

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **3 August 2011**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Redacted Version of ICC-01/04-01/10-330-Conf-AnxA

English version of ICC-01/04-01/10-311-Conf-AnxA

**Prosecution's document containing the charges submitted
pursuant to Article 61(3) of the Statute**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Luis Moreno-Ocampo

Fatou Bensouda

Counsel for the Defence

Nicholas Kaufman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT (“THE COURT”) PURSUANT TO HIS AUTHORITY UNDER ARTICLE 61(3)(A) OF THE ROME STATUTE (“THE STATUTE”) CHARGES:

CALLIXTE MBARUSHIMANA

with **CRIMES AGAINST HUMANITY** and **WAR CRIMES** as set forth below:

A. THE PERSON CHARGED

1. Callixte MBARUSHIMANA was born on 24 July 1963 in Ndusu, Ruhengeri Northern Province, Rwanda. He is believed to be of Hutu ethnicity, and is otherwise known as “Maneza”. He is married and has three sons. MBARUSHIMANA was granted refugee status in France in 2003 and holds a residence permit issued by the Police Department of Paris, valid from 31 December 2003 until 31 December 2013.

2. MBARUSHIMANA’s first known association with the FDLR was through his appointment as FDLR Commissioner for Finance in 2004. MBARUSHIMANA was elected Deputy Executive Secretary of the FDLR on 25 June 2005 for a five-year term. As of 23 May 2007, at the latest, he began exercising functions as the FDLR Executive Secretary. In this capacity, he is one of the highest-ranking members in the FDLR’s political structure. After the arrest of FDLR President MURWANASHYAKA and 1st Vice President MUSONI in November 2009, MBARUSHIMANA was the highest ranking remaining FDLR leader outside the forests of the Eastern DRC and became the *de facto* leader of the organisation. In 2010, he was appointed FDLR 1st Vice-President *ad interim*.

B. STATEMENT OF FACTS

I. *Facts relevant to background and Articles 7 and 8 contextual elements*

1. *The historical roots of the FDLR's use of violence*

3. The FDLR's reliance on violence to achieve its goals goes back to the group's historical roots in the Rwandan genocide. When the forces led by Paul Kagame overthrew the genocidal regime in Rwanda, members of the former *Forces Armées Rwandaises* ("ex FAR") and members of the *interahamwe* militias responsible for the Rwandan genocide fled Rwanda for the Kivu Provinces in the Eastern part of Zaire. While in the camps, they began to recruit and train troops and organised themselves in structured political-military groups designed to oppose the new Rwandan government through violent means. Despite the diverse background of the militia, they were usually referred to as ex-Far/ *interahamwe*.

4. In early 1995, a group of ex FAR leaders, including MUDACUMURA, joined the newly created *Rassemblement pour le retour des Réfugiés Rwandais* ("RDR"),¹ the earliest Rwandan rebel group operating on DRC territory. Between 1995 and 1996, operating from the refugee camps, the RDR launched military attacks on Rwandan territory in pursuit of the goal of returning to power there. Following the outbreak of the First Congo War, the RDR was dispersed in around mid to late 1996.

5. From the remnants of the RDR, a second Rwandan rebel group, the *Armée de Libération du Rwanda* (ALIR) was created. Like its predecessor, ALIR was partially composed of ex-FAR and *interahamwe* and sought to overthrow the Rwandan Government and install its leaders in control in Rwanda.

6. The Second Congo War started in mid-1998. The then DRC President Laurent-Désiré Kabila relied on foreign armed groups, including Rwandan rebel groups present on DRC territory, to fight against Rwandan and Ugandan troops and their proxies.

¹ Later known as *Rassemblement Républicain pour la Démocratie au Rwanda* (RDR).

7. In 1999, DRC, Uganda, Rwanda and other states involved in the conflict agreed to disarm armed groups present on Congolese soil and invited State Parties to the agreement to offer amnesty and political asylum to former combatants, “*except for génocidaires*”.

8. As a result of this exclusion, Rwandan rebel groups needed to cover up their connection to the Rwandan genocide, so as to avoid isolation and gain international legitimacy and clear the way for their participation in political negotiations.

9. By early 2000, following an internal power struggle, the FDLR was created from a splinter group of ALIR leaders. MURWANASHYAKA was appointed as FDLR Vice-President and subsequently, in late 2001, as President of the group. In 1997 MURWANASHYAKA was the RDR’s representative in Germany. He was later associated with ALIR.

10. Due to the historical roots of the FDLR, the members of its armed forces operating in the eastern DRC are still commonly referred to by the local population as *interahamwe*.

11. When Joseph Kabila succeeded his late father as DRC President in January 2001, the Congolese Government’s support of the FDLR declined. On 19 April 2002, the States involved in the Second Congo War and some of the main Congolese armed groups reached an agreement to end the war at Sun City, South Africa. In July 2002, the DRC and Rwandan Governments signed the Pretoria Accords, whereby the DRC undertook to track, disarm and repatriate the Rwandan rebel groups to Rwanda. In exchange, Rwanda agreed to the withdrawal from the DRC of its soldiers, whose presence it had believed to be necessary until that time to control the FDLR and its predecessors. In September 2002, the DRC government banned all FDLR activities on Congolese territory and issued an expulsion order affecting the leaders of the FDLR present in the DRC. However, the group neither dismantled nor disarmed. Instead, the FDLR continuously used violence against civilians in North and South Kivu Provinces in order to survive as an actor on the international scene and to gain political power.

12. In late 2004 - early 2005, the Catholic Sant'Egidio community facilitated a number of meetings in Rome between the Government of the DRC and the FDLR leadership. At least one of those meetings was attended *inter alia* by MBARUSHIMANA as a member of the FDLR delegation and by FDLR President MURWANAHSYAKA. MURWANAHSYAKA, after consultation with the FDLR military leaders, signed the "Rome Declaration" on 31 March 2005, in which the FDLR committed itself to renounce its armed struggle and to disarm and repatriate its fighters, subject to certain conditions or "*accompanying measures*". To date, however, the FDLR has not discontinued its armed struggle, disarmed or repatriated its fighters. Instead, the FDLR leaders have used the prospect of peace negotiations created in Rome as an excuse to attempt to shift onto Rwanda and/or the international community the responsibility for the FDLR's failure to honour its commitment to cease waging war in Eastern DRC.

2. Armed conflict in the provinces of North and South Kivu in 2009

13. In December 2008 the DRC and Rwandan Governments held bilateral meetings seeking to address the problems arising out of the FDLR's continued presence and operations on DRC territory. On 5 December 2008, they announced their agreement on a joint military plan, which revolved around removing the FDLR from North Kivu, and targeting the group's economic interests there.

14. On 20 January 2009, the FARDC and Rwandan Defence Forces ("RDF") jointly launched operation *Umoja Wetu*. An estimated 3,500 to 4,000 RDF troops crossed into the DRC. The two national forces sought to forcefully dislodge the FDLR from its bases in North Kivu and enable willing FDLR troops to demobilise and reintegrate into civilian life in Rwanda.

15. On 26 January, the FARDC initiated the accelerated integration of other Congolese armed groups into its ranks. The coalition established to fight the FDLR

came to include more than 25,000 elements from FARDC, CNDP, PARECO and the traditional armed groups known as the Mayi-Mayi.

16. On 27 January, the FARDC-RDF² coalition attacked key FDLR bases at Kibua and Katoyi, villages in Ufamandu *groupement*, Masisi territory, where the FDLR Reserve Brigade had its command centre.

17. On 21 February 2009, all the RDF troops present in North Kivu were ordered to terminate the offensive. They began their return to Rwanda on 25 February 2009.

18. On 2 March 2009, the FARDC, supported by MONUC, began a follow up operation against FDLR. Operation *Kimia II* was aimed at neutralising FDLR by preventing it from reoccupying former positions and cutting its lines of economic sustenance.

19. FDLR combatants, following orders, attacked Kipopo (on or about 13 February 2009), Mianga (on or about 12 April 2009), Luofu and Kasiki (on or about 18 April), Busurungi (on or about 9-10 May), Manje/Mandje (on or about 20-21 July), and Malembe (on or about 10-11 August).

20. On 31 December 2009, FARDC issued a communiqué announcing the conclusion of operation *Kimia II*; and from January 2010 onwards, the FARDC launched operation *Amani Leo*, supported by MONUC from 25 February 2010 onwards.

