

ICTR-97-34-I
1-6-2000
(5544-5541)

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 1 June 2000

THE PROSECUTOR

v.

Gratien KABILIGI

Case No. ICTR-97-34-I

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**DECISION ON THE DEFENCE MOTION SEEKING SUPPLEMENTARY
INVESTIGATIONS**

The Office of the Prosecutor:
Chile Eboe-Osuji
Frédéric Ossogo

Defence Counsel for Gratien Kabiligi
Jean Yaovi Degli

INTRODUCTION

- 1. The International Criminal Tribunal for Rwanda (the "Tribunal") sits today as Trial Chamber III, composed of Judge Lloyd George Williams, Presiding, Judge Yakov Ostrovsky and Judge Pavel Dolenc (the "Trial Chamber").
- 2. On 5 January 1999 Defence Counsel for Kabiligi filed a "Defence Motion Seeking Supplementary Investigations" (the "Motion") pursuant to Rules 40(c), 54 and 73 of the Rules of Procedure and Evidence (the "Rules").
- 3. On 7 July 1999 the Prosecutor filed the "Prosecutor's Brief in Reply to Defence Motion Seeking Supplementary Investigations" (the "Brief in Reply").
- 4. On 18 May 2000, the Trial Chamber heard the parties at the hearing of the Motion.

SUBMISSIONS OF THE PARTIES

Defence Submissions

- 5. Defence Counsel submits that a thorough and impartial investigation of the crimes with which Kabiligi has been charged must include an investigation of the shooting down of the plane carrying President Juvenal Habyarimana and other senior ministers on 6 April 1994, (the "plane crash"), as this was the trigger for the subsequent massacres in Rwanda.
- 6. Counsel argues that the Indictment against Kabiligi indicates that the plane crash was the act that triggered the massacres in Rwanda, and therefore that knowing the cause of the plane crash is fundamental to a clear understanding of the planning and execution of the massacres of which Kabiligi stands accused.
- 7. Counsel argues that it is within the powers of the Prosecutor to investigate the plane crash. He cites paragraphs 2 and 4 of United Nations Security Council Resolution 955 (1994), paragraph 4 of United Nations Security Council Resolution 1165 (1998), and Article 28 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute"), on cooperation by States with investigations and prosecutions conducted by the Tribunal, in support of this proposition. He also refers to Rule 39 of the Rules with respect to the Prosecutor's powers of investigation, and Rule 68 of the Rules requiring the Prosecutor to disclose exculpatory evidence.
- 8. Counsel argues that if an investigation is not undertaken, Kabiligi's right to have adequate time and facilities for the preparation of his defence, as articulated in Article 20 of the Statute, will be breached. He argues that it is

contrary to international principles of equity and justice for the Prosecutor not to investigate the plane crash.

9. Defence Counsel for Kabiligi seeks an order that the Prosecutor, as well as various institutions including the State of Rwanda, UNAMIR, INTERPOL and any other State body undertake an investigation into the plane crash and to report their findings.

Prosecution Submissions

10. The Prosecutor submits that the Motion is unfounded in view of the legal provisions determining the powers of the Prosecutor, including Article 15 of the Statute.
11. The Prosecutor argues that her priority is the pursuit of investigations to search for direct and indirect evidence to sustain the charges brought against those responsible for violations of international humanitarian law.
12. The Prosecutor cites Article 15(2) of the Statute and the principle of expediency of investigations and prosecutions, widely applied in both national and international criminal law, as the basis for its independent choice of ways and means of prosecution, arguing that it cannot be ordered to undertake investigations requested by the Defence.
13. The Prosecutor refers the decision of the former Trial Chamber I of 18 March 1999 on the Prosecutor's Motion to Withdraw the Indictment in *Prosecutor v. Ntuyahaga*, Case No. ICTR-98-40-T, in which the Chamber ruled that "it is the sole duty of the Prosecutor to devise prosecution strategy" and that "the Prosecutor has the sole responsibility for prosecutions and thus the decision on whether or not to proceed".
14. In relation to Rule 39, the Prosecution submits that, while it gives the Prosecutor prerogatives in the conduct of investigations, it does not compel the Prosecutor to investigate in any given way.
15. In relation to Rule 68, the Prosecution contends that the fact that it has not investigated the shooting down of the plane cannot amount to a failure to disclose exculpatory evidence.
16. In relation to the Defence request for the Trial Chamber to order Rwanda, other States, UNAMIR and INTERPOL to undertake an investigation into the plane crash, the Prosecutor argues that such an investigation is not imperative in the discovery of the truth with respect to the acts or omissions for which Kabiligi is charged and that, therefore, the Defence request is unfounded.
17. The Prosecution submits that granting the Motion would impede the progress of the trial and negatively impact on due process.

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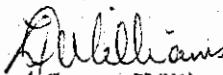
18. The Prosecution prays that the Trial Chamber rule that the Motion is unfounded and dismiss it.

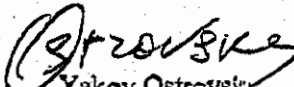
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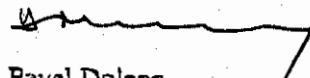
19. Defence Counsel failed to establish any causal link between the requested investigation into the responsibility for the plane crash and the acts and omissions which form the basis of the charges against Kabiligi in the Indictment.
20. Moreover, Defence Counsel failed to establish a legal basis on which the Trial Chamber could order supplementary investigations by the Prosecutor in this case. The issue is one solely for the discretion of the Prosecutor.
21. Finally, Defence Counsel has argued that the Trial Chamber may make an order under Article 28 of the Statute. Article 28 has no application to the present circumstances. In addition, Defence Counsel did not establish a basis on which the Trial Chamber should order various states and institutions to undertake an investigation into the plane crash.
22. For the above reasons, the Trial Chamber:

DENIES Kabiligi's "Defence Motion Seeking Supplementary Investigations."

Arusha, 1st June 2000


Lloyd George Williams
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

