



Original: **English**

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

Date: **22/07/2011**

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
URGENT**

**Defence observations on the consequences flowing
from the Prosecution's failure to file in an appropriate manner
the document containing the charges and the list of evidence**

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

As argued in a previous filing, the Prosecution failed to comply with HHJ Monageng's order: ICC-01/04-01/10-248 by filing the English version of the document containing the charges with an average page word-count which contravened the limit prescribed in Regulation 36(3) of the Regulations of the Court. Furthermore, the same English version of the document containing the charges and its accompanying list of evidence were filed six days out of time.¹

In so far as the Prosecution could potentially argue that the French versions of the document containing the charges and list of evidence are the officially binding versions – the former,² filed on 15 July 2011 at 16:30, similarly, contravenes Regulation 36(3) by containing 19,942 words spread over 43 substantive pages making an average page word-count of 463.77 words. When it was subsequently filed on 20 July 2011, the same document comprised 59 pages in contravention of HHJ Monageng's order mentioned above. Moreover, in so far as the Prosecution should argue that the French list of evidence is the official version, this document was deficiently filed on 15 July 2011 lacking substantial content.

The only appropriate remedy in the circumstances, it is submitted, is to prevent the Prosecution from presenting any form of document containing the charges and list of evidence at the confirmation hearing with all the necessary consequences flowing from such.

The Defence does not seek – under any circumstances – to postpone the date fixed for the confirmation hearing.

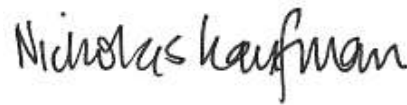
¹ ICC-01/04-01/10-298.

² ICC_01/04-01/10-287.

The Defence submits that the seriousness of the Prosecution's failure appropriately to comply with the Regulations of the Court and the Single Judge's order has caused prejudice to Mr. Mbarushimana which should not be underestimated.

The Prosecution also denied the Defence's attempts to mitigate such prejudice. The deficient French list of evidence was filed on Friday 15 July 2011 – and only notified to counsel after close of business. When Counsel asked for the English version (presuming that this would be a more correct version) he was not provided with such for the best part (and more) of a week.

It is respectfully submitted that, in the circumstances, Mr. Mbarushimana should not be left without remedy.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Nicholas Kaufman
Counsel for Callixte Mbarushimana

Jerusalem, Israel

Friday, July 22, 2011