

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
2 CASE NO.: ICTR-98-44A-T THE PROSECUTOR
3 OF THE TRIBUNAL
4 AGAINST
5 JUVÉNAL KAJELIJELI
6
7 9 JULY 2001
8 0950H
9 CONTINUED TRIAL
10
11 Before: Judge William H. Sekule, Presiding
12 Judge Winston Churchill Matanzima Maqutu
13 Judge Arlette Ramaroson
14
15 For the Registry:
16 Mr. John Kiyeyeu
17 Mr. Abraham Koshopa
18
19 For the Prosecution:
20 Mr. Ken Fleming
21 Ms. Ifeoma Ojemeni
22 Mr. Jayantha Jayasuriya
23
24 For the Accused:
25 Professor Lennox Hinds
Professor Nkey Bompaka
Court Reporters:
Ms. Kelly Allemang
Ms. Judith Kapatamoyo
Mr. Rex Lear
Ms. Regina Limula
Mr. Haruna Farage
Mr. Petrus Chijarira

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I N D E X

W I T N E S S

For the Prosecution:

WITNESS GBE

Examination-in-chief by Mr. Fleming.....22

Cross-examination by Professor Hinds.....116

E X H I B I T S

Prosecution Exhibit No. P2.....23

1 P R O C E E D I N G S

2 MR. PRESIDENT:

3 Yes, the proceedings are called to order.

4 Could the Registry introduce the case coming
5 before us this morning.

6 MR. KOSHOPA:

7 Thank you, Mr. President. Trial Chamber II
8 of the International Criminal Tribunal for
9 Rwanda composed of Judge William H. Sekule,
10 Presiding, Judge Winston Churchill Matanzima
11 Maqutu and Judge Arlette Ramaroson is now
12 sitting in open session today Monday the 9th
13 of July 2001 for the continued trial in the
14 matter of the Prosecutor versus Juvénal
15 Kajelijeli Case No. ICTR-98-44A-T. Thank
16 you, Mr. President.

17 MR. PRESIDENT:

18 Thank you. Can we have counsel's
19 appearances starting with the Prosecution,
20 if we may.

21 MR. FLEMING:

22 Thank you. If the Court pleases, I appear
23 as senior trial attorney, Ken Fleming. I
24 appear also with Ms. Ojemeni, Mr. Jayasuriya
25 and Mr. Babajide, trial attorneys, and

1 Ms. Marotine, case manager.

2 MR. PRESIDENT:

3 Thank you, Learned Counsel, could we also
4 have the appearances for the Defence.

5 PROFESSOR HINDS:

6 Good morning, Your Honours. Lennox Hinds,
7 representing Mr. Kajelijeli, assisted by
8 co-counsel, Professor Bompaka and one
9 investigator, one interpreter,
10 Mr. Baragahoranye, as we know that -- we
11 were trying to get him a visa from Harare
12 last week. He is now here with us and
13 Mr. Dusabe who has been here before and he
14 is an interpreter.

15 MR. PRESIDENT:

16 Thank you, Learned Counsel. Yes,
17 Mr. Fleming, next witness.

18 MR. FLEMING:

19 Yes, thank you, Your Honours. Before I call
20 the next witness, there are just a couple of
21 issues I want to raise with the Court.

22 MR. PRESIDENT:

23 Yes, please.

24 MR. FLEMING:

25 First -- and they are purely practical

1 issues. First, despite our many requests to
2 have an air conditioner repaired here, it
3 simply hasn't been working in all the time
4 we've been here. I can't get the people to
5 do anything about it. I have requested. I
6 have complained. I've done everything that
7 I can. I am told that various things, such
8 as people losing keys or taking keys or
9 whatever happens, so they never get around
10 to repairing it. It's very, very
11 uncomfortable at this end of the room with
12 no ventilation and no air conditioning at
13 all. Your Honours, I simply wanted to bring
14 that to your attention. I hope, I hope
15 that, that now will work the magic that I
16 want it to work without Your Honours
17 intervening yet.

