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No.: ICC-01/04-01/10
Date: 30 August 2011

PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

URGENT

Public document

**with Confidential Annexes 1, 2 and 4
and Public Annex 3**

Prosecution's filing of amended list of evidence in compliance with decision ICC-01/04-01/10-378

Source: Office of the Prosecutor

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I. Introduction

1. The Prosecution files herewith its amended list of evidence in compliance with the Pre-Trial Chamber's decision of 16 August 2011.¹
2. The Prosecution also identifies items of evidence² contained in Parts I and II of its list of Evidence which it no longer seeks to rely on for the confirmation hearing. Additionally, it lists items that are referred to on the list of evidence by the ERN of a page other than the first page of the items, or which appear with typographical errors, in order to facilitate their retrieval in eCourt.

II. Statement of Facts

3. On 16 August 2011 the Chamber granted a Defence request that the Prosecution be precluded from using at the confirmation hearing any transcripts of witness statements which had been disclosed in English but not in Kinyarwanda.³ The Chamber allowed the Prosecution to rely, instead, on French or Kinyarwanda transcripts or alternatively on French summaries of the witness statements.⁴ The Chamber also decided that the Prosecution cannot rely on the transcript of the second interview with witness 561 at the confirmation hearing.⁵
4. The Chamber authorised the Prosecution to amend its document containing the charges and list of evidence accordingly.⁶
5. On 29 August the Defence requested the Prosecution to provide the Defence with a list of items and accompanying evidence registration numbers ("ERNs") removed from the Prosecution's list of evidence.
6. On 30 August the Prosecution informed the Defence that it would remove from the list of evidence all references to documents and ERNs listed in ICC-

¹ ICC-01/04-01/10-378.

² Other than the transcripts of witness interviews excluded as a result of decision ICC-01/04-01/10-378.

³ ICC-01/04-01/10-378, page 12 and para 4.

⁴ ICC-01/04-01/10-378, para 24.

⁵ ICC-01/04-01/10-378, page 12.

⁶ ICC-01/04-01/10-378, para 25.

01/04-01/10-368-Conf-Anx2, as well as to the transcripts of the second interview of witness 561.⁷

7. The same day, the Prosecution disclosed to the Defence transcripts of the interviews of three witnesses in Kinyarwanda and English,⁸ in compliance with the Chamber's 16 August 2011 decision. It also disclosed summaries of eight witness statements in French.⁹

III. Amended list of evidence

8. The Prosecution re-files the French version of Part I of its list of evidence as Confidential Annex 1, in compliance with the Chamber's 16 August 2011 decision.
9. The version of Part I of this list of evidence differs from its earlier version¹⁰ in the following respects:
 - a. references to transcripts of the second interview with witness 561 were removed;
 - b. references to transcripts of eight other witness statements dealt with in the Chamber's 16 August decision were also removed, and replaced with references to summaries of the statements;¹¹
 - c. references to English only transcripts of three witnesses' statements were replaced with references to English-Kinyarwanda transcripts.¹²
 - d. items on which the Prosecution no longer seeks to rely are identified in bold red font, and items for which the ERNs do not refer to the ERN of the first page of the document or contain typographical errors are indicated in bold green font.

⁷ ERN range DRC-OTP-2033-1267 to -1427.

⁸ Witnesses 527, 562 (second interview) and 632.

⁹ Witnesses 526, 528, 529, 530, 542, 544, 559 and 587. The summaries of these witnesses except for 528 and 530 were also provided in English.

¹⁰ ICC-01/04-01/10-311-Conf-AnxC.

¹¹ Witnesses 526, 528, 529, 530, 542, 544, 559 and 587.

¹² Witnesses 527, 562 (second interview) and 632.

