

MICT-12-13  
23/07/2012  
(0807-0791)



ICTR-95-1D-R11bis

19-04-2012  
(677-661)

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International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

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**TRIAL CHAMBER III**

Before: Judge Vagn Joensen, presiding  
Judge Lee Gacuiga Muthoga  
Judge Gberdao Gustav Kam

Registrar: Adama Dieng

Date of filing: 19 April 2012

JUDICIAL RECORDS/ARCHIVES  
UNICTR  
2012 APR 19 P 2-561

**THE PROSECUTOR**

v.

**CHARLES SIKUBWABO**

Case No. ICTR-95-1D-R11bis

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**PROSECUTOR'S RESPONSE TO DUTY COUNSEL'S  
REQUEST FOR DISCLOSURE**

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**Office of the Prosecutor**

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


**Counsel for the Accused**

Jean Chrysostome Nkurunziza  
(Duty Counsel)

## SUBMISSIONS

1. On 18 April 2012, Duty Counsel for the Accused Charles Sikubwabo ("Accused") filed his *Confidential Requête de la Défense tendant à obtenir l'ordre de la Chambre pour la communication des documents en vertu de l'article 66 et suivants du règlement de preuve et de procédure* ("Request"). In essence, Duty Counsel requests the Trial Chamber, pursuant to Rule 66, to order the Registrar or Prosecutor to communicate to duty counsel any progress in relation to the monitoring mechanism in the Uwinkindi case.<sup>1</sup>
2. On 26 March 2012, the Chamber granted the Prosecutor's request for referral of the case of the Accused to the Republic of Rwanda, pursuant to Rule 11 *bis*.<sup>2</sup> The Chamber is therefore *functus officio* in relation to the referral proceedings, and accordingly has no jurisdiction to consider the Request.<sup>3</sup> Moreover, the provisions of Rule 66 are not applicable in the instant case, as the Prosecutor's disclosure obligations under this rule would not extend to the provision of this type of information to Duty Counsel.
3. However, as a courtesy, the Prosecutor discloses, in an annex to this Response, the President's decision of 5 April 2012 regarding the monitoring mechanism in the *Uwinkindi* case.<sup>4</sup>

Dated and signed this 19<sup>th</sup> day of April 2012, Arusha, Tanzania.

*for*   
James J. Arguin  
Chief, Appeals and Legal Advisory Division

<sup>1</sup> Request, paras. 7, 9.

<sup>2</sup> *The Prosecutor v. Charles Sikubwabo*, Case No. ICTR-95-1D-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 26 March 2012.

<sup>3</sup> *The Prosecutor v. Uwinkindi*, Case No. ICTR-2001-75-AR11bis, Decision on Motion to Place on Record Certain Information by a Non-Party Applicant, 29 August 2011, para. 3 (stating that the Referral Bench became *functus officio* with issuance of its decision to refer Uwinkindi to Rwanda and accordingly lacked jurisdiction in the matter).

<sup>4</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75R11bis, Decision on Monitoring Arrangements for the Trial of Jean Uwinkindi in the Republic of Rwanda, 5 April 2012 (attached hereto as Annex A).

ANNEX A

ICTR-01-75R11bis

674

OS-04-2012  
(5801-5789)



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda



OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Vagn Joensen  
*President of the Tribunal*

Registrar: Mr. Adama Dieng

Date: 5 April 2012

JUDICIAL RECORDS ARCHIVES  
UNICTR  
2012 APR -5 P 2:25  
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THE PROSECUTOR

v.

