

ICR-05-88-I  
16-07-2008  
(344bis - 337bis)

344bis  
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TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA  
Procès n° ICTR - 05- 88- I

**Chambre de Première Instance n° III**

Monsieur le Juge Denny BYRON, Président  
Monsieur le Juge Gberdao Gustave KAM  
Monsieur le Juge Vagn JOENSEN

Monsieur le Greffier Adama DIENG

Date de dépôt le 16 juillet 2008

**Le Procureur**  
c/  
**Callixte KALIMANZIRA**

JUDICIAL RECORDS/ARCHIVES  
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**DEMANDE EN RECONSIDERATION DE LA DEFENSE DE CALLIXTE  
KALIMANZIRA DU « SCHEDULING ORDER RULE 54 OF RULES OF  
PROCEDURE AND EVIDENCE » DU 8 JUILLET 2008 SUR LE DELAI DE  
COMMUNICATION DE L'IDENTITE DES TEMOINS A DECHARGE**

*Article 69 C du Règlement de Procédure et de Preuve*

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**POUR : Monsieur Callixte KALIMANZIRA**

**Conseils de la Défense**

Me Arthur VERCKEN - Conseil Principal  
Me Anta GUISSÉ - Co-conseil

Me Johann SOUFI - Assistant juridique

**Le Bureau du Procureur**

Madame Christine GRAHAM  
Madame Veronica WRIGHT  
M. Stephen AGABA  
M. Ousman JAMMEH  
M. Kartik MURUKUTLA

1. Le 8 juillet 2008 la Chambre de céans a rendu une décision portant calendrier de procédure<sup>1</sup>. Par cette décision, la Chambre a notamment ordonné :

- *ORDERS that the Defence for Kalimanzira files its submissions, if any, pursuant to Rule 98bis of the Rules, no later than seven days after the Chamber renders its decisions on the two pending Prosecution motions concerning the admission of documents and materials ;*
- *ORDERS that the Defence case commence on 17 November 2008 ;*
- *ORDERS that the Defence for Kalimanzira file the following, pursuant to Rule 73ter of the Rules, by September 2008 :*
  - a- *Admissions by the parties and statement of other matters which are not in dispute;*
  - b- *A statement of contested matters of fact and law;*
  - c- *Its proposed list of witnesses, including the name and pseudonym of each witness, a summary of the facts on which each witness will testify, the points in the indictment as to which each witness will testify, and the estimated length of time required for each witness;*
  - d- *A list of exhibits the Defence intends to offer in its case, stating where possible whether or not the Prosecutor has any objection as to authenticity;*
- *ORDERS that the Defence for Kalimanzira file an expected order of appearance of the witnesses scheduled to be heard during case by 17 October 2008; and*
- *ORDERS that the Defence for Kalimanzira provide the Witnesses and Victims Support Section with all the information necessary to facilitate the appearance of the Defence witnesses in accordance with the schedule of the hearings.*

**Sur l'absence de dépôt de requête en application de l'article 98 bis du Règlement de Procédure et de Preuve**

2. La Défense de Monsieur Callixte KALIMANZIRA entend tout d'abord informer la Chambre que, contrairement à ce qu'elle avait indiqué précédemment, elle ne présentera pas de demande d'acquiescement à ce stade de la procédure.

**Sur la demande d'un délai d'un mois pour révéler l'identité des témoins à décharge**

3. Dans cette décision portant calendrier, la Chambre a ordonné à la Défense de donner les noms et les pseudonymes de ses témoins à décharge deux mois avant le début de la présentation des moyens à décharge, c'est-à-dire au 17 septembre 2008.

<sup>1</sup> Le Procureur C/ KALIMANZIRA, ICTR 05-88 – I , *Scheduling order rule 54 of the Rules of Procedure and Evidence*, 8 juillet 2008

- 4. Il convient cependant de rappeler que, de son côté, le Procureur n'avait été tenu, (voir décision en date du 8 novembre 2007<sup>2</sup>), de révéler l'identité de ses témoins à la Défense que 30 jours avant le début la présentation de ses moyens à charge. Il était en effet spécifié au paragraphe 10 de la décision du 8 novembre 2008 :

*« 10. Identifying information of the protected witnesses shall be disclosed by the Prosecution to the Defence thirty days prior to commencement of the Prosecution case, in order to allow adequate time for the preparation of the Defence pursuant to Rule 69 C of the Rules »*

C'est en application de cette décision que le Procureur a communiqué l'identité de ses témoins le 28 mars 2008.

