

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15/05/2011**

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 only

Defence Request to Convene a Status Conference

Source: Defence for Mr. Callixte Mbarushimana

Document 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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

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

Mr. Xavier-Jean Keïta

States' Representatives

Amicus Curiae

The Democratic Republic of the Congo

REGISTRY

Registrar

Defence Support Section

Ms. Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Section**

1. On 15 February 2011, Her Honour Judge Sanji Mmasenono Monageng rendered her *"Decision on the Defence's request for State cooperation from the Democratic Republic of the Congo"*.¹

2. The Defence request for State cooperation is grounded in the submission that, at or about the time of State referral,² the Democratic Republic of the Congo ("DRC") and the Office of the Prosecutor ("OTP") jointly envisaged the investigation of crimes in the Ituri region alone. Put otherwise, the Defence asserts that the DRC authorities have never truly relinquished their prerogative³ to investigate war crimes or crimes against humanity committed in the Kivus by any party – whether Government affiliated or otherwise.

3. In her decision on the matter, the Single Judge sought the cooperation of the DRC regarding 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"* of the DRC situation to the ICC.

4. On 27 April 2011, in the absence of a response from the DRC, the Defence filed its request for the compliance of the DRC with ICC-01/04-01/10-56-Conf-Exp.⁴

5. On 3 May 2011, His Honour Judge Cuno Tarfusser reissued the invitation to the DRC authorities to present their observations on the Defence Request for State Cooperation by 13 May 2011 at the latest.⁵

6. On 13 May 2011, the Registrar notified the Court as follows:

¹ ICC-01/04-01/10-56-Conf-Exp.

² 3 March 2004.

³ Most pertinently, the DRC was never specifically invited to exercise such a prerogative by way of a letter pursuant to Article 18(1) of the Rome Statute.

⁴ ICC-01/04-01/10-123-Conf-Exp.

⁵ ICC-01/04-01/10-132-Conf-Exp.

"Le 13 mai 2011, le Greffe s'est enquis auprès des autorités congolaises de l'absence de réponse reçue.

Les autorités congolaises ont indiqué qu'en raison de procédures internes, elles avaient besoin de plus de temps pour répondre sans pouvoir indiquer d'échéance précise".⁶

7. The Defence notes that the DRC authorities do not deny the existence of the information sought. The Defence further notes that the DRC authorities have not specifically identified any potential problem in executing the Defence request for State cooperation nor have they cited national security considerations as a reason for preventing the production of the requested material.

8. The Defence stresses that the observations of the DRC on the Defence request for State cooperation are essential for the effective defence of Mr. Mbarushimana. In the circumstances, therefore, the failure of the DRC authorities to provide a time estimate for the provision of their observations is not conducive to the fair and expeditious conduct of the proceedings.

9. In light of all the aforementioned, the learned Single Judge is requested to convene a status conference at which the DRC authorities will be invited to present their observations on the Defence request for State cooperation.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Sunday, May 15, 2011

⁶ ICC-01/04-01/10-152-Conf-Exp.