



Original: **English**

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

Date: **14/07/2011**

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono, 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 Compliance with 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

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 hereby submits its observations on formerly password-protected files contained in Annex 3 to the Pre-Trial Chamber I's decision ICC-01/04-01/10-277 ("the Decision").

2. The Defence maintains its claim of privilege over the majority of files listed in Annex 3. A full description of the documents and a detailed explanation as to why, in the view of the Defence, these documents should be privileged within the meaning of rule 73(1) of the Rules is provided in an annex appended to the present submission.¹

3. The Defence has identified three types of documents that should attract privilege within the meaning of rule 73(1):

- (i) Documents setting out factual and background information which were prepared for use in the defence of Mr. Mbarushimana in criminal legal proceedings instituted against him;
- (ii) Draft legal submissions prepared by Mr. Mbarushimana's lawyer(s), which were not communicated to any person other than to Mr. Mbarushimana;
- (iii) Draft correspondence prepared by Mr. Mbarushimana's lawyer(s), which were sent to Mr. Mbarushimana for the purpose of obtaining his observations thereon but never ultimately communicated to a third party or made public.

4. The Defence has identified² additional privileged documents that were previously password-protected. These documents were not expressly listed in Annex 3 to the Decision but have now become accessible.

¹ Confidential Annex A, ex parte, Defence only.

² See Annex A

5. Finally, the Defence highlights one document³ which remains password-protected and over which, as with others, it claims the right of first review in the event that the password should be "cracked".



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Thursday, July 14, 2011

³ See Annex A