



Mechanism for International Criminal Tribunals

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

Date: 1 October 2015

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Vagn Joensen, Presiding  
Judge William H. Sekule  
Judge Florence R. Arrey

**Registrar:** Mr. John Hocking

**Decision of:** 1 October 2015

**PROSECUTOR**

**v.**

**JEAN UWINKINDI**

**DECISION ON UWINKINDI'S MOTION FOR A STAY OF  
PROCEEDINGS BEFORE THE HIGH COURT OF RWANDA,  
AN ORAL HEARING, AND OTHER RELATED MATTERS**

**The Office of the Prosecutor:**

Hassan Bubacar Jallow  
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**Counsel for Jean Uwinkindi:**

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Mechanism for International Criminal Tribunals  
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1. The Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively) is seised of Mr. Jean Uwinkindi’s request for the revocation of the referral of his case to the Republic of Rwanda,<sup>1</sup> in which, among other things, he requests a stay of proceedings before the High Court of Rwanda pending the disposition of his request for revocation.<sup>2</sup> The Trial Chamber is also seised of several other requests on related procedural matters, including a request for an oral hearing.<sup>3</sup>

## I. BACKGROUND

2. Uwinkindi, a former pastor of the Kayenzi Pentecostal Church in Nyamata Sector, Kanzenze Commune, Kigali-Rural Prefecture, was charged before the International Criminal Tribunal for Rwanda (“ICTR”) with genocide and extermination as a crime against humanity, related to alleged attacks at his church, area roadblocks, Rwankeri Cellule, Kayenzi hill, the Cyugaro swamps, and the Kanzenze communal offices.<sup>4</sup> On 28 June 2011, a referral chamber, designated under Rule 11*bis* of the ICTR Rules of Procedure and Evidence (“Referral Chamber”), ordered that Uwinkindi’s case be referred to the authorities of the Republic of Rwanda for trial before the High Court of Rwanda.<sup>5</sup> On 16 December 2011, the ICTR Appeals Chamber affirmed the order of the Referral Chamber and dismissed Uwinkindi’s appeal.<sup>6</sup>

3. On 13 May 2015, the President of the Mechanism considered Uwinkindi’s comments as reported in the March 2015 Monitoring Report as a request for revocation of the order referring his case to Rwanda and assigned the matter to the Trial Chamber.<sup>7</sup> On 22 May 2015, the Pre-Trial Judge found that it would be in the interests of justice to only consider Uwinkindi’s request for the revocation of his case after he had been assigned counsel and his counsel had been given an

<sup>1</sup> *Mémoire à l'appui de la requête d'Uwinkindi Jean en annulation de l'ordonnance de renvoi*, 5 August 2015 (confidential) (“Brief in Support of the Revocation Request”), p. 27. See also Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda and Assigning a Trial Chamber, 13 May 2015 (“Decision of 13 May 2015”), pp. 2, 3; Decision on Additional Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 5 June 2015 (“Decision of 5 June 2015”), p. 3.

<sup>2</sup> Brief in Support of the Revocation Request, paras. 171-177, p. 27.

<sup>3</sup> Motion to Reclassify Uwinkindi Brief as Public, 11 August 2015 (“Motion for Reclassification”); Motion to Strike Uwinkindi’s Supplemental Brief, 14 August 2015 (“Motion to Strike Uwinkindi’s Supplemental Brief”); Requête tendant à solliciter une ordonnance invitant les parties à présenter les arguments oraux (Oral Hearing) devant la Chambre, 24 August 2015 (“Motion for Oral Hearing”); Requête tendant à obtenir suspension de l’instruction de la cause inscrite sous le RP0002/12/HCCI en cause Uwinkindi Jean contre l’Organe National des Poursuites Judiciaires pendante devant la Haute Cour, 25 August 2015 (“Motion on Violations”). See also *infra* paras. 4-6.

<sup>4</sup> *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11*bis*, Decision on Uwinkindi’s Appeal against the Referral of his Case to Rwanda and Related Motions, 16 December 2011 (“Appeal Decision of 16 December 2011”), para. 2. See also *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-I, Amended Indictment, 16 December 2011, paras. 4, 11-39.

