

Pursuant to Pre-Trial Chamber I's Decision ICC-01/04-01/10-293, dated 20/07/2011, this document is reclassified as "Public"

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 July 2011

PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Confidential, *Ex Parte*, Defence Only

Decision on the "Third Defence request to convene a status conference for the purpose of State Cooperation from the Democratic Republic of the Congo"

Pursuant to Pre-Trial Chamber I's Decision ICC-01/04-01/10-293, dated 20/07/2011, this document is reclassified as "Public"

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. Yaël 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**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“Chamber” and “Court” respectively);

NOTING the “Defence Request under Article 57(3)(b) of the Rome Statute for State Cooperation from the Democratic Republic of the Congo”¹ filed on 28 December 2010 (“Request for Cooperation”), whereby the Defence sought an order requesting the Democratic Republic of the Congo (“DRC”) to cooperate with the court by providing “all contemporaneous records and documents, including official records and documents, which specifically comprise the supporting documentation envisaged under article 14(1) of the Rome Statute and which may shed light on the scope of the [r]eferral” of the situation in the DRC to the Court;

NOTING the “Defence Clarification of its Request pursuant to Article 57(3)(b) of the Rome Statute”² filed on 27 January 2011, whereby the Defence (a) indicated that the purpose of the Request for Cooperation was to obtain such “supporting documentation” as supplied by the DRC together with the state referral of 3 March 2004, and any contemporaneous documentation or record of meetings with the OTP retained by the DRC authorities which may shed light on the scope of the referral; and (b) provided reasons for the filing of the Request as confidential, *ex parte* Defence only, including the contention that “since the purpose of the Defence Request is effectively an investigative procedure designed to obtain information which may or may not be introduced as evidence – there should be no duty on Counsel to publish his strategy to the Prosecution”;

¹ ICC-01/04-01/10-30-Conf-Exp.

² ICC-01/04-01/10-45-Conf-Exp.

NOTING the “Decision on the Defence’s Request for State cooperation from the Democratic Republic of the Congo”³ issued by the Single Judge on 15 February 2011, whereby the cooperation of the DRC was sought with respect to the transmission of “any contemporaneous documentation or record of meetings with the OTP retained by the DRC authorities which may shed light on the scope of the [r]eferral”;

NOTING the “Defence request for the compliance of the Democratic Republic of the Congo with ICC-01/04-01/10-56-Conf-Exp”⁴ filed on 27 April 2011, whereby the Defence requested that the Single Judge remind the authorities of the DRC of the Request for Cooperation and their obligations under the Rome Statute (“Statute”);

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 »⁵ issued on 3 May 2011, whereby the Single Judge invited the DRC to submit observations on the Request for Cooperation by 11 May 2011;

NOTING the « Rapport du Greffe quant à l'exécution de la demande de la Chamber du 3 mai 2011 (ICC-01/04-01/10-132-Conf-exp) »⁶ filed on 13 May 2011, whereby the Registrar informed the Chamber that the authorities of the DRC had indicated that they would require further time to respond to the Request for Cooperation;

³ ICC-01/04-01/10-56-Conf-Exp.

⁴ ICC-01/04-01/10-123-Conf-Exp.

⁵ ICC-01/04-01/10-132-Conf-Exp.

⁶ ICC-01/04-01/10-152-Conf-Exp.

NOTING the “Defence Request to Convene a Status Conference”⁷ dated 15 May 2011, whereby the Defence (i) noted that the authorities of the DRC do not deny the existence of the information sought and have not identified any problems in executing the Request for Cooperation and (ii) requested that a status conference be convened and the authorities of the DRC invited to present their observations on the Request for Cooperation;

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 »⁸ issued on 17 May 2011 whereby the Single Judge rejected the Defence's request to have a status conference convened and invited the authorities of the DRC to submit their observations on the Request for Cooperation by 27 May 2011;

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) »⁹ filed on 27 May 2011 and 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) »¹⁰ filed on 30 May 2011, whereby the Registrar notified the Chamber that a note verbale had been received from the authorities of the DRC on 27 May 2011, attaching the letter of referral to the Court of the situation in the DRC dated 3 March 2004 from the President of the DRC to the Prosecutor (“Letter of Referral”) and indicating that this was « le document pertinent qui justifie le renvoi de la situation en

⁷ ICC-01/04-01/10-153-Conf-Exp.

⁸ ICC-01/04-01/10-157-Conf-Exp.

⁹ ICC-01/04-01/10-203-Conf-Exp.

¹⁰ ICC-01/04-01/10-204-Conf-Exp.

