

ICTR-97-34-I  
7-6-2000  
(5553 - 5549)

5553

UNITED NATIONS



NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

ORIG: Eng.

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

Registry: Dr. Agwu Ukiwe Okali

Decision of: 6 June 2000

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The PROSECUTOR  
v.  
Gratien KABILIGI and  
Aloys NTABAKUZE

Case No. ICTR-97-34-I

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**DECISION ON KABILIGI'S MOTION TO QUASH OR AMEND THE  
INDICTMENT**

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Office of the Prosecutor:

Mr. Chile Eboe-Osuji  
Mr. Frédéric Ossogo

Defence Counsel for Kabiligi:

Mr. Jean Yaovi Degli

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal")

**SITTING** as Trial Chamber III (the "Trial Chamber") composed of Judges Lloyd George Williams, presiding, Yakov Ostrovsky and Pavel Dolenc;

**BEING SEIZED** of Defence Counsel for Gratién Kabiligi's Motion to Quash or Amend the Indictment (the "Motion") filed on 11 October 1999, pursuant to Rule 72 of the Rules of Procedure and Evidence (the "Rules");

**NOTING** that the Prosecutor did not file a written response to the Motion;

**HAVING HEARD** the parties on 17 May 2000;

**NOW DECIDES THIS MOTION.**

**SUBMISSIONS OF THE PARTIES**

**The Defence Submissions**

1. The Defence argues that an accused is to be informed precisely of the nature and the cause of the charges against him.
2. The Defence contends that the amended indictment filed against Kabiligi on 13 August 1999 (the "Indictment") does not meet this requirement and ought to be quashed.
3. The Defence asserts that references in the Indictment to history and events alleged to have taken place before 1994 are beyond the temporal jurisdiction of the Tribunal and of no relevance.
4. The Defence refers to paragraphs of the Indictment which allege facts without making any link between these facts and the Accused, arguing that such paragraphs require the Indictment to be quashed.
5. Furthermore, the defence alleges a lack of precision with respect to the identity of victims, the identity of Kabiligi's subordinates, and the places and the dates of the events set out in the Indictment.
6. The Defence contends that the Prosecutor did not comply with Trial Chamber II's decision rendered on 5 October 1998, ordering the Prosecutor to clarify the Indictment.
7. The Defence asserts that the Prosecution unlawfully bases several charges on the same facts. It specifically argues that the Prosecutor cannot base the charges of genocide and complicity in genocide upon the same facts.

8. Lastly, the Defence submits that the Prosecutor, while admitting that the Accused was absent from Rwanda on 6 and 7 April 1994, nevertheless charged him with crimes which occurred during that time.
9. The Defence therefore requests that the Trial Chamber quash the Indictment or, in the alternative, order the Prosecutor to amend it.

### **The Prosecutor's Submissions**

10. The Prosecutor argues that the Indictment contains the necessary degree of specificity and that there is no need for further clarification or detail with respect to the allegations contained in the Indictment. In this regard, the Prosecutor refers to a number of authorities on the amount of detail required in an indictment.
11. The Prosecutor states that the Trial Chamber in its decision of 13 April 2000 (*Prosecutor v. Nsengiyumva*) properly addressed the issue of facts which do not fall into the temporal jurisdiction of the Tribunal.
12. The Prosecutor also argues that, given the specific nature and the scale of the crimes involved, the requirement of precision and specification cannot be the same as in national jurisdictions. She refers to previous decisions of the Trial Chamber noting that it is not realistic to expect a reference to the Accused in every paragraph of the indictment.
13. The Prosecutor asserts that the current Indictment is more detailed than the first indictment, which the Trial Chamber deemed precise enough.
14. Regarding the question of several charges based on the same facts, the Prosecutor refers to previous decisions of the Tribunal and argues that it is a matter to be dealt with at trial.
15. The Prosecutor, therefore, requests the Trial Chamber to dismiss the Motion.
16. In the alternative, the Prosecutor argues that if the Trial Chamber finds the Indictment to be lacking in detail, the Trial Chamber should make an order for particulars rather than striking the impugned paragraphs from the Indictment or ordering an amendment of the Indictment.

### **DELIBERATION**

17. It is a general principle of criminal law that all the facts of a given offence attributed to an accused person are to be set out in the indictment against this person. This is articulated in Rule 47 of the Rules.