- 5. Dans ces conditions, la Défense de Monsieur KALIMANZIRA considère que le délai de deux mois qui lui serait imposé briserait l'égalité des armes entre la Défense et l'Accusation. Elle sollicite donc qu'il lui soit appliqué le même délai.
- 6. Compte tenu de la décision rappelée et afin de préserver l'équité du procès, la Défense sollicite donc que la Chambre reconsidère sa décision du 8 juillet 2008 et fixe au 17 octobre 2008 la date à laquelle la Défense devra communiquer l'identité de ses témoins.

**PAR CES MOTIFS**

*Vu l'article 69 C du Règlement de Procédure et de Preuve ,  
Vu la « Decision on Prosecution motion for protective measures » du 8 novembre 2007,*

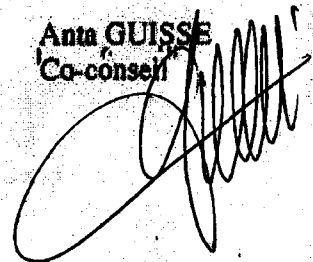
Il est demandé à la Chambre de bien vouloir reconsidérer sa décision « Scheduling order » en date du 8 juillet 2008 et de dire que la Défense devra communiquer l'identité de ses témoins au 17 octobre 2008.

Fait à Paris le 15 juillet 2008

Arthur VERCKEN  
Conseil principal



Anta GUISSÉ  
Co-conseil



<sup>2</sup> Le Procureur C/ KALIMANZIRA, ICTR 05-88 – I, *Decision on Prosecution motion for protective measures*, 8 novembre 2007

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**ANNEXE A LA DEMANDE EN RECONSIDERATION DE LA DEFENSE DE CALLIXTE  
KALIMANZIRA DU « SCHEDULING ORDER RULE 54 OF RULES OF PROCEDURE  
AND EVIDENCE » DU 8 JUILLET 2008 SUR LE DELAI DE COMMUNICATION DE  
L'IDENTITE DES TEMOINS A DECHARGE**

*Article 69 C du Règlement de Procédure et de Preuve*

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- Decision on Prosecution motion for protective measures, 8 novembre 2007

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ICTR-05-88-1  
08-11-2007  
International Criminal Tribunal for Rwanda  
Tribunal pénal International pour le Rwanda  
(105-102)

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TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 8 November 2007

THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-2005-88-1

JUDICIAL RECORDS/ARCHIVES  
2007 NOV - 8 . P. 11-56

DECISION ON PROSECUTION MOTION FOR PROTECTIVE MEASURES

**The Prosecution**  
Christine Graham  
Ousman Jammeh  
Stephen Agaba  
Kartik Murukutla

**The Defence**  
Arthur Vercken

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Judge Erik Møse, designated by Trial Chamber I in accordance with Rule 73 (A) of the Rules of Procedure and Evidence;

**BEING SEIZED OF** the Prosecution "Motion for Protective Measures", filed on 2 October 2007;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Prosecution requests protective measures for all potential witnesses in this case, wherever they may live, and including detained witnesses in Rwanda.<sup>1</sup> During a Status Conference on 26 October 2007, the Defence indicated that it does not oppose the motion.<sup>2</sup>

**DELIBERATIONS**

2. Pursuant to Article 19 of the Statute, the Tribunal must conduct proceedings with due regard for the protection of victims and witnesses. Article 21 obliges the Tribunal to provide for the protection of victims and witnesses in its Rules. Such protective measures shall include, but shall not be limited to, the conduct of in-camera proceedings and the protection of the victim's identity. Rule 75 of the Rules of Procedure and Evidence elaborates several specific witness protection measures that may be ordered, including sealing or expunging names and other identifying information that may otherwise appear in the Tribunal's public records, assignment of a pseudonym to a witness, and permitting witness testimony in closed session. Subject to these measures, Rule 69 (C) requires the identity of witnesses to be disclosed to the Defence in adequate time for preparation of the Prosecution or Defence.