<sup>5</sup> *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, 28 June 2011 (“Referral Decision”), pp. 57-59.

<sup>6</sup> Appeal Decision of 16 December 2011, para. 89.

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opportunity to prepare a brief in support of the revocation request.<sup>8</sup> Accordingly, the Pre-Trial Judge set forth the time-line for the briefing in this case and ordered Uwinkindi to file his brief in support of his request for revocation no later than 30 days following the assignment of counsel by the Registry.<sup>9</sup> On 22 June 2015, the Registrar assigned Mr. Gatera Gashabana as Uwinkindi's lead counsel.<sup>10</sup>

4. On 22 July 2015, the Pre-Trial Judge extended the time for Uwinkindi to file his Brief in Support of the Revocation Request and also extended the word limit for the brief to 9,000 words.<sup>11</sup> On 5 August 2015, Uwinkindi filed confidentially his Brief in Support of the Revocation Request, seeking, *inter alia*, that the Trial Chamber order a stay of the proceeding before the High Court of Rwanda, pending the resolution of Uwinkindi's revocation request, and requesting the translation of supporting documents.<sup>12</sup> Subsequently, on 11 August 2015, the Prosecution filed a motion to reclassify Uwinkindi's Brief in Support of the Revocation Request as public.<sup>13</sup> On 12 August 2015, Uwinkindi filed a Supplemental Brief in support of his revocation request.<sup>14</sup> On 14 August 2015, the Prosecution filed a motion to strike Uwinkindi's Supplemental Brief.<sup>15</sup> Uwinkindi filed the annexes to his Brief in Support of the Revocation Request on 9 September 2015.<sup>16</sup>

5. On 11 August 2015, the Pre-Trial Judge ordered the Prosecution and the Republic of Rwanda to file expedited responses, if any, to Uwinkindi's request for a stay of the proceedings before the High Court of Rwanda made in the Brief in Support of the Revocation Request.<sup>17</sup> The Prosecution filed its response on 21 August 2015.<sup>18</sup> The Republic of Rwanda did not file a response to Uwinkindi's request for stay of the proceedings before the High Court of Rwanda.<sup>19</sup> On

<sup>7</sup> Decision of 13 May 2015, pp. 2-3; Decision of 5 June 2015, p. 3.

<sup>8</sup> Scheduling Order, 22 May 2015 ("Scheduling Order"), p. 1.

<sup>9</sup> Scheduling Order, p. 1.

<sup>10</sup> Decision, 22 June 2015, p. 2.

<sup>11</sup> Decision on Jean Uwinkindi's Request for Extension of Time and for Extension of the Word Limit, 22 July 2015 ("Decision of 22 July 2015"), para. 8.

<sup>12</sup> Brief in Support of the Revocation Request, paras. 171-181, p. 27. The Trial Chamber notes that, in a letter to the President of the Mechanism dated 28 May 2015, Uwinkindi requested that the President order a stay of the proceedings before the High Court of Rwanda. On 22 July 2015, the President of the Mechanism forwarded Uwinkindi's letter to the Trial Chamber.

<sup>13</sup> Motion for Reclassification, para. 1. Uwinkindi did not file a response.

<sup>14</sup> *Mémoires complémentaires à l'appui de la requête d'Uwinkindi Jean en annulation de l'Ordonnance de renvoi*, 12 August 2015 (confidential) ("Supplemental Brief").

<sup>15</sup> Motion to Strike Uwinkindi's Supplemental Brief, para. 12.

<sup>16</sup> *Transmission des éléments de preuve à l'appui de nos diverses écritures*, 9 September 2015 ("Annexes to Brief in Support of the Revocation Request").

<sup>17</sup> Order for Expedited Responses and Reply to Jean Uwinkindi's Request for Stay of Proceedings, 11 August 2015 ("Order of 11 August 2015"), p. 1.

<sup>18</sup> Prosecution's Submissions Opposing Uwinkindi's Request for Stay of Rwandan Proceedings, 21 August 2015 ("Response to Request for Stay of Proceedings").

