



Original: **English**

No.: ICC-01/04-01/10
Date: **16 December 2011**

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Cuno Tarfusser
Judge Sylvia Steiner

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. Callixte MBARUSHIMANA

Public document
URGENT

Prosecution's request for stay of order to release Callixte MBARUSHIMANA

Source: 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

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Legal Representatives of the Victims

Mr Mayombo Kassongo

Mr Ghislain M. Mabanga

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

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REGISTRY

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Ms. Silvana Arbia

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 16 December 2011 the Majority of the Pre-Trial Chamber, the Presiding Judge dissenting, declined to confirm the charges against Callixte MBARUSHIMANA and ordered his release ("Decision").¹
2. Upon examination of the Decision and the Dissenting Opinion of the Presiding Judge,² the Prosecution has concluded that the Decision involves issues that affect the fair and expeditious conduct of the proceedings and the outcome of trial, and in relation to which timely intervention by the Appeals Chamber is warranted. It will accordingly file an application for leave to appeal under Article 82(1)(d) within the statutory time-limit. If leave to appeal is granted, the Prosecution will request that the Appeals Chamber attach suspensive effect to the appeal under Rule 156(5).
3. In order to prevent irreparable prejudice to the Prosecution, it is requested that the Pre-trial Chamber stays its order on release until such time as it has ruled on the Prosecution's application for leave to appeal or, if leave is granted, until the Appeals Chamber rules on the request for suspensive effect. The Prosecution reminds the Pre-Trial Chamber that according to its own findings,³ endorsed by the Appeals Chamber,⁴ Callixte MBARUSHIMANA, if released, has the means to interfere with the investigation, to commit crimes, and to abscond,⁵ with the financial support of the FDLR's international network.⁶ Thus, releasing Callixte MBARUSHIMANA could effectively render any reversal of the decision by the Appeals Chamber futile due to the Court's inability to secure his re-arrest and/or to MBARUSHIMANA's interference with the investigation or his commission of crimes. A stay of the release is thus appropriate under the circumstances.

¹ ICC-01/04-01/10-465-Conf, page 151.

² ICC-01/04-01/10-465-Conf, pages 153-217.

³ ICC-01/04-01/10-1; ICC-01/04-01/10-163; ICC-01/04-01/10-428.

⁴ ICC-01/04-01/10-283.

⁵ ICC-01/04-01/10-163, para 46; ICC-01/04-01/10-428, para. 43; ICC-01/04-01/10-283, para 28.

⁶ ICC-01/04-01/10-7, para 47; ICC-01/01-01/10-163, para. 46.

4. In the alternative, the Prosecution requests that if the Chamber is to maintain its release order, such release be confined to The Netherlands and under strict conditions adequate to ensure that a subsequent arrest and continued prosecution of Callixte MBARUSHIMANA remains possible.



Luis Moreno-Ocampo
Prosecutor

Dated this 16th day of December 2011

At The Hague, The Netherlands