

FEATURE

Nazi trial

by *Sebastiaan Gottlieb*

## Demjanjuk in the dock

**The trial of John Ivan Demjanjuk which opens next week in Munich is likely the last major Nazi case in a series that began in Nuremberg in 1945. At that time, 24 top Nazis were tried before an international tribunal. Demjanjuk will appear before an ordinary German court.**

Ukraine-born Demjanjuk is alleged to have been a guard at the Sobibor extermination camp in Poland in 1943. He denies this, saying he was a German prisoner throughout the war.

In total over 170,000 Jews were murdered in Sobibor but Demjanjuk is only charged with complicity in the murder of 27,900 Dutch Jews who perished at the camp.

Dutch historian Johannes Houwink ten Cate explains: "The German prosecutors went for facts they could be certain of. They used the transportation list of the Durchgangslager Westerbork in the Netherlands. It is known exactly how many people were transported from there to Sobibor, by name and birthplace. Of course other Jews - coming from Eastern Europe - were killed in Sobibor as well, but there are no lists of them."

### Witnesses

The prosecution says Demjanjuk was a Soviet prisoner of war and became a guard at the Nazi camp in exchange for better living conditions, including a salary, food and vodka.

Ignat Daniltsjenko also worked at Sobibor and in 1985, he recognised a photo of Demjanjuk. His testimony is important evidence but his death several years ago raises questions about whether or not it can be used

in the upcoming trial. In fact, all 23 prosecution witnesses are now dead.

Defence lawyer Guenther Maull said that he will argue that witness statements may have been made under pressure from Soviet interrogators when they were first taken 30 years ago. "Whether the statements have any value as evidence is questionable," he added.

In 1952 Demjanjuk became a United States citizen. He moved to Cleveland, Ohio, and lived there with his wife, undisturbed by his past for more than 20 years.

That changed when reports from Russia alleged that Demjanjuk had worked at Treblinka and Sobibor, leading the US Justice Department to revoke his citizenship in 1981.

He was extradited to Israel and in 1986 stood trial in Jerusalem on suspicion of being the infamous Treblinka guard "Ivan the Terrible". Demjanjuk was convicted and sentenced to death by hanging but was acquitted on appeal in 1993 after judges ruled that the evidence didn't conclusively place him at Treblinka.

In 2004 new evidence emerged suggesting he had been a guard at Sobibor. Later that year, Germany requested his extradition and in May 2009 he was flown to Munich and arrested.

Jules Schelvis is a survivor of Sobibor and directs the Sobibor Foundation in the Netherlands.

"When I think of Sobibor, I think of [...] the ones who were condemned to death without knowing it. My family, my wife who was murdered in the gas chamber. Even though he is now 89-years-old, Demjanjuk should be punished. The world has to know that he helped in killing these people."

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### ECCC: final arguments in Duch case

The Khmer Rouge prison chief accused of crimes against humanity, war crimes, torture and premeditated murder will make his final statements to the Extraordinary Chambers in the Courts of Cambodia (ECCC) this week.

In attendance at the trial are survivors of the Khmer Rouge regime which killed up to 2 million people between 1975 and 1979.

The trial of former prison chief Kaing Guek Eav - better known as Duch - began in February and a verdict is expected early next year.

The final week of the trial will see civil parties, prosecutors, defence counsel and Duch himself present final arguments, rebuttals and closing statements.

The accused has admitted that he oversaw the murders of approximately 15,000 men, women and children while in charge of the notorious Tuol Sleng prison and has asked for forgiveness from his victims and their families.

However, Duch has consistently denied any direct involvement in the torture and murder of prisoners.

The 67-year-old former school teacher has appeared remorseful throughout the trial and has apologized repeatedly for his actions under the Khmer Rouge. He claims that his job at the prison was performed under duress since he feared for his life from more senior Khmer Rouge officials if he did not carry out his duties.

## ► ICC: US attends ASP

For the first time since the International Criminal Court (ICC) opened in 2002, the United States attended the court's annual meeting in The Hague.

America is committed to ending impunity for crimes against humanity, US Ambassador for war crimes Stephen Rapp told the 110-nation Assembly of States Parties (ASP).

Although the US has not ratified the Rome Statute that established the court, it has "not been silent in the face of crimes against the basic code of humanity", Rapp said. "Far from it: we have worked shoulder to shoulder with other states to support accountability and end impunity for hauntingly brutal crimes in the former Yugoslavia, Rwanda and elsewhere."

