

ICTR-00-61-T
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 16 June 2010

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

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DECISION ON DEFENCE MOTION FOR CONFIDENTIALITY OF INFORMATION

*Article 19 (4) of the Statute and
Rules 78 and 79 of the Rules of Procedure and Evidence*

Office of the Prosecutor:

Richard Karegyesa
Drew White
Didace Nyirinkwaya
Yasmine Chubin

For the Accused:

Marie-Pierre Poulain
Kate Gibson

[Signature]

INTRODUCTION

1. On 10 April 2007, Trial Chamber I ordered protective measures, pursuant to Rule 75 of the Rules of Procedure and Evidence (“Rules”), for Defence witnesses in the present case.¹ The Defence closed its case on 29 March 2010. It now requests the Chamber to order that (i) the Prosecution withdraw one of its filings and re-file it as confidential, and (ii) that portions of the public transcript of hearings in this case be placed under seal.² It submits that the references may reveal the identities of two protected witnesses in contravention of the protective measures.³

2. The Prosecution objects to the Defence Motion.⁴ It submits that the impugned references contained in the aforementioned materials do not identify the witnesses. It notes that the Defence also publicly filed a submission that refers to a detail that the Defence now claims could identify a protected witness.⁵ The Prosecution further argues that the Defence could have objected earlier but did not do so and that the relief requested is disproportionate and contrary to the principle of open proceedings. The Defence filed a reply to the Prosecution Response on 1 June 2010.⁶ The Prosecution filed a rejoinder to the Defence Reply on 3 June 2010.⁷

DISCUSSION

3. Article 19 (4) of the Statute of the Tribunal (“Statute”), states that hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with the Rules. This requires that the written pleadings and decisions be made public insofar as that is safely possible.⁸ However, it is of primary importance that, in doing so, the Chamber does not compromise the safety of victims and witnesses involved in the proceedings.⁹

4. Rule 78 provides that all proceedings before a Trial Chamber, other than its deliberations, shall be held in public, unless otherwise provided. A Trial Chamber may, pursuant to Rule 79 (A) (ii), order that the press and public be excluded from all or part of the

¹ Decision on Defence Motion for Protection of Witnesses, 10 April 2007, p. 4. The order states, *inter alia*, that the “addresses, whereabouts, and other identifying information concerning the protected witnesses” shall not be included in any public or non-confidential Tribunal records. Rule 75 provides that a Judge or a Chamber may order appropriate measures for the protection of victims and witnesses.

² See Confidential Annex items 1 and 2; Defence Urgent Motion for the Confidential Re-Filing of the Prosecution Submissions [see Confidential Annex item 3] and the Suppression of References in the Public Record, 27 May 2010 (“Defence Motion”).

³ See Confidential Annex items 4 and 5.

⁴ Prosecution Response to the Defence Motion, 28 May 2010 (“Prosecution Response”).

⁵ See Confidential Annex item 6.

⁶ Defence Reply to Prosecution Response, 1 June 2010 (“Defence Reply”).

⁷ Prosecution Rejoinder to Defence Reply, 3 June 2010. Although the Chamber has considered both the Defence Reply and Prosecution Rejoinder in its Decision, it notes that no provision of the Tribunal’s Rules or of its Practice Directions authorizes a party to file supplemental replies or rejoinders. See *The Prosecutor v. Nyiramasuhuko et al.*, Decision on Joseph Kanyabashi’s Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List (AC), 21 August 2007, footnote 5 (finding a rejoinder unauthorized and declining to consider it).

⁸ *The Prosecutor v. Bizimungu et al.*, Decision on Prosper Mugiraneza’s Motion to Remove Confidentiality from Portions of the Prosecutor’s Pre-Trial Brief (TC), 10 December 2004, para. 10.

⁹ *Id.*

proceedings, for reasons of safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75.

5. Information to be sealed need not identify a protected witness directly. It is sufficient that such information, if publicly filed, could lead to identification of the witness. Where, for instance, a reference to the profession of a protected witness is applicable to only a small group of persons, such reference might be placed under seal.¹⁰

6. Part 6 (c) of the impugned Prosecution filing included details regarding the profession in April 1994 of one protected Defence witness, as well as the approximate location of the witness's workplace in relation to a landmark.¹¹ Part 6 (d) of the same filing also contained information on the location of the residence in April 1994 of a second protected Defence witness.¹²

7. The Chamber considers that this information is applicable only to very narrow categories of persons, and if publicly accessible, could lead to the identification of the two protected witnesses. Accordingly, it should not be available to the public. The Chamber does not consider it necessary for the Prosecution to re-file the entire submission confidentially. It is sufficient that only such material as could lead to the identification of the witnesses be placed under seal. To preserve witness security as well as openness of the proceedings, the Prosecution need only extract parts 6 (c) and 6 (d) of the filing, which contain the potentially identifying information, and place them into a confidential annex.¹³

8. The Chamber notes that the Defence referred to the same information in one of its public filings.¹⁴ That information should therefore also be extracted and filed in a confidential annex.¹⁵

9. The Defence pointed to a transcript of an open session hearing in this case which also contains several references to the above details.¹⁶ They should similarly be extracted and placed under seal. However, the Defence request in this respect is unnecessarily broad. The Chamber has considered the transcript references and will place under seal only those extracts that contain potentially identifying information.¹⁷

10. The Chamber concludes that the above approach will have a minimal impact on the general principle of openness of proceedings as set forth in Article 19, while preserving the security of witnesses under Rules 75 and 79.

FOR THESE REASONS the Chamber hereby

GRANTS the Defence Motion in part;

¹⁰ See, for example, T. 2 March 2010 p. 61. The reference to the witness's profession in 1994 was extracted and placed under seal as it described a narrow category of persons.

¹¹ See Confidential Annex items 4 and 7.

¹² See Confidential Annex items 5 and 8.

¹³ See Confidential Annex item 9.

¹⁴ See Confidential Annex item 6.

¹⁵ See Confidential Annex item 10.

¹⁶ See Confidential Annex item 2.

¹⁷ See Confidential Annex items 11 and 12.



ORDERS the Prosecution to re-file a modified public version of its submission, placing all information in parts 6 (c) and 6 (d) of that document into a confidential annex,¹⁸

ORDERS the Defence to re-file a modified public version of its submission, per item 10 of the confidential annex to this Decision;

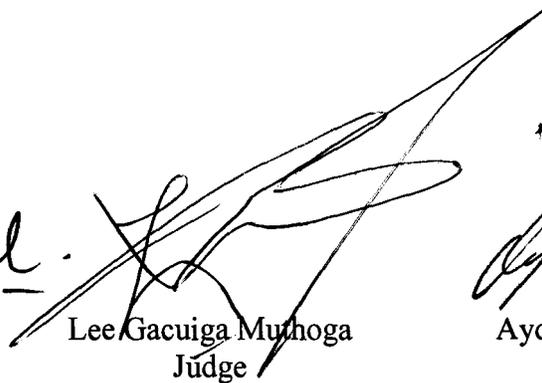
ORDERS the Registry to immediately place under seal the current version of the above-mentioned Prosecution and Defence submissions, as well as the portions of the public transcripts in this case that are listed in items 11 and 12 of the Confidential Annex to this Decision; and

DENIES the Defence Motion in all other respects.

Arusha, 16 June 2010



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge

[Seal of the Tribunal]

¹⁸ See Confidential Annex item 9.