

# ANNEX A

1. On 16 December 2011, the Majority of Pre-Trial Chamber I (“Majority”) declined to confirm charges against Callixte Mbarushimana (“Suspect”) for his contributions to crimes committed by the Forces Democratiques pour la Liberation du Rwanda (FDLR).<sup>1</sup> The Presiding Judge attached a dissenting opinion.
2. The Appeals Chamber authorized an extension of the page limit of the Prosecution’s and the Defence’s briefs up to 35 pages. The Appeals Chamber noted that “in the specific circumstances of the case and in light of the issues on appeal, there are “exceptional circumstances” in terms of regulation 37 (2) of the Regulations of the Court that justify a extension of the page limit for the document in support of the appeal. [...]”<sup>2</sup>
3. On 12 March 2012 the Prosecution filed its “Prosecution’s Document in Support of Appeal against the ‘Decision on the Confirmation of Charges’ (ICC-01/04-01/10-465-Red)”.<sup>3</sup>
4. The Prosecution has noticed that the Document as filed exceeds the word limit prescribed in Regulation 36(3) of the Regulations of the Court due to formatting errors. In addition, the text of two footnotes (8 and 82) does not appear in the filed version. Footnote 82, although referred to at the end of the second sentence of paragraph 46, does not appear in the lower margin of the filed version. Further, the text of footnote 7 corresponds to footnote 8. The text of footnote 8 does also not appear. These footnotes merely refer the Chamber to the relevant evidence and paragraphs of the Confirmation Decision already cited in the body of the filing. No legal or factual arguments are enclosed in the footnotes. Thus, this corrigendum does not “add or alter the substance of the submissions made in

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

<sup>2</sup> ICC-01/04-01/10-495OA4, para.5.

<sup>3</sup> ICC-01/04-01/10-499OA4.

[the] document” nor is it used to circumvent the word and page limit of the filing.<sup>4</sup>

5. The errors referred to above are due to technical problems. At 15:03 h., the computer of an OTP staff member preparing the document for filing started encountering technical difficulties and all the footnotes of the document disappeared. The ICC technical services were able to fix this problem shortly before 16:00 hours. However, the format of the document was as a result modified and the spacing between paragraphs and headings was not correct. The Prosecution nevertheless proceeded to file the document in order to comply with the time limit. This led to file the 31-page Document in Support of Appeal with 9,908 words, thus exceeding by a total of 608 words the permitted maximum of words. This means that, excluding the text of the cover pages, the Document had an average of 315 words per page. When reviewing the document after the filing process had been completed, the Prosecution also noticed that the two footnotes referred to above had not been retrieved in the lower margins, and that there were blank spaces in their place.
6. The Prosecution files an attached corrigendum adjusting the paragraphs and headings. In addition, the Prosecution has introduced the text of footnote 82 and moved the text of footnote 7 to footnote 8 and inserted the correct text of footnote 7. The Document has now 33 pages and 9,943 words (9,791 without the cover pages), which complies with the word average prescribed by regulation 36 (3). No substantive changes have been made to the document and not arguments have been added or modified.

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<sup>4</sup> A contrario, ICC-01/05-01/08-631-Red OA2, paras.38-9. The Prosecution notes that this case differs from the filing of the legal representatives where factual arguments were enclosed in the sentence added in the corrigendum.

7. The amendments to the footnotes are as follows:<sup>5</sup>

a. Footnote 7 reads:

DCC, paras. 27 and 109. FDLR Statute, DRC-REG-0008-1507, at 1509, ninth and tenth paragraphs; DRC-OTP-2038-2233 at 2234 (“Exigence de départ 1 : départ de Kagame.”), DRC-REG-0100-0960 at 01:07–01:20.

b. Footnote 8 now includes the old text of footnote 7 and reads as follows:

As a consequence of its actions, the United Nations Security Council has issued repeated Resolutions since 2008 calling on the FDLR to cease their attacks against the civilian population. For a recent Security Council resolution identifying the FDLR as “a major obstacle to lasting peace in the Kivus” and as “one of the primary causes for the conflict in the region” see DRC-OTP-2014-0945 / EVD-PT-OTP-00305.

c. Footnote 82 reads:

Decision, para.246.

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<sup>5</sup> Should the Appeals Chamber consider that the amendments exceed the scope of a corrigendum, then the Prosecution will request leave to re-file its document in a manner that complies with the regulations of the Court and also includes the omitted references. The Prosecution notes that the Chamber has granted extension of the time limit due to severe technical difficulties as those encountered by the Prosecution: see ICC-01/04-01/06-562 OA5, paras.2 and 5.