

1 International Criminal Court  
2 Pre-Trial Chamber I - Courtroom 1  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Callixte Mbarushimana -  
5 ICC-01/04 -01/10  
6 Presiding Judge Cuno Tarfusser, Judge Sylvia Steiner and  
7 Judge Sanji Mmasenono Monageng  
8 Initial Appearance Hearing  
9 Friday, 28 January 2011  
10 (The hearing starts in open session at 9.40 a.m.)  
11 THE COURT USHER: All rise. The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE TARFUSSER: Good morning to everybody. Pre-Trial Chamber 1  
14 is now in session. Court officer, please, could you call the case.  
15 THE COURT OFFICER: Good morning, Mr President, your Honours. The situation in  
16 the Democratic Republic of the Congo, in the case of the Prosecutor v. Callixte  
17 Mbarushimana, case reference ICC-01/04-01/10.  
18 PRESIDING JUDGE TARFUSSER: Thank you, court officer. Now, the Chamber  
19 authorises photographers to enter the courtroom for the purposes of some photographs.  
20 That's for only a few minutes.  
21 (Pause in proceedings)  
22 PRESIDING JUDGE TARFUSSER: Okay. Thank you. On behalf of my colleagues,  
23 Judge Sylvia Steiner, on my right, and Judge Sanji Monageng, on my left, I would like to  
24 welcome you all to this hearing. I would like now the parties to introduce themselves,  
25 starting with the Office of the Prosecutor.

1 MR STEYNBERG: Good morning Mr President, your Honours. The Prosecution is  
2 represented this morning by Pascal Turlan, international cooperation adviser; Julieta  
3 Solano, assistant -- I beg your pardon, trial lawyer; Marion Rabanit and Regina Weiss,  
4 assistant trial lawyers; Kimberly Fleming-Oberndorfer, case manager; and myself, Anton  
5 Steynberg, senior trial lawyer. Thank you.

6 PRESIDING JUDGE TARFUSSER: Thank you, Mr Prosecutor. I would like to turn now  
7 to the Defence. Please, Mr Kaufman.

8 MR KAUFMAN: Good morning, Mr President, your Honours. Behind me I have the  
9 Chief of the Office of the Public Counsel for Defence Mr Xavier-Jean Keita; his deputy,  
10 Madam Melinda Taylor; my name is Nicholas Kaufman; and behind of course is the  
11 accused Mr Callixte Mbarushimana who, with your permission after the formal  
12 identification, would like to address the Court.

13 PRESIDING JUDGE TARFUSSER: Of course. Thank you very much. Now the  
14 Registry. Madam Registrar, please.

15 MS ARBIA: Good morning, your Honours.

16 THE INTERPRETER: Microphone, please.

17 MS ARBIA: Good morning, your Honours. For the Registry, myself Sylvana Arbia,  
18 Registrar, assisted by Mr Cyril Laucci, legal officer. Thank you.

19 PRESIDING JUDGE TARFUSSER: Thank you very much.

20 Mr Mbarushimana, I would like to ask you to stand up and answer a number of  
21 questions. Please use the microphone before you and please speak slowly in order to  
22 allow adequate time to the interpreters. First of all, could you please confirm that you  
23 fully understand and speak French?

24 MR MBARUSHIMANA: (Interpretation) I confirm that.

25 PRESIDING JUDGE TARFUSSER: Could you confirm also that you're receiving proper

1 simultaneous interpretation into French on this hearing, of this hearing?

2 MR MBARUSHIMANA: (Interpretation) I confirm that.

3 PRESIDING JUDGE TARFUSSER: Your name, date of birth and your occupation?

4 MR MBARUSHIMANA: (Interpretation) My name is Mbarushimana, Callixte. I was  
5 born in Rwanda in the Ruhengeri prefecture, \*in Ndusu.

6 I'm a computer engineer.

7 PRESIDING JUDGE TARFUSSER: I learned that you gave the powers of attorney to  
8 your counsel, Mr Kaufman, these days. Do you confirm Mr Kaufman's your Defence  
9 counsel?

10 MR MBARUSHIMANA: (Interpretation) I confirm that, your Honour.

11 PRESIDING JUDGE TARFUSSER: Now, have you anything to add at this time? As  
12 Mr Kaufman said, you want to say something to the Court. You can do it.

13 MR MBARUSHIMANA: (Interpretation) Thank you, your Honour. What I wanted to  
14 say, well, I may say this later, after the charges have been read out. Thank you.

