

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 Sentencing Hearing

8 Monday, 5 May 2014

9 (The hearing starts in open session at 9.31 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) Please be seated.

14 Good morning to all in the courtroom.

15 Please, security officer, would you kindly bring Mr Katanga into the courtroom now

16 that the hearing is open.

17 (Mr Katanga enters the courtroom)

18 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Mr Katanga.

19 On 7 March by a majority, the Chamber found Germain Katanga to be guilty in part

20 of the charges brought against him. On the same day, the Chamber initiated the

21 procedure, the sentencing procedure. A number of submissions were filed,

22 following which the Chamber issued order number 3458 of 8 April 2014 authorising

23 the Prosecutor to call one witness and the Defence to call two witnesses.

24 It also issued decision number 3463 of 10 April 2014 authorising the Defence to

25 provide additional evidence.

1 On 29 April 2014, the Chamber spelt out the conditions in which the sentencing
2 hearings would take place from today, 5 May, to tomorrow, 6 May.
3 Today, 5 May, we shall hear Witness Byaruhanga by video link from the DRC and
4 this shall be done by video link. This witness is called by the Prosecutor.
5 This witness will be known as Byaruhanga. That is the only name by which he will
6 be -- the witness will be identified and reference will only be made to his present
7 occupation. If any references are to be made to the previous occupations of this
8 witness, it will be necessary to go into closed session.
9 Are we all clear and do we all agree on this point? Very well. Yes, thank you.
10 Then we shall proceed to hear two Defence witnesses, D02-401 and D02-404. The
11 Chamber recalls that D02-401 shall, pursuant to its decision of 25 April 2014, enjoy
12 protective measures whereby the witness will be given a pseudonym, his voice will
13 be distorted, his image will be distorted and closed session will be used when and if
14 necessary in order to protect the identity of the witness.
15 Similarly, the same measures shall apply to D02-404, who on Friday 2 May 2014
16 addressed such a request to the Chamber, and having consulted the Victims and
17 Witnesses section, the Chamber has determined that this witness deserves the same
18 measures. The Prosecutor and Defence have not expressed any objection thereto.
19 There will be a 30-minute break between the testimony of the Prosecution witness and
20 the testimony of D02-401. We will determine whether this break will coincide with
21 our normal break, or decide otherwise. As you can see from your screens, we are
22 already linked by video and soon by sound to the court officer whom we greet and
23 who is in the DRC.
24 The three witnesses are in different rooms waiting to be called as at now.
25 Mr Hooper, Mr O'Shea, for D02-401 and D02-404 we would like to ask you to ensure

1 that whenever we go into closed session it should be as briefly as possible in order to
2 uphold the public nature of hearings pursuant to the Statute. The Chamber would
3 request that you put together your closed session questions to avoid going in and out
4 of session, whereas the public nature of the hearings is the rule, and we thank you in
5 advance for what you are going to do along those lines.

6 In order to hear these witnesses, we shall proceed as usual. There will be an
7 examination-in-chief by the party that has called the witness, there will be remarks by
8 the legal representative for the Prosecutor's witness - and I refer you to our decision of
9 30 April 2014 - and then there shall be re-examination in possible.

10 Where possible, therefore, the OTP will begin its final submissions by the Prosecutor
11 herself and then the other members who have always been in the trial of
12 Germain Katanga. We shall begin, therefore, with these final submissions today and
13 continue tomorrow.

14 I want to recall finally that at the very onset of this hearing we must be aware of the
15 fact that we are sitting here in order to determine the sentence. This is a sentencing
16 hearing. Pursuant to the decisions of 8, 10 and 30 April 2014, it is no longer possible
17 to deal with the substance of this case and to matters that are already *res judicata*.

18 The Prosecutor shall not engage in any examination-in-chief as such of his witness.
19 The legal representative shall not delve into matters dealing with reparations which
20 will be dealt with subsequently or to revisit questions that have already been raised
21 by the Prosecutor.

22 Now, regarding your witness, Mr Prosecutor, as you have already suggested in your
23 filing of 7 April, paragraph 42, and as has been highlighted by the Chamber in its
24 decision of 17 April 2014, the idea here is to obtain information from the witness on
25 "the scope and ongoing nature of the damage suffered," end of quote. It is therefore

1 the Chamber's desire that questions to be put to the witness should have only a single
2 purpose; namely to provide the Chamber with information that will enable the
3 Chamber to better assess the sentence that it is called to deliver pursuant to a strict
4 application of Article 78(1) of the Statute and Rule 145 of the Regulations.

5 Subject to final submissions starting by the parties this afternoon, we shall focus on
6 the final submissions of the Defence and various submissions thereafter and, if
7 necessary, under Article 67(h) of the Statute, Germain Katanga will also have the
8 possibility to speak last.

9 Turning to the court officer, is it now possible to easily contact or link up with the
10 witnesses?

11 THE COURT OFFICER: (Interpretation) Yes, Mr President.

12 PRESIDING JUDGE COTTE: (Interpretation) We shall therefore proceed to hear
13 Mr Byaruhanga, OTP or Prosecution witness.

14 Court officer, can you tell us the language in which Mr Byaruhanga will be speaking?

15 THE COURT OFFICER: (Interpretation) The first witness will speak in French and
16 the court officer in the DRC will go fetch the witness. Thank you, Mr President.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

18 Court officer in the DRC, would you please now kindly bring the witness into the
19 courtroom set aside for that purpose.

20 (The witness enters the video-link room)

21 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness. Can you
22 hear me?

23 WITNESS: THE PROSECUTION WITNESS

24 (The witness speaks French)

25 THE WITNESS: (Interpretation) Yes, I can hear you clearly.

- 1 PRESIDING JUDGE COTTE: (Interpretation) Do you hear me clearly?
- 2 THE WITNESS: (Interpretation) Yes, I can hear you.
- 3 PRESIDING JUDGE COTTE: (Interpretation) Now, Witness, I want to ask you to
4 speak slowly in order to facilitate interpretation. Do you understand me?
- 5 THE WITNESS: (Interpretation) Okay, yes.
- 6 PRESIDING JUDGE COTTE: (Interpretation) I would like to ask you to tell the
7 Court your name, your full names.
- 8 THE WITNESS: (Interpretation) My names are Kisembo Byaruhanga Salomon.
- 9 PRESIDING JUDGE COTTE: (Interpretation) Your date and place of birth?
- 10 THE WITNESS: (Interpretation) 18 May 1983.
- 11 PRESIDING JUDGE COTTE: (Interpretation) And your place of birth?
- 12 THE WITNESS: (Interpretation) Nyankunde.
- 13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. What is your current
14 residence?
- 15 THE WITNESS: (Interpretation) My current residence is in Bogoro.
- 16 PRESIDING JUDGE COTTE: (Interpretation) Thank you. What is your present
17 occupation?
- 18 THE WITNESS: (Interpretation) I am currently the chef de groupement of Mabias
19 (phon) in Bogoro.
- 20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I am going to read out
21 the solemn declaration that you have to make and I read: "I solemnly declare that I
22 will tell the truth, the whole truth and nothing but the truth." Did you hear me?
- 23 THE WITNESS: (Interpretation) Yes, I heard you.
- 24 PRESIDING JUDGE COTTE: (Interpretation) Do you therefore undertake to speak
25 the truth, the whole truth and nothing but the truth?

1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE COTTE: (Interpretation) You have therefore to speak the
3 truth, and if you do not speak the truth, you may be prosecuted for perjury or false
4 testimony. This is pursuant to Article 69(1) of the Statute and Regulation 66(1) and
5 (3) of the Rules of Procedure and Evidence.

6 Now, Mr Witness, I am going to ask the Prosecutor to now put some questions to you.
7 That will be followed by the legal representative of the main group of victims who
8 may also put some questions to you. Then Germain Katanga's Defence may also
9 have some questions for you. I urge you to listen carefully to the questions, to
10 answer as clearly and as briefly as possible, except when you want to provide further
11 information or additional information to your question. And please remember to
12 speak slowly for the reasons that I have already stated.

13 I now ask the Prosecutor to take the floor.

14 MR MACDONALD: (Interpretation) Thank you, Mr President, your Honours. I
15 would like to request permission to speak sitting down so that I may be able to see the
16 witness on the screen. If I am authorised to do so, I would be happy to somehow
17 adjust this rule of rising before questioning a witness.

18 PRESIDING JUDGE COTTE: (Interpretation) That is fine, Mr Prosecutor. I have
19 consulted my colleagues and they seem to be in agreement.

20 MR MACDONALD: (Interpretation) Thank you.

21 With your leave, your Honours, we need a few seconds to address a slight technical
22 problem on our side before I proceed.

23 PRESIDING JUDGE COTTE: (Interpretation) Those in the public gallery must
24 understand that we are working by video link and dealing with some great distances
25 today and these -- this might slow down our proceedings, so I urge them to be

1 patient.

2 QUESTIONED BY MR MACDONALD: (Interpretation)

3 Q. Good morning, Mr Byaruhanga. I am going to be questioning you with a view
4 to updating, so to speak, information about Bogoro. We want to know how the
5 Bogoro community is faring today in terms of recovering from the attack of
6 24 February 2003. This is what I intend to do with you. Is that fine by you?

7 A. Yes.

8 Q. Mr Byaruhanga, I do understand that recently we were able to take a statement
9 from you by telephone. Do you remember that?

10 A. Yes.

11 Q. This happened specifically on 15 April 2014 in the evening. Is that the case?

12 A. Yes.

13 Q. My question, therefore, will bear essentially on the same issues that we
14 discussed during the taking of that statement. In general terms, Witness, today in
15 the month of May 2014, what are -- in fact, are there still any subsisting consequences
16 of the Bogoro attack in the community today, either consequences that can be seen or
17 that are apparent in the victims as the consequences of that attack, and if yes, what are
18 the consequences?

19 A. Yes, there are still some consequences of the Bogoro attack. The consequences
20 include the presence of widows and widowers and orphans and orphans do not have
21 the requisite resources to attend school. They are abandoned. They don't have any
22 host families. These are the situations that we can refer to as the consequences.

23 Now, still talking about consequences, you will see that there are physically
24 handicapped persons in the community. People are traumatised. To this date, in
25 the neighbouring villages of the Walendu-Bindi community, we are still being

1 attacked by the Cobra Matata militia. Every now and then you hear gun-shots, and
2 when that happens the people of Bogoro immediately remember what happened, and
3 they then become frightened. So they are afraid to travel out of Bogoro because of
4 prevailing security problems.

5 Q. Very well. Let me now again touch on some of the items which you just talked
6 about. I want to focus on the very last part of your answer. And you talked about
7 what I would refer to as the psychological effects of the Bogoro attacks. You said a
8 short while ago that when people hear gun-shots, they are reminded of something.
9 My question is what are they reminded of specifically?

10 A. Well, that raises a problem of insecurity. You see, when we hear gun-shots,
11 whether it is between militia and the government, what happens is that the people
12 begin to think that maybe the militia will go beyond fighting with the government
13 forces to return to our Bogoro community.
14 About a month ago, soldiers came as close as 3 kilometres from Bogoro in order to
15 ward off the displaced persons in a certain community, and that is what frightens the
16 people of Bogoro.

17 Q. You referred to the displaced persons of Embargo, Embargo is the word you
18 used, and this village is some 3 kilometres away from Bogoro and that when these
19 things happened they have an impact on Bogoro. Let me now speak to the impact
20 and consequences of the attacks on widows and widowers and orphans. Can you
21 tell us what you mean specifically when you talk about the consequences of the
22 attacks on widows and widowers?

23 A. When I speak of widows and widowers, I am referring to people who were
24 affected by the war who have nobody to take care of them, who live in very poor
25 conditions, who have no means of sustenance, and these are the people I refer to as

1 widows and widowers. They have no resources for their health, no support so to
2 speak. These are the types of people I am talking about.

3 Q. Very well. I would now like to refer to another category which you mentioned,
4 orphans. You said that following the Bogoro attacks there were some orphans.
5 Can you tell us how those orphans are faring today? How are they surviving?
6 How are they living as orphans?

7 A. Okay, okay. Some NGOs are taking care of some of the orphans who tried to
8 identify host families for them in Bogoro. These NGOs are helping them to go to
9 primary school from year 1 to year 6, but they are unable to support these children in
10 secondary schools or in trade schools. However, there are some orphans who were
11 not lucky enough to be recruited, so to speak by, the NGOs. You see, the NGOs
12 have their set ways of selecting these orphans based on the resources available to
13 them as well.

14 Q. So who is helping those orphans who unfortunately no longer have any families
15 and who do not meet the criteria of the NGOs? As far as you know, how are
16 those -- how is that category of orphans surviving?

17 A. Can you repeat your question?

18 Q. Those orphans who unfortunately are not supported by surviving members of
19 their families, nor by NGOs, how are they living today? How are they surviving
20 today?

21 A. Those orphans who are not supported by their families nor by NGOs; is that
22 your question?

23 Q. Yes.

24 A. Those orphans have to live with various families here and there. Some of them
25 have to struggle to survive by themselves and on their own.

1 Q. Very well. Now, let me move on to discuss with you the idea of those who are
2 still physically handicapped. In your answer, you said that there are some persons
3 who are handicapped today.

4 A. Yes.

5 Q. Can you explain to us what and who those physically handicapped persons are
6 and how they are living or surviving today?

7 A. The physically handicapped persons are struggling to survive. Some NGOs
8 have tried to reinsert them into society by helping them to learn some trades, or to
9 fend for themselves. Others live today with shrapnel and bullets in their bodies and
10 they are in great pain. They still suffer physical pain in their body.

11 Q. These victims who still have pieces of shrapnel in their bodies, do you think that
12 they will have to go on living with these pieces of shrapnel in the bodies, or is
13 anything being done to provide treatment?

