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

Date: **18 May 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 Annexes 1 – 12, and Confidential Annex A
Prosecution's first communication of Pre-Inspection Reports**

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**

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. The Prosecution submits Pre-Inspection Reports for 12 packages of evidence made available to the Defence pursuant to Rule 77 of the Rules of Procedure and Evidence (Annexes 1 – 12). In eight of the 12 packages,¹ the Prosecution submits concise summaries² of those items identified as material to the preparation of the Defence and an explanation of their relevance in compliance with an order of Pre-Trial Chamber I (“Chamber”).³
2. The four remaining packages⁴ contain exclusively either Callixte MBARUSHIMANA’s (“Suspect”) intercepted communications or FDLR press releases *ex facie* authored by him. This evidence was thus made available to the Defence since it was obtained from or belonged to the Suspect.

Description of the Annexes

3. Annex 1 is Pre-Inspection Report 1 and lists 1708 intercepted communications and their 4129 associated files received from the German authorities (the *Bundeskriminalamt* or “BKA”) disclosed to the Defence on 2 February 2011. There are 5837 items listed in Pre-Inspection Report 1 and it contains summaries of the intercepted communications and an explanation of the relevance of the items for the preparation of the Defence.
4. Annex 2 is Pre-Inspection Report 2 and lists 146 FDLR press releases *ex facie* authored by the Suspect, disclosed to the Defence on 11 March 2011.
5. Annex 3 is Pre-Inspection Report 3 and lists the transcripts of intercepted telephone and email communications attributed to the Suspect which were produced by the French authorities, accompanied by corresponding *procès*

¹ Annexes 1, 5, 6, 8 - 12.

² Decision on the “Prosecution’s applications for leave to appeal the ‘Decision on issues relating to disclosure (ICC-01/04-01/10-87)’”, ICC-01/04-01/10-116, 21 April 2011, para. 21.

³ Decision on issues relating to disclosure, ICC-01/04-01/10-87, 30 March 2011, p. 16.

⁴ Annexes 2 - 4 and 7.

verbaux.⁵ The Report also lists one further FDLR press release *ex facie* authored by the Suspect. The 140 items listed in Annex 3 were disclosed to the Defence on 21 March 2011.

6. Annex 4 is Pre-Inspection Report 4 and lists official translations and/or transcriptions produced by the Prosecution of some of the intercepted communications listed in Annex 1. The 65 items in Annex 4 were disclosed to the Defence on 13 April 2011.
7. Annex 5 is Pre-Inspection Report 5 and lists 44 items relating to admissibility and jurisdiction, disclosed in compliance with the Chamber's order⁶ and disclosed to the Defence on 13 April 2011. The Report also contains summaries and explanations of relevance of the items for the preparation of the Defence.
8. Annex 6 is Pre-Inspection Report 6 and lists intercepted audio recordings and SMS communications attributed to the Suspect, transcripts or translations of some of these communications, and related *procès-verbaux* and *réquisitions judiciaires*. The Report contains summaries of the *process-verbaux* and *réquisitions judiciaires* and an explanation as to their relevance to the preparation of the Defence. The 2525 items in Annex 6 were disclosed to the Defence on 13 April 2011.
9. Annex 7 is Pre-Inspection Report 7 and lists further intercepted audio recordings and SMS communications attributed to the Suspect and are those intercepted communications which were retrievable from a corrupted disc.⁷ These 403 items were disclosed to the Defence on 27 April 2011.

⁵ The *process-verbaux* in Pre-Inspection Report 3 are the transcripts of some of the intercepted communications and internet flow provided by the French authorities. They also confirm that the communications were intercepted in compliance with judicial authorization and also identify any interpreters participating in the interception.

⁶ ICC-01/04-01/10-87, para. 21.

⁷ See ICC-01/04-01/10-122.. Pursuant to the Chamber's decision ICC-01/04-01/10-126, the balance of the data on the corrupted disc will be disclosed if and when it is recovered.

10. Annex 8 is Pre-Inspection Report 8 and lists further translations and/or transcriptions of some of the intercepted communications listed in Annex 1 and 127 FDLR press releases authored by Ignace MURWANASYAKA. The Report also contains summaries and an explanation of the relevance of the 127 press releases for the preparation of the Defence. The 212 items were disclosed to the Defence on 27 April 2011.
11. Annex 9 is Pre-Inspection Report 9 and lists four items which the Prosecution relied on in the "Prosecution's request for the assessment of the English proficiency of Callixte Mbarushimana"⁸ and which were disclosed to the Defence on 2 May 2011. The Report also contains summaries of the items and an explanation of their relevance for the preparation of the Defence.
12. Annex 10 is Pre-Inspection Report 10 and lists 95 items disclosed to the Defence on 2 May 2011. The items in the Report are documents containing financial information relating to the Suspect and further transcripts of intercepted communications attributed to the Suspect, and documents relating to these communications. The Report contains summaries and an explanation of the relevance of items which are material to the preparation for the Defence.
13. Annex 11 is Pre-Inspection Report 11 and lists 13 items disclosed to the Defence on 2 May 2011. The items in the Report are call records of intercepted communications attributed to the Suspect and their associated documentation. The Report contains summaries and an explanation of the relevance of those items for the preparation of the Defence.
14. Annex 12 is Pre-Inspection Report 12 and lists 97 items relating to the defunct www.fdlr.org website obtained from the BKA disclosed to the Defence on 2 May 2011. The Report also contains summaries and an

⁸ ICC-01/04-01/10-122.

explanation of the relevance of the items for the preparation of the Defence.

15. Annex A is a table which compiles the intercepted communications received from the BKA and their associated files.⁹ This table was also disclosed to the Defence on 13 April 2011¹⁰ as a tool designed to assist in linking the intercepted communications to their related files.



Luis Moreno-Ocampo
Prosecutor

Dated this 18th day of May 2011
At The Hague, The Netherlands

⁹ In addition to the 1708 intercepted communications and associated files disclosed to the Defence as Rule 77 material, the table in Annex A also includes a further 18 intercepted communications and their associated files, which have been disclosed to the Defence pursuant to article 61(3)(b) of the Rome Statute.

¹⁰ An updated version of the table incorporating all BKA intercepted communications and official translations and transcriptions, produced by the Prosecution, was forwarded via email to the Defence on 27 April 2011 at 19:24.