



Original: **English**

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

Date: **27/05/2011**

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**

Public Document

Defence response to Prosecution filing ICC-01/04-01/10-197

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**

Mr. Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Defence Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

At the outset, Counsel for the Defence expresses his gratitude to the Prosecution for agreeing to his request for a one day extension for submitting the document in support of the Defence appeal of the decision refusing interim release.¹ This request was occasioned, as the OTP correctly states, by Counsel being ordered to attend compulsory military reserve duty on 26 May 2011.

Nevertheless, this does not provide justification for the postponement of all relevant deadlines by one week.

Counsel takes particular note that the original Prosecution request in terms of Rule 121(7) for the postponement of the confirmation hearing ("Request for a Postponement")² was filed without the time limit³ for notifying filings with Court Management Services and should have been notified not on 25 May 2011 but on 26 May 2011. As a result thereof, Counsel petitioned CMS on 25 May 2011 querying why the matter had been notified on the same day and received the following response:

"Please note that the Document was registered yesterday despite the reception time due to the urgency of the matter and after consultation with the Chamber.

We suggest you address any queries to the legal officer of the presiding judge for all issues related to time limits for a response."

Assuming that the Prosecution had been bound by correct procedure, it would essentially have been asking for a Defence response within one working day (without factoring in the time necessary for the Pre-Trial Chamber to render a decision ordering the Defence so to respond).

¹ ICC-01/04-01/10-163.

² ICC-01/04-01/10-189.

³ At 16:01. Counsel does not wish to be so pedantic as to quibble about a minute here or there and would not have raised the issue were it not for the present application.

Counsel for the Defence decided not to petition the Pre-Trial Chamber on this matter acknowledging the fact that he had benefited from the Prosecution's generosity (as mentioned above) and presuming, in addition, that the Pre-Trial Chamber had noticed the Prosecution failure to file on time, thereby adjusting the time for a Defence response accordingly.

The Defence was intending to file its objection to the content of the original filing today – but the need to respond to the present request for interim relief⁴ has now rendered this impossible.

To summarise, the present request is not related in anyway to Counsel's summons to military service. Rather, the Prosecution is not able to comply with the original deadlines set by the Court (for reasons totally unconnected to privilege asserted over part of the seized materials) and is, now, desperately trying to find alternative means for seeking an extension of time-limits.

The Defence opposes the request for interim relief but is prepared to agree to an extension of the time limit for the submission of redacted witness statements until the day on which the document containing the charges and the list of evidence are presently due.⁵



Nicholas Kaufman
Counsel for Callixte Mbarushimana

Done in Jerusalem, Israel

Friday, May 27, 2011

⁴ The present request for "interim relief" is not founded by reference to any article in the Rome Statute.

⁵ 1 June 2011.