Rapp's attendance at the meetings last week is the strongest sign yet that the Obama administration is willing to engage with the court. Last August, US Secretary of State Hillary Clinton voiced her "great regret" that America was not a member of the ICC.

Rapp said the US was interested in "gaining a better understanding of the issues being considered and the workings of the court", but warned that the country still has concerns about politically motivated prosecutions given the dominance of the United States around the world and the number of American troops stationed abroad.

"I would be remiss not to share with you my country's concerns about an issue to which we attach particular importance: the definition of the crime of aggression," Rapp said. "Our view has been and remains that, should the Rome Statute be amended to include a defined crime of aggression, jurisdiction should follow a Security Council determination that aggression has occurred."

The issue of the crime of aggression will be addressed in May at a review meeting of the ICC in Kampala, Uganda.

## TRIAL

by Thijs Bouwknegt

# Bogoro trial opens at ICC

**The International Criminal Court (ICC) opened its second trial in The Hague this week. On the stand are the Congolese former militiamen Germain Katanga and Mathieu Ngudjolo Chui who are accused of orchestrating the massacre of about 200 civilians in the village of Bogoro in the Ituri province of the Democratic Republic of Congo (DRC).**

Ituri is one of the bloodiest areas of the DRC. Since 1999, more than 60,000 civilians have been slaughtered in a conflict rooted in ethnic rivalries, primarily between the Lendu and the Hema. In the battle for Ituri's mineral riches, a myriad of armed groups - mostly composed of children - have been implicated in massacres, torture and rape.

Thomas Lubanga Dyilo is already in the ICC dock charged with using child soldiers in his Hema militia, the Union of Congolese Patriots. Starting on Tuesday, two of his former rivals are facing the same court.

Katanga and Ngudjolo respectively led the Nationalist and Integrationist Front and the Patriotic Resistance Force, both fighting for the Lendu. They are now on trial for their alleged involvement in the Bogoro massacre.

## *Bogoro massacre*

On the morning of February 24<sup>th</sup> 2003, their militia entered the village and attacked the mainly Hema population. Survivors were imprisoned in a room filled with corpses, while women and young girls were forced to become sex-slaves. Both men deny any involvement in the crimes.

Human rights organisations say Katanga was also involved in other atrocities. His militia attacked the Nyakunde hospital in September 2002, killing at least 1,200 Hema. He is also alleged to have led his group during attacks in Bunia and Komanda. Eyewitnesses say Katanga's men carried severed hands through the streets and ate their victims' livers and

hearts. These incidents, however, are not included on the ICC charge sheet. By restricting the investigation to the atrocities committed in Bogoro, the prosecutors were able to investigate multiple charges instead of spreading resources thinly over various crime scenes. As a result, the two men face charges of, *inter alia*, murder, using child soldiers, pillage, rape and sexual slavery.

31-year-old Katanga was arrested by the DRC after an attack that killed nine United Nations peacekeepers in 2004. He was held on charges of war crimes but never saw the courtroom in Kinshasa. Instead, the ICC brought him to The Hague in 2007 where he unsuccessfully tried to have his case returned to the DRC.

Ngudjolo, meanwhile, was granted a general amnesty by the DRC in exchange for the demobilisation of his troops in 2006. Two years later, however, the ICC indicted him and he was extradited to stand trial in The Hague.

## *Last Ituri trial*

This is the ICC's first murder trial - since Lubanga only faces charges of using child soldiers - but it is the last Ituri trial. ICC Chief Prosecutor Luis Moreno Ocampo said in July that the court has no more investigations in the province and he is now focusing on atrocities committed in the Kivu region.

The DRC has so far been the ICC's most productive hunting ground. The only prisoners at the court's detention centre in the Netherlands are Congolese; and the court's third trial, starting in April next year, involves the former vice president, Jean-Pierre Bemba Gombo. But the DRC still refuses to arrest Bosco Ntaganda, one of the ICC's most wanted.

In July the villagers of Bogoro finally buried the remains of those killed the 2003 massacre. Some 345 survivors, including ten child soldiers, will participate in the ICC trial in The Hague.

