



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

5617
du

OR: ENG

TRIAL CHAMBER III

Before: Judge Vagn Joensen, Presiding
Judge Seon Ki Park
Judge Gberdao Gustave Kam

ICTR-01-75-PT
22nd Dec. 2011
(5617-5614)

Registrar: Mr. Adama Dieng

Date: 21 December 2011

THE PROSECUTOR

v.

JEAN UWINKINDI

Case No. ICTR-2001-75-PT

JUDICIAL RECORDS/RECEIVES
2011 DEC 22 AM 13

**DECISION ON DEFENCE MOTION FOR TIME TO CONSIDER THE
CORRECTED INDICTMENT AND FOR TRANSLATION**

Office of the Prosecutor:

Mr. Richard Karegyesa
Mr. James Arguin
Mr. Alphonse Van
Mr. Rashid Rashid
Ms. Jane Mukangira

For the Defence:

Mr. Claver Sindayigaya
Mr. Iain Edwards
Ms. Bettina Spilker

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INTRODUCTION

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1. On 16 December 2011, the Appeals Chamber denied Mr. Uwinkindi's appeal "in all respects" and affirmed the Referral Chamber's decision to refer the case to the authorities of the Republic of Rwanda for trial before the High Court of Rwanda.¹ However, the Appeals Chamber stayed the transfer of Mr. Uwinkindi to Rwanda pending this Pre-Trial Chamber's (the "Chamber's") acceptance of the corrected indictment filed by the Prosecutor on the same date. The Appeals Chamber considered it important that the defects in the indictment be remedied prior to Mr. Uwinkindi's transfer to Rwanda so that the Rwandan Prosecutor General's Office may file its own adapted indictment based on an instrument that gives proper notice and so that this case remains trial ready at the Tribunal in the event of any possible revocation of the order referring this case to Rwanda.²

2. The Defence for Mr. Uwinkindi has now filed a motion³ requesting the Chamber to:
- i) accord Mr. Uwinkindi sufficient time to consider the corrected indictment and make representations, if necessary, before the Chamber makes a pronouncement on the adequacy of the corrections;
 - ii) order that the corrected indictment be translated into Kinyarwanda for Mr. Uwinkindi's benefit;
 - iii) order that the Appeals Chamber's Decision of 16 November 2011⁴ be translated for Mr. Uwinkindi's benefit; and
 - iv) order that the Appeals Chamber's Decision of 16 December 2011 also be translated for Mr. Uwinkindi's benefit.

DELIBERATIONS

3. In respect of the first request above, the Chamber agrees with the Defence that it would be fair for Mr. Uwinkindi to be afforded the opportunity to review the corrected indictment against the accompanying supporting material and to bring any relevant considerations to the Chamber's attention before it makes a final determination on the matter.

¹ *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi's Appeal Against the Referral of His Case to Rwanda and Related Motions, 16 December 2011 ("Appeals Chamber Decision of 16 December 2011").

² Appeals Chamber Decision of 16 December 2011, para. 88.

³ *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-PT, Defence Motion for Time to Consider the Corrected Indictment and for Translations, 20 December 2011 (the "Motion").

⁴ *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR72(C), Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment, 16 November 2011 ("Appeals Chamber Decision of 16 November 2011")

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The Chamber recalls that it was as a result of the Defence preliminary motion alleging defects in the amended indictment that the Appeals Chamber ultimately ordered the filing of a corrected indictment. Therefore, it is fair to grant the Defence and Mr. Uwinkindi the opportunity to review the corrected document in light of the Appeals Chamber's ruling. Moreover, in the Chamber's view, the 15-day time frame proposed by the Defence does not appear to be excessive in these circumstances.

4. Regarding the second item, the Chamber notes the Defence submission that Mr. Uwinkindi speaks and reads neither English nor French and, therefore, cannot understand the corrected indictment as filed by the Prosecutor. The Chamber is aware that, according to the jurisprudence of the Tribunal, the indictment is "the primary accusatory instrument."⁵ Moreover, pursuant to Article 20(4)(a) of the Statute of the Tribunal, an accused is entitled to be informed promptly, in detail and in a language he understands, of the nature and cause of the charges against him. Therefore, the Chamber considers it important to provide Mr. Uwinkindi with a Kinyarwanda version of the corrected indictment as soon as practicable.

