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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

Defence Observations on Pre-Trial Chamber I's Order ICC-01/04-01/10-154

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
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 for Mr. Mbarushimana hereby responds to the *Order requesting observations on the report from the Netherlands Forensic Institute*.¹

The Defence reiterates the oral submissions that it presented at the status conference held on 4 May 2011 and reasserts its preference for non-destructive analysis of the corrupted disc. Where destructive analysis is deemed necessary, the Defence will request the presence of an independent expert.

While conscious that exculpatory material could be present on the 14% of the disc which is corrupted, the Defence does not insist on the doubtful retrieval and disclosure of such for the purpose of the confirmation hearing.

In light of all the aforementioned, there exists no reason to seek a delay of the confirmation hearing.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Tuesday, May 17, 2011

¹ ICC-01/04-01/10-154.