

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 24 February 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 request for leave to reply to the "Defence Response to Prosecution's Request 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, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor

**Legal Representatives of Victims**

**Counsel for the Defence**

Mr Nicholas Kaufman

**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**

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**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*;<sup>1</sup>

**NOTING** the “Prosecution’s request for a review of potentially privileged material” (“Prosecution Request”), filed on 14 February 2011<sup>2</sup>, whereby the Prosecutor requested that a number of documents, which he had identified as potentially privileged by way of a keyword search and thereafter quarantined, be screened, either by the Chamber or someone designated by the Chamber, in order to determine whether they were in fact privileged;

**NOTING** the “Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material” (“Defence Response”), filed on 18 February 2011<sup>3</sup>, whereby the Defence *inter alia* requested that all of the material seized from the house of Mr. Mbarushimana, as well as the transcripts and original recordings of intercepted communications, be quarantined pending a review of such material by the Defence Counsel and/or his appointed representative (and failing which, that the OPCD be appointed to conduct the review) in order that privileged information could be removed at the discretion of the Defence;

**NOTING** the “Prosecution’s request for leave to reply to the “Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material””, filed on 23 February 2011<sup>4</sup>, whereby the Prosecutor requested leave to reply to the Defence Response, submitting that the Defence Response raised new and distinct issues of law and fact, which the Prosecutor had not had the opportunity to address;

**NOTING** regulations 24 (5) and 34 of the Regulations of the Court (“the Regulations”);

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

<sup>2</sup> ICC-01/04-01/10-54

<sup>3</sup> ICC-01/04-01/10-58

<sup>4</sup> ICC-01/04-01/10-60

**CONSIDERING** the importance and potential effect of the issues raised in the Prosecution Request and the Defence Response on the ongoing process of disclosure;

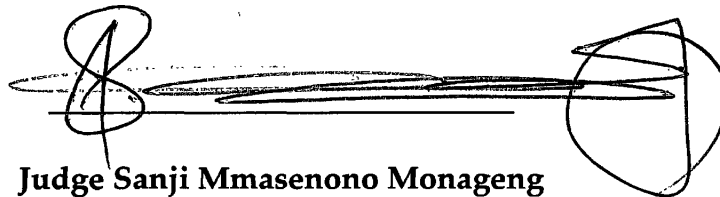
**CONSIDERING** further that according to the chapeau of regulation 34 of the Regulations, a time limit other than the 10 days provided for in paragraph (c) of this regulation may be fixed by the Chamber;

**FOR THESE REASONS,**

**GRANT** the Prosecutor leave to reply to the Defence Response;

**ORDER** the Prosecutor to file its reply by 1 March 2011 at 16.00 hours.

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

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a circular flourish on the right.

**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Thursday, 24 February 2011

At The Hague, The Netherlands