

# AMNESTY INTERNATIONAL

## QUESTIONS AND ANSWERS

6 March 2014

AI Index: IOR 53/003/2014

### **International Criminal Court: 9 Questions about the case of *Prosecutor v. Germain Katanga***

#### **1. Who is Germain Katanga and what is he being tried for at the International Criminal Court (ICC)?**

In 2007, the ICC issued an arrest warrant for Germain Katanga (also known by the alias 'Simba') accusing him of war crimes and crimes against humanity in relation to an attack on Bogoro, a village in the Ituri district of eastern Democratic Republic of Congo (DRC), that took place in early February 2003. It is the third verdict handed down by the ICC; both previous cases also related to the situation in the DRC. The Prosecutor alleges Katanga's involvement in the attack in his capacity as the leader of the *Forces de Résistance Patriotique d'Ituri* (FRPI; Patriotic Resistance Force in Ituri).

Katanga is charged with seven counts of war crimes and three counts of crimes against humanity. During the attack on Bogoro, at least 200 civilians were killed, predominantly of Hema ethnicity. According to a UN report, 100 survivors of the attack say that "around 260 persons were killed and another 70 are missing. Among the victims, 173 were under the age of 18." The Prosecutor also alleges that the village was pillaged by members of the FRPI; that women and girls were abducted and sexually enslaved; that some survivors of the attack were imprisoned in a building filled with corpses; and that child soldiers were used in the attack.

#### **2. What is the significance of the case of *Prosecutor v. Katanga*?**

Following the DRC's request in 2004 for the ICC Prosecutor to investigate crimes under the Court's jurisdiction on the territory of the DRC since 1 July 2002, the *Katanga* case is the third trial in relation to crimes in the DRC to reach a verdict at the ICC.

For the past two decades, the eastern provinces of the DRC have been marred by successive waves of instability and protracted armed conflict. Various armed groups, foreign armies, and the Congolese national army FARDC (*Forces Armées de la République Démocratique du Congo*) have engaged in a violent struggle for political and military control of land and resources. Despite an official end to the hostilities in 2003, the violence in eastern DRC continues to this day as armed groups continue their sporadic operations against civilians, who are subjected to killings, rape and sexual violence, forced displacement, conscription and use of children as soldiers, and pillaging. The work of the ICC in the *Katanga* case and other proceedings is providing victims of the DRC's protracted conflict with hope of a route to realizing their rights to justice, truth and reparation.

The decision will also be significant in that it will deal with charges of sexual and gender-based violence, including rape and sexual slavery. Katanga is also charged with war crimes of using

children under the age of 15 as child soldiers, who allegedly served as both combatants in the attack and as escorts to the accused. These crimes have been committed on a massive scale in the DRC with impunity. Survivors of sexual violence and former child soldiers are often stigmatized within their communities. The case will hopefully challenge this stigma and set important precedents that can be followed by DRC courts to address these crimes effectively.

### 3. What else has the ICC done to investigate and prosecute crimes in the DRC conflict?

Investigations by the ICC into the crimes committed in the DRC began shortly after the establishment of the Court; they have so far focused on crimes committed in the east of the country in Ituri district and North and South Kivu provinces.

To date, the ICC has conducted two other trials relating to crimes committed in the DRC. On 14 March 2012, **Thomas Lubanga Dyilo** was convicted of the war crime of conscripting and using child soldiers in the *Forces Patriotiques pour la Liberation du Congo* (Patriotic Forces for the Liberation of Congo, FPLC) armed group in various localities around Bunia and elsewhere in Ituri district in 2002 and 2003. He was sentenced to a total of 14 years imprisonment; the verdict and sentence are currently under appeal. **Mathieu Ngudjolo Chui** was acquitted on 18 November 2012 of war crimes and crimes against humanity allegedly committed during the same attack on Bogoro that Germain Katanga stands accused of. The Prosecutor has appealed this acquittal.

