



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

ICTR  
CRIMINAL REGISTRY  
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**TRIAL CHAMBER II**

Before: Judge William H. Sekule, Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal H. Khan

Registry: Mr. John Kiyeyeu

Decision of: 10 December 1998

**THE PROSECUTOR  
VERSUS  
LAURENT SEMANZA  
Case No. ICTR-97-20-I**

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**DECISION ON THE PROSECUTION MOTION FOR THE  
PROTECTION OF WITNESSES**

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The Office of the Prosecutor:

Mr. David Spencer  
Mr. Chile Eboe-Osuji

The Counsel for the Accused:

Mr. Gaetan Bourassa

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: <i>Dr. MINAUA K. M. Antoine</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>10.12.1998</i>

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),**

SITTING AS Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan (the "Trial Chamber");

CONSIDERING the indictment submitted by the Prosecutor against the accused, Laurent Semanza, which was confirmed on 23 October 1997 by Judge Lennart Aspegren pursuant to Rule 47 of the Rules of Procedure and Evidence (the "Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that the accused committed genocide, incitement to commit genocide, crimes against humanity and violations of Article 3 Common to the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING that the initial appearance of the accused took place on 16 February 1998;

BEING SEIZED of the Prosecutor's motion, filed on 24 November 1998, requesting protective measures for potential witnesses and the supporting documentation attached thereto (the "Prosecution motion");

MINDFUL OF the imperative need to adhere to the provisions of the Statute of the Tribunal ("the Statute") and the Rules made thereunder;

TAKING INTO ACCOUNT the provisions of articles 21 and 20(4)(e) of the Statute (Protection of Witnesses and Rights of the Accused to Examine Adverse Witnesses, respectively) and of rule 69 and 75 of the Rules (Protection of Victims and Witnesses);

HAVING HEARD the parties on 8 December 1998.

**PLEADINGS BY THE PARTIES**

1. The Prosecutor submitted that the persons for whom protection was sought could be divided into three categories; the first consisting of victims and potential prosecution witnesses presently residing in Rwanda, the second being those who reside in other African countries and the third comprised of those residing outside the African continent and who have requested that they be granted the protection of the Tribunal.

2. For all the abovementioned potential witnesses the Prosecutor under paragraph 3 of its motion sought the following orders:

a. Requiring the names, addresses, whereabouts of and other identifying information concerning these persons be kept under seal and excluded from the records of the Tribunal, other than the confidential material provided to the Trial Chamber in support of the instant motion and communicated to the Victims and Witness Support Unit in accordance with established procedure and only to implement the requested measures;

b. Requiring that, to the extent that any names, addresses whereabouts of and any other identifying information, concerning such persons is contained in existing records of the Tribunal, other than the confidential material provided to the Trial Chamber in support of this motion, that such identifying information be expunged from those documents;

c. Prohibiting the disclosure of the names, addresses, whereabouts of and any other identifying data, regarding these persons, to the public or the media even after the termination of the present trial;

d. Prohibiting the Defense Counsel or other persons working on the immediate defense

team and the Accused from sharing, discussing or revealing, directly or indirectly, any documents or any information contained in any documents or any other information which could lead to the identification of the potential witnesses;

e. Requiring the Defense to provide the Trial Chamber and the Prosecutor a designation of all persons working on the immediate Defense team who will have access to information referred to in paragraphs (a) through (c) above and for the Defence Counsel to inform the Trial Chamber, in writing of any changes in the composition of this team to ensure that any departing member of the said team has remitted all documents and information that could lead to the identification of protected witnesses;

f. Prohibiting the photographing, audio and/or video recording or sketching of any protected witnesses at any time or place without leave of the Trial Chamber and the parties;

g. Prohibiting the disclosure to the Defense of the names, addresses, whereabouts of and any other identifying data which would reveal the identities of victims or potential prosecution witnesses and any information in the supporting material, until such time as the Trial Chamber is assured that the witnesses are adequately protected, allowing the Prosecutor to disclose redacted pertinent materials, and in any event that the Prosecutor will not be required to reveal the identifying data to the Defense sooner than seven (7) days prior to the testimony of a particular witness;

h. That the accused or his Defense Counsel shall make a written request, on reasonable notice to the Prosecution and to the Trial Chamber or a Judge thereof, to contact any protected witness or any relative of such person. At the direction of the Trial Chamber or a Judge thereof, and with the consent of such protected person or the parents or guardian of that person if that person is under the age of 18, to an interview by the Defense the Prosecution shall undertake the necessary arrangements to facilitate such contact;

i. Requiring that the Prosecutor designate a pseudonym for each prosecution witness, which will be used whenever referring to each such witness in the proceedings, communications and discussions between the parties to the trial, and the public;

j. Prohibiting any members of the Defense team referred in paragraph (e) above, from attempting to make an independent determination of the identity of any protected witness or encouraging or otherwise aiding any person to attempt to determine the identity of any such person;

k. Prohibiting the accused individually from personally possessing any material which includes or might lead to discovery of the identity of any protected witness, including, but not limited to, redacted witness statements, unless the accused is at the time of the possession, in the presence of his Counsel, and instructing the United Nations Detention Facilities authorities to ensure compliance with the prohibition set out in this Paragraph.

