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*The Case of the Prosecutor v. Germain Katanga and
Mathieu Ngudjolo Chui*

ICC-01/04-01/07

Opening Statement
(Check against Delivery)

The Hague

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Mr. President,

Your Honours,

The Office of the Prosecutor of the International Criminal Court, representing 110 States Parties to the Rome Statute and committed citizens from all over the world, allege that Germain Katanga and Mathieu Ngudjolo Chui are responsible for some of the most serious crimes of concern to the international community as a whole.

The Prosecution submits that they are criminally responsible for crimes against humanity and war crimes committed in Bogoro, in the Democratic Republic of Congo, on 24 February 2003. They used children as soldiers. They killed more than 200 civilians in a few hours. They raped women, girls and elderly. They looted the entire village and they transformed women into sexual slaves.

Mr. Katanga and Mr. Ngudjolo were the leaders of militias composed of members of the Lendu and Ngiti communities. They were involved in an armed conflict with the UPC, a militia, predominantly composed of members of the Hema community and led by Thomas Lubanga.

The Bogoro attack was not an isolated event. It was part of a widespread and systematic attack against the civilian population of Ituri.

The Bogoro attack took place at the end of the two Congo wars. These neglected conflicts involved more than nine African countries for more than four years of fighting. As a consequence, almost four million people died, making the Congo

wars the gravest conflict since World War II. At the root of the Congo wars is the genocide in Rwanda.

In April 1994, the international community failed to act when the genocide started in Rwanda. One million fifty thousand people were exterminated within three months. Some of the *genocidaires* were allowed to escape to neighbouring Congo. There, they regrouped and became a crucial factor in triggering the two Congo Wars. The Bogoro attack is the consequence of the national and international failures to prevent and control such massive crimes.

The Rome Statute was adopted in 1998 to end the impunity for such crimes, crimes that we have thought, over and over, would never happen again, only to see them occur, again and again, before our eyes.

This International Criminal Court has no jurisdiction over most of the crimes committed during the Congo Wars. But this Office is determined to do justice for the Bogoro's victims and to contribute to stopping the cycles of violence in Ituri and the Great Lakes region, a region still unstable. It is time to apply the Rome Statute, to prevent genocide, to prevent another Congo War, to make the promise of "never again" real.

No more will the victims of massive crimes be ignored. The people from such places as Bogoro, Bunia, Aveba and Zombe must know that they are not alone; that they do not need to resort to violence again; the Hema, the Ngiti, the Lendu, the people from Ituri have to feel that they are part of a global community; that we are their brothers and sisters. The Rome Statute is building one global community to protect the rights of victims all over the world.

Mr. President,

Your Honours,

Where is Bogoro? Why did Katanga and Ngudjolo, the leaders of two militia from the Ngiti- Lendu communities, decided to target Bogoro?

Let me show you a map and a satellite picture. You will see that Bogoro is at a cross road on the way to Bunia. Katanga and Ngudjolo planned to attack Bogoro so as to open the Bunia-Kasenyei road, and prevent UPC attacks on nearby Lendu and Ngiti villages. The UPC had a military camp in the center of Bogoro. It was located at the "Bogoro Institute", you can see its position and the trench that surrounded it in the slide.

But the plan was more than just disabling the UPC. The plan was to "wipe out" Bogoro, destroying not only the UPC camp but the whole civilian village.

The attack on Bogoro was carried out in successive waves of violence. At around 5.30 in the morning, hundreds of men, women and children, under the command of Katanga and Ngudjolo, armed with automatic weapons, machetes and spears, descended on the village centre.

Katanga and Ngudjolo's forces did not distinguish between military and non-military targets. When questioned about the number of civilian deaths, Ngudjolo responded, I quote: *"There aren't any civilians amongst the Hemas, they're all soldiers."*

Civilians and UPC soldiers were killed without distinction. Some were shot in their sleep, some cut up with machetes to preserve bullets. Others were burnt alive after their houses were set on fire by the attackers.

