

IC12-98-41-I
13-3-2003
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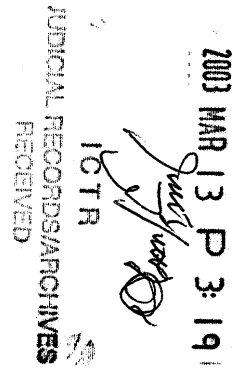
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER III

Before: Judge Lloyd George Williams, presiding
Judge Pavel Dolenc
Judge Andrézia Vaz

Registry: Adama Dieng

Date: 24 February 2003



THE PROSECUTOR

v.

GRATIEN KABILIGI

Case No. ICTR-98-41-I

MOTION TO REQUEST FREE SITTING ARRANGEMENT FOR
ACCUSED PERSONS

Office of the Prosecutor:

Barbara Mulvaney
Drew White
Segun Jegede
Christine Graham
Rashid Rashid

Defence Counsel:

Jean Yaovi Degli
Sylvia Olympio

Translation certified by LSS, ICTR

DIII03-0014 (E)

In the presence of:

Théoneste BAGOSORA

Raphaël CONSTANT, Counsel

P. SKOLNIK, Counsel

Aloys NTABAKUZE

André TREMBLAY, Counsel

Anatole NSENGIYUMVA

Kennedy OGETTO, Counsel

Gershom BW'OMANWA OTACHI, Counsel

MAY IT PLEASE THE TRIAL CHAMBER

I. Procedural and factual background

1. It should first and foremost be recalled that:
 - Théoneste BAGOSORA was indicted on 10 August 1996 under Case No. ICTR-96-7-I;
 - Anatole NSENGIYUMVA was indicted on 12 July 1996 under Case No. ICTR-96-12-I
 - Gratien KABILIGI and Aloys NTABAKUZE were indicted on 15 October 1997 under Case No. ICTR-97-34-I
2. Further to a Prosecution motion filed on 31 July 1998, the former Trial Chamber II rendered a decision on 29 June 2000 in favour of the joinder of the three aforementioned cases;
3. As from that date, the four Accused persons, who had to comply with a new initial appearance procedure in pleading guilty or not guilty to counts in the new indictments brought by the Prosecution, were all grouped together under a new case number henceforth known as ICTR-98-41-I;

4. Whereas the trial was scheduled to start on 2 April 2002 and that on that date, the case was postponed to 2 September 2002 for the appearance of the first Prosecution witnesses;

5. Whereas before the trial started in September 2002, the Trial Chamber had, during a status conference, asked that the Accused persons always sit in the same place at every court hearing;

6. Whereas this measure seriously violates the rights of the Defence in general and those of the accused persons in particular, and, at any rate, those of General KABILIGI;

7. Whereas **Article 19 of the Tribunal's Statute** provides that:

"1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses";

8. **Article 20 of the Statute**, which is a repetition of the provisions of Article 14 of the International Covenant on Civil and Political Rights provides:

"1. All persons shall be equal before the International Criminal Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 21 of the Statute.

3. The accused shall be presumed innocent until proven guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

...

(g) Not to be compelled to testify against himself or herself or to confess guilt";

9. Whereas neither the Statute nor the Rules of Procedure and Evidence prescribe that accused persons shall sit in the same place at every court hearing;

10. Whereas in a procedure that is almost entirely based on witness testimonies and even often on hearsay, the identification of an accused person is tantamount to the establishment of evidence;

11. Whereas the Prosecution often requests its witnesses to identify the accused persons in order to support its evidence;
12. Whereas in the Butare trial before Trial Chamber II, a lady who alleged that she had been raped by an accused was, on several occasions, unable to identify the accused;
13. Whereas this clearly shows how testimonies are presented before the Trial Chamber by the Prosecution whose is interested in having its adversaries or "enemies" detained in Arusha invariably convicted;
14. Whereas the burden of proof falls on the Prosecution;
15. Whereas the Accused would neither be asked to testify against himself nor assist the Prosecution in doing so;
16. Whereas this is clearly shown in the provisions of **Article 20(4)(g)** of the Tribunal's Statute, which states that the accused shall not be "*compelled to testify against himself or herself or to confess guilt*";
17. Whereas, before counts of the various legal systems in the world, accused persons are not generally compelled to sit in the same place at every court hearing, especially where the entire rule of evidence relies on testimonies;
18. Whereas no other Trial Chamber of ICTR or ICTY ever seems to have imposed such a rigid sitting arrangement on accused persons;
19. Whereas the request for and imposition of a specific sitting arrangement at every court hearing is tantamount to asking the accused persons to take part in the identification procedure that the Prosecution will use in respect of most of its witnesses, which procedure helps to establish evidence against the accused persons;
20. Whereas this must be interpreted as compelling the Accused to testify against himself or plead guilty, which is absolutely contrary to the letter of the aforementioned **Article 20(4)(g)** of the Statute, in particular, and to the spirit of fair justice in general;
21. Whereas by compelling the accused persons to sit in the same place at each court hearing, the Prosecution is able to let its witnesses identify the accused persons by simply telling them the order in which the accused persons are seated;
22. Whereas during Witness ZF's testimony before the Trial Chamber, such an impression seemed to emerge from the identification procedure of the accused persons by the witness;
23. Whereas, indeed, on 28 November 2002, when the Prosecution asked Witness ZF to identify the Accused Kabiligi, the witness did so by simply going by the order in which the accused persons were seated;

