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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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 COURT REGISTRY  
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THE PROSECUTOR

v.

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

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**DECISION ON NTABAKUZE'S MOTION FOR DISCLOSURE OF MATERIAL**

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

Defence Counsel for Aloys Ntabakuze:  
 Clemente Monterosso

## 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 11 February 2000, Counsel for Ntabakuze filed a “Motion for Disclosure of Material” (the “Motion”), pursuant to Rules 66, 68 and 72 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 a three page United Nations report dated 1<sup>st</sup> August 1997 in the possession of the President of the Tribunal and under seal, with respect to an investigation into responsibility for the 6 April 1994 attack on President Habyarimana’s plane (the “1<sup>st</sup> August 1997 report”), the summary of the investigation and all documents of the investigation which are or were in the possession of the Office of the Prosecutor.
6. Defence Counsel argues that there is a direct link between the assassination of President Habyarimana and the massacres which ensued in Rwanda as of 6 April 1994. He directs the Trial Chamber to a number of authorities in support of this position.
7. He also contends that there is a direct link between the assassination of President Habyarimana and the allegations in the indictment against Ntabakuze (the “Indictment”). He refers to a number of paragraphs in the Indictment which mention the plane crash of 6 April 1994.
8. It is Defence Counsel’s position that due to this alleged link, the information sought is material and must be disclosed or released to the Defence.
9. Counsel also argues that the information is a crucial element of the defence, and necessary for a full and unfettered defence.

10. Defence Counsel submits that the information should be disclosed if there is a reasonable belief that such disclosure can show the innocence of an accused, unless the disclosure is limited by secrecy which is not the case in the present circumstances.

*Prosecution Submissions*

11. As set out in her oral submissions in response to a similar motion brought by Gratien Kabiligi, also heard on 24 May 2000 (see Trial Chamber III's decision of today's date), 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 Ntabakuze. The Prosecutor argues that she does not have any information which she has not disclosed or does not intend to disclose which reveals or suggests the innocence of Ntabakuze.
12. 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 Ntabakuze's defence as required for disclosure under Rule 66(B).
13. The Prosecutor contends that although the 6 April 1994 plane crash is mentioned in the Indictment, the question of responsibility for the plane crash is not an issue in the Indictment.
14. The Prosecutor asks the Trial Chamber to rule that the Motion is unfounded and to dismiss it.
15. Additionally, the Prosecutor submits that Ntabakuze's motion, brought under Rule 72, is out of time.

**DELIBERATION**

*Preliminary Issues*

16. The Trial Chamber finds that the Motion, brought under Rule 72, is out of time, and in normal circumstances the Trial Chamber would dismiss the Motion. However, in the interests of justice, and since the Trial Chamber has decided to release the 1<sup>st</sup> August 197 report in another case, the Trial Chamber sees no reason to deny the release of the report in this case and will therefore decide this motion on the merits.

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*Information in the Possession of the Prosecutor*

17. 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. The Defence has failed to specify the information it wishes the Prosecutor to disclose.
18. The Trial Chamber therefore does not propose to make an order for the disclosure of such information.


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


19. In the instant case the Defence asks the Trial Chamber to make an order allowing it to have access to a document which was not in the possession of the Trial Chamber at the time of the hearing of the Motion.
20. 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.
21. 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.
22. The Trial Chamber makes no finding as to the relevance of the 1<sup>st</sup> August 1997 report at this time.
23. 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.
24. 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.

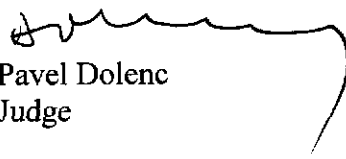
25. For the above reasons, the Trial Chamber:

- (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** Ntabakuze's "Motion for Disclosure of Material" in all other respects.

Arusha, 8 June 2000.

  
Lloyd George Williams  
Judge, Presiding

  
William H. Sekule  
Judge

  
Pavel Dolenc  
Judge

Seal of the Tribunal