## International Criminal Tribunal for Rwanda

### TRIAL CHAMBER HI

OR: ENG

Before:

Judge Pavel Dolenc

Registrar:

Dr. Agwu U. Okali

Decision of: 4 May 2000

THE PROSECUTOR

GRATIEN KABILIGI and ALOYS NTABAKUZE

Case No. ICTR-96-34-I Case No. ICTR-96-30-I

# **DECISION ON NTABAKUZE'S MOTION TO DECLARE** INADMISSIBLE THE PROSECUTOR'S MOTION FOR JOINDER

The Office of the Prosecutor:

Carla Del Ponte David Spencer Frédéric Ossogo Holo Makwaia

Defence Counsel for Gratien Kabiligi:

Jean Yaovi Degli

Defence Counsel for Aloys Ntabakuze:

Clemente Monterosso

International Criminal Tribunal for Rwanda Tribunal penal international pour le Rwanda

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IGNATURE:

- 1. The International Criminal Tribunal for Rwanda (Tribunal), sitting today as Judge Pavel Dolenc, a single judge designated by Trial Chamber III from among its members pursuant to Rule 73(A) of the Tribunal's Rules of Procedure and Evidence (Rules);
- 2. **Noting** that the joint indictment against accused Aloys Ntabakuze and Gratien Kabiligi was confirmed on 15 October 1997;
- 3. **Noting** that on 23 February 1998 the Defence filed a motion requesting that the Tribunal order separate trials for the two accused;
- 4. **Noting** that on 30 July 1998 the Prosecutor filed a motion for joinder of proceedings against the accused Gratien Kabiligi, Aloys Ntabakuze, Theoneste Bagosora, and Anatole Nsengiyumva;
- 5. Considering the "Motion to Declare Inadmissible the Prosecutor's Motion of 30/7/98 for Joinder of Accused" (Motion), filed on 16 September 1998 by Defence Counsel for Ntabakuze;
- 6. **Considering** the "Prosecutor's Reply to the [Ntabakuze's] Defence Motion for an Order Ruling Inadmissible the Prosecutor's Motion for Joinder of Accused" filed on 28 September 1999;
- 7. Now considers the matter solely on the briefs of the parties pursuant to Rule 73(A).

### SUBMISSIONS OF THE PARTIES

- 8. Defence Counsel for Ntabakuze submits that the Prosecutor's motion for joinder conflicts with the requirement of Rule 72(C) that the "Trial Chamber shall dispose of preliminary motions in limine litis." The Defence argues that at the time of the filing of the Prosecutor's motion for joinder, the Trial Chamber had not yet ruled on the Defence motion for separate trials filed 23 February 1998, and that such decision must precede any decision on the joinder. The Defence requests the Tribunal to declare the Prosecutor's motion for joinder inadmissible.
- 9. The Prosecution, in its Reply, submits that the Trial Chamber should dismiss the Motion because it is an issue of litispendence that does not render inadmissible the Prosecutor's motion for joinder.

#### REASONING

10. The Tribunal finds that the matter raised in the Motion is not an issue of "limine litis" within the meaning of Rule 72(C). Further, after the filing of the Motion and the Prosecution's Reply, the former Trial Chamber II handed down its decision denying the Defence motion for separate trials. See Prosecutor v. Ntabakuze & Kabiligi, ICTR-97-34-I, ICTR-97-30-I (Decision on the Defence Motion Requesting an Order for Separate Trials) (1 October 1998). Thus, the former Trial Chamber II's decision of 1 October 1998 rendered the Motion moot.

11. For the above reasons, the Tribunal **DISMISSES** Ntabakuze's "Motion to Declare Inadmissible the Prosecutor's Motion of 30/7/98 for Joinder of Accused."

Arusha, 4 May 2000.

Pavel Dolenc Judge

Seal of the Tribunal