21. The Prosecution alleges that the facts relevant to these charges – between January 2009 and the end of 2009 – took place within the context of an armed conflict in the Kivu Provinces.

3. Characterisation of the armed conflict pursuant to Article 8 of the Rome Statute

22. On 20 January 2009 at the latest, an armed conflict started between the FARDC-RDF coalition and the FDLR. This conflict lasted at least until 25 February 2009, when the RDF troops began departing from North Kivu. Notwithstanding the intervention of Rwanda through its troops and their presence on DRC territory, the Prosecution

² Rwandan Defence Forces.

alleges that the conflict was non-international in nature, since the Rwandan forces were not engaged in a conflict with a national force of another sovereign State. After the Rwandan army withdrew, the non-international armed conflict continued between Congolese forces, supported by MONUC forces, and the FDLR. Throughout operation *Kimia II*, MONUC provided logistical, planning and operational support, as well as some fire power, to the 16,000 FARDC troops assigned to joint FARDC-MONUC operations in North and South Kivu.

23. The Prosecution alleges that the involvement of some 16,000 FARDC troops in the conflict and of an estimated 6,000 to 8,000 FDLR troops is indicative of the intensity in the fighting. The fact that these two successive military operations lasted for almost the whole of 2009 demonstrates that the armed conflict was protracted and the violence sustained.

24. The Prosecution further alleges that the armed conflict took place between armed groups with the requisite degree of organisation. On the one side of the conflict, the forces of the RDF, FARDC and MONUC each consisted of professional armed forces. On the other side, as demonstrated below, the FDLR was a politico-military organisation that operated on a well-defined decision-making process. In 2009, it was capable of planning operations, executing orders and enforcing discipline.

25. The armed conflict was also widespread. The FARDC and FDLR conducted operations in all the territories of North and South Kivu. Military operations and reprisal attacks by the FDLR took place throughout the months of March to December 2009 in an uninterrupted manner, and have continued to occur through to the date of the filing of these charges.

26. Accordingly the Prosecution alleges that a non-international armed conflict existed in North and South Kivu from at least 20 January 2009 until 31 December 2009.

4. The leadership, structure and functioning of the FDLR in 2009

27. The FDLR is a combatant force that commits war crimes and crimes against humanity in order to achieve political goals. Its Statute formulates an ideology aimed at overthrowing the Rwandan government and putting an end to Tutsi dominance in Rwanda. It also describes with precision its structure and its decision-making process.

28. The group is estimated to have numbered between 6,000 to 8,000 combatants prior to January 2009, a figure that was reduced by approximately half by April 2010. It is organised in two main divisions, "SONOKI" and "SOSUKI" – Operational Sector North Kivu and Operational Sector South Kivu respectively. A mobile Reserve Brigade, called Zenith, is based in the provincial border area between the North and the South. The FDLR's military wing (FOCA) is structured according to a conventional army. The chain of command leads to the high command, which is composed of the general staff of the FDLR's military wing, and then to the Commander of the Army, General MUDACUMURA, based in the Kivu provinces. MUDACUMURA reported to and acted with the consent of the FDLR President MURWANASHYAKA, who was based in Germany. In 2009, MURWANASHYAKA and MBARUSHIMANA were supported by a cabinet based in the Kivu provinces. The cabinet's activities included keeping MURWANASHYAKA and MBARUSHIMANA abreast of military operational matters from the field. The members of the cabinet had direct contact with FDLR military leadership in the field for this purpose.

29. In order to decide on the group's activities and to promote its goals, the FDLR had a sophisticated political structure with two Vice-Presidents, Executive Secretary Callixte MBARUSHIMANA, a Deputy Executive Secretary and ten Executive Commissioners. The Executive Secretary coordinates and reports on the activities of the Commissioners. These activities include, among others, conceiving, defining and ensuring the execution of the FDLR's defence policy, in close collaboration with the

FDLR Army's High Command, and conceiving, defending and promoting the FDLR's positions vis-à-vis the international community.

30. The Statute aims to ensure that the FDLR Army follows the strategy adopted by its top leaders. All of them are joined at the level of *Comité directeur* ("Steering Committee"), the highest functioning FDLR decision-making body, which is comprised of equal numbers of civilian and military leaders. President MURWANASHYAKA, General MUDACUMURA, and Executive Secretary MBARUSHIMANA are all members of the Steering Committee. The Steering Committee's functions are *inter alia* to develop the group's defence and security policies and to receive reports from MUDACUMURA about "exactions" allegedly committed by FDLR members. According to the FDLR Statute, two further bodies in the FDLR structure, the National Congress and National Resistance Committee, were higher up in the decision-making hierarchy. However, these bodies have not met since January 2006. The FDLR Statute provides that when these bodies are unable to meet, their powers and duties also devolve upon the Steering Committee.

31. The *de jure* structure of the Steering Committee also functioned in practice. This body played a central role in the organisation, setting the course for the FDLR activities and articulating and disseminating the group's public messages. In 2009 MURWANASHYAKA was the central coordinating figure, emphasising the need to obtain the agreement of the members of the Steering Committee in connection with decisions taken during a Steering Committee meeting that took place between 16 and 19 January 2009.

32. The members of the FDLR High Command consistently followed the decisions adopted by the top leaders.

33. MURWANASHYAKA and MBARUSHIMANA, together with the top FDLR leaders based in the field, MUDACUMURA and Gaston IYAMUREMYE, were the key FDLR decision-makers in 2009.

5. *Existence of an organisational policy to commit an attack against a civilian population*

34. During January 2009, the FDLR leadership decided to launch a campaign of attacks targeting the civilian population of the Kivu provinces. The purpose of this campaign, as it was formulated at the highest reaches of the FDLR and transmitted to units in the field, was to create a humanitarian catastrophe in order to extort concessions of political power for the FDLR from the Governments of DRC and Rwanda in exchange for ceasing to commit crimes against civilians. The Prosecution alleges that the aim was to make the cost in human misery so high that these governments would have no option but to abandon their military campaign against the FDLR in favour of a negotiated settlement. FDLR troops also targeted the civilian population as a punishment for the population's perceived support of the effort to dislodge the FDLR. This, it is alleged, had the dual purpose of dissuading the local population from cooperating with the coalition forces and reducing public support among the Congolese population for their government's military campaign against the FDLR.

35. At the outset of joint Congolese-Rwandan *Umoja Wetu* military operation and again just prior to the launch of *Kimia II*, MBARUSHIMANA announced publicly the FDLR's preparedness to engage in what he predicted would be a bloodbath. MURWANASHYAKA announced the FDLR's intentions to the troops, saying that the FDLR's fight would be "*against the whole world*" and that it would target "*development work*" and the population. According to MURWANASHYAKA, the aim of the FDLR's fight was to discourage the FARDC from attacking the FDLR.

36. The order to create a humanitarian catastrophe was issued to the FDLR troops by MUDACUMURA, although it originally came from MURWANASHYAKA. The order was transmitted to all FDLR commanders and read out to their subordinates and units in the field. FDLR combatants learnt about the existence of the order early on in the armed conflict, as early as the time of the launch of operation *Umoja Wetu*.

37. The primary target of this order was the civilian population. FDLR soldiers were ordered to kill civilians wherever they were “mixed” with the FARDC and refused to flee. By design, thus, the attacks to be launched pursuant to this order involved killing civilians.

38. The order also encompassed the razing of villages in North and South Kivu Provinces with the aim of creating a humanitarian catastrophe and attacking the population for its alleged cooperation with the FARDC and the RDF. Wherever civilians were seen to collaborate with the FARDC, the order was for entire villages to be burnt to the ground.

39. In addition to killings and extensive destruction of property, pursuant to this order, FDLR troops also engaged in widespread rapes and other forms of sexual violence, visited on members of the civilian population before, during and after their attacks, with the aim of intimidating and punishing the civilian population perceived as being supportive of the FDLR’s enemies. The Prosecution alleges that sexual violence is also a particularly effective tool for the creation of a humanitarian disaster. As such, these crimes were committed within the context of the armed conflict which existed throughout 2009.

