

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **5 March 2012**

THE APPEALS CHAMBER

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. CALLIXTE MBARUSHIMANA***

Public Document

**Prosecution's Request for an Extension of the Page Limit for its Document
in Support of Appeal against the "Decision on the confirmation of charges" (ICC-
01/04-01/10-465-Red)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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**Unrepresented Applicants for
Participation/Reparation**

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REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Introduction

1. On 1 March 2012, Pre-Trial Chamber I (“the Chamber”) granted the Prosecution’s application for leave to appeal three issues emanating from the Chamber’s earlier majority decision not to confirm the charges against Callixte Mbarushimana (“the Suspect”).¹ The Prosecution’s document on appeal is due to be filed on 12 March.
2. According to the Regulations of the Court (RoC), the document in support of the appeal shall not exceed 20 pages. For the reasons set out below, the Prosecution an extension of the prescribed page limit to 50 pages.

Procedural Background

3. On 25 January 2011, the Suspect appeared before the Chamber pursuant to a warrant of arrest issued on 28 September 2010.² The hearing on the confirmation of charges was held from 16 to 21 September 2011. Following written submissions by the parties and the legal representatives of the victims,³ the Chamber issued its Decision on 16 December 2011 (“Confirmation Decision”). The Majority, with the Presiding Judge dissenting, declined to confirm the charges brought by the Prosecution against the Suspect.⁴
4. On 27 December 2011, the Prosecution filed its application under article 82(1)(d) for leave to appeal the Confirmation Decision (“Application”).⁵ Following receipt of the Suspect’s response,⁶ on 1 March 2012, the Chamber granted leave to appeal three issues:⁷

¹ ICC-01/04-01/10-465-Red (“the Decision”).

² ICC-01/04-01/10-1.

³ ICC-01/04-01/10-448-Red (Prosecution’s submissions); ICC-01/04-01/10-446 and ICC-01/04-01/10-447. (Victims’ submissions); ICC-01/04-01/10-450 (Suspect’s submissions).

⁴ ICC-01/04-01/10-465-Red.

⁵ ICC-01/04-01/10-480.

⁶ ICC-01/04-01/10-486.

⁷ ICC-01/04-01/10-487.

- (i) Whether the correct standard of proof in the context of Article 61 allows the Chamber to deny confirmation of charges supported by the Prosecution evidence, by resolving inferences, credibility doubts and perceived inconsistencies against the Prosecution and thereby preventing it from presenting its case at trial.
- (ii) Whether a proper interpretation of the scope and nature of a confirmation hearing, as defined by Article 61, allows the Pre-Trial Chamber to evaluate the credibility and consistency of witness interviews, summaries and statements without the opportunity to examine the witnesses that would be possible at trial.
- (iii) Whether the mode of liability under Article 25(3)(d) requires that the person make a “significant” contribution to the commission or attempted commission of the crime.

Request for Extension of Page Limit

5. Pursuant to Regulation 37(2) of the RoC, a party may apply for an extension of the page limit in exceptional circumstances. The Prosecution submits that the circumstances of this appeal warrant such an extension due to the number, importance and complexity of the issues raised.
6. The first two issues are of particular importance to both the present case and all future cases. They involve the conduct of confirmation hearings and centre on the purpose of confirmation, the nature of evidence that will be offered, and the manner in which evidence is assessed. To a large extent, resolution of these issues may define the confirmation process in this and future cases. The issues raised are also complex, in that they require the critical analysis of both the Majority Decision and Dissenting Opinion, previous decisions of the Pre-Trial Division, a

careful interpretation of the relevant provisions of the Rome Statute (“the Statute”) and Rules of Procedure and Evidence (“the Rules”) and a review of relevant international and national practice and doctrine.

7. The third issue on appeal, whether the contribution required under article 25(3)(d) is required to be ‘significant’, involves the appropriate threshold for the contribution to the commission of the crime to be applied in all future cases brought before the Court under this mode of liability. As with the other two issues, this is the first time that this critical issue will be considered by the Appeals Chamber.
8. In light of the number, novelty and complexity of the issues, the factual complexity of the case, and the lengthy decisions by the Majority and Dissenting Judges, the Prosecution submits that it cannot fully present all its arguments within the normal limit of 20 pages.⁸
9. The Prosecution accordingly submits that the additional pages will facilitate its ability to present clear and detailed arguments, which in turn will assist the Chamber in its role. It is therefore in the interests of a proper determination of the three issues and the interests of justice that the parties be given the opportunity to fully discuss the issues. The Prosecution believes that each side can present its case in a document not exceeding 50 pages, while also assuring the Chamber that the Prosecution will make concerted efforts throughout the drafting process to reduce the pages where possible.

⁸ ICC-01/04-01/06-177, para. 6; ICC-01/04-01/06-2205 OA15 OA16, para. 21.

Relief Sought

10. The Prosecution submits that the reasons set out above constitute exceptional circumstances within the meaning of Regulation 37(2). While the Prosecution will endeavour to restrict its submissions to the minimum required for the proper determination of the issue before the Appeals Chamber, it respectfully requests an extension of 30 pages to the page limit for its document in support of appeal.



Luis Moreno-Ocampo,
Prosecutor

Dated this 5th day of March 2012

At The Hague, The Netherlands