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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

UNITED  
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**REFERRAL PROCEEDINGS PURSUANT TO RULE 11 BIS**

**Before Judges:** Vagn Joensen, Presiding  
Florence Rita Arrey  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 25 June 2012

**THE PROSECUTOR**

v.

**Aloys NDIMBATI**

*Case No. ICTR-95-1F-R11bis*

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**DECISION ON THE PROSECUTOR'S REQUEST FOR THE REFERRAL  
OF THE CASE OF ALOYS NDIMBATI 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

**Duty Counsel for the Fugitive Accused:**

Ronilick Mchami

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## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

**SITTING** as a Chamber designated under Rule 11 *bis*, composed of Judges Vagn Joensen, Presiding, Florence Rita Arrey and Gberdao Gustave Kam;

**BEING SEISED OF** the Prosecutor's Request of 9 May 2012 for the Designation of a Trial Chamber and Request for the Referral of the Case of Aloys Ndimbati ("Ndimbati" or "Accused") to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") and the subsequent filings of parties;

**HEREBY DECIDES** the Request.

### 1. PROCEDURAL HISTORY

1. The current amended indictment against Aloys Ndimbati was confirmed on 8 May 2012.<sup>1</sup> The Accused remains at large.<sup>2</sup>

2. The present matter began on 9 May 2012, when the Prosecution filed its Request for Designation of a Trial Chamber and Request for the Referral of the Case of Aloys Ndimbati to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence ("Referral Request").<sup>3</sup>

3. In response to the Prosecution's Request, this Chamber was designated to adjudicate the matter, at which time the Duty Counsel ("Duty Counsel" or "Defence") was instructed to file submissions in response to the Prosecution's request within fourteen days of his appointment.<sup>4</sup>

4. The Duty Counsel signed his Statement of Availability on 11 May 2012.<sup>5</sup>

5. On 30 May 2012, this Referral Chamber issued an Amended Scheduling Order, after it came to the attention of the Chamber that Duty Counsel had not received the case materials until 29 May 2012. It instructed Duty Counsel to file his submissions by 19 June 2012.<sup>6</sup>

6. The Duty Counsel filed his Response on 19 June 2012.<sup>7</sup>

<sup>1</sup> *The Prosecutor v. Aloys Ndimbati*, Case No. ICTR-95-1F-R11bis, Prosecutor's Request for the Designation of a Trial Chamber and Request for Referral of the Case of Aloys Ndimbati to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 9 May 2012, para. 13 ("Referral Request"). See also, *The Prosecutor v. Aloys Ndimbati*, Case No. ICTR-95-1F-1, Second Amended Indictment, 8 May 2012.

<sup>2</sup> Referral Request, para. 14.

<sup>3</sup> See Referral Request.

<sup>4</sup> *The Prosecutor v. Aloys Ndimbati*, Case No. ICTR-95-1F-R11bis, Scheduling Order, 10 May 2012.

<sup>5</sup> *The Prosecutor v. Aloys Ndimbati*, Case No. ICTR-95-1F-R11bis, Statement of Availability from Dr. Ronilick E. K. Mchami, Duty Counsel, 11 May 2012.

<sup>6</sup> *The Prosecutor v. Aloys Ndimbati*, Case No. ICTR-95-1F-R11bis, Amended Scheduling Order, 30 May 2012.

<sup>7</sup> *The Prosecutor v. Aloys Ndimbati*, Case No. ICTR-95-1F-R11bis, Defence Response to Prosecutor's Request for Designation of a Trial Chamber and Request for the Referral of the Case of Aloys Ndimbati to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 19 June 2012 ("Defence Response").

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7. The Prosecution submitted its Reply to Duty Counsel's Response on 21 June 2012.<sup>8</sup>

## 2. APPLICABLE LAW

8. Rule 11 *bis* and the jurisprudence of this Tribunal allow a designated Chamber to order the referral of a case to a State that has jurisdiction over the charged crimes and is willing to prosecute and is adequately prepared to accept the case.<sup>9</sup> Before referring a case, the Chamber must be satisfied that the accused will receive a fair trial and the death penalty will not be imposed.<sup>10</sup>

9. The final decision on whether to refer a case is within the discretion of the Referral Chamber.<sup>11</sup> In so determining, the Chamber may consider whatever information it reasonably deems necessary to assist in determining whether the trial, if transferred, will be fair.<sup>12</sup> Article 20 of the Tribunal's Statute ("Statute") provides guidance as to the fair trial rights that must be afforded to the Accused.<sup>13</sup>

10. The *Uwinkindi* Referral Decision, issued on 28 June 2011<sup>14</sup> and upheld on Appeal on 16 December 2011,<sup>15</sup> remains the most relevant jurisprudence on matters of transfer to Rwanda. Additional jurisprudence specifically related to this matter may also be found in the *Kayishema* Referral Decision (2012),<sup>16</sup> the *Sikubwabo* Referral Decision,<sup>17</sup> the *Ntaganzwa* Referral

<sup>8</sup> *The Prosecutor v. Aloys Ndimbati*, Prosecutor's Reply To: "Defence Response to Prosecutor's Request for Designation of a Trial Chamber and Request for the Referral of the Case of Aloys Ndimbati to Rwanda Pursuant to Rule 11bis of the Tribunal's Rules of Procedure and Evidence," 21 June 2012 ("Prosecution Reply").

<sup>9</sup> *The Prosecutor v. Bagaragaza*, Case No. ICTR-05-86-AR11bis, Decision on Rule 11 *bis* Appeal (AC), 30 August 2006, para. 8 ("*Bagaragaza* Appeal Decision").

<sup>10</sup> Rule 11 *bis* (C).

<sup>11</sup> *Bagaragaza* Appeal Decision, para. 9.

<sup>12</sup> *Uwinkindi* Appeal Decision, para. 16 (citing *The Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2-AR11bis.1, Decision on Rule 11bis Referral (AC), 1 September 2005, para. 50 ("*Stanković* Appeal Decision").

