

Research Report | XXV Annual Session

---

# International Criminal Court

The situation in the Democratic Republic of  
Congo: The Prosecutor v. Sylvestre  
Mudacumura



**MODEL UNITED NATIONS**  
THE INTERNATIONAL SCHOOL OF THE HAGUE

Alexander van Eijk  
Alexandrah Bakker

<b>Forum:</b>	International Criminal Court
<b>Issue:</b>	The situation in the Democratic Republic of Congo: The Prosecutor v. Sylvestre Mudacumura
<b>Student Officer:</b>	Alexander van Eijk - Alexandrah Bakker
<b>Position:</b>	President – Deputy President

---

## Introduction

The Rome Statute is the legal document used by the International Criminal Court (ICC) to stipulate the Court's international law. The Rome Statute can only apply to a nation's territory if the document is signed by the head of state and ratified by its parliament. The Democratic Republic of Congo (DRC) signed the Rome Statute on the 8<sup>th</sup> of September 2000 and the document was ratified on the 11<sup>th</sup> of April 2002. This means that only the crimes under the Rome Statute committed in the DRC's territory after the 11<sup>th</sup> of April 2002 can be prosecuted by the ICC.

Sylvestre Mudacumura was a member of the Hutu Power group during the Rwandan Genocide of 1994. He is accused of later leading the FDLR into the Congo Wars of 1996 to 2003, and committing further attacks, even after the closure of the Congo Wars.

The specific conflict in question for this Court is the Kivu Conflict, between the FDLR and the DRC's military forces, from 2004 to 2009. The Warrant of Arrest for Mudacumura is in relation to attacks upon the civilian population committed in the time between the 20<sup>th</sup> of January, 2009 and September, 2010. Under Article 25 (3)(b), Mr Mudacumuru is charged of nine counts of War Crimes: attacking civilians; murder; mutilation; cruel treatment; rape; torture; destruction of property; pillaging; outrages against personal dignity.

## Definition of Key Terms

### Hutu Power

The Hutu are an ethnic group in Rwanda and the surrounding region. Hutu Power was an armed group active in Rwanda during the Rwandan Genocide between 1993 and 1994. Hutu Power was one of the largest actors in committing the 800,000 murders of this period in 1994.



## Warrant of Arrest

A document from an international or national court (in this case the ICC) calling for and allowing the arrest of an individual. These are issued by the ICC to all signatories of the Rome Statute, granting them permission to arrest and transport any alleged war criminals.

## War Crimes

Under Article 25 (3)(b), the war crimes are listed. These crimes and their respective description will only apply and be prosecutable under the condition that at the time of the commission of the act, there is a state of war in the respective region. This could mean an organized conflict between military factions, but also between two nations, or otherwise involving a nation.

## General Overview

The North Kivu region in eastern Congo has been at the heart of the DRC's conflict for years, even being cited as the source of ethnic conflict that would eventually act as a catalyst for DRC's two wars and other violent periods. This ethnic conflict in eastern DRC, as well as that in the rest of the country, has been dated to the Belgian colonialist era. Belgian colonialists encouraged the mass immigration of Hutus and Tutsis from neighbouring Rwanda to source labour for their farms and mines, yet constructed an ethnic hierarchy that favoured what they considered "indigenous" Congolese nationals. Between 1928 and 1956, over 150,000 Rwandans immigrated into eastern Congo, bringing with them ethnic tensions that only added to those already existing in DRC. These tensions were only magnified as Rwandan refugees poured into the country throughout the 20<sup>th</sup> century, with a particularly large influx directly after the Rwandan genocide of 1994. This, in combination with an ineffective central government, spurred on the First Congo War of 1996-97. The Second Congo War, which lasted from 1998 to 2003, was focused in North Kivu as the Rwandan-backed RCD sought to fight against president Laurent Kabila. Throughout the 2000s, the fighting in DRC has been focused in North Kivu, with a particularly violent period erupting in August of 2007.

## Hutu-Tutsi element of the conflict

On numerous occasions the government-run FARDC has tried to integrate the allegedly Rwandan-backed Tutsi group CNDP into its forces, with little success. These attempts broke down in 2007, sparking new extremes in the violence of already conflicting



groups in the North Kivu region. The CNDP claimed to be protecting the Tutsi populations of eastern DRC from the Hutu FDLR, while simultaneously accusing the Congolese government and FARDC of providing military support to the FDLR. In November 2007, the governments of Rwanda and the DRC agreed to the "Nairobi communiqué." This communiqué began a joint mission by the two governments to dismantle the FDLR. In January of the next year, the Conference on Peace, Security, and Development for the Kivus was organized in Goma, the capital of North Kivu. The Congolese government, CNDP, and other armed groups were invited to these peace talks. The FDLR, however, was not invited. Nevertheless, the parties came to an agreement called the "Act of Engagement," which committed the conflicting parties to an immediate cease-fire that has proven unsuccessful, and has been broken hundreds of times since.

### Mr. Mudacumura's involvement

The defendant, Sylvestre Mudacumura, is eastern Congo's military commander for the FDLR. The FDLR, or *Les forces démocratiques de libération du Rwanda* has been at the centre of the Kivu conflicts for a long time, particularly against the CNDP and FARDC. It is a Hutu militia group that controls significant parts of North and South Kivu, and its main objectives are to overthrow the Rwandan government and to increase political representation of the Hutu ethnic group. Some of its leaders are said to have participated in the Rwandan genocide in 1994. Due to the ethnic nature of this group and its conflicts, the violence in the Kivus from all parties involved has been particularly aimed at civilians, and by the end of 2007 there were more than 500,000 internally displaced persons (IDPs) in the Kivus. Additionally, sexual violence is rampant and seen more as an expected form of payment to soldiers.