10. Additionally, the Prosecution re-files Part II of its list of evidence as Confidential Annex 2,¹³ indicating in red the items on which the Prosecution no longer seeks to rely, and indicating in green the alternative items of evidence already contained elsewhere in the list of evidence, to which the Prosecution may refer in support of the conclusions it seeks to draw from the telecommunications data.¹⁴
11. The Prosecution informs the Chamber that it does not consider it necessary to amend the document containing the charges.¹⁵

IV. Explanatory note accompanying the list of evidence

12. The Prosecution has determined that it cannot rely on a number of items included on its list of evidence¹⁶ because they – or their translations, where required – were not disclosed as incriminating evidence by the disclosure deadline.¹⁷ The Prosecution has not amended the List of Evidence by removing these items. They are, however, listed in section A of the explanatory note filed as Annex 3 to the present filing in order to give the Defence and the Chamber notice that the Prosecution will not seek to rely on them.¹⁸ In addition, they are identified in red where they appear in Annexes 1 and 2, for ease of reference.¹⁹
13. Similarly, the Prosecution has also detected that, for several telephone communications listed in Part II of its list of evidence, it cannot rely at

¹³ See para 15 below for an explanation of additions to this chart.

¹⁴ This is in accordance with the caveat expressed in ICC-01/04/01/10-287, footnote 1 that the Prosecution reserves the right to rely on items of evidence adduced in support of a particular fact to also establish other facts, where appropriate.

¹⁵ ICC-01/04-01/10-311-Conf-AnxA and ICC-01/04-01/10-330-Conf-AnxA.

¹⁶ That is, in the French and English versions of part I of the list of evidence (ICC-01/04-01/10-311-Conf-AnxC and ICC-01/04-01/10-330-Conf-AnxB) and in part II of the list (ICC-01/04-01/10-287-Conf-AnxC).

¹⁷ The Defence drew the Prosecution's attention to apparent problems with a handful of items of evidence included in the Prosecution's list of evidence and/or in its accompanying explanatory note (ICC-01/04-01/10-287-Conf-AnxE).

¹⁸ Except for the transcripts of witness interviews excluded as a result of decision ICC-01/04-01/10-378, which do not appear on Annexes 1 and 2.

¹⁹ In Annex 1, the items the Prosecution no longer relies on were marked in red and bold font. In Annex 2, they appear inside excel cells that have been filled in red, or are marked in red font. In two cases, the whole row has been colored red. This means that the Prosecution no longer relies on those two communications at all..

confirmation on the sources of attribution of the telephone number to specific FDLR members, as a result of disclosure problems. In the version of Part II of the list of evidence filed as Annex 2, the Prosecution has added alternative sources, where available. These alternative sources are identified in green in Annex 2.²⁰ In all cases, the alternative sources were included in the Prosecution's earlier list of evidence.²¹

14. Finally, the Prosecution identifies in sections B and C the explanatory note filed as Annex 3 a number of ERNs included in Part I²² of the list of evidence which may be difficult to retrieve in eCourt, because they are references to a page other than the first page of the item, or because they contain typographical errors. The Prosecution has marked these items in green and bold font in Annexes 1 and 2 for ease of reference.²³

15. The Prosecution re-submits, as Annex 4, the explanatory note of Part II of its list of evidence.²⁴ This note contained references to items the Prosecution no longer seeks to rely on. These references have been replaced with references to alternative sources already contained on the previous version of the list of evidence. The Prosecution has added to this note an explanation of the data contained in the fourth tab of Part II of the list of evidence, which had not been explained in the version previously filed.

²⁰ The alternative sources appear inside new excel cells that have been coloured green. The evidence listed in these boxes establishes either the attribution to an FDLR member, or the fact that a given telephone communication took place.

²¹ That is, the French and English versions of part I of the list of evidence (ICC-01/04-01/10-311-Conf-AnxC and ICC-01/04-01/10-330-Conf-AnxB), or in part II of the list (ICC-01/04-01/10-287-Conf-AnxC).

²² ICC-01/04-01/10-311-Conf-AnxC and ICC-01/04-01/10-330-Conf-AnxB, and ICC-01/04-01/10-287-Conf-AnxC.

²³ Where an item is no longer relied on by the Prosecution, it is marked in red and bold font regardless of whether it was also referred to by a page other than the first page or whether it was listed with a typographical error.

²⁴ Previously filed as ICC-01/04-01/10-287-Conf-AnxE.



Luis Moreno-Ocampo
Prosecutor

Dated this 30th day of August 2011

At The Hague, The Netherlands