

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **21 March 2012**

**THE APPEALS CHAMBER**

**Before:**

**Judge Erkki Kourula, Presiding Judge  
Judge Sang-Hyun Song,  
Judge Akua Kuenyehia  
Judge Anita Ušacka  
Judge Ekaterina Trendafilova**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public Document**

**Prosecution's Response to the Defence's "Requête urgente aux fins de reconsidération  
de la décision ICC-01/04-01/10 OA4, de protestation et de réserve »  
(ICC-01/04-01/10-498 OA4)**

**Source: Office of the Prosecutor**

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**Unrepresented Victims****Unrepresented Applicants for  
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Defence****States Representatives****Amicus Curiae****REGISTRY**

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**Registrar****Counsel Support Section**

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**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Other  
Section**

## Background

1. The Prosecution is appealing the Pre-Trial Chamber's decision to not confirm charges against Mr Mbarushimana (the "Suspect").<sup>1</sup> On 12 March 2012, the Prosecution filed its Document in Support of the Appeal.<sup>2</sup> On 9 March 2012, the Appeals Chamber granted the Suspect a five-day extension of the time within which the Suspect must respond to the Prosecution's Document (the "Decision").<sup>3</sup> The Appeals Chamber however rejected the Suspect's request that his time for responding not start running until the Prosecution's Document in Support of the Appeal and other "essential documents" related to the Prosecution's appeal (in particular, the Prosecution's Application for Leave to Appeal and the Pre-Trial Chamber's Decision granting the Application) are translated into French.<sup>4</sup>
  
2. The Suspect seeks reconsideration of the Decision ("Request for Reconsideration").<sup>5</sup> In the Request, the Suspect expresses his "strongest protest and reservations" to only a five day extension.<sup>6</sup> He argues that the Appeals Chamber did not correctly appreciate the fact that the Pre-Trial Chamber had allowed him to delay his response to the Prosecution's Application for Leave to Appeal until the Confirmation Decision was translated into French.<sup>7</sup> He further submits that, although his Counsel speaks and reads English, "the technicality of the document", "the issues of this procedure" and "the extremely short time limit established by the Appeals Chamber" causes an unnecessary risk to the proper administration of justice.<sup>8</sup> In addition, the Suspect notes that one of his assistants would not be available to assist in the translation due to personal reasons.<sup>9</sup>

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<sup>1</sup> ICC-01/04-01/10-465-Red ("Confirmation Decision").

<sup>2</sup> ICC-01/04-01/10-499OA4. On 13 March the Prosecution filed a corrigendum.

<sup>3</sup> ICC-01/04-01/10-497OA4. Accordingly the Suspect should respond to the Prosecution's Document in Support of the Appeal by 28 March 2012.

<sup>4</sup> ICC-01/04-01/10-488OA4.

<sup>5</sup> ICC-01/04-01/10-498OA4.

<sup>6</sup> Request for Reconsideration, para.16.

<sup>7</sup> Request for Reconsideration, paras.3-7.

<sup>8</sup> Request for Reconsideration, para.11.

<sup>9</sup> Ibid., para.12.

### Submissions

3. The Prosecution opposes the application and submits that the Suspect's Request should be dismissed. While the Prosecution agrees in principle that Chambers have the discretion to reconsider their decisions, the circumstances in which reconsideration will follow ordinarily will be exceptional and rare – in the Prosecution's view, when the decision is manifestly unsound and its consequences are manifestly unsatisfactory,<sup>10</sup> or when new or previously unavailable information requires that the Chamber reconsider its previous ruling. Neither of those circumstances are present here.
4. The Appeals Chamber's decision extending to 15 days the time limit to respond to the Prosecution's Document in Support of the Appeal rejected the Defence argument that it was entitled to respond only after that Document (as well as other documents in the case) were notified in French. Nonetheless, the Chamber granted an unusual concession by providing an additional five days, to accommodate the Suspect's concern that he and/or his defence team lacked adequate fluency in English to respond within the normal 10 day period.
5. In complaining that the five extra days is inadequate, the Defence relies on the fact that it was not obligated to respond to the English-version of the Application for Leave to Appeal until the Confirmation Decision itself was translated into French. Based on that circumstance, it contends that the Appeals Chamber ought to reconsider its prior ruling.
6. The fact that the Pre-Trial Chamber allowed for a delay in responding to the Prosecution's Application for Leave to Appeal does not support the Defence's

