

**Cour
Pénale
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**International
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Court**

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Date: 7 April 2014

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

*IN THE CASE OF
THE PROSECUTOR v. GERMAIN KATANGA*

Public Document

**Annex A, Confidential, only available to the Prosecution, Defence, Legal
Representatives and VWU**

Prosecution's Sentence Request

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. Trial Chamber II (“Chamber”) has granted the parties until 7 April 2014¹ to submit their observations relevant to sentencing, pursuant to Rule 145 of the Rules of Procedure and Evidence (“Rules”), and to indicate if they intend to call any witnesses and/or submit any documentary evidence for sentencing purposes.²
2. The Prosecution will seek a severe sentence for Germain Katanga (“Katanga”) on the basis of the gravity of the crimes and aggravating circumstances including Katanga’s abuse of his position of authority as President of the Ngiti militia to secure key weapons and ammunition that were critical in assuring the success of the attack on Bogoro, the level of crimes perpetrated, and purpose of eliminating the civilian population from Bogoro.

II. OVERVIEW ON THE SENTENCE TO BE IMPOSED

3. The gravity of the crimes for which Katanga was convicted, the extent of the aggravating circumstances for the crimes and the lack of mitigating circumstances justify the imposition of a severe joint sentence pursuant to Article 78(3) of the Rome Statute (“Statute”).
4. Katanga was convicted of five crimes, both crimes against humanity and war crimes, due to his contribution to these crimes. These crimes are inherently grave. Katanga abused his position of authority and power to contribute to these crimes. As President of the Ngiti militia of Walendu-Bindi *collectivité*, Katanga was able to: (a) forge key alliances with military authorities in Beni who supplied him with weapons and ammunition;³ (b) that from his strategic location in Aveba, he was able to receive, secure and distribute amongst commanders for use in the attack on Bogoro.⁴ Without these weapons and ammunition and the strategic military alliance forged, the Ngiti combatants

¹ ICC-01/04-01/07-3447, para.11.

² ICC-01/04-01/07-3437, pp.5-6, paras.5-7, p.7. See Confidential Annex A attached for details regarding the proposed witness’s civil status and current place of residence.

³ Jugement rendu en application de l’article 74 du Statut, ICC-01/04-01/07-3436 («Article 74 Judgment»), para.1671.

⁴ Article 74 Judgment, paras.1671, 1675, 1680.

would not have had the means to successfully launch the attack or been able to pursue with the same level of efficiency or success their criminal purpose of wiping out Bogoro⁵ and to eliminate the predominantly Hema civilian population from Bogoro.⁶

5. The crimes were perpetrated in a systematic and organised manner,⁷ and pursuant to a discriminatory anti-Hema organisational policy.⁸ The attack was directed against the most vulnerable and defenceless, namely women, the elderly, and children – including babies.⁹ The impact on the victims and the entire community was devastating. Bogoro was wiped out.¹⁰ The attackers successfully routed the predominantly Hema inhabitants. Homes were burnt and belongings that were critical to survival pillaged. An immediate return for survivors was impossible.¹¹ Some were never able to return.¹² During and after the attack women were raped and sexually enslaved.¹³ Children below the age of 15 were used to fight at Bogoro.¹⁴
6. Katanga shared the group's anti-Hema ideology. He knew that the group would commit these crimes. He willingly made his significant contributions, without which the group could not have succeeded in all its aims.¹⁵
7. Given the above, and pursuant to Article 78 of the Statute and Rule 145 of the Rules, the Prosecution will request that Germain Katanga be sentenced to a severe punishment. The Prosecution will make submissions as to the specific sentence that it considers should be given at the Sentencing Hearing.

⁵ Article 74 Judgment, paras.1674-1681.

⁶ Article 74 Judgment, para.1679.

⁷ Article 74 Judgment, paras.1158, 1162, 1656.

⁸ Article 74 Judgment, paras.1142-1156. See in particular para.1155 : *«l'attaque qui s'est déroulée dans ce village a été mise en œuvre en application d'une politique organisationnelle consistant à l'attaquer pour en effacer non seulement les éléments militaires de l'UPC mais aussi, à titre principal, les civils hema qui s'y trouvaient... »*

⁹ Article 74 Judgment. See e.g. paras.816-836, 1137-1138.

¹⁰ See e.g. Article 74 Judgment, paras.855, 1142-1167, 1653-1665, 1678-1679. See also paras.1151-1152: The Chamber concluded that the project to wipe out the Hema civilian population from Bogoro was a continuation of the prior operation against Nyankunde.

¹¹ Article 74 Judgment, paras.854-855, 924, 932, 941-942, 1656-1665, 1678.

¹² P-166, T-225-FRA, p.54, ll.9-19, Article 74 Judgment, para.1678.

¹³ Article 74 Judgment, paras.876, 993, 1023.

¹⁴ Article 74 Judgment, paras.1057, 1059, 1060-1065, 1084, 1086, 1088.

¹⁵ Article 74 Judgment, paras.1682-1689.

