

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 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

**Decision on the "Defence request for a status conference to determine the
admissibility of two categories of evidence on which the Prosecution intends to
rely at 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

Counsel for the Defence

Mr. Nicholas Kaufman

Ms. Yaël Vias-Gvirsman

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**

I, Judge Cuno Tarfusser, 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* in the absence of Judge Sanji Mmasenono Monageng¹;

NOTING the “Defence request for a status conference to determine the admissibility of two categories of evidence on which the Prosecution intends to rely at the confirmation hearing”² filed on 19 July 2011 (“Defence Request”), whereby the Defence requested that a short status conference be convened to allow it to challenge the admissibility of (i) all materials seized from Mr. Mbarushimana’s house at the time of his arrest and (ii) all contents and records of communications intercepted by the French and German authorities, on which the Prosecutor intends to rely at the confirmation hearing;

NOTING the “Prosecution’s response to the Defence request for a status conference ICC-01/04-01/10-289”³ filed on 26 July 2011 (“Prosecutor’s Response”), whereby the Prosecutor submitted that the Defence Request should be rejected and requested that the Defence be directed to submit any challenge to the admissibility of the evidence in writing;

NOTING article 69 of the Rome Statute, rule 64(1) of the Rules of Procedure and Evidence (“Rules”) and regulation 23 *bis* of the Regulations of the Court (“Regulations”);

¹ ICC-01/04-583.

² ICC-01/04-01/10-289.

³ ICC-01/04-01/10-315-Conf.

CONSIDERING rule 64 of the Rules, which states that “[a]n issue relating to relevance or admissibility of evidence must be raised at the time when the evidence is submitted to a Chamber” and that “[t]he Chamber may request that the issue be raised in writing”;

CONSIDERING the proximity of the hearing of the confirmation of charges, scheduled to begin on 17 August 2011;

CONSIDERING that, in view of the details of the envisaged challenge provided in the Defence Request, it is neither necessary nor appropriate, at this stage in the proceedings, to convene a status conference for the purpose of hearing an oral challenge to the admissibility of the categories of evidence outlined above;

CONSIDERING that, given the time available for the hearing of the confirmation of charges and the need to ensure that proceedings are conducted in an expeditious manner, it is appropriate that any procedural challenge and thus also the possible challenge to the admissibility of the two categories of evidence, identified in the Defence Request, be raised by way of written submission, sufficiently in advance to allow the Prosecutor to respond and to enable the Chamber to deal with all these matters before the commencement of the hearing on the confirmation of charges;

CONSIDERING that the Prosecutor has not identified the factual or legal basis, required by regulation 23 *bis* of the Regulations, for the filing of the Prosecutor’s Response as confidential;

FOR THESE REASONS,

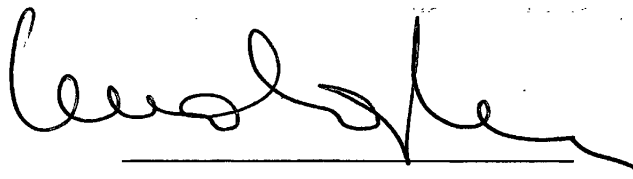
REJECT the Defence Request;

ORDER the Defence to file a challenge to the admissibility of the materials seized from Mr. Mbarushimana's house at the time of his arrest and/or the contents and records of communications intercepted by the French and German authorities, if it wishes to raise such a challenge, by 3 August 2011;

ORDER the Prosecutor to file his response to the challenge raised by the Defence, if such a challenge is raised, by 10 August 2011; and

ORDER the Registrar to re-classify the Prosecutor's Response as a public document.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser

Single Judge

Dated this Wednesday, 27 July 2011

At The Hague, The Netherlands