

# HOW THE MIGHTY FALL: TRIAL OF SHEKA AND CONSORTS IN DRC

Imminent verdict against the North Kivu warlord,  
as his former wingman falls from grace

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## HOW THE MIGHTY FALL: TRIAL OF SHEKA AND CONSORTS IN DRC

Imminent verdict against the North Kivu warlord as his former wingman falls from grace



The warlord Sheka on the opening day of his trial in 2018 ©TRIAL International

**Goma/Geneva, 20 November 2020 - for immediate release. The verdict is nearing for the warlord Ntabo Ntaberi, better known by his *nom de guerre* Sheka, and his three co-accused. After over a year and a half of trial and several more months of deliberation, the four accomplices face a life sentence for war crimes and crimes against humanity. A resounding message as Sheka's former wingman, Guidon Shimiray, could himself be brought to justice.**

The lengthy trial of Ntabo Ntaberi alias Sheka, the infamous commander of the militia Nduma Defense of Congo (NDC), is coming to an end. Last August, Defense and Prosecution have presented their closing statements. The Prosecutor has requested a life sentence. Now the judges will have to adjudicate the guilt of the four accused for mass crimes committed in North Kivu between 2010 and 2014. The verdict is expected on Monday 23 November 2020.

[Read the media release of 27 November 2018: time for accountability for warlord Ntabo "Sheka" Ntaberi](#)

**Jules Ruhunemungu**, Project Coordinator at Avocats sans Frontières (ASF), highlights that the participation and courage of victims have been key to the trial. *"Their contribution has been a central element of the lawyers' arguments to support*

*the allegations against the accused. We must commend the civil parties' will to overcome their fear and break the silence in order to fight impunity in DRC."*

## Past crimes, present crimes

The international community has closely followed the trial of Sheka, and the verdict will no doubt be widely covered by the international and Congolese media. The decision is all the more important because Sheka's former right-hand man within the militia Nduma Defense of Congo (NDC) and now one of the most feared warlords in the region, could soon be sitting in the dock too.

Flashback: in 2014, rivalry between Sheka and his wingman Guidon Shimiray led to a scission of the NDC. Since then, factions of the militia fought against each other until Sheka's surrender to the authorities in 2017, and subsequent indictment. To this day, Guidon Shimiray and his men continue to terrorize the populations of North Kivu.

But the days of impunity could soon be over for Shimiray too. On 8 July 2020, an official statement from the NDC removed him from his rank. He is already subject to an arrest warrant since June 2019. Could Sheka's former rival be facing justice next?

*"The parallel between Sheka and Guidon Shimiray is evident", confirms **Elsa Taquet**, a Legal Advisor at TRIAL International who has worked with the victims' lawyers in the case. "Both were so high up the ladder of the NDC that they were thought to be untouchable. The trial that has just ended proves that Sheka is not above the law, no more than Shimiray who will also, one day, have to answer for his deeds."*

## Putting an end to the vicious circle of violence

How to explain this repetition of history? Many armed militias in North Kivu start as self-defense groups to fight other militias or even DRC's regular army, the FARDC, whose men have, at times, also committed crimes against civilians and their possessions. Thus, the same people who are the victims one day may take up the arms the next day... and start committing atrocities too. This is how the vicious circle of violence is perpetuated and reinforced.

During the trial, Sheka portrayed himself as the protector of civilians in Walikale and Masisi. But the methods of his militia tell a different story: mass rape, sexual enslavement, enlistment of child soldiers, mutilations and inhumane treatment of ethnic Hundes and Hutus, etc. In total, thousands of civilians have lived in fear for over four years.

According to **Patience Iraguha**, Senior Legal Advisor for TRIAL International in DRC, only the Congolese State can put an end to this escalation: *"Civilians should not have*

### Key figures

- 4 accused, all former militiamen from North Kivu
- Crimes were committed over a 4-years period at least
- Over 70 hearings
- 337 victims took part in the trial
- Over 3'000 pages of incriminating evidence

*to defend themselves, it is the duty of the authorities to guarantee their safety. This is why the State of DRC is also accused in the trial against Sheka: it has not done everything in its power to prevent the NDC's atrocities."*

*"Is Congolese justice being put to the test?" asks **Dominique Kamuandu**, Program Coordinator at ASF. "This trial could prove to sceptics that a judiciary answer to grave human rights violations is possible. We hope that the court will uphold international standards up to the very end and will meet the victims' expectations on fair trial principles."*

