



Chui Arrest a Milestone in the Fight Against Impunity in DRC

On February 6, 2008, Mathieu Ngudjolo Chui became the third war crimes suspect to be transferred to the International Criminal Court (ICC) in the Hague. His arrest marks another milestone in ongoing efforts to address the impunity which facilitated the widespread commission of atrocities during the war in the Democratic Republic of Congo (DRC).

Since 1998, the conflict is estimated to have claimed the lives of 3.8 million people, including 60,000 civilians in the Ituri region in north-eastern DRC, where Chui was active. 3.4 million civilians are estimated to have been displaced, with more than half a million in the Ituri region alone.

Chui was the former leader of the National Integrationist Front militia (also known by its French acronym FNI), affiliated with the Lendu ethnic group. He is charged with nine counts of war crimes and crimes against humanity, including murder, inhumane acts, sexual enslavement and using child soldiers in the Bogoro village attack which claimed the lives of 200 civilians and in which girls were abducted and forced to be sex slaves. In 2002/3, over 8,000 civilians died and more than half a million people were displaced in Ituri as a consequence of the armed conflict between the FNI and other armed militias in the region.

The Ongoing March of Justice

While his arrest was a positive development, the fact that Chui was only the third war crimes suspect indicted by the Hague must be understood against the backdrop of the enormity of the human suffering in DRC. If impunity for the range of human rights abuses is to be addressed, a wide range of additional measures will need to build on the efforts of the ICC.

DRC, in its statement upon ratification of the ICC's Rome Statute on April 11, 2002, maintained that the country "was ashamed of the atrocities occurring on its territory and looked forward to ICC assistance in punishing those responsible." Since the referral of the DRC situation by the government to the ICC in March 2004, the ICC has brought two other suspects before the Court: Thomas Lubanga Dyilo, former warlord and leader of the Union of Congolese Patriots (UPC), and Germain Katanga. The UPC and Lubanga are accused of massacring civilians in various towns in the Ituri region and recruiting child soldiers as young as 10 since 2002. Between 2002 and 2003, more than 800 civilians were reported to have been killed by the UPC in the mining town of Mongbwalu and adjacent villages. Lubanga's trial is currently on hold as a result of fair trial concerns over potentially exculpatory evidence obtained by the prosecution but not disclosed to the defence.

Having been in custody in Kinshasa since March 2005, the second war crimes suspect Germain Katanga was transferred to the Hague on October 17, 2007. Katanga was the former chief of staff of the Patriotic Force of Resistance in Ituri (FRPI), the military wing of the FNI

militia. He is charged with three counts of crimes against humanity and six counts of war crimes for his involvement in killings, pillaging, using child soldiers and sexual enslavement during an attack on the town of Bogoro alongside Chui. Katanga also played a part in the mass murder at the hospital of Nyakunde in September 2002. Over a 10-day period 1,200 Hema and other civilians were murdered. Katanga is being tried together with Chui.

Confirmation of charges hearings, at which the Pre Trial Chamber assesses the evidence to determine whether the charges for which the prosecution intends to try Katanga and Chui can stand, began in late June and are ongoing.

Although the ICC cases are proceeding, it is clear that a comprehensive justice will not end with the few high profile cases that will be prosecuted in the Hague. In order to promote a broader restoration of the justice system in Ituri, the European Union has since 2004 been providing the DRC with funding to support justice and the rule of law. This program has focused on the Ituri region with the objective of ending the de-facto impunity for serious civil offences in Bunia through the establishment of courts, the training of prosecutors and legal defence and the construction of a prison. On February 17, 2004, the *Tribunal de Grande Instance* in Bunia was established and by July, 50 of the roughly 300 cases before the court had been tried. However, the national judiciary remains beset with problems, including obstruction from the authorities, problems with security and a lack of witness protection. In addition, the Prosecutor has no particular mandate to prosecute international crimes. Instead, militia leaders have been prosecuted for minor offences or have been, like Chui, acquitted, leading the local population to doubt the seriousness of new judicial authorities.

Double Jeopardy and Complementarity

The *Tribunal de Grande Instance* charged Chui with murdering a Hema businessman linked to a rival armed group. He was acquitted in June 2004 and the prosecution appealed, but Chui was ultimately released by the Bunia court due to a lack of evidence. Chui raised the fact that he had already been tried and acquitted for similar charges in the DRC as a bar to ICC jurisdiction. Indeed, if national prosecution has taken place, the ICC cannot normally prosecute due to the operation of two principles contained in the Rome Statute. The first is *non bis in idem* (double jeopardy), the principle which provides that the same person cannot be tried twice for the same crime. The second is the principle of complementarity, which limits ICC jurisdiction to cases where national authorities are either unwilling or unable to prosecute.

ICC activist Christian Hemedi argues that Chui's case never received a final judgment and is therefore exempt from the principle of complementarity. This, alongside the fact that the ICC indictments (for war crimes and crimes against humanity) differ from the crimes with which Chui was charged in DRC, he argues, obviate the need to apply either principle.

Political Implications

Throughout discussions about accountability in DRC, the question of how prosecutions may impact political negotiations has been a major problem. Indeed, fears that an investigation would stand in the way of a new power-sharing agreement that placed leaders of military and political groups in government positions were cited as arguments against the Court's intervention.

The fact that Chui was in military training in Kinshasa at the time of his arrest following his appointment as a colonel in the Congolese national army in October 2006 only highlights the powerful positions that some human rights abusers occupy in DRC, and the political sensitivity of prosecuting them. Human Rights Watch's International Justice Program Counsel, Param-Preet Singh, points this out, "instead of rewarding abusive warlords like Cobra Matata and Peter Karim with plum military posts, the Congolese authorities should follow the ICC's lead and try them for war crimes in fair and effective trials."

In addition, the Prosecution's announcement that it will not pursue further prosecutions in Ituri has sparked diverse reactions. REDRESS expressed concerns that the Court has "unfinished business" in Ituri. The Congolese Coalition for Transitional Justice (CCTJ), however, sees the Court's intention to move to other areas as positive. They pointed out that the focus on Ituri caused those committing crimes elsewhere not to be worried, perhaps minimizing the Court's deterrent effect. The CCJT therefore invited the Court "to spread its activities to crimes committed in the other provinces of the DRC in order to meet the expectations expressed during the Conference on Peace, Security and the Development of North and South Kivu."