



The Prosecutor V. Bosco Ntaganda

Global Human Rights Defence – Case Summary

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Background

Bosco Ntaganda was born in Rwanda on 5 November 1973 and is of Congolese nationality.¹ He moved to the Democratic Republic of Congo (DRC) as a result of increasing ethnic tensions in Rwanda.² Given that the conflict was not restricted to Rwanda and began spilling over into neighbouring countries, Ntaganda participated in both Rwanda and the DRC.³ He was able to do so by being a member of both the Rwandan Patriotic Front and national armies.⁴

Ntaganda went on to become a key military leader in the DRC and maintained a position of power for several years during the 1990s.⁵ At this time, the forces under his command allegedly were guilty of the following: war

1. International Criminal Court, 'Case Information Sheet: Situation in the Democratic Republic of Congo, The Prosecutor v. Bosco Ntaganda ICC-011/04-02/06' <<https://www.icc-cpi.int/drc/ntaganda>> accessed 29 April 2021.
2. Penny Dale, 'Profile: Bosco Ntaganda the Congolese 'Terminator'', BBC News Africa (8 July 2019) <<http://www.bbc.com/news/world-africa-17689131>> accessed 30 April 2021.
3. Q&A: Hearing to Confirm the Charges Against Bosco Ntaganda at the International Criminal Court, Human Rights Watch (6 February 2014) <<http://www.hrw.org/news/2014/02/06/qa-hearing-confirm-charges-against-bosco-ntaganda-international-criminal-court#1>> Accessed 30 April 2021.
4. Ibid at 2.
5. Human Rights Watch.

crimes, crimes against humanity (torture, rape, and ethnic massacres), as well as using child soldiers.⁶ Ntaganda joined a rebel group, the Union of Congolese Patriots, in 2002 where he took up the position as Deputy Chief of the General Staff of the military wing. Three years later, he moved on to the National Congress for the Defense of the People which, in 2008, was incorporated into the DRC's regular armed forces. The president of the DRC at this time promoted Ntaganda to the position of General even though at this point already, he was wanted by the ICC for war crimes.⁷

This disregard for the initial arrest warrant of the ICC shows the lack of cooperation on the part of the DRC in terms of holding key military players to account. Without state buy-in, it is near impossible for the ICC to implement the arrest warrant. Again, in 2012, the ICC issued a second arrest warrant. At this time, Ntaganda had taken up a new position: leader of the M23, an anti-governmental group.⁸ This group was not without its internal issues and it is thought that the group splitting up is the reason that Ntaganda surrendered himself to the ICC.⁹ He is the first accused ever to do so.¹⁰ Arguably Ntaganda's association with armed conflict, regardless of the group, was tainted by his methods of making use of inter alia war crimes. Given the lack of accountability on the domestic level, the ICC's judgment is pivotal for justice for all his victims.

Overview Timeline of the Key Case Dates¹¹

<i>First warrant of arrest</i>	<i>Second warrant</i>	<i>Voluntary surrender</i>	<i>Initial ICC appearance</i>	<i>Trial opening</i>	<i>Closing statement</i>	<i>Judgment</i>	<i>Sentence</i>	<i>Appeals judgment</i>
28 April 2008	13 July 2012	22 March 2013	26 March 2013	2 September 2015	28-30 August 2018	8 July 2019	7 November 2019	30 March 2021

6. DR Congo: Bosco Ntaganda recruits children by force, Human Rights Watch (16 May 2012) <<http://www.hrw.org/news/2012/05/15/dr-congo-bosco-ntaganda-recruits-children-force>> accessed 5 May 2021.

7. Ibid at 2.

8. Michelle Nichols, 'Credible reports of Congo's defeated M23 rebels regrouping: U.N.', Reuters (13 January 2014) <<http://www.reuters.com/article/2014/01/13/us-congo-democratic-un-idUSBREA0CIDC20140113>> accessed 5 May 2021.

9. Jonny Hogg, 'Congolese rebels surrender, flee after defeat by rivals', Reuters (16 March 2013) <<http://www.reuters.com/article/2013/03/16/us-congo-democratic-rebels-idUSBRE92F03Z20130316>> accessed 5 May 2021.

10. Ibid at 6.

11. Ibid.

Jurisdiction of the ICC

The DRC is a state party member of the Rome Statute, thus providing the ICC with jurisdiction in this respect. The President of the DRC in 2004 further referred Ntaganda in 2004 to the ICC.¹²

The ICC's subject matter jurisdiction is dependent on the crimes in the Rome Statute. There can be individual criminal accountability for crimes such as genocide; crimes against humanity; crimes of aggression; and war crimes. War crimes are in violation of international humanitarian law. The ICC has previously charged and convicted two other DRC military leaders, Thomas Lubanga and Germain Katanga, for war crimes due to the use of child soldiers as well as murder and attacks on civilians, respectively.¹³

The ICC has taken steps to recognise instances where rape and other forms of sexual violence can be at the level of war crimes and crimes against humanity. However, it is also acknowledged that these crimes are difficult to prosecute with victims who often have insufficient evidence or difficulty in recalling these traumatizing instances.¹⁴ In the event that these cases are taken to court, it can be difficult for victims to face questioning that forces them to relive the experience or makes them feel their claims are fabricated. The aftermath of the trial for victims can also prove to be a hurdle with lack of protection, social stigma, or community support.¹⁵

Lastly, given that these are criminal proceedings, any charge against an accused must be proven beyond a reasonable doubt.

