

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 August 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. Callixte MBARUSHIMANA***

Public Document

**Prosecution's views and proposals on the schedule of the
confirmation hearing and application to bar the testimony of a Defence
expert if essential documentation is not provided**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Counsel for the Defence

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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**

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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution files herewith its views and proposals on the schedule of the confirmation hearing, as ordered by the Single Judge.¹

Objection or observations relating to the proper conduct of the proceedings

2. The Prosecution objects, pursuant to Rule 122(3) of the Rules, to the failure by the Defence to permit the Prosecution inspection of the evidence relied upon in support of the expert report of its expert witness, Dr Phil Clark and, unless that failure is remedied by 5 August 2011, requests that the Chamber bar the testimony of this witness and the use of his report at the confirmation hearing.
3. From a review of Dr Clark's report, it is apparent that he consulted and relied on these authorities for evidential purposes. As the factual underpinning of his "expert opinion", they ought to have been offered for inspection² by the Defence, in accordance with the Chamber's disclosure ruling.³ The Prosecution thus submits that the Defence should be ordered to disclose all items of evidence relied upon by Dr Clark, that are not already on the Prosecution's List of Evidence, no later than 16:00 on 5 August. The Prosecution also requests that the Defence be directed to provide the Prosecution, by that same deadline, a copy of Dr Clark's unpublished book, *Doing Justice during Conflict: The International Criminal Court in the Democratic Republic of Congo and Uganda*, which is listed on his curriculum vitae. If the items of evidence and the unpublished book are not provided by 5 August, the Prosecution would request that the Defence be barred from presenting Dr Clark's *viva voce* evidence or report at the confirmation hearing.

¹ ICC-01/04-01/10-326.

² In terms of Rule 78.

³ ICC-01/04-01/10-207.

Viva voce witnesses

4. The Prosecution does not intend to call any *viva voce* witnesses. The Prosecution does intend to cross-examine Dr Clark, should he testify. The Prosecution requests a minimum of three (3) hours for the cross-examination of this witness (provided his evidence in chief is not permitted to exceed the bounds of his report, to which the Prosecution will object).

Time required for presentation

5. The Prosecution estimates that the time required for the presentation of its arguments on the merits including opening and closing statements (excluding any time periods referred to in para. 4 above) will not exceed nine (9) hours.
6. The Prosecution also reserves the right to respond to any objections raised or observations made by the Defence pursuant to Rule 122(3) of the Rules. The Prosecution cannot include in its estimate the time which may be required for such response.

Visual Aids

7. The Prosecution gives notice of its intention to present certain visual aids at the confirmation hearing, including interactive maps showing troop movements and engagements during the *Umoju Wetu* and *Kimia II* military campaigns; interactive maps showing the locations and details of FDLR attacks on the civilian population of North and South Kivu; timelines demonstrating the connections and temporal relationship between various events established by the Prosecution evidence; and PowerPoint slides containing explanatory charts and/or diagrams. These visual aids are not submitted as evidence, but will be used solely as explanatory aids to the Prosecution's oral presentation. They will be constructed exclusively on the basis of evidence included in the Prosecution's List of

Evidence. Advance copies will be provided to the Court Officer in accordance with the Regulations.



Luis Moreno-Ocampo
Prosecutor

Dated this 4th day of August 2011

At The Hague, The Netherlands