



ICTR-98-44A-T  
08-03-2004  
(3584 — 3582)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

3584 ammbag

Or: ENG

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Asoka de Zoysa Gunawardana  
Judge Arlette Ramaroson

**Registrar:** Mr. Adama Dieng

**Date:** 8 March 2004

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**The PROSECUTOR**  
v.  
**Juvénal KAJELIJELI**  
*Case No. ICTR-98-46A-T*

**DECISION ON MOTION BY DEFENCE FOR CASIMIR BIZIMUNGU FOR  
DISCLOSURE OF CLOSED SESSION TESTIMONY OF WITNESS GAP AND  
EXHIBITS PRESENTED**

**Office of the Prosecutor:**  
Ms. Ifeoma Ojemeni

**Counsel for the Defence:**  
Michelyne C. St. Laurent and Alexandra Marcil for Casimir Bizimungu  
Howard Morrison and Ben Gumpert for Justin Mugenzi  
Pierre Gaudreau and Michel Croteau for Jérôme Bicomumpaka  
Tom Moran and Christian Gauthier for Prosper Mugiraneza  
Lennox Hinds and Nkeyi Makanyi Bompaka for Juvénal Kajelijeli

*[Handwritten signature]*

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

**SITTING** as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Asoka de Zoysa Gunawardana, Judge Arlette Ramaroson (the "Chamber");

**BEING SEIZED** of the "Motion by Defence Council for Casimir Bizimungu for Disclosure of Closed Session Testimony of Witness GAP and Exhibits Presented", filed on 18 November 2003 (the "Motion") in which:

- (i) The Defence for Casimir Bizimungu requests the Prosecution to disclose the testimony and exhibits of witness GAP who was a Prosecution witness in the case of *The Prosecutor v. Kajelijeli* because the said witness would be called during the trial session of the trial of the Accused Casimir Bizimungu; and
- (ii) The Defence for Casimir Bizimungu and its Team undertakes to be bound by the same protective measures as the Kajelijeli Defence team with respect to the testimonies and exhibits received pursuant to the Motion;

**CONSIDERING** that the Prosecution filed a reply on 25 November 2003 in which it does not object to the request of Casimir Bizimungu since he and his Defence Team have undertaken to be bound *mutatis mutandis* by the Decision for the protection of witnesses of 6 July 2000 relating to the Prosecution witnesses in the *Prosecutor v. Kajelijeli* case;

**CONSIDERING** the matter pursuant to Rules 54, 75, 66(A) (ii), 81(B) of the Rules of Procedure and Evidence (the "Rules"), solely on the basis of the written submissions of the Parties;

**HAVING DELIBERATED**

**RECALLING** its "Decision on the Prosecutor's Motion for Protection Measures for Witnesses," of 6 July 2000 in the case of the *Prosecutor v. Kajelijeli* (the "Decision for the Protection of Witnesses of 6 July 2000");

**RECALLING FURTHER** the jurisprudence of the Tribunal<sup>1</sup> and in particular its "Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received under Seal," of 7 October 2003 whereby the Chamber granted the request of Counsel for Nzirorera instructing said Counsel and his team that it has to

<sup>1</sup> *Bagosora et al.*, Decision on Release of Closed Session Transcript of Witness DY for Use in the Trial of Bizimungu et al. (TC), 23 February 2004; *Niyitegeka*, Decision on Release of Closed Session Transcript of Witness KJ for Use in the Trial of Bagosora et al. (TC), 17 February 2004; *Ntakirutimana*, Decision on Release of Closed Session Transcript of Witness OO for Use in the Trial of Bagosora et al. (TC), 17 February 2004; *Musema*, Decision on Release of Closed Session Transcript of Witness AB for Use in the Trial of Bagosora et al. (TC), 18 February 2004; *Bagosora et al.*, Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony of Witness ZF (TC), 11 November 2003; *Nahimana et al.*, Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 5 June 2003; *Niyitegeka*, Decision on the Defence Motion for Release of Closed Session Transcript of Witness KJ (TC), 23 June 2003.

comply with the orders made in the Chamber's Decision for the Protection of Witnesses of 6 July 2000;

**CONSIDERING** that in its "Decision on Disclosure of Evidence" of 1 November 2000 in the case of *Prosecutor v. Nyiramasuhuko*, the Chamber was of the opinion at para. 32 that, "As regards Rule 66 (A) (ii) of the Rules, the Chamber considered that each of the Accused in the same proceedings must receive disclosure of the statements of all the witnesses whom the Prosecutor intends to call at their joint trial, so that the Defence of each of the Accused may be in a position to prepare their Defence and in particular to fully cross-examine the witnesses of its choice, in the course of the hearing." The Chamber is mindful that Casimir Bizimungu is jointly tried and indicted with three other Accused. Although the other Accused have not requested such disclosure, the Chamber rules that should any Accused ask for the transcripts and exhibits of Witness GAP, the Accused and their Defence Team should be provided with the said transcripts and exhibits and would be bound by the same orders made for Casimir Bizimungu.


**ACCORDINGLY** the Chamber grants the Defence request and orders the Registry to disclose to the Defence of Casimir Bizimungu the testimony and exhibits relating to Prosecution Witness GAP while reminding the Defence to preserve the confidentiality of the said testimony and exhibits under all circumstances and in compliance with the protective measures made in the Chamber's Decision for the protection of Witnesses of 6 July 2000;

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**GRANTS** the request of Counsel for Casimir Bizimungu instructing Counsel for Casimir Bizimungu as well as any Counsel for the Co-Accused and their teams that they are under strict orders to comply with the Chamber's Decision for the Protection of Witnesses of 6 July 2000; and

**ORDERS** the Registry to disclose to the Defence Team of Casimir Bizimungu and any other Defence teams of his Co-Accused the testimony and exhibits relating to Witness GAP while reminding these Defence teams to preserve the confidentiality of the said testimony and exhibits under all circumstances and in compliance with the protective measures made in the Chamber's Decision of 6 July 2000.

Arusha, 8 March 2004



William H. Sekule  
Presiding Judge



Asoka de Zoysa Gunawardana  
Judge



Arlette Ramaroson  
Judge

(Seal of the Tribunal)