

BRIEFING

The Trial of Germain Katanga at the ICC

FEBRUARY 2014

On February 7, 2014, the International Criminal Court (ICC) in The Hague is scheduled to issue a verdict in the trial of Germain Katanga, the third case to reach this stage at the ICC. This background paper summarizes the main issues in the case so far, with hyperlinks to relevant portions of our trial monitoring website www.katangatrial.org.

I. Background

Germain Katanga is the alleged former leader of the *Force de Résistance Patriotique en Ituri* (FRPI, Patriotic Resistance Forces in Ituri), an armed militia from the Ituri region of the Democratic Republic of the Congo (DRC). He was being held without trial in the DRC when the ICC issued its arrest warrant in 2007. He was transferred to the ICC detention center and first appeared before the ICC Pre-Trial Chamber I in October 2007.

In March 2008, the pre-trial chamber joined Katanga's trial with the trial of Mathieu Ngudjolo Chui, the alleged commander of another militia group, *Front des Nationalistes et Intégrationnistes* (FNI, National Integration Front). Their trial lasted from November 24, 2009 to May 23, 2012. However, the charges were severed in November 2012, six months after the closing arguments, due to proposed changes in the charges against Katanga. The trial chamber later acquitted Ngudjolo.

The Katanga/Ngudjolo trial is only the second to be heard before the ICC. Moreover, it is the first ICC trial to deal with sexual violence crimes and crimes against humanity, in addition to many other novel legal issues. The Katanga trial has also given rise to very unique legal questions, including detained witnesses applying for asylum in the Netherlands and issues about the timing and scope of changing charges against an accused.

II. The Charges

Katanga was charged with seven counts of war crimes and three counts of crimes against humanity allegedly committed during an attack on the village of Bogoro on February 24, 2003. The prosecution did not allege that Katanga physically committed the crimes himself but argued that they were committed by his troops according to a plan hatched by him and Ngudjolo to “wipe out” Bogoro.

He was originally accused under Article 25(3)(a) of having committed the crimes through “indirect co-perpetration,” for using a hierarchical organization (the FRPI) to carry out the crimes. Later, after the parties had rested their cases, the trial chamber suggested it might change the charges against Katanga to responsibility under Article 25(3)(d)(ii). This criminalizes intentionally contributing to a crime committed by a group acting with a common purpose, knowing that the group intended to commit the crime. Under this potential change, Katanga could be found guilty for helping the FRPI, knowing that they would commit crimes in Bogoro, even if he did not intend the crimes himself.

The alleged crimes are:

War crimes

- Using children under the age of fifteen to take active part in hostilities;
- Directing an attack against civilians;
- Willful killing;
- Destruction of property;
- Pillaging;
- Sexual slavery; and
- Rape

Crimes against humanity

- Murder;
- Sexual slavery; and
- Rape

Mode of Liability

- Indirect co-perpetration (25(3)(a)), or
- Common purpose (25(3)(d)(ii)) (if changed)

III. Key Legal Issues

The Katanga/Ngudjolo trial presented many interesting legal issues. Its jurisprudential value will be significant. It involved two defendants accused of several charges. It raised questions about the role of the ICC in protecting the human rights of detained witnesses. It also sparked a debate about the timing and manner of changing charges against an accused.

Why the Cases were Joined

The pre-trial chamber issued a decision joining the cases against Germain Katanga and Mathieu Ngudjolo Chui in March 2008, largely on the basis of their alleged shared responsibility for crimes committed during a joint attack on the village of Bogoro. All the evidence for these crimes related to both suspects. The chamber found that joining the cases would be in the interests of the victims and witnesses, would allow the proceedings to be conducted in a fair and efficient manner, and would protect the rights of the defendants, including the right to be tried without undue delay. It would also ensure the judicial economy of the proceedings. The chamber stated that joining the cases would not be prejudicial to the defendants or contrary to the interests of justice. It said that the cases could be separated at a later stage if necessary.

