

# The Trial of Germain Katanga and Mathieu Ngudjolo Chui: Closing Arguments

MAY 2012

---

On May 15 2012 CLOSING ARGUMENTS will commence at the International Criminal Court (ICC) in The Hague in the case against Germain Katanga and Mathieu Ngudjolo Chui, the second case to reach this stage at the ICC. This background paper summarizes the main issues in the case so far, with hyperlinks to our trial monitoring website [www.katangatrial.org](http://www.katangatrial.org).

## The Charges

Germain Katanga is the alleged commander of the *Force de Résistance Patriotique en Ituri* (FRPI, Patriotic Resistance Forces in Ituri) and Mathieu Ngudjolo Chui is the alleged former leader of the *Front des Nationalistes et Intégrationnistes* (FNI, National Integration Front), two armed militias from the Ituri region in eastern Democratic Republic of the Congo (DRC).

Katanga and Ngudjolo are 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 specific charges 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;
- Rape; and
- Sexual slavery

Their trial, which began on November 24, 2009, is the second to be heard before the ICC. The Katanga/Ngudjolo case is the first ICC trial to deal with sexual violence crimes and crimes against humanity, in addition to many other legal issues, such as cooperation and jurisdiction when witnesses seek asylum.

## Key Legal Issues

The defense teams do not deny that Bogoro was attacked or that civilians were harmed in the attack. The key legal issues are whether it is possible to link Katanga and Ngudjolo to the attack and proving that they were responsible for the commission of crimes that took place in Bogoro that day.

A discussion of the prosecution's attempt to do this is provided below, followed by a description of the defense cases put forward by the two defendants.

## 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. This joinder was deemed in the interests of the victims and witnesses, conducting the proceedings in a fair and efficient manner, and the protection of 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, nor contrary to the interests of justice. It allowed that the cases could be separated at a later stage if necessary.

## Witnesses Seeking Asylum

In May 2011, three witnesses, who each testified for the defense during the Katanga/Ngudjolo trial, [applied for asylum](#) in the Netherlands after their testimony implicated the DRC government, including President Joseph Kabila. The witnesses claimed they would face persecution and security risks if they are sent back to prison in the DRC. (Each witness had been in detention in the DRC for their alleged role in the murder of UN peacekeepers.)

After months of jurisdictional dispute between the ICC, the Netherlands, and DRC government, [a Dutch court held](#) that the witnesses have the right to access the Dutch asylum procedure under Dutch immigration law. The Dutch court also ordered the government authorities of the Netherlands to make a decision on the asylum applications by June 28, 2012.

## The Prosecution's Case

The Ituri conflict began as a series of land disputes between the Hema and Lendu ethnic groups but escalated into intensive attacks on civilian villages by local militias supported variously by Rwanda, Uganda, and the DRC government. The attack was part of a larger conflict in the DRC. During [opening statements](#), 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. At the time, Bogoro was held by the primarily Hema Union of Congolese Patriots (UPC), the militia of Thomas Lubanga, who was convicted in the [first ICC trial](#). Katanga and Ngudjolo allegedly planned the attack 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 claims that Katanga and Ngudjolo also planned to wipe out Bogoro— including its primarily Hema civilian population.

The prosecution contended 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.

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

In its closing arguments, the prosecution is expected to argue that its witnesses have demonstrated beyond a reasonable doubt that Katanga and Ngudjolo are jointly responsible for these crimes. The prosecution will likely highlight the leadership role of the two defendants in their respective organizations and argue that the evidence shows they played essential roles in carrying out the attack on Bogoro. The prosecution will probably focus on the ethnic aspect of the conflict and the plan to “wipe out” Bogoro and its Hema population.