JEAN UWINKINDI

*Case No. ICTR-01-75R11bis*

DECISION ON THE MONITORING ARRANGEMENTS FOR THE TRIAL OF  
JEAN UWINKINDI IN THE REPUBLIC OF RWANDA

Office of the Prosecutor:

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

Counsel for Jean Uwinkindi:

Claver Sindayigaya  
Iain Edwards  
Bettina Spilker

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## INTRODUCTION

1. In a decision dated 28 June 2011, the Trial Chamber designated under Rule 11 *bis* of the Rules of Procedure and Evidence ("Referral Chamber") granted the Prosecutor's request for referral of the case of Jean Uwinkindi to the High Court of Rwanda.<sup>1</sup> Jean Uwinkindi's appeal of the Referral Chamber decision was denied by the Appeals Chamber on 16 December 2011.<sup>2</sup>
2. On 16 January 2012, the Registrar filed submissions under Rule 33 (B) requesting a stay of Uwinkindi's transfer until an agreement could be reached with and funding could be secured for the monitoring by the African Commission of Human and People's Rights ("ACHPR").<sup>3</sup> As Acting President, I decided on 20 January 2012 that the Accused should be transferred within 30 days of the confirmation of the re-filed amended Indictment, which I considered to be sufficient time for the Registrar to conclude the necessary monitoring arrangements.<sup>4</sup> The amended indictment was confirmed on 23 January 2012.<sup>5</sup>
3. On 25 January 2012, Jean Uwinkindi filed a motion for review or reconsideration of the Appeals Chamber's 16 December 2011 decision confirming referral to Rwanda.<sup>6</sup> The following day, the Appeals Chamber ordered a stay in the transfer of Uwinkindi pending the resolution of the motion.<sup>7</sup> On 13 February 2012, the Registrar filed confidential submissions under Rule 33 (B) whereby he detailed continued complications in reaching an agreement with the ACHPR.<sup>8</sup> President Khan dismissed the Registrar's submissions as the matter was directly pending before the Appeals Chamber.<sup>9</sup> On 16 February 2012 the Defence filed further

<sup>1</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75R11bis. ("*Prosecutor v. Uwinkindi*") Decision on the Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011 ("Trial Chamber Referral Decision"). All further references to rules are to the Rules of Procedure and Evidence of the ICTR unless otherwise indicated.

<sup>2</sup> *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75AR11bis, ("*Uwinkindi v. Prosecutor*") Decision on Uwinkindi's Appeal against the Referral of his Case to Rwanda and Related Motions (AC), 16 December 2011 ("Appeals Chamber Referral Decision").

<sup>3</sup> Registrar's Submissions Regarding the Transfer of the Accused to the Custody of the Republic of Rwanda, filed on 16 January 2012 ("Registrar's 16 January 2012 Submissions").

<sup>4</sup> *Prosecutor v. Uwinkindi*, Decision on the Registrar's Request for Stay of Transfer of Jean Uwinkindi to Rwanda (P), 20 January 2012.

<sup>5</sup> *Prosecutor v. Uwinkindi*, Confidential Decision on the Confirmation of the Re-filed Amended Indictment (TC), 23 January 2012.

<sup>6</sup> Defence Extremely Urgent Motion for Review or Reconsideration of the Decision of 16 December 2011 on Uwinkindi's Appeal against the Referral of His Case to Rwanda, filed on 25 January 2012 ("Defence Motion for Review or Reconsideration").

<sup>7</sup> *Uwinkindi v. Prosecutor*, Interim Order on Uwinkindi's Motion for Review or Reconsideration of the Decision of 16 December 2011 (AC), 26 January 2012.

<sup>8</sup> Confidential Registrar's Submissions Regarding the Transfer of the Accused to the Republic of Rwanda and the Monitoring Agreement, filed on 13 February 2012 ("Registrar's 13 February 2012 Submissions").

<sup>9</sup> *Prosecutor v. Uwinkindi*, Decision on the Registrar's Submissions Regarding the Transfer of the Accused to the Republic of Rwanda and the Monitoring Agreement (P), 15 February 2012.

submissions before the Appeals Chamber in light of the Registrar's submissions.<sup>10</sup> On 23 February 2012 the Appeals Chamber issued a decision lifting its stay order and dismissing Uwinkindi's motion for review or reconsideration.<sup>11</sup>

4. On 24 February 2012, President Khan ordered that the transfer of Jean Uwinkindi be stayed pending the establishment of a suitable monitoring mechanism and directed the Registrar to file submissions pursuant to Rule 33 (B) detailing steps taken to effectuate the Referral Chamber's order to appoint the ACHPR as well as details with respect to his proposals for monitoring by ICTR legal officers and other organisations no later than 16 March 2012.<sup>12</sup> The Prosecution filed a confidential request for clarification of the President's order on 28 February 2012.<sup>13</sup>

