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

Date: **17/05/2011**

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 &
Confidential Annexes 1 & 2, *ex parte*, Defence Only**

Second 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. Yaël Vias-Gvirsman

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

The Office of Public Counsel for the 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 confirms that it has now completed its review of all electronic media supplied to it by the Registry and represented as arising out of the search performed at Mr. Mbarushimana's residence.

Pursuant, therefore, to the *Decision extending the deadline for the review of potentially privileged material*¹ and after the installation of one final necessary item of software on Mr. Mbarushimana's computer,² the Defence hereby submits two lists denoting outstanding electronic materials in respect of which privilege is claimed.

The first list³ comprises Email correspondence in respect of which Mr. Mbarushimana claims privilege pursuant to both Rule 73(1) of the Rules of Procedure and Evidence ("Rules") and Rule 73(2). Should it prove technically impossible to isolate individual Email messages in MS-Outlook, the Defence requests that the whole file containing the Email message concerned be regarded as potentially privileged until further decision of the Court.

The second list⁴ comprises two path-links to one audio conversation in respect of which Mr. Mbarushimana claims privilege pursuant to Rule 73(2).

The Defence reserves its right to challenge the legality of the search, the protocol for the handling of electronic media seized thereby and the admissibility thereof – not least in light of the fact that several hard drives appear to be corrupted.



Nicholas Kaufman
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Tuesday, May 17, 2011

¹ ICC-01/04-01/10-150.

² VLC player permitting access to files not readable by Windows Media Player on 16 May 2011 at 15:20.

³ Confidential Annex 1, *ex parte*, Defence Only.

⁴ Confidential Annex 2, *ex parte*, Defence Only.