

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 May 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 access to documents not considered to be potentially privileged and on re-classification of Defence filings

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
 Ms Yael Vias-Gvirsman

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**

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**

Judge Sanji Mmasenono Monageng, the Single Judge of Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;¹

NOTING the Defence’s submission of lists of potentially privileged documents identified (i) on the hard drives seized at the premises of Mr Mbarushimana² and (ii) among documents selected by the Prosecution on the basis of a key-word search (“179 Documents”)³;

NOTING the “Decision on the Prosecution’s response to the Defence submission of a list of potentially privileged documents”, issued on 23 May 2011,⁴ whereby the Defence was requested to submit, no later than 24 May 2011, in case it had objections to the possible reclassification of the Defence’s lists of potentially privileged documents identified on the said hard drives: (a) reasons for such objections and (b) specific information with respect to the listed items, as well as the number of the potentially privileged items identified by the Defence on each of the seized hard drives;

NOTING the “Prosecution’s response to the Defence “Soumission d’une liste de documents privilégiés suite à la décision de la Chambre Préliminaire ICC-01/04-01/10-158””, filed on 23 May 2011,⁵ whereby the Prosecution requests that the Chamber issue an order allowing the Prosecution access to those of the 179 Documents with respect to which privilege is not claimed and an order reclassifying the list of those of the 179 Documents with respect to which privilege is claimed;

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

² “Defence submission of a list of potentially privileged material”, 6 May 2011, ICC-01/04-01/10-137 with Annexes; “Second Defence submission of a list of potentially privileged material”, 17 May 2011, ICC-01/04-01/10-155 with Annexes.

³ “Soumission d’une liste de documents privilégiés suite à la décision de la Chambre Préliminaire ICC-01/04-01/10-158”, 20 May 2011, ICC-01/04-01/10-165-Corr (Corrigendum of document ICC-01/04-01/10-165), with Annex A.

⁴ ICC-01/04-01/10-173.

⁵ ICC-01/04-01/10-175.

NOTING the “Defence Response to Pre-Trial Chamber I’s Order: ICC-01/04-01/10-173”, filed on 24 May 2011, whereby the Defence submits (i) that it has no objection to the reclassification of the annexes to its filings, which contain the lists of documents it identified as privileged, “so long as they remain confidential to the Prosecution and the Defence only”, and (ii) that these lists identify the total number of potentially privileged items to be found on each of the seized hard drives;

NOTING articles 57(3) of the Rome Statute, rule 73 of the Rules of Procedure and Evidence, and regulation 23*bis*(3) of the Regulations of the Court;

CONSIDERING that in light of the Defence’s submissions, it is appropriate to reclassify as confidential the lists of material identified by the Defence as privileged;

CONSIDERING that those of the 179 Documents with respect to which the Defence does not claim privilege should be made available to the Prosecution;

FOR THESE REASONS

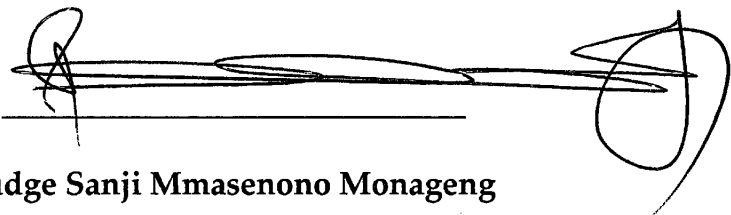
ORDER the Registry

(i) to reclassify the following documents as “confidential”:

- ICC-01/04-01/10-137-Conf-Exp-AnxA;
- ICC-01/04-01/10-155-Conf-Exp-Anx1, and –Anx2;
- ICC-01/04-01/10-165-Conf-Exp-AnxA; and

(ii) to allow the Prosecution immediate access to those of the documents listed on ICC-01/04-01/10-71-AnxB which do not appear on the list in document ICC-01/04-01/10-165-Conf-Exp-AnxA.

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this Wednesday, 25 May 2011

At The Hague, The Netherlands