



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

KATANGA / NGUDJOLO CHUI
INFORMAL WEEKLY SUMMARY
13 - 17 SEPTEMBER 2010



Situation Case	Democratic Republic of Congo 01/04-01/07 The Prosecutor vs. Germain Katanga and Mathieu Ngudjolo Chui	<u>Germain Katanga</u> : born 1978 in Mambassa, Ituri district, Eastern Province; National of the DRC; Alleged commander of the <i>Force de résistance patriotique en Ituri</i> (FRPI).
Hearing: Chamber:	Trial Proceedings Judge Bruno Cotte (Presiding Judge), Judge Fatoumata Dembele Diarra, Judge Christine van den Wyngaert	<u>Mathieu Ngudjolo Chui</u> : born 1970 in Bunia, Ituri district, Eastern Province; National of the DRC; Alleged former leader of the <i>Front des nationalistes et intégrationnistes</i> (FNI).
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;	Alleged crimes: <u>Germain Katanga and Mathieu Ngudjolo Chui</u> allegedly jointly committed, through other persons:
Participants	363 victims represented by Legal Representatives for Victims: Mr. Fidel Nsita Luvengika and Mr. Jean-Louis Gilissen	<ul style="list-style-type: none">○ 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.
Start of Trial:	24 November 2009	

This week the testimony of **Witness 002 (17th OTP witness)** continued. Witness 002 testified under protective measures and as a 'contextual witness', due to his occupation as a cameraman in the region. Recourse to private session was frequent due to the possibly identifying nature of the questions. OTP finished its Chief Examination, and LRV asked its questions.

13 September 2010 - Defence raises the issue of the alleged role of Ugandan troops in the Bogoro attack, Continuation of the Examination in Chief of Witness 002 by the OTP.

Katanga Defence Team's Counsellor O'Shea raised an issue that was already raised last week regarding the OTP's position on **the role of Ugandan troops** in the attack on Bogoro, as a document in the file seems to indicate, and appears to be contradicting the OTP's prosecution strategy.

OTP responded that its position was that the Accused were responsible for the attack against Bogoro in February 2003, but that Defence was free to plead what it wished. Defence - and Presiding Judge Cotte - remarked that the OTP's position was slightly ambiguous and that M. Dutertre's answers were rather evasive. Judge Cotte decided that the debate would be opened when such evidence is presented to the Court.

OTP also announced that it was ready to communicate to the Defence the identity of a witness it had so far kept confidential, and will do so via email.

OTP's Examination in Chief of Witness P002 begins: Prosecution showed the Witness a video extract, asks for a private session in order to ask the Witness questions of an identifying nature, then switches back to public session to ask the Witness to identify the speakers in the extract. This was repeated 11 times.

14 September 2010 - OTP's Examination in Chief of Witness 002 continues - Videos extracts on the Bogoro attack shown to the witness.

Prosecution continued showing the Witness a series of video extracts, asking each time for a brief private session to ask questions of an identifying nature, and then asking the Witness in public session to identify the speakers in the video. This was repeated again 11 times.

One was classified confidential following a request by OTP. The Court refused a similar request for a different video. And in the case of a third excerpt object of a request, the Court, after granting a temporary confidential status, asked the video to be replayed in public.

15 September 2010 - End of the OTP's Examination in Chief of Witness 002 - Questions by the Legal Representatives of Victims.

Prosecution, represented by Mr. Eric McDonald, started the session with a few points they wanted to clarify before the Court:

- Regarding the **exculpatory elements** discovered by LRV which has been an issue raised by the Defence before the Court, Senior Trial Lawyer Eric MacDonald wished to inform the Court that they were **carrying out investigations and will be transmitting these elements to the Defence as soon as they are done.** Prosecution does not believe this will lead it to request the permission to have more witnesses testify before the Court. They require more time to conclude investigations.
 - o After discussion with Presiding Judge Cotte, requires 15 more days to conclude investigation.
 - o On this issue, LRV is preparing to request 4 witnesses to testify, and possibly a 5th, the latter depending on the outcome of OTP's current investigations.
 - o After conferring, Judges order Prosecution to finish its investigation by 27 September, so that LRV can make its request on 28 September at the latest.
- Regarding OTP's strategy, in particular relating to the alleged involvement of Ugandan nationals in the attack on Bogoro, Mr. MacDonald made it clear that, even if the Court found that such nationals did in fact participate in the attack,

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that did not in any way - as far as the OTP was concerned - exonerate the Accused' responsibilities.

OTP then moved to finish its Chief Examination. Showed two excerpts, each time followed by a brief private session to ask questions of an identifying nature. Only the first was followed by the Witness identifying speakers in the video.

In the 3rd and last extract, OTP requested the video to be shown confidentially. After discussion in private session, the Court decided the video was to be public. OTP amputated the first few seconds of the video to protect the identity of the Witness. Witness was then asked to identify several speakers in the video.

Defence Counsellor O'Shea raised an objection to the video: he argued that the video was unreliable and the speaker, **a leader from the political party PUSIC**, evidently biased against the Accused. Invoked the **"Best Evidence Rule"**, arguing that OTP had other Witnesses to testify on this matter, and that this video was not necessary. OTP claimed that this was hearsay and admissible as such. Following a back and forth between the Defence teams, OTP, and the LRV, Judge Cotte decided that the probative value of the excerpt, although weak, was sufficient to be admitted.

LRV then moved to interrogate the Witness:

- Mr. Gillissen, for the child-soldiers victims, interrogated the witness on **the existence and employment of child-soldiers in the region** in general, and with the FRPI in particular, at the time surrounding the Bogoro attack:
 - o Witness was rather evasive on these questions:
 - Claimed that there were "young fighters" in the region surrounding that time, without being clear on the age of these fighters, despite being asked for clarification by Me Gellissen.
 - o Judge Cotte intervened to ask whether there were child-soldiers in Ituri generally:
 - Witness said yes, term for them was "Kadogo".
- Mr. Luvangika asked one question about whether the witness ever went to Bogoro.
 - o Witness answered yes, a month after the attack.

16 and 17 September 2010 - Hearings cancelled.

The hearing supposed to take place on Thursday 16th September was cancelled at the last minute.

No hearing scheduled on 17 September 2010.

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