

First acquittal by the ICC

The Prosecutor v. Mathieu Ngudjolo Chui

18 December 2012

Today, Trial Chamber II of the International Criminal Court (ICC) acquitted Mathieu Ngudjolo Chui (Ngudjolo), alleged commander of the Ituri-based militia group *Front de nationalistes et integrationnistes* (FNI) for war crimes and crimes against humanity. This decision is the second trial judgement to be issued by the ICC following the earlier conviction of Thomas Lubanga Dyilo in March of this year, and is the first acquittal issued by the ICC.

“The judges today found that it was not proven beyond a reasonable doubt that Mr Ngudjolo was the commander of the Lendu combatants from Bedu-Ezekere during the attack on Bogoro in Ituri, Eastern DRC on 24 February 2003, as charged by the ICC,” said Brigid Inder, Executive Director of the Women’s Initiatives for Gender Justice.

“While Mr Ngudjolo was therefore found not guilty, the judges stated that this did not signify that crimes had not been committed and that today’s finding did not call into question the suffering of the population,” said Inder.

The Chamber recognised that Ngudjolo was a chief commander of the FNI, however according to the judges the evidence presented by the Prosecution during the trial supported a finding that he held the role of a commander in March 2003 - after the February attack on Bogoro.

The Trial Chamber acquitted Ngudjolo of seven counts of war crimes, and three counts of crimes against humanity, including rape and sexual slavery. Ngudjolo was charged in his capacity as leader of the FNI pursuant to Article 25(3)(a) of the Rome Statute. Ngudjolo was tried together with Germain Katanga (Katanga), the alleged leader of the *Forces de resistance patriotique en Ituri* (FRPI). As of 31 August 2012, a total of 364 victims, 246 (67.6%) of whom are male and 117 (32.1%) of whom are female, were recognised to participate in the trial.¹

“With this decision, the judges affirmed that crimes occurred in the attack on Bogoro village and as such the authorities in the DRC and the ICC should continue to seek to bring to justice those responsible,” said Brigid Inder. “The judges cited evidence indicating Mr Ngudjolo acted as a commander. However, they found that he exercised a command role in March 2003 and as such there was insufficient evidence to link him to the February attack on Bogoro. Today’s acquittal is a devastating outcome for the Ituri communities in eastern DRC and for the victims/survivors of the Bogoro attack,” said Inder.

¹ Figures provided by the Victims Participation and Reparations Section (VPRS) to the Women’s Initiatives for Gender Justice by email dated 20 September 2012. See further *Gender Report Card 2012*, p 270.



The case against Ngudjolo was the first case to come to judgement in which crimes of sexual violence including rape and sexual slavery had been charged.

In 2006 and 2007 the Women's Initiatives carried out extensive documentation of gender-based crimes allegedly committed by a range of militias, including the FNI and FRPI, operating primarily in the Ituri region.

"Women we interviewed described horrific attacks, rapes, gang rapes and enslavement. Many of the women who reported attacks allegedly committed by the FNI described being raped in front of family members including their children. Several of those we interviewed reported losing consciousness as a result of the rape, many suffered extensive injuries and some became pregnant. Women reported being attacked in their homes, and others were abducted and enslaved allegedly in camps run by the FNI," said Inder.

"It is too early to be able to digest the entire judgement and the concurring opinion. We will carefully read and review the full text and publish our analysis in due course," said Inder.

The Court will hear submissions today from the Prosecution and Defence as to whether Ngudjolo should be released pending an appeal of this decision. Prosecutor Fatou Bensouda stated in today's hearing that her office is seeking for Ngudjolo to remain in custody.

