

ICTR-01-75-AR11bis  
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International Criminal Tribunal for Rwanda



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**PRESIDENT OF THE TRIBUNAL**

Before: Judge Khalida Rachid Kahn, President

Registrar: Mr. Adama Dieng

Date filed: 18 January 2012

**THE PROSECUTOR**

**V.**

**JEAN UWINKINDI**

*Case No. ICTR-2001-75-AR11bis*

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

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**The Prosecution**

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

**The Defence**

Claver Sindayigaya  
Iain Edwards  
Bettina Spilker

1. The Prosecutor submits this response to the Registry's submissions<sup>1</sup> to draw the President's attention to two points. The first point is that the President has no authority to postpone referral to Rwanda to accommodate the Registry's difficulties in arranging the administrative framework necessary to support the Tribunal's monitoring conditions. The second point is that there is no practical need or legal basis for postponing the transfer of the accused's physical custody until the Registry conducts a pre-referral inspection of Rwandan conditions of detention.

**A. Referral should not be postponed while the Registry "explores" funding to implement the Tribunal's judicial orders.**

2. As the Registry notes in its submission, the Trial Chamber ordered the referral of this case to Rwanda on 28 June 2011 and selected the African Commission on Human and People's Rights (ACHPR) as the Tribunal's monitor.<sup>2</sup> In that order, the Trial Chamber directed the Registry to secure a written agreement with the ACHPR that would "clearly stipulate the logistical, financial and other modalities by which the monitoring [would] be carried out."<sup>3</sup>

3. The Appeals Chamber affirmed the Trial Chamber's referral decision on 16 December 2011 but stayed the accused's physical transfer to Rwanda until the Trial Chamber confirms the amended indictment.<sup>4</sup> In all other respects, the decision of the Appeals Chamber is final.

4. Despite the passage of over six months since the Trial Chamber's decision and over a month since the Appeals Chamber's decision, it appears

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<sup>1</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Registrar's Submissions Regarding the Transfer of the Accused to the Custody of the Republic of Rwanda, 16 January 2012 ("Registrar's Submissions").

<sup>2</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011, p. 57 ("*Uwinkindi* (TC)").

<sup>3</sup> *Uwinkindi* (TC), paras. 210, 221.

<sup>4</sup> *The Prosecutor v. Jean Uwinkindi*, 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, para. 89 ("*Uwinkindi* (AC)").

the Registry has made little progress in formalizing the ACHPR's appointment as monitor. Indeed, the Registry submits that it does not yet have funds available to implement the Tribunal's monitoring of this referred case.<sup>5</sup> Nor did it make any provision in the Registry's budget for monitoring costs, despite the Prosecutor's pending application for referral and the likelihood that monitoring would be required as a part of a referral order.<sup>6</sup> The Registry's failure to ensure that sufficient funds would be available to implement the Tribunal's likely monitoring of this referred case is surprising given that the Prosecutor included provision for appointment of his own monitor in his budget submissions and the Tribunal amended Rule 11 *bis* to specifically allow the Chamber to appoint its own monitor in addition to the Prosecutor's monitor.<sup>7</sup>

5. The Registry's suggestion that referral of this case to Rwanda could be postponed for an unspecified period of time while it "explores" other avenues for funding is unacceptable.<sup>8</sup> Although the Trial Chamber acknowledged that the Registrar could apply to the President for any "consequential order" related to the implementation and operation of the monitoring mechanism,<sup>9</sup> it is doubtful that amendment of the Trial Chamber's 30-day deadline for the Registry to finalize monitoring arrangements with the ACHPR qualifies as merely consequential. That deadline was affirmed on appeal to the Appeals Chamber and was a critical component of the Trial Chamber's decision. It was intended to ensure that the referral process proceeded expeditiously and without undue administrative delay. Accordingly, the 30-day deadline for implementation of the monitoring mechanism should not be lightly cast aside, particularly where the Registry has known about the Trial Chamber's

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<sup>5</sup> Registrar's Submissions, para. 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> More concerning is the Registry's assertion that it will "forthwith commence" the process for securing funding to support the Tribunal's monitoring. *Id.*, para. 7. This assertion indicates that, despite the substantial passage of time since the Chambers' referral orders, the Registry has not yet started the process.

<sup>9</sup> *Uwinkindi* (TC), p. 59.

order for more than six months and makes no detailed submission to substantiate the alleged lack of available funding.

6. One of the Registry's core functions is implementation of the Tribunal's judicial orders and decisions in the manner and within the time established by the Chambers. If the Registry did not make sufficient budgetary provision to anticipate the Tribunal's monitoring order, it should immediately release sufficient funds from non-core functions (such as training, travel, or recruitment of non-critical posts) or seek emergency funding from new sources to effectuate the Tribunal's order.

