

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 August 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 redacted version of ICC-01/04-01/10-331

**Decision on "Prosecution's application for authorisation to disclose a document
received pursuant to article 54(3)(e) in redacted form "**

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, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Anton Steynberg, Senior Trial Lawyer

Counsel for the Defence

Mr. Nicholas Kaufman
Ms. Yaël Vias-Gvirsman

Legal Representatives of the Victims

Legal Representatives of the 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
Section**

Other

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

NOTING the “Prosecution’s application for authorisation to disclose a document received pursuant to article 54(3)(e) in redacted form”, confidentially filed on 1 August 2011 (“Application”),² whereby the Prosecutor notes that: (i) pursuant to a review of its protected materials received under article 54(3)(e) of the Rome Statute (“Statute”), a [REDACTED] (“Document”) containing information of a possible exculpatory nature was identified;³ (ii) on 27 April 2011, the Prosecutor had requested the Provider to lift the confidentiality restrictions on the document so that its relevant contents could be disclosed to the Defence;⁴ and (iii) on 12 July 2011, the Provider authorised the disclosure on condition that: (a) the Document be disclosed to the Defence only and not be made public, (b) the Document be entirely redacted save the paragraphs identified as potentially exculpatory and (c) the identity of the Provider should remain redacted and not be disclosed to the Defence;⁵

NOTING the redactions proposed by the Prosecutor in Annex A to the Application;⁶

NOTING articles 54(3)(e) and 67(2) of the Statute;

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

² ICC-01/04-01/10-325-Conf-Exp with Annex A.

³ Application, paras 3-4 (item number is [REDACTED]).

⁴ *Ibid.*, para. 5.

⁵ *Ibid.*

⁶ Application, Annex A.

CONSIDERING that all relevant information in the Document would be unredacted if it were to be disclosed to the Defence pursuant to the Prosecutor's proposed redactions;

CONSIDERING that the Prosecutor's request to disclose a redacted version of the Document suitably resolves the tension between the required confidentiality of this information and the suspect's right to a fair trial;⁷

FOR THESE REASONS,

GRANT the Application, allowing the Prosecutor to disclose the Document contained in Annex A thereto, with proposed redactions, to the Defence, no later than 4 August 2011.

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

A handwritten signature in black ink, consisting of several loops and horizontal strokes, positioned above the printed name of the judge.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Thursday, 4 August 2011.

At The Hague, The Netherlands

⁷ See Appeals Chamber, "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008"", 21 October 2008, ICC-01/04-01/06-1486, OA 13, para. 44.