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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER II

Original: English

Before: Judge Winston C. Matanzima Maqutu

Registrar: Mr. Adama Dieng

Date: 8 January 2002

THE PROSECUTOR

vs.

ALOYS SIMBA

Case No. ICTR-2001-76-I

JUDICIAL RECORDS/ARCHIVES  
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DECISION ON THE PROSECUTOR'S *EX PARTE* APPLICATION FOR  
REVIEW AND CONFIRMATION OF THE INDICTMENT AND OTHER  
RELATED ORDERS

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The Office of the Prosecutor:

Ms. Amanda Reichman

[Signature]

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal")

**JUDGE WINSTON C. MATANZIMA MAQUTU**, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rule of Procedure and Evidence (the "Rules");

**BEING SEIZED** of the "Prosecutor's Memorandum Concerning an Application for Review and Confirmation of the Indictment and Other Related Orders," filed on 4 January 2002 (hereinafter, "Prosecutor's Memorandum") annexed to which is an Indictment against one ALOYS SIMBA, filed pursuant to Article 17 of the Tribunal's Statute (hereinafter, "Indictment");

**HAVING RECEIVED and REVIEWED** the supporting materials, also filed together with the Prosecutor's Memorandum on 4 January 2002 comprising, among other things; statements of forty-one (41) witnesses, a Map of Gikongoro and Legislative Acts concerning Census, National Identification Card, Residency and Rwandese Home Address;

**HAVING HEARD** the Prosecutor during an *ex parte* hearing held on 7 January 2002 pursuant to Rule 47(D);

**NOW CONSIDERS** the matter:

**FINDINGS**

1. In her Memorandum, the Prosecutor requests that the Tribunal confirm the Indictment against ALOYS SIMBA. The Judge reviewing an indictment must examine the indictment to determine whether it is consonant with the requirements of the Tribunal's Statutes and Rules. Notably, in this regard, Article 18(1) of the Tribunal's Statute provides:

18(1) The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that the Prosecutor has established a *prima facie case*, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed. (Emphasis added)

2. Moreover, consistent with Rule 47, the reviewing Judge must determine whether the Prosecutor has presented within the Indictment and the supporting materials allegations as would provide "reasonable grounds for believing" that the identified suspect has committed crimes falling within the jurisdiction of the Tribunal.

3. After reviewing the proposed Indictment and the Supporting Materials, including the written statements of some forty-one (41) witnesses, the Tribunal finds that the Prosecutor has presented sufficient allegations to establish *prima facie* case for each of the four (4) counts in the Indictment, namely, (1) genocide, alternatively, (2) complicity in genocide, (3) Extermination as a Crime Against Humanity and (4) Murder as a Crime Against Humanity. In the allegations of the Indictment, as further supported by the various witness statements and reports that comprise the supporting materials, the Tribunal is satisfied that the Prosecutor has demonstrated the existence of reasonable grounds for believing that the identified suspect, ALOYS SIMBA,

committed crimes falling within the jurisdiction of the Tribunal. Accordingly, the Tribunal confirms the Indictment in its entirety.

4. In order to facilitate the review of the Indictment, the Prosecutor produced its "Explanatory Notes in Support of Indictment," which provide annotated references to the Supporting Materials in relation to each count of the Indictment. In her Memorandum and at the hearing, the Prosecutor requested that the said Explanatory Notes, should be returned to her after the indictment review process is complete, pursuant to Rule 70 of the Rules, because the said Explanatory Notes constitute internal documents of the Prosecutor prepared in connection with the preparation of the case. Consistent with Rule 70 of the Rules, the Tribunal grants the Prosecutor's request that the Explanatory Notes in Support of Indictment should not be disclosed to the public or media or to the suspect, or any of his representatives as they constitute the internal work product of the Office of the Prosecutor and are to be returned to the Prosecutor after the review process is complete.

