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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Case No. ICTR-2005-87-I

ENGLISH
Original: FRENCH

Before: Judge Inés M. Weinberg de Roca, presiding
Judge Lee Muthoga
Judge Robert Fremr

Registrar: Adama Dieng

Date: ..... October 2007

THE PROSECUTOR

v.

WENCESLAS MUNYESHYAKA

ORDER TO PROVIDE FURTHER INFORMATION ON PROSECUTOR'S REQUEST FOR THE REFERRAL OF WENCESLAS MUNYESHYAKA'S INDICTMENT TO FRANCE

Office of the Prosecutor
Hassan Bubacar Jallow
Bongani Majola
James Stewart
Alex Obote
William Egbe
George Mugwanya

Translation certified by LSS, ICTR

1. On 20 July 2005, the Prosecutor issued an Indictment against Wenceslas Munyeshyaka (the Accused).[1] Before the International Criminal Tribunal for Rwanda (the "Tribunal"), the Indictment charges Wenceslas Munyeshyaka with genocide, rape as a crime against humanity, extermination as a crime against humanity and murder as a crime against humanity committed in 1994 in Rwanda.[2] Judge Sergei Alekseevich Egorov confirmed the Indictment on 22 July 2005.[3]

2. On 12 June 2007, the Prosecutor filed a request for the referral of Wenceslas Munyeshyaka's Indictment to the French authorities.[4] Pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal (the "Rules"), the President, by Decision of 11 July 2007, designated this Chamber to decide on the request.[5]

3. The Chamber recalls that under Rule 11 *bis* of the Rules, it may order such referral *proprio motu* or at the request of the Prosecutor, after having given the Prosecutor and, where the Accused is in the custody of the Tribunal, the Accused, the opportunity to be heard. In the instant case, the Chamber notes that the Accused resides in France where he was notified of the Prosecutor's Indictment on 23 July 2007.[6] In the circumstances, the Chamber considers that it will be in the interests of justice to seek the Accused's opinion in respect of the Prosecutor's request for referral, even though he is not in the custody of the Tribunal.

4. The Chamber further recalls that under Rule 74 of the Rules, it may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber. In the instant case, the Chamber notes that as a State concerned by the referral, France's intervention in this case is required for the proper determination of the case.

5. Lastly, the Chamber recalls that under Rule 11 *bis* (C) of the Rules, in determining whether to refer a case to another jurisdiction, the Chamber must satisfy itself that the Accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out. Therefore, to be satisfied that these conditions are fulfilled in this case, the Chamber considers that the parties and France should provide further information on the points mentioned below.

FOR THE FOREGOING REASONS, THE CHAMBER:

I. URGES the parties and France to provide, each in their own sphere, within 14 days of this Order, information on the following:

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[1] Indictment of 20 July 2005.
[2] For details on the counts, see the Indictment of 22 July 2005.
[3] Decision on Confirmation of an Indictment against Wenceslas Munyeshyaka, 22 July 2005.
[4] Prosecutor's request for the referral of Wenceslas Munyeshyaka's Indictment to the French authorities pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal of 12 June 2007, amended on 19 and 27 June 2007.
[5] Designation of a Trial Chamber for the referral of the case to a State, 11 July 2007.
[6] Eighth Examining Chamber, Paris Court of Appeal, Decision in respect of the Request for Arrest and Detention of Wenceslas Munyeshyaka, 25 July 2007, pp. 2 and 3.

(i) The personal and material jurisdiction of the French courts over the crimes charged in the Prosecutor's Indictment, including details on the content of legal provisions and, if need be, the state of their enforcement by the courts;

(ii) Whether the referral of the case would occasion fresh proceedings against the Accused concurrently with the one pending before the French examining Judge;

(iii) In the event the case is referred, whether there would be a procedure adapting the Prosecutor's Indictment to French law and how this would be carried out;

(iv) The nature of sentencing in France should the Accused be found guilty of the crimes charged in the Indictment;

(v) How French law deals with the death penalty;

(vi) The scope of the Accused's guaranteed rights and the opportunity to examine his witnesses and cross-examine Prosecution witnesses;

(vii) Information on the rules governing the appearance of witnesses before French courts, including the rules on witness protection;

(viii) Whether sending observers to monitor proceedings in France is compatible with French law; and

(ix) Any further information it considers useful in this case.

II. **REMINDS** the parties and France that they have five days to respond to the submissions of the other party, pursuant to Rule 73(E) of the Rules.

Done at Arusha on ..... October 2007

Inés M. Weinberg de Roca	Lee Gacuiga Muthoga	Robert Fremr
Presiding Judge	Judge	Judge

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