

1 International Criminal Court

2 Appeals Chamber - Courtroom 1

3 Situation: Democratic Republic of Congo

4 In the case of The Prosecutor v. Germain Katanga - ICC-01/04-01/07

5 Presiding Judge Piotr Hofmanski, Judge Sanji Monageng and Judge Christine Van
6 den Wyngaert

7 Reduction of Sentence Hearing

8 Tuesday, 6 October 2014

9 (The hearing starts in open session at 9.34 a.m.)

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

13 PRESIDING JUDGE HOFMANSKI: Good morning, everybody. The hearing for
14 the review concerning the reduction of sentence of Mr Germain Katanga is now in
15 session.

16 I would ask the court officer to call the case.

17 THE COURT OFFICER: Thank you, Mr President. The situation in the Democratic
18 Republic of Congo, in the case of The Prosecutor versus Germain Katanga, case
19 reference ICC-01/04-01/07.

20 We are in open session.

21 PRESIDING JUDGE HOFMANSKI: Thank you.

22 I would now invite the parties and participants at this hearing to introduce
23 themselves to the Court. Beginning with the Defence of Mr Katanga, please
24 introduce yourself and those present with you today.

25 MR HOOPER: Thank you, your Honour. And good morning, your Honours. My

1 name is David Hooper. I'm a barrister of the English and Welsh Bar. And today I
2 have with me as part of the Germain Katanga Defence team Caroline Buisman, who
3 sits behind me, who is a member of the Dutch Bar, and Sophie Menegon, who is a
4 member of the Bar of Paris.

5 PRESIDING JUDGE HOFMANSKI: Thank you, Mr Hooper.

6 Next, Office of the Prosecutor, please.

7 MS BRADY: Yes, good morning, your Honours. I'll introduce the prosecution
8 team. Next to me is Ms Priya Narayanan, appeals counsel; behind us is Mr Eric
9 MacDonald, senior trial attorney; Ms Manochitra Prathaban, our case manager; and
10 behind them Mr Kee Chong, our intern; and I'm Helen Brady, senior appeals counsel.
11 Thank you.

12 PRESIDING JUDGE HOFMANSKI: Thank you, Ms Brady.

13 The Legal Representatives of Victims, please.

14 MR NSITA: (Interpretation) Thank you, your Honour. I am Fidel Luvengika,
15 legal representative of a group of victims who have status in this case. To my left is
16 Ms Julie Goffin, my legal assistant and who is a member of the Brussels Bar. Behind
17 me to my right we have Ms Aline Delehay, who is a member of the Paris Bar, who is
18 also a legal assistant and a member of my team. And finally to my left behind me
19 we have Ms Nadia Galinier, our case manager. I thank you, your Honour.

20 PRESIDING JUDGE HOFMANSKI: Thank you, Mr Luvengika.

21 I'm Piotr Hofmanski, Presiding Judge of the Panel of the three Judges appointed for
22 the Appeals Chamber for the purpose of conducting the sentence reduction review.
23 Seated to my right is Judge Sanji Monageng and to my left is Judge Christine Van den
24 Wyngaert.

25 During today's hearing, I will refer to myself and my colleagues, Judge Monageng

1 and Judge Van den Wyngaert as the "Panel."
2 We are also joined today with various Registry staff members and legal officers of the
3 Appeals Chamber, whom I welcome and thank for their assistance.
4 For those in the public gallery and those watching via the internet, I will briefly
5 explain how the hearing will be conducted.
6 Today's hearing is being held in accordance with the procedures set out in the Article
7 224(1) of the Rules of Procedure and Evidence.
8 In preparation of the hearing, the Panel received written submissions from the parties
9 and participants on the factors and criteria for sentence reduction set out in Article
10 110 of the Statute and Rule 223 of the Rules. The Panel also received written
11 observations from the Registrar under criteria of Rule 223.
12 Today, the Panel will hear oral submissions from the parties and participants on these
13 factors and criteria and on the various issues raised in the written submissions.
14 As indicated in the Panel's order of 29 September 2015, the Panel may, if it considers it
15 necessary, pose questions to the parties and participants.
16 At the end of today's hearing, Mr Katanga will have the opportunity to personally
17 address the Panel.
18 Before addressing a few procedural matters concerning the conduct of today's hearing,
19 I wish to address very briefly the preliminary submission made by the Legal
20 Representative of Victims in his written submissions, on the composition of the Panel,
21 in particular the participation of the Judge Van den Wyngaert in these proceedings.
22 The Panel notes that these submissions are inappropriate. In these circumstances,
23 since there has been no formal request before the Presidency pursuant to the Article
24 41 of the Statute for the disqualification of Judge Van den Wyngaert, the Panel
25 disregards these submissions.

1 Regarding to the conduct of today's hearing, the parties and participants are
2 reminded that they are expected to complete their submissions within the time frame
3 set by the Panel in the order of 29 September 2015.

4 I will alert you when you have two minutes remaining.

5 The Panel also informs the parties and participants that any documents used or
6 referred to at this hearing will not be given an evidence number.

7 Any such documents that were not already annexed to the filings made in advance of
8 this hearing should be filed as an annex by 4 p.m. on Friday, 9 October 2015.

9 Regarding the scope of the oral submissions, the parties and participants are
10 reminded that pursuant to the Panel's order of 29 September 2015, they may address
11 any relevant issues pertaining to this review without exceeding the issues raised in
12 their or other participants' written submissions.

13 Finally, the parties and participants are reminded that today's hearing is being
14 conducted in open session and therefore they should be mindful not to refer to any
15 confidential information. However, where necessary, the parties and participants
16 are reminded to request that the hearing be moved into the closed session should the
17 need arise.

18 Unless there are any questions with respect to what I have just said, we will now
19 proceed with hearing the submissions of the Defence of Mr Katanga.

20 Mr Hooper, you have the floor for 20 minutes. Please begin.

21 MR HOOPER: Thank you, your Honour. As we know, the Court has a duty under
22 Article 110 and Rule 223 to review the sentence of Germain Katanga as and when he
23 reaches two-thirds of his sentence served. And he's reached that point. And we're
24 here today in order to assist the Chamber further in our submissions.

25 The Court has already written -- received our written submissions, and I don't intend

1 to trawl again through the points that are made of course in those submissions. And
2 we've also been assisted by the case of Lubanga and the decision in that case, which of
3 course was a decision that was reached subsequent to the Defence submissions being
4 made. I'm glad to say that the Defence submissions are not significantly affected by
5 the Lubanga decision.

6 But the essential submission I make on behalf of Germain Katanga is that Mr Katanga
7 satisfies several of the criteria and is therefore eligible for the Court to exercise its
8 discretion so as to reduce his sentence. Further, that there are no matters of such
9 significance that the Court should decline to exercise its discretion in favour of
10 reducing his sentence at this stage. So those are my general submissions.

