



UNITED NATIONS  
NATIONS UNIES

ICTR-99-50-T  
20-02-2006  
(22765-22763)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

22765  
R

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Khalida Rachid Khan, Presiding  
Judge Lee Gacuiga Muthoga  
Judge Emile Francis Short

**Registrar:** Mr Adama Dieng

**Date:** 17 February 2006

**THE PROSECUTOR**  
v.  
**CASIMIR BIZIMUNGU**  
**JUSTIN MUGENZI**  
**JÉRÔME-CLÉMENT BICAMUMPAKA**  
**PROSPER MUGIRANEZA**

Case No. ICTR-99-50-T

2006 FEB 20 P 5: 50  
ICTR  
SECRETARY GENERAL'S OFFICE

**RECONSIDERATION OF DECISIONS ON PROTECTIVE MEASURES FOR  
DEFENCE WITNESSES PURSUANT TO APPEALS CHAMBER RULING OF  
16 NOVEMBER 2005**

**Office of the Prosecutor:**

Mr Paul Ng'arua  
Mr Ibukunolu Babajide  
Mr Justus Bwonwonga  
Mr Elvis Bazawule  
Mr George William Mugwanya  
Mr Shyamlal Rajapaksa

**Counsel for the Defence:**

Ms Michelyne C. St. Laurent and Ms Alexandra Marcil for *Casimir Bizimungu*  
Mr Ben Gumpert and Mr. Jonathan Kirk for *Justin Mugenzi*  
Mr Pierre Gaudreau and Mr Michel Croteau for *Jérôme-Clément Bicamumpaka*  
Mr Tom Moran and Ms. Marie-Pierre Poulain for *Prosper Mugiraneza*

22764

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“Tribunal”),

**SITTING** as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuga Muthoga and Judge Emile Francis Short (the “Trial Chamber”);

**BEING SEIZED** of the “Decision on Prosecution Appeal of Witness Protection Measures”, as rendered by the Appeals Chamber on 16 November 2005, in which the Appeals Chamber remitted the Impugned Decisions for reconsideration;

**RECALLING** that on 4 July 2005, the Prosecution filed its motion, pursuant to Rule 73(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) for certification to appeal a holding – repeated verbatim in each of the Impugned Decisions – that restricts disclosure of information pertaining to the identity of a protected witness to members of the “immediate Prosecution team” and not to anyone else within the Office of the Prosecutor;<sup>1</sup>

**RECALLING** that on 28 September 2005, the Chamber rendered its decision on the Prosecution’s motion for certification, granting certification of the interlocutory appeal pursuant to Rule 73(B);<sup>2</sup>

**CONSIDERING** that the Chamber is directed to reconsider the Impugned Decisions in light of the Appeal Chamber’s finding that a protective order restricting access to defence witness identities to a particular “Prosecution team” impermissibly contravenes the Prosecutor’s obligation to disclose exculpatory material, pursuant to Rule 68 of the Rules, and that this obligation “rest[s] on him or her alone as an individual who is then able to authorize the Office of the Prosecutor as a whole, undivided unit, in fulfilling those obligations;”

**RECONSIDERING** therefore, the

- i) “Decision on Casimir Bizimungu’s Motion for Protection of Defence Witnesses;”
- ii) “Decision on Jerome Bicomupaka’s Motion for Protection of Defence Witnesses;”
- iii) “Decision on Justin Mugenzi’s Confidential Motion for Protection of Defence Witnesses;”

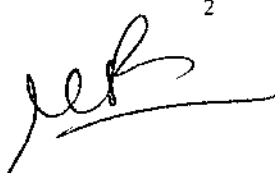
as filed on 27 June 2005 (the “Impugned Decisions”);

**ALSO RECONSIDERING** the “Decision on Prosper Mugiraneza’s Motion for Protection of Defence Witnesses” of 2 February 2005, **AND** the “Decision on Prosecutor’s Consolidated Corrigendum to Prosecutor’s Response to Defence Motions for Protection of Defence Witnesses and Request for Reconsideration of Decision on Prosper Mugiraneza’s Motion for Protection of Defence Witnesses”, filed on 7 July 2005 (collectively, the “Mugiraneza Decision”), in the interest of ensuring that the protective measures ordered by the Chamber in respect of all Defence witnesses are uniformly worded and applied;

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

<sup>1</sup> *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Prosecutor’s Motion, Pursuant to Rule 73(B), for Certification to Appeal the Trial Chamber’s Decisions on Motions for Protection of Defence Witnesses Dated 27 June 2005, 4 July 2005.

<sup>2</sup> *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on the Prosecutor’s Motion for Certification to Appeal the Trial Chamber’s Decisions on Protection of Defence Witnesses, 28 September 2005.



22763

HEREBY AMENDS the Impugned Decisions as follows:

i) Paragraph (e) of the Order in each of the Impugned Decisions is replaced with the following paragraph:

**(e) The Prosecution shall not share, discuss, or reveal, directly or indirectly, any documents or any information contained in any documents, or any other information which could reveal or lead to the identification of any Defence witnesses to any person or entity outside the Office of the Prosecutor.**

ii) Paragraph (f) of the Order in each of the Impugned Decisions is deleted.

**AND FURTHER ORDERS** that the Protective Measures ordered in the Mugiraneza Decision be amended as per the above amendment of the Impugned Decisions.

Arusha, 17 February 2006



Khalida Rachid Khan  
Presiding Judge

