

Annex 1



Original: **English**

No.: ICC-01/04-01/07
Date: 28 October 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Document

**Document Containing the Charges as Confirmed by the Pre-Trial Chamber
in accordance with the «Décision relative au dépôt d'un résumé des charges par le
Procureur»**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence of Germain Katanga

Mr David Hooper

Mr Andreas O'Shea

Counsel for the Defence of Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Jean-Louis Gilissen

Fidel Nsita Luvengika

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Pursuant to Article 61(3)(a), the Prosecutor charges the following persons with the crimes as described herein:

Germain KATANGA
and
Mathieu NGUDJOLO CHUI

with **WAR CRIMES** and **CRIMES AGAINST HUMANITY**, as set forth below:

I. THE PERSONS CHARGED

A. Germain KATANGA

1. Germain Katanga, allegedly also known as Simba or lion, was born on 28 April 1978 in Mambasa, in the territory of Mambasa, in the district of Ituri in the Democratic Republic of the Congo ("DRC"). He is partially of Ngiti (also called "Lendu South") ethnicity, is married and has two children.¹
2. By the end of 2002, Germain Katanga was a military leader of a predominantly Ngiti combatant group. The group allegedly became known in Ituri as the *Force de Résistance Patriotique en Ituri* ("FRPI"), and its forces were allegedly based in the Walendu Bindi *collectivité* of the Irumu territory in the Ituri district.²
3. In early December 2004, President of the DRC Joseph Kabila appointed Germain Katanga Brigadier-Général in the Forces Armées de la République Démocratique du Congo ("FARDC"), a post which he held at the time of his arrest by the DRC authorities, on or about 10 March 2005.³

¹ Decision on the confirmation of charges, para. 5.

² Decision on the confirmation of charges, para. 6.

³ Decision on the confirmation of charges, para. 7.

B. Mathieu NGUDJOLO CHUI

4. Mathieu Ngudjolo Chui was born on 8 October 1970 in the Likoni locality of the *groupement* of Ezekere, within the Walendu Tatsi collectivité in Djugu territory. He is of Lendu ethnicity, from the Njotsi clan, is married and has six children. He studied medicine and worked as a nurse before engaging in military activities.⁴
5. In August 2002, when the UPC succeeded in taking control of Bunia, Mathieu Ngudjolo Chui was working as a nurse in Bunia and in Zumbe, a village south-east of Bunia, in the Ezekere *groupement*. After the UPC's takeover of Bunia in August 2002, he allegedly settled in the Ezekere *groupement* and was involved with Lendu combatants south of Bunia who were known as the *Front des Nationalistes et Intégrationnistes* ("FNI").⁵
6. In or around August 2006, the media reported that Mathieu Ngudjolo Chui had signed a peace agreement with the Government of the DRC. Mathieu Ngudjolo Chui declared that he and his fighters had been granted amnesty, were being integrated into the FARDC, and would be deployed in Ituri district. In October 2006, he obtained his current rank of colonel in the FARDC and was based in Ituri. Prior to his transfer to the Court, Mathieu Ngudjolo Chui had been sent to Kinshasa for military training as part of the integration process of President Kabila's DRC government. Mathieu Ngudjolo Chui was still a member of the FARDC at the time of his arrest on 6 February 2008.⁶

⁴ Decision on the confirmation of charges, para. 8.

⁵ Decision on the confirmation of charges, para. 9.

⁶ Decision on the confirmation of charges, para. 10.

II. BACKGROUND

The Ituri district before 1 July 2002

7. Ituri is a district in the Orientale Province of the DRC. It is bordered by Uganda to the east and Sudan to the north. Ituri district is composed of five territories sub-divided into *collectivités*, themselves divided into *groupements*. The conflict relevant to the charges discussed in this decision began in Djugu territory which is composed of 10 *collectivités*, and the city of Mongbwalu which has a special administrative status. It then spread to Irumu territory. Irumu territory is composed of 12 *collectivités* - one Ngiti (Walendu Bindi), and four Hema (Bahema Sud, Bahema Boga, Bahema Mitego and Bahema d'Irumu), with different ethnic groups composing the others. The groupement of Babiase consists of four localities - Dodoy, Bagaya, Nyakeru, and Talieba - with Bogoro as its administrative centre.
8. Ituri has a population of 3.5 to 5.5 million people, and includes at least 18 different ethnic groups, the largest being the Alur, the Bira, the Hema, and the Lendu, as well as the latter's southern sub-group, the Ngiti. Before the war, Bunia, the capital of Ituri, had a population of about 100,000. The Hema/Gegere and Lendu groups are concentrated in Djugu territory, while the Hema and Ngiti groups are found in Irumu territory.
9. Ituri is rich in natural resources, including gold, oil, timber, coltan, and diamonds. For example, the Mongbwalu mine, which is located approximately forty-five kilometres north-west of Bunia, is the most important gold mine in the DRC and one of the most important in Central Africa. Competition over control of Ituri's resources has been a major reason for the continued conflict in the region.

10. In the summer of 1999, tensions arose over disagreements about the allocation of land in Ituri and the appropriation of its natural resources. During the second half of 2002, renewed violence flared up in several parts of the district, including the conflict among the Hema, the Lendu, and the Ngiti.

III. MATERIAL ELEMENTS OF THE CRIMES

A. Facts relevant to Article 8 *Chapeau* elements

1. *Existence and nature of the armed conflict in Ituri*

11. Between August 2002 and May 2003, an armed conflict took place in the territory of Ituri between a number of local organised armed groups, including, *inter alia*, the *Union des Patriotes Congolais* ("UPC")/*Forces Armées pour la Libération du Congo* ("FPLC"), the *Front des Nationalistes et Intégrationnistes* ("FNI"), the *Force de Résistance Patriotique en Ituri* ("FRPI") and the *Parti pour l'Unité et la Sauvegarde de l'Intégrité du Congo* ("PUSIC"). These armed groups:

- (i) had a certain degree of organisation, insofar as such groups acted under a responsible command and had an operative internal disciplinary system; and
- (ii) had the capacity to plan and carry out sustained and concerted military operations, insofar as they held control of parts of the territory of the Ituri District.⁷

12. Uganda directly intervened in this armed conflict through the Ugandan People Armed Forces ("UPDF"). Significant numbers of UPDF troops directly participated in several military operations on behalf of different armed groups, including the UPC takeover in Bunia in early August 2002, the

⁷ Decision on the confirmation of charges, para. 239.

FNI/FRPI takeover in Bogoro in February 2003 and of Bunia in early March 2003.⁸

13. Uganda was one of the main supplier of weapons and ammunitions to these armed groups and that the respective recipients' ability to successfully attack other groups was aided by this Ugandan military assistance. As a result, the conflict that took place in Ituri District between, at least, August 2002 and May 2003, was of an international character.⁹

2. Existence of a nexus between the armed conflict and the alleged crimes

14. The offences committed during and in the aftermath of the joint FNI/FRPI 24 February 2003 attack on the village of Bogoro took place in the context of and were associated with the protracted armed conflict in the Ituri District.¹⁰

3. Perpetrators' awareness of the factual circumstances that establish the existence of such armed conflict

15. Because of its strategic location in terms of geography, economy and military advantages,¹¹ the village of Bogoro was the scene of attacks on the civilian

⁸ Decision on the confirmation of charges, para. 240.

⁹ Decision on the confirmation of charges, para. 240.

Discrepancy: The Document Containing the Charges ("DCC") submits that the conflict might be either international or national. See Para 38 DCC : "The prosecution submits that , for the purpose of this criminal case, it is immaterial whether the conflict, (...), is characterized as non-international or international. (...) For that reason, the Prosecution is charging KATANGA and NGUDJOLO in the alternative, based on counts reflecting the same conduct but related to war crimes in the context of a conflict of international character and of non-international character. The Prosecution will therefore present evidence in its possession pertaining to both the international and non-international aspects of the armed conflict".

¹⁰ Decision on the confirmation of charges, para. 384.