11 Now, in the written submissions, though the Defence has largely addressed the
12 several criteria set out in Regulation 223, I don't want to pass to those without a brief
13 mention of also Article 110(4), which states that the Court may reduce the sentence if
14 it finds that the early and continuing willingness of the person to cooperate with the
15 Court in its investigations and prosecutions is present, early cooperation, early and
16 continuous cooperation.

17 Well, as we know, Germain Katanga was never interviewed. The first, as it were, his
18 input into the case arose was essentially in the course of the trial. In the course of the
19 trial, it's our submission, and I don't dwell on it, that he in fact provided an articulate
20 and consistent account, called witnesses, cross-examined witnesses and assisted the
21 Court, cooperated in the Prosecution in the way of the case by those actions and
22 produced a different account to that that had been proffered by the Prosecution and
23 which resulted as we know in Regulation 55 being invoked and Germain Katanga
24 being convicted almost entirely on the evidence that he himself provided to the Court
25 in person in giving evidence.

1 We submit that amounts to a degree of cooperation from an early stage, relatively
2 speaking, but perhaps more significantly it continues because as we know,
3 subsequently, in June of last year he abandoned his appeal and accepted his
4 culpability for the crimes he has committed.

5 As the Prosecutor has pointed out, that plea was a great saving in time and expense
6 for the Court.

7 But by his withdrawal of the appeal and his clear acceptance of his criminal
8 culpability, accepting responsibility for his crimes, and by expressing remorse in so
9 doing, as well as expressing heart-felt regret for the suffering of the victims of those
10 crimes, that constitutes in the Defence's submission a significant element in
11 demonstrating this prisoner's eligibility for reduction of sentence and it's an element
12 that is a backdrop throughout, in fact, certainly the first four of the criteria under
13 Regulation 223. It's a factor that, as it were, runs as a seam for consideration, in our
14 submission, through each of those factors.

15 I'm not going to go through, as I say, the submissions that have already been made in
16 our written proposals to the Court. Their extensively addressed in the various
17 filings provided to the Chamber, and the factors as between the various criteria one
18 recognizes, contain a certain element of an overlap.

19 I'll run through them briefly.

20 In respect to criteria (a), conduct of the sentenced person in detention showing a
21 genuine dissociation from his crime, aside from the high level of conduct which is
22 reflected in the Registry report, that is of his general behaviour over the past eight
23 years of detention here in The Hague, which has demonstrated a genuine dissociation
24 from his crime, we have of course the recurring theme -- element, I should say, of the
25 withdrawal of the appeal and his acceptance of guilt.

1 As the Prosecutor says in paragraph 27 of their submissions, his behaviour could be
2 considered to meet the criterion in Rule 223(a), that is dissociation from crime. And I
3 don't dwell further on that very important element.

4 Nor has there been any suggestion of Germain Katanga seeking or maintaining links
5 with any militia group during the time that he's been in custody. Nor contrary to the
6 position of some other detainees has there been any suggestion that he has acted in
7 any way that interferes with other processes before this Court or any other court, in
8 particular of course in the case of Ntaganda. In fact, investigations in respect of the
9 Ntaganda case, which involved also the examination of Germain Katanga's telephone
10 record, demonstrate that he has not in fact acted in any such manner whatsoever.

11 I move to item (b), the prospect of resocialisation and successful resettlement of the
12 sentenced person.

13 The Defence submits that there are clear indications that that criterion is fully satisfied.
14 He's been now ten years in prison, eight and a half years in prison here. That time
15 has had a significant effect on him. And one bears in mind that he was only 24 at the
16 time that the crimes were committed. He's now 37. He's spent much of his adult
17 life, therefore, in prison.

18 I rely on the information in support of my submission in respect of the applicability of
19 criterion (b) to this case to that information provided in our written filing and in that
20 of the Registry filing. There is a clear prospect of successful resocialisation and
21 successful resettlement of Germain Katanga. And I don't dwell further on it. The
22 Court will know he has a stable family life; three children, two adopted children, the
23 possibility of a continued army career and support of his community.

24 Criterion 3, whether the early release of the sentenced person would give rise to
25 significant social instability.

1 Perhaps the key word here is the word "significant." The Defence submits that there
2 is no information before you the Panel that Germain Katanga's early release will give
3 rise to significant social instability.

4 Firstly, dealing with the issue of the FRPI, that the original militia group. There's no
5 suggestion Germain Katanga is going to return to that militia. No suggestion at all.

6 The Defence have produced various annexes from those in the know, particularly
7 those amongst the Ngiti community, but also others as well including substantial
8 numbers of people who are members of the Hema community.

9 There are residual elements of the FRPI still in the bush. They are a nuisance to put
10 it mildly. They're composed of Hema as well as Ngiti. They prey mainly not on the
11 Hema, in fact I'm not aware of any attack by the FRPI, the present FRPI, on the Hema
12 communities at all. They prey in fact on their own community because it's amongst
13 their own community that they're hiding in the bush. It's their own community's
14 chickens and cattle and whatnot that provide them sustenance under duress. And
15 it's their own community that have suffered rape. And it's important to recognize
16 that Katanga has no contact or control over them at all, nor has he sought it.

17 The Registry acknowledges, quote, "The information to date does not suggest the
18 FRPI could reorganize around Mr Katanga." It says other matters as well in its
19 report which helps sustain this present submission.

20 Nor is there any suggestion in the observations made by the DRC, which I'll come to
21 later to this effect. There's a veiled suggestion in the representative of victims
22 submissions but no basis for it whatsoever.

23 So there is no information before you that Germain Katanga's early release will cause
24 a problem with the FRPI; rather, the Defence say there is information before the Court,
25 in the annexes and in other observations, that Germain Katanga's return could be a

1 positive asset if the authorities are willing to let him help. And, indeed, a high
2 official of MONUSCO expressed that selfsame view to us.
3 So in what other way will Germain Katanga's early release give rise to significant
4 social instability? And there's no information presented to you that it would do so.
5 The clearest material before you is in the annexes provided by the Defence.
6 As the Prosecution says, some members of the Hema community are positive
7 and -- in respect of Germain Katanga's release. And the annexes reflect a very wide
8 tranche of opinion in Ituri, not just Ngiti, though there's a substantial opinion from
9 them, but also Bira, and Lendu, and Hema and Hema-Sud, and from among those
10 people, opinion-formers and people working to bring these communities closer
11 together, and they are unanimous that Germain Katanga's return will not cause
12 instability, indeed, they all express the opinion it would be positively a good thing.
13 And I stress all sections of the community that we've spoken to have expressed that
14 view.
15 We turn to the submissions from the victims' representative. It's important to note
16 there does not appear to be a clear statement in those submissions that Germain
17 Katanga's early release will cause significant social instability. Nor was that
18 sentiment expressed to us by any of the Hema we met, including the Hema of Bogoro.
19 At paragraph 27 the view is expressed by the victims representative that, quote, "The
20 early release of the perpetrator is bound to lead to social instability at the very least
21 within the community concerned." We doubt that, the accuracy of that comment
22 and we certainly submit it's not a proper basis. And most importantly the word
23 "significant" is of course missing.
24 There's criticism by the victims' representative that our annexes do not include the
25 view of the Hema from Bogoro, that they do fairly represent the views of all those in

1 the community about, including other Hema who see no problem in Germain
2 Katanga's return.

