

Katanga Sentencing Judgment: Trial Chamber II (23 May 2014)

<http://www.icc-cpi.int/iccdocs/doc/doc1771079.pdf>

The Presiding Judge, Bruno Cotte, delivered the Chamber's analysis and judgment on the sentencing of Germain Katanga:

The Chamber commenced by briefly highlighting the conviction judgment of 7 March 2014, where Katanga was found guilty of the crime against humanity of murder and, the war crimes of murder, intentional attack against a civilian population, destruction of property and pillaging. The Chamber then recalled the sentencing hearing, which was held earlier this month. During the sentencing hearing one Prosecution witness and two Defence witnesses provided testimonies. The Prosecution requested a sentence of 22-25 years, following which the parties and participants made their final submissions. Katanga made a closing statement at the sentencing hearing.

The Chamber stated that its aim is that the sentence imposed should be meaningful and should reflect the objectives contained in the preamble of the Rome Statute. The Chamber stated that its task is to punish the perpetrators of crimes that threaten the peace, security and well being of the world and, to see that the sentence imposed on the perpetrator serves as a deterrent. The Chamber also highlighted the importance of achieving truth and justice for the victims and, recognizing their suffering.

The Chamber stated that the sentence must be proportionate. The Chamber also explained that the punishment given to the perpetrator should help to reform the person and eventually let the person reintegrate into society.

To determine the sentence, the relevant evidence and submissions made during the trial must be considered. The Chamber explained that the Rome Statute provides for a maximum sentence of 30 years and a fine. Also, forfeiture of any proceeds derived from the crimes committed.

The Chamber stated that the determination of the sentence would depend on the gravity of crimes committed, individual circumstances of the convicted person, mitigating circumstances and aggravating circumstances. The Chamber stated that it would assess the weight of the relevant factors and apply them accordingly to the final decision.

GRAVITY OF CRIMES COMMITTED

The Chamber first considered the gravity of the crimes committed. The Chamber stated that the sentence must reflect that the crimes, with which Katanga has been charged, constitute the most serious breaches of international law.

The Chamber explained that the penalties imposed are severe. The Chamber also explained that not all crimes are equally serious. The Chamber highlighted the distinction between crimes against people and crimes against property.

The Chamber elaborated that the gravity of the crimes committed must be assessed qualitatively and quantitatively based on the specific circumstances of the case.

The Chamber recalled that the entirety of the crimes with which Katanga was charged, all took place in one attack on the Bogoro village on 24 February 2003. The Chamber explained that there were no doubts relating to the Court's jurisdiction over the crimes committed

considering that the attack was widespread and specifically targeted the Hema population in Bogoro.

The Chamber then provided a brief summary of all the crimes committed on 24 February 2003 in the Bogoro village and the effects that are still being felt within the community. The Chamber explained that the rebel forces that received arms from Katanga, did not limit their attack to the UPC forces, instead they hunted and indiscriminately killed Hema civilians, specifically vulnerable women and children. The Chamber explained that the actions of the rebel forces were to further their common purpose, to eradicate Hema people from Bogoro and were extremely cruel. The Chamber also highlighted the widespread destruction of property and infrastructure in Bogoro.

The Chamber stated that while deciding the sentence, it considered the lasting effects of the attack on the Bogoro community. The Chamber highlighted the details of the aftermath of the attack that is still felt today by referencing the details provided by the Chief of Bogoro who testified during the sentencing hearing.

The Chamber mentioned that the people of the area still lived in fear and, since they lost everything during the attack, were suffering from acute poverty.

DEGREE OF PARTICIPATION

The Chamber reviewed the degree of participation of Katanga and the power and control he wielded over the crimes being committed. The Chamber stated that Katanga had made a significant contribution to the commission of the crimes by commanders and combatants of the rebel forces. The Chamber stated that Katanga's contribution had a major influence on the commission of the crimes and the harm caused.

The Chamber stated that Katanga's contribution allowed the militia to benefit from logistical means that he provided. The Chamber stated that the Ngiti combatants had military superiority over the UPC forces because of their weapons and ammunition and hence, were able to eliminate the Hema population in Bogoro. The Chamber reiterated that without the strategic relationship struck by Katanga to get ammunition, the combatants would not have been able to carry out their criminal common purpose.