Why the Cases were Severed

On November 21, 2012, a majority of Trial Chamber II, Judge Christine Van den Wyngaert dissenting, informed the parties that it was [considering a re-characterization of the facts](#) of the case concerning the mode of liability applicable to Germain Katanga. The majority recognized that these changes would prolong the trial of Katanga and decided that it was unnecessary to delay the judgment in the case of Ngudjolo. Therefore, in order to avoid potential violations of Ngudjolo's right to a trial without undue delay, the majority severed the charges. Judge Van den Wyngaert [dissented](#) to the majority's decision, stating that to change the mode of liability applicable to Katanga at this stage of the trial "fundamentally encroaches upon the accused's right to a fair trial."

In December 2012, Ngudjolo was [acquitted of all charges](#). The trial chamber held that the prosecution had not proven beyond a reasonable doubt that he was the commander of the FNI at the time of the Bogoro attack. The trial chamber found that although it could not rule out the possibility that Ngudjolo had committed the alleged acts or participated in a common plan with Katanga, the prosecution had not proven the charges beyond a reasonable doubt. The chamber also found that there was widespread use of child soldiers by militias in Ituri at the time. However, the chamber found, the prosecution had not proven a link between Ngudjolo and the use of child soldiers beyond a reasonable doubt.

Changing the Charges under Regulation 55

The prosecutor originally charged Katanga and Ngudjolo under Article 25(3)(a) of having committed the crimes through “indirect co-perpetration”: Katanga and Ngudjolo allegedly used hierarchical organizations (the FRPI and the FNI, respectively) to carry out the crimes according to their common plan to wipe out Bogoro.

After the parties had made their closing arguments, the trial chamber majority, Judge Van den Wyngaert dissenting, [notified the parties](#) that it would likely change Katanga’s mode of liability to “common purpose” liability under Article 25(3)(d)(ii). The judges have the power to make this change under [Regulation 55](#) of the Regulations of the Court. This regulation allows trial chambers to change how they consider evidence from a legal point of view, even if that is not exactly how the accused was originally charged.

Article 25(3)(d)(ii) criminalizes intentionally contributing to a crime committed by a group acting with a common purpose, knowing that the group intended to commit the crime. The new mode of liability would apply to all crimes except for those relating to the use of child soldiers. In short, Katanga could be found guilty if the judges find that he contributed in some way to the attack on Bogoro and he knew his contribution would help facilitate the commission of crimes. This is different from the original charges, which allege that Katanga himself intended the crimes as part of a common plan to wipe out Bogoro, as opposed to intending to contribute to actions of others he knew would commit crimes.

It is possible that the judges do not consider that there is sufficient evidence of a common plan between Katanga and Ngudjolo—especially given that the trial chamber acquitted Ngudjolo because the prosecution had failed to prove he was the commander of the Lendu forces that attacked Bogoro. However, [during his testimony](#), Katanga spoke about his role as a coordinator in preparing the attack on Bogoro. Katanga claimed the aim of the attack was to remove [Thomas Lubanga’s](#) Union of Congolese Patriots (UPC) soldiers based there, not to “wipe out” the village. He said local armed groups linked to the Congolese People’s Army (APC) and facilitated by the government of the DRC carried out the attack. If the charges are changed, the judges might consider whether this coordinating role would be sufficient to convict him under the new “common purpose” liability.

Katanga [appealed](#) these changes, but a majority of the Appeals Chamber, Judge Cuno Tarfusser dissenting, upheld the trial chamber decision. According to the majority, the decision itself did not violate Katanga’s fair trial rights. However, it acknowledged that

there was a risk that the trial chamber could violate Katanga's fair trial rights depending on how it conducted additional proceedings. In particular, the Appeals Chamber majority was concerned about violating Katanga's rights to a trial without undue delay, given the late timing of the trial chamber decision.

The majority of Trial Chamber II later [provided additional information](#) about the potential change. Nevertheless, the [defense argued](#) that it lacked sufficient information regarding the potential new mode of liability. Although it was [granted time to conduct new investigations](#), it was unable to do so, the defense claimed. The defense said it [faced significant difficulties](#) attempting the investigation, owing in part to the deteriorating security situation in eastern DRC.

The chamber [decided to move forward with the case](#) and requested the defense to submit observations on how the existing evidence should be considered in light of the new mode of liability. The majority held that it would take all of the evidence and the parties' written submissions into account in the final trial judgment when deciding whether to change the charges against Katanga. The chamber will decide whether changing the charges would violate Katanga's fair trial rights. If the trial chamber decides that such a change would indeed violate his rights, it will render its judgment on the basis of the original charges, the majority said.

