

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Situation: Democratic Republic of the Congo

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

5 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra

6 and Judge Christine Van den Wyngaert

7 Sentencing Hearing

8 Friday, 23 May 2014

9 (The hearing starts in open session at 8.59 a.m.)

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

13 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. The hearing shall
14 now begin.

15 Good morning, everyone. Good morning, Mr Katanga. The Chamber wishes to
16 extend greetings to the Official Representative of the DCR (sic).

17 Trial Chamber II shall now, pursuant to Article 76 of the Statute, hand down the
18 decision regarding the sentence we intend to impose on Germain Katanga.

19 The Chamber wishes to remind the parties and participants that, on 7 March 2014, the
20 majority of the Bench issued its decision, with Judge Christine Van den Wyngaert
21 dissenting, pursuant to Article 74 of the Statute.

22 On that day the Chamber acquitted Germain Katanga of the crimes of rape and sexual
23 slavery, which are crimes against humanity and war crimes. The Chamber also
24 acquitted him of the crime of having children less than 15 years of age participating
25 actively in hostilities, also a war crime.

1 On the other hand, the Chamber found Germain Katanga guilty of being an accessory
2 to a number of crimes committed during the attack of February 24, 2003, on the
3 village of Bogoro, a locality in the Ituri district in the Democratic Republic of the
4 Congo.

5 In more specific terms, these crimes comprised the following: The crime of murder,
6 which is a crime against humanity and a war crime; the crime of conducting an attack
7 on a civilian population, or on civilians not taking part directly in hostilities, which is
8 a war crime; the crime of destroying enemy property, a war crime; and finally the
9 crime of pillaging, also a war crime.

10 After receiving a great many filings from the parties, the Legal Representative of
11 Victims and the Registry, the Chamber held a sentencing hearing. This hearing
12 spanned two days, namely 5 and 6 May 2014.

13 On 5 May, the current chief of the village of Bogoro was called by the Prosecutor and
14 he gave testimony via video conference. Thereafter, Defence witnesses
15 D04 -- correction, D02-401 and D02-404 were heard.

16 Subsequently the Prosecutor made her final oral submissions, summarised
17 her arguments and requested a sentence of 22 to 25 years of imprisonment.

18 On 6 May 2014 the Legal Representative of Victims made his closing statements,
19 followed by the Defence of Germain Katanga. Thereafter Mr Katanga made a
20 statement himself, as is provided for in Article 67(1)(h) of the Statute, and was thus
21 the final person to address the Court.

22 In order to hand down the appropriate sentence, the Chamber took several factors
23 into account. Although these factors were quite dissimilar, the aim of the Chamber
24 was to ensure that the sentence imposed would be meaningful.

25 Article 77 and 78 of the Statute do not specify the ultimate aim of criminal penalties

1 imposed. All the same, the preamble of the Rome Statute provides some guidance.
2 The preamble speaks of the most serious of crimes of concern to the international
3 community as a whole must not go unpunished. The preamble also affirms that,
4 "The States Parties are determined to put an end to impunity for the perpetrators of
5 these crimes and thus to contribute to the prevention of such crimes," end of quote.
6 Thus our task is, "... to punish crimes that threaten the peace, security and well-being
7 of the world," once again a quote from the preamble, and to ensure that the sentence
8 truly serves as a deterrent.

9 When handing down a sentence, the Chamber must also respond to the legitimate
10 need for truth and justice expressed by the victims and their family members. Thus,
11 the Chamber is of the view that the sentence has two major functions: On the one
12 hand it serves to punish, that is to say to express society's disapproval of the crimes
13 committed and their perpetrator, which is also a way of recognising the harm and
14 suffering that the victims have undergone.
15 On the other hand, the sentence serves to deter others from committing similar crimes.
16 The punitive nature of the sentence thus tends to hold in check any and all desire to
17 satisfy the thirst for vengeance. It is not so much the harshness of the sentence that
18 is of importance. It is the inevitability of the sentence that must prevail.

19 Moreover, the Chamber must ensure that the sentence is proportionate to the crime as
20 is set out in Rule 145(1)(a) of the Rules of Procedure and Evidence.

