



Mechanism for International
Criminal Tribunals

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

Date: 26 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

**PROSECUTOR'S RESPONSE TO UWINKINDI'S
MOTION FOR ORAL HEARING**

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**Received by the Registry
Mechanism for International Criminal Tribunals
26/08/2015 14:16**

1. The Trial Chamber should reject Uwinkindi's Motion for a hearing¹ because he does not explain how the oral evidence he seeks to give at the requested hearing differs from the available documentary evidence, and he does not set out why he was unable to bring this evidence before the Trial Chamber in his Brief.² A hearing on Uwinkindi's revocation proceedings is not required under Rule 80(A) of the Rules of Procedure and Evidence (Rules),³ and the organization and conduct of an unnecessary evidentiary hearing would further delay the proceedings and needlessly consume Tribunal resources.

2. According to Uwinkindi, if a hearing is granted he would use the opportunity to give oral evidence about his Rwandan proceedings so as to describe "avec force et détails le calvaire qu' il endure."⁴ He does not explain what, specifically, he would testify about, nor does he show that his oral evidence would not duplicate available written materials, such as the Rwandan court records and the 34 detailed monitoring reports.

3. Likewise, he has not explained why he did not, in his Brief, have sufficient opportunity to provide all evidence and arguments he considered relevant.⁵ The Pre-Trial Judge specifically found that 9,000 words were sufficient for Uwinkindi to, in his Brief, present and argue the relevant issues.⁶ Uwinkindi has not demonstrated that circumstances have changed since the Pre-Trial Judge's Decision on word limits.

¹ *Requête tendant à solliciter une ordonnance invitant les parties à présenter les arguments oraux* (oral hearing) *devant la chambre*, 22 August 2015 (Motion).

² See Scheduling Order, 22 May 2015 (Scheduling Order).

³ Rules of Procedure and Evidence, Mechanism for International Criminal Tribunals, MICT/1, 8 June 2012 (Rules, Rule).

⁴ Motion, para. 10.

⁵ Scheduling Order.

⁶ Decision on Jean Uwinkindi's Request for Extension of the Time and for Extension of the Word Limit, paras 7–8.

4. In six out of the eight ICTR referral proceedings, including Uwinkindi's, no oral hearings were considered necessary.⁷ Only in two referral cases, *Munyakazi* and *Munyangishari*, were oral hearings conducted.⁸ In these two cases, the respective trial chambers scheduled hearings not to allow the parties to present oral evidence, but so that "the parties and the *amici curiae* [could] elaborate and expand on the issues arising from their respective briefs and to answer questions from the Chamber."⁹ Thus *Munyakazi* and *Munyangishari* do not support Uwinkindi's request to testify before the Trial Chamber at a hearing.

5. Uwinkindi has provided no reasons justifying the further delay that would result from conducting a hearing. The Trial Chamber should, therefore, reject his Motion.

6. Alternatively, if the Trial Chamber grants Uwinkindi's Motion and allows him to present oral evidence during a hearing, the prosecution requests the opportunity to cross-examine Uwinkindi and to present its own witnesses and documentary evi-

⁷ Decision on Uwinkindi's Appeal against the Referral of his Case to Rwanda and Related Motions, 16 December 2011, para.10 ("[T]he word limits for the parties' briefs have been extended to account for the complexity of the appeal. The Appeals Chamber is satisfied that the written briefs and the [...] record [...] form an adequate basis for the consideration of this appeal."); Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011; *Prosecutor v. Jean-Baptiste Gatete*, case no. ICTR-2000-61-R11bis, Decision on Defence Motion for Oral Hearing, para. 2; *Prosecutor v. Gaspard Kanyarukiga*, case no. ICTR-2002-78-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 6 June 2008, para. 6; *Prosecutor v. Idelphonse Hategekimana*, ICTR-00-55B-R11bis, Decision on Prosecutor's Request for the Referral of the case of Ildephonse Hategekimana to Rwanda, 19 June 2008; *Prosecutor v. Wenceslas Munyeshyaka*, case no. ICTR-2005-87-I, Decision on the Prosecutor's Request for the Referral of Wenceslas Munyeshyaka's Indictment to France, 20 November 2007; *Prosecutor v. Laurent Bucyibaruta*, case no. ICTR-2005-85-I, Decision on Prosecutor's Request for Referral of Laurent Bucyibaruta's Indictment to France, 20 November 2007.

⁸ Motion paras. 7-8

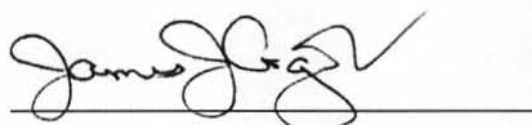
⁹ *Prosecutor v. Yussuf Munyakazi*, case no. ICTR-1997-36-I, Scheduling Order for a Hearing on Referral of the Case of Yussuf Munyakazi to the Republic of Rwanda, 19 February 2008, pp. 2-3; *Prosecutor v. Bernard Munyangishari*, case no. ICTR-2005-89-I, Scheduling Order for a Hearing on Referral of the Case of Bernard Munyangishari to the Republic of Rwanda, 7 March 2012, pp. 2-3.

dence. Furthermore, should the Trial Chamber grant Uwinkindi's Motion, the prosecution requests the Trial Chamber to establish procedures, similar to those contained in the Rules, to govern both the presentation of evidence during the hearing and the disclosure of evidence to be presented at the hearing. Disclosure procedures should include providing the opposing party with summaries of the facts on which each proposed witness will testify.¹⁰

7. In conclusion, the prosecution requests that the Trial Chamber dismiss Uwinkindi's Motion. Alternatively, should the Trial Chamber grant the Motion, the prosecution requests permission to cross-examine Uwinkindi at the hearing, and further requests that the Trial Chamber establish the procedures described in outlined in paragraph 6 above.

Word Count: 823

Dated and signed this 26th day of August 2015 at Arusha, Tanzania.



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

¹⁰ See, e.g., Rule 70(M)(i)(b).