3. The Prosecutor, in paragraph 5 of her motion, also reserved the right to apply to the Trial Chamber to amend the protective measures, if necessary.

4. At the audience, the Defence Counsel noted that in general he did not object to the Prosecutor's requests, however, he stated that the first and second categories of persons mentioned by the Prosecutor, in paragraph one above, had not asked for the protection of the Tribunal. Next, he submitted and that, in accordance with rule 69 of the Rules, protection should only be granted under exceptional circumstances and that the Prosecutor carried the burden of proof.

5. Finally the Defence Counsel raised objections with regard to measures sought in paragraphs (g) and (k) above. With regard to paragraph (g) he contended that the seven day period requested would not allow the Defence team sufficient time to conduct proper investigations and ultimately obstruct the preparation of adequate cross examination. He suggested that instead of the Prosecutor's proposal of "seven days before the witness is to testify

at the hearing", the Prosecutor be ordered to reveal the names of the witnesses to the Defence 30 days before the beginning of trial." (Transcripts at p. 23) Defence Counsel also requested that paragraph (k) be rejected in its entirety as it would be violative of the rights of the accused.

## DELIBERATIONS

6. In accordance with rule 69(A) of the Rules the Trial Chamber has the authority to grant non-disclosure of the identity of witness in exceptional circumstances, should it be satisfied that the witness may be in danger or at risk. There is no requirement that the witness himself or herself affirmatively request such measures, contrary to the contentions of the Defence Counsel. In the instant case, the Prosecutor has provided sufficient evidence, in the material annexed to its motion to show such exceptional circumstances exist. Additionally, judicial notice is taken of the context of the security situation affecting the potential witnesses.

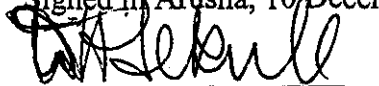
7. The Trial Chamber thus grants measures requested in paragraphs (a) through (f) and (h) through (j) of the Prosecutor's motion. However, we note that paragraph (g) of the Prosecutor's motion should be amended in order to allow the Defence adequate preparation time for cross examination, in accordance with article 20(4)(e) of the Statute. We are of the opinion that disclosure of the particulars of prosecution witnesses should be made when the witness has been brought under the protection of the Tribunal or at least 21 days before the witness is scheduled to testify, which ever comes first.

8. At the audience, the Defence Counsel emphasized the fact that he and his client needed to possess certain documents in order to prepare their case. He further stated that he, as an officer of the court, has a moral obligation not to disclose to third parties, including journalists and other detainees, (transcripts at pp. 21-22) therefore rendering paragraph (k) superfluous. It is also the view of the Trial Chamber that measures request in paragraph (k) may adversely affect the rights of the accused in so far as they could hamper the accused's ability to properly instruct his counsel. We therefore must reject the measures sought in paragraph (k).

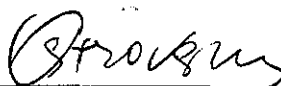
## FOR ALL THE ABOVE REASONS THE TRIAL CHAMBER:

1. **GRANTS** the measures requested in paragraphs (a) through (f) and (h) through (j) as well as paragraph 5 of the Prosecutor's motion,
2. **ORDERS** the amendment of paragraph (g), of the Prosecution motion, to read as follows: "... until such time as the Trial Chamber is assured that the witnesses have been afforded an adequate mechanism for protection thereby allowing the Prosecutor to disclose materials to the Defense, in a redacted form, *either when the witness is under the Tribunal's protection or 21 days before he or she is to testify at trial, which ever comes first.*"
3. **REJECTS** the measures sought in paragraph (k) of the Prosecution motion, and
4. **DIRECTS** the Registrar to execute this decision immediately and to report back in writing to the Trial Chamber on its implementation.

Signed in Arusha, 10 December 1998.



William H. Sekule  
Presiding Judge



Yakov A. Ostrovsky  
Judge



Tafazzal H. Khan  
Judge

[SEAL OF THE TRIBUNAL]