21 The sentence must also serve to bring once again to the affected populations and help
22 them achieve reconciliation, and finally a sentence that is proportionate to the crime
23 helps to encourage the convicted person's return to society even though, particularly
24 in the realm of international criminal law, this goal cannot be considered to be of the
25 first magnitude since the sentence cannot in of itself ensure the guilty party's

1 successful return to society.

2 To determine the sentence, the Chamber must take into account the relevant evidence
3 presented and the submissions made during the trial, as is set out in Article
4 71 -- correction 76(1) of the Statute.

5 Pursuant to Article 77(1) of the Statute, and Rule 145(3) of the Rules of Procedure and
6 Evidence, the Chamber may hand down a maximum sentence of 30 years of
7 imprisonment, unless the extreme gravity of the crime and the personal
8 circumstances of the person found guilty warrant a sentence of life imprisonment.

9 In addition to a prison term, the Chamber may impose a fine and/or forfeiture of
10 proceeds, property and assets derived directly or indirectly from the crime in
11 accordance with Article 77(2) of the Statute.

12 Article 78 of the Statute and Rule 145 of the Rules of Procedure and Evidence, which
13 deal with the Chamber's determination of the sentence, stipulate that the Chamber
14 must take into account such factors as the gravity of the crime and the individual
15 circumstances of the convicted person. The Chamber shall also consider any
16 mitigating or aggravating circumstances and shall assess the weight of any other
17 relevant factors.

18 Nevertheless the Chamber does wish to specify right from the outset, as the Defence
19 reminded us in their closing submissions, that the existence of mitigating
20 circumstances is relevant only to lessen the sentence and in no way takes away from
21 the seriousness of the crime in question.

22 In the instant case the Chamber took several factors into account, which I shall now
23 explain, before stating the sentence that we believe must be imposed.

24 To determine a fair sentence, one must first assess the gravity of the crimes
25 perpetrated by the accused. The punishment must thus reflect the gravity of the

1 offence itself. In this regard, accused persons who appear before the Court must
2 realise that the crimes that they have been charged with constitute the most serious
3 breaches of international law and consequently the penalties for such crimes are
4 severe.

5 Not all the crimes for which Germain Katanga has been found guilty are equally
6 serious and thus the Chamber assessed the precise nature of these crimes. For
7 instance, we made a distinction between crimes committed against actual people and
8 crimes that were property crimes.

9 To assess the gravity of the crime, one must take into account the specific
10 circumstances of the case as well as the way in which the accused persons took part in
11 the crime and their degree of participation in the offence committed. The
12 punishment must fit the crime and must be in keeping with the convicted person's
13 culpability. Furthermore, the gravity of the crime must be assessed both
14 qualitatively and quantitatively.

15 First of all, in connection with the circumstances of the case, the Chamber recalls that
16 in our decision we found that the entirety of the crimes - murder, a war crime and a
17 crime against humanity; attacks on civilians; destruction of property; pillaging; all of
18 which are war crimes - these crimes committed by the Ngiti militia from the
19 collectivity of Walendu-Bindi occurred during one single attack which occurred on 24
20 February 2003 in Bogoro. Many civilians were injured or killed because of these
21 crimes.

22 In the view of the Chamber, there is no question that the crimes that were committed
23 on that day and at that place were widespread in nature not only because of the
24 circumstances under which the attack occurred, but also owing to the fact that the
25 primarily Hema population living in Bogoro were clearly targeted. The scars of the

1 fighting that occurred on that day can still be seen today.

2 In its decision, the Chamber concluded that on 24 February 2003 Bogoro had been

3 fought by -- had been attacked, rather, by fighters who arrived from all directions.

4 They arrived in the village very early in the morning, at about 5 a.m. while it was still

5 dark, while the villagers were still at home and still asleep.

6 Because the attackers arrived from all different directions, it was very difficult for the

7 villagers to flee. Most of those who testified as victims had hidden in the bush and

8 had managed to move away very quietly, thus making their escape.

