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

Date: 22/06/2011

**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 annexes A & B, ex parte, Defence Only**

**Defence compliance with Pre-Trial Chamber I's decision: ICC-01/04-01/10-237**

**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**

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**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 complies with Pre-Trial Chamber I's *Decision on the review of potentially privileged material* ("the Decision").<sup>1</sup>
2. The Defence reasserts its claim of privilege with respect to the majority of the materials listed in Annex 3 to the Decision and provides the necessary additional information as ordered by the learned Pre-Trial Chamber.<sup>2</sup>
3. With respect to the materials contained in Annex 4 to the Decision, the Defence clarifies that it was only able to access "DBX" folders with software provided by the IT services of the Registry. Given, however, that Mr. Mbarushimana does not recollect the relevant passwords, the Defence was not able to access or view such encrypted materials listed in Annex 4 to the Decision. In so far as it is possible, the Defence has indicated where it believes presumed copies of password protected materials exist on the basis of similar titles and paths.<sup>3</sup> Since it is unable to access the password protected materials and given the contents of the presumed copies, the Defence cannot preclude the possibility that they may contain potentially privileged information.
4. The Defence does not possess the technical capability to access materials listed in Annex 4 as corrupted but indicates where it believes that presumed copies exist identified on the basis of similar titles and paths.<sup>4</sup> Since it is unable to access the corrupted materials and is unaware of the contents thereof, the Defence cannot preclude the possibility that they may contain potentially privileged information.

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<sup>1</sup> ICC-01/04-01/10-237

<sup>2</sup> Confidential Annex A.

<sup>3</sup> Confidential Annex B.

<sup>4</sup> *ibid.*

5. Additional information supplied for those materials appearing in Annex 3 of the Decision is equally valid for the same materials listed in Annex 4.

6. In the event that the Prosecution or Registry should acquire the technical means for accessing corrupted or password protected materials, the Defence would respectfully request that it be reserved first review thereof.



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Nicholas Kaufman  
Counsel for Callixte Mbarushimana

Dated this Wednesday, June 22, 2011

Jerusalem, Israel