

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 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

**Decision requesting further information on the "Defence request to deny the use of
certain incriminating evidence at the confirmation hearing"**

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

Legal Representatives of Victims

Counsel for the Defence

Mr. Nicholas Kaufman

Ms. Yaël 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

Detention Section

**Victims Participation and Reparations Others
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 "Defence request to deny the use of certain incriminating evidence at the confirmation hearing"² ("Defence Request"), filed on 7 August 2011, wherein the Defence requested that the Chamber: (i) deny the Prosecutor the use of any witness interview ("Statement") as incriminating evidence, which has not been supplied to the Defence by way of written transcript prepared in Kinyarwanda or French, and (ii) deny the Prosecutor the use of all Statements as incriminating evidence, for which English/ Kinyarwanda transcripts have been supplied yet without their associated audio files;

NOTING the "Prosecution's response to Defence Request to deny the use of certain incriminating evidence at the Confirmation Hearing"³ ("Prosecution Response") filed on 11 August 2011, whereby the Prosecutor (i) submitted that the disclosure which he had effected complied with both the Chamber's disclosure order and the Rules of Procedure and Evidence and allowed Mr. Mbarushimana to adequately prepare for the confirmation hearing and (ii) objected to the late submission of the Defence Request as well as to the remedy sought;

NOTING the "Defence request for reclassification of ICC-01/04-01/10-353"⁴ wherein the Defence objected to the classification of the Prosecution Response as a confidential *ex parte* Prosecution and Defence only document and requested that it be reclassified as a public document;

NOTING regulations 23 *bis* and 28 of the Regulations of the Court;

CONSIDERING that neither the Defence Request nor the Prosecution Response give a precise indication as to the number of statements, upon which the Prosecutor has

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

² ICC-01/04-01/10-343.

³ ICC-01/04-01/10-353-Conf-Exp.

⁴ ICC-01/04-01/10-354.

indicated that he intends to rely at the confirmation hearing, which are affected by the disclosure issues raised in the Defence Request or, the extent to which these statements are affected;

CONSIDERING that the Prosecutor has not identified the factual or legal basis, required by regulation 23 *bis* of the Regulations, for the filing of the Prosecutor's Response as confidential *ex parte* Prosecution and Defence only;

FOR THESE REASONS,

ORDER the Defence to provide the Chamber with the following information by no later than 12.00, on Monday, 15 August 2011:

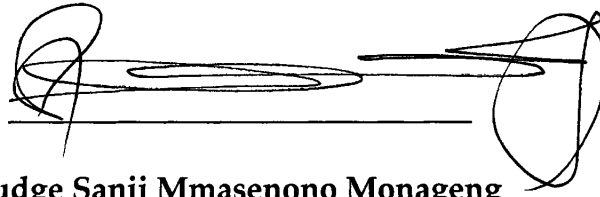
(i) the document identification number of each Statement upon which the Prosecutor has indicated that he intends to rely at the confirmation hearing that is affected by the disclosure issues raised in the Defence Request,

(ii) in relation to each Statement, the format(s) and language(s) in which the Statement (or each part of the Statement) has been disclosed, and

(iii) the number of pages or the length of the recording (where the Statement or part of the Statement has been disclosed by means of an audio file) of each section of the Statement disclosed; and

ORDER the Registrar to re-classify the Prosecution Response as a public document.

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Friday, 12 August 2011

At The Hague, The Netherlands