9 After the attack, dead bodies lay everywhere. In fact, the Chamber noted that the

10 Ngiti attackers did not limit themselves to taking control of Bogoro by attacking the

11 UPC forces that were there.

12 During the fighting, and after they gained control of the village, the attackers even

13 hunted down and killed civilians who had not taken part in the hostilities. This

14 occurred throughout the entire village and in some cases in the civilians' actual

15 homes.

16 The Chamber also took note of the fact that, once the attackers had overrun the camp,

17 they slaughtered the residents of the village who had taken refuge there; more

18 specifically those who were hiding in the classrooms of the Bogoro Institute.

19 The Chamber is of the view that, once the fighting was over, the attackers continued

20 to hunt down the villagers who had hidden themselves in the bush and that they

21 captured people who were caught unawares in their hiding places. Some of these

22 people were subjected to sexual violence by the attackers, while others were killed.

23 None of these people had taken part in the fighting. When all is said and done, the

24 Chamber saw that the people living in this village had been targeted systematically

25 throughout the course of the day.

1 The crimes against civilians followed a regular pattern and were particularly violent.
2 Some of the crimes were not committed with firearms, but rather with machetes.
3 The attackers literally carved their victims up limb from limb before killing them.
4 Witnesses told of how the attackers did not just shoot at the villagers as they fled.
5 The attackers slashed them with machetes and knives as they tried to make their
6 escape.
7 This practice - a particularly cruel one - caused extreme physical suffering both for
8 those who were killed and those who somehow managed to survive despite their
9 pain. The machete blows also caused serious and ongoing trauma both for the
10 survivors, some of whom had to go -- had to undergo amputations, as well as trauma
11 to those who were witnesses to the suffering of their family members. The women
12 and men who survived these crimes will forever bear the physical scars, to say
13 nothing of the psychological scars caused by witnessing crimes of such cruelty.
14 Those who survived the slaughter had to flee, leaving everything they owned behind.
15 When they returned to Bogoro the inhabitants tried to recover the bodies of their
16 family members who had been killed in the attack, yet very few were able to do so
17 and few were able to organise the appropriate ceremonies to mourn the dead.
18 Family members were separated from one another and experienced the anguish of
19 not knowing for long periods of time whether their husband, wife, child, father,
20 mother, sister or brother was still alive.
21 In addition to the various crimes that I have just described, the Chamber concluded
22 that on 24 February 2003 the attackers destroyed or torched the homes belonging to
23 the people of Bogoro, most of whom were Hema, or they removed the sheet metal
24 roofs of the villagers' dwellings.
25 The attackers also destroyed the buildings of the Diguna Church Mission, in

1 particular the CECA 20 Church which the people of the village attended. The
2 Chamber found that these acts of destruction unfolded throughout the entire village
3 throughout the entire day, even once the village had fallen and was controlled by the
4 attackers.

5 According to several eyewitnesses, most of the buildings were burnt to the ground,
6 destroyed, and the Chamber was able to see that many of the current houses in the
7 community had to be rebuilt later by an NGO.

8 The Chamber also found that attackers stole a wide variety of household possessions
9 belonging to the civilian population of Bogoro, most of whom were Hema. These
10 items, necessary for day-to-day life, included sheet metal roofing, furniture, other
11 household items, food, animals, in particular cattle.

12 The looting was done by the attackers themselves, as well as by women and children
13 who assisted them, and some of these women and children were armed. Moreover,
14 the fighters forced people who had been captured in Bogoro, especially women, to
15 carry the looted goods for them. The loss of these possessions has had major
16 consequences on the daily existence of the victims.

17 At present, many of them have been forced to start new lives for themselves away
18 from Bogoro. Some did not wish to return to the village and re-establish themselves
19 there because they would have to start all over again with nothing. In some cases
20 these people just did not have the resources to go back home.

21 The Chamber also noted that several witnesses testified that they had heard the
22 attackers' threats and they had heard the victims crying and begging for mercy.

23 The Chamber also wishes to stress that several witnesses stated that the fighters
24 specifically questioned the villagers about their ethnic origins in order to determine
25 their fate, and several people only survived because they had been able to convince

1 their attackers that they did not belong to the Hema community.

