

ICTR-05-85-I
15-8-2007
(419-408)

419
#m

CASE NO.
2007/024254
DECISION
OF 25 JULY 2007 IN
RESPECT OF
LAURENT
BUCYIBARUTA

DECISION IN
RESPECT OF THE
REQUEST FOR
EXTRADITION OF
LAURENT
BUCYIBARUTA

COUR D'APPEL DE PARIS
(PARIS COURT OF APPEAL)

EIGHTH EXAMINING CHAMBER

DECISION IN RESPECT OF THE WARRANT OF
ARREST ISSUED BY THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA TO THE
FRENCH AUTHORITIES FOR ARREST AND
DETENTION

(No. 7, 15 Pages)

The Examining Chamber in Paris
Sitting in an open session this 1st day of August 2007,
rendered this decision in public on 1 August 2007

ACCUSED: LAURENT BUCYIBARUTA, born in 1944 at
Musange, Gikongoro, Rwanda, to Kajangwe and Findili.
Residing at 12, *cours* Pablo Picasso -10120, Saint-André-
Les-Vergers.

Held at *La Santé* remand prison, pursuant to an order for
arrest issued by the *Procureur de la République* [Public
Prosecutor] of Troyes on 20 July 2007.

CHARGES:

Direct and public incitement to commit genocide,
genocide, complicity in genocide, extermination as a crime
against humanity, murder as a crime against humanity
and rape as a crime against humanity.

Having as Counsel: Mr. Philippe Greciano, c/o Thomas
Wendling, 28, Boulevard Sébastopol, 75004 Paris.

COMPOSITION OF THE CHAMBER

during the proceedings, deliberation and delivery of the
decision:

Madam Boizette, President
Madam Chaussade, Judge
Madam Barberot, Judge.

ORIGINAL
RECEIVED
JULY 26 2007

2007 AUG 15 P 4: 28

Joseph K...

Copy of the Decision
received and read on
[...] 2007

All three officers were designated pursuant to Article 191 of the *Code de procédure pénale* (The French Code of Criminal Procedure) and by order of the Paris Court of Appeal dated 13 June 2007.

REGISTRAR

Madam Binart, Registrar, during the proceedings and delivery of the decision.

THE PROSECUTION

Madam Petit-Leclair, *Avocat général* [Assistant Public Prosecutor], during the proceedings and delivery of the decision.

PROCEDURAL HISTORY

On 21 June 2007, the International Criminal Tribunal for Rwanda (ICTR) issued a warrant for the arrest and detention of **Laurent Bucyibaruta**, on the counts of :

Direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity,
pending a determination of the request submitted before ICTR, under Rule 11 *bis* of the Rules of the said Tribunal, for referral of the matter to the judicial authorities of France.

On 20 July 2007, the Public Prosecutor of Troyes :

- examined the Accused to establish his identity, informed him of the content of the warrant of arrest and his rights as to his defence, a process which was recorded, and remanded him in custody;

- On 23 July 2007, the *Procureur Général* [Prosecutor-General] at the Paris Court of Appeal:

- examined the Accused to establish his identity, informed him of the content the warrant of arrest and his rights as to his defence, a process which was recorded, remanded him in custody and gave notice of the counts charged in the Indictment issued by the International Criminal Tribunal on 16 and 17 June 2005.

At the open session of the Examining Chamber held on 25 July 2007, that is within the time-limit of eight working days from the date of presentation of the matter to the Prosecutor-General, in accordance with Article 12 of the Law of 15 June 2000, notice was given of the reasons for the arrest and of the

materials submitted in support of the request for arrest and detention;

On 31 July 2007, Mr. Greciano, Counsel assigned to the Accused, filed a brief with the Registry in the interests of his client.

DECISION

taken after deliberation pursuant to Article 200 of the French Code of Criminal Procedure

IN THE FORM

Pursuant to Article 694-2 *et seq.* of the French Code of Criminal Procedure, Articles 1 and 2 of Law No. 96-432 of 22 May 1996 and Articles 2 to 16 of Law No. 95-1 of 2 January 1995, the Court has jurisdiction to hear and determine this request.

