

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/04-01/10
Date: 9 September 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

Prosecution's notification of changed circumstances relating to two witnesses

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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**Unrepresented Applicants
(Participation/Reparation)**

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Victims and Witnesses Unit

Me Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Prosecution previously applied for redactions to the statements of two crime-base witnesses. The Single Judge determined that the requested redactions would not be sufficient to ameliorate the risk that would flow from their disclosure. Accordingly, she directed that the Prosecution instead rely on summaries of the witnesses' evidence.
2. The Prosecution informs the Single Judge of new circumstances, in particular the change in the security situation with respect to these witnesses and the innocent third parties mentioned in their statements.
3. The Prosecution notifies the Chamber that, in light of these new circumstances, it intends to disclose to the Defence the name of the village to which the statements relate and to refer to this information at the confirmation hearing.

II. Statement of facts

4. On 18 April 2011, the Prosecution sought authorisation¹ to redact, *inter alia*, the names and identifying information of the witnesses and innocent third parties in the signed statements of Prosecution witnesses DRC-OTP-WWWW-0673 ("W-0673")² and DRC-OTP-WWWW-0674 ("W-0674").³ [REDACTED].⁴
5. On 20 May, the Single Judge issued her Decision on the Prosecution's application for redactions,⁵ where with respect to W-0673 and W-0674, she decided that, in light of the circumstances described above, the redactions sought to the witnesses' statements would not adequately minimize the risk to the witnesses' safety.⁶ In light of this finding, the Single Judge declined to

¹ ICC-01/04-01/10-112-Red and ICC-01/04-01/10-148.

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ ICC-01/04-01/10-167.

⁶ ICC-01/04-01/10-167, para. 17.

- authorise the proposed redactions and instead ordered that, for the purposes of the confirmation hearing, the Prosecution rely on summaries of their statements.⁷
6. On 1 June, the Prosecution disclosed summaries of the statements of W-0673 and W-0674 to the Defence.
 7. [REDACTED].
 8. [REDACTED].^{8 9}
 9. [REDACTED].

⁷ ICC-01/04-01/10-167, p. 18.

⁸ [REDACTED].

⁹ [REDACTED].

III. Submissions

10. [REDACTED].^{10 11}

11. The Prosecution accordingly notifies the Single Judge, as enjoined by the Appeals Chamber,¹² that the circumstances prevailing at the time of the initial request for redactions have changed.

12. The Prosecution also notes that the Defence has complained of the alleged lack of specificity of the Document Containing the Charges in relation to the locations and dates of attacks charged,¹³ specifically to “the attack on the village of W673 and W674 [...] in the Masisi territory in the second part of 2009”.¹⁴ The Prosecution submits that disclosing the location of the attack will assist in addressing the Defence’s complaint.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² “[E]ven if it is determined that certain information should not be disclosed, such determination should be kept under review by the Pre-Trial Chamber. It may be necessary to disclose the withheld information subsequently, should circumstances change. The Prosecutor should assist the Pre-Trial Chamber in this regard by bringing to its attention factors that may cause it to reconsider its ruling on nondisclosure.”; *Prosecutor v. Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements, ICC-01/04-01/07-475 OA, 13 May 2008, para. 73.

¹³ ICC-01/04-01/10-305.

¹⁴ *Ibid.* at para. 6(c).

IV. Request for confidentiality

13. The Prosecution submits this Notification as confidential *ex parte*, available to the Prosecution and the Victims and Witnesses Unit only. It concerns information that is currently confidential and *ex parte*, the communication of which would defeat its purpose. No alternative procedures exist to deal with this Notification. A public redacted version is, however, filed simultaneously herewith.

V. Conclusion

14. The Prosecution notifies the Chamber that it intends to disclose to the Defence the name of the village to which the summaries of W-0673 and W-0674 relate and to refer to this information at the confirmation hearing.



Luis Moreno-Ocampo

Prosecutor

Dated this 9th day of September 2011

At The Hague, The Netherlands