

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 27 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**

**Decision on the “Requête de la Défense en interprétation ou en demande de délai prolongé de réponse à un éventuel appel interlocutoire du Procureur contre la décision infirmant les charges (ICC-01/04-01/10-465-RED)”**

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  
 Mr Anton Steynberg, Senior Trial Lawyer

**Counsel for the Defence**

Mr Arthur Vercken  
 Ms Yael Vias Gvirsman

**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**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

**Counsel Support Section**

**Pre-Trial Chamber I** of the International Criminal Court (“Chamber” and “Court” respectively) in the case of *The Prosecutor v. Callixte Mbarushimana*, hereby renders the following decision:

**NOTING** the “Decision on the Confirmation of Charges”, issued by the Chamber on 16 December 2011 (“Confirmation Decision”),<sup>1</sup> whereby the Chamber by Majority, Presiding Judge Sanji M. Monageng dissenting: (i) declined to confirm the charges against Mr Mbarushimana and (ii) decided that the five-day period to present an application for leave to appeal set out in rule 155(1) of the Rules of Procedure and Evidence (“Rules”) shall start running for the Defence as of the date of notification of the French translation of the Confirmation Decision;<sup>2</sup>

**NOTING** the “Prosecution's request for stay of order to release Callixte MBARUSHIMANA”, filed on 16 December 2011,<sup>3</sup> wherein the Prosecution noted that it was intending to file an application for leave to appeal the Confirmation Decision;<sup>4</sup>

**NOTING** the “Requête de la Défense en interprétation ou en demande de délai prolongé de réponse à un éventuel appel interlocutoire du Procureur contre la décision infirmant les charges (ICC-01/04-01/10-465-RED)”, filed on 21 December 2011,<sup>5</sup> whereby the Defence: (i) notes the length of the Confirmation Decision and stresses the need for perfect comprehension of it in order to respond to any arguments advanced by the Prosecution in the announced leave to appeal of the Confirmation Decision;<sup>6</sup> (ii) requests that the Chamber confirm that the delay, granted in accordance with rule 155 of the Rules in the Confirmation Decision, should be interpreted to mean that the three-day period to respond to any leave for appeal application filed by the Prosecution will not start running for the Defence until the notification to the Parties of the French translation of the

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<sup>1</sup> ICC-01/04-01/10-465-Red.

<sup>2</sup> *Ibid.*, pp. 149-50.

<sup>3</sup> ICC-01/04-01/10-466.

<sup>4</sup> *Ibid.*, para. 2.

<sup>5</sup> ICC-01/04-01/10-477.

<sup>6</sup> *Ibid.*, paras 9-10.

Confirmation Decision;<sup>7</sup> and, if the Chamber does not wish to make this interpretation, (iii) requests that the Chamber decide that the Defence's three day response time specified in regulation 65(3) of the Regulations of the Court ("Regulations") shall start running after notification of the official French translation of the Confirmation Decision;<sup>8</sup>

**NOTING** the "Prosecution Application for Leave to Appeal the 'Decision on the Confirmation of Charges'", filed on 27 December 2011 ("Prosecution Application");<sup>9</sup>

**NOTING** articles 21(2), 67(1)(f) and 82(1)(d) of the Rome Statute, rule 155 of the Rules, and regulations 35(2) and 65(3) of the Regulations;

**CONSIDERING** that the relief requested by the Defence is reasonable and fair;<sup>10</sup>

**CONSIDERING** that the Chamber has recognised the right of Mr Mbarushimana to be fully informed about the Confirmation Decision by allowing the Defence's time limit to present an application for leave to appeal to start running upon the notification of the Confirmation Decision's French translation, with French being a language that the suspect fully speaks and understands;

**CONSIDERING** that: (i) a perfect understanding of all procedural and substantive matters dealt with in the confirmation hearing and Confirmation Decision is necessary for ensuring that the rights of Mr Mbarushimana are respected and (ii) current Defence counsel for Mr Mbarushimana has only recently been appointed and may therefore not be fully familiar with all aspects of the proceedings;

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<sup>7</sup> ICC-01/04-01/10-477, para. 12.

<sup>8</sup> *Ibid.*, para. 13.

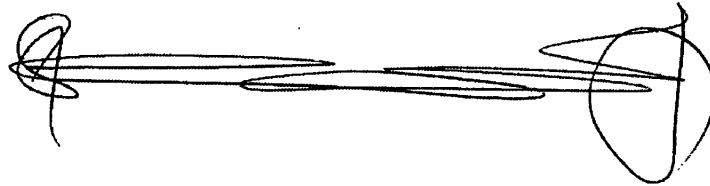
<sup>9</sup> ICC-01/04-01/10-480.

<sup>10</sup> The Chamber notes that Pre-Trial Chamber II, after allowing for the Defence's time limit for leave to appeal a confirmation decision to commence upon receipt of the French translation (*The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", 15 June 2009, ICC-01/05-01/08-424, p. 185), indicated that it was willing to accept a Defence response to a Prosecution application for leave to appeal that was filed within three days of notification from the French translation of the confirmation decision. See *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on the Prosecutor's Application for Leave to Appeal the 'Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo'", 18 September 2009, ICC-01/05-01/08-532, para. 25 (not accepting the Defence response on other grounds).

**FOR THESE REASONS, THE CHAMBER:**

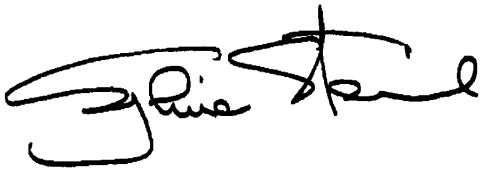
**DECIDES** that the three-day period to respond to the Prosecution Application set out in regulation 65(3) of the regulations shall start running for the Defence as of the date of notification of the French translation of the Confirmation Decision.

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



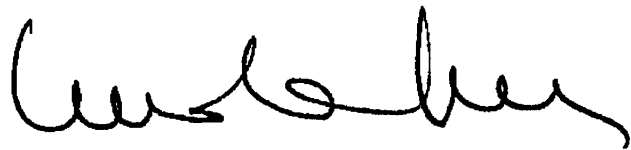
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**Judge Sanji Mmasenono Monageng**  
**Presiding Judge**



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**Judge Sylvia Steiner**



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**Judge Cuno Tarfusser**

Dated this Monday, 27 December 2011

At The Hague, The Netherlands