



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: <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.
Participants	363 victims represented by Legal Representatives for Victims: Mr. Fidel Nsita Luvengika and Mr. Jean-Louis Gilissen	
Start of Trial:	24 November 2009	

After two days during which **Witness P002 (17th OTP witness)** was unavailable, his testimony 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. The Katanga Defence Team finished its cross-examination, and the Ngudjolo Chui Defence Team began its own questioning.

20 September 2010 - Witness P02 unavailable at the beginning of the week; The Chamber rendered two Oral decisions.

Witness P02 was unavailable, and it was announced that he would be until Wednesday morning.

Presiding Judge Cotte rendered two oral decisions:

- One concerning an urgent request by the Defence team of Mr. Ngudjolo Chui on the interpretation of a decision rendered on 14 September 2010, following a request by the Prosecution requesting that the Court orders the Defence to communicate their case three weeks before the trial. The Defence Team of Mr. Ngudjolo raised the question on whether they had to acquit their obligations in that regard before the start of the Defence's turn, or 3 weeks

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before the start of their specific case. It should be noted that the Katanga Defence will be first to present its case, and then in second it will be the Ngudjolo Chui team's turn.

Judge Cotte explained that the Court had ordered both Defence teams, even though they will present their cases one after the other, to submit their written work to the OTP at the same time, in order to maintain fairness between the two Defence Teams.

- **The second oral decision concerns a request by the Katanga Defence Team on the recourse to Private Sessions.** On 28 May 2010, the Defence Team had expressed its worries regarding what it considered to be an abusive recourse to private sessions, and suggested two specific measures: a) the re-diffusion in public of videos that, in hindsight, do not justify a private session, with the modifications made on the transcripts as well, and b) that the Presiding Judge or the party which interrogated the witness resume the subject of the discussions once the Court has switched back to public session.

After having considered and analyzed observations on this issue by all parties and the Registry, Chambers made several comments and rendered a decision:

- After recalling that the principle of the publicity of the proceedings were a fundamental right and an essential guarantee to the rights of the Defence, Judge Cotte also recalled that the principle was not in itself absolute, and that Chambers could order a private session if necessary, such as in cases where the questions regards sensible information or the private life of the witness, etc.
- On the suggestions by the Defence, both are rejected on the grounds that they are too heavy, time-consuming, and overall ineffective.
- However, **the Court has suggested in its decision a certain number of "Best Practices" on how to recourse to private and/or closed sessions during the proceedings:**
 - they recommended to ask for a private or closed session only if there a serious and proven risk;
 - the Parties are asked to notify Chambers whenever it is possible to switch back to public session;
 - Chambers also request that the Party interrogating the Witness asks all identifying questions at the beginning, so that the proceedings do not continually get interrupted for private session, in order for the public to be able to follow and understand the proceedings;
 - asks Parties to submit in written form to the Court all subjects/themes/questions that would require a private session before interrogating the Witness;
 - to, whenever it is possible, establish a modus operandi / code names, etc. that would permit to discuss sensible subjects in public;

- to motivate objectively and briefly any request to switch and/or maintain the proceedings in private session;

21 September 2010 - Hearing cancelled.

22 September 2010

The hearing started with an oral decision rendered by the Judges regarding a request by Mathieu Ngudjolo asking the Chamber to demand an opening of an investigation against Witness P279, who testified from 20 May to 11 June 2010, for false testimony.

The Defence Team had apparently mentioned, among others, the inconsistencies surrounding the claims Witness P279 gave regarding his age, in order to pass off as a child-soldier.

Chambers rejected the request, claiming that Witness P279 had given explanations in Court about the inconsistency around his age, and that there was no solid evidence pointing at an eventual case for false testimony.

Presiding Judge Bruno Cotte asked one question to Witness P002 on whether there were child-soldiers escorting participants to the meetings the Witness attended. Witness P002 answered that he did see that, even though the escorts were left outside of the meeting venues. Witness was unable to provide names.

The Katanga Defence's team started its cross-examination. Mr. O'Shea asked questions regarding excerpts that were shown last week, asking the Witness for some precisions, especially on dates of meetings and interpretations of what people on video were saying.

23 September 2010 - Katanga Defence Team finished its cross-examination; the OTP announced that the investigations on exculpatory evidence announced two weeks ago were finished; Ngudjolo Defence Team began its cross-examination.

The Katanga Defence Team pursued their cross-examination of witness P002. Questions were asked on the dates of the videos shown, etc.

After the session break, Prosecution - represented by Mr. Eric McDonald - announced that the investigations on potentially exculpatory evidence are finished: will disclose by tomorrow two declarations by witnesses to the Defence Teams.

The Ngudjolo Defence team began its cross-examination, focusing on Witness P002's declarations. Many of the questions were asked in private session. The questions pertained to Thomas Lubanga's or Ugandan troops' role in the region at that time.

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24 September 2010 - The Chambers renders an oral decision regarding the Katanga Defence Team's request to using photographs of witnesses in the field; the Ngudjolo Defence Team pursues its cross-examination.

The hearing started with an **oral decision regarding the Katanga Team's request to use the photographs of three witnesses** in its investigations in the field. After referring to a Framework-Decision from 31 May 2010 providing for the principles applied for such requests, Chambers only granted the request in the case of one witness, and rejected the requests for the two others.

Ngudjolo Defence Team's Counsel Kilenda pursued his cross-examination of Witness P002, conducted in 3 parts:

- first part during which he questioned the Witness on his declarations, on the events in Ituri in early 2003, focusing on the alleged rivalry between UPC (Lubanga's party) and Ugandan forces. His questions were essentially of a contextual nature.
- The second part of his cross-examination was based on a series of video extracts already shown by the Prosecution (videos with EVD numbers). Counsel Kilenda continued asking questions on the identity of people shown on the videos and asked the witness about the events and context of each meeting.
- In the third part of his cross-examinations, Counsel Kilenda showed videos not previously shown by the Prosecution, asking the same types of questions. Lubanga, and his role in the conflict, were often mentioned.

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