3. Measures for the protection of witnesses are granted on a case-by-case basis. The jurisprudence of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia requires that the witnesses for whom protective measures are sought must have a real fear for their or their families' safety, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses themselves. A further consideration is trial fairness, which favours similar or identical protective measures for Defence and Prosecution witnesses.<sup>3</sup>

4. The Prosecution has stated there is subjective and objective fear on the part of the Prosecution witnesses, wherever they live, that disclosure of their participation in Tribunal proceedings would threaten their safety and security. The Prosecution further submits that witnesses presently detained in Rwanda and their families face the same fear as non-detainee

<sup>1</sup> Motion, paras. 1, 3 and 6.

<sup>2</sup> T. 26 October 2007, p. 6.

<sup>3</sup> *Prosecutor v. Setako*, Decision on Defence Motion for Protective Measures (TC), 18 September 2007, para. 4; *Prosecutor v. Gatete*, Decision on Defence Motion for Protection of Witnesses (TC), 10 April 2007, para. 2; *Prosecutor v. Renzaho*, Decision on Defence Request for Protective Measures (TC), 12 March 2007, para. 4; *Prosecutor v. Serugendo*, Decision on Motion for Protection of Witnesses (TC), 1 June 2006, para. 2; *Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 2; *Prosecutor v. Kanyarukiga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005, para. 2; *Prosecutor v. Ntabakuze*, Decision on Ntabakuze Motion for Protection of Witnesses (TC), 15 March 2004, para. 2.

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witnesses. Detained witnesses are often in close proximity to persons directly involved in crimes charged at the ICTR, or perceived to be sympathetic to the accused before the Tribunal. Further, some of these detained witnesses are released and find themselves in the position of other non-detainee witnesses.<sup>4</sup> Attached to the motion is an affidavit by a Commander of Investigations in the Prosecutor's Office in Kigali, according to which witnesses who participate in ICTR investigations face serious risks arising from their participation in Tribunal proceedings, regardless of where the witnesses are geographically located, or whether or not they are detainees in Rwanda.<sup>5</sup>

5. Based on the Prosecution's submissions and the Chamber's prior decisions, it is apparent that the witnesses do justifiably fear that disclosure of the participation in the proceedings of this Tribunal could threaten their safety and security.<sup>6</sup> Accordingly, the Chamber finds that the conditions for ordering witness protection measures are satisfied.

6. Numerous decisions have required that the identity of all witnesses be disclosed before the start of trial, especially in the trials of a single Accused, where there is little likelihood of a long delay between disclosure of the witness's identity and their testimony.<sup>7</sup> In light of Rule 69 (C), witness identities and unredacted witness statements would appropriately be disclosed to the Defence thirty days prior to the commencement of the Prosecution case, as requested by the Prosecution.<sup>8</sup>

**FOR THE ABOVE REASONS, THE CHAMBER**

**HEREBY ORDERS that:**

1. The Prosecution shall designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, and that pseudonym shall be used in Tribunal proceedings, communications and discussions, both between the parties and with the public.
2. The names, addresses, whereabouts, and other identifying information concerning the protected witnesses shall be sealed by the Registry and not included in any public or non-

<sup>4</sup> Motion, paras. 3-5.

<sup>5</sup> Affidavit attached to Motion, paras. 6-8.

<sup>6</sup> See the decisions referred to in footnote 3.

<sup>7</sup> *Prosecutor v. Setako*, Decision on Defence Motion for Protective Measures (TC), 18 September 2007, para. 6; *Prosecutor v. Simba*, Decision on Prosecution Request for Protection of Witnesses (TC), 4 March 2004, paras. 6-7; *Prosecutor v. Gatete*, Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004, para. 6; *Prosecutor v. Seromba*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses (TC), 30 June 2003, para. 7. See also *Prosecutor v. Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003 (requiring immediate disclosure of identifying information of all Prosecution witnesses). Similarly, disclosure of the identity of all Defence witnesses is frequently required before the start of the Defence case. *Ndindabahizi*, Decision on the Defence Motion for Protection of Witnesses (TC), 15 September 2003, p. 4; *Bagosora et al.*, Decision on Kabiligi Motion for Protection of Witnesses (TC), 1 September 2003, p. 4. These decisions were all rendered after 6 July 2002 when Rule 69 (C), which had formerly required disclosure before trial, was amended to permit rolling disclosure at the Chamber's discretion. The many decisions prior to that date requiring disclosure before trial are omitted.

<sup>8</sup> *Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 5; *Prosecutor v. Kanyarukiga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005, para. 5.

