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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:** Adama Dieng

**Date:** 6 July 2010

JUDICIAL RECORDS/ARCHIVES  
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**THE PROSECUTOR**

v.

**Jean-Baptiste GATETE**

**Case No. ICTR-2000-61-T**

**DECISION ON DEFENCE MOTION FOR RECONSIDERATION OF  
DECISION ON SITE VISIT POSTPONEMENT OR FOR HEIGHTENED SECURITY  
DURING SITE VISIT AND FOR STATEMENT FROM RWANDAN AUTHORITIES  
ON IMMUNITY OF DEFENCE COUNSEL**

*Rule 4 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

## INTRODUCTION

1. A site visit has been scheduled in this trial for 11 to 16 July 2010.<sup>1</sup>
2. On 17 June 2010, the Chamber denied a Defence motion to postpone the site visit and the closing arguments, on the basis that the ICTR Security and Safety Unit in Kigali assessed the situation and considered that the visit was safe to undertake in the projected time period.<sup>2</sup>
3. The Defence now moves for reconsideration of the Impugned Decision.<sup>3</sup> It asks that the site visit and closing arguments be postponed due to security concerns that it submits have increased since the date of that Decision. In the alternative, it asks that the Defence team be given the same level of protection as that afforded to Judges for the duration of the site visit. In either case, the Defence also asks that the Chamber order that the Registrar procure and provide to the Defence a statement from the Rwandan authorities that the immunity of the members of the Gatete Defence team will be respected. The Prosecution filed a Response on 30 June 2010.<sup>4</sup>

## DISCUSSION

### *Request for Reconsideration and Heightened Security*

4. According to the Tribunal's established jurisprudence, the Chamber has inherent power to reconsider its own decisions.<sup>5</sup> However, reconsideration is an exceptional measure that is available only in particular circumstances.<sup>6</sup> These include when (i) a new fact has been discovered that was not known to the Chamber at the time it made its original decision; or (ii) new material circumstances have arisen that did not exist at the time of the original decision; or (iii) the decision was erroneous or constituted an abuse of the Chamber's discretion and has

<sup>1</sup> T. 29 March 2010, p. 3; *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-T, Scheduling Order for Filing of Closing Briefs, Hearing of Closing Arguments and Site Visit to Rwanda, 31 March 2010. The site visit was initially set for 10 to 16 June 2010, but the dates were modified due to an unforeseen scheduling conflict. Interoffice Memorandum from the Chamber to the Court Management Section, 7 May 2010, circulated to the Parties via email correspondence on 10 May 2010. The President has authorized the Chamber to conduct its functions away from the Seat of the Tribunal pursuant to Rule 4 during the period of 11-16 July 2010. Interoffice Memoranda from the President to the Chamber, 6 April 2010 and 26 May 2010.

<sup>2</sup> Decision on Site Visit to Rwanda, 17 June 2010 ("Impugned Decision").

<sup>3</sup> Defence Motion for Reconsideration of the Decision on the Postponement of the Site Visit and Request for a Statement from the Rwandan Authorities on the Immunity of Defence Counsel, 29 June 2010 ("Defence Motion").

<sup>4</sup> Prosecution Response to Defence Motion, 30 June 2010 ("Prosecution Response").

<sup>5</sup> Decision on Defence and Prosecution Motions for Reconsideration of the Chamber's Decision of 13 October 2009 and Scheduling of the Prosecution Case, 19 October 2009 ("Gatete Reconsideration Decision"), para. 8; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in relation to Condition (B) Requested by the United States Government (TC), 26 April 2007 ("Bizimungu Reconsideration Decision"), para. 7 (citations omitted).