15 PRESIDING JUDGE TARFUSSER: Of course. So you can be seated. Thank you.

16 MR MBARUSHIMANA: (Interpretation) Thank you.

17 PRESIDING JUDGE TARFUSSER: This hearing will continue now with the matters  
18 provided in Article 60 of the Statute. The purpose of this hearing is to allow the  
19 Chamber to satisfy itself that Mr Mbarushimana has been informed of the crimes he is  
20 alleged to have committed, as well as of his rights under the Statute, including the right to  
21 apply for interim release pending trial.

22 On the basis of the evidence submitted by the Prosecutor in his application, under  
23 Article 58 dated 20 August 2009, this Chamber found that there were reasonable grounds  
24 to believe that Mr Mbarushimana committed crimes within the jurisdiction of the Court,  
25 as alleged by the Prosecutor, and that the arrest was necessary for the reasons given in the

1 Chamber's decision dated 28 September 2010. Accordingly, on the same day, it issued a  
2 warrant of arrest against Mr Mbarushimana.

3 In order for the Chamber to ascertain whether Mr Mbarushimana has been informed of  
4 the crimes with which he is charged, I would now like to ask the court officer to read the  
5 counts with which the Prosecutor charges him. Please, court officer.

6 THE COURT OFFICER: Yes, Mr President.

7 Count 1: Attacks against the civilian population constituting war crimes.

8 (Article 8(2)(b)(i) or Article 82(e(i) and Article 25(3)(a) or (d) of the Rome Statute)

9 From on about 20 January 2009 to the date of this application, Callixte Mbarushimana as a  
10 co-perpetrator or in the alternative as part of a group of persons acting with a common  
11 purpose, committed, or contributed to the direction of intentional attacks against the  
12 civilian population of North and South Kivu Provinces, DRC, including the populations of  
13 Remeka, Pinga, Kipopo, Mianga, Luofu, Kasiki, Busurungi, and neighbouring villages,  
14 Manje and Malembe, constituting war crimes perpetrated by the Forces démocratiques  
15 pour la libération du Rwanda (FDLR).

16 Count 2: Destruction of property constituting war crimes. (Article 8(2)(a)(iv) or Article  
17 8(2)(e)(xii) and Article 25(3)(a) or (d) of the Rome Statute)

18 From on or about 20 January 2009, to the date of this application, Callixte Mbarushimana,  
19 as a co-perpetrator or in the alternative as partly of a group of persons acting with a  
20 common purpose, committed, or contributed to the commission of, war crimes in the form  
21 of destruction of the adversaries' property or extensive destruction of property not  
22 justified by military necessity by the FDLR at various locations in North and South Kivu  
23 provinces, DRC, including Kipopo, Mianga, Luofu, Kasiki, Busurungi and neighbouring  
24 villages, Manje and Malembe.

25 Count 3: Murders or wilful killings constituting war crimes. (Article 8(2)(a)(i) or

1 Article 8(2)(c)(ii) and Article 25(3)(a) or (d) of the Rome Statute)

2 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,  
3 as a co-perpetrator or in the alternative as part of a group of persons acting with a  
4 common purpose, committed or contributed to the commission of, war crimes in the form  
5 of murders or wilful killings perpetrated by FDLR upon members of the civilian  
6 population of various locations in North and South Kivu Provinces, DRC, including  
7 Malembe, Remeka, Pinga, Busheke, Kipopo, Mianga, Luofu, Kasiki, Busurungi and  
8 surrounding villages, and Manje.

9 Count 4: Murders constituting crimes against humanity. (Article 7(1)(a) and Article  
10 25(3)(a) or (d) of the Rome Statute)

11 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,  
12 as a co-perpetrator or in the alternative as part of a group of persons acting with a  
13 common purpose, committed or contributed to the commission of, crimes against  
14 humanity which in fact occurred, namely murders perpetrated by the FDLR upon  
15 members of the civilian population of various locations in North and South Kivu  
16 Provinces, DRC, including Malembe, Remeka, Pinga, Busheke, Kipopo, Mianga, Luofu,  
17 Kasiki, Busurungi and surrounding villages, and Manje.

18 Count 5: Torture constituting a war crime.

19 (Article 8(2)(a)(ii) or Article 8(2)(c)(ii) and Article 25(3)(a) or (d) of the Rome Statute)

20 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,  
21 as a co-perpetrator or in the alternative as part of a group of persons acting with a  
22 common purpose, committed, or contributed to the commission of, a war crime in the  
23 form of torture perpetrated by the FDLR upon members of the civilian population of  
24 Busurungi, DRC, inflicted through rape, at various locations in North and South Kivu  
25 Provinces, DRC.

