



Original: **English**

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

Date: 10/06/2011

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 Annex A**

Defence Request for Disclosure

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. On 13 April 2011, the Prosecution disclosed to the Defence for Mr. Callixte Mbarushimana **Pre-Trial Rule 77 Package 5** containing 44 documents. The purpose of this disclosure was to enable the Defence to prepare, *inter alia*, its challenge to the jurisdiction of the Court over Mr. Mbarushimana.¹

2. In the letter accompanying the disclosure package,² the Office of the Prosecutor indicated as follows:

"The Prosecution is also in possession of a letter from the Government of the DRC in answer to our letter dated 8 October 2003. However, the DRC authorities have refused our request for consent to share this letter with the Defence. Accordingly, this correspondence is not included in the present disclosure package. In our view, this letter will not assist your Article 19(2) challenge, but if necessary will be put before the Chamber in order to rule on the way forward".

3. The Defence notes that no statutory basis is cited for the refusal of the Democratic Republic of the Congo to share the contents of a letter ("the Letter") which could potentially shed light on the scope of the referral and assist Mr. Mbarushimana in his defence.

4. In the circumstances, the learned Pre-Trial Chamber is requested to review the Letter and to order its transmission to the Defence. The learned Pre-Trial Chamber is also requested to permit the Defence the right of reply should the Prosecution raise any statutory ground for refusing the disclosure of the Letter.



Nicholas Kaufman
Counsel for Callixte Mbarushimana

Jerusalem, Israel

Friday, June 10, 2011

¹ per ICC-01/04-01/10-87 at paragraph 21.

² Annex A.