



Original: **English**

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

Date: **29/06/2011**

**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-01/04-01/10-254**

**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**  
 Xavier-Jean Keïta

**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 *Prosecution's request for reclassification of annexes to the "Defence compliance with Pre-Trial Chamber I's decision: ICC-01/04-01/10-237"*<sup>1</sup> ("the Request").

1. In light of its previous request<sup>2</sup> to disclose the annexes to Pre-Trial Chamber I's decision : ICC-01/04-01/10-237, the present Request is no more than an attempt by the Prosecution to have a second bite at the cherry. The Request is, in substance, merely a reply to a response<sup>3</sup> - something which the Prosecution habitually attempts to "*strike*" [sic] when done by others.

2. Notwithstanding, the Prosecution is to be thanked for affording the Defence the opportunity to clarify that which has caused it concern all along – namely that the Prosecution will use the titles of materials contained in the said annexes to actively search for full blown duplicates in its own possession. In this respect, the Pre-Trial Chamber is referred to footnote 10 to the Request which states as follows:

*The Prosecution submits that the Defence argument that the seized "Hard Copy Materials [...] could, conceivably, include those [documents] listed in Annex 1..." (ICC-01/04-01/10-250, final para.) in fact provides a potent argument in favour of disclosing the titles of the documents set out in Annex 1. This would allow the Prosecution to protect the Defence's privilege by searching for and destroying or quarantining any duplicates of these documents amongst the evidence in its possession.*

---

<sup>1</sup> ICC-01/04-01/10-254.

<sup>2</sup> ICC-01/04-01/10-238.

<sup>3</sup> ICC-01/04-01/10-250.

3. In the circumstances, the learned Pre-Trial Chamber is respectfully requested to reject the Request and to order the Prosecution to immediately surrender to the Defence all items which it formerly identified as potentially privileged.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Nicholas Kaufman  
Counsel for Callixte Mbarushimana

Dated Wednesday, June 29, 2011  
Jerusalem, Israel