

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 1 April 2011

**PRE-TRIAL CHAMBER I**

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

***IN THE CASE OF  
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA***

**Public Document**

**Decision requesting observations on the “Defence Request for Interim Release”**

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

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
 Participation/Reparation**

**The Office of Public Counsel for  
 Victims**

**The Office of Public Counsel for the  
 Defence**

Mr Xavier-Jean Keita

**States Representatives**

Competent authorities of  
 the French Republic and  
 the Kingdom of the Netherlands

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

**Others**

**I, Judge Sanji Mmasenono Monageng**, the Single Judge of Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;<sup>1</sup>

**NOTING** the “Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana” issued on 28 September 2010,<sup>2</sup> whereby the Chamber found, *inter alia*, that (i) there were reasonable grounds to believe that Callixte Mbarushimana (“Mr Mbarushimana”) is criminally responsible under article 25(3)(d) of the Rome Statute (“Statute”) for having contributed to the commission of war crimes and crimes against humanity allegedly committed by the troops of the *Forces démocratiques de libération du Rwanda* in North and South Kivu Provinces in the Democratic Republic of the Congo, in 2009,<sup>3</sup> and (ii) that the arrest of Mr Mbarushimana appears necessary to ensure his appearance before the Court, for protecting victims, witnesses and potential witnesses in the field and the Prosecutor's ongoing investigations, and to prevent Mr Mbarushimana from continuing to contribute to the commission of the above-mentioned crimes;<sup>4</sup>

**NOTING** the warrant of arrest (“Arrest Warrant”) for Mr Mbarushimana issued by the Chamber on 28 September 2010;<sup>5</sup>

**NOTING** that on 11 October 2010, pursuant to the Arrest Warrant, Mr Mbarushimana was arrested in France, and, on 25 January 2011, surrendered to the Court;

**NOTING** that Mr Mbarushimana is currently in custody at the Court's detention centre at The Hague;

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<sup>1</sup> Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p. 11.

<sup>2</sup> ICC-01/04-01/10-1.

<sup>3</sup> *Ibid.*, para. 44.

<sup>4</sup> *Ibid.*, para. 50.

<sup>5</sup> ICC-01/04-01/10-2.

**NOTING** the “Defence Request for Interim Release” (“Request for Interim Release”),<sup>6</sup> filed on 30 March 2011, whereby the Defence for Mr Mbarushimana requests the Chamber to order the interim release of Mr Mbarushimana to his French domicile and submits that, in light of the nature of the Request for Interim Release, which “concerns the liberty of the individual”, good cause is shown for reducing the time limit for a Prosecution response to the Request;

**NOTING** article 60(2) and (3) of the Statute, rules 118(1) and 119 of the Rules of Procedure and Evidence (“Rules”), and regulations 34 and 51 of the Regulations of the Court (“Regulations”);

**CONSIDERING** that rule 118(1) of the Rules and regulation 51 of the Regulations require that before deciding upon a request for interim release, the Chamber shall seek the views of the Prosecutor, as well as observations from the host State and from the State to which the persons seeks to be released;

**CONSIDERING** that Mr Mbarushimana has requested to be released to the French Republic;

**FOR THESE REASONS,**

**REQUEST** the Prosecutor to submit his views on the Request for Interim Release no later than Friday, 15 April 2011;

**ORDER** the Registrar to notify the competent authorities of the French Republic and the Kingdom of the Netherlands of the present decision and the Request for Interim Release with public Annexes thereto;

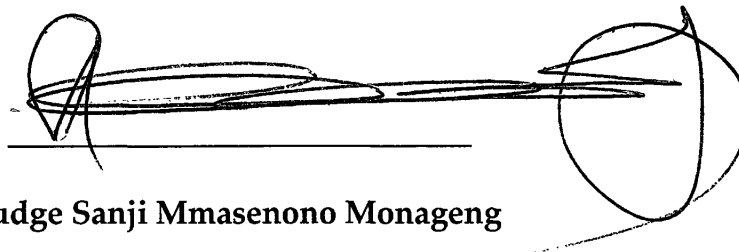
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<sup>6</sup> ICC-01/04-01/10-86, with Annexes.

**INVITE** the competent authorities of the Kingdom of the Netherlands to submit, no later than Tuesday, 26 April 2011, observations on the Request for Interim Release, and, in particular, on the practical aspects of Mr Mbarushimana's release to the French Republic; and

**INVITE** the competent authorities of the French Republic to submit, no later than Tuesday, 26 April 2011, observations on the Request for Interim Release, and, in particular, on the issues of (i) whether there would be any legal impediment to Mr Mbarushimana's return to French territory,<sup>7</sup> should he be released by the Chamber, and (ii) whether the French authorities would be in a position to impose one or more of the conditions set in rule 119 of the Rules, should the Chamber order the conditional release of Mr Mbarushimana to France.

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

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Friday, 1 April 2011

At The Hague, The Netherlands

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<sup>7</sup> See Request for Interim Release, para. 40.