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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Vagn Joensen
President of the Tribunal

Registrar: Mr. Adama Dieng

Date: 29 June 2012

ICTR-01-75-R11bis
29th June 2012
(5813-5804)

THE PROSECUTOR

v.

JEAN UWINKINDI

Case No. ICTR-01-75R11bis

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ORDER ON THE ICTR MONITORING ARRANGEMENTS

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I, the President, noting the 28 June 2011 Trial Chamber decision referring the case of Jean Uwinkindi to the High Court of Rwanda, the 16 December 2011 Appeals Chamber decision, and the 23 February 2012 decision in which the Appeals Chamber explicitly acknowledges the “demonstrated competence of the President of the Tribunal to address issues related to the monitoring mechanism,” hereby issue the additional guidelines in Annex A to govern ICTR staff monitors in order to facilitate the referral of cases to Rwanda by the Trial Chambers, and to ensure that uniform practices are followed after referral.

Arusha, 29 June 2012, done in English.


Judge Vagn Joensen
President

[Seal of the Tribunal]



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ANNEX A

9.



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P O Box 6016, Arusha, Tanzania – B P 6016, Arusha, Tanzanie

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Tel : 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax : 255 2504000/2504373 or 1 212 963 2848/49

**GUIDELINES ON MONITORING TRIALS
REFERRED TO NATIONAL JURISDICTIONS
UNDER RULE 11 *Bis* BY ICTR STAFF
MONITORS**

29 JUNE 2012

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1. OBJECTIVES OF MONITORING

- 1.1 To assess the application of international standards in cases transferred to a national jurisdiction under Rule 11 *bis* of the International Criminal Tribunal for Rwanda ("ICTR") Rules.

2. BASIC PRINCIPLES OF MONITORING

- 2.1 Principle of non-intervention in the judicial process. This principle derives from the fundamental precept that an independent judiciary is the final authority responsible for maintaining the rule of law. ICTR monitors must respect and enhance the independence of the national courts by avoiding interference with the judiciary with regard to the merits or outcome of individual cases. More specifically, ICTR monitors must never interrupt a trial proceeding or speak with legal actors or participants during any judicial proceedings, and should ideally observe from a location separate from the prosecution and the defence in the courtroom to avoid the appearance of support or partiality.
- 2.2 Principle of objectivity. This principle requires ICTR monitors to accurately report on the transferred cases using clearly defined and accepted standards and without bias. When reporting, findings must be based upon clearly articulated domestic law and international standards. More generally, this principle requires a balanced approach to findings, conclusions and recommendations. ICTR monitors must align themselves with any party, and should avoid acting in any way which may cause the appearance thereof.
- 2.3 Principle of harmonisation. Working to achieve a level of mutual understanding with the national authorities, as one of the primary stakeholders in the process, helps to increase the effectiveness of trial monitoring. To effectuate this principle, ICTR monitors should work with the national authorities in building relationships, sharing information, explaining programme goals and methods; making constructive recommendations; and working with the authorities to support the implementation of any recommendations regarding the transferred cases.

3. ROLE AND RESPONSIBILITIES OF ICTR MONITORS

- 3.1 ICTR monitors are expected at all times to fully cooperate with and assist any other monitors appointed on behalf of the ICTR, including representatives from any independent organisation chosen to participate in monitoring.
- 3.2 ICTR monitors will only monitor and report on cases referred under Rule 11 *bis* of the ICTR Rules. ICTR monitors must avoid any appearance of possessing an expanded mandate, including avoidance

