



ICTR-01-75R11bis
(24-02-2012)
(5675 - 5670)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Khalida Rachid Khan
President of the Tribunal

Registrar: Mr. Adama Dieng

Date: 24 February 2012

THE PROSECUTOR

v.

JEAN UWINKINDI

Case No. ICTR-01-75R11bis

2012 FEB 24 A 10:50
JUDICIAL RECORDS ARCHIVES
ICTR
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**ORDER TO STAY THE TRANSFER OF JEAN UWINKINDI PENDING THE
ESTABLISHMENT OF A SUITABLE MONITORING MECHANISM**

Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
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Counsel for the Jean Uwinkindi:

Claver Sindayigaya
Iain Edwards
Betting Spilker

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.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 a stay of Uwinkindi’s transfer, explaining that he needed additional 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.³ Acting President Judge Vagn Joensen decided on 20 January 2012 that the Accused should be transferred within 30 days of the confirmation of the re-filed amended Indictment.⁴ Such confirmation occurred on 23 January 2012.⁵

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.⁶ The following day, the Appeals Chamber ordered a stay in the transfer of Uwinkindi pending the resolution of the motion.⁷ On 13 February, the Registrar filed confidential submissions under Rule 33 (B) whereby he detailed continued complications in reaching an agreement with the ACHPR, noting difficulties at securing funding and discrepancies between the understanding of the Referral Chamber and the conditions now sought by the ACHPR.⁸ Due to the pending Defence motion for review or reconsideration, I dismissed the Registrar’s submissions as it would be improper for me to decide on a matter which was directly pending before the

¹ *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 unless otherwise indicated.

² *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”).

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 16 January 2012 Submissions”).

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

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

⁶ 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”).

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

⁸ 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”).



Appeals Chamber.⁹ On 23 February 2012 the Appeals Chamber issued a decision lifting its stay order and dismissing Uwinkindi's motion for review or reconsideration of the decision of 16 December 2011 ("Appeals Chamber Reconsideration Decision").¹⁰

DELIBERATIONS

4. As a preliminary matter, I note that I dismissed the Registrar's 13 February 2012 submissions made under Rule 33 (B) due to the fact that the pending motion before the Appeals Chamber hinged upon the subject of his submissions. I note that the Defence filed supplementary submissions before the Appeals Chamber relying upon the Registrar's 13 February 2012 submissions,¹¹ and accordingly that the Registrar's points were duly considered by the Appeals Chamber in rendering its Reconsideration Decision. Moreover, since the matter pending before the Appeals Chamber has now been decided, I may now properly consider the Registrar's submissions and make the appropriate orders in light thereof.

5. Jean Uwinkindi has argued that his transfer should not occur until such time as a monitoring mechanism has been established, and the Appeals Chamber has stated its agreement with this point in its most recent decision.¹² Considering the change in circumstances since the 20 January 2012 Decision by Acting President Joensen, namely that the Registrar has since informed me that he has been unable, despite his best efforts, to reach an agreement with the ACHPR, I have decided that it is appropriate at this time to stay the transfer of Jean Uwinkindi until such time as the President considers that a suitable monitoring mechanism is in place.

6. With respect to appointing a monitor other than the ACHPR, the Appeals Chamber has now reaffirmed the decision of the Referral Chamber that it falls within the authority of the President of the Tribunal to direct the Registrar to explore alternative monitoring mechanisms.¹³ The Registrar has already proposed several alternative mechanisms for

⁹ *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.

¹⁰ *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").

¹¹ 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.

¹² Appeals Chamber Reconsideration Decision, paras. 12, 16, 17, 19.

¹³ *Id.*, para. 16.



monitoring,¹⁴ and has requested guidance from the President as to his ability to enquire into the alternative organisations that he has suggested, as well as any other organisation that the President may deem competent.¹⁵

7. I consider that the Registrar's proposed alternatives of organisations who have "demonstrated an interest in human rights in the region and might be willing to do such work on a pro-bono basis", namely ICJ-Kenya, Amnesty International, *L'Observatoire International des Avocats*, or the Pan African Lawyers Union are options that the President could consider upon being presented with additional information on the proposed arrangement. I therefore direct the Registrar to immediately begin discussions about the potential for providing monitors with the organisations mentioned above, as well as with the International Senior Lawyers Project, who have also demonstrated an interest in human rights and have already indicated their willingness to engage in similar projects with the Tribunal on a pro-bono basis. I note that the Registrar should be guided by and must adhere to the terms and conditions that the Referral Chamber has enumerated for the Chamber's monitoring. I also consider the Registrar's proposal that two legal officers from Chambers at the Tribunal could be re-deployed to Kigali to undertake the monitoring to be a possibility worth considering further, and request that he provides further submissions with respect to his proposed arrangement for monitoring by Chambers legal officers.

8. In light of the complex monitoring requirements, I have decided to allow three weeks' time for the Registrar to undertake consultations with the above mentioned organisations, and to develop a detailed proposal for monitoring by two Chambers legal officers. I therefore direct the Registrar to file Rule 33 (B) submissions on the steps taken, and to provide details for the proposed monitoring by Chambers legal officers as well as by any of the organisations who agree to provide monitors under the required terms no later than 16 March 2012.

FOR THESE REASONS, THE PRESIDENT

ORDERS that the transfer of Jean Uwinkindi shall be stayed until such time as the President is satisfied that a suitable monitoring mechanism on behalf of the Chamber has been established; and

¹⁴ Registrar's 13 February 2012 Submissions, paras. 19, 20.

¹⁵ *Id.*




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INSTRUCTS the Registrar to urgently undertake discussions and negotiations in order to effectuate the establishment of a monitoring mechanism according to the terms and conditions ordered by the Referral Chamber; and

DIRECTS the Registrar to file submissions under Rule 33 (B) which detail the steps that have been undertaken to secure monitoring and provide details of the proposed options for monitoring no later than Friday, 16 March 2012.

Arusha, 24 February 2012, done in English.


Judge Khalid bin Ahmad Khan
President
[Seal of the Tribunal]



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

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

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	<input type="checkbox"/> OIC, JLSD P. Besnier	<input checked="" type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber <small>(names)</small>	<input type="checkbox"/> Defence <small>(names)</small>	<input type="checkbox"/> Prosecutor's Office <small>(names)</small>
	<input checked="" type="checkbox"/> Other: Office of the President J. Stefanelli <small>(names)</small>		
Case Name:	Prosecutor v. Uwinkindi		Case Number: ICTR-01-75R11bis
Dates:	Transmitted: 24 Feb 2012		Document's date: 24 Feb 2012
No. of Pages:	5	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Order to Stay the Transfer of Jean Uwinkindi Pending the Establishment of a Suitable Monitoring Mechanism		
Classification Level:		TRIM Document Type:	
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure	<input checked="" type="checkbox"/> Order
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion
		<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
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<p>CMS SHALL take necessary action regarding translation.</p> <p><input checked="" type="checkbox"/> Filing Party hereby submits only the original, and will not submit any translated version.</p> <p><input type="checkbox"/> Reference material is provided in annex to facilitate translation.</p> <p>Target Language(s):</p> <p><input type="checkbox"/> English <input checked="" type="checkbox"/> French <input type="checkbox"/> Kinyarwanda</p>		
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