



Original: **French**

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

Date: **17 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**

Confidential, *ex parte*, only available to the Defence

**Decision on the second Defence request to convene a status conference and
inviting the Democratic Republic of the Congo to provide clarifications**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

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/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

Competent authorities of the Democratic
Republic of the Congo

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I, Judge Sanji Mmasenono Monageng, single judge of Pre-Trial Chamber I of the International Criminal Court (“the Chamber” and “the Court”, respectively) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;¹

NOTING the *Decision on the Defence’s request for State cooperation from the Democratic Republic of the Congo* delivered on 15 February 2011 (“cooperation request”): (i) seeking the cooperation of the Democratic Republic of the Congo (“the DRC”) with respect to the transmission of any contemporaneous documentation or record of meetings with the Office of the Prosecutor retained by the DRC which may shed light on the scope of the referral of the situation in the DRC to the Court and (ii) also requesting the authorities of the DRC to consult with the Chamber without delay if they identified problems which could impede or prevent the execution of the cooperation request;²

NOTING the “Defence request for the compliance of the Democratic Republic of the Congo with ICC-01/04-01/10-56-Conf-Exp” dated 27 April 2011, in which the Defence: (i) noted that it had not been notified of any consultation initiated by the DRC authorities concerning problems arising out of the execution of the cooperation request and (ii) requested, given the desirability to file a jurisdictional challenge to the Court before a confirmation hearing, that the Chamber remind the competent authorities of the DRC of the cooperation request and of their obligations under the Rome Statute (“the Statute”);³

¹ Oral decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p. 11, lines 13-14.

² ICC-01/04-01/10-56.

³ ICC-01/04-01/10-123-Conf-Exp.

NOTING the *Décision sur la Requête de la Défense aux fins d'obtenir l'exécution de la Décision ICC-01/04-01/10-56-Conf-Exp par la République démocratique du Congo* dated 3 May 2011, inviting the DRC to submit its observations on the cooperation request no later than Friday, 13 May 2011;⁴

NOTING the “*Rapport du Greffe quant à l'exécution de la demande de la Chambre du 3 mai 2011 (ICC-01/04-01/10-132-Conf-Exp)*”, in which the Registry informed the Chamber that the Congolese authorities had stated that, because of certain internal procedures, they would require more time to respond to the cooperation request, although they were unable to provide an exact deadline;⁵

NOTING the “*Defence request to convene a status conference*” dated 15 May 2011, in which the Defence requested that a status conference be convened at which the DRC would be invited to submit its observations on the cooperation request;⁶

NOTING the *Décision sur la Requête de la Défense aux fins d'obtenir la convocation d'une conférence de mise en état et demandant à la République démocratique du Congo de soumettre des observations* dated 17 May 2011, rejecting the Defence's request to convene a status conference and again inviting the DRC to submit its observations on the cooperation request no later than Friday, 27 May 2011;⁷

NOTING the “*Rapport du Greffe quant à l'exécution de la demande de la Chambre du 17 mai 2011 (ICC-01/04-01/10-157-Conf-Exp)*” dated 27 May 2011,⁸ in which the Registry informed the Chamber that, on 13 May 2011, it had received a copy of the

⁴ ICC-01/04-01/10-132-Conf-Exp.

⁵ ICC-01/04-01/10-152-Conf-Exp.

⁶ ICC-01/04-01/10-153-Conf-Exp.

⁷ ICC-01/04-01/10-157-Conf-Exp.

⁸ ICC-01/04-01/10-203-Conf-Exp.

letter by which the Office of the Principal Public Prosecutor of the DRC transmitted the file to the office of the President of the DRC;⁹

NOTING the “*Addendum au rapport du Greffe quant à l’exécution de la demande de la Chambre du 17 mai 2011 (ICC-01/04-01/10-157-Conf-exp)*” dated 30 May 2011, in which the Registry transmitted to the Chamber a note verbale and a document that the Congolese authorities had sent to it by e-mail on 27 May 2011, in response to a note verbale of the Registry dated 17 May 2011;¹⁰

NOTING that the document transmitted by the DRC is the letter of 3 March 2004 in which the office of the President of the DRC referred the situation in the DRC to the Court (“referral letter”);

NOTING the “Second Defence request to convene a status conference for the purpose of obtaining cooperation from the Democratic Republic of the Congo” dated 7 June 2011, in which the Defence repeated its request to convene a status conference, on the grounds that the DRC, in presenting only the referral letter, did not properly comply with the cooperation request issued by the Chamber;¹¹

NOTING articles 14, 57(3)(b), 86, 87, 93, 96 and 97 of the Statute, rules 116, 176 and 177 of the Rules of Procedure and Evidence and regulation 109 of the Regulations of the Court;

⁹ ICC-01/04-01/10-203-Conf-Exp, Anx 1.

¹⁰ ICC-01/04-01/10-204-Conf-Exp and Conf-Exp-Anx1.

¹¹ ICC-01/04-01/10-219-Conf-Exp.

CONSIDERING that the Chamber remains of the view that there is no information to suggest that a status conference would enable the objectives of the cooperation request to be achieved;

CONSIDERING further that, in light of the fact that the commencement of the confirmation of charges hearing has been postponed until 17 August 2011,¹² it is appropriate to grant the DRC a final opportunity to clarify the scope of its response to the cooperation request and, in particular, to confirm whether the referral letter is indeed the only relevant document retained by the DRC authorities;

FOR THESE REASONS

DENY the Defence request to convene a status conference;

INVITE the Democratic Republic of the Congo to confirm no later than Friday, 1 July 2011, whether the referral letter is indeed the only relevant document with respect to the cooperation request retained by the DRC authorities;

ORDER the Registrar to transmit this decision, together with a copy of the cooperation request, to the DRC authorities through the proper channels of communication;

RECALL that the Democratic Republic of the Congo shall maintain the confidentiality of this decision, the cooperation request and supporting documents, save where disclosure is necessary for execution of the cooperation request.

¹² ICC-01/04-01/10-207.

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

[signed]
Judge Sanji Mmasenono Monageng
Single Judge

Dated this 17 June 2011

At The Hague, The Netherlands