

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. Germain Katanga - ICC-01/04-01/07
5 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
6 and Judge Christine Van den Wyngaert
7 Hearing for the Delivery of a Judgment
8 Friday, 7 March 2014
9 (The hearing starts in open session at 9.29 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE COTTE: (Interpretation) Court officer, could you call the case.
14 THE COURT OFFICER: Situation in the Democratic Republic of the Congo, in the
15 case of The Prosecutor versus Germain Katanga, ICC-01/04-01/07.
16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.
17 Security agents, please can you escort the accused person into the courtroom.
18 (The accused enters the courtroom)
19 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Mr Katanga.
20 The Chamber would like to greet the representative of the Democratic Republic of the
21 Congo; as well as the representatives of the host country who are in the public gallery;
22 as well as you, Madam Prosecutor, and the Deputy Prosecutor; Mr Gilissen,
23 Mr Luvengika, that is the Legal Representative of the Victims and their teams;
24 Mr Hooper, Mr O'Shea and the members of their teams; and we are very happy with
25 the presence of the Registrar because this is the first time we have you with us during

1 the case of Mr Katanga.

2 Trial Chamber II (that is "the Chamber") of the International Criminal Court hereby
3 publishes a summary of today's judgment, pursuant to Article 74 of the Statute, as to
4 whether the Prosecution has proved beyond reasonable doubt that the accused,
5 Germain Katanga, is guilty of the crimes alleged to have been committed on
6 24 February 2003 during the attack on the village of Bogoro, district of Ituri,
7 Democratic Republic of the Congo. The Chamber must underscore that only the
8 written judgment is authoritative.

9 Charges against the accused:

10 On 26 September 2008, Pre-Trial Chamber I was unanimous in confirming that there
11 was sufficient evidence to establish substantial grounds to believe that, during the
12 attack of 24 February 2003 on the village of Bogoro, Germain Katanga and
13 Mathieu Ngudjolo jointly committed through other persons within the meaning of
14 Article 25(3)(a) of the Statute the following crimes with intent:

- 15 - wilful killing as a war crime;
- 16 - murder as a crime against humanity;
- 17 - directing an attack against a civilian population as such or against individual
18 civilians not taking direct part in hostilities;
- 19 - destruction of property;
- 20 - pillaging as a war crime in the knowledge that this crime would occur in the
21 ordinary course of events;
- 22 - and jointly committed, within the meaning of Article 25(3)(a) of the Statute, the
23 war crime of using children under the age of 15 years to participate actively in
24 hostilities.

25 The Pre-Trial Chamber also confirmed, albeit by majority, that there was sufficient

evidence to establish substantial grounds to believe that during the aforementioned attack Germain Katanga and Mathieu Ngudjolo jointly committed through other persons, within the meaning of Article 25(3)(a) of the Statute, the following crimes in the knowledge that they would occur in the ordinary course of events:

- sexual slavery as a war crime;
- sexual slavery as a crime against humanity;
- rape as a war crime;
- rape as a crime against humanity.

The Chamber will now give you a brief history of the case.

The Chamber will confine the present overview to the key phases of the proceedings and the events which had a significant impact on the conduct thereof. However, the Chamber recalls at this juncture that it severed the case against Mathieu Ngudjolo from that of Germain Katanga by the majority decision on 21 November 2012, and notified the parties and participants that the mode of liability under which Germain Katanga initially stood charged as a principal may be recharacterised in accordance with Regulation 55 of the Regulations of the Court so as to ultimately consider his responsibility as an accessory. By judgment of 18 December 2012, Mathieu Ngudjolo was acquitted of all charges. That judgment is currently before the Appeals Chamber. Prior to the decision to sever the cases, the proceedings were conducted against both accused persons and all the hearings were held in both their presence.

The Chamber was constituted on 24 October 2008 and has since issued 409 written decisions and orders and 168 oral decisions. On commencement of the trial, the parties and participants made their opening statements and both accused restated their plea of not guilty.

1 The presentation of evidence commenced on 25 November 2009 and concluded on
2 11 November 2011. On 18 and 19 January 2012, the Chamber conducted an inter
3 partes site visit to the DRC accompanied by the parties and participants and
4 representatives of the Registry of the Court. The presentation of evidence was
5 officially declared closed on 7 February 2012.

6 The Chamber sat for 265 days. 55 witnesses were heard at trial. The Prosecution
7 called 24 witnesses, who testified between 26 November 2009 and 8 December 2010.

8 The Defence for Germain Katanga called 17 witnesses who appeared between
9 24 March and 12 July 2011. The Defence for Mathieu Ngudjolo called 11 witnesses
10 who testified between 15 August and 16 September 2011. Three of the Defence
11 witnesses were common to both teams. The legal representative of the main group
12 of victims called two victims who gave evidence between 21 and 25 February 2011.

13 The Chamber itself called two witnesses.

14 Once all the testimonies were concluded, both accused persons chose to testify as
15 witnesses under oath. Germain Katanga gave evidence in twelve hearings held
16 between 27 September and 19 October 2011. The parties and participants submitted
17 their closing briefs and made their closing statements, and the last hearings were held
18 between 15 and 23 May 2012.

19 The Prosecution tendered 261 items of evidence into the record of the case, the
20 Defence for the accused 240 and the Defence for Mathieu Ngudjolo 132. The
21 Chamber tendered five items of evidence and authorised the legal representatives of
22 victims to also tender five, bringing the total to 643. In accordance with Article 68 of
23 the Statute, 366 victims, including 11 child soldiers, were authorised to participate in
24 the trial through their legal representatives.

25 Here, the Chamber wishes to commend the contribution made by the legal

1 representatives and their teams throughout the proceedings. In the Chamber's view,
2 they were able to find their rightful place during the trial and in their own way by at
3 times taking a different stance to the Prosecution. They made a meaningful
4 contribution to establishing the truth in relation to certain aspects of the case. The
5 Chamber extends its gratitude for their contribution.