3 Now, we recognize the fact that the Bogoro Hema are particularly sensitive. Their
4 annex states that they're opposed for example to his early release for, quote, "the time
5 being." We don't know what "the time being" means. Does it mean is it all right
6 next year, or the year after that, or in three years' time? Even so, there's no basis to
7 conclude from their own expressed views that Katanga's release will result in
8 significant social instability.

9 It's interesting to note, and I refer here to annex A1 of the Legal Representatives of
10 Victims submissions, which is before the Court and which is a document signed by
11 very many people in Bogoro, that if we turn -- and I invite you to do so, to the back
12 where there's a list of names. And I don't read them out for the very reasons
13 Mr President you mentioned earlier. We turn to number 75 you'll see there a very
14 significant character indeed - and I know one of your member will certainly recognize
15 that name - who says this in the -- in a note, and I read from the English translation:
16 "Note well, why is he go to settle in Aru? In my opinion, we in Bogoro live on good
17 terms with his Ngiti brothers. Go back to where they live, Ngiti, his home
18 collectivité. Thank you."

19 So there's the expression which exactly reflects our own -- consequences of our own
20 investigations. In this man's opinion, those people in Bogoro live on good terms
21 with the Ngiti brothers. And indeed he's saying don't go to Aru, Germain Katanga,
22 go back to Ngiti. It really says a huge amount in our submission.

23 What really is perhaps reflected in the reaction of the people of Bogoro is upset rather
24 than any social instability. It's upset.

25 There's no material laid before you of potential for significant social instability.

1 There's a reflection of upset that the original sentence was too lenient and that,
2 therefore, reduction in it now would exacerbate feelings. But the issue of sentence
3 reduction is not, in our submission, a matter for consideration now.

4 And by my watch I still have, I think, five minutes to go.

5 PRESIDING JUDGE HOFMANSKI: (Microphone overlapping).

6 MR HOOPER: You've got -- I'm on English time here.

7 The Defence submits that that viewpoint is not a factor that should weigh
8 significantly.

9 Secondly, in their observations, the issue of release and reparations are co-joined.

10 It's wrong in our submission to do so. Though, when we met people in the village it
11 was quite plain that that was really their very, very great concern and frustration.

12 And who can blame them. It's been years since they have been seeking to be victims.

13 But even now, you see, the representative of victims is asking for more time to
14 investigate the victim position and also to include further classes of victims. This
15 victim position is going to go on and on and it's surely not a matter that should be
16 laid at Germain Katanga's door. He has no --

17 PRESIDING JUDGE HOFMANSKI: Mr Hooper, you have two minutes left, please.

18 MR HOOPER: The DRC submissions. I don't know who the author is or the basis
19 of his comments, his avenues of inquiry, his sources. They're all lacking. I think
20 rather keeps step it seems with the representatives of victims' observations. There
21 may be a direct reflection of them, if not a copy.

22 Again, it connects it with the upset again with early release being "a real act of
23 defiance," he says, "that is likely to exacerbate the frustrations of the victims and the
24 communities affected who so desperately hope for reparations." Again, no basis for
25 significant social instability. It's not suggested the locals in Bogoro are going to riot

1 and nor would it be suggested they would.

2 I would like to address you in respect of other matters, the Goda Sukpa case, the
3 casques bleu case, a complete fiction, and I'm not going to say more than that. There
4 is political goings-on here reflected to some extent in these reports by the DRC.
5 Finally, any significant action taken by the sentenced person -- this is D -- for the
6 benefit of the victims and any impact on the victims.

7 Abandonment of the appeal we say is in itself a significant action taken at least in the
8 part for the benefit and to the benefit of victims. "It put an end to the process," as
9 Germain Katanga said, "provided a definitive solution," and he expressed his sincere
10 regrets to the victims.

11 Secondly, he supported the victims in their applications for individual reparations.

12 Thirdly, he expressed his apologies publicly on film to the victims, and we'll provide
13 a copy of that film and its transcription to you; and

14 Fourthly, he's offered to meet with the victims personally to apologise as and when he
15 can; and

16 Fifthly, he seeks to do all he can to bring the two communities closer together.

17 And finally, well, it barely needs to me to say so, individual circumstances of the
18 accused: 24 at the time of the crime, 37 now; 10 and a half years in prison, a very
19 critical time.

20 What is important here is that there is a compelling need to him, with the death of his
21 father, his brother, the responsibilities that fall on him within an African society to get
22 home and support his family, not just his immediate family, his adopted children, but
23 also the wider family as well. And in my submission, given his youth, relative youth
24 at the time of the crime, his age now, the time spent in custody, it would be better if
25 his homecoming is sooner rather than later. And that is an individual circumstance

1 in my submission that bears consideration by the Court.

2 Thank you very much.

3 PRESIDING JUDGE HOFMANSKI: Thank you very much, Mr Hooper.

4 Ms Brady, you have the floor for the next 20 minutes please.

5 MS BRADY: Thank you, your Honours.

6 The Prosecution is not opposing Mr Katanga's early release. Although in our view the
7 information put forward by the participants in these proceedings does not meet the
8 criteria in Article 110(4) on cooperation and the criteria in Rule 223(d) regarding
9 beneficial action and impact on the victims, that the information before you could be
10 considered to demonstrate conduct that meets the criteria in Rule 223(a) showing a
11 genuine disassociation from the crimes and potentially Rule 223(b) regarding a
12 positive prospect for his resocialisation and successful resettlement. Furthermore, it
13 does not appear that Mr Katanga's release would give rise to significant social
14 instability in the sense contemplated under Rule 223(c). Ultimately, however, the
15 Prosecution defers to the Panel's discretion on the question of his early release.
16 We've already submitted written submissions addressing some of these factors. And
17 today my colleague and I, Ms Narayanan and I will amplify a few points which the
18 Prosecution believes are especially relevant to the exercise of your discretion, some of
19 which derive from the recent early release decision in Lubanga. And I'll be primarily
20 addressing Rule 223(a) and Ms Narayanan will be addressing the remaining criteria
21 in Rule 223 as well as the applicability or not of Article 110(4) to this case.
22 One point on terminology before I begin. The Prosecution will use the terms "early
23 release" and "reduction of sentence" interchangeably.
24 In particular, your Honours, Mr Katanga's post-sentence conduct - the combination of
25 his withdrawing his appeal, his declaring his acceptance of the Trial Chamber's

1 conclusions rendered against him in the trial judgment, and his expressing regret to
2 those who suffered from his conduct, including the victims of Bogoro - is conduct that
3 the Panel could consider in exercising your discretion to meet the criteria in
4 subparagraph (a) of rule 223.