24. Whereas when the Prosecution asked the witness to identify the Accused otherwise, for instance by his dressing, the witness failed to do so but simply used the sitting arrangement to identify the accused persons;

25. Whereas the court transcript clearly shows the following:

“Q. Sir, can - do you see the person here in court that you’ve identified as General Kabiligi?”

A. Yes, Counsel.

Q. Can you please identify him for the Court? Can you describe what he’s wearing and where he’s sitting?”

A. Yes, Counsel.

R. Please describe where he is sitting.

MR. PRESIDENT:

Can he do it sitting or does he need to stand?”

You need to find out from him.

BY MS. MULVANEY:

Q. Sir, can you see him from - the person you believe to be General Kabiligi from where you’re sitting?”

A. Yes, Counsel. Brigadier General Kabiligi is sitting to my left near Major Ntabakuze.

Q. Can you tell what colour shirt he’s wearing, or suit?”

A. I cannot clearly see the colour of his suit. The shirt is white.

Q. And can you tell how many – where he’s seated in relationship to the aisle? And by “the aisle” I mean the walkway that ends with a curtain.

A. Counsel, I have no doubt concerning all these persons. I know them very well. I could tell you how they are all seated. First of all, you have Major Ntabakuze, followed by Brigadier General Kabiligi, then you have Colonel Anatole Nsengiyumva, and then Colonel Théoneste Bagosora.”¹

¹ Transcript, 28 November 2002, pp 78-79, Trial Chamber III.

Considering that there is no provision assigning a specific and rigid sitting arrangement for accused persons at court hearings;

May it please the Tribunal,

To order that the accused persons in this trial shall henceforth freely take their seats in the dock at every court hearing;

WITH ALL PROPER RESERVE

Done at Paris on 15 February 2003

For General Gratien KABILIGI

Jean Yaovi DEGLI, Lead Counsel (Signed)

Sylvia OLYMPIO, Co-Counsel

Attached: Copy of court transcript.



