

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 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 Temporarily Suspending Dealings with Transcripts and Original
Recordings of Intercepted Communications and Materials Seized from the House
of Mr. Callixte Mbarushimana**

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
Section Others**

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. Callixte 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”” (“Prosecution Request for Leave to Reply”), filed on 23 February 2011⁴, whereby the Prosecutor requested leave to reply to the Defence Response;

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.

NOTING the “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””, filed on 24 February 2011⁵, wherein the Single Judge granted the Prosecution Request for Leave to Reply;

NOTING articles 64 (2), 67 (1) (b) and 69 (5) of the Rome Statute (“the Statute”) and rule 73 of the Rules of the Court (“the Rules”);

CONSIDERING that rule 73 of the Rules provides that privileged communications made in the context of certain specified relationships are not to be subject to disclosure;

CONSIDERING the right of the suspect to communicate freely with Counsel of their choosing in confidence pursuant to article 67 (1) (b) of the Statute;

CONSIDERING the duty of the Chamber, under article 64 (2) of the Statute, to ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the suspect;

CONSIDERING the Defence assertion that the materials seized from the house of Mr. Mbarushimana, as well as the transcripts and original recordings of intercepted communications (collectively “Specified Materials”) may contain privileged information within the scope of rule 73 of the Rules;

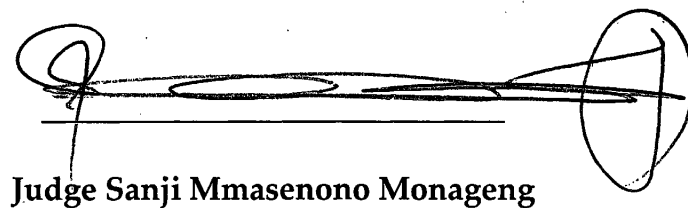
⁵ ICC-01/04-01/10-61.

FOR THESE REASONS,

ORDER the Registry to withdraw the access of the Prosecutor to any of the Specified Materials and to discontinue any further implementation of the protocols relating to the inventory, unsealing or recording of the seized materials or intercepted communications which would require the participation of the Prosecutor;

ORDER the Prosecutor to cease all dealings with the Specified Materials and to quarantine these materials pending resolution of the issues in the Prosecution Request and the Defence Response by the Chamber.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Friday, 25 February 2011

At The Hague, The Netherlands