III. THE GRAVITY OF THE CRIMES¹⁶

(1) *Circumstances of the manner, time and location of the crimes*¹⁷

i. Inherently grave nature of the crimes committed at Bogoro

8. Katanga was convicted of the crimes against humanity and war crimes of murder, as well as war crimes of an intentional attack directed against the civilian population, property destruction and pillaging.¹⁸ The Chamber found that these crimes formed part of the common purpose of the group and were committed by the group,¹⁹ and that Germain Katanga knowingly made significant contributions with the knowledge of the group's intent to commit such crimes.²⁰
9. The Chamber held that it was proven beyond a reasonable doubt that the crimes against humanity and war crimes of rape and sexual slavery also occurred during the Bogoro attack²¹ and that they formed part of the attack directed against the Hema civilian population as a war crime, as well as in the context of crimes against humanity.²² The Chamber further held that child soldiers below 15 years were used during the Bogoro attack.²³
10. All of these crimes are inherently grave and are amongst "the most serious crimes of concern to the international community".²⁴

ii. Systematic nature of the crimes

11. The Chamber made several factual findings regarding the intentional, systematic and organised manner in which the attack was conducted and the crimes committed and to which Katanga intentionally contributed. The Chamber found that the attackers encircled the village and from the outset committed the crimes by targeting the civilians. The Chamber also noted the significant number of Hema civilian victims, the deliberate hunt for Hema

¹⁶ Article 78(1), Rule 145.

¹⁷ Rule 145(1)(c).

¹⁸ Article 74 Judgment, pp.709-710.

¹⁹ Article 74 Judgment, paras.1652-1662, 1665-1669.

²⁰ Article 74 Judgment, paras.1670-1691.

²¹ Article 74 Judgment, paras.999, 1023.

²² Article 74 Judgment, paras.876, 1663, 1165-1167.

²³ Article 74 Judgment, paras.1057, 1059, 1060-1065, 1084, 1086, 1088.

²⁴ Preamble, para.4. Refer also to the Prosecution's Submissions on the Procedures and Principles for Sentencing, ICC-01/04-01/07-3444 ("Prosecution's first submissions").

civilians who survived the assault during and after the battle, and the coordinated and organised manner of the destruction and pillaging of goods.²⁵

The Chamber decided that the attack was intentionally directed against the Hema civilian population with the aim of wiping them out.²⁶

12. From the outset, the attackers armed with guns and machetes²⁷ came from all directions²⁸ and deliberately encircled the village.²⁹ The attackers chased after and intentionally killed by machete and gunfire the village's inhabitants, including women, children, and men not taking part in hostilities, who tried to flee and seek refuge at the Institute or bush.³⁰ The Chamber found that attackers also chased and deliberately killed civilians by machete and gunfire who tried to flee from the Institute *via* Mont Waka, including women, children and the elderly.³¹

13. Even after the UPC combatants were defeated and had left Bogoro, the attackers chased and deliberately killed remaining civilians. The Chamber concluded that most of the remaining villagers killed at the UPC camp, including women, children and the elderly, were killed by machete and gunfire when they were defenceless and not participating in hostilities, and after the attackers seized control of the camp.³² The Chamber decided that during or after the battle, when attackers had control of Bogoro village, that they entered people's homes and searched for hiding villagers and killed them, including women and children.³³ For instance, P-353 saw attackers

²⁵ Article 74 Judgment, paras.731, 745, 747, 755, 1158.

²⁶ Article 74 Judgment, para.1151.

²⁷ Article 74 Judgment, para.810. Citing e.g. P-161, T-111, p.50; P-233, T-83, p.73 (referring to Bira assailants); P-287, T-129, pp.24, 37, 40, 53; V-4, T-234, pp.11 and 47; T-235, pp.18-19.

²⁸ Article 74 Judgment, para.810. Citing e.g. V-2, T-231, p.41; V-4, T-233, p.69, T-234, p.9; P-323, T-117, pp.27-29 and 36.

²⁹ Article 74 Judgment, para.810. Citing e.g. Section VIII-A-3.

³⁰ Article 74 Judgment, paras.811, 815-817, 858 and 865. Citing for instance P-323, T-117, pp.29-30; T-118, p.30; D02-176, T-256, pp.31-32; V-4, T-234, pp.3-5, T-235, p.18; P-161, T-109, pp.42-43, T-111, pp.6 and 10; P-233, T-83, pp.67-69, 74-75, T-88, pp.27-28, 33-34 (referring to Bira assailants); V-4, T-234, pp.4-6, T-235, pp.18-19.

³¹ Article 74 Judgment, paras.823-824, 865. Citing P-323, T-117, pp.36-38; D02-176, T-255, p.37, T-256, pp.13, 50-51; V-4, T-234, pp.8, 11-12; P-233, T-84, p.13, T-86, p.10; P-161, T-112, pp.63-64; P-268, T-107, pp.15, 20, 31-32, 58-61, 64; P-317, T-228, p.32; P-287, T-129, pp.38-39; D02-148, T-280, p.27.

³² Article 74 Judgment, paras.819-820, 823-824, 863-865. Citing e.g. EVD-OTP-00205: Interim report of the UN MONUC on events in Ituri; P-317, T-228, p.32.

