

Ntaganda ICC Judgement

On July 8, 2019, Trial Chamber VI at the International Criminal Court (ICC) will deliver a judgement in the trial of former Congolese militia leader and army general Bosco Ntaganda. Ntaganda, who has been on trial at the ICC since September 2015, is facing 18 counts of war crimes and crimes against humanity, which is the highest amount of charges in any case to reach the judgment stage before the court.

The Defendant

Bosco Ntaganda, 45, is a Rwandan-born Congolese citizen. He is alleged to be the former Deputy Chief of General Staff of the Patriotic Forces for the Liberation of Congo (FPLC), a militia group based in eastern Democratic Republic of Congo. After a 2009 peace agreement with the Congolese government, Ntaganda served as a general in the Congolese army until 2012.

On March 18, 2013, Ntaganda voluntarily appeared at the United States Embassy in Kigali, Rwanda and asked to be transferred to the ICC. At the time, Ntaganda had two outstanding ICC arrest warrants, the first issued in 2006 and the second issued in 2012.

The Charges and Trial

The prosecution charged Ntaganda with 13 counts of war crimes: murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; rape and sexual slavery of child soldiers; and enlisting and conscripting child soldiers under the age of fifteen years and using them to participate actively in hostilities. He was also charged with five counts of crimes against humanity: murder and attempted murder; rape; sexual slavery; persecution; and forcible transfer of population. The crimes were purportedly committed during a 2002-2003 ethnic conflict in Congo's Ituri province while Ntaganda was a senior commander in the FPLC.

The trial began on September 2, 2015 and lasted nearly three years. Closing arguments took place August 28-30, 2018. During the trial, the prosecution called 80 witnesses, and the defense called 19 witnesses, including Ntaganda, who testified in his own defense for several weeks. Victims' lawyers called three witnesses to provide testimony, and five victims presented their views and concerns to the court.

The Defense Case

The defense said allegations of widespread criminality by the FPLC are false and claimed Ntaganda punished those responsible for crimes. The defense also argued many key prosecution witnesses deliberately provided false evidence. Ntaganda himself denied committing rape or murder and said he prohibited sexual relations between FPLC fighters. He also denied recruiting or using child soldiers and told judges he was peacemaker, not a war criminal.



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Contest over Sexual Violence Charges

Ntaganda's trial is the first at the ICC where a commander was charged with rape and sexual violence committed against child soldiers under his command. Ntaganda contested the ICC's jurisdiction to try him over this alleged war crime, arguing that under Common Article 3 of the Geneva Conventions of 1949, war crimes cannot be committed by members of an armed force against members of the same armed force. Judges dismissed this argument, stating that the court's founding law does not require victims of these crimes to be protected persons, meaning members of the same armed force are covered too. Ntaganda was not charged with having committed rape himself.

Communications Restrictions and Hunger Strike

In August 2015, judges imposed restrictions on Ntaganda's visits and communications, after finding evidence that he had personally engaged in witness interference and coaching. According to these restrictions, Ntaganda was permitted one hour of telephone calls per week with two specific individuals. The calls were also monitored and limited in duration, language, and subject matter. In protest, Ntaganda went on a 14-day hunger strike and boycott of proceedings in September 2016. Judges lifted all restrictions in February 2018, when nearly all evidence in the case had been submitted. No witness tampering charges were brought against Ntaganda.

Why the Defense Tried to Disqualify a Judge

On May 20, 2019, Ntaganda's lawyers sought the disqualification of Judge Kuniko Ozaki from the panel of three judges trying him. They claimed the judge had lost her judicial independence earlier this year after she was permitted by the ICC to take up a position as Japan's ambassador to Estonia while continuing to serve as a non-full-judge in Ntaganda's trial. A plenary of judges rejected the request to remove Judge Ozaki from the trial after finding that the defense had not provided sufficient reasons to satisfy the "high threshold" required to disqualify an ICC judge on the grounds of impartiality. However, Judge Ozaki resigned from her ambassadorial post amidst the protest from the defense.

Related Cases

Ntaganda is the fifth Congolese national put on trial at the ICC. Thomas Lubanga Dyilo, the former commander-in-chief of the FPLC, is serving a 14-year prison sentence for war crimes after his ICC conviction in March 2012. In December 2012, ICC judges acquitted Mathieu Ngudjolo Chui, and in March 2014 convicted Germain Katanga of four war crimes and one crimes against humanity. Jean-Pierre Bemba, who was charged with crimes related to a conflict in the Central African Republic, was also acquitted in June 2018.