

97-29-0111 060 (3)

ICTR-97-29A-I
(105-103)
20.10.97

105



International Criminal Tribunal for Rwanda

OR: FRA

Before: Judge Lennart Aspegren

Registry: Mr. Frederik Harhoff
Ms. Prisca Nyambe

Decision of: 16 October 1997

THE PROSECUTOR

VERSUS

**SYLVAIN NSABIMANA and
ALPHONSE NTEZIRYAYO**

Case N° ICTR-97-29A-I and Case N° ICTR-97-29B-I

DECISION CONFIRMING THE INDICTMENT

The Office of the Prosecutor:

Mr. Luc Coté
Mr. Jean Pierre Gervais

**ICTR
RECEIVED
20 OCT 1997
ACTION: REGISTRATION
COPY: :**

THE INTERNATIONAL CRIMINAL TRIBUNAL for RWANDA (the "TRIBUNAL"),

SITTING as Judge Lennart Aspegren, designated by the President of the Tribunal according to Rule 28 of the Tribunal's Rules of Procedure and Evidence ("the Rules");

HAVING RECEIVED on 15 October 1997 from the Prosecutor the enclosed indictment against **Sylvain NSABIMANA** and **Alphonse NTEZIRYAYO** and the supporting material attached to this indictment, pursuant to Articles 17 and 18 of the Statute of the Tribunal and Rule 47 (A), (B) and (C) of the Rules;

HAVING HEARD the Prosecutor during the review held on 16 October 1997 under Rule 47 (D) of the Rules;

HAVING NOTED that the Prosecutor, upon questions asked by the Tribunal during the review, made the following amendments to the indictment:

- in paragraph 3.12: the words "encouraged and facilitated" are replaced by: "aided and abetted";
- in counts five and eleven the words "as well as cruel treatment such as torture, mutilation or any form of corporal punishment" are deleted;

BEING SATISFIED from the material tendered by the Prosecutor that there is sufficient evidence to provide reasonable grounds for believing that each of the two suspects separately has committed crimes within the jurisdiction of the Tribunal, and is thereby convinced that a *prima facie* case has been established in relation to each of the suspects individually;

WHEREAS the Tribunal is thus convinced that a *prima facie* case has been established with regard to each of the five counts charged against Sylvain NSABIMANA as set forth in the indictment (*counts 1 to 5*), and in relation to each of the six counts charged against Alphonse NTEZIRYAYO as set forth in the indictment (*counts 6 to 11*);

RULING, however, that under Rules 2(A) and 48 of the Rules, there is insufficient basis in the present indictment and supporting material attached thereto to sustain, at this stage, that the two suspects be charged together, since none of the counts raised against each of them are seen to refer to the same transaction;

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HEREBY

CONFIRMS the indictment submitted by the Prosecutor

against **Sylvain NSABIMANA** with respect to counts one to five of the indictment, namely:

- genocide,
- complicity in genocide,
- crimes against humanity, and
- serious violations of Article 3 common to the 1949 Geneva Conventions and of the 1977 Additional Protocol II;

and against **Alphonse NTEZIRYAYO** with respect to counts six to eleven of the indictment, namely:

- direct and public incitement to genocide,
- genocide,
- complicity in genocide,
- crimes against humanity,
- serious violations of Article 3 common to the 1949 Geneva Conventions and the 1977 Additional Protocol II;

TAKES NOTE of the Prosecutor's prayer that

- a warrant of arrest and an order for continued detention be issued against the accused Sylvain NSABIMANA, who is presently detained in the Tribunal's Detention Unit; and
- a warrant of arrest and an order for surrender be issued against the accused Alphonse NTEZIRYAYO, who is presently believed to be in Burkina Faso;

DIRECTS, pursuant to Rule 54 of the Rules, the Registrar to register the accused Sylvain NSABIMANA and Alphonse NTEZIRIYAYO as two separate cases and to attribute to each of their cases its own file number;

ORDERS, after consultation with the Prosecutor during the review of this indictment and pursuant to Rule 53(B) and (C) of the Rules, that there be no public disclosure of the indictment and the supporting material attached thereto until the warrants of arrest have been served on both accused.

Arusha, 16 October 1997

Lennart Aspegren
 Lennart Aspegren
 Judge

(Seal of the Tribunal)