18. The Indictment must specify the acts or omissions with which the Accused is charged together with a concise statement of facts supporting these charges.
19. A number of paragraphs in the Indictment make general allegations without any specific reference to the Accused and his role in the events alleged therein. However, the Trial Chamber does not read those paragraphs in isolation. The Trial Chamber reads them in conjunction with, and in the context of, the other paragraphs relating to the crimes.
20. In this regard, there is no reason to strike out the historical background to which the Indictment refers. The requirement of a concise statement of the facts of the case and of the crime cannot be understood as excluding additional information that can give a more complete picture of the situation.
21. With respect to the Defence objection to the reference to facts that occurred before 1994, the Trial Chamber holds that such allegations do not constitute independent crimes. They merely represent what the Prosecutor intends to offer as relevant and admissible evidence of crimes occurring in 1994, or relate to the continuation of events, clarify and supplement the substantive charges.
22. The Trial Chamber further notes that it would be premature to deal with the issue of multiple charges based on the same facts at this stage. This issue ought to be addressed at trial.
23. The Trial Chamber also deems it premature to consider the question of the absence of Kabiligi from Rwanda during the period for which he is charged with crimes. Kabiligi will have the opportunity to raise a defense of alibi at trial.
24. The allegations set out in paragraph 5.1 of the Indictment: "From late 1990 until July 1994 Gratien Kabiligi...conspired among themselves" are imprecise due to the length of the time period mentioned and the generality of the allegations. However, the Trial Chamber finds that the facts demonstrating the specific conduct of the Accused with respect to these allegations are set out in the remaining paragraphs of the Indictment, particularly in paragraphs: 5.12, 6.3, 6.30 in fine, 6.38, 6.40, 6.41, 6.42, 6.50 and 6.51.
25. The same remarks as above apply to paragraphs 5.31, 6.18 and 6.31.
26. Paragraphs 5.10 and 6.49 refer to several meetings of army officers held respectively at the time of the negotiation of the Arusha Accords and from April to July 1994, without specifying when those meetings took place. The Accused is entitled to have information about the dates and venues of these meetings if known to the Prosecutor, or alternatively, at the very, least an approximation of the same.

27. In paragraph 6.29, the Accused is alleged to have regularly met with the Commander of Presidential Guard and others from April to July 1994. The Prosecutor should specify the dates of the meetings, if known, or the approximate dates, if the dates are not known. She also should specify the identity of the other participants, if known.
28. In the first lines of paragraph 6.30, it is alleged that: "Gratien Kabiligi supported the militiamen who were murdering Tutsi civilians and ordered his men to use the Interahamwe at the roadblocks." The Prosecutor should specify when and where he gave such orders, if known.
29. The Trial Chamber is not of the opinion that the Indictment should be quashed for vagueness or imprecision. Rather, the Trial Chamber finds that the Accused is entitled to the information set out above, if known to the Prosecutor, in order to properly prepare his defence. Thus, the Trial Chamber resolves that the Prosecutor shall provide the information to the Accused and his Counsel in the form of particulars, to the extent that such information is available to her.
30. **FOR THESE REASONS, THE TRIBUNAL:**
- (a) **ORDERS** the Prosecutor to provide to the Defence the particulars set out above within fourteen (14) days of the notification of this decision; and
- (b) **DENIES** the Motion in all other respects.

Arusha, 6 June 2000.

  
Lloyd George Williams  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

Seal of the Tribunal





025 ICTR-97-34-1  
21-6-2000 (3)  
(5586-5584)  
Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

97-34-0336

**IN THE TRIAL CHAMBER III**

**Before:** Judge Lloyd George WILLIAMS, Presiding  
Judge Yakov OSTROVSKY  
Judge Pavel DOLENC

**Registrar:** Dr Agwu U OKALI

**Date filed:** 21 June 2000

**THE PROSECUTOR**

v

**Gratien KABILIGI and  
Aloys NTABAKUZE**

Case No. ICTR-97-34-I

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**PARTICULARS**

[PURSUANT TO THE DECISION (DATED 6 JUNE 2000) ON KABILIGI'S MOTION TO  
QUASH OR AMEND THE INDICTMENT]

*Prosecution Counsel*

Mr Chile EBOE-OSUJI  
Mr Frédéric OSSOGO

*Defence Counsel*

Mr Jean Yaovi DEGLI

## PARTICULARS

**FURTHER TO** the Decision on the Defence Motion to quash or amend the Indictment dated 6 June 2000 notified to her on 9 June 2000, the Prosecutor hereby provides the following underlined particulars to the Defence:

**5.10** From about 1 May 1992 to about 31 August 1993, at the time of the negotiation of the Arusha Accords, several meetings of Army officers including **Major Aloys Ntabakuze** Colonel Théoneste Bagosora and Lt. Col. Anatole Nsengiyumva were held notably at Kanombe military camp. The frequency of those meetings varied but were held on a weekly basis during the negotiations of the Protocol of Agreement on the integration of the Armed Forces. During the same period, **Aloys Ntabakuze** and Théoneste Bagosora urged the military to reject and show their disapproval of the Arusha Accords. In August 1993, **Aloys Ntabakuze** even ordered his men to abduct the Prime Minister and bring her to Kanombe Camp. The operation was cancelled while it was under way on the orders of the Chief of Staff, General Déogratias Nsabimana.

