



Original: **English**

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

Date: **9 March 2011**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. Callixte MBARUSHIMANA***

**Public Document
with Confidential Annex A and Public Annex B**

Prosecution submission of keywords and list of potentially privileged materials

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Luis Moreno-Ocampo

Fatou Bensouda

Counsel for the Defence

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**

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pre-Trial Chamber I ordered the Prosecution and the Defence to provide a list of properly motivated keywords to the Chamber and Registry to be used in searches for potentially privileged communications in the electronic data seized from the Suspect, Callixte Mbarushimana.¹ The Chamber additionally requested the Parties to inform the Chamber of any further potentially privileged communications identified amongst the seized documents already processed by the Registry and searched by the Prosecution.²
2. The Prosecution submits in confidential³ Annex A a list of legal counsel, along with their names and addresses as alternative terms, that might facilitate identification of attorney-client communications. The list consists of all counsel known by the Prosecution to have represented the Suspect. The Prosecution has used this list up until now to identify communications that potentially might fall within the ambit of rule 73(1) of the Rules of Procedure and Evidence.
3. Rule 73(1) protects “communications made in the context of the professional relationship between a person and his or her legal counsel”. The Prosecution submits that a key word search based upon the names and contact details of the Suspect’s various legal counsel will adequately identify all such communications, including emails, letters and phone calls.
4. Annex B lists 179 items which were identified in a keyword search conducted by the Prosecution, including the details of three additional legal counsel identified by the Defence. This list of potentially privileged documents is an updated version of the list previously provided to the Chamber⁴ and incorporates the 72 documents contained in the previous list.

¹ Decision on the ‘Prosecution’s request for a review of potentially privileged material’, ICC-01/04-01/10-67, 4 March 2011, p. 8.

² *Ibid.*

³ Since the list contains the details of private persons, the Prosecution submits that it is appropriate that this Annex be filed as “Confidential”.

⁴ Prosecution’s request for a review of potentially privileged material, Annex A, ICC-01/04-01/10-54-AnxA, 14 February 2011.

5. Because the Prosecution cannot anticipate the Defence list, it reserves the right to comment on the Defence list, if appropriate. For example, the Defence has indicated its intention to include in its key word list certain unidentified “notions, concepts and topics”.⁵ It has also asserted an undefined but seemingly expansive religious privilege. The phrase “notions, concepts and topics” is not informative, and the Defence has not defined the parameters of what it believes is included in the asserted religious privilege. Once the Defence provides properly motivated terms, the Prosecution will be positioned to comment on the suitability of those terms.



Luis Moreno-Ocampo
Prosecutor

Dated this 9th day of March 2011

At The Hague, The Netherlands

⁵ Defence Request for Suspensive Effect of Decision ICC-01/04-01/10-67, ICC-01/04-01/10-68, 7 March 2011, para. 9.