



Original: English

No.: ICC-01/04-01/10
Date: 9 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 Response to the Defence's "Requête urgente de la Défense relative aux délais de recours qui affecteront la décision de confirmation ou d'infirmer des charges" - ICC-01/04-01/10-462

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

Me Arthur Vercken

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
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Ms. Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Submissions

1. The Prosecution opposes the Defence application that the time limit for filing an application for leave to appeal the decision following the confirmation hearing (“the Decision”) should begin to run when the French version of the Decision is issued. The Prosecution does not, however, oppose an order from the Chamber suspending time limits during the winter recess, thereby allowing that the time limit for both parties to seek leave to appeal the Decision shall begin on 9 January 2012.
2. On 8 December 2011 the Defence for Callixte Mbarushimana requested Pre-Trial Chamber I on urgent basis order that: (1) the time limit set out in Rule 155 for the parties to file applications for leave to appeal the Decision shall start running from the notification of the Decision’s French translation; and (2) should the French version of the Decision be rendered during the court recess, the time limit of Rule 155 starts running after the Court recess (“Defence Request”).¹
3. The Defence argues that the need of the Suspect to communicate with his defence counsel in a language that he fully understands and speaks justifies the Request.² The Defence further submits that the suspension of the time limit until the French translation is notified would further guarantee the rights of the Suspect as the new Defence team works primarily in French.³ Finally, the Defence refers to a pre-trial decision whereby the Chamber suspended and extended the time limits provided for in Rule 155 due to the Court recess.⁴
4. The Chamber stated that its confirmation decision will be issued within 60 days from the filing of the Defence written submissions⁵ – i.e., by 22 December

¹ ICC-01/04-01/10-462, paras.15-17.

² Defence Request, para.5.

³ Defence Request, para.7.

⁴ Ibid., para.13.

⁵ ICC-01/04-01/10-T-6, p.57, lns.13-18. The “Defence Written Submissions Pursuant to the Oral Order of Pre-Trial Chamber I of 16 September 2011” was filed on 21 October 2011 (ICC-01/04-01/10-450).

2011.⁶ Regardless whether the Decision is entered before or on that date, however, the Prosecution does not oppose suspension of the time limit set out in Rule 155 until the Court activities officially resume on 9 January 2012. If the Decision is issued on or after 12 December 2011, an application for leave to appeal by either party would be due during the Court's recess, as would a response by the opposing party. Suspension will relieve either or both parties, should they find it appropriate to seek leave to appeal the Decision, of the need to file and/or respond to an application during the recess.

5. The Prosecution however opposes the Defence's request that, should the Decision be issued in English, the time for seeking leave to appeal start from the notification of the French translation of the Decision. The Defence proposal would delay the proceedings for at least several weeks and, given the imminence of the Article 74 decision in the *Lubanga* case and the need to translate that likely lengthy document into French, potentially for months.
6. In addition, there is no provision in the basic texts of the Court that entitles a suspect or participant to argue that time limits should only apply when the decisions are provided in a preferred working language of the Court. Chambers accordingly have denied defence requests to have deadlines begin to run from the date the French translations of filings and decisions are notified.⁷
7. Finally, the Defence's reliance on this Chamber's decision on the "Prosecution's request for the assessment of the [Suspect's] English proficiency" is misplaced,⁸ as the Chamber only instructed the Prosecution to translate into French witness statements, the Document Containing the Charges and the List of Evidence. The Chamber did not issue a general ruling that all documents and decisions shall be notified only after they are translated into French.

⁶ Regulation 53 of the Regulations of the Court. The Defence mistakenly states that the Decision must be delivered by 27 December, and also that the recess ends on 2 January (Defence Request, para.11).

⁷ ICC-01/04-01/06-268, p.7; ICC-01/04-01/06-1125, para.14; ICC-01/04-02/07-304, pp. 3, 4.

⁸ Defence Request, para.6.

Conclusion

8. Accordingly, the Prosecution requests the Chamber to reject the Defence's request to suspend the time limit to file any application for leave to appeal the Decision until the French translation of the Decision is notified. The Prosecution does not oppose that the time limits set out in Rule 155 start - for all parties - from the date that the Court resumes its activities on 9 January 2012.



Luis Moreno-Ocampo
Prosecutor

Dated this 9th day of December 2011

At The Hague, The Netherlands