

Hearing to deliver the decision
pursuant to Article 74

(Open Session)

ICC-01/04-02/12

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Situation: Democratic Republic of the Congo

4 In the case of The Prosecutor v. Mathieu Ngudjolo Chui - ICC-01/04-02/12

5 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and

6 Judge Christine Van den Wyngaert

7 Hearing to deliver the decision pursuant to Article 74

8 Tuesday, 18 December 2012

9 (The hearing starts in open session at 9.00 a.m.)

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.

13 I beg your pardon, I shall now greet the accused person. The Chamber also wishes to
14 greet the Dutch authorities and of course the authorities from the Democratic Republic of
15 the Congo, who are here today in the courtroom. The Chamber extends greetings to the
16 parties and participants, whom we have not seen in quite a while.

17 I must now read out this ruling slowly, so as to facilitate the work of our interpreters, and
18 I would like to ask you to listen carefully and at the same time to be patient.

19 The Chamber shall now summarise a decision that we issue today pursuant to Article 74
20 of the Statute as to whether or not the Prosecutor has proved beyond all reasonable doubt
21 the guilt of the accused person, Mathieu Ngudjolo.

22 On 26 September 2008, Pre-Trial Chamber I gave the decision regarding the confirmation
23 of charges. At that time the Chamber confirmed unanimously that there was sufficient
24 evidence providing substantial grounds to believe that during the attack of 24

25 February 2003 on the locality of Bogoro, which is located in the Ituri region in the
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1 north-east part of the Democratic Republic of the Congo, Mathieu Ngudjolo and Germain
2 Katanga jointly committed through other people in the meaning of Article 25(3)(a) of the
3 Statute the following crimes and did so intentionally:

4 First of all, the war crime of wilful killing which is provided for in Article 8(2)(a)(i) of the
5 Statute; murder, which is a crime against humanity, provided for in Article 7(1)(a) of the
6 Statute; the war crime of directing attacks against the civilian population as such, or
7 against individual civilians not taking part directly in the hostilities, as provided for in
8 Article 8(2)(b)(xiii) of the Statute; the war crime of pillaging a town or place, which is
9 provided for in Article 8(2)(b)(xvi) of the Statute, knowing that that crime would occur in
10 the normal course of events; and finally that Mathieu Ngudjolo and Germain Katanga
11 jointly committed pursuant or in the meaning of Article 25(3)(a) of the Statute the crime of
12 using children under the age of 15, having them take part directly in hostilities, which is a
13 war crime and is provided for in Article 8(2)(b)(xvi) of the Statute.

14 The majority of Judges comprising the Pre-Trial Chamber confirmed that there was
15 sufficient evidence to show, or to believe rather, that during the aforementioned attack
16 Mathieu Ngudjolo and Germain Katanga jointly committed through other persons in the
17 meaning of Article 25(3) of the Statute the following crimes, knowing that they would
18 occur in the normal course of events:

19 The war crime of sexual slavery, which is provided for in Article 8(2)(b)(xxii) of the Statute;
20 the crime of sexual slavery, which is a crime against humanity pursuant to Article 7(1)(g)
21 of the Statute; the war crime of rape provided for in Article 8(2)(b)(xxii) of the Statute; and
22 finally the crime of rape, which is a crime against humanity provided for in Article 7(1)(g)
23 of the Statute.

24 In accordance with Article 19(1) of the Statute, and I shall quote, "The Court shall satisfy
25 itself that it has jurisdiction in any case brought before it."

1 The Democratic Republic of the Congo became a party to the Rome Statute on
2 11 April 2002. In March 2004, relying on Article 14 of the Statute, the government of that
3 country referred the situation in the DRC to the Office of the Prosecutor; namely all of the
4 events coming within its jurisdiction committed in that country since the time that the
5 Rome Statute came into force on 1 July 2002.

6 Pre-Trial Chamber I ensured that the Court was -- indeed had jurisdiction to hear
7 proceedings against Mathieu Ngudjolo. The criteria of personal, temporal, territorial and
8 material jurisdiction have not varied since the time of that ruling.