18
19 The second is that I said on Thursday that I
20 had other responsibilities. I do have other
21 responsibilities as Your Honours well know
22 and from time to time I will leave the
23 court. If that's acceptable to the Court
24 and it means no disrespect whatsoever when I
25 do that.

1 MR. PRESIDENT:

2 It's okay.

3 MR. FLEMING:

4 Thank you, Your Honours. But I will not
5 leave the Court at any critical time. Your
6 Honour we call the next witness --

7 PROFESSOR HINDS:

8 Your Honour, before Mr. Fleming calls his
9 witness, I would like to bring three matters
10 before the Court so that the Court is aware
11 of it. I was given a communiqué from my
12 investigator, who is in the Netherlands and
13 it is -- it was a very disturbing letter
14 because it suggests that the Government of
15 Kigali is directly interfering with my
16 ability to proceed with this defence. It's
17 a very serious matter and I am very alarmed
18 and disturbed about it and I didn't know
19 exactly why our investigator was not here
20 and I sent out communications to him trying
21 to find out why and he wrote a letter back
22 to me in New York by way of my research
23 assistant who is bilingual. This
24 investigator speaks French. And I just want
25 to read this into the record because I

1 intend to take some steps to see if we can
2 get some intervention to stop this.
3 "Certain defence team" -- this is addressed
4 to me, through my assistant.
5
6 "Certain defence team members are currently
7 undergoing a type of incarceration and
8 intimidation in Arusha. As you know the
9 FPR's government representative in Arusha is
10 in the process of incarcerating and
11 intimidating some defence investigators.
12 Kigali's Prosecutor continues as he pleases
13 to fabricate lists of persecuted persons
14 and/or persons accused of genocide calling
15 them 'genocidal,' an abusive term that is
16 used indiscriminately. They have put my
17 name on this famous list in order to
18 destabilize me wherever I go. Because of
19 this, I have become a victim of a monstrous
20 slander and of flagrant injustices from the
21 part of the Rwanda Government who seem
22 determined to condemn people without first
23 bringing an indictment against them. More
24 particularly, I have done nothing
25 reproachable and nobody has shown any type

1 of proof that would implicate me in the 1994
2 massacres. There is no one who can justify
3 my name being put on the list. There is no
4 doubt that these ridiculous accusations, if
5 there are any at all against me are merely
6 political in nature. In fact, the
7 compilation of these lists has become an
8 instrument to persecute men whether they be
9 Hutus or Tutsis who are opposed to the
10 totalitarian regime in Kigali, or to
11 persecute those who simply do not share the
12 opinion of those in Kigali or to persecute
13 those who did not support the RPF -- FPRs
14 taking power in Kigali. Isn't it equally
15 criminal to accuse an innocent man being of
16 such a vile crime? Isn't it criminal to
17 make these unfounded accusations?

18
19 For these reasons I ask you, please, tell
20 Professor Hinds the following: Despite this
21 campaign of incarceration and intimidation,
22 I can momentarily accept to continue my
23 investigative work in the west until you
24 find another investigator to replace me. I
25 can do this on one condition of not being

1 compelled to return to Arusha until my name
2 is cleared. Should this fail to happen, my
3 withdrawal from the case will be necessary
4 and a replacement will be needed to be
5 found. Also, please let me know if
6 Professor Hinds has transmitted certain
7 vouchers to the Registrar for me.

8
9 Finally, I wish you great luck and success
10 with your defence of an innocent man.
11 Augustin Basebya Rugumba."

