

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 16 August 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**

**Decision requesting observations on the "Defence Challenge to the Jurisdiction of  
the Court"**

Decision 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 Yael Vias-Gvirsman

**Legal Representatives of the Victims**

Mr Hervé Diakiese

Mr Mayombo Kassongo

Mr Ghislain Mabanga

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Paolina Massidda

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

**States Representatives**

The Government of the Democratic  
Republic of the Congo

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section Other**

**Pre-Trial Chamber I** of the International Criminal Court (“Chamber” and “Court” respectively) hereby renders the following decision:

**NOTING** the “Defence Challenge to the Jurisdiction of the Court” (“Jurisdiction Challenge”),<sup>1</sup> submitted on 19 July 2011;

**NOTING** the “Decision on the ‘Defence Request for Reclassification’ dated 14 July 2011 and on the request for reclassification of the ‘Defence Challenge to the Jurisdiction of the Court’”<sup>2</sup> dated 20 July 2011;

**NOTING** the “Decision on the 138 applications for victims’ participation in the proceedings”<sup>3</sup> issued by the Chamber on 11 August 2011;

**NOTING** articles 19(2), 19(3) of the Rome Statute (“Statute”), rules 58 and 59 of the Rules of Procedure and Evidence (“Rules”);

**CONSIDERING** that in the context of the proceedings arising from a challenge to the jurisdiction of the Court (“article 19 proceedings”), the Democratic Republic of the Congo (DRC) and the victims who have communicated with the Court in relation to the case against Callixte Mbarushimana (“Mr Mbarushimana”) are entitled, pursuant to rule 59(1) of the Rules, to be informed of the challenge by the Registrar and to make written observations or representations to the Chamber in accordance with article 19(3) of the Statute and rule 59(3) of the Rules, within a time limit set by the Chamber;

**CONSIDERING** that, consistent with the jurisprudence of the Court,<sup>4</sup> victims “that have communicated with the Court” for the purposes of the current proceedings are those (i) who have been recognised as victims for the purpose of participation in the pre-trial proceedings in the case against Mr Mbarushimana;<sup>5</sup> (ii) in relation to whom

<sup>1</sup> ICC-01/04-01/10-290.

<sup>2</sup> ICC-01/04-01/10-293.

<sup>3</sup> ICC-01/04-01/10-351.

<sup>4</sup> See *The Prosecutor v. Joseph Kony et al.*, ICC-02/04-01/05-320, page 7; *The Prosecutor v. William Samoei Ruto et al.*, ICC-01/09-01/11-31, para. 12.

<sup>5</sup> Applicants a/2000/11, a/2006/11, a/2007/11, a/2008/11, a/2022/11, a/2023/11, a/2024/11, a/2025/11, a/2027/11, a/2028/11, a/2029/11, a/2030/11, a/2031/11, a/2065/11, a/2067/11, a/2095/11, a/2099/11, a/2104/11, a/2149/11, a/2151/11, a/2152/11, a/2155/11, a/2157/11, a/2158/11, a/2159/11, a/2163/11, a/2166/11, a/2167/11, a/2168/11, a/2169/11, a/2170/11, a/2171/11, a/2172/11, a/2173/11, a/2174/11, a/2175/11, a/2177/11, a/2178/11, a/2179/11, a/2180/11, a/2181/11, a/2182/11, a/2183/11, a/2184/11, a/2185/11, a/2186/11, a/2187/11, a/2188/11,

a decision on their applications for participation has been deferred until further information in support thereof is provided to the Chamber;<sup>6</sup> (iii) who have submitted to the Registry applications for participation in the case against Mr Mbarushimana, which are yet to be transmitted to the Chamber;

**CONSIDERING** that while the victims already authorised to participate in the pre-trial proceedings of the present case have been assigned legal representatives, some of the applicants whose applications have been deferred until further information is provided to the Chamber and all those whose applications are yet to be transmitted to the Chamber remain unrepresented;

**CONSIDERING** that unrepresented applicants shall be assisted by the Office of the Public Counsel for Victims (“OPCV”) for the purpose of their participation in the article 19 proceedings;

#### **FOR THESE REASONS**

**ORDERS** the Registrar to inform the DRC and the victims that have communicated with the Court with respect to the case against Mr Mbarushimana of the Defence’s Jurisdiction Challenge;

**DECIDES** that only for the purposes of their participation in the current article 19 proceedings, the OPCV shall represent unrepresented applicants;

**INSTRUCTS** the Victims Participation and Reparations Section to provide the OPCV with all the applications of unrepresented applicants and to provide it with any necessary assistance to contact applicants expeditiously; and

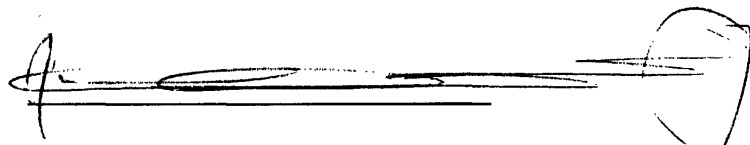
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a/2189/11, a/2190/11, a/2191/11, a/2192/11, a/2193/11, a/2194/11, a/2196/11, a/2197/11, a/2198/11, a/2203/11, a/2205/11, a/2206/11, a/2207/11, a/2208/11, a/2212/11, a/2219/11, a/2220/11, a/2221/11, a/2223/11, a/2224/11, a/2226/11, a/2228/11, a/2229/11, a/2230/11, a/2234/11, a/2239/11, a/2240/11, a/2572/11, a/2573/11, a/2574/11, a/2575/11, a/2576/11, a/2578/11, a/2579/11, a/2580/11, a/2582/11, a/2583/11, a/2584/11, a/2585/11, a/2586/11, a/2587/11, a/2588/11, a/2589/11, a/2590/11, a/2591/11, a/2593/11, a/2594/11, a/2595/11, a/2596/11, a/2597/11, a/2598/11, a/2599/11, a/2600/11, a/2602/11, a/2603/11, a/2604/11, a/2605/11, a/2606/11, a/2609/11, a/2610/11, a/2611/11, a/2612/11, a/2614/11, a/2615/11, a/2616/11, a/2617/11, a/2619/11, a/2620/11, a/2621/11, a/2622/11, a/2623/11, a/2624/11, a/2625/11, a/2626/11, a/2627/11, a/2628/11, a/2630/11, a/2631/11, a/2632/11, a/2633/11, a/2634/11, a/2635/11, See ICC-01/04-01/10-351, pp. 18-21.

<sup>6</sup> Applicants a/2153/11, a/2176/11, a/2195/11 and a/2218/11, See Ibid., page 21.

**INVITES** the DRC and the representatives of the victims who have already communicated with the Court with respect to the present case—as defined in the present Decision—to submit their observations on the Defence’s Jurisdiction Challenge, by 12 September 2011.

Done in English and French, the English version being authoritative.



**Judge Sanji Mmasenono Monageng**

**Presiding Judge**



**Judge Sylvia Steiner**



**Judge Cuno Tarfusser**

Dated this Tuesday, 16 August 2011

At The Hague, The Netherlands