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- of commentary and refraining from reporting on cases not referred by the ICTR.
- 3.3 ICTR monitors shall express no personal opinions regarding the merits of transferred cases, other cases occurring in the national courts, or on the larger justice system.
 - 3.4 ICTR monitors are expected to act in a professional manner at all times and to perform their duties honourably, faithfully, impartially and conscientiously.
 - 3.5 ICTR monitors shall 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 inform the President of the ICTR or of Mechanism for International Criminal Tribunals ("MICT"), as appropriate, and withdraw from the position as monitor of the affected case.
 - 3.6 ICTR monitors should carry applicable identification at all times, with a copy of such identification available in the language of the transferred accused.
 - 3.7 ICTR monitors are responsible for attending all hearings in a transferred case, and are expected to take detailed notes on all proceedings. This includes all pre-trial and appellate proceedings, if applicable.
 - 3.8 ICTR monitors shall review all pertinent court files, even those that are confidential.
 - 3.8.1 ICTR monitors shall monitor the detention conditions of the accused, subject to the specific rules of the prison facility.
 - 3.8.2 The use of recording or video devices by ICTR monitors is subject to the approval of court or prison officials. All requests for recording should be made to the proper officials of the national jurisdiction in advance and in accordance with national laws.
 - 3.9 ICTR monitors are not permitted to delegate their authority.
 - 3.10 ICTR monitors shall not act as mediators between the parties or between the ICTR and the parties.
 - 3.11 ICTR monitors shall not intervene in the investigative, pre-trial or trial proceedings. This principle of non-intervention encompasses, but is not limited to, the following restrictions:

- 3.11.1 ICTR monitors shall not file any motions before the national courts or before the President of the ICTR or of MICT, as appropriate.
- 3.11.2 ICTR monitors shall not take any official statements or otherwise participate in the investigative, pre-trial or trial proceedings.
- 3.11.3 ICTR monitors shall not dispense any advice to parties, to court staff or to the Registrar or President of the ICTR or of MICT, as appropriate.
- 3.12 ICTR monitors will respect the confidentiality of the proceedings at all times.
- 3.13 ICTR monitors may not give statements to the media whether in their capacity as monitors on behalf of the Tribunal or in their individual capacity.
- 3.14 ICTR monitors may be replaced at the request of the President of the ICTR or of MICT, as appropriate.

4. PRIMARY FAIR TRIAL RIGHTS TO MONITOR

- 4.1 ICTR monitors shall monitor the following, non-inclusive list of internationally recognised rights of the accused in the referred cases during the investigative or non-judicial proceedings.
 - 4.1.1 Right upon arrest to be notified of reasons for arrest, the right to counsel, the right to silence and the right to an interpreter;
 - 4.1.2 Right of detainees to humane conditions of imprisonment and to be free from torture; and
 - 4.1.3 Right to challenge lawfulness of detention.
- 4.2 ICTR monitors shall monitor the following, non-inclusive list of internationally recognised rights of the accused in the referred cases during the pre-trial stage.
 - 4.2.1 Right to prompt judicial review upon arrest;
 - 4.2.2 Right of suspect to information at the time of judicial review, including the right to be informed of all charges;
 - 4.2.3 Right to legal counsel at the pre-trial stage, including the custody hearing; and
 - 4.2.4 Right to trial within a reasonable time after detention.

- 4.3 ICTR monitors shall monitor the following, non-inclusive list of internationally recognised fair trial rights of the accused in the referred cases during the trial stage.
- 4.3.1 Right to a public hearing;
 - 4.3.2 Right to a competent, independent and impartial court;
 - 4.3.3 Right to be present at trial and to defend oneself;
 - 4.3.4 Right to legal counsel at trial, including instruction on this right and the right to free legal assistance if unable to afford counsel;
 - 4.3.5 Equality of arms, including the right to present evidence, to call and examine witness and adequate time to prepare one's defence;
 - 4.3.6 Right to a presumption of innocence;
 - 4.3.7 Right to be tried without undue delay and overall efficient of trial proceedings;
 - 4.3.8 Right to an interpreter if needed;
 - 4.3.9 Right not to be compelled to plead guilty, including the right to silence at trial;
 - 4.3.10 Right to a public and reasoned judgement; and
 - 4.3.11 Specific victim and/or witness rights, including the necessary protective mechanisms.

5. BEST PRACTICES FOR SECURING NECESSARY ACCESS TO THE COURT AND CASE FILES

- 5.1 The following practices should be followed by ICTR monitors to ensure access to court hearings in the transferred cases.
- 5.1.1 ICTR monitors should arrive in advance of a hearing to gain sufficient time to locate and enter the courtroom or judge's chamber.
 - 5.1.2 If access is denied, ICTR monitors must be prepared to explain the programme and show applicable documents and identification.
 - 5.1.3 If access is still denied, ICTR monitors should request a meeting with the judge to explain the legal basis, as well as the purpose and objectives of the monitoring programme.

