



Original: **English**

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

Date: 26/08/2011

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
REDACTED**

**Defence request for disclosure of information related
to the alleged victims of sexual violence**

Source: Defence for Mr. Callixte Mbarushimana

Document 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. Yael Vias Gvirsman

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

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section Other**

Introduction

1. On 12 August 2011, Counsel petitioned the Prosecution requesting as follows:

“Could you inform me as a matter of urgency as to the age of W-694? Could you also inform me the names of the investigators/trial lawyer present at the interview and the functions (you can keep the names confidential for the time being) of the others present?

Could you also inform me as, a matter of urgency whether any pre-interview psycho-social assessment of the rape victims or their family members was performed and if so whether you will permit me to see these documents?”

2. Shortly thereafter, Counsel received the following response from the Prosecution.

“The Prosecution is of the view that it has provided you with all of the evidence to which you are entitled for the purposes of the confirmation hearing, especially bearing in mind the limited scope and purpose of this hearing.

If you believe you are entitled to further information or evidence you will have to petition the Chamber.”

3. The information sought by Counsel is of material benefit to the preparation of the Defence. The Document containing the charges describes an assault on [REDACTED] in particularly gruesome terms which, the Defence will allege, is unsupported by admissible evidence. Psycho-social assessments of rape victims and/or those who witness sexual assaults are common practice in many jurisdictions and, often, reveal contradictions between the version of events communicated to the psychologist/caring professional and that communicated to the Prosecution investigators. Counsel should be entitled to

perform the comparison of these two versions (if such exist) for himself and, thereafter, decide whether there exists information which may be of material benefit for the preparation of the defence. The age of W-694 is, also, of material benefit since it will permit the Defence and, ultimately, the Court to assess appropriately the credibility of the evidence she supplies.

Relief Sought

4. Disclosure under Article 67(2) of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence is an ongoing obligation and the Prosecution is not entitled to fix an arbitrary cut-off point - as detailed in its response to Counsel.

5. This document is filed confidentially given that the document containing the charges is still classified as confidential.

6. In the circumstances, the Defence requests that the learned Pre-Trial Chamber order the Prosecution to disclose:

- a) the age of W-694 and the details of those individuals present at her interview;
- b) all psycho-social assessments or similar pre-interview materials emanating from victims of sexual violence or witnesses thereto - the evidence of whom will be produced at the confirmation hearing.



Nicholas Kaufman

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Friday, August 26, 2011