



## **Caught by Justice: Trial of Two Rwandan Rebel Leaders Begins in Stuttgart, Germany**

### **Questions and Answers**

**May 2011**

On Wednesday, May 4, 2011, judges in a local court in Stuttgart, Germany, will start hearing evidence against two Rwandan rebel leaders, Ignace Murwanashyaka and Straton Musoni, for war crimes and crimes against humanity carried out thousands of kilometers away, in the Democratic Republic of the Congo (DRC).

This trial will be the first in Germany under its Code of Crimes Against International Law, adopted in June 2002, which integrates the crimes of the Statute of the International Criminal Court (ICC) into German criminal law and allows German courts to investigate and prosecute them wherever they are committed in the world, because of their sheer gravity.

#### **1. Who are Ignace Murwanashyaka and Straton Musoni?**

Ignace Murwanashyaka is a 47-year-old Rwandan national who was the president, legal representative, and supreme commander of the Democratic Forces for the Liberation of Rwanda (Forces Démocratiques de Libération du Rwanda, FDLR), a predominantly Rwandan Hutu armed group active in eastern DRC. He arrived in Germany in 1989, studied economics at the University of Köln, and has lived in Germany ever since. He became politically active in Rwandan Hutu diaspora circles after the genocide in Rwanda in 1994. He was elected president of the FDLR in 2001, after which he took several trips to the DRC to meet with FDLR commanders and subordinates there. He was re-elected in 2005.

Straton Musoni, a 49 year- old-Rwandan national, was the first vice president of the FDLR and has been Murwanashyaka's deputy since 2004.

At the time of their arrest in Germany on November 17, 2009, the two men were among the most senior leaders of the FDLR. Both have remained in custody in Germany pending their trial.

## **2. What is the FDLR rebel movement and where is it operating?**

The FDLR has been operating in the eastern part of the DRC, under various names, following the 1994 genocide against the Tutsi in Rwanda. Some members are believed to have taken an active part in the genocide, which killed more than half a million people in Rwanda.

From its bases in eastern Congo, the FDLR has used military force to seek political change and greater representation for the Hutu in Rwanda.

Over the years, the Congolese government had repeatedly turned to the FDLR (and its predecessor movements) for support in its fight against Congolese rebel groups backed by the current Rwandan government or against the Rwandan army. This situation changed in 2009 after a dramatic shift in political alliances and a rapprochement between the Congolese and Rwandan governments. In January 2009, the Congolese government, together with the Rwandan army and later the UN peace-keeping force in the DRC (MONUC, renamed MONUSCO), began a military offensive aimed at neutralizing the FDLR. This wave of fighting was characterized by attacks against civilians by the FDLR as well as by the Congolese and Rwandan armies.

During 2009, as in previous years, FDLR troops, believed to number about 6,000, conducted widespread and brutal attacks against Congolese civilians. Human Rights Watch has documented numerous deliberate killings of civilians, including women, children and the elderly. FDLR combatants killed their victims with machetes and hoes, and pillaged and burned homes, sometimes with their inhabitants locked inside. FDLR combatants also engaged in [numerous acts of rape and sexual violence](#).

## **3. What are the specific accusations against Murwanashyaka and Musoni?**

In its March 1, 2011, decision accepting the Federal Prosecutor's indictment and assigning the case for trial, the Stuttgart court stated that the two suspects are charged with 26 counts of crimes against humanity and 39 counts of war crimes under the German Code of Crimes against International Law (CCAIL), allegedly committed by the FDLR on Congolese territory between January 2008 and November 17, 2009. Murwanashyaka and Musoni are suspected, along with others, of instigating and ordering the implementation of a strategy under which FDLR troops would create a "humanitarian catastrophe" in eastern Congo, through

systematic attacks against the civilian population. The strategy was allegedly intended to force the international community to react and press the Rwandan government to negotiate with the FDLR.

Murwanashyaka and Musoni are also charged with belonging to a terrorist group (the FDLR), an offense under the German criminal code.

More precise details of the charges against Murwanashyaka and Musoni are not yet known, as the document laying out the charges is not public. The charges will be read in court on the first day of the trial.

