



Original: **English**

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

Date: **01/08/2011**

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
with confidential Annex A**

Defence List of Evidence

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

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. In its *Decision on the Prosecution's request to postpone the confirmation hearing*,¹ the Pre-Trial Chamber ordered the Defence to file its list of evidence, by 1 August 2011. The Pre-Trial Chamber ordered that such list of evidence, if any, should comprise evidence "to be presented at the confirmation hearing".²

2. The Prosecution bears the burden of establishing substantial grounds to believe that Mr. Mbarushimana has committed the offences with which he has been charged. To this end, the Prosecution list of evidence contains incriminating documents which the Prosecution believes supports each and every one of its factual assertions.

3. The Defence cannot be expected to present as its evidence materials which the Prosecution is using to incriminate Mr. Mbarushimana. The Defence cannot, furthermore, be expected to present – as evidence – incriminating materials seized from the French and German authorities the very admissibility of which it is challenging. The Defence will, however, **refer to and distinguish all materials**³ on the Prosecution's list of evidence supporting those elements of the charges which are not subject to procedural concessions.

4. In light of the aforementioned, the Defence list of evidence, attached hereto as confidential annex A, comprises documents which are not listed on the Prosecution list of evidence and which the Defence will present as exculpatory evidence at the confirmation hearing.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel
Monday, August 01, 2011

¹ ICC-01/04-01/10-207.

² ICC-01/04-01/10-87 at page

³ In particular the statements/summaries of **all** OTP/BKA witnesses disclosed by the OTP to date and **all** UN/NGO reports referred to in the Prosecution's list of evidence.