



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: 29 July 2010

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

**DECISION ON PROSECUTION MOTION
TO RECEIVE EX PARTE INFORMATION**

Rule 73(E) 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. The trial in this case commenced on 20 October 2009.¹ The Prosecution and Defence cases closed on 16 November 2009 and 29 March 2010, respectively. Closing arguments have been postponed until further notice due to unavoidable circumstances.²

2. Following a reference made in a previous Defence motion to an *ex parte* communication from the Defence to the Chamber, as well as certain assertions made by the Defence in its Closing Brief, the Prosecution moves the Chamber to require the Defence to list, and provide to the Prosecution copies of, all information and materials previously communicated *ex parte* to the Chamber during the course of the proceedings.³ The Defence filed a reply on 26 July 2010, objecting to the motion. It asserts that, contrary to the Prosecution submission, no information has been kept secret from the Prosecution.⁴ The Prosecution filed a reply to the Defence response on 27 July 2010.⁵

DISCUSSION

3. As a general rule, motions must be filed *inter partes*.⁶ *Ex parte* submissions may be necessary when they are in the interests of justice, and when the disclosure to the other party in the proceedings of the information contained in the application would likely prejudice either the party making the application or some person or persons involved in or related to the application.⁷

4. The very nature of *ex parte* submissions means that the other party is not privy to them or even to their existence. The Prosecution has not cited to any Rule of Procedure and Evidence, Article in the Tribunal's Statute, or jurisprudence that requires either disclosure of *ex parte* submissions or to lists of occasions on which they have been made.

5. The Prosecution points to a Defence motion filed on 13 May 2010,⁸ in which reference was made to Defence correspondence dated 22 March 2010, attaching witness statements, that was communicated on an *ex parte* basis to the Trial Chamber. Although the document in

¹ *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT, Scheduling Order, 30 September 2009.

² Interoffice Memorandum from Judge Muthoga to Court Management Section, filed on 7 May 2010; Scheduling Order to Postpone Site Visit to Rwanda and Hearing of Closing Arguments, 6 July 2010.

³ Prosecutor's Motion to Receive Information Communicated Ex Parte, 22 July 2010 ("Prosecution Motion").

⁴ Defence Response to Prosecution Motion ("Defence Reponse"), 26 July 2010, para. 8.

⁵ Prosecution Reply to Defence Response to Prosecution Motion, 27 July 2010.

⁶ Rule 73 (E) of the Rules of Procedure and Evidence contemplates the filing of motions *inter partes*, giving a "responding party" five days from receipt of the motion to reply. See also *The Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Disclosure of Ex Parte Filings (TC), 18 February 2009 ("*Karemera et al.* Decision of 18 February 2009"), para. 4; *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Unsealing Ex Parte Submissions and for Disclosure of Withheld Materials (TC), 18 January 2008 ("*Karemera et al.* Decision of 18 January 2008"), para. 5; *Karemera et al.*, Decision on Defence Motion for Disclosure of Prosecution Ex Parte Motion under Rule 66 (C) and Request for Cooperation of a Certain State (TC), 14 October 2005 ("*Karemera et al.* Decision of 14 October 2005"), para. 4; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Ex Parte Motion (TC), para. 2.

⁷ *Karemera et al.* Decision of 18 February 2009, para. 4; *Karemera et al.* Decision of 18 January 2008, para. 5; *Karemera et al.* Decision of 14 October 2005, para. 4.

⁸ Defence Motion for the Admission into Evidence of Statements or, in the Alternative, the Admission of Further Oral Testimony, 13 May 2010 ("Defence Motion of 13 May").

question is not a motion, the Chamber considers that the principles listed in paragraph 3, above, are relevant.

6. The Chamber has reviewed the correspondence and attachments. The subject of the correspondence, part of its content, and both of its attachments have now been disclosed to the Prosecution.⁹ The Defence has not explained, and the Chamber does not find any reason, why the correspondence and its attachments should be kept *ex parte*. In the absence of any such justification, the Chamber concludes that the documents should be communicated to the Prosecution.

FOR THESE REASONS the Chamber hereby

GRANTS the Prosecution Motion in part; and

ORDERS the Defence to provide to the Prosecution the entirety of the correspondence dated 22 March 2010 and its attachments that were sent *ex parte* to the Chamber; and

DENIES the Prosecution Motion in all other respects.

Arusha, 29 July 2010

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

Aydin Sefa Akay
Judge

[Seal of the Tribunal]

⁹ The subject of the *ex parte* correspondence was described, and part of the content was quoted, in paragraph 2 of the Defence Motion of 13 May. Copies of the two statements of Defence witnesses that were attached to the correspondence were included as Annexes 3 and 4 to the Defence Motion of 13 May.