



Original: **French**

No.: **ICC-01/04-01/10**
Date: **28 September 2010**

PRE-TRIAL CHAMBER I

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

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

**URGENT
Under Seal**

Warrant of Arrest for Callixte Mbarushimana

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

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (“the Chamber”) of the International Criminal Court (“the Court”),

1. **NOTING** the application filed on 20 August 2010 by the Prosecutor under article 58 of the Rome Statute (“the Statute”) for the issuance of a warrant of arrest for Callixte Mbarushimana (“the Application”)¹ for war crimes and crimes against humanity falling under the jurisdiction of the Court committed by the troops of the *Forces démocratiques pour la libération du Rwanda – Forces combattantes Abacunguzi* (FDLR) in the provinces of North Kivu and South Kivu in the Democratic Republic of the Congo (DRC) between January 2009 and the date of the Application;

2. **NOTING** the submissions on jurisdiction filed on 10 September 2010,² in which the Prosecutor provided additional details pertaining to the Court’s jurisdiction, in response to the decision of 6 September 2010 by which the Chamber requested clarification on his Application;³

3. **NOTING** the evidence, information and supporting documentation presented by the Prosecutor;

4. **NOTING** the *Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana*, dated 28 September 2010,⁴ in which the Chamber set out the reasons why it is satisfied that there are reasonable grounds to believe that Callixte Mbarushimana is criminally responsible under article 25(3)(d) of the Statute for war crimes and crimes against

¹ “Prosecution’s Application under Article 58”, ICC-01/04-573-US-Exp.

² “Prosecution’s Submissions on Jurisdiction”, ICC-01/04-577-US.

³ *Decision requesting clarification on the Prosecutor’s Application under Article 58*, ICC-01/04-575-US.

⁴ ICC-01/04-01/10-1-US.

humanity committed in the provinces of North Kivu and South Kivu in the DRC;

5. **CONSIDERING** that, at this stage of the proceedings and in light of all of the information and supporting materials submitted by the Prosecutor, inter alia in his submissions on jurisdiction, the Chamber believes that the case concerning Callixte Mbarushimana falls within the jurisdiction of the Court and that no ostensible cause or self-evident factor manifestly requires it to exercise its powers under article 19(1) of the Statute to determine the admissibility of the case, without prejudice to any filing of a challenge to admissibility in accordance with article 19(2)(a) and (b) of the Statute;

6. **CONSIDERING** that the Chamber finds that there are reasonable grounds to believe that, between January and September 2009, several attacks were directed by the FDLR troops against the civilian population of North Kivu and South Kivu Provinces in the DRC, inter alia against the villages of Busheke in Kalehe territory, South Kivu; Remeka in Ufamandu *groupement*, Walikale territory, North Kivu; Pinga in Masisi territory, North Kivu; Kipopo in Masisi territory, North Kivu; Miriki in Lubero territory, North Kivu; Mianga in Waloa-Loanda *groupement*, Walikale territory, North Kivu; Luofu and Kasiki in Lubero territory, North Kivu; Busurungi in Walikale territory, North Kivu; Manje in Masisi territory, North Kivu; and Malembe in Waloa-Loanda *groupement*, Walikale territory, North Kivu;

7. **CONSIDERING**, more specifically, that the Chamber is satisfied that there are reasonable grounds to believe that, between January and September 2009, the FDLR troops:

- i) directed attacks against the civilian population of the villages of Busheke in Kalehe territory, South Kivu; Kipopo in Masisi

territory, North Kivu; Mianga in Waloa-Loanda *groupement*, Walikale territory, North Kivu; Luofu and Kasiki in Lubero territory, North Kivu; Busurungi in Walikale territory, North Kivu; Manje in Masisi territory, North Kivu; and Malembe in Waloa-Loanda *groupement*, Walikale territory, North Kivu;

