

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/10  
Date: 19 August 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  
URGENT**

**Decision requesting observations on the "Third 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  
 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**

Ms Paolina Massidda

**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 (“Chamber”) of the International Criminal Court (“Court”) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana*;

**NOTING** the “Decision on ‘Defence request to deny the use of certain incriminating evidence at the confirmation hearing’ and postponement of confirmation hearing”, issued by the Chamber on 16 August 2011<sup>1</sup> wherein, in order to ensure the fair and expeditious conduct of the proceedings leading to the confirmation hearing, the commencement of the hearing was postponed to 16 September 2011 in order for the Prosecutor to provide to the Defence by 31 August 2011, either (i) full written translations of interviews in French or transcripts in Kinyarwanda, of the witnesses’ statements upon which the Prosecution will rely at the confirmation hearing, or (ii) French summaries of those interviews;

**NOTING** the “Third Defence request for interim release” filed on 19 August 2011 (“Request for Interim Release”),<sup>2</sup> whereby the Defence submits that the delay caused in the commencement of the confirmation hearing is “inexcusable delay”, as defined under Article 60(4) of the Rome Statute (“Statute”); and for that reason, requests the Chamber to consider the release of Mr. Mbarushimana with or without conditions;

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

**CONSIDERING** that, before deciding upon a request for interim release, the Chamber shall seek the views of (i) the Prosecutor, (ii) the victims that have communicated with the Court in the case and whom the Chamber considers could be at risk as a result of the release or conditions imposed, and (iii) the host State and the State to which the person seeks to be released;

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

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<sup>1</sup> ICC-01/04-01/10-378.

<sup>2</sup> ICC-01/04-01/10-383.

**CONSIDERING** that, pursuant to the Chamber's understanding of victims "that have communicated with the Court"<sup>3</sup> the Office of the Public Counsel for Victims ("OPCV") should also be afforded an opportunity to file observations regarding the Request for Interim Release on behalf of the unrepresented applicants in this case;

**FOR THESE REASONS,**

**REQUEST** the Prosecutor, legal representatives of victims and OPCV to submit their views on the Request for Interim Release no later than Friday, 9 September 2011;

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

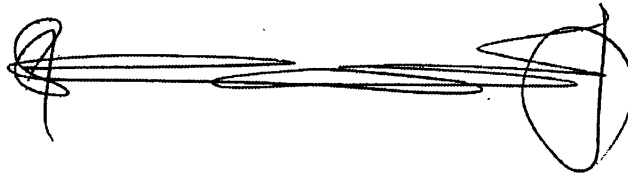
**INVITE** the competent authorities of the Kingdom of the Netherlands to submit, no later than Friday, 9 September 2011, any observations on interim release; and

**INVITE** the competent authorities of the French Republic to submit, by no later than Friday 9 September 2011, observations on the Request for Interim Release, and, in particular, on the issues of (i) whether there would be any legal impediment for Mr Mbarushimana to enter and leave the territory of the French Republic should he be conditionally released by the Chamber; and (ii) whether the French Republic would be in a position to impose one or more of the conditions set out in Rule 119 of the Rules, should the Chamber order the interim release of Mr Mbarushimana to the territory of the French Republic.

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<sup>3</sup> ICC-01/04-01/10-377, pp. 3-4.

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



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**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Friday, 19 August 2011

At The Hague, The Netherlands