The majority also agreed to exclude parts of Katanga's testimony. When he testified, Katanga was unaware that the charges might be changed in ways that affected his right to not incriminate himself, the defense said. On this basis, the defense had contended, the chamber should exclude or not rely on the evidence Katanga gave about his contribution to the attack on Bogoro.

IV. Witnesses Seeking Asylum

In May 2011, three witnesses who testified for the defense during the Katanga/Ngudjolo trial applied for asylum in the Netherlands. Their testimony implicated the DRC government, including President Joseph Kabila, in international crimes in Ituri. The witnesses had been in detention in the DRC for their alleged role in the murder of UN peacekeepers, and they were kept at the ICC detention center during their testimony. They were supposed to be returned to the DRC after they concluded testifying, but the witnesses claimed they would face persecution and security risks if they were sent back to the DRC.

Jurisdictional disputes ensued between the ICC, the Netherlands, and the DRC. Dutch authorities have repeatedly argued that the witnesses should remain at the ICC detention center until their asylum proceedings are completed. The witnesses' lawyers say that given the slowness of the Dutch proceedings and appeals processes, this could mean the witnesses are detained—ostensibly without charges—for years to come. The DRC government contends that the witnesses should have been returned to the DRC immediately when they finished their testimony.

Their asylum lawyers claim their detention violates their human rights and [requested](#) the ICC trial chamber to put an end to it. By a majority, Judge Van den Wyngaert dissenting, the trial chamber [majority found](#) that it did not have the authority to release the witnesses. The witnesses [appealed](#), but their appeal was declared inadmissible by the Appeals Chamber. A majority of the Appeals Chamber, Judge Sang-Hyun Song dissenting, [ordered the three detained witnesses to be returned to the DRC](#). The majority noted that Dutch authorities should be consulted over the witnesses' return, in case the Netherlands considered the return would constitute a violation of the Netherlands' obligation to protect the witnesses' human rights. However, the majority did not consider that the protection of the witnesses' rights relating to their Dutch asylum applications was within the jurisdiction of the ICC.

Meanwhile, Dutch immigration authorities decided that the witnesses would not be granted refugee status in the Netherlands on the basis of Article 1F of the Refugee Convention, which states that those suspected of involvement in crimes against humanity are not protected as refugees. The Amsterdam District Court upheld this decision on appeal. However, the Amsterdam court also found that returning the witnesses to the DRC would be a violation of Article 6 of the European Convention on Human Rights (ECHR), reasoning that if they were returned to the DRC they would face a “flagrant denial of justice.” This means that if they are released from the ICC detention center, they will be protected by the ECHR in European territory but excluded from refugee status in the Netherlands—a [problematic but not unprecedented](#) situation.

V. International or Non-International Armed Conflict in Ituri?

A key issue raised during the Katanga/Ngudjolo closing arguments was whether, pursuant to ICC Regulation 55, the trial chamber could re-characterize the conflict in Ituri as a non-international armed conflict. In the [Lubanga verdict](#), Trial Chamber I used Regulation 55 to change the legal characterization of the same conflict from “international” to a “non-international” armed conflict.

In Katanga/Ngudjolo, the prosecution argued that the conflict was an international armed conflict and charged the accused accordingly. Pre-Trial Chamber I in Katanga/Ngudjolo confirmed the prosecution's charges of war crimes committed during an international armed conflict. These are the charges the accused responded to during the course of the two-and-a-half year trial. However, in its final trial brief and [during closing arguments](#), the prosecution changed its argument and claimed the conflict was in fact a non-international armed conflict.

According to the [Katanga defense](#), the evidence pointed to a reasonable possibility that Thomas Lubanga's UPC was under the overall control of either Rwanda or Uganda. The Katanga defense argued it was the prosecution's responsibility to prove that those ties had been severed, thus barring the chamber's application of Regulation 55. Moreover, the

defense argued it would be prejudiced if the chamber re-characterized the nature of the conflict because some elements of the crimes are distinct based on the type of armed conflict and because the defense might have used different strategies if it knew the charges related to a non-international armed conflict.

This issue was not discussed in the Ngudjolo judgment and thus remains an important issue in the Katanga trial.

