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

Date: 28/06/2011

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
with confidential annex A**

Defence reply to Prosecution filing: ICC-01/04-01/10-245

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

1. The Defence for Mr. Callixte Mbarushimana hereby submits its response to the *Prosecution's observations on the Defence request for disclosure ICC-01/04-01/10-227* ("the Observations").¹

2. The Defence notes that the Prosecution objects to the disclosure of the letter received from the authorities of the Democratic Republic of the Congo ("the DRC") on 14 November 2003 on the grounds of relevance and lack of consent. Notably, however, the Prosecution does not argue that it received the letter on condition of confidentiality but rather that the claim of confidentiality was made after it enquired of the DRC as to whether it would agree to disclose the letter to the Defence.

3. In the circumstances, all that is before the Chamber is the Prosecution's communication of the DRC's request for confidentiality without any reasons being given for claiming such confidentiality. No argument, for example, is made that disclosure of the letter could impact on one of the protected interests under the Rome Statute such as the protection of national security information. Nor does the Prosecution cite any provision of the Rome Statute which provides that diplomatic correspondence is, *per se*, to be presumed confidential.

4. The Defence recalls that the letter from the DRC was a response to a letter sent by the Prosecutor of the International Criminal Court to the President of the DRC on 8 October 2003. In his letter,² the Prosecutor most definitely *did* limit the geographical scope of the information that he sought from the DRC. To this end, therefore, the exact phraseology of the DRC letter of 14 November 2003 (sent by way of reply) is of extreme pertinence and may not be substituted with a Prosecution edited summary.

5. The Defence sincerely apologises for the late filing of this reply which was caused by a clerical error in calculating time limits.



Nicholas Kaufman
Counsel for Callixte Mbarushimana

Jerusalem, Israel

Tuesday, June 28, 2011

¹ ICC-01/04-01/10-245.

² Confidential annex A.