



COALITION FOR THE INTERNATIONAL CRIMINAL COURT  
ICC TRIAL SUMMARY

Reference: Katanga\_TCII\_06/05/14

**Case Name:**  
Katanga

**Situation Country:**  
DRC

**Chamber:**  
Trial Chamber II

Date: 06/05/14

Type of Proceedings: Sentencing Hearings

Parties and Participants Present:

- Presiding Judge: Judge Bruno Cotte
- Office of the Prosecutor:

Eric MacDonald

- Defence:  
David Hooper

- Accused Present:  
Germain Katanga

- LRV:  
Fidel Nsita Luvengika

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### Submission Details

#### Office of the Prosecutor

**Defining aggravating factors:** The OTP discussed what would be regarded as an aggravating factor and would authorize an increase in Mr. Katanga's sentence. The Prosecutor said that "aggravating factors must be proven beyond a reasonable doubt" and should be linked to the charges themselves or the personal circumstances of the accused.

#### Legal Representatives of the Victims

**Enduring struggles in Bogoro:** The LRV explained that people were still struggling to rebuild their lives and to overcome the impact of the Bogoro attack. The LRV also analyzed the Defence's request for a reduction in the sentences on the basis that Mr. Katanga has cooperated with the Court and has behaved well during the trial. In regards to the aggravating factors addressed by the OTP, the LRV asked the Court to consider the particular vulnerability of the victims, cruelty of the crimes, and the ethnically discriminatory nature of the attacks.

#### Defence Counsel

**No effective control:** According to the Defence, Mr. Katanga was not present when the crimes were committed. He had knowledge of what would occur, but had no effective control over the perpetrators. Mr. Katanga allegedly did not have the authority to determine the manner they were killed. Hence, even if he was present, he would have had limited influence because he was only an "accessory in distributing arms."

**Relevance of age and background:** The Defence lawyer emphasized the importance of considering Mr. Katanga's background and age at the time of the events. After witnessing UPC attacks in his community, he joined the self-defence group. Given such circumstances, Mr. Katanga allegedly had to respond to the pressures from his community when he was only 24 years old.

**Provided with arms in Beni:** Mr. Katanga allegedly went to Beni to seek help on behalf of his community. As stated by the Defence, he did not go to Beni to specifically obtain arms, but he was provided with arms with a "pure military objective."

**Efforts towards peace:** In March 2003, Mr. Katanga allegedly removed himself from his own militia and joined the national army to convince others to demobilize. Mr. Katanga became a member of the *Pacificacion de Ituri* on 24 February 2005. On 21 November 2001, there was a political accord between various groups and efforts towards peace. Although there was opposition by other commanders, he personally helped convince the Cobra Militia to release NGO hostages. Referring to UN Reports, the Defence claimed that demobilization would not have been possible without Mr. Katanga.

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**Contribution to demobilization in Aveba:** An anonymous individual from Canadair arrived in Aveba on 21 September 2004 to work on a disarmament program for 10 months. According to the anonymous individual, while other militia leaders were opposed to demobilization, Mr. Katanga fully cooperated.

**Rape and murder in Aveba:** When Aveba was attacked, about 200 people were raped by Congolese troops. The Defence lawyer also pointed out that people were murdered in hospitals even up to last year.

**Anti-Hema ideology:** In response to the Court's statement about Mr. Katanga's anti-Hema ideology, the Defence lawyer argued that it was merely transitional and that Mr. Katanga helped Hema soldiers escape, as mentioned by a witness from the OTP.

**Request for a reduced sentence:** A reduction of the sentence was proposed to the Court by the Defence. They asked for the Court to consider the amount of time he was in custody and in jail at the DRC. Since Mr. Katanga showed good behavior in Court and because he was unable to contact his family except for the bi-annual visits, the Defence argued he should receive a reduced sentence.

**Family clarification:** In response to the Judge's request to clarify Mr. Katanga's family connections, the Defence lawyer first clarified that his family lives north of Bunia in Ituri. The Defence lawyer provided the Court with the names of his wife, three biological children, and three adopted children.

**Aggravating circumstances as an abusive authority:** The Judge asked the Defence to state their stance on the aggravating circumstances raised by the OTP. The Defence claimed that abusive power and capacity was misplaced because Mr. Katanga essentially had no effective authority or control. Mr. Katanga allegedly did not abuse any position but only accomplished what an intermediary would have done and nothing more. The Defence argued that the OTP was unable to prosecute bigger targets because of a lack of effective investigations.

**Mitigating circumstances after Bogoro:** The Defence responded to the Judge's request to clarify mitigating circumstances Mr. Katanga played after Bogoro, by referencing video footage that was presented in a former hearing. The video displayed Mr. Katanga as a fearful young man being manipulated and forced to sign. Even under the circumstance, he allegedly wanted peace and reconciliation.

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### **Office of the Prosecutor**

**Victimization of Mr. Katanga:** The Prosecutor claimed that Mr. Katanga was not a victim because no one imposed anything on him. Mr. Katanga was described as a man of peace by Witness D-2401, but he allegedly never attended a CPI (Ituri Pacification Commission) meeting.

**Ineffective Lingala translations:** In reference to the Defence's statement on Mr. Katanga's ability to speak French, the Prosecutor argued that thousands of Euros were wasted because Mr. Katanga never informed the Court that he did not need Lingala translations. The Prosecutor claimed that this was a mitigating factor. In response, the Defence stated that because Lingala translations were difficult to understand, they concluded that it would be better for Mr. Katanga to present his testimony to the Judges in French.

### **Mr. Katanga's statement**

Mr. Katanga referred to Mathieu Ngudjolo Chui's acquittal 2.5 years ago on 21 November 2012. Mr. Katanga stated that the Chamber changed the modes of liability in his case. He explained that the majority ruled that he was an accomplice because he only attended meetings with the purpose of gaining control of Ituri from the UPC. He argued that he did not intend to kill and had no control over the duties of the head of state. Concluding, he questioned what was preventing the Prosecutor from prosecuting the main perpetrators, especially when the majority ruled that he was only an accomplice.

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### Summary

In regards to the aggravating factors addressed by the OTP, the LRV suggested the Court to consider the vulnerability of particular victims, cruelty of the crimes, and the ethnically discriminatory nature of the attacks. The LRV also accounted that people were still struggling to rebuild their lives and to overcome the impact of the Bogoro attack.

According to the Defence, Mr. Katanga was not present when the crimes were committed and had no effective control over the perpetrators. Even if he was present, he would have had very limited influence because he was only an “accessory in distributing arms.”

The Defence lawyer emphasized the importance of considering Mr. Katanga's background and age at the time of the events. After witnessing UPC attacks, Mr. Katanga joined the self-defence group and allegedly responded to the pressures from his community when he was only 24 years old.

In March 2003, Mr. Katanga allegedly removed himself from his own militia and joined the national army to convince others to demobilize. According to an anonymous individual from Canadair, Mr. Katanga supported the disarmament program in Aveba despite opposition by other militia leaders. Mr. Katanga also became a member of the *Pacificacion de Ituri* on 24 February 2005.

The Defence lawyer argued for a reduced sentence by proposing to the Court to consider the amount of time he was in custody and in jail at the DRC.

In his own statement, Mr. Katanga argued that he did not intend to kill, and that he had no control over the duties of the head of state. Concluding, he questioned what was preventing the Prosecutor from prosecuting the main perpetrators, especially when the majority ruled that he was only an accomplice.

Judgment Delivery Date: 23/05/14

Private/Closed Sessions: N/A

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