

Germain Katanga and Mathieu Ngudjolo Chui Face Justice at the ICC

The International Criminal Court (ICC) opened its second trial on November 24, 2009, against Germain Katanga and Mathieu Ngudjolo Chui. The men are former leaders of armed rebel movements from the Ituri district in the Democratic Republic of Congo (DRC). The ICC is prosecuting them for war crimes and crimes against humanity allegedly committed in the context of a massacre in the Iturian village of Bogoro in February 2003. This trial is the first to pursue Ituri militia leaders on charges of sexual crimes among other alleged crimes committed during the conflict in DRC.

BACKGROUND

Laurent-Désiré Kabila's 1996-97 campaign to overthrow the repressive rule of Mobutu Sese Seko began a decade of war in the DRC, formerly known as Zaire. A military stalemate and formal foreign occupation by Ugandan and Rwandan forces came to an end with the signing of peace accords in 2002.

But fighting continued in the Ituri district in the country's northeast between rival ethnic militia groups, namely the Union of Congolese Patriots (UPC) of Thomas Lubanga and the Party for Unity and Safeguarding of the Integrity of Congo (PUSIC) of Chief Yves Kahwa, representing Hema ethnic communities, and the Patriotic Resistance Forces of Ituri (FRPI) and the National Integration Front (FNI) representing Lendu ethnic communities. Land tenure rivalries and continued interference of Rwanda and Uganda motivated by economic interests and strategic relations contributed to ongoing clashes between these rebel movements from 1999 to 2005.

Mathieu Ngudjolo and Germain Katanga commanded the FRPI and FNI militia groups respectively. In this capacity they are alleged to have jointly committed numerous war crimes and crimes against humanity over a series of attacks against civilians in the context of their ongoing clashes with rival Hema militias.

The DRC ratified the Rome Statute on March 30, 2002, and referred the situation of crimes committed in the DRC to the ICC prosecutor on April 19, 2004. Katanga had been in Congolese custody pending an ongoing investigation by Congolese military justice officials since March 2005. But the ICC issued a sealed arrest warrant against him on specific charges on July 2, 2007, and the Congolese authorities transferred him to The Hague on October 17, 2007.

Katanga's co-defendant, Ngudjolo—who became a colonel in the DRC's army following peace talks with the government—was subsequently arrested by Congolese authorities and transferred to The Hague on February 6, 2008, pursuant to a sealed arrest warrant the ICC issued on July 6, 2007.

CHARGES AGAINST NGUDJOLO AND KATANGA AT THE ICC

The ICC prosecutor charged Katanga and Ngudjolo with six counts of war crimes and three counts of crimes against humanity allegedly committed against the civilian ethnic Hema population in the Iturian village of Bogoro during an attack the FRPI and FNI carried out on February 24, 2003. Although two individual arrest warrants were issued against them separately, the court's trial chamber joined the cases on March 11, 2008. After the men appeared before the court for confirmation of charges hearings from June 27 to July 16, 2008, the pre-trial chamber confirmed the following charges for trial:

- **Three counts of crimes against humanity:** murder, rape, and sexual slavery;
- **Seven counts of war crimes:** willful killings, rape, sexual slavery, pillaging, destruction of property, directing an attack against civilians, and using children younger than 15 to actively participate in hostilities.

HIGHLIGHTS FROM THE KATANGA-NGUDJOLO CASE

Victim Participation

For the trial against Katanga and Ngudjolo, the ICC has granted victim status to 345 individuals, distinguishing victims who were child soldiers from others. As such, two legal representatives will participate in the trial on behalf of the victims. The trial will last several months, and 26 witnesses are expected to participate.

Between Admissibility and Complementarity

The court's preliminary deliberations on whether the Katanga case was admissible demonstrate the need for greater reflection on the dynamics of complementarity between Congolese courts and the ICC. The concept of "complementarity" refers to the ICC's fundamental principle that the court will only intervene when national legal systems are unable or unwilling to prosecute serious international crimes prescribed by the Rome Statute.

In February 2009, Katanga filed a motion challenging the admissibility of his case. Katanga's defense invoked the principle of complementarity to argue that he could be tried before Congolese courts but not before the ICC.

Trial Chamber II held a hearing on June 1, 2009, during which the defense, the prosecutor, and a delegation representing the Congolese government presented their respective arguments on the issue. This marked the first occasion in which a state party to the Rome Statute participated in an ICC hearing. In their remarks, the members of the DRC delegation acknowledged that the Congolese military court

system opened an investigation into the crimes Katanga allegedly committed. But the Congolese representatives emphasized that this investigation only concerned Katanga's potential role in the murder of United Nations peacekeepers in Ituri and not the February 2003 Bogoro massacre, which constitutes the focus of the ICC's case against him. Given ongoing insecurity in Ituri and the time that has lapsed since 2003, the DRC delegation posited that the Congolese justice system was not able to conduct an effective inquiry into the Bogoro massacre and expressed its support for the ICC to continue with its case against Katanga.

The Trial Chamber rejected Katanga's inadmissibility motion on June 12, 2009, and the Appeals Chamber upheld the decision on September 25, 2009. In reaching this conclusion, the court followed the reasoning put forward by the government delegation, accepting that because no trial was pending against Katanga before the Congolese justice system and because the DRC courts are unable to investigate the Bogoro massacre, the ICC is able to continue with its case against Katanga while still respecting the principle of complementarity.

THE BOGORO MASSACRE IN THE CONTEXT OF ALLEGED FRPI/FNI CRIMES IN ITURI

Bogoro is a village located about 20 km from Bunia in Ituri. On February 24, 2003, FNI and FRPI militias of the Lendu ethnic group launched an attack there against mainly civilians of the Hema ethnic group. At least 200 civilians were killed during the attack. Survivors were trapped in a building with corpses. Women and girls were abducted and forced into sexual slavery.

The ICC's charges against the two men who led the militias do not reflect the extent of crimes committed by the FRPI and the FNI, thereby showing the limits of the court's scope. Without being exhaustive, the following is a list of places where the FRPI and FNI coalition of rebel forces have committed major mass atrocities against civilians; all of these are well documented by human rights reports.

- September 5, 2002, in Nyakunde;
- March 6 and May 11, 2003, in Bunia;
- July 6, 2003, in Kasenyi;
- May 31, 2003, in Tchomia;
- March 4, 2003, in Mandro;
- September 19, 2004, in Lengabo.

In addition, the FRPI/FNI coalition is alleged to have murdered nine UN peacekeepers in February 2005.

Beyond the trials currently under way at the ICC, the other alleged perpetrators of serious crimes in Ituri—in the context of the wars and rebellions that have raged in DRC for more than a decade—must be held accountable for their acts. Thus the DRC government should engage a national dialogue on transitional justice needs to address the massive crimes of the past and develop a clear policy to fight against impunity using national courts in synergy with other non-judicial transitional justice.

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