

**CONFIDENTIAL, ex parte,
DEFENCE ONLY**

ANNEX

A



Nick Kaufman <kaufman.nick@gmail.com>

ICC: Prosecutor v. Callixte Mbarushimana: Request for Assistance from Defence Counsel

Serge Brammertz <brammertz@un.org>
To: Nick Kaufman <kaufman.nick@gmail.com>

29 June 2011 03:15

Nick,

Sorry for my late reply. We were very busy over the last weeks and I am also currently on mission.

As requested I confirm that I have no information to provide.

Regards

Serge Brammertz

From: Nick Kaufman [kaufman.nick@gmail.com]

Sent: 06/28/2011 10:46 PM ZE3

To: Serge Brammertz

Subject: Re: ICC: Prosecutor v. Callixte Mbarushimana: Request for Assistance from Defence Counsel

Dear Serge,

I am yet to receive acknowledgement of the receipt of this mail.

I would be grateful for your views before making my final decision as to who should be invited to give evidence in the context of a jurisdictional challenge.

Kind regards,

Nick Kaufman

On 10 June 2011 12:01, Nick Kaufman <kaufman.nick@gmail.com> wrote:

Dear Serge,

I write to you in your capacity as the former Deputy Prosecutor for Investigations at the ICC.

I am currently representing, *inter alia*, Callixte Mbarushimana - the subject of LMO's third investigation in the DRC situation. Callixte is the alleged Sec-Gen of the FDLR - a movement which is currently fighting in the North and South Kivus.

One of my arguments is that back in 2004 (at or around the time of President Joseph Kabila's referral on 3 March 2004), the DRC authorities never intended that the situation in the Kivus should be investigated. Although President Kabila's letter refers the crimes committed on DRC territory as a whole - the true purpose of the referral - we will argue - was solely to investigate the crimes committed in the Ituri region. My investigations have, indeed, revealed that ICC resources were only allocated for investigating the Ituri and that investigations in the Kivus were, at the time, positively discounted. My instinct further suggests to me that it was in President Kabila's interests not to have the Kivus referred (at the time) because it would have entailed an investigation into his responsibility for **his** troops' conduct in the region.

I am particularly mindful of the fact that before the referral - LMO's press releases and speeches only refer to investigating "the Ituri Situation". Something must therefore have happened during the negotiations between the ICC/OTP and the DRC to change the focus of the referral.

I was wondering whether you would be able to assist me on any of these matters?

My ultimate aim is to challenge the jurisdiction of the ICC over my client for the following reason: Article 14(1) enables a State Party to refer a situation "requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of crimes". Article 14(2) places a mandatory requirement on the State Party to specify "the relevant circumstances" for the referral. The "relevant circumstances", in my view, were not the Kivus and the referral could not possibly have been intended to target my client - who was not even active in the FDLR at the time of the referral.....

I realise that you may be bound by professional confidentiality - yet on the other hand there is nothing improper in my petitioning you - now that you are no longer at the ICC.

I would be grateful for your assistance in any way whatsoever. I would also be available to meet you should you desire.

Regardless, I would be grateful for a response even if you feel unable to help me for whatever reason.

Kind regards,

Nick Kaufman
Counsel for Callixte Mbarushimana