6 Once apprised on 27 March 2013 of the judgment on the appeal against the
7 aforementioned decision of 21 November 2012, giving notice of the possible
8 recharacterisation of the mode of liability applied to the accused, in the first two
9 weeks of April 2013, the parties and participants filed submissions on the proposed
10 recharacterisation in regard to points of both law and of fact. Thenceforth and until
11 11 September 2013, when the Defence for Germain Katanga (hereinafter "the Defence")
12 requested a permanent stay of the proceedings against him, the Chamber ensured
13 compliance with the requirements of Regulation 55(3) of the Regulations of the Court
14 which safeguards the rights of the Defence. There was much exchange of written
15 submissions on that issue, particularly with the Defence, on a continuous basis
16 throughout that period. The decisions of 15 May, 26 June, 2 October and 19
17 November 2013 are of particular importance in that connection.

18 One member of the Trial Bench, Judge Christine Van den Wyngaert, appended a
19 dissenting opinion to 21 November 2012 decision on possible recharacterisation, as
20 she did in respect of the four decisions afore cited. This judgment is also the subject
21 of a dissent pertaining to the majority of its factual findings and its holdings. The
22 thrust of this dissent will be set out further on in the summary. During this reading,
23 references to "the Chamber" shall therefore denote the majority.

24 The Chamber's main findings:

25 The Chamber wishes to bring to the fore certain findings in the judgment which merit

1 particular attention today. Each such finding will be analysed in detail. These
2 findings concern the attack on Bogoro; the organisation in February 2003 of the
3 commanders and combatants of Walendu-Bindi collectivité, who included
4 Germain Katanga; their objectives; the characterisation of the crimes charged; and the
5 duties performed and the powers held by the accused within the Ngiti militia of the
6 collectivité. This overview will culminate in a summary of the Chamber's main
7 factual findings concerning Germain Katanga's criminal responsibility as a principal
8 (Article 25(3)(a)) and as an accessory (Article 25(3)(d)).

9 From the outset, it is expedient to recapitulate briefly the arguments of the parties.

10 In the Prosecution's view, Germain Katanga must be held responsible for the crimes
11 committed in Bogoro on the basis of Article 25(3)(a) of the Statute; that is to say as a
12 principal. Throughout the trial, the Prosecution argued that after September 2002
13 the accused became the leader of the Ngiti combatants of Walendu-Bindi collectivité.
14 Then, once the combatants had assumed the name "FRPI" (Force de résistance
15 patriotique en Ituri, or Patriotic Force of Resistance in Ituri), he became
16 commander-in-chief and president of that group.

17 According to the Prosecution, the FRPI was a structured military group with a
18 hierarchical change of command; that command being centralised. In its view,
19 Germain Katanga, the supreme leader, exercised authority over the collectivité in
20 respect of both civilian and military matters.

21 The Prosecution contended that in February 2003 the accused effectively exercised his
22 authority over the Ngiti militia which at the time constituted an apparatus of power,
23 thus enabling him to exercise control over the crimes committed by the militia
24 members.

25 In the view of the Defence, the key witnesses relied upon by the Prosecution to

1 support its case are neither credible nor reliable. In Aveba, Germain Katanga's
2 control extended only to 60 men quartered in Atele Nga and he exercised no authority
3 over the local commanders of other sectors of Walendu-Bindi collectivité.
4 Furthermore, according to the Defence, the attack on Bogoro was planned, ordered
5 and directed by the État-major opérationnel intégré (EMOI, or Integrated Operational
6 General Staff) "set up by the Kinshasa government" and the armed wings of other
7 political and military groups, notably the APC based in Beni, North Kivu.
8 Lastly, it argues that 24 February 2003 attack on Bogoro was not directed against the
9 civilian population of the village, but the military camp of the UPC; a predominantly
10 Hema political and military group based there. The objective of the attack was
11 therefore military and strategic.

12 24 February 2003 attack on Bogoro:

13 The Chamber concluded that, prior to 24 February 2003 attack on Bogoro, at least 800
14 predominantly Hema civilians were living in Bogoro and that they clearly
15 outnumbered the UPC soldiers. The latter were quartered in a camp set up in and
16 around Bogoro Institute and often referred to by that name by various witnesses.
17 While Bogoro was undoubtedly a strategic military position, it must be borne in mind
18 that its inhabitants continued to lead civilian lives there.

19 On 24 February 2003, Bogoro was attacked by the Ngiti combatants of Walendu-Bindi
20 collectivité and the Lendu combatants of Bedu-Ezekere groupement with
21 reinforcements from the APC, which principally provided support early on when the
22 attack was being conceived and prepared. They came by various routes from
23 Bedu-Ezekere groupement and Walendu-Bindi collectivité, encircling the village.
24 The Chamber has not, however, been able to affirm that Germain Katanga was
25 present on 24 February 2003 and that he participated in the fighting. Neither has it

1 been able to establish whether or not he took part in a victory celebration in the
2 village, or whether he claimed responsibility for that victory.

3 Organisation of the commanders and combatants of Walendu-Bindi collectivité:

4 The Chamber summarises here its main factual findings in this regard. It established
5 that in early 2003 there were scores of combatants in Walendu-Bindi, mustering in
6 their thousands, and that they were organised in a network of camps which could be
7 moved throughout the collectivité. It also found that military training and parades
8 were held in some camps, demonstrating the existence of a certain degree of
9 discipline in the various camps. It further established that, in the months leading up
10 to 24 February 2003 attack, deliveries of weapons and ammunition from the town of
11 Beni began arriving in preparation for an imminent attack on Bogoro. Moreover, it
12 noted the importance of Aveba to Walendu-Bindi collectivité as the site where the
13 weapons and ammunition supplies were centralised and also where the commanders
14 of the collectivité regularly went to this end.

15 The Chamber established that certain religious, civilian and military authorities of the
16 collectivité turned to a common authority - whose name varied, but who was always
17 located in Aveba - between 29 January and 6 March 2003. They did so, for instance,
18 to impart information or secure proper execution of an order issued. There was thus
19 a focal point for the various commanders to whom they would turn when weight
20 needed to be given to a decision which was considered important.

21 Ultimately the Chamber established that, on the eve of the battle of Bogoro, the local
22 commanders and combatants constituted an organised armed militia. They had the
23 ability to communicate with each other and did so effectively through a
24 well-established network. It also appears that they had united in pursuit of a
25 common struggle as part of a movement, or under the newly formed force called the

1 FRPI. The commanders and combatants were thus part of a single entity able to
2 come together and organise itself to achieve its objectives.
3 As regards the back-drop to the development of this militia in 2002, the Chamber
4 concluded that the ethnic dimension of the conflict pitting the Ngiti militia against the
5 Hema-affiliated UPC was indisputable. In the case at bar, this conflict was presented
6 as being polarised between two main ethnic groups, the Hema and the Lendu, this
7 ethnic dimension being interwoven with geopolitical considerations. The conflict
8 cannot therefore be reduced to merely an ordinary dispute between villages, or a local
9 conflict. In the Chamber's view, the patriotic and ethnic dimensions of the conflict
10 combined and became mutually reinforcing.

