



## **ECCHR-Status Report November 2012**

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

4 May 2011 saw the start of the trial against two Rwandan leaders of the “Forces Démocratiques de Libération du Rwanda” (FDLR), Ignace Murwanashyaka and Straton Musoni, before the Higher Regional Court in Stuttgart. Since then ECCHR, along with other organizations and institutions, has been monitoring the proceedings of the first trial in Germany under the Code of Crimes Against International Law (Völkerstrafgesetzbuch), a law that entered into force in 2002 and which allows for the prosecution of war crimes and crimes against humanity by German courts.

All 112 days of proceedings from the beginning of the trial up to mid-November 2012 were observed, giving ECCHR a comprehensive insight into the events unfolding before the Court. The key issues have been questions around the political and military structural organization of the FDLR as well as the role of the two accused within the FDLR. In February 2012 ECCHR published an initial status report covering the first 50 days of proceedings. This second report summarizes the proceedings from day 50 to the beginning of the *in camera* (privately held) examination of the victim witnesses on the 112<sup>th</sup> day of the trial. The ECCHR plans only after the final verdict a comprehensive analysis of the proceedings.

### **Status of the proceedings**

From the 50th to the 111th day of proceedings on 7 November 2012, the hearing of evidence related to questions around the structure of the FDLR and the role of the accused. So far 34 witnessess including expert witnesses have given evidence on these issues.

To date most of the witnesses — ca. 20 in total — were former members of the military wing of the FDLR. A number of these described the influence of the FDLR leadership on the military wing of the FDLR within Eastern DRC, the processes involved in planning and executing attacks and the role of the accused Murwanashyaka. Since the former FDLR members could offer very little information on Musoni, the second accused, political declarations signed by him have been presented as part of the proceedings. Documentation of numerous conversations with FDLR General Mudacumura made from the mobile phone of Musoni’s wife and text messages sent to Mudacumura have also been presented. There has also been evidence of frequent transfers of large sums of money to the bank accounts of Musoni and his wife in the time before the accounts were frozen by UN sanctions. Following a motion from the defense, the court may soon decide on the possibility of a suspension of Musoni’s warrant of arrest; on the 101st day of proceedings, according to statement read out during the trial, Musoni renounced the FDLR and ceased his political activities for good.



In addition to the statements by former FDLR-members there has been the evidence provided by expert witnesses including, at the beginning of the trial, the testimony of an employee of a German research institute on the overall situation in Eastern DRC and Rwanda followed by evidence from two expert witnesses from the United Nations who work for the Group of Experts of the UN Security Council's Sanctions Committee and towards demobilization in the region. During one of the hearings, a film from the UN Department of Public Information was shown about the setting up of a demobilization camp in an area controlled by the FDLR. The film has not yet been shown publicly, as it includes a section on a woman who is taken to hospital after being raped. A UN report on an alleged massacre in Busurungi, which had up to that point been confidential, was also read out in the courtroom. The report described the role of the FDLR and the presence of civilians, as well as naming some of the victims. Finally, evidence was heard from a Human Rights Watch observer. She provided accounts of meetings with Murwanashyaka, interviews with affected persons and accounts of crime scenes after attacks as well as presenting her documentation of FDLR crimes and the methodology used in this process. The witness gave particularly detailed accounts of how Murwanashyaka had described his role in the FDLR to her, of individual crime scenes and her documentation of sexual violence.

## **Testimony by Victims**

From the 112th day of proceedings on 12 November 2012 the court will hear testimony from around ten victim witnesses, most of whom experienced sexual violence. Since even applying for documents to travel to Germany would involve great risk to the witnesses, they will not be present in the court room, appearing instead via a video link with Rwanda. A request had been made to allow for special visual distortion measures in order to protect the identity of the witnesses while giving video evidence. The German Criminal Police Office is maintaining contact with the witnesses through the United Nations Mission in Congo (MONUSCO) and locally active organizations. During the examination witness support will be provided by a local organization, and a female German lawyer has been appointed to assist the witnesses. The public will be excluded from the court room while it hears this evidence. The public has been excluded from the courtroom on previous occasions: while the court saw video recordings of questioning in Rwanda and during the examination of a witness in order to protect a victim of rape from Busurungi. The examination of the victim witnesses is likely to continue until spring 2013.