7. There also is no need for the Registry to secure funds sufficient to cover the entire anticipated budget for the ACHPR's monitoring program now. A short-term budget could be utilized for the first month or more of monitoring activities, thereby allowing the Registry a reasonable period of additional time to secure supplemental funding to cover the full costs of the Tribunal's monitoring. Also, although the monitoring imposed by the Chamber is robust, it will not necessarily require full-time presence at all stages of the proceedings and certainly not during any breaks in the proceedings.

8. These and other possible alternatives are not addressed in the Registry's submissions and, thus, may not have been adequately explored. All available options should be fully vetted and deemed unworkable before the President considers amending the deadline the Tribunal has established for the Registry's implementation of the monitoring mechanism.

9. Moreover, any further postponement in the referral of this case to Rwanda could raise fair trial issues as well. Delay in the Registry's implementation of the referral orders will inevitably delay the start of trial proceedings in Rwanda. Rwanda is prepared to start the trial process as soon as the accused is remanded to the custody of the responsible Rwandan officials. Earlier this week, the Prosecutor handed over his case file to his Rwandan counterpart so there would be no undue delay in the prosecution of the case in Rwanda.

10. The efficient and timely referral of this case for trial in Rwanda is vital to the interests of justice, including the right of the accused to trial without undue delay. The administrative difficulties the Registry has apparently experienced in implementing the Tribunal's judicial orders should not be allowed to frustrate these substantial interests.

**B. Transfer of the accused's physical custody should not be postponed while the Registry inspects detention facilities that the Tribunal already has held meet international standards.**

11. Both the Trial and Appeals Chambers determined that "Rwanda's detention facilities located at Kigali [Central Prison] and Mpanga [Prison] meet international standards."<sup>10</sup> These holdings were consistent with the findings made by the *Kanyarukiga* Trial Chamber in connection with an earlier Rule 11 *bis* proceeding.<sup>11</sup> There is, therefore, no practical need for the Registry to conduct any inspection of Rwanda's detention facilities.

12. Nor is there any legal basis for the Registry's request. The Registry was not appointed to monitor the referral of this case; its task is limited to implementing the Chambers' order for monitoring by the ACHPR. Neither the Trial Chamber nor Appeals Chamber conditioned the referral of this case on the Registry's pre-referral inspection of Rwandan detention facilities. There is no ambiguity in this respect; no such condition was imposed. The President has no jurisdiction to amend or clarify an unambiguous Trial Chamber order, particularly where the order relates to a substantive condition and has been affirmed by the Appeals Chamber.

13. Furthermore, to the extent the Registry is concerned that there could be a gap in the Tribunal's monitoring of conditions of detention, the Prosecutor submits that any such concern is misplaced given: (a) the

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<sup>10</sup> *Uwinkindi* (AC), para. 39 (quoting *Uwinkindi* (TC), para. 52).

<sup>11</sup> *Uwinkindi* (TC), para. 59; *Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 6 June 2008, para. 91.

Tribunal's findings that conditions of detention meet international standards; (b) the provisions of Rwanda's Transfer Law that permit inspection by the International Committee of the Red Cross;<sup>12</sup> and (c) the Prosecutor's appointment of his own monitor who, among other things, will verify that conditions of detention continue to meet international standards.

14. Accordingly, there is no practical need or legal basis for the Registry to conduct a pre-inspection of Rwandan detention facilities prior to effectuating the accused's physical transfer to Rwanda.

### C. Conclusion

15. The President should reject any further delay in implementation of the Tribunal's referral of this case to Rwanda for trial. The Registry should be directed to immediately implement the Tribunal's monitoring orders by releasing sufficient funds from non-core functions or seek emergency funding from new sources. At the very least, the Registry should be required to make a detailed showing as to why compliance with the Tribunal's judicial orders is impossible and cannot be funded even in the short-term.

16. Additionally, the President should reject the Registry's request for clarification of the Tribunal's orders concerning conditions of detention. No ambiguity exists; the Tribunal already has determined that conditions of detention in Rwanda meet international standards. In all events, the Registry is not charged with monitoring or inspecting conditions of detention, and the President lacks any authority to amend or modify substantive orders issued by the Trial Chamber and affirmed by the Appeals Chambers.

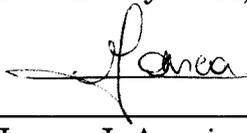
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<sup>12</sup> Article 23(2) of Organic Law No. 11/2007 of 16 March 2007 concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and From Other States, Official Gazette of the Republic of Rwanda, 19 March 2007 (Transfer Law); *Uwinkindi* (TC), para. 58.

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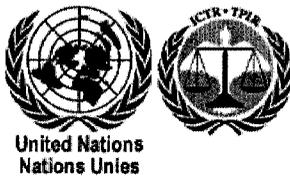
Respectfully submitted,

18 January 2012, Arusha, Tanzania



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



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(Art. 27 of the Directive for the Registry)

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

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<b>Case Name:</b>	The Prosecutor vs. Jean Uwinkindi				<b>Case Number:</b> ICTR-01-75-AR11bis	
<b>Dates:</b>	Transmitted: 18 January 2012			Document's date: 18 January 2012		
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