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

Date: **24/06/2011**

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-01/04-01/10-238

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

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REGISTRY

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Ms. Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section Other**

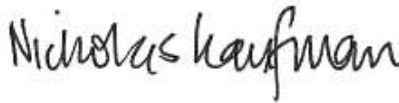
The Defence for Mr. Callixte Mbarushimana hereby submits its response to the *Prosecution's request for reclassification of annexes to the "Decision on the review of potentially privileged documents"*¹ ("the Request").

The Request, in so far as it relates to Annex 1 of the *Decision on the review of potentially privileged material*² is justified in a particularly oblique manner; namely that it will "assist the Prosecution in understanding the Chamber's privilege rulings". The Defence submits that there is no need to clarify the Chamber's rulings on the matter which are sufficiently clear.

The contents of Annex 1 have been deemed privileged and, as such, privilege should also attach to the title of all materials listed therein.

Furthermore, the Request, in so far as it relates to Annexes 3 and 4 of the Decision, is premature. The Pre-Trial Chamber is yet to render a final decision on whether the materials contained in these annexes are subject to privilege. Accordingly, the content of these annexes may therefore change.

It should be recalled that it was the Prosecution itself which first raised the issue of privilege after it had encountered and quarantined potentially privileged materials among the so-called "Hard Copy Materials" seized from Mr. Mbarushimana's premises. These materials remain in the possession of the Prosecution and could, conceivably, include those listed in Annex 1. In the circumstances, therefore, the Prosecution should be ordered to surrender these materials to the Defence immediately and to destroy any copy in their possession.



Nicholas Kaufman
Counsel for Callixte Mbarushimana

Dated this Friday, June 24, 2011
Jerusalem, Israel

¹ ICC-01/04-01/10-238.

² ICC-01/04-01/10-237.