

Democratic Republic of Congo

Questions and Answers

on the Hearing to Confirm the Charges Against Bosco Ntaganda at the International Criminal Court

February 2014

On February 10, 2014, the judges of the [International Criminal Court](#) (ICC) will hear evidence against [Bosco Ntaganda](#), a rebel leader from the [Democratic Republic of Congo](#), in a short hearing to determine whether the case against him should proceed to trial.

Ntaganda has been implicated in grave crimes in eastern Congo over the past decade, but managed to avoid arrest for almost seven years after the ICC issued its first arrest warrant for him in 2006. His long record of involvement with a succession of armed groups responsible for killings, rapes and other atrocities had made him a symbol of the impunity for grave abuses that has plagued eastern Congo. Having Ntaganda finally face justice is a momentous development for accountability in Congo and for the victims and rights advocates who worked over the years seeking his arrest.

The hearing for Ntaganda underscores the vital role of the ICC in ensuring accountability for grave international crimes when national courts are unwilling or unable to do so. Over the past year, some African governments and the African Union have criticized the ICC, calling on African member countries not to cooperate with the court and seeking immunity from prosecution for heads of state. Amidst this, the Ntaganda hearing is a powerful reminder that the ICC is often the only hope for justice when impunity prevails at the national level.

1. Who is Bosco Ntaganda?

Bosco Ntaganda is a rebel leader who has been active in various armed groups in eastern Congo since the late 1990s. For several years, he also served as a general in the Congolese army. He has been sought by the International Criminal Court for war crimes since 2006.

Ntaganda was born in 1973 in Kinigi, Rwanda. He fled to Congo as a young teenager amid attacks on ethnic Tutsi in Rwanda. He began his military career in 1990 in the Rwandan Patriotic Front (RPF), a Rwandan rebel group based in Uganda; the RPF went on to stop the

Rwandan genocide in 1994 and formed the government that is still in power in Rwanda today. Ntaganda then joined the new Rwandan army and participated in the Rwandan military invasion of Congo in 1996. In 1998, during the “Second Congo War,” he joined a Congolese rebel group backed by Rwanda, the Rally for Congolese Democracy (RCD). He subsequently moved among various Congolese militias before joining the Union of Congolese Patriots (UPC) in 2002. The UPC was an armed group that purported to further the interests of the Hema ethnic group in the Ituri district of north-eastern Congo.

From 2002 to 2005, Ntaganda served as chief of military operations under the UPC’s leader, [Thomas Lubanga](#). During that period, forces under Ntaganda’s command were implicated in many serious human rights abuses, including ethnic massacres, torture, rape and the widespread recruitment of children, some as young as 7. Lubanga was the first person to go to trial before the ICC. He was [convicted in 2012](#) for recruiting and using child soldiers in Ituri and sentenced to 14 years in prison. Ntaganda was the co-accused in that case but managed to elude justice until he [surrendered](#) in 2013. During that time, he continued to lead troops responsible for grave abuses and received significant support from backers in the Rwandan military.

2. What are the ICC charges against Ntaganda?

In the [first ICC arrest warrant](#) in August 2006, Ntaganda, like Lubanga, was charged with the war crimes of enlisting and conscripting children under 15 as soldiers and using them to participate actively in hostilities in the context of the armed conflict in [Ituri](#) in 2002 and 2003. The ICC issued a [second arrest warrant](#) against Ntaganda in July 2012, with four additional counts of war crimes and three counts of crimes against humanity, including charges of murder, attacks against the civilian population, rape and sexual slavery, pillaging, and persecution, all allegedly committed during the Ituri conflict in 2002 and 2003.

The second arrest warrant addressed concerns expressed by Congolese activists and Human Rights Watch about [the narrow scope](#) of the charges initially brought against Lubanga and Ntaganda. The expanded set of charges is more representative of the range of grave crimes allegedly committed by the UPC in Ituri. The additional charges are important in bringing justice to the victims of these further crimes, who belong predominantly to the Lendu ethnic group, and enabling them to participate in proceedings at the ICC. This had not been possible in the Lubanga case as the charges were limited to the use of child soldiers by the UPC, most of whom were from the Hema ethnic group. However, the additional charges do not cover crimes committed in North Kivu province since 2006.