11 Having specific regard to the mindset of the members of the Ngiti militia of
12 Walendu-Bindi collectivité, the Chamber considered that in 2002, over and above the
13 UPC, the Ngiti combatants considered the Hema and their allies to be their enemies
14 as an ethnic group which repeatedly attacked and threatened their territory. It is
15 evident from the testimony of witnesses, who lived in or near Walendu-Bindi
16 collectivité, that the UPC was considered synonymous with the Hema, that the local
17 combatants were engaged in resistance against this enemy whom they regarded as an
18 invader; resistance which also involved counter-offensives such as that in Nyankunde
19 in early September 2002. Therefore, it is against this back-drop that the Ngiti
20 combatants of Walendu-Bindi attacked Bogoro.

21 The nature of the armed conflict which occurred in Ituri between August 2002 and
22 May 2003:

23 The Chamber found - and I repeat the majority of the Judges found - that the evidence
24 on record demonstrated beyond reasonable doubt that during this period Uganda
25 exercised authority over the territory of this district as an occupying power. Finding

1 that both the law of international armed conflict and of non-international armed
2 conflict was applicable to the various actors in hostilities occurring on occupied
3 territory, the Chamber considered it necessary to determine the nature of the armed
4 conflict which encompassed the attack on Bogoro. It found that the protracted
5 hostilities between organised armed groups in Ituri constituted an armed conflict not
6 of an international character from January 2003; that is to say from the time of
7 Uganda's rapprochement with the DRC in order to combat the UPC forces which had
8 recently become allied to Rwanda.

9 The crimes committed during the attack:

10 As regards murder as a crime against humanity and a war crime and attack against
11 civilians as a war crime, the available evidence showed that Bogoro was attacked in
12 the very early morning when it was still dark and its inhabitants were still at home
13 asleep. The UPC combatants meanwhile were in their camp located centrally in the
14 village. The witnesses who were present, whether ordinary inhabitants, UPC
15 soldiers, or Ngiti combatants from Walendu-Bindi collectivité who participated in the
16 attack, all stated that there were scores of attackers armed with guns and machetes,
17 that they came from all directions and encircled the village and that the gun-fire was
18 intense.

19 The Chamber found that, from the outset of the attack, the combatants pursued and
20 killed the inhabitants of the village, elderly people, men, women and children, with
21 machetes and firearms, even though they had no part in the fighting and were fleeing
22 towards Bogoro Institute where they had a habit of taking refuge, or into the bush, or
23 towards a hill located on the edge of Bogoro commonly known as Mount Waka.

24 The evidence also demonstrated that, when the attackers took the camp and
25 surrounded the institute's premises, many who had taken refuge there and had been

1 unable to flee with the UPC soldiers were injured or killed, again by machete or by
2 shooting.

3 The Chamber further noted that during the fighting, or after the village was taken, the
4 attackers entered houses in the area to seek out and kill villagers who were hiding
5 inside.

6 It also noted that on 24 February 2003, once the camp had fallen and the fighting was
7 over, the attackers continued to hunt down inhabitants hiding in the bush, raped
8 some women, captured people whom they found hiding and killed others.

9 Several witnesses further stated that they had heard the attackers' threats and the
10 pleas of their victims, who wailed and begged for mercy. Various witnesses stated
11 that the attackers asked their victims their ethnic origin and several inhabitants
12 passed themselves off as non-Hema in order to save their lives. The attackers also
13 mutilated some victims with bladed weapons before dispatching them by shooting, or
14 by machete.

15 The Chamber arrived at a death toll of at least 60 in the attack, including 30 civilian
16 victims of murder, within the meaning of Articles 7(1)(a) and 8(2)(c)(i) of the Statute,
17 committed by Ngiti combatants. These victims included at least 13 children and a
18 significant number of women and elderly persons. However, the Chamber wishes to
19 emphasise that it found beyond reasonable doubt that a far greater number of people
20 were victims of murder and attack against the civilian population on
21 24 February 2003, but that the lack of precision of the evidence before it did not allow
22 accurate identification of these victims.

23 Thus, the timing of the attack and the means and method used - encirclement of the
24 village whilst its inhabitants were still asleep; use of machetes to attack them directly
25 and at close range; shooting indiscriminately, or further still directly at the villagers,

1 whether during or after the fighting, in their homes, as they fled or when they had
2 taken shelter in the institute or in the bush; the sheer number of civilian victims,
3 including 13 children, many women and elderly people - led the Chamber to find
4 beyond reasonable doubt that Ngiti combatants intended to directly target the
5 predominantly Hema civilian population of Bogoro on 24 February 2003, thereby
6 committing murder as a crime against humanity and a war crime under Articles
7 7(1)(a), 8(2)(c)(i) and 8(2)(e)(i) of the Rome Statute.

8 As to the war crimes of destroying the enemy's property and pillaging, the Chamber
9 concluded that houses belonging to the predominantly Hema population of Bogoro
10 were destroyed, set on fire or had their roofs removed by the Ngiti combatants on
11 24 February 2003. It also considered that on that day Bogoro was extensively
12 pillaged.

13 Property belonging to the predominantly Hema civilian population of Bogoro which
14 was essential to its daily life, including roofing sheets, furniture and various other
15 personal effects, food and livestock and animals, were taken away to Ngiti areas by
16 the attackers as well as by women and children, some of them armed, who had come
17 to assist. The combatants also compelled those captured in Bogoro, women in
18 particular, including Witness P-353, to carry the stolen property for them.

19 Whilst the Chamber found that the CECA-20 church in Bogoro, located within the
20 Diguna mission, was destroyed and pillaged by removal of its roof, it did not find the
21 accused responsible for these acts since it was unable to attribute them to Ngiti
22 combatants.