14 A. Well, it is possible to provide treatment. Some treatment has been provided.
15 One NGO, for example --

16 THE INTERPRETER: Inaudible.

17 THE WITNESS: -- has been able to find some resources, but other people have not
18 been assisted.

19 THE INTERPRETER: Message from the interpreters: Sound quality is very poor.
20 We will do our best, but cannot ensure accuracy.

21 MR MACDONALD: (Interpretation)

22 Q. If I could hark back to the trauma that you mentioned earlier, what do you
23 mean by that when you mention trauma? And I'm speaking of today, May -- the
24 situation in May 2014.

25 A. Well, I mentioned trauma and you see I made mention of the general levels of

1 danger. There are various movements, people going back and forth in the
2 surrounding villages, and this harks back really to the attack upon Bogoro. It all
3 goes back to that particular attack.

4 Q. Very well. I'd now like to ask you some questions about the financial impact of
5 the attack. Are there still financial impacts stemming from that attack?

6 A. The financial impact in Bogoro, most of the people there raise animals, cattle
7 and the like, so you see there is an economic impact. People who raise animals are
8 afraid to take the cows out to pasture because, you see, some of the pasture is just
9 beside Walendu-Bindi and there are movements of various people and, you see, at
10 times the animals are stolen, people are killed, so the economic impact is there
11 because of the general danger. Some people have had to flee as far as South Africa
12 in actual fact.

13 Q. Mr Byaruhanga, if I could clarify my question and put it in simpler terms. Let
14 me break it down into sections. Now, first of all, the people who fled subsequent to
15 the attack on Bogoro in February 2003, the survivors, did all these people come back?

16 A. Yes. Yes, thanks to God some people survived. Some went -- came back to
17 Bogoro. Some of the people continue to live elsewhere in Uganda, Bunia, Kasenyi,
18 Tchomia. They have taken refuge in these other places.

19 Q. Now, just to clarify matters to make sure we have understood one another, do
20 you know why these people who are still in Uganda or surrounding areas, Kasenyi,
21 Tchomia, why have they not come back to live in Bogoro?

22 A. Well, you see, they were afraid to come back to Bogoro. You must realise the
23 Bogoro war, the attack, the massacre -- these events have left them with very painful
24 memories and now today the people -- you see, I wish to speak of our brother,
25 Germain Katanga. People remember the war because, as you heard,

1 Germain Katanga was -- his movement was armed and -- you see, there were
2 massacres, massacres perpetrated upon the population and groups, and these events
3 have left difficult memories. People don't want to come back because of the high
4 levels of danger in Walendu-Bindi.

5 Q. Now, if we could ask you some questions about the community facilities in
6 Bogoro, the buildings that were for the general use of the entire population. Can
7 you tell us whether everything has been rebuilt? Have the churches and the schools
8 and other buildings, the administrative buildings, have they been rebuilt?

9 A. The infrastructure; there was an NGO that tried to build a few buildings for the
10 community following certain criteria, the number of people in --

11 THE INTERPRETER: Inaudible.

12 THE WITNESS: (Interpretation) Some NGOs tried to build some schools and
13 administrative buildings, but as for the churches, no, because you see the NGOs focus
14 on the community, not -- they don't work on a religious basis.

15 MR MACDONALD: (Interpretation)

16 Q. Now, these NGOs, or the community within Bogoro, have they been able to
17 rebuild all the schools that existed beforehand that were operating back then, all the
18 buildings?

19 A. No.

20 THE INTERPRETER: Inaudible.

21 THE WITNESS: (Interpretation) Only primary schools have been rebuilt, not
22 secondary. As for the administrative buildings, they've only built some, not all the
23 departments.

24 MR MACDONALD: (Interpretation)

25 Q. Now, we know that the village was destroyed. We know that houses and

1 residences were destroyed as well. Now, let us take the case of a civilian who lost
2 everything. Would such a person be living the same kind of life as beforehand,
3 before the attack?

4 A. No.

5 Q. Why?

6 A. Well, I can give you an example. Before the attack, there was a person who
7 had a number of cattle. Everything was looted and this person has to begin all over
8 again by cultivating the fields. Someone who's lost all his savings --

9 THE INTERPRETER: Inaudible.

10 MR MACDONALD: (Interpretation) We seem to be straying into the area of
11 reparations, your Honour. Now, a cow, I think we should determine what the value
12 of a cow would be today in 2014.

13 PRESIDING JUDGE COTTE: (Interpretation) Well, if this allows us to better assess
14 the harm done, yes, you can ask the question. Go ahead, Prosecutor.

15 MR MACDONALD: (Interpretation) Thank you.

16 Q. Witness, to your knowledge, how much does a cow cost these days in the year
17 2014? You said that a farmer might have lost 200 cows. Could you tell us what the
18 price of a cow is? How much does a cow cost?

19 A. Please repeat the question.

20 Q. In May -- in May 2014, what is the cost of a cow in the Ituri region if you want to
21 make up for that loss? How much does a cow cost?

22 A. The loss of villages?

23 Q. No, no, no, the loss of a cow.

24 A. Oh, I see. I see. A cow on the public market, \$200 to \$500.

25 Q. Very well. To conclude, if I could hark back to one particular topic once again,

1 something that we touched upon during our discussion, our telephone conversation.

2 Now, if today if you were to tell us what the main impact was of the Bogoro attack,
3 what would you say is the main impact? What has left the deepest scar?

4 A. I beg your pardon?

5 Q. If you had to describe the main consequence of the Bogoro attack that is still
6 seen today, what would that be? What is the most distinctive consequence that the
7 community is still experiencing today in Bogoro?

8 A. The main consequence is poverty.

9 MR MACDONALD: (Interpretation) Very well.

10 Your Honours, if you don't mind, I just need to consult my colleagues? I'm nearly at
11 the end.

12 PRESIDING JUDGE COTTE: (Interpretation) Very well. Please consult your
13 colleagues.

14 (Pause in proceedings)

15 MR MACDONALD: (Interpretation)

16 Q. Very well. Now, if I have understood you correctly, you're saying that the
17 main consequence or the main suffering of the community today is poverty; is that
18 correct?

19 A. Yes.

20 MR MACDONALD: Very well. Thank you, sir. Those were all the questions that
21 we had for the sentencing hearing today, because that was the intent of the
22 Prosecution. We wanted to ask you questions in order to get updated information
23 regarding the consequences of the attack on your community.

24 I have now concluded, your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.

1 Mr Luvengika, I believe a few days ago you told the Chamber that you wish to put a
2 few questions. The Chamber responded to all parties and participants, including
3 yourself, saying that there was no barrier to that, but there were a few conditions.
4 Just to ensure a straightforward proceeding, please do not ask questions that have
5 already been put by the Prosecution. We shall not go back to the material facts. We
6 will not touch upon the issue of reparations. We are currently proceeding
7 subsequent to Regulation 145, and I shall read it out in actual fact so everything shall
8 be crystal clear, "When setting the sentence, the Court shall take into account the harm
9 suffered by victims and their family members and the scope of the harm done."
10 So that is the framework within which we are operating, so please restrict yourself
11 and please respect the provisions of Article 68 and Regulation 145. So please restrict
12 yourself to items of information that will allow the Chamber to better assess, to better
13 assess the harm that has been done to victims. And I would like to also draw your
14 attention to the fact that -- now, in relation to sexual offences, Mr Katanga was
15 acquitted of the counts of rape and sexual slavery, and in actual fact this relates only
16 to attacks on the civilian population.

17 MR NSITA: (Interpretation) Thank you, your Honour.

18 I would like to ask the Chamber for a few moments so I could consult my team and
19 perhaps refocus my questions pursuant -- or subsequent to the questions already put
20 by the Prosecution.

21 PRESIDING JUDGE COTTE: (Interpretation) We will allow you a few moments,
22 and I'm sure Maître Denis has been preparing possible questions while listening to
23 the examination and I'm the two of you will have an opportunity now to select the
24 appropriate questions. All participants shall remain in the courtroom.

25 (Pause in proceedings)

1 PRESIDING JUDGE COTTE: (Interpretation) Witness, we shall suspend for just a
2 few moments so that the legal representatives of victims can determine exactly which
3 questions they will be asking, because you see the Prosecution has already put a
4 number of questions to you. So please don't be surprised by this short period of
5 silence.

6 THE WITNESS: (Interpretation) Thank you.

7 (Pause in proceedings)

8 MR NSITA: (Interpretation) Your Honour, with your leave and subsequent to the
9 questions put -- well, rather, as my colleague from the Prosecution asked, I too would
10 like to remain seated if that is --

11 PRESIDING JUDGE COTTE: (Interpretation) No, no, no, that's just fine. You
12 may be seated. And if the Defence team wishes to remain seated once it is their turn,
13 they may do so of course. Because you must view the screen, it is only fitting for
14 you to be seated.

15 MR NSITA: (Interpretation) Thank you.

16 QUESTIONED BY MR NSITA: (Interpretation)

17 Q. Good morning, sir. Can you hear me?

18 A. Good morning. Yes, I can hear you.

19 Q. I would like to ask you some questions about the consequences of the Bogoro
20 attack of February 2003 and, when we make mention of the attack, we will be
21 focusing on that particular count -- attack, the one of 24 February 2003. If you don't
22 understand a question, don't hesitate to ask me to rephrase the question. And, if you
23 don't -- or if you can't answer a question, don't hesitate to just say, "I can't answer," or
24 "I don't know".

25 A. Yes.

1 Q. As was the case with the Prosecution, please answer briefly and succinctly. I
2 will try to ask you questions slowly so that you can better grasp the scope of these
3 questions I am putting to you.

4 My first question is this: As the chef de groupement, the community leader, could
5 you explain to us what your duties are in relation to the people of Bogoro; the duties
6 that you must perform for the local population?

7 A. I work to serve them in terms of security activity. I try to lead them towards
8 better understanding of the law of the republic, because you see I am a representative
9 of the republic; of the leaders of the republic.

10 Q. Well, you say that you represent the community and that you play the role
11 of -- well, you play an administrative role. Would it be correct to say that you often
12 are in touch with the people who you represent?

13 A. Please repeat.

14 Q. Would it be correct to say that you frequently are in contact with the people of
15 Bogoro, of the -- you regularly see and interact with these people?

16 A. Yes. Yes, that is the case.

17 Q. Witness, Mr Byaruhanga, now earlier in response to a question put by the
18 Prosecutor, you made mention of orphans. I would like to ask you some general
19 questions about the people of Bogoro. Now, before the attack on Bogoro, what was
20 the schooling of children living in Bogoro in general terms?

21 A. Okay. Before the Bogoro attack, there were many primary schools and there
22 were two secondary schools. Children went to school --

23 MR HOOPER: I just -- sorry to interrupt.

24 THE WITNESS: (Interpretation) -- and depending on the resources --

25 MR HOOPER: We've had evidence of this in the trial and we heard that the schools

1 have been closed for a significant period of time before the attack.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper --

3 MR HOOPER: I don't want to intrude. It's because of the situation with -- I'll say
4 no more -- with the witness.

5 PRESIDING JUDGE COTTE: (Interpretation) Well, in actual fact you did interrupt,
6 but you are entitled to do so.

7 Mr Luvengika, please, as you made a commitment to, please ensure that your
8 questions are clear, that the answers are brief and please avoid overlap. It's
9 important for the Chamber to, among other things, take into account the extent of the
10 harm done, the nature of the harm done, and so the Chamber does need to assess to
11 what extent the attack on Bogoro had an impact and whether these -- this impact
12 continues. That is the point of the hearing.

13 And I wish to reassure you, Mr Hooper, the Chamber will be able to take all of this
14 into account, and we will sort through the information and consider what is relevant
15 and set aside information that is not.

16 So please go ahead.

17 MR NSITA: (Interpretation)

18 Q. Witness, I would now like to go on to the second part of my questions, not
19 about the schools. Now -- rather, could you tell us what the current level of
20 schooling is in Bogoro?

21 THE INTERPRETER: Overlapping speakers.

22 MR NSITA: (Interpretation)

23 Q. How are parents able to manage the schooling of their children, not orphans,
24 but their children in general terms?

25 A. Before the attack or after?

1 Q. After the attack.

2 A. Okay. Since the time of the attack, parents have had to school their children,
3 but with difficulty. Some parents, well, you see, they need to do additional work to
4 provide for the schooling of their children.

5 Q. Is this the case with all parents and all the children of the families?

6 A. No, no. This only happens where the families have very few resources.
7 Others have tried to move forward, have engaged in trade or stock breeding at
8 relatively low levels, but they -- they are struggling to generate income to provide
9 schooling for their children. But those who don't have resources are struggling to
10 send their children to school by looking for money from -- from others, by begging for
11 money actually from others.

12 Q. Witness, according to information available to you, can you explain to us
13 whether the families of persons who were killed were able to bury their dead ones,
14 and if not, why not?

15 A. You see, during the attacks on Bogoro, it was not possible to return to Bogoro to
16 bury the dead bodies. The dead bodies were abandoned. They were eaten up by
17 dogs and birds. They could not be buried because of the lack of security. We
18 returned to Bogoro in 2005, and at that time there were some militia still in Bogoro,
19 but, you see, some people tried to bury their dead.
20 Others tried to identify what had happened. They were told that their family
21 members had fled in a particular direction, and when they went in that direction, they
22 may have found an old piece of clothing or some bones that may resemble the bones
23 of their dead bones, and I think they simply gathered up those pieces of material and
24 tried to bury them. But for the most part others were not able to identify their dead
25 ones.

1 Q. Thank you very much. Now, going by information available to you, can you
2 explain to us whether the families were able to organise funerals for their dead ones?

3 A. No. Some tried to do what they could with their own private resources. I for
4 one tried to organise a prayer session in memory of the entire Bogoro community. I
5 did this once and it did bring some relief and solace to the Bogoro community.

6 Q. Do you know why it is that private individuals or families were not able to
7 organise funerals for their dead ones?

8 A. You see, in order to organise these things, it may have been necessary to take
9 into account the prevailing security circumstances.