12
13 Now, I received this on Friday. Needless to
14 say, I am particularly upset, frustrated and
15 it has quite frankly chilled my sense of
16 fairness within these proceedings. This was
17 at a time when I was trying to deal with my
18 obligations to the Prosecutor in terms of a
19 notice of alibi. Many of these witnesses
20 are in Europe. This particular individual
21 is key. We have filed our notice of alibi.
22 It is now in the Registry. It is under seal
23 because those witnesses are protected
24 witnesses. But the problem, you see, which
25 I want to bring before this Court, which is

1 not going to interfere with me being able to
2 proceed today, which is not going to
3 interfere with me being able to proceed
4 tomorrow, which is not going to interfere
5 with me to proceed for this whole month, but
6 it affects my ability to effectively defend
7 this man and this Chamber should be
8 sufficiently outraged that people who are on
9 the Defence team of this man, Augustin
10 Basebya, someone who the Kigali Government
11 knew about. This is someone who is a member
12 of parliament. They knew about this man.
13 He was hired on this team. He surfaced in
14 terms of his work during the time when we
15 were challenging the illegal arrests and we
16 sent him to Benin and he provided an
17 affidavit with respect to this and this is
18 when his name came up most prominently.
19
20 Now we have, and I understand he is a
21 representative of Kigali, who sits around
22 monitoring what is happening here. It is
23 with that person's intervention we now have
24 this increased type of pressure, which is
25 now causing this man to say that he cannot

1 continue. It's affecting us. I am
2 disturbed about it. Everyone in this
3 courtroom who is interested in justice
4 should be also concerned. If there is some
5 accusation against some people, bring
6 indictments and move on it. But don't wait
7 until you have -- you find people who are
8 involved intricately with the Defence and
9 then you proceed in this way, which just
10 simply has this individual unable to carry
11 out his work or be fearful that just based
12 upon rumours, et cetera, if he comes here he
13 would be arrested. I bring this to your
14 attention because it is troubling. It is
15 disturbing. I have only found out about
16 this because I wanted to know why
17 Mr. Basebya was not with us at the beginning
18 of this trial last week and this is what I
19 found out.

20
21 The second matter that I am bringing to the
22 attention of the Court is that I indicated I
23 would file a notice of alibi. I have done
24 so. It's under seal. There is particular
25 information which I have communicated to

1 Mr. Fleming, pursuant to the Rules. But the
2 witnesses are protected witnesses and
3 because of that, there has to be some
4 specific procedures with respect to
5 disclosing any of the identities, et cetera,
6 and so I have just referred to the order of
7 this Court of April 3rd, 2001, dealing with
8 the question of protection of witnesses with
9 respect to those witnesses and I just wanted
10 to alert the Court that that has been done.

11
12 The third item before calling the witness is
13 that I indicated that we would deal with it
14 on a witness-by-witness basis and that is
15 there are some corrections or clarifications
16 which we need to be made between the English
17 and the French and I didn't bring this to
18 the Prosecutor's attention before because
19 the person who had done the comparisons is
20 Mr. Baragahoranye and he has just returned
21 here and I had an opportunity to consult
22 with him over the weekend as we were going
23 over the witness statement.

24
25 There are about just three areas that we

1 need some clarity because the differences
2 between the French and the English in terms
3 of the meaning is significant enough that we
4 feel that we need to know what is the
5 witness saying with respect to those
6 provisions. And with the Court's
7 indulgence, I would just like to point those
8 three areas out to the Prosecution team and
9 maybe they can give us some clarification
10 with respect to that. So those are the
11 three items that I want to bring to the
12 Court's attention.

13 MR. PRESIDENT:

14 And on that last issue, Professor Hinds,
15 have you already indicated the discrepancies
16 to the Prosecution?

17 PROFESSOR HINDS:

18 No, I have not.

19 MR. PRESIDENT:

20 So they are not aware?

21 PROFESSOR HINDS:

22 No, they are not aware of them -- of this as
23 we speak.

24 MR. PRESIDENT:

25 I hope it does not concern the witnesses

1 about whom they are about to call.

2 PROFESSOR HINDS:

3 No, this is precisely what I said. It is
4 about this first witness. There are three
5 particular areas in the English that the
6 person who does the translation for us who
7 is bilingual has said there are differences
8 with the French. That being, I can point
9 those out very quickly.