5. On 16 March 2012, the Registrar filed submissions under Rule 33 (B) whereby he provided details of the negotiations with ACHPR and his suggestions for alternative monitoring mechanisms, and sought the President's direction on further steps to be taken.<sup>14</sup> On 23 March 2012, the Defence and Prosecution filed responses to the Registrar's 16 March 2012 submissions.<sup>15</sup>

## DISCUSSION

### CHOICE OF MONITOR

#### *Applicable law*

6. I note that Rule 11 *bis* of the ICTR Rules of Procedure and Evidence, as amended on 1 April 2011, does not indicate who can be appointed as monitors on behalf of Chambers in cases referred to national jurisdictions. In contrast, Article 6 of the Statute of the International

<sup>10</sup> Confidential Supplementary Submissions to the Defence Extremely Urgent Motion for Review or Reconsideration of the Decision of 16 December 2011 on Uwinkindi's Appeal Against the Referral of His Case to Rwanda, filed on 16 February 2012 ("Defence 16 February 2012 Submissions").

<sup>11</sup> *Uwinkindi v. Prosecutor*, Decision on Uwinkindi's Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion (AC), 23 February 2012 ("Appeals Chamber Reconsideration Decision").

<sup>12</sup> *Prosecutor v. Uwinkindi*, Order to Stay the Transfer of Jean Uwinkindi Pending the Establishment of a Suitable Monitoring Mechanism (P), 24 February 2012 ("President's 24 February 2012 Order").

<sup>13</sup> Prosecutor's Request for Clarification of the President's Order to the Registrar Regarding Implementation of the Monitoring Mechanism and Related Orders, filed on 28 February 2012 ("Prosecution Request for Clarification").

<sup>14</sup> Registrar's Submissions in Response to the President's Order of 24 February 2012, filed on 16 March 2012 ("Registrar's 16 March 2012 Submissions").

<sup>15</sup> Defence Submissions in Response to the Registrar's Rule 33(B) Submissions, filed on 23 March 2012 ("Defence Response to Registrar's 16 March 2012 Submissions"); Prosecutor's Response to the Registrar's Submissions in Response to the President's Order of 24 February 2012, filed on 23 March 2012 ("Prosecution Response to Registrar's 16 March 2012 Submissions").

Residual Mechanism for Criminal Tribunals ("IRM") requires that the monitoring be carried out with the assistance of an international or regional organisation.<sup>16</sup> I recall, however, that part of the justification for the amended Rule 11 *bis* was that there should be congruity between the Rules of the Tribunal and the IRM Statute because the trial proceedings in the Referral State may very well commence or continue after 1 July 2012 when the authority to monitor proceedings in a Referral State and to revoke a referral, if required, will pass to the IRM.

7. The Referral Chamber's decision that the ACHPR be appointed as the monitoring body is in accordance with the justification for the amended Rule 11 *bis*. I note, however, that the President of the Tribunal or the IRM, where appropriate, is empowered to modify the monitoring arrangement envisaged by the Referral Chamber if the circumstances dictate it.<sup>17</sup>

8. With regard to this, after consultations with the Presiding Judge of the Referral Chamber, I find that the delay of the transfer of Uwinkindi to Rwanda and, thus, the delay of his trial due to complications with respect to establishing a monitoring arrangement with ACHPR touches upon Uwinkindi's right to a trial without undue delay pursuant to Article 20 of the Statute of the Tribunal.