2 In connection with the current situation in Bogoro and the harm done to the victims
3 and their family members, the Chamber has reviewed the testimony of the current
4 chief of the village of Bogoro and the Babiase groupement. As village chief, this
5 witness is in contact with the people of Bogoro each and every day, and thus he was
6 very well placed to inform the Court about the situation of the people living in this
7 area.

8 The witness stressed that currently, the main problem of the residents of Bogoro was,
9 no doubt, the suffering that they endured because of poverty.

10 He stressed that even now the aftermath of the fighting is still felt. There are a large
11 number of widows, widowers and orphans in the community. Many of the orphans
12 have no foster homes. He also reminded the Chamber that before the attack the
13 village had several schools, but now, ever since the attack of February 24th, 2003,
14 parents are having great difficulty providing their children with an education.

15 The village chief mentioned that many families had suffered because of the damage
16 done in Bogoro on that day. He also stressed that some residents of the village still
17 suffer from physical disabilities or psychological trauma or both. According to him,
18 they still vividly remember the attack of 24 February 2003. In the final analysis, a
19 great many people from Bogoro can no longer play a role in the economic and social
20 life of their community.

21 I now wish to turn to another matter, once again, in relation to the gravity of the
22 crime, the Chamber has reviewed Germain Katanga's degree of participation and his
23 intent. The Chamber reached the conclusion that it had not been shown that in
24 February 2003, the Ngiti militia from the collectivity of Walendu-Bindi was in
25 an -- was or formed an organised power structure and that at that time,

1 Germain Katanga wielded control over the militia such to control -- as to exercise
2 control over the crimes within the meaning of Article 25(3) of the Statute.

3 However, the Chamber was of the view that Germain Katanga had made a significant
4 contribution to the commission of a number of crimes committed by the group of
5 commanders and combatants from the collectivity of Walendu-Bindi insofar as his
6 contribution had a major influence on the occurrence of these crimes and the manner
7 in which they were committed.

8 The Chamber also wishes to stress the importance of Germain Katanga's contribution
9 in the context of this case, more specifically, in the context of the collectivity of
10 Walendu-Bindi in February 2003.

11 The Chamber recalls that Germain Katanga's actions allowed the militia to benefit
12 from logistical means, resources that they did not have previously and yet were of
13 great usefulness for their attack on Bogoro.

14 Owing to Germain Katanga's contribution, the Ngiti combatants enjoyed military
15 superiority over their UPC adversaries and they were able to achieve their goal;
16 namely, to eliminate the civilian population of Bogoro, for the most part made up of
17 people from the Hema group. Without the strategic military alliance struck by
18 Germain Katanga and without the weapons and ammunition that were provided, the
19 Ngiti combatants would not have had the resources they needed to carry out the
20 attack of 24 February successfully; they would not have been able to conduct the
21 attacks so efficiently and carry out their criminal purpose, which was to wipe Bogoro
22 off the map and to eliminate the primarily Hema civilian population living there.

23 Furthermore, the Chamber was of the view that in February 2003, Germain Katanga
24 did indeed hold the highest ranking position within the Ngiti militia of the
25 collectivity of Walendu-Bindi. This militia was at times called the FRPI and he was,

1 at least on 9 February 2003, the president of this organisation. His title was
2 commander or chief of Aveba. He was a confirmed and recognised soldier, and he
3 had definite military authority within the collectivity.

4 As for the power that he actually enjoyed, the Chamber concluded that he did
5 facilitate the transportation of weapons and ammunition from Beni to Aveba, as well
6 as the storage of said weapons and ammunition.

7 He had the authority to not only allocate weapons and ammunition to the
8 commanders of the collectivity of Walendu-Bindi, but also to decide the quantity of
9 ammunition that would be allocated. In this regard, his instructions were followed.

10 The Chamber also concluded that on 24 February 2003, in Bogoro, the local
11 combatants from the collectivity of Walendu-Bindi had used the weapons and
12 ammunition that had come from Beni and that had been allocated to them once
13 shipments had been received in Aveba.