5 At the outset, the Prosecution emphasizes that it is very cognizant of the suffering
6 endured by the victims of Bogoro as a result of the crimes that were committed in
7 Bogoro and Mr Katanga's role in them. And it's understandable that the victims
8 have expressed their difficulty in accepting the genuineness of Mr Katanga's
9 declaration and apology, especially as it exceeded the statements he had made at the
10 sentence hearing two months before and which the Sentencing Trial Chamber did not
11 view as an expression of regret so as to be taken into account as a mitigating factors.

12 But as the Lubanga Panel in the early release decision in the Lubanga case has
13 recently held, the plain meaning of the factor in Rule 223(a) requires that the
14 sentenced person's conduct in detention must demonstrate a genuine disassociation
15 from his or her crimes. As they said, and I'm quoting from paragraph 46, "There is a
16 difference between a person expressing opposition to a particular criminal act in the
17 abstract and that person accepting responsibility and expressing remorse for having
18 committed those criminal acts," rule 223(a) being primarily concerned with the latter
19 and not the former. And in our view while Mr Katanga's statements in the
20 sentencing hearing fell more within the former category, which is why they were not
21 regarded as mitigating, you may consider in the exercise of your discretion that his
22 conduct and statements post-sentence hearing fall more within the latter category.
23 Mr Katanga has not merely withdrawn his appeal or only acknowledged that crimes
24 occurred or only acknowledged that victims in general suffered. These matters in
25 our view would not warrant a positive finding under Rule 223(a), much less amount

1 to early and continuing cooperation under Article 110(4)(a) or (b), a matter which my
2 colleague will elaborate further on.

3 Rather, Mr Katanga's declaration which he attached last year, in June of last year to
4 his notice of discontinuance of appeal, expresses his acceptance of the Chamber's
5 findings about the crimes in Bogoro and his role and responsibility for them and sets
6 out his expression of a statement of his regret to those who suffered from his conduct
7 including the victims of Bogoro. In their totality, these matters could be considered
8 by you to indicate a genuine disassociation from his crimes under the relevant
9 subparagraph of the rule.

10 And to ensure these are not merely hollow words, as we've already suggested in our
11 written submissions, Mr Katanga could today in his personal address, if he so wished,
12 of course, not say the -- not only say the same again, but could also comment on his
13 commitment to them if he should be granted early release.

14 At this Court there is no presumption of early release at the two-thirds mark of a
15 person's sentence. And a proper application of Article 110(4) and Rule 223 must
16 demonstrate that the person is deserving of release. Ultimately, it's a matter for the
17 Panel to decide. But balancing the factor in Rule 223(a) against the remaining
18 relevant factors, which my colleague will now address, the Prosecution does not
19 oppose this Panel exercising its discretion to grant Mr Katanga early release.

20 And now I will pass over the podium to my colleague, Ms Narayanan.

21 PRESIDING JUDGE HOFMANSKI: Thank you very much, Ms Brady.

22 Mr Luvengika, you have 20 minutes.

23 Okay, excuse me. You have divided time. Excuse me, please.

24 MS NARAYANAN: Good morning, your Honours. Your Honours, I'll now turn to
25 discuss the remaining factors in Rule 223 which will be relevant when you exercise

1 your discretion on whether to reduce Mr Katanga's sentence.

2 Turning first to Rule 223(b): Can Mr Katanga be resocialised and successfully
3 resettled?

4 As the Lubanga Panel did, this Panel too must consider this factor for the first time at
5 the early release stage.

6 Mr Katanga's young age and his family situation, including that he was a father of six
7 children, have been previously found to be factors that may ease his reintegration.

8 This was taken to mitigate his sentence, but accorded limited weight. I refer you to
9 the Katanga sentencing decision, paragraphs 88 and 144.

10 Mr Katanga suggests several options for his life post release, including farming in
11 Aru, a town in northeast Ituri. Although his current plans are not concrete, from the
12 information presented by the Defence, it appears he could be supported in his
13 reintegration by one Ituri-based organisation.

14 This, your Honours, may suggest that he could -- a prospect that he could be
15 successfully resettled.

16 We also note, however, the DRC's recent observations stating that there could be
17 potential national proceedings against Mr Katanga should he return. The
18 Prosecution has since inquired with the DRC Auditorat Général Militaire in Kinshasa
19 about these national proceedings against Mr Katanga. The DRC authorities confirm
20 that the file containing the charges for the killing of the 9 peacekeepers, among other
21 charges, is still open against several individuals, including Mr Katanga. The file has
22 been put in order and sent to the Haute Cour Militaire. No further details were
23 provided.

24 We leave this factor for your Honours to assess.

25 Moving on to Rule 223(c): Will Mr Katanga's early release give rise to significant

1 social instability?

2 The answer, your Honours, appears to be no. It does not appear, on the information
3 available, that Mr Katanga's early release would give rise to significant social
4 instability.

5 As with the previous factor, this factor must also be assessed for the first time at the
6 early release stage. In doing so, this Panel must first consider if the early release will
7 result in social instability within the territorial State. In addition, the Panel may also
8 consider the political and social situation in the State and the impact the early release
9 may have.

10 Your Honours, on this, the Defence on the one hand, and the victims and the DRC
11 authorities on the other, have divergent views. The Defence says that there has been
12 profound reconciliation between the various communities. But the victims of
13 Bogoro contest that there has been any such reconciliation for them. In opposing
14 Mr Katanga's early release, they state that his return to Ituri could reignite tensions
15 and conflict. The victims also state that even though the Defence consulted members
16 of the Hema community from other areas, their views, as the affected Bogoro
17 community, were not represented.