¹¹ The DCC is more detailed about the location and the advantages of Bogoro. See para. 64: "Bogoro is located at the junction of three major roads, which lead to the north to Bunia, to the east to Kasenyi (a village on Lake Albert) and to the south to Aveba and Gety. Before the war began, Bogoro had approximately 6,000 residents. The most populous tribe were the Hema and after that the Lendu, the Bira, and others. During the time period relevant to this Document, the UPC troops in Bogoro were based in a military camp in the centre of the village. This camp was near a traffic round-about from which the roads to Bunia, Kasenyi, and Gety/Aveba radiated. The presence of the UPC in Bogoro, from August 2002, put the Lendu and Ngiti militias in the area at a great disadvantage. The Ngiti forces in Irumu territory, as numerous as their fighters and camps were in the south, could not access or control the road leading to Bunia. In addition, the UPC base at Bogoro lay between the Ngiti militias in Irumu territory and the Lendu militias based in Zumbe, and farther north, thereby preventing their

population, killings,¹² inhuman treatment, rape and sexual slavery, outrages upon personal dignity, pillaging and destruction of property.¹³

16. Child soldiers under the age of fifteen were used by Germain Katanga and Mathieu Ngudjolo Chui as bodyguards and soldiers, and to participate in hostilities alongside the FNI and FRPI militia members, including in the attack on the village of Bogoro and to fight the Hema "enemies".¹⁴

17. FNI/FRPI members, as well as their leaders Germain Katanga and Mathieu Ngudjolo Chui, were fully aware of the existence of an armed conflict in the Ituri District between, at least, August 2002 and May 2003, and that the attack on the village of Bogoro, and the offences committed during and in the aftermath of the attack, were part of the strategic common plan to secure control over the village. Germain Katanga and Mathieu Ngudjolo Chui, as well as other FNI/FRPI commanders and combatants, were fully aware of the factual circumstances that established the existence of an armed conflict and that the 24 February 2003 attack on Bogoro was part of that armed conflict.¹⁵

B. Facts relevant to Article 7 Chapeau elements

1. Widespread or systematic attack directed against civilian population: contextual, objective and subjective elements

a. The civilian population of the Bogoro village was "attacked" on 24 February 2003

18. The civilian population of the Bogoro village was "attacked" on 24 February 2003;¹⁶ on that day in the early morning, FRPI and FNI combatants armed

effective coordination. The UPC presence in Bogoro was also a hardship for civilians, because it prevented free travel and commerce on the Bunia to Lake Albert axis."

¹² The DCC is more precise when speaking about killings: See Para. 94 DCC: reference is made to "murders (or wilful killings)".

¹³ Decision on the confirmation of charges, para. 385.

¹⁴ Decision on the confirmation of charges, para. 386.

¹⁵ Decision on the confirmation of charges, para. 388.

¹⁶ Decision on the confirmation of charges, para. 403.

with heavy weapons, automatic firearms and machetes (armes blanches) encircled Bogoro village from all the roads leading to it.¹⁷ The civilians in Bogoro village awakened on that day to gunfire as Lendu and Ngiti combatants began attacking the entire village, starting with the houses at the perimeter. Although there was a UPC military camp in the centre of the village and UPC soldiers were based at this military camp, the attack was not only directed against the military target but also against the predominantly Hema civilian population of the village.¹⁸

b. The attack on Bogoro village was directed against the civilian population

19. Prior to the 24 February 2003 attack against the civilian population of Bogoro, combatants led by Mathieu Ngudjolo Chui and Germain Katanga and largely of Lendu and Ngiti ethnicity initially organised themselves under the military groups of the FNI and FRPI as a means of fighting other combatants, largely of Hema ethnicity.¹⁹ However, the joint attack on Bogoro village on 24 February 2003 was directed not only against a military camp that existed in that village, but was also directed against the civilian population of the village, and in particular, against the Hema civilians living in Bogoro and in the vicinity.²⁰

20. FNI/FRPI combatants, before starting the attack, chanted songs in which they made it clear that they would kill Hema individuals, but would show mercy to Ngiti or Bira individuals.²¹ The attack was intended to "wipe out" or "raze" Bogoro village by killing the predominately Hema civilian population and destroying the homes of civilian inhabitants during and in the aftermath of the attack.²² The FNI/FRPI attacks on villages inhabited predominately by

¹⁷ Decision on the confirmation of charges, para. 403.

¹⁸ Decision on the confirmation of charges, para. 403.

¹⁹ Decision on the confirmation of charges, para. 404.

²⁰ Decision on the confirmation of charges, para. 405.

²¹ Decision on the confirmation of charges, para. 405.

²² Decision on the confirmation of charges, para. 406.

Hema civilians in the Ituri region, including the 24 February 2003 attack on Bogoro village, were directed against the civilian population of the region of Ituri in the DRC,²³ from the end of 2002 until the middle of 2003.²⁴

c. The attack on the civilian population of the Bogoro village was part of a widespread or systematic attack

21. Firstly, the attack against the predominantly Hema population of the relatively small geographical area of Bogoro village resulted in the deaths of a large number of victims.²⁵ Although exact estimates differ, the attack on Bogoro village on 24 February 2003 itself resulted in the deaths of approximately 200 civilians.²⁶

22. Secondly, the attack against the civilian population of Bogoro village, on 24 February 2003, was part of a widespread campaign of military attacks against civilians, predominantly of Hema ethnicity, of the region of Ituri in the

²³ Decision on the confirmation of charges, para. 407.

²⁴ Decision on the confirmation of charges, para. 416. The DCC (para. 40) alleges in more detail that **from** January 2001 to January 2004, the Lendu and the Ngiti armed groups, which became known, during the period, as the FNI and the FRPI were responsible for perpetrating at least 10 attacks, in which civilians were targeted and killed in significant numbers. While carrying out the attacks, these armed groups were, throughout the conflict, implementing a policy of targeting the Hema population and pillaging and destroying its property. By contrast, the Chamber (see paras. 407, 416, here as quoted from the para. 22 of the summary) found that the FNI/FRPI attacks on villages inhabited predominantly by Hema civilians in the Ituri region, including the 24 February 2003 attack on Bogoro village, were directed against the civilian population of the region of Ituri in the DRC, from the end of 2002 until the middle of 2003.

Discrepancies:

- The DCC alleged the attacks in the period from January 2001 to January 2004, while the Chamber found the relevant attacks took place from the end of 2002 until the middle of 2003.
- The DCC alleged the policy of targeting the Hema population though the attack on civilian population. The Chamber found that the attacks on villages inhabited predominantly by Hema population were directed against the civilian population (see paras 22, 29 of the summary, paras. 407, 411, 412, 416 of the Decision). The Chamber found that *“the attack against the predominately Hema civilian population of the Bogoro village, on 24 February 2003, was part of a widespread FNI/FRPI attack directed against the civilian population, predominantly of Hema ethnicity, of the region of Ituri in the DRC.”* and *“Although not necessary to satisfy both requirements, the Chamber nonetheless noted that the attack against the civilian population of Bogoro village was also part of a systematic attack against the civilian population, predominately of Hema ethnicity, living in the Ituri region.”* (see below paras. 25, 26 of the summary, 411, 412 of the decision). On the other hand, in para. 413 of the Decision the Chamber stated that the attack on Bogoro was part of *“a larger campaign of reprisals specifically directed against the predominantly Hema civilians living in villages in the Ituri region;”*

²⁵ Decision on the confirmation of charges, para. 408.

²⁶ Decision on the confirmation of charges, para. 408.

DRC.²⁷ For example, prior to the attack against the civilian population of Bogoro, the FNI and/or the FRPI killed approximately 1200 civilians throughout the region of Ituri in the DRC, in particular in the village of Nyankunde.²⁸ Furthermore, in the month following the attack against the civilian population of Bogoro approximately 900 civilians, predominantly from the Hema ethnic group, were also killed by the FNI/FRPI in Bunia/Nyakasanza, Tchomia, and Katoto.²⁹ By the end of July 2003, approximately 600 civilians, predominantly from the Hema ethnic group, were killed by the joint forces of the FNI/FRPI in Mandro, Kilo and Drodoro.³⁰

23. The attack against the civilian population of Bogoro village was also part of a systematic attack against the civilian population, predominately of Hema ethnicity, living in the Ituri region.³¹

24. The violent acts which occurred in Bogoro village on 24 February 2003 were not random acts of violence against the civilian population but were committed pursuant to a common policy and an organized common plan, which was, *inter alia*, (i) part of a larger campaign of reprisals specifically directed against the predominantly Hema civilians living in villages in the Ituri region; (ii) a demonstration of the FNI/FRPI's opposition to any alliance between the UPC (Hema) and (iii) a means to "wipe out" the village of Bogoro so as to ensure FNI/FRPI control over the route to Bunia and to facilitate the transit of goods along the Bunia-Lake Albert axis.³²

25. Prior to and after the 24 February 2003 attack against the civilian population of Bogoro, members of the FNI/FPRI regularly abducted, imprisoned in military camps, and subsequently raped and sexually enslaved women and

²⁷ Decision on the confirmation of charges, para. 409.