14 Within the specific context of this case, the Chamber concluded that the actions taken
15 by the convicted person had had a major influence on the commission of the
16 following crimes: Conducting attacks on civilians, murder, looting and destruction
17 of property. Taken as a whole, his actions and the various ways in which he made
18 his contribution had a significant influence on the commission of these crimes.

19 Moreover, Germain Katanga made his contribution to the commission of the crimes,
20 with full knowledge that the Ngiti combatants of the collectivity of Walendu-Bindi
21 were driven by an anti-Hema ideology, which he himself shared as well. He knew,
22 given the manner in which the group had behaved previously, that the Ngiti militia
23 would commit the crimes of murder, homicide, attacking civilians as well as the
24 crimes of destruction of property and looting.

25 As the Chamber pointed out in its decision, Germain Katanga knew full well how to

1 wage the war that was under way in Ituri at the time of the events. He knew full
2 well the suffering that this war would cause the civilian population. He was familiar
3 with the events that had occurred in Nyankunde in September 2003, only a few
4 months before Bogoro was seized. He gave many details about those events and he
5 himself described what had happened as a massacre.

6 Consequently, the degree of participation and the intent of Germain Katanga in this
7 case must not be underestimated, particularly since the crimes that were committed
8 on 24 February 2003 were particularly cruel.

9 In addition to the gravity of the crimes, which the Chamber has just mentioned, one
10 must also ask questions about mitigating and/or aggravating circumstances and
11 whether they actually exist in this particular case.

12 Four aggravating circumstances must be considered according to the Prosecutor.

13 First, the particular vulnerability of the victims; secondly, the cruelty of the crimes;
14 thirdly, the motive, the discrimination; and fourth, the abuse of official powers or
15 functions. This is pursuant to Rule 145.

16 The legal representative of victims shares the Prosecutor's view regarding the first
17 three aggravating circumstances.

18 The Chamber reviewed the gravity of the events and has already taken into account
19 the fact that the crimes were committed with cruelty and that the inhabitants of
20 Bogoro included vulnerable people, particularly children. The Chamber considered
21 the discriminate -- discriminatory nature of the attack. The Chamber only analysed
22 the fourth aggravating circumstance alleged by the Prosecution; namely, abuse of
23 official power and functions.

24 The Chamber remembers that as of 9 February 2003, Germain Katanga was indeed the
25 president of the Ngiti militia of the collectivity of Walendu-Bindi. Furthermore,

1 during the period prior to the attack on Bogoro, he had a certain degree of military
2 authority in that collectivity and he played a key role in the supply and distribution of
3 weapons and ammunition to the various commanders who were based there.

4 Germain Katanga was a particularly seasoned and renowned combatant and was
5 equally a key player in anything that had to do with the supply of weapons in the
6 collectivity. He had the authority to carry out a needs assessment and to take
7 decisions by himself relating not only to the principle of distribution but to the
8 quantities of ammunition to be allocated and for that purpose to issue the necessary
9 orders which were complied with.

10 The Chamber is of the view that the aggravating circumstance in question here
11 requires evidence that the accused not only exercised a certain degree of authority,
12 but that he also abused it. However, in the instant case, it does not appear that
13 Germain Katanga indeed abused his position of authority or that he used his
14 influence to facilitate the perpetration of crimes.

15 That being the case, the Chamber does not believe that the status of the accused, nor
16 his exercise of his powers as someone in a position of authority can be considered as
17 an aggravating factor.

18 The Chamber will now present a summary of its findings on possible mitigating
19 circumstances.

20 Both the Prosecutor and the legal representative are of the view that the accused must
21 not benefit from any mitigating circumstances. On the contrary, the Defence
22 believes that the young age of Germain Katanga, the nature of the role that he played,
23 the exceptional circumstances in which he found himself, the fact that he has the
24 potential to reform, the manner in which he cooperated with the Court, as well as the
25 organisation of his personal and family life are all elements that the Chamber should

1 take into account to mitigate the sentence to be imposed on him.

2 To begin with, regarding Germain Katanga's personal circumstances, the Chamber
3 notes that the accused was 24 years old at the time of the events. The Chamber also
4 recalls that, at the end of the year 2002, several other local commanders were in a
5 similar age bracket as him, and accordingly, the Chamber believes that the argument
6 relating to Germain Katanga's young age should be viewed in perspective.

