

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 09 September 2011

**PRE-TRIAL CHAMBER I**

**Before: Judge Cuno Tarfusser, Single Judge**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public Document  
URGENT**

**Decision on the representation of participating victims formerly represented by Mr  
Hervé Diakiese**

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

**Counsel for the Defence**

Mr. Nicholas Kaufman  
Ms. Yaël Vias-Gvirsman

**Legal Representatives of Victims**

Mr. Mayombo Kassongo  
Mr. Ghislain Mabanga

**Unrepresented Victims**

**Legal Representatives of Applicants**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms. Paolina Massidda

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

**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

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**Registrar**

Ms. Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr. Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms. Fiona McKay

**Others**

**I, Judge Cuno Tarfusser**, the Single Judge of Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana* in the absence of Judge Sanji Mmasenono Monageng<sup>1</sup>;

**NOTING** the “Decision on the 138 applications for victims’ participation in the proceedings”,<sup>2</sup> issued on 11 August 2011, wherein the Single Judge *inter alia* noted that 48 victims authorised to participate in the pre-trial proceedings in the present case were represented by Mr Hervé Diakiese, Mr Mayombo Kassongo and Mr Ghislain Mabanga and ordered the Registry to assist the 82 unrepresented victims who had been authorised to participate in the proceedings (“Unrepresented Victims”) by appointing a common legal representative for them, from among these three legal representatives;

**NOTING** the “Report on the legal representation of participating victims”,<sup>3</sup> filed on 16 August 2011, wherein the Registrar indicated that Mr Diakiese had been appointed to represent 26 of the Unrepresented Victims, in addition to the 4 participating victims he already represented (“30 Participating Victims”);

**NOTING** the “Enregistrement dans le dossier de la lettre du Bâtonnier National de la République Démocratique du Congo en date du 25 juillet 2011 et la décision du Greffier procédant à la radiation de Maître Herve Diakiese de la liste de conseils”,<sup>4</sup> filed on 19 August 2011, whereby the Registrar informed the Chamber that, by decision of 19 August 2011, Mr Diakiese had been struck off the list of counsel maintained by the Registrar due to the fact that he no longer satisfied the criterion set out in regulation 67(2) of the Regulations of the Court (“Regulations”) for inclusion on the list of counsel, having been struck off by the Conseil national de l’ordre des avocats of the Democratic Republic of the Congo for a disciplinary offence;

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<sup>1</sup> ICC-01/04-583.

<sup>2</sup> ICC-01/04-01/10-351 with annex.

<sup>3</sup> ICC-01/04-01/10-379 with annexes.

<sup>4</sup> ICC-01/04-01/10-385 with annexes.

**NOTING** the “Registry report concerning the representation of participating victims formerly represented by Maître Herve Diakiese”,<sup>5</sup> filed on 23 August 2011, whereby the Registrar recommended that the legal representation of the 30 Participating Victims should be taken up by Mr Mabanga;

**NOTING** the “Requête urgente portant recours contre la décision du Greffier sur la radiation d’un conseil et sollicitant une suspension immédiate des effets de cette décision”<sup>6</sup> filed on 24 August 2011, whereby Mr Diakiese applied to the Presidency for judicial review of the decision of the Registrar of 19 August 2011 (“Application for Judicial Review”);

**NOTING** the “Decision on the « Requete urgente portant recours contre la Décision du Greffier sur la radiation d'un conseil et sollicitant une suspension »”<sup>7</sup> issued on 9 September 2011, whereby the Presidency rejected the Application for Judicial Review;

**NOTING** rules 21 and 90 of the Rules of Procedure and Evidence and regulations 71 and 79 - 80 of the Regulations;

**CONSIDERING** that it is necessary that another legal representative be appointed to represent the 30 Participating Victims for the purpose of their participation during the pre-trial stage of these proceedings;

**CONSIDERING** that, in view of the proximity of the hearing on the confirmation of charges and the practical difficulties which would arise if a new legal representative were appointed at this stage, it is appropriate that the representation of the 30 Participating Victims be taken up by either or both Mr Kassongo and Mr Mabanga for the purposes of the participation of these victims in the pre-trial proceedings;

**CONSIDERING** the Registrar’s submissions that, in view of the geographical location of the 30 Participating Victims, Mr Mabanga is best placed to take up the legal representation of these victims;

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<sup>5</sup> ICC-01/04-01/10-387 with annex.

<sup>6</sup> ICC-RoC72-01/11-1 with annexes.

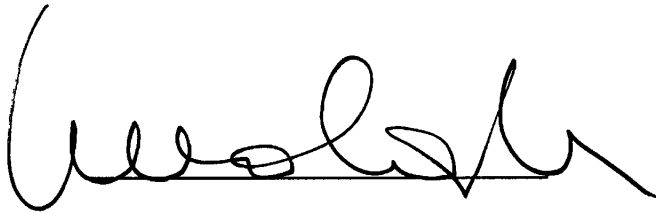
<sup>7</sup> ICC-RoC72-01/11-4.

**FOR THESE REASONS**

**APPOINT** Mr Ghislain Mabanga as the legal representative for the 30 Participating Victims; and

**ORDER** the Registry to transmit to Mr Ghislain Mabanga, as soon as possible, the unredacted application forms of the 30 Participating Victims.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

**Judge Cuno Tarfusser**

**Single Judge**

Dated this Friday, 09 September 2011

At The Hague, The Netherlands