

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/04-01/10
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PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single 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 Public Annex**

Prosecution's Observations on interim release

Source: Office of the Prosecutor

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I. Introduction

1. Pursuant to Rule 118(2) Pre-Trial Chamber I (“Chamber”), in its “Decision requesting observations on interim release”, requested the parties and legal representatives of victims to submit their views on Mr. Callixte Mbarushimana’s (“Suspect”) detention for the Chamber’s review of its earlier ruling on the matter, by 16 September.¹ The Prosecution hereby submits its views on the interim release of the Suspect. The Prosecution also presents further evidence of the current activities of the FDLR in the Kivu Provinces.

II. Background

2. On 26 August 2011, the Defence filed the “Defence Observations on interim release pursuant to Decision ICC-01/04-01/10-360”² as requested by the Chamber in the Decision requesting observations on interim release. In its submissions, the Defence stresses that due to the pending appeal against the Chamber’s Decision on Mr. Mbarushimana’s second request for interim release, the Defence has no further observations until receipt of the appeals judgment. The Defence also notes that it filed a third request for interim release³ and urges that its failure to submit observations in this submission should not prejudice its position in that third request.
3. On 29 August 2011, the Legal Representative of 93 victims filed the « Observations de victimes autorisées à participer à la procédure sur la liberté provisoire de M. Callixte Mbarushimana ».⁴ In these Observations, the Representative argued, *inter alia*, that the conditions set out in Article

¹ ICC-01/04-01/10-360, p. 4.

² ICC-01/04-01/10-389.

³ ICC-01/04-01/10-389, p. 3.

⁴ ICC-01/04-01/10-391.

58(1)(b) (warranting the continued detention of the Suspect, based on Article 60(3)) are verified.⁵

4. The Prosecution submits that since the Chamber's last review of the Suspect's detention on 19 May 2011, detailed in the "Decision on the 'Defence Request for Interim Release'" and confirmed on appeal,⁶ there are no changed circumstances requiring a modification of the Suspect's detention.

III. Submissions

5. When assessing whether Mr. Mbarushimana's continued detention was justified, the Chamber in its 19 May 2011 Decision determined that all three alternative limbs of Article 58(1)(b) requiring his detention were satisfied.⁷ These findings were confirmed recently on appeal.⁸

Detention appears necessary to ensure the suspect's appearance at trial

6. The Chamber found that the reasons militating for the Suspect's continued detention to ensure his appearance at trial rest on the following: (i) the gravity of the crimes alleged against Mr Mbarushimana and his knowledge thereof at this stage, (ii) the existence of an international network of FDLR supporters able and willing to assist him if need be, (iii) his freedom of movement within the Schengen area, and (iv) the advanced stage of the disclosure process in view of the proximity of the confirmation hearing.⁹ These findings are undisturbed on appeal and remain unchanged since the 19 May Decision.

⁵ ICC-01/04-01/10-391, paras. 24-27; The Prosecution will not discuss in this submission the third request for interim release based on Article 60-4 of the Statute since it will be discussed at length in its Response to The Defence Third Request for Interim Release.

⁶ ICC-01/04-01/10 OA-283.

⁷ ICC-01/04-01/10-163, para. 69.

⁸ ICC-01/04-01/10 OA-283.

⁹ ICC-01/04-01/10-163, para. 59.

Detention appears necessary to ensure the suspect does not obstruct or endanger the investigation or the court proceedings

7. The Chamber also determined that there was sufficient evidence that the risk of Mr Mbarushimana obstructing or endangering the proceedings is real, which rendered his continued detention necessary.¹⁰ The Appeals Chamber confirmed those conclusions.¹¹ Since these findings were based on evidence gathered from prior proceedings (i.e Mr Mbarushimana's plans to intimidate witnesses in the German proceedings and his possession of documents obtained through leaks) they are not subject to change.

Detention appears necessary to prevent the suspect from continuing the commission of the alleged crimes listed in the Arrest Warrant Application or related crimes

8. The Chamber, in its 19 May Decision, was satisfied that the risk of Mr Mbarushimana's continuing to contribute to the commission of the crimes detailed in the Arrest Warrant "by organising and conducting an international campaign through media channels" continues to exist and therefore warranted his detention.¹² In support of its finding the Chamber stressed the following: (i) the mode of liability attributed to Mr Mbarushimana, which "does not require his physical presence at the scene of the crime";¹³ (ii) the fact that the situation in Eastern DRC, where the FDLR is still active, remains volatile, and (iii) Mr Mbarushimana's information technology experience and his ability to have internet and telephone access in ways which cannot be easily monitored or controlled the Chamber.

¹⁰ ICC-01/04-01/10-163, para. 65.

¹¹ ICC-01/04-01/10 OA-283, para. 57.

¹² ICC-01/04-01/10-163, para. 66.

¹³ ICC-01/04-01/10-163, para. 66.

9. The appended annex provides further evidence that the situation in the Kivus remains volatile and that the FDLR continues to commit exactions in areas where some witnesses have been interviewed or may be located.
10. The Victims' submission also supports the Prosecution's contention that because the FDLR is still operational on the ground the Suspect's release would have a highly prejudicial effect on the victims in the affected region.¹⁴ They contend that it would bolster the sense of impunity among the FDLR combatants, who would see his release as an encouragement to carry out further war crimes and crimes against humanity against the civilian population in the affected areas.¹⁵
11. The Chamber determined that, irrespective of the Suspect's position within the hierarchy of the FDLR organisation, the continued detention of Mr Mbarushimana remains apparently necessary because of the risk that he might contribute to the continuation of the exactions.¹⁶ The Victims' submission supports this analysis. They stress that release would increase the Suspect's stature among the ranks of the FDLR: first, he would be the highest political figure in the FDLR to be free; and second, that situation would enable him to commit additional crimes in pursuit of the FDLR's continuing aim to obtain political concessions from Rwandan and Congolese authorities.¹⁷

¹⁴ ICC-01/04-01/10-391, para. 26.

¹⁵ ICC-01/04-01/10-391, para. 26.

¹⁶ ICC-01/04-01/10-163, para. 66.

¹⁷ ICC-01/04-01/10-391, para. 26.

IV. **Conclusion**

12. For all the reasons stated above, the Prosecution submits that the Suspect's detention must continue.



Luis Moreno-Ocampo,
Prosecutor

Dated this 2nd day of September 2011

At The Hague, Netherlands