3. What happened in Ituri?

Ituri district has been one of the worst affected areas in eastern Congo’s prolonged conflict. Localized fighting between Hema and Lendu ethnic groups that began in 1999 over land disputes expanded after Ugandan military forces backed Congolese armed groups. As the conflict spiralled and armed groups multiplied, more than 60,000 civilians died. Competition

for the region's lucrative gold mines and trading routes was a major contributing factor to the fighting. Foreign armies and local militia groups fought each other and committed numerous abuses, often targeting civilians. Armed groups, such as Ntaganda's UPC, carried out widespread ethnic killings, torture and rape.

Human Rights Watch documented in depth serious human rights abuses in Ituri in the early 2000s, including in three detailed reports in [2001](#), [2003](#) and [2005](#). While the situation has become significantly more stable in recent years, armed groups are still active in some parts of Ituri.

4. How did the ICC gain custody of Ntaganda?

Ntaganda is the first accused to surrender voluntarily to the ICC. In a surprising twist of events, on March 18, 2013, [he turned himself in](#) to the United States embassy in Kigali, Rwanda, and asked to be transferred to The Hague. His motives remain unclear. Prior to his surrender, there had been clashes between two factions of his most recent armed group, the M23, in eastern Congo. The faction opposed to Ntaganda had gained the upper hand. This may have prompted Ntaganda to flee Congo. Ntaganda may also have lost the support of his Rwandan backers, leading him to fear for his life and to surrender.

Cooperation by the United States – although not an ICC member country – was critical to enable the prompt and efficient [transfer of Ntaganda to the ICC](#), on March 22, 2013. Cooperation by Rwanda and Congo, which did not oppose the transfer, also helped facilitate it.

5. What will happen at the February hearing?

The hearing to confirm the charges against Ntaganda is not a trial. It will allow the judges of pre-trial chamber II to evaluate whether the prosecution has enough evidence to move ahead with a trial on the charges cited. The prosecution need not present all of its evidence at this stage but enough to satisfy the judges that there are “substantial grounds to believe” that Ntaganda committed the crimes alleged. This is a higher burden than the “reasonable grounds to believe” standard used by the chamber when issuing arrest warrants.

Ntaganda, through his defense counsel, can object to the charges, challenge the prosecution's evidence, and put forward his own evidence. However, the hearing is not aimed at determining guilt or innocence.

The pre-trial chamber has indicated that the hearing will start on February 10. It was initially scheduled to start on September 26, 2013 but was postponed at the request of the Office of the Prosecutor to allow more time to prepare the case, as it had been dormant for several years.

6. What rights does Ntaganda have during the hearing?

Ntaganda's rights during this hearing are similar to his rights during the trial. He is presumed innocent until proven guilty and is entitled to a fair and expeditious hearing, conducted impartially.

In advance of the hearing, Ntaganda has been provided with a document containing the charges sought by the prosecutor, as well as a list of the evidence the prosecutor intends to rely on at the hearing.

The disclosure of this evidence, as required by the Rome Statute, the ICC's founding treaty, has been on-going for several months. In recent filings, Ntaganda's defense lawyers raised concerns about delays in the disclosure process and about the prosecution's inability to disclose 116 documents containing exculpatory information. In the case against Lubanga (Ntaganda's co-accused), proceedings were halted twice because of difficulties related to the disclosure of evidence collected by the Office of the Prosecutor under confidentiality agreements with the sources.

In accordance with the Rome Statute, Ntaganda is entitled to have the proceedings held in a language he fully understands and speaks. During his initial appearance before the court, he indicated that he "understands French somewhat... but speaks Kinyarwanda fluently." Balancing issues of fairness and potential costs and delays incurred through extensive translations, the pre-trial chamber has decided to allow the translation into Kinyarwanda of documents considered central and material to the preparation of Ntaganda's defense.

7. Can victims participate in the hearing?

Under the Rome Statute, and for the first time before an international criminal tribunal, victims of the alleged crimes can participate as an independent party to the proceedings. This is an important feature of the ICC that can contribute to bridging the gap between victims and a court located thousands of kilometres away from where the crimes were committed. As participants, victims can go beyond appearing as witnesses for the Office of the Prosecutor and can present their views and concerns.

