

## ***THE CASE OF THE PROSECUTOR V. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI AT THE ICC***

### Background of the Conflict in Ituri

Between December 2002 and January 2003, combatants in the Ituri region of the Democratic Republic of Congo (DRC) have slaughtered at least 8,000 civilians. Some 600,000 others were forced to flee their home because of the conflict.

The region of Ituri has long been driven by rebel groups' fighting over its rich natural resources, including gold, diamonds and oil. The conflict is exacerbated because combatants are armed and often directed by the governments of Rwanda and Uganda. Despite a peace accord which officially ended the DRC conflict in July 2003, violence in Ituri continues. There are reports of forced displacement of people, sexual violence, killings and continued recruitment and use of child soldiers.

There are three major ethnic groups involved in the conflict in Ituri: the Hema, the Lendu, and the Ngiti. The Hema formed the Union des Patriotes Congolais (UPC) under Thomas Lubanga Dyilo. The Ngiti and some Lendu formed the Force de Résistance Patriotique en Ituri (FRPI). In 2002, Germain Katanga became the top commander of all FRPI forces. Some Lendu formed the Front des Nationalistes et Intégrationnistes (FNI) led by Mathieu Ngudjolo Chui. The FNI and the FRPI formed an alliance, known as the FNI/FRPI, in early 2003.

In March 2004, the DRC Government referred the situation on all of its territory, including Ituri, to the International Criminal Court (ICC). In June 2004, the Office of the Prosecutor (OTP) opened its investigation into crimes committed in the DRC since July 1, 2002. The Prosecutor has initiated three cases arising from the situation in the DRC: the case of Thomas Lubanga Dyilo, the case of Germain Katanga and Mathieu Ngudjolo, Chui, and the case of Bosco Ntaganda.

### Nature of the Charges

Germain Katanga and Mathieu Ngudjolo Chui are accused of having deliberately planned, orchestrated and ordered their respective troops to execute their plan to attack and wipe out the village of Bogoro, in the Ituri district of the DRC on February 24, 2004. Bogoro was a village controlled by the UPC, a rival of both the FRPI and the FNI. It was considered strategic because it blocked the FRPI and FNI soldiers from the road leading to the key city of Bunia.

Katanga and Ngudjolo face six counts of war crimes (willful killing, inhuman treatment, using children under the age of fifteen years to participate actively in hostilities, sexual slavery, intentionally directing attacks against civilians and pillaging) and three counts of crimes against humanity (murder, inhumane acts and sexual slavery).





## Status of the Proceedings

On March 10, 2008, ICC judges decided to join the cases of Katanga and Ngudjolo because of the suspects' alleged joint criminal participation in the attack on Bogoro. Both will be given the same rights as if they were being tried individually.

The confirmation of charges hearing against Katanga and Ngudjolo started on June 27, 2008 and ended on July 16, 2008. By September 26, 2008, the judges will issue their decision whether to confirm the charges against the two suspects.

## Biographical Information about Germain Katanga

Germain Katanga was born on April 28, 1978 in Mambasa, in the Ituri district of the DRC. He is an ethnic Ngiti. He is married and has adopted several orphans from Ituri. He speaks Swahili, Lingala and French.

He was the top commander of the FRPI from early 2003 and in late 2003 became president of the FRPI. He was appointed to the rank of General in the Forces Armées de la République Démocratique du Congo (FARDC) on December 11, 2004 as part of a peace process.

He was arrested by the Congolese authorities in early March 2005 in relation to an attack against the Mission of the United Nations in the Democratic Republic of Congo (MONUC) in Ituri on February 25, 2005, in which nine peacekeepers were killed. He was detained in Kinshasa from early March 2005 until his surrender to the ICC. On November 1, 2005, the UN Security Council imposed a travel ban and asset freeze on Katanga for violating an arms embargo.

The ICC issued an arrest warrant for him on July 2, 2007. On October 17, 2007, the Congolese authorities surrendered him and transferred him to the ICC.