²⁸ Decision on the confirmation of charges, para. 409.

²⁹ Decision on the confirmation of charges, para. 410.

³⁰ Decision on the confirmation of charges, para. 410.

³¹ Decision on the confirmation of charges, para. 412.

³² Decision on the confirmation of charges, para. 413.

girls predominantly of Hema ethnicity.³³ In particular, women and girls were sexually enslaved and raped during and in the aftermath of the attacks on Kasenyi, Nyankunde and other villages.³⁴ Hence, rape and sexual slavery were committed by the FNI/FRPI frequently and consistently throughout the region of Ituri in the DRC.³⁵

26. The 24 February 2003 attack against the civilian population of Bogoro was part of a systematic FNI/FRPI attack directed against the civilian population in the region of Ituri in the DRC, from the end of 2002 until the middle of 2003.³⁶

d. The acts committed against the civilian population of Bogoro were committed with knowledge that the conduct was part of a widespread or systematic attack against the civilian population

27. Germain Katanga and Mathieu Ngudjolo Chui, through Commander Boba Boba and others under their command, met in Aveba and planned the attack on Bogoro village on 24 February 2003.³⁷ Accordingly, Germain Katanga and Mathieu Ngudjolo Chui had knowledge of the attack.³⁸ Germain Katanga and Mathieu Ngudjolo Chui (i) knew that there would be an attack on the civilian population in the village of Bogoro in February 2003; (ii) knew that their actions were an essential part of the attack; and (iii) intended to further this attack. Further, Germain Katanga and Mathieu Ngudjolo Chui knew that the conduct of the members of the FNI/FRPI at Bogoro village on 24 February 2003 was part of a series of widespread or systematic attacks committed against the predominantly Hema civilian population living in the Ituri region.³⁹

³³ Decision on the confirmation of charges, para. 414.

³⁴ Decision on the confirmation of charges, para. 415.

³⁵ Decision on the confirmation of charges, para. 415.

³⁶ Decision on the confirmation of charges, para. 416.

³⁷ Decision on the confirmation of charges, para. 417.

³⁸ Decision on the confirmation of charges, para. 417.

³⁹ Decision on the confirmation of charges, para. 417.

C. Facts relevant to the crimes charged and confirmed by the Confirmation Decision

1. *Murder Constituting a crime against humanity within the meaning of article 7(1)(a)*

28. During and particularly in the aftermath of the joint FRPI and FNI attack against the village of Bogoro on 24 February 2003, members of the FRPI and the FNI: (i) lured civilians from their hiding places in order to kill them; (ii) chased down civilians who were fleeing, notably in the direction of Mount Waka, and shot at them with firearms or fatally wounded them with machete blows;⁴⁰ (iii) shot or killed with machetes certain civilians in their houses; (iv) killed others by setting their houses on fire; and (v) killed civilians attempting to find refuge in the UPC camp, in particular in the classrooms of the former Institute of Bogoro.⁴¹

29. Members of the FRPI and the FNI caused the death of approximately 200 civilians in the village of Bogoro on 24 February 2003, most of whom were killed once they fell into the hands of FRPI or FNI combatants;⁴² the FNI/FRPI members entered Bogoro village with guns and machetes to: (i) attack the village, (ii) "take the village, starting [with] the houses", (iii) "erase everything", and (iv) avenge the massacres they believed the Hema had perpetrated in other villages.⁴³ They did so with the intent to kill such civilians.⁴⁴

⁴⁰ In addition para. 80 of the Document containing the Charges also alleges that soldiers who were fleeing the camp were also chased down and killed.

⁴¹ Decision on the confirmation of charges, para. 424.

⁴² Decision on the confirmation of charges, para. 425.

⁴³ Decision on the confirmation of charges, para. 426.

⁴⁴ Decision on the confirmation of charges, para. 426.

30. In conclusion, the crime against humanity of murder, as detailed in article 7(1)(a) of the Statute, was committed by FNI/FRPI members during and in the aftermath of the 24 February 2003 attack on Bogoro village.⁴⁵

2. Wilful Killing as a war crime within the meaning of article 8(2)(a)(i) of the Statute

31. The 24 February 2003 attack by FNI/FRPI troops was directed towards, and intended both against a military objective and civilians not taking direct part in the hostilities and the civilian population of the village of Bogoro.⁴⁶

32. The killing of protected civilians - who had already fallen into the hands of the attacking forces - was the intended consequence of the attack.⁴⁷

33. The 24 February 2003 attack was planned and executed in a manner which would ensure that the civilian population was targeted first. Unarmed civilians were attacked with firearms or machetes or were burned alive inside their homes.⁴⁸

34. The attacks on the civilian population continued throughout the day and even after the military camp had been taken over by the FRPI and FNI combatants when the UPC soldiers ran out of ammunition and fled the camp.⁴⁹ Indeed, the FNI/FRPI attackers, after taking control of the UPC military camp in the centre of Bogoro village, willfully killed civilians - most of them women, children and elderly - who sought refuge in the Bogoro Institute, a school situated within the UPC military camp.⁵⁰ Furthermore, after taking control of the UPC camp and Bogoro village, the FNI/FRPI

⁴⁵ Decision on the confirmation of charges, para. 427.

⁴⁶ Decision on the confirmation of charges, para. 298.

⁴⁷ Decision on the confirmation of charges, para. 299.

⁴⁸ Decision on the confirmation of charges, para. 300.

⁴⁹ Decision on the confirmation of charges, para. 301.

⁵⁰ Decision on the confirmation of charges, para. 302.

combatants continued to kill civilians who were hidden in and around the village and/or had tried to flee.⁵¹ The FNI/FRPI combatants used captured Hema civilians to lure civilians from their hiding places, by shouting to them that there was no longer any risk to revealing themselves and emerging from hiding.⁵²

35. During and in the aftermath of the attack on the village of Bogoro, about 200 people were killed.⁵³

36. When directing attacks on the civilian population and when killing the civilian population, the FNI/FRPI combatants (i) intended to kill civilians not taking direct part in the hostilities, and the civilian population as such; (ii) knew that in the ordinary course of the events, the attack on Bogoro would include: (a) killings targeted at protected persons and unarmed persons - including women, children, and the elderly - most of whom could not have been mistaken for combatants; and (b) civilian victims who belonged to the adverse party to the conflict.⁵⁴

37. In conclusion, the war crime of willful killing, as defined in article 8(2)(a)(i) of the Statute was committed by FNI/FRPI members during and in the aftermath of the 24 February 2003 attack against the village of Bogoro.⁵⁵

3. Using children to participate actively in hostilities, as a war crime within the meaning of article 8(2)(b)(xxvi) of the Statute

⁵¹ Decision on the confirmation of charges, para. 303. In addition, in para. 80 of the DCC, the Prosecution alleges that soldiers who were fleeing the camp were also chased down and killed. In para. 85 of the DCC, it is stated: "85. (...) There, many corpses of UPC soldiers and civilians were visible. (...)"

⁵² Decision on the confirmation of charges, para. 303.

⁵³ Decision on the confirmation of charges, para. 304.

⁵⁴ Decision on the confirmation of charges, para. 306.

⁵⁵ Decision on the confirmation of charges, para. 307.

