



Questions and answers

Situation in the Democratic Republic of the Congo

The Prosecutor

v.

Germain Katanga and Mathieu Ngudjolo Chui



1. Who are Germain Katanga and Mathieu Ngudjolo Chui?

Germain Katanga, alleged commander of the *Forces de résistance patriotique en Ituri* [Patriotic Resistance Force in Ituri] (FRPI), allegedly had de facto ultimate control over FRPI commanders. In early December 2004, the President of the Democratic Republic of the Congo (DRC), Joseph Kabila, reportedly appointed Germain Katanga Brigadier-General of the Armed Forces of the DRC (FARDC), a post which he still held at the time of his arrest by the DRC authorities on or around 10 March, 2005. He was transferred to The Hague on 17 October, 2007, pursuant to a warrant of arrest issued on 2 July, 2007.

Mathieu Ngudjolo Chui, alleged former leader of the *Front des nationalistes et intégrationnistes* [National Integrationist Front] (FNI) allegedly had de facto ultimate control over FNI commanders. In October, 2006, he allegedly obtained his current rank of Colonel in the FARDC. He was transferred to The Hague on 7 February, 2008, pursuant to a warrant of arrest issued on 6 July 2007.

On 10 March 2008, Pre-Trial Chamber I issued a decision to join the cases, and held the confirmation of charges hearing between 27 June and 16 July 2008.

2. For what crimes are Germain Katanga and Mathieu Ngudjolo Chui being prosecuted?


According to Pre-Trial Chamber I's decision of 26 September, 2008, Germain Katanga and Mathieu Ngudjolo Chui allegedly jointly committed, through other persons:

- **Three counts of crimes against humanity:** Murder, sexual slavery and rape; and
- **Seven counts of war crimes:** Using children under the age of 15 years to participate in hostilities; intentionally directing an attack against the civilian population as such or against individual civilians not taking direct part in hostilities; wilful killing; destruction of property; pillaging; and sexual slavery and rape.

Pre-trial Chamber I is of the opinion that there are substantial grounds to believe that the alleged crimes were committed in the context of an armed conflict in Ituri which began in Djugu territory and in the town of Mongbwalu, and in particular during the joint attack by combatants led by Mathieu Ngudjolo Chui and Germain Katanga on Bogoro village on 24 February, 2003, which was part of a widespread attack and was directed not only against a military camp located in that village, but also against the civilian population of the village.

3. Why are the two accused being prosecuted before the ICC rather than before Congolese courts?

On 11 April, 2002, the Democratic Republic of the Congo ratified the Rome Statute, the founding instrument of the ICC. In March, 2004, the Government of the DRC asked the Prosecutor of the ICC to investigate the crimes committed in the DRC since 1 July, 2002 (date of entry into force of the Rome Statute), stating that the competent national authorities were not in a position to investigate these crimes or to conduct the necessary proceedings without the assistance of the ICC. The Prosecutor reviewed the situation independently and concluded that the criteria for



initiating an investigation under the Rome Statute were met. The investigation was initiated on 21 June, 2004, and, following the issue of three warrants of arrest, resulted in the detention of Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui at the ICC detention centre in The Hague, the Netherlands, and the commencement of trials against them. A warrant was also issued for the arrest of Bosco Ntaganda, who remains at large.

The Court is not, under any circumstances, a substitute for domestic criminal justice systems; it only intervenes if the national judicial system is either unwilling or unable to ensure that justice is done.

4. Who are the ICC judges sitting in this case?

The trial of Germain Katanga and Mathieu Ngudjolo Chui will take place before Trial Chamber II, composed of Presiding Judge Bruno Cotte, and Judges Fatoumata Dembele Diarra and Christine Van den Wyngaert.

The ICC judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. They all have extensive experience relevant to the judicial work of the Court and established competence in criminal law and procedure.

5. How long will the trial last?

The trial will last several months. The Prosecution and the Defence will present their cases and witnesses before the judges. The Legal Representatives of the Victims will also be authorised to present their observations and to ask question to the witnesses of both parties. Judges of Trial Chamber II will ensure the fairness of the trial and the respect of rights of both parties and of the victims. At the end of the hearings, the judges of the Trial Chamber will render their decision within a “reasonable period of time”. The decision will be read out in public and will either acquit or convict one or both accused. The various parties will then be able to appeal the decision before the Appeals Chamber of the ICC.

6. Who pays for the defence costs of Germain Katanga and Mathieu Ngudjolo Chui?

On 22 February 2008, the Registrar provisionally found Germain Katanga and Mathieu Ngudjolo Chui indigent pending verification by the Court of the information contained in their respective applications. The Court therefore bears the cost of their defence, in accordance with the legal assistance scheme.

