

Research Report

International Criminal Court

The situation in Democratic Republic of the Congo
The prosecutor v. Germain Katanga

MUNISH '14



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Forum	International Criminal Court
Issue:	The situation in Democratic Republic of the Congo. The prosecutor v Germain Katanga
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Introduction

The Democratic Republic of the Congo (DRC) is a vast country with immense economic resources. It has been the centre of what some consider “Africa’s world war” and has led it to a humanitarian crisis. The conflict, which has lasted for over 5 years, set the government forces (which were supported by Angola, Namibia and Zimbabwe) against the rebels (which were backed by Uganda and Rwanda). An estimate of three million lives were taken due to the war, either as a direct result of fighting or because of diseases and malnutrition. The village of Bogoro, situated in the Ituri Province, was an important scene of violence between 1999 and 2003. On the 24th of February 2003, an assault on the village took place, which was allegedly planned by Germain Katanga and Mathieu Ngudjolo Chui.

In the pre-trial chambers of the International Criminal Court, it was proven that there were substantial grounds to believe that Germain Katanga committed 6 war crimes and 3 crimes against humanity. The trial at MUNISH 2014 and this research report will focus on only one of those crimes, namely the war crime of “directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities”, according to article 8(2)(b)(i) of the Rome Statute.

Definition of Key Terms

Rome Statute:

The Rome Statute is a treaty, which entered into force on the 1st of July 2002, and established the International Criminal Court. It outlines the Court’s jurisdiction, structure and functions as well as establishing the 4 main international crimes over which the ICC has jurisdiction.



Pre-Trial Chamber:

At the Pre-Trial Chamber, the Court establishes whether there are substantial grounds to believe that a person has committed the alleged in order to confirm the charges.

Trial- Chamber:

Once the charges have been confirmed at the Pre-Trial Chamber, the case will be presented before the Trial Chamber where the threshold required is proof beyond reasonable doubt.

Jurisdiction:

According to <http://dictionary.law.com/>, jurisdiction can be defined as the “power of a court to adjudicate cases and issue orders”. The ICC may exercise its jurisdiction only over the crimes stated in article 5 of the Rome Statute, which are the crimes against humanity, genocide, war crimes and crimes of aggression. The ICC does not have universal jurisdiction; there are certain conditions that must be met in order for the Court to have jurisdiction over the case. According to articles 13 and 14, the Court only has jurisdiction over a cases which took place in the territory of a State Party or if the accused is a national of a State Party or of a State that has otherwise accepted the jurisdiction of the Court. The Court may also exercise its jurisdiction over a case if the United Nations Security Council has referred the situation to the prosecutor, irrespective of the nationality of the accused or location of the crime, according to article 15. Finally, the jurisdiction of the ICC is limited to events that have occurred since the 1st of July 2002 or after the State became party to the ICC.

Admissibility:

According to Article 1 of the Rome Statute, the Court “shall be complementary to national criminal jurisdictions”. Once it has been determined that the Court has jurisdiction over the case, the admissibility of the case can be considered. According to article 17, a case may be admissible before the Court if the State is “unwilling or unable genuinely to carry out the investigation or prosecution”. Unwillingness could be shown by shielding of the accused, unjustified delay of the trial or proceedings not being conducted independently or impartially. Inability may be justified by a total or substantial collapse of the judicial system, leading to unavailability to carry out the proceedings. The state may have also been unable to obtain the accused or the necessary evidence in order to proceed with the trial. In this case, the Pre-Trial



Chamber may consider the case admissible before the ICC and allow the case to proceed to trial (provided there are substantial grounds to believe that the accused is guilty).

Evidence:

“Every type of proof legally presented at trial which is intended to convince the judge and/or jury of alleged facts material to the case”(http://dictionary.law.com/). Evidence can be presented in the form of documents, public records, objects, photographs, depositions etc...Circumstantial evidence is intended to create a certain belief by showing surrounding circumstances which logically lead to a conclusion of facts. The aim of attorneys is to present evidence that survives objections of the opposition, who will claim it to be irrelevant, violate rules against “hearsay”or other technicalities.

General Overview

The Bogoro massacre

The assault on Bogoro, which occurred on February 24, 2003, was an attack on the village of Bogoro in the Democratic Republic of the Congo (DRC) by the Nationalist and Integrationist Front (FNI) and the Front for Patriotic Resistance of Ituri (FRPI). The attackers allegedly went on an "indiscriminate killing spree" killing at least 200 civilians, imprisoning survivors in a room filled with corpses, and sexually enslaving women and girls.

On 24 February 2003, hundreds of FNI and FRPI fighters including children under the age of fifteen attacked Bogoro with machetes, spears, arrows, mortars, rocket-propelled grenades, rocket launchers and semi-automatic weapons. They got into the centre of the village, killing at least 200 civilians, imprisoning survivors in a room filled with corpses, and sexually enslaving women and girls. Some residents of the village were killed by setting their houses on fire; others were hacked to death with machetes. The UN reported that 173 of the victims were under the age of 18.

The Union of Congolese Patriots (UPC) leader Thomas Lubanga claimed that 400 people were killed and 500 were missing after the attack. The attack succeeded in pushing UPC forces out of Bogoro within a few hours and, ten days later, the Lendu and Ngiti drove the UPC from Bunia.