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confidential Tribunal records, or otherwise disclosed to the public or the media. This Order shall remain in effect until otherwise ordered.

3. Names, addresses, locations and other identifying information of the protected witnesses which may appear in the Tribunal's public records shall be expunged and placed under seal.
4. The names and identities of the protected witnesses shall be forwarded by the Prosecution to the Registry in confidence, to be communicated to the Witnesses and Victims Support Unit only to implement protective measures for such witnesses.
5. No person shall make audio or video recordings or broadcastings, or take photographs or make sketches of protected witnesses or their family members, without leave of the Chamber or the witness.
6. The Defence shall keep confidential to itself all information identifying any protected witness, and shall not, directly or indirectly, share, discuss or reveal any such information.
7. The Defence team in this case and any representative acting on its behalf shall notify the Prosecution in writing if it wishes to any contact any protected witness and, if the witness consents, the Prosecution shall facilitate such contact.
8. The Defence shall provide the Registry with a designation of all persons working on the Defence team in this case who will have access to any identifying information concerning any protected witness, and shall notify the Registry in writing of any such person leaving the Defence team and to confirm in writing that such person has remitted all material containing identifying information.
9. The Defence, or any person working for the Defence, shall not attempt to make an independent determination of the identity of any protected witness or encourage or otherwise aid any person in so doing.
10. Identifying information of the protected witnesses shall be disclosed by the Prosecution to the Defence thirty days prior to commencement of the Prosecution case, in order to allow adequate time for the preparation of the Defence pursuant to Rule 69 (C) of the Rules.

Arusha, 8 November 2007.

  
Erik Møse  
Judge

[Seal of the Tribunal]





**Anta GUISSSE**  
<antaguisse@yahoo.fr>

16/07/2008 15:18

To: Aminata NGUM <ngum@un.org>  
cc: Zerthun Belay <belay@un.org>, Arthur VERCKEN  
<arthur.vercken@free.fr>, Johann Soufi  
<soufi.avocat@gmail.com>, Christine GRAHAM  
<grahamc@un.org>

Subject: Demande en reconsidération du scheduling order du 8 juillet 2007

Dear Aminata,

Please find attached submissions to file to all parties. I also enclose a word version for translation.

Thanks for your cooperation.

Best regards.

**Anta GUISSSE**  
Avocat au Barreau de Paris  
Co-conseil de M. Callixte KALIMANZIRA  
4, carrefour de l'Odéon 75006 Paris  
Tel : 01 44 32 08 00 Fax : 01 46 37 16 17  
Cell phone in Arusha : + 255 786 79 22 77

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(Art. 27, Directive à l'intention du Greffe)

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	<input type="checkbox"/> Chef, S.A.C. J.-P. Fomété	<input type="checkbox"/> Chef Adjoint, S.A.C. M. Diop	<input type="checkbox"/> Chef, UPJ, S.A.C. M. Diop	<input type="checkbox"/> Ch. d'Appel / La Haye R. Muzigo-Morrison K. K. A. Afande
<b>De:</b>	<input type="checkbox"/> Chambre  (noms)	<input checked="" type="checkbox"/> Défense A. VERCKEN et A. GUISSÉ  (noms)	<input type="checkbox"/> Bureau du Procureur  (noms)	<input type="checkbox"/> Autre:  (noms)
<b>Affaire:</b>	Le Procureur c. Callixte KALIMANZIRA			<b>Affaire No.:</b> ICTR-2005 - 88 - I
<b>Dates:</b>	Transmis le: 16 juillet 2008		Document daté du: 15 juillet 2008	
<b>No. de Pages:</b>	3 pages + annexe 5 pages	<b>Langue de l'original:</b> <input checked="" type="checkbox"/> Français <input type="checkbox"/> Anglais <input type="checkbox"/> Kinyarwanda		
<b>Titre du Document:</b>	<b>DEMANDE EN RECONSIDERATION DE LA DEFENSE DE CALLIXTE KALIMANZIRA DU « SCHEDULING ORDER RULE 54 OF RULES OF PROCEDURE AND EVIDENCE » DU 8 JUILLET 2008 SUR LE DELAI DE COMMUNICATION DE L'IDENTITE DES TEMOINS A DECHARGE</b>			
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**La S.A.C. NE DOIT PAS prendre en charge la traduction:**

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