

ICTR-00-61-T
4-10-2010
(4932-4929)

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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: 4 October 2010

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON DEFENCE MOTION
ON PUBLIC FILING OF PROSECUTION CLOSING BRIEF**

Rule 75 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

INTRODUCTION

1. Trial Chamber I ordered protective measures for Prosecution and Defence witnesses in this case on 11 February 2004 and 10 April 2007 respectively.¹ On 23 September 2010, the Defence filed a motion requesting this Chamber to order that the Prosecution withdraw the public filing of its Closing Brief and redact all confidential information, as well as information that could lead to the identification of witnesses before filing another public version, if any.² On 27 September 2010, the Prosecution filed its Response, opposing the Defence Motion.³ The Defence filed a Reply on 30 September 2010.⁴

DISCUSSION

2. Pursuant to Rule 75 (A) of the Rules of Procedure and Evidence (“Rules”), a Chamber may order appropriate measures to safeguard the security of witnesses, provided the measures are consistent with the rights of the accused. Under Rule 75 (B), such measures include expunging names and identifying information from the Tribunal’s public records and non-disclosure to the public of any identifying information.⁵

3. The Defence submits that the public version of the Prosecution Closing Brief contains numerous references that could identify protected witnesses, and points to specific examples. It further notes that the Prosecution cites to closed session transcripts and sealed exhibits.

4. The Prosecution submits that the Defence should have identified all the redactions that it considers necessary. It argues that its public Closing Brief contains no information that directly identifies a protected witness and that the Defence only refers to information that could lead to identification of a witness. According to the Prosecution, the Chamber need only assess whether the information leads to a high probability, when combined with publicly available information, that a witness will be identified.

5. The Chamber recalls that, in this case, the protective measures ordered pursuant to Rule 75 for both Prosecution and Defence witnesses, state that “identifying information” of protected witnesses shall not be made public. Information to be sealed need not identify a protected witness directly.⁶ It is sufficient that such information, if publicly filed, could lead to identification of the witness.⁷

6. The Chamber has considered the examples listed in the annex attached to the Defence Motion and in the Defence Reply, and finds that these instances pose a real risk of protected

¹ Decision on Prosecution Request for Protection of Witnesses, 11 February 2004; Decision on Defence Motion for Protection of Witnesses, 10 April 2007, p. 4. The orders state, *inter alia*, that the addresses, whereabouts, and other identifying information of the protected witnesses shall not be included in any public Tribunal records.

² Defence Motion Concerning the Public Version of the Prosecution’s Closing Brief, 23 September 2010 (“Defence Motion”).

³ Prosecution Response to the Defence Motion, 27 September 2010 (“Prosecution Response”).

⁴ Defence Reply to Prosecution Response, 30 September 2010 (“Defence Reply”).

⁵ See, in particular, Rule 75 (B)(i)(a) and (b).

⁶ Decision on Defence Motion for Confidentiality of Information, 16 June 2010 (“Decision of 16 June 2010”), para. 5.

⁷ *Id.*

witnesses being identified.⁸ Accordingly, the public version of the Prosecution Closing Brief should immediately be placed under seal. If the Prosecution files a new public version of its Closing Brief, it should first review and appropriately redact it in compliance with the protective measures in place. The Prosecution submission that the onus is on the moving party to demonstrate how information may identify a protected witness is misconceived. Since the Prosecution decided to file a public version of its Closing Brief, it was obliged to ensure that the filing complied with the protective measures in place.

7. However, contrary to the Defence submission, the Prosecution need not redact all references to sealed exhibits, closed session transcripts or information derived from closed session testimony, provided such references contain no information that could lead to identification of protected witnesses.

8. Lastly, the Chamber notes that the Defence Motion and Prosecution Response do not contain any information that could identify protected witnesses and need not remain under seal. The annex to the Defence Motion and the Defence Reply do, however, contain such information and their classification level should remain unchanged.

FOR THESE REASONS the Chamber hereby

GRANTS the Defence Motion;

ORDERS the Registry to immediately place under seal the current public version of the "Prosecutor's Final Brief" filed on 22 July 2010;

ORDERS the Prosecution to redact all information that could lead to identification of protected witnesses in the event that it files another public version of its Closing Brief; and

⁸ The first example is a reference in the Prosecution Closing Brief to a protected witness signing a very specific document. In view of the limited number of individuals who could have signed that specific document, there is a real risk of the protected witness being identified. The second example is a reference to two protected witnesses by their pseudonyms and the distance between their homes, which also cites to the open session transcripts. Read together, it is possible to identify the protected witnesses. The third example refers to the location of a protected witness's house. Given the possibility that a limited number of persons would have resided at that location, there is a risk of the protected witness's identity being revealed. The fourth example is the inclusion of several details about a protected witness, including the school that the witness attended and residential information in relation to another protected witness, whose close family member is also named in the public version of the Closing Brief. When these few details are taken together, they may easily identify both witnesses.

ORDERS the Registry to lift the confidential status of the Defence Motion (but not the annex thereto) and the Prosecution Response.

Arusha, 4 October 2010


For and with the consent of
Khalida Rachid Khan
Presiding Judge


Lee Gaciga Muthoga
Judge


For and with the consent of
Aydin Sefa Akay
Judge

[Seal of the Tribunal]