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

Date: 21/07/2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

**Public Document
URGENT**

**Second Defence request to exclude
the amended document containing the charges**

Source: Defence for Mr. Callixte Mbarushimana

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

The 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. Nicholas Kaufman

Ms. Yaël Vias-Gvirsman

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The 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**

On 24 June 2011, the Single Judge HHJ Sanji Mmasenono Monageng granted the Prosecution's request for an extension of the page limit of its document containing the charges permitting it to file 50 pages.¹

Regulation 36(3) of the Regulations of the Court states as follows:

*All documents shall be submitted on A4 format. Margins shall be at least 2.5 centimetres on all four sides. All documents that are filed shall be paginated, including the cover sheet. The typeface of all documents shall be 12 point with 1.5 line spacing for the text and 10 point with single spacing for footnotes. **An average page shall not exceed 300 words.***

The Appeals Chamber in the case against Thomas Lubanga Dyilo ordered the Prosecution to resubmit a document which exceeded the average page word-limit finding as follows:

*"The Appeals Chamber agrees with Mr Lubanga Dyilo that the Document in Support of the Appeal does not comply with the requirements of regulation of 36 (3) of the Regulations of the Court. Although that document is 36 pages in length, the 34 pages of the Prosecutor's submissions contain approximately 15,000 words, which corresponds to an average of 440 words per page. Even if the number of pages were extended to 40, the maximum authorised by the Appeals Chamber, it would still exceed the word limit per page as each page would contain an average of 395 words. Thus, if the Prosecutor had complied with the formatting requirements and the required maximum number of words permitted by regulation 36 (3) of the Regulations of the Court, the Document in Support of the Appeal would be approximately 50 pages in length."*²

¹ ICC-01/04-01/10-248

² ICC-01/04-01/06-2543 at paragraph 10.

The Appeals Chamber added as follows:

*"The Appeals Chamber strongly reminds the Prosecutor to comply with the relevant regulations in his filings in the future, and in particular reserves its discretion to reject any filing for which the page limit has been exceeded but leave has not been granted in advance. The Appeals Chamber considers that breaches by a party or participant of regulation 36 (3) of the Regulations of the Court could result in the rejection of the document in its entirety."*³

The amended document containing the charges⁴ starting at the sentence *"The Prosecutor of the International Criminal Court ("the Court") pursuant to his authority under Article 61(3)(a) of the Rome Statute ("the Statute") charges:"* on page 4 and ending with the phrase: *"The Hague, The Netherlands"* on page 46 contains **16,934** words (using a *pdf to MS-Word converter). The average page word count for the 43 substantive pages is therefore **393.814** words. Even if the Prosecutor had utilized the maximum 50 pages allotted to him, he would not have been entitled to exceed **15,000** words.

In the circumstances, the Chamber is respectfully requested to follow the Appeals Chamber precedent set in the *Lubanga* case and to decline to receive the amended document containing the charges.



Nicholas Kaufman

Counsel for Callixte Mbarushimana

Jerusalem, Israel

Thursday, July 21, 2011

³ ICC-01/04-01/06-2543 at paragraph 14.

⁴ The Defence has not taken into account the cover page, the notification page and the introductory index.