<sup>13</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 (AC), 16 December 2011, para. 22 ("*Uwinkindi* Appeal Decision"); *The Prosecutor v. Jean Uwinkindi*, ICTR-2001-75-R11bis, Decision on the Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011, para. 17 ("*Uwinkindi* Referral Decision"); *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Decision on the Prosecution's Appeal Against Decision on Referral under Rule 11 *bis*, 8 October 2008, para. 4 ("*Munyakazi* Appeal Decision").

<sup>14</sup> See *Uwinkindi* Referral Decision.

<sup>15</sup> See *Uwinkindi* Appeal Decision.

<sup>16</sup> *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 22 February 2012 ("*Kayishema* Referral Decision (2012)").

<sup>17</sup> *The Prosecutor v. Charles Sikubwabo*, Case No. ICTR-95-1D-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 26 March 2012 ("*Sikubwabo* Referral Decision").

Decision,<sup>18</sup> the *Munyagishari* Referral Decision,<sup>19</sup> and, most recently, the *Ryandikayo* Referral Decision.<sup>20</sup>

### 3. JURISDICTION

11. The Prosecution submits that Rwanda possesses territorial, personal, material and temporal jurisdiction to prosecute Ndimbati as required by Rule 11 *bis*.<sup>21</sup> It relies upon a letter from the Government of Rwanda dated 28 September 2011 as proof of Rwanda's willingness and readiness to prosecute Ndimbati for the charged crimes.<sup>22</sup>

12. The Defence does not contest the jurisdiction of Rwandan courts over the crimes alleged.<sup>23</sup>

13. The Second Amended Indictment charges the Accused with genocide; complicity in genocide; direct and public incitement to commit genocide; extermination as a crime against humanity; murder as a crime against humanity; rape as a crime against humanity; and persecution as a crime against humanity.<sup>24</sup> The Accused is charged pursuant to both Articles 6 (1) and 6 (3) of the Statute.<sup>25</sup> The Chamber recalls that previous decisions have found that each of these modes of liability is satisfactorily codified within Rwandan law.<sup>26</sup>

14. This Tribunal only has jurisdiction over crimes that occurred between 1 January and 31 December 1994.<sup>27</sup> In referring a case to a national jurisdiction, the Chamber must be certain that the accused will not be charged with crimes committed outside this time period. The Chamber recalls that previous Referral Chambers, namely the *Kanyarukiga* Referral Chamber in 2008, have found that Organic Law No. 11/2007 of 16 March 2007 concerning the Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and From Other States ("Transfer Law") has appropriately narrowed domestic jurisdiction in regards to any case transferred to Rwanda by the ICTR.<sup>28</sup> Therefore, the Chamber is satisfied that the Accused will only be tried for those acts occurring in 1994.

<sup>18</sup> *The Prosecutor v. Ladislas Ntaganzwa*, Case No. ICTR-96-9-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 8 May 2012, ("*Ntaganzwa* Referral Decision").

<sup>19</sup> *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-2005-89-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 6 June 2012 ("*Munyagishari* Referral Decision").

<sup>20</sup> *The Prosecutor v. Ryandikayo*, Case No. ICTR-95-1E-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 20 June 2012 ("*Ryandikayo* Referral Decision").

<sup>21</sup> Referral Request, paras. 23-25.

<sup>22</sup> Referral Request, paras. 15, 32.

<sup>23</sup> See Defence Response, para. 4.

<sup>24</sup> Referral Request, para. 13.

<sup>25</sup> Referral Request, para. 13.

<sup>26</sup> See *Uwinkindi* Referral Decision, para. 19; *Kayishema* Referral Decision (2012), para. 15; *Sikubwabo* Referral Decision, para. 13; *Ntaganzwa* Referral Decision para. 12; *Munyagishari* Referral Decision, paras. 12-13.

<sup>27</sup> See Statute, Articles 1, 7.

<sup>28</sup> *The Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, para. 20 ("*Kanyarukiga* Referral Decision"). See also *Uwinkindi* Referral Decision, paras. 20-21.

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#### 4. FAIR TRIAL

##### 4.1 Presumption of Innocence

15. The Prosecution submits that Rwanda has made presumption of innocence part of its statutory criminal law, pointing to Article 13 (2) of the Transfer Law, Article 19 of Rwanda's Constitution and Article 44 (2) of Rwanda's Code of Criminal Procedure ("RCCP").<sup>29</sup>

16. The Defence does not oppose the Prosecution's assertion and makes no further submissions on this particular topic.<sup>30</sup>

17. General Comment No. 32 of the United Nations Human Rights Committee ("HRC") concerns the right to equality before courts and to a fair trial, as enshrined in Article 14 of the International Covenant on Civil and Political Rights ("ICCPR"). On the particular issue of presumption of innocence, it states: "It is a duty for all public authorities to refrain from prejudging a trial, e.g. by abstaining from making public statements affirming the guilt of the accused [...]. The media should avoid news coverage undermining the presumption of innocence."<sup>31</sup>

18. Article 19 of the Constitution of Rwanda provides that every accused person "shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing [...]."<sup>32</sup> The Chamber recalls that previous Referral Chambers have found that presumption of innocence forms part of Rwanda's statutory law, and is in conformity with several human rights treaties to which Rwanda is a party.<sup>33</sup> Given that neither party has raised additional arguments that would differentiate the current case with previous decisions, this Chamber concludes that, if transferred, Ndimbati will be afforded the right to a presumption of innocence.

##### 4.2 *Non bis in idem*

19. The Prosecution submits that the two *Gacaca* judgements against the Accused have been vacated by the *Gacaca* Court of Appeals pursuant to Article 93 of Rwanda's *Gacaca* Law, because both of these judgements were rendered *in absentia*, in contravention of Article 2 of Rwanda's Transfer Law, as well as the principle of the Tribunal's superior jurisdiction, found in Article 8 of the Statute.<sup>34</sup>

<sup>29</sup> Referral Request, paras. 44-45.

<sup>30</sup> Defence Response, paras. 5-6.

<sup>31</sup> United Nations Human Rights Committee, General Comment No. 32: Article 14 Right to Equality Before Courts and Tribunal and to Fair Trial, CCPR/GC/32, 23 August 2007, para. 30 ("General Comment No. 32").