ON THE MERITS

By note bearing reference no. ICTR/RO/06/271SW, dated 29 June 2007, the Registrar of the International Criminal Tribunal for Rwanda, located in Arusha, Tanzania, transmitted to the Embassy of France in Tanzania, a warrant for the arrest and detention of **Laurent Bucyiburata** and Wenceslas Munyeshyaka, issued on 21 June 2007 by Judge Jai Sam Reddy on the basis of Articles 18(2), 19(2) and 28 of the Statute and Rules 55 to 61 of the Rules of Procedure and Evidence of ICTR, the Indictment dated 16 June 2005, the decision dated 16 June 2005 confirming that Indictment and the decision of 17 June 2007 to unseal the Indictment.

This note indicated that the Prosecutor of ICTR had filed a request for the transfer of the case to France for trial, pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of ICTR; copies are annexed hereto. It was explained that the

court order of 21 June 2007 (the warrant of arrest) was, therefore, requesting the French authorities to detain **Laurent Bucyibaruta** pending a determination by the Judges of ICTR of the above-mentioned Prosecutor's request.

On 20 July 2007, the S.R.P. J. [Regional Administration of the Judicial Police] at Troyes questioned Laurent Bucyibaruta at his home (12, *cours Pablo Picasso*, St.-André les Vergers). He was informed of his rights under Articles 63 (1) to 63 (4) of the French Code of Criminal Procedure, Article 20 of the Statute and Rules 41 to 43 of the Rules of Procedure of ICTR.

That same day, 20 July 2007, at 10.48, the Public Prosecutor at Troyes summoned **Laurent Bucyibaruta**, born on 30 July 1958 [sic] in Butare, Rwanda, single, residing at the above-mentioned address, to appear before him. He served on him the warrant of arrest issued by Judge Jai Reddy on 21 June 2007 and ordered that he be detained. **Laurent Bucyibaruta** requested that counsel be assigned to assist him.

An order was issued on 23 July 2007 for the transfer of **Laurent Bucyibaruta** from Troyes to *La Santé* remand prison, that is within the five working days time-limit. The Prosecutor-General at the Paris Court of Appeal examined Laurent Bucyibaruta as to his identity and notified him on 23 July 2007 of:

- the warrant of arrest dated 21 June 2007;
- his rights to as to his defence;
- the Indictment, specifying each count; and remanded him in custody.

At the open session of the Examining Chamber held on 25 July 2007, that is within the time-limit of eight working days from the date of presentation of the matter to the Prosecutor-General, pursuant to Article 12 of the Law of 15 June 2000, **Laurent Bucyibaruta** was notified of the reasons for his arrest and the materials submitted in support of the request, in particular the Indictment issued on 16 June 2005 and confirmed on 17 June 2005 (350 *bis* to 338 *bis*), charging him with genocide, rape and extermination and murder as crimes against humanity, under Article 3 of the Statute, namely:

1. Count 1:

- Direct and public incitement to commit genocide (a crime stipulated in Article 2(3)(c) of the Statute of the International Criminal Tribunal for Rwanda): In that from 1 January through 17 July 1994, throughout Rwanda, Laurent Bucyibaruta was responsible for the direct and public incitement of persons to kill or cause serious bodily or mental harm to members of the Tutsi racial or ethnic group with the intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 8 through 21.

2. Count 2:

- Genocide (a crime stipulated in Article 2(3)(a) of the said Statute): In that from 1 January through 17 July 1994, throughout Rwanda, Laurent Bucyibaruta was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group with the intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 22 through 43.