The court has agreed that 922 victims can participate in Ntaganda's confirmation of charges hearing. These victims are separated by the court into two distinct groups: one group consists of 97 former UPC child soldiers and their relatives; and the other consists of 825 victims of UPC attacks and their relatives. Each group will be represented at the hearing by a common legal representative from the ICC's Office of Public Counsel for Victims (OPCV). An assistant counsel will be based in Congo. The creation of two distinct groups follows concerns expressed by victim applicants that victims of Hema ethnicity (the ethnic group purportedly represented by the UPC), on the one hand, and Lendu and other non-Hema victims, on the other, might have diverging interests in this case.

The common legal representatives of the victims are expected to make opening and closing statements at the hearing and to seek permission to make oral and written submissions to the chambers.

8. Who is paying for Ntaganda's lawyer?

Under the Rome Statute, a defendant has the right to legal counsel during criminal proceedings and is entitled to financial assistance from the court if they cannot afford a lawyer. Ntaganda's lead counsel is Marc Desalliers, an experienced international criminal lawyer who was also part of Lubanga's defense team.

Ntaganda has declared to the court that he is indigent and cannot pay for his legal representation. The registrar of the ICC, the court's chief administrator, has granted him provisional legal aid during the pre-trial phase. However, this decision can be reversed at any time if the financial investigation conducted by the registrar shows that he can bear the costs of his legal defense.

Concerned countries should cooperate with the ICC in its efforts to identify a suspect's assets and to seize them if the court asks them to. Establishing an accurate assessment of Ntaganda's resources is also in the interest of victims who are seeking reparations. Ntaganda is believed to have amassed considerable wealth during his time as rebel leader and army general in eastern Congo, notably through seizing control of fertile land and cattle, and looting and trafficking minerals.

9. What happens after the February hearing?

After the hearing, the judges of pre-trial chamber II will have 60 days to provide a written decision. If the chamber decides that there are "substantial grounds to believe" that Ntaganda committed the alleged crimes, the charges will be confirmed and the case will proceed to trial.

If the judges decide that there is not enough evidence to confirm some or all of the charges, the prosecutor can submit additional evidence and request a new confirmation of charges hearing.

The judges could also adjourn the hearing and ask the prosecution to consider providing more evidence or conducting further investigations in relation to a particular charge. In addition, they could ask the prosecutor to consider amending a charge if it appears that the evidence presented establishes a different crime.

10. Is the ICC prosecuting Ntaganda for crimes committed after 2003?

In 2006, after leaving the UPC following internal disputes, Ntaganda moved to North Kivu in eastern Congo and remained there until he surrendered in 2013. During this period, Human

Rights Watch [documented](#) ethnic massacres, killings, rape, torture and recruitment of child soldiers by armed groups or army units under Ntaganda's command.

None of the grave crimes allegedly committed in North Kivu province are covered in the current ICC case against Ntaganda, which focuses solely on alleged crimes in [Ituri](#). At this stage of the proceedings, and given time and resource constraints, it is unlikely that the ICC prosecutor will add further charges relating to crimes in North Kivu province in this case.

It is regrettable that the prosecution's case does not more fully address the range of crimes allegedly committed by troops under Ntaganda's command. As a result of this limited focus, many atrocities in North Kivu and South Kivu provinces remain largely unaddressed, both at the ICC and before national courts in Congo. The ICC prosecutor should investigate those most responsible for these grave crimes, including high-level military and political officials who backed militias there, including Ntaganda's. Rebel and Congolese army commanders implicated in grave crimes who are not being sought by the ICC should be promptly investigated at the national level by Congolese judicial authorities.

Abuses carried out under Ntaganda's command in North Kivu province

In 2006, Ntaganda became military chief of staff of the National Congress for the Defense of the People (*Congrès national pour la défense du peuple* – CNDP), a Tutsi-led rebel group in the province of North Kivu, backed by Rwanda. Among other grave abuses, CNDP troops under Ntaganda's command massacred an estimated 150 people in the town of [Kiwanja](#). Ntaganda was present at the time according to video footage filmed by foreign journalists.

