



Original: **English**

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

Date: **25/07/2011**

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

Defence response to Prosecution filing: ICC-01/04-01/10-311

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

Ms. Fatou Bensouda

Mr. Anton Steynberg

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 the 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 notes the Prosecution's unauthorised amendment of its list of evidence and does not, at this late stage, seek to take issue with the reasoning proffered for exceeding the order of the Court.

Notwithstanding, prejudice has, once again, been caused to the Defence.

Although the Prosecution asserts that no evidence has been added to its list of evidence, the Defence has absolutely no idea what items have been removed. The Prosecution did not provide a version of its amended list of evidence with tracked changes nor did it supply the Defence with a sequential list of ERNs which would permit the Defence to cross check and avoid the duplication of evidence.

As a consequence, the Defence faces the impossible task of assessing which documents removed from the Prosecution list of evidence now need to be placed on the Defence list of evidence. All this has to be done in the few days remaining for the Defence to produce its list of evidence.

The Defence finds it extremely difficult to prepare for the confirmation hearing in circumstances where, as each day goes by, the Prosecution, for one reason or another, changes the rules of engagement.

To conclude, the Defence reserves the right, at the confirmation hearing, to refer to any document procured by and currently in the possession of the Prosecution. No prejudice will be caused to the Prosecution which, as the master of its own documentary evidence, is presumed to be aware of its contents. In the circumstances, the Defence list of evidence will only include items not currently in the possession of the Prosecution.

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

Monday, July 25, 2011