<sup>19</sup> The Trial Chamber notes that also in its response to Uwinkindi's Brief in Support of the Revocation Request, the Republic of Rwanda did not submit arguments in response to Uwinkindi's request for stay of the proceedings before

25 August 2015, Uwinkindi requested that the Trial Chamber find that the Prosecution and the authorities of Rwanda failed to comply with the relevant requirements for filing a response to his request for stay of proceedings.<sup>20</sup>

6. On 24 August 2015, Uwinkindi requested that the Trial Chamber allow the parties to present oral arguments.<sup>21</sup> The Prosecution filed its response on 26 August 2015.<sup>22</sup>

## II. DISCUSSION

7. In this decision, the Trial Chamber will consider: (i) the Prosecution's request to reclassify Uwinkindi's Brief in Support of the Revocation Request as public; (ii) the Prosecution's request to strike Uwinkindi's Supplemental Brief; (iii) Uwinkindi's request for translations; (iv) Uwinkindi's request to strike the Prosecution's response to his request for a stay of proceedings; (v) Uwinkindi's request for a stay of proceedings; and (vi) Uwinkindi's request for oral argument.

### 1. Prosecution's Request to Reclassify Uwinkindi's Brief in Support of the Revocation Request

8. The Prosecution submits that Uwinkindi's Brief in Support of the Revocation Request contains no confidential information and therefore should be reclassified as public.<sup>23</sup> Uwinkindi did not file a response.

9. The Trial Chamber notes that all submissions filed before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential.<sup>24</sup> Considering that there are no exceptional reasons for keeping confidential Uwinkindi's Brief in Support of the Revocation Request, the Trial Chamber finds that it is in the interest of maintaining the public character of the proceedings to reclassify the brief as public.

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the High Court. See Republic of Rwanda's Response to Jean Uwinkindi's Request for Revocation of the Referral Order, 4 September 2015.

<sup>20</sup> Motion on Violations, RP. 1058.

<sup>21</sup> Motion for Oral Hearing, RP. 1043.

<sup>22</sup> Prosecutor's Response to Uwinkindi's Motion for Oral Hearing, 26 August 2015 ("Response to Motion for Oral Hearing").

<sup>23</sup> Motion for Reclassification, paras. 1-4.

<sup>24</sup> Cf. Rule 92 of the Rules of Procedure and Evidence of the Mechanism ("Rules"). See also *Augustin Ndirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Decision on Requests for Reclassification, 22 August 2013, p. 1; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-R.1, Decision on Sreten Lukić's Application for Review, 9 July 2015, para. 8; *Prosecutor v. Radovan Stanković*, MICT-13-51, Decision on Stanković's Appeal against Decision Denying Revocation of Referral and on the Prosecution's Request for Extension of Time to Respond, 21 May 2014 ("*Stanković* Appeal Decision of 21 May 2014"), n. 1; *Prosecutor v. Aloys Ntabakuze*, MICT-14-77-R, Decision on Ntabakuze's *Pro Se* Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review, 19 January 2015, para. 1, n. 7.

## 2. Prosecution's request to strike Uwinkindi's Supplemental Brief

10. The Prosecution argues that Uwinkindi filed his Supplemental Brief without the authorization of the Trial Chamber and in violation of the applicable word and time limits.<sup>25</sup> It further submits that Uwinkindi fails to provide a good cause for these violations<sup>26</sup> and requests that the Trial Chamber strike the Supplemental Brief.<sup>27</sup> In response, Uwinkindi submits that, in his Supplemental Brief, he presents evidence that he was unaware of at the time his Brief in Support of the Revocation Request was filed,<sup>28</sup> and argues that he should be allowed to present the evidence in accordance with Rule 72(D) of the Rules.<sup>29</sup>