In early 2009, the Rwandan and Congolese governments reached an agreement: in exchange for Rwanda's assistance in ending the CNDP rebellion and putting its leader, Laurent Nkunda, under house arrest, the Congolese government integrated CNDP fighters into the Congolese army and made Ntaganda a general and deputy commander of military operations in eastern Congo. This was despite the ICC arrest warrant against him and the Congolese government's legal obligation to arrest him.

Ntaganda later became acting commander of military operations and used his position to create a parallel command structure in the Congolese army, with former CNDP soldiers who remained loyal to him. Army troops under Ntaganda's command carried out numerous attacks on civilians, including killings, rapes and burning homes. In 2009 alone, Human Rights Watch documented the killings of more than 730 civilians by Congolese army soldiers and their allies during military operations against the Democratic Forces for the Liberation of Rwanda (*Forces Démocratiques de Libération du Rwanda*, or FDLR), a largely Rwandan Hutu armed group, some of whose members participated in the 1994 genocide in Rwanda. Most of these killings were carried out by former CNDP troops under Ntaganda's command.

[In one incident](#) between April 27 and 30, 2009, Congolese soldiers attacked camps in the Shalio Hill area and killed at least 129 Rwandan Hutu refugees, mostly women and children. During the same incident, soldiers abducted at least 40 refugee women and girls, held them as sexual slaves, gang-raped and mutilated them.

From 2009 to 2011, [Ntaganda led a brutal campaign](#) against perceived military and civilian opponents, allegedly ordering assassinations, arbitrary arrests, and other unlawful acts. He recruited child soldiers and thwarted efforts to demobilize them. He blocked judicial investigations into abuses committed by those loyal to him and used his influence in the military to confiscate land and increase his wealth.

In April 2012, after the Congolese government signalled it would seek to arrest Ntaganda and break up the parallel command structure in the army, Ntaganda and those loyal to him defected and formed a new rebel group, the M23, named after the March 23, 2009 peace accord between the government and the CNDP. M23 fighters in turn [committed numerous grave abuses](#), including summary executions, rape, and recruitment of child soldiers.

11. Why the delay in bringing Ntaganda to the ICC?

The ICC does not have its own police force and relies on the cooperation of governments to carry out its arrest warrants.

In the period following the first ICC arrest warrant against Ntaganda, in 2006, Ntaganda's then-rebel group, the CNDP, was in a strong position: it controlled significant territory in North Kivu and militarily repulsed the Congolese army several times. In May 2007, the Congolese president, Joseph Kabila, confidentially requested assistance from the United Nations peacekeeping mission in Congo (MONUC, since renamed MONUSCO) in arresting Ntaganda, but no further progress was made.

In 2009, President Kabila integrated Ntaganda into the army and declared that "now was the time for peace, not the time for justice." He claimed that Ntaganda was an essential component for stability in eastern Congo. Congolese nongovernmental organizations [denounced](#) the deal and called on Kabila to arrest, rather than reward, Ntaganda. Human Rights Watch also [called repeatedly for Ntaganda's arrest](#) and for the Congolese government to fulfil its legal obligations under the Rome Statute.

Over the past decade, the Congolese government has repeatedly integrated known human rights violators into the army as a short-term means to end rebellions. Instead of bringing durable peace, this has fostered a climate of impunity that encouraged, rather than deterred, further abuses.

12. Didn't past pressure to arrest Ntaganda encourage him to start a new war in North Kivu province?

In April 2012, President Kabila indicated he was prepared to arrest Ntaganda. That, together with the ICC conviction of Lubanga in March 2012, may have been a factor in prompting Ntaganda and soldiers loyal to him to mutiny. Some Congolese officials and commentators have said they believed that it was the insistence on justice that led to the creation of the M23 and a renewed round of fighting in eastern Congo in 2012.

This interpretation overlooks important facts. It is the lack of justice – not efforts to bring abusers to justice – that has encouraged cycles of violence in eastern Congo over the past two decades. Military commanders such as Ntaganda have seen time and again that there was no price to pay for atrocities against civilians. On the contrary, those implicated in grave abuses were routinely rewarded through integration into the Congolese army. This, in turn, encouraged the emergence of numerous new armed groups, many of which have engaged in similar abuses.

