

**Cour
Pénale
Internationale**

No.: ICC-01/04

**International
Criminal
Court**

Date: 21 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 Redacted Version

Decision to Hold Consultation under Rule 114

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

Ms Lyne Decarie

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;

NOTING articles 12 and 56 of the Rome Statute (the “Statute”) and rule 114 of the Rules of Procedure and Evidence (the “Rules”);

NOTING the copy of the letter of referral from the President of the Democratic Republic of Congo (the “DRC”), dated 3 March 2004, appended to the Prosecutor’s Request as Annex I, whereby the situation in the DRC since 1 July 2002 is referred to the Prosecutor pursuant to articles 13 (a) and 14 (1) of the Statute;

NOTING that the Prosecutor has determined, pursuant to article 53 (1), that there is a reasonable basis to initiate an investigation into the situation in the DRC¹;

NOTING that the Prosecutor affirms that, in accordance with article 18 (1) of the Statute, on the 22 and 23 June 2004, he sent letters of notification to the States Parties to the Rome Statute as well as to other States which within the terms of such provision could exercise jurisdiction over the crimes concerned²;

¹ Prosecutor’s Request, paragraph 4. See also the Prosecutor’s letter to the President of the Court dated 17 June 2004 appended to the Presidency’s Decision Assigning the Situation in the Democratic Republic of Congo to Pre-Trial Chamber I (ICC-01/04-1).

² Prosecutor’s Request, paragraph 4.

NOTING that the Prosecutor affirms that no information pursuant to article 18 (2) has been received³;

NOTING that the Prosecutor affirms that the "REDACTED incident" took place in the territory of the DRC after 1 July 2002⁴;

NOTING that the Prosecutor affirms that the items referred to in paragraph 7 of the Prosecutor's Request were handed over REDACTED to the Prosecutor on the condition that they would be returned to it within six months or at the latest once the forensic processing was completed⁵;

CONSIDERING that the REDACTED which allegedly occurred in the "REDACTED incident", as described by the Prosecutor, appear *prima facie* to fall under articles 8 (2) (b) REDACTED and 8 (2) (e) REDACTED of the Statute;

CONSIDERING that Pre-Trial Chamber I has *prima facie* jurisdiction to entertain the Prosecutor's Request insofar as it is made in relation to the Prosecutor's investigation of the situation in the DRC after 1 July 2002;

CONSIDERING that the items referred to in paragraph 7 of the Prosecutor's Request may not subsequently be available for the purposes of a trial;

³ Prosecutor's Request, paragraph 4.

⁴ Prosecutor's Request, paragraph 1.

⁵ Prosecutor's Request, paragraph 11.

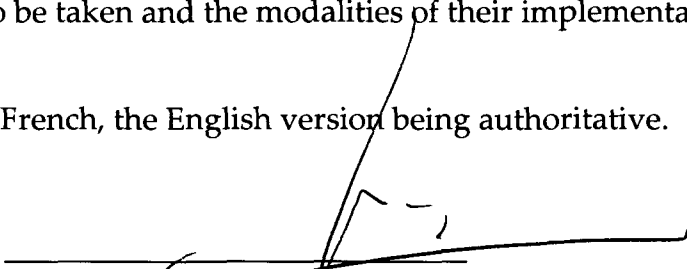
CONSIDERING that there is a unique investigative opportunity within the terms of article 56 (1) (a) of the Statute;

CONSIDERING therefore that, according to rule 114 (1), the Pre-Trial Chamber shall hold consultations without delay with the Prosecutor;

FOR THESE REASONS,

DECIDES to convene an *ex parte* consultation with the Prosecutor to be held by way of a hearing in closed session on 21 April 2005 at 3.30 p.m. in Courtroom I in order to determine the measures to be taken and the modalities of their implementation.

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



Judge Claude Jorda
Presiding Judge



Judge Akua Kuenyehia



Judge Sylvia Steiner

Dated this Thursday, 21 April 2005

At The Hague, The Netherlands.