

Research Report

International Criminal Court

The situation in the Democratic Republic
of Congo

Office of the prosecutor v. Mathieu
Ngudjolo Chui Appeals Court

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Forum	International Criminal Court
Issue:	The situation in the Democratic Republic of Congo- Office of the prosecutor v. Mathieu Ngudjolo Chui Appeals Court
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Definition of key terms

War crimes

There is a body of international law that regulates violence in the chaotic and brutal circumstances of war. The aim is to lay the ground rules about how parties may conduct themselves during armed conflict and which acts are out of the question, not to judge the reasons for the war. These laws try to safeguard the “protected persons”, meaning those who are no longer or who are not involved during and after the conflict. War crimes include crimes such as terrorism, murder, sexual violence, pillage and cruel treatment as noted in the Rome Statute of the International Criminal Court.

Crimes against humanity

Also part of the Rome Statute, these are crimes that target any civilian population as part of a systematic or widespread attack, so not an isolated incident, with the perpetrator having knowledge of the attack. They include crimes such as torture, rape, extermination, murder and sexual slavery.

Joiner

A Joiner occurs when two or more cases are merged in one trial. This happens when the issues in question of the different parties are sufficiently connected or alike, in order to make the trial fairer and/or more efficient.

Hema

The Hema are an ethnic group of about 160,000 people in the Democratic Republic of Congo (DRC) in some parts of Uganda and also Rwanda. Most of the Hema people live in particular in the Ituri region of Orientale Province. They are pastoralists, meaning dependant of the branch of agriculture that raises livestock. The Hema are actively involved in the recent Ituri conflict.

Lendu

The Lendu are an ethno-linguistic agriculturalist group, they live in particular in the Ituri region of Orientale Province in the East. Their language is one of the most spoken languages of the central satanic languages, this means it is also spoken by other ethnic groups. The Lend are actively involved in the Ituri conflict.

Hutu

The Hutu are an ethnic group in Central Africa. They mainly live in Rwanda, Burundi and the eastern DRC. They are one of the biggest ethnic groups in these regions and also involved in the Ituri conflict.

Tutsi

The Tutsi are an ethnic group that live in Rwanda and eastern DRC. They are the second largest population groups in the region. When in Rwanda the Hutu was in clear majority the conflict between the Hutu and the Tutsi culminated resulting in the Rwandan genocide.

Introduction on Mathieu Ngudjolo Chui

Background information on the situation in the Democratic Republic of Congo

The Democratic Republic of Congo and its neighbouring countries have been wrecked by conflicts over the past decades. For many years tension has existed between the two Congolese ethnic groups, the Lendu and the Hema. Because of conflicts that blew over from countries such as Rwanda, Uganda and Zaire (now the DRC) the violence escalated and turned deadly for the innocent civilian population. Involved in the conflicts are various proxy militia, that have accordingly been involved with their own official governments, other official governments or that were completely independent. The motives for these proxy militias went from land distribution, natural resources, ethnic divisions and sometimes ideological beliefs. It is extremely beneficial for the commanders of these proxy militias to keep fighting and pillaging at the cost of the civilian population, they enrich themselves by trying to control the mining, notably in Ituri in eastern Congo where there are large amounts of minerals, especially gold.

For 32 years, Zaire was under the dictatorship of Mobutu. Laurent Kabila invaded Zaire in 1996, with the help of Rwandan and Ugandan forces. This was due to Mobutu's alliance with Hutu fighters (involved in the Rwandan genocide) that had fled to the Zaire and were launching attacks at Rwanda. They had already killed over 200,000 civilians when in 1997 Kabila defeated Mobutu and founded the Democratic Republic of Congo declaring himself the president. At this point, Laurent Kabila sought for independence from Rwanda. Rwanda had helped Kabila attack Zaire because of the Hutu fighters that were positioned in Zaire, backed by Mobutu and attacking Rwanda thus helping Kabila get to power. Kabila then turned against his former ally causing a division between Congo, Angola, Zimbabwe, Namibia (allies of Kabila) and Rwanda, Uganda, Burundi (allies of Rwanda). Furthermore the Tutsis militia (Tutsis were slaughtered by the Hutu in the Rwandan genocide of '94) instituted control of Rwanda which in turn led to the anti-Tutsis militia *Mahi-mahi* siding with Kabila (this is important because the Hema started to identify with the Tutsis and the Lendu with the Hutus causing the Hema-Lendu tensions in eastern Congo to rise even further). The multitude of conflicts over ethnic divisions got more complicated and became most intense in Eastern Congo in Ituri because of its natural resources. In what later got named 'Africa's First World War' allies formed complicated rivalries and many nefarious actions were committed towards civilians, resulting in around four million deaths overall. These nefarious actions included murder and an appalling amount of sexual violence. In the end six different militias fought over the Ituri province, the massacres of civilians hit its peak in 2002. As a result French peacekeepers intervened in 2003. In 2005 the UN mission arrested Hema proxy militia commander Thomas Lubanga, resulting in the first ICC case ever. It then warranted the alleged commander of the ethnic Lendu "Front des Nationalistes Integrationnistes" (FNI) Mathieu Ngudjolo Chui and Germain Katanga, who was the commander of the Front Patriotique de Resistance of Ituri (FPRI), its members were mainly of the Lendu ethnic group. By then peace negotiations had started under Joseph Kabila, Kabila's son, and were advancing. Joseph Kabila referred the situation in Congo, from the time when the ICC statute went into force around 2002, to the ICC.