40. The order to attack civilians was executed under the supervision of the FDLR leadership. General MUDACUMURA reported to MURWANASHYAKA on the progress of the military campaign, and MURWANASHYAKA kept MBARUSHIMANA informed. MBARUSHIMANA also received reports from the field directly.

41. Before, during and after the attacks, MBARUSHIMANA, in close interaction with MURWANASHYAKA and with some participation of MUDACUMURA, orchestrated and implemented the FDLR’s international media campaign to deny its involvement in atrocities and cast the blame for the human suffering on government forces and other armed groups. In this manner they sought to extort from Rwanda political power for the FDLR.

42. The Prosecution accordingly alleges that there are substantial grounds to believe that the war crimes and crimes against humanity perpetrated by the FDLR were carried out in execution of an organisational policy to attack civilians and commit such crimes and to implement an associated international campaign to achieve the FDLR's goals. The warnings issued by MBARUSHIMANA, together with MURWANASHYAKA's and MUDACUMURA's orders to attack civilians and their supervision of the progress of the attacks, demonstrate that the FDLR leaders had an organisational policy to encourage or promote the acts constituting an attack against a civilian population.³ The civilian population was the primary object of the attack and not just an incidental victim thereof.

6. Widespread and systematic attack against the civilian population of North and South Kivu Provinces in 2009⁴

43. The crimes against humanity alleged in Counts 2, 5, 7, 9 and 13 were perpetrated in the context of a widespread and systematic attack against the civilian population of the Kivu provinces, within the meaning of Article 7(1), as well as on a large scale within the meaning of Article 8(1). From approximately 20 January until 31 December 2009, FDLR troops attacked undefended villages and perpetrated mass killings, rapes, pillaging, destruction of property and other crimes at various locations throughout North and South Kivu. These locations include but are not limited to Kibua, Katoyi, Remeka, Busheke, Kipopo, Pinga, Kahole, Mutakato, Mianga, Luofu, Kasiki, Busurungi, Manje, Mianja, and Malembe.

44. The crimes alleged in Counts 2, 5, 7, 9 and 13 were committed against a large number of victims. The FDLR is alleged to have perpetrated over 700 killings, close

³ Within the meaning of Article 7(1)(a). This also establishes that the FDLR leaders had a plan or policy to commit such war crimes within the meaning of Article 8(1).

⁴ The Prosecution alleges that the facts described in this section are relevant to establishing (i) the contextual element of crimes against humanity (Article 7(1) - the crimes were "widespread or systematic"); (ii) the provision in Article 8(1), the crimes in particular where committed on a large scale, and (iii) the offence of directing attacks against civilians (Article (2)(e)(i)), as per Count 1.

to 300 rapes and the burning of over 7,000 houses or other structures in 2009. Their crimes fuelled massive internal displacement.

45. The FDLR perpetrated at least four major incidents in which at least 30 civilians were killed, four incidents in which at least 10 women or girls were raped, and over 20 cases in which more than 100 houses and other structures were burnt by the FDLR, with at least four of those resulting in the burning of over 500 such structures.

46. The attacks on, *inter alia*, Manje, Malembe, and Busurungi were of a retaliatory nature. The FDLR addressed explicit threats to “punish” civilians by leaving warning letters, conducting public meetings warning the population against collaboration with enemies or sending such messages by word of mouth and killing local chiefs. Victims of rape were told by FDLR assailants that they were being punished for joining the DRC Government’s “side”, because the Government was now chasing the FDLR out, or in punishment for being the “wives” of Rwandan or Congolese army soldiers.

47. The Prosecution submits that at all relevant times MBARUSHIMANA had knowledge of the existence of the widespread and systematic attack on the civilian population of the Kivu provinces. As the press releases issued in his name show, MBARUSHIMANA was well aware of allegations that the FDLR committed crimes through its involvement in the armed conflict. The frequency with which attacks by the FDLR upon civilians were reported in media accessible to MBARUSHIMANA, or found in his possession, as well as the magnitude of the acts blamed on the FDLR put MBARUSHIMANA on notice of the existence of the attack. MBARUSHIMANA himself responded to some of the allegations made by United Nations bodies, Human Rights Watch and other sources. The Prosecution alleges that in light of the above and his senior position in the FDLR leadership and membership of the Steering Committee, there are substantial grounds to believe that MBARUSHIMANA had knowledge of the widespread and systematic attacks being conducted by FDLR troops.

II. Facts relevant to the crimes charged

1. Facts relevant to Attacks against the civilian population (Count 1)

48. From on or about 20 January until 31 December 2009, the FDLR directed a number of attacks against the civilian population at various locations in North and South Kivu provinces, DRC. The FDLR attacked villages, often at night, targeting civilians as the objective of their attack. Attacks were carefully planned and executed. Many attacks were motivated by reprisals and aimed specifically at the civilian populations. Others were launched for the purpose of dispelling FARDC troops stationed within the villages, while at the same time attacking the civilians who lived there.

49. As the FDLR military leadership was expelled by *Umoja Wetu* forces from its bases in the Walikale – Masisi area of North Kivu, FDLR troops carried out attacks at various locations in North and South Kivu. These attacks continued throughout the course of the *Kimia II* campaign. These attacks include, but are not limited to, the locations and dates specified in count 1.

50. The accounts presented in the following paragraphs are indicative of the wider pattern of attacks against the civilian population inflicted by the FDLR upon the people of the North and South Kivu provinces during 2009.

51. The FDLR carried out at least one attack on **Mianga**, Waloa-Loanda *groupement*, Walikale, North Kivu, where the FARDC had a small base. The largest scale incident took place on or about 12 April 2009, and was witnessed by W-687. The FDLR began the attack on Mianga in the early hours of the morning, finally neutralising the FARDC position in the village and leaving the population undefended. Many civilians fled their village to escape the shooting, but the FDLR killed others, including the chief. The FDLR first pillaged and burnt the village. Others who fled into the the forest were hunted down and killed after the attack.

52. In late April or early May 2009, the FDLR raped, mutilated, and killed several women in the vicinity of **Busurungi** in Walikale territory, North Kivu in the days prior to the main attack on that village. The remains of three female victims were found tied up, with sticks inserted in their vaginas, cuts all over their bodies and crushed skulls.

53. In the gravest incident perpetrated by the FDLR in 2009, the civilian population of Busurungi was targeted on or about the night of 9-10 May 2009 by hundreds of FDLR troops in a carefully planned attack on Busurungi village and nearby settlements. The attack took a high toll on civilian lives.

54. The FARDC battalion located in Busurungi was the initial military target of the 10 May 2009 attack. Once all military resistance had been overcome, the FDLR then turned against the civilian population, whom they accused of aligning with government forces. The intention, reflected in the orders by FDLR commanders to burn down the entire village, was for the civilians to have nothing to which to return once the FDLR had passed through.

55. The attack on Busurungi had been carefully planned in advance. A reconnaissance mission was conducted in Busurungi approximately a week before the attack. Hundreds of FDLR troops were involved in the attack. All troops assembled at a location two hours from Busurungi prior to the attack and received orders from high-ranking FDLR commanders as to how to carry out the attack.

56. During the fighting, houses and military positions alike were set on fire. FDLR troops went from door to door, pillaging and burning houses and killing civilians in a systematic fashion. Anything of value that was not pillaged was destroyed. When the FARDC abandoned their positions and shouted to the civilians to flee, FDLR troops had positioned themselves at the doors of the houses, preventing the population from fleeing. Victims who managed to get out were thrown back by the FDLR into the burning houses. Witnesses heard and saw guns being fired by the FDLR at civilians. Witnesses saw the FDLR setting fire to houses in Busurungi while their inhabitants were still inside. Possessions were pillaged and women were raped

and beaten during and after the attack. W-694 saw [REDACTED] raped, beaten, eviscerated (including the foetus of her unborn child), and dismembered.

57. Busurungi was almost completely destroyed in the attack. According to W-561, W-542, W-650 and W-655, nothing remained intact. A demobilised FDLR soldier who took part in the attack and who was interviewed by the Prosecution reported that there was nobody left in the town; only corpses, including those of women and children. W-650 counted 79 dead bodies after the attack.

