

Statement of the Women's Initiatives for Gender Justice

Appeals Withdrawn by Prosecution and Defence

The Prosecutor vs. Germain Katanga

26 June 2014

Yesterday, Defence Counsel for Germain Katanga (Katanga) and the Office of the Prosecutor (OTP) at the International Criminal Court (ICC) both filed notices withdrawing their appeals of the judgement issued by Trial Chamber II.¹

On 7 March 2014, Katanga was convicted by a majority of the Trial Chamber as an accessory to the war crimes of directing an attack against a civilian population, pillaging, and destruction of property, as well as murder as a war crime and a crime against humanity.² The Chamber unanimously acquitted Katanga as an accessory to rape and sexual slavery as war crimes and crimes against humanity, as well as of the war crime of using child soldiers.³

Katanga was convicted as the commander of the Ituri-based Ngiti militia from Walendu-Bindi, which at the time of the alleged crimes was also known as the *Force de résistance patriotique en Ituri* (FRPI).

Having reviewed the judgement, on 9 April 2014 the Prosecution filed a notice stating its intention to appeal Katanga's acquittal on the charges of rape and sexual slavery, and the 'legal, procedural and factual findings that led to those acquittals', for reasons to be elaborated later in a separate filing.⁴

The Women's Initiatives for Gender Justice is therefore extremely concerned and disappointed by the Prosecution's decision to drop its appeal regarding the acquittal of Katanga for the acts of sexual violence committed by troops under his command in their attack on the village of Bogoro in February 2003.

In many respects, it is easy to comprehend the decision by the Defence to withdraw its appeal of the judgment and to forego an appeal of the sentencing decision. Katanga will be eligible to apply for early release in September 2015⁵ and will likely be out of prison within a much shorter time frame than if he were to be caught-up in a lengthy appeals process.

However, it is unclear why the Prosecution has withdrawn its appeal given it had no obligation to do so in response to the withdrawal of the appeal by Defence Counsel, and bearing in mind the significant impact of this withdrawal on the victims of these crimes in the Katanga case, as well as the serious implications for the ICC, international justice and jurisprudence on crimes of sexual violence.

In our view, yesterday's statement by Katanga accepting the judgment, along with his expression of regret to victims, does not seem like an obvious or compelling basis for

¹ ICC-01/04-01/07-3497; ICC-01/04-01/07-3498.

² ICC-01/04-01/07-3436, p 709-710.

³ ICC-01/04-01/07-3436, p 710.

⁴ ICC-01/04-01/07-3462.

⁵ Article 110(3), Rome Statute.



withdrawing the appeal on Katanga's acquittal of charges for rape and sexual slavery.⁶ These concessions, in our view, do not readily explain or justify a decision not to pursue accountability for acts of sexual violence in this case, and not to invest in sound jurisprudence in relation to these crimes.

Having monitored this case since its investigation phase in 2006, the Women's Initiatives for Gender Justice raised concerns with the OTP during the investigation and pre-trial stages, regarding its crucial decision to limit the witness pool on sexual violence, and ultimately to proceed to trial with only three primary witnesses for these crimes.

In addition, from the early stages of this case, there were indications that some of the Judges considered the evidence linking the charges of rape and sexual slavery to Katanga to be insufficient. In the confirmation of charges decision, the sexual violence charges were the only crimes confirmed by a majority of judges and not by the full bench.⁷ This was an early and important indication that the evidence and legal arguments proving Katanga's role in the commission of rape and sexual slavery would need to be refined and reinforced at trial.

Unfortunately, based on the judgment it appears that these issues were not fully addressed during the trial, and certainly it is clear that the Prosecution was not ready in this case to address the additional judicial scrutiny uniquely, but predictably, applied to acts of sexual violence.

Based on the Women's Initiatives review of the judgment, we agree with the OTP's filing on 9 April 2014 that there appear to be errors of fact and law regarding the adjudication of rape and sexual slavery in this case, suggesting solid grounds for appeal. In light of this, the Prosecution's decision to withdraw from this process is highly unexpected. The judgment, now uncontested, is a step backwards in the body of jurisprudence on sexual violence, and we are concerned about the possible ramifications for the ICC in its future cases.