18 The victims state that they still fear the FRPI militia, who remain active in the region.

19 The Registry has said it seems unlikely that the FRPI could regroup around
20 Mr Katanga if he is released. The DRC authorities have also expressed their
21 reservations on this factor, stating that Mr Katanga's return to Ituri is likely to
22 exacerbate the frustrations of the victims and the communities affected. The

23 Prosecution has no further independent information from the DRC on this factor.

24 Your Honours, while the DRC authorities and the victims anticipate a risk of social
25 instability, bearing in mind Mr Katanga's particular circumstances, the information as

1 a whole does not appear to show that Mr Katanga's release would give rise to
2 significant social instability. Again, it is a matter for your Honours to decide.
3 Turning next to Rule 223(d): Will Mr Katanga's early release impact the victims and
4 their families? And has Mr Katanga taken any significant action to benefit the
5 victims?
6 Your Honours, the victims state that they risk retraumatization if Mr Katanga should
7 return. The victims and the leaders of the Bahema-Sud community from Bogoro
8 have said that Mr Katanga's early release to Ituri would relieve their trauma and their
9 sense of injustice of impunity. In light of the victims' views and the impact on them,
10 Mr Katanga's early release could indeed affect them.
11 And as for significant action taken by Mr Katanga to benefit the victims, at the time of
12 sentencing as of May 2014 there was none. He had not yet taken any action to
13 compensate the victims. I refer you to the Katanga sentencing decision, paragraphs
14 120 and 121.
15 Your Honours, the Lubanga Panel has since held that a person's involvement in the
16 reparations process or a demonstration of regret may be relevant to this factor. This
17 is from the Lubanga decision, paragraph 69. The reparations process in this case is
18 still ongoing. It is too early to tell if any of the actions Mr Katanga may take during
19 reparations would benefit the victims. The victims also appear to reject
20 Mr Katanga's apology in lieu of reparations.
21 Your Honours, Mr Katanga's early release could impact the victims because they
22 could relieve the trauma they experienced. Nor do Mr Katanga's actions appear to
23 have benefitted the victims. At present, therefore, this factor does not appear to be
24 met.
25 And on the last factor under Rule 223, Mr Katanga's individual circumstances. The

1 Prosecution has no independent information regarding this factor.
2 And naturally, your Honours, a few brief words on cooperation under Article 110(4).
3 Contrary to the Defence submissions just now, the factors under Article 110(4) are not
4 in play in Mr Katanga's early release decision. As a matter of law, a mere
5 withdrawal of an appeal or a decision to leave a sentence unchallenged does not
6 qualify as cooperation under Article 110(4). As a recent guidance of the Lubanga
7 Panel shows, to count towards early release, cooperation and willingness to cooperate
8 must continue beyond conviction and the imposition of sentence. I refer you, your
9 Honours, to the Lubanga decision, paragraphs 30 and 36.
10 Such actions, the mere withdrawal of the appeal, do not show early and continuing
11 willingness to cooperate under the first prong of Article 110(4). They're not early,
12 they come at the end of the lengthy investigations and trials. Nor are they
13 continuing. They are one-time actions, often the result of strategic choices by
14 counsel and not the convicted person themselves. Nor do such actions benefit other
15 cases as a second prong of Article 110(4) requires.
16 To conclude, your Honours. There is no presumption of early release at the
17 two-third mark of a sentence. A convicted person must earn the privilege of early
18 release. And even if the information on the various criteria for early release is drawn
19 from different sources, including the Prosecution and the relevant State, a convicted
20 person must still justify his early release.
21 In the circumstances, Mr Katanga's case, the Prosecution does not oppose his early
22 release. His post-sentence conduct, the combination of withdrawing his appeal,
23 accepting this Court's findings and expressing regret to all those who suffered as a
24 result of his conduct, including the victims of Bogoro, could be considered to show
25 his genuine dissociation from his crimes, they may also be a prospect for his

1 successful resettlement, and the social stability of the territory would not appear to be
2 threatened in a significant way if your Honours were to decide on early release.

3 The Prosecution, however, defers to you, your Honours, and this Panel's discretion on
4 whether the early release is appropriate in all the circumstances; considering also the
5 victims' views, the impact on them and that reconciliation between the affected
6 communities is at the very least contested.

7 This concludes our submissions. Thank you.

8 PRESIDING JUDGE HOFMANSKI: Thank you very much.

9 And now Mr Luvengika, you have 20 minutes to make submissions on behalf of the
10 victims you represent.

11 MR NSITA: (Interpretation) Your Honours, learned friends, your Honours, I do
12 not intend to reiterate my earlier submissions, but rather I would like to focus on a
13 number of issues that are of particular interest in light of the victims' situation.

14 Indeed, the victims are the people most affected by the criteria, found at Rule 223 in
15 the information, that they can provide in relation to these factors must be considered
16 just like the submissions from the Defence, the Prosecution, the Registry and the
17 government of the DRC.

18 After analysing the conclusions of the parties, namely the Prosecution and the
19 Defence, we entirely understand that each party has a particular mandate and interest
20 to defend. And to this end, each party must follow a certain line of argument,
21 arguments that serve their own interest. The Legal Representatives of Victims also
22 has a mandate; namely, my mandate is to protect the interests of the victims I
23 represent.

24 The Panel of three Judges from the Appeals Chamber, who reviewed the application
25 production of Mr Lubanga's sentence, stressed that the -- it is not just a matter of the

1 person who has been found guilty, it is on the basis of relevant information that such
2 a panel must make a decision.

3 We will speak to all the various relevant paragraphs within Article 110 of the Rome
4 Statute and Rule 223 of the Rules of Procedure and Evidence; first of all, dissociation
5 from the crime, secondly, successful resocialisation resettlement, the risk of social
6 instability in the event of release, significant actions in the favour of victims, and
7 finally the individual circumstances of the person found guilty.

8 Allow me an aside, if you will. I would like to ask the honourable Bench in your
9 ruling perhaps to dissipate any doubt in the future. Perhaps it would be suitable to
10 define what is meant by "significant actions" or the risk of social instability, significant
11 social instability.

12 I will hark back to this particular point later on in my remarks.

13 The Legal Representatives of Victims has taken note of the Registry's observations
14 regarding Mr Katanga's behaviour in detention, however we do not share the
15 Registry's interpretation or the interpretation of other parties.

16 The Legal Representatives already reminded all and sundry in our observations that
17 Mr Katanga is an intelligent man who can adjust to circumstances and, really, the
18 decision upon early release hinges upon this point. We are of the view that
19 Mr Katanga's behaviour in detention was quite ordinary, quite normal and is -- this
20 behaviour was entirely in keeping with what the Court expects of any detained
21 person.

22 Furthermore, as the DRC stated, Mr Katanga's behaviour in detention may have
23 stemmed from deceit because Mr Katanga is an intelligent man who can adjust to
24 varying circumstances.

25 Mr Katanga, right up to the very point when he decided not to appeal his sentence,

1 refused to recognize his crimes.

2 As the Trial Chamber II said in their decision regarding the sentence, Mr Katanga has
3 always had a great difficulty acknowledging the crimes committed. And
4 furthermore, I make reference to paragraph 119 of ruling 3484.

5 Furthermore, that Chamber pointed out that during the trial Mr Katanga did not
6 make any statement that was a reflection of true, deep remorse. There is a general
7 consensus that dissociation from the crimes must be clear-cut.