10 MR. PRESIDENT:

11 Maybe you can do that, so that before
12 Mr. Fleming responds -- do you want to
13 respond before that?

14 MR. FLEMING:

15 I can respond very quickly, Your Honour,
16 with respect to the first matter. It's a
17 matter about which we know nothing. We do
18 know that the Rwandan Government maintains
19 lists of people against whom they wish to
20 act. I know nothing about any of their
21 indictments or any of their procedures
22 internationally. Certainly I know of nobody
23 incarcerated from Arusha except, of course,
24 the investigator whom we indicted ourselves
25 and he has been arrested and placed in the

1 UNDF. That's the only issue about which I
2 know. So if there are issues that come to
3 our attention, we will certainly attempt to
4 resolve some of them and I will certainly be
5 raising what my learned friend has said with
6 the Prosecutor at an early date. Hopefully
7 today at some point when we have a break.

8
9 About the final matter, we can attend to
10 that very promptly if my learned friend
11 points out the areas.

12 MR. PRESIDENT:

13 Yes?

14 PROFESSOR HINDS:

15 May I, Your Honour?

16 MR. PRESIDENT:

17 Yes.

18 PROFESSOR HINDS:

19 I am now addressing just the three
20 discrepancies in witness statements.

21 MR. PRESIDENT:

22 Turning to page 0097445 of GBE, the
23 unredacted witness statement and, in
24 particular, the third paragraph that's
25 starting with the third line. There you see

1 it says in English -- I am now on the
2 English. "Also, he had actively
3 participated in the training of the youth
4 wing of the MRND," et cetera. Are we on the
5 same place? You have it, Mr. Fleming?

6 MR. FLEMING:

7 I have it, Your Honours.

8 PROFESSOR HINDS:

9 Okay. In the French, I will have
10 Mr. Baragahoranye point to that provision,
11 same provision, and indicate what he
12 translates that to be.

13 MR. BARAGAHORANYE:

14 Thank you. That sentence in French reads:
15 "During the period when he was not
16 bourgmestre, in addition to having
17 participated actively in the training of
18 MRND youth wing," the problem is with the
19 word "training." Does training mean
20 actually "training" or "establishments"? So
21 this is the confusion that needs to be
22 clarified.

23 PROFESSOR HINDS:

24 The issue is whether or not the witness is
25 saying that Mr. Kajelijeli trained the youth

1 wing of the MRND, which is what the English
2 says. That is what I am looking at. I
3 think that is what Mr. Fleming has. Or, I
4 am told in the French, it is he established
5 the -- or founded -- established or founded
6 the youth wing of the MRND. We need to know
7 if we're dealing with training or what
8 precisely is the witness saying with respect
9 to that?

10 MR. FLEMING:

11 I am informed by my expert that information
12 can mean either of those, so we can expect
13 it from the witness himself.

14 MR. PRESIDENT:

15 Yes.

16 PROFESSOR HINDS:

17 My understanding is that the witness did
18 not, in fact, speak French and so I wanted
19 to know what he said. The witness did not
20 speak French. He spoke Kinyarwanda.
21 That's what I am told. So the question is
22 not what the translator said, it is what the
23 witness said. But if the Prosecution is
24 saying they really don't know themselves,
25 okay. That's fair enough. Let's go to the

1 next page, 097446. We are now in the third
2 paragraph, first line, where it starts, "In
3 the afternoon of the same day, he went to
4 Kajelijeli's bar." In the French, I am told
5 that that is not what that statement says.
6 Mr. Baragahoranye.

7 MR. BARAGAHORANYE:

8 In the French version, in the fourth
9 paragraph, first line says: "In the
10 afternoon of the same day he went close to
11 or near Kajelijeli's bar," which is totally
12 different from what appears in English. In
13 English it says "he went to Kajelijeli's
14 bar," whereas he went close to or near.

15 MR. FLEMING:

16 Again, I am informed that the French can
17 mean he walked close to the bar.

18 PROFESSOR HINDS:

19 Okay. So therefore what we have in the
20 English is incorrect, meaning that he went
21 to the bar. You understand the issue that
22 we're dealing with, in terms of what is in
23 the witness statement. There is a
24 difference in going by the bar and going
25 into the bar.