*The Use of ICTR Chambers or Registry Legal Officers as Monitors*

9. As a means to mitigate any further delays, the Registrar has proposed the use of ICTR legal staff who would be immediately available as monitors, and I note that two Chambers legal staff have been recommended for these purposes by a panel convened by the Registrar.<sup>18</sup>

10. The Prosecution has raised concerns about ICTR staff acting as monitors,<sup>19</sup> stating that "the independence and neutrality of the monitors is important to both the Defence and Prosecution, as well as to the legitimacy of the Tribunal's referral order."<sup>20</sup> I agree that the independence and neutrality of the monitors is paramount, and believe that the use of ICTR staff would uphold the independence and neutrality of the monitoring, as discretion and impartiality are inherent in the duties performed by Chambers and Registry legal staff. Moreover, I note that the Prosecution has monitors who will report on whether its interests are being adequately represented by the Rwandan Prosecutor, and that the Defence has fully

<sup>16</sup> Statute of the International Residual Mechanism for Criminal Tribunals (IRMC'T). Article 6, para. 5.

<sup>17</sup> Trial Chamber Referral Decision, para. 22; Appeals Chamber Referral Decision, para. 84; Appeals Chamber Reconsideration Decision, paras. 16, 17.

<sup>18</sup> Registrar's 16 March 2012 Submissions, Confidential Annex G.

<sup>19</sup> Prosecution Response to Registrar's 16 March 2012 Submissions, para. 47.

<sup>20</sup> *Id.*, para. 44.

supported the appointment of the ICTR legal staff who were nominated by the Registrar's committee.<sup>21</sup>

11. I consider that the particular experience of Registry or Chambers legal staff makes them among the most qualified to provide accurate and impartial reports on the fair trial rights implications of the proceedings in Rwanda. ICTR legal staff are intimately familiar with the ICTR's guarantees of fair trial rights which will be compared to those observed in Rwanda, and already have an understanding of the Rwandan justice system.

12. I further note that the involvement of ICTR Chambers or Registry legal staff in the monitoring is not incompatible with the IRM Statute which merely requires that international or regional organisations *assist* in the monitoring, not that the monitoring in its totality be carried out by such organisations.

13. The necessity of appointing ICTR Chambers or Registry legal officers as monitors in order to facilitate the transfer of Uwinkindi to Rwanda and the commencement of the legal proceedings in Rwanda should not delay the endeavours to conclude an agreement with an international or regional organisation for it to assist, preferably before the commencement of Uwinkindi's trial in Rwanda, in the monitoring. However, for the sake of continuity an ICTR Chambers or Registry legal officer should continue to assist with and be involved in the monitoring and reporting to the ICTR or the IRM President once the monitors from the chosen organisation are on board.

#### *Continuation of Negotiations with the ACHPR*

14. The ACHPR was the organisation chosen to be appointed as monitor on behalf of Chambers in the Referral Chamber Decision,<sup>22</sup> and the Prosecution has repeatedly stated its position that it is necessary to appoint the ACHPR as the monitor on behalf of Chambers.<sup>23</sup> While thanking the Prosecution for expressing its opinions on the implications of choosing a different organisation, I recall that the Prosecution has the right to appoint its own monitor, and in this respect has chosen not to appoint the ACHPR as it had initially indicated it had planned to do.

15. On 20 January 2012, I noted in my decision that discussions with the ACHPR should have been ongoing since 28 June 2011 and therefore the Registrar would be expected to

<sup>21</sup> Defence Response to Registrar's 16 March 2012 Submissions, paras. 4-7.

<sup>22</sup> Trial Chamber Referral Decision, para. 211.

<sup>23</sup> Prosecution Response to Registrar's 16 March 2012 Submissions, paras. 50, 51; Prosecution Request for Clarification, paras. 3, 16 - 18.



conclude an agreement with the ACHPR within 30 days of the confirmation of the Indictment, which occurred three days later. In his 13 February 2012 submissions, the Registrar noted that he had “undertaken intense discussions with the ACHPR and made numerous efforts to conclude an effective monitoring agreement... and took all measures possible to ensure the effective implementation of Referral and Appeals Chamber decisions,”<sup>24</sup> but that “an agreement with the ACHPR [was] untenable.”<sup>25</sup>

16. The ACHPR has responded that it does not agree that best efforts were undertaken in order to reach an agreement for the monitoring, and has indicated that it understood that the decision by President Khan on 24 February 2012 had closed the possibility of reaching an agreement with the ACHPR.<sup>26</sup> I note that President Khan directed the Registrar to “immediately begin discussions about the *potential* for providing monitors” with organisations other than the ACHPR.<sup>27</sup> Her decision, however, did not indicate that the ACHPR was no longer in consideration. On the contrary, it merely provided the Registrar the opportunity to explore multiple options which he had proposed as alternatives to effectuate the monitoring required on behalf of Chambers as decided by the Referral Chamber.