10 Q. I'm talking about families that returned to Bogoro after the attacks. Did those
11 families that returned have an opportunity to organise funerals or mourning
12 ceremonies for their dead ones?

13 A. Some did. Some did not. It all depended on the available resources. So
14 some people did not have the necessary resources, because they were concentrating
15 on providing education for their children and for surviving for themselves. So I
16 already told the Prosecutor that the main problem in the area is poverty, so it was
17 difficult for this to be done.

18 MR NSITA: (Interpretation) Thank you, Witness.

19 Mr President, I now have a question, which clearly the Chamber had made
20 observations on, and this relates to sexual violence. However, the purpose of the
21 question today is in line with the criterion that deals with an attack against a civilian
22 population.

23 What I seek to determine through this question is the psychological state of the
24 Bogoro community in view of these crimes and these crimes that were committed
25 against the civilian population at the time. I do not know whether I have permission

1 to put such a question to the witness? If not, then I'll move on, Mr President.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Luvengika, I was very clear
3 when I stated that Germain Katanga was not found guilty of rape and sexual violence.
4 When we heard the substantive submissions, some young women came from Bogoro
5 to address the Court on issues of rape and sexual enslavement. During those
6 hearings we had the opportunity to determine what the fate of the young woman
7 who was raped would be in such a community as the one we are dealing with.
8 Now, given that your question would be revisiting this kind of question, I believe that
9 the Chamber is fully informed and that it might be wiser for you to move on to
10 another set of questions, and in any event this would avoid the Court having to hear
11 any remarks from Mr Hooper or Mr O'Shea. This is all I have to say, and please I ask
12 you to proceed.

13 MR NSITA: (Interpretation) Thank you.

14 Q. Mr Byaruhanga, from information available to you, how many family members
15 would you say were affected by the Bogoro attacks? Would it be many families, a
16 few families, or all the families in Bogoro?

17 A. I think that a lot of families were affected. I cannot say that all the families in
18 Bogoro were affected. You see, the Bogoro attack occurred over some time and some
19 people had tried to escape before the attacks of the 24th. Now, those who were
20 attacked, threatened or looted, I think what I can say is that many families were
21 affected in Bogoro.

22 Q. Mr Byaruhanga, I have one last question for you and I'll stop there. Are you
23 aware of any steps taken by Germain Katanga to indemnify or to compensate the
24 victims?

25 A. Please repeat your question.

1 Q. Are you aware of any steps taken by Germain Katanga to provide compensation
2 to the victims in Bogoro?

3 A. No.

4 MR HOOPER: (Microphone not activated)

5 MR NSITA: (Interpretation) That will be all, Witness.

6 Thank you, Mr President. Thank you, your Honours.

7 PRESIDING JUDGE COTTE: (Interpretation) We thank you, Mr Luvengika.

8 Mr David Hooper, Mr O'Shea, do we have any questions from the Defence for this
9 witness?

10 MR HOOPER: Yes, just a few if I may, thank you, and if I take up your offer of
11 sitting down during my questions?

12 PRESIDING JUDGE COTTE: (Interpretation) That is fine, but let me put a question
13 to you before you proceed. Mr Hooper, do you think that your questions could be
14 handled in 20 minutes? Will you be done in 20 minutes?

15 MR HOOPER: Yes, yes. I hope, yes.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. I'm not trying to limit
17 your time, but I just want to be able to organise our hearings properly. Thank you.
18 And please be seated.

19 QUESTIONED BY MR HOOPER:

20 Q. Good morning, Mr Byaruhanga. Can you see me? I see from my image I am
21 sort of side on to you there. And perhaps it would be better in those circumstances if
22 I faced what I understand to be the camera. We've --

23 A. I can see you very well. I can see you.

24 Q. I won't move about.

25 Well, first of all, let me welcome you as it were to our hearing this morning on behalf

1 of the Defence. We've met before. I've introduced myself to you as a matter of
2 courtesy on a number of visits that I've paid over the years to your village.

3 And I'm here this morning with other members of my team, Caroline Buisman, who
4 you know very well, for example, Mr O'Shea and Sophie Menegon, again people
5 I think you've met.

6 I don't have very many questions of you, but let me ask you this: We're now over
7 11 years since that dreadful day. Am I right in saying this: That today in 2014 in
8 your village, the Ngiti and the Hema people living there are living together in
9 harmony?

10 A. Yes, the Ngiti and Hema people in Bogoro are living in harmony. We have no
11 problem.

12 Q. It's a wonderful thing for us all to hear.

13 My understanding is that over the past year or two, and particularly over the last year,
14 and in particular -- in particular, because of the arrival of Cobra Matata back into
15 the area, there has been an increase in insecurity; is that right?

16 A. Yes, that is correct.

17 Q. And your efforts to help develop Bogoro have been handicapped over the last
18 year or so by that insecurity, because people have not been willing to come back and
19 settle down again; is that right?

20 A. Yes.

21 Q. There have also I understand been general economic problems not just in
22 Bogoro, but in Ituri and indeed in the republic, because the government has not
23 managed its --

24 A. Excusez?

25 Q. Pardon?

1 A. I'm sorry.

2 Q. Let me start that question again and, if you have any difficulties, just let us
3 know. We are many thousands of miles -- of kilometres apart, you and I, so there
4 are going to be difficulties.

5 My question was this: Am I right in saying that there's also been a high level of
6 economic difficulties in Ituri, as with other parts of Congo, because of for example
7 failed government policies, very high unemployment and in particular -- in
8 particular very high youth unemployment; is that right?

9 A. Yes. Yeah, that is correct. Yeah, unemployment.

10 Q. Now, the Congolese Army, the FARDC, I understand today or recently they
11 have been camped in your village in large numbers; is that right?

12 A. Which -- which army?

13 Q. The FARDC, the Congolese National Army?

14 A. Mm.

15 Q. And when you say "Mm," is that a "Yes"?

16 A. Yes, indeed. Yes, uh-huh.

17 Q. When you say "Mm," would it be right to say that --

18 A. (No interpretation)

19 Q. Yes.

20 A. I am saying "Yes" actually.

21 Q. Yes. And in fact would it be right to say that they have caused difficulties by
22 their presence to the local people, or is that something perhaps you'd rather not say?

23 A. Please repeat.

24 Q. Has the presence of the FRDC in Bogoro caused difficulties to local people?

25 A. Well, for now with the movements of Cobra Matata's militia, what has

1 happened is that the soldiers came towards the Walendu-Bindi collectivity in order to
2 provide security. You know that the Walendu-Bindi territory is quite a vast piece of
3 land, and with the militia moving about those militia are always able to overwhelm
4 the soldiers, so to speak, and to circumvent them in the Bogoro area and that is why
5 some fear still continues to prevail in the Bogoro community area.

6 Q. Now, you've told us about efforts that had been made by NGOs to rebuild
7 schools in Bogoro and also to provide housing. Do you know -- are you in a position
8 to help us today as to your knowledge as to the extent to which rebuilding of homes
9 and institutions has taken place in the Ngiti areas of Walendu-Bindi?

10 A. Are you talking about houses built in the Walendu-Bindi collectivity?

11 Q. Yes. My understanding is that there's been very little construction done, or
12 reconstruction done. Can you help me as to that?

13 A. I'm sorry. Are you talking about houses built by NGOs in Bogoro, or in the
14 Walendu-Bindi collectivity?

15 Q. I'm talking about -- you've told us about the houses in Bogoro. I'm asking you
16 about the houses in Walendu-Bindi. And let me put the question like this: I
17 understand that there's been very little rebuilding in the Walendu-Bindi area. Do
18 you know if that's right?

19 A. I have -- I have no idea. What I notice is that NGOs are active in the
20 Walendu-Bindi collectivity, but I have not visited the entire area to see what is
21 happening. I was able to go to Gety -- to Ngiti (sic), but when we look at what is
22 happening in Gety we see that some administrative buildings have been
23 reconstructed. I was able to observe that. I have seen that some schools have been
24 built here and there. A hospital or health centre in Nombe has also been rebuilt.
25 As I drive along I see one or two things happening here and there, but I cannot give

1 you an overview of what is happening in the Walendu-Bindi collectivity as a whole.

2 MR HOOPER: Well, in any event, thank you very much for your answers this
3 morning. Those are all my questions and thank you very much for joining us.

4 THE WITNESS: (Interpretation) Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper.

6 We therefore take it that the testimony of Mr Byaruhanga is now completed
7 and -- just a second, please.

8 (Trial Chamber confers)

9 PRESIDING JUDGE COTTE: (Interpretation) Mr Byaruhanga, Madam Diarra, the
10 Judge, has a question for you.

11 JUDGE DIARRA: (Interpretation) With the leave of the Presiding Judge and my
12 colleague, I have a small question for you. When you were asked what your role
13 was or your duties were as the chief of your community, you said that you were there
14 to serve the population, to help them and somehow act as a representative of the
15 State.

16 Now when you answered Mr Hooper's question relating to schools and health centres,
17 you said that you saw schools being built, you saw health centres being built, here
18 and there, and all of a sudden it appeared as if you had become passive, as if you had
19 a passive role. Do you think it is possible to come to your village and build schools
20 and invest and you would not be aware of who was doing it and for what reason?

21 THE WITNESS: (Interpretation) I thought that his question was in relation to the
22 Walendu-Bindi collectivity, because of -- I was able to note that he was asking about
23 Walendu-Bindi, and I said that as I went by I observed that a health centre was built
24 in Nombe, schools were built here and there in Gety, as well as administrative units,
25 and the police district building in Walendu-Bindi, not in Bogoro.

1 JUDGE DIARRA: (Interpretation) Thank you very much for that clarification.

2 Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Judge Diarra.

4 Thank you, Witness. We thank you for having given of your time to travel to the
5 premises of the Court in an external location from The Netherlands. So we thank
6 you for your answers and the information which the Court shall use in its assessment
7 of the situation.

8 So we thank you once again, and I would like to ask the court officer in the DRC to
9 please kindly release Mr Byaruhanga from the room where he is and we shall
10 continue our proceedings as soon as he leaves.

11 THE COURT OFFICER (Remote Location): Thank you, your Honour. Yes, indeed.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.

13 (The witness is excused)

14 PRESIDING JUDGE COTTE: (Interpretation) I believe that the witness has left the
15 room.

16 THE COURT OFFICER (Remote Location): (Interpretation) Yes.

17 PRESIDING JUDGE COTTE: (Interpretation) We shall take a break of 30 minutes
18 between the two testimonies, and this is required when we proceed by video link, and
19 that break now seems to coincide with our one-and-a-half hour regular time for
20 breaking.

21 So I want to point out that Witness D02-404 expressed the desire that at the end of his
22 testimony he would like to speak with Mr Germain Katanga, this being the case with
23 other witnesses who have been heard here in the courtroom. So I ask the Registry to
24 organise that contact with Mr Germain Katanga at the end of Witness D02-404's
25 testimony.

1 We shall adjourn 'til 11.30 and resume at that time with the hearing of Witness
2 D02-404, who will be examined by Mr Hooper and his team and then later by the
3 Prosecutor, and thereafter we shall determine how the rest of the proceedings shall
4 unfold.

5 I omitted to greet the Prosecutor earlier on because I didn't quite see her, but we will
6 see later on whether she would speak today or later on.

7 In any event, it is time to adjourn and we shall resume at 11.30. Thank you.

8 (Recess taken at 10.54 a.m.)

9 (Upon resuming in open session at 11.36 a.m.)

10 THE COURT USHER: All rise.

11 PRESIDING JUDGE COTTE: (Interpretation) The hearing shall now resume.

12 Please be seated.

13 Mr Katanga is present. Excellent.

14 Court officers, namely the court officer here and the court officer in the remote -- at
15 the remote location, if you could please bring the witness into the room in the remote
16 site, Witness D2-404 (sic). Good morning.

17 WITNESS: DRC-D02-P-0401

18 (The witness speaks French)

19 THE WITNESS: (Interpretation) Good morning.

20 PRESIDING JUDGE COTTE: (Interpretation) I can see that you can hear me and
21 I can see you and hear you. Will you be testifying in French?

22 THE WITNESS: (Interpretation) Yes.

23 PRESIDING JUDGE COTTE: (Interpretation) Very well. I would like to remind
24 you - and this is a reminder for everyone else in the courtroom - this particular

1 witness benefits from protective measures, and we will refer to you as D2-401 and we
2 will not be referring to your identifying characteristics. Your voice will be distorted
3 and your image will be scrambled on the broadcast.

4 If necessary -- if it is necessary to mention any identifying information, the Chamber
5 will order that the Court go into private session, but we are going to try to avoid
6 private session as much as possible because the general rule is to hold these hearings
7 in public as much as possible.

8 We will now go into private session, court officers, so that we can get the required
9 information from this witness, D2-401.

10 (Private session at 11.38 a.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Open session at 11.40 a.m.)

5 THE COURT OFFICER: (Interpretation) We are in open session.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

7 Witness, the oath goes as follows and I shall read it out: "I solemnly state that I shall
8 tell the truth, the whole truth and nothing but the truth." Have you heard me say
9 those words?

10 THE WITNESS: (Interpretation) Could you repeat?

11 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course. I hereby commit to
12 telling the truth, the whole truth and nothing but the truth. Have you heard me?

13 THE WITNESS: (Interpretation) Yes.

14 PRESIDING JUDGE COTTE: (Interpretation) Do you swear that you shall tell the
15 truth, the whole truth and nothing but the truth?

16 THE WITNESS: (Interpretation) I shall tell the truth, the whole truth and nothing
17 but the truth.

18 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you very much,
19 Witness.

20 So you will tell us the truth and I must point out to you that if you were not to tell the
21 truth, you could be charged and prosecuted for perjury.

22 The Chamber takes note that the provisions of Article 69(1) and also the Rules of
23 Procedure and Evidence have been complied with. We are in open session right
24 now.

25 Now, Mr Hooper, Mr Katanga's Defence counsel, will be asking you questions first

1 and if he requires identifying information from you, we will go back into private
2 session, but I wish you to be quite sure of that point.

