

Eliminating Sexual Violence in Conflict

Historic ICC Decision on the war crimes of rape and sexual slavery

19 June 2017

On this year's International Day for the Elimination of Sexual Violence in Conflict, we are pleased to celebrate a landmark and visionary decision by the Appeals Chamber of the International Criminal Court (ICC) on the commission of sexual violence in war.

On 15 June 2017, the Appeals Chamber of the ICC¹ rendered its Judgment in *The Prosecutor v. Bosco Ntaganda*, unanimously confirming the jurisdiction of the ICC over the war crimes of rape and sexual slavery committed by members of an armed group against members of that same armed group.²

This Appeals Chamber Judgment rejected the appeal³ by Bosco Ntaganda (Ntaganda) against Trial Chamber VI's decision⁴ of 4 January 2017 which found that it has jurisdiction over alleged war crimes of rape and sexual slavery of child soldiers within Ntaganda's militia group.⁵

The Chamber's decision last week found that international humanitarian law (IHL) 'does not contain a general rule that categorically excludes members of an armed group from protection against crimes committed by members of the same armed group',⁶ and that it protects 'vulnerable persons during armed conflict and assur[es] fundamental guarantees to persons not taking active part in the hostilities'.⁷

'This is one of the most important decisions in IHL in the last 120 years', said Brigid Inder, Executive Director of the Women's Initiatives for Gender Justice.⁸

'This decision recognises that legal protections apply to all those within armed groups, whether the armed conflict-related crimes they experience are committed against them by members of their own armed group or by members of an opposing group', said Ms Inder.

The Chamber stated that, given the 'prohibitions on rape and sexual slavery are well established under international humanitarian law',⁹ they saw no reason to conclude that there were 'any limits on who may be victims of such conduct'.¹⁰ In its decision, the Chamber highlighted that for each war crime, it must be established that the conduct in question 'took place in the context of and was associated with an armed conflict'.¹¹

'This decision focuses on the criminality of the acts of rape and sexual slavery and the context within which they occur, rather than qualifying the acts based on who is committing them or against whom

¹ The Appeals Chamber was composed of Presiding Judge Sanji Mmasenono Monageng (Botswana), Judge Christine Van den Wyngaert (Belgium), Judge Howard Morrison (United Kingdom), Judge Piotr Hofmański (Poland) and Judge Raul Cano Pangalangan (Philippines).

² ICC-01/04-02/06-1962, para 72.

³ ICC-01/04-02/06-1710; ICC-01/04-02/06-1754.

⁴ ICC-01/04-02/06-1707.

⁵ Counts 6 and 9.

⁶ ICC-01/04-02/06-1962, para 63.

⁷ ICC-01/04-02/06-1962, para 57.

⁸ The Hague Conventions of 1899 and 1907.

⁹ ICC-01/04-02/06-1962, para 64.

¹⁰ ICC-01/04-02/06-1962, para 64.

¹¹ ICC-01/04-02/06-1962, para 68.



they are committed. This decision finally establishes that the commission of rape and sexual slavery during war are war crimes, without exception’, said Brigid Inder.

‘The law always lags behind human experience and this is particularly true of sexual and gender-based crimes. It seems extraordinary that until now acts of rape and sexual slavery committed by members of a militia group against others within their own group, predominantly female combatants and children, have continued for so long without the recognition of criminality or a legal remedy for the victims of these crimes’, Ms Inder said.

‘This is a historic decision in which the ICC – the Appeals Chamber, the Ntaganda Trial Chamber and the Office of the Prosecutor – has made an important and significant contribution to the recognition of war crimes, acknowledging the multiple uses of sexual violence within warfare and the experience of women and children associated with armed groups’, said Inder.

As the brilliant late legal scholar and advocate, Rhonda Copelon, once wrote: ‘gender justice – which is among the most vehemently resisted aspects of international criminal law – is both profoundly revolutionary and one of the ultimate tests of universal justice’.¹²

Background

Ntaganda has been charged with 13 counts of war crimes and five counts of crimes against humanity, in his alleged capacity as the Deputy Chief of Staff in charge of operations and organisation of the *Forces Patriotiques pour la Libération du Congo* (FPLC), the military wing of the *Union des Patriotes Congolais* (UPC). The crimes alleged against Ntaganda by the ICC took place in the Ituri region in eastern Democratic Republic of the Congo (DRC), between September 2002 and September 2003.

Ntaganda is charged with the war crimes of: murder and attempted murder of civilians; attacks against a civilian population; rape of civilians and of UPC/FPLC child soldiers; sexual slavery of civilians and of UPC/FPLC child soldiers; pillaging; displacement of civilians; conscription, enlistment and use of children under the age of 15 to participate actively in hostilities; attacks against protected objects; and destruction of property. He is also charged with the crimes against humanity of: murder and attempted murder of civilians; rape of civilians; sexual slavery of civilians; persecution; and forcible transfer of population.¹³

The trial against Ntaganda commenced on 2 September 2015 and constitutes the first ever case before the ICC of a commander charged with sexual violence committed against child soldiers within his own militia group and under his command. Ntaganda is the first accused to be charged as an individual under several provisions of Article 25 and, alternatively, as a commander under Article 28 of the Rome Statute.¹⁴ This case also marks the first time an ICC Pre-Trial Chamber has authorised alternate modes of liability at the confirmation of charges stage.

¹² Rhonda Copelon, ‘Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law’, *McGill Law Journal*, November 2000. See also <http://4genderjustice.org/publications/resources-background-papers-and-articles/articles/>.

¹³ ICC-01/04-02/06-203-AnxA.

¹⁴ Ntaganda is charged under different modes of liability, including direct perpetration, indirect co-perpetration (Article 25(3)(a) of the Statute); ordering, inducing (Article 25(3)(b) of the Statute); any other contribution to the commission or attempted commission of crimes (Article 25(3)(d) of the Statute); or as a military commander for the crimes committed by his subordinates (Article 28(a) of the Statute). See the Ntaganda case information sheet, available at <http://icc-cpi.int/iccdocs/PIDS/publications/NtagandaEng.pdf>.



For more information about the case against Ntaganda, see [Gender Report Card 2014](#), p 112-118; [Gender Report Card 2013](#), p 69-71; [Gender Report Card 2012](#), p 114-115, 174-177. See also Women's Initiatives for Gender Justice, 'A Review of Charges and Prosecutions for Gender-based Crimes before the International Criminal Court', Making a Statement Second Edition, February 2010, p 10, 17, available at http://iccwomen.org/publications/articles/docs/MaS2_10-10_web.pdf

Read the full statement by the Women's Initiatives for Gender Justice on the commencement of the trial against Bosco Ntaganda <http://www.4genderjustice.org/pub/Ntaganda-Statement-Commencement-of-Trial-September-2015-FINAL.pdf>

Read the full statement by the Women's Initiatives for Gender Justice on the commencement of the confirmation of charges hearing in the Ntaganda case <http://iccwomen.org/documents/Ntaganda-Press-Statement-February-2014.pdf>

Read the full statement by the Women's Initiatives for Gender Justice and partners on Ntaganda's surrender <http://www.iccwomen.org/documents/Statement-on-Ntaganda-surrender.pdf>

Read the Women's Initiatives for Gender Justice Legal Eye eLetter on the Ntaganda confirmation of charges decision <http://4genderjustice.org/publications/eletters/legal-eye-on-the-icc-september-2014-special-issue-ntaganda-confirmation-of-charges/>

For information on gender-based crimes in relation to child soldiers in the Lubanga case, see <http://www.iccwomen.org/documents/Gender-Issues-and-Child-Soldiers.pdf>

