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

Date: 06/05/2011

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 &
Confidential Annexes A & B *ex parte*, Defence and Registry Only**

Defence submission of a list of potentially privileged material

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
 (Participation/Reparation)**

Applicants

**The Office of Public Counsel for
 Victims**

**The Office of Public Counsel for the
 Defence**

Mr. Xavier Jean Keita

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**

1. Pursuant to *the Second Decision on matters regarding the review of potentially privileged material*,¹ the Defence hereby submits a list² of potentially privileged files and documents which it has identified on the hard drive collection seized from Mr. Callixte Mbarushimana's residence in Paris.

2. Reiterating the essential nature of Mr. Mbarushimana's contribution to the review project, this list reflects the totality of potentially privileged files and documents which could be identified with the hardware and software currently placed at his disposal.

3. The Defence, however, cannot rule out the possibility that further potentially privileged items will be identified once several problems with the aforementioned hardware and software supplied to Mr. Mbarushimana are resolved. These problems have been communicated to the Registry³ and are set out as follows:

- (i) The inability to access "Microsoft Office 2010" on Mr. Mbarushimana's computer which has prevented him from opening and reviewing documents written in MS-Word, MS-Excel, MS-Powerpoint etc.;
- (ii) The absence of the necessary software on Mr. Mbarushimana's computer required to read Email files created in programs such as Outlook and Outlook Express;
- (iii) The absence of the necessary software required to open and review audio or video files other than those which may be heard or viewed on "Windows Media Player". These items may include, but are not limited to, files with the following extensions: *.mov, *.ogg, *.vob*, *.asf and *.amr.

¹ ICC-01/04-01/10-105.

² Confidential Annex A, *ex parte*, Defence and Registry Only.

³ See correspondence set out in Confidential Annex B, *ex parte*, Defence and Registry Only.

- (iv) The absence of a printer and a USB port on the computer provided to Mr. Mbarushimana in his place of detention preventing him from printing the results of his review or transferring them to a portable flash drive for the purpose of communication to the Defence team.
- (v) Problems relating the import of materials from the hard drive collection with the use of the FTK software which effectively prevents a review of the materials in "EnCase" format and obligates review in the more time consuming and incomplete "Native" format.

Confidentiality

The Annexes to this filing are submitted confidentially since items defined as potentially privileged and communications related thereto should, by their very nature, be reserved to the Defence alone.



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Friday, May 06, 2011