

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 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

Decision on the "Proposal on victim participation in the confirmation hearing"

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

Ms. Fatou Bensouda

Mr. Anton Steynberg

Legal Representatives of Victims

Unrepresented Victims

Counsel for the Defence

Mr. Nicholas Kaufman

Ms. Yael Vias-Gvirsman

Legal Representatives of Applicants

Mr. Hervé Diakiese

Mr. Mayombo Kassongo

Mr. Mabanga Manga Mabanga

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms. Paolina Massidda

States Representatives

The Office of Public Counsel for the Defence

Mr. Xavier-Jean Keita

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Ms. Fiona McKay

Counsel Support Section

Mr. Esteban Peralta Losilla

I, **Judge Sanji Mmasenono Monageng**, the Single Judge of Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively) 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 hearing of the first appearance of Mr Callixte Mbarushimana, held on 28 January 2011, the Chamber scheduled the commencement of the confirmation of the charges hearing for 4 July 2011;

NOTING the “Order setting a deadline for the transmission of applications for victims’ Participation”² issued by the Single Judge on 15 March 2011, whereby the Victims Participation and Reparation Section (“VPRS”) was ordered to transmit to the Chamber complete applications for participation as victims in the pre-trial stage of the case (“Applications”) no later than 45 days before the commencement of the confirmation of charges hearing (“Deadline”);

NOTING the “First report on applications to participate in the proceedings”³ filed by the Registrar on 20 May 2011, whereby the Registrar *inter alia* informed the Chamber that 783 applications for participation and/or reparations had been received, of which 530 appeared, on the basis of a preliminary examination, to be complete and linked to the case, but that the Registrar would not be in a position to transmit these applications to the Chamber before the Deadline;

NOTING the “Decision on the Prosecution’s request for the postponement of the confirmation hearing”⁴ issued by the Chamber on 31 May 2011, whereby the Chamber postponed the commencement of the confirmation hearing to 17 August 2011 and ordered the VPRS to transmit to the Chamber complete Applications no later than 30 June 2011 (“Revised Deadline”);

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

² ICC-01/04-01/10-78.

³ ICC-01/04-01/10-168-Conf-Exp.

⁴ ICC-01/04-01/10-207.

NOTING the “Proposal on victim participation in the confirmation hearing”⁵ filed by the Registrar on 6 June 2011, whereby the Registrar (i) informed the Chamber that the Registry would not be in a position to transmit all of the complete Applications by the Revised Deadline (ii) submitted that a partial transmission of Applications, in view of the high numbers involved, would place an undue burden on the parties to review and submit their observations on the Applications and would result in some applicants being excluded, and (iii) proposed that, rather than following the usual system of victim participation, the Chamber ““seek the views” of the applicants as “other victims” under rule 93”⁶ of the Rules of Procedure and Evidence (“Rules”) and suggested that the limited scrutiny to which these Applications had been subjected could be reflected in the rights of participation granted to the victim applicants, thereby ensuring that the rights of the suspect are respected (“Registrar’s Proposal”);

NOTING the “Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court on the specific issue of victims’ participation in the confirmation hearing”⁷ filed by the Office of Public Counsel for Victims (“OPCV”) on 9 June 2011, wherein the OPCV submitted that the Registrar’s Proposal “deviates from the general framework of victims’ participation set in the Rome Statute and in the Rules”⁸ and “would undermine the *“meaningful role of victims”* and their *“substantial impact in the proceedings”*”⁹ and requested leave to submit further observations on the Registrar’s Proposal;

NOTING article 68(3) of the Statute, rules 89-93 of the Rules and regulation 86 of the Regulations of the Court;

CONSIDERING that rule 93 of the Rules, in providing that “a Chamber may seek the views of other victims, as appropriate”, allows the Chamber to seek the views of victims irrespective of whether they have made an application for participation in the proceedings

⁵ ICC-01/04-01/10-213.

⁶ *Ibid* at para. 9.

⁷ ICC-01/04-01/10-226.

⁸ *Ibid* at para. 17.

⁹ *Ibid* at para. 20.

before the Court or have been granted rights of participation, and, as such, embodies a process which is distinct from that of victim participation set out in rules 89 – 91 of the Rules;

CONSIDERING that the application of rule 93 of the Rules in accordance with the Registrar's Proposal would be inappropriate in the current circumstances as it would operate to circumvent the system of victim participation and create a more limited form of participation for all of the victim applicants in question;

CONSIDERING, therefore, that the Revised Deadline for the transmission of Applications continues to be effective and that, in principle, applicants whose Applications have not been submitted by this date will not be permitted to participate in the proceedings related to the confirmation hearing;

CONSIDERING, therefore, that any further observations from the OPCV are unnecessary, without prejudice to the question of whether there was a valid basis for its intervention before the Chamber on this issue;

FOR THESE REASONS,

REJECT the request of the OPCV to submit further observations on the Registrar's Proposal;

REJECT the Registrar's Proposal, and

ORDER the VPRS to transmit to the Chamber complete Applications by the Revised Deadline.

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



Judge Sanji Mmasenono Monageng

Single Judge

Dated this Friday, 10 June 2011

At The Hague, The Netherlands