- 1 Count 6: Torture constituting a crime against humanity. (Article 7(1)(f) and Article  
2 25(3)(a) or (d) of the Rome Statute)
- 3 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,  
4 as a co-perpetrator or in the alternative as part of a group of persons acting with a  
5 common purpose, committed, or contributed to the commission of, a crime against  
6 humanity which in fact occurred, namely, torture perpetrated by the FDLR upon  
7 members of the civilian population of Busurungi, DRC, inflicted through rape at various  
8 locations in North and South Kivu Provinces, DRC, and through the mutilation of their  
9 genitals at Busurungi, on or about 10 May 2009.
- 10 Count 7: Rape constituting a war crime.  
11 (Article 8(2)(b)(xxii) or Article 8(2)(e)(vi) and Article 25(3)(a) or (d) of the Rome Statute)
- 12 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,  
13 as a co-perpetrator or in the alternative as part of a group of persons acting with a  
14 common purpose, committed, or contributed to the commission of, war crimes in the form  
15 of rape of civilian women at various locations of North and South Kivu, DRC, including  
16 but not limited to Busheke, Pinga, Miriki, Remeka, Busurungi and surrounding villages,  
17 Manje and Malembe.
- 18 Count 8: Rape constituting a crime against humanity. (Article 7(1)(g) and Article  
19 25(3)(a) or (d) of the Rome Statute) From on or about 20 January 2009 to the date of this  
20 application, Callixte Mbarushimana, as a co-perpetrator or in the alternative as part of a  
21 group of persons acting with a common purpose, committed, or contributed to the  
22 commission of, crimes against humanity which in fact occurred, namely, rape of women  
23 at various locations of North and South Kivu, DRC, including but not limited to Busheke,  
24 Pinga, Miriki, Remeka, Busurungi, Manje and Malembe.
- 25 Count 9: Inhumane acts constituting crimes against humanity, (Article 7(1)(k) and

1 Article 25(3)(a) or (d) of the Rome Statute).

2 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,

3 as a co-perpetrator or in the alternative as part of a group of persons acting with a

4 common purpose, committed, or contributed to the commission of, crimes against

5 humanity which in fact occurred; namely, inhumane acts perpetrated by the FDLR upon

6 male members of the civilian population of various locations of North and South Kivu,

7 DRC, including, but not limited to, Miriki, who were forced to rape women as well as

8 upon women who were mutilated on 28 April and 5 May 2009, and pregnant women who

9 had their stomachs cut open and their fetuses forcibly removed at Busurungi on 10 May

10 2009.

11 Count 10: Inhumane treatment constituting war crimes, (Article 8(2)(a)(ii) and Article

12 25(3)(a) or (d) of the Rome Statute).

13 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,

14 as a co-perpetrator or in the alternative as part of a group of persons acting with a

15 common purpose, committed, or contributed to the commission of, war crimes in the form

16 of inhumane treatment perpetrated by the FDLR upon male members of the civilian

17 population of various locations of North and South Kivu, DRC, including, but not limited

18 to, Miriki, who were forced to rape women as well as upon women who were mutilated

19 on 28 April and 5 May 2009, and pregnant women who had their stomachs cut open and

20 their fetuses forcibly removed on 10 May 2009 and at Busurungi. Count 11:

21 Persecution constituting a crime against humanity, (Article 7(1)(h) and Article 25(3)(a) or

22 (d) of the Rome Statute.

23 From on or about 20 January 2009 to the date of this application, Callixte Mbarushimana,

24 as a co-perpetrator or in the alternative as part of a group of persons acting with a

25 common purpose, committed, or contributed to the commission of, the crime against

1 humanity of persecution by intentionally and in a discriminatory manner targeting  
2 women and men seen to be affiliated with the FARDC on the basis of their gender  
3 through torture, rape, inhumane acts and inhumane treatment in various locations in  
4 North and South Kivu provinces, DRC.

5 PRESIDING JUDGE TARFUSSER: Thank you, court officer. Please, Mr Kaufman.

6 MR KAUFMAN: (Microphone not activated) I don't wish to be too pedantic, Mr  
7 President, your Honours, but the charges which were just read out included the mode of  
8 liability, 25(3)(a), which does not appear in the arrest warrant nor in the decision on the  
9 application pursuant to Article 58. The only mode of liability which appears is 25(3)(d).  
10 I just wanted to clarify that because that, of course, is what is being told to the client  
11 himself. Thank you.

12 PRESIDING JUDGE TARFUSSER: Okay. We will check this. Okay. In any case,  
13 Mr Mbarushimana, could you please confirm that you have understood what has just  
14 been read by the court officer?

