



ICTR-98-44C-T  
24-2-2006  
(1910 - 1908)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

1910  
2006

OR: ENG

**TRIAL CHAMBER III**

**Before:** Dennis C.M. Byron, presiding  
Karin Hökberg  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 24 February 2006

**THE PROSECUTOR**

v.

**André RWAMAKUBA**

*Case No. : ICTR-98-44C-T*

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1910  
[Signature]

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**DECISION ON BAGOSORA MOTION FOR DISCLOSURE OF CLOSED SESSION  
TESTIMONY OF DEFENCE WITNESS 3/13**

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**The Prosecution**

Don Webster  
Dior Fall  
Iain Morley  
Adama Niane  
Tamara Cummings-John

**The Defence**

David Hooper  
Andreas O'Shea

[Signature]

## INTRODUCTION

1. The Defence of an accused in another trial before this Tribunal, Théoneste Bagosora, requests access to the closed session transcripts of Defence Witness 3/13, who testified on behalf of the Accused in the present case on 24 January 2006.<sup>1</sup> The Bagosora Defence indicates that Witness 3/13 is scheduled to testify on its behalf in the near future, and argues that the closed session transcripts would assist in deciding whether to actually call the witness and, if so, the preparation of his testimony. The Bagosora Defence agrees to be bound by the terms of the witness protection order applicable in the present case.<sup>2</sup>

## DELIBERATIONS

2. The present application requires the Chamber to consider the balance of witness protection concerns, upon which the closed session hearings were based, and the legitimate needs of the Bagosora Defence for information which may be material to its preparations.

3. The authority to hear testimony in closed session derives from Rule 75 (A), which provides that a Chamber may “order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the Accused”. The witness appears to have disclosed to the Bagosora Defence that he testified as a protected witness in the present case. Little if any security interest would be advanced by denying the Bagosora Defence access to the closed session testimony of a person who has agreed to testify on its behalf.

4. Rule 75 (F) does not automatically authorize disclosure in the present case. Rule 75 (F) permits the Prosecution to discharge its disclosure obligations notwithstanding the existence of witness protection measures, and requires the party in receipt of the confidential information to comply with the applicable witness protection order. No showing has been made that the Prosecution is subject to any disclosure obligation in respect of Witness 3/13. It is the Registry, not the Prosecution, which is in possession of, and controls access to, closed session transcripts.

5. Rule 75 (F) is relevant, however, to the extent that it codifies a consistent jurisprudence of granting Defence requests for the testimony of Prosecution witnesses in other trials.<sup>3</sup> Even though the present application concerns a Defence witness’s testimony which is not the subject of any specific disclosure obligation, a “party is always entitled to seek material from any source to assist in the preparation of its case if the documents sought

<sup>1</sup> *Requête de La Défense de Bagosora*, filed on 20 February 2006.

<sup>2</sup> *Requête*, para. 7. The governing witness protection order is: *Rwamakuba*, Decision on Defence Motion for Protective Measures (TC), 21 September 2005 (“Defence Witness Protection Order”).

<sup>3</sup> *Bagosora et al.*, Decision on Disclosure of Confidential Material Requested By Defence for Ntahobali (TC), 24 September 2004; *Nahimana et al.*, Decision on Disclosure of Transcripts and Exhibits of Witness X (TC), 3 June 2004; *Nyiramasuhuko et al.*, Decision on Aloys Simba’s Motion for Disclosure of Closed Session Transcripts and Unredacted Statements of Witness FAI in the Nyiramasuhuko et al. Trial (TC), 27 May 2004; *Bagosora et al.*, Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony of Witness ZF (TC), 11 November 2003; *Kajelijeli*, Decision on Joseph Nzirorera’s Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 7 October 2003; *Niyitegeka*, Decision on the Defence Motion for Release of Closed Session Transcript of Witness KJ (TC), 23 June 2003; *Nahimana et al.*, Decision on Joseph Nzirorera’s Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 5 June 2003;

have been identified or described by their general nature and if a legitimate forensic purpose for such access has been shown".<sup>4</sup> Given that Witness 3/13 is scheduled to appear shortly as a witness on behalf of the Accused Bagosora, and that his testimony may overlap in substance with the subject-matter of his testimony in the present case, the closed session testimony of the witness is likely to be of material assistance. This interest significantly outweighs any witness protection concerns which might arise from disclosure to the Bagosora Defence. Furthermore, the parties have been consulted and do not object to the disclosure.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the motion;

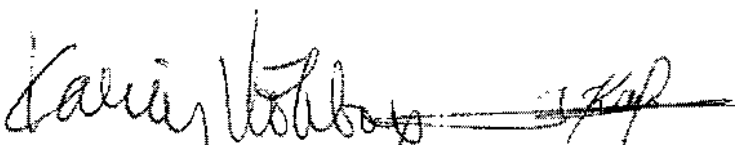
**ORDERS** the Registry to disclose the closed session transcripts of Witness 3/13 to the Bagosora Defence;

**ORDERS** that the Bagosora Defence, including the Accused, is bound by the terms of the Rwamakuba Defence Witness Protection Order in respect of Witness 3/13.

Arusha, 24 February 2006



Dennis C.M. Byron  
Presiding Judge



Karin Hökberg  
Judge



Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]



<sup>4</sup> *Blaškić*, Decision on Joint Motion of Enver Hadžihasanović, Mehmed Alagić and Amir Kubura for Access to All Confidential Material, Transcripts and Exhibits in the Case Prosecutor v. Tihomir Blaškić (AC), 24 January 2003, p. 4