

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 July 2011

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, 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 review of intercepted internet data"

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. Yaël 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**

Mr. Xavier-Jean Keïta

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**

Counsel Support Section

Mr. Esteban Peralta Losilla

I, Judge Cuno Tarfusser, 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* in the absence of Judge Sanji Mmasenono Monageng¹;

NOTING the “Decision on the Prosecution’s request for the postponement of the confirmation hearing”² issued by the Chamber on 31 May 2011, wherein the commencement of the confirmation hearing was postponed to 17 August 2011 and the deadline for the filing of the document containing the charges and the list of evidence by the Prosecutor was moved to 15 July 2011;

NOTING the “Prosecution’s request for review of intercepted internet data”³ filed by the Prosecutor on 27 June 2011, wherein the Prosecutor: (i) informed the Chamber that a hard drive containing internet data intercepted from the suspect over July to October 2010 (“Hard Drive”) was received from the French authorities on 21 January 2011 in a format which did not allow the data to be searched or exported, (ii) stated his intention to forward a copy of the Hard Drive to an unidentified service provider which would be able, within up to three weeks, to convert the data into a format that is more readily accessible, searchable and compatible with eCourt protocol, (iii) proposed a procedure for the identification of potentially privileged material contained on the Hard Drive, and (iv) requested the Chamber to designate itself to review any potentially privileged material identified by the Prosecution or the Defence in compliance with this procedure;

¹ ICC-01/04-583.

² ICC-01/04-01/10-207.

³ ICC-01/04-01/10-251.

NOTING the “Defence response to Prosecution filing: ICC-01/04-01/10-251”⁴, filed on 29 June 2011, wherein the Defence objected to: (i) the proposal put forward by the Prosecutor for the identification of potentially privileged material on the Hard Drive, and (ii) any imposition of a requirement on the Defence to perform time-consuming reviews of materials for privileged materials at this late stage;

NOTING articles 57(3)(c), 61 and 67 of the Rome Statute and rules 73 and 121 of the Rules of Procedure and Evidence;

CONSIDERING the proximity of the commencement of the hearing on the confirmation of charges;

CONSIDERING that, according to the information submitted by the Prosecutor, the Hard Drive will not be available in an accessible and searchable format before the deadline for the submission of the document containing the charges and the list of evidence on which the Prosecutor intends to rely for the purposes of the confirmation hearing (“List of Evidence”);

CONSIDERING, therefore, that the Prosecution will not be able to include the information contained in the Hard Drive in its List of Evidence or to rely on it at the confirmation hearing;

CONSIDERING that a review of the Hard Drive for potentially privileged material is thus unnecessary at this stage;

CONSIDERING the right of the suspect, under article 67(1)(b) to have adequate time for the preparation of his defence;

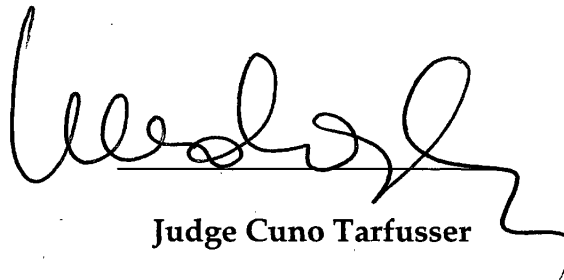
⁴ICC-01/04-01/10-256.

CONSIDERING that requiring the Defence, in compliance with the procedure adopted with respect to other potentially privileged communications in this case, to engage in a review of the Hard Drive for potentially privileged material after the disclosure of the Prosecution's List of Evidence would serve only to divert the Defence from its preparation for the hearing on the confirmation of charges;

FOR THESE REASONS

ORDER the Prosecutor to quarantine all copies and formats of the Hard Drive until the proceedings related to the hearing on the confirmation of charges are concluded, at which point a review of the potentially privileged materials contained therein, if any, can be carried out, if necessary.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line. The signature is stylized and cursive.

Judge Cuno Tarfusser

Single Judge

Dated this Friday, 8 July 2011

At The Hague, The Netherlands