

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 July 2011

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA***

Public

**Decision on the “Defence Request for Reclassification” dated 14 July 2011
and on the request for reclassification of the “Defence Challenge to the Jurisdiction
of the Court”**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Mr Luis Moreno- Ocampo

Ms Fatou Bensouda

Mr Anton Steynberg, Senior Trial Lawyer

Counsel for the Defence

Mr Nicholas Kaufman

Ms. Yael Vias-Gvirsman

Legal Representatives of Victims

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

Detention Section

**Victims Participation and Reparations Other
Section**

I, Judge Cuno Tarfusser, 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* in the absence of Judge Sanji Mmasenono Monageng;¹

NOTING the “Defence Request for Reclassification” dated 14 July 2011, whereby the Defence requests that a number of filings and decisions in the case as well as their annexes (“Relevant Filings”), currently classified as “confidential, ex parte Defence” or “confidential, ex parte Registry”, be reclassified as public “as an essential prelude to its envisaged jurisdictional challenge”, both with a view to enabling “free and non redacted drafting of the jurisdictional challenge” and since it “no longer deems that the matters discussed in the filings and decisions need remain confidential”;²

NOTING the “Defence Challenge to the Jurisdiction of the Court” (“Defence Jurisdictional Challenge”)³, submitted on 19 July 2011 by the Defence as “confidential, ex parte Defence only” since its paragraph 15 “details proceedings which are currently confidential and unknown to the Prosecution” and, more specifically, refers to some of the Relevant Filings;

NOTING the Defence’s request that its Jurisdictional Challenge be reclassified as public once the Chamber has ruled on the Defence Request for Reclassification;

NOTING articles 57(3)(c) and 67 of the Statute of the Court and regulation 23bis of the Regulations of the Court;

CONSIDERING that, in light of the paramount principle of the publicity of the proceedings, it is indeed appropriate that the Defence Jurisdictional Challenge be submitted as public and non-redacted;

¹ICC-01/04-583.

² ICC-01-04-01/10-284.

³ ICC-01/04-01/10-290-Conf-Exp.

CONSIDERING that the Relevant Filings include four categories of documents: (i) submissions by the Defence; (ii) decisions by the Chamber; (iii) reports by the Registrar and (iv) documents received from the Democratic Republic of the Congo ("DRC");

CONSIDERING, as regards the decisions by the Chamber, the submissions by the Defence and the reports by the Registrar, that there is no obstacle to their immediate reclassification as public, in light of their content and purpose;

CONSIDERING, as regards the documents received from the DRC, that they were submitted as confidential;

CONSIDERING that, accordingly, on the one hand it would be inappropriate for the Chamber to proceed to their reclassification without the DRC being given an opportunity to submit its observations;

CONSIDERING that, on the other hand, the proximity in time of the confirmation hearing makes it unfeasible to request observations from the DRC for the purpose of the reclassification of the Relevant Filings;

CONSIDERING, by the same token, that the substance of the documents submitted by the DRC is adequately mirrored and summarised in the Relevant Filings consisting of Chamber's decisions and submissions by the Defence, as well as in paragraph 15 of the Defence Challenge;

CONSIDERING that, accordingly, among the Relevant Filings, it is appropriate that the documents submitted by the DRC (and contained in Annexes thereto) retain their current classification as "confidential, ex parte";

CONSIDERING, as regards the confidential, ex parte Annexes to the Defence Jurisdictional Challenge, that Annex A consists of a document which has already been

reclassified as public by the Chamber and that Annex D does not contain information of a confidential nature;

CONSIDERING that confidential, ex parte Annexes B and C to the Defence Jurisdictional Challenge consists, respectively, of a letter addressed by the Prosecutor to the President of the DRC (Annex B) and of a letter addressed by a high official of the DRC to the Prosecutor (Annex C);

CONSIDERING that it is appropriate to limit access to Annexes B and C to the Defence Jurisdictional Challenge to the Prosecutor, in light of their nature and content;

FOR THESE REASONS,

DECIDE that

- (i) the following documents shall be reclassified as public:

ICC-01/04-01/10-30-Conf-Exp
ICC-01/04-01/10-45-Conf-Exp
ICC-01/04-01/10-56-Conf-Exp
ICC-01/04-01/10-123-Conf-Exp
ICC-01/04-01/10-132-Conf-Exp
ICC-01/04-01/10-152-Conf-Exp
ICC-01/04-01/10-153-Conf-Exp
ICC-01/04-01/10-157-Conf-Exp
ICC-01/04-01/10-203-Conf-Exp
ICC-01/04-01/10-204-Conf-Exp
ICC-01/04-01/10-219-Conf-Exp
ICC-01/04-01/10-240-Conf-Exp
ICC-01/04-01/10-269-Conf-Exp
ICC-01/04-01/10-270-Conf-Exp
ICC-01/04-01/10-270-Conf-Exp-AnnexA
ICC-01/04-01/10-282-Conf-Exp

- (ii) the Annexes to documents

ICC-01/04-01/10-152-Conf-Exp

ICC-01/04-01/10-203-Conf-Exp

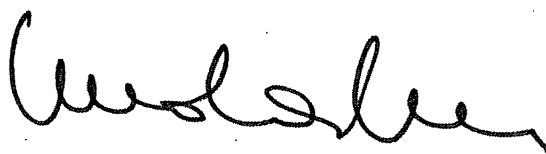
ICC-01/04-01/10-204-Conf-Exp

ICC-01/04-01/10-269-Conf-Exp

shall retain their current classification as "Confidential, ex parte Defence";

- (iii) the "Defence Challenge to the Jurisdiction of the Court" (ICC-01/04-01/10-290-Conf-Exp), as well as Annexes A and D thereto, shall be reclassified as public;
- (iv) Annexes B and C to the Defence Jurisdictional Challenge shall be reclassified as "Confidential".

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



Judge Cuno Tarfusser

Single Judge

Dated this Wednesday, 20 July 2011

At The Hague, The Netherlands