## Major Parties Involved and Their Views

### Democratic Republic of Congo (DRC)

The DRC is a nation that has seen almost constant fighting since its creation. After the Second Congo War of 1998, the country saw more localized fighting throughout its territories. North and South Kivu saw very heavy fighting during the Kivu Conflict, which is still not yet formally resolved. The government of the DRC is struggling against the many rebel groups within its territories and has accepted the peacekeeping force of the UN, the MONUSCO, to act within in the many conflicts. Furthermore, the DRC has signed and ratified the Rome Statute in an attempt to allow the ICC to prosecute the war criminals active in the



region. The DRC's own army, the FARDC, is doing its best to stabilize the nation but is also relying on international cooperation for aid in the various conflicts that are now taking its toll on the nation's army and government. The DRC's aim for now is to maintain the peace within their territories and put an end to the bloodshed.

### Forces Democratiques de Liberation de Rwanda (FDLR)

The FDLR is a Hutu rebel group consisting of former members of various Hutu groups active in the Rwandan genocide. The force believes in Hutu nationalism, opposing any Tutsi rule in the region. The FDLR, though being formed of those active in Rwanda has now focused its efforts into the DRC. Here, the force is in active conflict with the DRC's military and the MONUSCO.

Many of the senior members of the FDLR are currently facing trial by various international courts for charges similar to Mr. Mudacumura's. For those not yet arrested or not yet convicted, many have warrants of arrest issued against them. Regardless of this, the FDLR is currently still active, though on a much lesser scale. (Heaton)

### The United Nations

By means of preambulatory clauses in Security Council resolutions, the UN has published their stance of support for the government of the DRC and their animosity towards the rebel groups. The United Nations further wishes to apprehend all rebel leaders and has taken efforts to do so by imposing travel bans on individuals found to be affiliated with rebel groups and referring individuals to be prosecuted by the ICC.

### Timeline of Events

Date	Description of event
September 30 <sup>th</sup> , 2000	Creation of the FDLR in its current state
June 2nd, 2004	Occupation of Bukavu by dissident soldiers, starting the Kivu Conflict
May 9 <sup>th</sup> , 2009	Ekingi and Busuringi attacks take place
December 1 <sup>st</sup> , 2009	Mr. Mudacumura allegedly appointed military commander of FDLR
July 13 <sup>th</sup> , 2012	Warrant of Arrest issued for Mr. Mudacumura

### UN involvement, Relevant Resolutions, Treaties and Events



- The MONUSCO was created on the 1<sup>st</sup> of July, 2010, under Security Council resolution 1925 of the 28<sup>th</sup> of May. The Mission is the first UN Peacekeeping Mission permitted to undertake offensive action within a conflict in the interest of stabilizing the region. The Mission has, however, been widely criticized for its lack of involvement in the Kivu Conflict, allegedly having stood by as rebels overran and took Goma, the capital of North Kivu.
- Security Council Resolution 1596 was adopted unanimously on 18 April 2005, cancelling all other resolutions on the issue. The resolution implemented a stricter arms embargo in attempt to stop the supply of weapons to rebel groups in the DRC. The resolution further imposed a travel ban on all individuals

### Warrant of Arrest

The warrant of arrest that was issued by the ICC for the arrest of Mr. Mudacumura specifies that the Defendant is to be tried for nine counts of War Crimes. The warrant allows the Office of the Prosecutor to investigate Mr. Mudacumura and his actions from December 2009 to September 2010. Any alleged crimes, whether they be under the Rome Statute or not, that do not fall under this time frame are not to be investigated as they do not fall under the jurisdiction of the Court.

### Relevant Clauses of the Rome Statute

Mr Mudacumura is indicted for the indirect co-perpetration of nine counts of War Crimes. This specific form of criminal liability is defined in the Rome Statute under **Article 25 (3)(b)**:

In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

With this in mind, Mr Mudacumura will not be suspected of personally committing the alleged War Crimes, but of ordering the crimes to be committed from a position of command, or in any other form of superiority or control.

**Article 28** is important to this case as it defines the law for criminal responsibility of military commanders. Here, the Rome Statute states that a military commander, or any individual effectively acting as military commander, will be held responsible for crimes committed by the troops under their command.



### **Article 28 (1)(b):**

A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where that military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Under subclause (1)(b) of **Article 28**, the military commander can only be exempted from criminal responsibility if it can be proven that the commander took all measures within their power to prevent the crime, or bring the perpetrators to appropriate authorities. Under **Article 31**, more exceptions to criminal responsibility are provided under the Rome Statute, however in the context of this case, **Article 28** will be the most important.

## **Bibliography**

Heaton, Laura. "Rebel Leader Arrested in Paris, but What Happens Now in Congo? | Enough Project." *Rebel Leader Arrested in Paris, but What Happens Now in Congo?* Enough Project, 13 Oct. 2010. Web. 22 June 2015.

Prunier, Gérard. *From Genocide to Continental War: The 'Congolese' Conflict and the Crisis of Contemporary Africa*. London: Hurst, 2009. Print.

Refugees in DR Congo. Digital image. *Great Photo Journalism*. N.p., n.d. Web. 20 Sept. 2015. <[http://greatphotojournalism.com/christianals\\_series631.html](http://greatphotojournalism.com/christianals_series631.html)>.

"United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)." *UN News Center*. UN, n.d. Web. 22 June 2015.

