

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 August 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**

Public

**Decision on Prosecution's application to bar the testimony of a Defence expert if
essential documentation is not provided**

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, Prosecutor
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Anton Steynberg, Senior Trial Lawyer

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 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 Sanji Mmasenono Monageng, the Single Judge of Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;¹

NOTING the “Defence List of Evidence”, filed on 1 August 2011,² wherein the Defence indicated they will be seeking to rely on an expert report prepared by Dr Phil Clark;

NOTING the “Order requesting the parties to submit views and proposals on the schedule of the confirmation hearing”, issued by the Single Judge on 2 August 2011,³

NOTING the “Defence response to the order requesting views and proposals on the schedule for the confirmation hearing”, filed on 4 August 2011 (“Defence Views Filing”),⁴ wherein the Defence indicated they will not present *viva voce* evidence;⁵

NOTING the “Prosecution’s views and proposals on the schedule of the confirmation hearing and application to bar the testimony of a Defence expert if essential documentation is not provided”, filed on 4 August 2011 (“Prosecution Views Filing”),⁶ whereby the Prosecutor *inter alia*: (i) objects to the failure by the Defence to permit the Prosecution inspection of the evidence relied upon in the report of its expert witness, Dr. Phil Clark (“Clark Report”),⁷ (ii) requests that the Defence be ordered to disclose all evidence relied upon by Dr. Clark, which is not on the Prosecution List of Evidence no later than 16:00 on 5 August 2011 if Dr. Clark is

¹ Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p.11

² ICC-01/04-01/10-322, with confidential Annex A.

³ ICC-01/04-01/10-326.

⁴ ICC-01/04-01/10-334.

⁵ *Ibid.*, para. 2.

⁶ ICC-01/04-01/10-335.

⁷ *Ibid.*, para. 2.

to testify or have his report presented at the confirmation hearing⁸ and (iii) further requests disclosure of a copy of Dr. Clark's unpublished book *Doing Justice during Conflict: The International Criminal Court in the Democratic Republic of Congo and Uganda* ("Unpublished Book");⁹

NOTING the "Defence response to Prosecution filing: ICC-01/04-01/10-335", filed on 5 August 2011 ("Response"),¹⁰ wherein the Defence: (i) submits that all essential documents referenced in the Clark Report are accessible on the internet and offers to assist the Prosecutor in finding said documents¹¹ and (ii) notes that Dr. Clark was not amenable to disclosing the Unpublished Book because the book was still in draft form;¹²

NOTING Rules 78 and 122(3) of the Rules of Procedure and Evidence ("Rules"), and regulation 44 of the Regulations of the Court;

CONSIDERING that the Defence has already made efforts to comply with the Prosecutor's disclosure requests;

CONSIDERING that the objections raised in the Prosecution Views Filing are moot in view of the Defence offer to assist the Prosecutor in obtaining the requested materials;

CONSIDERING Dr Clark's legitimate concerns about the disclosure of a copy of a draft of the Unpublished Book;

⁸ *Ibid.*, para. 3.

⁹ *Ibid.*

¹⁰ ICC-01/04-01/10-338.

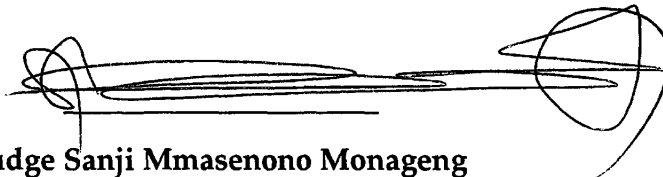
¹¹ *Ibid.*, para. 2.

¹² *Ibid.*, para. 3.

FOR THESE REASONS,

REJECT the Prosecution requests.

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this Friday, 5 August 2011

At The Hague, The Netherlands