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**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

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

Date: 9 October 2015

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Vagn Joensen, Pre-Trial Judge

**Registrar:** Mr. John Hocking

**Decision of:** 9 October 2015

**PROSECUTOR**

**v.**

**JEAN UWINKINDI**

***PUBLIC***

**DECISION ON PROSECUTOR'S MOTION TO STRIKE  
UWINKINDI'S REPLY BRIEF**

**The 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  
09/10/2015 10:43

A handwritten signature in black ink, appearing to read 'McCall Carter', written over a white rectangular background.

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**I, VAGN JOENSEN** Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Pre-Trial Judge in this case;<sup>1</sup>

**NOTING** the “Scheduling Order” in which I indicated the time-line, subject to adjustments as appropriate, for the briefing of Mr. Uwinkindi’s request for revocation of the order referring his case to Rwanda by ordering Mr. Uwinkindi to file his brief no later than thirty (30) days following the assignment of counsel by Registry<sup>2</sup> and a reply, if any, no later than ten (10) days after the filing of responses from the Prosecution and the authorities of the Republic of Rwanda;<sup>3</sup>

**NOTING** that Mr. Uwinkindi filed his Brief on 5 August 2015,<sup>4</sup> the Prosecution and the Republic of Rwanda both filed their response briefs on 4 September 2015 (collectively, “Response Briefs”),<sup>5</sup> and Mr. Uwinkindi filed his Reply Brief with annexes on 18 September 2015,<sup>6</sup> including a document in Annex 18 entitled “Additional Expert Report” by Martin Witteveen, “Advisor International Crimes to the National Public Prosecution Authority, NPPA, in Rwanda prepared for extradition proceedings re: Government of Rwanda v. Dr. Vincent Bajinya and others” (“NPPA Report”);<sup>7</sup>

**BEING SEISED** of the “Prosecutor’s Motion to Strike Uwinkindi’s Reply” filed by the Prosecution on 25 September 2015 (“Motion”), in which the Prosecution requests that the Reply Brief be struck and that, if it is to stand or Mr. Uwinkindi permitted to re-file a revised Reply Brief, the NPPA Report be struck from the Reply Brief or, in the alternative, the Prosecution be permitted to file a response limited to the issues raised in the NPPA Report;<sup>8</sup>

**NOTING** the “*Réplique à la requête du procureur tendant à solliciter le rejet de dernières mémoires en réponse de la défense*” filed on 1 October 2015 (“Response”), in which Mr. Uwinkindi responds that the Prosecution’s requests are unfounded;<sup>9</sup>

**NOTING** that the Prosecution argues that (1) Mr. Uwinkindi filed the Reply Brief beyond the deadline<sup>10</sup> and exceeded and misreported the word limit by more than 2,000 words;<sup>11</sup> (2) the NPPA

<sup>1</sup> Order Assigning a Pre-Trial Judge, 21 May 2015.

<sup>2</sup> On 22 July 2015, the deadline for Mr. Uwinkindi to file his brief was extended to 5 August 2015. See Decision on Jean Uwinkindi’s Request for Extension of Time and for Extension of the Word Limit, 22 July 2015, para. 8.

<sup>3</sup> Scheduling Order, 22 May 2015, pp. 1-2.

<sup>4</sup> *Mémoire a l’appui de la requête d’Uwinkindi Jean en annulation de l’ordonnance de renvoi*, confidential, 5 August 2015 (“Brief”).

<sup>5</sup> Prosecution Brief Responding to Uwinkindi’s Revocation Request, 4 September 2015; Republic of Rwanda’s Response to Jean Uwinkindi’s Request for Revocation of the Referral Order, 4 September 2015.

<sup>6</sup> *Réplique de la défense a la réponse du procureur*, 18 September 2015 (“Reply Brief”).

<sup>7</sup> Reply Brief, RP. 1642-1623.

<sup>8</sup> Motion, para. 16.

<sup>9</sup> Response, para. 44.

