

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 27 May 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 Document**

**Decision on the Prosecution's request for interim relief pending the Chamber's  
decision on the request for postponement**

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  
Mr 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 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 & Deputy Registrar**  
Ms Silvana Arbia

**Defence Support Section**  
Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

I, **Judge Sanji Mmasenono Monageng**, the Single Judge of Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;<sup>1</sup>

**NOTING** the “Prosecution’s request in terms of Rule 121(7) for the postponement of the confirmation hearing to preserve the fairness of the proceedings”, dated 25 May 2011 (“Request for Postponement”), whereby the Prosecution requests the Chamber to establish a new date for the confirmation of charges hearing and adjust accordingly the remaining disclosure time limits;<sup>2</sup>

**NOTING** the “Prosecution’s request for urgent interim relief pending the decision on the “Prosecution’s request in terms of Rule 121(7) for the postponement of the confirmation hearing to preserve the fairness of the proceedings””, filed on 27 May 2011 (“Request for Interim Relief”),<sup>3</sup> whereby the Prosecution requests the Chamber to postpone forthwith all remaining time limits for the disclosure of evidence and the filing of the Document Containing the Charges and the List of Evidence for a period of one week, pending the Chamber’s decision on the Request for Postponement, and submits that the disclosure of witness statements in advance of the confirmation hearing, which may be postponed for several months, would increase the risk of harm to the witnesses;

**NOTING** the “Defence response to Prosecution filing ICC-01/04-01/10-197” filed on 27 May 2011,<sup>4</sup> whereby the Defence opposes the Request for Interim Relief, but

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<sup>1</sup> Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p.11

<sup>2</sup> ICC-01/04-01/10-189.

<sup>3</sup> ICC-01/04-01/10-197.

<sup>4</sup> ICC-01/04-01/10-199.

declares its preparedness to agree to an extension of the time limit for the submission of redacted witness statements until 1 June 2011;

**NOTING** articles 57(3) and 61 of the Rome Statute and rule 121 of the Rules of Procedure and Evidence;

**CONSIDERING** that, in accordance with the Chamber's "Decision on issues relating to disclosure" ("Decision on Disclosure"), the Prosecution shall disclose to the Defence the names and the statements of the witnesses on which it intends to rely at the confirmation of charges hearing, no later than 5 days after the Chamber's decision regarding redactions requested by the Prosecution with respect to these statements;<sup>5</sup>

**CONSIDERING** that the decision on such redactions was issued on 20 May 2011 ("Decision on Redactions");<sup>6</sup>

**CONSIDERING** further that pursuant to the Decision on Disclosure, the Prosecution is required to file in the record of the case by 1 June 2011 the Document Containing the Charges and the List of Evidence;

**CONSIDERING**, however, that the Decision on Redactions, issued on the basis of information provided by the Prosecution, authorised measures to ensure the safety of the witnesses whose statements are to be disclosed;

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<sup>5</sup> ICC-01/04-01/10-87, 30 March 2011, pp. 17-18.

<sup>6</sup> "Decision on the Prosecution's applications for redactions pursuant to Rule 81(2) and Rule 81(4)", ICC-01/04-01/10-167.

**CONSIDERING** that, in the absence of information as to risk of harm to the witnesses, disclosure in advance of the confirmation hearing, even if it were to be postponed, will thus not affect their safety;

**CONSIDERING** therefore that, without prejudice to the Chamber's decision on the Request for Postponement, there is no reason at this stage to modify the time limits set in the Decision on Disclosure;

**CONSIDERING** that the Defence agrees to an extension of the time limit for the submission of redacted witness statements;

**FOR THESE REASONS**

**EXTEND** until 1 June 2011 the time limit for the Prosecution's disclosure to the Defence of the names and the statements of the witnesses subject to the redactions authorised by the Decision on Redactions; and

**REJECT** the Prosecution's Request for Interim Relief in all other respects.

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

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

**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Friday, 27 May 2011

At The Hague, The Netherlands