

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Wednesday, 24 March 2010
10 The hearing starts at 2.09 p.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) We are now in session.
15 Please be seated.
16 Are the accused with us? Yes, they are. We are in open session.
17 The Chamber is slightly late and we would just like to inform you that it
18 is not out of the question that this hearing be suspended earlier than
19 expected because the witness in principle must go to an urgent medical
20 appointment in the course of the afternoon, and the time of this
21 appointment has not yet been set. We just wanted to let you know that,
22 and in particular we wanted Mr. Hooper to know. We have no idea what
23 difficulties the witness may be having, but apparently he must go to a
24 medical appointment this afternoon on an urgent basis. All the same, we
25 have been told he can come and testify. So there you have it.

1 In the meantime, the Chamber will be handing down an oral ruling,
2 provide some information to Mr. Hooper regarding his last remarks at the
3 end of yesterday's hearing; and in private session the Chamber shall
4 issue another ruling and will provide you with some information that has
5 to do with another problem. So we have four rulings or elements of
6 information to provide you with today.

7 First of all, an oral ruling in response to a remark made by the
8 Prosecutor at the end of yesterday's hearing. Yesterday, on the 23rd of
9 March, 2010, the Chamber gave all participants a certain amount of
10 information about measures taken by the Victims and Witnesses Unit - we
11 shall refer to that section as the unit - the various measures that are
12 taken to ensure that witnesses here in The Hague cannot speak to each
13 other. At the end of the hearing the Prosecutor said that she would not
14 be against this information being -- that is found in the transcript of
15 yesterday's hearing, she wouldn't -- that they could receive an EVD
16 number and they could be put on the case record.

17 Now, the Chamber does note that these are merely information
18 items that were requested by one of the Defence teams. The information
19 was obtained from the Registry, that is to say, from the unit, and that
20 the information had to be brought to the attention of all participants
21 because the Chamber must ensure that the trial is conducted in a fair
22 manner. The Chamber notes that in no way are these information items
23 elements of evidence. Furthermore, the Chamber notes that the Registry
24 limited itself to replying to a request made by the Chamber, and it is
25 not the job of the Registry which is a neutral organ of the Court to

1 provide items of evidence.

2 Finally, the Chamber reminds all that the transcript of the
3 hearing that was held yesterday, the 23rd of March, 2010, and the
4 information found in that transcript - which I provided yesterday - the
5 Chamber reminds all that the transcript of this hearing provides an
6 account in a proper and sufficient form the information items that the
7 parties will be able to refer to, if necessary, depending on their
8 various objectives. The Chamber does not intend to give an EVD number to
9 the items of information in question since those items are found in the
10 transcript of yesterday's hearing, held on the 23rd of March.

11 Now the Katanga Defence team will be receiving a decision from
12 us.

13 Mr. Hooper, during the hearing of the 18th of March, 2010,
14 Witness 159 in answer to a question by the Prosecutor stated as follows,
15 and I will read the transcript of the 18th of March, 2010, transcript
16 number 119, page 21, lines 8 to 17.

17 Question by the Prosecutor:

18 "And those children who were fighters, did you hear anyone give
19 them orders?"

20 Witness's answer:

21 "Yes. When the camp fell, when the attackers captured the camp,
22 Bogoro camp had fallen. From my hiding-place I could observe that camp.
23 I could observe what was happening there, and amongst the people that I
24 saw there was a Mr. Ngudjolo and the second person was Mr. Etienne. He
25 was someone who lived in Bogoro. And sometime after that, I saw his

1 colleague Germain Katanga. They all arrived. They arrived in the camp
2 and they started congratulating the children who were there. It was at
3 that time that some of the enemies continued penetrating into the camp
4 and carrying out their activities."