58. The 20 and 21 July 2009, the FDLR attacked the village of **Manje** (or “Mandje”), Masisi territory, North Kivu. When the FDLR troops reached Manje, they found that the FARDC had fled. Even though there were few or no FARDC soldiers left in Manje, the FDLR attacked anyway. It was a revenge attack, targeting the civilians. During the attack civilians were killed and houses were burnt to the ground. W-693 heard the FDLR shooting in Mandje, and [REDACTED] beaten by FDLR soldiers. The FDLR pillaged, attacked and killed civilians and burnt houses in the village. Women were taken to the forest, raped repeatedly and held captive for a week.

59. The FDLR perpetrated an attack on the village of **Malembe** in Waloa-Loanda *groupement*, Walikale, North Kivu at least once, and likely twice, in the period 11 to 16 August 2009, and again mid-September. Over 250 soldiers took part in the attack, which was carefully planned in advance. An insider indicated that support troops had been sent in prior to the attack. Soldiers participating in the attack were briefed by a high-ranking FDLR commander, and given the order to destroy everything so that there would be nothing to come back to. When the troops arrived, Malembe was deserted. The FDLR nevertheless pillaged and burnt down the village, comprising approximately 600 houses. During the September attack near Malembe, three FDLR cadres caught a 5-month pregnant woman and raped her in turn, causing her to lose her unborn child.

60. In the second part of 2009, FDLR troops attacked the **village of W-673 and W-674** in the Masisi territory and pillaged, killed and burnt houses.

2. Facts relevant to killings and atrocities committed against the civilian population (Counts 2, 3, 4, 5 and 6)

61. From on or about 20 January until 31 December 2009, the FDLR conducted a campaign of killings and other atrocities against the civilian population in the North and South Kivu provinces. The FDLR killed men, women and children indiscriminately, in some cases employing particularly gruesome methods leading to the death of their victims. Some people were burnt alive in their houses, and others were mutilated before being killed. Decapitation and dismemberment of limbs and genitalia were part of the *modus operandi* employed by the FDLR. Civilians were killed by gunshot, machete, bayonet and knife. Babies were pounded to death. People were beaten, sometimes to death. The FDLR subjected their victims to inhumane treatment and inhuman acts, inflicting severe physical and/or mental pain or suffering. Many survivors are left emotionally and physically disfigured and crippled.

Murders and Willful killings (Counts 2 and 3)

62. The murders and unlawful killings committed by the FDLR during the course of 2009 included, but were not limited to the dates and locations specified in Counts 2 and 3.

Mutilation (Count 4)

63. The mutilations committed by the FDLR during the course of 2009 included, but were not limited to, the dates and locations specified in Count 4.

Inhumane acts and cruel treatment (Counts 5 and 6)

64. The inhumane acts and inhuman treatment committed by the FDLR during the course of 2009 included, but were not limited to the dates and locations specified in Counts 5 and 6.

Illustrative examples of killings and atrocities committed against the civilian population

65. The accounts presented in the following paragraphs are indicative of the wider pattern of killings and atrocities committed against the civilian population inflicted by the FDLR upon the people of the Kivu provinces in the year 2009.

66. In March 2009 near **Busurungi**, FDLR troops abducted, tied up a young man [REDACTED], and killed him by slitting his throat. [REDACTED] and saw that his body had machete wounds. The FDLR had severed [REDACTED]'s head from his body and put his severed genitals into his mouth. A demobilised FDLR insider told the Prosecution that FDLR Lieutenant MANDARINE, a notorious FDLR torturer who participated in the attack, boasted to the witness about having performed *gushahura*, a term used to describe genital mutilation, while at Busurungi.

67. In late April 2009, the FDLR mutilated and killed several women in the Busurungi vicinity in the days prior to the main attack against Busurungi. See paragraph 80 below.

68. On or about 10 May 2009, the FDLR attacked the civilian population of Busurungi. Prior to the attack the FDLR troops were instructed to kill anything that moved. They executed this order diligently by firing upon the civilian population and burning down their houses with people still in them. FDLR troops went from door to door, burning and looting houses and killing civilians in a systematic fashion.

69. Witness W-650 saw the FDLR burning houses. Civilians who managed to get out of the house were shot. Others were killed with machetes and small hoes and some were decapitated. One man was dragged from his bed, beaten and had his penis cut off. People lay dead in the streets, including young children. Babies were pounded to death; people were beaten, raped and killed. W-650 counted 79 dead bodies in Busurungi after the attack, including those of children [REDACTED]. He saw bodies with gunshot wounds and machete wounds. Some were cut in two and some were burnt. Civilians fled, without managing to bury the dead. Information disseminated to FDLR troops reported that over 150 civilians had been killed during the attack.

70. Five FDLR soldiers found [REDACTED] on the night of the attack on Busurungi. [REDACTED] was repeatedly raped and beaten by the FDLR soldiers. They pulled handfuls of hair out of her head. They pierced her eyes and cut her throat with the bayonet of their guns, and cut open her pregnant stomach, causing her moving foetus to fall out. After killing her, the FDLR dismembered her body parts with machetes and threw them around. W-692 was captured in Busurungi, taken into the forest by FDLR soldiers, beaten and repeatedly raped by three FDLR soldiers. They hit her with their penises on the outside of her vagina. They beat her all over her body, [REDACTED], and cut her body to the bone with a knife. She was left to die.

71. In the second part of 2009, the FDLR attacked **the village where W-673 and W-674** resided in the Masisi territory. The witnesses fled into forest when the FDLR attacked. When they returned the next morning, witness W-0673 discovered that [REDACTED] had been killed and several houses were burnt down. Witness W-0673 believes that [REDACTED] was targeted because [REDACTED] had reported to the FARDC [REDACTED] by the FDLR.

72. On or about 20-21 July 2009, at least 16 civilians were killed by the FDLR during an attack on **Manje**. Amongst those killed were a woman and her two toddlers, a man who was stabbed in the neck and died on the spot and a five-year-old girl who was cut in the stomach. People were shot and their bodies thrown into the burning houses. W-693 was [REDACTED], and was beaten.

73. Shortly after the attack on Mandje, seven women were attacked and captured by three FDLR soldiers as they were returning from the fields outside Mandje. Three women were released, but the remaining four were badly beaten. In another attack in the fields outside Mandje, the FDLR killed a man by shooting him in the chest.

3. Facts relevant to Rape, sexual violence and Torture (Counts 7, 8, 9 and 10)

74. The FDLR inflicted rapes and other forms of sexual violence on hundreds of women throughout the Kivu provinces in 2009. Some of these crimes were perpetrated during the FDLR's well-planned attacks on civilian population centres. The FDLR also created a humanitarian catastrophe in the Kivu provinces by perpetrating crimes of sexual violence. These were committed as threats or in punishment for the civilian population's perceived collaboration with the FDLR's enemies, prior to and after the attacks on villages and towns.

75. Wherever they were perpetrated, the FDLR's sexual violence crimes were characterised by their brutality. FDLR combatants committed gang-rape on a massive scale, often perpetrated by up to seven to eight soldiers on a single victim. FDLR sexual attacks frequently included severe beatings, mutilation and cuttings amounting to torture. In some instances, victims were gang-raped by multiple assailants over a protracted period, causing severe physical and mental pain and suffering. Some victims of rape also had foetuses cut out of their bodies during the course of the FDLR's sexual assaults. The assaults often culminated in murder or in the victims' death from their injuries. Victims of FDLR assaults were found tied with ropes and with objects inserted into their vaginas by way of, or in addition to, being raped. Family members had to witness the FDLR perpetrating rape, sexual violence and atrocities upon their loved ones, resulting in severe mental pain and suffering.

76. The victims of the FDLR's sexual assaults suffered multiple external and internal injuries and massive internal bleeding, requiring their hospitalisation for several weeks. The attacks left the victims permanently physically and psychologically scarred, also impacting the life of their communities.

77. FDLR soldiers perpetrated rapes, sexual violence and torture on members of the civilian population at various locations throughout the Kivu provinces. These include, but are not limited to, the dates and locations specified in Counts 7 to 10.

Illustrative examples of rapes, sexual violence and torture

78. The accounts presented in the following paragraphs are indicative of the wider pattern of the rapes and sexual violence inflicted by the FDLR upon the civilian population of the Kivu provinces in the year 2009.

79. In **Mianga**, on or about 12 April 2009, FDLR soldiers committed rape. Soldiers from the Reserve Brigade were further heard by W-562 bragging about having introduced spears into the vagina of women during the attack.

