



Original: **English**

No.: **ICC-01/04-01/10**

Date: **14/03/2011**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR
*v. CALLIXTE MBARUSHIMANA***

Public Document

**Defence Request for an Order for State Cooperation
Pursuant to Article 57(3)(b) of the Rome Statute**

Source: Defence for Mr. Callixte Mbarushimana

Document 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. Yael Vias Gvirsman

Legal Representatives of the Victims

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

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

1. The Defence for Mr. Callixte Mbarushimana hereby requests that the learned Pre-Trial Chamber exercise its powers under Article 57(3)(b) and Article 87 (Part IX) of the Rome Statute and request that the Government of the French Republic (“France”) provide such assistance necessary for the preparation of the Defence case as stipulated hereinafter.

2. The Defence is currently preparing an application for interim release in the context of which the learned Pre-Trial Chamber will be requested to release Mr. Mbarushimana to his domicile in Paris, France where, prior to his arrest, he benefited from a “*titre de séjour de réfugié*” valid until 31 December 2013.¹

3. The Defence is aware of the absence of a cooperation agreement between France and the International Criminal Court regulating the means for facilitating the release of pre-trial detainees onto French territory. The Defence is furthermore conscious that the return of Mr. Mbarushimana to France, notwithstanding a favorable decision of the Pre-Trial Chamber, may not be effected without the cooperation of the French authorities.

4. Accordingly, the Defence took the initiative of formally petitioning the French authorities requesting that they communicate their agreement to receive Mr. Mbarushimana onto French territory in the event that the learned Pre-Trial Chamber should order interim release. This formal written petition was delivered to and received by the French Embassy in The Hague on 10 February 2011 with an accompanying *note verbale* from the Registry of the International Criminal Court.

5. As of the date of the writing of this submission, no official written response has been received by the Defence from France.

6. In light of the aforementioned, the Defence respectfully petitions the Pre-Trial Chamber to urgently request France to provide the following assistance and/or information essential for the preparation of a request for interim release:

- (a) Confirmation that in light of his “*titre de séjour de réfugié*” valid until 31 December 2013, there exists no legal impediment, under French law, to Mr.

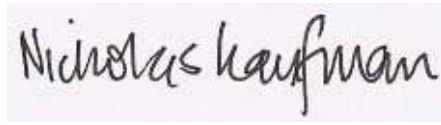
¹ DRC-OTP-2004-0018.

Mbarushimana's return to French territory should his release be ordered by the learned Pre-Trial Chamber, and;

(b) Confirmation that France would be prepared to enforce any terms and/or restrictions imposed by the Pre-Trial Chamber pursuant to Rule 119 of the Rules of Procedure and Evidence ("Rules") as conditions for the release of Mr. Mbarushimana.

7. Rule 116(2) of the Rules of Procedure and Evidence stipulates that the Pre-Trial Chamber may seek the views of the Prosecutor before making an order under Article 57(3)(b) of the Rome Statute. This is a discretionary and not a mandatory power. Given that urgency is of the essence and that the assistance sought from France cannot impact adversely on the Prosecution's intent to object to interim release, the Pre-Trial Chamber is requested to make the order sought forthwith.

8. In light of all the aforementioned, the Defence respectfully requests that the Pre-Trial Chamber seek the abovementioned urgent cooperation of France through the appropriate and accepted channels.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid black horizontal line.

Nicholas Kaufman
Counsel for Callixte Mbarushimana

The Hague, the Netherlands
Monday, March 14, 2011