

Six facts about the *Katanga* case in DR Congo



On 3 February 2016, the former Congolese warlord Germain Katanga, who had already been convicted by the International Criminal Court (ICC), appeared before the High Military Court of Kinshasa (DR Congo). He is accused of war crimes and crimes against humanity.

With the assistance of a Congolese lawyer and an international lawyer, ASF decided to observe this highly sensitive trial, both for the ICC and for the Congolese authorities.

The *Katanga* case represents a double test for relations between the ICC and State parties: will the trial start with or without the approval of the ICC? And will the international standards in relation to a fair trial be complied with?

1. Who is Germain Katanga?

Germain Katanga, alias "*Simba*" ("*lion*" in Swahili), is a former warlord with the Front for Patriotic Resistance (FRPI) militia in Ituri. In March 2014, the ICC sentenced him to 12 years in prison for being an accomplice in crimes against humanity and war crimes for the murders, attack against the civilian population, pillaging and destruction committed on 24 February 2003 against the village of Bogoro (in Ituri province in the east of the DR Congo). In November 2015, in compliance with the proceedings before the ICC, Mr. Katanga had his sentence reduced to 9 years and 4 months. At that point, he had already served two thirds of his sentence.

2. Why is Germain Katanga currently being detained in the DR Congo?

In principle, persons convicted by the ICC do not serve their sentences in the Netherlands, where the ICC sits, but in other States that agree to take the convicted persons. On 19 December 2015, Germain Katanga was transferred to the DRC in order to serve his sentence. He had specifically requested that he be allowed to serve his sentence in his country of origin, to be near his family. A specific agreement had been reached for this purpose between the ICC and the DRC. He was due to be released on 18 January 2016 in accordance with the decision by the ICC to reduce his sentence. However, the Congolese authorities have decided to bring charges against him before the High Military Court of Kinshasa and are currently detaining him.

3. What is Germain Katanga accused of in the DR Congo?

In his capacity as former leader of the FRPI, Germain Katanga is accused of taking part in an insurrectional movement known as FNI/FRPI, from 2003 to 2005. He is charged with war

crimes for having conscripted and enrolled children under the age of fifteen into armed groups or for using them to participate actively in hostilities in Ituri between 2003 and 2005. He is also accused of crimes against humanity for the murders of 14 people in Bunia in 2003, as well as for murders carried out in various villages in Ituri between 2002 and 2005, together with his soldiers. He is accused along with two other defendants, Floribert Ndjabu Ngabu and Pierre Célestin Iribi Mbodina.

4. In what way is the case starting in the DR Congo a test for the ICC?

It represents a test for the ICC and for the principle of complementarity, which should operate between this body and domestic authorities. In accordance with the ICC Statute and the agreement reached with the DRC for the service of Mr. Katanga's sentence, the Congolese authorities cannot pursue prosecutions for the facts referred to, unless the ICC gives its approval.

In the present context, where the ICC is presented by some African States as "*white men's justice*", scrutiny of this issue by the ICC could quickly become perceived as "*interference*" in the fight against impunity being undertaken by a sovereign State.

On the other hand, parties to the ICC Statute, including the DRC, have accepted this approval mechanism. Failure to comply with this mechanism would seriously undermine the ICC. Moreover, other similar cases could arise, as in the case of Thomas Lubanga Dyilo. This former president of the Union of Congolese Patriots was convicted by the ICC and is currently serving his sentence in the DRC. Perhaps the Congolese authorities will also seek to pursue prosecutions insofar as, like Mr. Katanga, he was convicted by the ICC in relation to extremely precise facts (conscripting, enlisting and using children under the age of fifteen).

5. What are the issues at stake for the Congolese authorities in the Katanga case?

This trial is also a test for the Congolese authorities. In 2004 they claimed not being able to start prosecutions against the perpetrators of serious crimes committed in the DRC. They called on the ICC Prosecutor to take over the cases. Now they claim that they can deal with such cases. If the ICC approves these prosecutions, the Congolese authorities will have to convince that complementarity with the ICC is now possible. Therefore, they will have to demonstrate that they can provide all guarantees for a fair trial in this case, including that they are not prosecuting Mr. Katanga for crimes for which he has already been convicted or acquitted by the ICC.

6. Why has ASF decided to observe this trial?

Surprisingly, as of today, the Congolese authorities keep on the proceedings against Mr. Katanga, while the ICC has not yet approved the prosecutions. For ASF, it is a matter of observing how the Congolese authorities are going to comply with their obligations both in relation to the ICC and in terms of trial fairness and in relation to the rights of the accused. The next stage is 19/02/2016, when the Public Ministry (Military Auditor of Kinshasa) in) will provide its advice on whether to carry on the proceedings, with or without the prior approval of the ICC.

ASF is an international NGO based in Brussels, and operates in the field of access to justice. Since 2006, ASF is working in collaboration with Congolese lawyers to contribute to the defence and the representation of the rights of victims and defendants before Congolese courts.

Contact and additional information:

Brussels: Giles Van Moortel, Head of Communications, Avocats Sans Frontières, gvanmoortel@asf.be; mob: +32/2/481-44.82.19

Kinshasa: Josselin Léon, Head of Mission, Avocats Sans Frontières in the DR Congo +243 81 74 20 559, rdc-cm@asf.be

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