23 This aside, the Chamber found beyond reasonable doubt that on 24 February 2003
24 Ngiti combatants committed the war crimes of destroying the enemy's property
25 under Article 8(2)(e)(xii) of the Statute and pillaging under Article 8(2)(e)(v) of the

1 Statute.

2 Turning now to the crimes of rape and sexual slavery as crimes against humanity and
3 war crimes, the Chamber also found that they had been committed by Ngiti
4 combatants on 24 February 2003. It did so by relying primarily on the evidence of
5 three witnesses - P-132, P-149 and P-353 - who testified as direct victims of rape and
6 sexual slavery. All three were raped on the day of the attack after being driven out
7 of their hiding places in the bush, or inside their house, by armed combatants and
8 after claiming to be of an ethnicity other than Hema. They were all taken to Ngiti
9 military camps, where they were held captive for several weeks, repeatedly raped
10 and allocated to combatants quartered in the camps.

11 The Chamber found that the evidence establishes beyond reasonable doubt that
12 sexual slavery as a war crime and a crime against humanity under Articles 8(2)(e)(vi)
13 and 7(1)(g) were intentionally committed in the aftermath of the battle of Bogoro on
14 24 February 2003 by combatants from camps belonging to the Ngiti militia of
15 Walendu-Bindi and by others in the camps.

16 In light of all of the foregoing, the Chamber concluded that on 24 February 2003 an
17 attack was directed against the civilian population of the village of Bogoro within the
18 meaning of Article 7(2)(a) of the Statute. It is apparent, principally in view of the
19 multiple acts of violence perpetrated directly against the Hema inhabitants of the area,
20 the nature of the victims and the fact that in the aftermath of the attack the village was
21 cleared of its Hema population, that Ngiti combatants regarded the UPC and the
22 Hema as an ethnic group as their enemy.

23 The Chamber is also of the opinion that the preparations in the collectivité prior to the
24 attack and the manner in which the attack was ultimately excused attest to the fact that
25 the operation against Bogoro ensued from a design specific to the Ngiti militia to

1 target the predominantly Hema civilian population in the area. Thus, the victims
2 perished according to the plan devised by the Ngiti combatants of Walendu-Bindi to
3 "wipe out" the predominantly Hema civilian population of Bogoro.

4 The Chamber thus found that the civilian population of Bogoro was the prime target
5 of the attack and the operation itself was systematic in nature.

6 Finally, concerning the war crime of using children under the age of 15 years to
7 participate actively in hostilities, it bears noting that, in contrast to the other crimes
8 for which the Pre-Trial Chamber ruled that there were substantial grounds to believe
9 that the members of the FRPI had committed them intentionally, this crime was
10 alleged to have been committed only by Germain Katanga himself and not by the
11 militia members.

12 On the basis of the evidence on record, the Chamber concluded that children were
13 present in the armed forces operating in Ituri, including in the ranks of the Ngiti
14 militia, from 2002 onwards and during the period of hostilities in which the battle on
15 24 February 2003 took place. It was able to establish that children, who were
16 referred to locally as "kalogos" and who in some cases were assessed to be under the
17 age of 15 years, were among the Ngiti combatants in Bogoro and participated not only
18 in the fighting, but also in acts of violence meted out to the local population and its
19 property.

20 The Chamber further concluded that shortly after 24 February 2003 children were
21 present among the militia members at the camp where P-132 was held captive,
22 although it was impossible to determine whether or not they were under the age of
23 15 years. They took part in military parades and guarded the camp and its prison,
24 thereby providing the Ngiti militia with logistical support during hostilities.

25 However, the Chamber was unable to identify a direct nexus indicating that the

1 accused used these children to participate in the hostilities.

2 Hence, whilst it cannot rule out the possibility that Ngiti commanders of

3 Walendu-Bindi collectivité used children under the age of 15 years in the hostilities

4 connected to the battle of Bogoro, it cannot find that Germain Katanga committed the

5 crime of using child soldiers under Article 8(2)(e)(vii) and consequently cannot find

6 him responsible under Article 25(3)(a) of the Statute.

7 Germain Katanga's duties and powers in the Ngiti militia of Walendu-Bindi

8 collectivité:

9 The Chamber considered that the evidence on record demonstrates that at the

10 material time and in Walendu-Bindi collectivité, Germain Katanga, who bore the title

11 Commander or Chief of Aveba, was a seasoned and well-known soldier with close

12 ties to the fetish priests in the collectivité who respected him.

13 He had undeniable military authority over the collectivité.

14 Similarly, administration, oversight, security and public order were considered to rest

15 with him. That authority crystallised in late 2002 and became increasingly

16 established after the battle of Bogoro, as the body of evidence covering the period

17 after the attack shows. As early as November 2002, Germain Katanga led a

18 delegation of combatants and prominent persons to Beni. Indeed, not only was he

19 the focal point for the various commanders of the Ngiti militia, but he also

20 represented the militia vis-à-vis the authorities in Beni. In that capacity, he could

21 attend high level meetings and take military decisions.

22 Therefore, at least from early February 2003, Germain Katanga bore the title of

23 "President" of the Ngiti militia, which as the Chamber has noted gradually adopted

24 the name FRPI in the run-up to the attack on Bogoro.

25 Regarding the powers which the accused actually wielded, the Chamber found that in

1 Aveba he facilitated the receipt and storage of weapons and ammunition from Beni
2 and had the power not only to allot them to the Walendu-Bindi commanders, but also
3 to decide the quantity of ammunition allocated as his instructions in this regard were
4 followed.

5 However, apart from his powers to receive, store and distribute weapons and
6 ammunition, the Chamber was unable to find beyond reasonable doubt that
7 Germain Katanga wielded in all areas of military life and over all commanders and
8 combatants in Walendu-Bindi collectivité powers of command and control.

9 In actual fact, whereas he moved around the Ngiti camps in the collectivité and was
10 received as a figure of authority, and whereas he could issue orders to commanders
11 and combatants within that collectivité, it was impossible to ascertain the exact nature
12 of the orders or whether they were obeyed.

13 His titles Commander or Chief of Aveba and "President" of the Ngiti militia - at times
14 called "FRPI" - the effectiveness of his authority over the supply and distribution of
15 weapons and ammunition to the militia, his duties as facilitator and negotiator did
16 not, however, allow the Chamber to find beyond reasonable doubt that
17 Germain Katanga was vested, as the Prosecutor alleged, with effective hierarchical
18 power over the commanders and combatants of the Ngiti militia in Walendu-Bindi
19 collectivité.