**5.10** Entre le 1er mai 1992 et le 31 août 1993, durant la période des négociations des Accords d'Arusha, plusieurs réunions, regroupant des officiers, parmi lesquels, le **Major Aloys Ntabakuze**, le Colonel Théoneste Bagosora et le Lt Col. Anatole Nsengiyumva ont eu lieu, notamment au camp militaire de Kanombe. La fréquence de ces réunions variait mais elles sont devenues hebdomadaires lors des négociations du Protocole d'intégration des Forces Armées. Durant cette même période, **Aloys Ntabakuze** et Théoneste Bagosora ont encouragé les militaires à rejeter et à manifester leur désaccord vis-à-vis des Accords d'Arusha. En août 1993, **Aloys Ntabakuze** a même ordonné à ses hommes d'enlever le Premier Ministre et de l'amener au camp de Kanombe. L'opération a été annulée en cours d'exécution sur ordre du Chef de l'Etat-Major, le Général Déogratias Nsabimana..

**6.29** From about 10 April to about 30 June 1994, Brigadier-General **Gratien Kabiligi**, Chief of military operations in the Rwandan Army regularly met with the Commander of the Presidential Guard, Protais Mpiranya, and the Commander of the Para-Commando Battalion, **Aloys Ntabakuze** and also with Colonel Théoneste Bagosora.

**6.29** Du 10 avril au 30 June 1994, le Brigadier Général, **Gratien Kabiligi**, Chef des opérations militaires de l'Armée Rwandaise a rencontré régulièrement le Commandant de la Garde Présidentielle, Protais Mpiranya, et le Commandant du bataillon Para-Commando, **Aloys Ntabakuze** ainsi que le Colonel Théoneste Bagosora.

**6.30** From about 10 April to about 31 May 1994, during the massacres, Brigadier-General **Gratien Kabiligi** encouraged and supported the militiamen who were murdering Tutsi civilians and ordered his men to use the *Interahamwe* at the roadblocks. Moreover, in mid-April 1994, **Gratien Kabiligi** ordered the murder of a soldier in the *Forces Armées Rwandaises* of Tutsi descent, as well as certain members of his family.

**6.30** Entre le 10 avril et le 31 mai 1994, pendant les massacres, le Brigadier Général **Gratien Kabiligi** a encouragé et soutenu les miliciens qui assassinaient les civils Tutsi et a ordonné à ses hommes d'utiliser les *Interahamwe* aux barrages. En outre, à la mi-avril 1994, **Gratien Kabiligi** a ordonné le meurtre d'un soldat des *Forces Armées Rwandaises* d'origine Tutsi et de certains membres de la famille de ce dernier.

**6.49** From about 10 April to about 3 July 1994, the officers of the General Staff of the Army participated in daily meetings at which they were informed of the massacres of the civilian Tutsi population. These meetings assembled the members of the General Staff and unit commanders, including, among others, Major-General Augustin Bizimungu, Brigadier-General **Gratien Kabiligi**, Major **Aloys Ntabakuze**, Major Protais Mpiranya, Major François-Xavier Nzuwonemeye, Colonel Aloys Ntiwiragabo, as well as the *directeur du cabinet* in the Ministry of Defence, Colonel Théoneste Bagosora, and the Chief of Staff of the Gendarmerie, General Augustin Ndindiliyimana.

**6.49** Du 10 avril au 3 juillet 1994, les officiers de l'État-Major de l'Armée, ont participé à des réunions quotidiennes où ils ont été informés des massacres perpétrés contre la population civile Tutsi. Ces réunions regroupaient les membres de l'État-Major et les chefs d'unités dont, entre autres, le Major-Général Augustin Bizimungu, le Brigadier-Général **Gratien Kabiligi**, le Major **Aloys Ntabakuze**, le Major Protais Mpiranya, le Major François-Xavier Nzuwonemeye, le Colonel Aloys Ntiwiragabo, et ainsi que le directeur du cabinet du Ministère de la Défense, le Colonel Théoneste Bagosora, et le chef de l'État-Major de la gendarmerie, le Général Augustin Ndindiliyimana.

DATED AT ARUSHA, 21 June 2000



Chile EBOE-OSUJI



Frédéric OSSOGO

TO: The Registrar

AND TO: Mr Jean Yaovi DEGLI  
(c/o The Registrar)