

**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

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*;¹

NOTING the “Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana” issued on 28 September 2010,² 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 2009,³ 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;⁴

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

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;

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

² ICC-01/04-01/10-1.

³ *Ibid.*, para. 44.

⁴ *Ibid.*, para. 50.

⁵ ICC-01/04-01/10-2.

NOTING the “Defence Request for Interim Release” (“Request for Interim Release”),⁶ 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;

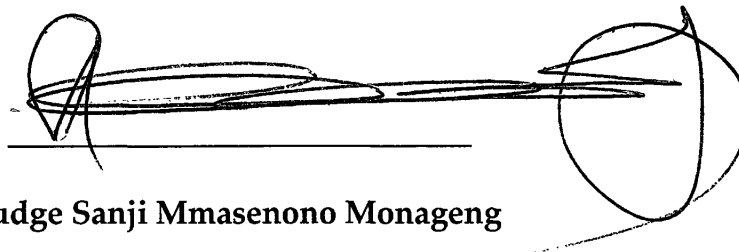
ORDER the Registrar to notify the competent authorities of the French Republic and the Kingdom of the Netherlands of the present decision and the Request for Interim Release with public Annexes thereto;

⁶ 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,⁷ 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

⁷ See Request for Interim Release, para. 40.