5. The third and fourth requests made by the Defence concern the translation into Kinyarwanda of the Appeals Chamber Decisions of 16 November 2011 and 16 December 2011. The Defence submits that in addition to having the right to receive the indictment in a language he understands, Mr. Uwinkindi "must also have the right to a translation of decisions of the Chamber concerning the indictment."⁶ The Defence argues that without reading the Kinyarwanda version of these decisions, Mr. Uwinkindi will not be in a position to assess whether all the amendments ordered by the Appeals Chamber have in fact been made in the corrected indictment, or whether all aspects of the corrected indictment are properly evidenced by the supporting material.

6. The Chamber disagrees with the Defence on these points. In the Chamber's view, the issues discussed in both decisions are legal matters best appreciated by Counsel who can then explain them to Mr. Uwinkindi. Besides, more than one month has elapsed since Mr. Uwinkindi and his Defence Counsel were served with copies of the Appeals Chamber's Decision of 16 November 2011. While there is no "statute of limitations" on translations, Mr. Uwinkindi and his Counsel could have acted more diligently by making an earlier request for the Kinyarwanda translation of that decision if they considered it to be of such great importance.

⁵ Appeals Chamber Decision of 16 November 2011, paras. 13, 39; citing *Prosecutor v. Tihomir Blaskić*, Case No. IT-95-14-A, Judgement, 29 July 2004, para. 220.

⁶ The Motion, para. 9.

7.

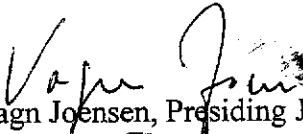

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7. Additionally, the Appeals Chamber Decision of 16 December 2011 concerns the referral of the case to the High Court of Rwanda and is only indirectly related to the issues involved in the corrected indictment. Furthermore, the Defence acknowledges in its submissions that “the Pre-Appeal Judge recognised that there was good cause to extend the deadline for the filing of the appeal brief in this case to allow Mr. Uwinkindi the opportunity to read the referral decision in a language he understands.”⁷ This indicates that Mr. Uwinkindi has already obtained and read the Referral Chamber’s decision in Kinyarwanda. Since the Appeals Chamber’s Decision of 16 December 2011 dismissed Mr. Uwinkindi’s appeal “in all respects” and affirmed the findings of the Referral Chamber, it is immediately apparent that both decisions dealt systematically with the same issues. Therefore, it is not necessary to halt all proceedings in this matter until the Appeals Chamber’s Decision of 16 December 2011 is also translated into Kinyarwanda.

FOR THESE REASONS, THE CHAMBER

- I. GRANTS** the Motion in part;
- II. DIRECTS** the Registry to prepare a Kinyarwanda version of the corrected indictment as soon as practicable;
- III. ORDERS** the Defence for Mr. Uwinkindi to file any comments or observations regarding the corrected indictment and the supporting materials, in light of the Appeals Chamber’s Decision of 16 November 2011, within **15 days** of the filing of the Kinyarwanda version of the corrected indictment; and
- IV. DISMISSES** the Motion in all other respects.

Arusha, 21 December 2011, done in English.


Vagn Joensen, Presiding Judge
[Designated pursuant to Rule 7(A)]

[Signature Manual]

⁷ The Motion, para. 11.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometownu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometownu	<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input checked="" type="checkbox"/> Chamber III I.E. (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
			<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Jean Uwinkindi		Case Number: ICTR-01-75-PT
Dates:	Transmitted: 22 December 2011		Document's date: 21 December 2011
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON DEFENCE MOTION FOR TIME TO CONSIDER THE CORRECTED INDICTMENT AND FOR TRANSLATION		
Classification Level:	TRIM Document Type:		
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.			
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and will not submit any translated version.			
<input type="checkbox"/> Reference material is provided in annex to facilitate translation.			
Target Language(s):			
<input type="checkbox"/> English	<input checked="" type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda	
CMS SHALL NOT take any action regarding translation.			
<input type="checkbox"/> Filing Party hereby submits BOTH the original and the translated version for filing, as follows:			
Original	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Translation	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	

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<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s):	
<input type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: