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No.: ICC-01/04-02/12 A

Date: 27 March 2013

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
 Judge Sang-Hyun Song
 Judge Cuno Tarfusser
 Judge Erkki Kourula
 Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR *v.* MATHIEU NGUDJOLO CHUI

Public Document

Prosecution Response to « *Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du Statut de Rom et les normes 35-2 et 59-1 du Règlement de la Cour* »

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 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
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Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution does not object to the relief sought by the Defence, for reasons developed briefly below, but requests that the translation of the Prosecution's Appeal Brief into French be expedited in order not to delay the appeal proceedings unduly.
2. On 19 March 2013, the Prosecution filed its Document in Support of the Appeal against the "*Jugement rendu en application de l'article 74 du Statut*" ("Appeal Brief").¹ The Appeal Brief was drafted in English.
3. On 20 March 2013, the Defence or Mr Ngudjolo ("Defence") filed the "*Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du Statut de Rom et les normes 35-2 et 59-1 du Règlement de la Cour*" ("Defence Request").² The Defence seeks an order from the Appeals Chamber that the Appeal Brief be translated into French and that the time limit pursuant to Regulation 59 for the Defence to file its response to the Appeal Brief be suspended until the Defence has received a French translation of the Appeal Brief. The Defence submits, among others, that the current conditions of detention of Mr Ngudjolo at Schiphol make it difficult for the Defence to freely access and communicate with Mr Ngudjolo.³
4. On 22 March 2013, the Appeals Chamber ordered that the Prosecutor may file a response to the Defence Request.⁴
5. The Prosecution does not object to the relief requested by the Defence. However, it emphasises that Mr Ngudjolo does not have a right to have the Appeal Brief translated into French. According to Article 67(1)(a), Mr Ngudjolo has a right to be informed of the "nature, cause and content of the charge, in a language which

¹ ICC-01/04-02/12-39-Conf-Exp; ICC-01/04-02/12-39-Conf-red.

² ICC-01/04-02/12-41.

³ Defence Request, paras.20-28.

⁴ ICC-01/04-02/12-44.

[he] fully understands and speaks". The Appeal Brief does not contain any such charge. Moreover, a French translation of the Appeal Brief is also not necessary to "meet the requirements of fairness" under Article 67(1)(f).⁵ Appellate proceedings are fundamentally different from trial or pre-trial proceedings. In particular, the appellate proceedings in this case concern, first, technical legal and procedural matters. The Defence can be expected to deal with the issues raised by the Prosecution in its Appeal Brief without there being a need to seek regular instructions from their client. As to the factual issues involved, these arise from the trial record and the appealed judgment under Article 74, which are fully available in French.

6. Further, in the *Mbarushimana* case, the Appeals Chamber rejected a similar request by the Defence that the deadline for its response to the Prosecution's document in support of the appeal should start running only with the notification of the translation into French of that document. In that case, the Appeals Chamber merely granted the Defence an additional 15 days to file its response.⁶
7. The Prosecution finally notes that any rights to translation under Article 67(1) apply exclusively to the accused, and not to the Defence.⁷ Nevertheless, the Prosecution understands that counsel for the Defence have difficulties in understanding documents drafted in English.⁸ It is for that reason that the Prosecution does not object to the relief requested by the Defence.
8. The Prosecution however considers that all efforts should be made to ensure that the relief requested does not excessively impact on the expeditious conduct of the proceedings. In order to minimize any delay, the Prosecution offers the

⁵ See for instance ICC-01/05-01/08-307, para.16.

⁶ ICC-01/04-01/10-497 OA4, paras.4, 6.

⁷ ICC-01/04-01/07-522 OA3, para.59 ; ICC-01/05-01/08-307, para.17.

⁸ Defence Request, paras.12-15.

assistance of its internal Language Support Unit to cooperate with the Registrar with a view to ensuring that the Appeal Brief be translated into French as soon as possible.⁹



Fatou Bensouda
Prosecutor

Dated this 27th day of March 2013
At The Hague, The Netherlands

⁹ The Prosecution's Language Support Unit and the Registrar have previously cooperated in translating a voluminous Prosecution filing (see ICC-01/04-01/07-T-335-ENG, p.12-1124 to p.13-1.6).