



THE CASE OF THE PROSECUTOR V. CALLIXTE MBARUSHIMANA AT THE INTERNATIONAL CRIMINAL COURT

On October 11, 2010, French authorities arrested Callixte Mbarushimana, the Executive Secretary of the Democratic Forces for the Liberation of Rwanda (Forces Démocratiques pour la Libération du Rwanda, FDLR). This was in accordance with the International Criminal Court arrest warrant issued on the September 28, 2010 for five counts of crimes against humanity and six counts of war crimes.¹

These crimes were allegedly committed as part of a widespread campaign of violence and rape in the Kivu provinces of the Democratic Republic of the Congo (DRC) from January 20 to February 25, 2009.² Mr. Mbarushimana denies any involvement in the crimes and is currently being held in Paris, France during national proceedings related to extradite him to The Hague.³

This is the fourth arrest for the ICC for crimes in the DRC but the first for crimes in the Kivu regions. This is part of a larger investigation in the DRC that began in 2004 and has resulted in two trials for three individuals.⁴

Early Life and Political Background

Callixte Mbarushimana was born in the village of Ciangugu in Northern Rwanda in 1963. He began his education at a local seminary in hopes of one day becoming a priest. He entered university to study technology and became an IT specialist. In 1991 he was hired by the United Nations Development Programme as a technology consultant.⁵

In 1994 Mr. Mbarushimana worked for the UN delivering supplies in a Rwandan village near the capital of Kigali when he allegedly participated in the massacre of Tutsi villagers, including several of his UN colleagues. He is of Hutu origin, the majority ethnic group in Rwanda which committed genocide of the minority Tutsis in 1994. In 2001, he was indicted by the International Criminal Tribunal for Rwanda but the charges were dropped by the judges when it was ruled that he was not one of the planners of the killing. He fled to France in 2003 received refugee status and had been living in Paris until the time of his arrest. In July 2007, Mbarushimana became the Executive Secretary of FDLR and, consequently, one of the organizations highest ranking members.⁶ As executive secretary, part of Mbarushimana's job was to convince the international community that the FDLR is a legitimate political party.⁷ In addition, he periodically released statements that

¹ <http://www.icc-cpi.int/NR/exeres/7119036D-EE20-449B-862C-19D5B90AC45C.htm>;

<http://www.icc-cpi.int/iccdocs/doc/doc954979.pdf>;

http://www.coalitionfortheicc.org/documents/CICC_advisory_Kivusarrest_11Oct2010.pdf

² <http://www.reliefweb.int/rw/rwb.nsf/db900sid/VDUX-8A5RHZ?OpenDocument>;

<http://www.bloomberg.com/news/2010-10-11/congo-war-crime-suspect-callixte-mbarushimana-arrested-in-paris-icc-says.html>

³ <http://allafrica.com/stories/201010150881.html>

⁴ For a brief summary of the facts, see

http://www.trial-ch.org/index.php?id=801&tx_jbtrial_pi2%5Btab%5D=facts&tx_jbtrial_pi2%5Bprofile%5D=callixte_mbarushimana_941&L=5

⁵ <http://www.msnbc.msn.com/id/6639759/>

⁶ <http://www.nytimes.com/2004/08/08/world/rwandan-accused-in-genocide-wins-suit-for-un-pay.html>;

http://www.iccnw.org/documents/Wider_Implications_of_Mbarushimana_Arrest.pdf

⁷ <http://www.nytimes.com/2010/10/12/world/africa/12congo.html>





sought to absolve the FDLR from responsibility from crimes in the DRC.⁸ Since the November 2009 arrest in Germany of the FDLR president, Ignace Murwanashyaka, and its vice president, Straton Musoni, he has become the de facto leader of the organization.⁹

Conflict in Kivu and Role of FDLR

The FDLR is a remnant of remaining Hutu Power rebel groups from Rwanda that fled after the 1994 genocide ended. The organization was established on September 30, 2000 and since that time has reportedly been directly involved in the violence in the DRC. The FDLR played a major role in the latter half of the Second Congo War (2001-2003) when the organization allegedly fought as a proxy mercenary force for the Congolese president. Since that conflict ended, the FDLR has been the main force for violence in both the North and South Kivu regions.¹⁰ The FDLR is the leading rebel group in what has essentially been characterized as ethnic conflict that spilled over from Rwanda.¹¹

On January 20, 2009 the Rwandan Defense Forces and the Congolese army began joint operations in the Kivus to dismantle the FDLR and other Rwandan rebel groups that have been present in the Congolese countryside since 1994. As the joint force advanced the FDLR rebels allegedly abducted, tortured, raped, and killed civilians in tremendous numbers. Within the first two weeks of the conflict over 100 people had been killed, 50 abducted, and over 50 people had been raped.¹²