The Chamber stated that on 9 February 2003, Katanga was the highest-ranking FRPI officer and his title was Commander/Chief of Aveba. The Chamber stated that Katanga facilitated the acquisition of weapons and ammunition from Beni and decided on the quantity of ammunition to be allocated. He also issued instructions relating to the weapons that had to be followed. The local combatants all used these weapons, which were sourced from Beni.

Therefore, the Chamber established that the actions taken by Katanga had a major influence on crimes committed. The Chamber found that Katanga made a contribution to the commission of the crimes with full knowledge of the consequences, driven by an anti-Hema ideology.

The Chamber stated that the degree of participation must not be underestimated and must be considered in addition to the gravity of the crimes committed.

AGGRAVATING FACTORS

The Chamber recalled that the OTP put forth four aggravating circumstances, which were: (i) the vulnerability of the victims, especially the children; (ii) cruelty of the crimes committed; (iii) discriminatory intent behind the attack; and, (iv) the accused's abuse of official power. The Chamber also recalled that the LRV agreed with the first three aggravating circumstances mentioned.

The Chamber stated that it already took into account the first three aggravating circumstances, when it considered the gravity of the crimes committed.

With relation to the fourth aggravating circumstance, regarding the abuse of power by an official, the Chamber noted that on 9 February 2003, during the period prior to the Bogoro attack, Katanga played a major role in the rebel forces and controlled the supply and distribution of weapons.

The Chamber stated that while the accused exercised his authority to make decisions regarding ammunition and weapons, he did not abuse the power he had by virtue of his official capacity. The Chamber stated that he carried out his functions and did not overreach them. Hence, he did not abuse the power that he possessed as a leader of the rebel forces.

MITIGATING FACTORS

The Chamber recalled that the OTP and the LRV stated that Katanga must not benefit from the application of mitigating factors to his sentence.

The Chamber went on to consider the mitigating circumstances put forth by the Defence:

- Age, Family and Character:

The Chamber recalled the submissions made by the Defence in order to mitigate Katanga's sentence, which relate to his young age during the commission of the crimes, the nature of his role, the exceptional circumstances that motivated him, his potential to reform, his manner of cooperation and the organization of his personal and family life.

The Chamber noted that Katanga was 24 years old when the attack on Bogoro village took place. The Chamber recalled that at the end of 2002 several local commanders were around the same age and hence, Katanga's young age must be viewed in the relevant context.

The Chamber noted Katanga's statements that he is a changed man, who has matured and understands much more now. The Chamber stated that while it acknowledges this change in Katanga, the fact is that Katanga's acts caused the suffering of many people and that he had deliberately chosen to undertake certain actions in an effort to carry out the ethnic conquest. The Chamber also pointed out that Katanga was both protective towards his community and belligerent towards the Hema population.

The Chamber stated that Katanga was a respected and trusted member of his community and that he must not be reproached for that. Still, the Chamber stated that it couldn't accept the Defence's arguments that Katanga had felt so trapped in 2002/2003 that he had no choice but to aid and abet in the Bogoro attack.

The Chamber recalled that Katanga is the father of 6 children who he only sees two times a year and, that he takes a keen interest in his family, especially the education and welfare of his children. The Chamber noted the tender ages of two of his children and the fact that they will have to grow up far away from their father. The Chamber noted that Katanga has a close-knit family and that this will help with his reintegration.

The Chamber also noted that Katanga's personal reputation indicates that he had a good moral standing in his community. In August 2002, he was considered a seasoned and courageous combatant. The Chamber stated that Katanga's reputation as a loyal soldier many not be considered as a mitigating factor. The Chamber noted that Katanga made a positive contribution to the protection of the civilian population of his community, while there are other commanders who create issues within their own communities.

Therefore, the Chamber stated that Katanga's young age during the commission of the crimes, six children and positive protective relationship with his community could be used to mitigate his sentence. The Chamber stated that these factors would not play a substantive role considering that Katanga still made the choice to perpetrate crimes against the Hema population. Therefore, these factors would be considered to have relative weight when assessing mitigating factors.

- Peace and reconciliation efforts:

The Chamber stated that on the facts Katanga definitely supported peace between March 2003 and 2004 until he was integrated into the national army. The Chamber recalled evidence provided, which stated that Katanga's contribution towards disarmament and demobilization of child soldiers was integral and, that the processes would not have happened without him.

The Chamber stated that peace and reconciliation efforts must be real and sincere. The Chamber stated that it is not possible to establish on the balance of probabilities that Katanga has tried to actively promote peace and disarmament as a whole.

