



UNITED NATIONS
NATIONS UNIES

ICTR-01-75-AR11bis
16-01-2012
(5634-5630)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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PRESIDENT OF THE TRIBUNAL

Before Judge: Khalida Rachid Khan
President

Registrar: Adama Dieng

Date: 16 January 2012

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THE PROSECUTOR

v.

Jean UWINKINDI

Case No. ICTR-2001-75-AR11bis

**REGISTRAR'S SUBMISSIONS REGARDING THE TRANSFER OF THE ACCUSED
TO THE CUSTODY OF THE REPUBLIC OF RWANDA**

Rule 33(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:
Hassan Bubacar Jallow
Richard Karegyesa

Defence Counsel:
Claver Sindayigaya
Iain Edwards
Bettina Spiker

5633

A. INTRODUCTION

1. On 28 June 2011, a Referral Chamber ("Referral Chamber") constituted under Rule 11*bis* of the Rules of Evidence and Procedure of this Tribunal rendered its decision in the case of Jean Uwinkindi ("Accused") and ordered the referral of this case to the Republic of Rwanda for trial ("*Uwinkindi* Referral Decision").¹ On 16 December 2011, the Appeals Chamber confirmed the *Uwinkindi* Referral Decision dismissing the appeal of the Accused.² The *Uwinkindi* Referral Decision has hence attained finality.
2. The *Uwinkindi* Referral Decision, *inter alia*, requested the Registrar to:
 - a. "within 30 days of this Decision becoming final, appoint the African Commission on Human and People's Rights ["ACHPR"] as monitor for the trial of the Accused in Rwanda under Rule 11 bis (D) (iv) and to make arrangements to this effect."³
 - b. "arrange the transport of the Accused and his personal belongings, within 30 days of this Decision becoming final, to Rwanda in accordance *mutatis mutandis* with the procedures applicable to the transfer of convicted persons to States for enforcement of sentence."⁴
 - c. "inform the President about any hurdles in the implementation and operation of the monitoring mechanism for any consequential orders."⁵
3. The Registrar makes these submissions pursuant to the direction (c) above to inform the President about the implementation and operation of the monitoring mechanism by the ACHPR. In addition, the Registrar, in the execution of his functions, pursuant to Rule 33B of the Rules of Evidence and Procedure, has the authority to make representations to the Chambers on any issue arising in the context of a case which affects or may affect the discharge of such functions, *including that of implementing judicial decisions*.⁶

¹ *The Prosecutor v. Jean Uwinkindi*, Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, ICTR-2001-75-R11*bis*, 7 August 2011 ("*Uwinkindi* Referral Decision").

² *Jean Uwinkindi v. The Prosecutor*, Decision on Uwinkindi's Appeal Against the Referral of his Case to Rwanda and Related Motions, ICTR-2001-75-AR11*bis*, 16 December 2011.

³ *Uwinkindi* Referral Decision, p. 57.

⁴ *Uwinkindi* Referral Decision, p. 57.

⁵ *Uwinkindi* Referral Decision, p. 59.

⁶ Emphasis added.

B. APPOINTMENT OF THE MONITOR

4. At the outset, the Registrar submits that, by a decision dated 11 January 2012, he has appointed the ACHPR as the monitor to observe the transferred case of the Accused in the courts of the Republic of Rwanda.
5. The Referral Chamber has stipulated detailed guidelines to the ACHPR for the implementation of this monitoring mechanism. These include directions to:
 - a. monitor on a full-time basis and report to the President through the Registrar on the progress of the referred case in general, and on the observance of international fair trial standards with special emphasis to the availability and protection of witnesses before, during and after the proceedings;
 - b. ensure that Article 13 of the Transfer Law is strictly respected and applied by Rwanda in respect of anything said by the Accused, his counsel or witnesses in his trial to advance his line of defence;
 - c. monitor detention conditions ensuring that that they are in accordance with international standards both during and after the trial and appeal of the Accused, if convicted by a competent court;
 - d. ensure that the provisions of Article 59 of the RCCP which precludes witnesses suspected by the Prosecution of having committed serious crimes (genocide) from testifying are not applied to witnesses in the trial of the Accused;
 - e. liaise with the representatives of VWSU and WPU in Rwanda on a regular basis and include their findings in the regular quarterly reports to the President through the Registrar on the number of witnesses seeking the assistance of each service;
 - f. identify and report to the President through the Registrar any incidents of violations of Rule 11 bis D (iv) and in particular those relating to the protective measures for witnesses ordered by this Tribunal;
 - g. indicate, in general, any violations of the fair trial rights of the Accused; and
 - h. seek assistance, as it deems appropriate, from the relevant United Nations agencies or other international, regional inter-governmental, governmental or non-governmental organizations to advance the objectives of an effective and efficient monitoring of this case.⁷
6. Accordingly, and as directed by the Referral Chamber, the Registrar has already commenced technical discussions with the ACHPR to "secure a written arrangement which will clearly stipulate the logistical, financial and other modalities by which the monitoring will be carried out."⁸ However, owing to the complex nature of these