Case background

Katanga was tried jointly with Mathieu Ngudjolo Chui (Ngudjolo), constituting the Court's second trial, as well as the second case, after the Lubanga case, arising from the DRC Situation.⁸ It was the first case in which crimes of sexual violence, including rape and sexual slavery, had been charged. During the trial, the case centred on Katanga and Ngudjolo's alleged indirect co-perpetration in orchestrating an attack on the village of Bogoro in the region of Ituri on 24 February 2003, as commanders of the Ngiti combatants from Walendu-Bindi and the Lendu combatants from Bedu-Ezekere, respectively.⁹ On 21 November 2012, the majority of Trial Chamber II severed the case against Katanga and Ngudjolo and notified the parties of a potential recharacterisation of the mode of liability with which Katanga was charged.¹⁰ On 18 December 2012, the Chamber acquitted Ngudjolo of all charges.¹¹

⁶ ICC-01/04-01/07-3497-AnxA.

⁷ ICC-01/04-01/07-717, p 211-212.

⁸ The cases were joined on 10 March 2008. ICC-01/04-01/07-257.

⁹ The Prosecution had charged and the Pre-Trial Chamber had confirmed that at the time of the attack, Katanga and Ngudjolo were the alleged commanders of the *Force de résistance patriotique en Ituri* (FRPI) and the *Front de nationalistes et intégrationnistes* (FNI), respectively.

¹⁰ ICC-01/04-01/07-3319. In this decision, the majority of Trial Chamber II (Judge Van den Wyngaert dissenting) notified the parties and participants, pursuant to Regulation 55 of the Regulations of the Court, of a potential recharacterisation of the facts underlying the form of criminal responsibility with which Katanga was charged,



Following the judgement issued on 7 March 2014,¹² Katanga was sentenced to 12 years' imprisonment by a majority of Trial Chamber II, on 23 May 2014.¹³ In the same decision, the Trial Chamber also ordered that the six years and eight months Katanga had already spent in ICC detention, since 18 September 2007, were to be deducted from his sentence.

For further comments, please contact the Women's Initiatives for Gender Justice:

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For more information about this case please see:

- The first Special Issue of the Legal Eye on the ICC on the Katanga judgement, available at: <http://www.iccwomen.org/WI-LegalEye5-14/LegalEye5-14.html>
- The statement by the Women's Initiatives for Gender Justice on the sentencing of Katanga, 23 May 2014, available at: <http://www.iccwomen.org/documents/Statement-Katanga-Sentencing.pdf>
- The statement by the Women's Initiatives for Gender Justice on the conviction of Katanga, 7 March 2014, available at: http://www.iccwomen.org/news/berichtdetail.php?we_objectID=215
- *Gender Report Card 2013*, p 92-104, available at: <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2013.pdf>
- *Gender Report Card 2012*, p 240-242, available at: <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2012.pdf>;
- *Gender Report Card 2011*, p 225-234, available at: <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-International-Criminal-Court-2011.pdf>;
- *Gender Report Card 2010*,¹⁴ p 160-178, available at: http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4_Final-version-Dec.pdf;
- *Gender Report Card 2009*, p 93-140, available at: http://www.iccwomen.org/news/docs/GRC09_web-2-10.pdf;

from indirect co-perpetration pursuant to Article 25(3)(a) of the Statute to accessory liability under Article 25(3)(d).

¹¹ ICC-01/04-02/12-3-tENG, p 197.

¹² ICC-01/04-01/07-3436.

¹³ ICC-01/04-01/07-3484.

¹⁴ For a description of the Prosecution's opening statements in this case, see *Gender Report Card 2010*, p 161, available at http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4_Final-version-Dec.pdf.



- *Gender Report Card 2008*, p 52-91, available at:
http://www.iccwomen.org/news/docs/GRC08_web4-09_v3.pdf;
- For further discussion of the decisions and filings regarding the use of Regulation 55 in the Katanga case, see *Modes of Liability: A review of the International Criminal Court's current jurisprudence and practice*, Women's Initiatives for Gender Justice Expert Paper, November 2013, p 116- 130, available at:
<http://www.iccwomen.org/documents/Modes-of-Liability.pdf>;
- Read more about the trial judgement acquitting Mathieu Ngudjolo Chui in the Women's Initiatives' series of Special Issues of the Legal Eye on the ICC. First Special Issue available at: <http://www.iccwomen.org/news/docs/WI-LegalEye2-13-FULL/LegalEye2-13.html>; Second Special Issue available at:
<http://www.iccwomen.org/news/docs/WI-LegalEye4-13-FULL/LegalEye4-13.html>;
Third Special Issue available at: <http://www.iccwomen.org/news/docs/WI-LegalEye1-14/LegalEye1-14.html>
- Read the statement by the Women's Initiatives for Gender Justice on the opening of the trial against Katanga and Ngudjolo, 23 November 2009, available at:
<http://www.iccwomen.org/news/docs/Katanga-Statement.pdf>

