

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 January 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

Decision on the Defence Challenge to the Validity of the Arrest Warrant

Decision 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

Counsel for the Defence

Mr Nicholas Kaufman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

PRE-TRIAL CHAMBER I of the International Criminal Court;

1. **NOTING** the “Defence Challenge to the Validity of the Arrest Warrant” (“Challenge”),¹
2. **NOTING** the “Prosecution response to the ‘Defence Challenge to the Validity of the Arrest Warrant’” dated 17 January 2011 (“Prosecutor’s Response”),²
3. **NOTING** the “Supplementary information in support of the Defence Challenge to the Validity of the Arrest Warrant”,³ filed by the Defence on 25 January 2011;
4. **NOTING** the “Prosecution motion to strike the “Supplementary Information in support of the Defence Challenge to the Validity of the Arrest Warrant””,⁴ filed on 27 January 2011 (“Prosecutor’s Motion”);
5. **NOTING** that, on page 3 of the Challenge, the Defence requests the Chamber to find that the warrant of arrest for Mr Callixte Mbarushimana “is void in light of the fact that it was sought and issued at a time when the case against him was plainly inadmissible”⁵;
6. **NOTING** article 58(1) and (2) of the Statute and rule 117(3) of the Rules;
7. **CONSIDERING** that the warrant of arrest has been issued by the competent organ of the Court and contains all the elements required under article 58(3) of the Statute;
8. **CONSIDERING** that rule 117(3) of the Rules only allows challenges “as to whether the warrant of arrest was properly issued” in accordance with article 58(1)(a) and (b);
9. **CONSIDERING** that the only ground referred to in the Challenge as its basis is the claim that the information regarding the admissibility of the Case submitted by the Prosecutor in its application for an arrest warrant for Mr Callixte Mbarushimana was incomplete and/or inaccurate;

¹ Defence Challenge to the Validity of the Arrest Warrant, 09 January 2011, ICC-01/04-01/10-32.

² Prosecution response to the ‘Defence Challenge to the Validity of the Arrest Warrant’, 17 January 2011, ICC-01/04-01/10-35-Conf.

³ Supplementary information in support of the Defence Challenge to the Validity of the Arrest Warrant, 25 January 2011, ICC-01/04-01/10-40.

⁴ Prosecution motion to strike the “Supplementary Information in support of the Defence Challenge to the Validity of the Arrest Warrant”, 27 January 2011, ICC-01/04-01/10-49.

⁵ ICC-01/04-01/10-32, page 3.

10. **CONSIDERING** that, consistently with the established case law of the Court, the admissibility of a case is not a substantive requisite for the issuance of a warrant of arrest, unless there are uncontested facts that render a case clearly inadmissible or an ostensible cause impelling the exercise of proprio motu review;
11. **CONSIDERING** that, accordingly, issues relating to the admissibility of the case do not qualify as issues which are relevant to determine “whether a warrant of arrest was properly issued” within the meaning of rule 117(3) of the Rules, and should therefore be rejected;
12. **CONSIDERING** therefore that the Prosecutor Motion is moot;

FOR THESE REASONS, the Chamber

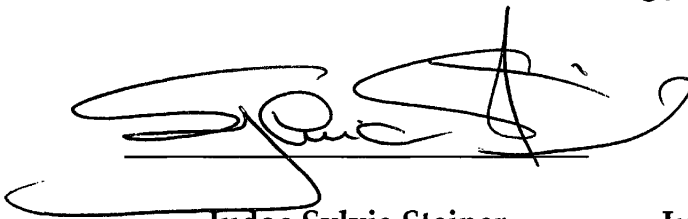
REJECTS the Defence Challenge.

Done in English and French, the English version being authoritative.

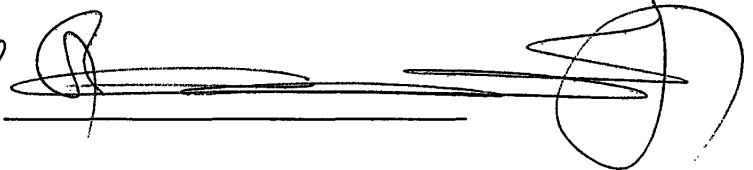


Judge Cuno Tarfusser

Presiding Judge



Judge Sylvia Steiner



Judge Sanji Mmasenono Monageng

Dated this Friday, 28 January 2011

At The Hague, The Netherlands