutor v. Jean UWINKINDI* Pending before the High Court".

² "Prosecution's Submissions Opposing UWINKINDI'S Request for Stay of Rwandan Proceedings".

³ Prosecution's Submissions, op. cit. no. 1050, pages 1, 2 and 3.

⁴ Prosecution's Submissions, op. cit. no. 1049 and 1050, pages 4 and 5.

2. On the Applicant's request

7. The request brought before the Mechanism relies on the legal arguments herewith:

- Order of 28 June 2012 referring the Accused to Rwanda, which sets out that any application before the Tribunal will not act as an automatic stay of *proceedings before Rwandan courts unless expressly directed by the Tribunal*.⁵
- The primacy of the Mechanism over national courts.⁶
- Article 190 of the Rwandan Constitution provides that international treaties shall be more binding than laws.⁷
- Article 119 of the Code of Judicial Organisation and Competence provides that in instances when the same acts are pending before two courts, the cases are referred by one of the courts to the other one, according to the following rules: the court that is subordinate shall defer to the higher court.⁸
- Article 22 of Law no. 47/2013 of 16 June 2013 on the relinquishment of jurisdiction by the High Court in favour of the Mechanism.⁹

3. Legal Observations

- The Prosecution's denial of the Mechanism's power to stay the proceedings before the High Court is unfounded. It cannot at the same time acknowledge the Mechanism's authority to revoke and then consciously ignore its authority to stay proceedings, because doing so violates the fundamental and well-known legal principle according to which "*he who can do more can do less*".
- Jurisprudence from the case of Peter Erlinder, who was prosecuted on facts that come under Rwandan positive law, should not affect the Accused.

⁵ Item 14 of the disposition in the Referral Order, Case no. ICTR-2001-R11bis, page 68, paragraph 14.

⁶ The Mechanism has primacy over national courts.

⁷ Constitution of the Republic of Rwanda of 4 June 2003, Ministry of Justice, January 2011.

⁸ Organic Law no. 51/2008 on the Code of Judicial Organisation, Functioning and Competence, *Official Gazette* year no. 47, special edition of 10 September 1908.

⁹ *Official Gazette*, special edition of 16 June 2013.

- The proceedings before the High Court are at a very advanced stage. The crucial phase of witness hearings will take place on 10 September 2015. The Applicant cannot cross-examine the defence witnesses inside the country because¹⁰ he no longer has access to them since his Counsel were dismissed pursuant to a decision by the authorities. In such circumstances, can anyone claim that he is not suffering prejudice in his case? The issue of witnesses outside of the country was already the subject of our previous submissions.
- The Accused cannot face two proceedings pending before two different courts with two different counsels. He risks finding himself alone before the High Court, with no representation, left to his sorry fate and being confronted by powerful opposing parties, with his requests being interrupted at every opportunity by the Presiding Judge.

8. According to Prosecution expert MARTIN WITTEVEEN, Jean UWINKINDI has been deprived of his right to have assistance from Counsel throughout the crucial period of hearings involving these witnesses¹¹ (paragraph 21).

9. The equality of arms has also been mentioned (paragraph 51):

... Additionally, unlike the NPPA and the Judiciary ... received extensive assistance capacity building from donors, *the Rwanda Bar Association hardly received any assistance...* There is no neutral Magistrate to conduct serious trial ... finds by both parties (point 56).

10. Regarding point 63: it appears that the issue of funds to be allocated to the defence for the necessary investigations in the genocide case by the Ministry to guarantee a fair trial has been clearly defined.

11. The expert is aware of all of the points raised in our briefs. As he is a member of the Prosecution, the Chamber should pay him particular attention so as to be able to duly assess the compelling need to order a stay in the proceedings before the High Court pending a ruling in the case.

¹⁰ Interlocutory decision of 9 June 2015 rendered by the High Court postponing the case to 10 September 2015 for witness hearings and closing arguments.

¹¹ Extradition proceedings re: Government of Rwanda v. Dr Vincent Bajinya.

12. May it please the Chamber to find the Prosecution's reply unfounded.

Word count /in original/: 1,000

Done this 26 August 2015

Gatera Gashabana

LEAD COUNSEL

/signed and stamped/