

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/10  
Date: 3 September 2012

**PRE-TRIAL CHAMBER II**

**Before:** Judge Ekaterina Trendafilova, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Cuno Tarfusser

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF *THE PROSECUTOR v. CALLIXTE MBARUSHIMANA***

**Public**

**Decision on the “Requête en contestation de deux décisions de la Section à l’appui  
des conseils relatives à l’aide judiciaire”**

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor

**The Defence**

Arthur Vercken

Yael Vias Gvirsman

Philippe Larochelle

**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**

**Other**

**REGISTRY**

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**Registrar & Deputy Registrar**

Silvana Arbia, Registrar

Didier Preira, Deputy Registrar

**Defence Support Section**

Esteban Peralta Losilla

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER II** (the “Chamber”) of the International Criminal Court (the “Court”) issues this decision on the “Requête en contestation de deux décisions de la Section à l’appui des conseils relatives à l’aide judiciaire” ( the “Defence’s Request” or the “Request”) submitted on 26 July 2012 by the Defence for Callixte Mbarushimana (“Mr. Mbarushimana”).<sup>1</sup>

1. On 5 July 2004, the situation in the Democratic Republic of the Congo (the “DRC” ) was assigned to Pre-Trial Chamber I.<sup>2</sup>

2. On 16 December 2011, Pre-Trial Chamber I issued the “Decision on the confirmation of charges” (the “Decision”), whereby it declined, by majority, to confirm the charges against Mr. Mbarushimana.<sup>3</sup>

3. On 15 March 2012, the situation in the DRC was re-assigned to the Chamber.<sup>4</sup>

4. On 30 May 2012, the Appeals Chamber unanimously dismissed the Prosecutor’s appeal and confirmed the Decision.<sup>5</sup>

5. On 26 July 2012, the Defence filed its Request, whereby it contested two decisions taken by the Registry’s Support Section on 15 June 2012 (the “First Contested Decision”)<sup>6</sup> and 27 June 2012 (the “Second Contested Decision”)<sup>7</sup>, respectively denying to bear the cost of a return ticket for one member of the Defence Team and refusing to extend the provision of legal aid beyond 12 June 2012. The Defence requested the Chamber to review both decisions pursuant to regulation 83(4) of the Regulations of the Court (the “Regulations”).

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<sup>1</sup> ICC-01/04-01/10-515-Anxs.

<sup>2</sup> Presidency, “Decision assigning the Situation in the Democratic Republic of Congo to Pre-Trial Chamber I”, ICC-01/04-1.

<sup>3</sup> ICC-01/04-01/10-465-Red.

<sup>4</sup> Presidency, “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations”, 15 March 2012, ICC-01/04-02/06-32.

<sup>5</sup> ICC-01/04-01/10-514.

<sup>6</sup> ICC-01/04-01/10-515-Conf-Exp-AnxA.

<sup>7</sup> ICC-01/04-01/10-515-Conf-Exp-AnxB.

6. On 24 August 2012, the Registry filed the « Observations du Greffier relatives à la 'Requête en contestation de deux décisions de la Section d'appui des conseils relatives à l'aide judiciaire' déposée le 26 juillet 2012 par Maître Arthur Vercken »<sup>8</sup>, in which it argued that the Defence's Request is ill founded and therefore should be rejected.

7. At the outset, the Chamber wishes to highlight that, in accordance with the Appeals Chamber's judgment of 30 May 2012, the Pre-Trial Chamber I's Decision became final, and subject to article 61(8) of the Rome Statute, proceedings related to this case have come to an end. Nonetheless, it is the view of the Chamber, that if there remain procedural matters pertaining to the case, triggered in the course of the proceedings, such as the one *sub judice*, they cannot be left unresolved without judicial intervention from the Chamber, which has been seized of that case.

8. In this respect, the Chamber notes regulations 23 *bis* and 83 of the Regulations and regulation 135 of the Regulations of the Registry (the "RoR").

9. According to regulation 83(4) of the Regulations, decisions taken by the Registrar on the scope of legal assistance paid by the Court "may be reviewed by the relevant Chamber on application by the person receiving legal assistance". Further details on the procedures for review are provided in regulation 135(1) of the RoR which stipulates that "[t]he Registrar shall take a decision on any dispute concerning the calculation and payment of fees or the reimbursement of expenses at the earliest possible juncture and notify counsel accordingly". Paragraph 2 of said regulation also provides that counsel may request the Chamber to review any decision taken under regulation 135(1) "[w]ithin 15 calendar days of notification". Thus, the wording makes it clear that the 15-day time limit applies from the dates of notifying the Counsel of the First Contested and the Second Contested Decisions respectively.

10. Both the First and the Second Contested Decisions qualify as Registry's "decision on the dispute" within the meaning of regulation 135(2) of the RoR.

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<sup>8</sup> ICC-01/04-01/10- 516 and its annexes.

11. The material submitted to the Chamber shows that the Defence's Request for review was filed on 26 July 2012, thus 42 and 30 calendar days respectively, following the issuance and notification of the First and the Second Contested Decisions. Counsel's email to the OPCD dated 3 July 2012<sup>9</sup> cannot be considered as relevant; it is the request to the Chamber which must be filed within the 15-day time limit following the Registrar's decision on the dispute concerning the determination of the fees.

12. Accordingly, the time limit prescribed to file a request for review before the Chamber had already expired at the time of the Defence's filing and the Chamber will therefore not address the merits of the Request.

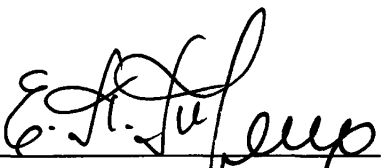
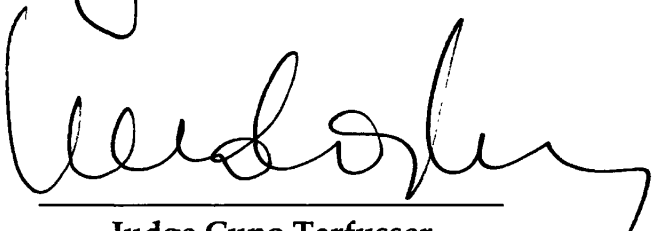
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<sup>9</sup> ICC-01/04-01/10-515-Conf-Exp-AnxC.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**Dismisses** the Defence's Request *in limine*.

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

  
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Judge Ekaterina Trendafilova  
Presiding Judge  
\_\_\_\_\_  
Judge Hans-Peter Kaul  
Judge  
\_\_\_\_\_  
Judge Cuno Tarfusser  
Judge

Dated this Monday, 3 September 2012

At The Hague, The Netherlands