



Original: **French**

No.: **ICC-01/04-01/10**
Date: **21 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

Defence application for interpretation of the time limit or requesting an extension of time to respond to an interlocutory appeal by the Prosecutor against the decision declining to confirm the charges (ICC-01/04-01/10-465-Red)

Source: Defence for Mr Callixte Mbarushimana

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

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REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Procedural Background

1. On 8 December 2011, the Defence filed its “Urgent Defence application in respect of the time limits for appeals affecting the decision confirming or declining to confirm the charges”¹ (“Defence Application”), wherein it requested the Pre-Trial Chamber to order that any time limits prescribed in rule 155 of the Rules shall start to run as of the date of notification of the French translation.² The Defence Application encompassed the provisions of regulation 65, which stipulates a time limit of three days to file a response to an interlocutory appeal.³

2. On 16 December 2011, the Pre-Trial Chamber rendered its decision on the charges, finding that

the five day period to present an application for leave to appeal set out in rule 155(1) of the Rules shall start running for the Defence as of the date of notification of the French translation of this decision.⁴

3. As the decision on the charges found in Mr Mbarushimana’s favour, he does not intend to seek leave to appeal against it.

4. On 16 December 2011, in a request for a stay of order filed before the Pre-Trial Chamber, the Prosecutor declared his intention to file an application for leave to appeal the decision on the charges.⁵

5. On 19 December 2011, the Prosecutor restated his intention in a document filed before the Appeals Chamber of the ICC.⁶

¹ ICC-01/04-01/10-462-tENG.

² ICC-01/04-01/10-462, paras. 7 and 9.

³ ICC-01/04-01/10-462, para. 9.

⁴ ICC-01/04-01/10-465-Red.

⁵ ICC-01/04-01/10-466, para. 2.

⁶ ICC-01/04-01/10-470 OA3.

6. To date, no such application for leave has been entered, but the Prosecutor has until 27 December 2011 to do so.

Submissions and Prayers

7. As noted above, the Prosecutor has in recent days filed two applications to which the Defence was constrained to respond on the basis of filings in English. This constraint arose from the urgency of the matter and from the fact that the Prosecutor's applications pertained to his opposition to the immediate release of Mr Mbarushimana. These circumstances required a large amount of risky work. Even though the applications were short and straightforward, Mr Mbarushimana's limited English significantly hampered consultation with him on the substance of the Defence's responses. The Defence therefore had no other choice than to perform its work in difficult and unsatisfactory conditions. In the event the Prosecutor makes good his intention to file an interlocutory appeal against the decision on the charges, matters must be arranged differently.

8. If the Prosecutor files an application for leave to appeal pursuant to regulation 65 of the Regulations of the Court, the Defence will have three days to respond.

9. However, the decision on the charges is extremely long (152 pages plus 65 additional pages presenting the dissenting opinion of Presiding Judge Sanji Mmasenono Monageng).

10. Thus, having regard to the criteria set out in article 82(1)(d) of the Statute, it is clear that to respond to any arguments put forth by the Prosecutor in support of his application for leave to appeal, the Defence team and Mr Mbarushimana himself will need to have full knowledge and understanding of the various arguments and the reasoning contained in the decision on the charges.

11. Only the provision of an official French translation of the decision can resolve this foreseeable difficulty.

12. The Defence therefore respectfully requests the Pre-Trial Chamber to confirm that the order it issued in granting the Defence Application on the time limits set out in rule 155 of the Rules of Procedure and Evidence⁷ is to be interpreted as meaning that the three-day time limit to respond to be granted to the Defence as of the Prosecutor's filing of an application for leave to appeal shall start running only as of the date of notification to the parties of the French translation of the decision.

13. Should the Pre-Trial Chamber not wish to make this interpretation, the Defence equally respectfully requests the Chamber to rule now that if the Prosecutor files an application for leave to appeal against the decision on the charges, the three-day time limit set out in regulation 65 of the Regulations of the Court shall be granted to the Defence as of the date of notification to the Defence of an official translation of the decision on the charges.

[signed]

Arthur Vercken
Counsel for Mr Callixte Mbarushimana

Dated this Wednesday, 21 December 2011

At Paris, France

⁷ ICC-01/04-01/10-465-Red, p. 152/152.