#### **4. How could Murwanashyaka and Musoni have committed these crimes when they were not in the DRC?**

Under international law, those who order war crimes and crimes against humanity, as well as those who commit them, are criminally liable. A person in a position of authority can be held responsible for crimes committed by his or her subordinates as a matter of command responsibility (for example, because of their role as military or civilian commanders). Pursuant to this rule, section 4 of the German CCAIL provides: “A military commander or civilian superior who omits to prevent his or her subordinate from committing an offense pursuant to this Act shall be punished in the same way as a perpetrator of the offense committed by that subordinate. [...]”

The FDLR is a highly organized armed group with a clear chain of command. It has a political wing, which was led by Murwanashyaka from Mannheim, Germany until his arrest in November 2009, and a military wing led by General Sylvestre Mudacumura, based in eastern Congo. According to research conducted by Human Rights Watch, Murwanashyaka wielded significant influence over FDLR combatants and was in regular communication with FDLR commanders on the ground in eastern Congo. Regular contact between Murwanashyaka and FDLR military commanders, including General Mudacumura, has been well-documented: for example, between September 2008 and August 2009, the UN Group of Experts on the DRC<sup>1</sup> recorded 240 telephone communications between Murwanashyaka and FDLR commanders in eastern Congo.

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<sup>1</sup> The Group of Experts was established by UN Security Council resolution 1533 in 2004 to assist the Security Council Sanctions Committee in monitoring the implementation of the sanctions regime in the DRC with a specific focus on North and South Kivu and Ituri. See “Final Report of the Group of Experts on the DRC submitted in accordance with paragraph 8 of Security resolution 1857 (2008),” November 23, 2009, para. 92, <http://www.un.org/sc/committees/1533/egroup.shtml> (accessed April 22, 2011).

Several FDLR commanders and lower-ranking combatants have confirmed to Human Rights Watch and others that decisions for the group, including decisions about military operations, were made by their president, Murwanashyaka. In an interview with Human Rights Watch researchers in August 2009, Murwanashyaka confirmed that he played a direct role in the FDLR's chain of command, and that FDLR commanders and combatants treated him as the ultimate "decision-maker"; he said he was "the supreme commander" of the FDLR.

The court in Stuttgart will hear evidence collected by the Federal Prosecutor's office and counter-evidence presented by the defense to establish whether the alleged crimes in the DRC did occur and whether the defendants had effective control over the FDLR troops that engaged in atrocities against civilians.

### **5. Why is this trial taking place in Germany? Are the suspects tried under the principle of universal jurisdiction?**

Both Murwanashyaka and Musoni were residents in Germany and are alleged to have conducted crimes from the territory of Germany. Germany has the legal obligation to investigate and prosecute allegations of war crimes and crimes against humanity against them, under the CCAIL, which integrates crimes under the jurisdiction of the International Criminal Court—war crimes, crimes against humanity, and genocide—into German criminal law.

In the case of Murwanashyaka and Musoni, there is a clear link between Germany and the crimes, as the accused allegedly ordered, or did nothing to stop crimes when they could have done so, from their homes in Germany.

The CCAIL also provides universal jurisdiction to German courts for these crimes, meaning that German courts are competent to try war crimes, crimes against humanity, and genocide even if they were committed abroad, by a non-German national and against a non-German national—that is, even if the crimes had no link with Germany.

German courts are therefore able to proceed with this case on the basis of either jurisdictional principle (territorial or universal).

### **6. Why can't the case be tried in the DRC or Rwanda?**

The judicial system in the DRC is not in a position to handle a case involving the leaders of an armed group that it is still active in the region. Congolese investigators and prosecutors have limited capacity and experience in investigating grave international crimes, especially those based on establishing chain-of-command responsibility rather than direct

perpetration, and the links between orders given at the top and events on the ground. The security of witnesses and judicial staff would also pose an overwhelming challenge for the national judicial system, in the absence of any protection system.