5 The Chamber is aware that this incrimination of Germain Katanga,
6 who is alleged to have been present in the UPC camp after the fall of
7 that camp, is a new element which was not included in the prior written
8 statements of Witness 159. In order to have the relevant information on
9 the reality, but particularly on the seriousness of the prejudice that
10 could be suffered by Mr. Katanga, the Chamber wished to know whether
11 other witnesses had provided that information and if other witnesses were
12 likely to do so. You were sent copies of the Prosecutor's answer to that
13 question this morning.

14 In its oral decision of the 4th of March, 2010, relating to a
15 similar situation involving Witness 161 and to which we referred the
16 participants, the Chamber pointed out that the existence and seriousness
17 of any prejudice possibly alleged by the Defence when a new element is
18 introduced during oral testimony leads the Chamber to seek balance on a
19 case-by-case basis between the respect of the principle of the oral
20 nature of the proceedings, the right of the accused persons to be
21 informed of the nature of the charges against them, and the necessity to
22 ensure a fair trial.

23 In light of the information at its disposal, the Chamber feels
24 that we are not yet in a position to assess in full knowledge of the
25 facts the seriousness of the prejudice suffered by the Defence of

1 Germain Katanga. We therefore asked you, Mr. David Hooper, to proceed
2 with the cross-examination of this witness. We will leave it up to you
3 to determine whether it is appropriate to ask the witness whether he
4 stands by the statements which are at the heart of our current debate;
5 and if that is the case, to explain to you and to explain to the Chamber
6 how he was able to recognise the accused person and if he knew him before
7 that.

8 And so in order for -- to ensure understanding of this decision I
9 will repeat, the Chamber requests you to proceed with your
10 cross-examination. We allow you to determine whether it is necessary for
11 you to ask the witness whether he stands by his statement, that is, the
12 statement that is at the heart of this debate; and if that is the case,
13 he should explain to you and to the Chamber how he was able to recognise
14 that accused person and whether he knew him before that.

15 At the end of your cross-examination and based on the answers
16 that the witness would have given you, you will tell us whether you still
17 feel that you are a victim of a prejudice and you will tell us the
18 seriousness of that prejudice. The Chamber will then determine whether
19 it is appropriate, as it was done for Witness 161 to give you a time-line
20 to carry out any investigations, particularly regarding credibility, that
21 you deem necessary. If that is the case and as the Chamber did for
22 Witness 161, we will ask you to brief us on the state of progress of any
23 such investigation as at the 3rd of May, 2010. And if at the end of that
24 investigation you feel that it is necessary to re-call that witness, the
25 Chamber will ask you, as we did for Witness 161, to submit a written

1 application to that effect.

2 In other words, the door giving access to further investigations
3 and to a possible re-call of this witness is not closed. But insofar as
4 we are only able to rule on a case-by-case basis, we do not yet know at
5 this particular time whether we can completely open that door.

6 Madam Court Officer, we are going to go into private session for
7 an oral ruling as well as a piece of information that I wish to give to
8 all participants, if we could.

9 (Private session at 2.23 p.m.)

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Ruling (Private Session)

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Ruling (Private Session)

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Procedural Matters (Private Session)

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12 (Closed session at 2.47 p.m.)
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20 (Open session at 2.48 p.m.)
21 COURT OFFICER: (Interpretation) We are in open session,
22 your Honour.
23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Court Officer.
25 Good afternoon, Witness.

Witness: Witness P-159 (Resumed) (Open Session)
Procedural Matters

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1 WITNESS: WITNESS P-159 (Resumed)

2 (Witness answered through interpreter)

3 THE WITNESS: (Interpretation) Good afternoon, Mr. President.

4 PRESIDING JUDGE COTTE: (Interpretation) It looks like you can
5 hear me quite well.

6 THE WITNESS: (Interpretation) Yes, your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, we know
8 that you have to leave the courtroom at a quarter past 3.00, that is
9 earlier than planned. If by chance during the 30 minutes of
10 cross-examination by Mr. Hooper you feel that your state of health does
11 not make it possible for you to answer in a sufficiently clear manner the
12 questions that are put to you, I am asking you to feel free to inform us
13 and we will adjourn earlier. It is important for you to be in full
14 possession of your capacities, and it is also important for the Defence
15 of Mr. Germain Katanga to know that you are fully fit to answer their
16 questions. We have been working together and you know that it is an
17 issue of a fair balance that should ensure that we respect your testimony
18 and also the work of the Defence team. Do we agree on that?