15 MR MBARUSHIMANA: (Interpretation) Thank you, your Honour. I understand the  
16 words that have been used in this reading of the charges, but I do not understand the  
17 basis upon which these accusations are made against myself because I was in no way  
18 involved in everything that has been said.

19 PRESIDING JUDGE TARFUSSER: Okay. Is this what you wanted to address the Court  
20 with, as your counsel said?

21 MR MBARUSHIMANA: (Interpretation) No. I wanted to make a statement with  
22 regards to that, if you would allow me to do so.

23 PRESIDING JUDGE TARFUSSER: Can we do that a little bit later when we finish the  
24 formal proceedings, at the end of the formalities? Okay?

25 MR MBARUSHIMANA: Merci.



1 PRESIDING JUDGE TARFUSSER: Thank you. I realise, reading the record, controlling  
2 the record, that you didn't tell us your day and the month and year of birth. Could you  
3 please tell us when are born, the date, month and year you are born?

4 MR MBARUSHIMANA: (Interpretation) Excuse me, your Honour, if I've forgotten  
5 that. I was born on 24 July in the year 1963.

6 PRESIDING JUDGE TARFUSSER: Okay. Thank you very much.

7 The Chamber assumes that as of your arrival on Dutch territory, on 25 January 2011, you  
8 have been informed of all your rights as set out under Article 67 of the Rome Statute. I  
9 will, however, read these rights out for you:

10 Pursuant to Article 67(1), you have the right (a) to be informed promptly and in detail of  
11 the nature, cause and content of the charge in a language which you fully understand and  
12 speak; (b) to have adequate time and facilities for the preparation of your Defence and to  
13 communicate freely with your counsel; (c) to be tried without undue delay; (d) to present  
14 at trial, to conduct the Defence in person or through legal assistance of your choosing, or  
15 legal assistance assigned by the Court and without payment if you lack sufficient means  
16 to pay for it; (e) to examine or have examined the witnesses against you and to obtain  
17 the attendance and examination of witnesses on your behalf; to raise defences and present  
18 other evidence admissible under the Statute; (f) to have free of any cost the assistance of a  
19 competent interpreter and such translation as are necessary to meet the requirement of  
20 fairness; (g) not to be compelled to testify or to confess guilt and to remain silent; (h) to  
21 make an unsworn oral or written statement in your defence; (i) not to have imposed on  
22 you any reversal of the burden of proof or any onus of rebuttal.

23 These rights are enumerated in the Statute in relation to the trial. However, according to  
24 Rule 121 of the Rules of Procedure and Evidence, a suspect enjoys them also at the first  
25 appearance and throughout the proceedings leading to and at the confirmation hearing.

1 Mr Mbarushimana, could you please confirm that you have understood these rights?

2 MR MBARUSHIMANA: (Interpretation) I confirm that, your Honour.

3 PRESIDING JUDGE TARFUSSER: Thank you. Thank you very much.

4 By virtue of Article 121 of the Rules of Procedure and Evidence, at the first appearance the  
5 Chamber shall set the date of the hearing on the confirmation of charges.

6 As mentioned before, one of the suspect's rights consists of having adequate time and  
7 facilities for the preparation of his Defence. Bearing that in mind, the Chamber has  
8 decided to set on 4 July 2011 as the date for the start of the hearing of the confirmation of  
9 charges.

10 Based on the experience of the Chamber, the Judges are confident that this date provides  
11 the Prosecutor with adequate time to disclose all the relevant evidence and the Defence  
12 with equally adequate time to properly prepare for the case. It also allows the Chamber  
13 and the Victims and Witnesses Unit to put in place any protective measure for victims and  
14 witnesses which may be necessary.

15 I would be now grateful if the parties could express their views on the dates, on the date  
16 set out, starting from the Office of the Prosecutor.

17 MR STEYNBERG: Thank you, Mr President. Mr President, as far as the Prosecution is  
18 concerned, the date is suitable. There are of course certain practical issues relating to  
19 disclosure which we will address in further detail at the first status conference but, as  
20 presently advised, the date does appear to be suitable. Thank you.

21 PRESIDING JUDGE TARFUSSER: Thank you very much. The Defence.

22 MR KAUFMAN: Yes, Mr President, your Honours. Mr Mbarushimana feels that the  
23 time that has been granted is in fact too long, too much. Of course we will use the time  
24 and if we feel that we are ready earlier then we will make an appropriate application to  
25 the Chamber.