Background information on Mathieu Ngudjolo Chui

Mathieu Ngudjolo Chui was born on 8 October 1970 in Bunya, Ituri. He is believed to be a Lendu. He is married and is father of two children. He started as a Zairian corporal in the armed forces under Mobutu, deserting once the war of '96 broke out. Allegedly, he became the leader of the ethnic Lendu Front des nationalistes et integrationnistes (FNI) closely linked to the Lendu FRPI led by Germaine Katanga. It is however unclear at which time exactly he gained overall control over the FNI. Both militias sided against the Hema Union des Patriotes Congolese (UPC) to gain control over the strategic Ituri region due to its ample natural resources. This occurred between August 2002 and May 2003 during which over 8000 civilians were killed and half a million persons got displaced from the region. The FNI and the FRPI supposedly conducted multiple attacks between January 2003 and March 2003 on the civilian population. As a result of the peace negotiations Ngudjolo was appointed colonel in the National Army of Congo (FARDC). It was during military training that Ngudjolo got arrested and deported to the ICC. On the morning of the 24th of February 2003 the FNI and FRPI are alleged to have attacked the village of Bogoro in Ituri committing seven war crimes and three crimes against humanity. In this attack three militias fought to control Bogoro, Lendu FNI and Ngiti ethnic group FRPI fought against Hema UPC. At least 200 innocent civilians died during the attack, survivors were held in a building that also stored the dead bodies. Women and girls were raped and turned into personal sex slaves or were forced into prostitution. The Pre-trial Chamber confirmed ten counts of crimes being charged against Katanga and Ngudjolo seeing that there was sufficient evidence to launch a full trial. The trials against the above-cited warlords were merged on 10 March 2008 due to charges that overlapped and close ties between the FRPI and the FNI were suspected. This joinder of the two cases was meant for economic purposes and a gain in efficiency. The counts of crimes against humanity are:

Murder (Article 7(1)(a) of the Rome Statute)- Block note

The Prosecution charges Katanga and Ngudjolo with the responsibility over ordering the killings of at least 200 civilians in the Bogoro village during and after the attack. The sufficient evidence includes: reports of FNI and FRPI members entering Bogoro with machetes and guns intending to kill innocent civilians. (Easterday et al.)

Rape constituting a crime against humanity (Article 7(1)(g) of the Rome Statute)

Katanga and Ngudjolo are accused by the Prosecution of having ordered or committed (with others) the rape of women in Bogoro village. The Pre-trial Chamber accepted the charge based on sufficient evidence including: members of the FRPI and the FNI raping women and girls, abducted during and in the aftermath of the Bogoro attack, by threat of force. (Easterday et al.)

Sexual Slavery constituting a crime against humanity (Article 7(1)(g) of the Rome Statute)

Katanga and Ngudjolo are alleged by the Prosecution to have ordered or committed (with others) the sexual enslavement of Bogoro women. Evidence found showed that: members of the FNI and the FRPI abducted women and girls from areas surrounding the camps or villages with the intent to use them as their “wives”, meaning that they forced women and the young girls to engage in sexual activities and even using them as sex-slaves for the militia in the encampments. The victims were also captured and imprisoned to be used as domestic servants and were forced into sexual acts with the soldiers. (Easterday et al.)

These are the seven counts of war crimes:

Using Children Under the Age of Fifteen to Take Active Part in Hostilities (Article 8(2)(b)(xxvi) of the Rome Statute)

The prosecution states that children under the age of fifteen actively took part in the attacks within the militias of the FNI and FRPI. These children are thought to have killed civilians during and after the attack on the village destroying property and pillaging for goods. Allegedly Ngudjolo himself once gave a machine gun to a child soldier. Child soldiers were also used as personal guards to FNI and FRPI commanders. (Easterday et al.)

