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ICC Judges to Decide if M23's Ntaganda to Face Trial

DRC militia leader suspected of war crimes and crimes against humanity in 2002-03

WHAT: A confirmation of charges hearing will open in The Hague next Monday, 10 February 2014, to decide whether alleged former leader of several Congolese armed groups Bosco Ntaganda will be tried at the International Criminal Court (ICC).

Ntaganda will face trial if the judges of ICC Pre-Trial Chamber II find reasonable grounds to believe that he is responsible for war crimes and crimes against humanity in the eastern Ituri region of the Democratic Republic of Congo (DRC) in 2002-03.

WHY: Two ICC arrest warrants were issued for Ntaganda in 2006 and 2012. He was transferred to The Hague in March 2013 after presenting himself to the United States embassy in Kigali, Rwanda, requesting to be transferred to ICC custody.

Ntaganda is charged with the war crimes of enlistment, conscription and use of children under the age of 15 to participate in hostilities, as well as murder, attacks against a civilian population, pillaging and rape and sexual slavery. He is also charged with the crimes against humanity of murder, persecution and rape and sexual slavery.

Armed militias that Ntaganda is believed to have been involved with include the *Forces Patriotiques pour la Libération du Congo*, the *Congrès national pour la défense du peuple* and most recently *M-23*, which has been at the center of renewed conflict in eastern DRC.

HOW: ICC Prosecutor Fatou Bensouda will present evidence to support her case against Ntaganda, while the defense will have the opportunity to object to the charges and challenge the prosecutor's evidence. The defense may also raise objections to the admissibility of the case before the ICC.

The views and concerns of 922 victims who applied to participate in the proceedings are to be presented at the hearing through two separate legal representatives from the Court's Office of Public Counsel for Victims.

NEXT STEPS: Pre-trial judges Ekaterina Trendafilova, Hans-Peter Kaul and Cuno Tarfusser must make a decision within 60 days of the parties' final submissions. The conclusion of the hearing is presently set for 14 February 2014. The judges can confirm the charges and send the case to trial; reject the charges, or request the prosecutor to provide additional evidence or amend the charges.

COMMENT: "This hearing is a long time coming for victims of mass atrocities in Ituri, who have waited years for justice," said **William Pace, convenor of the Coalition for the ICC**. "The Coalition had been calling for Ntaganda's arrest for many years, and we welcome that the charges he is facing include sexual and gender-based crimes, which have been particularly widespread and damaging to Congolese society," **Pace added**. "The DRC has long been plagued by armed groups seeking power through the use of force, and the prosecution of those most responsible for those crimes is needed to end impunity and lay a sound foundation for peace."

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"Victims and affected communities welcomed Ntaganda's transfer to the ICC as an opportunity for justice," said **André Marie Kito Masimango, coordinator of the DRC National Coalition for the ICC**. "Ntaganda's detention in The Hague has contributed significantly to the development of the peace process in eastern DRC," **Kito Masimango added**. "However, those participating in the proceedings represent only a fraction of Ntaganda's alleged victims. Outreach and communications with affected communities need to be strengthened."

"Today's hearing is an essential step towards ensuring the right to justice for victims in eastern DRC," said **Karim Lahidji, president of FIDH**. "While not yet the start of the trial, to see Ntaganda in the dock facing independent judges and prosecutors sends a very strong message to victims: their plight has not remained unheard," **Lahidji added**. "Due to the many years between the alleged crimes, the first arrest warrant and this hearing, it is essential that the Court—including the prosecutor—inform victims, properly and widely, of the steps and decisions taken. Informing victims is not the sole responsibility of the legal representative. The whole Court must remain accountable to victims, who should be informed about their rights and the decisions that affect them."

"Although the United States is not a party to the Court, it behaved like one in ensuring that Ntaganda was delivered safely to The Hague," said **John Washburn, convener of the American NGO Coalition for the ICC**. "Its cooperation with the Court and the others involved in the delivery was extensive, quick and effective. As this shows us, the United States has concluded that working with the ICC is in the American national interest and as a result, the relationship between them has become close and dynamic."

BACKGROUND: The confirmation of charges hearing was originally scheduled for 26 September 2013, but was postponed to give the prosecutor more time to prepare the case, which had been dormant for many years. In November 2013, judges rejected Ntaganda's request for provisional release.

The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity, and genocide. Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unwilling or unable to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes. There are currently eight investigations before the Court: the Central African Republic; Cote d'Ivoire; the Democratic Republic of the Congo; Darfur, the Sudan; Uganda; Kenya; Libya; and Mali. The ICC has publicly issued 30 arrest warrants and nine summonses to appear. The Court issued a judgment in its first trial on 14 March 2012. Three other trials are ongoing. The ICC Office of the Prosecutor has also made public that it is conducting eight preliminary examinations on four continents: Afghanistan, Colombia, Georgia, Guinea, Honduras, Republic of Korea, Nigeria and the Comoros.