



Mechanism for International Criminal Tribunals

Case No. MICT-12-25-AR14.1

Date: 4 February 2016

Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Burton Hall, Presiding
Judge Joseph E. Chiondo Masanche
Judge Mparany Mamy Richard Rajohnson
Judge José Ricardo de Prada Solaesa
Judge Ben Emmerson**

Registrar:

Mr. John Hocking

Decision of:

4 February 2016

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**DECISION ON MOTIONS TO STRIKE NOTICE OF APPEAL
AND APPEAL BRIEF**

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Richard Karegyesa
Mr. James J. Arguin
Mr. François Nsanzuwera

Counsel for Mr. Jean Uwinkindi:

Mr. Gatera Gashabana

Received by the Registry

Mechanism for International Criminal Tribunals

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A handwritten signature in black ink, appearing to be 'J. Arguin'.

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of the “Prosecution’s Motion to Strike Notice of Appeal” filed on 24 November 2015 (“Motion to Strike Notice of Appeal”).¹ Jean Uwinkindi (“Uwinkindi”) filed a response on 14 December 2015.² The Appeals Chamber is further seised of the Prosecution’s “Urgent Motion to Strike Appeal Brief” filed on 10 December 2015 (“Motion to Strike Appeal Brief”).³

I. BACKGROUND

2. On 22 October 2015, a Trial Chamber of the Mechanism dismissed Uwinkindi’s request for revocation of the order referring his case to Rwanda.⁴ The French and Kinyarwanda translations of the Impugned Decision were filed on 13 November 2015 and 2 December 2015, respectively.⁵ Uwinkindi challenges the Impugned Decision; he filed a notice of appeal on 20 November 2015 and an appeal brief on 5 December 2015.⁶

3. On 17 December 2015, the Pre-Appeal Judge⁷ accepted Uwinkindi’s Response to the Motion to Strike Notice of Appeal as validly filed.⁸ In an order issued the same day, the Pre-Appeal Judge further stayed the deadlines for filings in relation to the Appeal Brief and Motion to Strike Appeal Brief until the Appeals Chamber provides the parties with a briefing schedule related to such filings.⁹

II. DISCUSSION

A. Motion to Strike Notice of Appeal

4. The Prosecution submits that the Notice of Appeal should be dismissed since it was filed 14 days after the applicable deadline as set forth in Rule 14(E) of the Rules of Procedure and

¹ See Order Assigning Judges to a Case before the Appeals Chamber, 7 December 2015.

² *Réplique à la requête présentée par l'accusation aux fins du rejet de l'acte d'appel de Jean Uwinkindi*, 14 December 2015 (“Response to Motion to Strike Notice of Appeal”). As paragraph numbers are repeated after paragraph 36 in the Response to Motion to Strike Notice of Appeal, the Appeals Chamber will refer to the relevant submissions as if the paragraph numbering after paragraph 36 continued in sequential order.

³ See also Prosecutor’s Supplementary Submissions to Urgent Motion to Strike Appeal Brief, 17 December 2015 (“Supplementary Submissions”).

⁴ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Uwinkindi’s Request for Revocation, 22 October 2015 (“Impugned Decision”), para. 42.

⁵ *Le procureur c. Jean Uwinkindi*, affaire no. MICT-12-25-R14.1, *Décision relative à la demande d'annulation présentée par Jean Uwinkindi*, 13 November 2015; *Porokiren aburana na Jean Uwinkindi*, Urubanza No. MICT-12-25-R14.1, *Icyemezo ku cyifuzo cya Uwinkindi gisaba ikurwaho ry'icyemezo cyo kohereza urubanza ahandi*, 2 December 2015.

⁶ *Acte d'appel de la défense de Jean Uwinkindi*, 20 November 2015 (“Notice of Appeal”); *Mémoires d'appel de la défense de Jean Uwinkindi*, 5 December 2015 (“Appeal Brief”).

⁷ See Order Designating a Pre-Appeal Judge, 15 December 2015.

⁸ Decision on Applications for Translations and Extensions of Time, 17 December 2015, p. 4.

