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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

OR:ENG.

Before: Judge William H. Sekule, Presiding
Judge Yakov A. Ostrovsky
Judge Tafazzal H. Khan

Registry: Mr. John Kiyeyeu

THE PROSECUTOR
VERSUS
THEONESTE BAGOSORA

Case No. ICTR-96-7-T

**DECISION ON THE DEFENCE MOTION FOR FURTHER
PARTICULARS ON COUNTS 2, 3 AND 4 OF THE INDICTMENT**

The Office of the Prosecutor:

Mr. James Stewart
Mr. Chile Eboe-Osuji

Counsel for the Accused:

Mr. Raphael Constant
Mr. Jacques Larochelle



THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL")
SITTING AS Trial Chamber II , composed of Judge William H. Sekule, Presiding,
Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan (the "Trial Chamber");

CONSIDERING the indictment submitted by the Prosecutor against Theoneste Bagosora which was confirmed on 10 August 1996 by Judge Aspegren pursuant to rule 47 of the Rules of Procedure and Evidence (the "Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that the accused committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING the initial appearance of the accused Theoneste Bagosora which took place on 20 February 1997;

CONSIDERING the preliminary motion filed on 16 February 1998 by the defence seeking an order requiring the prosecutor to provide further particulars to counts 2, 3 and 4 of the indictment;

CONSIDERING the response to the aforementioned motion made by the prosecutor during the hearing of this motion on 13 March 1998 in which the prosecutor argued that the particulars provided are sufficient to enable the defence to prepare its case;

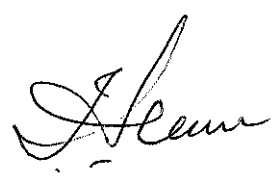
CONSIDERING the provisions of rule 66 of the Rules regarding disclosure obligation of the prosecutor;

HAVING HEARD the parties on 13 March 1998.

THE DEFENCE ARGUED THAT:

(a) In count 2, the prosecutor should describe in greater detail her understanding of "civilian population" that the accused is said to have murdered, exterminated, and persecuted for political, ethnic or racial reasons;

(b) In counts 3 and 4, the prosecutor should be ordered to give further particulars of the non international armed conflict mentioned by reference to section 3 of the Geneva Convention of 12 August 1949, ("the Convention") specifically, giving



details on (i) parties to the conflict (ii) when and where the armed conflict took place and (iii) who are the alleged victims.

THE PROSECUTOR RESPONDED THAT:

- 1. The wording of the Statute explains the formulation of the counts. When the prosecutor speaks of the civilian population in the indictment, she is referring to the wording of the statute.
- 2. In view of the nature of the genocide committed, it is impossible at this juncture, to give all necessary details covering the case and that, further particulars will be introduced in the course of hearing the case.
- 3. The counts complained of give reasonable information with respect to the act or omission to be proved against the accused and identifies the transactions.
- 4. No count can be said to be insufficient by reason only of absence of details.
- 5. The civilian population referred to in the indictment is the non-military population, which is defined in the Statute and the Convention.
- 6. As regards specification of armed conflict, it is clearly spelt out in count 2.23 that, a state of armed conflict existed in the territory of Rwanda between the Rwandan Patriotic Front and Government Forces while the victims referred to in this indictment are persons not taking an active part in the hostilities during the period specified in paragraph 2.18 and 2.23.
- 7. In indictments containing counts of genocide and crimes against humanity it is unreasonable to expect the prosecutor to mention the names of the victims.

AFTER HAVING DELIBERATED:

WHEREAS the instant motion seeks an order to compel the prosecutor to provide further particulars of counts 2, 3 and 4 of the indictment;

WHEREAS in support of this motion, the defence submitted that, further particulars are important to enable the defence to prepare its case which is a basic right guaranteed under Article 20 of the Statute;



WHEREAS the Prosecutor, in her submission, has opposed the defence request on the grounds that enough particulars has been given in the indictment and that, further particulars are not needed at this stage as details will be revealed in the course of hearing the case;

WHEREAS the Trial Chamber takes note of the accused right guaranteed under Article 20(4) of the Statute to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him which includes, being provided with particulars of counts of the indictment necessary for him to prepare his defence;

WHEREAS the wording of the indictment, to which the defence objects, is language taken directly from the Statute ("civilian population" appears in Article 3) and the Convention ("non international armed conflict" appears in Common Article 3);

WHEREAS after reading the indictment and hearing the oral submission of the parties, the Trial Chamber is of the opinion that the particulars given in the indictment and the oral explanation are sufficient to enable the accused to make his defence and does not breach the rights of the accused guaranteed under Article 20(4) of the Statute.

**FOR THESE REASONS THE TRIBUNAL,
DECIDES:**

To dismiss the motion.

Arusha, 5 October 1998.



William H. Sekule
Presiding Judge



Yakov A. Ostrovsky
Judge



Tafazzal Hossain Khan
Judge

SEAL OF THE TRIBUNAL