

ICTR-97-20-T  
24-5-2001  
(5248-5244)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER III

Original: English

Before: Judge Yakov Ostrovsky, Presiding  
Judge Lloyd George Williams  
Judge Pavel Dolenc

Registrar: Mr. Adama Dieng

Decision of : 24 May 2001

JUDICIAL RECORDS/ARCHIVES  
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2001 MAY 24 P 4: 38  
*Adama Dieng*

THE PROSECUTOR  
versus  
LAURENT SEMANZA

Case No. ICTR-97-20-T

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DECISION ON THE DEFENCE MOTION FOR PROTECTION OF WITNESSES  
(RULE 75)

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Counsel for the Prosecutor:  
Mr. Chile Eboe-Osuji  
Ms. Patricia Wildermuth  
Ms. Amanda Reichman

Counsel for the Accused:  
Mr. Charles A. Taku  
Mr. Sadikou Ayo Alao

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”)

**SITTING** as Trial Chamber III composed of Judge Yakov Ostrovsky, presiding, Judge Lloyd George Williams, and Judge Pavel Dolenc (the “Chamber”);

**BEING SEIZED** of a Defence Motion for Protection of Witnesses (Rule 75), dated and filed on 26 April 2001 (the “Motion”);

**CONSIDERING** the Prosecutor’s Response to the Motion, dated and filed on 7 May 2001;

**CONSIDERING** the Prosecutor’s Amended Response to the Motion, dated and filed on 9 May 2001;

**CONSIDERING** the Defence Reply to the Prosecutor’s Amended Response to the Motion, dated and filed on 18 May 2001;

**NOW DECIDES** the matter solely on the briefs of the parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal (the “Rules”).

**PLEADINGS BY THE PARTIES****Submissions of the Defence**

1. The Defence submitted that potential Defence witnesses, identified by pseudonyms on a list annexed to the Motion, are refusing to appear and testify before the Tribunal unless adequate protective measures are accorded to them.
2. The witnesses are Rwandan citizens who are presently found in various African and European countries. They fear that testifying before the Tribunal without an adequate protection would expose them to harm, including the loss of life, from the present Government of Rwanda. Additionally, many of the potential witnesses have applied for and/or received political asylum in various European countries and they need adequate protection so as not to lose their status in those countries.
3. Consequently, the Defence requested the following orders:
  - (A) That the witnesses be allowed to appear under pseudonyms and that all information that could disclose their identities be put under seal or redacted from all disclosures;
  - (B) That the Registry undertake all measures to protect the legal status of the witnesses in the countries in which they now reside and report any difficulties in so doing to the Chamber; and
  - (C) That these measures continue even after their testimony.

**Prosecutor's Response**

4. The Prosecutor is in principle not opposed to protective measures for Defence witnesses. However, the Prosecutor submitted that some of the measures requested by the Defence are unfounded and exceed the provisions of Rule 75 of the Rules.
5. The Prosecutor argued that in seeking exceptional measures going beyond the usual relief granted under Rule 75, exceptional circumstances must be shown. Since the Defence has failed to show exceptional circumstances, the Chamber should modify the measures requested by the Defence to read as follows:
  - (A) That the witnesses be allowed to appear under their pseudonyms and all information that could disclose their identity be put under seal or redacted from any disclosures made and shall be disclosed to the Prosecutor after the witnesses are under the protection of the Tribunal or, in any event, not later than 1 August 2001;
  - (B) That the Prosecutor communicate to the Defence, in writing, any request to interview a potential Defence witness or a member of a witness's family. With the consent of the potential witness or family member, the Defence shall take all necessary measures to facilitate such interview; and
  - (C) That the Defence may approach the Tribunal for appropriate relief for the protection of witnesses residing in other countries and in so doing must supply to the Witnesses and Victims Support Section the details of the witnesses, including the names of the countries where they reside.

**Reply of the Defence**

6. The Defence replied that the Prosecutor's proposal to include in the order on protective measures an order concerning the Prosecution's requests to interview potential Defence witnesses or members of their families should be disregarded. First, such an order would intimidate the witnesses and their families. Second, nothing in the Rules gives the Prosecutor the right to interview Defence witnesses prior to trial. The right to examine witnesses is contained in Rule 90 and is exercisable under the direction of the Trial Chamber during trial and not before. Finally, no rule provides for the examination of members of witnesses' families.