38. The war crime of using children under the age of fifteen to participate actively in the hostilities was committed before, during and in the aftermath of the attack on the village of Bogoro on 24 February 2003.⁵⁶ Germain Katanga and Mathieu Ngudjolo Chui used children for multiple purposes, including direct participation in the attack on the village of Bogoro on 24 February 2003.⁵⁷ In this regard, Germain Katanga and Mathieu Ngudjolo Chui consistently used children under the age of fifteen to take part in hostilities within the FNI/FRPI militias prior to, during, and following the Bogoro attack.⁵⁸

39. Training of child soldiers took place in FRPI and FNI camps.⁵⁹ Some of the children learned how to handle weapons, and received *armes blanches* (e.g. machetes and spears), or guns at the end of their training.⁶⁰ More specifically, during the attack on the village of Bogoro on 24 February 2003, some combatants were identified by the inhabitants of Bogoro as children who were visibly under the age of fifteen years.⁶¹ These children attacked the village of Bogoro killing civilians, destroying properties, and pillaging goods.⁶²

⁵⁶ Decision on the confirmation of charges, para. 253.

⁵⁷ Decision on the confirmation of charges, para. 254.

⁵⁸ Decision on the confirmation of charges, para. 256. In the DCC, the Prosecution alleged, in addition, that Ngiti child soldiers participated in larger numbers [during the Bogoro attack] (...) since they originated from a collectivité rather than its sub - unit, a groupement.” (para. 88 of DCC).

⁵⁹ Decision on the confirmation of charges, para. 255.

⁶⁰ Decision on the confirmation of charges, para. 255.

⁶¹ Decision on the confirmation of charges, para. 257.

⁶² Decision on the confirmation of charges, para. 257.

4. Intentionally directing attacks against the civilian population of Bogoro village, constituting a war crime within the meaning of article 8(2)(b)(i) of the Statute

40. Although the attack on 24 February 2003 was intended to target a military objective, the UPC military camp, placed in the centre of the Bogoro village where approximately 150 UPC soldiers were based- it was also intended to target the civilian population or individual civilians not taking direct part in 24 February 2003 attack who lived within the village of Bogoro.⁶³ The FNI/FRPI combatants intended the civilian population to be the first target; the object of the attack was the entire village and not just the military camp. In fact, the roads to and from the village were blocked by the attackers in order to kill any civilians attempting to flee.⁶⁴ The purpose of the attack was to "wipe out" the village of Bogoro in order to secure to Lendus and Ngitis control of the route to Bunia.⁶⁵ The attacks on the civilian population lasted throughout the day.⁶⁶

⁶³ Decision on the confirmation of charges, para. 275 and 277.

⁶⁴ Decision on the confirmation of charges, para. 281. In the DCC, the Prosecution alleged, in addition, that: "A few captured civilians were imprisoned in one of the classrooms of the Bogoro Institute, which was full of corpses of other civilians, including the bodies of men, women and children and the elderly killed by bullets and machetes blows." (para. 82); "The captured civilians remained there in captivity overnight and were later used to call out to those that were still hidden to come out (...)" ; "Among the targeted civilians, some survived but were severely wounded by gunshots and armes blanches (...)" (para. 83); "(...) among those who survived, a certain number were seriously wounded" (para. 87); however, the decision of confirmation of charges states for INHUMANE TREATMENT, para. 363: "In the view of the Chamber, there is also sufficient evidence to establish substantial grounds to believe that severe physical and mental pain and suffering as a result of their imprisonment with their hands tied for many hours in a classroom filled with dead bodies was inflicted on these civilians, including Witness 268", and in OTHER INHUMAN ACTS of the decision, para. 457: "The Chamber also finds that there are substantial grounds to believe that, pursuant to article 30 of the Statute, the combatants knew that by indiscriminately shooting at civilians with firearms or striking civilians with lances or machetes in Bogoro village, killings or serious bodily injury would occur in the ordinary course of events."

⁶⁵ Decision on the confirmation of charges, para. 283. In the DCC, the Prosecution alleged, in addition, that: "The UPC base at Bogoro laid between the Ngitis militias in Irumu territory and the Lendu militias based in Zumbe, and farther north, thereby preventing their effective coordination." (para. 64).

⁶⁶ Decision on the confirmation of charges, para. 282. In the DCC, the Prosecution alleged, in addition, that: "(...) and the gunfight at that camp had quieted before mid-day" (para. 80).

41. The killing and/or displacement of the civilian population,⁶⁷ together with the destruction of civilian property, was the strategy the perpetrators chose to secure control of the village once it had been seized.⁶⁸ The attack was also a reprisal against the Hema population there.⁶⁹ Unarmed civilians, including women and small children, were attacked and killed with gunshots or machetes or burned alive inside their homes.⁷⁰

42. Because of its strategic position, the village of Bogoro had previously been attacked by Lendu militias in 2001 and 2002.⁷¹ At the time of the first attack in 2001, there was no military camp in the village, and only a few APC soldiers were present which corroborates the finding that the attacks on the village of Bogoro were not aimed at military targets but at the wilful killing and/or expulsion of the Hema population, the destruction of the village, and the consequent Lendu/Ngiti assumption of control over the village.⁷² In fact, prior to the 2003 attack, combatants from FRPI and FNI militias recited songs with lyrics indicating that they should kill the Hema people, and show mercy towards the Ngiti and Bira.⁷³

5. Pillaging constituting a war crime within the meaning of article 8(2)(b)(xvi) of the Statute

43. In the aftermath of the 24 February 2003 attack on Bogoro, the FNI/FRPI combatants, who effectively controlled the village intentionally pillaged

⁶⁷ In the Document Containing the Charges (DCC), the Prosecution alleged, in addition, that “Before the war began, Bogoro had approximately 6,000 residents” (para. 64); and “Even today, families are returning to Bogoro at a slow rate and the population is less than half of the original population” (para. 87).

⁶⁸ Decision on the confirmation of charges, para. 277.

⁶⁹ Decision on the confirmation of charges, para. 275.

⁷⁰ Decision on the confirmation of charges, para. 287. In the DCC, the Prosecution alleged, in addition, that: “(...) There, many corpses of UPC soldiers and civilian were visible” (para. 5).

⁷¹ Decision on the confirmation of charges, para. 278.

⁷² Decision on the confirmation of charges, para. 279.

⁷³ Decision on the confirmation of charges, para. 280.

property belonging mainly to the Hema population in the village of Bogoro.⁷⁴

The pillaging continued for several days after the battle ended.⁷⁵

44. The FNI/FRPI combatants pillaged a large number of houses. Some of the common features of the pillaging included: the removal of the roofing sheets, the breaking of the doors, and the removal of furniture and tables. The roofs of shops and businesses in the centre of Bogoro were also removed and looted.⁷⁶ A school and the church were also pillaged.⁷⁷ The FNI/FRPI combatants "intended to deprive the owner of the property and to appropriate it for private or personal use."⁷⁸ For instance, after a house had been pillaged, eye witnesses described the combatants taking the furniture and other goods along with them for their personal use.⁷⁹

45. Many of these goods were taken from Bogoro to Zumbe by the FNI/FRPI combatants.⁸⁰ Vehicles were also stolen for the purpose of transporting the pillaged goods. In some cases, witnesses described the pillaged goods being resold by individual Lendus.⁸¹

46. Pillaging was committed without the consent of civilian owners of the pillaged property.⁸² For example, the evidence shows that some of the Hema civilians whose goods were taken were either hiding in the forest to escape from the "enemy" while their homes were being pillaged or were forced to transport pillaged goods for the combatants.⁸³

⁷⁴ Decision on the confirmation of charges, para. 334.

⁷⁵ Decision on the confirmation of charges, para. 334. The DCC contains a specific reference to soldiers and civilians pillaging the village. "85. (...)Soldiers and civilians continued arriving from the surrounding areas to view the destruction and join in the jubilation."

⁷⁶ Decision on the confirmation of charges, para. 335. The DCC also specifically mentions the pillaging of "livestock".

⁷⁷ Decision on the confirmation of charges, para. 335.

⁷⁸ Decision on the confirmation of charges, para. 336.

⁷⁹ Decision on the confirmation of charges, para. 336.

⁸⁰ Decision on the confirmation of charges, para. 336.

⁸¹ Decision on the confirmation of charges, para. 336.

⁸² Decision on the confirmation of charges, para. 337.

⁸³ Decision on the confirmation of charges, para. 337.

