



Original: **French**

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

Date: **17 May 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 Defence***

**Decision on the Defence request to convene a status conference and requesting  
the Democratic Republic of the Congo to submit observations**

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 the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

Competent authorities of the Democratic  
Republic of the Congo

## **REGISTRY**

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**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 the case of *The Prosecutor v. Callixte Mbarushimana*;<sup>1</sup>

**NOTING** the *Decision on the Defence’s request for State cooperation from the Democratic Republic of the Congo* issued on 15 February 2011 (“the 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 authorities which may shed light on the scope of the referral of the situation in the DRC to the Court; and (ii) requesting the DRC authorities to consult with the Chamber without delay if they identify problems which may impede or prevent the execution of the Cooperation Request;<sup>2</sup>

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

**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* of 3 May

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<sup>1</sup> Oral decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-FRA, p. 12, lines 17-18.

<sup>2</sup> ICC-01/04-01/10-56-Conf-Exp.

<sup>3</sup> ICC-01/04-01/10-123-Conf-Exp.

2011, inviting the DRC to submit its observations on the Cooperation Request by Wednesday 11 May 2011;<sup>4</sup>

**NOTING** the “*Rapport du Greffe quant à l’exécution de la demande de la Chambre du 3 mai 2011*”, in which the Registry notes that the Congolese authorities stated that on account of internal procedures they needed more time to respond to the Cooperation Request, but were unable to give a precise timeframe;<sup>5</sup>

**NOTING** the “Defence request to convene a status conference” of 15 May 2011, in which the Defence requests that a status conference be convened at which the DRC would be invited to submit its observations on the Cooperation Request;<sup>6</sup>

**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;

**CONSIDERING**, in the light of the Congolese authorities’ response, that there is no information to suggest that a status conference would enable the objectives of the Cooperation Request to be achieved;

**CONSIDERING** that the lack of response from the DRC to the Cooperation Request allows the Chamber to make a finding to that effect and refer the matter to the Assembly of States Parties pursuant to article 87(7) of the Statute;

**CONSIDERING** further that, before making a finding in accordance with article 87(7) of the Statute that a State Party has failed to comply with a cooperation request, the Chamber shall hear from the requested State pursuant to regulation 109(3) of the Regulations of the Court;

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<sup>4</sup> ICC-01/04-01/10-132-Conf-Exp.

<sup>5</sup> ICC-01/04-01/10-132-Conf-Exp.

<sup>6</sup> ICC-01/04-01/10-153-Conf-Exp.

**CONSIDERING**, in light of the fact that the DRC has already had several opportunities to submit its observations and that the confirmation hearing is due to commence on 4 July 2011, that it is appropriate to grant a final, brief extension of time to enable the Congolese authorities to comply with the Cooperation Request, before the Chamber acts pursuant to article 87(7) of the Statute;

**FOR THESE REASONS**

**REJECT** the Defence request to convene a status conference;

**INVITE** the Democratic Republic of the Congo to submit its observations on the Cooperation Request by Friday 27 May 2011;

**ORDER** the Registrar to transmit this decision and a copy of the Cooperation Request to the competent DRC authorities through the appropriate communication channels;

**RECALL** that the Democratic Republic of the Congo must keep confidential this decision, the Cooperation Request and its supporting documentation, save for where their disclosure is necessary for execution of the Cooperation Request.

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

**[signed]**

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**Judge Sanji Mmasenono Monageng**  
**Single Judge**

Dated this 17 May 2011

At The Hague, The Netherlands