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Date: 27 May 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Cuno Tarfusser
Judge Sylvia Steiner

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. Callixte MBARUSHIMANA

Public Document

Prosecution's request for urgent interim relief pending the decision on the "Prosecution's request in terms of Rule 121(7) for the postponement of the confirmation hearing to preserve the fairness of the proceedings"

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

1. In its request in terms of Rule 121(7) for the postponement of the confirmation hearing to preserve the fairness of the proceedings ("the Prosecution Request"),¹ the Prosecution sought the postponement of the confirmation of charges hearing ("the Confirmation Hearing") presently scheduled for 4 July 2011 in order to permit the Prosecution sufficient time to review all remaining electronic material.
2. The Prosecution also requested that *"the remaining deadlines for the disclosure of witness statements and the filing of the DCC and LoE should likewise be postponed and the Chamber should determine a new disclosure framework after an updated and reliable assessment from the Registry on the possibility of expedited access to the seized material and after hearing submissions by the parties."*²
3. In order to give effect to this relief, the Prosecution requested the Chamber to shorten the time limit for the Defence response until Friday 27 May, in order to give the Chamber sufficient opportunity to render its decision. The Prosecution has subsequently been informed that counsel for Mr Mbarushimana has been summoned to perform compulsory military reserve duty on Thursday 26 May 2011 and the proposed deadline would accordingly be unreasonable.
4. The Single Judge has now set the deadline for the Defence response for 16:00 on Monday 30 May. As a result, the earliest that the Chamber might be expected to render a decision on the Prosecution Request is Tuesday 31 May.³
5. The Prosecution is required to disclose all redacted witness statements already on the 30th.⁴ Therefore, even if the Prosecution Request is granted, the purpose of requesting the postponement of the disclosure deadline would have been frustrated. The Prosecution submits that the disclosure of these statements, even in redacted form, in advance of a

¹ ICC-01/04-01/10-189, 25 May 2011.

² *Ibid*, para 56.

³ ICC-01/04-01/10-195, 26 May 2011.

⁴ The Prosecution was ordered to disclose all statements in respect of which redactions are requested no later than 5 days after the Chamber's decision regarding such redactions. The Chamber's decision was issued on Friday 13 May. Hence the 5 day period expires on Friday 27 May (Regulation 33(1)(c)) and the disclosure must take place on Monday 30 May (Regulation 33(1)(d)).

Confirmation Hearing which may potentially be postponed for several months, would unnecessarily increase the risk of harm to the witnesses.⁵

6. In these circumstances, and taking into account the reasons for the postponement of the Confirmation Hearing as set out in Prosecutions Request, the Prosecution submits that it has shown good cause for the granting of urgent interim relief pending the outcome of the Chamber's decision on the request.
7. For this reason, and in order to give the Prosecution a reasonable opportunity to implement whatever decision the Chamber may deliver, the Prosecution requests the Chamber, as an interim measure, to postpone forthwith all remaining time limits for the disclosure of evidence and filing in the record of the Document Containing the Charges and the List of Evidence for a period of one week, pending its decision on the Prosecution Request.



Luis Moreno-Ocampo
Prosecutor

Dated this 27th day of May 2011

At The Hague, The Netherlands

⁵ "The review of the seized material may fundamentally effect the selection of evidence upon which the Prosecution relies for the Confirmation Hearing. The Prosecution submits that it is inappropriate to compel it to disclose the statements of witnesses upon whom it may ultimately choose not to rely. This would potentially expose these witnesses to harm. Nor is there any compelling reason to require disclosure before the confirmation hearing is rescheduled." ; ICC-01/04-01/10-189, para 57.