

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 12 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 Document

Decision on the schedule of 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, 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

Me Hervé Diakiese
 Me Mayombo Kassongo
 Me Ghislain Mabanga

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 "Decision on the Prosecution's request for the postponement of the confirmation hearing", issued on 31 May 2011, whereby the Chamber decided to postpone the commencement of the hearing on the confirmation of the charges to 17 August 2011 and its end no later than Wednesday, 24 August 2011;²

NOTING the "Prosecution's document containing the charges and List of Evidence submitted pursuant to Article 61(3) and Rule 121(3)", filed by the Prosecution on 15 July 2011;³

NOTING the "Defence List of Evidence", filed by the Defence on 1 August 2011;⁴

NOTING the "Order requesting the parties to submit views and proposals on the schedule of the confirmation hearing", issued on 2 August 2011, whereby the Single Judge ordered the Defence and the Prosecution to submit their views and proposals on the schedule of the confirmation hearing and, in particular, to detail (i) whether they intend to raise objections or make observations with respect to issues related to the proper conduct of the proceedings, pursuant to rule 122(3) of the Rules of Procedure and Evidence ("Rules"), (ii) whether they intend to hear *viva voce*

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

² ICC-01/04-01/10-207.

³ ICC-01/04-01/10-287 with Annexes (On 25 July 2011, the Prosecution filed, pursuant to the "Decision on the 'Defence request to exclude the Prosecution's amended document containing the charges and amended list of evidence'", ICC-01/04-01/10-306, issued on 22 July 2011, the "Re-filing of the Prosecution's Document Containing the Charges and List of Evidence submitted pursuant to Article 61(3) and Rule 121(3)", ICC-01/04-01/10-311 with Annexes).

⁴ ICC-01/04-01/10-322 with Annex.

witnesses, (iii) the estimate of the time required for the presentation of their arguments on the merits and the questioning of witnesses;⁵

NOTING the “Defence response to the order requesting views and proposals on the schedule for the confirmation hearing”, filed on 4 August 2011, wherein the Defence (i) submits that it intends to raise at the confirmation hearing, pursuant to rule 122(3) of the Rules, *inter alia*, the issue of lack of specificity of the document containing the charges (“DCC”),⁶ (ii) submits that it will not present *viva voce* evidence (indicating, however, that it may call an expert witness, subject to the Chamber’s decision and the expert’s availability), (iii) indicates that it intends to rely on written witness statements and the report of its expert witness (“expert report”), Dr Phil Clark, and (iv) estimates that it would need two days to present its arguments on the merits;⁷

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, wherein the Prosecution *inter alia*: (i) submits that it does not intend to call *viva voce* witnesses, (ii) estimates that the time required for the presentation of its arguments on the merits, including opening and closing statements, will not exceed 9 hours, (iii) submits that it reserves the right to respond to any objections raised or observations made by the Defence pursuant to rule 122(3) of the Rules, and (iv) indicates that it intends to present visual aids “as explanatory aids to the Prosecution’s oral presentation”;⁸

⁵ ICC-01/04-01/10-326.

⁶ See “Decision on the ‘Defence request to exclude the Prosecution’s amended document containing the charges and amended list of evidence’”, ICC-01/04-01/10-306, issued on 22 July 2011 whereby Single Judge Tarfusser decided that the Defence’s request that certain portions of the DCC should be altered or struck out due to lack of specificity “pertains to issues which may be raised during the confirmation hearing and that it would be more appropriate to deal with it during the confirmation hearing” (see also “Defence request to strike out portions of the document containing the charges for lack of specificity”, ICC-01/04-01/10-305, filed on 22 July 2011).

⁷ ICC-01/04-01/10-334.

⁸ ICC-01/04-01/10-335, with respect to which the Defence filed on 5 August 2011 the “Defence response to Prosecution filing: ICC-01/04-01/10-335”, ICC-01/04-01/10-338.

NOTING the “Decision on the 138 applications for victims’ participation in the proceedings” (“Decision on applications for victims’ participation”), issued by the Single Judge on 11 August 2011;⁹

NOTING articles 61, 67, 68 and 69 of the Rome Statute, rules 63, 121 and 122 of the Rules, regulation 20 of the Regulations of the Court and regulation 64(1) of the Regulations of the Registry;

CONSIDERING the discretion with which the Presiding Judge is endowed pursuant to rule 122(1) of the Rules, which provides that “[t]he Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented”;

CONSIDERING that the Defence has challenged the jurisdiction of the Court¹⁰ and that a Chamber’s decision on the matter is pending, and that, therefore, no submissions on this issue shall be made at the confirmation hearing;

CONSIDERING that, in response to the Single Judge’s order to submit whether they intended to raise objections or make observations at the confirmation hearing with respect to issues related to the proper conduct of the proceedings, pursuant to rule 122(3) of the Rules, the Defence submitted that it intended to raise the issue of the alleged lack of specificity of the DCC and other issues relating to the form of the DCC, while the Prosecution confined itself to the submission that it reserved its right to respond to any such objections raised or observations made by the Defence;

⁹ ICC-01/04-01/10-351.