3. Count 3: (alternative charge)

- Complicity in genocide (a crime stipulated in Article 2(3)(e) of the Statute): In that from 1 January through 17 July 1994, throughout Rwanda, Laurent Bucyibaruta was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group with the intent to destroy, in whole or in part, a racial or ethnic group, as such, or with knowledge that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and that his assistance would contribute to the crime of genocide, as outlined in paragraphs 22 through 43; these facts related to massacres perpetrated at the Kibeho parish and health centre in Mubuga *commune* (Gikongoro *préfecture*), Murambi Technical School in Nyamagabo *commune* (Gikongoro *préfecture*), Cyanika parish, Karama *commune* (Gikongoro *préfecture*), Kaduha parish and health centre (Gikongoro *préfecture*), Gikongoro prison (Gikongoro *préfecture*).

4. Count 4:

- Extermination as a crime against humanity (a crime stipulated under Article 36 of the Statute): In that from 1 January through 17 July 1994, in Gikongoro *préfecture*, Rwanda, Laurent Bucyibaruta was responsible individually

and through the acts of his subordinates, for the extermination, as part of a widespread or systematic attack against the civilian population, on political, ethnic or racial grounds, of persons who sought refuge at various locations including Kibeho, Murambi, Cyanika, Kaduha and at roadblocks throughout the *préfecture*, as outlined in paragraphs 44 through 58.

5. Count 5:

- Murder as a crime against humanity (a crime stipulated in Article 3(a) of the Statute) : in that from 1 January through 17 July 1994, in Gikongoro *préfecture*, Rwanda, Laurent Bucyibaruta is responsible individually and through the acts of his subordinates, for the murder as part of a widespread or systematic attacks against the civilian population, on political, ethnic or racial grounds, of persons within Gikongoro town and Gikongoro prison, as outlined in paragraphs 59 through 61.

6. Count 6:

- Rape as a crime against humanity (a crime stipulated in Article 3(g) of the Statute): in that from 1 January through 17 July 1994, in Gikongoro *préfecture*, Rwanda, Laurent Bucyibaruta is responsible individually and through the acts of his subordinates, for rape as part of a widespread or systematic attacks against the civilian population, on political, ethnic or racial grounds, of females within Gikongoro *préfecture*, notably in Murambi, Uwabahima and Kibeho, as outlined in paragraphs 62 through 74.

The Court also served on him the warrant of arrest dated 21 June 2007 (354 *bis* to 351 *bis*) issued by Judge Reddy, designated pursuant to Rule 28 of the Rules of Procedure and Evidence and to whom the Prosecutor's Request of 12 and 19 June 2007 was submitted. The Judge, considering Security Council Resolutions 955, 978 and 1165 on the cooperation of States with the Tribunal, Articles 18(2), 19(2) and 28 of the Statute of the Tribunal, and Rules 40, 54 and 61 of the Rules, in particular Rule 55 *bis*, requests the search for and arrest of **Laurent Bucyiburata**, a Rwandan citizen from Gikongoro *commune*, accused of having committed in Rwanda in 1994 the crimes genocide, rape, extermination and murder as crimes against humanity, crimes punishable under Article 3 of the Statute.

The said warrant, in addition to requesting that a search for and seizure be made of all physical evidence relating to the crimes listed herein, that all the materials, the Indictment and a statement of the rights of the Accused be served on **Laurent Bucyibaruta** and an acknowledgement sought from him of receipt of copies of these materials, that he be informed of his right to remain silent, that inquiries be made to discover whether the Accused has assets located within the territory of France and, if so, to adopt provisional measures to freeze such assets, requests the Government of France to detain **Laurent Bucyibaruta** pending the determination by the Tribunal of the Rule 11 bis application that the Prosecutor has submitted before a Referral Bench to be designated by the President of the Tribunal (352 bis).

Paragraph A of the Prosecutor's request (394 bis to 380 bis), dated 12 June 2007, submitted to the Trial Chamber to be designated pursuant to Rule 11 bis of the Rules states:

- The Prosecution submits the request, pursuant to Rule 11 bis of the Rules of Procedure and Evidence of the Tribunal for Rwanda, for the referral of the confirmed Indictment of **Laurent Bucyibaruta** to the French authorities so that those authorities may forthwith assign the case to an appropriate French court for the trial of the Accused;
- The Prosecutor respectfully requests the President of the Tribunal to designate a Trial Chamber to that end.