<sup>32</sup> Referral Request, para. 44.

<sup>33</sup> *Uwinkindi* Referral Decision, paras. 22, 26; *Kayishema* Referral Decision (2012), para. 19; *Sikubwabo* Referral Decision, para. 17; *Ntaganzwa* Referral Decision, para. 17; *Munyagishari* Referral Decision, para. 55; *Ryandikayo* Referral Decision, para. 25.

<sup>34</sup> Referral Request, paras. 16-17.

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20. The Defence offers no submission on this matter.<sup>35</sup>

21. Article 14 (7) of the ICCPR states that “[n]o one shall be tried or punished again for an offence for which he has been finally convicted or acquitted in accordance with the law and penal procedure of each country.” Article 9 of the Statute embodies this principle. However, the Chamber notes that General Comment No. 32 states that “[t]he prohibition [against double jeopardy] is not at issue if a higher court quashes a conviction and orders a retrial.”<sup>36</sup>

22. In light of the above, and following settled precedent,<sup>37</sup> the Chamber finds that the nullification of the Accused's convictions by the *Gacaca* Court of Appeals, a higher court, means that a trial of the Accused before Rwanda's High Court or Supreme Court would not violate the principle of *non bis in idem*.

#### 4.3 Extradition Cases

23. The Prosecution highlights several recent cases in which international courts such as the European Court of Human Rights and the courts of States such as Norway, Canada and France have concluded that fair trial standards are observed in Rwandan courts, thus “recognizing Rwanda's capacity and commitment to ensuring that the Accused in any referred case will receive a fair trial.”<sup>38</sup>

24. The Defence also refers to these cases, stating, “[i]f courts of record in well developed, experienced and fair legal systems have made such decisions [...] it is the Defence's considered opinion that there is nothing wrong in making a similar decision in the current case.”<sup>39</sup>

25. The Chamber notes that a reasoned analysis of two of these cases has already been provided in the *Kayishema* Referral Decision (2012) and the *Sikubwabo* Referral Decision.<sup>40</sup> Moreover, the Chamber considers that the French and Canadian cases merely serve to bolster the Prosecution's argument concerning the growing confidence of the international community in Rwanda's ability to guarantee a fair trial.<sup>41</sup> The Chamber recalls that this Tribunal is not bound by the decisions of national jurisdictions; thus, it does not deem an in-depth analysis of these two cases to be necessary. However, the Chamber takes note of this seeming “trend” that may be seen in recent international and national decisions.

<sup>35</sup> See Defence Response.

<sup>36</sup> General Comment No. 32, para. 56.

<sup>37</sup> *Uwinkindi* Referral Decision, para. 35; *Uwinkindi* Appeal Decision, para. 44; *Kayishema* Referral Decision (2012), para. 22; *Sikubwabo* Referral Decision, para. 20; *Ntaganzwa* Referral Decision, para. 21.

<sup>38</sup> Referral Request, paras. 4-9.

<sup>39</sup> Defence Response, para. 5.

<sup>40</sup> The *Kayishema* and *Sikubwabo* Referral Chambers discussed *NCLIS Norway v. Charles Bandora*, and *Ahorugeze v. Sweden*, Judgement, European Court of Human Rights, 27 October 2011. See *Kayishema* Referral Decision (2012), paras. 29-30; *Sikubwabo* Referral Decision, paras. 27-28.

<sup>41</sup> Referral Request, para. 4.

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#### 4.4 Conclusion

26. The Referral Chamber expects that the Republic of Rwanda will ensure that the Accused, upon surrender or apprehension, will be expeditiously brought before a judicial authority and, thereafter, will be extended, at a minimum, all the guarantees contained in Article 20 of the Statute and in the ICCPR to ensure a fair and expeditious conduct of proceedings against him.

#### 5. PENALTY STRUCTURE

27. The Prosecution contends that any previous concerns regarding Rwanda's penalty structure, such as the imposition of the death penalty and life imprisonment with special provisions, have been resolved by Rwanda's Abolition of the Death Penalty Law (Organic Law No. 31/2007 of 25 July 2007).<sup>42</sup>

28. The Defence makes no direct submissions on Rwanda's penalty structure, other than to include in its Prayer for Relief that "the accused in the event of conviction shall not suffer a death penalty [...]."<sup>43</sup> Given the fact that Rwanda has abolished the death penalty entirely, the Chamber does not foresee any possibility that the Accused would be subjected to this penalty, if convicted.

29. Although not expressly stated in Rule 11 *bis*, the jurisprudence of this Tribunal and the International Criminal Tribunal for the former Yugoslavia ("ICTY") has established that the State to which a case is referred must provide an appropriate punishment for the offences with which an Accused is charged.<sup>44</sup> The Chamber is satisfied that Rwanda's recent legislative changes have addressed previous concerns voiced by this Tribunal in earlier referral decisions.<sup>45</sup>

#### 6. CONDITIONS OF DETENTION

30. Concerning the specific detention facilities that will accommodate all cases transferred from the ICTR—Mpanga and Kigali prisons—the Prosecution submits that the facilities meet international standards, and notes that "[c]onvicts from the Special Court for Sierra Leone are currently serving their sentences in Mpanga prison [...]."<sup>46</sup> It contends that Rwanda's Transfer Law provides further assurance that such conditions of detention will be maintained, as it allows for continued inspections and confidential reports by either the International Committee of the Red Cross ("ICRC") or an observer appointed by the ICTR.<sup>47</sup> Lastly, the Prosecution points to the ICTR monitoring mechanisms that have been established in recent referral decisions as an additional safeguard.<sup>48</sup>

<sup>42</sup> Referral Request, para. 34.

<sup>43</sup> Defence Response, para. 19 (iii).

<sup>44</sup> *The Prosecutor v. Stanković*, Case No. IT-96-23/2-PT, Decision on Referral of Case Under Rule 11*bis* (TC), 17 May 2005 ("Stanković Trial Decision"); *Bagaragaza* Appeal Decision, para. 9.