17. I consider that President Khan did not direct the Registrar to appoint an organisation other than the ACHPR, but merely asked him to provide further details for his other proposed options. Therefore, the ACHPR remains as a viable option. Consultations should be immediately resumed with the ACHPR in order to reach an agreement embodying the terms set forth herein. For the reasons mentioned above, the ACHPR is still the organisation of first choice to assist as Chambers’ monitor, and every effort should be made by the Registrar to conclude an agreement with the ACHPR before undertaking further negotiations with any other organisations.

#### *Conclusion*

For the aforementioned reasons I consider that the Registrar should be directed:

- (i) To assign two ICTR Chambers or Registry legal officers, to be selected in consultation with me, to commence the monitoring of the proceedings in Rwanda upon the transfer of Jean Uwinkindi; and

<sup>24</sup> Registrar’s 13 February 2012 Submissions, para. 13.

<sup>25</sup> *Id.*, para. 18.

<sup>26</sup> Letter dated 9 March 2012 from Dupe Atoke, Chairperson of the ACHPR to Adama Dieng, ICTR Registrar.

<sup>27</sup> President’s 24 February 2012 Order, para. 7 (emphasis added).

- (ii) To resume negotiations with the ACHPR with a view to conclude an agreement on the ACHPR's assistance in the monitoring of the Uwinkindi proceedings in Rwanda and the modalities thereof, or if such negotiations fail, to enter into and conclude similar negotiations with another suitable international or regional organisation; and
- (iii) Upon the conclusion of the aforementioned agreement, to appoint, in consultation with the President of the ICTR or the IRM, as appropriate, an ICTR Chambers or Registry legal officer to participate in the monitoring and assist the organisation's monitors.

### THE MODALITIES OF ANY MONITORING AGREEMENT

#### *Rank of Monitors*

18. The ACHPR has envisaged providing Commissioners as monitors. In reviewing the qualifications of those proposed by the other organisations with whom the Registrar has consulted, it seems that similarly qualified persons have been presented. I note that while it is imperative that the monitors have sufficient experience in order to properly report on the proceedings, I do not believe that only the most senior representatives of an organisation may be qualified to take on this task.

19. There should be no mistake that the duties of those asked to monitor the proceedings on behalf of the Chambers are significant. However, it must also be recalled that the President is the person who will be in the position to interpret the reports of the monitors and to decide whether the monitors' observations warrant that a bench be designated to consider revocation of the referral. The monitors' role will therefore be to collect data and to present it with their recommendations, if any, in a report to the President.

20. Although the Referral Chamber has noted that professionals must be the ones to monitor the proceedings, I consider that many levels of professionals are qualified to report on fair trial rights observations in a criminal trial. The main requirements to be considered when selecting the individuals who will monitor the trials should be their qualifications and experience and their ability to impartially report on what they observe. Moreover, the intention is not for the Rwandan Judiciary to be influenced by the monitors. The Registrar

should also take all of this into consideration when completing the negotiations for the monitoring by the ACHPR or another organisation.

*Payment of Fees to Monitors and Other Costs Associated with Monitoring*

21. Neither the Referral Chamber nor the Appeals Chamber has stated that the ACHPR must be appointed on a *pro bono* basis. Moreover, the Appeals Chamber stated that an organisation cannot be compelled by the Tribunal to provide monitoring services,<sup>28</sup> and the Referral Chamber appointed the ACHPR while noting that it would be at the cost of the Tribunal.<sup>29</sup> This approach is reasonable since any human rights organisation will have a limited budget and it would be unfair to ask any such organisation to expend its own funds in order to provide services to the Tribunal. Moreover, where the individuals chosen to monitor on behalf of an organisation are not paid a salary for their duties to the organisation, it is also inherently reasonable that the individuals be compensated for their time spent away from their full-time jobs outside of the organisation. Where individuals are paid a salary by the monitoring organisation, it is also reasonable for the Tribunal to compensate the organisation for the portion of the individuals' salary that is paid for time spent doing work on behalf of the Tribunal.