The case - background

Arising from the DRC Situation, the case against Ngudjolo centred on an attack on the village of Bogoro in the Ituri region on 24 February 2003 alleged by the Prosecution to have been jointly carried out by the *Front de nationalistes et integrationnistes* (FNI), of which Ngudjolo was the alleged commander, and the *Force de resistance patriotique en Ituri* (FRPI), of which Germain Katanga (Katanga) was the alleged commander. The cases against Ngudjolo and Katanga were joined by Pre-Trial Chamber I in March 2008,² but severed by a majority of Trial Chamber II during the deliberations phase in November 2012.³ The Trial Chamber will be hearing submissions on changing the mode of liability under which Katanga is charged, and is expected to rule on his case at a later date.

Ngudjolo and Katanga were both charged with seven counts of war crimes: rape, sexual slavery, using children under the age of 15 to take active part in the hostilities, directing an attack against a civilian population, wilful killings, destruction of property and pillaging.⁴

² The cases were joined on 10 March 2008. ICC-01/04-01/07-257.

³ Ngudjolo and Katanga were tried jointly until the majority of Trial Chamber II, with Presiding Judge Van den Wyngaert dissenting, severed the cases in November 2012, during the deliberation phase at the very end of the trial. The case was severed in light of the Trial Chamber's decision to invoke Regulation 55 of the Regulations of the Court in order to add an alternative mode of criminal responsibility for Katanga (Article 25(3)(d)), which it did not find applicable to Ngudjolo. The severance was made to ensure Ngudjolo received a fair trial, in light of the potential delays to be occasioned in the Katanga proceedings. ICC-01/04-01/07-3319. It is not yet known when the trial judgement against Katanga will be delivered.

⁴ Pursuant to Articles 8(2)(b)(xxii), 8(2)(b)(xxvi), 8(2)(b)(i), 8(2)(a)(i), 8(2)(b)(xiii) and 8(2)(b)(xvi).



They were also charged with three counts of crimes against humanity: rape, sexual slavery and murder.⁵ Both Katanga and Ngudjolo were charged pursuant to Article 25(3)(a).⁶

The Prosecution had alleged that Ngudjolo was the commander of the Lendu combatants in Bedu-Ezekere, which participated in the Bogoro attack jointly with the Ngiti group led by Germain Katanga,⁷ and that Ngudjolo had been present during the attack on Bogoro. The Defence had argued that Ngudjolo could not be held responsible for the attack in Bogoro because he was working as a nurse at the time, but the Chamber found that Ngudjolo's status as a nurse did not necessarily mean that he did not also occupy a position of authority within the group of combatants of Bedu-Ezekere.

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For more information about this case please see:

- *Gender Report Card 2012*, available at <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2012.pdf>; *Gender Report Card 2011*, available at <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-International-Criminal-Court-2011.pdf>; *Gender Report Card 2010*, available at http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4_Final-version-Dec.pdf; *Gender Report Card 2009*, available at http://www.iccwomen.org/news/docs/GRC09_web-2-10.pdf; *Gender Report Card 2008*, available at http://www.iccwomen.org/news/docs/GRC08_web4-09_v3.pdf
- For a detailed description of the closing arguments in the case against Katanga and Ngudjolo see *Gender Report Card 2012*, p 224-247, available at <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2012.pdf>
- Over the course of the Prosecution's case, three female witnesses testified about sexual violence. For a detailed description of their testimony see *Gender Report Card 2010*, p 165-176, available at http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4_Final-version-Dec.pdf;

⁵ Pursuant to Articles 7(1)(g) and 7(1)(a).

⁶ In the decision severing the cases against Ngudjolo and Katanga in November 2012, Trial Chamber II gave notice to the parties and participants that it planned to invoke Regulation 55 concerning a possible legal recharacterisation of the facts related to the mode of responsibility pursuant to which Katanga was charged from Article 25(3)(a) (indirect co-perpetration) to Article 25(3)(d)(ii) (common purpose liability), excepting the crime of conscripting and using child soldiers. The decision also severed the Ngudjolo case, as it would be unaffected by the proposed recharacterisation. ICC-01/04-01/07-3319.

⁷ ICC-01/04-01/07-T-336-ENG, p 11 lines 15-19.



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