<sup>45</sup> See *Uwinkindi* Referral Decision, para. 49; *Kayishema* Referral Decision (2012), para. 43; and *Sikubwabo* Referral Decision, para. 41.

<sup>46</sup> Referral Request, paras. 37, 39.

<sup>47</sup> Referral Request, para. 41.

<sup>48</sup> Referral Request, para. 43.

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31. In its Response, the Defence requests that the Referral Chamber order two orders in regards to the conditions of detention.<sup>49</sup> First, it asks the Chamber "to order that the Republic of Rwanda shall be legally bound to fulfil all the promises stated by the Prosecutor" in his Request.<sup>50</sup> Second, in the event that Rwanda fails to keep the promises given by the Prosecutor, the Defence requests that "Ndimbati shall have an automatic legal right to apply to [the] ICTR or its successor for relocation to another country where he will serve his sentence in the detention facilities which meet international standards [...]."<sup>51</sup> In support of its requests, the Defences states that "[i]t is tenable that, in light of the particularities of this case [...] the implementation of such condition in any referral decision, would be in accordance with international law instruments."<sup>52</sup>

32. In its Reply, the Prosecution asserts that this condition requested by the Defence "misconstrue[s] the referral process."<sup>53</sup> It further contends that the monitoring and revocation scheme established by previous Rule 11 *bis* decisions, provide "adequate safeguards to ensure that there will be no substantial deterioration in the conditions of detention for prisoners in transferred cases."<sup>54</sup>

33. The conditions of detention speak to the fairness of a country's criminal justice system, and must be in accord with internationally recognised standards.<sup>55</sup> Given this importance, a Referral Chamber must ensure that at the time of transfer, the conditions of detention in the receiving state conform to international standards. However, the Chamber notes that the Prosecution is correct in its assertion that, once transferred and convicted, "[n]either this Chamber nor Rwanda can force another country to accept custody of a prisoner [...]."<sup>56</sup>

34. Nevertheless, the Chamber notes that Rwanda's Transfer Law states that any person transferred from this Tribunal to Rwanda shall be detained in accordance with the minimum standards of detention, as adopted by the United Nations General Assembly Resolution 43/173. This law also allows the ICRC or a monitor appointed by this Tribunal to submit a confidential

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<sup>49</sup> Defence Response, para. 8.

<sup>50</sup> Defence Response, para. 8.

<sup>51</sup> Defence Response, para. 8.

<sup>52</sup> Defence Response, para. 9.

<sup>53</sup> Prosecution Reply, para. 1.

<sup>54</sup> Prosecution Reply, para. 16.

<sup>55</sup> Conditions of detention in a national jurisdiction, whether pre- or post-conviction, is a matter that touches upon the fairness of that jurisdiction's criminal justice system and is an inquiry squarely within the Referral Chamber's mandate. *Stanković* Appeal Decision, para. 34. These internationally recognised standards include: (i) Freedom from torture, or cruel, inhumane or degrading treatment or punishment as contained in Article 5, Universal Declaration of Human Rights; Article 7, ICCPR; Article 5, African Charter on Human and Peoples' Rights ("AChHPR"); Article 16 (1), Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; Principle 6 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988) ("Body of Principles"); and (ii) all person deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person as contained in Article 10 (1), ICCPR; Article 5, AChHPR; and Principle 1 of the Body of Principles.

<sup>56</sup> Prosecution Reply, para. 16.

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report based on the findings of these inspections to the Rwandan Minister of Justice and the ICTR President.<sup>57</sup>

35. The Chamber is satisfied that adequate detention conditions are guaranteed by the Transfer Law, and expects that the monitoring mechanism will conduct regular prison visits to ensure that both the detention conditions and the treatment of the Accused in detention are satisfactory. Additionally, the Chamber is satisfied that the monitors will immediately report any concerns to the President of the Tribunal or the President of the International Residual Mechanism for Criminal Tribunals ("Residual Mechanism"), as appropriate. Therefore, the Chamber considers that the statutory guarantees and establishment of a monitoring mechanism ensure that adequate safeguards will remain in place if the Accused is convicted, and such additional conditions as requested by the Defence need not be instituted.

## 7. AVAILABILITY AND PROTECTION OF WITNESSES

36. The Prosecution submits that issues relating to witness availability and protection found in previous Rule 11 *bis* decisions have adequately been addressed by Rwanda.<sup>58</sup> Specifically as to the area of witness availability, the Prosecution points out that Article 13 of the Transfer Law has been amended to include immunity for anything said or done in the course of a trial, save for those actions or statements which amount to contempt of court and/or perjury.<sup>59</sup> Article 14 provides that any witness coming from outside of Rwanda to testify in a referred case shall not be subject to "search, seizures, arrest or detention during their testimony and their travel to and from the trials."<sup>60</sup>

37. The Prosecution further contends that previous concerns regarding the fact that the only witness protection program was run by the Prosecutor's office have been addressed by the creation of the Witness Protection Unit ("WPU") under the authority of the judiciary, specifically within the Supreme Court and High Court.<sup>61</sup> According to the Prosecutor, the immediate activation of this unit was ordered by Rwanda's Chief Justice upon the Tribunal's decision to transfer Uwinkindi's case to Rwanda.<sup>62</sup> The unit will be comprised of "six registrars from the Supreme Court and five registrars from the High Court[.]" with additional three registrars expected to be added later.<sup>63</sup> To assist the registrars in carrying out their duties, professionals who are highly-experienced in victim/witness related services will advise and consult with WPU.<sup>64</sup>

38. The Defence provides no submissions on this matter.

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<sup>57</sup> Referral Request, para. 41.

<sup>58</sup> Referral Request, para. 46.

<sup>59</sup> Referral Request, para. 47.

<sup>60</sup> Referral Request, para. 47.

<sup>61</sup> Referral Request, para. 54.

<sup>62</sup> Referral Request, para. 55.

<sup>63</sup> Referral Request, para. 55.

<sup>64</sup> Referral Request, para. 55.

