

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 08 November 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 "Prosecution's Application to File Additional Authority"

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

Counsel for the Defence

Mr. Nicholas Kaufman
Ms. Yaël Vias-Gvirsman

Legal Representatives of Victims

Mr. Mayombo Kassongo
Mr. Ghislain Mabanga

Legal Representatives of 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

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Others**

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

NOTING the “Prosecution’s Application to File Additional Authority”² (“Prosecution’s Request”) filed on 1 November 2011, whereby the Prosecution requested leave to file an official legal opinion of the *Procuración General de la Nación* of the Argentine Republic (“Additional Authority”) which the Prosecution views as relevant to the issue of cumulative charging, an issue which was raised during the confirmation hearing held from 16 to 21 September 2011 and addressed in the “Prosecution’s written submissions on the confirmation of charges”³ filed on 6 October 2011;

NOTING the “Defence Response to Prosecution’s Application to File Additional Authority”⁴ filed on 3 November 2011, wherein the Defence argued *inter alia* that (i) the issue of cumulative charging has been amply litigated at the confirmation hearing and (ii) the Additional Authority does not meet the standard required for applicable law under article 21(1)(c) of the Rome Statute (“Statute”);

NOTING article 21 of the Statute and regulation 28(1) of the Regulations of the Court (“Regulations”);

CONSIDERING that the deadline set during the confirmation hearing for the submission of the Prosecution’s final written observations expired on 6 October 2011;⁵

CONSIDERING the Appeals Chamber judgment of 27 May 2008, wherein the Appeals Chamber found that “a Chamber may act pursuant to regulation 28 of the Regulations upon request or upon its own motion”⁶ and that supplementary material may be

¹ ICC-01/04-01/10-192.

² ICC-01/04-01/10-453.

³ ICC-01/04-01/10-448-Red, pp.17-20.

⁴ ICC-01/04-01/10-454.

⁵ ICC-01/04-01/10-T-6-CONF-ENG, at page 57.

⁶ Appeals Chamber, “Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-trial Chamber I entitled ‘Decision on the Defence Request Concerning Languages’”, ICC-01/04-01/07-522, at para.

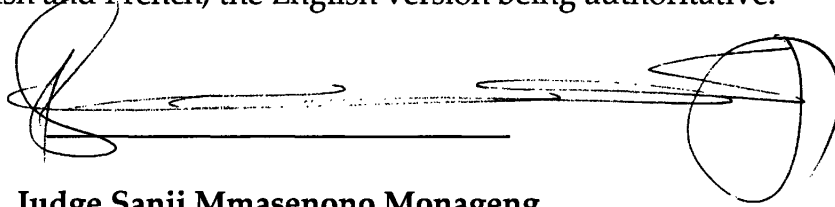
submitted pursuant to regulation 28 of the Regulations when it may be of assistance to the Chamber in deciding on the issue *sub judice*;

CONSIDERING that the issue of cumulative charging was adequately addressed in the submissions of the Prosecution and the submission of the Additional Authority would not be of assistance to the Chamber in its determination of this matter;

FOR THESE REASONS

REJECT the Prosecution's Request.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above the printed name of the judge.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Tuesday, 08 November 2011

At The Hague, The Netherlands

16, citing the "Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-trial Chamber I entitles 'First Decision on the Prosecution Request for Authorisation to redact Witness Statements'" 13 May 2008, ICC-01/04-01/07-476 at para. 18.