Awakened by gunfire and the screams of their neighbors, some civilians attempted to flee but found the escape routes blocked. Most were shot in flight. Many sought refuge in the Bogoro Institute, in the center of town. They were easy prey. As you will hear, the bodies of dead civilians filled the rooms of the Bogoro Institute.

Victims will tell this Court of the brutal killings. Some were forced to watch the murder of their own family members: *“The combatants ordered me to leave the house with my children and they surrounded us..I took my children by the hand, but the combatants held them and one combatant fired on my two daughters on the spot... he only shot twice from his gun.”*

Some reached the bush and hid while others were captured, but the slaughter and devastation were not over. As a victim will describe, I quote: *“From where we were, we could see that each time the attackers came across someone, they would kill him and cut him up in pieces. They killed everyone; they didn't make any distinction between men, women, children and the elderly.”*

The troops of the Accused first raped and then killed women. Two child soldiers found a 50 year old woman, *sick and exhausted in a house outside the village*. One of the child soldiers described the scene: *“The “mamma” told us that we were like her children and she started crying and we left. We did not have the courage to kill her.”* But other members of Katanga/Ngudjolo forces followed the orders to kill. *“We found*

her undressed and naked like an animal. She had been strangled and her tongue was outside. Her legs were open. One of her legs was tied with ropes to the pillar in the middle of the house and the other leg to the door. She was dead."

By the end of the afternoon, the screams had faded, dead bodies surrounded the commanders. Homes that were burnt to the ground were still smoldering; the pillaging continued amid the rubble. Commanders were congratulated by their troops for a job well done. One witness will say, and I quote: *"The officers were set up there. They had put some chairs. They were drinking beer and then got drunk. And they were even congratulating the commander who had led the operation."*

The next day, captured civilians were forced at gunpoint to lure out other community members who were hiding in the bushes. When they appeared, these survivors were brutally executed.

The joint attack achieved its goal. But horror was not over yet for the women of Bogoro. Once captured, some women hid their Hema identity to save their lives. Those later revealed as Hema were killed, the others were raped and forced into marriage as combatants' "wives" or detained to serve as sexual slaves by Katanga or Ngudjolo's soldiers. All these women were victimized on the basis of their gender: they were attacked in particular because they were women.

Mr. President,

Your Honours,

The Prosecution will show that Germain Katanga and Mathieu Ngudjolo planned the attack, were the top commander of the forces which killed, raped

and looted the civilians, and that both intended and were satisfied by the success of their criminal operation.

Katanga boasted that he had ordered and planned the attack and bluntly described its aims, openly documenting the atrocities that were committed: *“About Bogoro, which is a village predominantly Hema, ... the attack was carried out to take revenge on massacres perpetrated by the Hemas in another village.”* And, laughing he added that: *“Nothing was spared. Absolutely nothing, chickens, goats, everything, anyway there was nothing left. There was nothing left, everything was wiped out.”*

Mr. President,

Your Honours,

Deputy Prosecutor Fatou Bensouda will now present with more detail the context in which the crimes were committed.

II. The Conflict in Ituri

The Prosecution evidence will demonstrate that when the attack on Bogoro occurred, an ongoing armed conflict existed in the territory of Ituri involving several organized armed groups including Lubanga's UPC, the FNI, the FRPI as well as the Ugandan Army.

This conflict had roots in the 1994 genocide that occurred in neighboring Rwanda, which set in motion the two Congo wars.

In 1996, a first conflict broke out in the Congo, then known as Zaire, It was triggered by the presence of *génocidaires* in the eastern provinces of the DRC. These *génocidaires* began to launch attacks on Rwanda from their position in the Kivus.

Uganda and Rwanda provided support to a rebel group led by Laurent Désiré Kabila against the then leader of Zaire, Mobutu Sese Seko and were instrumental in ousting Mobutu in 1997.