#### **Witnesses for the Prosecution**

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

#### **Selected Prosecution Evidence**

**Witness 132:** A Hema resident of Bogoro, who testified about the alleged sexual violence crimes. According to Witness 132, on February 24, 2003, she was woken by gunshots early in the morning when Ngiti and Lendu fighters attacked the village. She was shot as she fled into the bushes 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 they did not believe her. 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 was later given to the battalion commander as a house slave before being forcibly married to another man outside of the camp. She 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. According to Witness 28, he was forced to undergo military training, which was like torture. He later went to Aveba where a military camp was eventually established under the leadership of Katanga. The DRC government provided the FRPI with weapons and ammunition, which Katanga distributed to other commanders before the Bogoro attack. He claimed that Katanga returned by airplane from a meeting with the Congolese People’s Army (APC, another Ituri armed group) with APC soldiers and ammunition for the Bogoro attack. The APC, FNI, and FRPI jointly attacked Bogoro. 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.

**Witness 279:** A young Ngiti man, who 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 Zombe. According to Witness 279, Ngudjolo was in charge of the camp and gave them the order to attack Bogoro but warned them not to shoot civilians. Ngudjolo, Katanga, and others had devised a precise plan to attack Bogoro. He described killing civilians, looting, and burning that took place during the Bogoro attack and insisted that both Ngudjolo and Katanga were in Bogoro on the day of the attack.

**Witness 219:** A former FRPI soldier, who testified that he participated in several battles, 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 with clear preparation and radio communication between the FNI and FRPI. He testified that he visited Bogoro the day after the attack and 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 had fled for protection during the attack.

## The Defense Cases

Both defendants have pleaded not guilty to all charges. The defendants do not deny that atrocities were committed in Bogoro. However, they deny that they commanded the forces during the attack. They claim that they were not in Bogoro on the day of the attack, and both claim that they did not meet the other until after the attack had already taken place.

Moreover, they both claim that they did not personally witness sexual violence and contend that neither of their militia forces used child soldiers. Katanga has admitted that there was one (but only one) child soldier at his camp in Aveba, who he says they helped demobilize.

Katanga and Ngudjolo have also argued that the attack was not ethnically motivated. They also both drew clear distinctions from local defense groups—such as the FNI and FRPI—and armed military groups (such as the APC), which were backed by the Ugandan, Rwandan, or Congolese armies. The local defense forces were only involved in self-defense, they claimed, not in larger overall military strategy.

During closing arguments, the defense teams will likely stress arguments that Katanga and Ngudjolo did not plan or have essential roles in the attack. Moreover, they will likely argue that civilians were not the target of the attack, which they both claim was undertaken for military purposes against a UPC military base.

## Witnesses for the Defense

The Katanga defense called 18 witnesses, including the accused himself. The Ngudjolo defense called 12 witnesses, including the accused himself and three common witnesses who also testified for Katanga.

### Selected Katanga Defense Witnesses

**Witness 228 (Pierre Célestin Mbodina Iribi):** Pierre Iribi, a high-ranking member of the FRPI, testified about the FNI and the FRPI and other armed groups operating in Ituri during the conflict. He said the FRPI did not have a military structure when it was first created 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-K/ML or the government-backed military structure, EMOI (Integrated Operational Head Command). Like the [other witnesses](#), Iribi blamed the DRC government for the attack on Bogoro. He testified that EMOI 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.

**Germain Katanga:** German Katanga [took the stand](#) in his own defense. Katanga denied that he was responsible for the attack on Bogoro, and claimed that the Ugandans, Rwandans, the DRC government, and other local militias were responsible. Katanga explained that he joined a self-defense group and later the FRPI. However, he said that at the time of the Bogoro attack, there was no formal FRPI hierarchy, and he did not begin having himself called the President of the FRPI until after February 2004. He denied having control over the combatants and said he was the “coordinator” between the APC and the village. [Katanga said](#) that the APC planned and ordered the Bogoro attack in order to wipe out the UPC military base there. He claimed this was for strategic military reasons and that the government of the DRC assisted in arming the APC. He did not fight that day, [Katanga testified](#), as he could not leave Aveba. He denied that civilian deaths would have been intentional and claimed looting could not have taken place as there was nothing in Bogoro to loot. He further denied that there were child soldiers in Aveba, with the exception of one child who they made demobilize. Katanga denied knowing Ngudjolo before the attack or having communication with Ngudjolo’s village, Zumbe. Germain Katanga also diminished the ethnic aspect of the attack, denying that it was intended to wipe out the Hema population.