Destruction of Property (Article 8(2)(b)(xii) of the Rome Statute)

According to the Prosecution, property in Bogoro and other areas in Bahema Sud, Ituri, got destroyed. Many houses and buildings got set on fire including schools. (Easterday et al.)

Wilful Killing (Article 8(2)(a)(i) of the Rome Statute)

The Prosecution accuses the warlords of killing at least 200 Bogoro civilians and accuses that the FNI and FRPI troops targeted the civilian population however, does admit that there was a military objective. Evidence showed unarmed civilians being shot or burnt alive inside their houses. Even after the UPC combatants had fled, the attacks on civilians by the FNI and FRPI continued throughout the day. (Easterday et al.)

Intentionally directing attacks against civilians (Article 8(2)(b)(i) of the Rome Statute)

The prosecution accuses the FNI and the FRPI of intentionally directing attacks against civilians that were not taking part in the hostilities. Evidence showed that even if the military target was the UPC military camp, the attack also targeted civilians such as small children and women and girls. The objective of the attack was to “wipe out” the whole village, so civilians were

targeted first. Allegedly this came about because of the Bunya-Lake, which was a strategic position for the transportation of numerous goods. Another reason was that this was revenge on the Hema population. (Easterday et al.)

Pillaging constituting a war crime (Article 8(2)(e)(v) of the Rome Statute)

The Prosecution indicts the defendants of the above stated crime with the evidence of FNI and FRPI combatants pillaging property that mostly belonged to the Hema population. The pillaging commonly included the removal of roofing sheaths, the removal of furniture and breaking the doors. (Easterday et al.)

Sexual Slavery constituting a war crime (Article 8(2)(e)(vi) of the Rome Statute)

The Prosecution alleges women were abducted and used as domestic servants forced to engage in sexual acts. (Easterday et al.)

Rape constituting a war crime (Article 8(2)(e)(vi) of the Rome Statute)

The Prosecution charges that Katanga and Ngudjolo committed the war crime of rape following the Bogoro attack. Women were raped and abducted to military camps, sometimes they were given as “wives” sometimes they were held in the camp’s prison (a hole dug in the ground). The Chamber has found enough substantial evidence that this war crime was committed. (Easterday et al.)

The Proceedings of the ICC trial

After the decision of joining the two cases of Katanga and Ngudjolo the Prosecution starts with its opening of the prosecution case. The main focus of the Prosecution was the February 24, 2003 attack on Bogoro, in the Ituri region. At that time Bogoro was held by the Hema UPC, under the leadership of Thomas Lubanga Dyilo, and had its military base near Bogoro. Purportedly the attack had the purpose of opening a strategic crossroads and to stop the UPC from attacking neighbouring Lendu and Ngiti (sub group of the Lendu) villages. The Prosecution claims the FNI and the FRPI were planning on wiping out the whole village including the civilian population, the Prosecution further argues there was an ethnically motivated systematic and widespread attack on the Hema Bogoro village. The attack allegedly started in the early hours of the morning while some were still asleep, the FNI and FRPI combatants are thought to have murdered, pillaged, raped, and forced the surviving women into sexual slavery.

In its closing arguments the Prosecution tried to alter the charges from war crimes in an international conflict to war crimes in a non-international conflict, noting this would not change the crimes committed. However the defence responded by claiming that the UPC was under the full control of either the Rwandan or Ugandan government, furthermore it was up to the Prosecution to prove that these bonds had been severed before the Bogoro attack

of February 24 2003. It also argued that the governments of Uganda, Rwanda and DRC were all fighting to gain control over Ituri through proxy militia. In the rest of the closing arguments the Prosecution claimed Ngudjolo to have been present in Bogoro on the day of the attack, backed up by film evidence where Ngudjolo was clearly visible. Ngudjolo denied at first any ties with the attack but after this piece of evidence he claimed to have been in Bogoro to help a woman give birth in his testimony (the Prosecution rejects this claim). The Prosecution noted the authority of Ngudjolo over the FNI at the time of the attack and the alleged fact that there was a common plan between the FNI and the FRPI, between Katanga and Ngudjolo. Arguing that the fact that both groups were around the same village at the same time to attack it made for a logical conclusion that the attack was planned. Furthermore the Prosecution indicts the Bogoro attack not to be an isolated attack but the result of a widespread and systematic approach. It elaborates on the fact that what at first was a land dispute over natural resources then escalated into an ethnical dispute between the Hema and the Lendu-Ngiti, resulting in the attack on Bogoro to have been a form of retaliation over the Hema UPC attacks on neighbouring Lendu and Ngiti villages. Testimonies of combatants of both FNI and FRPI claimed there was a policy of revenge for the attack, meaning the order not to discern combatants from civilians.