VI. The Prosecution's Case

The Ituri conflict began as a series of land disputes between ethnic Hema and Lendu communities but escalated into intensive attacks on civilian villages by local militias supported by Rwanda, Uganda, and the DRC government. During [opening statements](#), former ICC prosecutor Luis Moreno-Ocampo claimed that the crimes originated out of the international community's failure to act during the Rwandan genocide. He argued that fleeing Rwandan *génocidaires* regrouped in the DRC, spurring a conflict there that involved nine African countries and caused the death of nearly four million people.

Some 200 of those deaths occurred during the February 24, 2003 attack on Bogoro, the prosecution claimed. This attack was the main focus of the prosecution's charges. The prosecution contended that the attack was ethnically motivated, committed by the largely Ngiti FRPI and Lendu FNI against the Hema civilian population of Bogoro. According to the prosecution, the Bogoro attack was part of a widespread and systematic attack on civilians.

At the time, Bogoro was held by the UPC, the primarily Hema militia of Thomas Lubanga (the accused in the [first ICC trial](#)). Katanga and Ngudjolo allegedly planned the attack in order to open a key crossroads and stop the UPC from attacking nearby Lendu and Ngiti villages. However, in addition to destroying the UPC camp, the prosecution claimed that Katanga and Ngudjolo also planned to wipe out Bogoro as a whole, including its primarily Hema civilian population.

The attack began in the early hours of the morning, the prosecution maintained. Lendu and Ngiti soldiers—some of them allegedly children—descended on the village while most villagers were still sleeping. They proceeded to kill, rape, burn, and pillage, the prosecution alleged. Women who survived the attack were purportedly then taken as sexual slaves, used by FNI and FRPI soldiers.

Prosecution Closing Arguments

During [closing arguments](#), the prosecution focused on Katanga's authority over the FRPI. The prosecution argued that Katanga commanded this group and was in Bogoro on the day of the attack.

Common Criminal Plan

Katanga and Ngudjolo had a common plan to attack Bogoro, the prosecution argued. The plan was set when Bedu-Ezekere's Chief Manu visited Aveba and stayed in the home of Katanga. This meeting led to an agreement between the two communities and the provision of arms and munitions to Ngiti and Lendu combatants. The prosecution also argued that details of the attack, including how the two groups surrounded the village at the same time, suggest there was a common plan to attack Bogoro.

Ethnic Conflict

The prosecution emphasized that the attack on Bogoro was not an isolated event. Although the conflict started over land disputes, it later degenerated into an armed conflict between ethnic groups. The conflict pitted the Lendu and Ngiti against the Hema, the prosecution submitted. The prosecution focused on testimony about the various attacks by the Hema UPC on Lendu and Ngiti communities, arguing that because of these attacks, the Lendu and Ngiti communities grew to hate the Hema. Katanga and Ngudjolo were driven by this hatred, the prosecution said, and targeted civilians for abuse based purely on their ethnicity.

The prosecution argued that the groups had a clear policy to direct an attack against the civilian population. According to the prosecution, insiders of both armed groups testified about a policy of revenge and targeting all Hema as the enemy, with no distinction between civilians and combatants.

Sexual Violence

ICC prosecutor Fatou Bensouda noted the lasting harm suffered by victims of the attack, especially victims of sexual violence who suffered from stigmatization and rejection by their families and communities. This is the first time sexual violence crimes have been charged at the ICC, and the trial chamber's determination on this count will be an important milestone for the court.

Witnesses for the Prosecution

The prosecution called 24 witnesses to testify, including two expert witnesses. Key evidence from these witnesses is provided below.

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.

Witness 28: A former child soldier, Witness 28 testified that FRPI soldiers abducted him and took him to an FRPI camp. He said he was forced to undergo military training, which he said was like torture. He later went to Aveba, he said, where a military camp was eventually established under the leadership of Katanga. The witness testified that the DRC government provided the FRPI with weapons and ammunition, which Katanga distributed to other commanders before the Bogoro attack. Witness 28 claimed that Katanga returned by airplane from a meeting with the APC carrying APC soldiers and ammunition for the Bogoro attack. The APC, FNI, and FRPI jointly attacked Bogoro, he testified. He said that after the attack, the soldiers looted and burned down houses. He confirmed that children took part in the attack and were present at the FRPI camps.

