



Original: **English**

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

Date: **08/05/2011**

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

Defence observations on Prosecution filing ICC-01/04-01/10-133

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
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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
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Mr. Xavier-Jean Keïta

States' Representatives

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Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

The Defence for Mr. Callixte Mbarushimana hereby presents its observations on the document entitled “Prosecution’s application to strike portion of “Defence Reply to the Prosecution’s Response to the Defence Request for Interim Release” or, alternatively, for leave to reply to a new Defence argument”.¹

The Prosecution’s allegation² that the Defence neglected specifically to dispute Mr. Mbarushimana’s alleged role as the *de facto*/temporary leader of the FDLR is both artificial and meaningless. It is artificial because it is contrived to flout Regulation 24(4) of the Regulations of the Court and, thereby, make yet further submissions in support of Mr. Mbarushimana’s continued detention. It is meaningless because in paragraphs 35, 37 and 38 of its initial request for interim release,³ the Defence demonstrated that there was no evidence to support such a false contention. This is in stark contrast to the Prosecution’s surmise on the matter: “it is to be expected [emphasis added - NK] that, if released, the Suspect would revert to his role as *de facto* leader of the FDLR abroad, including the coordination of activities and managing their media campaign”.⁴ Accordingly, in so far as the Prosecution purports to satisfy its burden of proof with conjecture, the absence of a specific denial is of no consequence.

The Prosecution imputed to Mr. Mbarushimana the temporary/*de facto* leadership of the FDLR by reference to allegedly self-incriminating admissions in interviews given to the Washington Post and BBC radio. Yet the Prosecution did nothing to corroborate these highly damaging assertions which, *inter alia*, persuaded the Pre-Trial Chamber to deprive Mr. Mbarushimana of his liberty. It is thus not surprising that the Prosecution now seeks to “strike” the evidence of an objectively credible witness which highlights the very inadequacy of its one-sided investigation.



Nicholas Kaufman
Counsel for Callixte Mbarushimana

Done in Jerusalem, Israel
Sunday, May 08, 2011

¹ ICC-01/04-01/10-133.

² *ibid* at para. 3 and fn. 7.

³ ICC-01/04-01/10-86.

⁴ ICC-01/04-01/10-101; Prosecution response to the Defence request for interim release at para. 43.