8 We wish to stress at this juncture that although Mr Katanga decided not to appeal his
9 sentence and made a statement at that juncture, in no way was that equivalent to
10 dissociation from his crimes. It was not a recognition of the crimes that were
11 addressed in the ruling. This was not a dissociation from the crimes. He did what
12 he did for strategic reasons, obvious reasons, with a clear objective; namely, to avoid a
13 harsher sentence, anything harsher than the lenient sentence of 12 years that he
14 received, rather, Mr Katanga thought he would not gamble.

15 And really, this is what we are dealing with today in this courtroom. In actual fact,
16 Mr Katanga never had true remorse for the victims, nor did he truly wish to
17 disassociate himself from his crimes.

18 You can analyse all the statements that were made by Mr Katanga regarding these
19 issues and you will see that his apologies were to the victims who suffered in general
20 terms. And in this particular case, as for this case, we are talking about the victims
21 of the Bogoro attack.

22 Trial Chamber II stressed indeed that in his statements he directed his apologies to his
23 community, the Ngiti community. And in the filing in which he decided not to
24 appeal his sentence he said, "I accept the conclusions that were made in the ruling and
25 I express my sincere regret to all those who suffered because of my conduct, including

1 the victims of the Bogoro attack." But really this all hinges upon the victims of the
2 Bogoro attack, and Mr Katanga only spoke of those victims, those particular victims
3 after the fact.

4 And with regard to the trial -- the Trial Chamber's decision, and I make reference to
5 the sentencing hearing, there was a mention of general compassion for the victims of
6 these people, these people who had been victims of the war, and then more
7 specifically he made mention of victims within his own community. And I would
8 call upon you to read paragraph 118 of the decision mentioned.

9 Mr Katanga said that he accepted the conclusions and he expressed his sincere regrets
10 to all those who suffered. It was only after that point, after that particular comma
11 that he made mention of the victims of Bogoro attack. He never had any true
12 concern for those people. So it was reluctantly that he disassociated himself from his
13 crimes and mentioned the victims of the Bogoro attacks.

14 And now in a few moments I will speak to the apologies that were expressed in the
15 documentary that is currently being done. As for the possibility of successful return
16 to society and resocialisation, the Defence says that the Legal Representatives of
17 Victims did not provide any specific information, but it seems to me but in actual fact
18 it is the Defence who has not provided any detailed or specific information supported
19 by concrete measures.

20 There are some mention -- some mention is made of possibilities, return, for example,
21 the possibility of returning to the army, farming in Aru, studying law in Kisangani.
22 However, there is no actual specific mention of measures taken. For example, the
23 DRC has not made a commitment that Mr Katanga will return to the army. There is
24 no existence, no sign of existence of an actual plot of land that Mr Katanga would
25 farm, no documents showing that he has registered at university. There is just

1 general mention made of studying farming, returning to the army.

2 So this means, your Honours, that the statutory provisions of the Court say that in the
3 case of release, the Court is not in a position to set any particular conditions upon the
4 person or there is no way of ensuring that the person would serve the rest of his
5 sentence. So there have been no documents provided.

6 Now let me say a few words about the expectations from Mr Katanga's community, in
7 particular the women who are traditional community leaders in Aveba. I make
8 reference to annex 2 of the Defence submissions.

9 These expectations are not reassuring. For example, in this particular annex to this
10 filing, it is said, the following quote is provided, "Before, when he was in charge of
11 Aveba, there were no rapes. Now there are rapes." The RPI militia is active in the
12 region. And the quote goes on as follows: "It would be more useful for the
13 community that needs him because he has made many sacrifices for the community."
14 If one reads the annexes in the Defence's submissions, it is quite clear that this
15 community apparently has not made progress, has not moved forward. This
16 community feels abandoned and is expecting Mr Katanga and is awaiting with open
17 arms. They are waiting for the shepherd to return home.

18 Now allow me to turn to the risk of social instability. I would like to point out to the
19 Panel that the whole issue of social instability is a vital one. Now, when -- well, in
20 this provision mention is made of social instability. But this is not necessarily a
21 matter of a person returning to an armed conflict. But you see, social instability is
22 more a matter of disturbances, troubles from a social point of view within a particular
23 community once a person is released.

24 And I believe that it is the task of your Panel, your Honours, to assess and give the
25 appropriate weight to the information received to assess whether there is a significant

1 risk of social instability if Mr Katanga were to be released. I think the word
2 "significant" is not really part of my own particular sphere. I believe that the
3 assessment of whether the instability will be significant or not, that is the task of the
4 Panel.

5 Now, the Registry said that they were not in a position to provide reliable information
6 about the impact of release. However, a number of factors must be considered
7 because the community's concern could take a rather dim view of early release.

8 Allow me to clear up any doubts that the Registry may have. In actual fact, the
9 community's concern, the people in Bogoro have a very negative view of Mr Katanga
10 being released.

11 When the Defence visited Bogoro, the victims were quite clear on this issue. I wish
12 to repeat a few remarks that were made by the victims themselves when they met
13 with the Defence team. And I was there, too. One victim spoke to the Defence and
14 said this: "You heard about the massacres in Bogoro over the radio. We
15 experienced the events and we thought that the world had come to an end. The
16 sentence that Mr Katanga has received is not proportional. It would have been
17 better if he had been brought before Congolese courts. This request to come back or
18 this request for forgiveness is an insult to the victims. He deserved a life sentence.
19 We have suffered ever since 2001. You were in Aveba. You did not see any Hema,
20 unlike what we have heard here. Here in Bogoro we have Ngiti people. Tell the
21 Judges that the ruling did not satisfy me. How can the ICC end the conflicts
22 between the Hema and the Ngiti?"

23 Another victim said this: "Under national law, if a person kills another one, that
24 person deserves a life sentence or worse. Why did he get 12 years, even though the
25 massacres had been proven?"

1 And I remind the Panel that the Prosecution had asked for a sentence of 22 to 25 years
2 imprisonment.

3 Another victim said this: "You did the wrong thing by coming here," they were
4 speaking, that victim was speaking to the Defence. This victim said: "We have
5 greeted you out of courtesy. But the crimes of Mr Katanga did not affect the Judges
6 or Mr Katanga's advocate. The victims have suffered within themselves. The
7 sentence was lenient. I am against any reduction in his sentence before there are
8 reparations."

9 PRESIDING JUDGE HOFMANSKI: Excuse me, Mr Luvengika, you have two
10 minutes left, two minutes.

11 MR NSITA: (Interpretation) I shall try to summarize, your Honour.

12 Another victim said this: "Your coming here has reopened the wounds. Your
13 coming here has brought the pain back for many victims. Tomorrow some victims
14 will fall ill."

15 So you see, your Honours, this is what the victims are experiencing. This is what the
16 social instability will cause. I will skip over a few remarks I had prepared about the
17 DRC and their involvement.

