

Situation in the Democratic Republic of the Congo

ICC-PIDS-CIS-DRC-04-003/12\_Eng

***The Prosecutor v. Callixte Mbarushimana***

Updated: 15 June 2012

ICC-01/04-01/10

## Callixte Mbarushimana

On 16 December 2011, Pre-Trial Chamber I declined to confirm charges of crimes against humanity and war crimes against Callixte Mbarushimana. Released from ICC custody on 23 December 2011.



**Date of birth:** 24 July 1963

**Place of birth:** Ndusu, in Ruhengeri, the Northern Province of Rwanda

**Nationality:** Rwandese

**Current situation:** Released on 23 December 2011

**Warrant of arrest:** Issued under seal on 28 September 2010 | Unsealed on 11 October 2010

**Transfer to The Hague:** 25 January 2011

**Initial appearance:** 28 January 2011

**Confirmation of charges hearing:** 16 – 21 September 2011

**Decision on the confirmation of charges:** 16 December 2011

## Charges

The Prosecution alleges that Callixte Mbarushimana is criminally responsible under article 25(3)(d) of the Rome Statute for:

- **Five counts of crimes against humanity:** murder, torture, rape, inhumane acts and persecution;
- **Eight counts of war crimes:** attacks against the civilian population, murder, mutilation, torture, rape, inhuman treatment, destruction of property and pillaging.

**Status of Proceedings:** Pre-Trial Chamber declined to confirm the charges against Callixte Mbarushimana and ordered his release. The Prosecution can request anew the confirmation of charges by presenting additional evidence.

## Alleged crimes (non-exhaustive list)

Pre-Trial Chamber I is of the opinion that there are substantial grounds to believe that:

- From at least 20 January 2009 until at least 31 December 2009, an armed conflict not of an international character took place in the North and South Kivus, in the Democratic Republic of Congo (DRC), between the forces of the Government of the DRC, supported at times by Rwandese forces (RDF) or the forces of the United Nations Mission in the Democratic Republic of Congo, on the one side, and at least one organised armed group, the *Forces Démocratiques pour la Libération du Rwanda - Forces Combattantes Abacunguzi* (FDLR), on the other.
- FDLR troops committed several war crimes in different locations and at different times, particularly in Busurungi and surrounding villages in March 2009 (murder) as well as on or about 9 to 12 May 2009 (attacking civilians, murder, mutilation, rape, cruel treatment, destruction of property and pillaging); in Manje on or about 20 July 2009 (attacking civilians, murder, cruel treatment and destruction of property); in Malembe on or about 11 to 16 August 2009 (attacking civilians and destruction of property), and in Mianga on or about 12 April 2009 (attacking civilians, murder and destruction of property).

Although the Chamber found substantial grounds to believe that acts amounting to war crimes were perpetrated in five out of the twenty-five occasions identified by the Prosecutor, the Majority found that the evidence submitted was insufficient to be convinced of the existence of substantial grounds to believe that such acts were part of a course of conduct amounting to “an attack directed against the civilian population” pursuant to or in furtherance of an organisational policy to commit such attack, within the meaning of article 7 of the Rome Statute which defines crimes against humanity. Accordingly, the Majority found that there were not substantial grounds to believe that crimes against humanity were committed by the FDLR troops.

The Majority of the Chamber, with the Presiding Judge dissenting, further found that Callixte Mbarushimana did not provide any contribution to the commission of the alleged crimes, even less a “significant” one.

## Main judicial developments

### REFERRAL TO THE COURT

The DRC ratified the Rome Statute, the founding instrument of the International Criminal Court, on 11 April 2002. On 3 March 2004, the Government of the DRC referred to the Court the situation (the events falling under the Court's jurisdiction) in its territory since the entry into force of the Rome Statute on 1 July 2002. After a preliminary examination, the Prosecutor initiated an investigation on 21 June 2004.

Besides Callixte Mbarushimana, three persons have been transferred to the Court with respect to the situation: Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui. A warrant of arrest has also been issued against a fourth person, Bosco Ntaganda, but it is yet to be executed.

Investigations are ongoing with respect to the situation in the DRC.

### WARRANTS OF ARREST AND SURRENDER TO THE COURT

The Prosecution filed an application for the issuance of a warrant of arrest for Callixte Mbarushimana on 20 August 2010.

On 28 September 2010, Pre-Trial Chamber I issued a warrant of arrest under seal for Mr Mbarushimana. The warrant was unsealed on 11 October 2010.

On 25 January 2011, the French authorities surrendered Mr Mbarushimana to the Court. He was then transferred to the Court's Detention Centre in The Hague.

### INITIAL APPEARANCE AND CONFIRMATION OF CHARGES HEARING

On 28 January 2011, Mr Mbarushimana made his first appearance before the Court. At this hearing, the Chamber verified the suspect's identity and ensured that he had been informed of the crimes which he was alleged to have committed and of his rights before the Court. The confirmation of charges hearing in this case was held from 16 to 21 September 2011.

### DECISION DECLINING TO CONFIRM THE CHARGES

On 16 December 2011, Pre-Trial Chamber I decided by Majority to decline to confirm the charges in the case of *The Prosecutor v. Callixte Mbarushimana* and to release Mr Mbarushimana from the custody of the Court, on the completion of the necessary arrangements.

The Majority of the Chamber found that there was not sufficient evidence to establish substantial grounds to believe that Callixte Mbarushimana could be held criminally responsible, under article 25(3)(d) of the Rome Statute, for the eight counts of war crimes and five counts of crimes against humanity brought against him by the Prosecutor.

On 23 December 2011, Mr Mbarushimana was released from the ICC custody, in accordance with the Chamber's decision.

### LEGAL ASSISTANCE

On 15 February 2011, the Registrar provisionally found Mr Mbarushimana indigent pending verification by the Court of the information contained in his application. The cost of his defence is therefore borne by the Court under the legal assistance scheme.

### PARTICIPATION OF VICTIMS

On 11 August 2011, Pre-Trial Chamber I granted 130 persons the status of victims authorised to participate in the proceedings relating to the pre-trial stage of the case.

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**Composition of Pre-Trial Chamber I**

Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**Representation of the Office of the Prosecutor**

Fatou Bensouda, Prosecutor  
Anton Steynberg, Senior Trial Lawyer

**Defence Counsel for Callixte Mbarushimana**

Arthur Vercken  
Yaël Vias-Gvirsman

**Legal Representatives of the Victims**

Mayombo Kassongo  
Ghislain Mabanga