# Iturians tired of waiting

**As the trial of former militiamen Mathieu Ngudjolo and Germain Katanga opened this week at the International Criminal Court (ICC) in The Hague, residents of their home district of Ituri in the eastern Democratic Republic of the Congo (DRC) are losing faith in the court.**

In March 2005, the arrest of Thomas Lubanga Dyilo struck a chord with the population of the DRC and their attention turned to the ICC, where one of the principal actors in the Iturian tragedy was going to be tried for the recruitment and use of child soldiers.

In Ituri, the lack of equitable justice, poor governance, and the absence of dialogue have all contributed to the rise in bloody inter-ethnic violence, which has claimed more than 60,000 lives. The ICC seemed to offer an opportunity to re-establish peace through justice.

However, from the outset the Hema community - to which Lubanga belongs - saw the court as an instrument of oppression by the international community.

In February 2008, the arrest of two more Iturians, Germain Katanga and Mathieu Ngudjolo Chui, changed everything.

The two new defendants came from the Lendu ethnic group which fought the Hema during the war. The two men were accused of committing crimes in Bogoro, a Hema village located 30km south of Bunia. From that point on, the talk in Ituri was of actions perpetrated against sons of this district.

Jean Bosco Lalo, president of the Civil Society in Bunia explains: "Our desire would be for the investigation to continue beyond Ituri, knowing well that what happened in Ituri did not involve only Iturians."

## **"Trying the weak"**

Having been targeted by the ICC, Iturians pinned their hopes on the court.

Dheda Tikpa is a spokesperson

for the Lendu community in Bunia. "We want justice to be executed in an equitable manner," he said, "and for those responsible for these crimes, whether they are Iturians or from outside of the country, to be tried by this court. It is on that condition alone that the ICC will not appear to be a court destined to try the weak."

Tikpa's view resonates among the Hema as well. The community's spokesperson in Bunia, Professor Pilo Kamaragi, says: "I think that it was high time to carry out investigations into the tragedy in Ituri." He added, "Unfortunately, I don't see any systematic investigations into this tragedy."

## **"No movement"**

This criticism has eroded the credibility of the court little by little. So it was that efforts by the ICC Information Unit to promote awareness of Ngudjolo and Katanga's trial did not get the attention of many people. People were frustrated by the slow pace of the proceedings in the Thomas Lubanga case. As one member of the Lendu community put it, "Nothing is moving forward there."

While the court in The Hague has yet to reach a verdict, the president of the Ituri military tribunal in Bunia, Major Innocent Mayembe, points out that during the last four years he has already tried Yves Panga Mandro Kahwa - chief of staff of the army branch of Thomas Lubanga's Union des Patriotiques Congolais - for war crimes as well as the killers of two UN observers in Mungwalu.

Other rulings for serious crimes have been pronounced in Mbandaka and Katanga.

Seeing such results from their own courts, Iturians are losing trust in the international court in which they had initially placed their hopes. Five years after the first investigations opened, they are no longer expecting much from the ICC.

Members of the Democratic Liberation Forces of Rwanda (FDLR) were put on notice last week with the arrest of the group's leader and deputy leader in Germany on November 17<sup>th</sup>.

FDLR president Ignace Murwanashyaka and his deputy Straton Musoni command a force of around 5,000-6,000 fighters.

Murwanashyaka is charged with war crimes and crimes against humanity, and is also accused of leading a terrorist organisation.

The FDLR is made up almost entirely of Rwandan Hutus, some of whom allegedly took part in the 1994 Rwandan genocide. The three-month massacre killed an estimated 800,000 Tutsis and moderate Hutus.

The warrant issued by the German Federal Prosecution Office claimed the paramilitary organisation "has killed hundreds of Congolese, raped women and recruited child soldiers" since the civil war in the Democratic Republic of Congo began in 1996.

The warrant comes as a result of a new German law which permits the prosecution of those accused of violating international humanitarian law.

"As a leader of this group Mr Murwanashyaka looks like he was involved in either giving direct orders to the group or was aware that the group was committing these kinds of atrocities and then did nothing to stop it. Both are illegal under international law," Anneke Van Woudenberg of Human Rights Watch told the IJT.

The arrests of Murwanashyaka and Musoni will send alarm bells ringing in the ears of other FDLR leaders dotted around the globe, Van Woudenberg says.

"This arrest should send a very strong signal both to the leaders as well as to the governments who harbour them. It is unthinkable that such individuals would be able to carry out these kinds of operations with impunity."

► **ICTY: Karadzic assigned counsel**

British barrister Richard Harvey has been assigned to represent Radovan Karadzic at his war crimes trial in The Hague.

