

ICTR-98-41-T  
22 + 12 - 2008  
(39937-39934)

International Criminal Tribunal for Rwanda



UNITED NATIONS  
NATIONS UNIES

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39937  
S. Muru

Before: Judge Erik Møse, Presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

Registrar: Mr. Adama Dieng

Date filed: 22 December 2008

THE PROSECUTOR

v.

Théoneste Bagosora  
Gratien Kabiligi  
Aloys Ntabakuze  
Anatole Nsengiyumva

Case No. ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES  
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**PROSECUTOR'S EXTREMELY URGENT MOTION  
REQUESTING THE CHAMBER TO IMPOSE CONDITIONS ON  
KABILIGI'S LIBERTY PENDING THE PROSECUTOR'S  
DECISION TO APPEAL**

**Office of the Prosecutor**

Hassan Bubacar Jallow  
Bongani Majola  
Alex Obote-Odora  
George Mugwanya

**Defence: for Kabiligi**

Paul Skolnik

**A. NATURE OF THE MOTION.**

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1. The Prosecutor hereby respectfully submits this extremely urgent Motion requesting the Chamber to impose conditions and restrictions on Kabiligi's liberty pending the Prosecutor's decision whether or not to appeal.

**B. PROCEDURAL HISTORY AND SUBMISSIONS**

2. On 18 December 2008, the Trial Chamber delivered its Judgement in the case of *Bagosora et al*, in which it acquitted Kabiligi. The Chamber delivered only the oral summary of the Judgement, noting that the full text of the judgement will be available in the coming days after the conclusion of the editorial process.

3. The Prosecutor respectfully requests the Chamber in exercise of its inherent powers to impose restrictions on Kabiligi's liberty to ensure that when the Prosecutor takes a decision to lodge an appeal against his acquittal (a decision he will be in position to take when he receives the full text of the Judgement, and which he will communicate within the time prescribed for filing an appeal), Kabiligi is available to respond to the appeal. The restrictions and conditions will ensure that when the appeal is lodged, Kabiligi is available within the Tribunal's jurisdiction and thus ensure that the appeal process is not frustrated by his absence.

4. The Prosecutor submits that because the Chamber pronounced only an oral summary of the judgement, the Prosecutor could not immediately thereafter readily make a decision as to whether or not to appeal Kabiligi's acquittal, and thus could not request the Chamber to continue detaining the Accused in terms of Rule 99 of the Tribunal's Rules of Procedure and Evidence.

5. As the Prosecutor continues to await the Chamber's delivery of the full text of the Judgement, which will enable him to take a concrete decision as to whether or not to appeal the acquittal of Kabiligi, the Prosecutor respectfully submits that it is in the interest of justice that interim measures are taken. It is respectfully recalled that Kabiligi did not on his own surrender to the Tribunal for trial, and that it was an extremely difficult and expensive process to locate and arrest him. With this background, the

Prosecutor submits that if Kabiligi is released without any restrictions and conditions, there is a high risk that when the Prosecutor lodges an appeal, Kabiligi will flee, thus frustrating the appeal process.

6. The restrictions and conditions requested carefully take account of the rights of the accused, and are thus of a less intrusive nature and are only temporary. Their objective is to ensure that when the Prosecutor takes a decision to appeal, Kabiligi is available within the Court's jurisdiction, and that his absence does not frustrate the appeal process.

7. The Prosecutor respectfully requests that the Chamber imposes the following conditions and restrictions on Kabiligi's liberty until the Prosecutor takes a decision whether or not to appeal – a decision that he will take when he receives the full text of the Judgement, and which he will communicate within the time prescribed for filing an appeal - :

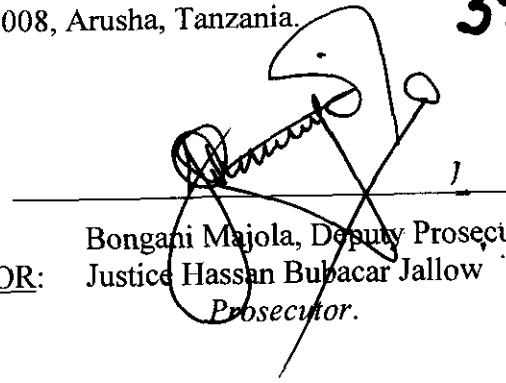
- Not to leave the Court's jurisdiction without the leave of Court: in order to ensure this, Kabiligi should only be allowed to stay not far away from the seat of the Court, and should provide the Court, the physical address of his residence and telephone contact;
- To deposit passport and all relevant travel documents with the Registrar;
- To report daily with the Registrar or the Court's security desk.

### **C. RELIEF SOUGHT**

8. For the foregoing reasons, the Prosecutor respectfully requests the Chamber to impose restrictions and conditions on Kabiligi's liberty so as to ensure that appeal proceedings that may be taken in the near future are not frustrated by his absence from the Court's jurisdiction.

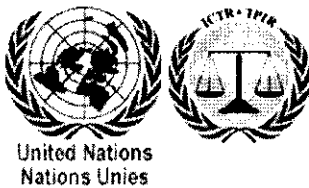
Dated and signed this 22<sup>nd</sup> day of December 2008, Arusha, Tanzania.

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A handwritten signature in black ink, appearing to be 'Bongani Majola', is written over a horizontal line. The signature is stylized and somewhat illegible.

Bongani Majola, Deputy Prosecutor  
FOR: Justice Hassan Bubacar Jallow  
Prosecutor.



# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office <b>H B Jallow</b> (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Theoneste BAGOSORA, et. al.		<b>Case Number:</b> ICTR-98-41-T	
<b>Dates:</b>	Transmitted: 22.12.08		Document's date: 22.12.08	
<b>No. of Pages:</b>	4		<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
<b>Title of Document:</b>	PROSECUTOR'S EXTREMELY URGENT MOTION REQUESTING THE CHAMBER TO IMPOSE CONDITIONS ON KABILIGI'S LIBERTY PENDING THE PROSECUTOR'S DECISION TO APPEAL			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties		
<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties		
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars		
		<input type="checkbox"/> Judgement <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English  French  Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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Filing Party will be submitting the translated version(s) in due course in the following language(s):

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<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: