

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 25 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**

**Decision on the Prosecution's access to documents not considered to be potentially privileged and on re-classification of Defence filings**

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**

**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**

**Judge Sanji Mmasenono Monageng**, the Single Judge of Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) 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 Defence’s submission of lists of potentially privileged documents identified (i) on the hard drives seized at the premises of Mr Mbarushimana<sup>2</sup> and (ii) among documents selected by the Prosecution on the basis of a key-word search (“179 Documents”)<sup>3</sup>;

**NOTING** the “Decision on the Prosecution’s response to the Defence submission of a list of potentially privileged documents”, issued on 23 May 2011,<sup>4</sup> whereby the Defence was requested to submit, no later than 24 May 2011, in case it had objections to the possible reclassification of the Defence’s lists of potentially privileged documents identified on the said hard drives: (a) reasons for such objections and (b) specific information with respect to the listed items, as well as the number of the potentially privileged items identified by the Defence on each of the seized hard drives;

**NOTING** the “Prosecution’s response to the Defence “Soumission d’une liste de documents privilégiés suite à la décision de la Chambre Préliminaire ICC-01/04-01/10-158””, filed on 23 May 2011,<sup>5</sup> whereby the Prosecution requests that the Chamber issue an order allowing the Prosecution access to those of the 179 Documents with respect to which privilege is not claimed and an order reclassifying the list of those of the 179 Documents with respect to which privilege is claimed;

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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> “Defence submission of a list of potentially privileged material”, 6 May 2011, ICC-01/04-01/10-137 with Annexes; “Second Defence submission of a list of potentially privileged material”, 17 May 2011, ICC-01/04-01/10-155 with Annexes.

<sup>3</sup> “Soumission d’une liste de documents privilégiés suite à la décision de la Chambre Préliminaire ICC-01/04-01/10-158”, 20 May 2011, ICC-01/04-01/10-165-Corr (Corrigendum of document ICC-01/04-01/10-165), with Annex A.

<sup>4</sup> ICC-01/04-01/10-173.

<sup>5</sup> ICC-01/04-01/10-175.

**NOTING** the “Defence Response to Pre-Trial Chamber I’s Order: ICC-01/04-01/10-173”, filed on 24 May 2011, whereby the Defence submits (i) that it has no objection to the reclassification of the annexes to its filings, which contain the lists of documents it identified as privileged, “so long as they remain confidential to the Prosecution and the Defence only”, and (ii) that these lists identify the total number of potentially privileged items to be found on each of the seized hard drives;

**NOTING** articles 57(3) of the Rome Statute, rule 73 of the Rules of Procedure and Evidence, and regulation 23bis(3) of the Regulations of the Court;

**CONSIDERING** that in light of the Defence’s submissions, it is appropriate to reclassify as confidential the lists of material identified by the Defence as privileged;

**CONSIDERING** that those of the 179 Documents with respect to which the Defence does not claim privilege should be made available to the Prosecution;

**FOR THESE REASONS**

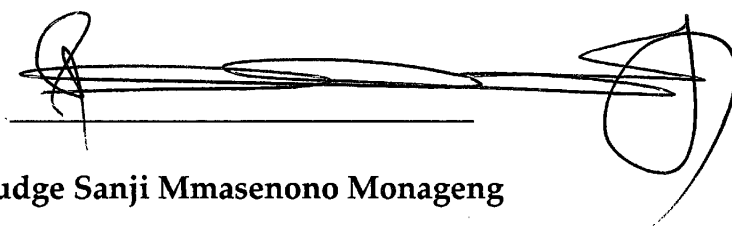
**ORDER** the Registry

(i) to reclassify the following documents as “confidential”:

- ICC-01/04-01/10-137-Conf-Exp-AnxA;
- ICC-01/04-01/10-155-Conf-Exp-Anx1, and –Anx2;
- ICC-01/04-01/10-165-Conf-Exp-AnxA; and

(ii) to allow the Prosecution immediate access to those of the documents listed on ICC-01/04-01/10-71-AnxB which do not appear on the list in document ICC-01/04-01/10-165-Conf-Exp-AnxA.

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Wednesday, 25 May 2011

At The Hague, The Netherlands