³³ Article 74 Judgment, paras.825 and 828. Citing for instance P-268, T-107, p.32; P-287, T-129, p.24, 43, 46, 51; P-353, T-213, pp.19-21; D02-176, T-256, p.34, T-255, p.23.

asking the non-Hema to leave; and tell Hema women amongst them that they were proud and despised them but they would be married without dowry. P-353 and three other girls were spared because they pretended they were not Hema. She saw the corpses of those killed by machete or gunfire, just in front of houses. She could hear the cries of those being killed inside their homes.³⁴

14. The Chamber decided that after the UPC had fled, the attackers also tried to find villagers hiding in the bush,³⁵ including by pretending to be Hema or using captured civilians to call out for fellow Hema.³⁶ Some found were captured, such as P-132 and P-249, who were not killed when they pretended they were not Hema, but were raped;³⁷ and P-268 who was used to call out other Hema.³⁸ Others found were killed by the attackers, including by machete or gunfire.³⁹ P-287, P-268 and P-233 heard an unarmed elderly man being deliberately killed.⁴⁰ P-233 learnt that his grandmother was killed after being discovered in the bush.⁴¹ P-161 saw a woman being shot then cut up by attackers after having been spotted by a "Lopi" who told the attackers where villagers were hiding.⁴² P-249, P-233 and P-268 saw corpses in the bush, including of two children aged about 10 years old and a woman.⁴³

15. From the outset of the attack and after the end of the hostilities, the attackers including Ngiti, together demolished or set on fire the homes of the

³⁴ Article 74 Judgment, para.826. P-353, T-213, pp.21, 27, T-215, p.26.

³⁵ Article 74 Judgment, para.829. Citing for instance P-132, T-143, pp.69-71; P-268, T-107, p.18, T-117, pp.59-60; P-287, T-129, pp.51-52.

³⁶ Article 74 Judgment, para.829. Citing for instance P-233, T-83, pp.75, 79; P-287, T-129, pp.51-52; P-132, T-143, pp.69-71; P-323, T-117, pp.59-60.

³⁷ Article 74 Judgment, para.832. P-132, T-139, pp.13-14, 19-21, T-141, pp.37-38; P-249, T-135, pp.41-42, 54-55, T-136, pp.77-78.

³⁸ Article 74 Judgment, para.829. P-132, T-139, pp.11-13; T-140, p.58, T-143, p.24. Citing also D02-148, T-279, p.21, T-280, pp.40-42, 60-62, T-181, p.10; P-249, T-135, pp. 58-59, 64, T-136, p.80, T-137, pp.60-61; P-233, T-84, pp.12, 32-33; P-268, T-107, pp.15-16, 40, T-108, p.73.

³⁹ Article 74 Judgment, para.830.

⁴⁰ Article 74 Judgment, paras.830-831, 866. P-233, T-84, pp.7, 32-33, T-83, pp.63, 78-80; P-287, T-129, pp.30, 51; P-268, T-107, pp.18, 67, 74. The Chamber concluded he was intentionally killed.

⁴¹ Article 74 Judgment, paras.830, 866. P-233, T-84, p.6; T-86, pp.10-11; EVD-OTP-00203: List of victims from the attacks on Bogoro between 2001 and 2003. The Chamber concluded she was intentionally killed.

⁴² Article 74 Judgment, paras.830, 866. P-161, T-110, pp.51-53, T-113, pp.44-46, 52-53; T-116, pp.37-43. Citing also D02-300 (Katanga), T-322, p.51: who confirmed that this expression was used to refer to the look-out position. The Chamber concluded she was intentionally killed.

⁴³ Article 74 Judgment, paras.831, 866, 869. P-249, T-135, p.42; P-233, T-86, pp.9-10; P-268, T-107, p.18. The Chamber concluded that they were intentionally killed. The Chamber was unable to conclude if the children were killed by Ngiti combatants.

inhabitants, principally Hema, of Bogoro.⁴⁴ The Chamber concluded that the destruction of property, and pillaging, was part of the common purpose to eliminate the Hema civilian population, as it made the survival or return of survivors to Bogoro difficult.⁴⁵ After the battle, Bogoro was emptied of its Hema civilian population.⁴⁶

(2) Means employed to execute the crime

16. The cruel means used to execute the crimes and target civilians also demonstrates the gravity of the crimes,⁴⁷ *inter alia*, in the manner in which the village was deliberately attacked early in the morning when most were sleeping in order to surprise them and making their escape difficult.⁴⁸ Moreover, the attackers used various means to hunt out civilians.⁴⁹ Attackers tried to lure them out, some pretending to be Hema or using Hema they had caught to lure others out. Those found were then killed, and women were raped.⁵⁰ They tried to identify civilians who were Hema.⁵¹

17. The attackers killed civilians at close range using machetes and shot civilians either without distinction or deliberately directed at villagers, during and after the fighting, in their homes, whilst they fled or sought refuge in the Institute or bush.⁵² The way in which they were executed, including by machete, and imploring for mercy, indicates that they were at the mercy of the attackers.⁵³

(3) Extent of the number of victims and damage caused

18. The Chamber found that the minimum number of Bogoro villagers killed during the attack was 60, including a large number of children (about 25), women and elderly people.⁵⁴ At least 33 of the 60 killed were civilians not

⁴⁴ Article 74 Judgment, paras.917-957.