11. In compliance with the decision of the Pre-Trial Judge,<sup>30</sup> on 5 August 2015, Uwinkindi filed his Brief in Support of the Revocation Request amounting to 9,000 words.<sup>31</sup> The Trial Chamber notes that, on 12 August 2015, Uwinkindi filed his Supplemental Brief which adds new arguments in support of his requests for revocation and stay of proceedings<sup>32</sup> and, effectively, amounts to an expansion of his Brief in Support of the Revocation Request, violating the word and time limits prescribed in the decision of the Pre-Trial Judge. The Trial Chamber notes that, pursuant to paragraph 17 of the Practice Direction on Lengths of Briefs and Motions,<sup>33</sup> a party must seek authorization in advance from the Chamber to exceed the prescribed word limits and must provide an explanation of the exceptional circumstances that necessitate the oversized filing. Although Uwinkindi failed to seek such an authorization, in the interests of justice and judicial economy, the Trial Chamber will consider his arguments as to the existence of exceptional circumstances which necessitate the oversized filing.

12. The Trial Chamber notes that, in his Supplemental Brief, Uwinkindi submits the following documents: (i) a letter dated 27 July 2015 from Messrs. Joseph Ngabonziza and Issacar

<sup>25</sup> Motion to Strike Uwinkindi's Supplemental Brief, paras. 3-6.

<sup>26</sup> Motion to Strike Uwinkindi's Supplemental Brief, para. 7.

<sup>27</sup> Motion to Strike Uwinkindi's Supplemental Brief, paras. 1, 12. *See also* Motion to Strike Uwinkindi's Supplemental Brief, paras. 8-11, referring to *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Prosecution's Motion to Strike Nyiramasuhuko's Motion for Stay of Proceedings, 7 February 2014; *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-A, Decision on Prosecution's Motions to Strike and for Extension of Time, and on Nzabonimana's Motions for Extension of Words and for Remedies, 17 June 2013; *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-A, Decision on Callixte Nzabonimana's Motion to Amend his Notice of Appeal and the Prosecution's Motion to Strike Nzabonimana's Appeal Brief, 30 August 2013; *Phénéas Munyarugarama v. The Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012, para. 16.

<sup>28</sup> *Réplique à la motion du procureur du 14 août 2015*, 25 August 2015 ("Response to Motion to Strike"), para. 8.

<sup>29</sup> Response to Motion to Strike, paras. 2, 11.

<sup>30</sup> *See* Decision of 22 July 2015, para. 8, requiring that Uwinkindi file his brief in support of his request for revocation, not exceeding 9,000 words, by 5 August 2015.

<sup>31</sup> *See supra* para. 4.

<sup>32</sup> *See* Supplemental Brief, paras. 5-12, 15, 22-29.

<sup>33</sup> Practice Direction on Lengths of Briefs and Motions (MICT/11), 6 August 2013.



Hishamunda, assigned to represent Uwinkindi before the High Court of Rwanda, to Counsel Gashabana, requesting Uwinkindi's case file in order to prepare for a hearing on 10 September 2015;<sup>34</sup> (ii) a letter dated 10 August 2015 from Counsel Gashabana stating that he is not in a position to send Uwinkindi's case file to Messrs. Ngabonziza and Hishamunda;<sup>35</sup> (iii) a letter dated 28 May 2015 from Uwinkindi to the President of the Mechanism;<sup>36</sup> and (iv) a letter dated 22 July 2015 from the President of the Mechanism, informing Uwinkindi that his letter of 28 May 2015 requesting a stay of proceedings before the Rwandan courts would be forwarded to the Trial Chamber.<sup>37</sup>

13. The Trial Chamber notes that, contrary to Uwinkindi's submission, at the time of filing of his Brief in Support of the Revocation Request, he was undoubtedly aware of his letter to the President of the Mechanism requesting a stay of proceedings and therefore could have presented this information in his brief. However, the Trial Chamber accepts that, at the time of filing of his brief, Uwinkindi may not have been aware of the letter of 27 July 2015 from Messrs. Ngabonziza and Hishamunda requesting his case file and of the response of the President of the Mechanism forwarding Uwinkindi's request for stay of proceedings to the Trial Chamber. In addition, the Trial Chamber notes that Counsel Gashabana's letter of 10 August 2015 was sent after the filing of the Brief in Support of the Revocation Request. To the extent that these documents shed further light on the status of the proceedings before the High Court of Rwanda and may be relevant to the determination of Uwinkindi's requests for revocation and stay of proceedings, the Trial Chamber considers that exceptional circumstances exist which justify the oversized filing.

