



Original: **English**

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

Date: 05/08/2011

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-01/04-01/10-335

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. The Defence for Mr. Callixte Mbarushimana hereby files its response to the *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*.¹

2. The Defence submits that all "essential" documents referred to in Dr. Phil Clark's report may be accessed via the internet. Should the Prosecution experience difficulty in acquiring any particular item then the Defence will be happy to assist. This is despite the oppressive nature of the Prosecution's demand that the Defence supply such documentation within 24 hours.

3. Pursuant to an *inter partes* request for disclosure, the Defence asked Dr. Phil Clark ("the Expert") if he would be prepared to share the contents of his unpublished manuscript with the Prosecution. On 1 August 2011, the Defence informed the OTP of Dr. Clark's response:

"I would not be amenable to releasing a copy of the manuscript of my unpublished book. The manuscript is still very much in draft form and will change on the basis of my next field trip to Uganda and the DRC".

4. The Defence endorses the views of the Expert and suggests that in no way does this detract from the contents of his report nor from his acknowledged expertise among his peers – which include those on whom the Prosecution have previously relied viz., Dr. Gerard Prunier.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

The Hague, the Netherlands

Friday, August 05, 2011

¹ ICC-01/0401/10-335.