

PRESS RELEASE

Detention of Congolese witnesses terminated by the ICC, ball in court of the Netherlands

Amsterdam 21 January 2014 - On 20 January 2014, the appeals chamber of the International Criminal Court ('ICC') held that the detention of three Congolese witnesses must be terminated immediately, and that the Dutch State is responsible for the further processing of their asylum requests.

The three Congolese men arrived in the Netherlands in March 2011 to serve as witnesses in the case *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. Before their arrival to the Netherlands, they were detained in the Democratic Republic of the Congo on unclear grounds. They were not formally charged before, during or after their imprisonment in the DRC. As such they were never given any form of due process. For this reason and others, they filed for asylum upon their arrival in the Netherlands. In October 2013, the Dutch administrative judge determined that they run a real risk that their fair trial rights will be violated in the DRC, and that they cannot be deported to that country for that reason.

The importance of the current decision by the ICC is that the Netherlands can no longer hide behind that Court with regards to the asylum-procedure, and that it must make its own careful risk-assessment before any return to the DRC can be considered. Therefore, this decision also has direct consequences for the cassation procedure currently pending before the Dutch Supreme Council, in which the Dutch government still denies jurisdiction. The decision furthermore has consequences for the appeal procedure in the asylum case that was initiated by the Dutch State against the decision by the district court that the witnesses cannot be deported back to the DRC for fear of human rights violations. Monday's decision establishes both the jurisdiction of the Netherlands and its responsibility for the witnesses. As a result, the witnesses are now confident about both national procedures.

This decision is also of great personal importance to the witnesses as it marks the end of their prolonged imprisonment. Now that they have a lawful residence in the Netherlands, they should be allowed to await the outcome of their asylum-procedure in freedom like any other asylum-seeker. Because the judge has determined that a return to the DRC is unsafe, there is no prospect of removal which means that further detention is excluded as a possibility.

Considering the urgent nature of the order by the appeals chamber of the ICC, the witnesses expect to be handed over to the Dutch authorities shortly. The appeals chamber is of the opinion that the solution to the current dispute is in the hands of the Dutch State. Göran Sluiter and Flip Schüller, the lawyers of two of the witnesses, expect that the Netherlands will implement the order of the ICC appeals chamber both faithfully and expeditiously, and at the same time fully respect the deportation-ban that the district court issued. They also expect that the Netherlands will contact them to discuss the further course of events and their release from the custody of the ICC.

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