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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER II

OR:ENG.

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

Registry: Mr. John M. Kiyeyeu

THE PROSECUTOR
Versus
GRATIEN KABILIGI

Case No. ICTR-97-34-I

**DECISION ON THE DEFENCE MOTION TO LODGE COMPLAINT AND OPEN
INVESTIGATIONS INTO ALLEGED ACTS OF TORTURE UNDER RULES (40)(C)
AND 73(A) OF THE RULES OF PROCEDURE AND EVIDENCE**

The Office of the Prosecutor:
Mr. William T. Egbe
Mr. Chile Eboe-Osuji

Counsel for the Accused:
Mr. Jean Yaovi Degli

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda
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NAME / NOM: <i>Dr. Antoine K. M. MINAUA</i>
SIGNATURE: <i>[Signature]</i> DATE: <i>06.10.1998</i>

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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 Gratien Kabiligi which was confirmed on 15 October 1997, 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 Convention and Additional Protocol II thereto;

CONSIDERING the preliminary motion filed by the defence seeking an order, pursuant to rule 40 (C) and 73(A) of the Rules, to order an investigation into acts of torture allegedly inflicted against the accused, to nullify the proceedings and declare illegal and inadmissible evidence obtained from him;

CONSIDERING the response to the aforementioned motion made by the prosecutor during the hearing of this motion in which the prosecutor argued that the arrest of the accused and seizure of his property was done in accordance with the law and the evidence so collected, is valid;

CONSIDERING the provisions of rule 39, 40(C) and 73(A) of the Rules regarding rights of suspects at the investigation stage;

HAVING HEARD the parties on 12 May 1998.

ARGUMENTS OF THE DEFENCE:

(a) The accused was arrested in violation of rule 55(B) of the Rules and Article 9(2) of the International Covenant on Civil and Political Rights in that, he was not informed of the reasons for his arrest.

(b) In violation of the law, the accused was handcuffed and threatened with return to Rwanda in the event he failed to answer the questions of the Tribunal’s investigators.

(c) The handcuffing of the accused and threats made against him constituted acts of torture under the United Nations Convention against Torture, adopted on 1 December 1975.

(d) Rule 42(A) was violated in that, the accused was not informed of his rights stipulated in rule 42(A)(i) and (ii) read together with rule 55(A) of the Rules.

(e) Failure to inform the accused of his rights, deprived him of his discretion to assess and decide whether or not it was necessary for him to request the assistance of a lawyer and if it was appropriate for him to answer questions.

(f) These violations make the questioning of General Kabiligi on 19 July 1997 blatantly



ineffective, null and void and inadmissible in evidence.

- (g) The Prosecutor's failure to supply the defence with copies of the interrogation tapes is a further denial of the accused rights.
- (h) Pursuant to Articles 17, 18 and 19 of the Statute and rules 40(D) and 40(bis)(K) of the Rules, the proceedings must be declared flawed and the Trial Chamber should order for the immediate release of the accused General Gratién Kabiligi.
- (i) The Trial Chamber has implied jurisdiction to hear this matter in view of the fact that the acts of torture complained of are consequential acts in relation to the main functions of the Tribunal which is to prosecute those responsible for the violation of international humanitarian law within the frame work of events in Rwanda in 1994.
- (j) The Trial Chamber should order that an independent commission be formed to investigate the Defence allegations of torture and other cruel, inhuman or degrading treatment or punishment inflicted on the accused by the investigators.

THE PROSECUTOR'S RESPONSE:

- (a) She denied the main factual allegations on which this motion was based and asserted that the allegations were untrue in that, the accused was arrested by Kenyan police authorities pursuant to an order for provisional detention issued on 16 July 1998 by Judge Laity Kama and transferred to United Nation's detention facilities under rule 40 of the Rules;
- (b) The allegations that throughout the journey from Nairobi to the United Nation's Detention facilities in Arusha, the ICTR investigators repeatedly told General Kabiligi that if he refused to answer questions that they were to ask him , he would be transferred immediately to Rwanda is untrue;
- (c) That the defence allegations that during his interrogation by the two investigators of the ICTR on 19 July 1997 in the premises of the Prosecution at ICTR headquarters, General Kabiligi was kept in handcuffs as before are untrue;
- (d) That the court orderly unfettered General Kabiligi before interrogation commenced and that all times, during the said interrogation, the rights guaranteed to the accused, under rule 42 of the Rules, were respected;
- (e) That the interrogation was conducted lawfully by the investigators of the Office of the Prosecutor;
- (f) She contends that in accordance with the law, the accused was arrested by Kenyan police while interrogation was conducted by investigators of the Office of the Prosecutor.



(g) The accused was handcuffed following his arrest under the authority of rule 40 of the Rules which allows arresting officers to take all necessary measures to prevent the escape of a suspect or accused;

(h) The defence could, if they so wish, file a motion for review under the provisions of rule 40(C) which provides that from the moment of arrest the accused shall enjoy all the rights provided under rule 42 and may apply for review to a Trial Chamber of the Tribunal which shall rule upon the application;

(i) This motion should have been brought under rule 54 which supports the proposition that it is the Trial Chamber which is competent to review matters that touch and concern the rights of suspects and accused persons in proceedings before the Tribunal. The power is discretionary and may be exercised only within the mandate of the Tribunal;

(j) To introduce third parties of the nature of independent commissions to the proceedings of the Tribunal to investigate the allegations is not consonant with the mandate of the Tribunal;

(k) Failure to supply copies of the interrogation tapes cannot be a ground in law for nullifying the proceedings.

AFTER HAVING DELIBERATED:

WHEREAS the defence has filed a motion before the Chamber seeking an order to nullify the proceedings instituted against the accused Kabiligi for, among other things, want of compliance with rule 40 of the Rules.

NOTING THAT if the allegations are proven the Trial Chamber has powers to remedy the situation complained of under rule 54 of the Rules by issuing appropriate orders.

NOTING HOWEVER THAT in the circumstances of this case, the accused was arrested photographed and handcuffed and transferred under authority of rule 40(A)(iii) and (B) which allows the Office of the Prosecutor to take all necessary measures to prevent the escape of a suspect or an accused.

OBSERVING THAT no evidence has been adduced by the defence to show that the accused was threatened to be returned to Rwanda by the investigators if he failed to co-operate in answering questions.

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FOR THE ABOVE REASONS THE TRIBUNAL,

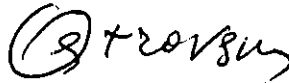
DECIDES:

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