Another case, against **Bosco Ntaganda**, is at the pre-trial stage. He is charged, in his then capacity as the Deputy Chief of the General Staff of the FPLC, with seven counts of war crimes for enlisting, conscripting and using child soldiers in hostilities, murder, attacks against a civilian population, rape and sexual slavery and pillaging carried out in Ituri in 2002 and 2003. He is additionally accused of three counts of crimes against humanity of murder, rape and sexual slavery, and persecution. One other accused, **Sylvestre Mudacumura**, remains at large. He is wanted by the ICC for crimes allegedly committed in North and South Kivu provinces in his capacity as the supreme commander of the *Forces Démocratiques pour la Libération du Rwanda* (Democratic Forces for the Liberation of Rwanda (FDLR)), including nine counts of war crimes committed between 20 January 2009 and September 2010. A sixth accused in cases involving crimes in the DRC, **Callixte Mbarushimana**, was released in December 2011 after the judges declined to confirm the charges brought against him by the ICC Prosecutor, due to lack of sufficient evidence.

The ICC is continuing to investigate crimes in the country and further cases may be initiated by the Prosecutor.

### 4. What has the ICC done for the victims and affected communities in the Katanga case?

There are at least 363 victims who are participating in the case against Katanga at the ICC. They are represented through lawyers who make these victims' views known to the Court. These victims are separated into two groups. One group consists of "general" victims and another, smaller, group consists of former child soldiers.

Should Katanga be convicted, the Court may order that he provide reparation to the victims to address the harm they suffered as a result of the crimes. In those circumstances, if he does not

have sufficient funds to meet a reparation order, the ICC's Trust Fund for Victims may step in to fund reparation to the victims.

Since 2008, the ICC Trust Fund for Victims has already been delivering "general assistance" to victims in Ituri and North and South Kivu. Using voluntary contributions from donors, mostly other states, it provides physical rehabilitation, material support, and/or psychological rehabilitation to tens of thousands of direct and indirect victims of the conflict in eastern DRC. For example, the Trust Fund for Victims' projects include provision of counselling and vocational training for victims of torture and mutilation in South Kivu and material and psychological support provided to victims of sexual and gender based violence in Ituri. The difference made in the lives of victims already through the work of the ICC Trust Fund for Victims shows the value and significance of the ICC's involvements in the DRC, complementing justice efforts.

## **5. What does it mean if Germain Katanga is convicted? Or acquitted?**

A conviction in this case does not amount to success and an acquittal does not signify failure. A guilty or not guilty verdict reflects whether the Prosecution has presented sufficient admissible evidence to prove beyond a reasonable doubt that Katanga committed the crimes he is charged with. Both a conviction and an acquittal may be appealed by the Defence and the Prosecution.

If convicted, Katanga will be sentenced in a separate phase during which the judges will consider aggravating and mitigating circumstances, and reparation proceedings will commence.

If acquitted, the judges will order that arrangements are made as soon as possible for Katanga's release to a country that is willing to receive him. However, if an application for appeal is filed by the Prosecutor, the judges may in exceptional circumstances, having regard to the concrete risk of flight, the seriousness of the offence charged and the probability of success, order his continued detention pending the appeal.

## **6. What impact should this judgment have in DRC?**

While the completion of the Katanga trial is another important step to addressing impunity in the DRC, this case relates to only a very small fraction of the crimes under international law committed in the DRC over the past years. The *Katanga* judgment should focus the DRC authorities on addressing the enormous "impunity gap" for egregious crimes committed against its people.

Over the past two years, Amnesty International researchers have documented numerous serious violations of human rights and humanitarian law committed by armed groups in North Kivu, and calls on the Congolese government to live up to its commitment of investigating and prosecuting perpetrators of human rights abuses. In his presidential speech on October 23, 2013, President Joseph Kabila stated the government's commitment to identify and prosecute individuals who organize armed groups. [*"Il y a lieu d'identifier et de traduire en justice les personnes qui entretiennent les groupes armés."*]

Yet, the justice system is still failing victims of human rights abuses – it remains drastically understaffed and under-resourced, marked by inadequate detention facilities and witness and victims protection programs. Amnesty International has repeatedly called on the DRC authorities to address obstacles to justice for victims by taking all measures necessary to

develop a comprehensive long-term justice strategy aimed at reforming the criminal justice system.

