

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/10
Date: 19 January 2011

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA***

Public

Decision to unseal and reclassify certain documents in the record of the case

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, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Anton Steynberg, Senior Trial Lawyer

Counsel for the Defence

Mr Nicholas Kaufman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**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

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

I, Judge Cuno Tarfusser, Judge of Pre-Trial Chamber I of the International Criminal Court “Court”), acting as a Single Judge in the case of *The Prosecutor v. Callixte Mbarushimana* (“Mbarushimana case”),¹ issues the following Decision to unseal and reclassify certain documents in the record of the case:

1. On 20 August 2010 the Prosecutor filed the “Prosecution’s application under Article 58” (“Applicatoin”)² whereby the Chamber was requested to issue a warrant of arrest for Mr Callixte Mbarushimana (“Mr Mbarushimana”), for war crimes and crimes against humanity committed in the North and South Kivu Provinces of the Democratic Republic of the Congo (“DRC”) between January 2009 and the date of the Application.

2. On 6 September 2010 the Chamber issued the “Decision requesting clarification on the Prosecutor’s Application under Article 58”,³ which requested the Prosecutor to submit observations on the link between the events alleged in the Application and the situation of crisis that triggered the DRC investigation. On 10 September 2010 the Prosecutor filed its “Prosecution’s Submission on Jurisdiction”.⁴

3. On 28 September 2010, the Chamber issued the “Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana”,⁵ whereby the Chamber found that there were reasonable grounds to believe that Mr Mbarushimana is criminally responsible under article 25(3)(d) of the Statute for war crimes and crimes

¹ Decision on the designation of a Single Judge of Pre-Trial Chamber I, 25 October 2010, ICC-01/04-583.

² Prosecution’s Application under Article 58, 20 August 2010, ICC-01/04-573-US-Exp with 11 Annexes all classified as under seal *ex-parte*, Prosecution only. The Application was reclassified as confidential *ex parte*, Prosecution only (ICC-01/04-01/10-20-Conf-Exp) and a confidential redacted version and a public redacted version of the Application were filed pursuant to decision ICC-01/04-01/10-7 of 11 October 2010 (ICC-01/04-01/10-11-Conf-Red and ICC-01/04-01/10-11-Red, respectively). The annexes thereof remained classified as under seal *ex parte*, Prosecution only.

³ Decision requesting clarification on the Prosecutor’s Application under Article 58, 6 September 2010, ICC-01/04-575-US, reclassified as Public pursuant to decision ICC-01/04-01/10-7 of 11 October 2010.

⁴ Prosecution’s Submission on Jurisdiction, 10 September 2010, ICC-01/04-577-US and ICC-01/04-01/10-13, of 14 October 2010, reclassified as public pursuant to decision ICC-01/04-01/10-7 of 11 October 2010.

⁵ Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana, 28 September 2010, ICC-01/04-01/10-1-US and ICC-01/04-01/10-1 reclassified as public pursuant to decision ICC-01/04-01/10-7 of 11 October 2010.

against humanity allegedly committed in the North and South Kivu Provinces of the DRC, subsequently, the Chamber issued a warrant of arrest for Mr Mbarushimana.⁶

4. On 11 October 2010, pursuant to the arrest warrant, Mr Mbarushimana was arrested and kept into custody in France.

5. On 14 January 2011 the Registrar filed its "Information from the French authorities in relation to the surrender of Callixte Mbarushimana"⁷ whereby it informed the Chamber of the following:

- a) On 4 January 2011 the French Court of Cassation authorized the surrender of Mr Mbarushimana to the Court, as it dismissed the appeal against the decision of 27 October 2010 denying Mr Mbarushimana release as well as his appeal against the decision of 3 November 2010 ordering his surrender to the Court; and
- b) Pursuant to article 627-10 of the French Code of Criminal Procedure, the surrender is to take place within a month from the date of issuance of the above decision, namely between 4 January 2011 and 4 February 2011.

6. Taking into account that Mr Mbarushimana's surrender to the Court is imminent and that in accordance with articles 57(3)(c), 67(1) and 68(1) of the Statute and Regulation 8(c), 20 and 23bis (3) of the Regulations of the Court, the Chamber finds it necessary to reclassify a certain number of documents contained in the case file in order to safeguard the publicity of the proceedings before the Court,

⁶ Mandat d'arrêt à l'encontre de Callixte Mbarushimana, 28 Septembre 2010, ICC-01/04-01/10-2-US, reclassified as public pursuant to decision ICC-01/04-01/10-7 of 11 October 2010.

⁷ Information from the French authorities in relation to the surrender of Callixte Mbarushimana, 14 January 2011, ICC-01/04-01/10-34-Conf.

FOR THESE REASONS,

DECIDE to unseal the following document, which shall be copied into the record of the case:

ICC-01/04-576-US

DECIDES that the following documents shall be reclassified as public:

ICC-01/04-01/10-13-Conf;

ICC-01/04-01/10-15-Conf;

ICC-01/04-01/10-18-Conf;

ICC-01/04-01/10-19-Conf;

ICC-01/04-01/10-25-Conf;

ICC-01/04-01/10-26-Conf

ICC-01/04-01/10-27-Conf;

ICC-01/04-01/10-28-Conf;

ICC-01/04-01/10-34-Conf; and

ICC-01/04-01/10-34-Conf-Anx1.

ORDERS the Registrar to file, by Friday 21 January 2011 at 16.00hrs, public versions, with the redactions deemed necessary if any, of the following documents:

ICC-01/04-01/10-18-Conf-Anx1;

ICC-01/04-01/10-19-Conf-Anx1;

ICC-01/04-01/10-27-Conf-Anx; and

ICC-01/04-01/10-28-Conf-Anx1.

ORDERS the Prosecutor to file, by Friday 21 January 2011 at 16.00hrs, a public redacted version of the following document:

ICC-01/04-01/10-35-Conf

ORDERS the Prosecutor to file, by Friday 21 January 2011 at 16.00hrs, a proposal on the change of the level of confidentiality and/or redactions to be made to the following documents, in order for them to be copied into the record of the case:

ICC-01/04-573-US-Exp-Anx1;

ICC-01/04-573-US-Exp-Anx2;

ICC-01/04-573-US-Exp-Anx3;

ICC-01/04-573-US-Exp-Anx4;

ICC-01/04-573-US-Exp-Anx5;

ICC-01/04-573-US-Exp-Anx6;

ICC-01/04-573-US-Exp-Anx7;

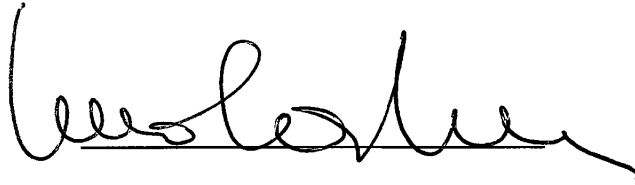
ICC-01/04-573-US-Exp-Anx8;

ICC-01/04-573-US-Exp-Anx9;

ICC-01/04-573-US-Exp-Anx10; and

ICC-01/04-573-US-Exp-Anx11.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser

Single judge

Dated this Wednesday 19 January 2011

At The Hague, The Netherlands