3 Mr Hooper, please proceed.

4 MR HOOPER: Yes, thank you, your Honour.

5 QUESTIONED BY MR HOOPER:

6 Q. Good morning, (Redacted). My name is David Hooper and in fact we met --

7 A. Good morning.

8 Q. And good morning to you.

9 A. Yes, I know.

10 Q. Yes, I'm sorry. We're in public, yes. Sorry. That will be -- I mentioned your
11 name, but don't worry, that will be taken from the -- from the record. I blundered
12 into that straightaway.

13 We are in open session now. I met you, you may recall, I think it was several years
14 ago. And I think more recently, indeed, in -- towards the end of March this year you
15 were good enough to provide a statement to Jean Logo, who works as an investigator
16 for this Defence team, and I'm going to be asking you questions entirely based on that
17 statement.

18 Now, I'm going to start, in fact, by asking you some personal matters which may be
19 identifying and, therefore, we'll go into closed session for that so that we can talk
20 openly about such matters. And then when we've done that, we'll go back into open
21 session - I won't be very long in closed session - we'll go back into open session where
22 we'll be able to -- to deal with your evidence.

23 So we can go into closed session for no more than, I hope, a few minutes.

24 PRESIDING JUDGE COTTE: (Interpretation) Court officers, if we could go into
25 closed session for a few moments.

- 1 (Private session at 11.44 a.m.)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
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1 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Open session at 11.47 a.m.)

10 THE COURT OFFICER: (Interpretation) We are in open session.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

12 Mr Hooper, please proceed.

13 MR HOOPER:

14 Q. So I understand in late 2004 you went to Bunia as part of a demobilisation
15 project, Bunia, that is, in Ituri. And what happened after that, after you arrived in
16 Bunia? What happened then?

17 A. When we arrived in Bunia, we were assigned to transit sites. My team and I
18 were assigned to the transit site in Aveba within the Walendu-Bindi collectivity.
19 That is where we went for our work. We were assigned there.

20 Q. Now, when you were there, did you have occasion to meet Germain Katanga?

21 A. When we arrived -- you see, in Aveba our site was just opposite the BCA camp
22 where the combatants were staying, and at that time we already found a structure
23 there and a liaison officer called David was assigned to us. He was the one who
24 assured liaison between us and the armed group, so I did have an opportunity to
25 meet Germain Katanga.

1 Q. And can you tell us approximately for how long you were based in Aveba?

2 A. About five months. I spent about five months there. Then after that I was
3 called back to Bunia for other duties. I was called back by my superiors.

4 Q. Did Germain Katanga assist you in any way in the demobilisation project?

5 A. His support was of great importance to us. His presence in Aveba was of great
6 help to us because, you see, he himself was a model and he gave a strong signal. He
7 was the first to be demobilised, so he set the example, and then he was followed by
8 his bodyguards and so the other combatants followed his example too. So he was a
9 model for us. He was the one who truly incarnated, who represented. He helped
10 us a great deal, because from time to time he would come to the site. There were
11 meetings that he took part in to see what arrangements would be made to deal with
12 problems, he also helped us with that, and on his side he encouraged other
13 combatants who were somewhat hesitant. He went to the sites and spoke to them.

14 Q. What was the reaction, if you know, of other combatants to the demobilisation
15 project?

16 A. Initially it was a matter of raising their awareness, having them understand
17 what the programme was all about. After their awareness was raised and once they
18 had seen that their leader was preaching by example, those who were hesitant had an
19 opportunity to come and set down their weapons through the programme. And so,
20 you see, their leader was setting the example and they followed.

21 Q. What was your level of security? What was your level of security while you
22 were in Aveba?

23 A. During my entire stay in Aveba, we were fine. There were no problems.
24 Although we were facing the BCA camp, the presence of Germain himself reassured
25 us. From time to time he would ask us if we had been bothered, or worried, or

1 concerned. That was -- that was until the time I left Aveba. Everything went well.

2 It was quite calm.

3 Q. Now, we know of course -- we know, of course, that Aveba was a Ngiti area and
4 you were dealing primarily with Ngiti. Did you have occasion to demobilise any
5 other person belonging to a different ethnic group while you were in Aveba?

6 A. Yes, I do remember because there were other combatants, Hema people from
7 Boma, and with the agreement of Germain who -- he was a man of peace. Some
8 combatants from Boga - Hema combatants - took part. Also some other pygmies
9 from Tcharma (phon). They came to take part in the programme. What's more, I
10 saw some combatants from the UPC from Bunia. They too took part in the
11 programme. So they were there as well. So it wasn't just Ngiti combatants. Other
12 combatants took part. Germain was very open. Since he was a man of peace, he
13 gave access to other combatants. They too could take part in the programme.

14 Q. Did you have any opportunity or occasion to see how Germain Katanga related
15 to the local population in Aveba?

16 A. When I was there, there were not many problems. I do remember he organised
17 a tournament - a football tournament - that brought together nearly all the localities
18 and he himself played. He played with the team and I was a coach as well. I
19 trained them. So the atmosphere was really excellent. So he stayed with the
20 community. He was a very pleasant person, very friendly, reliable.

21 MR HOOPER: Thank you very much. Those are in fact all my questions to you
22 this morning, but just wait there. There may be -- just one moment. I'm getting a
23 note that might be of -- yes, those are all my questions of you at the moment, but just
24 wait there. There may be some other questions from other persons here. Thank
25 you.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper.

2 Prosecutor, you now have the floor. It's your turn.

3 So, Witness, please answer the questions of the Prosecutor and we are still in open
4 session.

5 MR GARCIA: (Interpretation) Mr President, the Prosecution has no questions for
6 this witness.

7 PRESIDING JUDGE COTTE: (Interpretation) So, Witness, the Prosecutor has no
8 questions to put to you.

9 Do the legal representatives have any questions? They have said that they didn't
10 have any. Are there no spontaneous questions they want to put?

11 MR NSITA: (Interpretation) Just a question for clarification, your Honour.

12 PRESIDING JUDGE COTTE: (Interpretation) Just one question, Mr Luvengika?

13 QUESTIONED BY MR NSITA: (Interpretation)

14 Q. Witness, a moment ago when we spoke about the Hema who came from Boga
15 and the pygmies, you seemed to say that they came to Aveba to participate in the
16 programme because Germain Katanga wanted that; is that correct?

17 A. Yes. There were meetings - joint meetings - that we had and we couldn't do
18 something without having consultation with Germain. So when he'd agreed to it
19 those who came from Boga at the start they were afraid of coming to Aveba, and with
20 his agreement with -- at the meeting, they accepted that they could also participate in
21 the programme. This meant that people from Boga came.

22 THE INTERPRETER: There seems to be a problem with the sound, says the
23 interpreter.

24 MR NSITA: (Interpretation)

25 Q. So we are to understand you, the programme that was set up in Aveba by the

1 authorities I think with MONUC at the time, Germain Katanga was also involved in
2 the organisation of the system?

3 A. With regards to the programme, he was participating in meetings because you
4 also had to have his opinion. He also participated in joint meetings, he gave his
5 opinion and together solutions would be found for the good functioning of the work
6 to be carried out.

7 MR NSITA: (Interpretation) Thank you very much, Witness.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel Luvengika.

9 Mr Hooper, a last question or last questions for this witness?

10 MR HOOPER: I've no further questions. I'd merely like to extend my thanks to the
11 witness for joining us here this afternoon. Thank you very much on behalf of
12 Mr Katanga. Thank you.

13 (Trial Chamber confers)

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

15 Witness, the Chamber has no questions to put to you. We'd like to thank you for
16 having made the trip to this courtroom - this remote courtroom - in order to answer
17 Mr Hooper's questions and Mr Luvengika's questions as well. You have answered
18 them in a clear way and we would like to thank you for that.

19 THE WITNESS: (Interpretation) Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) Goodbye.

21 Court officer, please could you invite the witness to leave the remote courtroom.

22 I think that we need five to six minutes before the next witness can take the seat.

23 Thank you very much, court officer.

24 THE COURT OFFICER: (Remote Location) Yes, your Honour. The witness, with
25 your permission, would like to address the Chamber. Would you be -- would you

1 agree with that?

2 PRESIDING JUDGE COTTE: (Interpretation) If the witness wishes to speak to the
3 Chamber just to simply extend his testimony, then we are listening, sir.

4 THE WITNESS: (Interpretation) I just wanted -- if you would allow me to do so, I
5 just wanted to greet Germain.

6 PRESIDING JUDGE COTTE: (Interpretation) The request that has been made by
7 the witnesses, the Chamber sees no obstacle thereto. Court officer, I don't know how
8 you can organise that, but it would be possible. So you're going to see that -- with
9 the representatives of the Registry next to me, to look at the modalities according to
10 which you will be able to greet Germain Katanga. That is understood. Goodbye.

11 THE WITNESS: (Interpretation) Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

13 THE COURT OFFICER: (Interpretation) Thank you.

14 (The witness is excused)

15 PRESIDING JUDGE COTTE: (Interpretation) I can see that the witness has left the
16 remote courtroom. In a few moments, although there's a slight delay, we are going
17 to receive D02-404 who will testify under the same conditions as D02-401.

18 And we might think, Madam Prosecutor, that it will be possible for you and I think
19 for Mr MacDonald, or for one of the members of your team, to make your application
20 this afternoon. This gives you the time - the lunch-time - in order to make your -- to
21 think about your closing arguments, and I think Mr MacDonald will have time for
22 that, and tomorrow you will have the observations of Mr Luvengika and the closing
23 arguments of the Defence as well. We're in agreement with that.

24 Court officer, please tell us, or we will see on our screen when D02-404 is going to be
25 able to testify.

- 1 Mr Katanga, can you follow everything on the screen? Can you hear everything well?
- 2 Can you see everything well? Good, perfect.
- 3 With this slight delay we are sure that the witness was not in the same room.
- 4 WITNESS: DRC-D02-P-0404 (The witness speaks Swahili)
- 5 THE WITNESS: (Interpretation) Your Honour.
- 6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.
- 7 Good morning, Witness. Can you hear me?
- 8 THE WITNESS: (Interpretation) Good morning. I can hear you.
- 9 PRESIDING JUDGE COTTE: (Interpretation) Witness, what language are you
- 10 going to testify in?
- 11 THE WITNESS: (Interpretation) I am going to testify in Swahili.
- 12 PRESIDING JUDGE COTTE: (Interpretation) Very well. We ask you to speak
- 13 very clearly, as you have just been doing, and to speak slowly. And also I will tell
- 14 you as you have wished and has proved necessary, you will have protective measures
- 15 accorded to you. You will be called by a pseudonym, D2-404. Your voice will be
- 16 distorted. And for the video transmission, your image will also be distorted, or
- 17 pixilated. And if in the future there are other identifying elements asked of you, we
- 18 will go into closed or private session. Have you understood?
- 19 THE WITNESS: (Interpretation) Very well.
- 20 PRESIDING JUDGE COTTE: (Interpretation) We are now going into private
- 21 session and please could you state your identity for us.
- 22 Court officer, we are now going into private session.
- 23 (Private session at 12.12 p.m.)
- 24 (Redacted)
- 25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Open session at 12.15 p.m.)

25 THE COURT OFFICER: We are in open session, your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) Witness, the oath reads as follows:
2 "I solemnly declare that I will tell the truth, the whole truth and nothing but the
3 truth." Have you understood that fully?

4 THE WITNESS: (Interpretation) Please, could you be so kind as to repeat it?

5 PRESIDING JUDGE COTTE: (Interpretation) "I solemnly declare that I will tell the
6 truth, the whole truth and nothing but the truth." If you have fully understood me,
7 you commit yourself to saying the truth, the whole truth and nothing but the truth.

8 THE WITNESS: (Interpretation) I commit myself thereto.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Witness.

10 You have said that you will tell the truth. If you do not tell the truth, you can be
11 subject to proceedings for perjury. And the Court note that it has been satisfied in
12 accordance with Article 69(1) of the Statute and of Rule 60(1) -- 60(1) and (3) of the
13 Rules of Procedure and Evidence.

14 So, Witness, the Defence of Germain Katanga is going to put some questions to you,
15 and if they want to, the Prosecution will also put questions to you, perhaps the Legal
16 Representatives of Victims, and Mr Hooper will have the final floor.

17 Now, Mr Hooper, you have the floor now. We are in open session.

18 QUESTIONED BY MR HOOPER:

19 Q. Yes. Good morning, Mr Witness. We are in open session.

20 A. Jambo sana.

21 Q. We have met. My name is David Hooper. And I remember meeting you in
22 Bunia several years ago. You've also met some other of my colleagues. I think
23 Caroline Buisman you've met and perhaps Sophie Menegon.

24 And recently you were good enough to provide a statement to us about your
25 knowledge of Germain Katanga, and I'm going to ask you questions essentially based

1 upon that statement.

2 Now, can I just go into closed session just to correct what's been recorded and to ask

3 just a few other questions? Can we go into closed session, please? But I'll only be a

4 very few minutes.

5 PRESIDING JUDGE COTTE: (Interpretation) Of course.

6 Court officer, if you'd be so kind.

7 (Private session at 12.18 p.m.)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Open session at 12.20 p.m.)

1 THE COURT OFFICER: We are in open session, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

3 Mr Hooper, please continue.

4 Witness, we are in open session.

5 MR HOOPER:

6 Q. Now, we've asked you to join us today in order for you to tell the Judges what
7 you know about Germain Katanga, so let me ask you this: First of all, am I right in
8 saying you have -- you're not a relation, you're not part of his family; is that right?

9 A. You're right, I am not a relation.

10 Q. And when did you first meet him?

11 A. I met him for the first time in a village called Dele.

12 Q. Can you provide us with a date, a month, a year as to when that was?

13 A. In April/March, 7 March it was in the year 2003.

14 Q. And what were your impressions of Germain Katanga?

15 A. When I met him he wasn't alone, he was accompanied by another person. The
16 meeting took place after the war where the UPC of Thomas Lubanga fought the
17 UPDF who were the Ugandan army. When I met them for the first time, I was
18 introduced to him as being a community leader of the Bindi locality in Bunia and he
19 was pleased to meet me.

