



UNITED NATIONS
NATIONS UNIES

ICR-99-46-T
29-3-2004
(5179-5177)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

5179
2004

OR: ENG

TRIAL CHAMBER III

Before Judges: Lloyd G. Williams, Q.C., Presiding
Andrésia Vaz
Khalida Rachid Khan

Registrar: Adama Dieng

Date: 26 March 2004

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ICTR

THE PROSECUTOR

v.

**André NTAGERURA
Emmanuel BAGAMBIKI
Samuel IMANISHIMWE**

Case No. ICTR-99-46-T

**DECISION ON PROSECUTOR'S MOTION SEEKING AN ORDER FOR
THE DISCLOSURE OF SEALED EXCERPTS (CLOSED SESSION) TRANSCRIPTS
AND EXHIBITS RECEIVED UNDER SEAL FOR PROSECUTION WITNESS LAI**

Office of the Prosecutor:
Barbara Mulvaney
Drew White
Segun Jegede
Christine Graham
Fatou Bensouda
Rashid Rashid
Abdoulaye Seye

Defence Counsel for André Ntagerura
Benoit Henry and Hamuli Rety

Defence Counsel for Emmanuel Bagambiki
Vincent Lurquin and Seydou Doumbia

Defence Counsel for Samuel Imanishimwe
Marie Louise Mbida and Jean-Pierre Fofe

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III composed of Judges Lloyd G. Williams, Q. C., Presiding, Andréia Vaz and Khalida Rachid Khan (“Chamber”);

BEING SEIZED of the “Prosecution’s Motion Seeking an Order for the ‘Disclosure of Sealed Excerpts (Closed Session) Transcripts and Exhibits Received Under Seal for Prosecution Witness LAI’”, filed on 17 March 2004 (“Motion”);

RECALLING the “Decision on the Prosecution Motion for the Protection of Victims and Witnesses,” in the case of *The Prosecutor v. André Ntagerura*, by Trial Chamber II, issued on 22 June 1997;

CONSIDERING the relevant provisions of the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence (“Rules”), particularly Rules 54 and 81(B);

NOW REVIEWS the present matter solely on the basis of the Prosecutor’s written brief, as prescribed in Rule 73(A) of the Rules.

Prosecution’s Submissions

1. The Prosecutor is requesting the Chamber to amend the Witness Protection Orders of 22 June 1997¹ and 3 March 2000² issued by Trial Chambers II and III respectively, so as to allow the Prosecutor to disclose the sealed portion of the testimony of a witness, who testified in the case of *The Prosecutor v. André Ntagerura et al.*(ICTR-99-46-T), under the pseudonym LAI (“Witness LAI”), to all Counsel and Accuseds in the case of *The Prosecutor v. Théoneste Bagosora et al.*(ICTR-98-41-T) wherein the said Witness is scheduled to testify for the Prosecution. The Prosecutor also requests that the said amendment extend to cover all exhibits filed under seal.
2. The amendment to the Witness Protection Orders is being requested to facilitate the process of disclosure and the appearance of the witness before Trial Chamber I. The Prosecution also submits that the disclosure of the said documents is necessary to facilitate the preparation of the defence case and assess witness credibility.
3. The Prosecutor also requests that parties or persons accessing these documents should provide a written undertaking to comply with the Protection orders issued in respect of this Witness.

Deliberations

¹ *The Prosecutor v. André Ntagerura* (ICTR-96-10A-I), Decision on the Prosecutor’s Motion for the Protection of Victims and Witnesses (TC), 22 June 1997.

² *The Prosecutor v. Emmanuel Bagambiki and Samuel Imanishimwe* (ICTR-97-36-I), Decision on the Prosecutor’s Motion for Orders For Protective Measures for Victims and Witnesses (TC), 3 March 2000.



4. Rule 54 affords the Chamber the authority to issue such orders as may be necessary for the investigation, preparation or conduct of a trial. Rule 81 further provides for the disclosure of all or part of the record of closed proceedings when the reasons for ordering the non-disclosure no longer exist. The Chamber will therefore vary the protective orders in question, being mindful of the potential materiality and relevance of the witness's testimony to the defence of the Accused as well as the Prosecutor's disclosure obligations.


FOR THE FOREGOING REASONS, THE CHAMBER


GRANTS the Motion and amends the protective measures ordered in respect of Witness LAI, to the extent of making the transcripts of his testimony, and any related documents filed under seal, available to the Trial Chamber seized of the *Bagosora et al.* case;


INVITES the Trial Chamber hearing the *Bagosora et al.* case to determine the date and manner in which the requested documents should be disclosed; and

ORDERS all Defence Counsel in that case to submit a written undertaking to abide by the provisions of the protective measures Order issued in respect of this Witness, dated 22 June 1997³ and 3 March 2000⁴.

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Arusha, 24 March 2004 


Lloyd G. Williams, Q.C.
Presiding Judge


Andréia Vaz
Judge


Khalida Rachid Khan
Judge

[Seal of the Tribunal]

³ *The Prosecutor v. André Ntagerura* (ICTR-96-10A-I), Decision on the Prosecutor's Motion for the Protection of Victims and Witnesses, 22 June 1997.

⁴ *The Prosecutor v. Emmanuel Bagambiki and Samuel Imanishimwe* (ICTR-97-36-I and 36-T), Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses, 3 March 2000.