

MICT-12-25-R14.1  
21-08-2015  
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Mechanism for International Criminal Tri-  
bunals

Case No: MICT-12-25-R14.1

Date: 21 August 2015

Original: English

**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***

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**PROSECUTION'S SUBMISSIONS OPPOSING  
UWINKINDI'S REQUEST FOR STAY OF  
RWANDAN PROCEEDINGS**

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**Office of the Prosecutor:**  
Hassan Bubacar Jallow  
James J. Arguin  
François Nsanzuwera

**Counsel for Jean Uwinkindi:**  
Gatera Gashabana

**Received by the Registry  
Mechanism for International Criminal Tribunals  
21/08/2015 15:42**

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1. The Trial Chamber should reject Uwinkindi's request<sup>1</sup> for a stay of the High Court of Rwanda proceedings because the Security Council has not authorized the Mechanism for International Tribunals (MICT) to issue any orders to national courts with regard to their domestic proceedings.

2. Only Article 6 and Article 28 of the MICT Statute authorize binding requests to States, and neither of those provisions apply to Uwinkindi's request. Article 6 deals with cases, such as Uwinkindi's, which are referred to national jurisdictions. But the MICT's power in such cases is limited, under Article 6(6), to revocation of the referral and issuance of a formal request for deferral to the MICT's competence. Uwinkindi's request for stay cannot, therefore, be entertained under Article 6.

3. Article 28 allows the MICT to request a State's cooperation, but only in order to guarantee the fairness of proceedings that are before the MICT.<sup>2</sup> Uwinkindi, however, does not and cannot argue that the requested stay is necessary to guarantee the fairness of his revocation proceedings before the MICT. He simply claims that his Rwandan proceedings—including the High Court's refusal of his request for stay—were unfair, and seeks to use the MICT as an appeals court to challenge that decision.<sup>3</sup> Since Uwinkindi's request concerns not the fairness of MICT proceedings, but rather the alleged unfairness of the Rwandan proceedings, Article 28 does not apply. Indeed, in *Bagosora et al*, the ICTR Appeals Chamber refused to issue any request to Rwanda that was not relevant to the fairness of the case before the Tribunal.<sup>4</sup>

4. In any event, even if the MICT did have the power to issue an order to stay to guarantee the fairness of the Rwandan proceedings, Uwinkindi does not provide reasons as to why such an order is necessary. In particular, he does not explain how he

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<sup>1</sup> Mémoire à l'appui de la requête de Jean Uwinkindi en annulation de l'ordonnance de renvoi, 5 August 2015, paras.171–177, 181 (Brief); Order for Expedited Responses and Reply to Jean Uwinkindi's Request for Stay of Proceedings, 11 August 2015.

<sup>2</sup> See *Prosecutor v. Théoneste Bagosora et al.*, case no. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motion for Injunctions against the Government of Rwanda Regarding the Arrest and Investigation of Lead Counsel Peter Erlinder, 6 October 2010 (*Erlinder Decision*), pp. 28–31.

<sup>3</sup> Brief, paras. 172–177.

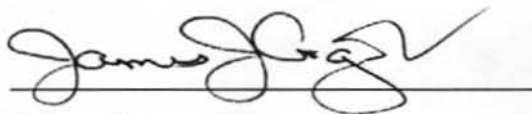
<sup>4</sup> *Erlinder Decision*, pp. 28–31.

would be prejudiced if his trial in Rwanda continues as scheduled. Indeed, he cannot be prejudiced by his Rwandan trial continuing in parallel with the revocation proceedings, because if his transfer is revoked, the proceedings in Rwanda will be largely irrelevant, as his case will then be tried before the MICT. If his transfer is not revoked, the requested stay will have delayed his Rwandan trial further.

5. The prosecution therefore asks the Trial Chamber to reject Uwinkindi's request for an order staying proceedings before the High Court of Rwanda.

Word Count: 404

Dated and signed this 21<sup>st</sup> day of August 2015 at Arusha, Tanzania.

A handwritten signature in black ink, appearing to read 'James J. Arguin', is written over a horizontal line.

James J. Arguin  
Chief, Appeals and Legal Advisory Division  
(Pursuant to the MICT Prosecutor's 26 July  
2012 Interim Designation)