9 On 24 October 2008, the Chamber was constituted. The Chamber held the first status
10 conference on 27 and 28 November 2008. Since then, 24 further status conferences have
11 held.

12 The Chamber issued 201 orders and written rulings, as well as oral rulings, before the
13 actual trial began.

14 The Chamber shall restrict remarks to the essential aspects of the proceedings, as well as
15 the events that had a significant effect on the proceedings.

16 At this juncture the Chamber wishes to remind all that the Chamber severed the case of
17 Mathieu Ngudjolo from the case of Germain Katanga by way of a decision handed down
18 on 21 November 2012, and up until that point in time, the time of that decision, the
19 proceedings were conducted against both accused persons. Consequently, the trial was
20 held in the presence of the two accused and the two accused being in the presence of one
21 another.

22 The trial itself began on 25 November 2009. Parties and participants then presented their
23 opening statements, and both accused reiterated that they were entering a plea of not
24 guilty.

25 Presentation of evidence began on 25 November 2009 and concluded on
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1 11 November 2011.

2 After duly hearing the parties on 18 and 19 January 2012, the Chamber travelled to the
3 DRC along with representatives of parties and participants as well as representatives of
4 the Registry.

5 The presentation of evidence ended on 7 February 2012.

6 During the trial, the Chamber heard 54 witnesses and sat 265 days. The Prosecution
7 called 25 witnesses, who testified between 26 November 2009 and 8 December 2010.

8 The Defence team of Mr Germain Katanga called 17 witnesses, who appeared between
9 24 March and 12 July 2011.

10 The Mathieu Ngudjolo Defence team called 11 witnesses, who gave testimony between
11 15 August and 16 September 2011.

12 Three of the Defence witnesses were common to both teams.

13 The legal representative of the main group of victims called two victims, who were heard
14 between 21 and 25 February 2011.

15 The Chamber itself called two witnesses.

16 It should also be recalled that, once testimony was heard, both accused persons opted to
17 testify under oath. In the case of Mathieu Ngudjolo, he testified over the course of seven
18 hearings held between 27 October and 11 November 2011.

19 The Prosecution and the legal representatives of victims filed their ultimate conclusions
20 on 24 February 2012. The Defence team of Mathieu Ngudjolo did the same on
21 30 March 2012.

22 Parties and participants then made final oral submissions during a number of hearings
23 held from 15 to 23 May 2012, and finally pursuant to Article 67(1)(h) of the Statute made
24 oral statements at the very end.

25 The Prosecution placed 261 items on the record and the Defence team of Mr Ngudjolo
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1 placed 132 items on the record. In turn, Mr Katanga's team produced 240 items. Five
2 items were placed on the record by the Chamber, and the Chamber authorised legal
3 representatives of victims to place five items on the record for a grand total of 643 items.
4 In accordance with Article 68(3), 366 victims - 11 of which were child soldiers - were given
5 leave to take part in the proceedings through their respective legal representatives. They
6 were able to put questions to the witnesses who had been called, make filings in the
7 course of the proceedings and, as I have just reminded all of you, they were also
8 permitted to make opening statements, ask for evidence to be placed on the record, file
9 final submissions in writing and make final oral arguments.
10 Furthermore, I would like to remind all that the majority of Judges comprising the
11 Chamber decided to make use of Regulation 55 of the Regulations of the Court. This was
12 in a decision of 21 November 2012.
13 Pursuant to this decision, the Chamber severed the charges against Mathieu Ngudjolo.
14 This summary only deals with the case of Mr Ngudjolo.
15 According to the provisions of Article 66 of the Statute, the accused is presumed to be
16 innocent until the Prosecution has proven his or her guilt. To convict the accused, the
17 Chamber must be convinced of the person's guilt beyond all reasonable doubt.
18 We wish to recall that this principle of establishing proof beyond all reasonable doubt
19 must be applied, be it to establish the existence of one particular element of the crime or
20 the mode of liability attributed to the accused person or if it is a matter of establishing a
21 fact that is absolutely necessary to convict. The Chamber also wishes to stress that if an
22 allegation has not been proven beyond all reasonable doubt in the Chamber's mind, this
23 does not necessarily mean that the alleged fact did not occur; it only means that the
24 Chamber is of the opinion that in relation to the threshold of proof, the Chamber does not
25 have sufficient reliable evidence to come to a determination regarding the veracity of the

1 alleged event.

