

**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

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 2011¹ 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"),² 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;

¹ ICC-01/04-01/10-378.

² ICC-01/04-01/10-383.

CONSIDERING that, pursuant to the Chamber's understanding of victims "that have communicated with the Court"³ 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;

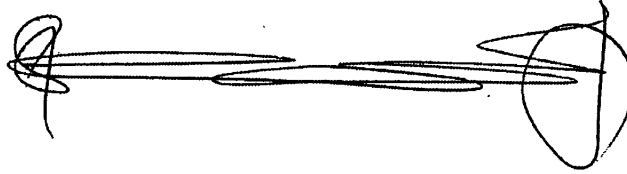
ORDER the Registrar to notify the competent authorities of the French Republic and the Kingdom of the Netherlands of the Request for Interim Release and the present decision;

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.

³ ICC-01/04-01/10-377, pp. 3-4.

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

A handwritten signature in black ink, consisting of a series of loops and horizontal strokes, positioned above a horizontal line.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Friday, 19 August 2011

At The Hague, The Netherlands