



THE ARREST AND SURRENDER OF GERMAIN KATANGA TO THE INTERNATIONAL CRIMINAL COURT

Summary

On October 18, 2007 Germain Katanga, former senior commander of the militia group Patriotic Force of Resistance in Ituri (FRPI) in the Democratic Republic of the Congo (DRC), was delivered to the International Criminal Court's (ICC) detention center in The Hague. His transfer is the second case concerning the Ituri region. He joins suspect Thomas Lubanga Dyilo, who will be tried for crimes also allegedly committed in Ituri. According to the Office of the Prosecutor, Mr. Katanga belongs to a different group of mercenaries than Mr. Lubanga.

Mr. Katanga is charged with three counts of crimes against humanity and six counts of war crimes.

Background on the Situation in DRC

Between January 2002 and December 2003, more than 8,000 civilians died and more than half a million people were displaced from their homes in Ituri as a result of the conflict in this region in the north of DRC. Today, the DRC is still engulfed in violence. There are continuing reports of forced displacement of people, sexual violence, killings and continued recruitment of child soldiers. In September 2003, the ICC Prosecutor Luis Moreno-Ocampo announced that he had decided to investigate the situation in the Ituri region. He opened investigations in June 2004 after the DRC government referred the situation on its territory to the Court.

Who is Germain Katanga?

General Germain Katanga, a Congolese national, is an alleged senior military leader in the FRPI. Also known as "Simba," the 29-year old Katanga in 2003 emerged as the top commander of the FRPI. Later in 2003, he assumed the title of FRPI President. Despite his title military rank, some reports have indicated that Mr. Katanga is a "small fish" relative to others suspected of atrocities. The FRPI was established to promote the interests of the ethnic Lendu. The group fought the Union des Patriotes Congolais, an ethnic Hema group that was led by Mr. Lubanga and whom the Lendu considered to be their enemies.

What is Katanga Charged With?

The charges include the attack on Bogoro, a village mainly inhabited by Hema civilians, on the morning of 24 February 2003, when the prosecution alleges that members of Mr. Katanga's militia entered the village and began an indiscriminate killing spree. At least 200 civilians died in the attack, while survivors were imprisoned in a building filled with corpses. Women were allegedly abducted and sexually enslaved. The village was reportedly pillaged by the FRPI forces. Mr. Katanga allegedly ordered the attack and the crimes were carried out by forces under his command.

The Prosecution alleges that Mr. Katanga is responsible for murders, inhumane acts and sexual enslavement at Bogoro, constituting crimes against humanity and war crimes, and for cruel treatment at Bogoro, a war crime. The Prosecution also alleges that he committed the war crime of using children to participate actively in





hostilities, the war crime of launching an attack against the civilian population of Bogoro and the war crime of pillaging Bogoro.

The decision to prosecute nine crimes, including sexual slavery, which the ICC's Rome Statute has defined for the first time as a war crime and crime against humanity, is a significant step in the fight against impunity for the worst crimes committed and continuing in Ituri.

The Arrest

In March 2005 Mr. Katanga was arrested by the DRC authorities, together with 8 other militiamen from various Ituri armed groups, and sent to a detention center in Kinshasa. The arrests were made in relation to an attack against MONUC peacekeepers in Ituri on February 25, 2005 in which 9 peacekeepers were killed.

During his first appearance at the ICC, Mr. Katanga informed the court about conditions of his imprisonment in Kinshasa and noted that he especially saw his family rights violated. When Mr. Katanga was arrested in 2005 his wife expected his second child, who today is 2 ½ years old and with whom he has never had contact. However, the conditions of his imprisonment in DRC will not be relevant to his trial at the ICC, since they occurred when Mr. Katanga was not yet in the ICC's custody. The Court will ensure that he can meet his family as soon as possible.

The Surrender to the ICC

On October 18, 2007 Mr. Katanga was surrendered to the ICC and transferred in a plane chartered by the ICC to the detention center in The Hague. During his first appearance at the ICC, Mr. Katanga stated that he was not informed of where he was being taken when he was picked up from the detention center in Kinshasa.

The DRC assisted the ICC in transferring Germain Katanga to The Hague. The Dutch authorities facilitated and assured the transport from the airport to the ICC detention center and the French government provided technical assistance during an emergency landing at a military base in Corsica.

After having undergone a medical examination that found Mr. Katanga to be in good health representatives of the Registry informed him of his full rights as the Rome Statute requires. During a visit of Registry representatives from the Public Counsel for the Defense (OPCD) in the afternoon Mr. Katanga learned in detail about his rights. He designated the OPCD as a counsel to represent him during his first appearance before the ICC. However, it is not the mandate of the OPCD to represent the suspect for the next stages of the proceedings.

The Arraignment

On October 22, 2007 Pre-Trial Chamber I (PTC I) held a public hearing during which Germain Katanga appeared for the first time before the Court. The purpose of this hearing is to verify the suspects identity and to inform the suspect of his rights and the charges brought against him.





Designation of principal counsel

The PTC I reminded Mr. Katanga that it is in his interest to appoint as soon as possible a principal counsel, and asked the Registry to take all necessary measures. The Registry will provide Mr. Katanga with a full list of counsel who satisfied the criteria to appear before the Court, so he can choose his defense lawyers. If Mr. Katanga does not have the financial means to afford counsel the Court will bear the costs of his defense.