Evidence of the Mechanism (“Rules”).¹⁰ It further contends that Uwinkindi has not shown good cause for the late filing.¹¹

5. Uwinkindi responds that his Notice of Appeal was filed within the deadline pursuant to Rule 133 of the Rules.¹² Alternatively, he argues that he does not understand English or French and that his counsel could only fully advise him with respect to his appeal of the Impugned Decision once the French translation was filed.¹³ He therefore contends that, even if Rule 14(E) of the Rules is applicable, the deadline for filing his Notice of Appeal started running upon receipt of the Impugned Decision in a language the Defence understood, that is from the date on which he received the French or Kinyarwanda translations of the Impugned Decision, which occurred on 16 November or 3 December 2015, respectively.¹⁴

6. The Appeals Chamber observes that the Rules are silent on the procedure for filing appeals from decisions on requests for revocation of referral.¹⁵ However, it has held that such appeals should follow the same procedure as provided for in cases involving appeals from decisions on referral as set out in Rule 14(E) of the Rules.¹⁶ In relevant part, Rule 14(E) of the Rules provides that the “[n]otice of appeal shall be filed within fifteen days of the decision”. This Rule is mirrored in paragraph 21 of the Practice Direction on Appeals, which provides that “[a] party wishing to appeal from a decision of [...] a Trial Chamber pursuant to Rule 14 [...] of the Rules shall file a notice of appeal within 15 days of the decision”.¹⁷

7. Pursuant to Rules 3(A), (F), and 152(A) of the Rules, the time limits run from the day upon which a document is filed in one of the working languages of the Mechanism, namely English or

⁹ Order Relating to Urgent Motion to Strike Appeal Brief, 17 December 2015, p. 3.

¹⁰ See Motion to Strike Notice of Appeal, paras. 2-4, 6, referring to, *inter alia*, *Prosecutor v. Radovan Stanković*, Case No. 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* Decision of 21 May 2014”), para. 10; *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5-A, Decision on Admissibility of Notice of Appeal against Trial Judgement, 4 September 2008 (“*Haxhiu* Decision of 4 September 2008”).

¹¹ Motion to Strike Notice of Appeal, paras. 2, 4-6, 8, referring to, *inter alia*, *Haxhiu* Decision of 4 September 2008, paras. 14-16.

¹² Response to Motion to Strike Notice of Appeal, paras. 7, 19, 22-24.

¹³ Response to Motion to Strike Notice of Appeal, paras. 38, 39, 45, 48. See also *Requête sollicitant les traductions dans les langues françaises et kinyarwanda de la motion du procureur intitulée: ‘Motion to Strike the Notice of Appeal of Uwinkindi Jean’*, 30 November 2015, paras. 7-9; *Requête sollicitant les traductions dans les langues françaises et kinyarwanda de la demande du procureur d’un document intitul[é]e: ‘Prosecution Response to Uwinkindi Motion for Translations’*, 7 December 2015, paras. 8-10.

¹⁴ Response to Motion to Strike Notice of Appeal, paras. 5, 12, 23-28, 33, 41-43, 52, 53.

¹⁵ The Appeals Chamber has held that a decision on whether or not to revoke the referral of a case is subject to appellate review. See *Stanković* Decision of 21 May 2014, para. 9. Consequently, the Appeals Chamber finds that an appeal lies as of right from the Impugned Decision, which dismissed Uwinkindi’s request to revoke the order referring his case to Rwanda.

¹⁶ *Stanković* Decision of 21 May 2014, para. 9.

¹⁷ Practice Direction on Requirements and Procedures for Appeals, MICT/10, 6 August 2013 (“Practice Direction on Appeals”). See also Practice Direction on Appeals, paras. 22-24.

French.¹⁸ Notwithstanding, Rule 154(A)(ii) of the Rules allows a Chamber, on good cause being shown by motion, to “recognise as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired”. Further, paragraph 31 of the Practice Direction on Appeals provides that “the Appeals Chamber may vary any time-limit or recognize as validly done any act done after the expiration of a time-limit prescribed in [the] Practice Direction [on Appeals]”.