80. In the **Busurungi** vicinity, the FDLR had captured, tortured, raped, and killed several women in the days prior to the main attack on the village. On or about 28 April 2009, [REDACTED] was found lying in a field together with two other women. They were tied up and had wooden sticks jammed into their vaginas. Their bodies bore deep cuts and their throats were slit. Women who managed to escape capture identified the FDLR, who had been often seen around the farm, as the perpetrators.

81. During the main attack on Busurungi, on or about the night of 9-10 May 2009, W-683 fled her house [REDACTED] and ran through the bush to escape the fighting. Two FDLR soldiers armed with machetes grabbed her. While one was holding her by the throat, the other penetrated her vagina with his penis. The second FDLR also raped W-683 while her legs were held down. During the same attack W-655 [REDACTED] were captured by two FDLR soldiers as they were fleeing Busurungi. W-656 recognized one of the soldiers as an FDLR member who used to come to the village's market. This man pinned her to the ground and penetrated her vagina. W-656 [REDACTED] was also raped by FDLR soldiers in the forest. That same night, W-692 was grabbed by FDLR soldiers and taken in the forest behind her house as the fighting broke out. Three FDLR soldiers then raped her three times in turn. They beat her heavily, [REDACTED], cut her legs deeply and left her for dead. [REDACTED] was also raped by FDLR that night. They both were bleeding through the vagina and were treated for [REDACTED] months in hospital. W-692 [REDACTED] who remained in the house had to witness FDLR soldiers cutting off [REDACTED]. While escaping the fighting in Busurungi on or about the night of 9-10 May 2009,

[REDACTED] were discovered by five FDLR soldiers [REDACTED]. [REDACTED] witnessed [REDACTED] being raped by the soldiers and heavily beaten by the soldiers, who pierced her eyes and slit her throat. When the soldiers cut open the stomach of [REDACTED] with a machete, a moving foetus fell out as she was [REDACTED] pregnant. Then the FDLR dismembered the body with a machete in front of [REDACTED].

82. In the middle of 2009, near a village in Masisi territory, several women, including W-674, were abducted by [REDACTED] FDLR soldiers as they were travelling to the market through the forest. Under death threats and heavy beatings, two of the soldiers raped her five times each, taking turns throughout the night. As a result of this assault, she was hospitalised for [REDACTED] weeks. The other women captured were also raped repeatedly by multiple FDLR soldiers throughout the night.

83. FDLR troops perpetrated rape and other grave sexual offences widely across North and South Kivu in 2009 but this was denied on a systematic basis.

4. Facts relevant to crimes committed against civilian property (Counts 11 and 12)

84. From on or about 20 January until 31 December 2009, in the conduct of their attacks, FDLR soldiers systematically razed entire villages. The FDLR burnt to the ground hundreds of civilians' dwellings, often setting houses on fire while their occupants were sleeping. This conduct led to massive displacement of population in the Kivu provinces, as the villagers that survived the attack had no other choice but to search for new homes. During attacks, FDLR soldiers organised the pillaging of the population belongings, depriving them of their livelihood and livestock, sometimes forcing civilians to act as porters to carry their loot back to their bases deep in the forest.

85. FDLR soldiers destroyed and pillaged villages at various locations throughout the Kivu provinces. These locations included, but are not limited to, **Remeka**, Masisi

territory, North Kivu, late January 2009; **Kipopo**, Masisi territory, North Kivu, on or about 12-13 February 2009; **Mianga** on or about 12 April 2009; **Luofu** and **Kasiki**, in Lubero territory, North Kivu; **Busurungi** on or about 9-10 May 2009; the village of W-673 and W-674 in mid-2009 and again in the second semester of that same year; **Malembe** on or about 15 of September 2009; **Ruvundi** north of Walikale, North Kivu, on or about 22-23 October 2009; **Mutakato**, Walikale territory, North Kivu, on or about 2-3 December 2009; **Kahole**, Shabunda territory, South Kivu, on or about 6 December 2009.

86. The accounts presented in the following paragraphs are indicative of the wider pattern of crimes committed by the FDLR against the civilian property in the Kivu provinces in 2009.

87. According to W-587, at the end of February 2009, MUDACUMURA ordered all commanders to burn civilian houses so that the population would flee and become a burden for the DRC Government. FDLR soldiers they were given green light to “*burn houses and get their things*”.

88. On or about 13 February 2009, the FDLR returned to the village of **Kipopo**. The FDLR burnt over 70 houses.

89. In **Mianga**, on or about 12 April 2009, the FDLR pillaged and burnt down the entire village.

90. On or about 18 April the FDLR attacked the villages of **Luofu** and **Kasiki** in Lubero territory, North Kivu, burning over 250 and 50 houses in these villages respectively.

91. On or about the night of 9-10 May 2009 FDLR troops attacked **Busurungi** and nearby settlements which resulted in the destruction of over 700 civilian lodgings. During the fighting, houses and military positions alike were set on fire. FDLR troops went from door to door, burning and looting houses and killing civilians in a systematic fashion.

92. During this attack on Busurungi, W-692 witnessed FDLR loot livestock and goods belonging to the population. FDLR soldiers organized the pillaging of the village

going to and from the forest, in and out of houses removing clothes, goods or mattresses. What could not be looted was burnt. The FDLR pillaged the sheet metal from W-655's house in the vicinity of Busurungi, and then destroyed the remainder of the house. In the aftermath of the attack, W-650 found his village burnt down. He saw the FDLR looting the livestock and goods belonging to the population. Upon her return to Busurungi, W-694 saw that everything had been burnt down and pillaged.

93. On or about 20-21 July 2009, the FDLR attacked the village of **Manje** and burnt over 180 houses. During this attack, [REDACTED] W-693 [REDACTED] saw houses being set on fire. As [REDACTED] the FDLR, the soldiers were taking away looted pots, money or clothes. [REDACTED] W-693 [REDACTED], he found his wife had been robbed, his house pillaged and the entire village burnt down.

94. In August the FDLR perpetrated a further attack on the village of **Malembe**, pillaging and then burning down the village's approximately 600 houses.

95. In the middle of 2009, near a village in Masisi territory, FDLR soldiers stopped women who were going to the market, including W-674, and looted their money. Two months later, the FDLR attacked the village of W-673 and 674, looted money from the civilians and burnt several houses.

5. Facts relevant to Persecution (Count 13)

96. In perpetrating the crimes described above, FDLR troops specifically targeted members of the civilian population of the Kivu provinces perceived as having called for, collaborated with or supported the FARDC's and/or the RDF's efforts to defeat the FDLR. These civilians were – whether individually or collectively as residents of a given locality – considered enemies by the FDLR.

97. At the start of *Umoja Wetu*, under the pressure of FARDC operations, the FDLR were forced to leave the surrounding of villages where they were staying and moved deeper into the forest. Their cohabitation with communities in the Kivu provinces thus ended abruptly and triggered retaliation attacks. Before or while burning down

villages, killing, looting, raping or committing other atrocities upon civilians, FDLR soldiers verbally, through warning letters or obvious revengeful acts, made sure the victims knew why they were being attacked.

98. W-654, a former FDLR officer, states that the order came from Europe that anyone, including civilian Congolese, who wasn't on the side of the FDLR was to be considered as enemy. W-677, [REDACTED] in the FDLR, explains that the Congolese population is split in two parties; the ones on the side of the FARDC are considered enemies and the rest are on FDLR side and they are considered as friends.

99. FDLR soldiers persecuted members of the civilian population at various locations throughout the Kivu provinces. These included, but were not limited to, the dates and locations specified in Count 13.

100. The accounts presented in the following paragraphs are indicative of the wider phenomenon of persecution inflicted by the FDLR upon members of the civilian population of the Kivu provinces in the year 2009, because they were perceived to be collaborating with the FARDC and/or the RDF.

101. After the FARDC arrived in **Burungi** [*sic*] in February 2009, the FDLR began targeting civilians, stating that the population "*had invited the government soldiers to stay and to chase them, and to kill them*". Just before the May attack, W-650 saw a letter the FDLR left on the road to Hombo exhorting the population of Busurungi to leave, stating that anyone who stayed behind would be considered as "*being together with the government*". After the attack, W650 saw and heard the FDLR celebrating, shouting "*You Congolese people you have been boasting about your government, where are they now? [...] We'll even get to you in Walikale, and we'll even get to Hombo. You'll have to flee very far away.*" After gang raping W-683, the FDLR said to her, "*Go, you fool, the government soldiers were not able to help you in any way*". While they were pinning W-692 on the ground in the forest, FDLR soldiers said to her that the women had been arrogant to men and that the Tembos were sending their soldiers against them.