20 Accordingly, the Chamber relied on these factual findings as a whole in determining
21 Germain Katanga's responsibility within the meaning of Article 25(3)(a) of the Statute;
22 that is as a principal. In this respect, the Chamber considered that the Prosecutor
23 failed to prove beyond reasonable doubt, and having regard to the evidence found
24 credible, that:

25 - in February 2003 the Ngiti militia was an organised apparatus of power; and.

1 - Germain Katanga at that time wielded control over the militia such as to exercise
2 control over the crimes within the meaning of Article 25(3)(a) of the Statute.
3 The militia, as already established, had a president who lived in Aveba and who, in
4 the view of the Chamber, acted as a focal point with oversight over the community
5 and who also exercised military authority vis-à-vis the collectivité. In this respect,
6 whereas it is apparent that he had powers to receive, store and distribute weapons
7 and ammunition, the Chamber was unable to rely on the evidence available to find
8 that the president of that militia had the powers of a superior. It has not been
9 proven, in light of the evidence found credible, that vis-à-vis that collectivité he had
10 the material ability to issue and ensure compliance with orders, or furthermore that
11 he had the power to punish commanders from various camps. The Chamber
12 therefore found that it could not make a determination on the existence of a
13 centralised command within the Ngiti militia of Walendu-Bindi collectivité.
14 Consequently, the Chamber considered that it need not determine whether the other
15 constituent elements of commission within the meaning of Article 25(3)(a) of the
16 Statute were established, thus impelling the finding that the Prosecutor failed to
17 establish that Germain Katanga had committed the alleged crimes within the meaning
18 of Article 25(3)(a) of the Statute. Judge Van den Wyngaert concurs with this finding.
19 However, as previously stated, she has issued a dissenting opinion whose main
20 conclusions I shall read from the excerpt provided to the majority and I quote:
21 "Although Judge Van den Wyngaert concurs with the majority in the acquittal of
22 Germain Katanga for the charges under Article 25(3)(a) of the Statute, she distances
23 herself entirely from the recharacterisation of the charges under Article 25(3)(d)(ii) of
24 the Statute. She also sees no grounds for changing the legal characterisation of the
25 nature of the armed conflict.

1 For reasons explained in her minority opinion, Judge Van den Wyngaert is of the
2 view that it is not possible to recharacterise the charges in this case from Article
3 25(3)(a) to 25(3)(d)(ii) without fundamentally changing the 'facts and circumstances'
4 of the confirmation decision. She is of the view that the narrative of the charges has
5 been substantially amended contrary to Article 74 of the Statute, an alteration that
6 could not have been reasonably foreseen by the Defence.

7 Moreover, Judge Van den Wyngaert is of the view that the recharacterisation has
8 rendered this trial unfair by infringing a series of Germain Katanga's rights. In
9 particular, the Judge believes that the accused did not receive adequate notice of the
10 new charges under Article 25(3)(d)(ii) and was not afforded a reasonable opportunity
11 to conduct a meaningful investigation in response to those new charges. For these
12 reasons, the Judge is of the opinion that Germain Katanga has been prevented from
13 defending himself appropriately.

14 In addition, Judge Van den Wyngaert is of the view that Germain Katanga's
15 testimony cannot be used against him as evidence for the charges under Article
16 25(3)(d)(ii). Although she accepts that Germain Katanga was not forced to testify
17 against himself, she believes that he was misled about the scope of the permissible use
18 of his testimony. Accordingly, Judge Van den Wyngaert thinks that the accused's
19 waiver of his right to remain silent cannot be considered to have been made freely.

20 As regards the actual charges under Article 25(3)(d)(ii), Judge Van den Wyngaert
21 believes that the evidence does not permit the making of any findings beyond
22 reasonable doubt that would lead to a conviction of Germain Katanga. In particular,
23 Judge Van den Wyngaert is concerned about the quality and reliability of much of the
24 evidence in this case. She is also of the view that essential evidence is missing from
25 the case record. Both of these factors make it impossible, in her view, to enter

1 findings beyond reasonable doubt.

2 In particular, apart from finding that the elements of crimes against humanity are not
3 fulfilled, Judge Van den Wyngaert also does not believe that the evidence shows
4 beyond reasonable doubt that the Ngiti fighters of Walendu-Bindi constituted a group
5 acting with a common purpose to attack the Hema civilian population of Bogoro.

6 She also does not believe that there were separate plans at the level of the EMOI in
7 Beni and at the level of the Ngiti fighters of Walendu-Bindi. Furthermore,
8 Judge Van den Wyngaert thinks that the evidence does not show that

9 Germain Katanga intentionally contributed to the commission of any crimes

10 committed in Bogoro. On the contrary she believes that it cannot be excluded that he
11 made his contribution to a legitimate military plan, which would exclude his criminal
12 responsibility under Article 25(3)(d)(ii).

13 Finally Judge Van den Wyngaert is of the opinion that the proceedings in this case
14 have gone on for too long in violation of Germain Katanga's right to be tried without
15 undue delay, as well as the Chamber's duty to conduct the proceedings expeditiously
16 and to pronounce the judgment within a reasonable period of time after the Trial
17 Chamber has retired to deliberate. Judge Van den Wyngaert would have acquitted
18 Germain Katanga alongside Mathieu Ngudjolo Chui on 18 December 2012," end of
19 quote.

20 I shall now discuss the legal recharacterisation of the mode of liability under
21 Regulation 55 of the Regulations of the Court. Having found that Germain Katanga
22 had not incurred criminal responsibility on the basis of Article 25(3)(a) of the Statute,
23 the Chamber considered whether in law and in fact the mode of liability could then
24 be recharacterised to accord with Article 25(3)(d), which is definitive of accessoryship
25 through contribution, "[i]n any other way ... to the commission [...] of a crime by a

1 group of persons acting with a common purpose."

