

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 June 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

Decision on the Defence request to consider sanctions for misconduct

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

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 “Defence waiver of privilege and request to consider sanctions for misconduct”² filed on 25 May 2011, wherein the Defence *inter alia* requests the Chamber to consider whether individual members of the Office of the Prosecutor should be sanctioned for misconduct pursuant to article 71 of the Rome Statute (“Statute”), due to the fact that the Prosecutor had contacted an individual whose communications with Mr. Mbarushimana were alleged to be privileged (“Defence Request”);

NOTING the “Prosecution’s response to the Defence “Waiver of privilege and request to consider sanctions for misconduct””³ filed on 10 June 2011 (“Prosecution Response”), wherein the Prosecutor submits that the Prosecution has acted scrupulously in accordance with its statutory obligations;

NOTING Regulation 23 *bis* of the Regulations of the Court;

CONSIDERING that, on the basis of the information submitted by the Defence and the Prosecution, the Single Judge is of the view that there is no factual or legal basis for the contention that the Prosecution’s contact with the individual whose communications with Mr. Mbarushimana were the subject of the Defence’s claim of privilege amount to misconduct, within the meaning of article

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

² ICC-01/04-01/10-183-Conf.

³ ICC-01/04-01/10-228-Conf.

71 of the Statute, and that, therefore, the Defence's allegations are manifestly without merit;

CONSIDERING that the Defence stated that the "present status as a Prosecution witness at confirmation" of the individual mentioned in the Defence Request was the basis for its filing as confidential;

FOR THESE REASONS,

REJECT the Defence Request;

ORDER the Defence to file a public redacted version of the Defence Request by 1 July 2011 at the latest; and

ORDER the Prosecutor to file a public redacted version of the Prosecution Response by 1 July 2011 at the latest.

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

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a series of loops and a final flourish.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Thursday, 30 June 2011

At The Hague, The Netherlands