

MICT-12-14
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UNITED NATIONS
NATIONS UNIES

Mechanism for International Criminal Tribunals
Mécanisme pour les Tribunaux Pénaux Internationaux

THE OFFICE OF THE PRESIDENT

Before: Judge Theodor Meron, President

Registrar: John Hocking

Date Filed: 26 March 2014

THE PROSECUTOR

v.

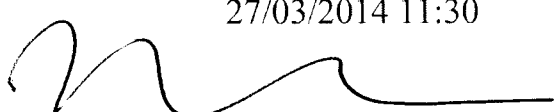
ALOYS NDIMBATI

Case No. MICT-12-14

**PROSECUTOR'S REQUEST FOR A WARRANT OF ARREST AND
AN ORDER FOR TRANSFER**

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PROSECUTOR'S REQUEST FOR A WARRANT OF ARREST AND AN ORDER FOR TRANSFER

BACKGROUND

1. The initial Indictment against **ALOYS NDIMBATI** (the Accused) and seven others was confirmed on 28 November 1995 by Judge Navanethem Pillay of the International Criminal Tribunal for Rwanda (ICTR)¹ and a Warrant of Arrest and Order for Surrender directed to the Republic of Zaire (now the Democratic Republic of Congo) issued in consequence thereof on the same day.² The first amended Indictment was confirmed on 06 May 1996 by Judge Navanethem Pillay.³ A subsequent Warrant of Arrest and Order for Transfer directed to all members of the United Nations was issued on 30 June 2003.⁴ A Second Amended Indictment was confirmed by Judge Vagn Joensen on 08 May 2012.⁵

2. On 25 June 2012, a referral Chamber designated by the President ordered the referral of the indictment of **ALOYS NDIMBATI** to the Republic of Rwanda pursuant to Rule 11*bis* of the ICTR Rules of Procedure and Evidence.⁶ Consequent to the abovementioned referral order, a Warrant of Arrest and Order for Transfer addressed to all Member States of the United Nations was issued on the same day by Judge Vagn Joensen of the International Criminal Tribunal for Rwanda.⁷

PROSECUTOR'S REQUEST

¹ *The Prosecutor v Clement Kayishema*, Case No. ICTR-95-1-I, Decision of the Review of the Indictment, 28 November 1995.

² *The Prosecutor v Aloys Ndimbati*, Case No. ICTR-95-1-I, Warrant of Arrest and Order for Surrender, 28 November 1995.

³ *The Prosecutor v Kayishema et al.*, Case No. ICTR-95-1-I, Order in the matter of an application by the Prosecutor for Leave to Amend the Indictment and Order Granted on 28 November 1995, 06 May 1996.

⁴ *The Prosecutor v Aloys Ndimbati*, Case No. ICTR-95-1-I, Warrant of Arrest and Transfer, 30 June 2003.

⁵ *The Prosecutor v Aloys Ndimbati* Case No. ICTR-95-1F-I, Ex Parte Filing of Second Amended Indictment, 8 May 2012.

⁶ *The Prosecutor v Aloys Ndimbati*, Case No. ICTR-95-1F-R11*bis*, Decision on the Prosecutor's Request for the Referral of the Case of Aloys Ndimbati to Rwanda, 25 June 2012.

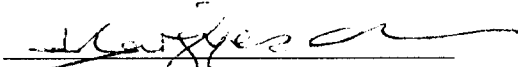
⁷ *The Prosecutor v Aloys Ndimbati*, Case No. ICTR-95-1F-I, Warrant of Arrest and Order for Transfer, 25 June 2012.

3. Having regard to Articles 1(1) and (2) of the MICT's Statute and Rule 57 of the MICT's Rules of Procedure and Evidence, the Prosecutor now requests the President to substitute the Warrant of Arrest and Order for Transfer dated 25 June 2012, issued by the ICTR, with one issued by the MICT, directing all States to arrest and transfer the Accused to the custody of the Rwandan authorities.

4. In this regard the Prosecutor seeks the following orders:

- a) An **ORDER** for the search and seizure of all or any physical evidence related to **ALOYS NDIRIMBATI** and an **ORDER** for the transfer of all said evidence to the National Public Prosecution Authority of the Republic of Rwanda;
- b) An **ORDER** for the search and warrant for the arrest and transfer of **ALOYS NDIRIMBATI** to the custody of the Rwandan authorities; and
- c) Such other **ORDER(S)** as the President may deem just in the interest of justice.