- 5.1.4 If access is not granted by the judge, ICTR monitors should inquire as to the specific legal basis or reason why the right to public trial does not exist.
 - 5.1.5 ICTR monitors should report the reasons for denial of access as required by the programme's reporting guidelines.
 - 5.1.6 If ICTR monitors feel threatened in any way, they should discontinue monitoring and immediately leave the courtroom, and report any threats against them to the President of the ICTR or of MICT, as appropriate.
- 5.2 The following practices should be followed by the ICTR monitors to secure access to closed hearings in the transferred cases.
- 5.2.1 ICTR monitors must be prepared to provide official documents providing authorization to monitor closed hearings.
 - 5.2.2 ICTR monitors must be prepared to explain the programme's confidentiality policy and reiterate that information will not be disseminated to the public.
 - 5.2.2.1 ICTR monitors must agree to be bound by any court order prohibiting the public release of information.
 - 5.2.3 If access is granted, ICTR monitors must report such information consistent with the programme's reporting guidelines.
 - 5.2.4 If access is denied, ICTR monitors should report the denial of access, and seek to obtain any redacted transcript that the court might release.
- 5.3 The following practices should be followed by the ICTR monitors to secure access to court files in the transferred cases.
- 5.3.1 A methodology for obtaining documents should be agreed upon with court staff and/or registrars.
 - 5.3.2 For the convenience of the court, documents should be obtained in a systemised manner.
 - 5.3.3 When possible, case files should be reviewed in advance of a hearing to allow the ICTR monitors to become familiar with the case.
 - 5.3.4 Since case files may be kept by individual judges, in order to respect the principle of non-intervention, ICTR monitors should try to avoid direct contact with the judge, and first request case files from the registry and/or other appropriate court staff.

6. ICTR MONITORING PROGRAMME REPORTING

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- 6.1 ICTR monitors shall report to the President of the ICTR or of MICT, as appropriate, through the Registrar in the event of any impediments to a fair trial or if the monitor has any difficulties accessing relevant persons, proceedings or documents during the course of any judicial proceedings.
- 6.2 ICTR monitors shall file confidential monthly reports on the transferred cases. Such reports shall be filed through the Court Management Section of the Registry ("CMS"), and will not be distributed except to the Registrar and the President of the ICTR or of MICT, as appropriate, except at the discretion of the President under whose authority the monitoring is being conducted.
- 6.3 ICTR monitoring reports should continue until the completion of the trial and appellate processes, if any.
- 6.4 These monthly reports, at a minimum, must include:
 - 6.4.1 The specific dates of the reporting period;
 - 6.4.2 Basic information on the transferred case, including the name of the accused and the charges;
 - 6.4.3 A list of all motions filed during the reporting period;
 - 6.4.4 A list of all decisions filed during the reporting period;
 - 6.4.5 A list of the main individuals that the monitor was in contact with;
 - 6.4.6 Information on all proceedings during the reporting period observed by the monitor; and
 - 6.4.7 Any other information deemed relevant to the fair trial rights of the accused, including the monitor's observations on the detention conditions of the accused.
- 6.5 The President of the ICTR or of MICT, as appropriate, 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 ICTR monitors the provision of additional information, either on a one time basis or as a continued requirement for all future reports.

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**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 type="checkbox"/> Trial Chamber III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> F. A. Talon (Appeals/Team IV)
From:	<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison	<input type="checkbox"/> Chamber II (names)	
	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input checked="" type="checkbox"/> Other: Office of the President Anees Ahmed (names)
Case Name:	The Prosecutor vs. Jean Uwinkindi		Case Number: ICTR-01-75R11bis
Dates:	Transmitted: 29 June 2012		Document's date: 29 June 2012
No. of Pages:	11 (Incl. this sheet)	Original Language: <input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Order on the ICTR Monitoring Arrangements		
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

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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 checked="" 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"/> 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:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input checked="" 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: