



Coalition for the International Criminal Court

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**FOR IMMEDIATE RELEASE**

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**MBARUSHIMANA CASE NOT READY FOR TRIAL AT ICC**

*Pre-Trial Judges Say They Lack Evidence to Try Callixte Mbarushimana for War Crimes and Crimes Against Humanity and Order Release of the Suspect; ICC Prosecutor Likely to Appeal Decision*

**WHAT:** Today, 16 December 2011, Pre-Trial Chamber I the International Criminal Court (ICC) declined to confirm charges of alleged crimes against humanity and war crimes against Callixte Mbarushimana in the Kivu provinces of the Democratic Republic of the Congo (DRC) hence refusing to move his case forward to trial at this stage. Judges also ordered the release of Callixte Mbarushimana from ICC custody. The ICC prosecutor has a right to appeal the decision as well as to request suspension of his immediate release. The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity, and genocide.

**HOW:** The ICC prosecutor had argued that there was sufficient evidence to try Mbarushimana—a Rwandan citizen and the first senior leader brought before the ICC for alleged crimes committed in the DRC Kivus provinces—for crimes against humanity (murder, torture, rape, persecution and inhumane acts) and war crimes (attacks against the civilian population, destruction of property, murder, torture, rape and inhumane treatment) allegedly committed between January and September 2009 in the DRC. Judges of ICC Pre-Trial Chamber I established that it lacked sufficient evidence to try Mbarushimana for these crimes. The decision was taken by majority, the Presiding Judge Sanji M. Monageng dissenting.

**NEXT STEPS:** Judges have ordered the release of Callixte Mbarushimana from ICC custody after completion of the necessary modalities. The ICC prosecutor has the right to appeal today's decision and to request the Chamber to grant suspensive effect to the appeal, meaning that the suspect would not be released until the appeal's decision is made. At a later stage, the prosecution could again request the chamber to confirm the charges against Mbarushimana if supported by additional evidence.

**COMMENTS:** "It is a reality that FDLR forces continue to be very active in the east of DRC, and the grave crimes they are committing against the civilian population have gone unpunished for many years," said Andre Kito, Coordinator of the DRC Coalition for the ICC. "The arrest of Mbarushimana and his subsequent hearings before the ICC had brought great hope to victims and affected communities in the region that justice would be delivered, so today's decision will undoubtedly accentuate their suffering and concerns about their security," Kito added. "It must be also underlined that there are many other FDLR leaders who should also be the subject of ICC investigations, given the ever-increasing number of crimes committed by them against civilians."

"It is vital that the Court continues to ensure the protection of victims and witnesses that have stepped forward in this case. It is equally essential for the Court to undertake comprehensive communications activities to explain this decision to victims and affected communities in the Kivu provinces who will feel extremely disappointed and have security concerns as a result," said William Pace, Convenor of the Coalition for the International Criminal Court—a civil society network of more than 2,500 NGOs in 150 countries advocating for a fair, effective and independent ICC and improved access to justice for victims of genocide, war crimes and crimes against humanity. "Nonetheless, the decision declining to confirm charges against Mbarushimana shows the independence of ICC judges and serious examination of the evidence before them," he added.

**BACKGROUND:** Today's decision is the result of a hearing held from 16-21 September 2011 by ICC Pre-Trial Chamber I to determine whether the charges against Mbarushimana should be confirmed or not. At the hearing, the prosecutor was required to submit evidence in support of the charges, which the defense could dispute. Pre-Trial Chamber I is composed of Presiding Judge Judge Sanji Mmasenono Monageng, Judge Sylvia Steiner and Judge Cuno Tarfusser.

On 25 January 2011, Mbarushimana was transferred to the ICC detention center in The Hague, the Netherlands, following his arrest on 11 October 2010 by French authorities pursuant to an ICC arrest warrant issued under seal on 28 September 2010.

Kivu is a region in the northeast area of the DRC that borders Lake Kivu. North and South Kivu have long been sites of conflict involving a number of actors, including the Forces Démocratiques pour la Libération du Rwanda (FDLR), the Armed Forces of the Democratic Republic of Congo (FARDC), the Congrès National pour la Défense du Peuple (CNDP) and the MONUSCO.

The DRC is one of six situations under investigations by the ICC. It was formally referred to the Court by the DRC government on 19 April 2004, and the prosecutor officially opened an investigation on 23 June 2004. Five arrest warrants have been issued in the DRC situation, and two trials are ongoing, the first for Thomas Lubanga Dyilo, and the

second for Germain Katanga and Matthieu Ngudjolo Chui. An ICC arrest warrant for Bosco Ntaganda was issued on 29 April 2008, and remains outstanding.

**Background:** *The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity, and genocide. 120 states have joined the Rome Statute, the Court's founding treaty. Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unwilling or unable to investigate and prosecute perpetrators of genocide, crimes against humanity, and war crimes. There are currently seven active investigations before the Court: the Central African Republic; the Democratic Republic of the Congo; Côte d'Ivoire; Darfur, the Sudan; Uganda, Kenya and Libya. The ICC has publicly issued 19 arrest warrants and nine summonses to appear. Three trials are ongoing. The ICC prosecutor has also made public that it is examining eight situations on four continents: Afghanistan, Colombia, Georgia, Guinea, Honduras, Republic of Korea, Nigeria and Palestine.*

*The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. For more information, visit: [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org)*

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