

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 July 2011

**PRE-TRIAL CHAMBER I**

**Before: Judge Cuno Tarfusser, Single Judge**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public Document**

**Decision requesting the Parties to submit observations on 124 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

**Counsel for the Defence**

Mr Nicholas Kaufman  
Ms Yael Vias-Gvirsman

**Legal Representatives of Victims**

**Unrepresented Victims**

**Legal Representatives of Applicants**

Me Mayombo Kassongo  
Me Ghislain Mabanga

**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**

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**Registrar**

Ms Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Others  
Section**

**I, Judge Cuno Tarfusser**, 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* in the absence of Judge Sanji Mmasenono Monageng;<sup>1</sup>

**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;<sup>2</sup>

**NOTING** the “Order setting a deadline for the transmission of applications for victims’ participation” (“Order”) issued on 15 March 2011,<sup>3</sup> whereby the Single Judge Sanji Mmasenono Monageng<sup>4</sup> ordered the Victims Participation and Reparation Section (“VPRS”) 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;

**NOTING** the “Decision on the Prosecution’s request for the postponement of the confirmation hearing” (“Decision”) issued on 31 May 2011,<sup>5</sup> whereby the Chamber decided to postpone the confirmation hearing to 17 August 2011 and ordered the VPRS to transmit to the Chamber complete applications for victims’ participation in the proceedings at the pre-trial stage of the present case no later than 30 June 2011;

**NOTING** the “Decision on the ‘Proposal on victim participation in the confirmation hearing’” issued on 10 June 2011,<sup>6</sup> whereby the Single Judge Sanji Mmasenono Monageng (i) rejected the “Proposal on victim participation in the confirmation hearing” filed by the

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<sup>1</sup> ICC-01/04-583 issued by the Chamber on 25 October 2010.

<sup>2</sup> Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p. 10.

<sup>3</sup> ICC-01/04-01/10-78.

<sup>4</sup> ICC-01/04-01/10-T-1-ENG, p. 11.

<sup>5</sup> ICC-01/04-01/10-207.

<sup>6</sup> ICC-01/04-01/10-229.

Registry on 6 June 2011,<sup>7</sup> wherein the Registry, *inter alia*, 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” of the Rules of Evidence and Procedure (“Rules”); and (ii) ordered the VPRS to transmit to the Chamber complete applications within the time limit set in the Decision;

**NOTING** the “Second transmission to the Pre-Trial Chamber of applications to participate in the proceedings” filed on 30 June 2011,<sup>8</sup> whereby the Registry (i) submitted 124 applications (“Applications”), wherein 124 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 124 Applications; (iii) submitted that 470 other applications had been received by the Registry before 30 June 2011; and (iv) requested the Chamber for instructions with respect to those 470 applications;

**NOTING** the “Second report on applications to participate in the proceedings” (“Report”) filed on 1 July 2011,<sup>9</sup> whereby the Registry provided the Chamber with a report on each of the 124 applications, pursuant to regulation 86(5) of the Regulations of the Court (“Regulations”);

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

**CONSIDERING** that the 124 Applications were transmitted to the Chamber within the time limit set by the Single Judge in her Order;

**CONSIDERING** that under rule 89(1) of the Rules both Parties, the Defence and the Prosecution, are entitled to reply to the 124 Applications within a time limit set by the

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<sup>7</sup> ICC-01/04-01/10-213.

<sup>8</sup> ICC-01/04-01/10-261 with Annexes.

<sup>9</sup> ICC-01/04-01/10-263-Conf-Exp with Annexes.

Single Judge, and that, accordingly, it is necessary that, 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 seek the Parties' observations;

**CONSIDERING** that, with due regard to the need to maintain the balance between the rights and interests of victims on the one hand and the rights of the Defence on the other, 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 Suspect and fair and impartial proceedings;

**CONSIDERING** that, in view of the nature and the purpose of the proceedings, redactions of all the information that might lead to the Applicants' identification are an appropriate and necessary measure of protection which is not prejudicial or inconsistent with the rights of Callixte Mbarushimana;

**CONSIDERING** that, in light of the safety concerns raised by some of the Applicants in their applications alongside the concerns regarding the security situation in the field raised by the Registry,<sup>10</sup> all the information that might lead to the identification of the Applicants should be redacted from the copies of the Applications which are to be transmitted to the Defence;

**CONSIDERING** that, in order to ensure that information leading to the identification of the Applicants will not be inadvertently disclosed, the Prosecution and the Defence should be aware of the information that has been redacted in the redacted version of the Applications which are to be transmitted to the Defence;

**CONSIDERING** that the Prosecution is under the obligation, expressly stated in article 54(1)(b) the Statute, to respect the interests and the personal circumstances of victims;

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<sup>10</sup> Report, paras 9-11.

**CONSIDERING** that the legal representatives of victims are under the obligation, enshrined in article 8 of the Code of Professional Conduct for counsel, to ensure respect for professional secrecy and the confidentiality of information available to them;

**CONSIDERING** that, while the Chamber will not, at this stage, examine the outstanding 470 applications, the Registry shall assess them with a view to presenting them to the Chamber in relation to other proceedings in which those applicants could participate;

**FOR THESE REASONS**

**ORDER** the Registry to provide, no later than Tuesday, 5 July 2011, at 1600 hours:

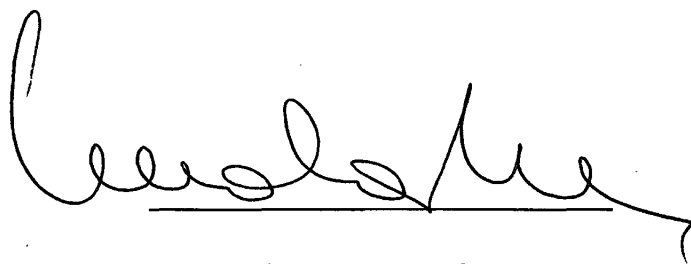
- a) the Prosecution with non-redacted, as well as redacted, copies of the 124 Applications;
- b) the Defence with redacted copies of the 124 Applications;
- c) the legal representatives with the redacted version of the applications submitted by the applicants whom they represent;

**DECIDE** that the Registry shall proceed with the assessment of the 470 applications;

**REQUEST** the Defence and the Prosecution to submit their observations on the Applications, no later than Monday, 25 July 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.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

**Judge Cuno Tarfusser**

**Single Judge**

Dated this Tuesday, 4 July 2011

At The Hague, The Netherlands