Paragraph B of the request states that France has jurisdiction and is willing and adequately prepared to accept the case. The texts goes on to elaborate on and to establish this assertion (392 bis to 380 bis), on the basis of the universal jurisdiction principle that France has embraced to cover international crimes committed in Rwanda and/or neighbouring States between 1 January and 31 December 1994. It is further stated that France confirmed that the Accused was present on French territory and that France was willing to apprehend him for prosecution.

In fine, the Prosecutor requests, *inter alia*, that the President of the Tribunal designate a Trial Chamber, pursuant to Rule 11 bis, to determine whether the case should be referred to the French authorities for the Accused to be prosecuted and tried by a competent French court.

By submissions dated 24 July 2007, the Prosecutor-General requested that the application to place and hold **Laurent Bucyibaruta**, accused before ICTR, in detention should be granted, pending a determination of the Rule 11 *bis* request that is before ICTR, since the application could be construed as an arrest for surrender, within the meaning of Article 13 of the Law of 2 January 1995 and the legal conditions, as regards the facts in the request, have been met in terms of the requirements in Law No. 96-432 of 22 May 1996, referring back to Articles 6 to 16 of Law No. 95-1 of 2 January 1995.

By brief filed on 31 July 2007, the Defence for **Laurent Bucyibaruta** contended that the warrant of arrest satisfied neither the requirements of legality under international nor under domestic law. The warrant was issued in violation of ICTR's Rules of Procedure and Evidence of ICTR which make no provision for the surrender of an accused, either to an international jurisdiction or to the French courts that declare themselves to have jurisdiction to hear such cases. The application of Rule 11 *bis* in matters of referral and deferral to a foreign jurisdiction does not provide for the issuance of a warrant of arrest. Rule 55 *bis*, also relied on in the same warrant applicable, is no more applicable either, since in the instant case, **Laurent Bucyibaruta** is not likely to move from one State to another and his whereabouts are known, given that he has been under judicial supervision since December 2000 and has strictly complied with that measure. Proceeding as requested would breach the European Convention on Human Rights, as well as our own domestic law on detention.

IN VIEW OF THE FOREGOING,

Considering that the present request for the arrest and detention cannot, contrary to the Prosecutor-General's submissions, be construed as a request for surrender, within the meaning of Article 2 of the Law of 22 May 1966 and Articles 9 to 16 of the Law of 2 January 1995, which appear in Chapter II of the said law entitled: "*De l'arrestation et de la remise*" [Arrest and Surrender]; that in fact each of the above articles refers to "*demande d'arrestation aux fins de remise*" (request for arrest and surrender) (in particular, Articles 10, 13 and 15) of the person sought by the international jurisdiction; this is not the case here;

Considering that it is clear from both the 21 June 2007 warrant of arrest and the Prosecutor's request of 12 June 2007 that ICTR's objective, at present, in the process initiated against **Laurent Bucyibaruta**, is to defer to the competence of the appropriate judicial authority in France, since the Accused is on French territory, and the French judicial authorities appear to be legally competent, in terms of their entire legal and judicial set up, to afford the Accused a fair trial and also that the death penalty would not be imposed on him;

Whereas, at this stage of the proceedings, ICTR, which is seized of the request, the ICTR Registrar's transmission of 25 July 2007 to the French Embassy in Tanzania;

Considering that the aforementioned Rule 11 *bis* is found in Part II of the Rules of Procedure and Evidence entitled "Primacy of the Tribunal", which governs the procedures for deferral to third countries;

Whereas Rule 11 *bis* (A) entitled "Deferral of the Indictment to Another Country" provides that:

(A) If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:

