

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/10
Date: 16 March 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 Registry's request for extension of time and on other matters
regarding 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
Mr Anton Steynberg, Senior Trial Lawyer

Counsel for the Defence

Mr Nicholas Kaufman

Legal Representatives of Victims

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 “Decision on the ‘Prosecution’s request for a review of potentially privileged material’” (“Decision on Privileged Material”),² issued on 4 March 2011, whereby the Chamber, *inter alia*, ordered the Defence and the Prosecutor to provide the Chamber and the Registry with a properly motivated list of keywords, if any, that can be used in a search for potentially privileged communications in part of the material seized at the premises of Mr Callixte Mbarushimana (“Seized Material”); and ordered the Registry (i) to conduct a search of the Seized Material with the use of the keywords provided by the Defence and the Prosecutor and approved by the Chamber; (ii) to provide the Chamber, no later than 16 March 2011, with a list of documents which the said search produces; and (iii) to ensure that only the Chamber has access to the 72 potentially privileged communications identified by the Prosecutor (“72 Documents”);

NOTING the “Request for extension of time with respect to the Chamber’s decision of 4 March 2011” (“Request”),³ filed on 9 March 2011, whereby the Registry (i) submits that the timeframe proposed in the Decision on Privileged Material does not materially allow the Registry to adequately process the materials and that the time needed for the forensic processing may vary between two or three months; and (ii) requests an extension of the time limit set by the Chamber so that the Registry can report by 20 April 2011 on the progress made in the forensic processing of the Seized Material;

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

² ICC-01/04-01/10-67.

³ ICC-01/04-01/10-70.

NOTING the “Prosecution submission of keywords and list of potentially privileged materials” (“Prosecution submission”),⁴ filed on 9 March 2011, whereby the Prosecutor submits (i) a list of keywords, containing the names and addresses of legal counsel; and (ii) an updated list of 179 potentially privileged documents (“179 Documents”) that incorporates the 72 Documents contained in the previous list;

NOTING the “Defence Submission of ‘Keywords’ for the Review of Potentially Privileged Materials” (“Defence Submission”),⁵ filed on 9 March 2011, whereby the Defence Counsel for Mr Callixte Mbarushimana (“Defence”) submits a list of keywords;

NOTING article 57 of the Rome Statute, rule 73 of the Rules of Procedure and Evidence, and regulation 35 of the Regulations of the Court;

CONSIDERING that in view of the difficulties described by the Registry, the extension of time is justified;

CONSIDERING, however, that the prolongation of the process by two or three months, as foreshadowed by the Registry, may lead to significant delays in the preparation for the confirmation of the charges hearing;

CONSIDERING also that in light of the extension of the list of potentially privileged communications identified by the Prosecutor, the Chamber should be given exclusive access to these documents in order to conduct the review described in the Decision on Privileged Material;

⁴ ICC-01/04-01/10-71.

⁵ ICC-01/04-01/10-72.

RECALLING that the Chamber requested that the lists of keywords to be provided by the parties should be “properly motivated” and that such lists “can be used in a search for potentially privileged communications” in the Seized Material;⁶

CONSIDERING however that the Defence has failed to properly motivate the keywords it has identified and that the vagueness of some of them, such as year numbers, will not enable a focused and expeditious search for potentially privileged communications in the Seized Material;

FOR THESE REASONS,

APPROVE the use of the keywords provided by the Prosecutor;

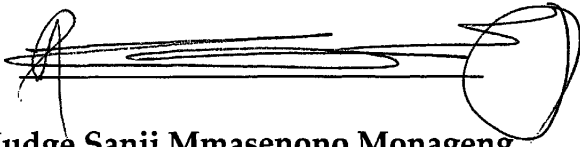
GRANT the Defence until Thursday, 17 March 2011, 16:00 hours to “properly motivate” and, when appropriate, reformulate keywords it has submitted;

MODIFY the time limit set in the Decision on Privileged Material for the Registry to provide the Chamber with a list of documents which the keyword search produces in that the Registry shall provide the Chamber, no later than 1 April 2011, with a list of documents obtained through the search until that date and with a report on the progress made on this matter, including an estimate of how much more time is required to complete the task; and

ORDER the Registry to ensure that only the Chamber has access to the 179 Documents listed in Annex B to the Prosecution Submission.⁷

⁶ Decision on Privileged Material, p. 8.

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



Judge Sanji Mmasenono Monageng

Single Judge

Dated this Wednesday, 16 March 2011

At The Hague, The Netherlands