



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 request to strike out portions of
the document containing the charges for lack of specificity**

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

1. The Defence awaits the decision of the learned Pre-Trial Chamber on the requests to exclude the document containing the charges (“DCC”) and the list of evidence (“LoE”) on the basis of inappropriate form and late submission.

2. Should the Pre-Trial Chamber, nevertheless, permit the Prosecution to rely on the DCC as it stands, the Defence requests that certain portions thereof be altered or struck out for lack of specificity. In addition, the Defence requests that those elements of the LoE supporting the non-specific elements of the DCC be struck out.

3. The DCC is the principal document informing a suspect of the nature of the charges against him. On the basis of this document, the suspect is able to formulate his defence bringing evidence where necessary to counter accusations brought by the Prosecution as to his participation in criminal activity at a certain place and at a certain time. Requiring the suspect to mount a defence without his being informed of the exact nature of the charges against him would infringe his right under Article 67(1)(a) of the Rome Statute “*to be informed promptly and in detail of the nature, cause and content of the charge...*” and would render the proceedings wholly unfair.

4. In the Krnojelac Decision as to Form, the International Criminal Tribunal for the Former Yugoslavia found as follows: “*an indictment must contain information as to the identity of the victim, the place and the approximate date of the alleged offence and the means by which it was committed*”.¹ Although the Rome Statute does not provide for the notion of an indictment, the DCC is, similarly,

¹ IT-97-25-PT, T. Ch II, 24 Feb 1999 at paragraph 12 as cited in Kip & Sluiter; “The International Criminal Court for the former Yugoslavia 1997-1999”.

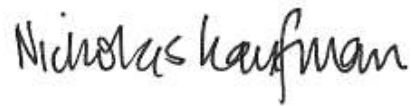
intended to be the means to ensure that a suspect is not surprised by factual allegations against which he will be unprepared to defend himself. While the Defence recognises that the degree of particularity required at the International Criminal Tribunals is, by nature of its material jurisdiction, less stringent than would be expected in domestic jurisdictions, this does not mean that a suspect should be charged with default or “catch-all” crimes lacking both specific location and time.

5. Specificity as to the times and locations of alleged crimes in the case against Mr. Mbarushimana is essential. As will be recalled, the Prosecution alleges that Mr. Mbarushimana was jointly conspiring to use the FDLR in order to “*create a humanitarian catastrophe*” in the Kivus. The North and South Kivus, however, encompass a vast geographical territory in which many militias were fighting at the time of the offences alleged. Mass criminality has been reported in this region as having been committed by FADRC, PARECO, Mai-Mai and CNDP forces, among others, throughout 2009.² Without being informed of the town or specific location of alleged crimes, Mr. Mbarushimana has no ability whatsoever to present evidence (**as is his right at the confirmation hearing**) in support of the assertion that the alleged perpetrators were troops other than those of the FDLR.

6. In light of all the aforementioned, the Defence reiterates its request set out in paragraph 2 above and petitions the learned Pre-Trial Chamber to alter the language of every one of the 13 counts listed in the DCC as follows:

² *c.f.*; Prosecution list of evidence: HRW, UNJHRO, ICG reports and others.

- a) striking out the words "*These locations include but are not limited to:*" replacing them with "*These locations are:*";
- b) striking out the words "*Busurungi and neighbouring villages*" or "*Busurungi and surrounding villages*" replacing them with "*Busurungi*", and;
- c) striking out "*the village of W673 and W674*" and "*in Masisi territory in the second part of 2009*".



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Friday, July 22, 2011