6. Destruction of property constituting a war crime within the meaning of article 8(2)(b)(xiii) of the Statute

47. During and in the aftermath of the 24 February 2003 attack on the village of Bogoro, FNI/FRPI combatants intentionally destroyed property belonging to the civilian population of Bogoro.⁸⁴

48. The combatants destroyed a large number of houses of "the enemy" and many of them were set on fire.⁸⁵ The main buildings of Bogoro, such as the commercial centre, the school and others, were destroyed and houses were burned by FNI/FRPI combatants.⁸⁶ Roofs, doors, and windows of buildings which remained standing after the attack, were destroyed.⁸⁷

49. The destruction of property in the village of Bogoro was extensive and that most of the destroyed property belonged not to military personnel but to the members of the Hema population.⁸⁸

50. FNI/FRPI combatants were aware of the status of the property they destroyed during the Bogoro attack on 24 February 2003, given that this property consisted mainly of houses, shops, schools, or was public or private property belonging to the civilian population.⁸⁹ Even though the FNI/FRPI combatants knew that the Institute of Bogoro was located within the UPC military camp, the combatants arrived at the village from four different directions, began by destroying and burning houses, before reaching and destroying the centre of

⁸⁴ Decision on the confirmation of charges, para. 319.

⁸⁵ Decision on the confirmation of charges, para. 320.

⁸⁶ Decision on the confirmation of charges, para. 321.

⁸⁷ Decision on the confirmation of charges, para. 320.

⁸⁸ Decision on the confirmation of charges, para. 322.

⁸⁹ Decision on the confirmation of charges, para. 323.

Bogoro, where the UPC military camp was located.⁹⁰ The destruction was not justified by military necessity.⁹¹

7. Sexual slavery and rape as war crimes within the meaning of article 8(2)(b)(xxii) of the Statute

Sexual slavery

51. Civilian women were abducted from the village of Bogoro after the attack, imprisoned, and forced into becoming the 'wives' of FNI/FRPI combatants, required to cook for and obey the orders of FNI or FPRI combatants.⁹² These civilian women were forced to engage in acts of a sexual nature.⁹³

Rape

52. Civilian women were raped in the aftermath of the attack on the village of Bogoro and/or during their period of enslavement.⁹⁴

53. These rapes resulted in the invasion of the body of these civilian women by the penetration of the perpetrator's sexual organ or other body parts.⁹⁵ These invasions were committed by force, threat or fear of violence or death, and/or detention.⁹⁶

54. In conclusion, the war crimes sexual slavery and rape, as described in article 8(2)(b)(xxii) of the Statute, were committed by FNI/FRPI members in the aftermath of the 24 February 2003 attack on the village of Bogoro.⁹⁷

⁹⁰ Decision on the confirmation of charges, para. 323.

⁹¹ Decision on the confirmation of charges, para. 324.

⁹² Decision on the confirmation of charges, para. 348.

⁹³ Decision on the confirmation of charges, para. 349.

⁹⁴ Decision on the confirmation of charges, para. 350.

⁹⁵ Decision on the confirmation of charges, para. 351.

⁹⁶ Decision on the confirmation of charges, para. 352.

⁹⁷ Decision on the confirmation of charges, para. 354.

8. Sexual slavery and rape as crimes against humanity within the meaning of article 7(1)(g) of the Statute and article 7(l)(g) of the Statute

Sexual slavery

55. In the aftermath of the joint FRPI/FNI attack against the village of Bogoro on 24 February 2003, combatants from the FRPI and the FNI: (i) abducted women and/or girls from villages or areas surrounding the camps for the purpose of using them as their "wives"; (ii) forced and threatened women and/or girls to engage in sexual intercourse with combatants and to serve as sexual slaves for combatants and commanders alike;⁹⁸ and (iii) captured and imprisoned women and/or girls to work in a military camp servicing the soldiers.⁹⁹ More specifically, there are substantial grounds to believe that during the attack on Bogoro, women were captured, raped and subsequently abducted by Ngiti attackers.¹⁰⁰ The women were taken to camps where they were kept as prisoners in order to provide domestic services, including cooking and cleaning, and to engage in forced sexual acts with combatants and commanders.¹⁰¹

56. When the combatants (i) abducted women from the village of Bogoro, (ii) captured and imprisoned them and kept them as their "wives", and (iii) forced and threatened them to engage in sexual intercourse, they intended to sexually enslave the women or knew that by committing such acts, sexual enslavement would occur.¹⁰²

⁹⁸ The DCC at para. 89 also makes a specific reference to women being forced into sexual intercourse by soldiers who were punished and sent to prison.

⁹⁹ Decision on the confirmation of charges, para. 434.

¹⁰⁰ Decision on the confirmation of charges, para. 434.

¹⁰¹ Decision on the confirmation of charges, para. 434.

¹⁰² Decision on the confirmation of charges, para. 435.

57. In conclusion, the crime against humanity of sexual slavery, as detailed in article 7(1)(g) of the Statute, was committed by FNI/FRPI members in the aftermath of the 24 February 2003 attack on Bogoro village.¹⁰³

Rape

58. The FNI and FRPI, by force or threat, invaded the body, or parts of it, of women and girls abducted before, during and after the February 2003 attack on the village of Bogoro.¹⁰⁴ During and after the attack on Bogoro, women were raped by FNI/FRPI combatants in or around the village of Bogoro.¹⁰⁵ Rape was a common practice following an attack and that combatant who forced women to engage in sexual intercourse intended to commit such acts by force or threat of force.¹⁰⁶

59. The crime against humanity of rape, as detailed in article 7(1)(g) of the Statute, was committed by FNI/FRPI members in the aftermath of the 24 February 2003 attack on Bogoro village.¹⁰⁷

IV. CRIMINAL RESPONSIBILITY

60. Germain Katanga and Mathieu Ngudjolo Chui are jointly or jointly through other persons criminally responsible for the crimes described herein based on article 25(3) (a) of the Statute.

1. Germain Katanga and Mathieu Ngudjolo Chui had control over the organisation

61. From the beginning of 2003 until his integration into the FARDC,¹⁰⁸ Germain Katanga¹⁰⁹:

¹⁰³ Decision on the confirmation of charges, para. 436.

¹⁰⁴ Decision on the confirmation of charges, para. 442.

¹⁰⁵ Decision on the confirmation of charges, para. 442.

¹⁰⁶ Decision on the confirmation of charges, para. 443.

¹⁰⁷ Decision on the confirmation of charges, para. 444.

- i. served as *de jure* supreme commander of the FRPI; and
- ii. had *de facto* ultimate control over FRPI commanders, commanders who sought his orders for obtaining or distributing weapons, and ammunitions and was the person to whom other commanders reported.¹¹⁰

62. From the beginning of 2003 until he was integrated into the FARDC, Mathieu Ngudjolo Chui:¹¹¹

- i. served as *de jure* supreme commander of the FNI;¹¹² and
- ii. had *de facto* ultimate control over FNI commanders, commanders who sought his orders for obtaining or distributing weapons and ammunitions; and was the person to whom other commanders reported.¹¹³

63. Some reports and documents were signed by Floribert Ndjabu Ngabu as the President of the FNI:¹¹⁴

- i. Floribert Ndjabu Ngabu acted as President of the political wing of the FNI/FRPI;
- ii. Germain Katanga and Mathieu Ngudjolo Chui acted independently of the President of the FNI;
- iii. even as a coalition, they fought separately and their alliance was short-lived;

¹⁰⁸ DCC, Para. 43 : “Following the Nyankunde attack of September 2002, KATANGA emerged as the leader of the Ngiti combatants”.

¹⁰⁹ Para. 48, DCC : “By the time of the Bogoro attack, KATANGA had the authority and power, as did NGUDJOLO, to select the targets and order attacks”.

¹¹⁰ Decision on the confirmation of charges, para. 540.

¹¹¹ Para. 58: “By the time of the Bogoro attack, NGUDJOLO had the authority and power, as did KATANGA, to select the targets and order attacks”.

¹¹² It must be added that he was *de jure* supreme commander of the FNI of the Ezekere groupement. He is not supreme commander of the entire FNI (See DCC, paras. 1, 54 -55)

There is no mention here that Germain Katanga’s authority extended to the civilian population. Para. 45, DCC : “KATANGA exercised authority over the civilian population. For instance, pursuant to his orders, civilians but his military camp at Aveba and provided food to the combatants prior to the Bogoro attack”.

¹¹³ Decision on the confirmation of charges, para. 541.

¹¹⁴ Para. 44: In Aveba, “KATANGA received the reports of other commanders”.

