

ICTR-00-61-T  
30-09-2010  
(4923-4921)

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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:** 30 September 2010

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**THE PROSECUTOR**

v.

**Jean-Baptiste GATETE**

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

**DECISION ON DEFENCE MOTION  
TO STRIKE PORTIONS OF THE PROSECUTION CLOSING BRIEF**

*Rules 54 and 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Drew White  
Didace Nyirinkwaya  
Yasmine Chubin

**For the Accused:**

Marie-Pierre Poulain  
Kate Gibson

*[Signature]*

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## INTRODUCTION

1. On 27 September 2010, the Defence filed a confidential motion requesting that the Chamber order the Prosecution to file an amended Closing Brief.<sup>1</sup> It submits that the Prosecution improperly cites to prior written statements of witnesses which were admitted for the limited purpose of impeaching Prosecution witnesses, and that such references should be excluded from the Prosecution Closing Brief, as well as from its closing arguments.
2. The time limit for the Prosecution to file its response has not yet expired. However, the Chamber considers it unnecessary to receive the Prosecution response before rendering its Decision on the Defence Motion.

## DISCUSSION

3. As a preliminary matter, the Chamber expresses its concern regarding the unnecessary confidential filing of motions. The transparency of the proceedings is served by the public-filing of documents. Confidential filings should be reserved for exceptional circumstances, such as where the protection of a witness is at stake.<sup>2</sup> In the present case, the Defence Motion contains no such confidential information. Accordingly, its confidentiality should be lifted.
4. Regarding the merits of the Defence request, it submits that the Prosecution Closing Brief improperly cites to prior written statements of witnesses to either establish the truth of the contents of those statements, or to bolster the Prosecution case. In support, the Defence cites to Rules 90 and 92 *bis* of the Rules of Procedure and Evidence ("Rules"), as well as the Tribunal's jurisprudence, to demonstrate that prior statements cannot be relied upon for such purposes.<sup>3</sup> It argues that these references confuse the record and should be excluded from the Prosecution Closing Brief and its closing arguments.
5. The Chamber wishes to stress that it is at all times mindful of the principles governing the use of prior statements and will apply these accordingly when assessing the evidence in the record.<sup>4</sup> Submissions made by either Party with respect to prior statements that are in the record cannot alter these principles. It is, therefore, unnecessary to order the Prosecution to amend its Closing Brief, or to issue an order with respect to its closing arguments. Indeed, the Chamber considers that the Defence Motion lacks merit to the extent that it is frivolous, and

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<sup>1</sup> Defence Motion to Strike Portions of the Prosecution Closing Brief, 27 September 2010 ("Defence Motion"). The Parties filed their Closing Briefs on 25 June 2010.

<sup>2</sup> See for example *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82, Decision on Defence Extremely Urgent Application for an Extension of Time for Filing Response to Prosecution Motion for Protective Measures (TC), 17 February 2009, para. 3; *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Order for Transfer of Detained Witnesses (TC), 1 March 2007, para. 5.

<sup>3</sup> Rule 90 (A) of the Rules provides that witnesses shall, in principle, be heard directly by the Chambers. Moreover, Rule 92 *bis* sets out very specific procedure which must be followed before a written statement may be admitted by a Trial Chamber in lieu of oral testimony.

<sup>4</sup> In particular, the Appeals Chamber has held that prior consistent statements cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony. However, there is a difference between using a prior consistent statement to bolster the indicia of credibility observed at trial and rejecting a Defence challenge to credibility based on alleged inconsistencies between testimony and earlier statements. The former is a legal error, while the latter is simply a conclusion that the Defence's arguments are not persuasive. See *The Prosecutor v. Ntakirutimana and Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgment (AC), 13 December 2004, paras. 147-148.

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has unnecessarily expended judicial time and resources.<sup>5</sup> Accordingly, pursuant to Rule 73 (F), the Chamber deems it appropriate to direct the Registrar to deny costs associated with this matter.<sup>6</sup>

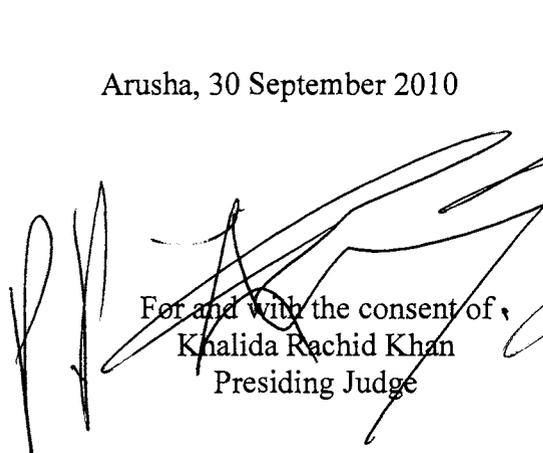
**FOR THESE REASONS** the Chamber hereby

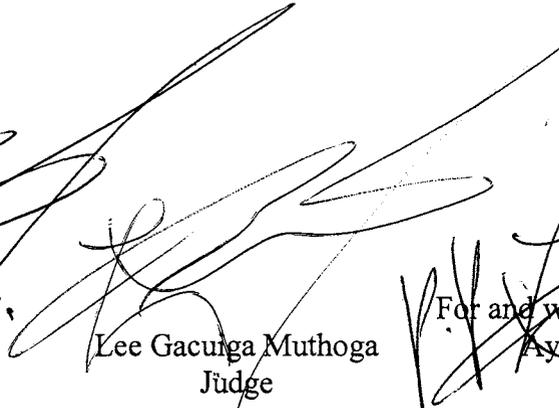
**DENIES** the Defence Motion;

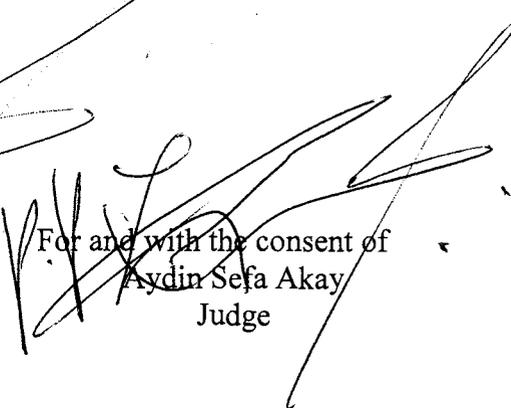
**ORDERS** the Registrar to:

- (i) lift the confidentiality of the Defence Motion; and
- (ii) withhold payment of costs associated with the filing of the “Defence Motion to Strike Portions of the Prosecution Closing Brief”, filed on 27 September 2010.

Arusha, 30 September 2010

  
For and with the consent of,  
Khalida Rachid Khan  
Presiding Judge

  
Lee Gacunga Muthoga  
Judge

  
For and with the consent of  
Aydin Sefa Akay  
Judge

[Seal of the Tribunal]



<sup>5</sup> See for example *Ferdinand Nahimana et al., v The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze’s Motion Appealing the Registrar’s Denial of Marriage Facilities (AC), 20 January 2005; *The Prosecutor v. Casimir Bizimungu et al*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza’s Emergency Motion to Vary Witness List (TC), 12 June 2008, para. 12.

<sup>6</sup> Rule 73 (F) states that “a Chamber may impose sanctions against Counsel if Counsel brings a motion [] that, in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof”.