14. The Trial Chamber further notes that, pursuant to Rule 154(A)(ii) of the Rules, it may on good cause being shown by motion, recognize as validly done any act done after the expiration of the prescribed time-limit. For the reasons set out above, the Trial Chamber recognizes Uwinkindi's Supplemental Brief as validly filed.

### 3. Uwinkindi's request for translations

15. Uwinkindi submits that many of the documents in support of his revocation request, such as transcripts from hearings, various statements, and court decisions, are in Kinyarwanda.<sup>38</sup> He therefore requests that the Trial Chamber allow him to obtain translations of all documents cited in

<sup>34</sup> Supplemental Brief, RP. 1027-1026.

<sup>35</sup> Supplemental Brief, RP. 1025-1024.

<sup>36</sup> Supplemental Brief, RP. 1023.

<sup>37</sup> Supplemental Brief, RP. 1022.

<sup>38</sup> Brief in Support of the Revocation Request, paras. 178-179.

his Brief in Support of the Revocation Request into one of the working languages of the Mechanism.<sup>39</sup>

16. The Trial Chamber recalls that Article 31 of the Statute provides that the working languages of the Mechanism are English and French, and pursuant to Rule 3(E) of the Rules, the Registrar of the Mechanism shall make any necessary arrangements for interpretation and translation into and from the working languages. On 9 September 2015, Uwinkindi filed the annexes containing the documentation in support of his request for revocation, and, in the filing, he indicated that English translations of Kinyarwanda documents were necessary.<sup>40</sup> Considering that, under Rule 3(E) of the Rules, the Registrar has the duty to make any necessary arrangements for translation into the working languages of the Mechanism, the Trial Chamber does not find it necessary to issue any order for the translation of the material at this stage.

#### 4. Uwinkindi's request to strike the Prosecution's response opposing stay of proceedings

17. Uwinkindi requests that the Trial Chamber dismiss the Prosecution's response to Uwinkindi's request for stay of proceedings as filed out of time.<sup>41</sup> He further requests that the Trial Chamber note that the Prosecution and the authorities of Rwanda have failed to comply with the Order of 11 August 2015 and violated Rules 153 and 154 of the Rules.<sup>42</sup>

18. The Trial Chamber recalls that the Prosecution and the authorities of Rwanda were required to file responses, *if any*, to Uwinkindi's request for stay of proceedings by 21 August 2015.<sup>43</sup> The Trial Chamber notes that the Prosecution filed its response within the time limit.<sup>44</sup> Accordingly, Uwinkindi's request that the Prosecution's response be dismissed as filed out of time is without merit. The Trial Chamber also dismisses Uwinkindi's submission that the Prosecution violated the Order of 11 August 2015 and Rules 153 and 154 of the Rules.

19. Further, as the language of the Order of 11 August 2015 indicates, the authorities of Rwanda had the discretion whether or not to respond to Uwinkindi's request for stay of proceedings. Therefore, Uwinkindi's assertion that by not filing a response the authorities of Rwanda violated the Order of 11 August 2015 and Rules 153 and 154 of the Rules is dismissed.

<sup>39</sup> Brief in Support of the Revocation Request, paras. 178-181, p. 27.

<sup>40</sup> See Annexes to Brief in Support of the Revocation Request, Transmission sheet.

<sup>41</sup> *Réplique aux conclusions du Procureur receptionnées le 25 août 2015 à 14h30.* [sic], 26 August 2015 ("Reply in Support of Request for Stay of Proceedings"), paras. 1-4.

<sup>42</sup> Motion on Violations, RP. 1058; See also Motion on Violations, RP. 1060, 1059.

<sup>43</sup> Order of 11 August 2015, p. 1.