⁴⁵ Article 74 Judgment, paras.1653-1665.

⁴⁶ Article 74 Judgment, para.1161.

⁴⁷ Article 74 Judgment, paras.878-879.

⁴⁸ Article 74 Judgment, paras.810, 872, 878.

⁴⁹ Article 74 Judgment, para.873. Referring to paras.810-817, 825-828.

⁵⁰ Article 74 Judgment, para.876. Referring to para.829; and the accounts of P-132 and P-249.

⁵¹ Article 74 Judgment, para.877.

⁵² Article 74 Judgment, para.878.

⁵³ Article 74 Judgment, para.820.

⁵⁴ Article 74 Judgment, paras.837-838, 835, 841, 869. Citing Annexe F; EVD-OTP-00203, List of the victims of the attacks on Bogoro between 2001 and 2003.

directly participating in hostilities.⁵⁵ Moreover, the Chamber concluded that Ngiti combatants or Lendu-Ngiti together killed more than 30 (including 13 young children).⁵⁶ However, the Chamber considered that the actual number of those deliberately killed was much higher even though it could not determine precise numbers; referring, *inter alia*, to the testimony of witnesses who confirmed that the village was strewn with corpses,⁵⁷ amongst whom there were women, the elderly, and children (including babies).⁵⁸ Inhabitants returning in 2005 found the skeletal remains of many.⁵⁹ Many saw others injured or were injured themselves, such as witnesses P-132, P-249 and P-287.⁶⁰

19. As stated above, the Chamber also determined that women were raped and sexually enslaved during and after the attack and that the crimes of rape and sexual slavery formed part of the element of the widespread or systematic attack directed against a civilian population pursuant to an organisational policy to commit such attack, as well as part of the war crime of attack against civilians.⁶¹ Children below the age of 15 were amongst the ranks of the Ngiti militia in the period of the conflict in 2002 and used in hostilities during the attack on Bogoro village in February 2003.⁶²

20. After the attackers took control of Bogoro, the belongings of the civilian population essential to their daily life including house roof tops, furniture, food, cattle, goats and chickens, were taken by the attackers and by civilians

⁵⁵ Article 74 Judgment, para.869.

⁵⁶ Article 74 Judgment, paras. 869, 1137. Citing for instance P-353 (Article 74 Judgment, paras.826-827).

⁵⁷ Article 74 Judgment, paras.838-839. Citing for instance D02-176, T-255, p.40, T-256, p.28, p.34; P-353, T-213, pp.19-20; P-132, T-138, pp.79, 82, T-140, pp.55-56; P-233, T-86, p.10; P-249, T-135, p.42; P-268, T-107, pp.15, 18, 31-32, 45-46, 57-61, 64; P-287, T-129, pp.45-46; P-353, T-213, pp.25, 27, 44; D02-148, T-280, pp.27-28; V-4, T-234, pp.11-12, T-140, pp.55-56.

⁵⁸ Article 74 Judgment, para.836, footnote 1972. Citing for instance P-132, P-249, P-268, P-287, D02-148, D02-176, and V-4.

⁵⁹ Article 74 Judgment, paras.836, 869. P-233, T-87, pp.24-25; P-161, T-111, pp.32-33; V-4, T-234, p.17; P-166, T-225, pp.62-64; Annexe E.

⁶⁰ Article 74 Judgment, para.836, footnote 1974. Citing P-132, T-138, p.83, T-139, p.8, T-140, pp.49-51; Medico-legal expert report regarding P-132: EVD-OTP-00055; Photographs of P-132's injuries: EVD-OTP-00113, EVD-OTP-00114, EVD-OTP-00115, EVD-OTP-00116; P-249, T-135, pp.40-41; Photographs of P-249's injuries: EVD-OTP-00107, EVD-OTP-00108; Medico-legal expert report regarding P-249: EVD-OTP-00056; P-287, T-129, p.29; Photographs of P-287's injuries: EVD-OTP-00097-EVD-OTP-00101.

⁶¹ See e.g. Article 74 Judgment, paras.853, 876, 1663.

⁶² Article 74 Judgment, paras.1074-1083, 1084, 1086, 1088.

and in particular Bogoro.⁶⁹ In so doing, he helped the militia as a group to obtain the support of the Beni military authorities in the fight against their “Hema” enemy (assimilated with the UPC). He assumed the role of facilitator when he first returned from Beni, and by virtue of his position of authority, with the aim of establishing good communication between the local combatants and the authorities from Beni and APC militia; and settled any differences that arose between the local commanders and APC. He facilitated and ensured the receipt and secure storage of weapons and ammunition coming from Beni, and organised their distribution amongst the different commanders of the *collectivité* coming to take delivery for preparation for the Bogoro attack.⁷⁰

23. The Chamber made a number of factual findings regarding the impact of Katanga’s contributions to the Bogoro attack and the crimes that occurred. The Chamber concluded that he made “*a truly significant contribution*” to the realisation of the crimes; and that his contributions enabled the Ngiti combatants to assure their military superiority against their UPC adversary and to complete their purpose of eliminating the civilian population, principally Hema, of Bogoro.⁷¹ In this instance, Katanga had in the period preceding the attack been an essential actor in the alliances that were established and helped to reinforce the striking capabilities of the Ngiti militia who committed the crimes at Bogoro. He also contributed, by virtue of the position he occupied at Aveba, in that this was the only locality of the *collectivité* that had an airport to receive the weapons and therefore the militia could be equipped to enable it to function in such an organised and efficient manner.
24. During the period of preparation for the attack, at Aveba, he was the privileged intermediary between those furnishing the weapons and

⁶⁹ Article 74 Judgment, paras.1671, 1269.