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39. In assessing the availability of witnesses and the protection provided them, this Chamber must assess the likelihood that, if his case were transferred to Rwanda, the Accused will be able to "obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her."<sup>65</sup> In conducting such an assessment in the present case, the Chamber recalls that previous Rule 11 *bis* Decisions that denied requests for referral relied upon findings that "witnesses in Rwanda may be unwilling to testify for the defence due to their fear that they may face serious consequences, including prosecution, threats, harassment, torture, arrest or even murder."<sup>66</sup>

40. Since the *Kanyarukiga* Appeals Decision, Rwanda has shown itself willing and able to amend its laws to address these concerns. The amendment of Article 13 of the Transfer Law to include immunity for statements made by witnesses at trial as well as the improvement in the operation of the Rwanda Victims and Witness Support Unit ("VWSU" or "WVSU") and the establishment of the WPU under the judiciary are steps towards allaying witnesses' fears.

41. Should a witness residing abroad be unwilling to travel to Rwanda to testify, despite the provisions above, the 2009 amendment to Article 14 of the Transfer Law presents three more ways in addition to providing *viva voce* testimony, that witnesses may give evidence to the High Court in Rwanda. They may provide testimony via deposition in Rwanda; via video-link taken before a judge at trial, or in a foreign jurisdiction; or via a judge sitting in a foreign jurisdiction.<sup>67</sup>

42. Rule 11 *bis* (D) (ii) provides that the Referral Chamber may order existing protective measures for certain witnesses or victims to remain in force. In addition, in the event of referral, external monitors would oversee these protection programmes. The Referral Chamber would expect that the ICTR appointed monitors meet with defence counsel and the WPU on a regular basis and address the concerns raised in their regular reports to this Tribunal. The Chamber concludes that the potential reluctance of witnesses to avail the services of the WPU is speculative at this time, and is of the opinion that the issuance of protective measures for defence witnesses *prima facie* guarantees a likely fair trial of the Accused.

## 8. RIGHT TO AN EFFECTIVE DEFENCE

43. The Prosecution submits that Rwanda's legal framework provides for both the protection and realisation of an accused's right to an effective defence.<sup>68</sup>

44. Under Article 20 (4) (b) of the Statute, and Article 14 (3) of the ICCPR, accused persons are given the right to defend themselves through the counsel of their choice and to have adequate time and facilities for the preparation of their defence. Article 20 (4) (d) of the Statute provides that free legal assistance be assigned where required by the interests of justice, or where the accused has insufficient means to pay. The Chamber notes that Article 13 (4) and 13 (6) of Rwanda's Transfer Law codify these provisions.

<sup>65</sup> Article 20 (4) (e) of the Statute.

<sup>66</sup> *Uwinkindi* Referral Decision, para. 100 (citing *Kanyarukiga* Appeals Decision, para. 33).

<sup>67</sup> Referral Request, para. 68.

<sup>68</sup> Referral Request, para. 86.

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45. The Prosecution submits that "Rwanda's Constitution and laws guarantee the right to legal representation before courts of law to all accused persons."<sup>69</sup> Specifically, it points to Articles 18 and 19 of the Rwandan Constitution which establish, respectively, that "[...] the right to defence [is] absolute at all levels and degrees of proceedings before [...] judicial [...] organs[.]" and provide for a fair and public hearing "in which all the necessary guarantees for defence have been made available."<sup>70</sup>

46. In addition to such legal guarantees, the Prosecution states that Rwanda has the actual capacity to provide counsel to the accused transferred from the Tribunal.<sup>71</sup> Of the 890 lawyers admitted to the Kigali Bar Association ("KBA"), approximately 173 have been practising for more than seven years.<sup>72</sup> Additionally, should the accused so choose, he may also be represented by a foreign lawyer who has been admitted to practice before Rwandan courts.<sup>73</sup>

47. In its Response, the Defence argues that it is within the Referral Chamber's power and discretion to order Rwanda to afford Ndimbati the right "to receive continued legal representation from international counsel, in addition to national counsel."<sup>74</sup> However, the Chamber notes, that in its Prayer for Relief, the Defence only asks that "the accused shall be availed with the right of Legal Representation from within the Republic of Rwanda or from outside the Republic of Rwanda."<sup>75</sup> The Defence offers three arguments in relation to Ndimbati's right to legal representation. In addition to its submission regarding the appointment of international and national counsel, the Defence also states that the "fundamental right [to counsel] also encompasses the right of [...] the accused to fire his counsel and appoint another at the expense of the Republic of Rwanda."<sup>76</sup> Additionally, the Defence submits that any counsel appointed must have "a legally trained and experienced legal mind," due to the fact that "this case involves complex procedural and substantive law issues[.]"<sup>77</sup>

48. In its Reply, the Prosecution asserts that this request by the Defence is "contrary to law."<sup>78</sup> It reiterates that Rwanda has provided for a legal aid program to ensure that any accused referred by the ICTR receives adequate legal aid, but correctly states that the right to an attorney entitles Ndimbati "to appointed counsel but not necessarily counsel of his choice."<sup>79</sup> Nevertheless, the Prosecution confirms that "it is possible for appointed counsel to be an international or foreign attorney,"<sup>80</sup> but asserts that the mere fact that it is possible "to comply

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<sup>69</sup> Referral Request, para. 73.

<sup>70</sup> Referral Request, para. 74.

<sup>71</sup> Referral Request, para. 75.

<sup>72</sup> Referral Request, para. 75.

<sup>73</sup> Referral Request, para. 76.

<sup>74</sup> Defence Response, para. 15.

<sup>75</sup> Defence Response, para. 19 (ii).

<sup>76</sup> Defence Response, para. 12.

<sup>77</sup> Defence Response, para. 14.

<sup>78</sup> Prosecution Reply, para. 1.

<sup>79</sup> Prosecution Reply, para. 7.

<sup>80</sup> Prosecution Reply, para. 9.