20 Q. Did you meet him on subsequent occasions? And if so, in what circumstances?

21 A. Yes. The second time that I met him was in Aveba. I had been sent by the
22 authorities at the time in order to help four employees of the NGO COOPI in order to
23 free them. They had been arrested and detained by Cobra Matata's militia and that
24 took place between 16, 17 March 2003.

25 Q. And what happened in respect of those people taken by Cobra Matata and what

1 part did Germain Katanga play in it?

2 A. Thank you. During my second meeting -- well, in actual fact, I met him three
3 times. So talking about the third time, that time, the second meeting -- you see, four
4 employees of COOPI had come from Badiya village and they were going to that place
5 to assist some children who were ill. When they came back along the way, they
6 were taken hostage by Cobra Matata's militia, and that occurred in
7 Kombakako village.

8 The hostages were taken to the place where Mr Cobra was living in Olongba/Bavi, so
9 that is why when -- when the officials from OCHA in Bunia learned that I was one of
10 the community leaders from that collectivity, they asked me to go there to negotiate
11 with Cobra in order to obtain the release of these employees of COOPI, C-O-O-P-I,
12 released alive and safe.

13 When I went there, I had to go by way of Aveba, and in Aveba I had to ask
14 Mr Katanga to go with me to Bavi to meet with Cobra in order to obtain the release of
15 these four employees of COOPI. He agreed to my request.

16 When we got to Bavi, when we got to Cobra Matata's headquarters -- you see, that
17 was the point, the final destination of my trip, so at that place Mr Germain Katanga
18 was able to take part in the negotiations that I was leading, and he did all he could to
19 persuade Cobra to hand over the four employees to be handed over to me, to be
20 released to me, and that is what, indeed, happened.

21 Q. Thank you. And when you went to do that, to Bavi, how long were you in
22 Bavi for when those negotiations were being conducted?

23 A. Thank you for your question. Once arrived in Bavi -- once I arrived there, my
24 initial objective was to spend just one day there and to come back with the COOPI
25 workers. However, since Cobra and his officers were stubborn, in order to get the

1 workers released, I had to spend three days there, so after three days I was able to go
2 back with the four people and we travelled to the town of Bunia.

3 Q. All right. Thank you. Now, you told us about your meeting
4 Germain Katanga the first time at Dele, and as I understand it the third time with this
5 incident with the COOPI hostages. And you said there was a second time, a time
6 therefore in between those two occasions when you met Germain Katanga. Can you
7 remember what the circumstances were of that second meeting or any other meeting
8 if that order isn't correct?

9 A. I would like to specify that the first meeting was on 7 March and that was in
10 Dele. The second meeting was between 16 and 17 March, and I met him in Aveba
11 and he went with me to Bavi. And the third and final meeting was held when the
12 international organisations organised a major gathering that was intended to achieve
13 peace, and that gathering, or meeting, was the CPI, commission for peace in Ituri.
14 And that meeting lasted for 12 days. It was held in April 2003, from the 1st to the
15 12th. As one of the community leaders, as the notable --

16 PRESIDING JUDGE COTTE: (Interpretation) I believe it's your term, Mr Hooper,
17 because I think the witness had the impression that you had interrupted him.

18 MR HOOPER:

19 Q. I'm sorry to have interrupted you if that's the case, Mr Witness. The last thing
20 we've got is that you were on the -- there was a meeting for the peace commission in
21 Ituri - this is - I'm reading from my record of the transcript here - that lasted for 12
22 days in April 2003, from the 1st to the 12th, and then it goes on, "As one of the
23 community leaders, as the notable ...", and then I may have cut you off. So can you
24 just help us perhaps finish or complete what you wanted to tell us?

25 A. Thank you, I will continue. As a notable, one of the leaders of my tribe, I was

1 one of the people who took part in this major meeting - this peace meeting - and there
2 I met Mr Germain Katanga. When he went to that meeting, because you see he had
3 been invited as well, that is when we met one another the third time.

4 Q. Yes, thank you very much for completing that. Now, may I just ask you this?
5 During the time that you had contact with Germain Katanga, did you have any
6 opportunity to hear him or judge him as to any attitudes he had towards the peace
7 process? Can you help us as to that?

8 A. Thank you. When we were taking part in the meeting, Germain Katanga and
9 the others were part of a group that was called Consultation des groupes armés,
10 Coalition of the Armed Groups. We were part of a group called Commission for the
11 Prevention and Verification. Thus, each time the commissions gave their various
12 reports I saw that he had the will and the concern. He wanted all of Ituri to remain
13 united and he wanted all the tribes, including the Lendu and the Hema -- he wanted
14 all the tribes to come together and live together in complete peace. That was his aim.
15 That is what I saw. That is what I concluded from him.

16 Q. All right, thank you very much. Did you ever have occasion to see how
17 Germain Katanga -- his relationship with the civil population?

18 PRESIDING JUDGE COTTE: (Interpretation) We can see Mr Hooper of course up
19 close, but we don't see the witness any more on the screen.

20 THE COURT OFFICER: (Interpretation) I am afraid we have a minor problem and
21 I'll just have to call back.

22 PRESIDING JUDGE COTTE: (Interpretation) Very well.

23 (Pause in proceedings)

24 PRESIDING JUDGE COTTE: (Interpretation) Witness, can you hear me?

25 THE WITNESS: (Interpretation) Yes, I can hear you.

1 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, please proceed.

2 MR HOOPER:

3 Q. Yes, sorry. Sorry, Mr Witness. We lost the transmission for a few minutes.

4 You're back with us now in court, we're in open session and let me repeat my last

5 question to you, which was this: Can you help us as to Germain Katanga's

6 relationship, in your observations, with the civil population?

7 A. Thank you. Mr Germain Katanga when he was living in Aveba, I was not

8 living in Aveba with him because I was living in Bunia before the war. The

9 information that I received from him -- about him, rather, came through our

10 customary chief, Mr Karogo (sic), and he died last year in actual fact, and also I got

11 information from some church leaders.

12 These people said the following about Germain Katanga: They said that he

13 was -- that he had saved the civilian population, and to confirm that point the

14 information that I already had was to the effect that, when other militiamen wanted to

15 extort money from the civilian population or hurt civilians, it was

16 Mr Germain Katanga who would intervene and condemn these people for such acts.

17 I heard several accounts to that effect. I can't give you the entire or all of the

18 accounts though.

19 THE INTERPRETER: Interpreter correction: The name of the customary chief was

20 Akobi Chomi Katorogo.

21 MR HOOPER:

22 Q. Yes, it was Chef Akobi who died -- who died last year; is that right?

23 A. Yes, he died on 20 November last year. (Redacted)

24 (Redacted)

25 Q. And was there a cease-fire at that time?

1 A. In the Walendu-Bindi collectivity, where Aveba was, there were some battles
2 here and there. When the war worsened in August -- no, it was at the time of
3 the 2002 war; at the end of the 2002 war. I would say that it was during the lull.
4 Walendu-Bindi, those people were on the other side and we were on the side of
5 Bunia.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr MacDonald?

7 MR MACDONALD: (Interpretation) Your Honour, I'm sorry. I will continue in
8 French. Apologies to interpreters. I believe the Chamber is not particularly
9 interested in finding about the situation in 2002 for obvious reasons, or 2013.
10 I believe such a matter could be settled upon appeal, but I believe that the Trial
11 Chamber has heard sufficient evidence. The Appeals Chamber can --

12 PRESIDING JUDGE COTTE: (Interpretation) Yes. Realising that, hearing from
13 the other witnesses has interested us in events in 2013, particularly relating to harm
14 done.

15 Now, Mr Hooper, if you could continue, but perhaps you could help the witness
16 refocus.

17 MR HOOPER: Certainly.

18 Q. Mr Witness, I was asking you solely about the death of Chef Akobi in or about
19 November of last year, 2013, and I was asking you in respect of his funeral, whether
20 there was a ceasefire, a temporary peace in the area. Do you know anything about
21 that?

22 A. Yes, yes. I think I can answer you now. Yes. When the customary chief
23 died, Chief Akobi, he died at the hospital in Nyankunde, in the locality of Nyankunde,
24 and I was there with him, and at that time in the Walendu-Bindi locality, there was a
25 battle between the FRDC and Cobra Matata's militia. As customary chief -- you see,

1 it was not possible for him to be buried in Bunia. (Redacted)

2 (Redacted). We had to thank

3 the FRDC authorities who asked their officers, their soldiers to cease fire, the militia

4 ceased fire as well, and thus we were able to go and bury the customary chief in our

5 village without any problems at all. We spent a week without having any problems.

6 When we got back to Bunia the fighting resumed.

7 PRESIDING JUDGE COTTE: (Interpretation) Is it absolutely necessary to ask these

8 questions about the death and the burial of the customary chief? The witness is

9 telling us all about this, but we wonder about the relevance of this information and

10 where this is going. So perhaps questions could be asked that would lead us into

11 areas of greater interest; namely, the reputation that Germain Katanga had, in the

12 opinion of this witness, within his community, outside his community. This is what

13 is of interest to us. Thank you.

14 MR HOOPER: Yes, yes.

15 Q. Can I ask you, this is my final question, I want to go back, in fact, to the time

16 when you met Germain Katanga, back in 2003, and is it right that in May 2003 you,

17 yourself, had to flee Bunia because of problems? And just very briefly, because

18 we're not concerned with those events, if that's the case, if you did have to flee, where

19 did you go?

20 A. Very well. On 12 May, I was still a refugee in Zumbe. From there I fled to

21 Nombe because the UPC of Thomas Lubanga was attacking that place and so we had

22 to escape.

23 Q. All right. When you got to Walendu-Bindi, and we've heard previously that

24 there were refugees from various areas in Walendu-Bindi, was it just Ngiti who were

25 refugees who were taking shelter there, or were there any other ethnic groups taking

1 shelter there?

2 A. Thank you. On 12 May 2003, the battle of Bunia was such that the entire
3 population, all the tribes, had to flee. During that time everyone had only one
4 destination, that is, everyone left and went to Aveba. We couldn't go to Beni,
5 Kisangani or other places. Everyone went to Medhu towards -- from Mayvi (sic)
6 towards Aveba towards Kivu. I was in Nombe. I went to Tchekele, and, myself, I
7 saw our brothers from the Hema group whom we lived with in Bunia, I saw them
8 and they did not have any problems. They went by that place, they went to Beni,
9 others went back to Bunia, and even today we live with them.

10 Q. All right. Thank you very much. And those are my questions. Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper.

12 Prosecutor, if you have questions to put you will put them this afternoon. Do you
13 have any questions to put?

14 MR MACDONALD: (Interpretation) No questions, your Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. Mr Luvengika?

16 MR NSITA: No questions, your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well.

18 Mr Witness -- Mr Hooper, we are with your last question and the last answer of the
19 witness will stay there.

20 Witness, thank you very much for your presence, for having accepted to come to this
21 remote courtroom. We will make you free now. Thank you once again.

22 Court officer, from this remote courtroom, please, could you allow the witness to
23 leave and once the witness has left we shall suspend our hearing.

24 THE COURT OFFICER: (Remote Location) Yes, your Honour.

25 (The witness is excused)

1 PRESIDING JUDGE COTTE: (Interpretation) I see that Witness D2-404 has left the
2 room.

3 Court officer and -- court officers, these two witnesses must be allowed to greet
4 Germain Katanga.

5 The Chamber would like to thank the Registry and the representative of the Registry.
6 There's a problem with the sound. We can hear a double sound. There are certain
7 technical issues. There's an echo, a triple video conference.

8 Thank you very much, Registrar, court officer, court's interpreter, Prosecutor.

9 We are, therefore, going to continue at 2.30 if you would be so kind, if it is the case,
10 Mr Luvengika, that you are able to take the floor this afternoon. Are you able to do
11 so?

12 MR NSITA: (Interpretation) Yes, I think so, your Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) We are not hurrying. We just
14 want to avoid interrupting anybody if it appears that the Office of the Prosecutor does
15 not go beyond 45 minutes, which should be possible for you, if not, we shall put it to
16 tomorrow morning when we have time available, but if we can do it this afternoon
17 that would be simpler.

18 MR NSITA: (Interpretation) Very well, your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. I would just
20 ask you for a moment everybody can make sure that the identity of the witness is not
21 known.

22 Thank you, court officer. So, Mr Rojas, thank you very much for your contribution.

23 The hearing is suspended. We shall continue at 2.30 until 4 o'clock.

24 (Recess taken at 1.02 p.m.)

25 (Upon resuming in open session at 2.33 p.m.)

1 THE COURT USHER: All rise.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Katanga is with us. We're therefore
3 now going to listen successively to the Prosecutor, Madam Prosecutor, who -- and then
4 possibly Mr MacDonald, and then perhaps others of his colleagues from the Office of the
5 Prosecutor. Once we have heard them, if there are certain points which remain for the
6 Chamber, if they haven't been fully clarified, perhaps we will ask you a few questions,
7 Prosecutor. They won't be long questions, but they would be useful subject to the words that
8 you are going to say.

9 Prosecutor, you have the floor.

10 MS BENSOUDA: Thank you, Mr President. Mr President, your Honours, the Prosecution
11 is present before you today to assist the Chamber in its determination of the appropriate
12 sentence to be imposed on Mr Germain Katanga, a militia leader convicted of some of the
13 most serious and heinous crimes of concern to the international community as a whole.
14 In March of this year, Mr Katanga was convicted pursuant to the mode of liability
15 enshrined in Article 25(3)(d) of the Rome Statute of having committed the crimes
16 against humanity of murder as well as the war crimes of murder, intentionally
17 directing an attack against the civilian population, pillaging and the destruction of
18 property in connection with the 24 February 2003 attack on the village of Bogoro in
19 the Ituri district of the Democratic Republic of the Congo.

