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

Date: **24/05/2011**

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR
*v. CALLIXTE MBARUSHIMANA***

Public Document

Defence Response to Pre-Trial Chamber I's Order: ICC-01/04-01/10-173

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 the 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

The Defence for Mr. Callixte Mbarushimana hereby submits its response to the Single Judge's *Decision on the Prosecution's Response to the Defence submission of a list of potentially privileged documents* ("the Decision").¹

The Defence has no objection to the reclassification of the *ex parte* annexes appended to ICC-01/04-01/10-137 and, for that matter, ICC-01/04-01/10-165 so long as they remain confidential to the Prosecution and Defence only.

The Defence also has no objection to the reclassification of the two annexes appended to ICC-01/04-01/10-155 so long as they remain confidential to the Prosecution and Defence only.

The Defence agrees to this course of action despite its concerns as to the OTP's true motives. The Defence cannot divorce itself from the impression that the OTP is actively seeking to approach what the former views as the guardians of Mr. Mbarushimana's protected secrets for the purpose of penetrating the confidentiality of these relationships.

The number of potentially privileged "items" is not an easy concept to define – the path-links contained in the lists include references to individual documents and files. The lists, nevertheless, identify the total number of potentially privileged items to be found on each of the seized hard drives.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Tuesday, May 24, 2011

¹ ICC-01/04-01/10-173.