However, in the Ngudjolo judgment, the trial chamber found that this witness lacked credibility. In particular, the chamber found his testimony contradictory, vague, and contrary to the testimony of defense witnesses who claimed he was not in Bogoro at the time of the attack. However, the chamber did consider that the witness could provide useful evidence about the Aveba militia's activities and operations given that he had close proximity to Katanga.

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. According to his testimony, he would have been 12-years-old at the time of the Bogoro attack, although documentary evidence suggested he may have been over 18. He testified that Ngudjolo, in charge of the camp, gave them the order to attack Bogoro, but warned them not to shoot civilians. He testified that Katanga visited Ngudjolo's camp in order to discuss the attack. According to Witness 279, Ngudjolo, Katanga, and others had devised a precise plan to attack Bogoro. He described the killing of 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.

In the Ngudjolo judgment, the chamber found Witness 279 to be unreliable. According to the trial chamber, his evidence evolved throughout the hearings. The trial chamber noted he was confused and inconsistent. In particular, the chamber recalled the witness' testimony that, while standing near the market, he saw Katanga and Ngudjolo enter a school in Bogoro immediately after the attack. The chamber said that during its site visit to Bogoro, it noticed that the camp and the market were too far apart for the witness to have seen the two men enter the school.

Witness 219: Witness 219, a former FRPI soldier, testified that he participated in several battles in Ituri, 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, and the witness said Katanga and Ngudjolo communicated regularly before the attack. Witness 219 testified that he visited Bogoro the day after the attack, traveling on foot from Aveba. He 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 fled for protection during the attack.

The trial chamber, however, seriously doubted his testimony and found it unreliable in the Ngudjolo judgment. In particular, it doubted he could have covered the 100 km trip over difficult terrain to Bogoro and back within a single day and also doubted his statements about what he said he saw in Bogoro that day.

VII. The Defense Case

Katanga pleaded not guilty to all charges. He did not deny that atrocities were committed in Bogoro. However, he denied that he commanded the FRPI during the attack. According to the Katanga defense, the FRPI did not become an organized or structured group until after the Bogoro attack, when it sought additional legitimacy to participate in regional peace talks. He said that he was a “coordinator” of Aveba at the time of the attack, acting as a liaison between the APC and people of Aveba. Katanga maintained that he did not meet Ngudjolo until after the Bogoro attack.

Katanga’s defense argued that, although there had been ethnic conflicts in the past, the Ituri conflict was not about ethnicity, but was about gaining control of the territory. Katanga argued that the attack on Bogoro was a military operation against the UPC, planned and carried out by DRC government-backed militias. The Katanga defense also emphasized the role of Uganda and Rwanda in the Ituri conflict.

Defense Closing Arguments

During [closing arguments](#), the Katanga defense argued that the prosecution had failed to prove the charges against him beyond a reasonable doubt. In particular, the Katanga defense argued that the attack on Bogoro was a military attack against the UPC carried out by the Congolese Rally for Democracy (RCD-KML), a state-sponsored militia.

Crimes Against Humanity

The defense argued that the prosecution had failed to prove that there had been a widespread or systematic attack against a civilian population, which is necessary to prove the crimes against humanity charges of murder, rape, and sexual slavery.

The Katanga defense also argued that the attack was not widespread or systematic. The pre-trial chamber had characterized the “attack” as an attack against the Hema population in the district of Ituri. Therefore, the defense contended, the Bogoro attack itself could not be considered a “widespread” attack. Nor was the attack on Bogoro part of any larger attack against Hema in the region, the defense argued. The Katanga defense distinguished the Bogoro attack from other regional attacks relied on by the prosecution to establish the widespread or systematic nature of the crimes. For example, the defense argued that the Nyankunde attack was directed against the Bira population, in response to an attack on Songolo. This, the defense submitted, created reasonable doubt that the alleged crimes in

Bogoro were committed as part of a larger regional attack on the Hema.

Common Criminal Plan

The prosecution alleged that the two accused shared a common plan to wipe out the village of Bogoro. The Katanga defense argued that the common plan must be criminal, but in this case the prosecution has conflated a legitimate military plan—to attack the UPC military base—with a criminal plan—to wipe out the village of Bogoro and its Hema civilian residents.

