

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **12/09/2011**

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

Defence response to Prosecution filing: ICC-01/04-01/10-410-Red

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

Mr. Mayombo Kassongo
 Mr. Ghislain Mabanga

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

The Prosecution requests that the Pre-Trial Chamber lift redactions applied to the statements of witnesses 673 and 674 citing the Defence request to strike charges relating to these witnesses on the grounds of a lack of specificity. The Prosecution asserts that its request is prompted by a change in circumstances regarding the security situation of the aforementioned witnesses.

It is not clear from the redacted version of the Prosecution filing when the information as to the change in the witnesses' security situation became available and whether the information has been brought promptly to the attention of the Chamber. In any event, the Defence objects to the Prosecution request since the lifting of redactions will release incriminating information beyond the deadlines set in Rules 121(3) and (5) of the Rules of Procedure and Evidence.¹ At this late stage (i.e. four days before the confirmation hearing), the Defence will be in no position at all to investigate the new information.

The Pre-Trial Chamber is thus requested to postpone its decision on the Prosecution request until after the confirmation hearing.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel
Monday, September 12, 2011

¹ *c.f.*; ICC-01/09-02/11-211: *Decision on the "Resubmitted Defence Request for Leave to Appeal the Redacted First Decision on the Prosecutor's Requests for Redactions and Related Requests"* where the late lifting of redactions was considered in the context of Article 67(2) and Rule 77.