

MICT-12-25
12-03-2014
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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-12-25

Date: 12 March 2014

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 12 March 2014

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**DECISION ON REQUEST FOR REVOCATION OF AN ORDER
REFERRING A CASE TO THE REPUBLIC OF RWANDA**

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
George Mugwanya
Inneke Onsea
Abdoulaye Seye
François Nsanzuwera

Counsel for Jean Uwinkindi:

Gashabana Gatera
Jean Baptiste Niyibizi

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A handwritten signature in black ink, appearing to be a stylized 'M' or similar, written over a white background within a black rectangular box.

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the “Decision on Prosecutor’s Request for Referral to the Republic of Rwanda”, issued on 28 June 2011 by the referral chamber designated under Rule 11*bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“Referral Chamber” and “ICTR”, respectively) in the case of *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-R11*bis* (“Referral Decision”), in which the Referral Chamber ordered that the case of Mr. Jean Uwinkindi be referred to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;¹

NOTING the “Decision on Uwinkindi’s Appeal Against the Referral of his Case to Rwanda and Related Motions”, issued on 16 December 2011 by the Appeals Chamber of the ICTR (“ICTR Appeals Chamber”), in which the ICTR Appeals Chamber affirmed the Referral Decision;²

BEING SEISED OF the request for revocation of the order referring Mr. Uwinkindi’s case to Rwanda submitted by Counsel for Mr. Uwinkindi and filed on 16 September 2013,³ in which it is contended that revocation is warranted because, *inter alia*, the Ministry of Justice of Rwanda has not made the necessary funds available to Mr. Uwinkindi’s defence team that would allow it to contact defence witnesses, the defence team has insufficient members, and Counsel for Mr. Uwinkindi have not been paid since February 2013;⁴

NOTING the “Prosecutor’s Opposition to Jean Uwinkindi’s Motion for Revocation of Referral Order”, filed on 25 September 2013 (with annexes) (“Response”), in which the Prosecutor of the Mechanism (“Prosecutor”) asserts that revocation of the order referring Mr. Uwinkindi’s case to Rwanda is not warranted and avers, *inter alia*, that proceedings in Rwanda concerning the question of additional funding for defence investigations remain pending and that claims about the

¹ Referral Decision, pp. 57-59.

² *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”), para. 89. *See also* *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11*bis*, Decision on Uwinkindi’s Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion, 23 February 2012.

³ *Demande de dessaisissement de la Haute, [sic] Chambre détachée chargée de statuer sur les infractions internationales et transfrontalières dans le dossier opposant Uwinkindi Jean au Ministre Public RP 0002/12/HCC1*, 16 September 2013 (with annexes) (“Revocation Request”). French translations of the annexes to the Revocation Request, which were originally submitted in Kinyarwanda, were filed on 10 October 2013. An English translation of the Revocation Request itself was filed on 11 October 2013. All references herein are to the English translation of the Revocation Request and to the French translation of the annexes to the Revocation Request, respectively.

⁴ Revocation Request, pp. 2, 4. *See also* Revocation Request, Annex (Letter dated 13 September 2013 from Jean Uwinkindi to Gatera Gashabana and Jean Batiste Niyibizi), pp. 78*bis*-76*bis* (Registry pagination).

insufficient staffing of the defence team and a failure to compensate Counsel for Mr. Uwinkindi are unfounded;⁵

NOTING the reply submitted by Counsel for Mr. Uwinkindi and filed on 7 October 2013,⁶ in which Counsel for Mr. Uwinkindi, *inter alia*, offer additional arguments concerning the inadequacy of funds provided to Mr. Uwinkindi's defence team and related issues;⁷

NOTING the confidential additional submissions of Counsel for Mr. Uwinkindi, filed on 3 December 2013,⁸ in which Counsel for Mr. Uwinkindi, *inter alia*, present additional information and request an order suspending proceedings in Mr. Uwinkindi's case in Rwanda pending a determination as to revocation;⁹

NOTING the confidential "Prosecutor's Response to Jean Uwinkindi's Additional Submission in Support of Motion for Revocation of Referral Order", filed on 24 December 2013 ("Response to Additional Submissions"),¹⁰ in which the Prosecutor maintains, *inter alia*, that the Additional Submissions fail to demonstrate that revocation is warranted;¹¹

NOTING the monitoring reports filed between December 2013 and March 2014 in relation to Mr. Uwinkindi's case;¹²

RECALLING that the Referral Chamber granted Mr. Uwinkindi standing to seek revocation of the order referring his case to Rwanda;¹³

CONSIDERING that Rule 14(C) of the Rules of Procedure and Evidence of the Mechanism ("Rules") grants the President of the Mechanism discretion to assign a Trial Chamber to decide,

⁵ Response, paras. 3, 8, 13, 15, 17, 20, 32.

