



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

KATANGA / NGUDJOLO CHUI
INFORMAL WEEKLY SUMMARY
11 - 15 OCTOBER 2010



Situation Case Democratic Republic of Congo
01/04-01/07
The Prosecutor vs. Germain Katanga and Mathieu Ngudjolo Chui

Hearing: Trial Proceedings

Chamber: Judge Bruno Cotte (Presiding Judge), Judge Fatoumata Dembele Diarra, Judge Christine van den Wyngaert

Parties: OTP: Mr Eric McDonald, Mr Garcia, Ms Dianne Luping, Mr Gilles Dutertre and team;
Defence Mr Katanga: Mr. David Hooper, Mr. Andreas O'Shea and team;
Defence Mr Ngudjolo: Mr. Jean-Pierre Kilenda Kakengi Basila, and team;

Participants 363 victims represented by Legal Representatives for Victims: Mr. Fidel Nsita Luvengika and Mr. Jean-Louis Gilissen

Start of Trial: 24 November 2009

Germain Katanga: born 1978 in Mambassa, Ituri district, Eastern Province; National of the DRC; Alleged commander of the *Force de résistance patriotique en Ituri* (FRPI).

Mathieu Ngudjolo Chui: born 1970 in Bunia, Ituri district, Eastern Province; National of the DRC; Alleged former leader of the *Front des nationalistes et intégrationnistes* (FNI).

Alleged crimes:

Germain Katanga and Mathieu Ngudjolo Chui allegedly jointly committed, through other persons:

- **Crimes against humanity:** Murder, sexual slavery and rape;
- **War crimes:** Using children under the age of 15 to take active part in hostilities; deliberately directing an attack on a civilian population as such or against individual civilians not taking direct part in hostilities; willful killing; destruction of property; pillaging; sexual slavery; rape.

This week the testimony of **Witness P12 (18th OTP witness)** resumed. The witness had been called to testify under protective measures. At the end of the week, a new OTP witness, **Witness P219 (19th OTP witness)**, was sworn in and began giving testimony. Concerned about **the length of the proceedings**, Judge Cotte at some point stressed that the OTP case must be finished by the end of the year.

11 October 2010 - Cross-examination of OTP Witness P12 by the Katanga Defence Team continued.

Mr. Hooper, of the Katanga Defence Team, continued his cross-examination by picking up where he left off at the end of the last session: **Witness P12's arrest by CMI in 2002**, his time in custody and his release in early January 2003. The witness was further questioned on the UPC, PUSIC, his meetings with Mr. Katanga, and Uganda's involvement.

Mr. Hooper tried to depict another scenario of the events that took place, specifically concerning the meetings with Mr. Katanga. However, the witness maintained his version of the events.

OTP intervened on several occasions and questioned the relevance of the questions being put to the witness. Mr. Hooper indicated that the historical context, specifically

the creation of PUSIC, etc. was relevant. Trial Chamber II reminded Mr. Hooper to avoid repetition and to focus on the absolute necessary.

12 October 2010 - Mr. Hooper of the Katanga Defence Team finished his cross-examination. The Ngudjolo Chui Defence Team, represented by Professor Fofé, started its cross-examination.

The hearing opened with a few comments from Chambers expressing concern over the length of the case: Presiding Judge Cotte reiterated that all parties must, in their interrogation and cross-examination, go straight to the point, "focus on what is truly important and the most relevant information". **He insisted that the OTP case must be finished by the end of 2010.**

Mr. David Hooper of the Katanga Defence Team then pursued his cross-examination. His questions today focused on **the role of Uganda** in the conflict and the **2005 "New Rebellion"**. Mr. Hooper questioned the Witness P12 on his financial relations with Uganda, the role of Uganda regarding Germain Katanga's group, and the relationship between Germain Katanga and P12's wife.

Mr. Hooper tried on several occasions to show contradictions between what P12 and Katanga claimed, in order to destabilize the Witness. Witness P12 'resisted' and was quite assertive when faced with Mr. Hooper's repetitive and destabilizing questions.

Mr. Hooper then continued to ask questions regarding P12's relation to Uganda, including a potential falling out between P12 and the Ugandan government after General Kissemba's arrest by the Ugandans.

The rest of his cross-examination was conducted in private session.

Before moving on to the Ngudjolo Chui's Defence's cross-examination, **Judge Cotte asked one question regarding the motivation behind the Ugandans' actions in the Bogoro attack.** P12 answered that relations between Uganda and Lubanga had been tense, and that Uganda wanted the road to and from the Ituri region clear of all dangers for its military (Bogoro is on that road).

Professeur Fofé, of the Ngudjolo Chui Defence Team, then began his cross-examination with questions on the chain of events that led to the Bogoro attack, showing the Witness P12 documents and asking simple questions on them.

