

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-01/10
Date: 15 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 Document

Prosecution's response to
"Defence request for an extension of the time-limit to submit observations on
interim release" - ICC-01/04-01/10-363

Source: The 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

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 Defence requests an extension of the time limit to file its observations on interim release, asserting that “where it has not initiated 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”.¹
2. The Prosecution opposes the request. In terms of Article 68(3), the Pre-Trial Chamber (“Chamber”) may modify its decision as to the detention “if it is satisfied that changed circumstances so require”. Thus, even where the proceedings are initiated *proprio motu*, the burden rests on the Defence to establish changed circumstances to the satisfaction of the Chamber, failing which, the Suspect’s detention will continue.
3. The Prosecution disputes that there is an automatic presumption that the Defence should always be afforded the right of last submission. According to the principle that “he who alleges must prove”, the Prosecution submits that, in the present circumstances, it is appropriate and just for the Defence to first identify the changed circumstances and to give the Prosecution the opportunity to respond, not *vice versa*.



Luis Moreno-Ocampo, Prosecutor

Dated this 15th day of August 2011
At The Hague, The Netherlands

¹ ICC-01/04-01/10-343, para 5.