

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 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

URGENT

Decision extending the deadline 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

Ms. Fatou Bensouda

Mr. Anton Steynberg

Legal Representatives of Victims

Counsel for the Defence

Mr. Nicholas Kaufman

Ms. Yael 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 Other
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 “Second Decision on matters regarding the review of potentially privileged material”², issued by the Chamber on 18 April 2011 (“Second Decision on Potentially Privileged Material”), wherein the Chamber *inter alia* ordered (i) the Registrar to provide copies of the non-faulty and unprotected devices seized at the premises of Mr. Mbarushimana on his arrest (“Materials”) to the Defence in an accessible and searchable format, with a view to allowing the Defence to review the documents contained therein and identify those over which it claimed privilege; and (ii) the Defence to expeditiously carry out its review and submit to the Chamber a list of the documents over which it claims privilege by no later than 6 May 2011;

NOTING the “Defence implementation of the second decision on matters regarding the review of potentially privileged material”³, filed by the Defence on 2 May 2011, wherein the Defence submitted that the full assistance of Mr. Mbarushimana is required if a speedy and effective search of the Materials is to be conducted and *inter alia* requested that Mr. Mbarushimana be supplied with exactly the same hardware, software and training which had been afforded the Defence representatives;

NOTING the “Decision on the Defence Requests concerning the implementation of the Chamber’s ‘Second Decision on matters regarding the review of

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

² ICC-01/04-01/10-105.

³ ICC-01/04-01/10-127.

potentially privileged materials”⁴ issued by the Single Judge on 2 May 2011, wherein the Registry was ordered to immediately supply Mr. Mbarushimana with exactly the same hardware, software and training which had been afforded the Defence representatives;

NOTING the “Defence submission of a list of potentially privileged material”⁵ filed by the Defence on 6 May 2011 (“Defence Submission”), wherein the Defence (i) submitted a list of potentially privileged files and documents for the Chamber’s review, (ii) detailed a number of technical problems in relation to the hardware and software supplied to Mr. Mbarushimana which have impeded his review of the Materials, and (iii) stated that it was unable to rule out the possibility that further potentially privileged items will be identified once the aforementioned technical problems have been resolved;

NOTING the “Order to the Registry to submit a report concerning the Defence submission of a list of potentially privileged material”⁶, issued by the Single Judge on 11 May 2011, whereby the Registrar was ordered to submit a report containing her observations on the action taken to address the problems in relation to the hardware and software supplied to Mr. Mbarushimana;

NOTING the “Registry Report on technical problems encountered by Mr Mbarushimana on the computer installed in his detention cell”⁷, filed by the Registrar on 12 May 2011, wherein the Registrar submitted that all but one of the technical problems detailed in the Defence Submission were resolved by 12 May 2011 and that the technical services of the Registry were researching the appropriate software to remedy the outstanding problem, which is the absence

⁴ ICC-01/04-01/10-129.

⁵ ICC-01/04-01/10-137.

⁶ ICC-01/04-01/10-143.

⁷ ICC-01/04-01/10-146.

of software to allow access to audio or video files other than those which may be heard or viewed on "Windows Media Player" ("Inaccessible Audio and Video Files");

NOTING the "Prosecution's Response to the Defence submission of a list of potentially privileged documents and request for access to seized electronic material"⁸, filed by the Prosecutor on 13 May 2011 ("Prosecution Request"), wherein the Prosecutor requested *inter alia* that he be: (i) granted immediate access to the Materials other than those identified as potentially privileged in the Defence Submission; (ii) granted access to the confidential *ex-parte* annex to the Defence Submission and, in the event that this annex does not contain specific information (i.e. the type of document, the date of its creation on the hard drive, the author thereof, the file name and path and the ERN number of the device in which the file was contained) in relation to the documents over which the Defence claims privilege, that this information be provided to the Prosecutor by the Defence or the Registrar; and (iii) provided with details of the number of potentially privileged items identified by the Defence on each of the relevant hard drives;

NOTING regulations 24 and 34 of the Regulations of the Court;

CONSIDERING that the Prosecutor is obliged to file in the record of the case, in a language which Mr. Mbarushimana fully understands and speaks, the Document Containing the Charges and the List of Evidence by 1 June 2011 at the latest;⁹

⁸ ICC-01/04-01/10-147.

⁹ Decision on issues relating to disclosure (ICC-01/04-01/10-87) 30 March 2011.

CONSIDERING that the Prosecutor to date has not been granted access to the Materials, while the Defence was granted access to these materials on 18 April 2011¹⁰;

CONSIDERING the need to ensure the expeditious conduct of proceedings;

CONSIDERING that the Defence was unable to complete its review of the Materials within the time limit set in the Second Decision on Potentially Privileged Material due to technical problems beyond its control;

CONSIDERING therefore that it is appropriate to vary the time limit for the Defence to complete its review of the Materials for the purposes of identifying those that are potentially privileged;

CONSIDERING it appropriate to set a time limit for the submission of the Defence's observations to the Prosecution Request, if any;

FOR THESE REASONS,

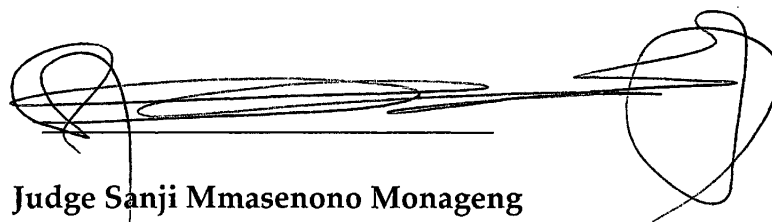
ORDER the Defence to expeditiously carry out and complete its review of the Materials and to submit to the Chamber a list of the documents and files over which it claims privilege as soon as possible and no later than Wednesday, 18 May 2011;

ORDER the Defence to file its observations on the Prosecution Request, if any, no later than Thursday, 19 May 2011; and

¹⁰ Second Decision on matters regarding the review of potentially privileged material (ICC-01/04-01/10-105).

ORDER the Registrar, on receipt of the list of potentially privileged files and documents on Wednesday, 18 May 2011, to immediately grant the Prosecutor access to the Materials over which privilege is not claimed, excluding the Inaccessible Audio and Video Files if the problem with the suspect's access thereto is not resolved by Monday, 16 May 2011.

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 the printed name of the judge.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Friday, 13 May 2011

At The Hague, The Netherlands