22. The Registrar has confirmed that the Tribunal's budget has sufficient funds available for any monitoring costs that will be incurred.<sup>30</sup> It is also my understanding that such funds are supplemented by an external grant which was provided specifically for monitoring of this trial, and that additional funds may be requested from the same source for ongoing monitoring activities. However, just because the Tribunal has funds available both from its own budget and from outside grants does not mean that money should be spent frivolously. The costs of monitoring should be mitigated as much as possible and only reasonable funds should be spent.

23. In light of this, I consider that as long as any fees proposed are commensurate with payments for similar services to individuals at the level of the monitors and the fees are only paid for time actually spent in Kigali collecting the data for the reports, the Registrar may pay fees to the monitors as part of the costs of monitoring. Therefore, funding should no longer be considered as a hurdle to concluding an agreement for monitoring.

<sup>28</sup> Appeals Chamber Referral Decision, para. 84, fn. 211.

<sup>29</sup> Trial Chamber Referral Decision, para. 219.

<sup>30</sup> Registrar's 16 March 2012 Submissions, para. 5.

MODALITIES OF THE MONITORING*Frequency and Duration of Monitors' Reports*

24. I recall that the Referral Chamber decided that it would require "the ACHPR to appoint at least two or more experienced professionals who will conduct full-time monitoring of the proceedings and submit reports ... on the progress made by the Rwandan Prosecutor General in the Accused's case six weeks after the transfer of the evidentiary material to the appropriate court in Rwanda."<sup>31</sup> The Appeals Chamber decided that after such initial report the monitors should provide monthly reports until such time as the President decides otherwise.<sup>32</sup>

25. The Referral Chamber noted that monitoring reports should continue until the completion of the trial and appellate processes and through to the enforcement of sentence, if any.<sup>33</sup> I note that revocation is only possible until "the accused is found guilty or acquitted" by the court in Rwanda.<sup>34</sup> I consider that, in the event of an appeal of the verdict, an accused is only "found guilty or acquitted" once a final decision is rendered on appeal. Therefore, the monitors will be required to provide reports beginning upon the transfer of Mr. Uwinkindi to Rwanda and continuing until the delivery of the trial judgement. In the event of an appeal of the verdict, the monitors shall continue to provide reports until an appeals judgement is rendered. All reports by monitors shall be provided on a monthly basis until the President of the ICTR or the IRM decides otherwise.

26. With respect to the enforcement of sentence, if any, neither Rule 11 *bis*, nor the Bilateral Agreement between the Government of the Republic of Rwanda and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda ("Bilateral Agreement") provide for monitoring of sentences imposed by Rwandan Courts in cases referred from the ICTR. I consider, however, that the International Committee of the Red Cross ("ICRC") or such other person or body as the Tribunal may designate shall be requested, in accordance with the guidelines in Article 6 of the Bilateral Agreement, to conduct inspections and submit reports to the President on the enforcement of sentences, if any, imposed by Rwandan Courts in cases referred from the ICTR.

<sup>31</sup> Trial Chamber Referral Decision, para. 211.

<sup>32</sup> Appeals Chamber Referral Decision, para 52.

<sup>33</sup> Trial Chamber Referral Decision, para. 213.

<sup>34</sup> Rule 11 *bis* (f) of the ICTR Rules of Procedure and Evidence.

*Definition of Full-Time Monitoring*

27. As noted above, the Referral Chamber has indicated that monitors will be required to act on a full-time basis and to provide reports to the Tribunal which, as decided by the Appeals Chamber, should be done on a monthly basis, on the progress of the proceedings in Rwanda.<sup>35</sup> After consultations with the Presiding Judge of the Referral Chamber, I note that it was not the intention of the Referral Chamber to require that both or all monitors must be present in Rwanda at all times as of the transfer of Jean Uwinkindi to Rwanda.

