

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/10  
Date: 18 August 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**

**Decision on “Defence request for an extension of the time-limit to submit observations on interim release” and request for OPCV observations**

**Decision 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 Yaël Vias-Gvirsman

**Legal Representatives of the Victims**

Mr Hervé Diakiese  
 Mr Mayombo Kassongo  
 Mr Ghislain Mabanga  
**Unrepresented Victims**

**Legal Representatives of the Applicants****Unrepresented Applicants for  
Participation/Reparation****The Office of Public Counsel for  
Victims**

Ms Paolina Massidda  
**States Representatives**

**The Office of Public Counsel for the  
Defence****Amicus Curiae****REGISTRY****Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

**Pre-Trial Chamber I** of the International Criminal Court (“Chamber” and “Court” respectively),

**NOTING** the “Decision requesting observations on interim release”, issued by the Chamber on 12 August 2011 (“Briefing Schedule”),<sup>1</sup> wherein the Defence was requested to submit their observations on interim release first, followed by observations of the Prosecutor, legal representatives of victims and affected States Parties;<sup>2</sup>

**NOTING** the “Defence request for an extension of the time-limit to submit observations on interim release” (“Request”), filed on 14 August 2011,<sup>3</sup> wherein the Defence: (i) requests an extension of time to file observations to the next working day after the States Parties’ observations<sup>4</sup> and (ii) relying on rules 122(8), 140(2)(d) and 141(2) of the Rules of Procedure and Evidence (“Rules”), submits that “where it has not initiated a motion for relief and where legal proceedings are initiated by the Chamber *proprio motu* then, as a matter of justice, the Defence should always be afforded the right to submit last”;<sup>5</sup>

**NOTING** the “Prosecution’s response to ‘Defence request for an extension of the time-limit to submit observations on interim release,’” filed on 15 August 2011 (“Response”),<sup>6</sup> wherein the Prosecutor: (i) opposes the Request,<sup>7</sup> (ii) disputes that there is no automatic presumption that the Defence should always be afforded the right of last submission<sup>8</sup> and (iii) argues that the Defence should go first in this instance because the Defence has the burden of proof to show the Chamber

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<sup>1</sup> ICC-01/04-01/10-360.

<sup>2</sup> *Ibid.*, p. 5.

<sup>3</sup> ICC-01/04-01/10-363.

<sup>4</sup> *Ibid.*, para. 6.

<sup>5</sup> *Ibid.*, paras 2-5.

<sup>6</sup> ICC-01/04-01/10-370.

<sup>7</sup> *Ibid.*, para. 2.

<sup>8</sup> *Ibid.*, para. 3.

reviewing the suspect's detention that changed circumstances warrant modifying the ruling on detention;<sup>9</sup>

**NOTING** article 60(3) of the Rome Statute, rules 118(2) and 119(3) of the Rules, and regulations 24(5), 34 and 35(2) of the Regulations of the Court ("Regulations");

**CONSIDERING** that the Briefing Schedule is designed for the Defence to speak first so that: (i) the Defence can clarify the parameters of the interim release debate by identifying which changed circumstances are most relevant for the other participants to consider in their submissions and (ii) should the Defence wish to seek release to a country not presently invited to file observations on interim release issues, the Chamber has enough time to ask that country for observations in time for them to be considered in the forthcoming interim release review decision;

**CONSIDERING**, pursuant to regulation 35(2) of the Regulations, that the Defence has not provided good cause to justify extending the time limit given to them in the Briefing Schedule;

**CONSIDERING**, however, that the issue of interim release is important to the Defence and that the Chamber may benefit from a Defence reply to the other participants' arguments, so long as such a reply is confined to arguments raised in the other participants' observations;

**CONSIDERING**, pursuant to the Chamber's previously stated understanding of victims "that have communicated with the Court"<sup>10</sup> and rule 119(3) of the Rules, that before any Defence reply is filed the Office of the Public Counsel for Victims ("OPCV") should also be afforded an opportunity to file observations regarding interim release on behalf of the unrepresented applicants in this case;

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<sup>9</sup> *Ibid.*, paras 2-3.

<sup>10</sup> ICC-01/04-01/10-377, pp. 3-4.

**FOR THESE REASONS,**

**REJECTS** the Request for extension of the time limit given to the Defence in the Briefing Schedule;

**GRANTS** the Defence leave to reply to the observations of the other participants;

**INVITES** the Defence, if necessary, to file a reply by Tuesday, 13 September 2011;

**DECIDES** that, only for the purposes of their participation in the current interim release litigation, the OPCV shall represent unrepresented applicants and

**REQUESTS** the OPCV to submit their views on interim release no later than 2 September 2011.

Done in both English and French, the English version being authoritative.

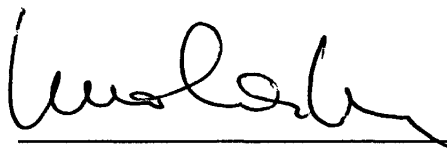


**Judge Sanji Mmasenono Monageng**

**Presiding Judge**



**Judge Sylvia Steiner**



**Judge Cuno Tarfusser**

Dated this Thursday, 18 August 2011

At The Hague, The Netherlands