Para. 46, DCC: “KATANGA organized and supervised parades in Aveba camp”.

Para. 47: “KATANGA summoned other commanders of other FRPI camps to meetings in Aveba which they attended”.

Para. 49: “KATANGA and the other camp leaders travelled to visit each other’s camps as a means of exchanging information”.

iv. both Germain Katanga and Mathieu Ngudjolo Chui signed official documents, peace agreement and/or decided on the amnesty of their fighters.¹¹⁵

2. Both organisations - FNI and FRPI- were hierarchically organized

64. The FRPI, over which Germain Katanga had the command, was a hierarchically organised group. This is shown in particular by the fact that:

- i. the FRPI was organised into camps within the Irumu territory, in the Walendu Bindi collectivité and that each of these camps had a commander;
- ii. Germain Katanga was the commander of the Aveba camp which served as the headquarters of the FRPI;
- iii. the FRPI was a military structured organisation divided into sectors, battalions and companies;
- iv. FRPI commanders had the ability to communicate with each other through hand-held short range radios; there was also a *phonie* at Germain Katanga's headquarters in Aveba; Germain Katanga notably used these means to give his orders;
- v. Germain Katanga, vested with his power as leader of his movement, had the ability to jail and adjudicate. For instance, he executed 12 FRPI soldiers for creating troubles at Lake Albert and punished an Ngiti soldier for raping an Ngiti woman.¹¹⁶

65. The FNI, over which Mathieu Ngudjolo Chui had the command, was a hierarchically organised group. This is shown in particular by the fact that:

- i. the FNI was organised into camps within the Ezekere *groupement* and that each of these camps had a commander;

¹¹⁵ Decision on the confirmation of charges, para. 542.

¹¹⁶ Decision on the confirmation of charges, para. 543.

- ii. Mathieu Ngudjolo Chui was the commander of the Zumbe camp that served as the central camp in the Ezekere *groupement*;
- iii. the FNI was a military structured organisation divided into sectors, battalions, companies, platoons and sections;
- iv. FNI commanders had the ability to communicate with each other through two way radios (Motorola); Mathieu Ngudjolo Chui used a *phonie* and even appointed a *phonie* operator; and it is notably through these means that Mathieu Ngudjolo Chui gave his orders;
- v. Mathieu Ngudjolo Chui, vested with his power as leader of his movement, had the ability to jail and adjudicate. For instance, he punished an FNI soldier for sexually enslaving a Lendu woman.¹¹⁷

3. The execution of orders issued by Germain Katanga and Mathieu Ngudjolo Chui was “ensured”

66. The FNI and the FRPI were large organisations each providing its leaders with an extensive supply of soldiers. In this regard, based on testimonial evidence provided, the Pre-Trial Chamber determined that the FRPI was comprised of four battalions, hence a total of approximately 1,000 soldiers, which took part in the attack against Bogoro village.¹¹⁸ Similarly, it found that one and a half battalion from the FNI, amounting to approximately 375 soldiers, took part in the attack against Bogoro village.

67. Because of the young age of the soldiers, the brutal military training regime¹¹⁹ they endured while inspired by a sentiment of allegiance to the military leaders of their ethnic groups,¹²⁰ they were likely to comply with the leaders’

¹¹⁷ Decision on the confirmation of charges, para. 544.

¹¹⁸ Decision on the confirmation of charges, para. 545.

¹¹⁹ In the DCC, the Prosecution also alleged that “Children under 15 years of age were abducted by local Lendu commanders.” (para. 61 of DCC).

¹²⁰ In the DCC, the Prosecution also alleged that “ (...) At that time [end of 2002], Ngiti leaders started to pressure the Ngiti community to have children under 15 years of age join the ranks of the Ngiti militias to support the armed resistance of the community.” (para. 51 of DCC) .

orders almost automatically, without asking any questions.¹²¹ For instance, the FNI and FRPI camps:

- i. child soldiers were trained using violent methods, they learned how to handle weapons, and at the end of their training received *armes blanches* (e.g. machetes and spears) and guns;¹²²
- ii. soldiers, including children,¹²³ were militarily trained under the orders of Germain Katanga and Mathieu Ngudjolo Chui and were often paraded in their presence;¹²⁴
- iii. Germain Katanga was the key decision-maker regarding the transfer of children to, from, and within FRPI camps;¹²⁵
- iv. Germain Katanga also used child soldiers in his personal escort because: "[il] préférait être escortée [sic] par les enfants soldats âgés de moins de 15 ans parce qu'ils exécutaient sans oppositions."¹²⁶
- v. Mathieu Ngudjolo Chui also used child soldiers in his personal escort. According to testimonial evidence, in the FNI camps, a significant number of children were in the Military Police; the Military Police was in charge of arresting soldiers who caused trouble in the camp or in the village (every camp had a Military Police whose size depended on the size of the camp).¹²⁷

4. Germain Katanga and Mathieu Ngudjolo Chui agreed on a common plan¹²⁸

68. Germain Katanga and Mathieu Ngudjolo Chui agreed on a common plan to "wipe out" Bogoro;¹²⁹

¹²¹ Decision on the confirmation of charges, para. 547.

¹²² Decision on the confirmation of charges, para. 547 (i)

¹²³ Decision on the confirmation of charges, para. 562.

¹²⁴ Decision on the confirmation of charges, para. 547 (ii)

¹²⁵ Decision on the confirmation of charges, para. 547 (iii)

¹²⁶ Decision on the confirmation of charges, para. 547 (iv)

¹²⁷ Decision on the confirmation of charges, para. 547 (v).

¹²⁸ There is no mention of certain evidence regarding the common plan such as:

Para. 33: In March-April 2003, the composition of the general staff of the FRPI was announced in Bunia and included KATANGA, KIZA and NGUDJOLO in top positions".

- i. Since their creation in late 2002, because of the traditional links between Lendu and Ngiti ethnic groups, the FNI and FRPI, fought together;
- ii. In early 2003, there was an agreement or common plan between Germain Katanga, leader of the FRPI, and Mathieu Ngudjolo Chui, leader of the FNI,¹³⁰ to attack the village of Bogoro by "wiping out" the village of its UPC military elements and of the Hema civilians;
- iii. Germain Katanga,¹³¹ and Mathieu Ngudjolo Chui, through Commander Boba Boba and others under his command, met in Aveba in early 2003¹³² and planned the attack against the village of Bogoro;
- iv. After the meeting in Aveba, a written plan was handed over to Mathieu Ngudjolo Chui. The plan was distributed to commanders by both Germain Katanga and Mathieu Ngudjolo Chui;
- v. A few days before the attack against the village of Bogoro, Germain Katanga and other commanders visited Mathieu Ngudjolo Chui at the Zumbe Camp. The day after Germain Katanga's visit to the Zumbe camp, Mathieu Ngudjolo Chui informed the soldiers that they were going to attack Bogoro; and
- vi. The day before the attack, Germain Katanga, Mathieu Ngudjolo Chui and other commanders met at Cobra Matata's camp in Bavi and from there, on the eve of the attack against the Bogoro village, moved to implement the common plan as they took their respective positions in Medhu and Kagaba.¹³³

69. The plan to "wipe out" Bogoro village was based on directing the attack against the civilian population which meant killing and murdering the predominantly Hema civilians and destroying their properties.¹³⁴

¹²⁹ Decision on the confirmation of charges, para. 548.

¹³⁰ It must be added that he is leader of the FNI of the Ezekere groupement. He is not supreme commander of the entire FNI (See DCC, paras. 1, 54 -55).

¹³¹ and most of the FRPI commanders. Para. 65: "KATANGA met this delegation with the following FRPI commanders: MATATA, YUDA, DARK, OUDO, BESTO, KISORO, LOBO TSHAMANGERE".

¹³² Para. 65: "The attack on Bogoro was originally planned by commanders of the FNI and FRPI at KATANGA's residence in Aveba over the course of several weeks, in late 2002-early 2003".

¹³³ Decision on the confirmation of charges, para. 548.

¹³⁴ Decision on the confirmation of charges, para. 549.