8. In the present case, the Impugned Decision was filed in English on 22 October 2015, and, consequently, the deadline for Uwinkindi to file his Notice of Appeal expired 15 days later on 6 November 2015.¹⁹ Consequently, Uwinkindi’s Notice of Appeal, which was filed on 20 November 2015, was submitted out of time.

9. The Appeals Chamber notes that Uwinkindi understands neither English nor French.²⁰ However, the Pre-Appeal Judge has previously found that Uwinkindi’s counsel can work in English and is able to discuss the contents of legal documents with his client.²¹ Moreover, the Appeals Chamber reiterates that, on appeal, counsel bear the main burden in preparing submissions,²² allowing sufficient time to discuss relevant issues with their clients,²³ as well as ensuring the timely submission of all pleadings. The determination of potential grounds of appeal falls primarily within the purview of counsel and good cause for extending a deadline to file a notice of appeal is normally not present where the judicial determination, which is the subject of the appeal, is made in a language in which counsel can work.²⁴ Accordingly, Uwinkindi has not shown the existence of good cause warranting the late filing of his Notice of Appeal.

10. Nonetheless, even where good cause has not been demonstrated, the Appeals Chamber may recognize submissions as validly filed where they are of such substantial importance to the appeal that doing so is in the interests of justice.²⁵ The Appeals Chamber considers that the Notice of Appeal is of substantial importance to Uwinkindi’s appeal: to refuse to consider it would deny

¹⁸ See also Article 31 of the Statute of the Mechanism.

¹⁹ See Rule 14(E) of the Rules; *Stanković* Decision of 21 May 2014, para. 9.

²⁰ *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Jean Uwinkindi’s Motion for Translation of the Prosecution’s Response, 16 September 2015, p. 1.

²¹ Decision on Applications for Translations and Extensions of Time, 17 December 2015, p. 3.

²² See *Augustin Ndingiyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Bizimungu’s Motion for Extension of Time to File His Reply Brief, 8 March 2012, p. 2, referring to, *inter alia*, *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004, p. 3.

²³ Cf. *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Prosper Mugiraneza’s Motion for Extension of Time to File His Appellant’s Brief, 26 January 2012, para. 10.

²⁴ Cf. *Augustin Ndingiyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 11 July 2011, paras. 9, 15; *Pauline Nyiramasuhuko et al. v. The Prosecutor*, Case No. ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 25 July 2011, para. 5.

²⁵ *Phénéas Munyarugarama v. 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. 12.

Uwinkindi the opportunity to challenge the Impugned Decision. The subject-matter of Uwinkindi's appeal concerns the fairness of criminal proceedings in Rwanda in which he is charged, *inter alia*, with genocide, a crime that is punishable with a sentence of life imprisonment.²⁶ Furthermore, as the deadline for appealing decisions on requests for revocation is not set forth explicitly in the Rules and has only been clarified by the Appeals Chamber in a single decision, the principle of *in dubio pro actionis* and the interests of justice weigh in favor of recognizing the Notice of Appeal as validly filed despite the failure of Uwinkindi's counsel to file it on time or seek an extension. Additionally, accepting the Notice of Appeal will not prejudice the Prosecution, which will have sufficient time to respond to the submissions that form the basis of Uwinkindi's appeal. Consequently, the Appeals Chamber finds that it is in the interests of justice to recognize the Notice of Appeal as validly filed.

B. Motion to Strike Appeal Brief

11. The Prosecution submits that the Appeal Brief should be struck since the Notice of Appeal was not validly filed²⁷ and the Appeal Brief exceeds the applicable 3,000 word-limit.²⁸ In the alternative, the Prosecution requests that Uwinkindi be ordered to re-file the Appeal Brief in compliance with the applicable word-limit.²⁹

12. The Appeals Chamber recalls that the Pre-Appeal Judge stayed the deadline for Uwinkindi to file a response to the Motion to Strike Appeal Brief³⁰ and observes that Uwinkindi has not responded to the Motion to Strike Appeal Brief or the Supplementary Submissions subsequently filed by the Prosecution. However, in view of the disposition in the present decision, the Appeals Chamber is satisfied that making a determination on these matters without further submissions will not prejudice either party.