Dated this 26th day of March 2014, at Arusha, Tanzania.


Richard Karegyesa
Senior Legal Officer, OTP, MICT

DRAFT ORDER

SITTING as Judge Theodor Meron, President of the Mechanism for International Criminal Tribunals (MICT);

BEING SEIZED of the Prosecutor's Request for a Warrant of Arrest and an Order for Transfer of **ALOYS NDIMBATI** (the Accused) filed on [DATE] [xxx] 2014;

CONSIDERING the Second Amended Indictment against **ALOYS NDIMBATI** confirmed on 08 May 2012 by Judge Vagn Joensen of the International Criminal Tribunal for Rwanda;

CONSIDERING the Warrant of Arrest and Order for Transfer of **ALOYS NDIMBATI** dated 25 June 2012, which is currently in force;

CONSIDERING United Nations Security Council Resolution 1966 (2010) regarding the cooperation of States with the MICT;

CONSIDERING Article 28 of the MICT Statute and Rule 57 of the MICT Rules of Procedure and Evidence;

NOTING the need to vacate the Warrant of Arrest and Order for Transfer dated 25 June 2012 requesting transfer of **ALOYS NDIMBATI** to the custody of the Rwandan authorities, issued by the ICTR with a request for the arrest and transfer of the Accused to the custody of the Rwandan authorities issued by the MICT, I:

1. **HEREBY RESPECTFULLY REQUEST** all States that are members of the United Nations to:
 - (a) **ARREST** and **TRANSFER** to the custody of the National Public Prosecution Authority of the Republic of Rwanda:

ALOYS NDIMBATI

A Rwandan citizen believed to have been born in the early 1950s, in Gitabura *secteur*, Gisovu *commune* Kibuye *prefecture*, Rwanda, who is accused of having committed during 1994 in Rwanda the following crimes: genocide, complicity in genocide, direct and public incitement to commit genocide and crimes against humanity (murder, extermination, rape and persecution).

- (b) **SERVE** on the Accused at the time of his arrest or as soon as practicable immediately following arrest, in a language he understands, a certified copy of this warrant of arrest, accompanied by a copy of the indictment certified in accordance with Rule 48(G) and a statement of the rights of the accused set forth in Article 19 of the Statute and in Rules 40 and 41;
 - (c) **INFORM** the Accused at the time of his arrest or as soon as practicable immediately following arrest, in a language he understands, that he is being transferred to the custody of the Rwandan authorities;
 - (d) **SEEK AN ACKNOWLEDGEMENT** of receipt from **ALOYS NDIRIMBATI** of a copy of the warrant of arrest, the indictment and the statement of rights in a language he understands, and return one set of documents together with proof of service to the National Public Prosecution Authority of the Republic of Rwanda;
 - (e) **SEARCH AND SEIZE** all physical evidence related to the crimes alleged against **ALOYS NDIRIMBATI**;
 - (f) **CREATE** an itemized inventory of all seized materials, including documents, books, papers or any other objects, that is properly witnessed and is acknowledged by the Accused;
 - (g) **TRANSFER** all seized evidence and the inventory to the National Public Prosecution Authority of the Republic of Rwanda;
 - (h) **NOTIFY** the Registrar of the MICT and the Prosecutor-General of the National Public Prosecution Authority of the Republic of Rwanda of the arrest of the Accused for the purposes of arranging his transfer to the custody of the National Public Prosecution Authority without delay;
 - (i) **REPORT** forthwith to the Registrar of the MICT and the National Public Prosecution Authority of the Republic of Rwanda if unable to execute this Warrant or Order for Transfer, indicating the reasons for the inability to do so; and
 - (j) **MAKE INQUIRIES** to discover whether the Accused has assets located within the territory of the Member State and if so, to adopt provisional measures to freeze such assets, without prejudice to the rights of third parties.
2. **HEREBY VACATE** the Warrant of Arrest and Order for the Transfer of **ALOYS NDIRIMBATI** dated 25 June 2012.

Dated this [] day of [MONTH] 2014 at Arusha, Tanzania.

President/Judge

