

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 12 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**

**URGENT**

**Public Document**

**Decision requesting observations on 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  
 Ms Yaël Vias-Gvirsman

**Legal Representatives of Victims**

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

**Legal Representatives of Applicants**

**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**

**Pre-Trial Chamber I** of the International Criminal Court (“Chamber” and “Court” respectively) hereby renders the following decision:

**NOTING** the “Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana” issued on 28 September 2010,<sup>1</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>2</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>3</sup>

**NOTING** the warrant of arrest (“Arrest Warrant”) for Mr Mbarushimana issued by the Chamber on 28 September 2010;<sup>4</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** the “Defence Request for Interim Release” (“Request for Interim Release”),<sup>5</sup> filed on 30 March 2011, whereby the Defence for Mr Mbarushimana requested the Chamber to order the interim release of Mr Mbarushimana to his French domicile;

**NOTING** the “Decision on the ‘Defence Request for Interim Release’”, issued by the Chamber on 19 May 2011 (“Decision on Interim Release”),<sup>6</sup> wherein the Chamber denied the Defence Request for Interim Release;

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

<sup>2</sup> *Ibid.*, para. 44.

<sup>3</sup> *Ibid.*, para. 50.

<sup>4</sup> ICC-01/04-01/10-2.

<sup>5</sup> ICC-01/04-01/10-86, with Annexes.

<sup>6</sup> ICC-01/04-01/10-163.

**NOTING** the “Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled ‘Decision on the ‘Defence Request for Interim Release’”, issued by the Appeals Chamber on 14 July 2011,<sup>7</sup> unanimously confirming the Decision on Interim Release;

**NOTING** the “Second Defence request for interim release”, filed on 20 July 2011 (“Second Interim Release Request”),<sup>8</sup>

**NOTING** the “Decision on ‘Second Defence request for interim release’”, issued by the Single Judge on 28 July 2011,<sup>9</sup> whereby the Single Judge rejected the Defence request of 20 July 2011 as a request for reconsideration and declined to review the Suspect’s detention at that time;<sup>10</sup>

**NOTING** article 60(3) and (4) of the Rome Statute, rules 118(2) and 119 of the Rules of Procedure and Evidence (“Rules”), and regulations 34 and 51 of the Regulations of the Court (“Regulations”);

**CONSIDERING** that, given the date which the Decision on Interim Release was issued and that rule 118(2) of the Rules mandates that the Chamber review the Suspect’s detention once every 120 days, the Chamber’s ruling must be reviewed by 16 September 2011;

**CONSIDERING** that, since the Second Interim Release Request was decided as a motion for reconsideration and did not review Mr Mbarushimana’s detention, the Defence should be given a fresh opportunity to submit views on the issue of interim release;

**CONSIDERING** that rule 118(1) of the Rules and regulation 51 of the Regulations require that, before deciding upon any 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 person seeks to be released;

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<sup>7</sup> ICC-01/04-01/10-283.

<sup>8</sup> ICC-01/04-01/10-294.

<sup>9</sup> ICC-01/04-01/10-319. This decision is currently before the Appeals Chamber.

<sup>10</sup> *Ibid.*, at pp. 6-7.

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

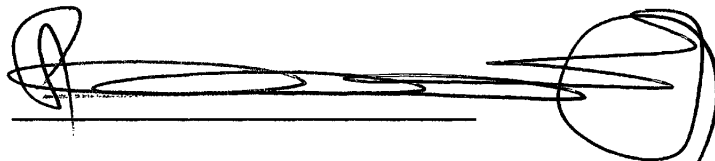
**FOR THESE REASONS,**

**REQUESTS** the Defence to submit their views on interim release no later than Friday, 26 August 2011;

**REQUESTS** the Prosecutor and legal representatives of victims to submit their views on interim release no later than Friday, 2 September 2011;

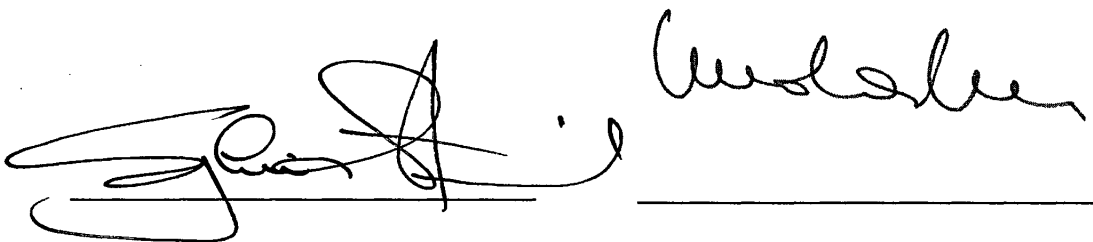
**ORDERS** the Registrar to notify the competent authorities of the French Republic and the Kingdom of the Netherlands of the present decision and invite them to submit their observations on interim release by Friday, 9 September 2011.

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



**Judge Sanji Mmasenono Monageng**

**Presiding Judge**



**Judge Sylvia Steiner**

**Judge Cuno Tarfusser**

Dated this Friday, 12 August 2011

At The Hague, The Netherlands