



Original: **English**

No.: **ICC-01/04-01/10**
Date: 21 January 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. Callixte MBARUSHIMANA***

**Public document with
Confidential *ex parte* Prosecution only Annex A**

Prosecution's proposal to reclassify Annexes to the "Prosecution's Application under Article 58" and to lift redactions to confidential version thereof

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Luis Moreno-Ocampo
Fatou Bensouda

Counsel for the Defence

Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Prosecution proposes the reclassification of the annexes to the “Prosecution’s Application under Article 58” in response to the decision of the Single Judge of Pre-Trial Chamber I (“the Chamber”) of 19 January 2011.¹
2. The Prosecution also proposes to lift redactions contained in the confidential version of the application, in anticipation of the impending surrender of Callixte MBARUSHIMANA (“the Suspect”) to the Court.

II. Statement of facts

3. On 20 August 2010, the Prosecution filed under seal an application² to issue a warrant of arrest for the Suspect, together with 11 annexes (“the Annexes”).³
4. On 28 September 2010, Pre-Trial Chamber I (“the Chamber”) issued a warrant for the arrest of the suspect.⁴
5. French authorities arrested the Suspect on 11 October 2010.
6. On 14 October 2010, pursuant to instructions from the Chamber, the Registry reclassified the Prosecution’s application under Article 58 as ‘confidential, *ex parte*, Prosecution only’ and copied it to the record of the case.⁵
7. On 10 November 2010, with authorisation by the Chamber,⁶ the Prosecution filed a confidential redacted version of the Application.⁷ (This version is henceforth referred to as the “Redacted Application”).

¹ Decision to unseal and reclassify certain documents in the record of the case, ICC-01/04-01/10-36, 19 January 2011.

² Prosecution’s Application under Article 58, ICC-01/04-573-US-Exp, 20 August 2010.

³ ICC-01/04-573-US-Exp-Anx1 through ICC-01/04-573-US-Exp-Anx11.

⁴ Warrant of Arrest for Callixte Mbarushimana, ICC-01/04-01/10-2-tENG, 28 September 2010.

⁵ The under seal version of the application was reclassified as ICC-01/04-573-Conf-Exp. It was copied in the record of the case as Prosecution’s Application under Article 58, ICC-01/04-01-10-11-Conf-Exp, 14 October 2010.

8. On 14 December 2010, the Defence requested the Chamber to order the Prosecution to disclose *inter alia* "all information forming the evidential basis for the Prosecution's application under Article 58 of the Rome Statute"⁸ which was "supplied to the Pre-Trial Chamber".⁹ On 5 January 2011, the Prosecution tendered to disclose to the Suspect the evidential material annexed to the application when he is surrendered to this Court.¹⁰
9. On 13 January 2011, the Registry informed the Chamber that the French authorities stated that the Suspect would be surrendered to the Court by 4 February 2011 at the latest.¹¹
10. On 19 January 2011, the Chamber ordered the Prosecution to file "a proposal on the change of the level of confidentiality and/or redactions to be made to" the Annexes, "in order for them to be copied into the record of the case".¹²
11. The Prosecution files, simultaneously with the present filing, a request for the Chamber to issue an order for protective measures in respect of sensitive information contained in four documents relied on in the Redacted Application ("the Application for Protective Measures").¹³

⁶ Decision on the "Prosecution's Application for Re-Classification of the "Application under Article 58" and Request for Authorization of Redactions", ICC-01/04-01/10-22-Conf-Exp, 9 November 2010.

⁷ Prosecution's Application under Article 58, ICC-01/04-01-10-11-Conf-Red, 10 November 2010.

⁸ Defence Request for Disclosure, ICC-01/04-01/10-29, 14 December 2010, para. 30(b).

⁹ ICC-01/04-01/10-29, para. 11.

¹⁰ Prosecution's Response to the "Defence Request for Disclosure", ICC-01/04-01/10-31, para. 33.

¹¹ Information From The French Authorities In Relation To The Surrender Of Callixte Mbarushimana, ICC-01/04-01/10-34, 14 January 2011, para. 1(b) and ICC-01/04-01/10-34-Anx1, page 2.

¹² ICC-01/04-01/10-36, page 6.

¹³ Prosecution application for protective measures for four documents, 21 January 2011.

III. Submission

Reclassification of annexes to the Prosecution's Application

12. The Prosecution proposes that the Chamber order the reclassification of seven Annexes to the Redacted Application – Annexes 1, 2, 3, 4, 7, 8 and 9¹⁴ – as ‘public’. The Prosecution also proposes that the Chamber order the reclassification of the remaining four annexes – Annexes 5, 6, 10 and 11¹⁵ – as ‘confidential’, since they contain evidence that is not available in the public domain.¹⁶

13. The Prosecution requests, however, that Annexes 10 and 11 are only reclassified once the Chamber has granted its related Application for Protective Measures.

Lifting of redactions to the confidential version of the Prosecution's Application

14. The Prosecution also proposes the lifting of redactions to references to documents obtained from a Provider, though it requests first that the Chamber grant its related Application for Protective Measures regarding the public dissemination of discrete sections in the documents. The redacted references to the documents appear in paragraphs 109 and 114, footnotes 50, 129, 149, 151, 154, 155 and 156, and page 69 of the Redacted Application.

15. In addition, the Prosecution proposes the lifting of redactions to the portions of the Redacted Application relating to the execution of the Suspect's

¹⁴ ICC-01/04-573-US-Exp-Anx1, ICC-01/04-573-US-Exp-Anx2, ICC-01/04-573-US-Exp-Anx3, ICC-01/04-573-US-Exp-Anx4, ICC-01/04-573-US-Exp-Anx7, ICC-01/04-573-US-Exp-Anx8 and ICC-01/04-573-US-Exp-Anx9.

¹⁵ ICC-01/04-573-US-Exp-Anx5, ICC-01/04-573-US-Exp-Anx6, ICC-01/04-573-US-Exp-Anx10 and ICC-01/04-573-US-Exp-Anx11

¹⁶ Annex 5 is a compilation of draft translations into English of summaries and excerpts of voice calls and text messages that German authorities intercepted and shared with the Prosecution. Annex 6 is a compilation of draft transcripts and translations into English of interviews conducted by the Prosecution with demobilised FDLR combatants. Annexes 10 and 11 are reports on sexual violence and other serious human rights abuses obtained from a Provider, for which the Prosecution is separately filing the Application for Protective Measures.

surrender. The redactions are those applied to paragraph 203 and footnotes 236-239 of the Redacted Application. These redactions will no longer be necessary once the Suspect is surrendered to the Court.

16. Annex A to this application contains a version of the Redacted Application in which the relevant redactions have been lifted. If the Chamber grants the present application as well as the Application for Protective Measures in full, Annex A may be reclassified as 'confidential' once the Suspect is surrendered to the Court.

IV. Confidentiality

17. The Prosecution request that the annex to this filing be classified as 'confidential, *ex parte*, Prosecution only', until the Chamber rules on the Application for Protective Measures and the Suspect is surrendered to the Court. Once both conditions are met, the annex may be reclassified as 'confidential'.

V. Relief sought

18. The Prosecution proposes that, once the Suspect is surrendered to the Court, the Chamber:
 - (a) order the reclassification of Annexes 1, 2, 3, 4, 7, 8 and 9 to the Redacted Application as 'public';
 - (b) order the reclassification of Annexes 5, 6, 10 and 11 to the Redacted Application as 'confidential';
 - (c) authorise the lifting of redactions identified at paragraphs 14 and 15 above; and

(d) order the reclassification of Annex A to this application as 'confidential', if the Chamber grants the Application for Protective Measures in full.



Luis Moreno-Ocampo
Prosecutor

Dated this 21st day of January 2011

At The Hague