2 Consequently, declaring that an accused person is not guilty does not necessarily mean
3 that the Chamber has been convinced of the person's innocence. Such a decision merely
4 shows that the evidence adduced is insufficient to convince the Chamber beyond all
5 reasonable doubt.

6 The Chamber is of the opinion that it would be useful to explain how the ruling has been
7 structured. We also wish to say a few words about the approach that we have taken.

8 After a general introduction that allows the reader to locate Bogoro, after describing the
9 accused person, Mathieu Ngudjolo, and after reminding the reader of the charges that the
10 Pre-Trial Chamber confirmed, the Chamber then provided some background regarding
11 the case before specifying which criteria would be used to assess the evidence adduced.

12 The Chamber then developed a number of arguments, or explored a number of
13 arguments put forward by parties and participants. Then, the Chamber set out the
14 approach followed and our main conclusions.

15 The Chamber deemed it necessary to make a number of observations relating to
16 investigations by the Office of the Prosecutor, and then finally, the Chamber focused on
17 two issues that lie at the very heart of the ruling; namely, an analysis of the credibility of a
18 number of witnesses, and secondly, the role played by Mathieu Ngudjolo at the time of
19 the events at hand.

20 After assessing the credibility of witnesses, the Chamber then analysed all evidence that
21 we had at our disposal, with a view to establishing which events had been proved beyond
22 all reasonable doubt.

23 Furthermore, the Chamber came to a number of decisions only insofar as this was
24 necessary to make a determination regarding the guilt or innocence of the accused. This
25 approach was necessary and appropriate, given the aforementioned decision of

1 21 November 2012 regarding the implementation of Regulation 55 of the Court, whereby
2 the charges against Mathieu Ngudjolo were severed.

3 A separate ruling will be handed down at a later point in time regarding the same
4 evidence, and this of course shall relate to Germain Katanga.

5 It should be stressed that with regard to Mathieu Ngudjolo, the case of the Prosecutor and
6 regarding the criminal responsibility of Mr Ngudjolo, this is based to a very large extent
7 on the testimony of three witnesses that the Chamber has deemed to be key witnesses:

8 Witnesses P-250, P-279 and P-280.

9 According to the Prosecution, all three were allegedly members of the Bedu-Ezekere
10 militia at the time of the events. It is alleged that all three of them took part in the attack
11 on Bogoro. These three witnesses have all come under the protective measures of the
12 Court. The credibility of these key witnesses was vigorously challenged during the
13 hearings and also in the written conclusions of the Defence.

14 The Prosecution also devoted several pages in their final submissions showing that they
15 were credible, and the Chamber shall repeat the very words used by the Prosecution.

16 The Prosecution said that "They testified as best they could and in light of their own
17 personal situations."

18 After reviewing the evidence, the Chamber found that despite a number of statements, or
19 some testimony casting doubt on the ability of these witnesses to testify to the events,
20 their remarks were too contradictory or too hazy, too imprecise, and thus it was not
21 possible to base ourselves on all their testimony. The Chamber was not able to base itself
22 on their testimony.

23 The Chamber has provided lengthy explanations on the position that we have taken. We
24 have carried out a lengthy analysis of the conditions under which those three witnesses
25 gave testimony and, of course, an analysis of the very content of their testimony.

1 The Chamber looked closely at the credibility of other witnesses such as P-28, P-219 and
2 P-317, witnesses also called by the Prosecution.

3 Regarding Witness P-219, once again the Chamber was of the opinion that it could not
4 base itself on all of that person's testimony.