1 MR. FLEMING:

2 It's not correct in English.

3 PROFESSOR HINDS:

4 Page 09447. Third paragraph, the fifth
5 line. Well, let's start with the fourth
6 line going into the fifth line. The witness
7 saw some Interahamwe come to Nzirorera's
8 house in 1992 and '93, to return some
9 Interahamwe uniforms. Mr. Baragahoranye.

10 MR. BARAGAHORANYE:

11 The French version says: "He saw the
12 Interahamwe go to his place in '92/'93 to
13 collect Interahamwe uniforms." So,
14 "collect."

15 MR. FLEMING:

16 Your Honours, it would appear that the
17 English is the converse of what was actually
18 being said. It would appear that they went
19 to get uniforms, whereas the translation is
20 "returned uniforms."

21 PROFESSOR HINDS:

22 All right. So we now understand that --
23 which is the correct versions, which we
24 expect the witness to state. Okay.

25 MR. PRESIDENT:

1 That was the English version?

2 MR. FLEMING:

3 The French version, the one that was signed,
4 Your Honour, is what we said was always the
5 correct version.

6 MR. PRESIDENT:

7 The English is the translation.

8 MR. FLEMING:

9 The English is the translation and the
10 translation has been shown to be incorrect
11 on at least two occasions in this particular
12 one, which of course says nothing about the
13 credibility of the witness.

14 MR. PRESIDENT:

15 Yes, maybe Professor Hinds would like simply
16 with regard to your first issue, the Trial
17 Chamber simply notes that on the information
18 that we, I think we can go beyond that,
19 except to assure that those who appear
20 before the Trial Chamber and even in the
21 Tribunal, they have all the freedom and the
22 opportunity to be as free as possible, but
23 we cannot go beyond that on the information
24 that we have at this stage with regard to
25 your first question.

1
2 The other matter we wanted also to maybe
3 just by way of reminding, Professor Hinds,
4 is that you were supposed today to tender
5 that document. We have to keep the records
6 up-to-date, the statement of the first
7 witness, I don't know how far you have gone.

8 PROFESSOR HINDS:

9 Your Honour, we are not in a position to
10 tender that because we don't have -- all
11 weekend we tried to get the transcript. The
12 transcript is not ready. And I just want to
13 serve notice on the Court that we will not
14 be able to tender that document until we are
15 able to work with the transcript.

16 MR. PRESIDENT:

17 Okay. Because the record must reflect that
18 issues are raised and completed.

19 PROFESSOR HINDS:

20 Yes, and what I understood what we were
21 going to do is that the Defence is going to
22 prepare the document. We are going to
23 submit it to Mr. Fleming for his review and
24 that by consent it's going to go in. That's
25 what I understand.

1 MR. PRESIDENT:

2 Okay. All right. Mr. Fleming, your next
3 witness, please.

4 MR. FLEMING:

5 Thank you.

6 MR. PRESIDENT:

7 Yes, this will be?

8 MR. FLEMING:

9 GBE --

10 THE INTERPRETER:

11 Your microphone, Mr. Fleming.

12 MR. FLEMING:

13 Your Honours, while the witness is coming,
14 the transcripts are causing a lot of concern
15 no doubt to Your Honours as well. Just the
16 availability of the transcripts. I know
17 that they like to send them out fully
18 revised, but sometimes that takes longer
19 than really is acceptable because the only
20 satisfactory way of dealing with the
21 transcript is having it at the commencement
22 of the next day and then identifying any
23 areas where we might disagree with it and
24 sorting that out in the next couple of
25 minutes. Now it's going to be very

1 difficult to do that in the present
2 circumstances.

3 MR. PRESIDENT:

4 Yes, that's a valid concern. Registrar,
5 could you note that and see what's been done
6 in this issue.

7

8 Could you please swear the witness.

9

10 (Declaration made by Witness GBE in
11 Kinyarwanda)

12

13 MR. PRESIDENT:

14 Please. Just a minute. Please could you
15 interpret to the witness. Tell him that he
16 just made a solemn declaration. In case he
17 is not familiar as to how his evidence will
18 be taken here, we'll explain very briefly a
19 few essential things. You'll be led or
20 you'll be asked questions by -- in his
21 evidence-in-chief by the Prosecution, who
22 are seated on this side. Thereafter
23 questions will be put to him in
24 cross-examination by the Defence who are
25 seated on this side of the Court. The

1 judges sitting in front of you may also ask
2 questions as you testify that they have of
3 your evidence as you give it. If a question
4 put to you is not clear or you do not
5 understand it, please say so, it will be
6 repeated or explained.

