



Original: **French**

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

Date: **3 May 2011**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. CALLIXTE MBARUSHIMANA***

Confidential, *ex parte*, only available to the Defence

**Decision on the Defence request for the compliance of the Democratic Republic of
the Congo with Decision ICC-01/04-01/10-56-Conf-Exp**

Decision 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 Yael Vias-Gvirsman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

Competent authorities of the Democratic
Republic of the Congo

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I, Judge Cuno Tarfusser, Single Judge of Pre-Trial Chamber I of the International Criminal Court (“the Chamber” and “the Court” respectively), charged with exercising the Chamber’s functions in the case of *The Prosecutor v. Callixte Mbarushimana* in the absence of Judge Sanji Mmasenono Monageng;¹

NOTING the *Decision on the Defence’s request for State cooperation from the Democratic Republic of the Congo* issued on 15 February 2011 (“Cooperation Request”) (i) seeking the cooperation of the Democratic Republic of the Congo (“DRC”) with respect to 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 [r]eferral” of the situation in the DRC to the Court, and (ii) requesting that the DRC authorities consult with the Chamber without delay if they identify problems which may impede or prevent the execution of the Cooperation Request;²

NOTING the “Defence request for the compliance of the Democratic Republic of the Congo with ICC-01/04-01/10-56-Conf-Exp” of 27 April 2011, in which the Defence (i) notes that it has not been notified of any consultations initiated by the DRC concerning any problems arising from the execution of the Cooperation Request, and (ii) requests, in light of its desire to file a challenge to the Court’s jurisdiction prior to the confirmation hearing, that the Chamber remind the competent DRC authorities of the Cooperation Request and of their cooperation obligations under the Rome Statute (“the Statute”);³

NOTING articles 14, 57(3)(b), 86, 87, 93, 96 and 97 of the Statute and rules 116, 176 and 177 of the Rules of Procedure and Evidence;

NOTING that, in light of the time that has passed since the Cooperation Request and of the scheduling of the confirmation hearing for 4 July 2011, it is appropriate to

¹ ICC-01/04-583.

² ICC-01/04-01/10-56-Conf-Exp.

³ ICC-01/04-01/10-123-Conf-Exp.

determine whether the competent authorities of the DRC are in fact in possession of relevant documentation as requested by the Defence;

FOR THESE REASONS,

INVITE the Democratic Republic of the Congo to submit its observations on the Cooperation Request by Friday, 13 May 2011;

ORDER the Registrar to transmit this decision to the competent DRC authorities together with a copy of the Cooperation Request via the appropriate communication channels;

RECALL that the DRC must maintain the confidentiality of this decision, the Cooperation Request and supporting documentation, except where their disclosure is necessary for the execution of the Cooperation Request.

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

[signed]

Judge Cuno Tarfusser
Single Judge

Dated this 3 May 2011

At The Hague, The Netherlands