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with this proposed conditions [...] does not mean that the Chamber should impose it as a condition for referral."<sup>81</sup>

49. The Chamber recalls that previous Referral Decisions have found Article 13 (6) of the Transfer Law, which entitles an accused to counsel of his choice or legal representation, should he not have the means to pay for such, to satisfactorily guarantee an effective right to counsel.<sup>82</sup> Furthermore, previous Referral Chambers have expressly stated that while "Rwanda's decision to permit foreign lawyers to practice before its courts [is welcomed], it is not for the Referral Chamber to decide whether Rwandan or foreign lawyers would most effectively represent the Accused."<sup>83</sup> However, the Chamber also recalls that the *Munyagishari* Referral Chamber conditioned its transfer "on the assignment of counsel with sufficient international experience," and stated that it was "within the discretion of the President of this Tribunal or the Residual Mechanism to determine whether prospective counsel has sufficient experience."<sup>84</sup>

50. Similarly, this Chamber also considers that any defence counsel appointed to represent the accused should have sufficient previous experience so as to enable him or her to effectively present the accused's defence. However, the Chamber does not consider this requirement to necessitate the need to condition the transfer on the appointment of foreign or international counsel for the accused. The Chamber recalls that previous Referral Chambers have found that the Kigali Bar Association has "a sufficient number of competent, qualified and experienced lawyers"<sup>85</sup> who also have experience in the defence of genocide cases.<sup>86</sup> Therefore, the Chamber is satisfied that the Accused's right to counsel will be respected, and concludes that it is not necessary to condition a referral upon the appointment of international counsel.

## 9. JUDICIAL COMPETENCE, INDEPENDENCE AND IMPARTIALITY

51. The Prosecution submits that the Rwandan judiciary is independent and impartial. To support this claim, it highlights that all judges are qualified and experienced lawyers, enjoy security in their tenure, operate in a judicial system that is independent from other government branches and are governed by a strict code of ethics.<sup>87</sup>

52. The Prosecution highlights Rwanda's legal framework and its provisions against outside pressure as evidence that the system as a whole is independent and impartial. Additionally, it relies upon the acquittal rate before the High Court of Rwanda,<sup>88</sup> and draws the attention of the

<sup>81</sup> Prosecution Reply, para. 10.

<sup>82</sup> See *Uwinkindi* Referral Decision, para. 139; *Uwinkindi* Appeal Decision, para. 71; *Kayishema* Referral Decision (2012), para. 102; *Sikubwabo* Referral Decision, para. 100; *Ntaganzwa* Referral Decision, para. 49; *Munyagishari* Referral Decision, para. 146; *Ryandikayo* Referral Decision, para. 56.

<sup>83</sup> See *Uwinkindi* Referral Decision, para. 139; *Kayishema* Referral Decision (2012), para. 102; *Sikubwabo* Referral Decision, para. 100; *Ntaganzwa* Referral Decision, para. 49.

<sup>84</sup> *Munyagishari* Referral Decision, para. 148.

<sup>85</sup> *Munyagishari* Referral Decision, para. 146. See also *Uwinkindi* Referral Decision, para. 140; Referral Request, para. 75.

<sup>86</sup> See *Uwinkindi* Referral Decision, para. 137;

<sup>87</sup> Referral Request, paras. 87-88.

<sup>88</sup> Referral Request, para. 100.

Chamber to the qualifications and expertise of the Rwandan judges, particularly regarding genocide cases.<sup>89</sup>

53. The Defence does not contest the Prosecution's submissions with regards to the impartiality of the Rwandan judiciary.

54. Article 20 (2) of the Statute guarantees the right to a fair and public hearing. This right encompasses the right to be tried before an independent and impartial tribunal, as reflected in major human rights instruments<sup>90</sup> and international criminal jurisprudence.<sup>91</sup>

55. The criteria that define an independent judiciary are articulated in the HRC General Comment No. 32, and include the following: the procedure and qualifications for the appointment of judges; the guarantees relating to their security of tenure; the conditions governing promotion, transfer, suspension or cessation of their functions; and the actual independence of the judiciary from external interference.<sup>92</sup>

56. The Appeals Chamber has defined the absence of impartiality as the existence of actual bias or an unacceptable appearance of bias. Circumstances that may give rise to an unacceptable appearance of bias include when a judge is a party to a case, has financial interest in the outcome of the case or when the case will lead to a promotion of a cause in which the judge is involved. It also includes "circumstances that would lead a reasonable observer, properly informed, to reasonably apprehend bias."<sup>93</sup>

57. There exists a presumption of impartiality which attaches to a judge or a tribunal,<sup>94</sup> deriving from the judges' oath of office as well as the qualifications for their appointment. The Chamber notes that though absolute neutrality can hardly, if ever, be achieved, in the absence of

<sup>89</sup> Referral Request, para. 96.

<sup>90</sup> ICCPR, Article 14 (1) (providing that "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."); ECHR, Article 6 (1) (protecting the right to a fair trial and providing *inter alia* that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."); AChHPR, Article 7 (1) (providing that every person shall have the right to have his case tried "within a reasonable time by an impartial court or tribunal." The AChHPR "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa" recognises "General Principles Applicable to All Legal Proceedings," among them a fair and public hearing, independent and impartial tribunal).

<sup>91</sup> *Furundžija* Appeal Judgement, para. 177, fn 239 (holding that under Article 21 (2) of the Statute of the ICTY, which is identical to Article 20 (2) of the Statute of the ICTR, the Accused is entitled to "a fair and public hearing" in the determination of the charges against him).

<sup>92</sup> General Comment No. 32, para. 19.

<sup>93</sup> *Uwinkindi* Referral Decision, paras. 75-76; *The Prosecutor v. Furundžija*, Case No. IT-97-17/1-A, Judgement (AC), 21 July 2000, para. 203 ("*Furundžija* Appeal Judgement").

<sup>94</sup> *The Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 para. 48 ("*Nahimana* Appeal Judgement"); *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001, para. 91; *The Prosecutor v. Seromba*, Case No. ICTR-2001-66-T, Decision on Motion for Disqualification of Judges (TC), 25 April 2006, para. 9; *The Prosecutor v. Karemera*, Case No. ICTR-98-44-T, Decision by Nzirorera for Disqualification of Trial Judges (TC), 17 May 2004, para. 11; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Disqualification of Judge Byron and Stay of Proceedings (TC), 20 February 2009, para. 6.