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5. Uwinkindi's request for stay of the proceedings before the High Court of Rwanda

20. Uwinkindi requests that the Trial Chamber order a stay of the proceeding before the High Court of Rwanda, pending the resolution of his revocation request.<sup>45</sup> He further submits that the continuation of the proceedings before the High Court of Rwanda, which soon will enter the stage of deliberations, may render futile the proceedings in relation to his revocation request before the Mechanism.<sup>46</sup> The Prosecution responds that the Mechanism has no authority to issue orders to national courts with regard to their domestic proceedings.<sup>47</sup> In addition, the Prosecution argues that Uwinkindi fails to show that he would be prejudiced if his trial in Rwanda continues as scheduled.<sup>48</sup> In reply, Uwinkindi argues that the Mechanism has the authority to order stay of proceedings as stipulated in the Referral Decision and on the basis of the primacy of the Mechanism over national jurisdictions and domestic law.<sup>49</sup> Uwinkindi also argues that his trial before the High Court is entering a critical phase and there is a risk that he will have no legal representation or ability to examine defence witnesses.<sup>50</sup>

21. Pursuant to Article 6(6) of the Statute, where a case has been referred to a national jurisdiction, the Mechanism retains the power to make a request for deferral should the conditions for referral of the case be no longer met. However, there is no explicit provision in the Statute or the Rules that would allow the Mechanism to issue a binding order to a State, other than a formal request for deferral, which would affect the conduct of the proceedings in a case referred to its national courts.

22. The Trial Chamber notes, however, that, in the Referral Decision, the Referral Chamber declared that any application by Uwinkindi for revocation of the referral “will not act as an automatic stay of proceedings before Rwandan courts unless expressly directed by this Tribunal”.<sup>51</sup> This declaration was endorsed by the ICTR Appeals Chamber.<sup>52</sup> The Trial Chamber considers that, in this case, a stay of proceedings could be expressly directed as part of a formal request for deferral of the case, or where exceptional circumstances require the immediate intervention of the

<sup>44</sup> See Response to Request for Stay of Proceedings, RP. 1051. See also Response to Request for Stay of Proceedings, Transmission Sheet. The Trial Chamber notes that Uwinkindi's position likely results from the fact that the Registry did not circulate the filing on the same day that it was received.

<sup>45</sup> Brief in Support of the Revocation Request, paras. 171-177, p. 27; Supplemental Brief, para. 33; Motion on Violations, RP. 1058.

<sup>46</sup> Supplemental Brief, paras. 12, 29.

<sup>47</sup> Response to Request for Stay of Proceedings, paras. 1-3.

<sup>48</sup> Response to Request for Stay of Proceedings, para. 4.

<sup>49</sup> Reply in Support of Request for Stay of Proceedings, para. 7; See also Supplemental Brief, paras. 5, 6.

<sup>50</sup> Reply in Support of Request for Stay of Proceedings, paras. 7, 8; Supplemental Brief, paras. 11, 12.

<sup>51</sup> Referral Decision, p. 59.

<sup>52</sup> Appeal Decision of 16 December 2011, para. 79.

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Mechanism. However, the Trial Chamber is not convinced that, pending a decision on Uwinkindi's revocation request, Uwinkindi has demonstrated the existence of exceptional circumstances that would require ordering a stay of the proceedings before the Rwandan Courts.

23. The Trial Chamber notes that, at this stage, it is anticipated that Uwinkindi's request for the revocation of the referral of his case will be adjudicated prior to the completion of the trial and appeal proceedings against him in Rwanda.<sup>53</sup> Accordingly, if the Trial Chamber were to revoke the referral order, such revocation would occur before the national court has reached a final decision on Uwinkindi's culpability. Accordingly, the Trial Chamber finds that there is no imminent threat of egregious violation of Uwinkindi's fair trial rights that could not be remedied should the Trial Chamber find it necessary to revoke the referral order.

24. Finally, the Trial Chamber finds that Uwinkindi's reliance on domestic legal provisions is not pertinent, as the Mechanism has no authority over the enforcement of national law.<sup>54</sup> The Trial Chamber emphasizes that its findings are without prejudice to the determination of Uwinkindi's request for revocation of the referral of his case to the Republic of Rwanda.