7
8 These are the few essential things the Trial
9 Chamber wanted to tell you before you begin
10 your testimony. Mr. Fleming, please.

11 MR. FLEMING:

12 Thank you. As the previous leader of this
13 Chamber, Your Honour, we are working on a
14 compromis dynamique in respect of exhibits.

15 PROFESSOR HINDS:

16 Thank you, Mr. Fleming.

17

18 EXAMINATION-IN-CHIEF

19 BY MR. FLEMING:

20 Q. Witness, does that piece of paper contain
21 details which identify you?

22 A. Yes, indeed that's my identity.

23 Q. Thank you. Your Honours, I tender that
24 document as Exhibit P2.

25 MR. PRESIDENT:

1 Yes.

2 MR. FLEMING:

3 When Your Honours have seen it, I will be
4 making the submission that it should be
5 sealed.

6 MR. PRESIDENT:

7 Any objection?

8 PROFESSOR HINDS:

9 No objection.

10 MR. PRESIDENT:

11 So let the document be admitted as Exhibit
12 P2.

13

14 (Exhibit P2 was admitted)

15

16 MR. PRESIDENT:

17 Yes.

18 MR. FLEMING:

19 Thank you, Your Honour. I ask then that
20 Your Honour seal the document so that it's
21 not available to the public.

22 MR. PRESIDENT:

23 Let the said document, which is now Exhibit
24 P2 be sealed, so that it is not available
25 for the public and also to protect the

1 identity of the witness.

2 MR. FLEMING:

3 Your Honour, I would ask that what Your
4 Honour just said be translated for the
5 benefit of the witness.

6 MR. PRESIDENT:

7 Yes. Can you translate?

8 MR. FLEMING:

9 Thank you, Your Honour. That doesn't
10 require an answer from him, but I now have a
11 particular application to make in respect of
12 this witness and I would ask that the Court
13 be closed whilst I disclose some information
14 to the Court in order that the Court can
15 rule on the motion that I am about to make.

16 MR. PRESIDENT:

17 In other words, you want to make -- you want
18 to move the submission that you think it
19 should be made when the Court is closed?

20 MR. FLEMING:

21 Yes, I would like to make a submission in
22 respect of the identity of this particular
23 witness and the evidence that he is going to
24 give because of certain circumstances that
25 have arisen.

1 MR. PRESIDENT:

2 Yes, Professor Hinds?

3 PROFESSOR HINDS:

4 I am completely in the dark. I don't have
5 the vaguest idea what Mr. Fleming is talking
6 about and so I am waiting to hear. But I
7 don't oppose, I don't oppose a closed
8 session for the purposes of whatever he is
9 about to make, but I would like the witness
10 to be excused because I don't know what he
11 is going to say. And so I don't want the
12 witness contaminated because, again, I don't
13 know what he is going to say. Whatever he's
14 going to say, I have no opposition to us
15 having a closed session, but I don't want a
16 witness around again because I don't know
17 what he said.

18 MR. FLEMING:

19 Thank you, Your Honours. I don't have an
20 objection to now the witness having been
21 sworn and identified to the Court then
22 making a submission out of the hearing of
23 the witness, however it may require the
24 witness to come back and to give some very
25 short evidence in respect of the submission

1 that I want to make. Effectively what I am
2 going to say is that this witness, this
3 witness' testimony should not be disclosed
4 for reasons that will become apparent.

