



COALITION FOR THE  
INTERNATIONAL CRIMINAL COURT

KATANGA / NGUDJOLO CHUI  
INFORMAL WEEKLY SUMMARY

5 - 9 JULY 2010



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

**Hearing: Chamber:** Trial Proceedings  
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 Ngujolo: 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 Ngujolo Chui: born 1970 in Bunia, Ituri district, Eastern Province; National of the DRC; Alleged former leader of the *Front des nationalistes et intégrationnistes*.

**Alleged crimes:**

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

- o **Crimes against humanity:** Murder, sexual slavery and rape;
- o **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.

During this week's hearings **Witness 267 (15<sup>th</sup> OTP witness)** continued to testify. Witness 267 is a local NGO worker from the DRC whose organisation assists children in conflict situations. In addition, **Witness 418**, a forensic expert, was recalled to provide clarification on a forensic report. Procedural issues discussed included the Defence request for disclosure of the identity of **Intermediary 143**. On 9 July 2010, a **status conference** was held in which estimates for the duration of the OTP's case (, the Victims' case and the Defence case) were discussed. Also, the Chamber asked for views of parties and participants regarding a possible **in situ visit to Bogoro by the Chamber**.

5 July 2010

Examination-in-Chief by the OTP continued

The OTP continued questioning the witness on his first visit to Mr. Katanga which took place at Katanga's residence where also the general staff headquarter was located as well:

- The witness stated that there was nothing written at the entrance which would indicate a military camp. He was accompanied by some people who took him to

*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.*

- Mr. Katanga. The witness had a brief meeting with Mr. Katanga. After Katanga left the witness was introduced to two associates for further discussion;
- During the visit, the witness explained the objective of his NGO's programme; he had brought documents with him about the demobilisation of children as well as an ICC letter from the Prosecution and Resolution 1460;
  - He spent 3 hours discussing with the associates. Afterwards he went to see another person. She was the mother of a commander in a military camp and would have an important role in the awareness raising. They agreed on a second visit.

Following a question from the Defence about how old the youngest soldier was, the Defence made an objection with regard to the nature of the question. The Defence questioned the relevance and prejudicial effect of the witness' testimony regarding the presence of child soldiers in 2004.

6 July 2010

Examination-in-Chief of Witness 267 by the OTP resumed

The OTP returned to the frequency of the visits to Mr. Katanga following the first one also asked further questions about the demobilisation process:

- The witness elaborated on the briefing he had with the woman who had become a crucial resource person in the area. In their discussion they agreed on the necessity of reinforcing the relationship and of adopting a programme;
- Mr. Katanga had to be informed at all times and his approval was needed.
- The witness confirmed that at his second visit the location of the site of the demobilisation programme was discussed: a transit centre was to be built;
- The witness stated that all children to be demobilised were in the FRPI group. Commanders were involved in the demobilisation exercise. They began with the 'Walendu Bindi' collectivity.

The demobilisation process:

- The witness went into more detail about the transit sites: people were checked if they belonged to an armed group, then documentation was verified. Adult soldiers were to return to civilian life or were integrated into the national army, according to their preference. Children did not have a choice: they had to return to their families or original communities;
- There were two structures in place: the children's transit site was a subunit where they would stay 48 hrs. The goal was to send them back, but if this was not possible they would live in a CTO (*Transit & Orientation Centre*);
- As to the process, the witness stated that it was up to the commanders to identify the children and to provide them with an identification document;
- He explained that at the transition site they would first verify if the child had indeed belonged to an armed group. "Form B" contained the identity of the

- child, its history, age, schooling, military unit, commander, time spent. Each questionnaire would be analysed and a certificate would be provided if the child had indeed been a soldier;
- The witness explained further that the second unit documented the complete history: when enlisted, why, members of the family. Mistakes or lies would come up during this cross-check. The aim was to locate the parents, family, community to hand over the child. The officers would categorise the children according to their age: 6-12 12-15 15-17.
  - As to forced or voluntary recruitment, he stated there were several possible reasons: community mobilisation (everyone was called) or protection, vengeance, just followed others and poverty. At the site, children were provided with a kit containing essential things which attracted other children from the community;
  - He stated that all forms were handed over when a child left after 48 hrs. Due to the awareness campaign many children came in. In total, 952 children were demobilised at the site. The youngest was 9 years old. The objective for children under 12 was to reorient them to schooling;

7 July 2010

Hearing cancelled

8 July 2010

Procedural matters:

The Chamber ordered immediate staggered disclosure of certain Intermediaries' statements relevant to the cross-examination of some witnesses by the Defence. The relevant testimonies concerned **Intermediary 321** - currently testifying in the Lubanga case - and **Intermediary 143**. Regarding the latter, the Chamber said disclosure was not yet possible due to protection problems. A decision was still pending in the Lubanga case. The OTP said it would disclose what they have concerning Intermediary 321 and stressed the Defence had to respect the protective measures already in place.

