

The Trial of Mathieu Ngudjolo Chui: The Appeal Judgment

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On February 27, 2015, the International Criminal Court (ICC) in The Hague will deliver its first ruling on a prosecution appeal, challenging the acquittal of Mathieu Ngudjolo Chui. On December 18, 2012, Ngudjolo was found not guilty of war crimes and crimes against humanity allegedly committed during an attack on the village of Bogoro in eastern Democratic Republic of the Congo (DRC) in February 2003.

This is the second case to reach the appeals stage at the ICC. In December 2014, the ICC [upheld the conviction](#) and sentencing of Thomas Lubanga on appeal.

- Ngudjolo is the [first person to be acquitted](#) at the ICC. In reaching the decision to acquit, the trial chamber concluded that the prosecution failed to prove beyond a reasonable doubt that Ngudjolo was the commander of the combatants who participated in the attack on Bogoro.
- The Office of the Prosecutor (OTP) has raised [three grounds of appeal](#) and is asking for the Appeals Chamber to reverse the acquittal and remand the case for a retrial.

Ngudjolo was originally 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:

War crimes

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

Crimes against humanity

- Murder;
- Sexual slavery; and
- Rape

Mode of Liability

- Indirect co-perpetration under Article 25(3)(a) of the Rome Statute

Background

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 variously by Rwanda, Uganda, and the DRC government. Some 200 people were killed during an attack on the village of Bogoro on February 24, 2003, the prosecution claimed. At the time, Bogoro was held by the *Union des Patriotes Congolais* (UPC), the primarily Hema militia of Thomas Lubanga (the accused in the [first ICC trial](#)). The prosecution alleged that Ngudjolo from the *Force de Résistance Patriotique en Ituri* (FRPI), along with co-accused Germain Katanga from the *Front des Nationalistes et Intégrationnistes* (FNI), allegedly planned the attack in order to open a key crossroads and stop the UPC from attacking nearby Lendu and Ngiti villages.

In addition to destroying the UPC camp, the prosecution contended that the largely Ngiti FRPI and Lendu FNI wanted to “wipe out” the Hema civilian population of Bogoro. 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.

The Trial

The prosecution called 24 witnesses to testify, including two expert witnesses. The Ngudjolo defense called 12 witnesses, including the accused himself and three common witnesses, who also testified for Katanga.

Ngudjolo pleaded not guilty to all charges. He did not deny that atrocities were committed in Bogoro but denied that he commanded the FNI during the attack. His defense argued that the prosecution had failed to prove a link between Ngudjolo and the crimes. Rather, the Ngudjolo defense placed the blame for the attack squarely on DRC President Joseph Kabila. His defense contended that Kabila planned the Bogoro attack because he wanted to regain control over the conflict ridden Ituri region.

The trial chamber also granted 366 victims the right to participate in the trial, separated into two groups because of conflicts of interests: victims who suffered during the attack and former child soldiers. Each group has separate legal representation.

Why the Ngudjolo and Katanga cases were joined and later severed?

The ICC initially joined the cases against Mathieu Ngudjolo Chui and Germain Katanga in March 2008, largely on the basis of their alleged shared responsibility for the Bogoro attack. All the evidence for these crimes related to both suspects and the cases were joined during the whole of the trial hearings. However, after both parties rested their cases, a majority of Trial Chamber II informed the parties that it was [considering changing the mode of liability](#) charged against Katanga. The majority recognized that these changes would prolong Katanga’s trial, and in order to avoid potential violations of Ngudjolo’s right to a trial without undue delay, the cases were separated again.

The Acquittal

Trial Chamber II of the ICC acquitted Ngudjolo of all charges in December 2012. The judges concluded that the prosecution had failed to prove beyond a reasonable doubt that Ngudjolo was the commander of a group of Lendu combatants from the Ituri region of DRC. Specifically, the judges noted that key prosecution witnesses presented contradictory testimony and lacked sufficient credibility. The judges did not make any findings about the crimes themselves.

The Appeal

In response to the trial chamber's judgment, the prosecution raised [three grounds of appeal](#). First, the prosecution stated that the trial chamber misapplied the criminal standard of proof for conviction, which is proof "beyond reasonable doubt." The prosecution argued that the judges applied an unreasonably difficult standard of proof and searched for "all potential contrary explanations" to evidence that suggested Ngudjolo was guilty, even if those alternative explanations were not supported by the evidence.

In the second ground of appeal, the prosecution contended that the trial chamber erred by failing to consider the totality of the evidence and facts for its decision-making. Specifically, it claimed that the chamber "committed a legal error when it failed to assess individual items of evidence or specific facts in light of the entire record and in the context of other key relevant corroborating evidence."

Lastly, the prosecution argued that the trial chamber infringed on the prosecution's right to a fair trial under Article 64(2) of the Rome Statute - referring to the argument that the trial chamber committed "critical errors" in managing the trial that materially affected the prosecution's case. Among other remedies, the prosecution requested that the Appeals Chamber reverse the acquittal of Ngudjolo and remand the case for a retrial before another trial chamber.

Reparations

Reparations to victims can only be awarded after a conviction. If the acquittal is confirmed by the Appeals Chamber, no reparations proceedings will follow. This does not preclude victims from seeking reparations for harm they suffered during the Bogoro attack in proceedings against Katanga [as long as such harm relates to the crimes he has been convicted of](#).

For more details of the trial proceedings, please see our trial monitoring site: www.ijmonitor.org/category/germain-katanga-and-mathieu-ngudjolo-chui/.

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