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION - ARUSHA**

Date:	13 March, 2003	Case Name / affaire:	The Prosecutor v. - THEONESTE BAGOSORA - GRATIEN KABILIGI - ALOYS NTABAKUZE - ANATOLE NSENGIYUMVA
		Case No / no. de l'affaire:	ICTR-98-41-T
To: A:	<input type="checkbox"/> TC1	received by / reçu par:	ALO: received by / reçu par
	<input type="checkbox"/>	Judge N. Pillay, President	<input type="checkbox"/>
	<input type="checkbox"/>	Judge Møse, Vice President	<input type="checkbox"/>
	<input type="checkbox"/>	Judge A. Vaz	<input type="checkbox"/>
	<input type="checkbox"/>	E. Nahamya, Co-ordinator	<input type="checkbox"/>
	<input type="checkbox"/> TC2	Judge W. H. Sekule	<input type="checkbox"/>
	<input type="checkbox"/>	Judge W. C. M. Maqutu	<input type="checkbox"/>
	<input type="checkbox"/>	Judge A. Ramaroson	<input type="checkbox"/>
	<input type="checkbox"/>	A. Lorey, Co-ordinator	<input type="checkbox"/>
	<input type="checkbox"/> TC3	Judge L.G. Williams	<input type="checkbox"/>
<input type="checkbox"/>	Judge Y. Ostrovsky (Pre-Trial Only)	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Judge P. Dolenc	<input type="checkbox"/>	
<input type="checkbox"/>	Judge A. Vaz (Trial Only)	<input type="checkbox"/>	
<input type="checkbox"/>	M. Niang, Co-ordinator	<input checked="" type="checkbox"/>	
<input type="checkbox"/> OTP / BUREAU DU PROCUREUR			
<input type="checkbox"/>	Trial Attorney in charge of case: BARBARA MULVANEY	Received by	<i>[Signature]</i> 14/03/03
<input type="checkbox"/> DEFENSE:	<i>Mubanyi WAYNE</i> 14/03		
<input type="checkbox"/>	Accused / Accusé: BAGOSORA, KABILIGI, NTABAKUZE, & NSENGIYUMVA		complete / remplir " CMS4 FORM"
<input checked="" type="checkbox"/>	Lead Counsel / Conseil Principal: CONSTANT, DEGLI & OGETTO		
<input type="checkbox"/>	In / à Arusha	<input type="checkbox"/>	by fax complete / remplir "CMS3bis FORM"
<input type="checkbox"/>	Co-Counsel / Conseil Adjoint: SKOLNIK, OLYMPIO, TREMBLAY & BW'OMANWA		
<input type="checkbox"/>	In / à Arusha	<input type="checkbox"/>	by fax complete / remplir "CMS3bis FORM"
All Decisions:	<input type="checkbox"/> Appeals Chamber Unit, The Hague	<input type="checkbox"/>	Suzanne Chenault, Jurist Linguist
All Decisions & Important Public Documents:	<input type="checkbox"/> Press & Public Affairs	<input type="checkbox"/>	Legal Library
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS)	<input checked="" type="checkbox"/> K. Afande (TC 1)	<input type="checkbox"/> R. Kouambo (TC 2) <input type="checkbox"/> F. Talon (TC 3) <input type="checkbox"/> F. Talon (Appeal)
Cc:	<input type="checkbox"/> A. Dieng	<input type="checkbox"/> A. Miller, OLA, NY	<input type="checkbox"/> L. G. Munlo <input type="checkbox"/> K. Moghalu <input type="checkbox"/> S. Van Driessche
	<input type="checkbox"/> WVSS- D	<input type="checkbox"/> WVSS-P	<input type="checkbox"/> E. O'Donnell <input type="checkbox"/> LDFMS <input checked="" type="checkbox"/> P. Nyambe GLSS <input type="checkbox"/> P. Enow
Subject Objet:	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):		

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Date Filed / Date enregistré Pages

MOTION TO REQUEST FREE SITTING ARRANGEMENT FOR ACCUSED PERSONS

13/03/2003

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**PROOF OF SERVICE TO DETAINEES
PREUVE DE NOTIFICATION D'ACTES AUX DETENUS**

Upon signature of the detainee, please return this sheet to the originator as proof of service.
Formulaire à être renvoyé à l'expéditeur dûment signé par le détenu.

Date: 13 March, 2003		Case Name / affaire: The Prosecutor v. - THEONESTE BAGOSORA - GRATIEN KABILIGI - ALOYS NTABAKUZE - ANATOLE NSENGIYUMVA		
		Case No / affaire no: ICTR-98-41-T		
To: A:	Name of detainee / nom du détenu KABILIGI	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
		I confirm reception of the document(s) listed below. <i>Je confirme réception du/des documents mentionné(s) ci-dessous.</i>	Signature <i>[Signature]</i>	Date, Time / Heure <i>17/03/2003</i>
Via:	Security Officer Commanding Officer, UNDF	Print name / nom <i>[Signature]</i> SAIDOU GUINDO	Signature <i>[Signature]</i>	Date, Time / Heure <i>17/03</i>
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input checked="" type="checkbox"/> K. Afande (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> F. Talon (TC3) <input type="checkbox"/> F. Talon Ahouandogbo (Appel) <input type="checkbox"/> Other / Autre			
Subject Objet:	Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants.			

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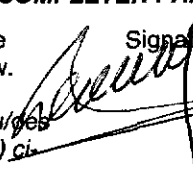




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		Case No / affaire no: ICTR-98-41-T		
To: A:	Name of detainee / nom du détenu NSENGIYUMVA	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
		I confirm reception of the document(s) listed below. Signature  Date, Time / Heure 17-03-03 Je confirme réception du/des documents mentionné(s) ci-dessous.		
Via:	Security Officer Commanding Officer, UNDF	Print name / nom  SAIDOU GUINDO	Signature 	Date, Time / Heure 17/03
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input checked="" type="checkbox"/> K. Afande (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> F. Talon (TC3) <input type="checkbox"/> F. Talon Ahouandogbo (Appeal) <input type="checkbox"/> Other / Autre			
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Via:	Security Officer Commanding Officer, UNDF	Print name / nom SAIDOU GUINDO	Signature 	Date, Time / Heure 19/03/03
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To: À:	Name of detainee / nom du détenu NTABAKUZE	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
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Judge Andrésia Vaz

Registry: Adama Dieng

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JUDICIAL RECORDS ARCHIVES
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Adama Dieng

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