19 THE WITNESS: (Interpretation) Yes, we agree, Mr. President.
20 They can continue with any questions they wish to ask me.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.

22 Mr. David Hooper, you have a half-hour to begin your
23 cross-examination. Please proceed.

24 MR. HOOPER: Thank you, Mr. President.

25 Questioned by Mr. Hooper:

Witness: Witness P-159 (Resumed) (Open Session)
Questioned by Mr. Hooper

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1 Q. Good afternoon, Mr. Witness.

2 A. Good afternoon.

3 Q. I'm going to go back a few days in your evidence, and for those
4 who have the transcript I'm going to transcript T-118 at page 74, line 2.
5 And I'm going to read just a very short portion of this to you, but just
6 so that you have what I'm going to read in its context, the context is
7 that you were telling my friend Ms. Luping about the February attack, the
8 final Bogoro attack. And you had told her how, as usual, and I quote,
9 how:

10 "... as usual, the women and children spent the night in the
11 camp ..."

12 And then you say this, and this is what I am concentrating on.

13 You said:

14 "That week there was several attacks."

15 Now, I repeat that phrase:

16 "That week there were several attacks."

17 And you've told us, indeed, in your evidence how over the year or
18 two prior to the final attack there had been other attacks, some major
19 attacks and some not so major attacks. So I'm interested in that phrase
20 that you came out with last Wednesday when you said:

21 "That week there was several attacks."

22 Can you tell us about those attacks, what you experienced, about
23 those attacks that week, the week of the Bogoro attack?

24 A. Thank you for the question. I will explain to you. During
25 that -- or rather, during those weeks there were attacks. If I say that

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1 there were attacks during that week, it is because before the 25th,
2 during the weeks preceding the 25th or two weeks before the
3 25th of February, there were a few small attacks. There were three of
4 them. The first attack came from the direction of Gety. When that
5 attack was launched, the young people of Bogoro drove the attackers back,
6 and in the course of that same week, the attackers came from the
7 direction of the Lendu north. Our young people drove them back once
8 again.

9 After that week, that is, during the week that followed, on
10 Monday, Tuesday, and Wednesday, we were attacked very early in the
11 morning, afternoon 6.00/7.00 a.m., and when those attackers arrived the
12 young people drove them back. And on the fifth day, the attackers once
13 again arrived in the same manner.

14 During those small or minor attacks, I would say that, in fact, I
15 gave a summary because the young people of Bogoro repulse the attackers
16 each time they attacked. And then one week passed by. And in the course
17 of the last week, on the 25th, they agreed and decided that those young
18 people had to be dispersed.

19 Q. All right. So thank you very much. And I also note that at --
20 and I'm looking at -- again for those who have the transcript, at T-120
21 at page 71, and I'm referring to the English transcripts, of course. You
22 indeed refer to a particular attack in -- possibly one of the ones you've
23 just referred to. Let me read what you've said in the transcript of, I
24 think, Monday or maybe it was last week. You said this:

25 "I remember that during an attack from the Ngiti, it was early in

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1 the morning. It was around 6.00 or 7.00 a.m. we observed the enemy. We
2 saw where they were and we fled into the camp. We gave the signal and
3 our men came out. They fought against the Lendus and they pushed them
4 back. They even succeeded in killing two of their commanders."

5 And am I right, that was one of the small attacks that happened
6 in the week or two before the Bogoro attack?

7 A. I will give you two answers. I am not confused. To begin with,
8 when I talk about small attacks, it means that there were attacks before
9 the 25th. So what I gave you was a summary of all the attacks that took
10 place before the 25th. On that day it is true that they killed two
11 commanders, but this was before the attack of the 25th. When those two
12 commanders died, it was indeed before the 25th. The attackers became
13 angry. They went away. And on the 25th, they came back in full strength
14 and very angry. So this was after the killing of their two soldiers.