70. In the ordinary course of events, the implementation of the common plan would inevitably result in the pillaging of the Bogoro village.¹³⁵

71. In the ordinary course of events, the implementation of the common plan would inevitably result in the rape or sexual enslavement of civilian women there.¹³⁶

72. Germain Katanga and Mathieu Ngudjolo Chui knew each other and had worked together since the creation of the FNI and FRPI. They were each involved in some way in the attacks against the village of Nyankunde, together with the APC, at the end of 2002, the attacks against the villages of Mandro, Kilo and Drodro in March/April 2003 and the attack against Bunia/Nyakasanza on May 2003. Children under the age of fifteen years actively participated in these attacks during which pillaging occurred.¹³⁷

73. Germain Katanga and Mathieu Ngudjolo Chui agreed upon the use of children under the age of fifteen years to actively participate in the attack on Bogoro village. They themselves used child soldiers as their bodyguards and their militias included a large number of child soldiers. The accused sent their own bodyguards, amongst whom many were children under the age of fifteen, to participate in the attack on Bogoro village.¹³⁸

5. Coordinated essential contribution by each co-perpetrator resulting in the realisation of the objective elements of the crime

74. From the meeting in Aveba to the day of the attack against the village of Bogoro on 24 February 2003.¹³⁹

¹³⁵ Decision on the confirmation of charges, para. 550.

¹³⁶ Decision on the confirmation of charges, para. 551.

¹³⁷ Decision on the confirmation of charges, para. 552.

¹³⁸ Decision on the confirmation of charges, para. 553.

¹³⁹ Decision on the confirmation of charges, para. 555.

i. after agreeing on the plan, Germain Katanga and Mathieu Ngudjolo Chui had direct responsibility for its implementation, which includes:

- a. ordering the militias to "wipe out" Bogoro village;
- b. the distribution of the plan of the attack to FRPI¹⁴⁰ and FNI commanders; and
- c. the distribution of weapons and ammunitions.¹⁴¹

ii. Germain Katanga played an overall coordinating role in the implementation of the common plan, in particular, by:

- a. having direct and ongoing contacts with the other participants in the implementation of the common plan;
- b. personally travelling to Beni to obtain weapons and ammunitions;
- c. distributing the weapons and ammunitions not only to the FRPI commanders but also to the FNI; and
- d. organising the meeting at his Aveba camp where the attack against Bogoro village was planned.¹⁴²

iii. Germain Katanga personally performed other tasks in the implementation of the common plan, in particular, by encouraging the soldiers under his command through military parades in his presence during which songs with hate-filled lyrics were sung.¹⁴³

iv. Mathieu Ngudjolo Chui played an overall coordinating role in the implementation of the common plan, in particular, by:

- a. having direct and ongoing contacts with the other participants in the implementation of the common plan;
- b. travelling to Beni to obtain weapons and ammunitions;
- c. sending Commander Boba Boba on his behalf to the meeting at Aveba Camp, and staying in contact with him through a phonic
- d. obtaining weapons and ammunitions as part of the outcome of the meeting at Aveba camp; and
- e. distributing the weapons and ammunitions to FNI camps.¹⁴⁴

¹⁴⁰ There is no express mention of the second meeting held at Aveba between KATANGA and the FRPI commanders shortly before the attack. Para. 68: "Shortly before the attack on Bogoro, FRPI commanders were summoned to KATANGA's residence to prepare for the attack. MATATA, YUDA and OUDO, amongst others, travelled to Aveba".

¹⁴¹ Decision on the confirmation of charges, para. 555.

¹⁴² Decision on the confirmation of charges, para. 555.

¹⁴³ Decision on the confirmation of charges, para. 555.

¹⁴⁴ Decision on the confirmation of charges, para. 555.

v. Mathieu Ngudjolo Chui personally performed other tasks in the implementation of the common plan, in particular, by encouraging soldiers under his command during military parades held in his presence while songs with hate-filled lyrics were sung.¹⁴⁵

75. The attack was planned in early 2003 and that the implementation of the common plan started on the eve of the attack on Bogoro village.¹⁴⁶ The day before the attack, Germain Katanga and Mathieu Ngudjolo Chui, followed by their respective battalion commanders:

- i. met in specific camps for parades, briefing, and singing, notably in Ladile and Lagura;¹⁴⁷
- ii. deployed to different points around the village of Bogoro and prepared for the attack; and
- iii. at around 5 a.m. on 24 February 2003, the battalion commanders and soldiers under Germain Katanga and Mathieu Ngudjolo Chui entered the village of Bogoro and attacked the inhabitants.¹⁴⁸

76. Just before or during the attack:

- i. Germain Katanga was present in the surroundings of the village of Bogoro and gave his last instructions to the soldiers before they entered Bogoro;
- ii. Mathieu Ngudjolo Chui was on *phonie*/Motorola communication with Commander KUTE and was giving instructions throughout the attack;¹⁴⁹

77. Soon after the attack on the village of Bogoro, Germain Katanga and Mathieu Ngudjolo Chui celebrated the fact that the common plan had been carried out successfully, in particular, by:

¹⁴⁵ Decision on the confirmation of charges, para. 555.

¹⁴⁶ Decision on the confirmation of charges, para. 556.

¹⁴⁷ It is Mathieu Ngudjolo's troops which gathered in Ladile and Lagura. (DCC, para. 75).

¹⁴⁸ Decision on the confirmation of charges, para. 556.

¹⁴⁹ Decision on the confirmation of charges, para. 557.

- i. meeting at the centre of the village, near the institute/UPC barracks; and
- ii. congratulating other commanders.¹⁵⁰

78. Germain Katanga and Mathieu Ngudjolo Chui:

- i. took no punitive action against the other commanders or soldiers under their command for the killings;
- ii. in any event congratulated the other commanders around them;
- iii. ordered the burial of the bodies of the civilians, in order to hide the number of victims.¹⁵¹

79. FRPI soldiers would obey only orders issued by FRPI commanders and FNI soldiers, similarly, would obey only orders issued by FNI commanders. Therefore, the fact that Germain Katanga and Mathieu Ngudjolo Chui were the highest commanders of the Ngiti and Lendu combatants, respectively, corroborates the finding that without their agreement on the common plan and their participation in its implementation, the crimes would not have been committed as planned.¹⁵²

80. In conclusion, Germain Katanga and Mathieu Ngudjolo Chui implemented the common plan in a coordinated manner and that Germain Katanga and Mathieu Ngudjolo Chui had joint control over the implementation of the plan, insofar as their essential overall coordinating roles gave to them, and only to them, the power to frustrate the implementation of the plan.¹⁵³

¹⁵⁰ Decision on the confirmation of charges, para. 558.

¹⁵¹ Decision on the confirmation of charges, para. 559.

¹⁵² Decision on the confirmation of charges, para. 560.

¹⁵³ Decision on the confirmation of charges, para. 561.

6. The suspects were aware of the factual circumstances enabling them to exercise joint control over the crimes or joint control over the crimes through another person

81. Germain Katanga and Mathieu Ngudjolo Chui:

- i. as the highest commanders of the organizations, were aware of the specific role that they played within the FRPI and FNI, respectively;
- ii. were aware of the hierarchically organized character of their respective organisations;
- iii. were aware of the circumstances allowing automatic compliance with the orders due to:
 - a. the size of the organisations, composed mainly of low level and interchangeable soldiers;
 - b. the brutal training undergone by the soldiers, specially children under the age of fifteen years; and
 - c. the allegiance of the soldiers to the military leaders of their ethnic groups.¹⁵⁴

82. Germain Katanga and Mathieu Ngudjolo Chui:

- i. intentionally agreed on the plan to "wipe out" Bogoro and commanded their respective troops to attack Bogoro village;
- ii. were aware of their coordinating role in the implementation of the common plan;
- iii. were aware of the essential nature of their coordinating role in the implementation of the common plan and their ability to frustrate the implementation of the plan by refusing to activate a mechanism leading to the soldiers' almost automatic compliance with the orders.¹⁵⁵

¹⁵⁴ Decision on the confirmation of charges, para. 562.

¹⁵⁵ Decision on the confirmation of charges, para. 563.

7. The suspects were mutually aware and mutually accepted that the implementation of the common plans would result in the realisation of the crimes

83. From the Aveba meeting in early 2003 to the day of the attack on 24 February 2003, Germain Katanga and Mathieu Ngudjolo Chui used children under the age of fifteen years as bodyguards and to participate actively in military operations.¹⁵⁶

84. During that time, Germain Katanga and Mathieu Ngudjolo Chui, as part of the common plan to "wipe out" Bogoro, intended:

a. to carry out the attack against the civilian population of the Bogoro village;¹⁵⁷

b. to carry out the killings or murder of the civilian population of Bogoro village; and¹⁵⁸

c. to destroy properties.¹⁵⁹

85. From the Aveba meeting in early 2003 to the day of the attack on 24 February 2003, Germain Katanga and Mathieu Ngudjolo Chui knew that, as a consequence of the common plan, pillaging would occur in the ordinary course of events.¹⁶⁰

86. Germain Katanga and Mathieu Ngudjolo Chui knew that, as a consequence of the common plan, rape and sexual slavery of women and girls would occur in the ordinary course of the events.¹⁶¹

¹⁵⁶ Decision on the confirmation of charges, para. 564.

¹⁵⁷ Decision on the confirmation of charges, para. 565 (a).

¹⁵⁸ Decision on the confirmation of charges, para. 565 (b).

¹⁵⁹ Decision on the confirmation of charges, para. 565 (c).

¹⁶⁰ Decision on the confirmation of charges, para. 566.

¹⁶¹ Decision on the confirmation of charges, para. 567.

87. In relation to the crimes against humanity of rape and sexual slavery of women and girls:

(i) rape and sexual slavery against of women and girls constituted a common practice in the region of Ituri throughout the protracted armed conflict;¹⁶²

(ii) such common practice was widely acknowledged amongst the soldiers and the commanders;¹⁶³

(iii) in previous and subsequent attacks against the civilian population, the militias led and used by the suspects to perpetrate attacks repeatedly committed rape and sexual slavery against women and girls living in Ituri;¹⁶⁴

(iv) the soldiers and child soldiers were trained (and grew up) in camps in which women and girls were constantly raped and kept in conditions to ease sexual slavery;¹⁶⁵

(v) Germain Katanga, Mathieu Ngudjolo Chui and their commanders visited the camps under their control, frequently received reports of the activities of the camps by the camps commanders under their command, and were in permanent contact with the combatants during the attacks, including the attack on Bogoro;¹⁶⁶

(vi) the fate reserved to captured women and girls was widely known amongst combatants; and¹⁶⁷

(vii) the suspects and the combatants were aware, for example, which camps and which commanders more frequently engaged in this practice.¹⁶⁸

88. Therefore when the accused planned, ordered and monitored the attack on Bogoro and on other villages inhabited mainly by Hema population, they

¹⁶² Decision on the confirmation of charges, para. 568 (i).

¹⁶³ Decision on the confirmation of charges, para. 568 (ii).

¹⁶⁴ Decision on the confirmation of charges, para. 568 (iii).

¹⁶⁵ Decision on the confirmation of charges, para. 568 (iv).

¹⁶⁶ Decision on the confirmation of charges, para. 568 (v).

¹⁶⁷ Decision on the confirmation of charges, para. 568 (vi).

¹⁶⁸ Decision on the confirmation of charges, para. 568 (vii).

knew that rape and sexual slavery would be committed in the ordinary course of the events.¹⁶⁹

V. LIST OF CHARGES

Count 1

Murder at Bogoro village constituting a Crime against Humanity within the meaning of Articles 7(1)(a) and 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO jointly committed through other persons, crimes against humanity, namely, the killings of at least two hundred civilian residents of, or persons present at Bogoro village¹⁷⁰ in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁷¹

Count 2

Wilful Killing at Bogoro village constituting a War Crime within the meaning of Article 8(2)(a)(i) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO jointly committed through other persons, war crimes, namely, the killings of at least two hundred civilian residents of, or persons present at Bogoro village¹⁷² in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁷³

¹⁶⁹ Decision on the confirmation of charges, para. 569.

¹⁷⁰ This information is confirmed by the Pre-Trial Chamber at para. 425 but is not included in the Conclusions of the Pre-Trial Chamber, see confirmation decision, p. 211.

¹⁷¹ DCC, p. 30 mentions: “including Suzanne MABONE and Matia BABONA”.

¹⁷² This information is confirmed by the Pre-Trial Chamber at para. 304 but is not included in the Conclusions of the Pre-Trial Chamber, see confirmation decision, p. 211

¹⁷³ DCC, pp. 30-31 mentions: “including Suzanne MABONE and Matia BABONA”.

Count 3

Using Children to Participate Actively in Hostilities constituting a War Crime within the meaning of Article 8(2)(b)(xxvi) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed war crimes, namely, the use of children under the age of fifteen years to participate actively in hostilities during the attack at Bogoro village in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁷⁴

Count 4

Intentional Attack against the Civilian Population of Bogoro village constituting a War Crime within the meaning of Article 8(2)(b)(i) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, a war crime, namely, the intentional directing of an attack against the civilian population of Bogoro village in the Bahema Sud *collectivité*, Irumu territory, Ituri district, and against individual civilians not taking direct part in hostilities.¹⁷⁵

Count 5

Pillaging at Bogoro constituting a War Crime within the meaning of Article 8(2)(b)(xvi) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, a war crime, namely, the pillaging of Bogoro village in the Bahema Sud *collectivité*, Irumu territory, Ituri district.

¹⁷⁴ DCC, p. 31 mentions: “including W-28 and W-157”.

¹⁷⁵ DCC, pp. 33-34 mentions: “including Suzanne MABONE, Matia BABONA, W-132, W-249, W-268 and W-287”.

Count 6

Destruction of Property in Bogoro village and surrounding areas constituting a War Crime within the meaning of Article 8(2)(b)(xiii) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, a war crime which in fact occurred, namely, the destruction of Bogoro village and surrounding areas in the Bahema Sud *collectivité*, Irumu territory, Ituri district.

Count 7

Sexual Slavery following the Bogoro attack constituting a War Crime within the meaning of Article 8(2)(b)(xxii) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, war crimes which in fact occurred, namely, the sexual enslavement of civilian female residents or civilian women present at Bogoro village,¹⁷⁶ in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁷⁷

Count 8

Rape following the attack on Bogoro village constituting a War Crime within the meaning of Article 8(2)(b)(xxii) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, war crimes which in fact occurred,

¹⁷⁶ This information is confirmed by the Pre-Trial Chamber at para. 347 but is not included in the Conclusions of the Pre-Trial Chamber, see confirmation decision, p. 213.

¹⁷⁷ DCC, p. 32 provides: “including W-132 and W-249”.

namely, the rape of civilian female residents or civilian women present at Bogoro village,¹⁷⁸ in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁷⁹

Count 9

Sexual Slavery following the Bogoro attack constituting a Crime against Humanity within the meaning of Article 7(1)(g) and Article 25(3)(a) of the ICC Statute

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, crimes against humanity which in fact occurred, namely, the sexual enslavement of civilian female residents or civilian women present at Bogoro village,¹⁸⁰ in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁸¹

¹⁷⁸ This information is confirmed by the Pre-Trial Chamber at para. 425 but is not included in the Conclusions of the Pre-Trial Chamber, see confirmation decision, p. 213

¹⁷⁹ DCC, p. 33 provides: “including W-132 and W-249”.

¹⁸⁰ This information is confirmed by the Pre-Trial Chamber at paras 434-435 but is not included in the Conclusions of the Pre-Trial Chamber, see confirmation decision, p. 212.

¹⁸¹ DCC, p. 33 provides: “including W-132 and W-249”.

Count 10

**Rape following the attack on Bogoro village constituting a Crime against
Humanity within the meaning of Article 7(1)(g) and Article 25(3)(a) of the ICC
Statute**

On or about 24 February 2003, Germain KATANGA and Mathieu NGUDJOLO, jointly committed through other persons, crimes against humanity which in fact occurred, namely, the rape of civilian female residents or civilian women present at Bogoro village,¹⁸² in the Bahema Sud *collectivité*, Irumu territory, Ituri district.¹⁸³



Luis Moreno-Ocampo, Prosecutor

Dated this 28th day of October 2009

At The Hague, The Netherlands

¹⁸² This information is confirmed by the Pre-Trial Chamber at paras 442-443 but is not included in the Conclusions of the Pre-Trial Chamber, see confirmation decision, p. 213.

¹⁸³ DCC, pp. 32-33 provides: “including W-132 and W-249”.