#### 6. Uwinkindi's Request for Oral Arguments

25. Uwinkindi submits that he is in a unique position to provide information "on the multiple violations of his rights" before the Rwandan courts and requests that the Trial Chamber allow the parties to present oral arguments in relation to the revocation request.<sup>55</sup> In response, the Prosecution submits that Uwinkindi's request for oral hearing should be dismissed as he fails to show how the evidence he seeks to provide differs from the available documentary evidence, or to explain why he was unable to present this evidence in his Brief in Support of the Revocation Request.<sup>56</sup> Should the Trial Chamber allow Uwinkindi to present oral evidence, the Prosecution requests that the Trial Chamber establish disclosure procedures and rules governing the presentation of evidence, and provide the Prosecution with the opportunity to cross-examine Uwinkindi, call witnesses, and present further documentary evidence.<sup>57</sup> In reply, Uwinkindi argues that during the oral hearing he

<sup>53</sup> See Article 6(6) of the Statute and Rule 14(C) of the Rules, which allow the Trial Chamber to revoke a referral order before the accused has been found guilty or acquitted by a national court. See also *Stankovi*} Appeal Decision of 21 May 2014, para. 16 (where in dismissing Radovan Stankovi}'s appeal against a decision denying his revocation request, the Appeals Chamber considered that *both* the trial and appeal proceedings against Stankovi} in Bosnia and Herzegovina have been completed).

<sup>54</sup> The Trial Chamber notes that, in addition, none of the domestic provisions invoked by Uwinkindi explicitly requires stay of proceedings pending the resolution of a revocation request by the Mechanism. See Reply in Support of Request for Stay of Proceedings, para. 7.

<sup>55</sup> Motion for Oral Hearing, paras. 9, 10, 12, 13.

<sup>56</sup> Response to Motion for Oral Hearing, paras. 1-3, 7.

<sup>57</sup> Response to Motion for Oral Hearing, paras. 6, 7.

would be able to supplement his written arguments and present first hand testimony regarding the conduct of the proceedings in Rwanda.<sup>58</sup>

26. Pursuant to Rule 80(A) of the Rules, it is within the Trial Chamber's discretion to decide a motion with or without an oral hearing. The Trial Chamber recalls that, in view of the novelty, complexity and significance of the issues presented in Uwinkindi's request for revocation, the Pre-Trial Judge authorised an extension of the word limit for Uwinkindi's Brief in Support of the Revocation Request.<sup>59</sup> The Trial Chamber has also recognized Uwinkindi's Supplemental Brief, which expands his Brief in Support of the Revocation Request, as validly filed.<sup>60</sup> The Trial Chamber considers that Uwinkindi was afforded sufficient opportunity to present in his written submissions arguments concerning the alleged violations of his rights before the Rwandan courts. To the extent that such arguments refer to procedural issues,<sup>61</sup> they could be adequately presented in writing. The Trial Chamber is, therefore, not satisfied that it will be assisted by oral arguments in support of Uwinkindi's revocation request and dismisses his submissions in this regard.

### III. DISPOSITION

27. For the foregoing reasons, the Trial Chamber

**DISMISSES** Uwinkindi's request for stay of the proceedings before the High Court of Rwanda;  
**DISMISSES** the Motion for Oral Hearing;

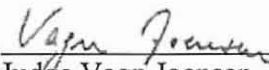
**DISMISSES** the Motion to Strike the Prosecution's Response;

**DISMISSES** the Motion to Strike Uwinkindi's Supplemental Brief;

**GRANTS** the Motion for Reclassification and **ORDERS** the Registry of the Mechanism to reclassify the Brief in Support of the Revocation Request as public.

Done in English and French, the English version being authoritative.

Done this 1st day of October 2015,  
At Arusha,  
Tanzania

  
Judge Vagn Joensen  
Presiding

[Seal of the Mechanism]



<sup>58</sup> *Réplique aux conclusions du Procureur*, 2 September 2015 (Reply in Support of Motion for Oral Hearing"), paras. 6-10, 14.

<sup>59</sup> Decision of 22 July 2015, paras. 7, 8.

<sup>60</sup> See *supra* paras. 11-14.

<sup>61</sup> See Reply in Support of Motion for Oral Hearing, para. 8.