5 MR. PRESIDENT:

6 Okay. In other words, you're adamant in
7 terms of the Court to hear the evidence of
8 this witness in camera?

9 MR. FLEMING:

10 Yes, in camera, Your Honours, yes.

11 MR. PRESIDENT:

12 And you're now making an application that
13 you made the reasons for that request in
14 closed session?

15 MR. FLEMING:

16 In closed session, yes.

17 MR. PRESIDENT:

18 That would be Rule 75(b)(ii)?

19 MR. FLEMING:

20 Yes, Your Honours, 75(b).

21 MR. PRESIDENT:

22 (b)(ii). And, Professor Hinds, you say you
23 have no objection to that until you have
24 heard what the Prosecution has to say on
25 this matter, is that correct?

1 PROFESSOR HINDS:

2 Now I have got a little more information, I
3 just need a minute just to consult with my
4 client.

5 MR. FLEMING:

6 Your Honour can the witness be brought
7 up-to-date in respect of this discussion? I
8 know it's very difficult.

9 MR. PRESIDENT:

10 It's very difficult. Let's see first of all
11 what can be done.

12
13 (Pages 1 to 27 by Kelly Allemang)

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1 1030H

2 MR. PRESIDENT:

3 Yes, Professor Hinds.

4 PROFESSOR HINDS:

5 I have now read Rule 75(B). I am not
6 familiar with the procedures of this
7 Tribunal, except what I have read, and
8 last week. So, therefore, I am making
9 these comments without --

10 MR. PRESIDENT:

11 We don't --

12 PROFESSOR HINDS:

13 Without -- please let me finish. Making
14 these comments just to put on the record
15 because I am not quite sure what
16 Mr. Fleming is applying for.
17 My understanding is, this witness is a
18 protected witness and all of the
19 provisions with respect to 75(B), Rule(i)
20 applies without anything further. I mean
21 I am looking at Rule 75(B)(i).
22 Whatever, this witness says, I certainly
23 feel there will be no reference to this
24 witness's name or any item identifying
25 the witness in terms of the public

1 records. That's under (A).
2 (B) non-disclosure to the public of any
3 records identifying the victim.
4 (C), only with respect to (C), maybe
5 there I see a difference which is, giving
6 testimony through image- or voice-
7 altering devices or closed circuit
8 television; but I don't think there a
9 closed circuit television provision
10 applies, the assignment of a pseudonym.

11
12 Now again I am just trying to find out.
13 This is my first time of dealing with --

14 MR. PRESIDENT:

15 I think what he is actually saying in
16 essence at this stage is that they are
17 saying that they have a matter that they
18 wish to raise in closed session, and in
19 the closed session ideally that's exactly
20 when the real issue might become apparent
21 to be able to determine exactly how the
22 Trial Chamber and the parties move from
23 there.

24 PROFESSOR HINDS:

25 Okay.

1 MR. PRESIDENT:
2 So, I think that's the essence of it.
3 PROFESSOR HINDS:
4 Okay.
5 MR. PRESIDENT:
6 So at this stage --
7 PROFESSOR HINDS:
8 I was looking at 75(B) and reading it.
9 And --
10 MR. PRESIDENT:
11 Yes. So the Trial Chamber is also in the
12 dark. I think it's from there that the
13 issue they want to raise, are issues that
14 they would like to be raised in closed
15 session, and from there then whatever
16 issues, should be made.
17 PROFESSOR HINDS:
18 We don't have any problem with having in
19 camera session.
20 MR. PRESIDENT:
21 Yes. So, I think that will be okay.
22 MR. FLEMING:
23 Indeed, Your Honours Rule 79 -- Rule 79
24 makes specific provision for closed
25 session.

1 MR. PRESIDENT:

2 Yes, after that that's the next stage.

3 MR. FLEMING:

4 Yes.

5 MR. PRESIDENT:

6 To be granted. So we will grant the
7 request made by Prosecution. The Trial
8 Chamber will go in closed session to
9 determine -- to hear and determine what
10 the Prosecution has got to say on this
11 particular issue. So, if the gallery
12 could be cleared and the witness may
13 leave, for a while, when this issue is
14 being addressed. Maybe you can just tell
15 the witness, there's an issue to be
16 addressed, and then he will come back.

