



Original: English

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

Date: 15/08/2011

PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

**Public Document
with confidential annexes 1,2 & 3**

Defence Compliance with Decision ICC-01/04-01/10-359

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**

1. The Defence hereby submits further information in compliance with Pre-Trial Chamber I's *Decision requesting further information on the "Defence request to deny the use of certain incriminating evidence at the confirmation hearing"*.¹

2. On 7 August 2011, the Defence submitted a request to deny the use of certain allegedly incriminating evidence at the confirmation hearing.² In its request, the Defence argued that the Prosecution had failed to comply with the Pre-Trial Chamber's *Decision on the "Prosecution's request for the assessment of the English proficiency of Callixte Mbarushimana"*.³

3. The Defence submits three confidential annexes as follows:

(i) **Confidential Annex 1** lists those English/Kinwarwanda transcripts disclosed and mentioned in the Prosecution's list of evidence for which no audio-files have been disclosed to the Defence.⁴ The Defence lacks the ability to check those elements of the interview which have been poorly translated by the attending interpreter or not translated at all;

(ii) **Confidential Annex 2** lists audio-files disclosed and mentioned in the Prosecution's list of evidence for which only English transcripts have been supplied to the Defence.⁵ The Defence stresses that, more often than not, the English elements of the transcript; i.e., the questions of the OTP investigators, have as a result of the poor quality of the interpreter present at the interview, not been translated into either French or Kinyarwanda.

¹ ICC-01/04-01/10-359

² ICC-01/04-01/10-343

³ ICC-01/04-01/10-145

⁴ For example: W-552 and W-564 on whom the Prosecution relies in order to prove the order that was allegedly given to create "a humanitarian catastrophe". Here the Prosecution failed to disclose 30 (!!) audio-files supplying, instead, poorly translated and non-linear English/Kinyarwanda transcripts.

⁵ For example: W-526, W-528, W-529, W-530 and W-544 for whom a total of 40 (!!) audio-files were disclosed without any transcript or translation in to French.

(iii) **Confidential Annex 3** details other incriminating materials listed in the Prosecution's list of evidence for which no translation has been provided. These materials include documents provided to the Defence in English and in German only. It should be noted that the majority of these items were disclosed by the Prosecution as incriminating evidence during the month of July 2011.

4. The Defence adds that it has failed to find the following files which ought to fall within the ERN range of disclosed materials attributed by the Prosecution to W-559:⁶ DRC-OTP-2017-0014 (apparently an audio-file) and DRC-OTP-2033-1446 to 1462 (apparently a transcript). Should the Prosecution be unable to prove the disclosure of these materials or, otherwise, assure the Chamber that no part of the interview is lacking, the integrity of the whole of W-559's evidence is affected and it should not be admitted.

Confidentiality

5. The annexes to this filing are submitted confidentially given that they relate to Prosecution witnesses whose identities have not been disclosed to the public.



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Monday, August 15, 2011

⁶ Attributed by virtue of Annex 4 of the letter accompanying the incriminating package disclosed by the Prosecution on 1 June 2011.