

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 August 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 ICC-01/04-01/10-331**

**Decision on "Prosecution's application for authorisation to disclose a document received pursuant to article 54(3)(e) in redacted form "**

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  
 Ms. Yaël 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**

Ms Silvana Arbia

**Deputy Registrar**

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 application for authorisation to disclose a document received pursuant to article 54(3)(e) in redacted form”, confidentially filed on 1 August 2011 (“Application”),<sup>2</sup> whereby the Prosecutor notes that: (i) pursuant to a review of its protected materials received under article 54(3)(e) of the Rome Statute (“Statute”), a [REDACTED] (“Document”) containing information of a possible exculpatory nature was identified;<sup>3</sup> (ii) on 27 April 2011, the Prosecutor had requested the Provider to lift the confidentiality restrictions on the document so that its relevant contents could be disclosed to the Defence;<sup>4</sup> and (iii) on 12 July 2011, the Provider authorised the disclosure on condition that: (a) the Document be disclosed to the Defence only and not be made public, (b) the Document be entirely redacted save the paragraphs identified as potentially exculpatory and (c) the identity of the Provider should remain redacted and not be disclosed to the Defence;<sup>5</sup>

**NOTING** the redactions proposed by the Prosecutor in Annex A to the Application;<sup>6</sup>

**NOTING** articles 54(3)(e) and 67(2) of the Statute;

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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-01/04-01/10-325-Conf-Exp with Annex A.

<sup>3</sup> Application, paras 3-4 (item number is [REDACTED]).

<sup>4</sup> *Ibid.*, para. 5.

<sup>5</sup> *Ibid.*

<sup>6</sup> Application, Annex A.

**CONSIDERING** that all relevant information in the Document would be unredacted if it were to be disclosed to the Defence pursuant to the Prosecutor's proposed redactions;

**CONSIDERING** that the Prosecutor's request to disclose a redacted version of the Document suitably resolves the tension between the required confidentiality of this information and the suspect's right to a fair trial;<sup>7</sup>

**FOR THESE REASONS,**

**GRANT** the Application, allowing the Prosecutor to disclose the Document contained in Annex A thereto, with proposed redactions, to the Defence, no later than 4 August 2011.

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



**Single Judge**

Dated this Thursday, 4 August 2011.

At The Hague, The Netherlands

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<sup>7</sup> See Appeals Chamber, "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008"", 21 October 2008, ICC-01/04-01/06-1486, OA 13, para. 44.