20 Before you impose the appropriate sentence in this case, Mr President, your Honours,
21 it is important to recall the overarching principle that the sentence to be handed down
22 must be proportionate to the gravity of the offence committed and to the degree of
23 culpability of the convicted person.

24 In this case, it is our respectful submission that the serious crimes committed by
25 Mr Katanga for which he was convicted beyond reasonable doubt in accordance with

1 Article 66(3) of the Statute and his high degree of responsibility in the commission of
2 such egregious crimes demand the imposition of a serious and effective sentence.
3 The sentence which you are about to impose on Mr Katanga should also serve to
4 publicly reprimand his criminal conduct and demonstrate to the international
5 community the commitment to end impunity for such crimes that shock the
6 conscience of humanity and violently tear the social fabric of society.
7 Another important purpose of the sentence that you will impose is, in our respectful
8 submissions, that it will and must serve as an acknowledgment of the harm done to
9 the innocent victims and to the community of Bogoro, which have suffered so
10 immensely from Mr Katanga's proven criminality.
11 The crimes committed in Bogoro on 24 February 2003 are amongst the most serious
12 that this Court was established to address and are deserving of an equally serious
13 sentence.
14 On 24 February 2003, vulnerable and defenceless people were the victims of horrible
15 crimes in Bogoro. Civilians, innocent women, children and the elderly were killed
16 gratuitously and without distinction.
17 Even after the village of Bogoro had fallen, civilians were lured out of their hiding places and
18 executed by the attackers by various means, including through the unforgiving thrust of
19 machetes penetrating body and limb.
20 It bears repeating here that the Trial Chamber concluded that the attackers killed
21 more than 30 innocent civilians, including 13 young children, but it also considered
22 that the actual number of those deliberately killed was much higher.
23 The Chamber, when describing the attack on the civilian population of Bogoro, also
24 recognised that women were raped and sexually enslaved during and in the
25 aftermath of the attack. The Chamber further states that these acts, font partie d'une

1 attaque de caractère systématique visant principalement la population --

2 THE INTERPRETER: ... principally deigned that the civilian population, which for the
3 majority was Hema, of this village and launched in application of a policy of the militia from
4 Walendu-Bindi.

5 MS BENSOUDA: Your Honours, on that dark day in February of 2003, the attackers showed
6 no mercy to anyone found in Bogoro. As innocent lives were being cut short and suffering
7 inflicted on the civilian population, property was not spared by the attackers either. Houses
8 were burnt to the ground and goods were pillaged, leaving nothing but devastation and
9 misery.

10 The attackers took lives, but also the belongings of the civilian population essential to
11 the daily life of the community, and in the end Bogoro was left in ruins. Bogoro was
12 no more.

13 To be sure, Mr Katanga's criminal contribution to these crimes was critical. It is an
14 irrefutable and unmistakable fact, as confirmed by this Chamber, that without
15 Mr Katanga's aid and contribution the goal of wiping out Bogoro and eliminating the
16 civilian population would not have succeeded or played out as the trier of fact has
17 established that it did.

18 Notably, the learned Judges of this Chamber concluded that Mr Katanga made quote
19 "a truly significant contribution."

20 Let us not forget that, prior to the attack, Mr Katanga helped to reinforce the striking
21 capabilities of the Ngiti militia that attacked Bogoro. Mr Katanga was also
22 instrumental in providing the very weapons that were used for the attack.

23 The Chamber found that, in the end, Mr Katanga's actions enabled the Ngiti
24 combatants to ensure their military superiority over the Union of Congolese Patriots
25 and to effectively carry out their plan to eliminate the civilian population of the

1 village of Bogoro.

2 In the words of the Chamber, and I'm quoting, (Interpretation) "His intervention did
3 make it possible for the militia to benefit from logistical means that it didn't have and
4 which had for it a major interest in attacking Bogoro. The contribution made by
5 Germain Katanga made it possible for the Ngiti combatants to ensure their military
6 superiority, faced with their UPC enemy, and to meet their aim of eliminating the
7 civilian population - principally Hema population - of Bogoro.

8 (Speaks English) It is also important to stress that, as the Trial Chamber determined,
9 Mr Katanga knew fully well that the attack at Bogoro would occur in the manner that
10 it did and that the Ngiti militia would commit acts of murder, attacks against the
11 civilian population and engage in destruction and pillaging.

12 Mr President, your Honours, today Bogoro still bears the indelible marks of the
13 crimes that were committed on 24 February 2003.

14 Many of the inhabitants of Bogoro murdered on that day left behind family members
15 and loved ones. The children that became orphans that day now live with host
16 families, but they lack the basic means to live in good conditions, let alone the means
17 to study, to expand their horizons and seize opportunities that they could otherwise
18 enjoy. They will undoubtedly always live with the trauma of having lost their
19 parents and other family members in such harrowing circumstances.

20 The civilians who survived the brutal attack on their village, but were wounded and
21 who never had the means to receive adequate medical treatment, must now go
22 through life with bullet fragments still lodged in their body, or bear the physical and
23 emotional scars of their unimaginable ordeals. They will forever be haunted and
24 reminded of that day in February of 2003, where plunder, death and destruction
25 descended upon Bogoro and changed their lives forever.

1 Your Honours, your sentence should not only be proportionate and just to
2 Mr Katanga. It must also be just to the countless victims of Bogoro.
3 The good people of the Democratic Republic of the Congo, including the victims of
4 the Bogoro attack, yearn for an end to impunity in their war ravaged country and
5 look in anticipation to a just sentence in this case that will not only bring justice to the
6 victims, but will also serve as an effective deterrent not only in relation to Mr Katanga
7 himself, but for any other person that may be tempted to commit or participate in the
8 commission of such heinous crimes in the present conflicts or future ones that may
9 arise.

10 As we know, this is only the second sentencing hearing that this -- that has been
11 heard before this permanent court. Your Honours are entrusted with the all too
12 important responsibility of imposing a sentence which is proportionate to the severity
13 of the crimes committed in Bogoro, also to the high degree of Mr Katanga's
14 culpability for the commission of the crimes in question and to the suffering of the
15 significant number of victims in this case; a sentence which is both fair and serves as
16 an effective deterrent to guarantee lasting respect for the law and the enforcement of
17 international criminal justice, and by doing so, Mr President, your Honours,
18 contribute to the ending of impunity in the Democratic Republic of the Congo and
19 beyond.

20 And for these reasons, Mr President, your Honours - for all these reasons - in our
21 respectful submission the Prosecution requires a joint sentence ranging from 22 to 25
22 years in the present case.

23 With your indulgence, Mr President, I now leave the floor to my colleague, Mr Eric
24 MacDonald, who will elaborate on the applicable principles and the facts I have
25 summarised in my opening remarks - my opening submissions - and he will also

1 further explain why such a serious sentence is justified and appropriate in the case of
2 Mr Germain Katanga.

3 I thank you, Mr President, your Honours.

4 PRESIDING JUDGE COTTE: (Interpretation) The Chamber would like to thank you,
5 Prosecutor.

6 Prosecutor Eric MacDonald, you now have the floor.

7 MR MACDONALD: (Interpretation) Please excuse me. A bit tight here.

8 Your Honour, Honourable Judges, please allow me now to go back to and to develop
9 some of the comments that were made by the Prosecutor.

10 It's certain - and here I am putting myself in your shoes - that as a Judge it's one of the
11 most difficult tasks imposing a sentence on an accused. And certainly in this case, in
12 the case of Mr Katanga, certainly this sentence should not only be just and reasonable,
13 but it should also be proportional to the seriousness of the crimes for which you
14 declared Mr Katanga guilty. And these crimes, as mentioned a moment ago, are
15 among the most serious crimes of concern to the international community. Here I'm
16 only citing the preamble of the Statute.

17 My presentation shall just summarise today the submissions that we have made, in
18 particular submission 3455 in which we developed our position, if you would allow
19 me now for the purpose of this public hearing to make a summary of the major lines
20 thereof.

21 First of all, going back to the seriousness of these crimes and the context among
22 which -- in which these crimes were committed, I think that it's important to recall
23 that the Bogoro attack started in the small hours of the morning, around 5.30 in the
24 morning, while most of the inhabitants of Bogoro were in bed asleep.

25 They were in their houses and the attackers who were armed with rifles and machetes

1 surrounded the village, and when they surrounded the village they launched an
2 attack on Bogoro and from the very beginning of the attack they targeted the civilian
3 population who were not part of the hostilities. When you're in your bed you're
4 asleep and, if you die there, you are certainly not a combatant.

5 And how were these victims killed in the attack? Well, two major means:
6 Machetes, but also with firearms. Obviously the use of firearms is an important
7 element in this case.

8 And during this attack, the people who died were some of the most vulnerable
9 victims, women, children, babies, the elderly, people who at that time were without
10 defence, and the attackers made no distinction among their victims. They killed the
11 civilians irrespective of the place where they were, or where they had taken refuge.
12 Even after taking control of Bogoro, the attackers continued to hunt down the civilian
13 population firstly in their houses and later in the bush and the village.

14 As noted by the Chamber, Witness 353 describes that while hiding in his house heard
15 attackers penetrate into the house making death threats. They opened fire on the
16 people present and killed them with machetes. The victims cried out and begged
17 their attackers while they were mutilating them, sometimes member by member, or
18 they were shooting them in order to kill them.

19 And I think that it's important to note the way in which the victims died because that
20 is one of the aggravating circumstances that we would like to come back to later.

21 Once captured Witness 353 also saw bodies of victims killed by machete or by bullets
22 lying outside the houses.

23 The attackers also hunted down their victims in the bush and continued to kill them
24 without distinction. The attackers used a strategy pretending to be victims, or using
25 Hema victims to do so, they called upon other victims who were hiding so that they

1 would come out of their hiding place, and the victims who came out of their hiding
2 places were then killed by the attackers, by machete or, again, they were shot. That's
3 another element that we'd like to come back to when we discuss aggravating
4 circumstances.

5 Witness P-268 testified that he was captured following the attack and was put in a
6 classroom in Bogoro institute. He saw several bodies in that classroom as well as
7 outside it lying on the floor. And if I'm not mistaken during his testimony, he also
8 mentioned that it was difficult -- well, there were lots of different bodies on the floor
9 of the classroom and that these victims had either been killed by machete cuts or they
10 had been shot.

11 The attackers not only killed, they also destroyed the village because they demolished and
12 burnt all the houses of individuals of the civilian population of Bogoro.

13 The Prosecution also recalls that the Chamber obtained that the attack was directed
14 intentionally against the Hema civilian population with the aim of completely
15 destroying it. The Chamber also considered the destruction and the pillaging of
16 goods was part of a common plan aiming to eliminate the Hema civilian population
17 because it excluded any possibility of survival or possible return to Bogoro for those
18 who managed to escape.

19 After the battle, Bogoro was emptied of its civilian Hema population. The chief of
20 the village furthermore recalled, for the Chamber, that the return of civilians
21 happened in 2005, and the proof is quite clear in the case file in this regard.

22 The Prosecution also recalls that all these crimes committed in Bogoro are intrinsically
23 serious because they figure among the most serious crimes which, once again, are of
24 concern to the international community as a whole. As the Chamber has also noted,
25 these crimes were also committed in a systematic and organised way.

1 I would now like to go back to the issue of the number of victims. The Chamber
2 concluded that at least 60 inhabitants of Bogoro were killed during the attack in
3 question, including a certain number of children, women and the elderly. Among
4 these 60 persons, 33 at least were civilians who were not directly participating in the
5 hostilities.

6 The Chamber also concluded that the Ngiti or Lendu-Ngiti combatants had together
7 killed more than 30 persons including three young children. However, the Chamber
8 considered that the true number of persons killed in a deliberate manner was much
9 higher, despite the fact that it was impossible to determine this number precisely, and
10 it referred, among other sources, to the count -- to accounts which confirmed that
11 bodies were lying in the village streets, including bodies of women, of the elderly and
12 children including babies.

13 So that's one of the difficulties that, among others, was referred to with the testimony
14 of the chief of the village. The population fled and came back in 2005. In 2005, once
15 again, you find -- they find bones and remains of victims of the attack, and it's
16 difficult to bury them, the civilian population fled and it became difficult to identify
17 the bodies.

18 The Chamber also recognised that it was difficult to make a distinction between a
19 person, a civilian not participating in the hostilities from Hema soldiers of the UPC
20 who would be -- would have died on that day but, nevertheless, whatever the case the
21 Prosecution submits that even if the Chamber could conclude with regards to the
22 exact number of victims of the attack of Bogoro, on 24 February 2003, after the attack
23 of Nyankunde was one of the most bloody of the conflict in Ituri.

24 It's also important to recall, because this cannot be left in silence, that a lot of people
25 saw people who were wounded or were wounded themselves. And here we recall

1 the testimony of Witness 249 -- 247 in this regard.

2 If you would allow me now to go back to the criminal responsibility of Mr Germain
3 Katanga with regards to these crimes.

4 The Prosecution respectfully submits that Mr Katanga's contribution, although this is not
5 necessarily the legal element to be proved, was essential. Without his help in establishing
6 crucial links with the authorities in Beni and thereby making it possible for weapons and
7 ammunitions to be obtained, it would not have been possible for Bogoro to be wiped out, nor
8 for its civilian population to have been eliminated and the attackers would not have been in a
9 position to commit all these crimes.

10 It is important to recall that Mr Katanga went to Beni in the months prior to the attack
11 and, at that time, he was at the head of a delegation from Aveba, including some
12 soldiers and notables of the Zumbe area in the Walendu-Bindi region, and on behalf
13 of the militia he represented, he established links with military authorities in Beni and
14 participated with them in his capacity as a privileged interlocutor and military ally in
15 developing a strategy for the re-tacking of the Ituri, particularly in Bogoro. It can
16 therefore be argued that his minimum role was that of a facilitator.