5. In her Memorandum, the Prosecutor further requested, pursuant to Rule 53(C) of the Rules that any unredacted materials provided to the Court during the confirmation process be kept confidential. She also requested, pursuant to Rules 53(C) and 66(C) of the Rules that the names of witnesses and any suspects who are not yet apprehended and of any information that may tend or is likely to disclose their contained in the supporting materials should only be disclosed in a redacted form until further order of the Court.

6. In this regard, it is noted that pursuant to Rule 53 of the Rules, the Tribunal may, upon "consultation with the Prosecutor" enjoin the disclosure to the public of any documents or information, including the Indictment, if such an order is in the interests of justice or necessary to give effect to a provision of the Rules. Rule 66(C) of the Rules authorises the Prosecutor to apply to the Chamber sitting *in camera* to be relieved from the obligation to disclose pursuant to Sub-Rule (A) and (B) of Rule 66 of the Rules.

7. Based on its consultation with the Prosecutor during the hearing of the Prosecutor's Memorandum, the Tribunal finds that it is in the interests of justice that the names and other identifying data for the forty-one (41) witnesses and any suspects who have not yet been apprehended whose names appear in the supporting materials should not be disclosed to the public or the media until they are redacted in order to ensure the safety of the witnesses and to prevent jeopardising the Prosecutor's ongoing investigations. Moreover, The Tribunal finds that it is in the interests of justice that any unredacted materials provided to the Court during the confirmation process should not be disclosed to the public, media, and the suspect unless they are redacted.

8. Furthermore, the Prosecutor requested the non-disclosure to the public and the media of the Indictment pursuant to Rule 53 of the Rules because *inter alia* it contains the names of potential accused persons who may be under investigation. Accordingly, pursuant to Rule 53 of the Rules, the Tribunal grants the Prosecutor's request and orders that the Indictment be placed under seal so that it is not disclosed to the public or the media until it is served upon the Accused. The Tribunal further orders that, in the interests of justice, the names of potential

accused appearing in the Indictment shall not be disclosed to the public and the media until those potential accused have been served with it or until a further order of the Tribunal.

9. Finally, the Tribunal notes that the Prosecutor's request for a Warrant of Arrest, an order for transfer and detention against Aloys Simba, is not necessary as such an order was made by Judge Andr esia Vaz on 23 November 2001.

**FOR THE FOREGOING REASONS, THE TRIBUNAL:**

**CONFIRMS** the Indictment, dated 4 January 2002, brought by the Prosecutor against ALOYS SIMBA (the "Accused");

**ORDERS** the Registrar to translate the Indictment, into a language that the Accused understands and to prepare pursuant to Rule 47(g) of the Rules certified copies of the Indictment, bearing the seal of the Tribunal; and further

**SERVE** on the Accused, as soon as it is practicable, in a language he understands, a certified copy of the Indictment; and further

**ORDERS** the Prosecutor to redact from the supporting materials the names, address, and all data that may be used to identify the forty-one witnesses and any suspects who are not yet apprehended; and further

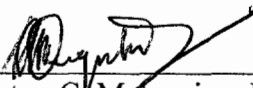
**ORDERS** the Prosecutor to redact from the supporting materials any materials used in the confirmation process which have not yet been redacted before disclosure; and further

**ORDERS** that the Indictment be placed under seal so that it is not disclosed to the public or the media until it is served upon the Accused; and further

**ORDERS** that the names of potential accused persons appearing in the Indictment shall not be disclosed to the public and the media until those potential accused have been served with the Indictment or until a further order of the Tribunal; and further

**ORDERS** that the Explanatory Notes in Support of Indictment should not be disclosed to the public or media or to the suspect, or any of his representatives as they constitute the internal work product of the Office of the Prosecutor and are to be returned to the Prosecutor after the review process is complete.

Arusha, 8 January 2002

  
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Winston C. Matanzima Maqutu  
Judge

Seal of the Tribunal