⁷⁰ Article 74 Judgment, para.1671. The Chamber further referred to its findings at paras.1359-1365; and Sections X-A, X-B-4, VII-B-2-a, X-A-7-b-I, X-A-8, X-A-5.

⁷¹ Article 74 Judgment, para.1679.

ammunition and those who used these weapons at Bogoro to commit the crimes. Without this important contribution of weapons to the Ngiti militia, and without the accused's contribution in organising and facilitating the provision of these weapons, the commanders and combatants of Walendu-Bindi *collectivité* would not have had the same advantages nor could they have committed with the same efficiency the crimes perpetrated at Bogoro against the Hema civilian population.⁷² His intervention enabled the militia to benefit from logistical means that were not otherwise at their disposal and in which they had a key interest in using for the Bogoro attack.⁷³

25. All of the actions of the accused had an important impact on the realisation of all of the crimes for which he was convicted.⁷⁴ The Chamber found that Katanga's contributions were particularly relevant for the commission of crimes that formed part of the common purpose, because his contributions had an important impact on their occurrence and the manner in which they were committed.

Impact on crimes

26. In particular, the Chamber concluded that the weapons and ammunition he secured had the following impact on crimes perpetrated at Bogoro:
- (a) the weapons and ammunition were delivered to Aveba with the objective of succeeding in the Bogoro operation, which meant for the Ngiti combatants the takeover of the village and elimination of the Hema population found there; those weapons and ammunition were distributed from Aveba to the other military camps and used for the attack; there was no evidence of any other source of weapons;⁷⁵
 - (b) there were large numbers of weapons and ammunition provided for the Bogoro attack, which ensured the success of the Bogoro operation and that Bogoro fell within a few hours;⁷⁶

⁷² Article 74 Judgment, para.1680.

⁷³ Article 74 Judgment, para.1679.

⁷⁴ Article 74 Judgment, para.1681.

⁷⁵ Article 74 Judgment, para.1675.

⁷⁶ Article 74 Judgment, para.1676.

(c) whilst many of the crimes were committed with machetes and other *armes blanches*, the guns not only enabled the attackers to surprise the inhabitants and takeover the locality but were also used to kill and injure inhabitants;⁷⁷

(d) the manner in which the attack occurred also indicates the importance of the fire power in ensuring their success – the UPC was quickly vanquished, the civilian population was constrained in its ability to flee and was forced to abandon its belongings; the attack directed against the Hema civilians was intended to eliminate them as well as destroy and pillage their belongings excluding all possibility of the survival or return of the survivors.⁷⁸

(5) *The intent of the convicted person*

27. The Chamber held that Katanga knew that the attack at Bogoro would occur in the way that it did, in that the Ngiti militia would commit acts of murder, an attack against the civilian population as well as crimes of destruction of property and pillaging.⁷⁹ The Chamber found that Katanga, in his capacity as the President of the Ngiti militia of Walendu-Bindi *collectivité*, knew that a military attack was being prepared against Bogoro and that the weapons supplied were to be used in this battle. He knew that generally the methods of war used in Ituri, including in Walendu-Bindi, by the armed groups involved exactions against the civilian population. In particular, he was aware that the Ngiti combatants of Walendu-Bindi had violently attacked the civilian population, due to their hostile ideology towards the Hema, for instance certain combatants from this militia took part in combat at Nyankunde in September 2002 and committed exactions against civilians.⁸⁰
28. The Chamber held that the accused acted deliberately, at Aveba and in the Walendu-Bindi *collectivité*, in the period of preparation before the attack, including between November 2002 and February 2003. Katanga himself explained that he consciously contributed to the project to attack Bogoro and

⁷⁷ Article 74 Judgment, para.1677.

⁷⁸ Article 74 Judgment, para.1678.

⁷⁹ Article 74 Judgment, para.1689.

⁸⁰ Article 74 Judgment, para.1689.

that he participated in its conception at Beni in November 2002 and then during other travel in his locality.⁸¹ He admitted that if he was not forced to stay in Aveba, as he claimed, he would have participated in the attack as that was his duty to take part in the operation together with Commander Blaise Koka of the APC.⁸² The Chamber concluded that the accused therefore acted deliberately and was fully conscious of the fact that his behaviour contributed to the activities of the Ngiti militia.⁸³