17 After he returned to Beni, he once again facilitated and made possible -- made it
18 possible for weapons to be received from Beni, as well as provided storage for the
19 said material in a safe place.

20 Subsequently, Mr Katanga, acting as a privileged intermediary, organised the
21 distribution of the weapons and ammunitions between the various commanders of
22 the Walendu-Bindi collectivity who had come to receive such supplies from Aveba in
23 order to prepare for the attack on Bogoro village.

24 By the way, the Chamber also found that Mr Katanga had provided a significant
25 contribution to the commission of the crimes and that such contribution made it

1 possible for Ngiti combatants to enforce their military superiority over the UPC
2 adversary and to achieve their mission, namely, that of eliminating the civilian
3 population of Bogoro, who in the main were Hema.

4 Without this important support provided to the Ngiti militia and without the
5 contribution of Mr Katanga in organising and facilitating those supplies, the
6 commanders and combatants of the Walendu-Bindi collectivity would not have had
7 the necessary assets to perpetrate with such efficiency the crimes that were carried out
8 in Bogoro against the Hema civilian population.

9 His intervention in fact made it possible for the militia to have the necessary logistics
10 which it did not possess, but which were of a primary interest for them in the success
11 of the attack on Bogoro.

12 Furthermore, it must be noted that the manner in which the attack unfolded also
13 speaks to the importance or significance of the fire power that was necessary to
14 ensure success. The UPC was quickly defeated. The civilian population was bound
15 to flee and also to abandon their possessions.

16 Mr Katanga's contribution therefore, pursuant to the Chamber's decision, is that
17 without this military strategy that he developed and without providing the weapons
18 and ammunitions, the Ngiti combatants would not have been able to carry out the
19 attack and would not have been able to so efficiently bring to -- a successful end their
20 criminal plan which was designed to wipe out Bogoro and to eliminate its civilian
21 population who were Hema in the main from that village.

22 Allow me now to speak to aggravating circumstances. I will also talk about
23 mitigating circumstances later on.

24 But I will speak to the suggestion that the sentence should be from 22 to 25 years later
25 on.

1 Rule 145 of the Rules, paragraph (2)(b), provides a list, a non-exhaustive list -- a
2 non-exhaustive list, I must say, of some of the factors or elements on which the
3 Chamber can rely in its decision. The first item that we want to highlight from that
4 list, that list of six items, six of them, some of them do not apply to Mr Katanga but
5 others do.

6 The first is abuse of power or official capacity. The issue here is one of abuse of
7 power. Mr Katanga, and this was acknowledged by the Chamber, was the chief or
8 leader of a militia group known as the FRPI, and this was certainly the case in early
9 February 2003.

10 In that capacity as the leader, and this was demonstrated previously when he acted as
11 chief or leader in Aveba, he went to Beni to obtain weapons, he established contacts
12 with the authorities in Beni and then returned in his capacity as the military chief of
13 the delegation that went to Beni. And in that very capacity he calls up the other
14 commanders and combatants to Aveba and distributed the weapons. In that
15 capacity as a leader in Aveba he received the weapons. The only air strip in
16 Aveba -- in Walendu-Bindi is in Aveba. So the Chamber identified each of the
17 elements pointing to the fact that Mr Katanga indeed had authority.

18 But beyond that, all his other actions in his capacity as a leader with authority, these
19 actions were undertaken at a time when Mr Katanga shared an ideology that was
20 hostile to the Hema people. He shared the intent or intention of the attackers when
21 they carried out the attack.

22 At the time of the attack on 24 February 2003, Mr Katanga was the president of the Ngiti
23 militia in Walendu-Bindi. It is therefore our submission that this is an aggravating
24 circumstance.

25 Another aggravating circumstance is the specific vulnerability of the victims and their

1 defencelessness. As previously indicated, women, children, babies on their mother's
2 backs were killed deliberately, intentionally. Those people, your Honours, are
3 vulnerable or defenceless victims.

4 Another aggravating circumstance is the particular cruelty of the crime and the number of
5 victims. A short while ago when I talked about Witness 353, I mentioned the manner in
6 which some people were killed with machetes. They were dismembered one member after
7 the other. But this I must say is an act that inflicts grievous harm and pain and amounts to
8 cruelty. It is so cruel to do this when people are in hiding to survive. People are hiding in
9 houses and people are in the bush, and yet a strategy is put in place to encourage victims to
10 come out, giving them the impression that when they come out of their hiding places, they
11 will be safe and fine, and yet when they do so, they are killed by bullets or with machetes.
12 It is our submission, your Honours, that in Bogoro the manner in which those crimes
13 were committed amount to aggravating circumstances.

14 Another aggravating circumstance is the matter of discrimination as one of the
15 motives of committing the crime. The Prosecution argues that the crimes were
16 committed by Ngiti attackers who attacked on the basis of discrimination or ethnic
17 hatred for their Hema victims.

18 The Chamber pointed out that the Ngiti combatants when they attacked Bogoro
19 considered members of the Hema ethnic group to be their enemies. The attack
20 therefore was carried out in the context of a broader ethnic conflict between the Ngiti
21 and the Hema. We therefore submit - and this is in line with the previous
22 aggravating circumstance - that when discrimination is at the basis of an action based
23 on ethnicity, one of the possible consequences is cruelty, the cruelty that we inflict on
24 our victims. And, your Honours, this is what happened in Bogoro.

25 Allow me now without prejudice to any other points that will be raised by my learned

1 colleague, Mr Hooper, let me talk about mitigating circumstances. It is true that the Defence
2 will clearly plead Mr Katanga's young age both at the times of the events and even today and
3 that such should be considered as mitigating circumstance.

4 The Prosecution submits or contends that Mr Katanga's youthfulness should not be
5 taken as a mitigating circumstance for the following reasons: At the time of the
6 commission of the crimes and at the time when he contributed to those crimes, he was
7 already the president of the Ngiti militia and at that very early age was already
8 exercising significant military authority.

9 Furthermore, it has been established that Mr Katanga is an educated man who had
10 also received some military training. This also must be taken into account as a
11 significant factor. He did not become a leader overnight. He had already received
12 some training that distinguished him from the other combatants who may have
13 volunteered to that position.

14 In spite of his youthfulness, Mr Katanga was also a respected man, not only by
15 soldiers, but by religious and civilian authorities within the community. Do I need
16 to recall this famous letter whereby Mr Katanga was being informed of a religious
17 ceremony that had been organised?

18 He was also an unavoidable interlocutor who was respected and an essential factor in the
19 conflict. He led the delegation to Beni to negotiate with the military authorities on behalf of
20 his community, and he did so at that age, at that very young age.

21 We must also recall that in spite of his youthfulness, he went on to sign the
22 agreement -- the ceasefire agreement in March of 2003 at the behest of MONUC. He
23 was therefore considered to be one of the principal actors of the conflict by the
24 military authorities of the UPDF.

25 Prejudice or harm done. We heard the chief of the village testify this morning about

1 the ongoing consequences of the attack on the community and the victims in Bogoro.
2 What I would like to point out and to emphasise on behalf of the Prosecution is that
3 this attack did indeed have consequences on the people to the extent that we have
4 widows, widowers and orphans.
5 People died, but others survived. And among them we have a significant number of
6 widows, widowers and orphans. People were wounded by bullets and still have
7 shrapnel in their bodies today. Witness P-239 and Dr Baccard when testifying
8 looked at an x-ray here in the courtroom and said this was indeed a bullet fragment --
9 (Audio interruption)

10 MR MACDONALD: (Interpretation) Let me continue.
11 When the chief of that village talks about victims who still have bullet fragments in their
12 bodies, well, you remember we had one of them here, Witness P-287. We have also heard
13 about psychological trauma. Yes, this has not been challenged. The fact remains that there
14 is prevailing insecurity in Ituri today.
15 But what the village chief said today in his testimony is that one of the causes of
16 people not returning to Bogoro might be insecurity, but one main reason is that they
17 do not want to experience the trauma any more, because they had been traumatised
18 on 24 February 2003. They are afraid to have to go through that all over again.
19 And this is only a small part of the trauma that the victims are subjected to.
20 I put it to you that in some jurisdictions for some crimes there is an assumption of trauma, a
21 presumption of trauma, because once the crimes have been established, there is a
22 presumption, and the Prosecutor does not have to prove this, that there is trauma. And
23 regardless of whether they are bullet fragments or any stigma, no, the Prosecutor does not
24 have to prove that because it is taken as a given that the victims have suffered trauma.
25 About economic loss, the witness again testified today that the Hema who are

1 basically stockbreeders had cattle, and the witness went on to indicate how much it
2 costs to buy a cow today. These are significant amounts. And the Court had the
3 opportunity during the site visit in Bogoro to see for itself the conditions under which
4 the victims and these people are living in Bogoro.

5 It is a situation that is far away or far different from the comfortable circumstances we
6 enjoy here in The Hague.

7 You can think about what an animal represents, an animal on which an entire family may
8 depend for its livelihood. That is why this leads us to the main consequence of the attack
9 according to the chief of the village. It is not only an attack on a people who were already
10 poor, but a people who have become even poorer because of that attack.

11 Now, with your leave, Mr President, let me speak briefly to the issue of hierarchy in
12 the modes of liability under Article 25.

13 The Chamber at paragraph 1386 and 1387 the Chamber acknowledged that there is no
14 hierarchy, according to the Chamber, between the various modes of liability. And I
15 quote, paragraph 1386, or part thereof: "Article 25 of the Statute simply identifies
16 some illegal conduct that -- and in that connection the distinction proposed between
17 the responsibility of the perpetrator of the crime and of the accomplice does not in
18 any way amount to a hierarchy of blameworthiness, not any more than it does lay
19 down even implicitly a scale of sentences."

20 Then further on at paragraph 1387, in fact the existing distinction between
21 perpetrators of a crime and accomplices is inherent in the Statute, but it does not to
22 that extent imply that there is a hierarchy in terms of culpability and sentence.

23 Each mode of liability has its own characteristics and its own legal consequences
24 which are different and which speak of different forms of involvement in criminal
25 activities. That, however, does not necessarily mean that accused persons will be

1 found to have lesser guilt or would be given lesser sentences.

2 It is not the intention of the Prosecutor today to outline the jurisprudence of
3 international tribunals or courts for the simple reason that there's a whole gamut of
4 sentences that can apply depending on the various circumstances as analysed.

5 At the Tribunal for the Former Yugoslavia, the sentences ranged from 15 years and
6 above and others which are 30 years and above for the same issue of complicity.

7 In most national jurisdictions, complicity is not distinguished from main perpetration
8 in the crime. In my country, in Canada, if one is found guilty as an accomplice of
9 premeditated murder, it is a life sentence with a possibility of probation at 25.

10 In other legal systems it is life imprisonment without any possibility of parole or
11 release.

12 We may want to revisit this jurisprudence. Some will benefit the Prosecutor.
13 Others will benefit the Defence.

14 Now, this is going to be the second sentence that this Court will be imposing. The
15 Chamber therefore has in this case to lay down the principles that will apply to this
16 case and that will apply in the future.

17 In a national system, one murder can lead to a life sentence. Here we are dealing
18 with a systematic attack organised where the crimes are recognised as the most
19 serious, and that is why the Prosecution is asking for a sentence of 22 to 25 years.

20 It is our submission that this is a fairly reasonable application mindful of the entire
21 case, mindful of the criteria applying to aggravating circumstances and mitigating
22 circumstances and mindful of the personal situation of Mr Germain Katanga, as well
23 as the seriousness of the crimes that were committed in Bogoro.

24 Some clearly will find that the sentence is too serious and others may find that it is
25 somewhat lenient. That is why upfront I said that your task is one of the most

1 difficult tasks, your Honours. It is for you to impose a sentence based on the gravity
2 of the crimes and yet you must impose that sentence on an accused person and his
3 personal circumstances.

4 For all these reasons, Mr President, your Honours, we submit that the sentence
5 should be between 22 to 25 years as an appropriate sentence in the circumstances.

6 Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.

8 Mr Luvengika and then you will take the floor tomorrow. Prosecutor, to be fully
9 informed, at the time when we'll be drafting our decision, we'd like to put a few
10 questions to you. We have two legal questions and other more factual questions.

11 The first question: In your submissions 3444 of 17 March 2014, you'll remember that
12 this went into the definition of the principles and proceedings to be adopted for the
13 setting of sentences. You didn't challenge -- as far as we could see, but we'd like to
14 be sure of this, you didn't seem to challenge that the aggravating circumstances
15 should be proved beyond all reasonable doubt.

16 As we haven't had the feeling that this was very clear in your submissions, as I don't
17 think that you addressed it orally, we would therefore like to be sure what your
18 position is on that point for the Defence as well, and for you do the aggravating
19 circumstances have to be proved beyond reasonable doubt? Is that the case?

20 (Pause in proceedings)

21 MR MACDONALD: (Interpretation) Please excuse me, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) No, no, there are a lot of you. You have the
23 right to consult each other.

24 MR MACDONALD: (Interpretation) I would like to have a few moments to talk to my
25 colleagues.

1 PRESIDING JUDGE COTTE: (Interpretation) Okay. I will go on to the next question.
2 Perhaps you'll be able to discuss both questions. Now, where it concerns the aggravating
3 circumstances, in the same submission of 17 March, 2014 you refer to jurisprudence from the
4 ad hoc tribunals according to which these circumstances have to be linked to a confirmed
5 crime; now for the International Criminal Court confirmed by the Pre-Trial Chamber. We
6 would quite simply like to be sure that this is the approach that your office is adopting, that
7 your office favours. Now, beyond reasonable doubt with regards to aggravating
8 circumstances, and there's also a question with regard to the need therefore for it to be linked
9 to a confirmed crime.
10 And please have five minutes to discuss that between yourselves. Other questions
11 are much more factual.

