

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 July 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

**Decision on Data Retrieved from Faulty and Encrypted Devices and Analysis of
Mobile Phones Seized from the Premises of Mr. 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

Ms. Fatou Bensouda

Mr. Anton Steynberg

Legal Representatives of Victims

Counsel for the Defence

Mr. Nicholas Kaufman

Ms. Yaël Vias-Gvirsman

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 Other**

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 observations on the quotation from the Netherlands Forensic Institute regarding analysis of damaged and protected hard drives””² issued on 27 May 2011, wherein the Single Judge ordered the Registrar to identify and enquire with any forensic institutes or private companies other than the Netherlands Forensic Institute (“NFI”) which would be able to process the faulty and encrypted devices which were seized at the premises of Mr. Mbarushimana (“Faulty and Encrypted Devices”);

NOTING the “Registry Report on the processing of faulty and protected devices and other outstanding issues” filed on 12 July 2011, whereby the Registrar informed the Chamber that the Registry had (i) received, on 4 July 2011, two reports from Carratu Ltd. indicating the data that had been retrieved from eight faulty or protected devices (“Data Retrieved from the Faulty and Encrypted Devices”) and (ii) prepared copies of the information contained in the acquired devices which could be provided to the Defence;

NOTING the “Registry Report on fingerprint examination and DNA analysis of the mobile phones”³ filed on 15 July 2011, whereby the Registrar informed the Chamber that a report on the “Biological traces and DNA investigation” of two mobile phones which were seized from Mr. Mbarushimana (“Mobile Phones”) was received from the NFI on 12 July and a report on the “Latent fingerprint

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

² ICC-01/04-01/10-196-Conf.

³ ICC-01/04-01/10-285-Conf.

examination” of the Mobile Phones, as well as a disk containing the enlarged version of two photographs included in the “Latent fingerprint examination” report, were received from the NFI on 14 July 2011;

NOTING articles 57(3)(c) and 67 of the Rome Statute and rules 73 and 121 of the Rules of Procedure and Evidence;

CONSIDERING it necessary that copies of the Data Retrieved from the Faulty and Encrypted Devices as well as the Reports and Disk received from the NFI be provided to the Prosecutor and the Defence as soon as possible;

CONSIDERING that it is necessary to review the Data Retrieved from the Faulty and Encrypted Devices for privileged communications before providing it to the Prosecutor;

CONSIDERING it appropriate that the procedure for review by the Defence for the purposes of identifying those documents over which it claims privilege set out previously by the Chamber in relation to the materials seized from Mr. Mbarushimana’s house⁴, be extended to the Data Retrieved from the Faulty and Encrypted Devices;

FOR THESE REASONS,

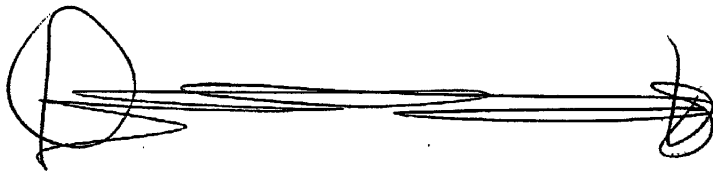
ORDER the Registrar to provide, as soon as possible, the report on the “Biological traces and DNA investigation” of the Mobile Phones, the report on the “Latent fingerprint examination” of the Mobile Phones and the disk containing the enlarged version of two photographs included in the “Latent fingerprint examination” report to the Defence and the Prosecutor;

⁴ ICC-01/04-01/10-105; ICC-01/04-01/10-165.

ORDER the Registrar to provide copies of the Data Retrieved from the Faulty and Encrypted Devices to the Defence in an accessible and searchable format by no later than 20 July 2011;

ORDER the Defence to expeditiously carry out and complete its review of the Data Retrieved from the Faulty and Encrypted Devices, and to submit to the Chamber a list of the files contained therein over which it claims privilege under rule 73 of the Rules (if any), setting out (i) a full description of the context, time and purpose of the document's creation, including whether the document is a draft and whether it was ever actually communicated or rendered public, and (ii) a detailed explanation as to why, in the view of the Defence, this document should be considered to attract privilege within the meaning of rule 73(1) of the Rules by Monday 25 July 2011 at the latest.

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

A handwritten signature in black ink, consisting of a large, stylized 'S' on the left and a smaller, more complex mark on the right, connected by a horizontal line.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Tuesday, 19 July 2011

At The Hague, The Netherlands