**DELIBERATIONS**

7. The Defence filed the present Motion under Rule 75. Rule 75(A) sets out that a Trial Chamber may order appropriate measures to safeguard the security of witnesses. This is the general provision on protective measures for witnesses. At the same time, Rule 75(B) enumerates concrete protective measures to prevent disclosure to the public or the media of the identity of witnesses.
8. The Tribunal's Statute prescribes that an accused has the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses

*The Prosecutor v. Semanza*, ICTR-97-20-T

against him. See Article 20(4)(e).

9. A consideration of the Motion in light of Article 20 of the Statute and Rule 75 leads to the conclusion that protective measures under Rule 75 should be granted to the Defence in order to prevent the disclosure of the identity of its witnesses to the public or the media.
10. Provisions of Rule 75(B) that the Defence expressly invoked as the basis of its Motion include some of the protective measures sought by the Defence, namely to allow the witnesses to appear under pseudonyms and to put under seal all information that could disclose their identity or redact such information from any disclosure made.
11. The Chamber notes that the Tribunal has granted such protective measures in various decisions,<sup>1</sup> including in respect of the Prosecution's witnesses in the present case. See *Prosecutor v. Semanza*, ICTR-97-20-I, Decision on the Prosecution Motion for the Protection of Witnesses (10 December 1998).
12. As for the Defence request that the Chamber order the Registry to take all measures to protect the legal status of the witnesses in countries of their residence, a request considered under Rule 75(A), the Chamber reiterates its general position that "the Chamber ought not to interfere with the sovereign prerogative of States to control the sojourn of aliens in their territories..." *Prosecutor v. Bagambiki and Imanishimwe, Prosecutor v. Ntagerura*, ICTR-99-46-I, Decision on the Motion by Emmanuel Bagambiki's Defence Seeking Orders for Protective Measures for its Witnesses (7 September 2000), para. 8. Subject to this, and recalling Article 28 of the Statute of the Tribunal providing for cooperation of States with the Tribunal, the Chamber will direct the Registry to seek the cooperation of States in facilitating the testimonies of Defence witnesses.
13. Finally, the Chamber turns to the Prosecutor's proposal to include in the present Decision an order concerning the Prosecution's requests to interview potential Defence witnesses or members of their families. First, as the Defence noted, there is nothing in the Rules to provide for one party's interviews of the other party's potential witnesses and their family members. The Prosecutor will have the opportunity to cross-examine all Defence witnesses who will appear before the Tribunal in this case. While a similar measure was granted in respect of the Prosecution witnesses in this case,<sup>2</sup> the Chamber accepts that

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<sup>1</sup>See, e.g. *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Decision on Juvenal Kajelijeli's Motion for Protective Measures for Defence Witnesses (3 April 2001); *Prosecutor v. Bagambiki and Imanishimwe, Prosecutor v. Ntagerura*, ICTR-99-46-I, Decision on the Motion by Emmanuel Bagambiki's Defence Seeking Orders for Protective Measures for its Witnesses (7 September 2000).

<sup>2</sup>See *Prosecutor v. Semanza*, ICTR-97-20-I, Decision on the Prosecution Motion for the Protection of Witnesses (10 December 1998).


potential Defence witnesses and their families may well fear that contacts by the Prosecutor could expose them to the unwanted attention of the Rwandan authorities. Moreover, the Prosecutor did not indicate the timing of such interviews. Thus, presumably, the Prosecutor could request the interviews to take place even prior to the time prescribed by the Chamber for disclosure of the witnesses's identities. This would, of course, be inconsistent with our present decision. Consequently, the Chamber declines to adopt the Prosecution's proposal in this regard.

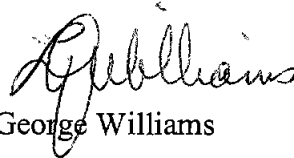
14. **FOR THESE REASONS, THE TRIBUNAL:**

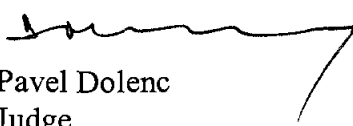
**GRANTS** the Defence requests made in the present Motion to the following limited extent, and

- (A) **ORDERS** that the Defence witnesses in this case be allowed to appear under pseudonyms and that all information that could disclose their identities be put under seal and redacted from all disclosures to the public and the media; and
- (B) **DIRECTS** the Registry to seek the cooperation of States, subject to paragraph 12 above, in facilitating the testimonies of Defence witnesses in this case.

Arusha <sup>24</sup> May 2001.

  
Yakov Ostrovsky  
Judge, presiding

  
Lloyd George Williams  
Judge

  
Pavel Dolenc  
Judge

[Seal of the Tribunal]