18 Now, significant actions for the victims. I make reference to the criteria. As for the
19 personal circumstances of Mr Katanga, if one were to consider these circumstances,
20 the Defence would have you believe a number of things about Mr Katanga and his
21 family. But if the Panel were to consider his individual circumstances, this would be
22 seen as yet another frustration, yet another blow to the victims who have lost
23 everything.

24 All opportunities for an education, whereas Mr Katanga talks about studying law, the
25 victims wish to rebuild their families. They don't even have any -- nothing. They

1 have suffered severe physical and psychological harm. They have lost their family
2 members. So the individual circumstances of Mr Katanga as mentioned here
3 represent nothing more than another source of frustration for the victims.

4 And I thank you, your Honours.

5 PRESIDING JUDGE HOFMANSKI: Thank you, Mr Luvengika.

6 Ms Brady, you have five minutes, if needed, to respond to the Defence submissions
7 and the observations made by the Legal Representatives of Victims.

8 MS BRADY: Your Honours, the Prosecution has no need to make any further
9 submissions in response. We have already made all the submissions we need to
10 make in our earlier submissions today and in our written submissions. Thank you.

11 PRESIDING JUDGE HOFMANSKI: Thank you very much.

12 Mr Hooper, you have five minutes, if needed, to respond to Prosecutor's submissions
13 and to also the victims, please.

14 MR HOOPER: (Microphone not activated)

15 THE INTERPRETER: Microphone, please.

16 MR HOOPER: Thank you, your Honour. I'll start again.

17 Just in response to the Prosecutor's submissions, in respect of the Defence
18 submissions relating to the relevance of Article 110(4), that is early and continuous
19 cooperation, we're not taking just the fact that he withdrew his appeal as the starting
20 point. We're going right back to the history of the case, and we put it this way:
21 Were the Judges of the Trial Chamber assisted by Germain Katanga's cooperation in
22 the course of that case? And we'd say they were substantially and that, therefore,
23 the withdrawal of the appeal should be seen in that context.
24 But in any event, the effect of the appeal has of course very deep relevance
25 throughout your consideration in respect of any of the criteria.

1 Turning to the perhaps even excessive, perhaps even inappropriate commentary by
2 the victims' representative based on, as it was, on an absence, on a factual basis, but
3 on a speculative basis in respect of why Mr Katanga, for example, withdrew his
4 appeal. Of course we can all approach a person in Mr Katanga's position with a
5 great degree of scepticism and cynicism, but the human heart, as we know, has many
6 chambers. Is there deceit here?

7 Well, I was present when Germain Katanga was shown for the first time the film of a
8 young girl from Bogoro relating her loss of family when she was ten years old in the
9 course of the attack. She didn't know Germain Katanga at all, but she held him
10 responsible. In fact, no one in Bogoro really knew Katanga, as we know, until his
11 name was mentioned after the crimes. And he's the only one who's been charged, so
12 one can understand this focus by the Bogoro population on him. When he saw that
13 film, there weren't words, there were tears. So perhaps the cynicism is misplaced.
14 Visiting Bogoro, our clear impression was that the local population had a very scant
15 idea of, for example, Regulation 55 and the effect that that had in respect of the
16 sentencing powers (overlapping speakers) --

17 PRESIDING JUDGE HOFMANSKI: Excuse me, you have two minutes.

18 MR HOOPER: Very clearly we're very focused, very sentenced, very, very focused
19 on the issue of reparations. We went there really to reach out to them. We realized
20 it was a difficult thing. We didn't feel, may I say, best assisted by the representative
21 for victims, but we did our best.

22 I'm unsure for my part how profound the objections to Germain Katanga's release are.
23 A prominent leader of that community said to me off the record, off the record, so I
24 can't mention his name or his position, but he was a very significant figure, he said, "I
25 have no objection to Germain Katanga coming back, but" he said in effect words, "I've

1 got to stay in line."

2 There we are. Thank you.

3 PRESIDING JUDGE HOFMANSKI: Thank you very much. (Microphone not
4 activated)

5 THE INTERPRETER: Microphone, please.

6 PRESIDING JUDGE HOFMANSKI: The Panel will now retreat to the deliberations
7 room in order to briefly confer the submissions we heard.

8 However, before we do so, could Mr Hooper provide us with the indication as to
9 whether Mr Katanga will be addressing the Court today.

10 MR HOOPER: Yes. I've discussed this with Mr Katanga and he's grateful for the
11 opportunity to say a last and few words.

12 PRESIDING JUDGE HOFMANSKI: Thank you very much. You have 10 minutes
13 after the break.

14 The Court adjourns for 10 minutes.

15 THE COURT USHER: All rise.

16 (Recess taken at 10.50 a.m.)

17 (Upon resuming in open session at 11.14 a.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE HOFMANSKI: We are now back in session.

21 The Panel would like to pose basically one question to the participants. While the
22 Panel does not want to receive written submissions on this question, we would be
23 interested to hear from the participants on their understanding of the word
24 "significant" under Rule 223(c). Please, if possible, five minutes for all the parties,
25 starting with Defence.

1 Mr Hooper.

2 MR HOOPER: Well, the word "significance" is sometimes perhaps a little better
3 judged by withdrawing it from the sentence, and if we withdraw this particular
4 adjective from the sentence, what do we have? We have a situation that would give
5 rise to social instability. Even addressing it as simply as that qua social instability in
6 the context of this case, we'd say there's no information to suggest that social
7 instability will result. What we've heard is upset and we've addressed perhaps the
8 root reasons for that upset and whether they are appropriate for consideration at this
9 stage or not.

10 If we add the word "significant," well, significant -- this is the point when I'd like to
11 have a dictionary at hand or at least a thesaurus -- it's a word that obviously is there
12 to give a very heightened meaning to the words that follow. The social instability
13 has to have a significant quality in terms of the society as a whole, and we'd submit
14 that really we're not focusing on a very small and particular group that may express a
15 sense of upset, but we're talking here of divisions of -- divisions in the context also of
16 perhaps international criminal crime. And so that's the particular context in which
17 we should approach it.

18 And of course the concern of the drafters was we don't want to create a situation
19 where the authors of serious crime are sent back into communities to recreate the
20 divisions that existed before. That's not the situation that arises here and it's not
21 suggested to be.

22 I hope that assists.

23 PRESIDING JUDGE HOFMANSKI: Thank you very much, Mr Hooper.

24 Ms Brady or -- yes, please, you have also five minutes.

25 MS NARAYANAN: I won't need five minutes, your Honours. Thank you.

1 As for your question, your Honours, on the understanding of the word "significant" in
2 Rule 223(c) it is our understanding that the word "significant" would mean something
3 more than a risk or some risk. Beyond that, it may turn on the facts of each case.

