

UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Decision of: 5 May 2000

THE PROSECUTOR
v.
GRATIEN KABILIGI and
ALOYS NTABAKUZE

Case No. ICTR-96-34-I

Case No. ICTR-96-30-I

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**DECISION ON KABILIGI'S MOTION FOR THE
DISCLOSURE OF STATEMENTS OF THE ACCUSED**

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

1. The International Criminal Tribunal for Rwanda (Tribunal), sitting today as Judge Pavel Dolenc, as 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. **Considering** Defence Counsel for Gratien Kabiligi's "Motion for the Disclosure of Statements of the Accused" (Motion), filed on 15 January 1999;
3. **Considering** the Prosecutor's "Brief in Reply to the Defence Motion for Disclosure of Statements obtained from the Accused", filed on 28 January 1999;
4. **Now considers** the matter solely on the briefs of the parties pursuant to Rule 73(A).

SUBMISSIONS OF THE PARTIES

5. The Motion asserts that investigators of the Office of the Prosecutor questioned Gratien Kabiligi as a suspect on 19 July 1997 and the Accused made his initial appearance on 17 February 1998. Pursuant to Rule 43(iv), the Prosecution should supply an accused with copies of the record and of transcripts of the interrogation as soon as practicable after the questioning, but at least within thirty days from initial appearance under Rule 66(A).
6. The Motion further submits that only in May 1998 the Prosecutor disclosed a transcript of the first, smaller part of the questioning, and that a delay in the complete disclosure of Kabiligi's statements impedes preparation of his defence.
7. The Defence requests an order that the Prosecutor disclose the entire transcript of Kabiligi's questioning within eight days, and to impose coercive measures against the Prosecutor if she does not comply with the order.
8. The Prosecutor in her reply submits that on 24 December 1997 she sent to the Registry three cassette tapes of the questioning of Kabiligi. The Registrar confirmed receipt in a letter dated 13 January 1998 to which was attached a receipt of the Defence Counsel, dated 8 January 1998, certifying that these materials were dispatched to the Defence Counsel.
9. The Prosecutor submits that on 27 January 1999, she also sent to the Defence Counsel the transcript of the cassette tapes. The Prosecutor asserts that she always has been ready to rectify any error in handing over the materials, if the Defence Counsel simply brought it to her attention.

REASONING

10. The Tribunal finds that the Prosecutor did not comply with the Rule 43(iv). In her reply, the Prosecutor admits that she filed with the Registry the cassette tapes of the questioning only on 24 December 1997, more than five months after the questioning. The Tribunal cannot regard such a delay as acceptable. Further, the disclosure was incomplete without the transcripts, which were sent only on 27 January 1999.

11. The Defence, however, does not dispute that the Prosecutor has met her obligations under Rule 43(iv) on 27 January 1999 when she sent the transcripts. On that date, the Motion became moot.

12. The Defence has not contradicted the Prosecutor's assertion that the Prosecutor was ready to comply with her obligations if the Defence brought the matter to her attention. The Tribunal is of the opinion that, when such non-compliance with the Rules occurs, a party should try first to resolve the matter in a simple and practical manner by contacting the opposing party. The filing of a motion, before making a simple request to the opposing party, may be premature, waste judicial resources, and cause further delay. Here, the Motion merely caused further delay, contrary to one of the alleged reasons behind its filing.

13. For the above reasons the Tribunal **DISMISSES** Kabiligi's "Motion for the Disclosure of Statements of the Accused."

Arusha, 5 May 2000.

Pavel Dolenc
Judge



Seal of the Tribunal

