

**Statement by the Women's Initiatives for Gender Justice on the Opening of the ICC Trial of  
Germain Katanga and Mathieu Ngudjolo Chui**

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The case against Germain Katanga and Mathieu Ngudjolo Chui is important, as are all the cases before the ICC, because it provides accountability and proof that militia leaders are not beyond the reach of the law even when they operate in remote locations, far from capital cities.

This trial is important because it shows to those who believe impunity is assured that accountability is inevitable.

In some respects this is a modest case. It is based on one incident - the attack of Bogoro village on 24 February 2003. However, the case at least partially 'representative' of the types of attacks, types of crimes, types of violence against women and the types of victims of the FRPI<sup>1</sup> and FNI.<sup>2</sup>

As the alleged senior commanders of these two militias, Katanga and Ngudjolo are charged with three counts of crimes against humanity<sup>3</sup> and seven counts of war crimes<sup>4</sup> including rape and sexual enslavement. They are the first two accused from the Democratic Republic of the Congo (DRC) to be charged with gender-based crimes.

### **Documentation**

In 2006 and 2007 the Women's Initiatives carried out extensive documentation of gender-based crimes committed by a range of militias operating primarily in the Ituri region. Our report included 112 interviews mostly with women victims/survivors of sexual violence. Almost 30 interviews related to gender-based crimes committed by the FNI and FRPI.

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<sup>1</sup> Force de résistance patriotique en Ituri (Patriotic Resistance Force in Ituri).

<sup>2</sup> Force des nationalistes et intégrationnistes (National Integrationist Front).

<sup>3</sup> Murder under article 7(1); sexual slavery and rape under article 7(1)(g).

<sup>4</sup> Using children under the age of 15 to take active part in hostilities under article 8(2)(b)(xxvi); deliberately directing an attack on a civilian population as such or against individual civilians not taking direct part in hostilities under article 8(2)(b)(i); willful killing under article 8(2)(a)(i); destruction of property under article 8(2)(b)(xiii); pillaging under article 8(2)(b)(xvi); sexual slavery and rape under article 8(2)(b)(xxii).

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Women we interviewed described horrific attacks, rapes, gang rapes and enslavement. Many of the women were raped in front of family members, including their children. Several we interviewed reported losing consciousness as a result of rape, and some became pregnant. Women who were pregnant prior to the rape lost their children, and many had severe physical and psychological injuries as a result of the sexual violence. Many women were attacked in their homes. Many were abducted and enslaved particularly in camps run by the FNI. Women we interviewed told us that in addition to domestic work in the camps, women were raped by militiamen and commanding officers and assigned to them as 'wives'. Those who tried to escape were killed.

The FNI and FRPI attacked entire villages, where they pillaged, raped, and abducted women.

Although not all these forms of sexual violence are being charged, the case against Katanga and Ngudjolo does include important charges of rape and sexual enslavement as war crimes and crimes against humanity.

However, there are some challenges with this case.

### **Limitation on Facts and Evidence**

On 29 October the Trial Chamber issued a decision regarding the scope of the evidence to be submitted at trial.

The Chamber has taken a position to not consider new facts disclosed over the course of trial as a result of the Prosecution's ongoing investigations, stating that the Prosecution is bound by the 'facts and circumstances' as set forth in the confirmed charges. Consequently, the decision forces the Prosecution to rely on facts presented only during the pre-trial phase. We are concerned about the impact of this decision on the Prosecution's ability to adequately present its case regarding, in particular, gender-based crimes.

In the Katanga/Ngudjolo case, evidence of gender-based crimes was not fully presented at the Confirmation Hearing, and one of the Judges issued a partly dissenting opinion<sup>5</sup> casting doubt on the sufficiency of the evidence presented with respect to gender-based crimes at the pre-trial stage. In our view, it is critical that the Chamber allows the Prosecution to present all the evidence of gender-based crimes it has collected as a result of ongoing investigations, regardless of whether it was introduced during the Confirmation Hearing.

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<sup>5</sup> Partly dissenting Opinion of Judge Ušacka, ICC-01/04-01/07-717, available at <http://www.icc-cpi.int/iccdocs/doc/doc571253.pdf>.



## **Accountability**

Accountability for gender-based crimes is important for the Bogoro community, for communities in Ituri, in eastern DRC, throughout the Democratic Republic of the Congo, the Great Lakes region and beyond, because it shows the ICC takes these crimes seriously, will prosecute sexual violence with purpose and vigor, and that the ICC will recognize the human and legal rights that women in the DRC are denied at the domestic level.

The DRC has the highest rate of sexual violence in the world, it has the fourth lowest ranking of countries on the Ibrahim Index of Good Governance and Democracy<sup>6</sup> and is in the top ten percent of most corrupt countries around the globe according to a recent report by Transparency International.<sup>7</sup>

Therefore, the likelihood of the sexual violence crimes – the acts committed in the Bogoro attack – being addressed domestically is almost zero. In such situations, the role and responsibility of the ICC to prosecute these crimes is paramount, as it represents for women the greatest hope and perhaps their only chance for justice and accountability.

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<sup>6</sup> See <http://www.moibrahimfoundation.org/en/section/the-ibrahim-index/scores-and-ranking>.

<sup>7</sup> Corruption Perceptions Index 2009, available at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009).

