

ICTR-00-61-T
22-07-2010

4634
1094

The Prosecutor v. Jean-Baptiste Gatete (Case No. ICTR-00-61-T)

(4634 - 4632)



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS
NATIONS UNIES

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

TRIAL CHAMBER III

Before: Judge Khalida Rachid Khan, Presiding Judge
Judge Lee Gacuiga Muthoga
Judge Aydin Sefa Akay

Registrar: Adama Dieng

Filed on: 22 July 2010

THE PROSECUTOR
v.
Jean Baptiste GATETE

Case No. ICTR-00-61-T

2010 JUL 22 11:19
JUDICIAL SECRETARIAT

**PROSECUTOR'S MOTION
TO RECEIVE INFORMATION COMMUNICATED EX PARTE
Rule 73**

Office of the Prosecutor:
Didace Nyirinkwaya
Yasmine Chubin
Drew White

For the Accused:
Marie-Pierre Poulain
Kate Gibson

MAY IT PLEASE THE TRIAL CHAMBER:**Introduction:**

1. Pursuant to Rule 73 of the Rules of Procedure and Evidence ('Rules') the Prosecutor hereby submits this *Motion to receive information communicated ex parte*, dated 22 July 2010.

Procedural Background:

2. The trial in the present case commenced on 20 October 2009 and the Prosecution case-in-chief concluded on 16 November 2009 after having heard twenty-two prosecution witnesses. The Defence case commenced 2 March 2010 and concluded on 29 March after having heard 27 witnesses. The closing Briefs of both parties were ordered to be filed 25 June. A site visit and closing submissions have yet to be re-scheduled.
3. During the Defence phase of the trial it became apparent that the Defence had provided ex parte materials to the Trial Chamber. In the Defence closing Brief it appears that reliance may be placed on ex parte information. The Prosecution moves the Trial Chamber to be provided with copies of all such ex parte material, in advance of the closing submissions of the trial.

Prosecution Submissions:

4. The Prosecutor submits that it is a fundamental principle of trial practice that evidence before the court is available to all parties.
5. In the Defence Motion of 13 May 2010, reference was made to the Defence having filed ex parte correspondence with the Trial Chamber. Footnote four of that Motion indicates a date of 22 March 2010 and a possible title as "Ex Parte Correspondence re Ongoing Interference with Defence Witnesses by Prosecution Witnesses".
6. Further, paragraph 17 of that Motion makes reference to the Defence having previously notified the Chamber "of a number of instances of witness intimidation, and has stated at various times it would seize the Chamber accordingly." In light of this reference, the Prosecution is unable to ascertain how many times, how often and to what effect the Trial Chamber may have received ex parte information from the Defence.
7. In the Defence Closing Brief filed 26 June 2010, the argument was presented that due to the alleged witness intimidation issues, certain Prosecution witnesses were less credible. The argument was also presented that due to the allegations of witness intimidation, the process of witness availability was affected.¹
8. As a consequence of the claims made concerning witness credibility and availability, coupled with the ex parte submissions and information made by Defence to the Trial Chamber on at least one occasion, it is clear that evidence relating to matters at issue before the Trial Chamber has been kept in secret from the Prosecution.
9. The Prosecution submits that not only does this ex parte process have the appearance of unfairness, but that actual prejudice is likely to have been created by keeping information secret that relates to matters placed in issue before the Trial Chamber.

¹ See for example, the Closing Brief of Jean Baptiste Gatete, paragraphs 952-955.

10. As a further example, where the Defence may be relying on ex parte materials in the Closing Brief, the Prosecutor points to paragraphs 952-955 and 1260 and the attribution of alleged evidence to the "Affidavit of LA131". Whereas, no such affidavit is entered into evidence, no such witness has testified and it is not clear what "Affidavit" is referred to, it appears to the Prosecution that the Defence may thus be using secret evidence in an effort to challenge the credibility of Prosecution witnesses and testimony.

Conclusion:

Based on the above submissions, the Prosecutor respectfully requests that the Chamber **GRANT** the Motion herein, requiring the Defence to list and provide to the Prosecution copies of all information and materials previously communicated ex parte to the Trial Chamber, during the course of the trial proceedings.

Dated in Arusha, this 22nd day of July 2010.



Drew White
Ag Senior Trial Attorney

