

**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, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA***

Public

Third Decision on matters regarding 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
Section Other**

PRE-TRIAL CHAMBER I of the International Criminal Court (“Chamber” and “Court” respectively);

NOTING the “Decision on the ‘Prosecution’s request for a review of potentially privileged material”¹, dated 4 March 2011 (“First Decision on Potentially Privileged Material”), whereby the Chamber, *inter alia*:

- (i) decided to perform a review of 72 documents which had been identified as potentially privileged by means of a keyword search performed by the Prosecutor, on that part of the material seized at the premises of Mr. Callixte Mbarushimana upon his arrest which consisted of hard copies of documents (“First Part of the Seized Materials”),
- (ii) requested the Prosecutor and Defence to inform the Chamber if they identify any other potentially privileged material in the First Part of the Seized Materials, and
- (iii) ordered the Registrar to conduct a search on that part of the Seized Materials that consisted of hard drives and other information storage devices (“Second Part of the Seized Materials”) based on the keywords provided by the Defence and the Prosecutor and approved by the Chamber and to provide the Chamber with a list of documents which the said search would produce;

NOTING the “Prosecution submission of keywords and list of potentially privileged materials”², filed on 9 March 2011 (“Prosecution’s Submission of 9 March 2011”), whereby the Prosecutor submitted to the Chamber an updated list of potentially privileged documents found in the First Part of the Seized Materials (“179 Documents”), which list had increased to include 179 documents³ as a result of the implementation of a keyword search using the names of a further three legal counsel which had been identified by the Defence;

¹ ICC-01/04-01/10-67.

² ICC-01/04-01/10-71.

³ The 179 Documents are listed in Annex B to the Prosecution’s Submission of 9 March 2011: ICC-01/04-01/10-71-AnxB.

NOTING the "Second Decision on matters regarding the review of potentially privileged material"⁴, issued by the Chamber on 18 April 2011 ("Second Decision on Potentially Privileged Material"), wherein the Chamber, in view of the technical and operational difficulties encountered by the Registrar in implementing the system established by the Chamber in the First Decision on Potentially Privileged Material⁵, partially modified the system for review of potentially privileged material and ordered that copies of the Second Part of the Seized Material be provided to the Defence, with a view to allowing the Defence to review the said documents and identify those over which it claimed privilege;

CONSIDERING that it is necessary to ensure the expeditiousness of the proceedings and that the Defence is in a position to identify the documents over which it claims privilege in an expeditious and efficient manner;

CONSIDERING it appropriate that the provision made for review by the Defence of the Second Part of the Seized Materials, for the purposes of identifying those documents over which it claims privilege, be extended to the First Part of the Seized Materials;

CONSIDERING, however, that the Defence does not have access to the 179 Documents produced by the initial search based on keywords;

FOR THESE REASONS, the Chamber

ORDERS the Registrar to provide, as soon as possible, access on Ringtail to the Defence to the 179 Documents, the ERN numbers of which are contained in Annex B to the Prosecution's Submission of 9 March 2011⁶; and

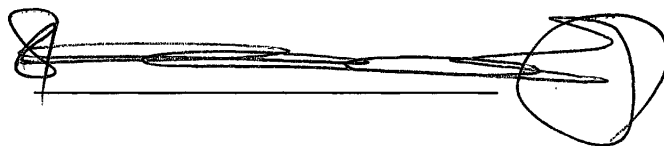
⁴ ICC-01/04-01/10-105.

⁵ Registry Report dated 8 April 2011 (ICC-01/04-01/10-95) and Annex thereto (ICC-01/04-01/10-95-Conf-Exp-Anx) and Addendum to the Registry Report dated 11 April 2011 (ICC-01/04-01/10-98) and Annexes thereto (ICC-01/04-01/10-98-Conf-Anx1 and ICC-01/04-01/10-98-Conf-Exp-Anx2).

⁶ ICC-01/04-01/10-71-AnxB.

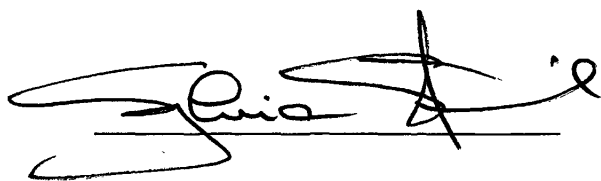
ORDERS the Defence to expeditiously carry out and complete its review of the 179 Documents and to submit to the Chamber a list of the documents over which it claims privilege by no later than Monday, 23 May 2011.

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

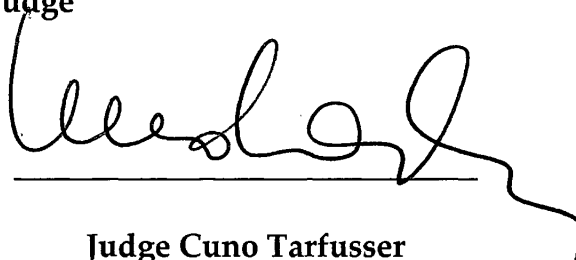


Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner



Judge Cuno Tarfusser

Dated this Tuesday, 17 May 2011

At The Hague, The Netherlands