



Original: **English**

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

Date: **12/07/2011**

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 Observations pursuant to Decision: ICC-01/04-01/10-277

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

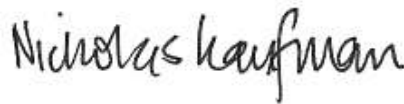
Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

1. The Defence for Mr. Callixte Mbarushimana hereby presents observations pursuant to Pre-Trial Chamber I's *Second decision on the review of potentially privileged material* ("the Decision").¹
2. The Defence has not relinquished any claim to client-attorney privilege and respectfully submits that a waiver of privilege may only be express and not implied.
3. In accordance with practice to date, the Defence requests that it be allowed to perform prior analysis of any presently corrupted or password-protected files the contents of which may be retrieved.
4. The Defence repeats its previous argued submission that any forensic attempt to retrieve information on corrupted or password protected files should be carried out in the presence of a Defence representative and/or by an independent agency the selection of which is approved by the Defence. To date, all such forensic tests have been performed either by the Registry or by the Prosecution without any Defence input whatsoever. To this end, the Defence reiterates that it will reserve the right to challenge the admissibility of any incriminating evidence extracted from such forensic examinations.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Tuesday, July 12, 2011

¹ ICC-01/04-01/10-277.