In order to ensure that Mr. Katanga was clearly informed of the charges presented by the Prosecution, the Presiding Judge, Ms. Akua Kuenyehia, requested a Court officer to read the arrest warrant in full. PTC I also satisfied itself that Mr. Katanga was informed of his rights under the Rome Statute, including the right to apply for interim release.

PTC I designated Judge Sylvia Steiner as single judge, in order to organize status conferences and to ensure that evidence is exchanged. PTC I reminded the Prosecutor of his obligation under the Rome Statute to disclose to the defence, as soon as possible, evidence which he or she believes shows the innocence of the suspect.

Further Proceedings

Confirmation of charges hearing

Prior to the confirmation of charges hearing, PTC I will address a number of preliminary matters, including the language or languages to be used at trial. Mr. Katanga claims he is not fluent in the French and Swahili languages and that he prefers Lingala. If his claim proves true the Court will have to provide interpretation and translate key documents in Lingala.

PTC I provisionally set the confirmation of charges hearing for February 28, 2008.

The confirmation hearing is a public hearing at which ICC judges will decide whether or not to confirm the charges brought by the Prosecutor against Mr. Katanga and commit him to trial.

During this hearing held in the presence of Germain Katanga and his defense counsel, the Prosecutor is required to support each specific charge with sufficient evidence to establish substantial grounds to believe that Mr. Katanga committed the crimes with which he is charged. The Prosecutor can do this by means of documentary or summary evidence and/or by calling witnesses. The Prosecutor must ensure that his requisite evidence is available to the Defense in time for it to prepare for the confirmation hearing.

During the confirmation hearing Germain Katanga's counsel can challenge and object to the charges brought against Mr. Katanga. The counsel will also be permitted to present evidence as well as challenge the evidence presented by the Prosecutor.

The Pre-Trial Chamber can render the following decisions during the confirmation hearing:

- Confirm the charges for which it has found sufficient evidence in which event the case will proceed to trial. Upon confirmation, the Presidency of the Court will constitute a Trial Chamber responsible for subsequent proceedings;



- Refuse to confirm charges for which it has not found sufficient evidence. That decision does not prevent the Prosecutor from presenting a subsequent request for confirmation of the charges on the basis of additional evidence;
- Adjourn the hearing and request the Prosecutor to provide further evidence or conduct further investigations; or
- Adjourn the hearing and request the Prosecutor to amend a charge if the evidence appears to establish a different crime than the one charged.

The PTC will deliver a written decision within 60 days of the date the confirmation hearing ends in accordance with Regulation 53 of the Regulations of the Court.

Once the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw any charges.

The trial

If the charges against Germain Katanga are confirmed following the confirmation hearing the case of Mr. Katanga will proceed to trial. Upon confirmation the Presidency of the Court will constitute a Trial Chamber responsible for subsequent proceedings.

Participation of victims

The Rome Statute gives victims the opportunity to be part of the ICC's proceedings, to an extent unprecedented in by any other international tribunal or court. Each Chamber governs the scope of participation of victims in its activities. Participation may, but will not necessarily, include the ability to participate in hearings, to make written submissions and observations, and to question witnesses at trial. Rather than act on their own, victims will typically be represented by counsel, and the Chambers may request that large numbers of victims have a common legal representative.

In order to participate in proceedings before the ICC, victims must first send a written application to the Office of the Registrar. The Registrar sends that application to the pertinent Chamber, which will decide whether the applicant qualifies as a "victim" within the meaning of the Statute, and whether the harm to the applicant is sufficiently connected to the situation or case on which the Chamber is acting. Thus, the Trial Chamber can accord the status of victim only in connection with the crimes charged against Germain Katanga.

To qualify as a victim applicants must meet the conditions set out in the Statute and the Rules of Procedure and Evidence: 1) they are natural persons; 2) in each case, a crime within the jurisdiction of the Court and within the scope of the "situation in the DRC" was committed; 3) in each case, the Applicants suffered harm; 4) in each case, there is a causal link between the crime committed and the harm suffered.

Victims who have been recognized by the Court in the DRC situation will not have to reapply for the status of victim in the Katanga case. PTC I will review every victim as to whether there is a causal link between the crimes allegedly committed by Mr. Katanga and the harm suffered.





Future Actions

Prosecutor Luis Moreno-Ocampo stated after Mr. Katanga's arrest that more action can be expected. Currently a third case in the DRC is being selected. To ensure the ICC's future success it is important for the Court to show that it is actively investigating atrocities and trying those individuals most responsible for them.

Why is the ICC Focusing on Africa?

The Prosecution seems to have a strong focus on Africa, with two arrests made in DRC and the four situations under investigation concerning African countries. However, the DRC government requested ICC investigations on Congolese territory, since its justice system is not prepared to try and prosecute alleged criminals such as Thomas Lubanga and Germain Katanga. For the same reason Uganda and the Central African Republic referred situations to the ICC.

Additionally, the Prosecutor's investigating methodology leads to a concentration on the overall situation in a specific country. The Prosecutor will investigate all groups in a situation "in sequence", suggesting that one group will be investigated at a time. The term "group" refers to all parties in a conflict that may be under investigation. After completion of an investigation of a particular group, the prosecutor's office examines whether other groups warrant investigation. Since Mr. Lubanga and Mr. Katanga belong to different groups involved in the Ituri conflict their arrests comply with the Prosecution's methodology and therefore do not indicate a Prosecution biased towards conflicts in Africa.

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