

**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

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 “Decision on the ‘Prosecution’s request for a review of potentially privileged material” (“Decision on Privileged Material”),² 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”),³ 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”,⁴ 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”,⁵ 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;

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

² ICC-01/04-01/10-67.

³ ICC-01/04-01/10-71.

⁴ ICC-01/04-01/10-72.

⁵ ICC-01/04-01/10-80.

NOTING the “Defence submission of properly motivated keywords” (“Defence Submission”),⁶ 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 keywords⁷ 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;

⁶ ICC-01/04-01/10-81.

⁷ ICC-01/04-01/10-81-Conf-Exp-AnxA.

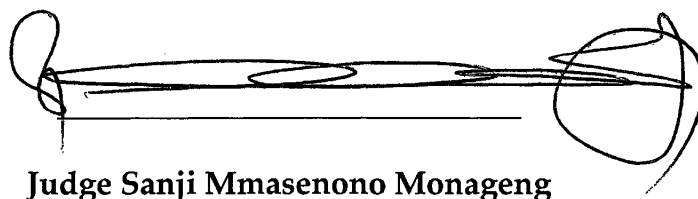
FOR THESE REASONS,

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