



## **ECCHR Interim Report March 2015**

### ***FDLR Leadership Trial in Stuttgart***

4 May 2011 saw the start of the trial of two Rwandan leaders of the *Forces Démocratiques de Libération du Rwanda* (FDLR), Ignace Murwanashyaka and Straton Musoni, before the Higher Regional Court of Stuttgart. They stand accused of responsibility for the commission of war crimes and crimes against humanity in the eastern region of the Democratic Republic of Congo in 2008 and 2009. ECCHR is monitoring the case, the first criminal proceedings taken in Germany under the Code of Crimes against International Law (*Völkerstrafgesetzbuch*), which entered into force in 2002. The Code allows for prosecutions for war crimes and crimes against humanity to be held before German courts. This fourth report presents the most important developments from 2014 (day 201 to day 273 of the trial). The focus is on witness testimony from (former) FDLR members, a further defense statement from Musoni as well as procedural issues.

#### **I. Status of the proceedings**

From day 201 (8 January 2014) to day 273 (17 December 2014) of the trial, the hearing of evidence focused primarily on the command authority held by Murwanashyaka and his relationship to Musoni as well as on the statutes of the military wing of the FDLR, the *Forces Combattants Abacunguzi* (FOCA), and the FDLR itself. The questions were examined in the context of specific allegations of attacks on the civil population. Here the Court paid particular attention to the command structure of the FDLR and the FOCA. Of key importance for the attribution of the individual responsibility of the defendants was and is the relationship between the military wing FOCA and the overall organization FDLR.

More than 53 witnesses have given evidence since the beginning of the trial. During 2014, evidence was heard from ten witnesses over almost 50 of the total 73 trial days. Most of these witnesses had already given evidence and were returning to give further testimony. These hearings often lasted more than five days. The hearing of witness testimony was predominantly at the request of the defense. Notably, the witnesses were often questioned directly by the defendant Murwanashyaka.

#### **II. Notable features of the trial**

##### **1. Audiovisual technology**

As in previous years, audiovisual technology was used in 2014 for some hearings of witness testimony. The public was excluded from the proceedings on four of the nine days of these hearings for the purposes of witness protection. In another case, audiovisual testimony was heard from a witness who had been denied entry into Germany. His testimony was recorded in Kigali and broadcast in the court room at the Higher Regional Court of Stuttgart.

##### **2. Testimony from a state prosecutor**

The Court heard evidence from a state prosecutor who had in turn heard evidence from victim witnesses in Congo. These witnesses had given evidence anonymously; all personal



information was likewise rendered anonymous. The state prosecutor was called on to report on the process of these hearings. She described the overall circumstances and the difficulties encountered during the hearings. As the evidence from these witnesses was heard in camera, the testimony from the state prosecutor provided a rare insight into the investigations that were undertaken locally. Although specific allegations did arise from this evidence, the hearing was not held in camera.

### **3. Reading of prior testimony from ICC investigations**

The Court Senate permitted the reading of earlier testimony from hearings that took place during investigatory proceedings by the Office of the Prosecutor of the International Criminal Court (ICC) in The Hague against Callixte Mbarushimana, executive secretary of the FDLR. In the course of hearing testimony in Stuttgart from a witness from the ICC proceedings, allegations were put to him that arose from the testimony gathered during the ICC proceedings. In Stuttgart, the defense registered their objections to the selection of witnesses at the ICC, stating that the selection occurred according to unclear criteria and that the introduction of allegations from these hearings represented a violation of the principle of a fair trial. There had never before been a decision by the Court Senate on the admissibility of using evidence gathered as part of ICC hearings.

### **4. Transcripts and extended hearing breaks**

As it has done many times since the start of the trial, the defense made requests in 2014 for transcripts to be kept of certain parts of testimony from witnesses. Murwanashyaka's defense team requested to have a representative of the Chief Federal Prosecutor give evidence in early July 2014 that transcripts were not kept during earlier hearings of testimony from a witness in July 2013 and that this had caused difficulties in the investigations. This followed an argument between the parties about the content of the testimony of a witness who had given varying statements over a number of different hearings. The Court Senate dismissed this request from the defense and also rejected the move to keep transcripts of witness testimony.

