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8-6-2000  
(5562-5559)

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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 William H. Sekule  
Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 8 June 2000

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THE PROSECUTOR

v.

Gratien KABILIGI  
Aloys NTABAKUZE  
Case No. ICTR-97-34-I

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**DECISION ON KABILIGI'S SUPPLEMENTARY MOTION FOR  
INVESTIGATION AND DISCLOSURE OF EVIDENCE**

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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 William H. Sekule (as assigned by the Acting President), and Judge Pavel Dolenc (the "Trial Chamber").
2. On 4 April 2000, Defence Counsel for Kabiligi filed a "Supplementary Motion for Investigation and Disclosure of Evidence" (the "Motion") pursuant to Rules 66(B), 68 and 73 of the Rules of Procedure and Evidence (the "Rules").
3. The Prosecutor did not file a written reply but made oral submissions.
4. On 24 May 2000, the Trial Chamber heard the parties at the hearing of the Motion.

## SUBMISSIONS OF THE PARTIES

### *Defence Submissions*

5. Defence Counsel seeks the disclosure of information in the possession of the Prosecutor with respect to an investigation into responsibility for the 6 April 1994 attack on President Habyarimana's plane, and the release of a United Nations report dated 1<sup>st</sup> August 1997 in the possession of the President of the Tribunal and under seal (the "1<sup>st</sup> August 1997 report").
6. Counsel argues that the attack is an essential element in the planning and perpetration of the crimes committed in Rwanda in 1994. The Defence contends that Rules 66(B) and 68 of the Rules require the disclosure to the Defence of the information in the possession of the Prosecutor, on the basis that the information is material to the preparation of the defence and may suggest the innocence or mitigate the guilt of the accused.

### *Prosecution Submissions*

7. The Prosecutor submits that any information in her possession would be a report, memorandum or internal document prepared by the Office of the Prosecutor in connection with its investigation and preparation of the case as envisaged by Rule 70 and thus not subject to disclosure to the Defence. The Prosecutor further argues that there is no suggestion such information would be exculpatory for Kabiligi.
8. With respect to the 1<sup>st</sup> August 1997 report, the Prosecutor argues that it is not subject to disclosure under the Rules because it is not in the possession of the Prosecutor. Additionally, the Prosecutor contends that Defence Counsel has not established that the report is material to Kabiligi's defence as required for disclosure under Rule 66(B).

9. The Prosecutor asks the Trial Chamber to rule that the Motion is unfounded and to dismiss it.

## **DELIBERATION**

### *Information in the Possession of the Prosecutor*

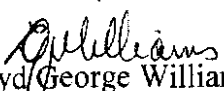
10. The Defence has failed to show that the Prosecutor is in possession of information concerning responsibility for the attack on President Habyarimana's plane on 6 April 1994, as alleged in the Motion.
11. The Trial Chamber therefore does not propose to make an order for the disclosure of such information.

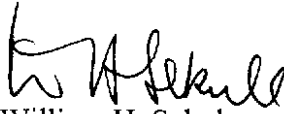
### *1<sup>st</sup> August 1997 Report*


12. In the instant case the Defence asks the Trial Chamber to make an order allowing it to have access to a document which at the time of the hearing of the Motion was not in the possession of the Trial Chamber.
13. It would have been impossible for the Trial Chamber to adjudicate on the matter without seeing the document. Therefore, the Trial Chamber made a request to the President of the Tribunal to allow the Trial Chamber to have a copy of the 1<sup>st</sup> August 1997 report and the President provided the Trial Chamber with a copy of same.
14. Because the 1<sup>st</sup> August 1997 report is not in the possession of the Prosecutor, Rules 66(B) and 68 are not applicable.
15. The Trial Chamber makes no finding as to the relevance of the 1<sup>st</sup> August 1997 report at this time.
16. In the interest of justice, the Trial Chamber decides that in the particular circumstances of this case it will invoke the inherent powers of the Tribunal and make the 1<sup>st</sup> August 1997 report available to the parties.
17. The circumstances existing are exceptional and this action by the Trial Chamber is not to be considered as setting any precedent with regard to future matters.

18. For the above reasons, the Trial Chamber:
- (a) **RELEASES** a copy of the 1<sup>st</sup> August 1997 report to the Defence solely for the purposes of the defence in this case;
  - (b) **RELEASES** equally a copy of the 1<sup>st</sup> August 1997 report to the Prosecutor solely for use in this case; and
  - (c) **DENIES** Kabiligi's "Supplementary Motion for Investigation and Disclosure of Evidence" in all other respects.

Arusha, 8 June 2000.

  
Lloyd George Williams  
Judge, Presiding

  
William H. Sekule  
Judge

  
Pavel Dolenc  
Judge

Seal of the Tribunal