13. The Appeals Chamber observes that, pursuant to Rule 14(E) of the Rules,³¹ "[t]he appellant shall file an appeal brief within fifteen days after filing the notice of appeal",³² with the applicable

²⁶ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Monitoring Report for November 2015, 21 December 2015, para. 23 ("The [Rwandan] Prosecution request was that Mr. Uwinkindi be sentenced to life imprisonment for the genocide, as well as for crime against humanity with the sentences running concurrently"). The Appeals Chamber is not persuaded by the Prosecution's contention that the *Haxhiu* Decision of 4 September 2008 is controlling with respect to the circumstances of this proceeding. That decision concerned an appeal against conviction for contempt of court that resulted in a punishment of a fine of 7,000 Euros. See *Haxhiu* Decision of 4 September 2008, para. 2. Uwinkindi is charged, *inter alia*, with the crime of genocide, which is materially of greater gravity and can be punishable with a sentence of life imprisonment.

²⁷ Motion to Strike Appeal Brief, para. 3.

²⁸ Supplementary Submissions, para. 3, referring to Practice Direction on Lengths of Briefs and Motions, MICT/11, 6 August 2013 ("Practice Direction on Briefs and Motions"), para. 15.

²⁹ Supplementary Submissions, para. 4.

³⁰ See *supra* para. 3.

³¹ See *supra* para. 6.

word limit for such briefs being 9,000 words.³³ With respect to the latter, “[a] party must seek authorization in advance to exceed the word limits [...] and must provide an explanation of the exceptional circumstances that necessitate the oversized filing”.³⁴

14. In the present case, given that the Appeals Chamber has recognized the Notice of Appeal, which was filed on 20 November 2015, as validly filed,³⁵ the deadline to file an appeal brief was 5 December 2015. Consequently, Uwinkindi’s Appeal Brief, which was filed on 5 December 2015, was submitted within the prescribed time-limit. However, the Appeals Chamber observes that the Appeal Brief contains 11,285 words³⁶ and that Uwinkindi has not sought prior authorization to exceed the 9,000 word-limit. Consequently, the Appeals Chamber holds that Uwinkindi must re-file his Appeal Brief in strict compliance with the applicable word limit.

III. DISPOSITION

15. For the foregoing reasons, the Appeals Chamber

DENIES the Motion to Strike Notice of Appeal in its entirety and recognizes the Notice of Appeal as validly filed;

GRANTS the Motion to Strike Appeal Brief, in part,

ORDERS:

- (i) Uwinkindi to re-file the Appeal Brief in strict compliance with the Practice Direction on Briefs and Motions within seven days of the filing of this decision;
- (ii) the Prosecution to file a response within ten days of the filing of the Appeal Brief;
- (iii) Uwinkindi to file a reply, if any, within four days of the filing of the response; and

DENIES the remainder of the Motion to Strike Appeal Brief.

³² This is mirrored in paragraph 22 of the Practice Direction on Appeals, which provides that “[a]n appellant shall file the appeal brief within 15 days of the filing of the notice of appeal”.

³³ Practice Direction on Briefs and Motions, para. 9. The Appeals Chamber considers that the applicable provision of the Practice Direction on Briefs and Motions is found in paragraph 9, which applies to appeals from decisions made under Rule 14 of the Rules, rather than, as the Prosecution submits, paragraph 15, which applies to motions not otherwise mentioned in the Practice Direction on Briefs and Motions.

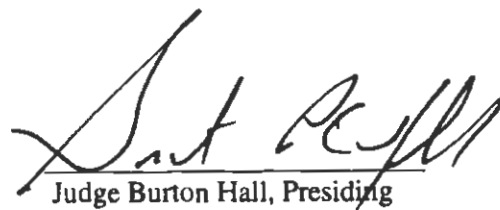
³⁴ Practice Direction on Briefs and Motions, para. 17.

³⁵ See *supra* para. 10.

³⁶ See Appeal Brief, p. 37.

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

Done this 4th day of February 2016,
At The Hague,
The Netherlands


Judge Burton Hall, Presiding

[Seal of the Mechanism]





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