102. In **Mianga**, Walikale, North Kivu, on or about 12 April 2009, FDLR murdered [REDACTED] in his home. W-687 states that he was targeted because he

[REDACTED] had brought the FARDC. The entire village was then pillaged and burnt down because the population had allegedly become too close to the FARDC.

103. In **Manje**, [REDACTED] the FDLR, W-693 [REDACTED] deliver a note from [REDACTED] to village chiefs [REDACTED] in which they demanded that the population do not to follow the government's line.

104. Two months after having abducted and gang raped W-674 and other women, the FDLR attacked **their village** in the Masisi territory, beating and killing civilians, pillaging and burning houses. W-673 states that the FDLR soldiers targeted them because they had reported [REDACTED] to the FARDC.

105. The Prosecution alleges that through the commission of the acts listed above, the FDLR severely deprived their victims of, *inter alia*, the following fundamental rights, contrary to international law: the right to life; the right not to be subjected to torture, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, the right to health, the right to property.

III. Facts relevant to Mode of Liability

106. MBARUSHIMANA bears responsibility for the crimes committed by FDLR soldiers in North and South Kivu Provinces in 2009 pursuant to Article 25(3)(d) of the Statute.

1. The FDLR committed crimes within the jurisdiction of the Court

107. As described above, the FDLR committed acts in North and South Kivu in 2009 which constitute war crimes and crimes against humanity within the meaning of Articles 7 and 8. They constituted the FDLR's criminal activity in 2009.

2. The crimes were committed by the FDLR leaders, acting with a common purpose

108. The Prosecution alleges that at all material times MURWANASHYAKA, MUDACUMURA and MBARUSHIMANA, together with other members of the FDLR leadership (collectively, the “Common Purpose Group”), constituted a group of persons acting with a common purpose, within the meaning of Article 25(3)(d) of the Statute. All three were among the most senior leaders in the FDLR. They were in regular communication with each other and performed their official functions in an integrated manner. They agreed on and executed a common plan, as described below.

109. The FDLR is not a legitimate political party. Two of its top leaders are on trial in Germany for their membership in the FDLR, which the German authorities allege to be a terrorist organisation. The FDLR is an armed group that uses its military force to carry out a campaign of deliberate criminal acts in North and South Kivu. In 2009 it sought to extort concessions of political power through the commission of grave crimes, including securing direct negotiations between the FDLR and the Rwandan Government and FDLR participation in the Rwandan government. Its ultimate objective, however, is the overthrow of the incumbent government of Rwanda. The very purpose of the FDLR and its leaders was the pursuit of a criminal common purpose.

110. In early 2009, at the latest, the Common Purpose Group agreed to pursue a criminal plan (“Common Plan”), comprising of two elements: to direct attacks against the civilian population of the eastern DRC in order to create a “humanitarian catastrophe” and simultaneously to conduct an international media campaign. The aim of the media campaign was twofold: firstly to conceal the FDLR’s responsibility for the attacks by either denying them or casting the blame onto the FARDC/RDF coalition or other armed groups; secondly to persuade the governments of the DRC and Rwanda and the international community that the FDLR could not be defeated militarily and that the cost to the civilian population of the military campaign against

the FDLR would be intolerable. The overall purpose of the Common Plan was to persuade the governments of the DRC and Rwanda, and the international community, to abandon the military offensive in favour of a negotiated solution on favourable terms for the FDLR. In essence, therefore, the Prosecution alleges that the FDLR sought to extort political power in Rwanda in exchange for ceasing their atrocities against civilians.

111. The agreement on the Common Plan was reflected in the issue and implementation of MUDACUMURA's order to the troops under his command to attack civilians in North and South Kivu. Throughout 2009 MUDACUMURA remained in the field in command of the troops, ordering or authorising operations and receiving reporting from subordinate units on their participation in the ongoing armed conflict. He used his position as supreme commander of the FDLR armed forces and the near-automatic compliance of FDLR commanders and troops with his orders to implement the Common Plan. The other members of the Common Purpose Group abroad, MURWANASHYAKA and MBARUSHIMANA, received information about the military operations and the campaign of attacks from the field as they unfolded.

112. The Common Purpose Group also coordinated their efforts during 2009 to execute the second element of the Common Plan, namely the international media campaign. In early 2009, MURWANASHYAKA, MUDACUMURA and MBARUSHIMANA were in regular communication with each other and with key FDLR personnel in the field. They took part in Steering Committee and High Command meetings between on or about 10 to 18 January 2009, at which the use of international media to mobilise people was identified as an urgent priority of the Common Purpose Group's strategy. The members of the Group had intensive contact in preparation of the international campaign launched in reaction to the military operations against the FDLR. They collaborated closely for the preparation of press releases issued in MBARUSHIMANA's name.

113. During 2009, the message that the FDLR could not be defeated militarily and the extortive demands for concessions of political power for the FDLR in Rwanda in exchange for stopping the atrocities against civilians, were consistently presented by FDLR leaders.

114. The international campaign was also essential to maintain the FDLR's military strength. It kept up the morale of the FDLR troops and encouraged them to stay in the FDLR army and to follow the commanders' orders. MURWANASHYAKA himself explained to the FDLR troops about the good progress of the "diplomatic and political combat". The FDLR leaders reinforced this with threats to kill deserters in order to keep control of the combatants. They also denied information heard by the troops on the radio about the demobilisation and reintegration programs available through MONUC in Rwanda, or prevented the troops from having access to such information.

3. MBARUSHIMANA's contribution to the FDLR's crimes

115. Callixte MBARUSHIMANA contributed to the commission of FDLR crimes by agreeing with MURWANASHYAKA and MUDACUMURA to conduct an international media campaign as part of the Common Plan. He personally orchestrated and led the implementation of the extortive international campaign.

116. As part of his contribution to the pursuit of the Common Plan, MBARUSHIMANA was intimately involved in the articulation of the FDLR's views and extortive message in coordination with MURWANASHYAKA and other senior FDLR leaders. He was also involved in their dissemination. All of the FDLR's press releases in 2009 were issued in his name. In implementation of the agreement reached during the January 2009 Steering Committee meeting, MBARUSHIMANA's public communications were used as the main tool through which the FDLR sought to extort concessions of political power for the FDLR in Rwanda in exchange for

stopping the crimes against civilians. MBARUSHIMANA also disseminated the FDLR's discourse through interviews and other interaction with the media.

117. MBARUSHIMANA's contribution to the Common Plan was not merely coincidental. Unlike other members of the political leadership, such as the Commissioners, who were appointed to their posts by the FDLR President, MBARUSHIMANA enjoyed real authority and independence as one of only five elected civilian leaders in the FDLR. MBARUSHIMANA's official duties as Executive Secretary and Steering Committee member required him to engage with the Common Plan. He performed his functions in accordance with the FDLR Statute and the *Règlement d'ordre intérieur* and in implementation of the decisions taken during the January 2009 Steering Committee meeting regarding the international media campaign and the collaboration with external contacts.

118. MBARUSHIMANA played an active role in the leadership of the organisation, as part of the small core of political leaders based in Europe. In January 2009, the group included five members, but it shrank over the course of the year to include only MBARUSHIMANA and External Relations Commissioner Djuma NGILISHUTI as a result of the resignation of the Political Affairs Commissioner RUZINDANA in February and the arrests of MURWANASHYAKA and MUSONI in November. MBARUSHIMANA therefore played a central role in the leadership structure that adopted the Common Plan. His work was necessary for its implementation, especially the international media campaign, in light of the unavailability or reticence of other FDLR senior political leaders for participation in public information activities and political negotiations.

119. MBARUSHIMANA and MURWANASHYAKA shared and jointly exercised the power to authorise FDLR contacts with external parties for the purposes of peace negotiations and FDLR demobilisation. MUDACUMURA acknowledged this joint authority.

