

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **27 March 2012**

THE APPEALS CHAMBER

Before:

**Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song,
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Silvia Fernández de Gurmendi**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

Prosecution's Response to the Victims' « Requête tendant à obtenir autorisation de participer à la procédure d'appel contre la 'Décision relative à la confirmation des charges' »

(ICC-01/04-01/10-494 OA4)

Source: Office of the Prosecutor

The Office of the Prosecutor**Counsel for the Defence**

Mr Arthur Vercken

Ms Yael Vias-Gvirsman

Legal Representatives of Victims**Legal Representatives of Applicants**

Mr Mayombo Kassongo

Mr Ghislain M. Mabanga

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**Counsel Support Section**

Ms Silvana Arbia

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

Introduction

1. The Prosecution has appealed the Pre-Trial Chamber's decision to not confirm charges against Callixte Mbarushimana ("the Suspect"). According to the Prosecution, the Pre-Trial Chamber erred in its manner of considering evidence at the confirmation hearing and by requiring that the Suspect's contribution to the commission of the crimes under article 25(3)(d) be "significant".¹
2. The victims represented by Mr Ghislain M. Mabanga seek to participate in the appeal proceedings (OA 4) and submit that they fulfill the criteria for participation in this instance.
3. Given the nature of the issues in this appeal, and in line with the Appeals Chamber's prior jurisprudence, the Prosecution does not oppose the application.

Procedural Background

4. On 16 December 2011, Pre-Trial Chamber I issued its decision whereby it declined to confirm the charges against the Suspect ("the Decision").² Presiding Judge Sanji M. Monageng dissented.³
5. On 27 December 2011, the Prosecution sought leave to appeal the Decision.⁴
6. On 1 March 2012, the Pre-Trial Chamber granted the Prosecution's application with respect to three issues.⁵
7. On 7 March 2012, the Legal Representative of the victim applicants, Mr Ghislain M. Mabanga ("Legal Representative"), filed a request to participate on behalf of the victims he represents ("Victims' Request").⁶

¹ ICC-01/04-01/10-499-Corr OA4.

² ICC-01/04-01/10-465-Red.

³ Ibid, p.151.

⁴ ICC-01/04-01/10-480.

⁵ ICC-01/04-01/10-487.

8. On 12 March 2012, the Prosecution filed its Document in Support of the Appeal.⁷
9. With the Appeals Chamber's authorization,⁸ the Prosecution hereby files its response to the Victims' Request.

Submissions

10. The Appeals Chamber has set out the requirements for victims' participation in interlocutory appeals, which have been consistently applied:⁹ article 68(3) "mandates a specific determination by the Appeals Chamber that the participation of victims is appropriate in the particular interlocutory appeal under consideration."¹⁰ The Appeals Chamber further requires that the victims demonstrate that (i) the individuals seeking participation are victims in the case or situation out of which the appeal arises (an assessment to be made by a Pre-Trial or Trial Chamber);¹¹ (ii) the individuals have a personal interest that is affected by the issues on appeal; (iii) the individuals' participation is appropriate; and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹²

(a) The applicants meet the requirements for victims to participate in the appeal

11. Once victims have been admitted to participate in the situation or case, they do not need to demonstrate again to the Appeals Chamber that they meet the

⁶ ICC-01/04-01/10-494 OA4.

⁷ ICC-01/04-01/10-499-Corr OA4. On 13 March the Prosecution filed a corrigendum.

⁸ ICC-01/04-01/10-504 OA4.

⁹ "In order for victims to participate in an appeal under article 82(1)(b) of the Statute, an application seeking leave to participate in the appeal must be filed." See ICC-01/04-01/06-824 OA7, para.38, see also paras.40,43.

¹⁰ ICC-01/04-01/06-824 OA7, para.40; ICC-01/04-503 OA4 OA5 OA6, para.36; ICC-01/05-01/08-566 OA2, para.14.

