

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 30 September 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Germain Katanga and Mathieu Ngudjolo Chui***

Public Redacted Version

Decision on the confirmation of charges

This subjective element includes, first and foremost, *dolus directus* of the first degree and *dolus directus* of the second degree.

b) Whether there is sufficient evidence to establish substantial grounds to believe that the war crime of outrages upon personal dignity was committed during and in the aftermath of the 24 February 2003 attack on the village of Bogoro

373. In the view of the Chamber, the evidence tendered by the Prosecution is sufficient to establish substantial grounds to believe that, during and in the aftermath of the 24 February 2003 attack on the village of Bogoro, FNI/FRPI combatants committed outrages upon the personal dignity of at least one civilian woman, Witness 287.

374. The Chamber finds that there is sufficient evidence to establish substantial grounds to believe that Witness 287: (i) is a civilian Hema woman [REDACTED] on the day of the attack;⁴⁸⁹ and that (ii) she fell into the hands of the FNI/FRPI combatants during the attack.⁴⁹⁰

375. The Chamber also finds that there is sufficient evidence to establish substantial grounds to believe that while she was in the hands of the FNI/FRPI combatants, Witness 287: (i) was undressed so that she wore only a blouse and underwear;⁴⁹¹ (ii) was then asked to show the FNI/FRPI combatants the UPC weapons and ammunitions depot;⁴⁹² and (iii) while walking through the centre of Bogoro, a combatant cut off her underwear with his knife, thus leaving her wearing only her blouse until she eventually escaped.⁴⁹³

⁴⁸⁹ Statement of W-287 at DRC-OTP-1013-0205 at 0205-0206, para. 8.

⁴⁹⁰ Statement of W-287 at DRC-OTP-1013-0205 at 0209, paras 23-24.

⁴⁹¹ Statement of W-287 at DRC-OTP-1013-0205 at 0209-0210, para. 26.

⁴⁹² Statement of W-287 at DRC-OTP-1013-0205 at 0209-0210, para. 26.

⁴⁹³ Statement of W-287 at DRC-OTP-1013-0205 at 0209-0210, para. 26; at 0210-0211, paras 33-37.

376. The Chamber also finds that, taking into account the circumstances under which the crime was committed, this conduct was serious enough to be generally recognised as an outrage upon personal dignity.

377. In conclusion, the Chamber finds that there are substantial grounds to believe that the war crime of outrage upon personal dignity, as defined in article 8(2)(b)(xxi) of the Statute, was committed by FNI/FRPI members during and in the aftermath of the 24 February 2003 attack on the village of Bogoro.

C. Existence of a nexus between the armed conflict and the alleged crimes

378. The Prosecution highlighted that all war crimes alleged in its Amended Charging Document, “occurred in the context of and were associated with an armed conflict, irrespective of its characterization.”⁴⁹⁴

379. In order to constitute war crimes, the crimes allegedly committed in, or in connection with, the joint FNI/FRPI 24 February 2003 Bogoro attack, must have occurred in the context of, or in association with, the established armed conflict of an international character.⁴⁹⁵

380. The Chamber has defined that a crime has taken place in the context of, or in association with an armed conflict where “the alleged crimes were closely related to the hostilities.”⁴⁹⁶ This means that the armed conflict “must play a substantial role in the perpetrator’s decision, in his ability to commit the crime or in the manner in

⁴⁹⁴ ICC-01/04-01/07-649-Anx1A, para. 37.

⁴⁹⁵ CASSESE, A., *International Criminal Law*, 2nd ed., Oxford, Oxford University Press, 2008, p. 83: “[S]pecial attention should be paid to crimes committed by civilians against other civilians. They may constitute war crimes, provided there is a link or connection between the offence and the armed conflict. In the absence of such a link, the breach simply constitutes an ‘ordinary’ criminal offence under the law applicable in the relevant territory”.

⁴⁹⁶ ICC-01/04-01/06-803-tEn, para. 288; Also see DÖRMANN, K., LA HAYE, E. & VON HEBEL, H., “The Context of War Crimes” in LEE, R.S. (Ed.), *The International Criminal Court: Elements of the Crimes and Rules of Procedure and Evidence*, New York, Transnational Publishers, 2001, p.120: “[T]he material element uses the expression ‘in the context of and associated with’. These concepts are borrowed from the case law of the ICTY. In the case law, however, both expressions are normally used alternatively, not cumulatively. There is, however, no consistent pattern in the use of either of these concepts.”