5 As for Witness P-28, the Chamber came to a more nuanced conclusion, although the
6 Chamber did not find the witness credible when he said that he was a member of the
7 militia. On the other hand, the Chamber did find that we could rely on the particularly
8 credible testimony of Witness P-317.

9 Finally, the Chamber turned its attention to the testimony of Witness D03-88, the chef du
10 groupement of Bedu-Ezekere, where the accused person was at the time of the events.

11 The Chamber found that this witness called by the Ngudjolo team could be deemed
12 credible overall, while highlighting that certain aspects of his testimony, in particular
13 relating to the responsibility of the accused person, had to be dealt with, or treated, with a
14 great deal of caution.

15 Let us now turn to the factual observations regarding the role of Mathieu Ngudjolo.

16 As the Chamber has recalled, in accordance with the decision on the confirmation of
17 charges, Mathieu Ngudjolo has been accused of the crimes of murder, wilful killing,
18 directing an attack on a civilian population, destruction of property and looting a town or
19 place, rape, and sexual slavery, crimes committed during the attack on Bogoro on
20 24 February 2003, and this jointly with Germain Katanga, acting through other persons, in
21 the meaning of Article 25(3)(a) of the Statute. This is a form of responsibility that
22 combines co-participation with the commission of the crime through another person; in
23 other words, indirect commission of a crime. Mr Ngudjolo is also accused jointly with
24 Germain Katanga, pursuant to Article 25(3)(a) of the Statute, of the war crime of using
25 children under the age of 15, having them take part in hostilities.

1 To assess the criminal responsibility of the accused, the Chamber decided to first turn its
2 attention to the indirect aspect of the alleged form of responsibility, as the Prosecution
3 deemed it necessary to do.

4 I'm speaking of the commission of a crime through another person. The Chamber asked
5 itself: Did Mathieu Ngudjolo commit the crimes that have been attributed to him
6 through the Lendu commanders and Lendu combatants of the groupement of
7 Bedu-Ezekere. Was he the commander-in-chief?

8 According to the Prosecution, the accused was the commander-in-chief of the Lendu
9 commanders and combatants who took part on the attack on Bogoro on 24 February 2003.

10 This Chamber wished the presentation of the events to be as neutral as possible and as
11 independent as possible and in relation to the legal criteria set out in the decision
12 confirming the charges, pursuant to Article 25(3)(a) of the Statute.

13 Consequently, the Chamber presented its factual conclusions regarding all of the evidence
14 adduced concerning the organisation and structure of the Lendu forces of Bedu-Ezekere
15 in the relevant period, as well as the role and office of Mathieu Ngudjolo.

16 In light of all the evidence in our possession, we first observed that against this backdrop
17 of constant attacks on the groupement of Bedu-Ezekere between 2001 and 2003, and in
18 light of the very difficult living conditions caused by the -- these attacks on the inhabitants
19 of this place, a self-defence group sprang up within the groupement.

20 The Chamber did not agree with the Defence's argument that this self-defence group was
21 only a committee of young people within a larger structure within the community called
22 the Comité de base. The evidence at our disposal has not allowed us to precisely
23 determine how this self-defence group was structured, nor was it possible for us to
24 conclude beyond all reasonable doubt that this self-defence group that was formed took
25 the shape of a military structure with a defined chain of command, as the Prosecution has

1 alleged.

2 However, the Chamber concluded beyond a reasonable doubt that at some point between
3 2001 and 2003 the Lendu combatants of the groupement Bedu-Ezekere formed groups
4 within various positions, some of which were headed by commanders.

5 It also emerged from the evidence in the case that the combatants did not only engage in
6 defending the territory of the group when it came under attack, but that they were also in
7 a position to launch attacks themselves.

8 Regarding the role played by Mathieu Ngudjolo and the position he held in that
9 movement, the Chamber found that at the end of the year 2002 Mr Ngudjolo had some
10 weight within the Bedu-Ezekere grouping because he was a notable in his family and he
11 had relations in high places in Ituri, as well as the education and military training that he
12 had followed, particularly within the civil guard.

