

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 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

**Order requesting observations on the report from the Netherlands Forensic
Institute**

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**
 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 authorisation to conduct destructive analysis of corrupted disc" filed by the Prosecution on 27 April 2011,² whereby the Prosecution submits, *inter alia*, that a "destructive analysis" of a corrupted disc ("Disc") containing records of intercepted communications originating from phones attributed to Mr Callixte Mbarushimana needs to be conducted by the Netherlands Forensic Institute ("NFI") in order to recover the 14 % of the data stored on the disc, which are unreadable;

NOTING the "Decision to Hold Consultations under Rule 114", issued by Single Judge Cuno Tarfusser on 28 April 2011,³ convening a hearing in order to determine the measures to be taken and the modalities of their implementation;

NOTING the hearing held on 4 May 2011, attended, *inter alia*, by representatives of the NFI;

NOTING the "Order to NFI to submit a report", issued by the Chamber on 5 May 2011 and inviting the NFI to "perform a non-destructive preinvestigation on the corrupted disc and to submit a report detailing the different options available for proceeding to the analysis of the Disc by Monday 9 May 2011 at 12 hours";⁴

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

² ICC-01/04-01/10-122 and its Annex A.

³ ICC-01/04-01/10-126.

⁴ ICC-01/04-01/10-136.

NOTING the “Extension of Deadline for Submission of NFI Report”, issued by Single Judge Cuno Tarfusser on 9 May 2011, extending until 11 May 2011 the deadline for the submission of the report by the NFI;⁵

NOTING the “Investigation Proposal” submitted by the NFI on 11 May 2011,⁶ whereby the NFI provides an overview of the “investigation possibilities” detailing four options and estimates of time required to complete each of them, as well as the fifth option of “no further investigation”;

NOTING article 57 of the Rome Statute, rule 121 of the Rules of Procedure and Evidence (“Rules”) and regulation 28(2) of the Regulations of the Court;

CONSIDERING that the NFI advises conducting three of the five investigation possibilities and indicates that it would complete them by 27 June 2011;

CONSIDERING that the hearing on the confirmation of the charges in the present case is scheduled to commence on 4 July 2011 and if the recovery of the data from the Disc were to be completed on 27 June 2011, the Prosecution would be unable to disclose evidence thus obtained to the Defence within the time limits set in rule 121 of the Rules;

CONSIDERING that the Parties should thus be consulted on the issue of the advisability of requesting further action from the NFI;

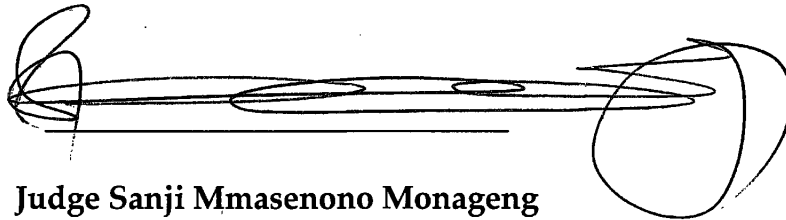
FOR THESE REASONS,

⁵ ICC-01/04-01/10-141.

⁶ ICC-01/04-01/10-144-Anx, annexed to the “Registry Transmission of the Report from the Netherlands Forensic Institute”, ICC-01/04-01/10-144.

ORDER the Prosecution and the Defence to submit by no later than Friday, 20 May 2011 observations on further action to be taken with respect to the Disc.

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 Tuesday, 17 May 2011

At The Hague, The Netherlands