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PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

**Defence Response to the Prosecution's request
for extension of the time limit for redaction applications**

Source: Defence for Mr. Callixte Mbarushimana

Document 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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(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

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

The Defence for Mr. Callixte Mbarushimana hereby opposes the "*Prosecution's request for extension of the time limit for redaction applications*".¹

Submission

1. At Mr. Mbarushimana's initial appearance, held on 28 January 2011, the learned Pre-Trial Chamber fixed the confirmation hearing in the present case for 4 July 2011.² The Defence does not presently seek to postpone this date and is working "full steam ahead" to guarantee that the Court's schedule is honoured.

2. In its "*Decision on issues relating to disclosure*",³ the Pre-Trial Chamber meticulously calculated the various time limits imposed on the Prosecution in order to ensure that the Defence would have sufficient time to prepare for the confirmation hearing.⁴

3. Although it alleges that no prejudice will be caused to Mr. Mbarushimana,⁵ the truth of the matter is that the Prosecution is, essentially, seeking to inflate the evidence load which it proposes to pitch at the Defence in proportions never witnessed by the International Criminal Court. Indeed, with a certain degree of pride, the Prosecution cites mind-boggling statistics regarding the quantity of evidence it is currently handling.⁶ So vast are these materials⁷ in their scope that the already well-staffed and comfortably-

¹ ICC-01/04-01/10-103.

² ICC-01/04-01/10-T-1-ENG ET WT 28-01-2011 10/13 at line 8.

³ ICC-01/04-01/10-87.

⁴ *c.f.*; also, ICC-01/04-01/10-T-1-ENG ET WT 28-01-2011 10/13 at line 6.

⁵ ICC-01/04-01/10-103 at paragraph 8.

⁶ *ibid* at footnote 4 where the Prosecution celebrates a 500% increase on the Lubanga disclosure package for confirmation.

⁷ By way of example – the Prosecution states that the total duration of the recorded interviews exceeds 250 hours. Based on an 8 hour working day – this would require that Counsel devote, at the very least, one whole month just to listening to these interviews let alone appreciate their content.

budgeted Prosecution has had to resort to "outsourcing".⁸ The Defence can only wonder if the Registry will be similarly magnanimous should the Defence be forced to beg, cap in hand, for legally-aided external support to speedily assimilate and "quality-control"⁹ the fruits of the Prosecution's present labour.

4. The Defence has even sought to assist the Prosecution in the process of facilitating timely disclosure. On 14 April 2011, the OTP requested that Counsel agree to accept disclosure of witness statements, where possible, in English.¹⁰ Given that Counsel has no desire to postpone the confirmation hearing, he agreed to such disclosure in English (as opposed to French) despite the fact that Mr. Mbarushimana is not "*completely fluent in the language in ordinary, non-technical conversation*".¹¹ Counsel merely conditioned his acceptance of such disclosure¹² on the wholly reasonable expectation that he would simultaneously receive the said witness statements in the original Kinyarwanda (where such exist) since this language is Mr. Mbarushimana's native tongue.

5. Despite the aforementioned, the exact volume of materials on which the Prosecution proposes to rely at the confirmation hearing remains unclear. This is no improvement on the Prosecution's statement to the Pre-Trial Chamber more than two months ago:

"The Prosecution's assessment of the number and volume of documents we will rely on at the hearing and the number of witnesses and witness statements we will rely on is contingent upon several factors, the two most important of which are, firstly, it is contingent on the Registry making available a copy of the electronic media and communication devices seized from the Suspect.

Once this is fully available to the Prosecution, we will then be in a position to prepare an informed estimate for the Chamber about the

⁸ ICC-01/04-01/10-103 at paragraph 4 and footnote 5 where the Prosecution states that it has contracted with not one but two external service providers.

⁹ *ibid* at footnote 5.

¹⁰ Email from Mr. Anton Steynberg to Counsel of 14 April 2011 sent at 15:56.

¹¹ Rule 76(3) of the Rules of Procedure and Evidence as interpreted by the ICC Appeals Chamber: ICC-01/04-01/07-522 at paragraph 58-61.

¹² Email from Counsel to Mr. Anton Steynberg of 14 April 2011 sent at 23:51.

*time it will take to process and analyse this information. At this stage, the Prosecution anticipates that the volume of evidence could be significant."*¹³

6. The Prosecution has, furthermore, failed to give the learned Pre-Trial Chamber a clear indication as to when all of those witness statements which are currently being transcribed were taken. Such a lack of clarity denies the Pre-Trial Chamber the wherewithal for assessing the efficiency of the Prosecution's preparation of the transcripts to date and, likewise, prevents it from assessing the reasonableness of the present request for an extension of time limits.

7. The abovementioned vagueness of the Prosecution's preparations for the confirmation hearing only confirms the Defence's fear that the true reason for seeking an extension of the time limit for redactions is in order to allow the Prosecution to pursue its ulterior motive of continuing to investigate¹⁴ an unknown number of witnesses.

Relief Sought

8. In light of all the aforementioned, the learned Pre-Trial Chamber is respectfully asked to reject the Prosecution request for extension of the time limit for redaction applications.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Sunday, April 17, 2011

¹³ ICC-01/04-01/10-T-2-ENG ET WT 14-02-2011 5/34 at line 13.

¹⁴ ICC-01/04-01/10-103 at paragraph 9.