### Selected Ngudjolo Defense Witnesses

**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. The witness also testified about the role of the DRC and Ugandan governments in the Ituri conflict. He said Kinshasa forces attacked Bogoro, not the FNI or FRPI. Both Kinshasa 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 88 (Emmanuel Ngabu Mandro, a.k.a. “Chief Manu”):** Chief Manu, Chief of Zumbe, testified that Ngudjolo was not the commander of the FNI at the time of the Bogoro attack. He said that Ngudjolo was a nurse at the Zumbe health center and, therefore, not in a position to give orders. [Chief Manu testified](#) that Ngudjolo did not become the leader of the FNI until after March 18, 2003, about one month after the attack on Bogoro. At that time, he “reached an agreement” with the FNI, and stayed in Bunia as its leader. Like [other defense witnesses](#), he testified that children who were not child soldiers took advantage of the demobilization centers in order to obtain the financial benefits of demobilizing. He testified that parents would encourage their children to take part in the process in order to receive the benefits.

**Mathieu Ngudjolo Chui:** Ngudjolo also [took the stand to testify](#) in his own defense. Ngudjolo testified that he had been a nurse and healthcare worker during most of the conflict and was unassociated with the FNI until after the Bogoro attack. On the day of the attack, Ngudjolo said he was in Zumbe helping a woman give birth. According to Ngudjolo, the FNI was not present in his area at the time of the Bogoro attack. He claimed that he did not learn of the FNI until March 18, 2003, when he met with FNI president Floribert Njabu. Ngudjolo said that Njabu asked him to get involved with the organization. On March 22, 2003, he said, he was appointed as Deputy Chief in charge of FNI operations. However, the group was quickly integrated into the national army. Therefore, he testified, he did not carry out any military operations. Although the prosecution alleges that the FNI and FRPI jointly planned the attack on Bogoro, Ngudjolo claimed that the FNI and FRPI did not establish an alliance until March 2003, after the attack.

## Legal Representatives for Victims

There are 364 participating victims in the Katanga/Ngudjolo trial, separated into two groups. One group consists of 353 “general” victims and another 11 victims are former child soldiers. Each group has separate legal representation.

**Victim 2:** This witness told the court that the attack on Bogoro started around five o’clock in the morning. She was awoken by gunshots from the direction of the Bogoro military camp and 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. The victim also discussed the harm she suffered because of the attack. She claimed that before the attack, she had managed a restaurant, which was destroyed in the attack. She claimed that she cows, goats, chickens, a straw hut, land that she cultivated, and other possessions that were all stolen, lost, or destroyed due to the attack. The witness also testified about emotional and psychological trauma that she suffered because of the attack.

**Victim 4:** 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. The victim testified that at four o'clock on the morning of the attack, she was awoken by gunshots. She also heard people shouting in the Lendu and Ngiti languages coming from the attackers. The witness said that she was eventually able to flee through the bush to Bunia, but as she was fleeing, she had to jump over dead bodies. She testified that she had lost family members during the attack, in addition to shepherds who took care of her cows. 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 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. These cows were stolen by the attackers, as well as other animals and possessions.

## Timeline of Significant Events

**September 8, 2000:** The Democratic Republic of Congo (DRC) signs the Rome Statute of the International Criminal Court (ICC).

**April 11, 2002:** The DRC ratifies the Rome Statute of the ICC.

**April 19, 2004:** The Congolese government refers the situation in the DRC to the ICC.

**June 23, 2004:** The decision of the ICC Prosecutor to launch an investigation into crimes committed in Ituri, DRC, is announced.