Examination-in-Chief of Witness 267 by the OTP continued:

Mr. Mc Donald from the OTP revisited certain subjects for clarification:

- **As to the age of the children**, the witness explained that they would be visually assessed during the interview. Following the level of maturity shown by the child in its answers, the age was established;
- When questioned about the members of his team/his co-workers, the witness said they received **threats** from some commanders. Relative security was provided by the presence of Mr. Katanga in the camp. The threats were related to FRPI elements. When Mr. Katanga left (following his promotion to general) more threats were received;
- On the demobilisation programme the witness stated that it was intended as a pilot programme. In June 2005 they shut down their doors and in 2006

- CONADER took over the activities. Armed groups which were not yet demobilised remained there;
- **About female military personnel** the witness stated that he could not say in what circumstances they became soldiers. He said their behaviour was not normal as shown in daily life, but much more excessive, violent;
  - He mentioned that in 2006 a new programme was launched, which was extended because of warlords resisted to the demobilisation of child soldiers;
  - The witness said he had exchanges with Mr. Katanga, but they only related to the demobilisation programme and the withdrawal of children;
  - Asked about the exploits of Mr. Katanga, the witness stated that in general Mr. Katanga was highly thought of, well-known and respected. An objection by the Defence followed ('hearsay') which was discussed without the witness present.

9 July 2010

Re-examination of **Witness 418** by the OTP

**Witness 418**, a forensic expert who testified earlier in the proceedings on behalf of the OTP, was recalled to be examined about his second report. This report concerned the analysis of X-rays of a metal object in the knee of protected witness **287**, which was possibly caused by a weapon of war. Witness **287** had been shot in the leg. The original X-rays were of sub-quality, therefore new ones had been requested and analysed by the witness. OTP and Defence took the opportunity to ask questions.

The main outcome was that the original conclusions of the earlier report were retained. It was confirmed that fragments, foreign bodies of a metallic nature could be seen in the knee. As to the nature of the projectile, the witness was far certain given that he was not a weapons' expert.

Defence request relating to Intermediary **143**

The Defence for Mr. Katanga renewed its request to disclose the identity of and other information on **Intermediary 143**, given that -one day after the stay of the proceedings in the Lubanga case- Trial Chamber I was no longer occupied with the issue. Disclosure would put the Defence in a better position to cross-examine the current witness. It was stated that Intermediary **143** has a link with OTP witnesses **279** and **280** as well.

## Status conference of 9 July 2010

### Estimates for the duration of the OTP case

15 OTP witnesses (including Witness 267) have testified so far, thus amounting to approximately 69 hours of testimony.

11 OTP witnesses are left (or 9, depending on whether witnesses 157 and 238 will be called or not)

#### OTP position:

The OTP said it planned to use the entire 120 hours granted to the OTP for examination in chief. The OTP expected to close its case at the beginning of December.

#### Position of Chamber:

The Chamber said it is imperative for the OTP to finish its case in the latter half of October and that a diligent course of proceedings should be kept in mind.

### Intention of LRVs to call participating victims as witnesses?

#### LRV position:

Legal Representative of Victims, Mr. Luvengika, said that victims as witnesses would be in the interest of the establishment of the truth. The texts do not rule out the appearance of participating victims in person. A mission to the DRC is planned during the judicial recess. It would bring the LRV in a better position to give an answer to this question.

#### Defence position:

The Defence said it was taken aback by the lack of clarity on part of the LRV. Incriminatory witnesses need to be disclosed. Names and statements are required well in advance to allow the Defence to conduct appropriate investigations in preparation of the cross-examination. Time is needed to prepare the "Victims' case". Full details are needed well before the prosecution rests its case. The expeditiousness and the situation of the detained accused should be taken into account.

#### Chamber's position:

**The Chamber underlined that the possibility to call victims as witnesses is subject to very strict conditions.** The proceedings should not be excessively delayed.

A rigorous selection must be made of the witnesses to call. The witnesses should be likely to contribute something tangible. Applications must be in 6 weeks before the end of the OTP case, ie by the first half of September (according to the Chamber's deadline). The approximate time of examination must be indicated. Extension will be decided upon on a case-by-case basis.

Given the large number of his clients (354 victims), Mr. Luvengika asked for flexibility.

**At what stage are the Defence investigations?**

The Defence for Mr. Katanga indicated that the investigation currently carried out concerned prosecution witnesses. Only one resource person from the Defence is present in the DRC. The Defence is far from forming its defence strategy and waiting for the prosecution case to take shape. **An estimated 12 weeks will be needed for the preparation of the case, starting from the end of the "victims' case"**. The Chamber said that joint Defence witnesses should be considered as a possibility.

***In Situ* visit by the Chamber?**

The chamber asked the parties and participants for their view on whether the Chamber should pay an 'in situ visit' to Bogoro.

- According to the OTP, a visit after the testimony of the different witnesses would be essential, as the case progressed;
- The Defence added that it is important, necessary for the Chamber to visit the site;
- The LRV stated that it an in situ visit is also a wish on the part of the victims.