## **7. What does Amnesty International think needs to happen to tackle impunity in DRC?**

The ICC cannot address impunity comprehensively on its own. In reality it will only deal with a small number of cases. So at the same time as the ICC conducts its investigations and cases, more must be done both in law and in practice by DRC authorities to establish the rule of law and ensure the rights of victims of past and continuing violations. The DRC authorities must address the obstacles faced by victims trying to find justice in the national system by taking all measures necessary to develop a comprehensive long-term justice strategy aimed at reforming the criminal justice system.

Impunity cannot continue. The authorities must take more effective steps to investigate the thousands of other crimes under international law, including war crimes and crimes against humanity, committed in the country. Where there is sufficient evidence, those suspected of the crimes must be brought to justice in fair trials. Establishing robust justice and security systems in DRC requires going beyond prosecution of members of armed groups, and must also include the investigation and prosecution of members of the national security services who are allegedly responsible for serious crimes, regardless of their political or military status. The authorities of the DRC must also cooperate fully with all of the ICC's cases, including the arrest and surrender of Sylvestre Mudacumura, who remains at large.

Moreover, sustained security for populations in eastern DRC is still a far-off goal. Today, the scale of such crimes committed in Ituri district is lower than a decade ago. However, armed groups continue to operate in Ituri district, and throughout eastern DRC, conducting attacks and terrorizing local populations. For example, in Ituri district, there were new allegations of abductions of civilians by members of the FRPI in early 2014. Other armed groups such as the *L'armée de résistance du Seigneur* (Lord's Resistance Army (LRA)), the *Forces démocratiques alliées* (Allied Democratic Forces, (ADF)), and the FDLR also continue to operate in Orientale Province, North Kivu and South Kivu.

## **8. Does the *Katanga* case confirm that the ICC is unfairly targeting Africans?**

Simply, no. On the contrary, the *Katanga* trial confirms the tremendous demand for international justice within Africa. African states and individuals have come to the attention of international justice mechanisms because of serious of impunity for grave human rights violations and crimes under international law in many countries in Africa. Closely related to this is the fact that millions of Africans are demanding the rights of victims to receive justice, truth and reparation. This has resulted in African states requesting international criminal tribunals to assist them in bringing alleged perpetrators of crimes under international law to justice – including the DRC, which was the first state to request the ICC to investigate crimes under its jurisdiction.

In fact, all but three situations under investigation by the ICC are the result of African states asking the ICC to step in because they were unable to bring perpetrators to justice (DRC, CAR,

Uganda, Cote d'Ivoire and Mali). Two other situations were referred by the UN Security Council with the support of its African members. The ICC Prosecutor initiated an investigation in the situation of Kenya, after the government had been given every opportunity to conduct national investigations and prosecutions and failed to do so.

Amnesty International also notes that the International Criminal Court is conducting preliminary examinations of numerous situations outside Africa, including Afghanistan, Colombia, Georgia, Honduras and the Republic of Korea.

## **9. Why does Amnesty International support the ICC?**

Amnesty International campaigns for justice, truth and reparation for victims of crimes under international law on all continents of the globe without distinction on the basis of race, religion, nationality, ethnicity, gender, sexual orientation or identity, or disabled status.

The ICC is at the centre of the new system of international justice. It is a vital mechanism to insist that national authorities fulfil their responsibilities to investigate and prosecute crimes, and to step in when they fail to do so. Amnesty International strongly supported the establishment of the ICC in 2002. Over a decade later, our organization campaigns for all countries to sign up to its Statute – 122 have already done so - and for all governments to cooperate fully with its important work, especially arresting and surrendering suspects to it for trial.

However, the ICC is also a court of last resort for when states are unable or unwilling to investigate and prosecute crimes under international law. Amnesty International urges states to fulfil their obligations under international law to combat impunity at the national level by establishing, effective national mechanisms to deliver justice, truth and reparation to victims.