In 1998, a second larger conflict broke out in the Congo after relations deteriorated between Kabila (father), the new President of the Congo, and his former allies. Under international pressure, Rwanda and Uganda retreated from a large part of the Congo but remained in eastern DRC. Uganda consolidated its presence in a large part of the Province Orientale, which included Ituri, and Rwanda consolidated its presence in the Kivus.

At least nine countries and many local militias were involved in these wars. It is estimated that between 1998 and 2003, close to 4 million people died in relation to these events, largely from disease and starvation as the population was displaced and fled the combat zones.

At the beginning of this second conflict, armed groups depicting themselves as *groupes politico-militaires* took control of Ituri with the support of Uganda and, Rwanda. These governments each supported, at different times, Ituri based militias, by supplying them with weapons, ammunition, military training and expertise, uniforms and financial support.

The Eastern DRC, including Ituri, is a rich and fertile area. The armed conflict out of which the attack on Bogoro arose, started in mid-1999 with a series of land disputes and violent confrontations between the Hema and Lendu groups. By the end of 2001, the violence escalated to intensive attacks launched by either group on villages.

In April 2002, the States involved in the Congo conflicts, as well as the main Congolese groups, began peace negotiations in Sun City, South Africa.

In April 2002, after been excluded from the Sun City negotiations, Thomas Lubanga publicly announced his own *mouvement politico-militaire*: the Hema-dominated UPC. At first, the UPC was supported by the Ugandan army but later changed alliances and Rwanda became its source of support.

In August 2002, the UPC took over the town of Bunia. Non-Hema residents were displaced and fled south, mostly to the Beni area in North Kivu. Mathieu

NGUDJOLO, a Lendu, fled Bunia and went back to his village of Zumbe, in the Djugu territory.

From August 2002 onwards, the UPC and the Ngiti and Lendu armed groups were engaged in this armed conflict. By the fall of 2002, the Ngiti and some Lendu had joined forces under the umbrella of the FRPI. At the same time, a number of other Lendu had formed the FNI.

Once in Zumbe, Mathieu NGUDJOLO, became the leader of the Lendu combatants based in that area.

During the fall of 2002, from his base village of Aveba, Germain KATANGA, an Ngiti, emerged as the leader of the FRPI.

On 6 March 2003, the Ugandan Army with the support of the FNI/FRPI forces attacked the UPC in Bunia and occupied parts of the city.

On 6 May 2003, under pressure from the international community, the UPDF began their pull-out from Ituri and left Bunia. About a week later, the UPC retook Bunia. The UPDF completed their withdrawal from the DRC on 2 June 2003 following the Luanda Agreement. The UPDF's departure marked the end of the second Congo war.

III. Widespread and systematic attack on civilians

The Prosecution will show that the Bogoro attack was part of a series of attacks perpetrated by various armed groups throughout the District of Ituri from

August 2002 to July 2003. Most attacks did not discriminate between military or civilian targets; they were directed at both. As a result of these attacks, approximately 8,000 civilians were killed and more than 600,000 were forced to flee their homes.

The February 2003 attack on Bogoro was part of a pattern of widespread and systematic attacks perpetrated by the Lendu and Ngiti militias against the civilian population of mostly Hema origin. Between August 2002 and July 2003, the Lendu and Ngiti forces were responsible for many attacks; let me describe some of these.

On 5 September 2002, Ngiti militia along with other forces attacked the UPC-controlled town of Nyankunde. The attack lasted only a few hours, ending with the destruction of the UPC camp. In the following ten days, the attackers hunted out and killed an estimated 1200 Hema and Bira civilians.

On 4 March 2003, the allied forces of KATANGA and NGUDJOLO attacked UPC military positions located in Mandro. An estimated 168 civilians were deliberately killed during this short attack.

On 6 March 2003, FNI and FRPI forces supported the Ugandan Army in attacking the UPC in Bunia, which resulted in the willful killing of many civilians.

On 3 April 2003, FNI militias attacked at least 11 Drodro area villages where UPC combatants were located. At a minimum, 400 civilians were deliberately killed during these attacks.