<sup>6</sup> Gatete Reconsideration Decision, para. 8; *The Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko's Strictly Confidential Ex-Parte Extremely Urgent Motion for Reconsideration of Trial Chamber II's Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte Under-Seal-Motion for Additional Protective Measures for Defence Witness WBNM Dated 17 June 2005 or, Subsidiarily, on Nyiramasuhuko's Strictly Confidential Ex-Parte Under-Seal-Motion for Additional Protective Measures for Defence Witness WBNM (TC), 4 July 2005, para. 3, quoting *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List pursuant to Rule 73 bis (E)" (TC), 15 June 2004, para. 7.

caused prejudice or injustice to a party.<sup>7</sup> The onus is on the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.<sup>8</sup>

5. To support its request for postponement, the Defence refers to several media reports of insecurity in Rwanda in advance of the elections to be held there on 9 August 2010.<sup>9</sup> It argues that these reports demonstrate a new material circumstance that did not exist at the time of the Impugned Decision. It reiterates that, while members of the Gatete Defence team were on official mission in Rwanda, they were the subject of threats and harassment.<sup>10</sup> The Defence again asks the Chamber to postpone the site visit until after the elections in Rwanda, at such time as the relevant security personnel at the ICTR Kigali office determines that the risk to participants has been reduced. It further requests that the closing arguments be rescheduled accordingly.<sup>11</sup>

6. The Prosecution objects to the request for postponement on the grounds that the Defence has not shown that the security situation in Rwanda has changed. It submits that the Chamber may re-assess the security situation in Rwanda at any time. It argues that the appropriate information for such a reassessment should come from the ICTR Security Unit, rather than media reports such as those cited in the Defence Motion. The Prosecution takes no position with respect to the Defence request for increased security for counsel but does not itself wish to be the subject of such increased security.<sup>12</sup>

7. The Chamber has reviewed the media reports to which the Defence has referred. They discuss alleged incidents regarding the press and political opposition in Rwanda, and do not relate to the work of the Defence team or the Tribunal more generally. The Chamber does not consider that they demonstrate a new material circumstance.

8. The Defence referred to threats and harassment of its team members in Rwanda. In its previous motion of 7 June 2010, it specified that these threats and harassment were from members of the local population and local authorities. The nature of the harassment and threats was not specified, nor was it stated that they were made because of the Defence team members' status as such.

9. Although the Chamber takes matters of security very seriously, it does not find that the Defence submissions show that the site visit and closing arguments should be postponed. The Security and Safety Unit, which is the appropriate section of the Tribunal authorised to make security assessments, has made a report and will continue to monitor closely the situation in

<sup>7</sup> Gatete Reconsideration Decision, para. 8; Bizimungu Reconsideration Decision, para. 7; *The Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions (TC), 8 November 2007 ("Karemera Reconsideration Decision"), para. 6; *Karemera et al.*, Decision on Reconsideration of Admission of Written Statements in lieu of Oral Testimony and Admission of the Testimony of Prosecution Witness GAY (TC), 28 September 2007, para. 10; *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005, para. 8.

<sup>8</sup> Gatete Reconsideration Decision, para. 8; Bizimungu Reconsideration Decision, para. 8; *Karemera Reconsideration Decision*, para. 6.

<sup>9</sup> The five media reports cited were from the BBC, Jeune Afrique, Human Rights Watch, and Al Jazeera. All were dated on or after 25 June 2010.

<sup>10</sup> The previous Defence motion regarding postponement of the site visit indicated that the Defence mission took place in April 2010. Defence Motion for the Postponement of the Site Visit and Closing Arguments, 7 June 2010, para. 3.

<sup>11</sup> Defence Motion, paras. 7-9.

<sup>12</sup> Prosecution Response, paras. 3, 5-7.

Rwanda.<sup>13</sup> The Chamber does not find that reconsideration of the Impugned Decision is warranted and therefore denies the request for postponement of the site visit and closing arguments.

10. The Security and Safety Unit in Kigali has assured the Chamber that all parties concerned will be covered by the Unit's general Security Contingency Plan. The Chamber finds that these precautions are adequate.

