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UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda

ICTR
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TRIAL CHAMBER II

OR: ENG

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

Registry: Mr Abraham L. Koshopa

Decision of: 10 February 1998

**THE PROSECUTOR
VERSUS
CLEMENT KAYISHEMA
OBED RUZINDANA

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

**DECISION ON THE PROSECUTION'S MOTION REQUESTING AN IN
CAMERA PROCEEDING TO DETERMINE WHETHER ADDITIONAL
PROTECTIVE MEASURES FOR WITNESS VV SHOULD BE
ORDERED PURSUANT TO RULE 75 (A) AND (B)**

The Office of the Prosecutor:
Mr. Jonah Rahetlah
Ms. Brenda Sue Thornton
Ms. Holo Makwaia



The Counsel for the Accused:
Mr. Pascal Besnier (Obéd Ruzindana)
Mr. Willem F. Van der Griend
Mr. Philippe Moriceau (Clément Kayishema)

motion/Kayishdefwit/02/98/1

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THE TRIBUNAL,

SITTING AS Trial Chamber II of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge William H. Sekule as Presiding Judge, Judge Yakov Ostrovsky and Judge Tafazzal H. Khan;

CONSIDERING that the initial appearance of two accused persons, namely Clement Kayishema and Obed Ruzindana, took place on 31 May and 29 October 1996 respectively and hearing of the case on merits commenced on 11 April 1997;

CONSIDERING THAT the Tribunal is currently recording the Prosecution evidence as presented by the Witnesses;

BEING SEIZED of the Prosecutor's written motion of 6 February 1998 requesting the Trial Chamber to hold in camera proceedings as provided under Rule 79 of the Rules of Procedure and Evidence ("the Rules") to determine whether to order additional protective measures for witness VV pursuant to Rule 75 (A) and (B) of the Rules;

CONSIDERING THAT the motion was heard in closed session, during which the Prosecutor elaborated on the motion as stated above, to wit, requesting that part of the evidence of witness VV be heard in camera upon reasons to be advanced by witness VV himself and further requesting that the media be prohibited from disseminating the substance of his testimony pursuant to Rule 75;

TAKING INTO CONSIDERATION the oral amendment to the original motion made by the Prosecutor seeking to have the entire evidence of witness VV heard in camera;

GIVEN THE FACT THAT witness VV was given an opportunity to explain to the Trial Chamber why it was necessary to have his entire testimony heard in closed session;

CONSIDERING THAT instead of giving sufficient reasons, witness VV persistently stated that he would only give his reasons in the absence of the accused persons, that is, not until and unless the accused persons vacated the Trial Chamber;

GIVEN THE FACT THAT the Defence objected to the unsubstantiated and illegal demands of witness VV above stated on the basis that the accused has a right to be present during the proceedings and that given the importance of the precedent setting nature of the trial, it was necessary to have public participation;

CONSIDERING THAT the Prosecutor also impressed upon the witness that his request could not be acceded to and taking into account the fact that the Prosecutor was in agreement with the Defence's submission to have the accused present during the proceedings;



CONSIDERING ALSO the interest of all concerned parties and the legal position and given the fact that the Trial Chamber has at length explained to witness VV that in the interest of justice and according to the Statute of the Tribunal and the Rules, the accused has the right to be present during the proceedings and could not be asked to vacate the courtroom on the insistence of a witness;

BEING MINDFUL OF the security situation in Rwanda and the need for the protection of witnesses and victims but considering the illegal insistence by witness VV that the accused persons vacate the courtroom;

TAKING INTO ACCOUNT THAT despite a clear explanation by the Trial Chamber, witness VV has failed to lay a basis upon which the Trial Chamber could render a decision in his favour ;

HENCE FOR ALL THE ABOVE STATED REASONS:

THE TRIBUNAL IS OF THE CONSIDERED VIEW THAT THE REASONS FOR THE PROSECUTION'S MOTION, AS ORALLY AMENDED, WERE INSUFFICIENT AND THEREFORE THE PROSECUTION'S MOTION IS HEREBY DISMISSED.

Arusha, 10 February 1998

William H. Sekule
Presiding Judge

Yakov Ostrovsky
Judge

Tafazzal H. Khan
Judge



Seal of the Tribunal