13 October 2010 - The Ngudjolo Defence Team's cross-examination of OTP Witness P12 continued. Some procedural and technical issues were raised

The hearing started with Judge Cotte engaging in a discussion on a technical issue regarding a future Witness, P223, and the establishment of a photo panel to have him identify another Witness, P268. Problems arose due to changes in the physical appearance of the latter.

The cross-examination of Professeur Fofé from the Ngudjolo Chui Defence team then continued. Professor Fofé asked a series of contextual questions on the UPC, as well as the relationship with RCDKML, between Lubanga and Chef Kahwa, on the role of PUSIC, etc.

The question of the methodology of Professeur Fofé's cross-examination was raised: Professor Fofé, in order to "gain time", was reading excerpt from previous statements given by the Witness to the investigators, asking each time if P12 stood by what he said, to get the information admitted as evidence. Following a slight reprimand by Judge Cotte, Professor Fofé tried after the break to tackle the issue in a different way: he formally made an oral request to Chambers to admit a series of paragraphs from the witness' statements to be admitted as evidence by the Court.

Judge Cotte adamantly refused, arguing that debates must be oral, and that such requests must be exceptional. He asked the Ngudjolo Chui team once more to ask questions in an orthodox manner, and to go straight to the point.

The cross-examination continued. Fofé kept asking contextual questions, and in particular the UPC, the command structure, the weaponry, the relationship with Kahwa, etc.

14 October 2010 - The Ngudjolo Chui Defence Team's cross-examination of Witness P12 finished, and P238 was sworn in and prepared for interrogation. However, a document provided by P12 was released to the Defence teams at the last minute, and the Katanga Defence Team asked to be able to further interrogate P12 on that document at the next hearing.

The Ngudjolo Chui Defence Team, represented by Professor Fofé, pursued its cross-examination. The questions were all of a contextual nature, showing P12 a series of documents and reading from his previous statements, and pinpointing once more to Thomas Lubanga's role, the function of the UPC, and his difficult relationship with the Ugandans.

Just before the break, **David Hooper of the Katanga Defence Team announced to the Court that they had just received this morning from OTP an email with key, potentially exculpatory documents.** From what Mr. Hooper mentioned, these documents had already been released in a redacted version, in which the source was among the information redacted.

Hooper claimed that the document was useless without the source, but from the morning's email, it turned out that the source of the document is P12 himself. The Katanga Defence Team asked for the afternoon to look at the documents and ask questions about it to P12 the next day, despite the fact that P12 was supposed to be done today.

The Judge granted the Katanga Defence Team its request: it was agreed that although they would start taking testimony from P238 today, P12 would be brought back in

tomorrow morning to be further interrogated on that document.

After the break, Professeur Fofé finished his cross-examination of P12 by asking very contextual questions.

The hearing finished with **Prosecution Witness P238 being brought in and sworn in.**

<p>15 October 2010 - P12 returned for a few questions relating to a document disclosed at the last minute by the Prosecution. The Examination-in-chief of OTP Witness P219 (19th OTP witness) started.</p>
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OTP Witness P12 returned at the beginning of the hearing for a few more minutes of cross-examination by the Defence teams. The Judge recalled the circumstances of the disclosure of the document that was the object of yesterday's request: It was clarified that the document was not given by P12 to the Court, but only through MONUC and the UN. The UN had communicated the document to the Court under strict conditions of confidentiality, hence the lateness in the disclosure.

The Katanga Team, represented by David Hooper, started off with questions on the document. Issues particularly raised were the Witness' involvement with certain militias and the money he eventually received for the evidence he provided, either to the Court or indirectly through intermediaries such as the UN.

The Ngudjolo Chui Team, represented by Professor Fofé, then asked just a few questions to clarify answers given by the witness to Hooper. Questions were asked about the FRPI, its political leader, Dr. Adirodou, and his ties with Ngudjolo Chui.

The Prosecution then raised an issue for the attention of the Judges: the Katanga Defence Team sent yesterday evening to the Prosecution a transcript of a conversation between P219 and Germain Katanga dated from last December. Although not all the details were given in public session, it was apparent that the transcript cast a large doubt on the credibility of P219, leading possibly to OTP's reconsideration of even presenting the Witness in the first place. Prosecutor Eric MacDonald asked the judge for a recess until Monday to reconsider Prosecution strategy. Judge Cotte refused, but gave the Prosecution one hour to learn more about the transcript and adapt.

The second part of the hearing then moved on to the examination-in-chief of P219. OTP Trial Lawyer Gilles Dutertre asked for a private session to ask questions of an identifying nature. Back in public session, questions were asked on the **Nyakunde attack** and the massacre in September 2002, and Germain Katanga's role in that attack.

This is a very informal summary. Please note we were unable to verify the spelling of some of the persons and locations mentioned. Please do not forward without prior consent from CICC staff.

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