Report is new evidence that does not qualify to be an annex;<sup>12</sup> and (3) the Prosecution would have been able to address those aspects of the NPPA Report on which Mr. Uwinkindi relies on had Mr. Uwinkindi submitted the NPPA Report as part of his Brief;<sup>13</sup>

**NOTING** that Mr. Uwinkindi submits that (1) the Reply Brief was filed within the prescribed time limit<sup>14</sup> and that the word count does not include the footnotes;<sup>15</sup> (2) the Reply Brief should not be struck in any event;<sup>16</sup> and (3) that the procedure under Rule 116 of the Mechanism's Rules of Procedure and Evidence ("Rules") does not apply to the NPPA Report, contrary to the Prosecution's argument;<sup>17</sup>

**CONSIDERING** that, since the Response Briefs were filed on 4 September 2015,<sup>18</sup> the deadline to file the Reply Brief was 14 September 2015 pursuant to Rule 152(A) of the Rules;

**CONSIDERING** that, pursuant to Rule 154 of the Rules, there is good cause to vary the time limit and consider the Reply Brief as validly filed given that Mr. Uwinkindi submits that he and his counsel received the Prosecution's response brief on 8 September 2015 and 7 September 2015, respectively, and the Prosecution does not contest these dates;<sup>19</sup>

**CONSIDERING** that, pursuant to Article 16 of the Practice Directions, "[h]eadings, footnotes and quotations count towards the [3,000] word limitations";<sup>20</sup> according to the Prosecution, the Reply Brief appears to exceed this limit by more than 2,000 words;<sup>21</sup> and Mr. Uwinkindi acknowledges that he did not include the footnotes in the word count for the Reply Brief;<sup>22</sup>

**CONSIDERING** that it is in the interests of justice to permit Mr. Uwinkindi to re-file a revised Reply Brief that is in accordance with the Practice Directions;

**NOTING** that, although the parties in their submissions refer to the NPPA Report as an 'expert report', it is for the Trial Chamber to decide whether, on the basis of the evidence presented by the

<sup>10</sup> Motion, paras. 3, 6.

<sup>11</sup> Motion, para. 10.

<sup>12</sup> Motion, paras. 12-13, 15.

<sup>13</sup> Motion, para. 14.

<sup>14</sup> Response, paras. 7-8.

<sup>15</sup> Response, para. 30.

<sup>16</sup> See Response, paras. 23-26. See also Response, paras. 27-29, 42 (in which Mr. Uwinkindi seems to imply his willingness to re-file a revised Reply Brief).

<sup>17</sup> Response, paras. 34, 36, 43. See also Response, para. 38 (in which Mr. Uwinkindi submits that parts of the NPPA Report were included in the Mechanism's March 2015 Monitoring Report).

<sup>18</sup> See *supra* n. 5.

<sup>19</sup> See Motion, para. 6; Response, para. 8.

<sup>20</sup> Practice Direction on Lengths of Briefs and Motions (MICT/11) 6 August 2013 ("Practice Directions").

<sup>21</sup> Motion, para. 10.

<sup>22</sup> Response, para. 30; Reply Brief, p. 17.

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parties, the person proposed can be admitted as an expert witness<sup>23</sup> and that the Trial Chamber made no such decision in this case;

**CONSIDERING** that the Practice Directions provides that “[a]n appendix [...] shall not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant, non-argumentative material”;<sup>24</sup>

**CONSIDERING** that the NPPA Report does not appear to contain legal or factual arguments and that parties have some discretion with respect to the contents of annexes and that the Chamber will intervene only where such discretion is abused;<sup>25</sup>

**PURSUANT TO** Rules 55, 70, and 154 of the Rules;

**HEREBY GRANT** the Motion, in part;

**ORDER** Mr. Uwinkindi to re-file a revised Reply Brief in accordance with the Practice Directions by Wednesday, 14 October 2015; and

**DISMISS** the Motion in all other respects.

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

Done this 9th day of October 2015,  
At Arusha,  
Tanzania



\_\_\_\_\_  
Judge Vagn Joensen  
Pre-Trial Judge

[Seal of the Mechanism]



<sup>23</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 199.

<sup>24</sup> Practice Direction, Article 16.

<sup>25</sup> *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Decision on Prosecution’s Motion to Strike Ante Gotovina’s Reply Brief, 18 October 2011, p. 2.