28. First, monitors may alternate to be present in Rwanda. They need not all be present at the stages of proceedings when monitoring is required. They must, however, keep each other informed of their respective observations.

29. Second, the term "full-time" must necessarily be interpreted in different ways during the different stages of trial.

30. For instance, a monitor or monitors need not be in Rwanda at all times to prepare monthly reports during the pre-trial phase. Prior to the commencement of the trial, a monitor or monitors should only be required to be in Rwanda for as much time as is necessary to gather data for their reports. This will include being present when any judicial proceedings occur. Otherwise, it seems reasonable that the monitoring during the pre-trial phase could require spending approximately one week per month in Rwanda. Once the trial has commenced, however, a monitor or monitors will likely be required to be present in Rwanda on a more frequent basis to attend all court proceedings. Similar to pre-trial, during the post-verdict appellate phase, if any, a monitor or monitors must only be in Kigali to attend judicial proceedings and to gather data for their monthly reports. It seems likely that this would amount to approximately one week per month spent in Kigali. These guidelines should be instructive to the Registrar in concluding an agreement for monitoring and in financial planning for the provision of necessary funding to the monitoring regime.

*Terms of Reference for Monitors*

31. In concluding an agreement with an organisation for the monitoring of the trial of Jean Uwinkindi by the Republic of Rwanda, the Registrar should include terms of reference which will be instructive for the organisation as well as the individuals chosen to monitor on behalf of the organisation. The terms of reference should include, *inter alia* the following points:

<sup>35</sup> Trial Chamber Referral Decision, para. 211; Appeals Chamber Referral Decision, para 52.

- a. Monitors are expected to act in a professional manner at all times and to perform their duties honourably, faithfully, impartially and conscientiously.
- b. Monitors shall provide their reports only to the Tribunal, with a copy to their parent organisation. Such reports will be considered confidential until the President of the ICTR or the IRM releases them to the public.
- c. The role of the monitors is one of recording data and presenting it in a report to the President of the ICTR or IRM. In this regard, the monitors may not give statements to the media whether in their capacity monitors on behalf of the Tribunal or in their individual capacity. Any requests for comment by the press should be referred to the ICTR/IRM Spokesperson for appropriate action.
- d. In order to ensure their actual and apparent impartiality, the monitors should not accept appointment to monitor a case for which they have any personal interest or concerning which they have or have had any association which might affect their impartiality. This includes any circumstances which would lead a reasonable observer, properly informed, to reasonably apprehend bias. In any such circumstance, the monitor shall withdraw from the position as monitor of the affected case.
- e. Individuals assigned as monitors may be replaced at the request of the President of the ICTR or the IRM, or at the request of the monitoring organisation after consultations with the President of the ICTR or the IRM.

32. The Registrar may include additional terms as required, and is requested to consult with the President in the event that he wishes to modify the above terms. It should also be noted in the terms of reference that changes may be effectuated after the monitoring has commenced if the need should arise.

#### MINIMUM REQUIREMENTS FOR REPORTS

33. I consider that in order to achieve the stated purpose, the monitors' reports should, include, *inter alia*, the following information:

- a. The specific dates of the reporting period; and
- b. A list of all motions filed during the reporting period; and

- c. A list of all decisions filed during the reporting period; and
- d. Any information which the Parties wish to have included in the report; or
- e. Notice that after consultation a Party has chosen not to provide any input for the reporting period; and
- f. Any other information deemed relevant to the fair trial rights of the accused;

34. The President shall have the right to request, upon receipt of any report, more specific details about any of the topics discussed therein. Moreover, the President shall have the ability at any time to request from the monitors that additional information is provided, either on a one time basis or as a continued requirement for all future reports.