## **Length of proceedings**

Roughly one and a half years have elapsed since the beginning of the trial. The court has presided over more than 110 days of proceedings. Two full days of proceedings are generally scheduled for each week, suspended only when the court is on recess. The complexity of the evidentiary hearings — including translation, the playing of audio or video recordings or the reading out of documents before the court — means that the proceedings are extremely time



intensive. In addition, the court division decided at the beginning of 2012 that each witness examination would be allotted four days instead of two since the questioning of witnesses by all involved parties often failed to be completed within two days. Because of this decision, numerous witnesses had to appear before the court for a second time.

### **Separate proceedings against FDLR members before the International Criminal Court in The Hague**

Separate to the work of the Higher Regional Court in Stuttgart, the prosecution of FDLR members is also being pursued by the International Criminal Court in The Hague, focussing in part on the same facts and charges. Nevertheless, both proceedings must be held strictly separate, since each is about the individual responsibility about another person. The Pre-Trial Chambers found in two cases substantial grounds to believe that from 20 January 2009 until at least 31 December 2009 as well as from January 2010 until September 2010 an armed conflict of a non-international character took place in the North and South Kivus in Eastern DRC and that war crimes were committed by FDLR troops. The Pre-Trial Chamber in the first case also came to the conclusion that the evidence provided by the Prosecution was insufficient when it came to establishing the individual responsibility of FDLR Executive Secretary Calixte Mbarushimana, since there was no apparent connection between his personal role within the FDLR leadership and the crimes in Eastern Congo. An appeal by the Prosecution against this decision was unsuccessful and was dismissed by the Court at the end of May 2012. In contrast, the Pre-Trial Chamber did find sufficient evidence to issue an arrest warrant in the case against Sylvestre Mudacumura, the military commander of the FDLR. The Pre-Trial Chamber initially refused to issue an arrest warrant due to a lack of clarity in the Prosecutor's request. In the Chamber's decision from 13<sup>th</sup> July 2012 it then found grounds to believe that Mudacumura directly issued orders for a general military campaign as well as for individual attacks, during which war crimes were committed. The Court therefore found a sufficient likelihood that Mudacumura could bear individual criminal responsibility according to Article 25(3)(b) of the Rome Statute.

### **Outlook**

Dates for the continuation of the trial have been set until the end of 2012. The examination of victim witnesses from the region is however likely to continue until spring 2013, meaning that the extensive hearing of evidence will continue for some time. An initial decision can be expected in the course of next year at the earliest. The decision by the Higher Regional Court is likely to be appealed and referred to the Supreme Court of Justice, which means that a conclusive appraisal of the trial will not be possible for a number of years. The initial decision will, however, allow to draw some conclusions on questions of procedural law matters and offer insights into how investigations are conducted, the treatment of victims of sexual violence during conflict and the significance and effect of the German court case in the affected regions.



## **ECCHR Background Material on the FDLR-Leadership Trial**

[www.ecchr.eu/index.php/gender-based\\_crimes/articles/criminal-proceedings-against-two-rwandan-militia-leaders.html](http://www.ecchr.eu/index.php/gender-based_crimes/articles/criminal-proceedings-against-two-rwandan-militia-leaders.html)

 [Status Report 2012-02](#)

### **Further References:**

#### **Case against Mbarushimana at the International Criminal Court**

<http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc01040110/icc01040110?lan=en-GB>

#### **Case against Mudacumura at the International Criminal Court**

<http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0104/Related+Cases/ICC01040112/ICC01040112.htm>

#### **UN Security Council: Sanctions Committee Group of Experts**

<http://www.un.org/sc/committees/1533/>