2 The Chamber first ensured that the recharacterisation contemplated did not exceed

3 the facts and circumstances described in the charges. In that respect, the Chamber

4 satisfied itself that the factual considerations on which it was to rely and which

5 concerned the existence and composition of the Ngiti militia of Walendu-Bindi

6 collectivité and Germain Katanga's role were substantially the same as those set out in

7 the decision confirming the charges, which founded the Chamber's holdings under

8 Article 25(3)(a). The Chamber concluded therefrom that the proposed

9 recharacterisation was in this regard consistent with the requirements of Regulation

10 55 and Article 67(1) and 74(2) of the Statute. It however found that the

11 recharacterisation could not apply to the crime of using child soldiers, as the charge

12 of direct co-perpetration against the accused could not be modified to accessoryship

13 within the meaning of Article 25(3)(d) without violating the afore cited provisions.

14 The Chamber then sought to satisfy itself that Germain Katanga had been informed

15 promptly and in detail of the nature, cause and content of the charges against him.

16 To this end, it recalled and examined all the information which had been imparted to

17 the accused, including by the Pre-Trial Chamber, as well as the notice furnished to

18 him before commencement of the trial - which at the time was being conducted on the

19 basis of the mode of liability under Article 25(3)(a) - during the pre-trial phase and

20 then provided as part of the procedure specific to Regulation 55. The Chamber

21 concluded that he had been sufficiently informed and in detail of the nature, cause

22 and content of the charges.

23 Responding to certain Defence observations, the Chamber first considered that the

24 accused had not been forced to incriminate himself. Indeed, it noted that he had

25 waived his right to remain silent and that he willingly made an informed decision,

1 with the guidance of counsel, to testify and take the initiative to raise or dwell on
2 various topics which he deemed significant to the charges against him. The
3 Chamber then concluded that Germain Katanga's case had been given a fair hearing,
4 even though Regulation 55 was triggered only at the deliberation stage.
5 Then, with the utmost circumspection, the Chamber examined whether the accused
6 had been given adequate time and facilities for the preparation of his defence. In
7 this respect, the Chamber acknowledged that in the instant case recourse to the
8 provisions of Regulation 55 at an advanced stage in the proceedings had to a certain
9 extent, and without overestimating the difficulty, compelled the accused to redirect
10 and perhaps complement his defence, which required special preparation on his part
11 within a short space of time. Thus, in particular to alleviate the situation, the
12 Chamber implemented various measures to ease the Defence's preparation and
13 enable it to respond more efficiently to the new mode of liability.
14 The Chamber therefore considered whether with respect to the existing evidence the
15 Defence, availing itself of the necessary human and financial resources, had been able
16 to present its case on the new recharacterisation. It satisfied itself that such had been
17 the case and that the Defence, composed of an entirely new team since late
18 November 2012, had succeeded in submitting all the analyses and observations which
19 it deemed necessary. The Chamber underscored that to achieve this the Defence had
20 recourse to the Bench's assessment of the credibility of some key Prosecution
21 witnesses and to the law on the new characterisation envisaged and the legal analysis
22 thereof. The Chamber further noted that subsequently, and in the course of its
23 rulings, it had brought to the attention of the Defence numerous references to the
24 relevant parts of the Decision on the Confirmation of Charges and had specified how
25 it thought some of the issues raised by the Defence could be tackled and understood.

1 Thereafter, the Chamber noted that ultimately the Defence was able to effect part of
2 the further investigations it had desired to conduct, whereas such investigations were
3 not indispensable to the fairness of the trial. The Chamber noted that to carry out its
4 investigations the Defence again availed itself of the necessary human and financial
5 resources, the Registry having been duly approached in that connection long before
6 July 2013. The Chamber noted as well that, having been apprised as from the
7 decision of 21 November 2012 of the possibility of a legal recharacterisation of the
8 mode of liability, the Defence was able to start developing its strategy for further
9 investigation and promptly take all the necessary measures.

10 Subsequently, the Chamber meticulously examined the Defence's *modus operandi*.
11 It noted that the Defence had ultimately chosen not to recall those Prosecution
12 witnesses whom it considered relevant and whom it had met in the DRC in July 2013,
13 and that it had equally decided not to recall witnesses who had testified in support of
14 its case and whose names it had mentioned. The Chamber also endeavoured to
15 assess the difficulties faced by the Defence in reaching some locations to meet
16 potential witnesses, owing to the prevailing security situation in Ituri between June
17 and September 2013. The Chamber consulted the Registry of the Court on the matter.
18 Whereas the Chamber does not downplay some of the difficulties which it has duly
19 noted, it equally noted that the Defence had specifically chosen not to act on the
20 alternative solutions suggested by the Chamber and the Registrar and had postponed
21 some trips which would have been possible at the time concerned.

22 Ultimately, the Chamber was compelled to note that it could not assess the relevance
23 of any information which might have been provided by most of the potential
24 witnesses living in areas inaccessible to the Defence. In actual fact, the documents
25 submitted by the Defence make clear that part of its planned investigations consisted

1 of seeking information which sometimes concerned solely the person's
2 whereabouts - no information of a temporal nature or alluding to the experience of
3 the potential witness was provided. Failure by the Defence to demonstrate with
4 specificity the need for further investigations therefore prevented the Chamber from
5 assessing the relevance of information which possible new witnesses might have
6 brought.

7 On the basis of all its findings, the Chamber concluded that in the instant case the
8 provisions of Article 61(b) -- 67(1)(b) and 67(1)(e) of the Statute had not been violated.

9 Lastly, the Chamber considered whether the accused had been tried within a
10 reasonable time. It recalled that in its decision of 21 November 2012 it had ruled on
11 how the right to be tried without undue delay must be construed and how in that
12 respect the phase preceding the implementation of Regulation 55 must be appraised.
13 Regarding the conduct of the phase concerning said implementation, the Chamber
14 pointed out that the perfect regulatory in the sequence of written submissions which
15 were produced at its behest and the decisions it rendered since 21 November 2012
16 shows, if proof were needed, that the Bench was ever mindful of the need for the
17 procedure for the implementation of Regulation 55 to be expeditious. The Chamber
18 recalled that, faced with the need to achieve a delicate balance, it ensured that the
19 Defence could play a part under the fairest possible conditions. It did so by
20 providing exhaustive responses to each of the Defence's written submissions and
21 offering guidance to the Defence, while steering the recharacterisation procedure
22 within a strict time frame. The Chamber therefore found that the requirements of
23 Article 67(1)(c) had been fully respected.

24 As to 11 December 2013 Defence motion to stay proceedings, having determined that
25 the rights of the accused had not been violated the Chamber found no ground to

1 entertain said motion.