29. Katanga had full knowledge of the manner in which war took place in Ituri and of the resulting suffering of the civilian population. He had testified that war in Walendu-Bindi was different to war in Europe, in that in Europe you would be protected in your home, whilst in Ituri if you remained in your home, your house would be burnt and you would be burnt inside it.⁸⁴
30. He knew of the massacre of civilians at Nyankunde; in particular of the Bira who were allied to the Hema; that the Ngiti combatants of Walendu-Bindi participated in this fighting including Commander Yuda who also collected weapons and ammunition from Aveba for the Bogoro attack and Commander Garimbaya, Katanga's subordinate.⁸⁵ He described the "massacre" at Nyankunde, confirming that he had heard of larger numbers of those killed – between 1000 to 1200 people, including of female and child civilians – and visited Nyankunde in October 2002 where he saw that the medical centre had been destroyed and pillaged.⁸⁶
31. He knew that the UPC was considered to be a Hema militia and that his community had bad memories of the Hema referring to the anti-Hema ideology at the time of the Bogoro attack amongst the commanders and combatants of the Ngiti militia of Walendu-Bindi. He testified that the threat of the establishment of a Hima-Tutsi empire was discussed amongst the commanders of Aveba. He knew that the authorities in Beni used this ethnic

⁸¹ Article 74 Judgment, para.1682.

⁸² Article 74 Judgment, para.1683. Citing D02-300, T-318, p.13.

⁸³ Article 74 Judgment, para.1683.

⁸⁴ Article 74 Judgment, para.1685. Citing D02-300, T-320, p.33.

⁸⁵ Article 74 Judgment, para.1686.

⁸⁶ Article 74 Judgment, para.1687. Citing, *inter alia*, D02-300, T-315, pp.39-40, T-320, pp.25-27.

argument as a way of mobilising the local combatants. He said they feared that the Hema would destroy them, take over their territory and impose their own empire. Moreover, the Chamber found that Katanga shared this ideology.⁸⁷

IV. INDIVIDUAL CIRCUMSTANCES OF THE CONVICTED PERSON

32. The Defence has tried to suggest that Katanga's supposed young age at the time of the Bogoro attack should be taken into account as a mitigating circumstance, as he was 24 years old at the time.⁸⁸ The Prosecution submits that this should not be considered to be a mitigating circumstance bearing in mind that he assumed the responsibilities of his rank and position, regardless of his age: (a) he was already the President of the Ngiti militia and a significant military authority at that age; (b) in contrast to many of his peers, he had received an education – both academic, and military training;⁸⁹ (c) he was well-respected, in that he was considered an authority not only by the military, but also key religious and civilian authorities in his community;⁹⁰ (d) he had the maturity to develop important relations within his community, including key fetisheurs;⁹¹ (e) he was a key, respected interlocutor and viewed as an essential player in the conflict – he headed delegations travelling to Beni that negotiated with the military authorities there, on behalf of his community; and (f) he signed the Cessation of Hostilities Agreement at the insistence of UN MONUC and UPDF who saw him as a key player in the conflict.

⁸⁷ Article 74 Judgment, para.1688. Citing D02-300, T-321, p.49, T-319, p.24, T-325, pp.9-12, p.54, T-316, pp.63-64.

⁸⁸ T-80-ENG, p.53, ll.9-20; T-80-FRA, p.57, l.23-p.58, l.11; ICC-01/04-01/07-3443, para.47.

⁸⁹ Article 74 Judgment, paras.1246, 1248. Citing for instance D02-300, T-314, p.32, T-324, p.79.

⁹⁰ Article 74 Judgment, paras.1256-1258.

⁹¹ Article 74 Judgment, paras.1257-1258.

V. AGGRAVATING CIRCUMSTANCES

(1) *Abuse of power or official capacity*

33. The Prosecution submits that Katanga, who shared his group's anti-Hema ideology,⁹² abused his position of authority in particular as President of the Ngiti militia of Walendu-Bindi, to ensure he could forge the military alliances with the Beni authorities and thereby secure the critical supplies of weapons and ammunition that were critical to the success of the Bogoro attack in defeating the UPC, impacted on the level of crimes committed, and assured the elimination of the predominantly Hema civilian population from Bogoro.
34. The Chamber made a number of factual findings as to the importance of Katanga's position of authority and power within the Walendu-Bindi *collectivité* at the time of the Bogoro attack. Moreover, as described above, the Chamber concluded that by virtue of his position of authority and power, Katanga was able to make his essential contributions that ensured the success of the attack, commission of crimes, and elimination of the civilian population.⁹³
35. The Chamber made the following factual findings regarding Katanga's authority and power within the Ngiti military of Walendu-Bindi *collectivité*.
36. First, the Chamber concluded that from at least 9 February 2003, Katanga was the President of the Ngiti militia or "movement" of the Walendu-Bindi *collectivité*, progressively known as the FRPI.⁹⁴
37. Second, Katanga was an essential interlocutor: he facilitated the receipt of weapons and ammunition at Aveba, their storage, and played a central role in their supply and distribution to different commanders in the *collectivité*. Not only did he have the power to distribute them to Walendu-Bindi commanders but also to decide the needs in weapons and ammunition including quantity of ammunition to be allocated, and his instructions on this were respected.⁹⁵

⁹² Article 74 Judgment, para.1688. Citing D02-300, T-321, p.49, T-319, p.24, T-325, pp.9-12, p.54, T-316, pp.63-64.

⁹³ Refer to paragraphs 21-26 above.

⁹⁴ Article 74 Judgment, paras.1334, 1361.

⁹⁵ Article 74 Judgment, paras.1291, 1342, 1362.