Following are four pieces of evidence from the case of the prosecution:

Victim 2: This witness told the court that the attack on Bogoro started around five o'clock in the morning. She said she was awoken by gunshots from the direction of the Bogoro military camp. She fled with her husband and children. Victim 2 had her baby swaddled against her back, she said, and as she ran, someone decapitated the child. The witness said that she continued to run and then hid, telling herself "this is not the day that I will die." She testified that Katanga and Ngudjolo were responsible for the attack. Victim 2 also discussed the harm she suffered because of the attack. She claimed that before the attack, she had managed a restaurant, which was destroyed in the attack. She also claimed that she had cows, goats, chickens, a straw hut, land that she cultivated, and other possessions that were all stolen, lost, or destroyed due to the attack. The witness testified of emotional and psychological trauma that she suffered because of the attack. (*Briefing Paper- The Trial of Mathieu Ngudjolo Chui at the ICC.*)

Witness 132: This witness, a Hema resident of Bogoro, testified about alleged sexual violence crimes. She said that on February 24, 2003, she was woken by gunshots early in the morning when Ngiti and Lendu fighters attacked the village. She stated that she was shot as she fled into the bush and was later found by a group of six soldiers who asked her if she was Hema. She lied and told them she was not Hema, but, she said, they did not believe her. Witness 132 testified that she was raped by the soldiers before she was taken to an FRPI camp, where she was raped again and witnessed others being raped, including a girl she estimated was 11-years-old. She said she was later given to the battalion commander as a house slave before being forcibly married to another man outside of the camp. Witness 132 also testified that she saw child soldiers during the attack and later at the camp. (*Briefing Paper- The*

Trial of Mathieu Ngudjolo Chui at the ICC.)

Witness 219: Witness 219, a former FRPI soldier, testified that he participated in several battles, including the Bogoro attack. He testified that Katanga was the President of the FRPI before and at the time of the Bogoro attack. He explained that Bogoro was located midway between Katanga's FRPI forces and Ngudjolo's FNI forces, and that both forces were preparing to attack the village. He testified that unlike other attacks in the conflict, the Bogoro attack was very well planned and organized. There was clear preparation and radio communication between the FNI and FRPI, he testified. Witness 219 testified that he visited Bogoro the day after the attack, and described seeing looted and burnt houses in Bogoro. He also described seeing many dead bodies, including of women, children and elderly persons, in the Bogoro military camp where civilians had fled for protection during the attack. (*Briefing Paper- The Trial of Mathieu Ngudjolo Chui at the ICC.*)

Witness 279: Witness 279, a young Ngiti man, testified that he had been forcibly taken from his home as a child and taken with a group of other children to an FNI military camp in Zumbe. He testified that Ngudjolo, in charge of the camp, gave them the order to attack Bogoro, but warned them not to shoot civilians. According to Witness 279, Ngudjolo, Katanga and others had devised a precise plan to attack Bogoro. He described killing civilians, looting, and burning that took place during the Bogoro attack. He said that both Ngudjolo and Katanga were in Bogoro on the day of the attack. (*Briefing Paper- The Trial of Mathieu Ngudjolo Chui at the ICC.*)

The Defence opened its case by pleading not guilty to all charges; Ngudjolo did not however deny that there had been atrocities committed during and after the attack of Bogoro. The Defence denied that Ngudjolo had the commandment over the FNI at the time of the Bogoro attack on 24 February 2003. The accused claims not to have witnessed any sexual violence or child soldiers amongst the combatants, the accused claims not to have been there on the day Bogoro got attacked and to only have met Katanga after the attack. Furthermore, the Defence claims that the attack was not ethnically motivated, it stressed a clear distinction between local defence groups such as the FNI and the FRPI and armed military groups backed by Rwandan, Ugandan and Congolese armies. These local defence groups only fought as defence and never with larger military strategy.

In its Closing arguments the Defence claimed that the Prosecution failed to prove there had been a widespread and systematic attack against civilians, which is necessary to back up the charges of crimes against humanity. It alleges the Bogoro attack not to have been an attack on the civilian population but to have the Hema UPC military base as a target. Furthermore the Defence argues that the civilians also took active part in the hostilities. Allegedly the Prosecution failed to prove a link between the Bogoro attack of February 24 2003 and

Ngudjolo Chui. Lastly, they blamed the full attack on President Kabila, for wanting to regain control over the Ituri region in eastern Congo.