7 Nevertheless, as proposed by the Defence, the Chamber is receptive to the convicted
8 person's statements to the effect that he has been a changed man since 2003, that he
9 has become an adult, and that he has started understanding more and more things
10 that he probably had not understood during the period in question, notably in
11 relation to his level of maturity and the constraints that he was subject to within his
12 community at the time.

13 That notwithstanding, regarding this last point, there is absolutely no doubt that
14 Germain Katanga like many other members of his community suffered greatly for the
15 acts -- from the acts of violence perpetrated against the civilian population of their
16 collectivité.

17 It is nonetheless obvious that the convicted person who has a willing and enterprising
18 spirit, as demonstrated throughout his testimony, chose, between 2002 and 2003, to
19 take the initiatives he deemed to be necessary in full knowledge of the facts on behalf
20 of his community and in a well-thought-out spirit of military-ethnic conquest.

21 True, such an attitude, which is both protective and belligerent, made it possible for
22 him to gain the trust of the members of his community while advancing his
23 endeavour to earn respect, which are all values that are considered essential in his
24 community and, therefore, he cannot today be reproached for trying to acquire those
25 values. The fact remains that the Chamber cannot accept, in spite of the particularly

1 sensitive context within which the convicted person was at the time, that he, as the
2 Defence claims, found himself inextricably trapped at the end of 2002 and in 2003.
3 The Chamber will now consider the family situation of Germain Katanga.
4 He is the father of six children. He sees his family only twice per year and,
5 according to the Defence, he shows the keenest interest in his family, particularly
6 when it comes to the welfare and education of his children. The Chamber notes the
7 tender age of some of these children and the fact that for reasons beyond their control
8 they are faced with the difficulty of growing up far away from their father, and it is of
9 the opinion that having a close-knit family is an asset that could facilitate the
10 reintegration of Germain Katanga.

11 With regard to Germain Katanga's reputation, or what could be referred to as his
12 good moral standing, the Chamber recalls that it has already determined that in
13 August 2002 he was a particularly renowned and seasoned combatant, as can be
14 attested to by the evidence on record. The Chamber has also pointed out that the
15 convicted person had a good reputation, at least at the end of 2002. Nevertheless,
16 the Chamber is of the view that such considerations, which are mainly linked to his
17 courage as a soldier and in his actions on behalf of his community, may not be
18 considered as mitigating circumstances.

19 However, according to several witnesses, it appears that Germain Katanga
20 contributed actively towards the protection of the civilian population of his
21 community and that he had a good relationship with that community, whereas other
22 commanders were known to be quite adept at causing incidents, even amongst that
23 very population, even going as far as confiscating property and instituting reigns of
24 terror.

25 Accordingly, the Chamber believes that the young age of Germain Katanga, the fact

1 that he is the father of six children and his positive and protective relationship with
2 the civilian population of his community are important elements that can be taken
3 into consideration to mitigate his sentence. Nonetheless, these elements cannot play
4 a substantive mitigating role, given the nature of the crimes for which he has been
5 found guilty and which were perpetrated against the Hema civilian population of
6 Bogoro. As such the Chamber will accord them only a very relative weight.
7 Going beyond the personal circumstances of the convicted person, the Chamber will
8 now consider Germain Katanga's conduct after the events. The Defence underscores
9 the fact that Germain Katanga gave his support to the peace process which was
10 ongoing in Ituri, as from March 2003 and throughout the years 2003 and 2004, up
11 until his integration into the Congolese army, and that he encouraged the
12 disarmament and demobilisation of the militias and child soldiers. The Defence
13 further submits that the demobilisation programme could never have been
14 implemented without his participation.
15 The Chamber considers that the efforts that were made to promote peace and
16 reconciliation may and should be taken into account in determining the sentence and
17 that they are potentially of a nature to constitute mitigating circumstances. However,
18 it is the Chamber's view that such efforts must be both real and sincere without there
19 being a requirement for results to be produced.
20 In the opinion of the Chamber, after having analysed all the evidence on record, it is
21 not possible to establish, on the balance of probabilities, that Germain Katanga did
22 indeed try through the efforts that he is supposed to have made, to actively promote
23 the peace process as a whole.
24 The fact remains, in the Chamber's view, that several documents and testimonies
25 attest to the positive role that he played in the disarmament and demobilisation

1 process for child soldiers. The Chamber considers that the active participation of
2 Germain Katanga in the demobilisation process has been established on the balance of
3 probabilities, given his conduct and positive contribution at the time. As such, the
4 Chamber is of the view that his efforts should be taken into account in the sentencing
5 decision.