- Remorse shown by the accused towards the victims:

The Chamber stated that the expression of remorse could be a mitigating circumstance only if it is sincere. The Chamber stated that in this case, the statement made by Katanga does not amount to an expression of remorse and hence should be accorded a low value. The Chamber stated that Katanga did not make a statement that indicated that he deeply felt remorse instead he exhibited compassion for the victims and communicated that justice should be achieved for them. The Chamber stated that Katanga first expressed compassion for the victims of "that war", which means the war in Ituri and then shared his feelings about the people of his community. The Chamber stated that his statements were much too general and that he is still having difficulties acknowledging that the crimes were committed.

Regarding compensation, the Chamber stated that the Registrar has been unable to provide any information about compensation provided by Katanga to the victims of the Bogoro village attack. The Chamber referenced the information provided by the Chief of the Bogoro village and stated that he too was unaware of any compensation that had been provided by Katanga.

Therefore, the Chamber stated that it would not consider Katanga's statement as a mitigating factor, which arises from the "remorse" felt by the accused.

- Conduct of the accused during proceedings:

The Chamber stated that contrary to the Rules of Procedure and Evidence for international criminal tribunals, the accused's cooperation with Court proceedings must be substantive in

order to amount to a mitigating factor. The Chamber elaborated that the cooperation has to be substantive beyond “mere good conduct” otherwise it will not be mitigating.

The Chamber stated that since Katanga testified at length, provided answers without requiring judicial interventions and spontaneously provided information, his conduct would be taken into account to certain degree.

The Chamber noted that as per the internal memo it received, Katanga’s conduct throughout the past 6 years of ICC proceedings has been “normal”. The Chamber highlights that the Defence also did not request that this conduct be considered mitigating. The Chamber stated that on this specific issue there is no finding of mitigating circumstances.

Lastly, the Chamber addressed the claims that the time Katanga spent in prison in Kinshasa, between 10 March 2005 and 18 September 2007, amount to a violation. The Chamber stated that if a violation of Katanga’s fundamental rights had been established then his detention in DRC, under the authority of an ICC warrant, could have been considered as a mitigating factor. The Chamber stated that it couldn’t rule on the circumstances of Katanga’s detention in DRC before the ICC arrest warrant was communicated to the DRC on 18 September 2007. Therefore, since no violation of Katanga’s rights was established while he was in Court authorized detention; this could not be considered as a mitigating factor.

FINAL JUDGMENT

The Chamber sentenced Katanga to:

- 12 years of imprisonment for aiding and abetting in the commission of the crime against humanity of murder;
- 12 years of imprisonment for aiding and abetting in the commission of the war crime of murder;
- 12 years of imprisonment for aiding and abetting in the commission of the war crime of intentional attack against a civilian population;
- 10 years of imprisonment for aiding and abetting in the commission of the war crime of destruction of property; and,
- 10 years of imprisonment for aiding and abetting in the commission of the war crime of pillaging.

The Chamber ruled that the aforementioned sentences would be combined to form a “joint sentence” of 12 years of imprisonment.

The Chamber stated that it has the discretion to deduct from the sentence the time in prison already served by Katanga when he was detained in the DRC. The majority of the Chamber was of the view that the Chamber does not have sufficiently precise information in order to be able to take into account the time Katanga spent imprisoned in the DRC, which was not under an ICC order. The Chamber ruled that the time Katanga has spent imprisoned under an ICC order would be taken into account and deducted from the overall sentence, which is the time period between 18 September 2007 and 23 May 2014.

The Chamber ruled, in the absence of any financial information concerning Katanga that no fine would be imposed against Katanga.

Therefore, the Chamber sentenced Katanga to 12 years of imprisonment for aiding and abetting in the commission of the crime against humanity of murder and, war crimes of murder, intentional attack against a civilian population, destruction of property and pillaging.

DISSENT

Judge Van den Wyngaert issued a dissenting statement, which stated that as long as the "conduct underlying the crime" is in principle covered by the national investigation, which justifies the detention of the accused, the Chamber should exercise its discretion to deduct the time spent detained due to national proceedings from the final sentence imposed. Therefore, Judge Van den Wyngaert stated that the time Katanga spent detained in the DRC due to national proceedings against him, from 26 February 2005 to 18 September 2007, before the notification of the ICC arrest warrant against him, must be deducted from his final sentence. <http://www.icc-cpi.int/iccdocs/doc/doc1771078.pdf>