The assignment of weapons by Katanga took place in the presence of the commanders of the Walendu-Bindi *collectivité*, and as D03-88 testified, the decision taken by the accused was imposed on them.⁹⁶ In his role as a facilitator, Katanga had a real authority in military planning within the Walendu-Bindi *collectivité*. He also settled differences amongst the local combatants and APC.⁹⁷

38. Finally, the Chamber concluded that there were other factors demonstrating Katanga's exercise of authority within the *collectivité*, including: (a) his access to military information from different camps;⁹⁸ (b) his reception with high honour as "President" when traveling to different camps;⁹⁹ (c) his importance in military planning and competence in administrative planning, management, security and public order;¹⁰⁰ already starting from November 2002 when he led the delegation of combatants and notables to Beni and participated in high-profile meetings and took military decisions;¹⁰¹ (d) his role as Commander or Chief of Aveba, and recognition as a military authority and close relations with the respected fetisheurs of the *collectivité*;¹⁰² (e) the insistence of UN MONUC and the UPDF that he sign the Cessation of Hostilities agreement in March 2003 because he was seen as one of the "important personalities of the conflict" in Ituri and that it was necessary to negotiate with him.¹⁰³

(2) Commission of the crime where the victims are particularly defenceless

39. The attackers deliberately targeted the particularly defenceless and vulnerable, namely women, the elderly, and children including babies. Witnesses confirmed that most of those slaughtered and cut by machete or killed by bullet were civilians not taking part in hostilities.¹⁰⁴

⁹⁶ Article 74 Judgment, para.1291.

⁹⁷ Article 74 Judgment, para.1342.

⁹⁸ Article 74 Judgment, para.1343.

⁹⁹ Article 74 Judgment, para.1347.

¹⁰⁰ Article 74 Judgment, paras.1334, 1360.

¹⁰¹ Article 74 Judgment, para.1360.

¹⁰² Article 74 Judgment, para.1359.

¹⁰³ Article 74 Judgment, para.1353.

¹⁰⁴ Article 74 Judgment, para.815. Citing P-132, T-138, p.82; P-249, T-135, pp.46-47.

40. Those who could not leave with the UPC were killed in the Institute or whilst they sought to flee.¹⁰⁵ The Chamber concluded that many at the camp and seeking to flee from the camp, including babies, children, women and elderly, were deliberately killed or injured by machete or gunfire and were civilians not participating in hostilities.¹⁰⁶ P-323 described how the attackers made no distinction between the simple villagers and combatants when killing those who tried to flee, including infants and elderly people.¹⁰⁷ P-132 saw corpses of four civilian women, a fifth woman and her dead baby, and an elderly man, all cut up by machete.¹⁰⁸ P-161 learnt that one of his sons, aged four years old, a daughter and nephew both aged six years old, were all killed by machete by the attackers. The three children of his older sister, all of whom were of young age, were killed by machete at the same time as their mother and another woman with them were killed by bullet. P-161 confirmed that the attackers included Ngiti.¹⁰⁹ D02-176 described seeing a church leader Matia Babona, who was unarmed, being deliberately shot down by gunfire.¹¹⁰ P-287 in her home at the military camp, was present when one of her infant children was injured by a spear and then murdered by an attacker by gunshot.¹¹¹ Many other witnesses lost relatives at the camp, including D02-176 (his mother) and P-323 (his wife and daughter).¹¹² Witnesses described vulnerable victims killed in their homes or as they tried to flee their homes. P-161's relative saw

¹⁰⁵ Article 74 Judgment, para.820. P-287, T-130, p.27; P-323, T-117, p.47. The Chamber also refers to P-317, T-228, p.32. See Article 74 Judgment, para.865. The Chamber concluded that those fleeing via Mont Waka the same time as UPC soldiers were not killed during exchange of gunfire between the armed groups and that their loss of life exceeded any military gain, as the UPC were leaving. The attackers shooting knew civilians would be killed in the ordinary course of events.

¹⁰⁶ Article 74 Judgment, paras.819, 863, 864.

¹⁰⁷ Article 74 Judgment, para.823. P-323, T-117, pp.27, 36-38, 73-74.

¹⁰⁸ Article 74 Judgment, paras.815, 859. Citing P-132, T-138, pp.79-82, T-140, pp.55-56. The Chamber concluded that they were deliberately killed.

¹⁰⁹ Article 74 Judgment, para.816. Citing P-161, T-110, pp.67-69, T-111, pp.6-7, T-113, pp.39-40, 42-44, 50-51; EVD-OTP-00047: List of family members of P-161 killed during the attack. See Annexe E. See para.858. The Chamber concluded that they were intentionally killed.

¹¹⁰ Article 74 Judgment, paras.823, 865. D02-176, T-256, p.13. The Chamber concluded he was intentionally killed, and not by crossfire.

¹¹¹ Article 74 Judgment, paras.821-822, 863. P-287, T-129, pp.28-29, 32-34, 37; Annexe E.