**The verdict will be read on Monday 23 November 2020 in Goma.**



*Three accused sit at the forefront; the fourth is testifying in the background. © Elsa Taquet/TRIAL International*

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# THE TRIAL AT A GLANCE

## Key dates of the Sheka case

**2010 to 2014 at least:** The Nduma Defence of Congo - sometimes in collaboration with the FDLR militia - commit mass crimes in the territories of Walikale and Masisi, in North Kivu

**26 July 2017:** Sheka surrenders to the MONUSCO

**27 November 2018:** opening of the trial against Sheka and his co-accused in Goma

**28 February to 17 June 2020:** suspension of the hearings to due to covid-19

**August 2020:** closing of the hearings

[See the full chronology of the trial \(in French\)](#)

## Who are the accused?

**Ntabo Ntaberi, alias Sheka:** commander of the NDC from 2010 to 2014, then of the faction NDC Sheka. He surrendered to the authorities in 2017.

**Séraphin Zitonda, alias Lionceau:** commander in the FDLR militia and accomplice of Sheka, he was present during the attack of Luvungi (see next section).

**Jean Ndoole Batechi:** care-provider in the NDC and doctor of Sheka himself. He was arrested at the same time as him 2017.

**Jean-Claude Lukambo, alias Kamutoto:** former child soldier who became an NDC commander. He was in charge, between other things, of training child soldiers. He was arrested in 2018.

## Which crimes are Sheka et consorts accused of?

- Organization, coordination and commandment of an insurrectional movement;
- Criminal association;
- Acts of terrorism;
- War crimes by murder, rape, sexual enslavement, looting, destruction, recruitment and use of child soldiers;
- Crimes against humanity by murder and rape.

The qualifications of “war crimes” and “crimes against humanity” intervene when the crimes are committed in a widespread and systematic matter. This explains why they are constituted by various specific crimes (see also “Why is Sheka not charged with genocide?” in the legal highlights below).

## ZOOM ON THE LUVUNGI ATTACK

From 3 July to 2 August 2010, the NDC attacked the village of Luvungi, in the Walikale territory. Situated in a mining area, the village is relatively wealthy: the extortion of villagers constituted a key source of income for Sheka's group. In fact, during the trial, Sheka did not deny these looting operations, arguing it was the price to pay for the "protection" the NDC provided to the population.

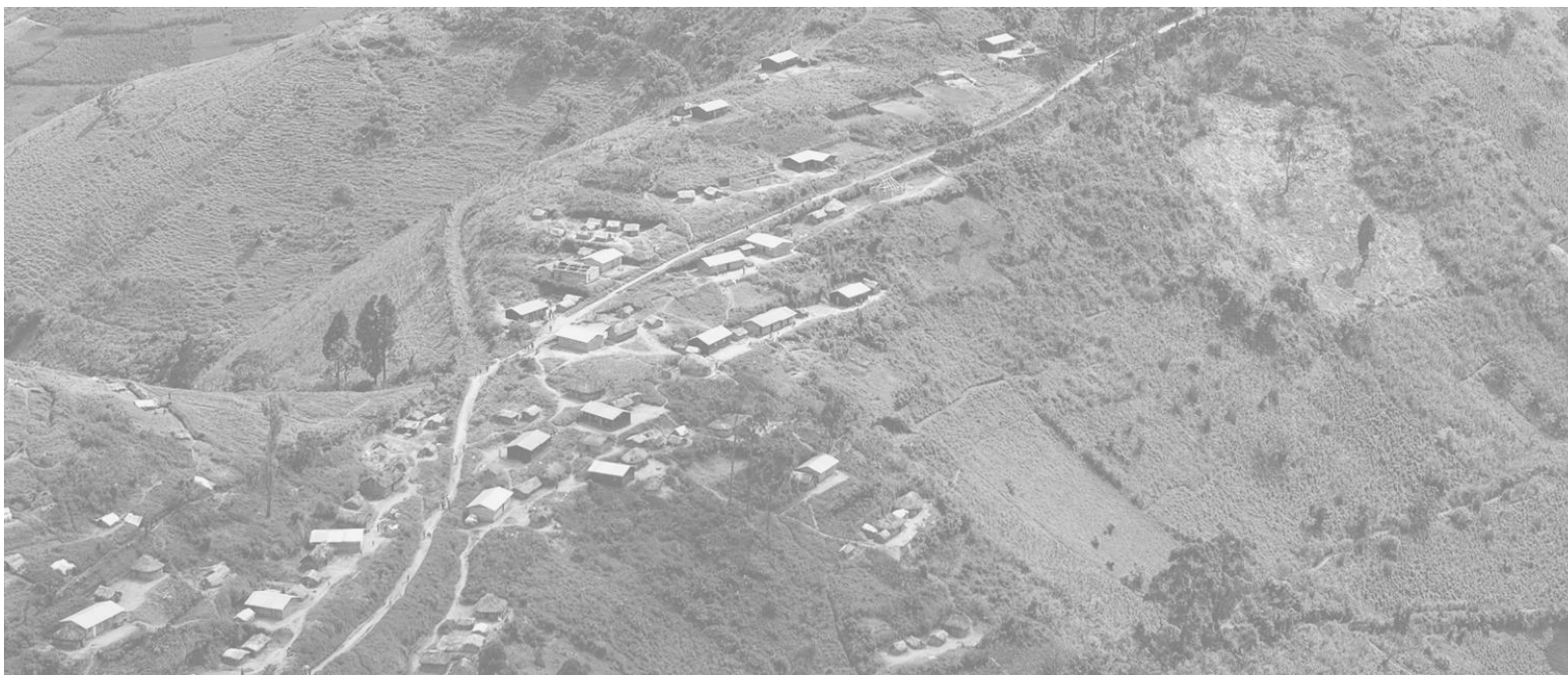
But the Luvungi attack went well beyond crimes of pillage: in four days, over 350 women were systematically raped, often by several men at once. Not a single house in the village was spared. A few days later, the neighboring village of Mubi was assaulted in a very similar way.