## Biographical Information about Mathieu Ngudjolo Chui

Mathieu Ngudjolo Chui was born on October 8, 1970 in Bunia, in the Ituri district of the DRC. He is an ethnic Lendu. He is married and has six children. He speaks Lingala, French, Swahili and Kilendu.

Under the dictatorship of Mobutu Sésé Seko, Ngudjolo served as a corporal in the Forces Armées Zaïroises (FAZ), now the Congolese Army. In 1996, when the First Congo War started, he left the FAZ. He completed medical studies and worked in centers for leprosy and tuberculosis patients.

In August 2002, he became the militia commander of Lendu troops in and around Zombe. In 2003, he was appointed as one of the top leaders of the Allied forces of the FNI and of the FRPI army which settled in Bunia.

On October 23, 2003, he was apprehended in Bunia by MONUC and surrendered to the Congolese authorities to face accusations for the murder of a member of an armed political group. He was released in December 2004 after being acquitted by the Tribunal de Grande Instance in Bunia.





In 2005, he helped launch the Mouvement Révolutionnaire Congolais (MRC) and became its president. That same year, the UN Security Council imposed a global travel ban and asset freeze on Ngudjolo.

In mid-2006, he signed an agreement with the Congolese government for the disarmament and integration of his forces into the national army in exchange for a general amnesty. He was appointed colonel in the FARDC, based in Bunia.

On July 6, 2007, the ICC issued a sealed arrest warrant. On February 6, 2008, the Congolese authorities arrested and surrendered him to the ICC.

## The Alleged Attack

According to the OTP, on February 24, 2004, Katanga and his 1,000 FRPI soldiers entered the village of Bogoro. 300 FNI soldiers also joined the attack and Ngudjolo gave them instructions over the radio. The village was completely destroyed and pillaged. At least 200 civilians were killed. Many women were raped and forced into sexual slavery. Many civilians were locked and some killed inside the Bogoro Institute which was already full of dead bodies of other civilians who were killed that day. The militia forced civilians to call out to others in hiding, who were killed when they showed themselves. The militia used children under the age of 15 who were trained in the FRPI and FNI camps to commit these crimes. After the attack, Katanga and Ngudjolo joined their troops in the village to celebrate their victory.

## The OTP's Allegations of a Common Plan

The OTP alleges that the planning of the Bogoro attack took place at Katanga's residence at the end of 2002 and early 2003. Ngudjolo did not attend the planning meetings but was represented by Commander Boba Boba. Katanga provided his commanders with ammunition for the attack. On the eve of the attack, Katanga's commanders, in his presence, told the FRPI soldiers to exterminate the UPC. Commander Bahati, in Ngudjolo's presence, outlined the plan of attack to the FNI soldiers. Ngudjolo told Commander Bahati that he (Ngudjolo) would lead the attack. The plan was to eliminate every Hema.

## Summary of Confirmation of Charges Hearing

From June 27 to July 16, Pre-Trial Chamber I held the confirmation of charges hearing for Katanga and Ngudjolo. The confirmation hearing is not a trial; it is a process equivalent to an indictment in the common law system. The judges are only deciding whether or not there is enough evidence to support the charges against the two defendants and justify a trial; they are not deciding on their innocence or guilt. The following is a summary of each day of the confirmation hearing:

**June 27:** The OTP outlined the criminal responsibilities of the defendants. It argued that Katanga and Ngudjolo were co-perpetrators in planning the attack on Bogoro. It further affirmed that each are responsible for the crimes committed by both the FRPI and FNI combatants in Bogoro, regardless of whether or not they each had authority over the other's subordinates.



As provided by the Rome Statute, the victims of crimes are able to participate in the proceedings. The legal representatives of victims noted that the victims wished to insist that it would be too simplistic to consider the attack on Bogoro as being the responsibility of Katanga and Ngudjolo only. The victims were convinced that the two suspects are just the tip of the iceberg and that there was complicity or active coercion on the part of the Ugandan and Rwandan governments. The victims also wished to insist on the fact that the attacks in Bogoro should not be considered just an ethnic conflict, but rather a struggle to control natural resources.