17 MR. FLEMING:

18 Thank you, Your Honours. If the witness
19 could be brought up to date with what's
20 actually happening, it's a matter of
21 record, Your Honour.

22 MR. PRESIDENT:

23 Yes. So that's what we are -- that's
24 what I essentially said.

25

1 Can you tell the witness, and then he
2 will come back later. I hope he doesn't
3 go very far.

4 PROFESSOR HINDS:

5 Could the court excuse, Mr. Kajelijeli,
6 for just two minutes for personal
7 reasons.

8 MR. PRESIDENT:

9 Okay. Do you want us to adjourn formally
10 or -- ?

11 PROFESSOR HINDS:

12 He just needs a short recess.

13 MR. PRESIDENT:

14 Okay, we will wait.

15 PROFESSOR HINDS:

16 He will be right back.

17

18 (At this point in the proceedings, a
19 portion of the transcript (pages 33 to
20 45) was extracted and sealed under
21 separate cover as the session was heard
22 in camera)

23

24

25

1 MR. PRESIDENT:

2 Yes, this is the ruling of the Trial
3 Chamber. The Prosecution have made an
4 oral motion to hear the evidence of
5 Witness GB in closed session in terms of
6 Rule 79 of the Rules of Procedure and
7 Evidence. The reasons being that it is
8 deemed essentially because of the special
9 circumstances of this particular
10 protected witness arising from the
11 matters that were spelt out by the
12 Prosecution during the hearing of this
13 matter in closed session.

14
15 The defence has no objection to the
16 requested procedure for the reasons they
17 advanced and the observation they have
18 just made. The Trial Chamber has
19 considered this matter, whereas it
20 appreciates that justice is like a plant
21 and it flourishes best in open air, and
22 under the glare of the public as some
23 jurists have said. But also is aware of
24 the provisions of Rule 79 of the Rules of
25 Procedure whereby a number of things

1 listed therein could justify the holding
2 of closed session in certain situations.
3 The Prosecution have said that the issue
4 involved here is essentially one
5 concerning the safety, security of this
6 witness and non-disclosure of the
7 identity of a witness as well as any
8 victim as the Rule spells out in Rule
9 79(ii).
10
11 The Trial Chamber after consideration of
12 this matter is satisfied that there are
13 justifiable reasons to hold the
14 proceedings with regard to the testimony
15 of this witness in closed session to
16 protect, in the particular circumstances
17 of this case, the identity, the safety
18 and the security of this particular
19 witness.
20
21 So the Trial Chamber grants the
22 Prosecution oral motion in this regard,
23 and that the evidence of this witness
24 will be heard in closed session. It is
25 so decided.

1 MR. FLEMING:

2 Your Honour, can I simply put on the
3 public record as well that the reasons
4 for bringing this particular motion, have
5 nothing to do with the Defence
6 whatsoever. It has not been any
7 behaviour on the Defence's part which has
8 given rise to the issue which I have
9 raised before the Court.

10 MR. PRESIDENT:

11 Yes. The Trial Chamber notes that the
12 Prosecution has observed that the reason
13 leading to the holding of the, or to the
14 hearing of the witness -- this particular
15 witness in closed session has nothing to
16 do with the Defence.

17

18 (At this point in the proceedings, a
19 portion of the transcript (pages 49 to
20 148) was extracted and sealed under
21 separate cover as the session was heard
22 in camera)

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C E R T I F I C A T E

We, Kelly Allemang, Judith Kapatamoyo, Rex Lear, Regina Limula, Haruna Farage, Petrus Chijarira, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (stenotype) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

_____	(1 to 27 in open)
Kelly Allemang	
_____	(28 to 32; 46 to 48 in open)
Judith Kapatamoyo	(33 to 45; 49 to 54 in closed)
_____	(55 to 92 in closed)
Rex Lear	
_____	(93 to 115 in closed)
Regina Limula	
_____	(116 to 127 in closed)
Haruna Farage	
_____	(128 to 148 in closed)
Petrus Chijarira	