13 After considering the activities of Mathieu Ngudjolo within the group of combatants, the
14 evidence before the Court led the Chamber to believe that he was indeed a nurse working
15 in that capacity in Kambutso before the Bogoro attacks took place.

16 The Chamber underscores that the status of a nurse did not stop Mathieu Ngudjolo from
17 being simultaneously a figure of authority within the group of combatants in
18 Bedu-Ezekere and that is the crux of the matter in his case.

19 Furthermore, the Chamber underscored the fact that some interventions by Mathieu
20 Ngudjolo that occurred during that period clearly indicated that he had a good
21 knowledge - a very good knowledge - of what was happening in Ituri and that he could
22 have not improvised himself, or that the information could not have been improvised by
23 someone who was not aware of the situation in his district.

24 In a meeting in March 2003, Mathieu Ngudjolo confirmed that a liaison office had been
25 opened in Bunia to receive reports on any significant incidents that may have occurred,
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1 and he confirmed that the security of the region was within his purview and he therefore
2 demonstrated that he was informed of developments in a significant way on a matter
3 concerning the taking of hostages in Bogoro.

4 The Chamber analysed his statements with regard to his position of authority in regard to
5 the Ugandans, as far as Mathieu Ngudjolo was concerned, during that period. In fact
6 Witness P-31, an investigator with MONUC, testified that Mathieu Ngudjolo was the one
7 to whom the UPDF soldiers -- from whom the UPDF soldiers requested permission to
8 have access on 26 March to the Bogoro area.

9 The accused person himself confirmed that General Kale Kahiyura, the Chief General of
10 the Ugandan Armed Forces, had to go through him to be able to contact Commander
11 Dark in Bogoro in order to talk about the disappearance of a vehicle, as well as discuss the
12 fate of some hostages in Hema who were part of that convoy.

13 The Chamber therefore did not agree with the Defence argument that Mathieu Ngudjolo
14 was a mere imposter who managed to deceive all officials in Ituri who had met him.

15 The Chamber recalled that in fact in the month of March 2003 Mathieu Ngudjolo had
16 dealings with a number of persons who played an important role in Ituri. It is therefore
17 the Chamber's position that it is impossible for Mr Ngudjolo to have misled all these
18 people, including for example Commander Dark, who was part of the fighting in Bogoro,
19 as well as General Kale Kahiyura, the leader of the Ugandan forces in Ituri which indeed
20 was an occupying force at that time, and further still the officer-in-charge of MONUC who
21 was involved in the pacification process in the Ituri, as well as Floribert Njabu, President
22 of the FNI, who by the way appointed Mathieu Ngudjolo to a key military position within
23 the FNI/FRPI alliance.

24 The evidence before the Court led the Chamber to consider the statements by the accused
25 on the circumstances in which he was able to be raised to a high military level, which

1 according to him was a product of chance, opportunism and career tendencies and that
2 such a position was not credible.

3 Regarding Mathieu Ngudjolo's functions, the functions he actually held before the Bogoro
4 attack, the Chamber found that although some witnesses in substance confirmed that the
5 accused person was the leader of the Bedu-Ezekere militia, all witnesses except Witness
6 P-28, whom by the way the Chamber did not find credible on this point, and Witness
7 P-317, all these witnesses only testified on hearsay and none of them was present in the
8 Bedu-Ezekere group before 24 February 2003.

9 The Chamber also points out that hearsay evidence must be handled with utmost caution
10 to the extent that they relate in particular to a question that speaks to the very crux of the
11 case of the Prosecution. The Chamber also notes that in this regard the witnesses did not
12 provide any details on the authority that Mathieu Ngudjolo may have had at that time,
13 nor did they provide material as to the manner in which he exercised such alleged
14 authority.

15 The Chamber believes that some witnesses may have been of the view that Mathieu
16 Ngudjolo had a position within the FNI based on the position he held before the month of
17 March 2003, and for those reasons the Chamber can only ascribe very low probative value
18 to their testimonies.

