

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 August 2011

PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. Callixte MBARUSHIMANA***

Public Document

**Prosecution's observations on
"Defence Compliance with Decision ICC-01/04-01/10-359"**

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

**The Office of Public Counsel for the
Defence**

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I. Introduction

1. On 12 August 2011, Pre Trial Chamber I (“the Chamber”) issued its Decision requesting further information on the “Defence request to deny the use of certain incriminating evidence at the confirmation hearing.”¹
2. On 15 August, the Defence submitted a filing pursuant to the Chamber’s order (“Defence filing”), along with three annexes.²
3. The Prosecution herewith submits its observations on the Defence filing and annexes, in compliance with the Chamber’s order.³

II. Submissions

Annexes 1 and 2

4. The Prosecution submits that Defence Annexes 1 and 2 confirm the Prosecution’s submission that all of the relevant statements - with one exception which is addressed below – have been supplied to the Defence in both English and Kinyarwanda in compliance with the Chamber’s order: All of the English-only transcripts listed in Annex 2 have been disclosed together with the original audio recordings in both English and Kinyarwanda. All of the statements supplied without audio recordings, with the same exception, have been transcribed in both English and Kinyarwanda.

Witness 561

5. Witness 561 was interviewed twice, once in May 2010 and again in November of that year. Annex 1 to the Defence filing correctly reflects that 18 transcripts⁴

¹ ICC-01/04-01/10-359.

² ICC-01/04-01/10-368 and ICC-01/04-01/10-369.

³ ICC-01/04-01/10-372.

⁴ Wherever interviews were recorded, each tape used was registered under a separate ERN and likewise the transcript of each tape.

were disclosed by the Prosecution relating to witness W-0561.⁵ Twelve of the 18 transcripts⁶ were fully transcribed in English and Kinyarwanda, whereas the remaining six⁷ have only been transcribed into English. The audio tapes of the six English-only transcripts were not disclosed to Defence due to an oversight, a fact which the Prosecution only became aware of upon reviewing Annex 1 of the Defence filing.

6. Thus, in respect of the second interview with this witness, the Prosecution concedes that it has not been disclosed in a language which the Suspect has been found to fully speak and understand. Thus, the Prosecution will not rely on the transcripts relating to the second interview with this witness,⁸ which is referred to only twice in the Prosecution's List of Evidence.⁹

Quality of interpretation

7. The Prosecution disputes the Defence assertions that the interviews are 'poorly translated', and notes that the quality of the transcripts was not an issue on which the Chamber requested the Defence to address.¹⁰
8. The English transcripts are not translated into French or Kinyarwanda because this was neither possible given the time constraints, nor necessary given the fact that the Suspect has access to the original Kinyarwanda audio files. This was not, as the Defence alleges, due to the allegedly poor quality of the interpretation.¹¹

⁵ These were disclosed on 23 May 2011, as part of Pre-Trial INCRIM package 5.

⁶ Relating to the May 2010 interview.

⁷ Relating to the November interview.

⁸ The ERN range of this interview is DRC-OTP-2033- 1267 TO 1427. This is referred to only twice

⁹ At p. 31 para 28 and p. 155 para. 111.

¹⁰ The Chamber specifically sought information on three points only. ICC-01/04-01/10-359 p. 4.

¹¹ The Prosecution notes that the Chamber only ordered French translations of witness statements where the original statements were not disclosed in Kinyarwanda. See ICC-01/04-01/10-145.

9. The Prosecution submits that the Defence merely reiterates an argument raised in his original request, to which the Prosecution has already responded.¹²

Witness W-0599

10. The Defence once again wrongly assumes that the Prosecution has failed to properly comply with its disclosure obligations¹³ by speculating about the content of apparently missing items by calculating an ERN range.¹⁴
11. The Prosecution informs the Chamber, as it also informed the Defence in reply to one of its many emails,¹⁵ that all the transcripts relating to witness W-0559 have been disclosed. For completeness sake, the Prosecution informs the Chamber that the 'missing' item the Defence points out is an audio tape containing a security assessment, which solely relates to the security of the witness and does not contain information relevant to the interview. Therefore, the absence of this information has no bearing on the integrity of the evidence provided.

Language of other incriminating materials

12. The Defence lists four items and their four translations in annex 3 to its filing which it states have only been provided to it in English and German.¹⁶ The items listed are not witness statements, or transcripts of witness interviews.¹⁷
13. The Prosecution notes that the Defence has once again exceeded its mandate by providing information not requested by the Chamber in its Decision, which specifically concerned the transcripts and audio recordings of witness interviews.

¹² See ICC-01/04-01/10-353, paras. 15-17.

¹³ See ICC-01/04-01/10-211 para. 29. Para 34 is also apposite.

¹⁴ At para. 4 of the Defence filing.

¹⁵ Email sent to Defence on 10 August 2011 at 19:19.

¹⁶ At para. 3(iii) of the Defence filing.

¹⁷ Thus, Rule 76(3) does not apply to this material.

14. Regulation 39 of Regulations of the Court provides that that “All documents and materials filed with the Registry shall be in English or French. [...] If the original document or material is not in one of these languages, a participant shall attach a translation thereof.” (Emphasis added)
15. By disclosing and filing into the record of the case the English translations of documents which were originally in German (and disclosed as such), the Prosecution has complied with its obligations.

Witness 561

16. The Defence asserts at page four of Annex 1 that two BKA statements exist in respect of W-0564, of which only one is translated. Once again, this goes beyond the Defence’s mandate.
17. It is also wrong. There is only one BKA statement for this witness, the original of which is in German.¹⁸ It has also been translated into both English¹⁹ and French.²⁰

¹⁸ DRC-OTP-2016-0606, disclosed in February.

¹⁹ DRC-OTP-2024-0166 disclosed 1 June.

²⁰ DRC-OTP-2034-1627 disclosed 1 June

III. Conclusion

18. With the exception of the concession made in respect of the second interview of W-561, the Prosecution stands by its earlier submissions²¹ and submits that the defence request should be denied.



Luis Moreno-Ocampo
Prosecutor

Dated this 16th day of August 2011

At The Hague, The Netherlands

²¹ ICC-01/04-01/10-353.