**June 30:** The Defense for Ngudjolo stated that Ngudjolo denied the facts as alleged by the OTP. The Defense said it was not in a position to present evidence yet. Making a reference to Thomas Lubanga's case, it affirmed the obligation of the OTP to produce both exculpatory and incriminating evidence to the Defense. (In the Lubanga case, the judges of the Trial Chamber decided to halt the trial because of the Prosecution's failure to release over 200 documents containing exculpatory material that may show Lubanga's innocence, mitigate his guilt, or affect the credibility of the prosecution evidence.) The Defense further commented that challenging the Prosecution's evidence risked being impossible if the OTP only provides the Defense with summaries of the evidence.

The Defense for Katanga stated that it would not make an opening submission and that it would reserve its position until the trial.

**July 2:** The Defense for Katanga brought up a number of issues concerning the admissibility of documents of evidence that the OTP intended to use for the confirmation hearing. In particular, the Defense asked that Katanga's statement taken before the DRC military court on January 26, 2006 be excluded; that the interview of a witness who is now dead not be admissible; that a video of Katanga be excluded; and that the manuscript of a dead witness be inadmissible.

The OTP and the legal representatives of victims responded to the Defense's comments.

**July 3-4:** The OTP presented evidence showing that Ngudjolo and Katanga, as co-perpetrators, planned, ordered and executed the attack on Bogoro.

The OTP then gave details of the nature of the crimes against humanity and war crimes committed in Bogoro.

The OTP concluded by arguing that the evidence shows that the suspects committed the alleged crimes at Bogoro as co-perpetrators of a common plan or ordered the attack and its underlying crimes. The OTP argued that the co-perpetrators satisfied the requirements for intent and knowledge of each and every charge. It argued that the crimes are indivisible and both co-perpetrators had joint control over the crimes. Thus, both co-perpetrators are jointly responsible for creating the commission of the crimes.

**July 7:** The legal representatives of victims first introduced its evidence concerning the preparation of the attack on Bogoro and the victims' testimony as it relates to this. Second, it introduced evidence concerning the crimes against humanity committed there and how the represented victims suffered as a result.



**July 9:** Katanga decided that he did not wish to appear until the end of the confirmation hearing and requested a waiver of his right to appear before the Court. The reason for his absence was that he was tired and his morale was low because he had not been able to see his wife since his arrest and had never seen his last born child. The Defense insisted that his absence should not be seen as blackmail.

**July 11:** The judges granted Katanga's request to waive his right to appear before the Court. They determined that he was fully aware of the consequences of his actions and that his absence would not prejudice the proceedings.

The Defense noted that Katanga was charged for co-perpetration and for indirect perpetration. The Defense argued that joining the concepts of co-perpetration and indirect perpetration would create an overly broad notion of culpability where Katanga would become responsible for his subordinates' actions, but also for the actions of their subordinates and the subordinates of his co-perpetrator, Ngudjolo.

**July 14:** The Defense for Ngudjolo did not present evidence in its submissions. Rather, it argued that the OTP's evidence is neither reliable, due to the sources, nor had much probative value. The Defense made some objections in regards to the witnesses called by the OTP; the interviewing of some minors by the OTP without the presence of any responsible adults; the use of uncorroborated summaries; the use of photos which show the scars of certain witnesses; the preventive relocation of some witnesses by the OTP; prior contact with some witnesses by the OTP; the fact that the OTP is relying on several witnesses who were once seen as suspects; the use of individuals who are both witnesses and victims.

**July 15:** The OTP and the legal representatives of victims presented their final remarks.

**July 16:** The Defense for Ngudjolo and Katanga respectively delivered their closing statements to the confirmation hearing.

*Researched and drafted by Aurélie Coppin  
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