There are many theories as to the motivations behind the 2009 massacres. The most accepted theory is that the FDLR wants to secure their regional and ethnic dominance and thus they perpetrate horrific acts of violence as a means of power projection.¹³ To guarantee control of their gold, tungsten, tantalum and tin mines in the region, as the joint force advanced the FDLR terrorized citizens and raided villages. It is important to note that these mines provide the FDLR with most of their financial backing and thus, the means for continued occupation

Since the beginning of the Kivu conflict in 2003 the FDLR, Bosco Ntaganda's Congrès National pour la Défense du Peuple (CNDP), and other rebel groups under these two organizations' leadership have allegedly been responsible for over 1.6 million displacements, over 2.7 million deaths, and over 50,000 reported cases of rape.¹⁴ Currently, there are three members of FDLR's leadership in custody. Its president, Murwanashyaka, and vice president, Musoni, are facing trials in Germany. Mbarushimana has been arrested and is awaiting transfer to the ICC. Bosco Ntaganda faces an ICC warrant for his arrest but is still at large.

⁸ http://www.google.com/hostednews/afp/article/ALeqM5jm-Y_CYJthWIPVLhIWY5v3jiYLA?docId=CNG.ecf3b9ba4f1b34e86a551c3a8aefc644.7f1

⁹ <http://www.alertnet.org/thenews/newsdesk/iwprep/128750159468.htm>

¹⁰ <http://www.crisisgroup.org/en/regions/africa/central-africa/rwanda/063-rwandan-hutu-rebels-in-the-congo-a-new-approach-to-disarmament-and-reintegration.aspx>

¹¹ <http://africanpress.wordpress.com/2008/01/16/ethnic-cohabitation-problems-led-to-conflict-in-kivu-tutsi-mai-mai-said/>

¹² <http://www.hrw.org/en/news/2009/02/13/dr-congo-rwandan-rebels-slaughter-over-100-civilians>;

<http://www.hrw.org/en/news/2009/04/08/dr-congo-brutal-rapes-rebels-and-army>

¹³ http://www.globalwitness.org/media_library_detail.php/786/en/global_witness_report_faced_with_a_gun_what_can_you

¹⁴ <http://www.unhcr.org/cgi-bin/telex/vtx/page?page=49e45c366>;

<http://af.reuters.com/article/drcNews/idAFLDE68N0SV20100924?pageNumber=2&virtualBrandChannel=0>





The Arrest

On August 20, 2010 the Office of the Prosecutor (OTP) submitted sealed evidence to the ICC judges implicating Mbarushimana as the leader in organizing and executing the early 2009 attacks in the Kivus.¹⁵ On September 28, Pre-Trial Chamber I issued a sealed warrant for his arrest and only 13 days later, on October 11th, French authorizes quietly arrested Mbarushimana at his home in Paris, France. They were also able to seize many documents that may be useful in further proceedings. This arrest is the outcome of nearly two years of undisclosed collaborative investigations between the OTP and officials in the DRC, Rwanda, Germany, and France which included the exchange of information, political support, the development of domestic cases, and the carrying out of arrest warrants.¹⁶ Mbarushimana is currently in the midst of proceedings related to his extradition. He denies any involvement in the alleged crimes.¹⁷ French judicial authorities refused to release him despite his claim that he is a political refugee of France on French soil.¹⁸

Implications for Future Actions

Mbarushimana's arrest may increase efforts to secure the capture of Bosco Ntaganda, who is currently wanted by the ICC for crimes committed in Eastern DRC.¹⁹ The evidence that has been gathered may open the doors for further investigations into the atrocities committed in the DRC and may lead to other arrests in the future.

Next Steps

If the French courts rule to extradite him, the next step for Mbarushimana will be to appear before the ICC to be identified and soon after will face a confirmation of charges hearing. The Pre-Trial Chamber will hear evidence from the Prosecutor as he tries to establish substantial grounds to believe that the crimes occurred. If the charges are confirmed then the Court may begin the trial proceedings. The trial would likely begin next year.

*Researched and drafted by Sierra Ortega
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¹⁵ http://www.google.com/hostednews/canadianpress/article/ALeqM5i-ObwJBmfeErItcnYPWku_UACWog?docId=4819214

¹⁶ <http://www.reuters.com/article/idUSTRE69A32R20101011>

¹⁷ http://english.ntdtv.com/ntdtv_en/ns_europe/2010-10-21/056764683036.html

¹⁸ http://www.google.com/hostednews/afp/article/ALeqM5hkVtuh2hfpk2arhXTa_9JIUCTbRQ?docId=CNG.f8d6dcd2470cc008581e945560bb3e1.8d1

¹⁹ <http://www.rnnews.com/regional/4308-gen-bosco-ntaganda-is-next-after-callixte-mbarushimana--icc>

