



ICTR-97-20-A  
15 MARCH 2004  
(1161/H - 1158/H)

1161/H

International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

**IN THE APPEALS CHAMBER**

**Before:**

Judge Theodor Meron, Presiding Judge  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Inés Mónica Weinberg de Roca

**Registrar :**

Mr. Adama Dieng

**Decision of:**

15 March 2004

**Laurent SEMANZA**

v.

**THE PROSECUTOR**

Case No. ICTR-97-20-A

ICTR Appeals Chamber

Date: 15 March 2004

Action: PG

Copied To: Concerned Judge

Judicial Archives, Parties,

LOs, LSS, WYSS

**DECISION ON MOTION FOR PROTECTIVE MEASURES**

**Counsel for the Appellant**

Mr. Charles Taku  
Mr. Philip Baten

**Counsel for the Prosecutor**

Ms. Melanie Werrett  
Mr. James Stewart

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:

Roseve Muzigo-Morrison

SIGNATURE:

*[Signature]*

DATE:

16/03/04

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "International Tribunal", respectively);

**NOTING** the "Decision on Defence Motion for Leave to Present Additional Evidence and to Supplement Record on Appeal" filed on 12 December 2003 ("Rule 115 Decision"), in which the Appeals Chamber ordered that the testimony of Witness TDR would be heard by the Appeals Chamber as additional evidence pursuant to Rules 98, 107, and 115 of the Rules of Procedure and Evidence ("Rules");

**BEING SEISED OF** the "Defence Extremely Urgent Motion for Protective Measures to be Granted to Witness TDR Pursuant to Rule 69 and 75 of the Rules of Procedure and Evidence" filed confidentially by the Appellant Semanza on 22 January 2004 ("Motion" and "Appellant" respectively) in which the Appellant explains that the witness fears reprisals against his life if he testifies publicly and therefore asks that:

- (i) "all identifying information and data" of Witness TDR be placed under seal and not be disclosed to the press, the public, or the Rwandan government;
- (ii) the hearing of the testimony of Witness TDR be conducted entirely in closed session;
- (iii) the Witness Protection Unit be ordered to take necessary measures to provide the protection requested by Witness TDR in his confidential information sheet, which in addition to seeking appropriate protective measures before, during, and after testimony also includes a request for medical attention and for payment of hotel costs at his place of residence;

**CONSIDERING** the "Prosecution Response to Defence Extremely Urgent Motion for Protective Measures to be Granted to Witness TDR" filed on 27 January 2004, in which the Prosecution indicates that it does not oppose the Appellant's first and third requests on the basis that they are "usual practices and measures", but objects to the request for the "extraordinary measure" of hearing the witness in closed session because it is not justified by the Appellant's submissions;

**NOTING** the "Defence Reply to the Prosecution Response to Defence Extremely Urgent Motion for Protective Measures to be Granted to Witness TDR Pursuant to Rules 69 and 75 of the Rules of Procedure and Evidence" filed confidentially on 28 January 2004, in which the Appellant stresses

that Witness TDR is particularly vulnerable; explains that if any part of Witness TDR's testimony is heard in open session this will reveal his identity; and argues that the Prosecutor failed to show how it would suffer any prejudice if the entire hearing of Witness TDR were conducted in closed session;

**CONSIDERING** that the principle of a public hearing with full disclosure of the identification of a witness is important both to the public and to the International Tribunal but that the principle is susceptible to allowances being made in the circumstances of a particular case;

**CONSIDERING** that the determination of whether all or part of a witness's testimony will be held in closed session is best made at the time of the hearing;

**CONSIDERING** that the Appellant's request concerning medical treatment and hotel costs at the place of residence are not related to the witness's testimony before this Tribunal and are not matters of witness protection;

**CONSIDERING** that the witness has stated that he fears that revealing his identity publicly could expose him to harm;

**CONSIDERING** that a request for protective measures pursuant to Rule 75 of the Rules must demonstrate a real likelihood that the person may be in danger or at risk;<sup>1</sup>

**FINDING** that the Appellant has demonstrated that there is an objective basis for the fears of Witness TDR and that, in the circumstances of this case, it is appropriate that the identity and whereabouts of Witness TDR not be publicly disclosed in order to safeguard the witness's privacy and security, as provided in Rule 75(A) of the Rules;

**FINDING** that the circumstances of this case warrant an order that all identifying information and data of Witness TDR be kept under seal, that no records revealing Witness TDR's identity or whereabouts be disclosed to the public, and that the testimony authorized by the Rule 115 Decision be given under a pseudonym;

**FOR THE FOREGOING REASONS;**

**HEREBY GRANTS** the Motion in part;

<sup>1</sup> *Prosecutor v. Kordić & Čerkez*, No. IT-95-4/2-A, Decision on Motion for Clarification and Motions for Protective Measures, 13 October 2003, para. 23.

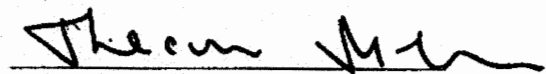
**ORDERS** that all identifying information and data of Witness TDR be kept under seal, that no records revealing Witness TDR's identity or whereabouts be disclosed to the public, and that the testimony authorized by the Rule 115 Decision be given under a pseudonym;

**DIRECTS** the Witnesses and Victims Support Section to take all steps necessary to safeguard the security and privacy of Witness TDR in the giving of the testimony authorized by the Rule 115 Decision; and

**DISMISSES** the Motion in all other respects.

Done in English and French, the English text being authoritative.

Done this 15<sup>th</sup> day of March 2004,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
Presiding Judge

[Seal of the International Tribunal]