The International Criminal Tribunal for the former Yugoslavia (ICTY) appointed Harvey on November 5<sup>th</sup>, following Karadzic's refusal to attend the proceedings.

Karadzic, who is defending himself, has repeatedly requested more time to prepare his defence owing to some 1.3 million pages of evidence and hundreds of witness statements submitted by the prosecution. Harvey has been given until March 2010 to prepare his case.

Peter Robinson, legal advisor to Karadzic, said, "Dr Karadzic will not cooperate with Mr Harvey. He will be filing a challenge to the appointment in the near future. The Registrar violated his own procedures [as] an accused should be provided the list of counsel and be allowed to choose from that list."

Karadzic is charged with genocide, war crimes and crimes against humanity, relating to the 43-month siege of Sarajevo that began in 1992, and the genocide of over 7,000 Bosnian Muslims at Srebrenica in 1995.

Harvey has provided counsel at the ICTY twice before, serving as lead defence counsel for Kosovo Liberation Army (KLA) leader Lahi Brahimaj and as co-counsel for KLA soldier Haradin Bala.

**INTERVIEW**

**André Guichaoua, expert witness ICTR**

by Franck Petit, Paris

# Shock at acquittal of Mr Z

**Former Rwandan prefect and businessman Protais Zigiranyirazo - or "Mr Z" - was acquitted by the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) on November 16<sup>th</sup>.**

Z was convicted in 2008 of genocide and crimes against humanity relating to the killing of Tutsis at Kesho Hill in the Gisenyi prefecture in April 1994. The appeals court found that the first instance judges "seriously erred in [their] handling of the evidence".

Sociologist and regular expert witness at the tribunal, André Guichaoua, says the acquittal downplays the role of the Akazu – the influential circle around Z's mother, Agathe Kanziga, widow of President Juvénal Habyarimana - during the 1994 genocide.

**Did Z's acquittal surprise you?**

It was more of a shock. It comes at a very bad time because it was not a key case in terms of the scope of responsibilities or the crime, but it was a case with major symbolic and political implications. For some Rwandans, it is proof that nothing happened, that the Akazu never conspired in any way. It is an enormous waste in terms of the whole underlying case involving Protais and the Akazu, but at the same time it is a deserved sanction that results directly from the way the tribunal works.

**How did the case start?**

Z was arrested at the Brussels airport in July 2001 carrying a false Senegalese passport. The office of the prosecutor at the ICTR didn't have a case or, therefore, an indictment. At the prosecutor's office, no one could then say if or when Z had been present during the Rwandan war. Two substitute prosecutors, one from Kigali and one from the ICTR, were made available to go to Gisenyi and gather testimonies. They returned with charges of massacres committed at road blocks, and that led to a sole indictment for extermination or alternatively for murder, understood as a crime against humanity. It was on this tenuous basis that the case got started.

**So then why commit to proceedings?**

One element that played a major role was that the Belgian authorities were scared to lose the credit garnered from the first Rwandan trial that they had just organised. They therefore placed pressure on the prosecutor's office and Z was transferred on October 3<sup>rd</sup> – already three months after his arrest. Once in Arusha, the ICTR machine got rolling and the result was a highly charged indictment.

**That contained serious errors?**

As for what he is accused of on Kesho hill, the error is egregious. On this point, everyone had information on his whereabouts. Both Protais and his brother Sraphin went to Gisenyi on April 10<sup>th</sup>. That fact was never contested. On the 9<sup>th</sup>, he was at Camp Kanombe in Kigali. He cannot be placed on that hill in Gisenyi.

**What role did Protais play during the genocide?**

Agathe, as the president's widow and as a woman, couldn't behave like the leader of the troops to order murders. In the same way that Juvénal passed his orders through Elie Sagatwa, the person who represented the family at the time was necessarily Protais. He [is believed to have] delivered the messages. That being said, we don't have proof of that. We are working with a range of presumptions. We have the testimonies of Bagaragaza and a few others who back it up, but the testimonies of the penitent are not always the most reliable.

**Given the context, what could the prosecutor have done?**

Modify the charges. The prosecutor could have quite simply said that he believed he had a converging body of facts that he could not prove beyond a reasonable doubt. Of course, that is not satisfying, but there is no room for cheating. It wouldn't be the first time he had weak cases, but the problem arises when you try to turn weak cases into strong ones. That is what shocks me.

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