



Questions and answers

Questions and answers about the Judgment rendered by Trial Chamber II

in the case of

The Prosecutor v. Germain Katanga

7 March 2014



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1. What is the ICC Judgment of 7 March 2014 in the case against Germain Katanga?

On 7 March 2014, Trial Chamber II of the International Criminal Court (ICC), by majority, rendered its judgment in the case *the Prosecutor v. Germain Katanga*. The Chamber was satisfied beyond reasonable doubt of Germain Katanga's guilt as an accessory, within the meaning of article (25)(3)(d) of the Rome Statute – the ICC's founding treaty – in the commission of a crime against humanity (murder) and four war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on 24 February 2003 during the attack on the village of Bogoro in the Ituri district of the Democratic Republic of the Congo (DRC). The Chamber is composed of Judges Bruno Cotte, presiding, Fatoumata Dembele Diarra and Christine Van den Wyngaert.

2. Why did the Trial Chamber find Germain Katanga guilty as an accessory rather than as the principal perpetrator of war crimes and crimes against humanity?

The Chamber dismissed the mode of liability, as principal perpetrator, applied to Germain Katanga, since it was not proven beyond reasonable doubt that within the collectivité he had the material ability to give orders or to ensure their implementation, or that he had the power to discipline camp commanders.

Hence, Trial Chamber II changed the characterisation of the mode of liability of Germain Katanga, who was initially charged as principal perpetrator, on the basis of article 25(3)(d) of the Rome Statute, which is definitive of accessoryship through contribution "[i]n any other way [...] to the commission [...] of [...] a crime by a group of persons acting with a common purpose". Germain Katanga was found guilty as an accessory within the meaning of (25)(3)(d) of the Rome Statute, of crimes of murder constituting crimes against humanity and war crimes as well as attacks against a civilian population as such or against individual civilians not taking direct part in hostilities, destroying the enemy's property and pillaging constituting war crimes.

3. Why did Trial Chamber II acquit Germain Katanga of some charges?

Germain Katanga was found guilty of committing a crime against humanity (murder) and four war crimes (murder, attacking a civilian population, destruction of property and pillaging) during the attack on the village of Bogoro, Ituri.

However, the Trial Chamber acquitted Germain Katanga of the other charges that he was facing. With respect to these other charges, the Chamber found that there was evidence beyond reasonable doubt that the crimes of rape and sexual slavery were committed. Regarding the crime of using child soldiers, it found that there were children in the armed forces operating in Ituri, in the Ngiti militia and among combatants who were in Bogoro on the day of the attack, as well as in some militia camps, especially in Aveba. The Chamber however considered that the evidence presented in support of the accused's guilt did not satisfy it of the accused's responsibility for the crimes "beyond reasonable doubt".



4. Is this judgment final?

No. The Prosecutor and the Defence may appeal the judgement within 30 days.

5. When is the determination of his sentence? Where will he serve his sentence?

Today's judgment only relates to the guilt of Mr Katanga. Trial Chamber II will make a decision later on the procedure to follow in determining his sentence.

A decision on the sentence may also be appealed. Where such a decision becomes final, a person found guilty of committing a crime that falls under the jurisdiction of the Court will not serve his or her sentence at the ICC Detention Centre in The Hague, as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred to a prison outside the Netherlands, in a State designated by the Court from a list of States which have indicated their willingness to allow a convicted person to serve his or her sentence there. A sentence of imprisonment may be modified only by ICC judges.

6. Why were the cases of Germain Katanga and of Mathieu Ngudjolo Chui severed and why are the judgments different?

On 21 November 2012, Trial Chamber II severed the charges against Mathieu Ngudjolo Chui and Germain Katanga. The Chamber considered that the case against Mathieu Ngudjolo Chui was ready for judgment whereas the proceedings in the case against Germain Katanga needed to continue due to a possible change of characterisation of the mode of liability in his case.

On 18 December 2012, the Chamber acquitted Mr Ngudjolo Chui, finding that in light of the standard of proof, the evidence presented in support of guilt did not satisfy it of the accused's liability "beyond reasonable doubt". He was released on 21 December 2012. His case is on appeal.

Unlike in the case against Mathieu Ngudjolo Chui, Trial Chamber II was satisfied beyond reasonable doubt of Germain Katanga's liability for four war crimes and one crime against humanity. That said, the Chamber acquitted him of the other charges against him as there was insufficient evidence to satisfy it of his liability "beyond reasonable doubt".

In both cases, likewise in the case against Thomas Lubanga Dyilo, the ICC judges were guided solely by the rules of law, witness statements and evidence tendered before them, during the months that the trial lasted. No political or ethnic consideration can or has been taken into account by the ICC judges.

7. Will there be reparations for victims and when?

Today's judgment relates to the guilt of Germain Katanga. Judges will then determine the sentence to be applied. Once Trial Chamber II has determined the sentence for Germain Katanga, it may decide to award reparations to victims of the crimes for which he was found guilty. In addition, the parties may appeal these decisions and no remedy can be implemented as long as the decisions are not final.

Reparations may take various forms, including monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials.

The Court may award individual reparation or reparation on a collective basis, whichever, in its view, is most appropriate for victims in the case being heard. Collective reparation has the advantage of providing relief to a community as a whole and assisting its members to reconstruct their lives. Centres that provide services to victims, for example, could be built or symbolic measures could be taken.

Furthermore, the States Parties to the Rome Statute have established a Trust Fund for Victims of crimes within the jurisdiction of the ICC and for their families in order to raise the funds necessary to comply with an order for reparations made by the Court if the convicted person does not have sufficient resources to do so.

Meanwhile, independently from decisions on reparations, the Trust Fund for Victims continues to provide support to projects to assist victims and their families in the DRC. This assistance is not linked to the cases and does not depend on the conviction of the accused.

8. In case of an appeal, will Germain Katanga remain in detention during appeals proceedings?

On 7 March 2014, Trial Chamber II ordered that Germain Katanga will continue to be detained.

In the event of an appeal, and unless there is a subsequent decision of ICC judges modifying the order above, Germain Katanga shall continue to be detained during appeals proceedings.



9. What is the ICC doing regarding the situation in the Kivu regions?

The case against Germain Katanga (as well as the cases against Thomas Lubanga and Mathieu Ngudjolo) only related to crimes committed in Ituri. But other cases are currently before the ICC for crimes committed in the Kivu regions of the DRC (North Kivu and South Kivu).

A warrant of arrest was issued for Sylvestre Mudacumura by the ICC Pre-Trial Chamber II on 13 July 2012. Sylvestre Mudacumura is charged with being criminally liable for nine counts of war crimes within the meaning of article 25(3) (b) of the Rome Statute, from 20 January 2009 to late September 2010 in the conflict in the Kivu regions: attacks against a civilian population, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrages against personal dignity. Mr Mudacumura is not detained by the ICC as the arrest warrant against him has not yet been executed.

The ICC's Office of the Prosecutor continues investigating alleged crimes in the Kivu regions and, depending on evidence gathered, may submit further requests to the judges for the issuance of warrants of arrest or summonses to appear.