Ntaganda was never an “instrument of peace,” as the Congolese government claimed. Soldiers under Ntaganda’s control carried out abuses even after Ntaganda was made a general in the Congolese army. Ntaganda was also implicated in targeted killings, enforced disappearances and arbitrary detention of people who called for his arrest or denounced alleged abuses until he eventually fled Congo and surrendered.

13. How will people in Congo follow the proceedings in The Hague?

The opening of proceedings against Ntaganda at the ICC bears great significance for the thousands of people across eastern Congo who have suffered, witnessed, or documented abuses by troops under his command. It also sends a strong warning to other abusive commanders still active in Congo.

However, the ICC is located far from the locations of Ntaganda’s alleged crimes. The court faces the challenge of making sure that its proceedings are meaningful for the Congolese people most affected by these crimes and that victims are informed of their rights.

Since 2004, the ICC’s Public Information and Documentation Section has worked to ensure that information about ICC proceedings reaches affected communities in Congo, as well as journalists, human rights activists, lawyers and judicial staff.

The court should make every effort to ensure that information about the hearing against Ntaganda is widely transmitted. It should consider holding a live screening of the hearing’s opening statements in Bunia, the capital of Ituri, where the crimes occurred. This could be followed by a discussion with ICC staff, who could answer questions from the public. As radio is the principal form of public communication in Congo, ICC staff should also ensure that the

most popular national and international radio stations broadcasting in Congo have the necessary information about the hearing to cover it adequately. The ICC regularly produces audio and video summaries of court proceedings. Such a summary of the confirmation of charges hearing could be widely distributed and discussed in Ituri and elsewhere, in events organized by ICC staff.

14. What else is the ICC doing in Congo? What more should it do?

The ICC prosecutor has initiated public cases against six suspects in relation to alleged crimes committed in Congo. These include four military commanders accused of crimes in Ituri – Lubanga, Ntaganda, Germain Katanga and Mathieu Ngudjolo – and two FDLR leaders implicated in serious crimes in North Kivu and South Kivu provinces. Callixte Mbarushimana, the executive secretary of the FDLR, was arrested in France in October 2010 on an ICC arrest warrant, but pre-trial judges declined to confirm the charges against him for lack of sufficient evidence. He was released in December 2011. Gen. Sylvestre Mudacumura, the FDLR’s military commander, is still in Congo, evading justice.

Overall, however, the number and stature of Congo-related cases before the ICC do not address the scale of the crimes committed since 2002 (the year as of which the ICC has jurisdiction.).

Human Rights Watch [has repeatedly called on the ICC Office of the Prosecutor](#) to explore the regional dimension of the conflict in Congo, notably by investigating the role of senior political and military officials in Congo, Rwanda, and Uganda who supported, armed, and financed abusive armed groups in eastern Congo over the years. For example, in 2012 and 2013, Human Rights Watch [documented](#) Rwandan support to Ntaganda’s M23 rebellion, which was reminiscent of Rwandan support to previous abusive Congolese armed groups, including the CNDP and the UPC. Human Rights Watch has also called on the ICC prosecutor to investigate alleged crimes by the Congolese army and, evidence permitting, to prosecute those most responsible. These steps are crucial for the ICC to make a meaningful contribution to justice in Congo.

While we recognize that the ICC is investigating international crimes in seven other countries, and may lack the resources to take on additional Congo cases at this time, the ICC prosecutor should publicly express her intention to continue the work in Congo in the coming years. The court in turn needs strong, long-term support from ICC member countries, which should commit to allocating sufficient resources to meaningfully address these and other country situations within its mandate.

From its inception, the ICC was never intended, and does not have the capability, to investigate and prosecute all those responsible for grave international crimes in Congo. Under the “complementarity” principle in the Rome Statute, national authorities retain the primary responsibility to bring those responsible for war crimes, crimes against humanity, and

genocide to account. To strengthen the capacity of Congolese national courts to hear these cases, the Congolese government has drafted legislation to establish “specialized mixed chambers” within the Congolese judicial system, which would be entrusted exclusively to deal with war crimes, crimes against humanity, and genocide and would include national and international staff.