



Original: **French**

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

Date: **04/03/2012**

THE APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Akua Kuenyehia
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. CALLIXTE MBARUSHIMANA***

Public Document

**Application for the translation of all filings essential to the Prosecutor's appeal
against Decision ICC-01/04-01/10-465 of the Pre-Trial Chamber**

Source: The 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 Yael Vias Gvirsman
 Mr Philippe Larochelle

Legal Representatives of the Victims

Legal Representatives of the 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

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

1. The Defence prays the Appeals Chamber to rule on the matter of translation into French of previous and forthcoming filings in the interlocutory appellate proceedings brought by the Prosecutor against the *Decision on the confirmation of charges* (“Decision on the charges”) issued on 16 December 2011 by Pre-Trial Chamber I.¹
2. The purpose of the present application is to secure equitable working conditions for Mr Mbarushimana, his Counsel and team, insofar as they are all francophone.
3. As early as 8 December 2011, the Defence filed a “*Requête urgente de la Défense relative aux délais de recours qui affecteront la décision de confirmation ou d’infirmeration des charges*” with Pre-Trial Chamber I,² underscoring both an earlier ruling of that Chamber and the recent change of counsel.
4. The Defence accordingly recalled the *Decision on the ‘Prosecution’s request for the assessment of the English proficiency of Callixte Mbarushimana’*,³ wherein the Pre-Trial Chamber determined that to satisfy the requirements of a fair trial, the language which Mr Mbarushimana adequately understands and speaks is French.⁴
5. The Defence further emphasised that the new undersigned counsel having been appointed in November 2011 to represent Mr Mbarushimana before the International Criminal Court, the Defence team is now entirely francophone.⁵
6. On 28 December 2011, Pre-Trial Chamber I issued its *Decision on the “Requête de la Défense en interprétation ou en demande de délai prolongé de réponse à un*

¹ ICC-01/04-01/10-465-Red.

² ICC-01/04-01-10-462.

³ ICC-01/04-01/10-145.

⁴ See, for example, article 61(1)(a) and (f).

⁵ ICC-01/04-01-10-462, para. 7

éventuel appel interlocutoire du Procureur contre la décision infirmant les charges (ICC-01/04-01/10-465-RED)”.⁶

7. In that decision, Pre-Trial Chamber I found that the relief requested by the Defence *is reasonable and fair*.⁷

8. For this reason, the Pre-Trial Chamber ruled that any time limit pertaining to an application of the Prosecutor for leave to appeal the Decision on the charges would only run as of notification of the French version thereof.

9. On 27 December 2011, the Prosecutor filed the “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”.⁸ This application, in English, remains hitherto untranslated.

10. On 22 February 2012, the Defence team for Mr Mbarushimana received notification of the French translation of the Decision on the charges.⁹

11. On 27 February 2012, the Defence for Mr Mbarushimana filed its response¹⁰ to the application for leave to appeal raised by the Prosecutor on 27 December 2011.

- The decision to grant the Prosecutor leave to appeal the Decision on the charges was issued by Pre-Trial Chamber I on 1 March 2012,¹¹ and, as such, marks the first time that a party has been granted leave to appeal a decision on the charges. Equally unprecedented is the dismissal of the charges by the Pre-Trial Chamber in a decision which was not unanimous. Finally, the decision

⁶ ICC-01/04-01/10-481.

⁷ ICC-01/04-01/10-481.

⁸ “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”, ICC-01/04-01/10-480.

⁹ ICC-01/04-01/10-465-Conf-tFRA and ICC-01/04-01/10-465-Red-tFRA.

¹⁰ ICC-01/04-01/10-486.

¹¹ ICC-01/04-01/10-487.

constitutes the first ruling by the Bench on the nature of “contribution” under article 25(3)(d) of the Statute.

12. Regulation 65(4) of the Regulations of the Court (“RoC”) on appeals under rule 155 provides: “When leave to appeal is granted, the appellant shall file, within ten days of notification of the decision granting leave to appeal, a document in support of the appeal...”

13. Under regulation 65(5) of the RoC, the Defence will then have “ten days [as] of notification of the document in support of the appeal [in which to file its response]”.

14. Finally, regulation 65(2) of the RoC states that the application for leave to appeal must set out the “reasons warranting immediate resolution by the Appeals Chamber of the matter at issue”.

15. The Defence for Mr Mbarushimana submits that it cannot guarantee that the quality of its work will be adequate, absent notification of the French translations of all documents essential to the appeal mounted by the Prosecutor before the Appeals Chamber.

16. So far the essential documents whose translation is sought and which will trigger the 10-day time limit prescribed by regulation 65(5) of the RoC are as follows:

- The Prosecutor’s Application for leave to appeal the impugned Decision,¹² hitherto untranslated;
- The Decision of the Pre-Trial Chamber granting the Prosecutor leave to appeal the impugned Decision,¹³ hitherto untranslated;

¹² ICC-01/04-01/10-480.

¹³ ICC-01/04-01/10-487.

- The *document in support of the appeal* which may be filed by the Prosecutor by Monday 12 March 2012.

17. Naturally, by way of precaution, the Defence requests that any further filings by the Prosecutor in support of his appeal be translated into French and that notification of any such translations (where effected subsequent to the three translations mentioned at paragraph 17) be taken as the commencement of time under article 65(5) of the RoC.

18. The Defence moves the Appeals Chamber to rule that the time afforded to the Defence under regulation 65 of the RoC on *appeals under rule 155* shall run only as of notification of the French translation of all of the documents which are essential to the appellate proceedings, particularly those specified at paragraphs 17 and 18 herein.

19. The following considerations ground the present application:

- (i) The requirements of a fair trial and respect for the rights of the defence;
- (ii) The Pre-Trial Chamber has heretofore ruled that fairness requires the Defence team for Mr Mbarushimana not to be handicapped by material which is exclusively in English;
- (iii) The Pre-Trial Chamber has heretofore ruled that this state of affairs had to affect the time prescribed by the texts;
- (iv) The importance of the appellate proceedings instituted against the Decision on the charges and the stakes entailed.

FOR THESE REASONS**MAY IT PLEASE THE APPEALS CHAMBER TO:**

- ORDER the prompt translation into French of all documents essential to the Prosecutor's appeal, as set forth at paragraphs 17 and 18 of the present application;
- ORDER that any time afforded to the Defence pursuant to the texts shall start to run only upon notification of the French translation of those documents essential to the appeal.

[signed]

Arthur Vercken

Counsel for Mr Callixte Mbarushimana

Dated this Sunday 4 March 2012
At Paris, France