

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 30 March 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**

**with a confidential *ex parte* Annex – Defence and Registry only**

**Decision on the keywords provided by the Defence for the purpose of selection 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  
 Mr Anton Steynberg, Senior Trial Lawyer

**Counsel for the Defence**

Mr Nicholas Kaufman

**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**

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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 “Decision on the ‘Prosecution’s request for a review of potentially privileged material” (“Decision on Privileged Material”),<sup>2</sup> issued on 4 March 2011, whereby the Chamber, *inter alia*, ordered the Registry to conduct a search of part of the material seized at the premises of Mr Callixte Mbarushimana (“Seized Material”) with the use of the keywords provided by the Defence and the Prosecutor and approved by the Chamber;

**NOTING** the “Prosecution submission of keywords and list of potentially privileged materials” (“Prosecution submission”),<sup>3</sup> filed on 9 March 2011, whereby the Prosecutor submits a list of keywords, containing the names and addresses of legal counsel;

**NOTING** the “Defence Submission of ‘Keywords’ for the Review of Potentially Privileged Materials”,<sup>4</sup> filed on 9 March 2011, whereby the Defence Counsel for Mr Callixte Mbarushimana (“Defence”) submits a list of keywords;

**NOTING** the “Decision on the Registry’s request for extension of time and on other matters regarding the review of potentially privileged material”,<sup>5</sup> issued on 16 March 2011, whereby the Single Judge, *inter alia*, (i) approved the use of keywords provided by the Prosecutor; and (ii) ordered the Defence to “properly motivate” and, when appropriate, reformulate keywords it had submitted;

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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-01/04-01/10-67.

<sup>3</sup> ICC-01/04-01/10-71.

<sup>4</sup> ICC-01/04-01/10-72.

<sup>5</sup> ICC-01/04-01/10-80.

**NOTING** the “Defence submission of properly motivated keywords” (“Defence Submission”),<sup>6</sup> filed on 17 March 2011, whereby the Defence resubmits its list of keywords with reasons for their use;

**NOTING** article 57 of the Rome Statute and rule 73 of the Rules of Procedure and Evidence (“Rules”);

**CONSIDERING** that the Defence provided adequate reasons for the use of the keywords it submitted;

**CONSIDERING** nonetheless that in order to ensure that the search is conducted in an efficient and expeditious manner, it is necessary for the Single Judge to provide further instructions to the Registry on the use of the keywords provided by the Defence;

**CONSIDERING** that the present approval of the keywords proposed by the Defence is without prejudice to the Chamber’s determination of whether or not documents produced through the keyword search are privileged within the meaning of rule 73 of the Rules;

**CONSIDERING** that in order to make the search more efficient it is necessary to limit it to file types associated with common user applications (mail, browsers, text processors, viewers, drawing tools, file compressors, etc);

**CONSIDERING** that the factual and legal basis provided by the Defence for its choice of the *ex parte* classification of its list of keywords<sup>7</sup> is persuasive and that it is appropriate that the instructions of the Single Judge on these keywords should be included in an *ex parte* Annex to the present Decision;

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<sup>6</sup> ICC-01/04-01/10-81.

<sup>7</sup> ICC-01/04-01/10-81-Conf-Exp-AnxA.

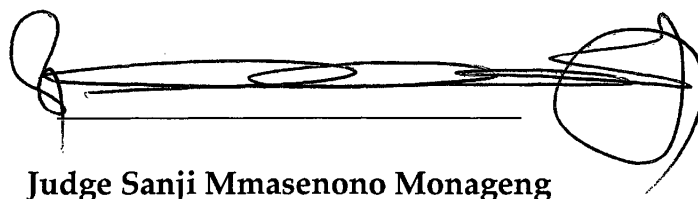
**FOR THESE REASONS,**

**APPROVE** the use of the keywords provided by the Defence, subject to the instructions contained in the Annex;

**ORDER** that in the course of the search, both on the basis of the keywords provided by the Defence and those provided by the Prosecutor, the Registry should exclusively regard file types associated with common user applications; and

**FURTHER MODIFY** the time limit set in the Decision on Privileged Material for the Registry to provide the Chamber with a list of documents which the keyword search produces in that the Registry shall provide the Chamber, no later than 8 April 2011, with a list of documents obtained through the search until that date and with a report on the progress made on this matter, including an estimate of how much more time is required to complete the task.

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 a solid horizontal line.

**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Wednesday, 30 March 2011

At The Hague, The Netherlands