

**Cour  
Pénale  
Internationale**

No.: ICC-01/04

**International  
Criminal  
Court**

Date: 5 october 2005

Original: English

**PRE-TRIAL CHAMBER I**

**Before:** Judge Claude Jorda, Presiding Judge  
Judge Akua Kuenyehia  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN DEMOCRATIC REPUBLIC OF CONGO**

**Public Redacted Version**

**DECISION TO HOLD CONSULTATION**

**The Office of the Prosecutor**

Mr. Luis Moreno-Ocampo

Ms. Fatou Bensouda

Mr. Ekkehard Withopf

Ms. Lyne Décarie

**Counsel for Defence**

Mr. Tjarda van der Spoel

No.: ICC-01/04

5 october 2005

**PRE-TRIAL CHAMBER I** of the International Criminal Court (the “Court”);

**NOTING** the Prosecutor’s Request for Measures under Article 56 filed on 19 April 2005 (the “Prosecutor’s Request”);

**NOTING** the Decision to hold Consultation under Rule 114 issued by Pre-Trial Chamber I on 21 April 2005 (the “Decision to Hold Consultation”);

**NOTING** the Decision on the Prosecutor's Request for Measures under Article 56 issued by Pre-Trial Chamber I on 26 April 2005 (the “Decision”);

**NOTING** the “Report of the Netherlands Forensic Institute (2005.05.02.089)” filed on 4 August 2005 (the “NFI Report”);

**NOTING** the *Ad hoc* Defence Counsel’s Submission pursuant to the Decision of Pre-Trial Chamber I on the Prosecutor’s Request for Measures under Article 56 of the Rome Statute of the International Criminal Court (the “*Ad hoc* Counsel for the Defence’s Submission”) filed on 22 August 2005;

**NOTING** the Prosecution’s Observations on the NFI 28 July 2005 Forensic Report (the “Prosecution’s Observations”) filed on 23 August 2005;

**NOTING** the Submission of the NFI Correspondence of 20 September 2005 (the “NFI Correspondence”) filed on 29 September 2005;

**NOTING** article 56 of the Rome Statute (the “Statute”) and rule 114 (1) of the Rules of Procedure and Evidence (the “Rules”);

**CONSIDERING** that the Prosecution previously assured Pre-Trial Chamber I that it would not be involved in the forensic examinations performed by the NFI<sup>1</sup>, and now the Prosecution requests the Chamber “to allow the Prosecution’s Forensic Expert [to have] access to the items as detailed in paragraph 9 and [examine] them”;<sup>2</sup>

**CONSIDERING** that the Prosecution requests the NFI REDACTED;<sup>3</sup> and that the NFI has responded that REDACTED;<sup>4</sup>

**CONSIDERING** that the Prosecution submits that a significant part of the NFI Report was written in Dutch;<sup>5</sup> that some portions of the report are handwritten and are not legible;<sup>6</sup> and that “in light of the particularities of the NFI Report, the Prosecution is not in a position to at this stage provide the Pre-Trial Chamber or the NFI with a full set of observations and questions”<sup>7</sup>;

**CONSIDERING** that the NFI states that “the Expert report has been made fully available to the Registrar, in one of the working languages of the Court, English”<sup>8</sup>; and that only the forms, which the investigators filled in order to ensure the quality of the research, are written in Dutch<sup>9</sup>;

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<sup>1</sup> The Decision, paragraph 3.

<sup>2</sup> The Prosecution’s Observations, paragraph 10 (iv).

<sup>3</sup> REDACTED.

<sup>4</sup> REDACTED.

<sup>5</sup> The Prosecution’s Observations, paragraph 3.

<sup>6</sup> The Prosecution’s Observations, paragraph 3.

<sup>7</sup> The Prosecution’s Observations, paragraph 6.

<sup>8</sup> The NFI’s Correspondence, page 2.

<sup>9</sup> The NFI’s Correspondence, page 2.

**CONSIDERING** that indeed pages 131 to 317 (inclusive) of the document entitled "Report of the Netherlands Forensic Institute (2005.05.02.089)" are written in Dutch and some portions are handwritten;

**FOR THESE REASONS,**

**DECIDES** to convene consultation with the Prosecution and the *ad hoc* Counsel for the Defence in closed session on Tuesday 11 October 2005 at 2.30 p.m. in Courtroom I;

**SETS** the following agenda for the said hearing:

1. The Prosecution's request for the involvement of the Prosecution's Forensic Expert and the measures to be taken, if any, to protect the general interests of the defence;
2. The Prosecution's request REDACTED; and
3. The schedule to be followed to complete the NFI's forensic examination related activities.

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



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Judge Claude Jorda  
Presiding Judge



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Judge Akua Kuenyehia



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Judge Sylvia Steiner

Dated this Wednesday, 5 October 2005

At The Hague

The Netherlands.