

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 June 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

Order for observations on the "Defence Request for Disclosure"

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

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*;¹

NOTING the “Defence Request for Disclosure” filed on 10 June 2011 (“Request for Disclosure”),² whereby the Defence (i) submits that the Prosecution did not disclose to the Defence a letter (“Letter”) from the Government of the Democratic Republic of the Congo (“DRC”); and (ii) requests the Chamber to (a) review the Letter, (b) order its transmission to the Defence, and (c) permit the Defence to reply to the Prosecution, should it “raise any statutory ground for refusing the disclosure of the Letter”;

NOTING the Prosecution’s letter of 13 April 2011 to the Defence, appended to the Request for Disclosure,³ whereby the Prosecution informs the Defence that it did not include the Letter in a disclosure package as the DRC had refused to consent to such disclosure and that the Letter would not assist the Defence in its challenge under article 19(2) of the Rome Statute (“Statute”);

NOTING article 19(2) of the Statute, rule 77 of the Rules of Procedure and Evidence (“Rules”), and regulations 24, 28 and 34(b) of the Regulations of the Court;

CONSIDERING that it is unclear from the Prosecution’s letter whether it did not disclose the Letter to the Defence due to the DRC’s refusal to consent to disclosure or because the Letter would not be material to the preparation of the defence;

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

² ICC-01/04-01/10-227 with Annex A.

³ ICC-01/04-01/10-227-AnxA.

CONSIDERING therefore that the Chamber needs to establish if the Letter is material to the preparation of the defence, and if so, what the grounds and legal basis for the Prosecution's decision to exclude the Letter from disclosure under rule 77 of the Rules are;


FOR THESE REASONS,

ORDER the Prosecution to submit, no later than 22 June 2011:

- (i) to the Chamber: a copy of the Letter; and
- (ii) to the Chamber and the Defence: the grounds and legal basis of the Prosecution's decision to exclude the Letter from disclosure under rule 77 of the Rules;

GRANT the Defence leave to reply, within five days from receipt, to the Prosecution's submission pursuant to item (ii) above.

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this Wednesday, 15 June 2011

At The Hague, The Netherlands