The sheer scale of this attack shocked the international community. It is following this episode that the United Nations started investigating the deeds of the NDC.

### What is the responsibility of Lionceau and Sheka?

In Luvungi, the aggressors were not only NDC members, but also fighters from another militia, the FDLR, led by Séraphin Zitonda alias Lionceau. The latter was identified by many victims from Luvungi. Sheka himself was not present during the attacks, but had planned and organized it. He was represented in Luvungi by his wingman M. Mayele.

During the trial, Sheka and Lionceau blamed each other for the mass rapes committed in Luvungi. In reality, both could be punished under command responsibility (see legal highlight below): Lionceau was present in Luvungi and directly controlled the FDLR fighters; and Sheka had masterminded the attack, which was manifestly well organized. It is therefore impossible that Sheka had no knowledge of the FDLR's methods. And he still chose to attack Luvungi, and later Mubi, with their support.



# LEGAL HIGHLIGHTS

## Outstanding evidence

The crimes of the NDC have been documented since 2010, both by Congolese authorities and by local and international NGOs. Thousands of testimonials were collected<sup>1</sup>, as well as audiovisual material and even Sheka's logbook. All these elements contributed to clarifying the NDC's complex structure and trace back the specific roles of Sheka and his subordinates.

In addition to the quantity of evidence, its quality is also outstanding. Investigators were able to visit the crimes scenes within days of the attacks - including in Luvungi, featured the previous page. The medical evidence and testimonials they collected were exceptionally fresh. Interviews with the victims not only established the responsibility of Lionceau, Sheka and the other accused; they also upheld the highest standards and practices in the field.

The audition of five child soldiers and two sexual slaves during the trial also provided precious evidence as to the NDC's organization. Since the victims were forced to proximity with the militiamen - and even, in the case of the child soldiers, to fight alongside them - they were able to describe precisely the functioning and hierarchy of the group, including the responsibilities of Sheka himself.

[Read the article of 11 June 2019: Six months after its start, an updated on the Sheka trial](#)

## Establishing the chain of command

As the commander of a militia, Sheka bears a double responsibility: that of the crimes he committed himself, and that of the crimes committed by others under his command. The latter is called command responsibility.

Establishing the NDC's chain of command was crucial in the trial. War crimes and crimes against humanity are, by definition, carried out in an organized and systematic way. Responsibility does not lie solely with the individuals who physically commit the deeds, but also with their instigators who have planned, ordered, encouraged or otherwise aided the atrocities. Likewise, military commanders are indirectly responsible for their troops' acts.

## Why is Sheka not charged with genocide?

Many crimes of the NDC were directed against ethnic Hundes and Hutus, and Sheka himself confirmed this targeting. However, this is insufficient to qualify these crimes of genocide. For one, many victims were neither Hundes nor Hutus. And secondly, the legal definition of a genocide requires an extremely rigorous organization of the

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<sup>1</sup> Testimonials collected for the documentation of the crimes are distinct from those included to the investigation. In the documentation phase many individuals may be heard, whereas only the most probative testimonials, corresponding to specific legal criteria, are filed in the investigation. This does not mean that the other testimonials have no value: it is merely a common legal practice to ensure the trial proceeds within a reasonable timeframe.

extermination, based on the specific intention to destroy a targeted group. These elements were not established by the evidence in the case, and therefore the legal qualification of genocide cannot be used.