*Statement of Immunity from Rwandan Authorities*

11. In its Motion, the Defence expresses concern at the events surrounding the arrest in Rwanda on 28 May 2010 of ICTR Defence Counsel, Peter Erlinder. It asserts that these events show that the Rwandan authorities have not respected the immunity of Defence Counsel and that a mission letter provided by the ICTR to Defence Counsel is insufficient to guarantee that immunity will be respected in Rwanda.<sup>14</sup>

12. The Chamber recalls that, when defence teams wish to conduct investigations in Rwanda, the Registry so notifies the Rwandan Government in order for the defence teams to enjoy the functional immunity and facilities that follow from the provisions of the 1999 Memorandum of Understanding between the United Nations and the Republic of Rwanda to Regulate Matters of Mutual Concern Relating to the Office in Rwanda of the ICTR (the "Memorandum").<sup>15</sup> The Chamber finds that, in light of the commitments that the Rwandan Government has already made in the Memorandum, a statement specifically regarding the Gatete Defence team would be redundant.

13. Moreover, the Chamber notes that the Rwandan Prosecutor General, Martin Ngoga, spoke about the case of Mr. Erlinder at a press conference held at the ICTR offices in Arusha on 30 June 2010. Mr. Ngoga assured the current ICTR Defence lawyers that they can continue their work in Rwanda without fear. He also underlined Rwanda's commitment to honour its obligations under the Memorandum. He stated that the case against Mr. Erlinder does not have implications for the work of the other Defence counsel. Lastly, Mr. Ngoga stated that Rwanda will respect findings of the ICTR or the UN Office of Legal Affairs as to matters of immunity.<sup>16</sup>

14. In light of all of these elements, the Chamber does not consider it necessary to obtain a statement from the Rwandan Government regarding the immunity of the Gatete Defence team.

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<sup>13</sup> Impugned Decision, para. 13.

<sup>14</sup> Defence Motion, paras. 11-19.

<sup>15</sup> Memorandum, para. 2.

<sup>16</sup> ICTR Press Release, 30 June 2010.

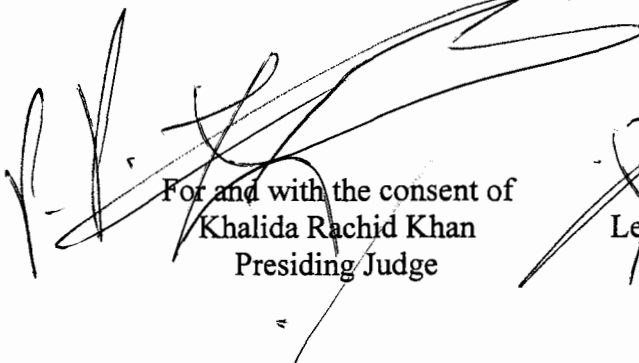


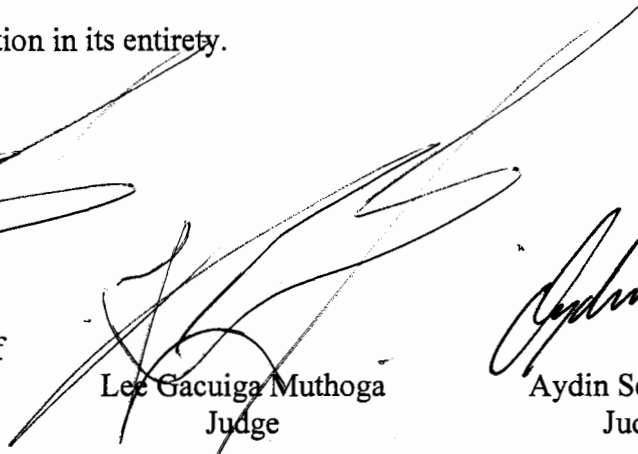
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**FOR THESE REASONS**, the Chamber

**DENIES** the Defence Motion in its entirety.

Arusha, 6 July 2010

  
For and with the consent of  
Khalida Rachid Khan  
Presiding Judge

  
Lee Gacuiga Muthoga  
Judge

  
Aydin Sefa Akay  
Judge

[Seal of the Tribunal]