2 Germain Katanga's responsibility within the meaning of Article 25(3)(d) of the Statute
3 (accessoryship):

4 After satisfying itself that the recharacterisation procedure was consonant with the
5 requirements of Regulation 55, the Chamber analysed the form of accessoryship
6 defined under Article 25(3)(d) of the Statute. It first examined the various
7 constituent elements of this mode of responsibility and noted the need to prove
8 beyond reasonable doubt that: (1) a crime falling within the jurisdiction of the Court
9 had been committed; (2) the persons who committed the crime formed part of a group
10 acting with a common purpose; (3) the accused made a significant contribution to the
11 commission of the crimes; (4) his contribution was intentional; and (5) that it was
12 made in the knowledge of the intention of the group to commit the crimes.

13 The Chamber then considered whether in the case at bar the evidence on record
14 satisfied the requirements of Article 25(3)(d) and established this mode of
15 responsibility.

16 It is not expedient here in the instant summary, or at this point in time, for the
17 Chamber to reiterate the entirety of its reasoning. Nevertheless, it wishes to recall
18 and underscore that:

19 - Ngiti combatants in Walendu-Bindi collectivité committed the above described
20 crimes;

21 - those Ngiti combatants were part of a militia which constituted an organisation
22 within the meaning of Article 7(2) of the Statute and an organised armed group
23 within the meaning of the law of armed conflict. This militia harboured its own
24 design which, albeit part of a wider design to reconquer territory, was to attack
25 Bogoro and wipe out from the area the UPC soldiers, but also and first and foremost

1 to wipe out the Hema civilians who were there. On this point, the Chamber
2 essentially relied on its findings regarding the policy pursued by the Ngiti militia
3 within the meaning of Article 7(2) of the Statute to establish the existence of an attack
4 against a civilian population. It considered that the conditions under which the
5 attack was launched, then the manner in which it proceeded and the treatment of the
6 civilian population, in particular women, children and elderly persons, established
7 the existence of a common criminal purpose against the population of Bogoro;
8 - the crimes of murder, attack against civilians, destruction of property and pillaging
9 which were committed at the time therefore formed part of the common purpose.
10 Regarding the crimes of rape and sexual slavery, the Chamber however found that it
11 could not conclude on the basis of the evidence laid before it that the criminal
12 purpose pursued on 24 February 2003 necessarily included their commission, or
13 therefore that such crimes were also part of the common purpose. The Chamber
14 however recalls its finding that these two crimes constitute crimes against humanity,
15 as they were part of the operation to wipe out the civilian population of Bogoro. It
16 further determined that the rapes constituted the war crime of attack against civilians.
17 - lastly, although they were not alone at the locus in quo, the physical perpetrators
18 of the crimes were Ngiti combatants and members of the militia of Walendu-Bindi
19 collectivité and harboured the common purpose.
20 This finding having thus been made, the Chamber ascertained whether
21 Germain Katanga had made a significant contribution to the commission of the
22 crimes by the Ngiti militia acting with a common purpose. With reference to its
23 factual findings on the duties Germain Katanga performed and the powers he held,
24 the Chamber considered that it has been established that as of November 2002 the
25 accused helped the Ngiti militia of Walendu-Bindi collectivité to mount the operation

1 against Bogoro and which the Ngiti commanders and combatants organised locally.
2 To show in greater detail that the activity engaged in by Germain Katanga from
3 November 2002 to 24 February 2003 had a significant effect or impact on the
4 commission of the crimes within the meaning of Article 25(3)(d) of the Statute, the
5 Chamber first recalled that in the case at bar both the geographical and temporal
6 scope of the group's common purpose was confined to 24 February 2003 operation
7 against Bogoro. Indeed, there is perfect concordance between: (1) the attack, that is
8 the operation against Bogoro; (2) the group's common purpose, which specifically
9 was to wipe out from that area the UPC military elements and the Hema civilians
10 there; and (3) the commission of the crimes by the Ngiti combatants. Accordingly, it
11 is the activity which the accused engaged in in respect of the preparation for the
12 attack on Bogoro which may constitute a contribution to the commission of crimes by
13 Ngiti combatants on that date and during that attack.

14 Admittedly, not all assistance lent in preparation of a military operation perforce and
15 as a rule constitutes a contribution to crimes committed by the members of an armed
16 group which take part in the operation. Nonetheless, it must be underscored that
17 the fact that the accused's conduct constituted a contribution to the military operation
18 which was decided in Beni does not preclude that his conduct may also constitute a
19 contribution to the commission of crimes by the Ngiti militia within the meaning of
20 Article 25(3)(d) of the Statute.

21 It is further established that the weapons which the Beni authorities furnished to the
22 local combatants in order to attack Bogoro were provided in large quantities and that
23 the fighting was extensive, inasmuch as the fire power was very great, not only taking
24 the UPC troops by surprise, but also the population as a whole. It has been
25 established that the weapons and ammunition secured the success of the operation

1 and Bogoro fell in just a matter of hours.

2 It is beyond doubt that much criminality was perpetrated directly by machete, but it
3 was the firearms which not only allowed the population to be taken by surprise and
4 the area to be captured, but also to wound and kill Bogoro's inhabitants.

5 Of note is that the manner in which the attack proceeded attests to the strength of the
6 fire power deployed to secure its success. The UPC was soon routed. The
7 explosions and the crackle of gun-fire not only struck fear into the population on
8 account of their volume and intensity, but also compelled it to flee, leaving it
9 vulnerable to shooting and forcing it to abandon its property. The Chamber has

10 already underlined that the attack against the Hema was undertaken both through
11 the elimination of people (men, women and children) and the destruction and
12 pillaging of their property wholly precluding survival or any return of survivors.

13 Lastly, it emerges from the Chamber's findings that those who attacked Bogoro
14 opened fire directly on scores of inhabitants and that they assaulted them by machete,
15 or further still directly shot and killed some of them.

