

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 February 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 request for leave to reply to the "Defence Response to Prosecution's Request for the Review of Potentially Privileged Material"

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

Legal Representatives of Victims

Counsel for the Defence

Mr Nicholas Kaufman

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Others
Section**

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 request for a review of potentially privileged material” (“Prosecution Request”), filed on 14 February 2011², whereby the Prosecutor requested that a number of documents, which he had identified as potentially privileged by way of a keyword search and thereafter quarantined, be screened, either by the Chamber or someone designated by the Chamber, in order to determine whether they were in fact privileged;

NOTING the “Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material” (“Defence Response”), filed on 18 February 2011³, whereby the Defence *inter alia* requested that all of the material seized from the house of Mr. Mbarushimana, as well as the transcripts and original recordings of intercepted communications, be quarantined pending a review of such material by the Defence Counsel and/or his appointed representative (and failing which, that the OPCD be appointed to conduct the review) in order that privileged information could be removed at the discretion of the Defence;

NOTING the “Prosecution’s request for leave to reply to the “Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material””, filed on 23 February 2011⁴, whereby the Prosecutor requested leave to reply to the Defence Response, submitting that the Defence Response raised new and distinct issues of law and fact, which the Prosecutor had not had the opportunity to address;

NOTING regulations 24 (5) and 34 of the Regulations of the Court (“the Regulations”);

¹ Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p. 11.

² ICC-01/04-01/10-54

³ ICC-01/04-01/10-58

⁴ ICC-01/04-01/10-60

CONSIDERING the importance and potential effect of the issues raised in the Prosecution Request and the Defence Response on the ongoing process of disclosure;

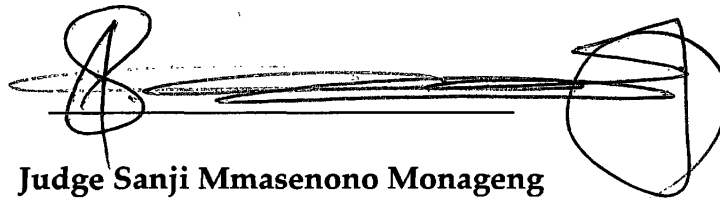
CONSIDERING further that according to the chapeau of regulation 34 of the Regulations, a time limit other than the 10 days provided for in paragraph (c) of this regulation may be fixed by the Chamber;

FOR THESE REASONS,

GRANT the Prosecutor leave to reply to the Defence Response;

ORDER the Prosecutor to file its reply by 1 March 2011 at 16.00 hours.

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

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a circular flourish.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Thursday, 24 February 2011

At The Hague, The Netherlands