6 Furthermore, regarding the expression of remorse and sympathy towards the victims,
7 the Chamber notes that the expression of remorse can be considered as a mitigating
8 factor, but only if such remorse is shown in a sincere manner. Besides, even though
9 expressing one's sympathy or sincere compassion towards the victims can also be
10 taken into account for the purpose of determining the sentence, it does not under any
11 circumstances amount to an expression of remorse and, in the Chamber's opinion,
12 should only be accorded a very low value.

13 Also, the Chamber cannot fail to point out that, in the course of the trial,
14 Germain Katanga did not make any statement that would indicate deeply felt and
15 sincere remorse. At the very most, he made a few statements reflecting his
16 compassion for the victims and his wish to see that justice is done.

17 Also, the Chamber recalls that during his closing statement at the sentencing hearing,
18 Germain Katanga, in general terms, expressed his compassion for the victims of,
19 quote, "that war", unquote, that is the war in Ituri at that time before sharing the
20 feelings he had more specifically for the victims of his own community. The
21 Chamber considers that those statements were also much too general. The fact is
22 that Germain Katanga is still having great difficulties acknowledging the crimes
23 perpetrated.

24 Lastly, in the observations it communicated to the Chamber on 4 April 2014, the
25 registry stated that it did not have any reliable information on possible initiatives by

1 Germain Katanga to compensate the victims in response to a specific question on this
2 matter. The current village chief said he was not aware of any initiative by the
3 convicted person for the benefit of the victims.

4 In view of the foregoing points, the Chamber, as a result, will not consider the
5 statements made by Germain Katanga about victims as constituting an expression of
6 sincere compassion or remorse that could be treated as a mitigating factor.

7 As to Germain Katanga's co-operation with the Court and his conduct in the
8 detention centre, the Chamber notes that contrary to the Rules of Procedure and
9 Evidence of the International Criminal Tribunals which stipulate that such

10 co-operation must be notable or substantive, Rule 145 does not require that to be so.

11 The Chamber further notes that the jurisprudence of the International Criminal
12 Tribunals has become progressively flexible and that the Chambers have a wide
13 margin of manoeuvre in a factual assessment of what constitutes notable co-operation
14 or not.

15 In the Chamber's view, in order to be considered as a mitigating factor, co-operation
16 has to be substantive, it has to be -- to extend beyond mere good conduct, which, even
17 though is appreciable, cannot by and of itself amount to a factor likely to mitigate the
18 sentence to be imposed.

19 In the instant case, the Chamber points out that Germain Katanga testified at length
20 that he answered the questions put to him by the parties, the participants and the
21 Judges without any difficulty and that he spontaneously offered various items of
22 information and points of clarification.

23 Accordingly, the Chamber, to a certain degree, has decided to take that positive
24 attitude into account in its sentencing decision. That said, the Chamber cannot take
25 into consideration the fact that Germain Katanga attended the hearings and behaved

1 well with the staff members and security officers during the proceedings, that being
2 the normal conduct that any Chamber expects as of right from an accused person.

3 Now, with regard to Germain Katanga's conduct in detention, the Chamber duly
4 notes the internal memo communicated to it by the Registry on this matter.

5 It is satisfied on reading the document that Germain Katanga's conduct over a period
6 of six years can be generally considered as positive. The Chamber further notes that
7 even though the Defence responded to this matter in its observations of 7 April 2014,
8 it did not argue that such conduct should be considered as a mitigating factor.