1 PRESIDING JUDGE TARFUSSER: Of course. Thank you very much. I would also  
2 seize the opportunity to remind the Prosecutor that according to Article 61(3) of the  
3 Statute, within a reasonable time, and at the latest not later than 30 days before the  
4 confirmation hearing, Mr Mbarushimana should (a) be provided with a copy of the  
5 documents containing the charges which the Prosecutor intends to bring him to trial; (b)  
6 be informed of the evidence on which the Prosecutor intends to rely at the hearing.  
7 By the same token, according to Article 67(2) of the Statute, the Prosecutor must disclose  
8 to the Defence any exculpatory evidence in his possession or control and any other  
9 material relevant for the Defence.

10 I also recall that Rule 121(2)(b) of the Rules of Procedure and Evidence stipulates that the  
11 Chamber shall hold status conferences to ensure that disclosure takes place under  
12 satisfactory conditions. To do so, a Judge of the Chamber shall be appointed to organise  
13 such conferences. Judge Sanji Monageng is the Single Judge for this case including for  
14 the disclosure proceedings. Would the Prosecutor like to make any observations to the  
15 Chamber at this point?

16 MR STEYNBERG: Thank you, Mr President, no. We are aware of our disclosure  
17 obligations and we will do our best to adhere to them.

18 PRESIDING JUDGE TARFUSSER: Thank you very much. I hope so. Are there any  
19 observations on the Defence side?

20 MR KAUFMAN: No, Mr President. As the Pre-Trial Chamber is fully aware, a number  
21 of applications have been made for disclosure and in fact a decision has been rendered  
22 yesterday.

23 PRESIDING JUDGE TARFUSSER: And another has been rendered just before this  
24 morning.

25 MR KAUFMAN: I haven't had an opportunity.

1 PRESIDING JUDGE TARFUSSER: Yes, of course, but on the validity of the arrest  
2 warrant, has been rendered just before coming in.

3 MR KAUFMAN: Okay. Thank you.

4 PRESIDING JUDGE TARFUSSER: Now, Mr Mbarushimana, now it's your turn to, as I  
5 told you also before in reading your rights, to make oral statements or written statements  
6 in your defence. This is your right and please do so.

7 MR MBARUSHIMANA: (Interpretation) Thank you, your Honour.

8 Your Honour, ladies of the Bench. I would first of all like to comment on everything. I  
9 was -- I would like to comment on this: What happened in the Democratic Republic in  
10 the Congo, the barbarity that took place there, all my life I was fighting injustice, hate of  
11 other people and all forms of exploitation of human beings and I shall continue to fight  
12 that in all its forms.

13 I condemn and I continue to condemn that with vigour. In the Great Lakes region of  
14 Africa they have been ravaged and in particular the South and North Kivu Provinces. As  
15 such, the use of military force in that area to resolve problems has been a problem in itself.

16 I condemn that. I condemn the attacks against civilian populations who are innocent.

17 Your Honour, I was presented before you this morning having been brought here, put in  
18 handcuffs and deprived of liberty for more than three months.

19 Now, through the intermediary of my counsel, Counsel Kaufman, I pointed out my will  
20 and availability to appear to the Court at any time.

21 Further to my deprivation of liberty, I would like to ask the Court to release me. Thank  
22 you very much, your Honour.

23 PRESIDING JUDGE TARFUSSER: Thank you, Mr Mbarushimana. It seems that you  
24 want to add something, Defence counsel?

25 MR KAUFMAN: Yes, Mr President. Of course, in due course, after we have

1 appropriate disclosure, an application for interim release will actually be made.  
2 PRESIDING JUDGE TARFUSSER: To come back to the mode of liability the Defence  
3 counsel suggested, for the sake of the record, all the counts, for all the counts, the mode of  
4 liability, as stated in the Chamber's decision and in the arrest warrant, is the one provided  
5 for in Article 25(3)(d) of the Statute. Just to correct. So, thank you very much to  
6 everybody. This thing ends the hearing, this initial appearance in this case.  
7 I would like to thank the interpreters, recorders, the court officer and all the parties and  
8 participants. Thank you very much.

9 THE COURT USHER: All rise.  
10 (The hearing ends at 10.18 a.m.)

11 CORRECTION REPORT

12 The Court Interpretation and Translation Section has made the following correction  
13 in the transcript.

14 \*Page 3 line 5

15 “. I was born in Rwanda in the Ruhengeri prefecture and I work in -- I am a -- work in  
16 the area of informatics.” Is corrected by “I was born in Rwanda in the Ruhengeri  
17 prefecture, in Ndusu.”