



Original: **English**

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

Date: 05/08/2011

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-01/04-01/10-333

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

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 files its response to the *Prosecution's request for direction in respect of potentially privileged material contained on hard drive DRC-REG-0009-0046-RED* ("the Hard Drive"):¹
2. The Defence acknowledges that the items identified by the Prosecution are indeed subject to client-attorney privilege – as evidenced by the fact that herein undersigned Counsel printed such in bright red highlighted letters in the body of his mail.
3. The Defence is grateful to the Prosecution for its diligence.
4. The items identified as privileged escaped the Defence's attention given the sheer amount of information (several hundred gigabytes) it had to review in the short time available to it. The Defence would request 48 hours to re-review the **Emails** contained on the Hard Drive. The rest of the contents of the Hard Drive may be released to the Prosecution.
5. The Defence disputes the Prosecution's interpretation and calculation of the deadline for filing "new" evidence pursuant to Rule 121(5) and will raise its objections if and when the Prosecution should attempt to introduce further evidence for use at the confirmation hearing.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

The Hague, the Netherlands

Friday, August 05, 2011

¹ ICC-01/0401/10-333.