

Katanga's sentence reduced and to be completed on 18 January 2016 (*The Prosecutor v. Germain Katanga*, Decision on the Review Concerning Reduction of Sentence of Mr. Germaine Katanga, Case No. ICC-01/04/01/07, (13 November 2015))

On 23 May 2014 Germain Katanga was sentenced, to a total of 12 years' imprisonment after being found guilty as an accessory of five counts of crimes against humanity and war crimes, they includes: one count of crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on 24 February 2003 during the attack on the village of Bogoro, in the Ituri district of the Democratic Republic of the Congo (DRC). The panel of judges¹ taking judicial notice of the time spent by Mr. Katanga in detention prior to being convicted was deducted from the sentence imposed, and accordingly, on 18 September 2015, Mr. Katanga had served the statutory two-thirds of his sentence.² To comprehend this decision it is worthwhile to look at the applicable law, the panel's determination of the sentence and its decision.

A. Applicable Law

According to Article 110 (3) of the Statute in its relevant part to this case provides that, "[w]hen the person has served two thirds of the sentence, [...] the court shall review the sentence to determine whether it should be reduced".³ In this same light Article 110 (4) further provides that the Court may reduce the sentence on grounds of one or more of the following reasons as follows:

"(a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions; (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or (c) Other

¹ Judges Sanji Monageng, Christine Van den Wyngaert and Piotr Hofmański

² International Justice Monitor, <http://www.ijmonitor.org/2015/10/icc-judges-to-consider-katangas-early-release/>, [19 November 2015]; ICC, https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1174.aspx, [Access date 19 November 2015]; see also *The Prosecutor v. Germain Katanga*, Decision on the Review Concerning Reduction of Sentence of Mr. Germaine Katanga, Case No. ICC-01/04/01/07, (13 November 2015), para. 116.

³ *The Prosecutor v. Germain Katanga*, Decision on the Review Concerning Reduction of Sentence of Mr. Germaine Katanga, Case No. ICC-01/04/01/07, (13 November 2015), para. 15; "Decision on the review concerning reduction of sentence of Mr Thomas Lubanga Dyilo", ICC-01/04-01/06-3173 (RW) (hereinafter: "Lubanga Sentence Review Decision"), 22 September 2015, para. 19. Available at: <https://www.icc-cpi.int/iccdocs/doc/doc2063771.pdf>, [Access date, 19 November 2015]. para. 15. (Lubanga's request for reduction of sentence was denied).

factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence”.⁴

Again, Article 110 (5) of the Statute states that, “[i]f the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence”,⁵ the Court shall necessarily conduct another review at a later time, this point is corroborated by Rule 223 of the Rules of Procedure and Evidence which is to the effect that the panel will consider the following criteria for granting reduction of sentence. These points are:

- (a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;
- (b) The prospect of the resocialization and successful resettlement of the sentenced person;
- (c) Whether the early release of the sentenced person would give rise to significant social instability;
- (d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;
- (e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.⁶

Aside from these legal requirements, the accused has personally shown remorse by publicly apologize in a video to the victims for the crimes he committed⁷, which the panel considered during its review⁸ as shown below.

B. The Panel’s Determination on Whether it is Necessary to Reduce the Sentence of Mr. Katanga

After careful consideration of the facts and arguments presented by the participants and the panel’s own consideration, a decision was reach based on the following points below, which has been extensively exhausted in this decision as follows:

111. The Panel recalls that it has found that the following factors are present: (i) an early and continuing willingness by Mr Katanga to

⁴ Ibid, para. 16; Lubanga Sentence Review Decision, para. 16.

⁵ Lubanga Sentence Review Decision, para. 17.

⁶ Ibid, para. 17 – 18; Lubanga Sentence Review Decision, para. 18.

⁷ Ibid, para. 14; “Defence Submission of a Video Recording of Mr Germain Katanga”, ICC-01/04-01/07-3606 (RW) with Annex 1, ICC-01/04-01/07-3606-Conf-Anx1 (RW). Available at: <https://www.icccpi.int/iccdocs/doc/doc2083043.pdf>; and <https://www.icc-cpi.int/iccdocs/doc/doc2083053.pdf>, [Access date, 19 November 2015].

⁸ “Decision on the review concerning reduction of sentence of Mr Thomas Lubanga Dyilo”, ICC-01/04-01/06-3173 (RW) (hereinafter: “Lubanga Sentence Review Decision”), 22 September 2015, para. 19. Available at: <https://www.icc-cpi.int/iccdocs/doc/doc2063771.pdf>, [Access date, 19 November 2015].

cooperate with the Court in its investigations and prosecutions (article 110 (4) (a) of the Statute); (ii) a genuine dissociation from his crimes demonstrated by Mr Katanga's conduct while in detention (rule 223 (a) of the Rules of Procedure and Evidence); (iii) the prospect of resocialisation and successful resettlement of Mr Katanga (rule 223 (b) of the Rules of Procedure and Evidence); (iv) the prospect that Mr Katanga's early release would give rise to some level of social instability in the DRC, though not to the level of "significant" (rule 223 (c) of the Rules of Procedure and Evidence); and (v) the individual circumstance of an increase in familial responsibilities due to recent deaths in Mr Katanga's family (rule 223 (e) of the Rules of Procedure and Evidence). The Panel has not found the factors under article 110 (4) (b) of the Statute or rule 223 (d) of the Rules of Procedure and Evidence to be present

112. The Panel recalls that, while it found that the factor under rule 223 (c) of the Rules of Procedure and Evidence is present, it determined that this factor "ha[s] neutral value, weighing neither for nor against a reduction in Mr Katanga's sentence". All the other factors found to be present weigh in favour of a reduction in sentence. With respect to the factor concerning Mr Katanga's individual circumstances under rule 223 (e) of the Rules of Procedure and Evidence, the Panel does not consider that this factor, on its own, is sufficient to justify a reduction in sentence. However, taking into account all of the factors found to be present, the Panel considers that together they are "sufficient to justify a reduction of sentence". Therefore, on the basis of the above, the Panel decides that it is appropriate to reduce Mr Katanga's sentence pursuant to article 110 (3) of the Statute.

C. Decision

Building on the facts presented the panel of three judges arrived at the decision that:

1. Pursuant to the review conducted under article 110 (3) of the Statute, the original sentence of Mr Germain Katanga is reduced by 3 years and 8 months; and
2. The date of completion of Mr Katanga's sentence is set to 18 January 2016.