



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

## TRIAL CHAMBER II

OR:ENG

**Before:**

Judge William H. Sekule, Presiding Judge  
Judge Yakov Ostrovsky  
Judge Lennart Aspegren

**Registry:**

Mr. Jean-Pelé Fomété

**Decision delivered orally:** 14 March 1997

**Decision signed:** 28 November 1997

**THE PROSECUTOR  
VERSUS  
CLEMENT KAYISHEMA**

*Case No. ICTR-95-1-T*

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**DECISION ON THE MOTION FILED BY THE PROSECUTOR ON THE  
AVAILABILITY OF THE DEFENCE COUNSEL**

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**The Office of the Prosecutor:**

Mr. Jonah Rahetlah  
Ms. Brenda-Sue Thornton

**The Counsel for the Accused:**

Mr. Pascal Besnier ( Representing Mr André Ferran, Counsel For the accused ).

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (" The Tribunal").

SITTING as Trial Chamber 2, composed of Judge William Sekule, Presiding, Judge Yakov Ostrovsky and Judge Lennart Aspegren;

CONSIDERING the Assignment of Counsel Andre Ferran in May 1996 to act as Defence Counsel for the accused, Clement Kayishema;

CONSIDERING that the assigned Counsel appeared for the accused at the initial appearance on 31 May 1996;

CONSIDERING that the Defence Counsel has already appeared before the Tribunal on behalf of the accused at all relevant court sessions;

GIVEN THE FACT THAT on 20 February 1997 the Tribunal called the accused persons to inform them that the case will not proceed as scheduled due to the trial of Jean-Paul Akayesu;

CONSIDERING FURTHER THAT the accused's Counsel was not present at that time;

CONSIDERING that the Trial has been set for hearing on 8 April 1997 to accord the defence sufficient time to prepare their case;

BEING SEIZED BY a Motion filed on 4 March 1997 by the Prosecutor under Rule 72 of the Rules of Procedure and Evidence and Article 20 of the Statute of the Tribunal for a hearing on the issue of availability of Defence Counsel throughout the trial to ensure that the accused has effective legal assistance and that he receives a fair Trial;

CONSIDERING the response to the Prosecutor's Motion filed by the Defence on 13 March 1997 in which the Defence Counsel was opposed to the Prosecutor's impeachment of the Defence Counsel;

HAVING HEARD, the Prosecutor during the session of 14 March 1997, whereby she requested the Tribunal to clarify that in future, in proceedings against the accused, Clement Kayishema, Defence Counsel will be present or in his absence, the Tribunal put it on record that the accused is willing to proceed without his assigned Counsel as was done during the hearing of this particular motion ;

TAKING INTO ACCOUNT the fact that the Defence Counsel, during the hearing on

14 March 1997, was agreeable to the request of the Prosecutor to have the Tribunal ask the accused if he was willing to proceed in the absence of his Counsel each time the case came up for hearing;

HAVING HEARD AS WELL the accused, who had no objection to being represented by

Mr. Pascal Besnier just for that session and who stated that he did not want to exclude

Mr. André Ferran as his Defence Counsel to represent him throughout the Trial;

TAKING INTO CONSIDERATION the assurance given by Mr. Besnier, the Counsel authorized by Mr. Ferran, the Assigned Counsel for the accused, that the said Assigned Counsel would be available to represent the accused throughout the Trial;

BEING AWARE OF THE FACT THAT the matter before the Tribunal is non-contentious;

**FOR THESE REASONS,**

**THE TRIBUNAL**

OBSERVES THAT as much as possible, both Counsels should be available to carry out their mandate whenever the accused is called upon to be in Court;

GRANTS the request made by the Prosecutor within the context it has been stipulated at this hearing.

Arusha, 28 November 1997.

William H. Sekule,  
Presiding Judge

Yakov Ostrovsky  
Judge

Lennart Aspegren  
Judge

(Seal of the Tribunal)