- ii) committed acts of murder in the villages of Busheke in Kalehe territory, South Kivu; Pinga in Masisi territory, North Kivu; Remeka in Ufamandu *groupement*, Walikale territory, North Kivu; Kipopo in Masisi territory, North Kivu; Mianga in Waloa-Loanda *groupement*, Walikale territory, North Kivu; Luofu and Kasiki in Lubero territory, North Kivu; Busurungi in Walikale territory, North Kivu; and Manje in Masisi territory, North Kivu;
- iii) committed acts of rape in the villages of Busheke in Kalehe territory, South Kivu; Miriki in Lubero territory, North Kivu; Pinga in Masisi territory, North Kivu; Remeka in Ufamandu *groupement*, Walikale territory, North Kivu; Busurungi in Walikale territory, North Kivu; and Manje in Masisi territory, North Kivu;
- iv) committed acts of torture and other inhumane acts and inhuman treatment in the villages of Busheke in Kalehe territory, South Kivu; Miriki in Lubero territory, North Kivu; Pinga in Masisi territory, North Kivu; Remeka in Ufamandu *groupement*, Walikale territory, North Kivu; Busurungi in Walikale territory, North Kivu; and Malembe in Waloa-Loanda *groupement*, Walikale territory, North Kivu;
- v) committed acts of destruction of property in the villages of Luofu and Kasiki in Lubero territory, North Kivu; Busurungi in Walikale

territory, North Kivu; Kipopo in Masisi territory, North Kivu; Malembe in Waloa-Loanda *groupement*, Walikale territory, North Kivu; Mianga in Waloa-Loanda *groupement*, Walikale territory, North Kivu; Busurungi in Walikale territory, North Kivu; and Manje in Masisi territory, North Kivu,

8. **CONSIDERING** that, in light of all of the evidence and other information presented in the Application, there are reasonable grounds to believe that Callixte Mbarushimana has been the Executive Secretary of the FDLR since July 2007 and that, after the arrest of the FDLR's President in November 2009, he inherited part of the latter's powers;

9. **CONSIDERING** further that there are reasonable grounds to believe that, at the time of the events set out in the Application, and in particular from 20 January to 25 February 2009 and from 2 March to 31 December 2009, there was a protracted armed conflict between the FDLR and government forces present in the provinces of North Kivu and South Kivu in the DRC, and that Callixte Mbarushimana was aware of the existence of said armed conflict;

10. **CONSIDERING**, accordingly, that the Chamber is satisfied that there are reasonable grounds to believe that Callixte Mbarushimana is criminally responsible within the meaning of article 25(3)(d) of the Statute for:

- i) attacks against the civilian population, constituting war crimes under article 8(2)(b)(i) or 8(2)(e)(i) of the Statute;
- ii) acts of destruction of property, constituting war crimes under article 8(2)(a)(iv) or 8(2)(e)(xii) of the Statute;

- iii) acts of murder, constituting war crimes under article 8(2)(a)(i) or 8(2)(c)(i) of the Statute;
- iv) acts of murder, constituting crimes against humanity under article 7(1)(a) of the Statute;
- v) acts of torture, constituting war crimes under article 8(2)(a)(ii) or 8(2)(c)(i) of the Statute;
- vi) acts of torture, constituting crimes against humanity under article 7(1)(f) of the Statute;
- vii) acts of rape, constituting war crimes under article 8(2)(b)(xxii) or 8(2)(e)(vi) of the Statute;
- viii) acts of rape, constituting crimes against humanity under article 7(1)(g) of the Statute;
- ix) inhumane acts, constituting crimes against humanity under article 7(1)(k) of the Statute;
- x) acts of inhuman treatment, constituting war crimes under article 8(2)(a)(ii) of the Statute; and
- xi) acts of persecution, constituting crimes against humanity under article 7(1)(h) of the Statute;

11. **CONSIDERING** that the Chamber is of the view that there are reasonable grounds to believe that the arrest of Callixte Mbarushimana appears necessary at this stage to ensure his appearance at trial, to ensure that he will not obstruct or endanger the investigation or the court proceedings,

and to prevent him from continuing with the commission of those crimes or related crimes, within the meaning of sub-paragraphs (i), (ii) and (iii) of article 58(1)(b) of the Statute;

FOR THESE REASONS, THE CHAMBER

HEREBY ISSUES a warrant of arrest for **Callixte MBARUSHIMANA**, alias “Maneza”, whose photograph is attached, born on 24 July 1963 in the *commune* of Ndusu in Ruhengeri, Northern Province, Rwanda, son of Sendogoro and Concessa Ruvugundi, Executive Secretary of the FDLR since July 2007, a Rwandan national residing in Paris, holder of a residence permit issued by the French Republic which expires on 31 December 2013.

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

[signed]

Judge Cuno Tarfusser
Presiding Judge

[signed]

Judge Sylvia Steiner

[signed]

Judge Sanji Mmasenono Monageng

Dated this 28 September 2010

At The Hague, The Netherlands