

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 May 2011

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

Order to NFI to submit a report

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. Yael Vias-Gvirsman

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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

In the case of *The Prosecutor v. Callixte Mbarushimana*, Pre-Trial Chamber I of the International Criminal Court ("Chamber" and "Court" respectively) renders the following decision.

NOTING the "Prosecution's request for authorisation to conduct destructive analysis of corrupted disc" ("Request") filed by the Prosecutor on 27 April 2011¹, whereby the Prosecutor submitted (on the basis of information received from the Netherlands Forensic Institute, "NFI") that there arose a unique investigative opportunity, given the need to perform a potentially destructive analysis on one of the discs ("Disc") provided by the French authorities and containing copies of intercepted communications originating from Mr Callixte Mbarushimana, which disc had proven to be corrupted and thus unreadable, with a view to retrieving the totality of the data contained therein;

NOTING the "Decision to hold consultations under rule 114" dated 28 April 2011², which convened a hearing before the Chamber on Wednesday 4 May 2011 ("Hearing");

NOTING that, in view of the technical nature of the issue raised by the Prosecutor, representatives of the NFI were invited to attend the Hearing, together with the Prosecutor, the Defence and the Registry;

NOTING article 56 of the Rome Statute and rule 114 of the Rules of Procedure and Evidence;

NOTING the submissions of the parties and participants at the Hearing, and notably of the participating experts from the NFI;

¹ ICC-01/04-01/10-122 and its Annex A.

² ICC-01/04-01/10-126.

NOTING, in particular, that representatives of the NFI suggested that they may submit a report in which the different options for proceeding to the analysis of the Disc are detailed;

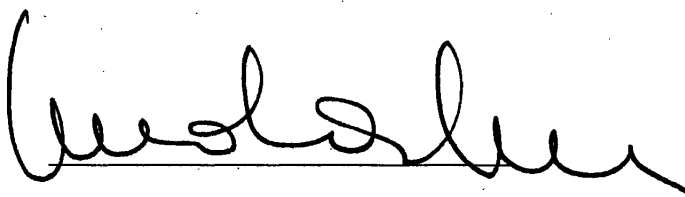
CONSIDERING that it is appropriate that the NFI prepare such report on an expedited basis, with a view to allowing the Chamber to take a decision as to the measures to be taken and the modalities of their implementation;

CONSIDERING that the NFI, insofar as it is an independent expert body within the Dutch Ministry of Justice with no connection to the Prosecutor, is in a position to perform the task entrusted to it by the Chamber;

FOR THESE REASONS

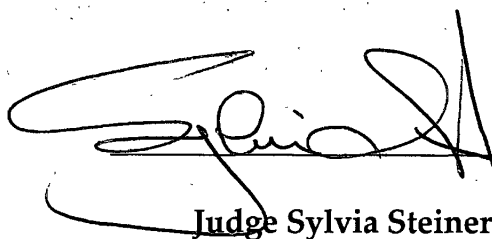
INVITE the NFI to perform a non-destructive preinvestigation on the corrupted disc and to submit a report detailing the different options available for proceeding to the analysis of the Disc by Monday 9 May 2011 at 12 hours.

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

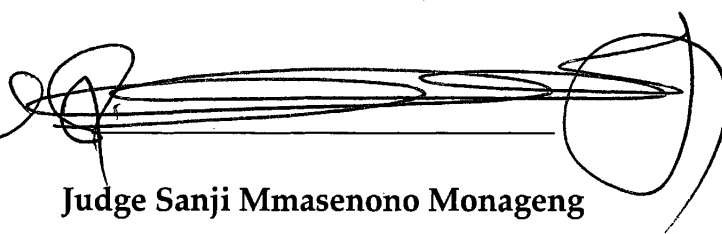


Judge Cuno Tarfusser

Presiding Judge



Judge Sylvia Steiner



Judge Sanji Mmasenono Monageng

Dated this Thursday, 5 May 2011, at The Hague, The Netherlands