The plan, to remove the UPC military base in Bogoro, was orchestrated and formulated by the DRC government and the RCD-KML, the Katanga defense argued. Even though the defense conceded that there were civilian casualties in this attack, it argued that there was a general perception among combatants that the civilians had left the village before the attacks. Therefore, the prosecution had not proven that the common plan involved attacking civilians, the Katanga defense posited.

Katanga’s Position as Coordinator

Germain [Katanga testified](#) that he was not a commander but played the role of “coordinator” in Aveba. His defense team argued that this was not an official position and that Katanga simply adopted the term to describe his role as a liaison. At the time of the Bogoro attack, the FRPI was a “boneless” and “overblown” organization, the Katanga defense argued. It was only later, in anticipation of regional peace talks, that Katanga and others from Walendu-Bindi adopted the FRPI structure to give themselves more legitimacy among the other participants in the talks.

Witnesses for the Defense

The Katanga defense called 18 witnesses, including the accused himself and three witnesses who also testified for Ngudjolo. The testimony of selected witnesses is described below.

[Witness 236 \(Floribert Njabu\)](#): The former president of the FNI, Njabu testified in defense of both Katanga and Ngudjolo. Njabu testified about the creation of the FNI and the FRPI and the role of the DRC and Ugandan governments in the Ituri conflict. According to the witness, DRC forces attacked Bogoro, not the FNI or FRPI. Both the DRC 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.

[Witness 228 \(Pierre Célestin Mbodina Iribi \(also known as Pichou\)\)](#): Iribi, an Ngiti, said he was a high-ranking member of the FRPI. The witness said that a group of

refugees who had fled Bunia, Mongbwalu, and other areas of the region created the FRPI. The FRPI did not have a military structure when it was first created, Iribi testified, and did not form its military structure until after the peace process had started. Iribi claimed that until then, military missions undertaken by members of the FRPI were assigned by the RCD-KML or EMOI (Integrated Operational Head Command). Iribi blamed the DRC government for the attack on Bogoro. He testified that EMOI, a government-backed military structure based in Beni, had sent officers to organize troops in the Aveba area and prepare the attack on Bogoro. Iribi claimed that neither he nor Katanga participated in the attack. Katanga arrived in Bogoro one day later, he said. Iribi claimed that the FRPI did not have recruitment or training centers, and was not an army. According to the witness, anyone under 18-years-old who was with the FRPI troops was there on their own initiative and for their own safety. He claimed that there were no child soldiers in Aveba.

Germain Katanga: Katanga took the stand in his own defense. During Katanga’s testimony, he discussed the leadership structure of the combatants from Aveba. Importantly, although he admitted being a leader among the Aveba combatants, Katanga testified that he did not have direct command or control over the combatants or fighters at the time of the attack. Katanga said he first heard of the FRPI when he went to Bunia in November 2002 for meetings with the APC and the FRPI to discuss how the APC and combatants could work together. Later, the combatants in Aveba expropriated the FRPI name, he said, in order to foster a sense of identity. However, Katanga claimed that at the time of the Bogoro attack it was not an official organization and did not have a president. According to his testimony, he only began having himself called the president of the FRPI after February 2004. From December 2002 until the time of the Bogoro attack, there was no formal hierarchy in the group, he said. On the eve of the Bogoro attack, Katanga said that he was the Aveba coordinator. He testified that his job was to bring the combatants closer to the APC and to transmit the instructions given by their allies. He was serving as a mediator between the soldiers in the camp and the people in the town, he claimed.

According to his testimony, the APC planned the attack on Bogoro. Katanga [denied that he participated](#) in the attack or knew when it was going to occur. Katanga also denied that he had knowledge of crimes committed in Bogoro.

VIII. Legal Representatives for Victims

The trial chamber granted 366 victims the right to participate in the Katanga/Ngudjolo trial, separated into two groups: “general” victims and former child soldiers. Each group has separate legal representation. The victims’ representatives participated in the trial and [presented submissions](#) to the court during closing arguments.

The representative for “general” victims of the attack argued that his clients considered the conflict an ethnic conflict between the Hema and Lendu/Ngiti, countering defense arguments to the contrary. He also argued that 200 victims are enough to demonstrate a “widespread” or “systematic” attack for the purposes of crimes against humanity. The

victims' representative argued that the evidence shows that the accused intended to target a civilian population and that the perpetrators considered any Hema as the "enemy," whether they be a man, woman, or baby.