19 Regarding revelations that the accused on two occasions, the first being with Witness P-31
20 regarding such revelations whereby the witness is alleged to have said that he organised
21 the Bogoro attacks and the Mandro attacks, and on the second occasion when with a
22 member of the Prosecution from the Congo, within the -- a separate case indicating that he
23 had been involved or he had led only the Bunia attack on 6 March 2003 exclusively, the
24 Chamber -- while underscoring the fact that Mathieu Ngudjolo's statements were unclear
25 and non-specific, the Chamber can only then observe that there is some inconsistency

1 between these two pieces of evidence.

2 On the one hand there is no mention of Mathieu Ngudjolo's participation in the Bunia
3 attack, and on the other no mention is made of his participation in the Bogoro and
4 Mandro attacks.

5 Therefore, while not challenging the credibility of P-31, nor the reliability of the document
6 forwarded by the Congolese authorities, the Chamber felt that it could only circumscribe
7 its findings on the revelations made by Mathieu Ngudjolo.

8 The Chamber also carefully examined, as requested by the way by the Chamber, all
9 evidence pointing to the fact that Mathieu Ngudjolo may have had an important role, as
10 has been mentioned, during all significant official events that took place in Ituri in the
11 month of March 2003.

12 However, the evidence all posterial to the Bogoro attacks, did not enable the Chamber to
13 infer that -- to infer beyond a reasonable doubt that the accused person was indeed the
14 commander-in-chief of the Lendu and Bedu-Ezekere combatants and was present in
15 Bogoro on 24 February 2003.

16 The Chamber by not considering these facts, and the first public appearances in
17 March 2003 in particular, during the first meeting with General Kale Kahiyura the accused
18 is said to have been wearing a military uniform and that it also - the Chamber
19 also - observed that the rank of colonel that the accused claims to have ascribed to himself,
20 this is not mentioned -- this is not mentioned in the agreement for the cessation of
21 hostilities of 18 March 2003.

22 It has no evidence to show that Mathieu Ngudjolo was beyond a reasonable doubt the
23 commander-in-chief of the Bedu-Ezekere combatants. Therefore it cannot necessarily be
24 completely excluded, within the political and military context of the time, that Mathieu
25 Ngudjolo was able to impose his authority as a soldier and as the unavoidable

1 interlocutor following the Bogoro attacks and only at that time.

2 Furthermore, the Chamber feels that his appointment of 22 March 2003 to a high post, that
3 of the chief of the operations within the FNI/FRPI alliance, did not necessarily
4 demonstrate that he was an important military chief prior to that time; that is on
5 24 February 2003.

6 In concluding this part of its judgment, the Chamber considered that within the prevailing
7 context Mathieu Ngudjolo, mindful of his social status and the experience he had in
8 military matters at that time, that Mathieu Ngudjolo was only naturally brought to a
9 position where he had to play a role that was beyond his strict medical field.

10 His active participation in the capacity of a colonel at the various meetings which have
11 already been mentioned, which took place after 18 March 2003, as well as the content of
12 testimonies on his role prior to the attack, all this led the Chamber to wonder what the
13 exact military activities of Mathieu Ngudjolo were at the time.

14 In that connection, the Chamber felt that it could not exclude the possibility that during
15 the facts under review, he was one of the military commanders who held an important
16 place among the combatants of the Bedu-Ezekere Lendu group, but the Chamber
17 underscored that it was not able to make such a determination beyond a reasonable
18 doubt.

19 Furthermore, the Chamber added that, in any event, it did not have credible evidence
20 which led it to consider that Mathieu Ngudjolo would have given orders and military
21 directives or would have taken measures to ensure that such orders were implemented or
22 that he would have taken any disciplinary measures or sanctions of such a nature.

23 Mindful of the evidence before the Court, the Chamber therefore was not in a position to
24 come to the conclusion beyond a reasonable doubt that the accused person was the chief
25 of the Lendu combatants who participated in the Bogoro attacks on 24 February 2003.