7. Who will take part in the trial?

The trial before Trial Chamber II, consisting of three judges who will ensure that the trial is conducted fairly and expeditiously and with full respect for the rights of the Defence, equality of arms and the adversarial principle, will provide the Prosecutor and Counsel for the accused with the opportunity to present their case in turn.

At the hearings, the Office of the Prosecutor will present all the evidence at its disposal, submitting for consideration by the judges a large number of the documents which it has compiled in the case, as well as audiovisual extracts. It will also call 26 witnesses including one expert witness.

The Counsel for the Defence will then have the opportunity to cross-examine the Prosecution witnesses. It should be noted that a large number of these witnesses (21 in total) will be subject to protective measures and will accordingly testify anonymously (their face and voice may be distorted).

Following the conclusion of the Prosecution case, probably in a few months’ time, the Defence teams will present exculpatory evidence in their possession, in support of which they will call a number of witnesses. These witnesses will be examined by Defence Counsel and cross-examined by the Prosecution.

The victims may also address the Court, primarily through their legal representatives. The 345 people who have been granted victim status by the judges will be represented by Fidel Nsita Luvengika and Jean-Louis Gilissen who will present the views and interests of their clients.

8. How can the victims express their concerns and ensure that their voice is heard before the Court?

The Statute of the Court is innovative in several respects. One of the most significant points is that it grants victims unprecedented rights before an international criminal court. Victims may be involved in proceedings before the ICC either by sending information to the Prosecutor and asking him to open an investigation, or by willingly testifying before the Court, or by participating in the proceedings through their legal representatives (i.e. their lawyers).

This voluntary participation enables victims to express an opinion independently of the parties and offers them the opportunity to speak about their own concerns and interests.



9. Are the witnesses and victims who participate in the trial safe?

Yes. The Court provides protective measures commensurate with the threats to which witnesses and victims may be exposed as a result of their interaction with the Court. The Victims and Witnesses Unit, which is part of the Registry, implements protective measures and security arrangements for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses.

Protective measures may, for example, include the anonymity of people participating in the trial, the use of pseudonyms, the redaction of documents or a disclosure ban, or the use of audiovisual techniques to conceal the identity of persons appearing before the Court.

As a last resort, protected persons may be admitted to the Protection Programme and relocated with their close relatives away from those who threaten them.

The Court ensures that the experience of appearing before the judges does not result in further harm, suffering or trauma. Protection is not merely meant to protect the physical well-being of protected persons, but also to protect their psychological well-being, dignity and privacy insofar as such protection shall not be prejudicial to or inconsistent with the right of the accused to a fair trial. Particular attention is paid to the specific needs of children, elderly people, disabled people and victims of sexual or gender-based violence.

10. How will the affected communities and the Congolese people be informed of the progress and outcome of the trial?

The public nature of the proceedings is crucial to guarantee a fair trial and thus high-quality justice. To this end, special efforts are undertaken on a daily basis by the Court in order to ensure that the proceedings are accessible to the communities affected by the crimes allegedly committed in the Democratic Republic of the Congo. The Court continues to elaborate and to broadcast audiovisual programmes which enables the Congolese people to follow and understand the legal proceedings taking place in The Hague. With the commencement of the trial of the two accused, the Court will start a nationwide information campaign, via national radio and television stations based in Kinshasa, as well as community radio stations covering the Ituri territory where affected communities are living.

Furthermore, ICC staff in the DRC will regularly hold Outreach sessions addressing key social groups during which audiovisual summaries of the proceedings will be screened in order to encourage public involvement in an interactive debate. These meetings will provide an opportunity to listen to the concerns and expectations of the local communities, to explain the mandate of the Court and its sphere of activity, to answer questions and to correct any misinformation.

The Court has also developed specific Outreach programmes, adapted to target groups such as young people, women, religious and ethnic leaders, journalists and non-governmental organisations. With the commencement of the trial, these different groups will be targeted both in Kinshasa and Ituri, by holding interactive meetings on a regular basis, that will enable them to follow judicial developments and to express their concerns.

11. Why are only Thomas Lubanga Dyilo, Germain Katanga, Mathieu Ngudjolo Chui and Bosco Ntaganda being prosecuted whereas many other senior figures responsible for heinous crimes are not?

The Office of the Prosecutor is continuing its investigations. The four warrants of arrest issued by the Court may not be the last and others will follow as investigations continue in the DRC. The Prosecutor conducts targeted investigations and prosecutions so as to present the various modes of crime and victimisation in each situation. He proceeds in stages. He continues to investigate crimes committed by other armed groups and other individuals with due regard for the admissibility criteria set out in the Rome Statute. He will apply for further warrants of arrest when he is in a position to do so.