On the other hand, the crimes of the NDC do qualify as war crimes, because they were committed during the armed conflict opposing the NDC to other militias in North Kivu. The existence of a frontline, putting the local civilians at high risk, allows this qualification. The accused also face charges of crimes against humanity, notably for the attack on Luvungi.

Find out more about [war crimes](#), [crimes against humanity](#) and [crimes of genocide](#)

### **The sensitive matter of child soldiers**

The enlistment of child soldiers was a common practice of the NDC under Sheka's command, especially after 2011 when the militia's rising influence required more fighters. Boys were usually abducted during looting operations in villages, some as young as nine years old.

One of the accused in the case, Jean-Claude Lukambo alias Kamutoto, was himself enrolled as a child soldier, before climbing up the NDC ladder. Under Sheka and later under Guidon Shimiray, he is suspected of enlisting and training dozens of child soldiers for the NDC.

The children's crimes were usually committed under physical or psychological duress, after a thorough brainwash and sometimes under the influence of drugs. The responsibility for all their crimes therefore clearly lies with the adults who enrolled them - that is, the NDC commanders - and not with the children themselves.

[Read the MONUSCO report on the enlistment of child soldiers by armed groups in DRC \(in French\)](#)

### **Guaranteeing the safety of victims and witnesses**

Although Sheka surrendered in 2017, he remains influential on the territories of Walikale and Masisi. This is one of the reasons why the trial was not held in these regions but in Goma, far away from NDC-controlled areas.

The protection plan for victims and witnesses is one of the most comprehensive ever deployed in North Kivu, in parts thanks to the efforts of the United Nations Joint Human Rights Office. The plan included, among other things, the complete anonymity of the individuals, the confidentiality of their travels to and from Goma to testify and their protection by bodyguards. After the hearings, each victim and witness was offered temporary resettlement, its length depending on their personal situation, to avoid potential retaliation in their village.

[Read the article of 5 March 2019: Sheka trial, what support is envisaged for the victims?<sup>2</sup>](#)

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<sup>2</sup> The article mentions 290 identified victims. Since its publication in March 2019, 47 new victims have joined the proceedings, making their total number 337.



## ABOUT THE SIGNATORY ORGANIZATIONS

**TRIAL International** is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable sufferings. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward. TRIAL International operates in the Democratic Republic of the Congo (DRC) since 2014, and in North Kivu since 2018.

In the Sheka case, TRIAL International has worked in close collaboration with the victims' lawyers. Together, they have collected and analyzed over 3'000 pages of evidence; consolidated their legal strategy to prove the widespread and systematic nature of the crimes; and supported the NGOs working directly with the victims to prepare them for the hearings.

**Avocats Sans Frontières** (ASF) is an international NGO active in DRC since 2002. It seeks to contribute to the emergence of the rule of law by consolidating access to justice. The approach of ASF on international criminal justice is to improve victims' representation and support legal help mechanisms to move forward the fight against impunity for grave crimes and the respect of human rights.

In the Sheka case, ASF supported the first documentation missions conducted by NGOs in the committed crimes, and the legal consultations between the victims and their lawyers. They then contributed to the collection of data as well as the sensitization and support to victims, in collaboration with local NGOs. The goal was to allow victims to participate in judiciary proceedings and receive legal assistance at each stage.

**RCN Justice & Démocratie** (RCN J&D) is a Belgian non-governmental organization created in 1994. Its mission is to promote and support local and transitional justice, as well as democratic practices in developing or transitioning societies and States. It also sensitizes a European audience to the prevention of conflict. RCN J&D is active in DRC since 2000 and aims to make justice accessible and adapted to the population's needs.

In the Sheka case, RCN J&D mobilizes and supports journalists trained to cover the trial in Goma and Kinshasa. It also sensitizes the affected communities with the contribution of the Union of Congolese Women in the Media (*Union Congolaise des Femmes des Médias* or UCOFEM).

*The work of TRIAL International, Avocats sans Frontières and RCN Justice et Démocratie on this case has been conducted in the framework of the Cadre de concertation, an informal network of international actors collaborating to support the work of Congolese military jurisdictions in the investigation and prosecution of mass crimes in DRC in the North Kivu province.*