



ICTR-01-75-R11bis
20-01-2012
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OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Vagn Joensen
Acting President of the Tribunal

Registrar: Adama Dieng

Date: 20 January 2012

THE PROSECUTOR

v.

JEAN UWINKINDI

Case No. ICTR-01-75R11bis

JUDICIAL RECORDS ARCHIVES
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**DECISION ON THE REGISTRAR'S REQUEST FOR STAY OF
TRANSFER OF JEAN UWINKINDI TO RWANDA**

Rule 11 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

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

Counsel for the Defence:

Claver Sindyigaya
Iain Edwards
Betting Spilker

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INTRODUCTION

1. In a decision dated 28 June 2011, the Trial Chamber granted the Prosecutor's request for referral of the case of Jean Uwinkindi to the High Court of Rwanda.¹ Jean Uwinkindi's appeal of the Trial Chamber decision was denied by the Appeals Chamber on 16 December 2011.²
2. On 16 January 2012, the Registrar filed submissions under Rule 33(B) requesting additional amount of time to reach an agreement with and secure funding for the monitoring by the African Court of Human and People's Rights ("ACHPR") as ordered by the Trial Chamber in its Referral Decision. The Registrar also requested a stay in the order to transfer Uwinkindi to the custody of the Republic of Rwanda until the practical arrangements for monitoring were fully in place.³
3. The Prosecution filed a response on 18 January 2012 claiming, *inter alia*, that the fair trial rights of the Accused may be violated by a stay in the transfer order for an unspecified period as requested by the Registrar.⁴ Jean Uwinkindi filed observations on the Registrar's submissions on 19 January 2012.⁵

DELIBERATIONS

4. As a preliminary matter, the President recalls that the Registrar mentioned quarterly reporting to the President by the Monitor.⁶ The President reminds the Registrar that the Appeals Chamber has modified the reporting requirement of the Trial Chamber such that reports to the President by the monitor appointed by the Registrar must be submitted on a monthly, rather than quarterly, basis until such time as the President decides otherwise. At this time, the President does not see any reason to modify the decision of the Appeals Chamber in this regard.

¹ *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75R11bis, Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011 ("Trial Chamber Referral Decision").

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

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

⁴ Prosecutor's Response to Registrar's Submissions Regarding the Transfer of the Accused to the Republic of Rwanda, filed on 18 January 2012 ("Prosecutor's Response").

⁵ Defence Observations on Registrar's Submissions Regarding the Transfer of the Accused to the Custody of the Republic of Rwanda, filed on 19 January 2012.

⁶ Registrar's Submissions, para. 5e.

5. Pursuant to the amended Rule 11*bis* of the Rules of Procedure and Evidence, the Trial Chamber may order the Registrar to appoint a monitor to ensure that the fair trial rights of the transferee are being observed. In its referral decision, the Trial Chamber decided that the Registrar should appoint the ACHPR as Monitor pursuant to the previous indication that the ACHPR acquiesced to the idea of providing monitors at the expense of the Tribunal.⁷

6. The Registrar submits that “the monitoring mechanism envisaged in the [Trial Chamber] Referral Decision will [...] 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 the 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.”⁸ The President recalls that at least two detention facilities in Kigali have already been determined by the Tribunal to meet international standards, and therefore decides that the Tribunal is satisfied that the condition of detention facilities in Rwanda are sufficient for the transfer of Jean Uwinkindi as long as the Registrar can ensure that Uwinkindi will be placed in either Kigali Central Prison or Mpanga Prison. The President further considers that the decision outlining the requirements for monitoring was taken by the Trial Chamber on 28 June 2011, and that discussions with the ACHPR regarding the modalities of the monitoring and securing of the necessary funding should have been ongoing since that time subject to the then pending Appeal. Therefore, the President considers that a further stay in the transfer for such purposes is not warranted at this time.

7. The Registrar further submits that the Trial Chamber Referral Decision requested the Registrar to appoint the ACHPR as monitor and to transfer Uwinkindi to Rwanda “within 30 days of [the Trial Chamber Referral] Decision becoming final”,⁹ and that such finalisation occurred upon the Appeals Chamber’s confirmation of the decision on 16 December 2011. The President recalls, however, that while upholding the Trial Chamber Referral Decision, the Appeals Chamber ordered that the transfer of Uwinkindi should be stayed pending the Trial Chamber’s acceptance of the corrected indictment. Therefore, the President considers that the Trial Chamber Referral Decision will not become final until such time as the corrected indictment has been accepted by the Trial Chamber.

⁷ Trial Chamber Referral Decision, para. 210.

⁸ Registrar’s Submissions, para. 12.

⁹ Registrar’s Submissions, para. 1.


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FOR THESE REASONS, THE PRESIDENT

ORDERS that Jean Uwinkindi should be transferred to Rwanda within 30 days of acceptance of the corrected indictment by the Trial Chamber; and

INSTRUCTS the Registrar to liaise with the Rwandan Government in order to ensure that Jean Uwinkindi will be remanded to a detention facility which has already been determined to meet international standards.

Arusha, 20 January 2012, done in English


Judge Vagn Joensen
Acting President

[Seal of the Tribunal]



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Case Name:	The Prosecutor vs. Jean Uwinkindi		Case Number: ICTR-01-75R11bis
Dates:	Transmitted: 20 January 2012		Document's date: 20 January 2012
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