⁷ *Uwinkindi* Referral Decision, p. 58.

⁸ *Uwinkindi* Referral Decision, paras. 210, 221.

5631

discussions, the Registrar submits that they are likely to take some more time before a final written arrangement is entered into between the Tribunal and the ACHPR.

C. FUNDING FOR MONITORING

7. The Referral Chamber noted that the ACHPR has expressed its willingness to monitor the transferred case "at the cost of the Tribunal."⁹ Consequently, the Registrar will forthwith commence exploring the avenues of funding for the monitoring. Currently there is no funding available in the Registry's budget for this activity.
8. The Registrar notes that there is funding earmarked in the budget of the Office of the Prosecutor ("OTP") for sending its own monitors. However, as the *Uwinkindi* Referral Decision envisages separate monitoring by the OTP and the ACHPR, the funding for the latter will have to be separately sourced.

D. INSPECTION OF THE DETENTION FACILITY

9. In the *Uwinkindi* Referral Decision, the Referral Chamber, while referring its first case for trial to the Republic of Rwanda, particularly stressed that the detention conditions of the Accused, upon transfer, must be in "accordance with international standards both during and after the trial".¹⁰
10. While the Referral Bench expressed satisfaction that the Accused would be detained in appropriate conditions once his case is transferred to Rwanda, it also "expect[ed]" from the monitoring mechanism "to conduct regular prison visits to ensure that both the detention conditions and the treatment of the Accused are satisfactory".¹¹
11. However, the Registrar seeks the guidance of the President regarding the period intervening between the transfer of the Accused to Rwanda and the commencement of the monitoring mechanism. The Registrar submits that to ensure that the Accused is detained in this interregnum at a facility that meets international standards, the Registrar would consider inspecting the facility to ensure that the letter and spirit of the *Uwinkindi* Referral Decision are met. Accordingly, before transfer of the Accused to the custody of the authorities of the Republic of Rwanda, and subject to the guidance of the President, the Registrar would consider conducting an inspection of this facility.

⁹ *Uwinkindi* Referral Decision, para. 219.

¹⁰ *Uwinkindi* Referral Decision, p. 58.

¹¹ *Uwinkindi* Referral Decision, para. 60.

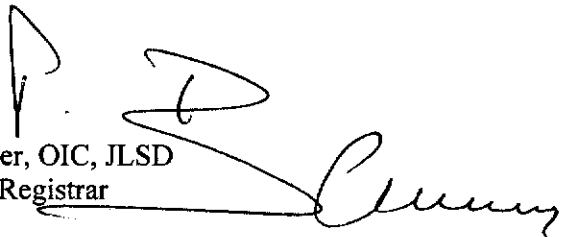
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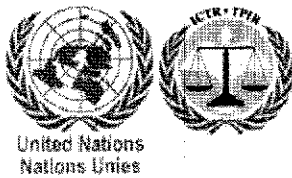
E. CONCLUSION

12. The Registrar submits that the monitoring mechanism envisaged in the *Uwinkindi* Referral Decision will, therefore, likely become fully operational when 1) a detailed technical agreement comes into effect, between the Tribunal and the ACHPR for monitoring, 2) funding is secured for this monitoring, and 3) pending the commencement of the monitoring, the Tribunal is satisfied that the Accused will be transferred to a detention facility that meets international standards.
13. Accordingly, the Registrar seeks the guidance of the President on whether the Tribunal may consider transferring the Accused to Rwanda only upon the settlement of these practical matters.

Respectfully submitted,

Done in English at Arusha on this 16th day of January of 2012.


Pascal Besnier, OIC, JLSD
for the Registrar



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