⁶ *Transmission des conclusions en réplique*, 7 October 2013 (with annexes) ("Reply").

⁷ See, e.g., Reply, paras. 6-8, 39, 43, 78-83, 90-123, 136-144, 146-148.

⁸ *Conclusions additionnelles*, 3 December 2013 (confidential) ("Additional Submissions").

⁹ Additional Submissions, p. 15.

¹⁰ See also Decision on Prosecutor's Request for Extension of Time to File Response to Uwinkindi's Additional Submissions, 23 December 2013, p. 3.

¹¹ See Response to Additional Submissions, para. 16. The Prosecutor asserts that a moving party may not ordinarily submit anything beyond a reply to a response memorandum absent prior leave but nonetheless elects to respond to the Additional Submissions notwithstanding this procedural defect. See Response to Additional Submissions, n. 1. In these circumstances, I will consider both the Additional Submissions and the Response to the Additional Submissions.

¹² Monitoring Report for the *Uwinkindi* Case (October and November 2013), 20 December 2013 ("October and November 2013 Monitoring Report"); Monitoring Report for the *Uwinkindi* Case (December 2013), 20 January 2014 ("December 2013 Monitoring Report"); Monitoring Report for the *Uwinkindi* Case (January and February 2014), 11 March 2014 ("January and February 2014 Monitoring Report"). The October and November 2013 Monitoring Report, the December 2013 Monitoring Report, and the January and February 2014 Monitoring Report are referred to collectively herein as the "Monitoring Reports".

¹³ Referral Decision, p. 59. See also Appeal Decision, paras. 79, 85.

pursuant to Article 6(6) of the Statute of the Mechanism ("Statute"), whether to revoke an order of referral and make a formal request for deferral;

CONSIDERING that the gravamen of the Revocation Request concerns the funding of Mr. Uwinkindi's defence team and its investigations, and certain matters corollary thereto;¹⁴

CONSIDERING that insofar as the funding issues raised by Counsel for Mr. Uwinkindi could impact, *inter alia*, the adequacy of time and facilities for the preparation of his defence or his ability to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, these are matters of concern to the Mechanism;¹⁵

CONSIDERING, however, that based on the submissions made to date and the Monitoring Reports, the various funding issues raised in the Revocation Request have either been rendered moot or are still the focus of ongoing negotiations and may be subject to further review within the Rwandan courts;¹⁶

CONSIDERING, therefore, that those funding issues not rendered moot are not ripe for consideration as a basis for revocation pursuant to Article 6(6) of the Statute;

FOR THE FOREGOING REASONS,

DISMISS the Revocation Request, without prejudice to the filing of a new request for revocation should circumstances so warrant.

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

Done this 12th day of March 2014,
At The Hague,
The Netherlands.



Theodor Meron
Judge Theodor Meron
President

[Seal of the Mechanism]

¹⁴ See Revocation Request, pp. 2-4; Revocation Request, Annex, paras. 1-2, 6 (p. 77*bis*, Registry pagination), 6 (p. 76*bis*, Registry pagination). Insofar as Counsel for Mr. Uwinkindi raise new claims in the Reply and in the Additional Submissions that were not the basis for the Revocation Request, I decline to consider them at this time.

¹⁵ See, e.g., Appeal Decision, para. 52. See generally Article 6(6) of the Statute.

¹⁶ See, e.g., Reply, paras. 119-123; Additional Submissions, paras. 10, 32-39; Response to Additional Submissions, paras. 1, 4, 16; October and November 2013 Monitoring Report, paras. 4, 9, 17-21, 23-41, 46-49, 54, 61, 70; December 2013 Monitoring Report, paras. 7-11, 13; January and February 2014 Monitoring Report, paras. 27-34, 54, 80.



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