¹⁰ “Defence Challenge to the Jurisdiction of the Court”, ICC-01/04-01/10-290, filed on 19 July 2011 (pursuant to the Chamber’s decision ICC-01/04-01/10-293 dated 20 July 2011, whereby this document was reclassified public).

CONSIDERING, accordingly, the limited scope of the objections and the observations which the Defence indicated that it intended to raise and make respectively, the Single Judge is of the view that 30 minutes shall be a sufficient amount of time for the discussion of the Defence's relevant submissions and the Prosecution's response;

CONSIDERING that the Prosecution indicated that it would not need more than 9 hours to present its evidence on the merits, including opening and closing statements;

CONSIDERING that while the Defence requested two days to present its evidence on the merits, it did not indicate whether it intended to make opening and closing statements;

CONSIDERING the nature and the purpose of opening and closing statements, as well as that the crucial part of the confirmation hearing is the one where the parties will have the opportunity to present their arguments and respond to the other party's submissions, the Single Judge is of the view that both the Prosecution and the Defence shall be allotted 20 minutes for each of these statements;

CONSIDERING that the Prosecution indicated its intention to present at the confirmation hearing visual aids with a view to explaining and facilitating the understanding of its oral submissions;

CONSIDERING that both the Defence and the Prosecution submitted that they did not intend to rely on *viva voce* witnesses at the confirmation hearing;

CONSIDERING that in view of the limited scope and nature of the confirmation hearing, as well as the need to ensure that the proceedings are conducted in an expeditious and effective manner, the confirmation hearing shall end no later than Friday, 19 August 2011;

CONSIDERING that, in view of Dr Phil Clark's, the Defence's expert witness, limited availability due to his "tight travel schedule"¹¹ and the fact that, in any event, the expert report on which the Defence intends to rely at the confirmation hearing is available to the Chamber, the Single Judge is of the view that Dr Phil Clark's testimony, as *viva voce* witness, does not appear necessary for the purposes of the confirmation hearing;

CONSIDERING that, consistent with regulation 64(1) of the Regulations of the Registry, in cases where three sessions are going to be held per day, each session shall not last more than one hour and a half with at least one break of one hour and a half between the second and the third session;

CONSIDERING that, in accordance with the Decision on applications for victims' participation, the Legal Representatives of the Victims are authorised to make opening and closing statements at the confirmation hearing, and that they shall have 20 minutes for each of these statements;

CONSIDERING that the Single Judge is of the view that the parties and the participants to the present case shall be allowed to submit, after the conclusion of the hearing on the confirmation of the charges, their written submissions in relation to issues discussed during the confirmation hearing;

¹¹ ICC-01/04-01/10-334, fn 4.

CONSIDERING it appropriate that, in order to ensure that the proceedings are conducted in an effective and efficient manner, in the event that a party does not use the time allotted in accordance with the schedule attached to the present decision, the Chamber may decide to reschedule the commencement of a presentation, even if not scheduled for that same day, and that, therefore, the parties are expected to be flexible and prepared at all times;

CONSIDERING that the present decision is taken without prejudice to modifications to be made to the schedule in due time if need be;

FOR THESE REASONS,

DECIDE that the hearing on the confirmation of the charges shall commence on Wednesday, 17 August 2011 at 09.30 hours and end no later than Friday, 19 August 2011 and be held in public in Courtroom II and conducted in accordance with the schedule set forth in Annex I to the present decision;

DECIDE that the parties and the participants shall comply with the timelines set in the schedule annexed to the present decision;

DECIDE that the Chamber shall not hear the Defence's expert witness *viva voce*;

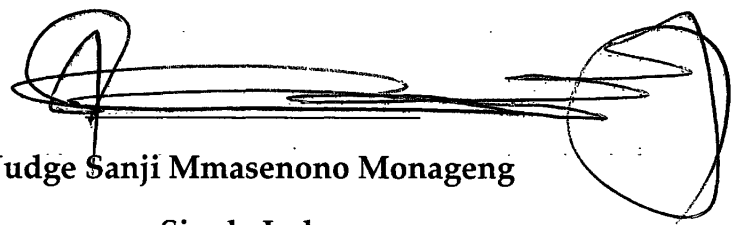
DECIDE that the Prosecution, the Legal Representatives of the Victims and the Defence shall be entitled to submit after the conclusion of the hearing, their written submissions in relation to issues discussed during the confirmation hearing within a time limit to be set by the Chamber;

INSTRUCT the Legal Representatives of the Victims to consider and decide in consultation with one another how to use the time allocated to them;

ORDER the Registry to make all the arrangements necessary for the Prosecution to use the visual means required to present its visual aids; and

DECIDE that photographers shall be authorised to take pictures at the beginning of the confirmation hearing and that they shall have 1 minute to do so.

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



Judge Sanji Mmasenono Monageng

Single Judge

Dated this Friday, 12 August 2011

At The Hague, The Netherlands