République Démocratique de Congo à la Cour pénale internationale»¹¹ ("First Response from the DRC");

NOTING the "Second Defence request to convene a status conference for the purpose of obtaining cooperation from the Democratic Republic of the Congo"¹² filed on 7 June 2011 ("Second Defence Request to Convene a Status Conference"), wherein the Defence reiterated its request to have a status conference convened for the purpose of seeking the cooperation of the authorities of the DRC and submitted that the authorities of the DRC should be invited to present at the status conference any additional documentation in their possession which would clarify the scope of the referral or to indicate that they do not have any such documents;

NOTING the « Décision sur la Deuxième 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 précisions »¹³ issued on 17 June 2011, whereby the Single Judge rejected the Second Defence Request to Convene a Status Conference and invited the authorities of the DRC to clarify whether the Letter of Referral is the only document in their possession relevant to the Request for Cooperation by 1 July 2011;

NOTING the « Rapport complémentaire du Greffe quant à l'exécution de la demande de la Chambre du 17 juin 2011 »¹⁴ filed on 6 July 2011, whereby the Registrar transmitted to the Chamber a note verbale received on 4 July 2011 from the authorities of the DRC confirming that the Letter of Referral referred the

¹¹ ICC-01/04-01/10-204-Conf-Exp-Anx1.

¹² ICC-01/04-01/10-219-Conf-Exp.

¹³ ICC-01/04-01/10-240-Conf-Exp.

¹⁴ ICC-01/04-01/10-269-Conf-Exp.

situation in the DRC to the Court with respect to crimes within its jurisdiction committed across the territory of the DRC from 1 July 2002 ("Second Response from the DRC");

NOTING the "Third Defence request to convene a status conference for the purpose of State Cooperation from the Democratic Republic of the Congo"¹⁵ filed on the 6 July 2011 ("Defence Request"), wherein the Defence requested, for the third time, that a status conference be convened for the purpose of questioning a competent representative of the authorities of the DRC, with a view to clarifying the true scope of the referral, or, in the alternative, that the Chamber draw the inference that the DRC retains relevant documentation "testifying to an agreement with the OTP that, for the purpose of the referral, OTP investigations would be confined to the Ituri region alone" and make a finding of non-cooperation by the authorities of the DRC pursuant to article 87(7) of the Statute;

NOTING articles 13, 14, 57(3)(b), 86, 87, 93 and 96 of the Statute and rule 116 of the Rules of Procedure and Evidence;

CONSIDERING that the Single Judge has already requested that the authorities of the DRC cooperate with respect to the transmission of "any contemporaneous documentation or record of meetings with the OTP retained by the DRC authorities which may shed light on the scope of the referral";¹⁶

CONSIDERING that the Single Judge has already invited the authorities of the DRC to specify whether the Letter of Referral is the only document in their possession relevant to the Request for Cooperation, which is the information the

¹⁵ ICC-01/04-01/10-270-Conf-Exp.

¹⁶ ICC-01/04-01/10-56-Conf-Exp.

Defence seeks to obtain by means of a status conference convened with the participation of the authorities of the DRC;¹⁷

CONSIDERING that the authorities of the DRC have responded to the Chamber's Request for Cooperation to the effect that the relevant document is the Letter of Referral¹⁸ and have reiterated the terms of this letter in clarifying its scope¹⁹;

CONSIDERING that the Chamber has no basis to infer that the authorities of the DRC retain relevant documentation which may shed light on the scope of the referral of the situation in the DRC;

CONSIDERING that, in view of the First Response of the DRC and the Second Response of the DRC, the convening of a status conference with the participation of a representative of the authorities of the DRC would not serve any fruitful purpose;

FOR THESE REASONS,

REJECTS the Defence Request.

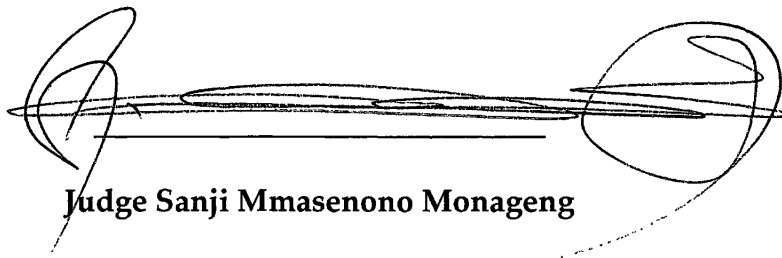
Done in English and French, the English version being authoritative.

¹⁷ ICC-01/04-01/10-240-Conf-Exp.

¹⁸ ICC-01/04-01/10-204-Conf-Exp-Anx1.


¹⁹ ICC-01/04-01/10-269-Conf-Exp-Anx1.

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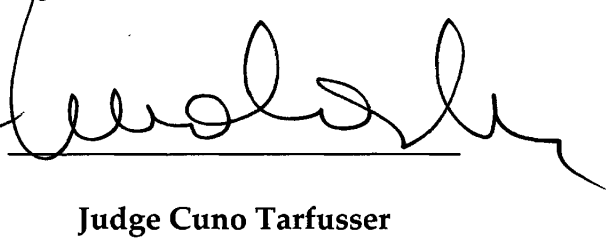


Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner



Judge Cuno Tarfusser

Dated this Wednesday, 13 July 2011

At The Hague, The Netherlands