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evidence to the contrary, it must be assumed that judges can “disabuse their minds of any irrelevant personal beliefs or predispositions.”<sup>95</sup> The Appeals Chamber held in *Furundžija* that there is a high threshold that must be reached in order to rebut the presumption of impartiality, and partiality must be established upon adequate and reliable evidence.<sup>96</sup> As in *Uwinkindi*, *Ntaganzwa* and *Ryandikayo*, this Chamber is of the view that as professional judges, Rwandan judges benefit from this presumption of independence and impartiality—a presumption which cannot easily be rebutted.<sup>97</sup>

## 10. MONITORING AND REVOCATION

### 10.1 Monitoring

58. The Prosecution requests that this Chamber follow the *Sikubwabo*, *Kayishema* and *Ntaganzwa* Referral Chambers in “ordering that the monitoring mechanism implemented in *Uwinkindi* apply *mutatis mutandis* in the case of the Accused once he is arrested and transferred to Rwanda.”<sup>98</sup>

59. The Defence has made no submission on this matter.

60. In 2011, Rule 11 *bis* (D) (iv), which had previously stated that the Prosecutor could appoint observers to monitor the proceedings of any case referred to Rwanda, was amended to enable the Referral Chamber to request that the Registrar appoint a monitor for the proceedings.

61. Rule 11 *bis* (G) provides for the revocation of a transfer order, providing that where the Tribunal makes such a revocation, the State shall accede thereto without delay, in keeping with Article 28 of the Statute.

62. The *Uwinkindi* Appeal Decision held that in adjudicating a referral application, a Chamber may satisfy itself that an accused will receive a fair trial on the basis, *inter alia*, of the monitoring and revocation mechanism.<sup>99</sup> Numerous Referral Chambers have found Rwanda’s legal framework sufficient to ensure an effective monitoring system.<sup>100</sup>

63. This Chamber considers it to be in the interests of justice to ensure that there is an adequate system of monitoring in place if this case is to be transferred. Under Rule 11 *bis*, as amended in 2011, the Referral Chamber, as well as the Tribunal’s Prosecutor, has the ongoing

<sup>95</sup> *Furundžija* Appeal Judgement, para. 203.

<sup>96</sup> *Furundžija* Appeal Judgement, para. 197.

<sup>97</sup> *Uwinkindi* Referral Decision, para. 166; *Ntaganzwa* Referral Decision, para. 72; *Ryandikayo* Referral Decision, para. 64.

<sup>98</sup> Referral Request, para. 115.

<sup>99</sup> *Uwinkindi* Appeal Decision, para. 83.

<sup>100</sup> See *Uwinkindi* Referral Decision, para. 209; *Kayishema* Referral Decision (2012), para. 149; *Sikubwabo* Referral Decision, para. 147; *Ntaganzwa* Referral Decision, para. 78; *Munyagishari* Referral Decision, para. 209; *Ryandikayo* Referral Decision, para. 72.

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capacity to monitor a case which it has referred to a national jurisdiction and, where the circumstances so warrant, to have the transferred case recalled to this Tribunal.<sup>101</sup>

64. Additionally, the Chamber notes that Article 19 of the Transfer Law provides that "[o]bservers appointed by the ICTR Prosecutor shall have access to court proceedings, documents and records relating to the case as well as access to places of detention." In consideration of the amended Rule 11 *bis* D (iv), which not only provides for the Prosecutor's monitoring, but now also enables the Chamber to request the Registrar to send observers to monitor the proceedings of the trials in referred cases, the Referral Chamber requests Rwanda to provide Registry monitors with access to the court proceedings, documents, records and locations, including any detention facility where the Accused would be detained.

65. Following the *Ryandikayo*, *Munyagishari*, *Ntaganzwa*, *Kayeshima* and *Sikubwabo* Referral Chambers, the Chamber considers this suggestion to be most suitable. It notes that the President of the Tribunal has directed that ICTR legal staff be appointed as interim monitors while negotiations are ongoing with the African Commission on Human and Peoples' Rights ("ACHPR"), or, should such discussions prove unsuccessful, another organisation is appointed as a monitor together with the ICTR legal staff.<sup>102</sup> Therefore, the Chamber finds that such arrangements should apply, *mutatis mutandis*, to the case of the Accused, when he is arrested and transferred to Rwanda.<sup>103</sup>

<sup>101</sup> On 1 April 2011, the ICTR Rules Committee presented the revised Rule 11 *bis* and it was adopted by the Chambers Plenary session. The Rule was amended to read as follows:

Rule 11 *bis* :

(D) [...]

(iv) the Prosecutor and, if the Trial Chamber so orders, the Registrar shall send observers to monitor the proceedings in the State concerned. The observers shall report, respectively, to the Prosecutor, or through the Registrar to the President.

[...]

(F) At any time after an order has been issued pursuant to this Rule and before the Accused is found guilty or acquitted by a court in the State concerned, the Trial Chamber may *proprio motu* or at the request of the Prosecutor and upon having given to the authorities of the State concerned the opportunity to be heard, revoke the order and make a formal request for deferral within the terms of Rule 10.

<sup>102</sup> See *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75R11bis, Decision on the Monitoring Arrangements for the Trial of Jean Uwinkindi in the Republic of Rwanda, 5 April 2012, Disposition.

<sup>103</sup> On the point of the Accused's arrest and transfer to Rwanda, this Chamber wishes to address the Defence's request that "the accused shall be availed with a fair trial [...] after his arrest or surrender to the jurisdiction of ICTR and relocation into the Republic of Rwanda." (Defence Response, para. 19 (i)). The Prosecution understands this request to mean that once the Accused is apprehended, he must first be transferred to the ICTR, before being transferred to Rwanda. It contends that such a request misconstrues the referral process (Prosecution Reply, para. 1). The Chamber considers that the Defence's request, in essence, does not ask for such a condition, but requests that in the event that the Accused decides to surrender himself to the jurisdiction of this Tribunal and once he is transferred to Rwanda, he be afforded a fair trial. Given this seeming misreading by the Prosecution, the Chamber considers that both parties are in agreement that the Accused shall be arrested and transferred to Rwanda, or, if he surrenders himself to the ICTR or Residual Mechanism, that the competent body will immediately arrange for his transfer to the Republic of Rwanda.