- (i) in whose territory the crime was committed; or
- (ii) in which the accused was arrested; or
- (iii) having jurisdiction and being willing and adequately prepared to accept such a case,

so that those authorities should forthwith refer the case to the appropriate court for trial within that State;

Whereas the Trial Chamber may issue a warrant of arrest against the Accused and must specify the State to which he is to be transferred for trial;

Considering that the present request for a warrant of arrest and detention and the supporting materials, now submitted before this Court which, contrary to the arguments in the brief, must be likened to "the judge" provided for in the cited instruments, before which the Accused has duly appeared, is founded on an

ICTR procedure, which takes place at this stage, on the day of its transmission;

Considering that the warrant of arrest of 16 June 2007 refers to Rule 55 *bis*, which is found in Part V of the Rules of Procedure and Evidence which governs pre-trial proceedings, orders, and warrants and evidence, in cases where ICTR maintains its own jurisdiction.

Whereas Rule 55 provides:

- (A) Upon the request of the Prosecutor, and if satisfied that to do so would facilitate the arrest of an accused who may move from State to State, or whose whereabouts are unknown, a Judge may without having recourse to the procedures set out in Rule 61, and subject to sub-Rule (B), address a warrant of arrest to all States.
- (B) The Registrar shall transmit such a warrant to the national authorities of such States as may be indicated by the Prosecutor.

Considering that in the instant case, application of Rule 11 *bis* must be given first consideration over that of Rule 55 *bis*, which is only applicable in the alternative, and only provisionally so, while ICTR is still seized of the matter and retains its jurisdiction.

Whereas at this stage of the proceedings instituted by ICTR, the Prosecutor's request for referral of this case to the French authorities, filed on 12 June 2007 for the Tribunal to designate a Trial Chamber to determine whether the case may be referred to the authorities of the State that is meant to hear the case, namely France; and whereas the wish has been clearly expressed to refer the matter to a foreign jurisdiction, in particular, France, nevertheless, as matters stand, ICTR is still seized of the facts and of the proceedings, until such time that the Chamber that will be designated rules as to whether or not to defer the case to France.

However, even if Rule 55 *bis* may, at law, be applicable in the alternative, in fact, in this case, France, the requested State does not appear to fulfill the requirements for its application, given that **Laurent Bucyibaruta** was questioned at his home, a known address, without any prior search; whereas placed under judicial supervision in connection with criminal

proceedings opened by France and under investigation by the *Tribunal de grande instance de Paris* [the Paris major civil and criminal trial court] in part for acts likely to be disclosed to France, in line with the Prosecutor-General's submissions, **Laurent Bucyibaruta** has for several years always complied with the obligations attached to the judicial supervision he is under; whereas no proof or the presumption of proof has been shown that the Accused might move from one State to another, whereas the French police and judicial authorities know his whereabouts, and even arrested him without difficulty or a prior search.

Consequently, pending a determination of the Rule 11 *bis* application by the Trial Chamber to be designated by ICTR, there is no need to grant the request for arrest and detention of **Laurent Bucyibaruta**.

FOR THESE REASONS

Having regard to United Nations Security Council Resolution 955,

Having regard to the provisions of Articles 694-2 *et seq.* of the French Code of Criminal Procedure,

Having regard to Articles 1 and 2 of Law No. 96-432 of 22 May 1996,

Having regard to Articles 2 to 16 of Law No. 95-1 of 2 January 1995,

Having regard to Law No. 15 of June 2000,

Having regard to the Statute and the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

In the form :

Finds this request admissible.

On the merits :

Finds the request to be without merit, declines to execute the warrant of arrest and detention issued on 21 June 2007 by the International Criminal Tribunal for Rwanda, rescinds the effects of the warrant notified on 20 July 2007 and orders that Laurent Bucyibaruta be released immediately, if he is not detained for or any other cause; and

Rules that at the Prosecutor-General's behest, the case shall be submitted to *M. le Garde des Sceaux*, Minister of Justice, with an original copy of this decision.

[Signed]
Registrar

[Signed]
President