**FOR THESE REASONS, THE PRESIDENT**

**DIRECTS** the Registrar to immediately resume negotiations with the ACHPR with the goal of expeditiously concluding an agreement for monitoring of the trial of Jean Uwinkindi in the Republic of Rwanda pursuant to the terms set forth herein; and

**REQUESTS** the Registrar to promptly inform the President in the event of any further difficulties in reaching such an agreement so that the President may assist with the process or direct the Registrar to continue negotiations with another organisation should it become necessary; and

**DIRECTS** the Registrar to proceed with the appointment of ICTR Legal Staff chosen in consultation with the President to act as interim monitors upon the transfer of Jean Uwinkindi to Rwanda and until the ACHPR or another organisation is appointed as monitor, and notes that the same or other ICTR Chambers or Registry Legal Staff should continue to assist and participate in monitoring and reporting upon the commencement of monitoring by the organisation; and

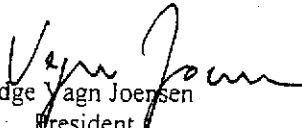
**DIRECTS** the Registrar to request the International Committee of the Red Cross ("ICRC") or such other person or body as the Tribunal may designate to conduct inspections and submit reports to the President in accordance with the guidelines in Article 6 of the Bilateral Agreement with respect to the enforcement of sentences imposed by Rwandan Courts in cases referred from the ICTR.

**DIRECTS** the Registrar to immediately begin discussions with Rwanda to determine what is necessary to effectuate the transfer of Jean Uwinkindi; and

**REQUESTS** the Registrar to ensure that such transfer takes place within 14 days of the filing of this decision; and

**INSTRUCTS** the Registrar to make all other necessary arrangements in line with this decision;

Arusha, 5<sup>th</sup> April 2012, done in English.

  
Judge Yagn Joensen  
President

[Seal of the Tribunal]







## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

661

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

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

<b>To:</b>	<input type="checkbox"/> Team I N. M. Diallo	<input type="checkbox"/> Team II C. K. Hometowu N. M. Diallo	<input checked="" type="checkbox"/> Team III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
	<input checked="" type="checkbox"/> Other: Office of the President J. Stefanelli (names)		
<b>Case Name:</b>	The Prosecutor vs. Jean Uwinkindi		<b>Case Number:</b> ICTR-01-75-R11bis
<b>Dates:</b>	Transmitted: 5 April 2012		Document's date: 5 April 2012
<b>No. of Pages:</b>	13	<b>Original Language:</b>	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	Decision on the Monitoring Arrangements for the Trial of Jean Uwinkindi in the Republic of Rwanda		
<b>Classification Level:</b>	<b>TRIM Document Type:</b>		
<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.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English                       French                       Kinyarwanda

CMS SHALL NOT take any action regarding translation.

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

CMS SHALL NOT take any action regarding translation.

Filing Party will be submitting the translated version(s) in due course in the following language(s):

English                       French                       Kinyarwanda

**KINDLY FILL IN THE BOXES BELOW**

<input type="checkbox"/> <b>The OTP</b> 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"/> <b>DEFENCE</b> 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:
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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

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



# 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)

<b>To:</b>	<input type="checkbox"/> Team I N. M. Diallo	<input type="checkbox"/> Team II C. K. Hometownu N. M. Diallo	<input type="checkbox"/> Team 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 R. Muzigo-Morrison
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office <b>James Arguin</b> (names) <i>A. SEYE</i>
<b>Case Name:</b>	The Prosecutor vs. <b>Charles Sikubwabo</b>		<b>Case Number:</b> ICTR-95-1D-R11bis
<b>Dates:</b>	Transmitted: <b>19 April 2012</b>		Document's date: <b>19 April 2012</b>
<b>No. of Pages:</b>	<b>17</b>	<b>Original Language:</b>	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	<b>Prosecutor's Response to Duty Counsel's Request for Disclosure</b>		
<b>Classification Level:</b>	<b>TRIM Document Type:</b>		
<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 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
			<input type="checkbox"/> Submission from non-parties
			<input checked="" type="checkbox"/> Submission from parties
			<input type="checkbox"/> Disclosed particulars

JUDICIAL OFFICE  
 2012 APR 19 09:57  
 ICTR-95-1D-R11bis  
 CHIEF OF SECTION

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Target Language(s):

English  French  Kinyarwanda

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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"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: