

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/10

Date: 21 April 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

**Decision on the "Prosecution's request for variation of time limit for the filing of
the "Prosecution's first application for redactions to witness statements pursuant to
Rule 81(2) and Rule 81(4)"**

Decision 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

Legal Representatives of Victims

Counsel for the Defence

Mr Nicholas Kaufman

Ms. Yael Vias-Gvirsman

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Mr. Didier Preira

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations Other
Section**

I, Judge Sanji Mmasenono Monageng, the Single Judge of Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;¹

NOTING the “Decision on issues relating to disclosure” (“First Decision”),² filed on 30 March 2011, , wherein the Chamber ordered the Prosecutor to submit to the Chamber, as soon as practicable and no later than 18 April 2011, requests for redactions under rule 81 of the Rules of Procedure and evidence (“Rules”);

NOTING the “Prosecution’s request for extension of time limit for redaction applications” (“First Prosecution Request”),³ filed on 15 April 2011, wherein the Prosecutor sought an extension of the deadline set for the filing of applications for redactions in relation to a number of transcripts of witness interviews and stated that he would file, on 18 April 2011, an application for authorisation to redact five witness statements and the transcripts of recorded interviews with three other witnesses (“First Application for Redactions”);

NOTING the “Defence Response to the Prosecution’s request for extension of the time limit for redaction applications”,⁴ filed on 18 March 2011, wherein the Defence submitted that the First Prosecution Request should be rejected;

NOTING the “Decision on the “Prosecution’s request for extension of time limit for redaction applications” (“Second Decision”),⁵ filed on 18 April 2011, whereby the Chamber partially granted the First Prosecution Request and, *inter alia*, ordered the Prosecutor to file, on 18 April 2011, the First Application for Redactions;

¹ Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p. 11.

² ICC-01/04-01/10-87.

³ ICC-01/04-01/10-103.

⁴ ICC-01/04-01/10-108.

⁵ ICC-01/04-01/10-110.

NOTING the “Prosecution’s first application for redactions to witness statements pursuant to Rule 81(2) and Rule 81(4)”⁶ and annexes thereto,⁷ filed on 18 April 2011 at 16.44, outside the time limit specified by the Single Judge in the Second Decision;

NOTING the “Prosecution’s request for variation of time limit for the filing of the “Prosecution’s first application for redactions to witness statements pursuant to Rule 81(2) and Rule 81(4)”” (“Prosecution Request”),⁸ filed on 19 April 2011, wherein the Prosecutor submitted that, although the filing was ready at 15.30, he encountered technical problems in converting the redacted witness statements that were the subject of his application into the requisite format, which resulted in his filing being delayed by 44 minutes;

NOTING that the Prosecutor also submitted that the Senior Trial Lawyer tried to contact several of the Associate Legal Officers of the Chamber without success;

CONSIDERING that attempts to contact the legal support staff of the Chamber, successful or unsuccessful⁹, are of no relevance to the deadline set for the filing of the First Application for Redactions or to the Prosecutor’s failure to meet such deadline;

CONSIDERING nonetheless that the Prosecution Request shows good cause for a variation of time limit imposed in relation to the First Application for Redactions and demonstrates that the Prosecutor was unable to file the application within the time limit for reasons outside his control within the meaning of regulation 35(2) of the Regulations of the Court;

CONSIDERING that the delay of 44 minutes was minimal and, in view of the totality of the circumstances, not such as would be detrimental to the rights of the suspect under article 67 of the Statute;

⁶ ICC-01/04-01/10-112-Conf-Exp.

⁷ ICC-01/04-01/10-112-Conf-Exp-Anx1 to Anx8 and AnxA to AnxH.

⁸ ICC-01/04-01/10-113-Conf-Exp.

⁹ In any event, the Single Judge notes that two of the three legal officers of the Pre-Trial Chamber as well as the Senior Legal Advisor for the Division were available at all relevant times and no attempts were made to contact them.

CONSIDERING that regulation 8(c) of the Regulations of the Court requires publication on the website of the Court of all “decisions and orders of the Court and other particulars of each case brought before the Court as described in rule 15”;

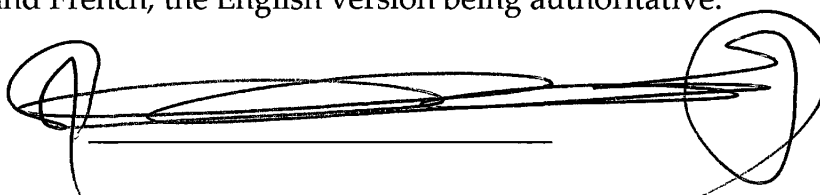
CONSIDERING that the reason for the classification of the Prosecution Request as confidential *ex parte* was that it related to a confidential *ex parte* document and that this reason has fallen away in light of the fact that a public redacted version of this document¹⁰ has since been filed;

FOR THESE REASONS,

GRANT the Prosecution Request for a variation of the time limit for the filing of the First Application for Redactions; and

DECIDE to reclassify the Prosecution Request (ICC-01/04-01/10-113-Conf-Exp) as a public document.

Done in English and French, the English version being authoritative.



Judge Sanji Mmasenono Monageng

Single Judge

Dated this Thursday, 21 April 2011

At The Hague, The Netherlands

¹⁰ ICC-01/04-01/10-112-Red.