



Original: **French**

No.: **ICC-01/04-01/10**
Date: **8 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

URGENT and PUBLIC

**Urgent Defence application in respect of the time limits for appeals affecting the
decision confirming or declining to confirm the charges**

Source: Defence for Mr Callixte Mbarushimana

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

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 Yaël Vias Gvirsman

Legal Representatives of Victims

Legal Representatives of 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

Mr Xavier Jean Keita

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

1. The Pre-Trial Chamber is preparing to render a decision on the charges brought by the Prosecutor against Mr Callixte Mbarushimana (“the Decision”). The Decision is expected no later than 27 December 2011.

2. In accordance with regulation 35 of the Regulations of the Court, the Defence requests that the Pre-Trial Chamber give consideration to two grounds which warrant postponement of the date on which the time limit set out in rule 155 of the Rules of Procedure and Evidence (“the Rules”) begins to run.

3. The two grounds pertain to the following points:

- (i) the determination as to which version of the Decision (French or English) is to constitute the official notification, thereby triggering the time limit granted to the parties to request leave to appeal;
- (ii) the deadline for deliberations (27 December 2011) falls during the Court recess, a period already described in another case as an unusual week by the Appeals Chamber.¹

OBSERVATIONS AND LEGAL BASIS

The language of notification of the Decision and its effect on the calculation of the time limit set out in rule 155 of the Rules

4. The Defence prays Pre-Trial Chamber I to order that, for all parties, the time limit set out in rule 155 of the Rules shall begin on the date of notification of the French version of the Decision.

¹ ICC-01/04-01/07-115.

5. The Defence submits that its prayer is warranted in the interests of fairness in light of the need to communicate with Mr Mbarushimana in a language which he *fully understands and speaks*.²

6. In this connection, the Defence recalls the *Decision on the "Prosecution's request for the assessment of the English proficiency of Callixte MBARUSHIMANA"*.³ In that decision, Pre-Trial Chamber I applied the test described in the *Katanga* judgment for determining whether a suspect fully understands and speaks⁴ a given language.⁵ The Chamber determined at that time that the language which Mr Mbarushimana "fully" understands and speaks is French.

7. Moreover, in light of the recent change in Mr Mbarushimana's Lead Counsel and the appointment of Mr Arthur Vercken of the Paris Bar in France, his defence team now works principally in French. This is a further reason why the measure sought will guarantee the rights of the Defence in the event that an application for leave to appeal is filed on the basis of article 82(1)(d) of the Statute.

8. A similar measure has previously been requested and was granted by a Pre-Trial Chamber. This was in *The Prosecutor v. Jean Pierre Bemba*, in which Pre-Trial Chamber II decided that:

f) [...] the five-day period to present an application for leave to appeal set out in rule 155(1) shall start running for the Defence as of the date of notification of the French translation of this decision.⁶

9. Finally, the present application appears all the more warranted as the time limit to present an application for leave to appeal prescribed in rule 155 of the Rules

² See, for example, article 61(1)(a) to (f) of the Rome Statute.

³ ICC-01/04-01/10-145.

⁴ In accordance with rule 176 of the Rules of Procedure and Evidence governing disclosure.

⁵ See *Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled "Decision on the Defence Request Concerning Languages"*, ICC-01/04-01/07-522, rendered on 27 May 2008.

⁶ ICC-01/05-01/08-424, p. 185.

is extremely brief (five days from notification of a decision). This is also true of the three-day time limit, prescribed in regulation 65(3) of the Regulations of the Court, for responding to such an application by the Prosecutor.

10. In light of the brevity of the three- and five-day time limits, it would seem quite reasonable to decide that the time limit for all parties to present an application for leave to appeal shall start running as of notification of the French version. Indeed, if the requested measure were only to apply to the Defence, and the Prosecutor presented an application for leave to appeal upon notification of the English version, the Defence would find itself compelled to respond to the Prosecutor within three days whilst not being provided with a French version of the Decision.

Decision rendered during Court recess

11. At the confirmation hearing, Pre-Trial Chamber I ordered the Defence to file its written submissions no later than 21 October 2011.⁷ Accordingly, whilst it does not know the precise date on which Pre-Trial Chamber I will render its decision, the Defence notes that the deadline for deliberations is 27 December 2011. However, the period from 24 December 2011 to 2 January 2012 is a Court recess and also includes public holidays and special days of leave.

12. The Appeals Chamber has previously held that a situation such as this warrants an extension of the time limit established by the Rules. For example, in a judgment of 18 December 2007 rendered in response to an appeal by the Prosecution, the Appeals Chamber ordered an extension of the time limit to file a brief, finding that:

⁷ ICC-01/04-01/10-T-9-ENG.

[although] the three week Court recess does not generally constitute a suspension of judicial activity,⁸ [...]

This week is unusual in that, over and above [this] fact [...], it comprises two public holidays and special days of leave. On that basis, the Appeals Chamber regards it as appropriate to extend the prescribed time limits to take those factors into account.⁹

13. Likewise, in a decision rendered by Single Judge Sylvia Steiner,¹⁰ Pre-Trial Chamber I applied the Appeals Chamber's above-mentioned findings, deciding to postpone the starting date for the five-day time limit prescribed in rule 155 of the Rules.

14. The Defence submits that circumstances similar to those addressed in the aforementioned findings currently obtain in Mr Mbarushimana's case and that this situation warrants a postponement of the starting date for the time limit for appeal. Besides the forthcoming Court recess, 23 and 26 December 2011 are public holidays and 2 January 2012 is also a public holiday.

15. Accordingly, in the event the Decision is notified before or on 27 December 2011, the Defence requests that the Chamber order the starting date for the five-day time limit prescribed in rule 155 of the Rules to be 3 January 2012.

16. Of course, in the event the French version is not notified until after 3 January 2012, the normal procedure provided for in the Statute and the Rules would again apply.

⁸ ICC-01/04-01/07-115, para. 9.

⁹ ICC-01/04-01/07-115, para. 6.

¹⁰ See Pre-Trial Chamber I, *Decision on the Starting date of the Timelimit provided for in Rule 155 of the Rules in relation to the Decisions Issued on 21 December 2007*, ICC-01/04-01/07-128.

URGENCY

17. This application is being filed urgently before Pre-Trial Chamber I, in anticipation of the forthcoming Decision and with a view to ensuring the efficient and proper administration of justice.

FOR THESE REASONS, MAY IT PLEASE PRE-TRIAL CHAMBER I

- **TO ORDER** that, in any event, the time limit set out in rule 155 of the Rules shall start running for all parties as of the date of notification of the French translation of the decision.
- **TO ORDER** that, if the Decision is notified to Mr Mbarushimana in French before or on 27 December 2011, the starting date of the five-day time limit set out in rule 155 of the Rules shall be 3 January 2012.
- **TO ORDER** that, if the said French translation of the Decision is not notified until 3 January 2012, the normal established procedure shall be applicable once more.

[signed]

Arthur Vercken
Counsel for Mr Callixte Mbarushimana

Dated this Thursday, 8 December 2011

At Phnom Penh, Cambodia