9 Accordingly, the Chamber shall make no finding on this point.

10 Lastly, as concerns the violation of the rights of the Defence, which is an argument
11 raised by Germain Katanga's Defence, on the basis of the time that its client spent in
12 the Kinshasa Central Prison between 10 March 2005 and 18 October 2007, the
13 Chamber considered that, if a violation of the fundamental rights of the convicted
14 person had been established, it would indeed be proper to take that into account for
15 the purpose of mitigating his sentence.

16 However, the Chamber finds that there is nothing in the Statute authorising the Court
17 to rule on the legality of Congolese detention procedures or to determine whether
18 those procedures have been violated. As such, the Chamber believes that it has no
19 mandate to rule on any violation of his rights that Germain Katanga may have
20 suffered in the DRC at a time when his detention was not subsequent to an order of
21 the Court.

22 On the other hand, regarding the period during which Germain Katanga was
23 detained at the request of the Court, it is the opinion of the Chamber that if any
24 violations have been established they may only be attributed to it if they related to
25 proceedings before it. It is out of the question for the Chamber to deal with possible

1 violations of Germain Katanga's rights if they are in no way related to the
2 proceedings before the Court, even if such violations supposedly occurred while he
3 was being detained in accordance with an order of the Court.

4 In the instant case, the Chamber finds that the Defence did not demonstrate that the
5 proceedings conducted between 17 September and 18 October 2007, during the
6 notification of the arrest warrant issued against Germain Katanga, had been
7 characterised by irregularities.

8 For all the reasons set out above, the Chamber sentences Germain Katanga to: 12
9 years' imprisonment for aiding and abetting within the meaning of Article 25(3)(d) of
10 the Statute, the crime of murder as a crime against humanity; 12 years' imprisonment
11 for aiding and abetting within the meaning of Article 25(3)(d) of the Statute, the crime
12 of murder as a war crime; 12 years' imprisonment for aiding and abetting within the
13 meaning of Article 25(3)(d) of the Statute, the crime of attack against a civilian
14 population as a war crime; 10 years' imprisonment for aiding and abetting within the
15 meaning of Article 25(3)(d) of the Statute, the crime of destruction of property as a
16 war crime; 10 years' imprisonment for aiding and abetting within the meaning of
17 Article 25(3)(d) of the Statute, the crime of pillaging as a war crime.

18 Pursuant to Article 78(3) of the Statute, the Chamber pronounces a joint sentence of 12
19 years' imprisonment.

20 With regard to the time spent in detention in the DRC and which might be deducted
21 from the sentence at the discretion of the Court, the majority of the Chamber, contrary
22 to the arguments of the Defence, was of the view - explained at length in this decision,
23 which will be available soon - that it did not have sufficiently precise and correct
24 information that would have enabled it to take that period into account and deduct it
25 from the sentence. On the other hand, pursuant to Article 78(2), the Chamber orders

1 that the time spent in detention in accordance with an order of the Court, that is from
2 18 September 2007 to this day, 23 May 2014, shall be deducted from
3 Germain Katanga's sentence.

4 Lastly, in the absence of any information relating to the financial circumstances of
5 Germain Katanga, the Chamber has not sentenced him to a fine.

6 For these reasons the Chamber sentences Germain Katanga to 12 years' imprisonment
7 for aiding and abetting, or otherwise assisting in the commission of the crimes of
8 murder as a war crime and a crime against humanity; directing an attack against a
9 civilian population as such, or against individual civilians not taking direct part in
10 hostilities as a war crime; and the destroying of enemy property and the pillaging of
11 property as war crimes.

12 Judge Christine Van den Wyngaert appends a dissenting opinion to this decision.

13 The Chamber, with the Bench, which started with the commencement of the trial in
14 November 2009, has come to the end of its work. Pursuant to decision 3468 of the
15 Presidency of the Court, dated 16 April 2014, it will be a different Bench under Article
16 75 that will take over the reparation procedure for the victims.

17 Before I leave you, on behalf of the Chamber I would like to thank the parties and
18 participants for all their contributions and the quality of their work. Once again, the
19 Chamber would also like to thank all those who contributed to the good conduct of
20 these proceedings.

21 This session is adjourned.

22 (The hearing ends in open session at 9.52 a.m.)