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66. In accordance with Article 6 (5) of the Statute of the Residual Mechanism, the Arusha branch of the Residual Mechanism shall take over the monitoring of cases referred to national courts by this Tribunal, with the assistance of international and regional organisations and bodies.<sup>104</sup> Monitoring will continue uninterrupted with the proviso that the competence of this Tribunal will pass to the Residual Mechanism on 1 July 2012. The Chamber considers its choice of monitoring mechanism to be consistent with the requirements established in this Article.

67. The Referral Chamber recognises and reiterates the importance of the continued cooperation of Rwanda with this Tribunal and the Residual Mechanism. It expects Rwanda to facilitate and assist the monitors in their monitoring activities.

### 10.2 Revocation

68. The Chamber is mindful of the revocation mechanism established under Rule 11 *bis*. However, bearing in mind the delays occasioned by the transfer proceedings, it must consider that proceedings requesting revocation could be equally time-consuming. In addition, if a case were revoked, further time would be spent by the parties at the Tribunal preparing for trial. This would inevitably adversely impact the Accused's right to an expeditious trial, even if revocation is sought by the Accused himself. Therefore, this Chamber will only consider the revocation mechanism as a remedy of last resort.

69. Having said that, the Chamber is cognizant that the nature and importance of this case would require a great degree of diligence on the part of any person or agency charged with monitoring. Such a monitor would be in a position to provide accurate and up-to-date data on the conduct of the proceedings in Rwanda.

## 11. CONCLUSION

70. Upon assessment of the submissions of the parties, the Chamber has concluded that the case of Aloys Ndimbati should be referred to the authorities of the Republic of Rwanda for his prosecution before the High Court of Rwanda for charges brought against him by the Prosecutor in the Second Amended Indictment.

71. This Chamber notes that Rwanda has made material changes in its laws and has indicated its capacity and willingness to prosecute cases referred by this Tribunal, and that six other Referral Chambers constituted by this Tribunal have referred similar cases to Rwanda in the last year.<sup>105</sup> The Referral Chamber, therefore, has confidence that the case of the Accused will be prosecuted consistent with internationally recognised fair trial standards enshrined in the Statute of this Tribunal and other human rights instruments. The Chamber is persuaded to refer this case after receiving assurances that a robust monitoring mechanism will ensure that any material violation of the fair trial rights of this Accused will be brought to the attention of the President of

<sup>104</sup> See Article 6 (5) of the Statute of the International Residual Mechanism for Criminal Tribunals, Security Council Resolution 1966, S/Res/1966, 22 December 2010.

<sup>105</sup> See *Ryandikayo* Referral Decision; *Munyagishari* Referral Decision; *Ntaganzwa* Referral Decision; *Kayishema* Referral Decision (2012); *Sikubwabo* Referral Decision; *Uwinkindi* Referral Decision.

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the Tribunal or the President of the Residual Mechanism, as appropriate, so that remedial action, including revocation, can be considered.

72. Finally, the Chamber expresses its solemn hope that the Republic of Rwanda, in accepting referrals from this Tribunal, will actualise in practice the commitments it has made about its good faith, capacity and willingness to enforce the highest standards of international justice in the referred cases.

## 12. DISPOSITION

### FOR THE FOREGOING REASONS, THE REFERRAL CHAMBER

**PURSUANT** to Rule 11 *bis* of the Rules;

**GRANTS** the Motion;

**ORDERS** the case of *The Prosecutor v. Aloys Ndimbati* (Case No. ICTR-95-1F-R11bis) to be referred to the authorities of the Republic of Rwanda, so that those authorities should forthwith refer the case to the High Court of Rwanda for an expeditious trial;

**DECLARES** that the referral of this case shall not have the effect of revoking the previous Orders and Decisions of this Tribunal in this case, including any protective measures for witnesses previously imposed;

**ORDERS** the Prosecution to hand over to the Prosecutor General of Rwanda, as soon as possible and no later than thirty days after this Decision has become final, the material supporting the Indictment against the Accused and all other appropriate evidentiary material in the possession of the Prosecution;

**REQUESTS** Rwanda, upon apprehension and arrest of the Accused, to inform this Tribunal or the International Residual Mechanism for Criminal Tribunals within seven days, upon which the directions contained in the 28 June 2011 Decision, as modified by the Appeals Chamber's decision on the Prosecutor's Request for Referral to the Republic of Rwanda, issued in *The Prosecutor v. Jean Uwinkindi* (Case No. ICTR-2001-75-R11bis), will apply *mutatis mutandis*;

**REQUESTS** Rwanda, that until such time as the Accused is arrested or it receives news and confirmation of his death, to provide the Tribunal or the International Residual Mechanism for Criminal Tribunals with quarterly reports on efforts taken to apprehend him;

**REQUESTS** the Registrar, that within thirty days of receiving notice that the Accused has been arrested, in order to allow for his trial in Rwanda to begin, to arrange for the monitoring mechanism, as determined suitable in *The Prosecutor v. Jean Uwinkindi*, to become functional;

**REQUESTS** the Registrar to inform the President of any hurdles in the implementation and operation of the monitoring mechanism for any consequential orders;

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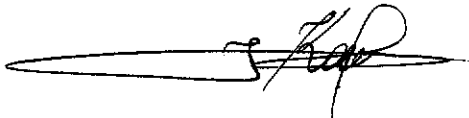
**NOTES** that upon the conclusion of the mandate of the Tribunal, all obligations of the parties, the monitors and Rwanda will be subject to the directions of the Residual Mechanism; and

**REQUESTS** the President to cause to be issued an Amended Arrest Warrant urging all Member States to provide their fullest cooperation and assistance in the apprehension of the Accused.

Done in English at Arusha on 25 June 2012.

  
Vagn Joensen  
Presiding Judge

  
Florence Rita Arrey  
Judge

  
Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]

