

1998 JUN -1 P 4 21



International Criminal Tribunal for
the Prosecution of Persons
Responsible for Genocide and Other
Serious Violations of International
Humanitarian Law Committed in the
Territory of Rwanda and Rwandan
Citizens responsible for genocide
and other such violations committed
in the territory of neighbouring States
between 1 January and 31 December
1994

Case No: ICTR-98-37-I

Date: 26 May 1998

Original: English

IN THE APPEALS CHAMBER

Before: Judge Gabrielle Kirk McDonald (Presiding)
Judge Mohamed Shahabuddeen
Judge Lal Chand Vohrah
Judge Wang Tieya
Judge Rafael Nieto-Navia

Registrar: Mr. Agwu U. Okali

Order of: 26 May 1998

PROSECUTOR

v.

THÉONESTE BAGOSORA AND 28 OTHERS

**ORDER ON THE MOTION ON BEHALF OF THE ACCUSED
COLONEL THÉONESTE BAGOSORA**

The Prosecutor:

Louise Arbour
Bernard A. Muna

Counsel for the Accused:

Raphael Constant

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994 (“International Tribunal for Rwanda”),

CONSIDERING the Preliminary Motion on behalf of the accused regarding an appeal lodged by the Prosecutor against a decision of 30 March 1998 by Judge Tafazzal Hossein KHAN [*sic*] (“Motion”), filed on 1 May 1998 by Counsel for Mr. Bagosora (“Accused”),

NOTING that the Prosecutor in her *ex parte* Notice of Appeal filed on 6 April 1998, is seeking to appeal from the Decision of Judge Tafazzal Hossain Khan (“Decision”), dated 31 March 1998, in which he dismissed the indictment against Théoneste Bagosora and 28 Others, filed on 6 March 1998, following an *ex parte* review pursuant to Rule 47 of the Rules of Procedure and Evidence of the International Tribunal for Rwanda (“Appeal”),

CONSIDERING that in the Motion, the Accused seeks leave to be heard by the Appeals Chamber on the Appeal and contends that the Appeal is inadmissible,

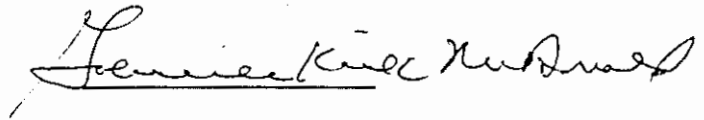
NOTING the Scheduling Order dated 23 April 1998 in which the Appeals Chamber of the International Tribunal for Rwanda requested the Prosecutor to submit a written brief addressing the question of whether an appeal lies from the Decision (“Scheduling Order”),

NOTING the Appellant Brief by the Prosecution in Support of the Admissibility of the Appeal of the Dismissal by Judge Khan of the Indictment against Bagosora and 28 Others of 31 March 1998, filed on 30 April 1998 pursuant to the Scheduling Order,

NOTING FURTHER that the Appeals Chamber has not yet determined whether it has jurisdiction to review the Decision, and that therefore the Request for Leave is premature at this time,

HEREBY STAYS consideration of the Motion pending determination by the Appeals Chamber of whether an appeal lies from the Decision.

Done in both English and French, with the English text being authoritative.



Gabrielle Kirk McDonald
Presiding Judge

Dated this 26th day of May 1998
At The Hague
The Netherlands.



[Seal of the Tribunal]