**March 10, 2005:** Germain Katanga, alleged commander of the *Force de résistance patriotique en Ituri* (FRPI) militia and Brigadier-General of the national Armed Forces of the Democratic Republic of Congo (FARDC), is arrested in connection with the killing of nine UN peacekeepers. He is detained without charge by the Congolese authorities.

**July 2, 2007:** An ICC arrest warrant is issued for Katanga.

**July 6, 2007:** An ICC arrest warrant is issued for Mathieu Ngudjolo Chui, alleged former leader of the *Front des nationalistes et intégrationnistes* (FNI) militia.

**October 17, 2007:** Katanga 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, including murder or wilful killing, inhumane acts, sexual slavery, rape, cruel or inhuman treatment, using children to participate actively in hostilities, outrages upon personal dignity, intentional attack against the civilian population, pillaging and destruction of property.

**October 22, 2007:** Katanga appears before ICC Pre-Trial Chamber I for the first time.

**February 6, 2008:** Mathieu Ngudjolo is arrested.

**February 7, 2008:** The arrest warrant listing the same war crimes and crimes against humanity as those in the arrest warrant for Katanga is unsealed for Ngudjolo. He is surrendered by the Congolese authorities and transferred to the ICC in The Hague.

**February 11, 2008:** Ngudjolo appears before ICC Pre-Trial Chamber I for the first time.

**March 10, 2008:** A decision is made to join the Katanga and the Ngudjolo cases, as the two defendants are on trial for the same crimes. The Chamber states that joining the cases will not prejudice the subjects, nor will it be contrary to the interests of justice, and affirms that the cases may be severed at a later date if necessary.

**June 27, 2008 – July 16, 2008:** Pre-Trial Chamber I holds a confirmation of charges hearing in the case against Katanga and Ngudjolo. The hearing had twice been postponed by the Chamber to provide the parties involved more preparation time.

**September 26, 2008:** Pre-Trial Chamber I confirms all but three of the charges against Katanga and Ngudjolo. The Chamber confirmed seven counts of war crimes and three counts of crimes against humanity. The judges declined three charges on the grounds of insufficient evidence: the charges of inhuman treatment and outrages upon personal dignity (war crimes), and inhumane acts (a crime against humanity).

The Chamber confirmed the war crimes of 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. The three counts of crimes against humanity include murder, rape, and sexual slavery allegedly committed in Bogoro, a village in the Ituri Province of eastern DRC, from January to March 2003.

**March 27, 2009:** In a decision issued on March 27, 2009 the Trial Chamber II of the ICC set the commencement of the trial in the case of against Katanga and Ngudjolo for September 24, 2009.

**August 31, 2009:** Trial Chamber II postpones the commencement of the trial to November 24, 2009.

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

**December 2, 2009:** Trial Chamber II postpones hearings in the case against Katanga and Ngudjolo due to illness that prevents one of the judges from attending.

**January 26, 2010:** The trial resumes with the Prosecution case.

**December 8, 2010:** The Prosecution closes its case.

**February 21, 2011:** The trial resumes after the winter recess. The testimony of victims begins.

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

**April 6, 2011:** The first joint witness, Floribert Njabu, begins his testimony in defense of Katanga and Ngudjolo.

**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.

**October 20, 2011:** Katanga completes testimony in his own defense, completing his defense.

**October 27, 2011:** Mathieu Ngudjolo begins testifying in his own defense.

**November 11, 2011:** Mathieu 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 Katanga and Ngudjolo are charged with took place.

**May 15, 2012:** Prosecution closing arguments begin.

**May 23, 2012:** Defense closing arguments begin.

**E-mail: [info@justiceinitiative.org](mailto:info@justiceinitiative.org)  
[www.justiceinitiative.org](http://www.justiceinitiative.org)**



---

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.