4 Thank you. I hope that assists.

5 PRESIDING JUDGE HOFMANSKI: Thank you.

6 Mr Luvengika.

7 MR NSITA: (Interpretation) Thank you, Mr President, your Honours. It is true
8 that when it comes to the meaning of -- the literal meaning of "significant" it would be
9 difficult to give a theoretical definition, but this can be done on a case-by-case basis
10 and within the context of whatever we are talking about.

11 Here when we talk about significant social instability, that is what I was referring to a
12 short while ago. I am saying that it does not necessarily relate to the consequences
13 of a war or anything of that scope, but the totality of the elements felt by that
14 community that can lead to a negative consequence.

15 Mr Hooper has been talking about the anger of the victims and he seems to be linking
16 it to the reparation process, but I would like to point out here that the victims want to
17 have appropriate reparation, but in order for that to happen they are willing to wait
18 for justice to be administered.

19 In this particular case the victims are angry when they look at the low sentence and
20 they are thinking that even though the number of years is so low it is still possible to
21 reduce the sentence. That is what that anger relates to and it is reflected in the letter
22 that they have sent to the Chamber. So we have to look at that as a whole.

23 Now, talking about significant action in favour of the victims, I frankly believe that if
24 Mr Katanga's apologies to the victims could really be sincere, this would be a
25 significant element for the victims because it would be an element of reparation and

1 appeasement. But in this instant case the victims have always disagreed, that is why
2 they believe that those apologies are an insult because they thought it was insincere in
3 relation to what happened to them.

4 Thank you, your Honours.

5 PRESIDING JUDGE HOFMANSKI: Thank you very much.

6 This concludes the Panel's questions. At this time Mr Katanga is invited to address
7 the Panel.

8 Mr Katanga, you have 10 minutes. Please begin.

9 MR KATANGA: (Interpretation) Good morning, Presiding Judge, your Honours.
10 I am hoping not to exhaust the 10 minutes.

11 Mr President, your Honours, when an accused person is found guilty, his value as a
12 human being collapses and the credibility -- his credibility and his word suffer as a
13 result.

14 PRESIDING JUDGE HOFMANSKI: The mic was off.

15 MR HOOPER: (Microphone not activated)

16 THE INTERPRETER: Mr Hooper's mic is off now. Mr Hooper's mic is off now.

17 PRESIDING JUDGE HOFMANSKI: Yes, please.

18 MR HOOPER: (Microphone not activated)

19 THE INTERPRETER: Mr Hooper's mic is off now.

20 JUDGE VAN DEN WYNGAERT: If he speaks louder, that would be fine as well.

21 (Pause in proceedings)

22 PRESIDING JUDGE HOFMANSKI: Yes, please start again. Okay, you have
23 10 minutes still.

24 MR KATANGA: (Interpretation) Good morning, Presiding Judge, your Honours.
25 Mr Presiding Judge, your Honours, when an accused person is found guilty his very

1 value as a human being collapses while his credibility and his word suffer as a result.
2 This is the awkward situation in which I find myself today. And I am not saying this
3 merely because I wish to be released at all costs. Very few people would put their
4 trust in anything that I say, even when my words come from the bottom of my heart.
5 I repeat, I'm not saying this simply because I want to be free. What I'm saying comes
6 from the bottom of my heart and it is a reflection of my deepest conviction. This is
7 all the more true when it comes to the victims of my actions and that is because their
8 pain is immense. I am fully aware of that.

9 I have personally experienced such pain with the death of my younger brother as well
10 as with the very recent passing of my father. This experience has enabled me to
11 better understand how painful the loss of a loved one can be.

12 The situation is even worse in the case of the Bogoro victims who lost their own loved
13 ones in violent circumstances. Nevertheless, in spite of this reality, I'm determined
14 not to be discouraged as long as I'm certain of my own sincerity.

15 The fact of the matter is that in the course of the trial I had to come to terms with the
16 role that I personally played in the attack on Bogoro as well as with the degree or
17 scope of suffering inflicted upon the victims of that attack.

18 Today, through you, Mr Presiding Judge, I would like to address myself to the
19 victims whose pain as expressed in their statements has profoundly affected me. I
20 sincerely hope that my message will eventually reach them.

21 Mr President, your Honours, I have read the reactions of the victims as conveyed by
22 their Legal Representative. I have heard their cries of pain and suffering with a
23 feeling of deep respect. The suffering inflicted upon the victims is real. I have
24 already acknowledged that. I have expressed my regrets for that before and I am
25 once again expressing my regrets today. This is something that I will never take

1 lightly.

2 I would like to reassure you and along with you all the victims of the sincerity of my
3 regrets and of the sadness that I feel. This is something that I can only express
4 through my words. I am saddened to learn that certain militia members continue to
5 undermine security in the region and particularly in the Ngiti areas. I no longer
6 have any contact with the militias, but I hope that the situation is going to improve.
7 I'm also fully prepared to work in cooperation with MONUSCO and the DRC
8 government in order to assist them to the extent possible with the demobilisation of
9 this residual group of militias in the Walendu-Bindi collectivité.

10 As to my own plans for the future, I would like to engage in farming and further
11 studies. It is my hope that you will allow me to reunite with my family in Aru. It is
12 from there that I will make the necessary arrangements to enroll in the University of
13 Kisangani or Bunia considering that learning and the implementation of rights are my
14 passions at the present time.

15 Mr President, your Honours, I simply would like to respond to the Legal
16 Representative of Victims with his -- in relation to his statement regarding farming.
17 When it comes to farming, Mr President, your Honours, in Africa, and in particular in
18 the DRC, in order to have a plot of land to farm, you really do not need a project or a
19 plan. You need a road, you need a machete and you need cooperation.
20 I thank you for having given me the floor. Thank you very much, Mr President,
21 your Honours.

22 PRESIDING JUDGE HOFMANSKI: Thank you very much, Mr Katanga.
23 The Panel assures you that we will to the greatest possible extent take into account
24 considerations that you have personally raised today.

25 The Panel thanks the parties and the participants for their assistance with respect to

1 the hearing.

2 Rule 224(2) of the Rules provides that following the review hearing, the Panel's

3 decision and the reasons for it should be communicated to the review participants as

4 soon as possible. The Panel informs today's participants and Mr Katanga that it is

5 working carefully to ensure that the issuance of its decision occurs in as timely a

6 manner as possible.

7 This concludes today's hearing.

8 My last task is to thank on behalf of myself, Judge Monageng and Judge Van den

9 Wyngaert all the Registry staff members, both inside and outside the courtroom, legal

10 officers and interpreters who have assisted us today.

11 The hearing is now closed.

12 THE COURT USHER: All rise.

13 (The hearing ends in open session at 11.35 a.m.)