¹¹ ICC-02/05-01/09-48 OA, para.10; ICC-01/04-01/06-1335 OA 9 OA 10, para.40.

¹² ICC-01/05-01/08-1597OA7, para.7; ICC-01/04-01/06-1335OA9 OA10, paras.35, 36; ICC-01/04-503 OA4 OA5 OA6, paras.35,90; ICC-01/04-01/06-1453 OA13, para.7; ICC-01/04-01/06-1452 OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324 OA2, para.8; ICC-01/05-01/08-566 OA2, para.8. See also ICC-01/04-01/06-824 OA7, paras.2,44,46; ICC-01/04-01/06-925 OA8, para.23.

definition of “victim” under rule 85.¹³ In this case, the Pre-Trial Chamber recognizes as victims the persons on whose behalf this Victims’ Request is submitted.¹⁴

12. The Prosecution agrees that the issues in this appeal affect the personal interests of the victims. As a result of its evidentiary standards at confirmation and its interpretation of the level of contribution required by article 25(3)(d), the Pre-Trial Chamber declined to confirm charges against the Suspect. Thus, as there will be no trial unless the Decision is reversed, the victims will not be able to exercise any participatory rights and seek reparations for the harm suffered.¹⁵ The Prosecution further notes that in a similar appeal the Appeals Chamber recognised the right of victims to participate; in the *Bashir* case the Chamber held that an issue concerning the appropriate evidentiary standard when assessing the application for an arrest warrant affected the personal interests of victims against whom the suspect was alleged to have committed genocidal acts.¹⁶
13. The Prosecution further considers it appropriate for victims to be allowed to present their views and concerns on the issues in this appeal.¹⁷

(b) The modalities of participation

14. The Prosecution submits that the victims should be permitted to present their views and concerns regarding the issue under appeal in writing, through their Legal Representative. Such views and concerns “must be specifically relevant to

¹³ ICC-01/04-01/06-824 OA7, paras.44, 45; ICC-01/04-503 OA4 OA5 OA6, para.92.

¹⁴ See Victim’s Request para.11 referring to ICC-01/04-01/10-351 and ICC-01/04-01/10-441.

¹⁵ Victims’ Request, para.12.

¹⁶ ICC-02/05-01/09-70 OA.

¹⁷ Victims’ Request, para.13. ICC-01/05-01/08-1597OA7, para.11; ICC-01/04-01/06-824 OA7, para.54; ICC-01/05-01/08-566OA2, para.17.

the issues arising in the appeal and to the extent that their personal interests are affected by the proceedings.”¹⁸

15. Furthermore, as mandated by rule 91(2), the Prosecution and the Defence must have an opportunity to respond to the views and concerns presented by victims in this appeal.¹⁹ Under these circumstances, the participation of the victims in this appeal would not be prejudicial to or inconsistent with the rights of the Suspect and a fair and impartial trial.²⁰

Conclusion

16. For the reasons set out above, the Prosecution does not oppose the Appeals Chamber’s granting the Victims’ Request to participate in this appeal, in accordance with the modalities of participation proposed above.



Luis Moreno-Ocampo

Prosecutor

Dated this 27th day of March 2012

At The Hague, The Netherlands

¹⁸ ICC-01/04-503 OA4 OA5 OA6, para.101; ICC-01/04-01/06-1335 OA9 OA10, para.50; ICC-01/05-01/08-1597OA7, para.12. See also ICC-01/04-01/06-824OA7, para.55: “Observations to be received by the victims [are] limited and [must be] specifically relevant to the issues arising in the appeal rather than more generally”.

¹⁹ The Appeals Chamber has previously recognised that if victims are permitted to participate, “the Prosecutor and the Defence shall be allowed to reply to any filing of the victims, in accordance with the provisions of rule 91(2) of the Rules of Procedure and of Evidence”, ICC-01/04-01/06-824OA7, para.49. See also ICC-01/05-01/08-1597OA7, para.12.

²⁰ Victims’ Request, para.14.