From 6 to 16 May 2003, after the withdrawal of the UPDF from Bunia, fighting erupted between the UPC and the FNI/FRPI for the control of the city. During this fighting, there were instances of ethnically targeted killings, as well as pillaging and destruction of property. More than 500 cases of deliberate killings were reported and approximately 200,000 civilians fled Bunia and its surrounding villages.

On 31 May 2003, the FNI attacked the village of Tchomia. More than 250 civilians were deliberately murdered, including 30 patients that were still on their hospital beds.

On 11 June 2003, FNI and FRPI forces attacked the village of Kasenyi. More than 80 civilians were deliberately killed while at least 30 civilians were abducted.

During the Ituri conflict Lendu and Ngiti militias abducted and raped women from all tribes including their own; women were merely considered as *butin de guerre*.

In fact, during the earlier attacks on Bogoro in 2001 and 2002, young girls were abducted and forced to become the “wives” of combatants. During the Nyankunde attack, many young girls were raped, and either killed or taken to Ngiti or Lendu camps to become sexual slaves. During later attacks, women were often used to carry looted goods to the camps and remained captive, were raped and deprived of their identity and liberty. Their existence was reduced to being the “forced wives” or sexual slaves of soldiers.

Mr President,
Your Honours,

At this moment, with your kind permission, I would like to call your trial lawyer,
Mr. Eric MacDonald to present the remaining opening remarks of the
Prosecution.

IV. Individual criminal responsibility

Mr. President, your Honours, let me now turn to the individual criminal responsibility of Germain KATANGA and Mathieu NGUDJOLO. The Prosecution will prove that both Germain KATANGA and Mathieu NGUDJOLO are criminally responsible as principals, in accordance with the Rome Statute for the crimes committed at Bogoro. All the crimes charged resulted from the implementation of the common plan to wipe out Bogoro as devised by the accused and other commanders.

The Prosecution will show that Germain KATANGA and Mathieu NGUDJOLO agreed on a common plan to carry out the attack on Bogoro, through their respective militias. The accused coordinated their efforts and made essential contributions in order to realize this plan.

With respect to the crime of using children under the age of fifteen years to actively participate in the Bogoro attack, the Prosecution will show that both accused used children as soldiers, including direct participation in the attack on the village of Bogoro.

For the remaining crimes, the Prosecution will demonstrate that the criminal responsibility of Germain KATANGA and Mathieu NGUDJOLO, rests on their authority as leaders of their respective groups, which they controlled and used as a common instrument to commit the attack. It follows that the Lendu and Ngiti militias that committed the crimes acted as agents of the accused. Based on the principle of mutual attribution the crimes committed by each of the militias can be imputed to both leaders. It matters not which of the militias committed which

of the crimes as their actions can be ascribed to each of the accused as all these crimes have been committed in furtherance of the common plan.

The Prosecution will show that from late 2002 through the joint FNI/FRPI attack on Bogoro on 24 February 2003, Mathieu NGUDJOLO was the FNI leader of all the Lendu fighters based in military camps in the Zombe area. The evidence will also show that during the fall of 2002, Germain KATANGA became the supreme commander of all FRPI forces. KATANGA and NGUDJOLO were the top commanders of their forces at the time the attack was planned and executed.

Finally, the evidence will show that the accused possessed the required *mens rea* pertaining to the charges. The Prosecution will prove that the accused intended that the following crimes be committed as a result of the implementation of the common plan: (1) directing an attack against a civilian population; (2) willful killings; (3) destruction of property; and (4) using children under the age of 15 years to participate actively in the attack. The evidence will also demonstrate that both accused were aware that, in implementing the common plan, the crimes of pillaging, sexual slavery and rape would occur in the ordinary course of events.

Structure of the FNI and the FRPI camps [Use of slide]

Germain Katanga was the *de jure* supreme commander of the FRPI and had *de facto* ultimate control over FRPI commanders. During the same period, Mathieu Ngudjolo, exercised a similar control over the FNI and its commanders based in the Zombe area.