15 PRESIDING JUDGE COTTE: (Interpretation) Counsel, I just wanted
16 to point out that we were told that you have to stop at ten past 3.00,
17 ten past 3.00. You have the floor.

18 MR. HOOPER: Thank you very much.

19 Q. That's about ten minutes, Witness. A short afternoon for you
20 this afternoon. Now, what happened to the bodies of those who were
21 killed -- the attackers who were killed? Were they buried?

22 A. I do not know whether those bodies were buried. They were killed
23 and left on the spot. I do not know whether they were carried away. So
24 the two commanders were killed and those commanders were wearing their
25 stripes, and those who killed them took those stripes or epaulettes and

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1 brought them to the camp to show them there and to show their weapons.

2 So I do not know what happened to the bodies.

3 Q. All right. Now, I'm going to go into the -- just the general
4 history so that we have got a -- a clear picture of what's -- of what --
5 where you are and what's going on in the year prior to this final attack.
6 Now, you've told us that in 2001 there was an attack and we've heard from
7 others that this was in January, indeed the 9th of January, 2001. Is
8 that a date that you feel you could agree with or not, that the first
9 attack where civilians in Bogoro were killed was in January of 2001?
10 Does that fit in with your recollection?

11 A. Yes, the attack took place on the 9th, as I already stated, the
12 9th of January.

13 Q. Now, we know that Lompondo, the military governor of Bunia, is
14 chased out of Bunia and I think the date we have for that was the
15 5th of August --

16 MS. LUPING: Sorry to interrupt my friend but just for sake of
17 clarity, the date we have is the 9th of August, 2002.

18 MR. HOOPER: Thank you very much. That's a very welcome
19 correction.

20 Q. So the 9th of August, 2002, that's a date we've all heard about
21 and we all agree, even if I don't remember it. So the 9th of August,
22 2002, Lompondo is chased out of Bunia. Where were you living at that
23 time? Were you in Bunia or were you in Bogoro or elsewhere? And just
24 try and keep your answers a little short and to the point so that the
25 answer's clear. Thank you.

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1 A. When Lompondo was chased out, I was living in Bogoro.

2 Q. And by then, how long had you been living in Bogoro for
3 approximately, a matter of years or months? Just in general terms.

4 (Expunged)

5 Q. And so by the time Lompondo fell, this wasn't a time when you'd
6 been living in Bunia, for example? You were living in Bunia -- sorry,
7 Bogoro; is that right?

8 A. Yes, I was living in Bogoro.

9 Q. Now, you were present, you told us, during an attack in 2002, an
10 attack, you told us, where about 20 people approximately, maybe more,
11 about 20 people were killed. Who do you say were the principal fighters
12 in that attack?

13 A. The attack -- during the attack which took place in 2002, as I
14 stated previously, if I have to repeat that, every time the attackers
15 used to come in groups. Most of the attacks which took place, it was the
16 Lendu Nord who did it because from Bogoro to their locality the distance
17 is not great. Most of the attacks were, therefore, carried out by
18 members of the FNI, and it was during the last attack that they fought
19 together.

20 Q. Very well. I'm not interrupting you to cut you off, but you gave
21 your answer and thank you for that. Now, what do you say to this, that
22 in 2002 the major attack was, in fact, an attack inflicted on Bogoro
23 largely by a division -- a battalion of APC soldiers who were fighting
24 their way north -- fighting their way south in order to join Lompondo and
25 Bogoro got in their way? What do you say to that? Do you know of such

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1 an attack where the APC soldiers attacked?

2 A. No. I didn't state that. I didn't say that in 2002 it was APC
3 soldiers who attacked Bogoro. I didn't say that. I didn't mention the
4 APC forces. During the attack of 2002, which I know very well, I didn't
5 see APC forces. What I know and what I saw is that there were Lendu, and
6 I am before this Court to testify to what I have seen and experienced. I
7 did not say that I saw the APC.