12 (Pause in proceedings)

13 MR MACDONALD: (Interpretation) Your Honour, I've tried to avoid this type of request,
14 but under these circumstances the Prosecution would like to reserve the right to answer your
15 question tomorrow morning given the time now to these specific questions because I want to
16 avoid any confusion. I will turn to the submissions, I don't have them before me, but also
17 you will understand I know there is a position that was presented in the Lubanga case and
18 which was rejected by the Pre-Trial Chamber.

19 However, I would just like to ensure that we do not make a mistake with regards to
20 the terms to be used. So our answer will be very brief tomorrow to continue, or it
21 could be written. It could be in an e-mail perhaps this evening, or after the hearing.

22 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, subject to my respective
23 collaborators and colleagues, you will remember without doubt that in the Lubanga case,
24 where it concerned mitigating circumstances, there was the notion of most probable. Now,
25 with regards to aggravating circumstances, it was beyond reasonable doubt.

1 Now, unless I am wrong - I don't have the submissions in front of me - this was also
2 the position that the Defence of Germain Katanga adopted in the submissions that it
3 presented to us, and it would seem to me that this is also what Mr Luvengika adopted
4 if Mr Luvengika had spoken. I don't remember exactly. And it is because we do
5 not -- or we haven't been able to find in your submissions a categorical position that
6 we would like to ask you this question so that our deliberations are fully clarified.
7 And with regards to our second question, well, you have certainly understood.
8 We've referred to what you said, but we want to be certain and so you can give us this
9 answer tomorrow morning right at the start of the hearing. We don't need a long
10 answer. The first question could be "Yes" or "No," but it is important that the
11 Chamber has these clarifications.

12 Now, we are also aware of the fact -- unless it is taken up by Mr Hooper in his
13 pleadings we have questions to be put and, if he needs to reflect, then we would also
14 have to accord him that time to reflect by suspending the hearing in order to respect
15 equality between the parties.

16 Now, factual questions. Well, I think you can and you should answer us. Well,
17 I don't know if it's interpretable spontaneously, immediately.

18 You -- what we haven't heard in your words this afternoon when you spoke about the
19 aggravating or mitigating circumstances, we haven't heard from you anything about
20 the role that Germain Katanga had in the demobilisation process; demobilisation of
21 child soldiers.

22 In your submissions relating to the proceedings and the setting of the sentencing,
23 fixing of the sentence, you put aside any mitigating circumstances, but when you
24 gave your closing arguments at the end of the debate in your oral submissions,
25 however, you did admit that at this time Germain Katanga had incontestably played a

1 role in the demobilisation process in particular of child soldiers. So there was a
2 position when the proceedings were closing before going into deliberations.
3 Now, it seems that there's a lack of conformity between your submissions and your
4 oral -- written and oral submissions. Now, do you consider that with regards to
5 mitigating circumstances the role of Germain Katanga in the demobilisation process
6 merits to be taken into consideration, knowing that it is up to the Chamber to decide
7 the extent to which it should be taken into consideration? If, furthermore, you
8 consider that it should not be taken into consideration after this morning, could you
9 tell us why you consider that it should not -- that this action should not be taken; why
10 this shouldn't be taken into consideration for mitigating circumstances?

11 MR MACDONALD: (Interpretation) Well, the answer is as follows, your Honour. The
12 Prosecution has heard Witness 267, you will remember, when we presented our arguments in
13 our final submissions and it's clear that we referred to Witness 267. It's undeniable. It's not
14 contested that Mr Katanga did indeed participate in a demobilisation process for child
15 soldiers, but you have to put it in time and space: One-year-and-a-half after the end of the
16 Bogoro attack.

17 We're talking about a time when he is appointed within the national army. So it is in that
18 context that the Chamber has to assess if it's a mitigating circumstance or factor or not and
19 also in light of the testimony of Mr Katanga when he testified before you with regards to all
20 the crimes that were committed -- well, I'm going to limit myself to that, but it's in this context
21 that our position was presented. We would put it to you that it's now for the Defence to
22 come and explain to the Chamber how this would be a factor of any type of rehabilitation.
23 Nevertheless, demobilisation -- demobilising child soldiers doesn't change the
24 seriousness of the crimes committed in Bogoro or the way in which the crimes were
25 committed, including by child soldiers.

1 PRESIDING JUDGE COTTE: (Interpretation) You have understood well, Prosecutor,
2 Madam Prosecutor, that we don't come to this hearing without information. We have the
3 comments that you've made, all of you during your final submissions that you have made at
4 the end of the substantive arguments. We have the written submissions that you have given
5 to us within the framework of these proceedings for the setting of the sentence, and we have
6 also discerned certain -- or we believe we've discerned certain contradictions; so it was
7 important for us to put the question to you to see if there was a contradiction or if this
8 contradiction could be solved. But have no fear, the Chamber will rule on this definitively.
9 We're not asking you to do our work.

10 And the Defence shall indeed develop the role of Germain Katanga, if it so wishes,
11 who is very far and who we don't see very much, and they shall be responsible for
12 speaking about the role of Germain Katanga in the demobilisation process. But
13 please understand the approach of the Chamber in this regard.

14 MR MACDONALD: (Interpretation) What the Prosecution would like to add, if you go
15 back to the context of the trial, the Chamber reflected -- (Overlapping speakers)

16 PRESIDING JUDGE COTTE: (No interpretation)

17 MR MACDONALD: (No interpretation) ... (Interpretation) -- context in which this
18 demobilisation occurred and in particular with the second witness who was heard today, so
19 insisted on the authority of Mr Katanga. So when you have demobilisation, there is a role
20 that is played, and it is in that context, in particular where Witness 267 is heard, this is a
21 matter of demonstration, if you have demobilisation, there is a recognition of the existence of
22 the phenomenon.

23 So today the Chamber will analyse these facts with regards to the sentence, but also
24 the Chamber also has to evaluate the context under which this demobilisation took
25 place and the intention behind this will, if you like, on the part of Mr Katanga.

1 It is the case of having an accused who is going to say to you, "Well, listen, I have the
2 right to a presumption of innocence, and the reason I'm challenging the
3 charges -- well, you have to believe me when I say that I'm really sorry for the victims
4 of Bogoro who were killed."

5 The Chamber will have to evaluate the sincerity of the remarks that are made and the
6 recognition of guilt. In certain national systems, you have a witness who is found
7 guilty, but what is the purpose of this sincerity of this admission of crimes? They
8 are -- (Audio interruption) -- within a context here, we're talking about demobilisation,
9 which comes prior to the transfer of this person to the Court and comes within the
10 framework which is very specific, which comes within the -- he became a general in
11 the national army.

12 But I do not think that that is challenged, your Honour. It is challenged that
13 Mr Katanga at a certain time was willing to do this. That is part of the case record.
14 That's on record. That's recognized. That's admitted.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor. And please
16 understand that there is no trap in this question. It's just a concern to be -- have as much
17 light shed on this as possible.

18 Now, the last factual question that I'd like to put to you in order to try to better
19 understand the position of the Prosecution with regards to the -- with regards to
20 possible mitigating circumstances where it concerns the co-operation that Germain
21 Katanga might have had with the work of the Court, when it concerns his behaviour
22 in the hearings, these are elements sometimes taken into account by international
23 tribunals when they examine the existence or the nonexistence of mitigating
24 circumstances.

25 Now, where it concerns the co-operation of Germain Katanga with the Court, his

1 behaviour during the hearings and more generally within the framework of the
2 proceedings, do you consider that there there are elements which could be taken into
3 account by the Chamber with regards to mitigating circumstances? If that is the case,
4 could you briefly give us the reasons why it is important that we know if for you
5 there is an (indiscernible) or quite opposite? Or perhaps you think that it would not
6 be unreasonable to look at his conduct during the hearings and during the
7 proceedings and to say that there are elements therein which would be of interest to
8 the Court.

9 MR MACDONALD: (Interpretation) If you could give us a minute?

10 PRESIDING JUDGE COTTE: (Interpretation) Two minutes.

11 (Pause in proceedings)

12 MR MACDONALD: (Interpretation) Your Honour, Mr Katanga, his behaviour-- well, we
13 have to go back to the case, during the confirmation hearing, where Mr Katanga decided to
14 stay in the detention centre, that's not in the trial, but later there were (indiscernible)
15 proceedings because he used these means to avoid -- put impression on the detention
16 authorities and the Pre-Trial Chamber.

17 But here in the trial he had a normal behaviour, normal conduct, nothing exceptional.
18 This is the conduct that you expect from anyone who is faced with justice and the
19 more international justice and the public aspect thereof, the scrutiny as they would
20 say in English, the scrutiny which this institution is subject to given that it is
21 broadcast almost instantaneously on the web. But furthermore, the Chamber issued
22 a final judgment where it assessed the credibility of Mr Katanga during his testimony.
23 Now, the Chamber rejected part of his testimony. Parts of it were accepted, parts
24 rejected. So the behaviour, the conduct is not just being sat behind and listening to
25 the proceedings. It's also when you are in the witness box, and you swear an oath,

1 and you have to tell the truth, and the Chamber rejected part of his testimony.

2 I can go back to other points with regards to question of weapons, et cetera, on how
3 many occasions how many explanations were necessary.

4 The external pressure that Aveba was subject to, I think there were four or five
5 different explanations in this regard. You will come back to these questions, but this
6 is also part of the case record, contrary to the Lubanga case, where Mr Lubanga chose
7 to -- not to testify as his rights enable him to do.

8 That's our answer. I don't think that Mr Katanga had an exceptional conduct as a
9 mitigating or aggravating circumstance. He was here. He behaved as any person
10 should behave. You shouldn't -- well, I'm just going to limit myself to that.

11 PRESIDING JUDGE COTTE: (Interpretation) That's therefore the position of the Prosecution,
12 and we take that into account, and we will see in our deliberations the way in which the
13 conduct of Mr Katanga should be assessed throughout our proceedings. We will therefore
14 stay with that for today. We should have finished at 4 o'clock. It's now 3.45. Tomorrow
15 morning, Prosecutor, you will very briefly reply, because we do not expect very long answers.
16 We really want to be sure that we have understood what your position was. We will
17 therefore start by hearing your answer.

18 Counsel Luvengika, once again, without wanting to impose a deadline on you, but
19 how much time do you think you would need tomorrow? You said 45 minutes. Is
20 that the case? If we could try and divide up the hearing tomorrow, that would make
21 it possible for Mr Hooper not to be interrupted. That's what we aim to do.

22 MR NSITA: (Interpretation) Your Honour, I think that if the Prosecutor doesn't take a lot
23 of time tomorrow morning from us, then I think that the Prosecutor and myself, we could
24 cover the first one and a half hours. And we will certainly be then for Mr Hooper for the rest
25 of the day.

1 PRESIDING JUDGE COTTE: (Interpretation) So 9.30 to 11. That's difficult to make it, 9.30
2 to 11, it's difficult to go from 11.30, 1.30. Is it a problem if at the end of an hour and a half
3 you have to interrupt yourself in order to come back in the afternoon?

4 MR HOOPER: Well, with my usual optimism, Mr President, I'm hopeful of concluding in an
5 hour and a half. So if Mr Nsita Luvengika, sorry, concludes his submissions in the morning
6 break or whatever time that may be, at the latest 11 o'clock, which would mean me starting at
7 11.30, then I would finish by 1 o'clock.

8 I think we may have indicated this already, but Mr Katanga for his part does wish to
9 address the Court.

10 PRESIDING JUDGE COTTE: (Interpretation) Of course.

11 MR HOOPER: I've asked him to limit himself to ten minutes, and he has told me he will do
12 that. And so I'm thinking at the most of addressing the Court for an hour-and-a-quarter, but
13 probably less than that. But given all that's been said about victims already, perhaps if
14 Mr Luvengika can limit himself to less than an hour-and-a-half, I would've with respect to
15 him thought that possible, in which case we can perhaps start a little earlier, very little earlier,
16 and start a little earlier than 11.30 and have a two-hour tape run as it were.

17 But as I say, I've been confident hitherto of making my submissions within about an
18 hour, a little more.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Well, this is what I
20 propose --

21 MR NSITA: (No interpretation)

22 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, tomorrow the Prosecutor will
23 have ten minutes as a maximum.

24 MR MACDONALD: I can already answer the first question.

25 PRESIDING JUDGE COTTE: (Interpretation) Please, go ahead. We have a little time

1 now.

2 MR MACDONALD: (Overlapping speakers).

3 PRESIDING JUDGE COTTE: (Interpretation) That means tomorrow we'll have five
4 minutes, from 9.30 to 9.35 the Prosecutor will answer us, Mr Luvengika will then take the
5 floor. It appears -- let's say 45 minutes, and then we will suspend for half an hour, if you
6 would be so kind, court officer, and then we will have two hours of session to make it possible
7 for Mr Hooper to have the time accorded to him, and it will be good that if in these two hours
8 you can have both your pleadings and the final statement of Mr Katanga. Would that be
9 possible for you?

10 MR HOOPER: You're looking to me for an undertaking? Yes.

11 PRESIDING JUDGE COTTE: (Interpretation) No, no. A reasonable undertaking to do
12 that then.

13 Mr Katanga, who is the primary person concerned, have you understood? So
14 tomorrow morning the Prosecutor will give us a brief response, then Counsel
15 Luvengika will go into his arguments approximately 45/50 minutes, we will then
16 suspend earlier than envisaged and then we will thereafter have two hours of hearing
17 during which your Defence team will make oral submissions for you and you can
18 take the floor to make a statement which you wish to address to the Chamber. Is
19 that understood? Very well.

20 On behalf of the Chamber, I would like to thank the interpreters, the court reporters,
21 and all the persons who work with us and who make sure that this hearing happened
22 under good conditions.

23 The Chamber would also like to thank the Registry staff who have made it possible to have
24 this morning a video conference hearing which worked well, while we know that technical
25 incidents can arise, so our gratitude goes to the Registry staff.

- 1 The session is now suspended. We'll be back tomorrow morning.
- 2 (The hearing ends in open session at 3.56p.m.)