The FRPI was formed in late 2002 during meetings held in Beni. The aims of these meetings were to unify and organise Lendu and Ngiti resistance against the UPC, which was attacking Ituri's different communities in order to exploit the region's natural resources. The FRPI was the first significant attempt to unite, within one group, the various Ngiti and Lendu groups.

At around the same time, the Lendu community was creating a similar movement to oppose the UPC, under the name of the "FNI". The FNI was formed in December 2002, during discussions held first in Kpandroma, DRC and then in Arua, Uganda.

Until the formal creation of these movements in late 2002, Lendu combatants were under the command of local leaders who organised the defence against the UPC attacks. During this period, NGUDJOLO consolidated his power and authority over Lendu fighters in the Zumbe area.

[Visual aid]

In the fall of 2002, Germain KATANGA became chief of all the Ngiti combatants in the Walendu-Bindi collectivité. At least, seven militia camps from this collectivité were involved in the execution of the attack on Bogoro. Aveba camp, also known as the *Bureau des Combattants d'Aveba* ("BCA"), was commanded by Germain KATANGA. It served as his residence and operational headquarters, where he received reports from other area commanders. Germain KATANGA also possessed a radio through which he could communicate with other FRPI camps.

At Aveba's local airstrip weapons and ammunition were delivered by airplane. They were stored at Aveba camp to be distributed to other FRPI or FNI camps in preparation of attacks, such as for the Bogoro attack.

The Prosecution will also show that, during the same period, the Lendu combatants from the Zumbe area were similarly organised in a series of military camps, each led by a commander. These camps were all located within approximately 10 kilometers from one another. Mathieu NGUDJOLO resided in Kambutso but commanded a camp based in the village of Zumbe.

Mathieu NGUDJOLO exercised authority over the other camp commanders. He issued orders which were executed by his subordinates. Mathieu NGUDJOLO had the power to gaol and adjudicate. He punished and even executed soldiers at will.

Concurrently with the development of this network of camps at the close of 2002, the decision was taken amongst some Ngiti and Lendu to formalise the resistance against the UPC. This resulted in the formal alliance of the FRPI and FNI and led to the planning and execution of the attack on Bogoro.

VI. The plan to attack Bogoro

The common plan [Visual aid]

The Prosecution will demonstrate that the attack on Bogoro was originally planned by commanders of the FNI and FRPI at KATANGA's residence in Aveba in late 2002 - early 2003.

In the fall of 2002 and up until the attack on Bogoro Germain KATANGA traveled to Beni and returned with weapons and ammunition and other goods such as hand-held radios. In late 2002-early 2003 a delegation of FNI soldiers left Ladile (in the Zumbe area) and went to Germain KATANGA's residence in Aveba. NGUDJOLO designated Commander BOBA BOBA to lead this FNI delegation in Aveba to meet with KATANGA and other FRPI commanders.

There, a plan was elaborated by KATANGA and other FNI and FRPI commanders "to erase" or "wipe out" the village of Bogoro and open the road to Bunia. In the words of a former member of the FRPI: *"le but était qu'on puisse se mettre ensemble pour attaquer Bogoro. On voulait effacer Bogoro."*¹ During these discussions, BOBA BOBA communicated with Mathieu NGUDJOLO via radio.

Then, the FNI delegation, returned, in waves, to its bases in the Zumbe area with ammunition provided by KATANGA. The FRPI commanders who had attended the Aveba meetings also returned to their respective camps. A few days before the attack, FRPI Commander BAHATI returned to NGUDJOLO's camp in Zumbe with the plan of the attack.

A few days before the attack on Bogoro, FRPI commanders were summoned to KATANGA's residence to prepare for the attack. KATANGA informed the commanders of the details of the Bogoro attack and provided them with ammunition for the attack.