Following are three pieces of evidence used by the Defence:

Witness 236 (Floribert Njabu): The former president of the FNI, Njabu testified in defence of both Katanga and Ngudjolo. Njabu testified of the creation of the FNI and the FRPI. The witness also testified about the role of the DRC and Ugandan governments in the Ituri conflict. According to the witness, Kinshasa forces attacked Bogoro, not the FNI or FRPI. Both Kinshasa and Uganda, the witness claimed, provided support for the FNI's efforts to regain control of Ituri from the forces of Thomas Lubanga's UPC. According to Njabu, ethnicity did not play a major role in the conflict between the FNI, FRPI, UPC, and other armed groups. He acknowledged that there had been ethnic conflicts, as well as an agrarian conflict over land rights, before the armed militias began fighting for control of the region. (*Briefing Paper- The Trial of Mathieu Ngudjolo Chui at the ICC.*)

Witness 88 (Emmanuel Ngabu Mandro, a.k.a "Chief Manu"): Chief Manu, Chief of Zumbe, testified that Ngudjolo was not the commander of the FNI at the time of the Bogoro attack. The witness said that Ngudjolo was a nurse at the Zumbe health center, and therefore not in a position to give orders. Chief Manu said that Ngudjolo did not become the leader of the FNI until after March 18, 2003, about a month after the attack on Bogoro. At that time, he "reached an agreement" with the FNI and stayed in Bunia as its leader. Chief Manu, like other defence witnesses, testified that children who were not child soldiers took advantage of the demobilization centers in order to obtain the financial benefits of demobilizing. He testified that parents would encourage their children to take part in the process in order to receive the benefits. (*Briefing Paper- The Trial of Mathieu Ngudjolo Chui at the ICC.*)

Mathieu Ngudjolo Chui: Ngudjolo also took the stand to testify in his own defence. Ngudjolo testified that he had been a nurse and healthcare worker during most of the conflict, and was not associated with the FNI until after the Bogoro attack. On the day of the attack, Ngudjolo said he was in Zumbe helping a woman give birth. According to Ngudjolo, the FNI was not present in his area at the time of the Bogoro attack. He claimed that he did not learn of the FNI until March 18, 2003, when he met with Floribert Njabu, President of the FNI. Ngudjolo said that Njabu asked him to get involved with the organization. On March 22 2003, he said, he was appointed as Deputy Chief in charge of FNI operations. However, the group was quickly integrated into the national army. Therefore, he testified, he did not carry out any military operations. Although the prosecution indicts that the FNI and FRPI jointly

planned the attack on Bogoro, Ngudjolo claimed that the FNI and FRPI did not establish an alliance until March 2003, after the attack. (*Briefing Paper- The Trial of Mathieu Ngudjolo Chui at the ICC.*)

On the 21st of November 2012 the Chamber informs it considers a re-characterisation of the mode of liability of Germain Katanga concerning the Bogoro attack, then acknowledging the prolongation of the Katanga trial the charges got severed so that the Ngudjolo judgment could follow without delay. On December 28 2012, the Trial Chamber acquits Ngudjolo of all charges seeing that the judges could not conclude (because of insufficient evidence) beyond reasonable doubt that Ngudjolo was the commander of the FNI at the time of the attack. The judges stated that the key prosecution witnesses lacked in the credibility needed to prove that Ngudjolo was at that time commander to the combatants of the FNI.

On April 4th 2013 the Prosecution filed a confidential appeal brief.

Timeline of events

February 24, 2003	Attack on the village of Bogoro, situated in the East of the Democratic Republic of the Congo
2005	Joseph Kabila refers the situation in the DRC to the International Criminal Court.
6 July 2007	Arrest warrant for Mathieu Ngudjolo Chui is issued by the ICC.
6 February 2008	Ngudjolo Chui is arrested and transferred to the ICC.
10 March 2008	Joinder of the case against Ngudjolo and Katanga.
24 November 2009	Beginning of the Ngudjolo trial.
21 November 2012	Trial Chamber II considers a re-characterisation of the mode of liability applicable to Katanga prolonging his case, seeing as there is no need for a prolongation in the judgment of Ngudjolo the charges are severed.
18 December 2012	Ngudjolo is acquitted.
April 2013	Prosecution files confidential appeal brief.

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