8 Q. No, indeed. While you were in Bogoro, did -- were you aware of
9 attacks taken by the UPC against, for example, the Lendu of Bedu-Ezekere,
10 attacking, for example, Lagura, on the mountain just above Bogoro. Were
11 you aware of any such attacks?

12 A. You are speaking about Bindi and another place, Nyakara [phoen],
13 I didn't understand that name. Please could you ask your question once
14 again.

15 Q. North of Bogoro, on the Montagnes Bleues, is Ezekere. There's
16 Zumbe. There's Lagura. Were you aware, in the course of 2002, of
17 attacks by the UPC based in Bogoro against any of those places?

18 A. North of Bogoro, yes, the localities which you have just
19 mentioned -- and in the north-east there's the locality of Lagura, which
20 is in the Lendu region. When I was in Bogoro, as I stated previously,
21 I'm not a politician, I'm not a soldier. I don't know at what time they
22 went to attack them. I don't know. I'm not a politician. I'm not a
23 soldier. If I was, I would be. Now, with regards to the names of the
24 places you've just said, I know that they're in the north. They are
25 Lendu localities.

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1 Q. Indeed. Let me ask you this: You might not be a soldier, but
2 while you were in Bogoro didn't you hear shooting and firing and mortar
3 fire coming from the Montagnes Bleues as it was attacked by UPC people
4 from Bogoro?

5 A. What I know is that the soldiers who were in Bogoro, the UPC
6 forces, all the time that I lived in Bogoro, with regards to them I would
7 say that I do not know the period in which they went to attack this
8 locality. They were there to -- they were in Bogoro to protect the
9 population. Every time that they left Bogoro, the population was
10 concerned. But I would say that all the time that I lived in Bogoro, I
11 did not see soldiers or UPC forces attack the Lendus.

12 Q. And one final question. Or the Ngitis?

13 A. Are you speaking about the Ngiti that attacked Bogoro?

14 Q. Were you aware of any attacks carried out by UPC soldiers against
15 the Ngiti to the south?

16 A. I couldn't say. I don't know. I don't know. I'm not a soldier.
17 The distance between Bogoro and Gety is 35 kilometres. It's a distance
18 that I would estimate to be 35 kilometres.

19 Q. (Previous translation continues) ...

20 A. From there in order to organise oneself to go to the other
21 locality --

22 Q. You've given your answer and thank you very much. But you have
23 to leave the Court, I understand. So we'll have to carry on tomorrow. I
24 hope it goes well for you this afternoon.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Counsel Hooper.

2 Court Officer, we're going to go into closed session to enable
3 the witness to leave the courtroom.

4 Usher, please could you accompany the witness.

5 I tried to get some information to see if it was envisageable [as
6 interpreted] to come back to a hearing after the medical visit of the
7 witness, that is to say, for example, at 4.30, but I didn't manage to get
8 an answer in this regard. So we will therefore go into closed session.

9 Good-bye, Witness.

10 (Closed session at 3.13 p.m.)

11 (Expunged)

12 (Expunged)

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14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 3.13 p.m.)

19 COURT OFFICER: (Interpretation) We are in open session, your
20 Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Court Officer.

23 If you have no news from us in the coming half-hour, by 3.45,
24 that means that we will be back tomorrow morning. If we hear that the
25 witness is able to be here at 4.30, we will tell you. But because we

1 don't want to disturb too much everybody's timetables, I would just like
2 to ask people to wait for half an hour. But, to be honest, I don't think
3 that we can continue today. So let's -- so we'll see about tomorrow
4 then. I think that we've just got a bit of time to indicate to
5 Counsel Kilenda that his cross-examination was two hours, 30, for your
6 respective files.

7 The session is therefore adjourned, and unless that anything
8 occurs we will be back at 9.30 tomorrow morning.

9 The hearing ends at 3.15 p.m.

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