

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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
URGENT
Decision on the Prosecution's Request for stay of order to release 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

Ms Fatou Bensouda

Mr Anton Steynberg

Counsel for the Defence

Mr Arthur Vercken

Ms Yael Vias-Gvirsman

Legal Representatives of Victims

Mr Mayombo Kassongo

Mr Ghislain M. Mabanga

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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (the “Chamber” and the “Court”, respectively), in the case of *The Prosecutor v. Callixte Mbarushimana*;

NOTING the “Decision on the Confirmation of Charges”,¹ (“ Decision”) issued by the Chamber on 16 December 2011, wherein the Majority of the Chamber, the Presiding Judge Sanji M. Monageng dissenting, declined to confirm the charges brought by the Prosecution against Callixte Mbarushimana (“Mr Mbarushimana”), and ordered his release;

NOTING the “Prosecution’s request for stay of order to release Callixte Mbarushimana” (“Prosecution’s Application”),² urgently filed by the Prosecution on 16 December 2011, wherein it announces that it will file an application for leave to appeal against the Decision on the Confirmation of Charges, pursuant to article 82(1)(d) of the Rome Statute (“Statute”) and that, in case the leave to appeal is granted, it will request that the Appeals Chamber attach suspensive effect to the appeal under Rule 156(5) of the Rules of Procedure and Evidence (“Rules”).³ In order to prevent irreparable prejudice to the Prosecution, the Prosecution requests the Chamber to stay its order on release until such a time as it ruled on the Prosecution’s Application or, if leave is granted, until the Appeals Chamber rules on the request for suspensive

¹ ICC-01/04-01/10-465-Red, “Decision on the Confirmation of Charges”, 16 December 2011

² ICC-01/04-01/10-466, “Prosecution’s request for stay of order to release Callixte Mbarushimana”, 16 December 2011.

³ Ibid., para. 2.

effect.⁴ In the alternative, in case the Chamber is to maintain the release order, the Prosecution requests such release to be confined to The Netherlands and under strict conditions in order to ensure a subsequent arrest and continued prosecution of Mr Mbarushimana;⁵

NOTING the “Réponse de la Défense et demande d’application immédiate de la décision infirmant les charges- ICC-01/04-01/10-465-Red”,⁶ whereby the Defence submits that the Prosecution does not explain how the release of Mr Mbarushimana could affect its appeal against the Decision and that the restriction of the release to the territory of The Netherlands is a remedy not envisaged in the applicable provisions of law; the Defence also emphasises that the detention of Mr Mbarushimana is arbitrary since 16 December 2011;

NOTING the “Observations de victimes autorisées à participer à la procédure sur la “Prosecution’s request for stay of order to release Callixte Mbarushimana” (ICC-01/04-01/10-466)”,⁷ whereby the victims authorised to participate in the proceedings submit that the Prosecution’s Application is justified and that the release of Mr Mbarushimana may cause irreparable prejudice to victims and witnesses;

⁴ Ibid., para. 3.

⁵ Ibid., para. 4.

⁶ ICC-01/04-01/10-468.

⁷ ICC-01/04-01/10-467.

NOTING articles 55(1)(d), 58(1) and (4), 61(10), 82(1)(b) and (3) of the Statute, rule 154(1) and (5) of the Rules;

CONSIDERING that , in accordance with article 61(10) of the Statute, a warrant of arrest previously issued ceases to have effect with respect to any charges not confirmed by the Pre-Trial Chamber and that, pursuant to article 55(1)(d) of the Statute, a person shall not be deprived of his or her liberty except on such grounds and in accordance with the procedures established in the Statute;

CONSIDERING therefore that pursuant to the Decision on the Confirmation of Charges, whereby the Majority of the Chamber declined to confirm the charges against him, the Warrant of Arrest against Mr Mbarushimana consequently ceased to have effect;

CONSIDERING that the Prosecution intends the detention of Mr Mbarushimana to continue solely to prevent “irreparable prejudice to the Prosecution,” a condition not recognised in article 58(1) of the Statute, nor elsewhere in the Statute;

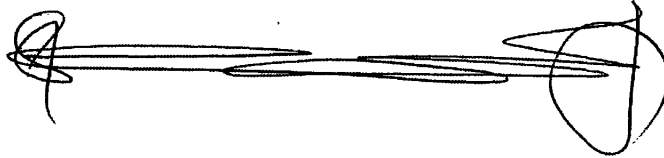
CONSIDERING, that the Prosecution's Application seeks suspensive effect of the Decision, a measure envisaged in article 82(3) of the Statute and which only the Appeals Chamber can order;

CONSIDERING that there is likewise no legal basis for confining the release of Mr Mbarushimana to the territory of The Netherlands;

FOR THESE REASONS

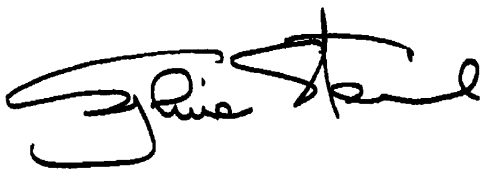
REJECTS the Prosecution's Application.

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

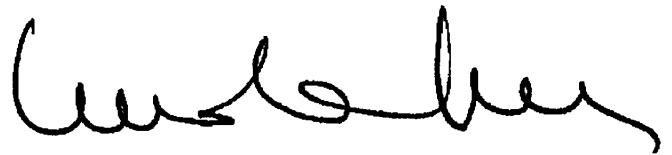


Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner



Judge Cuno Tarfusser

Dated this Monday, 19 December 2011

At The Hague, The Netherlands