



Original: **English**

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

Date: 03/11/2011

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's Application to File Additional Authority

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
 Ms. Karlijn Van der Voort

Legal Representatives of the Victims

Mr. Mayombo Kassongo
 Mr. Ghislain Mbanga

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

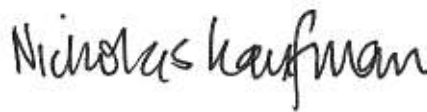
**Victims Participation and Reparations Other
 Section**

1. The Defence for Callixte Mbarushimana hereby files its response to the *Prosecution's Application to File Additional Authority* ("the Prosecution Application").¹

2. The Defence notes that the Prosecution Application has been filed the best part of a month after the additional authority was promulgated and after the matter to which it purportedly pertains has been amply litigated at the confirmation hearings. Should the Pre-Trial Chamber thus allow the Prosecution Application, the Defence requests that it order the said authority to be filed "*without any accompanying argument*".²

3. In any event, the Defence submits that the authority which the Prosecution seeks to adduce is of negligible weight and fails to meet the standard required for applicable law under Article 21(1)(c) of the Rome Statute. The guidelines of the Argentinian General Prosecutor do not have the force of a statutory instrument nor of a judgment of a domestic tribunal of law.

4. Should the Pre-Trial Chamber accede to the Prosecution Application, the Defence requests the right of last reply.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

The Hague, the Netherlands

Thursday, November 03, 2011

¹ ICC-01/04-01/10-453

² See *Decision on the "Prosecution Request for Leave to Present Additional Authority Regarding Defence Appeal against 'Decision on the Defence Request Concerning Languages'"* ICC-01/04-01/07-402 16-04-2008 3/3 EO PT OA3 the reasons for which are set out in ICC-01/04-01/07-522- OA3 paras 14-16 referred to in the Prosecution Application at footnote 3.