There are also concerns about the ability of Rwandan courts to try the two men in accordance with international fair trial standards. In December 2008, the Regional High Court in Karlsruhe turned down an extradition request from Rwanda for Murwanashyaka on the grounds that he might not receive a fair trial in Rwanda. On the basis of its own research on the justice system in Rwanda, Human Rights Watch does not believe that there are sufficient fair trial guarantees for Germany to extradite Murwanashyaka and Musoni to Rwanda.

It is therefore particularly important for Germany to uphold its legal obligation to prosecute Murwanashyaka and Musoni in the absence of other credible forum to try them.

### **7. Why didn't the ICC take up the case of Murwanashyaka and Musoni?**

The ICC has been conducting investigations in the DRC since 2004, following a referral of the situation by the Congolese president, Joseph Kabila. The ICC has issued arrest warrants for four rebel leaders from the Ituri district, three of whom are on trial in The Hague; the fourth, Bosco Ntaganda, now a serving general in the Congolese army, is still at large in eastern Congo. In September 2008, the ICC prosecutor announced that he was turning his attention to the provinces of North and South Kivu, where the FDLR, as well as other armed groups, are active. In October 2010, the ICC issued an arrest warrant against the executive secretary of the FDLR, Callixte Mbarushimana (see question 11 below).

Under the Rome Statute, which founded the ICC, states parties retain the primary responsibility to investigate and prosecute the crimes under the jurisdiction of the court. The ICC only acts as a court of last resort, when the states with jurisdiction are unable or unwilling to prosecute. In the case of Murwanashyaka and Musoni, the German judicial authorities upheld their legal obligation to investigate allegations of war crimes and crimes against humanity against them. The ICC therefore did not need to step in.

### **8. What is the significance of this case?**

This case sends a strong signal to FDLR leaders and others who have engaged in grave violations of international law that justice will catch up with them, wherever they try to hide. This message is particularly important in light of the significant support that the FDLR has received from diaspora cells and satellites in Europe (Norway, Sweden, Austria, Switzerland,

Denmark, Belgium, and France), North America (Canada and the United States) and Africa (including Burundi, Tanzania, South Africa, Uganda, and Sudan.)

Over the past two decades, national courts in a number of countries have become increasingly willing to investigate and prosecute grave international crimes committed abroad, thus progressively limiting the number of countries where suspected war criminals can expect impunity.

This case is also significant as the first prosecution in Germany under the CCAIL. Until recently, none of the complaints filed by victims and non-governmental organizations had resulted in any judicial action. In the past, German judicial officials were reluctant to conduct the necessary investigations abroad, in the countries where the crimes were committed.

With this case—and an additional case against Rwandan genocide suspect Onesphore Rwabukombe, whose trial started in January 2011 in a local court in Frankfurt<sup>2</sup>—Germany is joining the expanding club of states that are willing to further their commitment to the fight against impunity for grave international crimes by giving jurisdiction to their national courts over these crimes, wherever they are committed. Similar prosecutions have taken place in a number of countries including Austria, Belgium, Canada Denmark, France, the Netherlands, Norway, Spain, Sweden, the United Kingdom, and the United States.

#### **9. What are some of the challenges German judicial officials face with this trial?**

Investigating and prosecuting war crimes and crimes against humanity, especially those that occurred in a foreign country thousands of kilometers away, is a complex exercise, which requires specific knowledge, expertise, and resources. Yet there have been positive precedents, including in other European countries, where national judicial staff have developed innovative and creative responses to address the challenges.

One such innovative practice is the creation of “national war crimes units” of police and prosecutors, who focus on the investigation of grave international crimes, including war crimes, crimes against humanity, genocide, and torture. Belgium, Denmark, the Netherlands, Norway, Sweden, Canada, the United Kingdom, and the United States have such units, and France will soon create one. This model allows police and prosecutors to specialize in techniques for investigating and prosecuting such cases.

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<sup>2</sup> This case is tried under the German criminal code as the crimes, allegedly committed during the genocide in Rwanda in 1994, happened before the adoption of the CCAIL in June 2002.

