

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 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
URGENT**

**Decision requesting the Parties to submit observations on 14 applications for
victims' participation in the proceedings**

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

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section Others**

Ms Fiona McKay

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 that at the initial appearance hearing of Mr Callixte Mbarushimana, held on 28 January 2011, the Chamber decided that the hearing on the confirmation of the charges would commence on 4 July 2011;²

NOTING the “Order setting a deadline for the transmission of applications for victims’ participation” (“Order”) issued on 15 March 2011,³ whereby the Single Judge ordered the Victims Participation and Reparation Section to transmit to the Chamber complete applications for participation as victims in the proceedings at the pre-trial stage of the case no later than 45 days before the day on which the confirmation of charges hearing is scheduled to commence and stated that applications for victims’ participation which are incomplete at the date set would not be considered by the Single Judge;

NOTING the “First Transmission to the Pre-Trial Chamber of applications to participate in the proceedings” filed on 20 May 2011,⁴ whereby the Registry (i) submitted 14 applications (“14 Applications”), wherein 14 applicants (“Applicants”) request to be granted the right to participate as victims in the proceedings in the present case; (ii) stated that it is in a position to immediately transmit to the Parties and the legal representatives of the applicants a redacted version of the 14 Applications; and (iii) submitted that 783 other applications had been received by the Registry shortly before 20 May 2011;

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-T-1-ENG, p. 10.

³ ICC-01/04-01/10-78.

⁴ ICC-01/04-01/10-166 with Annexes.

NOTING the “First Report on applications to participate in the proceedings” filed on 20 May 2011 (“Report”),⁵ whereby the Registry provides the Chamber with a report on each of the Applications, pursuant to regulation 86(5) of the Regulations of the Court (“Regulations”);

NOTING the “Defence response to the first transmission to the Pre-Trial Chamber of the applications to participate in the proceedings” filed on 22 May 2011,⁶ wherein the Defence expressed its opposition to the processing of any applications for victims’ participation which were not transmitted to the Chamber within the time allotted by the Single Judge;

NOTING articles 57(3)(c) and 68(3) of the Rome Statute (“Statute”), rules 86 and 89 of the Rules of Evidence and Procedure (“Rules”), as well as regulations 33, 34 and 86 of the Regulations;

CONSIDERING that the 14 Applications were transmitted to the Chamber within the time limit set by the Single Judge in her Order;

CONSIDERING that 783 applications for victims’ participations were received by the Registry but not transmitted to the Chamber within the time limit set in the Order;

CONSIDERING that the purpose of the time limit set by the Single Judge was to enable the Chamber to examine applications for participation before the commencement of the confirmation hearing and that the extension of that time limit may cause delays in the proceedings, which would adversely affect Mr Mbarushimana’s right to be tried without undue delay;

CONSIDERING that under rule 89(1) of the Rules both Parties, the Defence and the Prosecution, are entitled to reply to the 14 Applications within a time limit set by the

⁵ ICC-01/04-01/10-168-Conf-Exp with Annexes.

⁶ ICC-01/04-01/10-169.

Single Judge, and that, accordingly, it is necessary, prior to any decision on whether the Applicants should be granted the right to participate as victims in the pre-trial proceedings of the present case, that the Chamber seeks the Parties' observations;

CONSIDERING that, pursuant to article 57(3)(c) in conjunction with article 68(1) of the Statute, the Court shall, *inter alia*, take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and that these measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;

CONSIDERING that, in view of the nature and purpose of the present proceedings, redactions from the Applications are an appropriate measure of protection and that this measure is not prejudicial to or inconsistent with the rights of Mr Mbarushimana;

CONSIDERING that in view of some of the Applicants' concerns about their security⁷ and having regard to the Registry's recommendations regarding the security situation in the field,⁸ identifying information should be redacted from the copies of the Applications which are to be transmitted to the Defence;

CONSIDERING that the Prosecution is under the obligation, expressly stated in the Statute, to respect the interests and the personal circumstances of victims (article 54(1)(b) of the Statute) and that, therefore, the Applications may be provided to the Prosecution without redactions;

FOR THESE REASONS

ORDER the Registry to provide, no later than 25 May 2011, at 1600 hours:

⁷ Annexes 1-4 to ICC-01/04-01/10-166.

⁸ Report, paras 10-14.

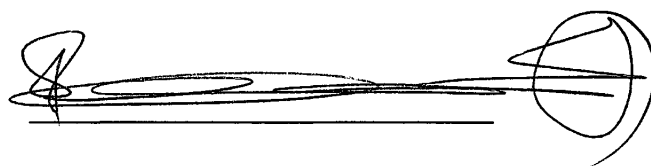
- a) the Prosecution with non-redacted copies of the 14 Applications; and
- b) the Defence with redacted copies of the 14 Applications;

DECIDE that the Chamber will not, at this stage, examine applications transmitted to the Chamber after the deadline set in the Order;

REQUEST both Parties, the Defence and the Prosecution, to submit their observations on the Applications, no later than 6 June 2011, at 1600 hours; and

ORDER all participants in the proceedings to refer to the Applicants only by the numbers assigned to them by the Registry.

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



Judge Sanji Mmasenono Monageng

Single Judge

Dated this Tuesday, 24 May 2011

At The Hague, The Netherlands