120. In preparation of his public communications and of his work to harness the support of external parties, MBARUSHIMANA communicated regularly with other

top FDLR leaders and field personnel, including MUDACUMURA and members of MURWANASHYAKA's cabinet in the field, who were simultaneously also in contact with MURWANASHYAKA. MBARUSHIMANA maintained influence and access through direct communication with a network of FDLR field personnel as well. These contacts gave him access to "intelligence" he would use to further the criminal activities of the FDLR. Given MURWANASHYAKA's own frequent interactions with FDLR field personnel at various levels, including MUDACUMURA and other high-ranking FDLR military commanders, the Prosecution alleges that MURWANASHYAKA's contacts with MBARUSHIMANA resulted in keeping MBARUSHIMANA fully informed about the FDLR's activities in the field. He was informed, at a minimum, to the extent that this was necessary for the international campaign and the coordination of contacts with external parties. The frequency and volume of these contacts intensified with the arrest of MURWANASHYAKA.

121. MURWANASHYAKA also executed part of the international campaign himself. However, the implementation of the international campaign publicly fell to MBARUSHIMANA alone during 2009, due to the earlier ban on MURWANASHYAKA's political activities by the German authorities.

122. MBARUSHIMANA also contributed to the commission of criminal activity of the FDLR by his encouragement of FDLR troops, through his contribution to the drafting of FDLR press releases.

4. MBARUSHIMANA's conduct in contributing to the FDLR's crimes was intentional (Article 25(3)(d) and Article 30 (2)(a))

123. The Prosecution alleges that MBARUSHIMANA's contribution to the crimes committed by the FDLR was intentional in that he meant to engage in the conduct alleged.

124. In the days leading up to the armed conflict, MBARUSHIMANA announced the FDLR's preparedness to engage in an armed conflict "*the consequences of which*

[will be] immeasurable", so long as the international community, the DRC, and Rwanda did not give in to the FDLR's demands.

125. Close to 60 FDLR press releases were issued in MBARUSHIMANA's name in 2009, published on the FDLR or other websites and disseminated to FDLR personnel in the field. MBARUSHIMANA also engaged voluntarily with various external actors, including peace mediators and journalists, as a high-level representative of the FDLR. MBARUSHIMANA presented himself and was regarded as a legitimate, high-level representative of the movement in these interactions.

126. MBARUSHIMANA collaborated with MURWANASHYAKA to fabricate a false account of crimes attributed to the FDLR. Such accounts were calculated to counter the reports from UN and other sources which attributed responsibility for crimes to the FDLR, and instead shift the blame for the crimes onto, *inter alia*, the FARDC/RDF coalition troops. The Prosecution alleges that the Common Purpose Group considered that these denials were necessary to maintain the FDLR's credibility as a political organisation, while simultaneously putting international pressure on the coalition to halt its offensive.

5. MBARUSHIMANA's intention and knowledge

127. The Prosecution alleges that MBARUSHIMANA's contribution to the crimes committed by the FDLR was intentional in that he meant to engage in the conduct alleged. It was made both (i) with the aim of furthering the FDLR's criminal activity or criminal purpose, including the commission of the crimes within the jurisdiction of the Court alleged below; and (ii) in the knowledge of the FDLR's intention to commit such crimes.

128. As described above, the Common Plan encompassed a decision to create a humanitarian catastrophe by directing attacks against the civilian population of the Eastern DRC. Such plan was criminal by design and necessarily involved the commission of crimes within the jurisdiction of the Court.

129. By virtue of his position in the FDLR, his permanent activity and his access to information from internal and external sources, MBARUSHIMANA's contribution to the commission of crimes by the FDLR in 2009 was made in the knowledge that, pursuant to the Group's strategic policy, FDLR troops would commit such crimes in the ordinary course of events.

130. MBARUSHIMANA's knowledge derived, firstly, from his position as FDLR Executive Secretary, member of the Steering Committee and one of the four active top leaders.

131. MBARUSHIMANA has been a high-ranking FDLR member since 25 June 2005, at the latest, and has been the group's Executive Secretary since at least May 2007. Since 1 June 2004, when he was appointed FDLR Commissioner of Finance, he has contributed to the functioning as well as the financial management of the FDLR. Between 2004 and 2007 in particular, he acted as financial coordinator between the FDLR's military branch and the political leadership based in Europe. After the imposition of a UN asset freeze on MBARUSHIMANA in March 2009, his involvement in the financial management of the organisation was more discreet. In 2009 and 2010 MBARUSHIMANA relied on his close associate NGILISHUTI. Through his close collaboration with NGILISHUTI in 2009, MBARUSHIMANA continued to act as coordinator of the FDLR's financial activities between the DRC and Europe.

132. Throughout 2009, as Executive Secretary, MBARUSHIMANA was technically fourth in command in the political structure of the organisation, but he was in fact a core member of the top leadership. After the arrests of MURWANASHYAKA and MUSONI, he became the only active high-level representative of the FDLR outside of the DRC. By his own admission, MBARUSHIMANA was thereafter responsible for coordinating the daily activities of the organisation.

133. MBARUSHIMANA's role gave him access to details about the FDLR's operations. By virtue of his position, he was wholly aware of the FDLR's goals and activities. As a member of the Steering Committee, MBARUSHIMANA was in a

position to demand information from MUDACUMURA about the allegations of FDLR responsibility for crimes attributed to the group. MBARUSHIMANA knew, in particular, that the FDLR was a combatant force that committed crimes against civilians in North and South Kivu. As a long-time member of the group and one of its most representative leaders internationally, in 2009 MBARUSHIMANA was enmeshed in the group's criminal activities, which he actively sought to re-characterise as political and paint in the most positive, albeit false, light possible. The FDLR's alleged crimes were consistently the object of MBARUSHIMANA's public information activities in 2009.

134. MBARUSHIMANA's awareness of the fact that the FDLR would commit crimes in the ordinary course of events also derived from his access to publicly available information and reports from credible sources about the ongoing commission of crimes by the FDLR. MBARUSHIMANA stayed abreast of developments in the armed conflict in the Kivu provinces and in the Great Lakes region of Africa throughout 2009. He had timely access to published allegations made by UN bodies and agencies and other credible sources that the FDLR had attacked civilians or civilian structures in various locations throughout 2009. MBARUSHIMANA was fully aware of the seriousness of the allegations which he denied or for which he sought to shift the blame from the FDLR.

135. MBARUSHIMANA's awareness of the fact that the FDLR would commit crimes in the ordinary course of events derived, finally, from his communications with various FDLR members. MURWANASHYAKA and other FDLR members transmitted insiders' information to MBARUSHIMANA, enhancing his knowledge of the FDLR's criminal activities.

136. In his press releases, MBARUSHIMANA explicitly denied allegations that the FDLR committed crimes at various locations. These press releases contained information, including military information that had been exchanged in intercepted communications between MURWANASHYAKA and MUDACUMURA, between MURWANASHYAKA and individuals reporting from the field, and between others

in the FDLR. Some of these communications explicitly contained information about the FDLR's participation in the attacks. The Prosecution alleges that the inclusion of detailed information in the press releases resulted from MBARUSHIMANA's access to insider information through his contact with the FDLR President and other FDLR sources. The Prosecution alleges that this level of access to information establishes substantial grounds to believe that MBARUSHIMANA was fully aware of the fact that, pursuant to the FDLR's strategic policy, FDLR troops would commit crimes in the ordinary course of events.

C. CHARGES

The Prosecution alleges that there are substantial grounds to believe that, from on or about 20 January until 31 December 2009, Callixte MBARUSHIMANA, acting as part of a group of persons acting with a common purpose, intentionally and with the aim of furthering the criminal activity or criminal purpose of the group involving the commission of a crime within the jurisdiction of the Court, and/or with knowledge of the intention of the group to commit this crime, contributed to the commission of the following crimes:

Count 1

Attacks against the civilian population constituting a war crime

(Article 8(2)(e)(i) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of intentionally directing attacks against the civilian population at various locations in the North and South Kivu Provinces, DRC.

