

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 15 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***

**URGENT**

**Public**

**Decision on the Prosecution's notification of changed circumstances  
regarding two witnesses**

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**

Mr. Mayombo Kassongo

Mr. Ghislain Mabanga

**Unrepresented Victims**

**Counsel for the Defence**

Mr. Nicholas Kaufman

Ms. Yaël Vias-Gvirsman

**Legal Representatives of Applicants**

**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**

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**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*;

**NOTING** the “Decision on the Prosecution’s applications for redactions pursuant to Rule 81(2) and Rule 81(4)”,<sup>1</sup> filed on 20 May 2011 (“Decision on Redactions”), whereby the Single Judge decided, *inter alia*, that if the Prosecution chose to rely on the account of anonymous witnesses 673 and 674, it should rely for the purposes of the confirmation hearing on a summary of their statements, as the redacted form of their statements proposed by the Prosecution would not adequately minimise risks to their safety;<sup>2</sup>

**NOTING** the “Prosecution’s notification of changed circumstances relating to two witnesses”, filed on 9 September 2011 (“Prosecution’s Notification”), whereby the Prosecution notifies the Chamber that it intends to disclose to the Defence the name of the village to which the summaries of evidence of witnesses 673 and 674 relate and to refer to this information at the confirmation hearing, arguing that there has been a change in the security situation of these two witnesses;<sup>3</sup>

**NOTING** the “Defence response to Prosecution filing: ICC-01/04-01/10-410-Red”, filed on 12 September 2011, whereby the Defence: (a) objects to the Prosecution’s Notification arguing that the lifting of redactions will release incriminating information beyond the deadlines set out in rules 121(3) and (5) of the Rules of Procedure and Evidence (“Rules”), and (b) requests the Chamber to postpone its decision on the Prosecution’s Notification until after the confirmation hearing;<sup>4</sup>

**NOTING** rules 81, 121(3) and (5) of the Rules;

**CONSIDERING** that, in accordance with the Decision of Redactions, the evidence disclosed to the Defence includes only summaries of the statements of anonymous

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<sup>1</sup> ICC-01/04-01/10-167, with confidential *ex parte* Annexes I and II.

<sup>2</sup> *Ibid.*, para. 17.

<sup>3</sup> ICC-01/04-01/10-410-Conf-Exp; ICC-01/04-01/10-410-Red (public redacted version).

<sup>4</sup> ICC-01/04-01/10-416.

witnesses 673 and 674,<sup>5</sup> and not the redacted versions of such statements which were never disclosed to the Defence;

**CONSIDERING** that prior to disclosure by the Prosecution of information previously withheld from the Defence pursuant to the Chamber's decision, the Prosecution should seek a ruling of the Chamber reconsidering its previous ruling on non-disclosure, assisting the Chamber in this regard by bringing to its attention factors that may cause it to reconsider its ruling<sup>6</sup>;

**CONSIDERING** that in the present case the Prosecution has not sought reconsideration of the Decision on Redactions and the Chamber has thus been unable to re-assess the reasons for its order on non-disclosure of certain information relating to witnesses 673 and 674;

**CONSIDERING** therefore that the Prosecution is not authorised to disclose information not contained in the summaries of evidence of 673 and 674 without a decision of the Chamber authorising such disclosure;

**CONSIDERING**, further, that such disclosure may amount to disclosure of potentially incriminating evidence and can thus only be effected within the time limits set out in the rules governing disclosure of evidence for the purposes of the confirmation hearing;<sup>7</sup>

**CONSIDERING** that, the confirmation hearing being scheduled to commence on 16 September 2011, the time limits set out in rules 121(3) and (5) of the Rules have expired and no further disclosure can be effected;

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<sup>5</sup> Documents DRC-OTP-2034-1527 and DRC-OTP-2034-1533.

<sup>6</sup> *Prosecutor v. Germain Katanga*, Appeals Chamber, "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"", 13 May 2008, ICC-01/04-01/07-475, para. 73.

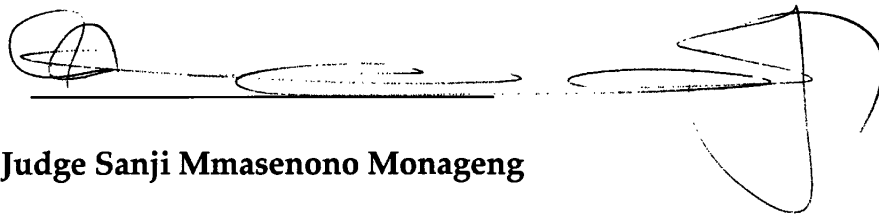
<sup>7</sup> *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Pre-Trial Chamber II, "Decision on the "Resubmitted Defence Request for Leave to Appeal the Redacted First Decision on the Prosecutor's Requests for Redactions and Related Requests"", 4 August 2011, ICC-01/09-02/11-211, para. 20.

**FOR THESE REASONS,**

**DECIDE** that the Prosecution cannot, at this stage, disclose to the Defence the name of the village to which the summaries of evidence of witnesses 673 and 674 relate and refer to this information at the confirmation hearing; and

**DISMISS** the Defence's request to postpone the consideration of this matter after the confirmation hearing.

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

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

**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Thursday, 15 September 2011

At The Hague, The Netherlands