¹¹² Article 74 Judgment, paras.819, 863. D02-176, T-256, pp.12, 13, 28; EVD-OTP-00203: List of victims of the attacks on Bogoro between 2001 and 2003; P-323, T-117, pp.34-39.

her two infant sons killed by machete in their home.¹¹³ P-132 learnt that her mother and sister were shot and her mother also dismembered by machete, when they tried to flee their home.¹¹⁴ P-353 was hiding in a house when she saw and heard attackers entering and killing those they found by gunfire and machete, including two children aged about four years old.¹¹⁵

(3) Commission of the crime with a discriminatory motive

41. The crimes were committed by the Ngiti attackers with discrimination or ethnic hatred towards their predominantly Hema victims. The Chamber held that the Ngiti combatants, when launching their attack on Bogoro, viewed the Hema ethnic group as their enemy, and that the attack occurred in the context of the broader ethnic conflict between the Lendu-Ngiti against the Hema.¹¹⁶ After the attack the village was emptied of its Hema population who were compelled to flee or be killed.¹¹⁷ For instance, the Chamber refers to the testimony of P-28 who stated that the Ngiti also targeted not just the men, but also the Hema women. The Hema were the enemy.¹¹⁸ The Ngiti combatants had an anti-Hema ideology: the purpose of the attack was to wipe out Bogoro – not only the UPC but also the predominantly Hema civilian population there.¹¹⁹ The Chamber refers to the testimony of many witnesses who heard attackers threaten victims, who cried to be spared; asking victims what their ethnicity was; and that those convincing them they were not Hema were spared.¹²⁰ For instance, P-268 and P-287 were near the camp and could hear the cries of those being murdered.¹²¹ P-353 could hear the cries of those being

¹¹³ Article 74 Judgment, paras.825, 861. P-161, T-111, pp.7-9; EVD-OTP-00047: List of family members of P-161 killed during the attack; Annexe E. The Chamber concluded they were clearly civilians not participating in hostilities and had been intentionally targeted.

¹¹⁴ Article 74 Judgment, paras.825, 862, 869. P-132, T-140, pp.41-42; EVD-OTP-00203: List of victims of the Bogoro attacks between 2001 and 2003. The Chamber concluded these killings were intentional.

¹¹⁵ Article 74 Judgment, paras.826, 860; Annexe E. P-353, T-213, pp.15, 19-21, 25-27. The Chamber concluded these killings were intentional and the victims did not participate in hostilities.

¹¹⁶ Article 74 Judgment, paras.702, 707-708, 716, 850-854.

¹¹⁷ Article 74 Judgment, para.855.

¹¹⁸ Article 74 Judgment, paras. 717-718, 852. P-28, T-219, pp.5-6, T-217, p.19.

¹¹⁹ Article 74 Judgment, paras.1142-1143.

¹²⁰ Article 74 Judgment, para.853. P-233, T-83, pp.16-17, T-84, pp.12, 32-33; P-268, T-107, pp.15, 31-33, 40-41; P-287, T-129, pp.29, 37, 45-46; P-353, T-213, pp.19-21, 27, T-215, p.26; P-132, T-139, pp.11-12; P-249, T-135, pp.58-59; D02-148, T-280, pp.41-42; D02-148, T-280, pp.41-42.

¹²¹ Article 74 Judgment, para.819. P-268, T-107, p.15; P-287, T-129, pp.45-46.

killed inside their homes.¹²² V-2 heard attackers crying out to catch the Hema.¹²³ As the Chamber observed, the UN MONUC Special Report on Ituri also concludes that the attack appeared to constitute a reprisal attack against the Hema civilian population.¹²⁴

VI. SENTENCING HEARING

42. The Prosecution seeks authorisation to call the current chief of Bogoro village as a witness at the sentencing hearing to testify about the impact of the crimes on the community and survivors, including those who lost the essential financial earners in their families. He is willing to come to The Hague to testify or *via* video link. The Prosecution will further seek authorisation to admit additional parts of the UN Special Report on Ituri, that are not currently part of the trial record, where they are relevant to crimes committed during the attack.¹²⁵

¹²² Article 74 Judgment, para.826. P-353, T-213, pp.21, 27, T-215, p.26.

¹²³ Article 74 Judgment, para.853. V-2, T-231, pp.32-33, 36.

¹²⁴ Article 74 Judgment, para.854. EVD-OTP-00285: UN Special Report on Ituri, para.64.

¹²⁵ See Annex A in relation to P-233. See also EVD-OTP-00206 for the UN Special Report on Ituri.

VII. CONCLUSION

43. The Prosecution requests that the Chamber consider all of these factors when assessing what sentence to apply and recalls the principles previously advanced in its prior submissions.¹²⁶ The Prosecution will elaborate on the sentence, which it will seek against Mr. Katanga at the sentencing hearing.



Fatou Bensouda, Prosecutor

Dated this 7th day of April 2014

At The Hague, The Netherlands

¹²⁶ See ICC-01/4-01/07-3444. The Prosecution refers in particular to the principle that there should be no automatic difference in sentence for an accessory as opposed to a principal. Consider for example *Prosecutor v Krstic*, IT-98-33-A, Judgment, 19 April 2004; *Prosecutor v Taylor*, SCSL-03-1-A, Judgment, 26 September 2013. Both were convicted as an aider and abettor, *inter alia* for crimes against humanity and war crimes. Krstic received 35 years and Taylor received 50 years.