

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 15 August 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. Callixte MBARUSHIMANA

Public Document

Prosecution's response to urgent
"Defence request for a hearing pursuant to rule 58(2) of the Rules of Procedure and
Evidence"

Source: The Office of the Prosecutor

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

Nicholas Kaufman

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**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Ms. Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Defence has submitted an urgent request for an evidentiary hearing next week, pursuant to Rule 58(2), in which it would question a representative of the Office of the Prosecutor (OTP) relating to the pending Defence challenge to the jurisdiction of the Court.¹ The Defence adds that the Chamber has yet to rule on its request to hear *viva voce* evidence on “two factual issues” (emphasis in original) alleged to be central to the Prosecution’s argument in favour of jurisdiction.²

2. The Prosecution opposes the request. Contrary to the Defence submission,³ it is not central to the Prosecution’s position that the OTP engaged in referral negotiations, much less that it interpreted those negotiations in any particular way. Absent ambiguity, the language in the DRC’s referral and its subsequent actions speak for themselves. The OTP’s view at the time is irrelevant, and an evidentiary hearing to question an OTP representative to explore how the OTP “viewed” or “understood”⁴ the DRC’s referral would be a waste of Court time and resources. Furthermore, the facts surrounding the referral are fully addressed by evidence already on record.⁵

3. The Prosecution also notes that the Defence Request intends to inquire into an issue that it did not raise either in its original challenge⁶ or in its previous request for *viva voce* evidence -- namely whether the Prosecution or the DRC had identified, at the time of referral “a situation in the Kivus DRC where a crime under the Rome Statute had occurred or was ongoing” (emphasis in original). For this reason as well, the request ought to be dismissed.

¹ ICC-01/04-01/10-365

² This request was made, improperly the Prosecution submits, in the Defence request for leave to reply, see ICC-01/04-01/10-323.

³ Defence Request, para. 3

⁴ Defence Request, para. 3(a), (b).

⁵ See ICC-01/04-01/10-320, paras. 6 – 9, 46, 48 and 49; ICC-01/04-01/10-290-AnxA.

⁶ ICC-01/04-01/10-290, paras. 9 – 12.



Luis Moreno-Ocampo, Prosecutor

Dated this 15^h day of August 2011

At The Hague, The Netherlands