### **5. Court-appointed counsel suffers ill health**

Due to the long-term illness of one of Murwanashyaka's two court-appointed defense counsels, the possibility of a replacement was discussed in late July 2014. The Court Senate ultimately decided to appoint a new defense counsel, who was in attendance from the first day of proceedings following the summer break. The second defense counsel was absent on this day. Murwanashyaka submitted a request to stay the proceedings and a further request to discontinue proceedings claiming that he was left without defense. At this point he also requested that his new court-appointed defender be released from service. Murwanashyaka claimed that this defense counsel could not represent the defendant's interests as he did not have adequate knowledge of the case files. Murwanashyaka's request was based on procedural provisions contained in the German Code of Criminal Procedure (StPO), which stipulates that if proceedings are interrupted for more than one month, they must be recommenced *de novo*. Thus there was a risk that the trial, which has been ongoing for more than three years, could collapse. The presiding judge had to address the requests but also continue with substantial proceedings. Otherwise he would have left himself open to the accusation that he was only continuing the proceedings as a pretense and that the time limit of one month had in fact



elapsed. The representative of the Chief Federal Prosecutor called for the rejection of the request for proceedings to be discontinued and the request to release the new court-appointed counsel from service. The Court Senate granted the Chief Federal Prosecutor's applications and rejected the requests for the discontinuation of the trial and for the counsel's release from service. Over the following days this issue continued to be the subject of argument between the defense and the Senate. One of the counsels for Murwanashyaka's defense stressed that deficiencies in the defense were down to the Senate's decision at the beginning of the proceedings to assign only two court-appointed counsels to act in his defense.

#### **6. Second defense statement from Straton Musoni**

In the first hearing in August 2013 defendant Musoni contested the accusations in the charges and also explicitly distanced himself from the crimes that were committed. In April 2014 the defendant Musoni made a further statement on the accusations facing him. The presiding judge pointed out to the defendant that he should set out his own memories. Musoni clarified that the charts he presented were based not only on his own information but also on third party information from documents and witness statements. He went on to use these to describe the structure of the FDLR and the FOCA, attempting to show a distinct division between the political and military wings.

#### **III. FDLR supporters trial in Düsseldorf**

In further FDLR proceedings opened at the Higher Regional Court of Düsseldorf on 15 November 2013, three defendants stood accused of being members of the FDLR and thus members of a terrorist organization abroad. The proceedings centered on allegations of writing and disseminating FDLR press releases aimed at denying/justifying the crimes in eastern Congo. The case also concerned financial support provided to Murwanashyaka, defendant in the Stuttgart trial.

The case concluded on 5 December 2014 after 92 days of proceedings before the Higher Regional Court of Düsseldorf. The Court sentenced two of the three defendants to prison for membership of a terrorist organization abroad (FDLR). They received prison sentences of four and three years respectively. The third defendant was convicted of aiding the FDLR and was given a suspended sentence of two years. The decisive point here is the classification of the FDLR as a terrorist organization. This classification by the Court is based on information from experts who have worked for the UN and the United Nations Organization Stabilization Mission in the DR Congo (MONUSCO) and who have already given evidence in the Stuttgart proceedings. The judgments are not final.

#### **IV. Outlook**

Dates for the continuation of the trial have been scheduled up to March 2015. The end of the evidentiary hearings is now in sight, as neither the Court nor the Federal Prosecutor has called further witnesses. Currently, witnesses for the defense as well as other evidence including telecommunications and in particular SMS-based evidence are introduced.



**ECCHR background material on the FDLR leadership trial**

<http://www.ecchr.de/Congo-war-crimes-trial.html>

 [FDLR, Third Status Report, 2014-02-17.pdf](#) (172.8 KiB)

 [FDLR, Second status report 2012-11.pdf](#) (141.3 KiB)

 [FDLR, First status report 2012-02](#) (215.7 KiB)