In April 2009, the German federal police office (*Bundeskriminalamt*) set up a Central Unit for the Fight Against War Crimes and further offenses pursuant to the Code of Crimes Against International Law, based in the State Security Division. The unit has seven permanent investigators, who focus on investigating allegations of war crimes, crimes against humanity and genocide. The Unit cooperates closely with prosecutors in the Federal Prosecutor's office, also dedicated to these cases. This unit and the prosecutors intensively investigated and prepared the Murwanashyaka and Musoni case for trial, including through several missions to the Great Lakes region.

At the trial phase, new challenges will arise. First, the judges of the local court in Stuttgart will have to familiarize themselves with the history of the conflict and crimes in eastern Congo and with a context and cultures that will be foreign to them. The appearance of witnesses coming from the DRC will require careful preparation. Victims and witnesses of serious crimes are likely to require specific protection measures as well as psychological support. The court will also have to ensure that the rights of the accused are scrupulously upheld and that they are afforded all the means to build an effective defense. A final challenge will be to ensure that affected communities in eastern Congo have access to some information about the trial. This may require forms of communication that are unusual for a local German court, such as issuing news releases in languages other than German or making transcripts of testimonies available (when security allows) in the original language spoken by witnesses.

#### **10. How long is the trial going to last?**

The length of the trial is difficult to predict. At this point, hearings are scheduled through the summer of 2011. In light of the complexity of the case, observers predict that the trial is likely to last several months.

#### **11. Wasn't another FDLR leader arrested in France recently?**

On October 11, 2010, French police arrested Callixte Mbarushimana, the executive secretary of the FDLR, acting on an arrest warrant issued by the ICC. Mbarushimana is wanted by the ICC on charges of crimes against humanity (murder, torture, rape, and inhumane acts) and war crimes (attacks against the civilian population, destruction of property, murder, torture, rape, inhumane treatment, and persecution) allegedly committed in eastern DRC in 2009. The prosecutor of the ICC has said he is considering including additional charges against Mbarushimana for incidents that took place in 2010, evidence permitting. Mbarushimana was transferred to The Hague at the end of January. The ICC's hearing to determine whether there is sufficient evidence to send his case to trial is scheduled to start on July 4.

Mbarushimana had moved into the leadership role of the FDLR following the arrest of Murwanashyaka and Musoni in Germany. He had been living in France since 2003 and assumed his functions as executive secretary of the FDLR from there. Unlike Germany, France did not have national legislation giving its courts jurisdiction over the crimes he is accused of committing in his role as a leader of the FDLR until August 2010, when ICC implementing legislation was finally passed by the French parliament.<sup>3</sup>

## **12. Has the FDLR stopped committing crimes now that several of its leaders have been arrested?**

The arrest of three of the FDLR's top political leaders significantly weakened the group's political wing and its support networks outside of the Great Lakes region. With members of the diaspora no longer willing to take up official posts with the FDLR, military leaders based in eastern Congo have taken over key political positions. The arrests, together with ongoing military pressure and efforts by the UN's Disarmament, Demobilization, Reintegration, Rehabilitation, and Repatriation (DDRRR) program, contributed to the departure from the group of 2,360 FDLR combatants and children associated with the group, including 81 officers, since January 2010. Yet the group remains a highly organized movement with an estimated 2,500 to 3,000 combatants and a clear structure and chain of command.

Many of the hardliners are still operating in the forests of eastern Congo, where they continue to commit atrocities and forcibly recruit new combatants, including children, to replenish their ranks. Human Rights Watch research identified at least 83 Congolese children under 18, some as young as 14, recruited in the last several months of 2010 by the FDLR. According to UN sources, at least 300 new combatants were recruited in February 2011 alone, mostly around one of the FDLR's main training camps in Walikale territory, North Kivu Province.

FDLR combatants continue to kill, rape, abduct, kidnap for ransom, and burn civilians' homes, leading to the displacement of thousands of civilians. In one of the worst recent incidents, at least 53 women and girls were raped by FDLR combatants in southern Fizi, South Kivu Province, between January 19 and 21.

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<sup>3</sup> "France: Rwandan Rebel's arrest sends strong message," Human Rights Watch news release, October 11, 2010, <http://www.hrw.org/en/news/2010/10/11/france-rwanda-rebel-s-arrest-sends-strong-message>.