The locations of these attacks include, but are not limited to, **Kibua** and **Katoyi** in early January 2009, **Katoyi**, **Remeka**, **Malembe**, **Mianga**, **Busurungi** and **Busheke** in late January 2009, **Pinga** on or about 14 February 2009, **Kipopo** on or about 12-13 February 2009, Miriki also in February, **Mianga** on or about 12 April 2009, **Luofu** and **Kasiki** on or about 18 April 2009, **Busurungi** and neighbouring villages on or about 28 April 2009, and on or about 9-10 May 2009, the **village of W-673 and W-674** in Masisi territory in the second half of 2009, **Manje** on or about 20-21 July and **Malembe** on or about 11-16 August and 15 September, **Ruvundi** in October 2009, **Mutakato** on or about 2-3 December 2009 and **Kahole** on or about 6 December 2009.

Count 2

Murder constituting a crime against humanity

(Article 7(1)(a) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the crime against humanity of murder perpetrated by the FDLR upon members of the civilian population at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to **Remeka** in late February 2009, **Busheke** in late January 2009, **Kipopo** on or about 12-13 February 2009, **Mianga** on or about 12 April 2009, **Luofu** and **Kasiki** on or about 18 April 2009, **Busurungi** and surrounding villages on or about 28 April 2009 and on or about 9-10 May 2009, **Manje** on or about 20-21 July 2009, the **village of W-673 and W-674** in Masisi territory, during the second half of 2009, **Ruvundi** in October 2009, **Mutakato** on or about 2-3 December 2009, **Kahole** on or about 6 December 2009.

Count 3

Murder constituting a war crime

(Article 8(2)(c)(i) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of murder perpetrated by the FDLR upon members of the civilian population at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to **Malembe** and **Remeka** in late January 2009, **Busheke** in late January 2009, **Pinga** on or about 12 February 2009, **Kipopo** on or about 12-13 February 2009, **Mianga** on or about 12 April 2009, **Luofu** and **Kasiki** on or about 18 April 2009, **Busurungi** and surrounding villages on or about 3 March 2009, on or about 28 April 2009 and on or about 9-10 May 2009, **Manje** on 20-21 July 2009, the **village of W-673 and W-674** in Masisi territory, during the second half of 2009, **Ruvundi** in October 2009, **Mutakato** on or about 2–3 December 2009, **Kahole** on or about 6 December 2009.

Count 4

Mutilation constituting a war crime

(Article 8 (2)(c)(i)-2 or 8 (2)(e)(xi)-1 read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of mutilation perpetrated by the FDLR upon members of the civilian population at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to near Busurungi in March 2009, **Busurungi** and surrounding villages on or about 28 April 2009, and on or about 9-10 May 2009.

Count 5

Inhumane acts constituting a crime against humanity

(Article 7(1)(k) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the crime against humanity of inhumane acts perpetrated by the FDLR upon members of the civilian population of various locations in the North and South Kivu Provinces, DRC, by assaulting people and/or forcing people to carry heavy loads of pillaged goods, thus inflicting great pain and suffering or serious injury to body or mental or physical health.

These locations include but are not limited to **Busurungi** on or about the night of 9-10 May 2009 and **Manje** on or about 20-21 July 2009.

Count 6

Cruel treatment constituting a war crime

(Article 8(2)(c)(i) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of inhuman treatment perpetrated by the FDLR upon members of the civilian population of various locations in the North and South Kivu Provinces, DRC, by assaulting people and/or forcing people to carry heavy loads of pillaged goods, thus inflicting great pain and suffering or serious injury to body or mental or physical health.

These locations include but are not limited to **Busurungi** on or about the night of 9-10 May 2009 and **Manje** on or about 20-21 July 2009.

Count 7

Rape constituting a crime against humanity

(Article 7(1)(g) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the crime against humanity of rape perpetrated by the FDLR on civilian women at various locations in the North and South Kivu Provinces.

These locations include but are not limited to **Busheke** in late January 2009, **Remeka** in late February 2011, **Pinga** on or about 12 February 2009, **Miriki** in February 2009, **Mianga** on and or about 12 April 2009, **Busurungi** and surrounding villages on or about 28 April 2009 and on or about 9-10 May 2009, the **village of W-673 and W-674** in Masisi territory in the second part of 2009 and **Manje** on or about 20-21 July and **Malembe** in August and on or about 15 September 2009.

Count 8

Rape constituting a war crime

(Article 8(2)(e)(vi) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of rape, perpetrated by the FDLR on civilian women at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to **Busheke** in late January 2009, **Remeka** in late February 2011, **Pinga** on or about 12 February 2009, **Mianga** on or about 12 April 2009, **Busurungi** and surrounding villages on or about 28 April 2009, and on or about 9-10 May 2009, the **village of W-673 and W-674** in Masisi territory in mid-2009, **Manje** on or about 20-21 July 2009 and **Malembe** in August and on or about 15 September 2009.

Count 9

Torture constituting a crime against humanity

(Article 7(1)(f) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the crime against humanity of torture inflicted by the FDLR upon members of the civilian population at various locations in the North and South Kivu Provinces, DRC, inflicted through severe assaults, aggravated rape, mutilation and/or inhumane treatment involving the infliction of severe physical or mental pain or suffering upon the victims.

These locations include but are not limited to **Mianga** on or about 12 April 2009, **Busurungi** and surrounding villages on or about 28 April 2009, and on or about 9-10 May 2009, the **village of W-673 and W-674** in Masisi territory in the second part of 2009, **Manje** on or about 20-21 July 2009, and **Malembe** in August and on or about 15 September 2009.

Count 10

Torture constituting a war crime

(Article 8(2)(c)(i) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of torture inflicted by the FDLR upon members of the civilian population at various locations in the North and South Kivu Provinces, DRC, inflicted through severe assaults, aggravated rape, mutilation and/or inhumane treatment involving the infliction of severe physical or mental pain or suffering upon the victims, including but not limited to **Mianga** on or about 12 April 2009, **Busurungi** and surrounding villages on or about 28 April 2009, and on or about 9-10 May 2009, the **village of W-673 and W-674** in Masisi territory in the second part of 2009, **Manje** on or about 20-21 July 2009 and **Malembe** in August and on or about 15 September 2009.

Count 11

Destruction of property constituting a war crime

(Article 8(2)(e)(xii) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of destruction of the adversaries' property or extensive destruction of property not required by military necessity committed by the FDLR at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to **Remeka**, late February 2011, **Kipopo** on or about 12-13 February 2009, **Mianga** on or about 12 April 2009, **Luofu** and **Kasiki** on or about 18 April 2009, **Busurungi** and neighbouring villages on or about 9-10 May 2009, **Manje** on or about 20-21 July, **Malembe** on or about 11-16 August and 15 September and the **village of W-673 and W-674** in Masisi territory, during the second half of 2009, **Ruvundi** in October 2009, **Mutakato** on or about 2-3 December 2009, **Kahole** on or about 6 December 2009.

Count 12

Pillaging constituting a war crime

(Article 8(2)(e)(v) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the war crime of pillaging of the property of the civilian population, including, but not limited to money, gold, household property, food and livestock, perpetrated by the FDLR at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to **Mianga** on or about 12 April 2009, **Busurungi** and neighbouring villages on or about 9-10 May 2009, the **village of W-673 and W-674** in Masisi territory in the second half of 2009, and **Malembe** on or about 11-16 August 2009.

Count 13**Persecution constituting a crime against humanity**

(Article 7(1)(h) read with Article 25(3)(d) of the Rome Statute)

MBARUSHIMANA contributed to the commission of the crime against humanity of persecution, perpetrated by the FDLR upon members of the civilian population by intentionally and in a discriminatory manner targeting women and men seen to be affiliated with the FARDC on the basis of their political affiliation, through torture, rape, inhumane acts and inhuman treatment, at various locations in the North and South Kivu Provinces, DRC.

These locations include but are not limited to **Remeka** in late January 2009, **Busheke** in late January 2009, **Pinga** on or about 14 February 2009, **Kipopo** on or about 12-13 February 2009, **Mianga** on or about 12 April 2009, **Luofu** and **Kasiki** on or about 18 April 2009, **Busurungi** and neighbouring villages on or about 28 April 2009, and on or about 9-10 May 2009, **the village of W-673 and W-674** in Masisi territory in the second half of 2009, **Manje** on or about 20-21 July and **Malembe** on or about 11-16 August and 15 of September 2009.



Luis Moreno-Ocampo, Prosecutor

Dated this 3rd day of August 2011

At The Hague, The Netherlands