1 We shall break here a little to talk about the use of child soldiers of less than 15 years.
2 The Pre-Trial Chamber had found that there was sufficient evidence to establish
3 substantial grounds to believe that Mathieu Ngudjolo used children less than 15 years old
4 for multiple purposes, to bring them to participate actively before, during and after the
5 attack, and I'm quoting here, "... to cause them to participate actively before, during and
6 after the attack" of 24 February 2002 against the Bogoro village. According to the Pre-Trial
7 Chamber, the children were incorporated into the militia and received military training
8 under the orders of the accused person and they frequently marched and performed
9 parades in his presence, and Mathieu Ngudjolo used them either as escorts or as personal
10 bodyguards.

11 Mindful of the evidence before the Court, the Chamber considered the presence of
12 children in the groups of existing combatants in Ituri at the time of the events was a
13 generalised practice and that the practice also extended to Djugu territory in which the
14 Bedu-Ezekere groupement is located.

15 The Chamber also observed that children less than 15 from the Bedu-Ezekere groupement
16 were present during the Bogoro attacks of 24 February 2003. However, the Chamber was
17 not able to come to the position that it had sufficient evidence to prove, for example, that
18 military training was offered to children of less than 15 years, following orders from the
19 accused person, that the accused person used such children as bodyguards or for any
20 other purpose before, during and after the attack, and the Chamber therefore was not in a
21 position to conclude beyond a reasonable doubt that there was a link between
22 Mathieu Ngudjolo and the children who were present in Bogoro on 24 February 2003.

23 Other factual allegations: Regarding factual allegations about the involvement of
24 Mathieu Ngudjolo in the planning and implementation or in the development and
25 implementation of a plan, I quote, "to wipe out Bogoro," the Chamber found that,

1 according to the Pre-Trial Chamber, the involvement of the accused person was closely
2 tied to the position of authority and control that he may have had on all the commanders
3 and combatants of Bedu-Ezekere who participated in the attack of 24 February 2003. It
4 must be underscored that the decision confirming the charges did not call for
5 co-perpetration for the crimes confirmed or the charges confirmed except those involving
6 the use of children of less than 15 for active participation in hostilities.

7 Going by these factual findings on the role of the accused within the Bedu-Ezekere
8 groupement, the Chamber therefore did not deem it necessary to analyse the possibility of
9 a joint plan or an agreement between the accused and Germain Katanga, nor his
10 contribution to the realisation of the crimes.

11 Still mindful of the factual observations on the role played by the accused, the Chamber
12 did not deem it necessary to further speak on any findings beyond any reasonable doubt,
13 neither in fact nor in law, regarding the crimes in question, to the extent that the issues
14 were of no bearing on the outcome of this trial.

15 This approach is more relevant to the extent that such findings may have a bearing on the
16 unfolding of the trial of Germain Katanga.

17 However, the Chamber opted to proceed in this manner, but this does not in any manner
18 mean that the Chamber was of the opinion that no crimes were committed in Bogoro on
19 24 February 2003, and this does not in any way put to question what befell the people of
20 that area on that day.

21 In our decision, we deemed it necessary to provide a general description of the attack on
22 Bogoro and the acts of violence that allegedly occurred there on 24 February 2003, it being
23 understood, as I have just stressed, that this approach was not one of presenting
24 conclusions beyond all reasonable doubt on the material elements of crimes.

25 Mr Mathieu Ngudjolo, please rise.

1 The Chamber has come to its decision unanimously. Judge Van den Wyngaert has
2 appended a concurring opinion to the decision regarding the interpretation of Article
3 25(3)(a) of the Statute.

4 Mindful of the factual observations that we have made, and after reviewing all evidence
5 on the case file, the Chamber hereby concludes that the Prosecution has not proven
6 beyond all reasonable doubt that Mathieu Ngudjolo committed, on the basis of Article
7 25(3)(a) of the Statute, the various crimes that have been alleged.