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<sup>10</sup> Trial Chamber I accepted the possibility of reconsidering decisions in exceptional circumstances. See ICC-01/04-01/06-2705, paras.13-19. Other Chambers, like Pre-Trial Chamber II in the Uganda Situation, conclude that there is no express statutory authority to reconsider rulings (see, e.g., ICC-02/04-01/05-60, para.18). The Prosecution notes that the Appeals Chamber has affirmed the ability of this Court to exercise inherent judicial powers, as in its authority to issue a permanent stay of proceedings even though no article or rule allows it (ICC-01/04-01/06-772 OA4, paras.36-39).

arguments. First, that extension was an extraordinary action that signified the uniqueness of the Confirmation Decision itself. It did not suggest that all documents must be available in French before the Suspect needs to respond, much less that the two additional documents at issue here – which are irrelevant to the merits of the appeal – must also be translated. Second, the Pre-Trial Chamber did not also require that Application for Leave to Appeal itself must first be translated into French before the Suspect's time to respond would start to run. Consequently, the Pre-Trial Chamber's decision does not validate the Suspect's position that it is unfair and impossible to require a response before the Prosecution's Document in Support of the Appeal is translated.

7. Nonetheless, dissatisfied with this Chamber's allowance of only five days additional time, the Suspect continues to insist that his time *cannot* start to run until the Prosecution's Document is notified in his preferred language. As the Prosecution previously argued,<sup>11</sup> there is no legal support for this demand. No provision in the basic texts of the Court (1) authorises a party or participant to impose a preference among the two working languages and (2) requires that documents and materials be made available in the preferred language before the party's time to respond begins to run. The legal texts explicitly require the provision of only certain key documents - "the nature, cause and content of the charge" and "the statements of prosecution witnesses" - to the Suspect "in a language which the accused fully understands and speaks".<sup>12</sup> Documents in support of an appeal, as well as ordinary filings in cases, are not included.
8. Accordingly, Chambers have denied defence requests that deadlines run from the date the French translations of filings and decisions are notified.<sup>13</sup> This is not only consistent with the legal texts, it is also necessary to enable the cases to move without unnecessary delay. Indeed, the adverse consequences of such a ruling on

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<sup>11</sup> See ICC-01/04-01/10-493 OA4, ICC-01/04-01/10-463.

<sup>12</sup> Article 67(1)(a) and Rule 76(3)

<sup>13</sup> ICC-01/04-01/06-268, p.7; ICC-01/04-01/06-1125, para.14; ICC-01/04-01/07-304, pp.3 - 4.

the expeditiousness of proceedings, generally and in this particular case, could be profound.<sup>14</sup>

9. Finally, it is not necessary here. The Request itself acknowledges that Counsel reads and speaks English.<sup>15</sup> If the issue is the English-language capacity of the Suspect, the record reflects that he has competence in that language,<sup>16</sup> even if he was deemed not to be completely fluent and thus unable to assimilate a huge quantity of English incriminating materials and witness transcripts in a short period of time.<sup>17</sup> Moreover, his language shortcomings can be addressed through access to a competent interpreter as provided for in article 67(1)(f).

### Conclusion

10. For the above referred reasons, the Prosecution requests that the Appeals Chamber reject the Suspect's Request for Reconsideration.



Luis Moreno-Ocampo

Prosecutor

Dated this 21<sup>st</sup> day of March 2012

At The Hague, The Netherlands

<sup>14</sup> As a possible frame of reference, the most recent document filed in the Lubanga case bears the number "2844". The most recent document filed in the Pre-Trial Chamber's file in the instant case bears the number "486". Even assuming that half of these documents would be filed initially in French, it is clear that the requirement that progress be halted to permit French translation of each English-language filing, or even each "important" filing, would substantially have slowed both cases.

<sup>15</sup> Request for Reconsideration, para. 11.

<sup>16</sup> See Prosecution's request for the assessment of the English proficiency of Callixte Mbarishimana, ICC-01/04-01/10-125, paras 14-15, and annexes thereto. Notably, the Defence has heretofore been able, without complaint about the Suspect's particular language inadequacy, to respond within the time limit to documents filed in English. See for instance, ICC-01/04-01/10-492; ICC-01/04-01/10-473; ICC-01/04-01/10-468; ICC-01/04-01/10-498; ICC-01/04-01/10-486.

<sup>17</sup> ICC-01/04-01/10-145.