



Original: **French**

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

Date: **12/03/2012**

THE APPEALS CHAMBER

Before: Judge Anita Usacka, 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

Urgent application for review of decision no. ICC-01/04-01/10 OA4, and to register a protest and reservations

Source: 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 Victims

Legal Representatives of 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

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
 Section**

1. By application dated 4 March 2012, the Defence prayed the Appeals Chamber to order the translation into French of previous and forthcoming filings in the interlocutory appeal brought by the Prosecutor against the *Decision on the confirmation of charges* issued on 16 December 2011 by Pre-Trial Chamber I. In the application, the Defence requested that the notification of translations into French should mark the starting point of time limits for future proceedings.

2. On 9 March 2012, the Appeals Chamber issued a decision denying the application and granted the Defence a five-day extension of time to respond to the appeal the Prosecutor is preparing to file today, Monday, 12 March 2012.

3. In paragraph 5 of its decision of 9 March 2012, the Appeals Chamber claims that the Defence has proved its proficiency in the English language by responding, within the normal three-day time limit, to the Prosecutor's application for leave to appeal filed before the Pre-Trial Chamber on 27 December 2011.

4. This ground is erroneous.

5. The Prosecutor's application for leave to appeal the decision on the charges is dated 27 December 2011, whereas the Defence response is dated 27 February 2012, that is, two months later.

6. The two-month – not three-day – time limit was made possible by decision no. ICC-01/04-01/10-481, dated 28 December 2011, wherein the Pre-Trial Chamber noted that the Defence team for Mr Mbarushimana is French-speaking and ordered that time limits should be calculated upon translation into French of the decision on the charges. For this reason, the Defence was able to wait for the notification, in French, of the decision on the charges to respond to the Prosecutor's application for leave to appeal.

7. Whilst it is true that the Prosecutor's 27 December 2011 application for leave to appeal the decision is yet to be translated into French, it contained only 16 pages of legal reasoning and the Defence was afforded two months for its translation.

8. Today, at a time when the Appeals Chamber has just ordered the Prosecutor to submit an appeal which is 35 pages long instead of 20, the Chamber has granted only five additional days to the Defence, which is known to be French-speaking, to translate a highly technical English document.

9. The Defence for Mr Mbarushimana wishes to protest against this decision.

10. Mr Mbarushimana is French-speaking.

11. The Defence Counsel for Mr Mbarushimana, Mr Arthur Vercken, is French-speaking and his working language is French. Of course, Mr Vercken is able to read and speak English, but in his view, the technical nature of the document to be submitted by the Prosecutor, the issues at stake in the proceedings, and the extremely short time limit imposed by the Appeals Chamber pose an unnecessary risk to the proper administration of justice.

12. Moreover, the Defence's only assistant, Ms Yael Vias-Gvirsman, who had acted as improvised interpreter for the Defence team during the two months of work necessary to respond to the Prosecutor's application for leave to file an interlocutory appeal, will give birth in the coming hours and is therefore completely unavailable for any translation work whatsoever. The due date for her delivery is 17 March.

13. The decision of the Appeals Chamber to deny the Defence application of 4 March 2012 places the Defence in great difficulty and, in clear terms, undermines the principles of a fair trial. Mr Mbarushimana and his Defence team have the right to a trial conducted in a language that they understand and speak. They cannot be compelled to produce a translation within 15 days. That falls within neither their skill set nor their mission.

14. The Defence has very limited resources. In this context, it seems astounding to compel a lawyer with no assistant to work with a dictionary in hand to verify one out of three words whereas the Prosecutor has substantial resources at his disposal enabling him to produce French versions of his documents without difficulty.

15. Yet, the French language is also an official working language of the International Criminal Court, and the need for producing translations into this language had already been recognised in the present case.

16. Accordingly, Counsel for Mr Mbarushimana must protest vigorously and express the gravest reservations in regard to the Appeals Chamber' requirement that he himself translate the Prosecutor's appeal.

17. Considering the existence of an error at paragraphs 3-5 of this application, Mr Arthur Vercken prays the Chamber urgently to reconsider its decision and grant his application no. ICC-01/04-01/10-488 dated 4 March 2012 *"for the translation of all filings essential to the Prosecutor's appeal against decision no. ICC-01/04-01/10-465 issued by the Pre-Trial Chamber"*

[signed]

Arthur Vercken

Counsel for Mr Callixte Mbarushimana

Dated this Monday, 12 March 2012

At Paris, France