16 In that context, therefore, it is apparent that Germain Katanga's contribution proved
17 to be particularly suited for the commission of the crimes which form part of the
18 common purpose, since that contribution had considerable influence on their
19 occurrence and the manner of their commission. His involvement allowed the
20 militia to avail itself of logistical means which it did not possess and which, however,
21 were of paramount importance to attacking Bogoro. His involvement, therefore, had
22 a truly significant part in bringing the crimes to pass. Germain Katanga's
23 contribution secured the military superiority of the Ngiti combatants over their
24 adversary, the UPC, and allowed them to see through their purpose of eliminating
25 from Bogoro the predominantly Hema civilian population.

1 In the case at bar, the Chamber noted inter alia that:

2 - Germain Katanga in the run-up to the attack, and as a key protagonist in the
3 alliances which the militia had forged, contributed to reinforcing the strike capability
4 of the Ngiti militia which carried out the crimes committed in Bogoro on
5 24 February 2003. He also contributed, by virtue of his position in Aveba - the only
6 area in the collectivité with an airport which could accommodate aircraft transporting
7 weapons - to equipping the militia and enabling it to operate in an organised and
8 efficient manner.

9 - Throughout the preparatory period of the attack in Aveba, he was the
10 intermediary of choice between the suppliers of weapons and ammunition and the
11 physical perpetrators of the crimes who were to deploy such weaponry in Bogoro.

12 - Absent that considerable supply of weapons to the Ngiti community and absent
13 the accused's contribution, which entailed organising and facilitating the supply of
14 weapons at a local level, the commanders and combatants of Walendu-Bindi
15 collectivité would not have had the same advantages, or have been able to
16 commit with as much efficiency the crimes which they perpetrated in Bogoro against
17 the Hema civilian population.

18 In the Chamber's view, it was therefore his activities as a whole and the various forms
19 which his contribution took that in the circumstances had a significant influence on
20 the commission of those crimes.

21 Ultimately the Chamber established that the accused meant to make his contribution,
22 which he moreover has not contested. It further established that he knew of the
23 intention of the group to commit the crimes which formed the common purpose
24 since:

25 - he knew that the Ngiti militia was preparing an operation against Bogoro with the

1 support of the authorities in Beni;

2 - he knew that the weapons and ammunition whose receipt and distribution he

3 facilitated would be used by the combatants during the attack;

4 - he was fully aware of how war was waged in Ituri and of the ensuing suffering

5 which the civilian population endured;

6 - he knew that a massacre of civilians had occurred in early September 2002, during

7 the attack by inter alia Ngiti combatants against Nyankunde and the resident Bira

8 population which was then allied to the Hema;

9 - he knew, therefore, that the Ngiti combatants from Walendu-Bindi had already

10 violently attacked the civilian population and were driven by an ideology inimical to

11 the Hema. Accordingly, the Chamber considered that these findings as a whole

12 establish beyond reasonable doubt that Germain Katanga's contribution to the crimes

13 of murder, attack against the civilian population, destruction and pillaging committed

14 in Bogoro on 24 February 2003 was significant and made in the knowledge of the

15 intention of the group to commit the crimes.

16 Would the accused please rise.

17 For all the reasons given today and relying in pursuance of the provisions of Article

18 74(2) of the Statute, on the evidence tendered and examined at trial and on the entire

19 proceedings, the Chamber:

20 By majority modifies, pursuant to Regulation 55 of the Regulations of the Court, the

21 legal characterisation of the facts such that the armed conflict connected to the

22 charges was not of an international character between August 2002 and May 2003;

23 By majority modifies, pursuant to Regulation 55 of the Regulations of the Court and

24 with the exception of the crime of using children under the age of 15 years to

25 participate actively in hostilities (Article 8(2)(e)(vii)), the legal characterisation of the

mode of liability initially applied to Germain Katanga under Article 25(3)(a) of the Statute (indirect co-perpetration) so as to apply to him Article 25(3)(d) (accessoryship through a contribution made in any other way to the commission of a crime by a group of persons acting with a common purpose);

Rejects the application for a permanent stay of proceedings;

Finds Germain Katanga guilty, within the meaning of Article 25(3)(d) of the Statute, as an accessory to the crimes committed on 24 February 2003 of:

- Murder as a crime against humanity under Article 7(1)(a) of the Statute;
- Murder as a war crime under Article 82(c)(i) of the Statute;
- Attack against a civilian population as such or against individual civilians not taking direct part in hostilities, as a war crime under Article 8(2)(e)(i) of the Statute;
- Destroying the enemy's property as a war crime under Article 8(2)(e)(xii) of the Statute; and
- Pillaging as a war crime under Article 8(2)(e)(v) of the Statute;

Unanimously finds the accused not guilty, within the meaning of Article 25(3)(d) of the Statute, as an accessory to the crimes of:

- Rape and sexual slavery as crimes against humanity under Article 7(1)(g) of the Statute;
 - Rape and sexual slavery as war crimes under Article 8(2)(e)(vi) of the Statute; and
- acquits him of those charges;

Unanimously finds the accused not guilty, within the meaning of Article 25(3)(a) of the Statute, of the crime of:

- Using children under the age of 15 years to participate actively in hostilities as a war crime under Article 8(2)(e)(vii) of the Statute and acquits him of that charge.

Consequently, the Chamber by majority decides that Germain Katanga shall remain

1 in detention until such time as sentence is passed and orders the Victims and
2 Witnesses Unit to take all necessary measures to ensure the protection of the
3 witnesses pursuant to Article 68 of the Statute.
4 Judge Van den Wyngaert appends a partially dissenting opinion to this judgment.
5 She has appended also a brief concurring opinion.
6 You can sit down now, Mr Katanga. Thank you.
7 Today the Chamber also issues an order concerning the sentencing procedure. Such
8 procedure -- Mr Prosecutor, Mr Hooper, Mr Gilissen, Mr Luvengika, such procedure
9 entails a time frame to which the Chamber specifically draws your attention. The
10 reparations procedure will then be implemented.
11 At this point, the Chamber thanks you for your kind attention. We would like to
12 thank the entire staff of the Registry. I cannot mention all of them, jurists and
13 technicians. We would like to thank the interpreters and the court reporters, as well
14 as all the devoted members of staff who have assisted in this hearing and the previous
15 ones. We also thank, it goes without saying, the assistants and all our collaborators
16 in the Chamber who assisted us throughout the proceedings.
17 Security agents, officers, you can please escort out Mr Katanga and we will meet you
18 again for the sentencing proceeding.
19 Court shall now rise.
20 (The hearing ends in open session at 10.50 a.m.)