



UNITED NATIONS
NATIONS UNIES

ICTR-97-20-T
28-1-2004
(7497 - 7495)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

7497
2004

OR: ENG

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Q.C., Presiding
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Adama Dieng

Date: 28 January 2004

JUDICIAL RECORDS
1678
2004 JAN 28 P 4: 00
[Signature]

THE PROSECUTOR

v.

LAURENT SEMANZA

Case No. ICTR-97-20-T

**DECISION ON ALOYS NTABAKUZE'S MOTION FOR DISCLOSURE OF
TRANSCRIPTS OF CLOSED SESSIONS AND MATERIALS FILED UNDER SEAL
DURING THE TESTIMONY OF WITNESS DCH**

Office of the Prosecutor:
Hassan Bubacar Jallow

Defence Counsel for Laurent Semanza
Charles Achaleke Taku, Lead Counsel

Defence Counsel for Aloys Ntabakuze
Peter Erlinder, Lead Counsel
André Tremblay, Co-Counsel

[Signature]

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 "Aloys Ntabakuze's Motion for Disclosure of Transcripts of Closed Sessions and Materials Filed under Seal during the testimony of Witness DCH", filed on 16 December 2003 ("Motion"), transferred to this Chamber by Trial Chamber I for its Consideration;

CONSIDERING further the "Reply by the Defence of Laurent Semanza to the Motion by Major Aloys Ntabakuze's Defence for Disclosure of the Transcripts and Exhibits of the Testimony in Closed Session of Prosecution Witness DCH", filed on 31 December 2003 ("Reply");

RECALLING the "Decision on the Prosecution Motion for the Protection of Witnesses," in the case of *The Prosecutor v. Laurent Semanza* by Trial Chamber II, filed on 10 December 1998;

NOTING that the Prosecutor has neither replied to the instant Motion, within the time frame stipulated in Rule 73(E) of the Rules, nor applied for an extension of time;

CONSIDERING the relevant provisions of the Statute of the Tribunal ("Statute") and the Rules, particularly Rules 54 and 81(B);

REVIEWS the present matter solely on the basis of the written briefs of the parties, as prescribed in Rule 73(A) of the Rules.

Submission of the Parties

Defence Motion

1. Counsel for Ntabakuze prays for the issuance of an order, pursuant to Rule 54, for the disclosure of closed session testimony of a prosecution witness who testified in the case of *The Prosecutor v. Laurent Semanza* under the pseudonym 'DCH' (hereinafter, "Witness DCH").¹ The said witness is listed as a prosecution witness in the ongoing case of *The Prosecutor v. Bagosora et. al.*, in which Ntabakuze stands accused.²

2. Counsel is already in receipt of Witness DCH's unredacted statements, but is presently seeking an order for disclosure of statements made from 15 through 18 April 2002 during which time the witness testified in the *Semanza* case, as well as documents filed under seal during the course of that case.

3. The disclosure of the said documents are being requested to facilitate the preparation of the Accused's case.

¹ *The Prosecutor v. Laurent Semanza*, ICTR-97-20-T.

² *The Prosecutor v. Bagosora et. al.*, ICTR-98-41-T. Witness DCH is listed in the Annex to the Prosecutor's Pre-Trial Brief of 21 January 2002, and in a revised witness list dated 30 April 2003.



4. The Defence has also submitted an undertaking to comply with the protective measures afforded to the witness by the "Decision on the Prosecution Motion for the Protection of Witnesses" issued on 10 December 1998.

Reply by the Defence of Laurent Semanza

5. Counsel for Semanza holds the view that the present request relates materially to the Defence of Accused Ntabakuze and therefore submits that it would be appropriate and in the interest of justice for the Chamber to grant the present Motion.

Deliberations

6. 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. While the Chamber notes that Witness DCH is still a protected witness, it is nevertheless mindful of the materiality and relevance of the witness's testimony to the defence of the Accused.

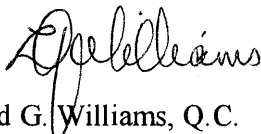
FOR THE FOREGOING REASONS, THE CHAMBER

GRANTS the Motion and amends the protective measures ordered in respect of Witness DCH, to the extent of making it, and any documents filed under seal, available to the Trial Chamber seized of Accused Ntabakuze's case;

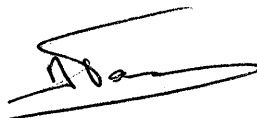
INVITES the Trial Chamber hearing Accused Ntabakuze's case to determine the date and manner in which the requested documents should be disclosed; and

REMINDS the Defence for Accused Ntabakuze of his undertaking to abide by the provisions of the protective measures Order issued in respect of this Witness, dated 10 December 1988.

Arusha, 28 January 2004



Lloyd G. Williams, Q.C.
Presiding Judge



Andréia Vaz
Judge



Khalida Rachid Khan
Judge

