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

Date: 16/04/2011

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

**Defence Request for Leave to Reply
to the Prosecution's Response to the Defence Request for Interim Release**

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**

Pursuant to Regulation 24(5) of the Regulations of the Court, the Defence for Mr. Callixte Mbarushimana hereby requests leave to file a reply to the "*Prosecution's response to the Defence request for interim release*" ("the Response").¹

Justification

1. In the Response, the Prosecution refers to "*new developments and evidence*"² which was not in its possession at the time that it requested the warrant for Mr. Mbarushimana's arrest. It is a basic principle of justice that that no person should be judged without being given the opportunity to respond to the evidence against him: "*audi alteram partem*".
2. Rule 140(2)(d) of Rules of Procedure and Evidence, furthermore, enshrines the right of the Defence to be the last party to examine a witness. The same rationale, it is submitted, should be adopted, *mutatis mutandi*, by permitting the Defence to be the last party to comment on items of evidence – especially new material which, allegedly, further substantiates a demand for detention.
3. A fair opportunity ought to be afforded Mr. Mbarushimana to reply to all the Prosecution's submissions since it is the Prosecution which is demanding the deprivation of his liberty.

Relief Sought

4. In light of the aforementioned, the Defence requests leave to file a short³ reply to the Response and permission to submit such to the learned Pre-Trial Chamber no later than the date fixed for the observations of the State Parties.⁴



Nicholas Kaufman
Counsel for Callixte Mbarushimana

Jerusalem, Israel

Saturday, April 16, 2011

¹ ICC-01/04-01/10-101.

² *ibid* at paragraph 30.

³ No more than 5 pages.

⁴ The Kingdom of the Netherlands and the Republic of France on 26 April 2011.