12. Sarah T Deutch, 'Putting the Spotlight on the Terminator: How the ICC Prosecution of Bosco Ntaganda Could Reduce Sexual Violence during Conflict' (2016) 22 *Wm & Mary J Women & L* 655.

13. Germain Katanga sentenced to 12 years' imprisonment, ICC (23 May 2014) <http://www.icc-cpi.int/en_menus/icc/press%20and%20releases/Pages/pr1008.aspx> accessed 6 May 2021.

14. Susana SaCouto, Perspectives on crimes of sexual violence in international law, 19 *ILSA J. INT'L & COMP. L.* 263, Spring 2013; Susana SaCouto, Katherine Cleary, Importance of effective investigation of sexual violence and gender-based crimes at the International Criminal Court, *Am. U. J. Gender Soc. Pol'y & L.*, (2009), <<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1027&context=jgspl>> accessed 6 May 2021.

15. *Ibid.*

Legal Issues

The legal issues to be decided by the court pertained to 13 charges against Ntaganda being: murder, attacking civilians, rape, sexual slavery of civilians and the use of child soldiers, (who, at under the age of fifteen, were participating in hostilities), and lastly, five counts of crimes against humanity.¹⁶

The sexually related crimes were of the most interest in this case, given that it was an opportunity for the ICC to have an impact on this area of law. The ICC has previously recognized its jurisdiction of rape and sexual slavery as war crimes when committed by members of armed forces against their fellow members.¹⁷ This case was an opportunity to see this being applied. The previous conviction that was related to sexual and gender-based crimes, by Jean-Pierre Bemba, was successfully appealed by Bemba.¹⁸

The types of liability faced included the following: direct perpetration, indirect co-perpetration, ordering, inducing, contributing, and acting as a military leader for the committed crimes.¹⁹

16. Prosecutor v. Bosco Ntaganda, Case No. ICC-01/04-02/06, Warrant of Arrest, (July 13, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1441449.pdf>.

17. Women's Initiatives for Gender Justice, 'How the Ntaganda trial advances thinking on sexual violence' < <https://4genderjustice.org/wp-content/uploads/2019/07/Ntaganda-statement.pdf>> accessed 13 May 2021.

18. Ibid.

19. Ibid at 3.

Judgment

First instance conviction

Ntaganda was found guilty of 18 counts of war crimes and crimes against humanity between 2002 and 2003 in the DRC. The war crimes included murder, attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, ordering the displacement of the civilian population, the use of child soldiers in hostilities, direct and intentional directs against protected objects, and destroying adversary's property.²⁰ Crimes against humanity included murder, attempted murder, rape, sexual slavery, persecution, forcible transfer, and deportation.²¹ There was a combination of Ntaganda being a direct and indirect perpetrator.

On the basis of the guilty verdict, he was sentenced to 30 years imprisonment. In getting to this verdict, the brave victims who came forward should be celebrated. The Prosecutor experienced overwhelming responses from victims in the DRC coming forward and wanting to participate in the trial.²² This could indicate a desire for justice in some form given the lack of accountability Ntaganda experienced in the DRC.

20. Ibid at 1.

21. Ibid.

22. Ibid at 2.

Appeal Decision

Both the finding as well as the sentencing of the court was appealed by Ntaganda. However, the ICC Appeals Chamber dismissed the appeal in its entirety. This means that the initial verdict and sentencing is final. It was the ICC's first final conviction for sexual violence.²⁴

Local and International Responses

The guilty verdict was a great feat for Ntaganda's victims through the conviction and corresponding accountability for his atrocious actions. It affirms that no one is above the law, even people in power.²⁵ It could also further motivate movement on a domestic level to prosecute other war criminals.²⁶

Regarding other countries experiencing similar internal conflict, it could also promote domestic prosecutions and hopefully forms of prevention altogether. Additionally, the step forward together in terms of prosecuting sexual violence is also a hopeful one.²⁷

24. Ibid at 17.

25. Ibid at 12.

26. Colin Dwyer, "'Terminator' of Congo, Bosco Ntaganda, Gets Historic 30-Year Sentence for War Crimes' (7 November 2019) <<https://www.npr.org/2019/11/07/777183227/terminator-of-congo-bosco-ntaganda-gets-historic-30-year-sentence-for-war-crimes?t=1620371183457>> accessed 6 May 2021.

27. Ibid.

Conclusion

Ntaganda has been the first defendant convicted of sexual slavery and crimes of sexual violence against his own troops by the ICC. Importantly expert witnesses such as psychologists were included in the trial, assisting the Court with how trauma can affect witness statements and memory.

The 30-year sentence is also the lengthiest to be handed down by the Court. Finally, it is noteworthy that the victims were also awarded reparations by the ICC. This will be paid from the Trust Fund for Victims, instructed by the court to draft an implementation plan, and will be in consultation with the victims. Victims who require immediate medical or psychological care will have priority.

In the fight for justice, this is applaudable. The judgment further creates the pathway towards empowerment of victims of crimes of sexual violence in the context of conflict situations.

28. Ibid.

29. Ibid at 1.

30. VOA News, 'UCC Upholds Convictions of Former Congolese Warlord' (30 March 2021) < <https://www.voanews.com/africa/icc-upholds-convictions-former-congolese-warlord> > accessed 7 May 2021.

31. Ibid at 1.

32. Ibid at 1.

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