¹ W-250 (drc-otp-0177-0230, at 0243, lines 427-428).

Movement of the FRPI Forces prior to the Attack [Visual aid]

The day before the attack, the FRPI combatants gathered at two meeting points: Medhu, to the west of Bogoro, and Kagaba, to the south. KATANGA led his fighters to Kagaba camp. Other FRPI commanders such as Cobra MATATA led FRPI troops to Medhu in accordance with the plan.

At Kagaba, KATANGA attended a parade and ordered Commander YUDA and DARK to address the FRPI soldiers. Commander YUDA stressed that the UPC soldiers had made the Ngiti suffer for a long time. If the FRPI were militarily successful, they would exterminate the UPC, plunder their goods, burn down their homes and settle on their property. It was understood that FRPI soldiers had *carte blanche* to erase Bogoro. Late that evening, KATANGA and the FRPI soldiers left Kagaba and took up position near the village of Bogoro.

At Medhu, MATATA led the meeting and stated that it was necessary to “wipe out” Bogoro because the Ngiti had already twice tried to do so and had to succeed on this third attempt. The troops left Medhu and split so as to approach Bogoro from different sides: MATATA’s troops marched south of the Waka Mountain and approached the centre of Bogoro from the Aveba-to-Bunia road. FRPI Commander OUDO MBAFELE travelled from Medhu to the North, around the Waka Mountain, and entered Bogoro by the Bunia road.

Movement of the FNI Forces prior to the Attack

On or about two days prior to the attack, NGUDJOLO announced to his troops stationed in Zumbe camp that the attack on Bogoro would soon take place. The

day before the attack again at Zombe, NGUDJOLO handed the plan of the attack to Commander BOBA BOBA, who in turn, communicated it to the combatants.

On the day before the attack, NGUDJOLO and Commander NYUNYE traveled to Ladile camp. During a parade at Ladile camp, Commander BOBA BOBA, announced that the attack on Bogoro would take place the next day. This announcement took place in the presence of NGUDJOLO and other FNI commanders. While in Ladile, NGUDJOLO and the FNI commanders agreed that BAHATI would lead the operations for the Bogoro attack.

NGUDJOLO, together with the other commanders and soldiers, then left for Lagura camp located on a hill near Bogoro, to join the soldiers that were positioned there. BAHATI, the “commander of operations” in the presence of other commanders, informed the soldiers about the details of the attack and explained the different directions from which the groups would enter Bogoro. BAHATI instructed the fighters to meet in the centre of Bogoro after the attack. The group led by BAHATI took position near the Bogoro – Bunia road. Another group positioned itself on a path near the Bogoro - Kasenyi road.

Prior to the attack, FNI combatants sang songs which included the following words: “the Hema had to be killed and shown no mercy, Ngiti and Bira had to be shown mercy.” Similar songs had been sung by FRPI soldiers the day before the attack. When they were on the road leading from Aveba to Kagaba they chanted: “if we capture a Hema, we cut his throat and we kill him.”

The execution of the attack showed the common plan. The weapons previously distributed were used, the combatant's movements were coordinated and the village was surrounded. There was perfect synchronization.

VII. Post Attack Celebration of the Defendants

Soon after the objective of "wiping out" Bogoro had been achieved, NGUDJOLO and KATANGA joined other FNI and FRPI commanders in the centre of Bogoro. There, many corpses of civilians were visible. As the killings and pillaging continued, the FNI and FRPI commanders and fighters celebrated their victory.

Conclusion

Bogoro was razed by the attack. The Prosecution's evidence will show that at least 200 civilians were killed. The survivors, too terrified to return to their homes, fled to nearby villages. Even today, despite the return of some families to Bogoro, the population of the village is less than half of its original population.

The Prosecution will prove beyond reasonable doubt that Germain KATANGA and Mathieu NGUDJOLO are responsible and must be held accountable for the crimes as charged. At the end of the case, the Prosecution will ask the Chamber to return verdicts of conviction on all charges.