8 On these grounds the Chamber hereby declares Mathieu Ngudjolo not guilty pursuant to
9 Article 25(3)(a) of the Statute of wilful killing; Article 8(2)(a)(i); not guilty of an attack on a
10 civilian population, Article 8(2)(b)(i); not guilty of destruction of property, Article
11 8(2)(b)(xii); or pillaging, Article 8(2)(b)(xvi); sexual slavery, Article 8(2)(b)(xxii) of the
12 Statute; rape, Article 8(2)(b)(xxii) of the Statute; and the use of children under the age of 15,
13 having them participate actively in hostilities, Article 8(2)(b)(xxvi) of the Statute; crimes
14 which are all war crimes.

15 We declare that you are not guilty of murder, Article 71(a) of the Statute; sexual slavery,
16 Article 7(1)(g) of the Statute; and rape, Article 7(1)(g) of the Statute; all of which are crimes
17 against humanity.

18 Consequently, the Chamber acquits Mathieu Ngudjolo of all the charges against him in
19 this case. The Chamber hereby orders the Registrar to take the necessary measures for
20 the immediate release of Mathieu Ngudjolo, and the Chamber orders the Victims and
21 Witnesses Unit to take all necessary measures to ensure the protection of witnesses
22 pursuant to Article 68 of the Statute.

23 Please be seated, Mr Ngudjolo.

24 Madam Prosecutor, Mr Prosecutor, if you intend to make an application to the Chamber
25 asking for Mr Mathieu Ngudjolo to remain in detention, basing yourself on

1 Article 81(3)(c)(i) of the Statute, which I shall read out: "In the case of acquittal, the
2 accused person is immediately released pursuant to the following conditions: Under
3 exceptional circumstances, and particularly in relation to the risk of fleeing, the severity of
4 the offence, and the Trial Chamber may, at the request of the Prosecution, order that the
5 accused person remain in detention during the appeal."

6 Madam Prosecutor, if that is the case, if you intend to make an application to the Chamber,
7 asking for Mr Ngudjolo to remain in detention on the basis of Article 81(3)(c)(i) of the
8 Statute, given the urgency of this matter, you will have to do so now, right now, and by
9 way of oral submissions.

10 If that were to be the case, the Chamber shall meet today, at 1.30 in the afternoon, to hear
11 your arguments supporting such an application, to hear possible observations from legal
12 representatives, and Mr Kilenda will have the final word.

13 Your submissions will have to be briefed and focused, useful in nature, because the
14 hearing at 1.30 can last no longer than 45 minutes.

15 Once again, since this is such an urgent matter, the Chamber will have to give an oral
16 ruling today on such request, and this would have to be done between 4.30 and 5.00 in the
17 afternoon.

18 The Registry shall advise you of the exact time of the hearing, if you wish to make such an
19 application. This means that all parties and participants, and our staff, will have to
20 remain on call this afternoon.

21 I wish to thank the parties and participants, the authorities who have come from very far
22 to attend this hearing, as well as the people who attended the hearing in the gallery.

23 Madam Prosecutor, in light of what I have just said, do you have an application to make
24 to the Chamber?

25 MS BENSOUA: Mr President, Honourable Judges, the Prosecution will be making an
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1 application under Article 81, and we will do so at the appointed time.

2 Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Prosecutor, but the
4 Chamber has deemed that this application must be made immediately, right now. You
5 must say, "Yes, we intend to make such a request pursuant to 81(3)(c)(i)," and the actual
6 oral arguments will be at 1.30. If you wish to confirm this by way of a filing between
7 now and 1.30, you are free to do so, of course, but just to ensure that the day's proceedings
8 unfold smoothly, we wish to know whether you will be making such a request.

9 MS BENSOUDA: Indeed, Mr President, the Prosecution will be making such this request
10 and I will call on the senior trial lawyer, Eric Macdonald, to make it immediately, as the
11 Court pleases.

12 PRESIDING JUDGE COTTE: (Interpretation) The Chamber wishes to thank you.
13 Thank you, Madam Prosecutor for that item of information. Once again, the Chamber
14 thanks you for being so patient. It is quite a lengthy process listening to such a ruling.
15 The Chamber shall reconvene at 1.30.

16 (The hearing adjourns in open session at 10.02 a.m.)

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