

**Cour
Pénale
Internationale**

No.: ICC-01/04

**International
Criminal
Court**

Date: 26 April 2005

Original: English

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

Decision on the Prosecutor's Request for Measures under Article 56

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

Ms Lyne Decarie

No.: ICC-01/04

PRE-TRIAL CHAMBER I of the International Criminal Court (the “Court”);

NOTING the “Prosecutor’s Request for Measures under Article 56” (the “Prosecutor’s Request”), filed on 19 April 2005, whereby the Prosecutor informs Pre-Trial Chamber I of the existence of a unique investigative opportunity to carry out forensic examinations and requests the adoption of specific measures to ensure the efficiency and integrity of the proceedings and to protect the rights of the defence;

NOTING the “Decision to Hold a Consultation under Rule 114”¹ issued by Pre-Trial Chamber I on 21 April 2005;

NOTING the discussion, including that related to the appropriateness of the appointment of counsel for the defence, between the Prosecutor and Pre-Trial Chamber I at the consultation held on 21 April 2005 (the “Consultation”);

NOTING article 56, paragraphs 1 (b) and 2;

CONSIDERING that the Prosecutor has given assurances that the Netherlands Forensic Institute (the “NFI”), insofar as it is an independent expert body within the Dutch Ministry of Justice with no connection to the Prosecutor, is in a position to perform an objective, independent and impartial examination in accordance with well-established scientific criteria;

¹ ICC-01/04-18-Conf.

CONSIDERING that the Prosecutor has assured Pre-Trial Chamber I that the NFI is in a position to make an accurate record of the forensic examinations and that it has the authority to give full faith and credit to such examinations;

CONSIDERING that the Prosecutor has assured Pre-Trial Chamber I that his office will not be involved in the forensic examinations performed by the NFI;

CONSIDERING the need to protect the general interests of the defence through the appointment of *ad hoc* counsel for the defence, given the likelihood that the items submitted for the forensic examinations referred to in the "Prosecutor's Request" will not be available at subsequent stages of the proceedings;

FOR THESE REASONS,

DECIDES to authorise the Prosecutor to request the NFI to perform the forensic examinations as detailed in Annex 4 to the "Prosecutor's Request";

DECIDES that the following measures shall be taken:

- (i) A comprehensive record of all the forensic examinations performed and a report on the conclusions of those examinations shall be produced by the NFI; the latter shall be responsible for maintaining the confidentiality of the procedure as a whole;

- (ii) A copy of the record and the report referred to under (i) shall be provided by the NFI to the Registrar;
- (iii) The NFI shall respond in writing, as soon as practicable, to any additional questions and observations submitted by the Prosecutor and/or the *ad hoc* counsel for the defence ;
- (iv) A copy of any additional report responding to the questions and observations referred to under (iii) shall be provided by the NFI to the Registrar;
- (v) The items subject to forensic examination shall be retained by the NFI in its possession until a copy of any additional report produced has been provided to the Registrar as required under (iv);

Therefore, **ORDERS** the Registrar:

- (a) To incorporate any document received from the NFI in the record of the situation of the Democratic Republic of Congo on a confidential basis, and to notify Pre-Trial Chamber I accordingly;
- (b) To appoint an *ad hoc* counsel to represent the general interests of the defence for the purpose of the forensic examinations as soon as the Registrar is in receipt of the documents referred to under (ii);
- (c) To notify the Prosecutor and the *ad hoc* counsel for the defence, as soon as the latter is appointed, that they may submit any written questions and observations concerning the documents referred to under (ii) within a period of fifteen days;

(d) To make available to the *ad hoc* counsel for the defence, the "Prosecutor's Request", the "Decision to Hold a Consultation under Rule 114", the transcripts of the Consultation, and any other documents related to the forensic examinations.

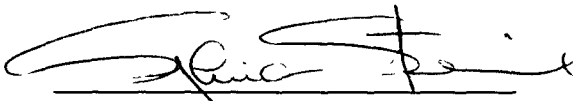
Done in both English and French, the English version being authoritative.



Judge Claude Jorda
Presiding Judge



Judge Akua Kuenyehia



Judge Sylvia Steiner

Dated this Tuesday, 26 April 2005

At The Hague, The Netherlands