The legal representative for child soldier victims argued that various witnesses had testified about children as young as ten years old taking part in the hostilities. The victims' representative also addressed witnesses' hesitancy in giving precise ages and their difficulty in determining their age. The witnesses did not guess at ages, he said, but relied on other indicators to determine that they were obviously under 15, such as voices that had not broken, physical characteristics, and mental and physiological characteristics.

IX. Victim Witnesses

Two victims testified during the trial. Their testimony is described below.

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, including emotional and psychological trauma. She also claimed she had managed a restaurant that 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 in the attack.

Victim 4: Much of this witness' testimony about the attack on Bogoro was conducted in closed session. The witness testified that civilians from Bogoro would take refuge in the Bogoro military camp each time there was an attack on the village by the Lendu and Ngiti. She had sent her children away before the February 24 attack, she said, so that they would be safe. However, because her fields were in Bogoro, she had to stay, she maintained. At four o'clock on the morning of the attack, she was awoken by gunshots, Victim 4 testified. She said she heard attackers shouting in the Lendu and Ngiti languages. The witness fled first to the camp and later to the bush. The witness testified that she was eventually able to flee through the bush to Bunia. As she was fleeing, she said, she had to jump over dead bodies. The witness claimed that it was the men led by Katanga and Ngudjolo who attacked Bogoro. Victim 4 also testified about the effect of the attack on her life. She testified that she had lost family members during the attack, in addition to shepherds who took care of her cows. She explained that at the time of the attack, she had over 130 head of cattle, which are a great source of wealth for Hema people. The attackers stole these cows, she said, as well as other animals and possessions.

X. Case Timeline

July 6, 2007: An ICC arrest warrant is issued for Mathieu Ngudjolo Chui after three years of investigations by the former ICC prosecutor, Luis Moreno-Ocampo, into the conflict in the Ituri region of the DRC.

October 17, 2007: Germain Katanga, already imprisoned in DRC, is surrendered by the Congolese authorities and transferred to the ICC in The Hague.

October 18, 2007: The warrant of arrest is unsealed for Katanga, revealing counts of war crimes and crimes against humanity allegedly committed in the village of Bogoro in the Ituri Province of eastern DRC from January to March 2003.

February 6, 2008: Ngudjolo is arrested for the same war crimes and crimes against humanity as those in the arrest warrant for Katanga. He is surrendered by the Congolese authorities and transferred to the ICC in The Hague the following day.

March 10, 2008: A decision is made to join the Katanga and the Ngudjolo cases, as the two defendants face trial for the same crimes.

November 24, 2009: The ICC trial against Katanga and Ngudjolo commences.

December 8, 2010: The prosecution closes its case.

March 24, 2011: The opening of the defense case for Katanga.

September 27, 2011: Katanga begins testifying. It is the first time in the history of the ICC the accused has taken the witness stand in his own defense.

November 11, 2011: Ngudjolo, the final defense witness, completes his testimony, ending the defense case.

January 16-20, 2012: The Judges of Trial Chamber II visit Bogoro and surrounding villages in Ituri, DRC. The site visit allows them to see the scene where the alleged crimes took place.

May 15, 2012: Prosecution closing arguments begin.

May 23, 2012: Defense closing arguments begin.

November 21, 2012: Trial Chamber II informs the parties that it is considering a re-characterization of the facts of the case concerning the mode of liability applicable to Katanga. Recognizing this would prolong Katanga's trial, the judges sever the charges in order to avoid causing undue delay in the judgment of Ngudjolo.

December 18, 2012: Trial Chamber II acquits Ngudjolo of all charges. The judges conclude that the prosecution had failed to prove beyond a reasonable doubt that

Ngudjolo was responsible for the crimes committed during the attack on Bogoro.

December 21, 2012: The ICC releases Ngudjolo from custody. He remains in the Netherlands pending the removal of a United Nations travel ban against him and claims asylum there.

March 15, 2013: Trial Chamber II provides additional information on potential changes to the charges against Katanga.

November 19, 2013: Trial Chamber II decides to move forward with the case, sets a judgment date of February 7, 2014.

February 7, 2014: The final judgment is scheduled in the case against Katanga.

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