



Original: **French**

No.: ICC-01/04-01/10
Date: 19 December 2011

PRE-TRIAL CHAMBER I

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. CALLIXTE MBARUSHIMANA***

**Public document
Urgent**

**Defence response and request for immediate implementation of the decision
declining to confirm the charges – ICC-01/04-01/10-465-Red**

Source: The 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 Arthur Vercken
 Ms Yael Vias Gvirsman
 Mr Philippe Larochelle

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparations**

Office of Public Counsel for Victims

**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. By decision of 16 December 2011 (“the Decision”),¹ Pre-Trial Chamber I of the International Criminal Court (ICC) dismissed all of the charges brought by the Prosecutor against Mr Callixte Mbarushimana in the ICC-01/04-01/10 case.
2. As an immediate consequence of the dismissal, the Chamber:
 - (i) declared that the warrant of arrest for Mr Mbarushimana ceases to have effect;
 - (ii) decided that Mr Mbarushimana should be released immediately; and
 - (iii) ordered the Registry of the ICC, pursuant to rule 185 of the Rules of Procedure and Evidence (RPE), to make all necessary arrangements for Mr Mbarushimana’s release.
3. By a request of that same day, registered at 7.01 p.m.,² the Prosecutor sought a stay of Mr Mbarushimana’s release until the Chamber had ruled on the application for leave to appeal against the Decision, which the Prosecutor announced he would file forthwith.
4. In his request, the Prosecutor further sought, in the event that his application for leave to appeal against the Decision was granted, a stay of Mr Mbarushimana’s release until the Appeals Chamber had issued its judgment.
5. In the alternative, the Prosecutor requested that Mr Mbarushimana be placed under judicial supervision in the Netherlands.
6. The Prosecutor did not set out any valid arguments to justify such requests.

¹ ICC-01/04-01/10-465-Conf.

² ICC-01/04-01/10-466.

7. In fact, the Prosecutor initially³ claimed merely that he had concluded upon a reading of the Decision and the attached dissenting opinion that there were arguments in favour of an appeal. Yet nowhere did he explain how the execution of the Decision would deny him this course of action.

8. The Prosecutor went on⁴ to attempt to justify the measure sought by relying on the decision on the warrant of arrest and the first and third decisions denying applications for release which the Chamber had issued **before** it had deliberated upon the substance of the charges brought against Mr Mbarushimana.

9. Accordingly, the arguments presented by the Prosecutor (risks of pressure, continued commission of crimes and abscondment) concern a time period prior to the proceedings, at which point the Chamber had not yet deliberated upon the charges brought by the Prosecutor.

10. Such deliberation has since taken place and the charges have been dismissed. For this reason, the risks alleged by the Prosecutor must be considered to be just as null as the warrant of arrest.

11. Ultimately, in the absence of fresh evidence, the Prosecutor's request is tantamount to an application for the Chamber's Decision of 16 December 2011 to be set aside merely on the pretext that it does not suit him.

12. Clearly, such reasoning cannot be accepted by the Chamber and must be rejected.

13. Similarly, the Chamber must deny the request to have Mr Mbarushimana placed under judicial supervision on the territory of the Netherlands – a request

³ ICC-01/04-01/10-466, para. 3.

⁴ ICC-01/04-01/10-466, para. 4.

which in the present circumstances, recalled *supra*, is not provided for in the applicable Court documents and is therefore unlawful.

14. The Defence respectfully informs the Chamber that, on 16 December 2011, the date on which the Decision was issued, Mr Mbarushimana indicated to the Registry of the ICC that he wished to return to France,⁵ where he has had political refugee status since 2003 and where he has a valid residence permit.

15. France is therefore obliged to receive Mr Mbarushimana (incidentally, it never disputed this point when its opinion was sought in conjunction with applications for interim release) once all the formalities set out in rule 185 of the RPE have been completed.

16. The Defence therefore considers that **as from Friday, 16 December 2011, Mr Mbarushimana's detention is arbitrary** and requests the Chamber immediately to order the Registry to release Mr Mbarushimana without delay, as from the morning of this Monday, 19 December 2011.

[signed]

Arthur Vercken
Counsel for Mr Callixte Mbarushimana

Dated this Monday, 19 December 2011
At Paris, France

⁵ Cf. Annex 1.