The counts

The warrant of arrest for Germain Katanga lists nine counts on the basis of his individual criminal responsibility (article 25(3)(a) of the Rome Statute of the International Criminal Court) including:

- three counts of crimes against humanity (murder –article 7(1)(a), inhumane acts – article 7(1)(k), and sexual slavery –article 7(1)(g));
- six counts of war crimes (willful killing –article 8(2)(a)(i) or 8(2)(c)(i), inhuman treatment –article 8(2)(a)(ii) or cruel treatment –article 8(2)(c)(i), using children under the age of fifteen years to participate actively in hostilities –article 8(2)(b), sexual slavery –article 8(2)(b), intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities –article 8(2)(b)(i), pillaging a town or place even when taken by assault –article 8(2)(b)).

All counts were approved by the pre-trial chamber as there is substantial grounds to believe that Germain Katanga is criminally responsible, under article 25(3)(a), of committing the previously stated crimes. However, only the crime under article 8(2)(b)(i) will be presented at the trial.

The allegations

The warrant was unsealed on the 18th of October 2007. The Chamber found that there were reasonable grounds to believe that Katanga, as the highest ranking Front for Patriotic Resistance in Ituri (FRPI) commander, played an essential role in the planning and implementation of an indiscriminate attack against the village of Bogoro, in the territory of Ituri, around 24 February 2003.

The Chamber also found that there were reasonable grounds to believe that during and after the attack on the village of Bogoro, the following criminal acts were committed against civilians, primarily of Hema ethnicity: the murder of about 200 civilians; causing serious bodily harm to civilians; arresting, threatening with weapons and imprisoning civilians in a room filled with corpses; pillaging; the sexual enslavement of several women and girls, and the use of children under the age of fifteen years to participate actively in the attack.

The Chamber further found that there were reasonable grounds to believe that a common plan to carry out an attack on the village of Bogoro was agreed upon by Germain Katanga and other commanders of the FRPI and the Nationalist and Integrationist Front (FNI).



According to the Chamber, there were reasonable grounds to believe that the attack on the village of Bogoro took place in the context of an armed conflict in the territory of Ituri, that the attack was jointly launched by the FRPI and the FNI as part of a systematic or widespread attack directed against the civilian population of certain parts of the territory of Ituri, primarily of Hema ethnicity, between January and at least March 2003.

Major Parties Involved and Their Views

Patriotic Resistance Force in Ituri (FRPI)

The Patriotic Resistance Force in Ituri (FRPI) is an armed militia and political party in the Ituri Province of northeastern DRC. Established in November 2002 from the Ngiti ethnic group, the FRPI acts as an ally to the Lendu Nationalist and Integrationist Front (FNI).

Under the leadership of traditional Ngiti men, a counterweight to the Congolese Patriots was supported by the Uganda-backed Movement for Liberation faction of the Rally for Congolese Democracy in the Ituri conflict. 9000 combatants were reported in May 2003, some of which were considered to be part of the armed wing of the FNI. In March of 2003 an offensive, allegedly led by Germain Katanga, against the IPC was launched by the FRPI and the Ugandans, to occupy the town of Ituri. In 2006, 15,000 FRPI soldiers were demobilized as part of the peace process. In October 2007, Katanga was arrested and flown to the International Criminal Court to face charges of war crimes and crimes against humanity.

Democratic Republic of Congo (DRC)

The Congo, in West-Central Africa, is bordered by: the Republic of Congo; the Central African Republic; the Sudan; Uganda; Rwanda; Burundi; Tanzania; Zambia; Angola; and the Atlantic Ocean. It is one-quarter the size of the U.S. The principal rivers are the Ubangi and Bomu in the north and the Congo in the west, which flows into the Atlantic. The entire length of Lake Tanganyika lies along the eastern border with Tanzania and Burundi:





"Map of Democratic Republic of Congo." *Map of Democratic Republic of Congo*. N.p., n.d. Web. 30 July 2014.
 <<http://www.lonelyplanet.com/maps/africa/democratic-republic-of-congo/>>.

After its involvement in this case and the warrant of arrest presented to them by the International Criminal Court on 17 October 2007, the Congolese authorities surrendered and transferred Germain Katanga, a Congolese national and alleged commander of FRPI.

United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)

The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) is a United Nations peacekeeping force in the Democratic Republic of the Congo (DRC) which was established by the United Nations Security Council in resolutions 1279 (1999) and 1291 (2000) in order to monitor the peace process of the Second Congo War, though much of its focus subsequently turned to the Ituri conflict, which is related to the case of Germain Katanga. Some of the MONUSCO peacekeeping soldiers were killed during the Bogoro massacre according to evidences brought by the International Criminal Court.

Timeline of Events

Date	Description of event
July 1st 2002	Rome Statute entered into force
February 2003	Massacre in the village of Bogoro, DRC, allegedly led by Germain Katanga



March 2005	Katanga is arrested by the Congolese authorities
October 17th 2007	Congolese authorities surrender Katanga to the ICC
July 2nd 2007	Pre-Trial Chamber of the ICC finds that there are reasonable grounds to believe that Katanga bears individual criminal responsibility of the crimes he has allegedly committed during the Bogoro attack.
From June 27th 2007 to July 11th 2008	Confirmation hearings
September 26th 2008	Charges are confirmed
November 24th 2009	Beginning of Trial

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