



SEPARATE CONCURRENT OPINION
OF JUDGE LUZ DEL CARMEN IBÁÑEZ CARRANZA

to the “Decision on the notices of discontinuance of the appeals” (ICC-01/12-01/18-2688) in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.

1. I agree with my colleagues to terminate the appellate proceedings in this case.¹ The parties’ notices of discontinuance have been filed without reservations or conditions and apply to the appeal in its entirety.² Accordingly, they align with the procedural framework of the Court, as currently reflected in the Statute, the Rules of Procedure and Evidence (hereinafter: “Rules”), and the Court’s jurisprudence.³
2. I issue this opinion because I find it essential to elaborate on the need to ensure that a procedural prerogative – such as the parties’ ability to file an appeal and subsequently discontinue it – is exercised in a manner that is consistent with internationally recognised human rights. As addressed in further detail below, I believe that the Court’s legal framework should be amended to sufficiently reflect this need.
3. In my view, the discontinuance of an appeal against a decision of acquittal under article 74 of the Statute, in a procedural system where victims do not have an independent right to appeal, may significantly impact the victims’ right to an effective judicial remedy, effective judicial protection, the right to have the truth established, as

¹ See [Decision on the notices of discontinuance of the appeals](#), 7 March 2025, ICC-01/12-01/18-2688 (hereinafter: “Decision”), p. 3, para. 26.

² See [Decision](#), para. 21.

³ See for example *Situation in the Islamic Republic of Afghanistan*, [Decision on Prosecutor’s notice of discontinuance of the appeal](#), 16 March 2023, ICC-02/17-216 (OA5) (hereinafter: “Afghanistan OA5 Decision”); *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision on Thomas Lubanga Dyilo’s Brief relative to Discontinuance of Appeal](#), 3 July 2006, ICC-01/04-01/06-176 (OA2). See also, *The Prosecutor v. Germain Katanga*, [Decision on victims’ requests to participate in appeal proceedings](#), 24 July 2014, ICC-01/02-01/07-3505 (A A2).

well as the right to seek reparations should the appeal proceedings result in a conviction.⁴

4. As stated by the Inter-American Court of Human Rights in the case *Bayarri v. Argentina*, “[t]he victim’s right to due judicial protection [...] includes not only the victim’s access to criminal actions as a complainant, but also the right to obtain a final judgment through effective mechanisms of justice”.⁵ In this respect, I recall that several international treaties recognise the victims’ right to access to justice and effective remedy,⁶ such as article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) establishing the effective remedy for persons whose rights are violated;⁷ article 25(1) of the American Convention on Human Rights (ACHR) on the right to simple, prompt and effective recourse;⁸ and article 2(c) of the Convention on the Elimination of All Forms of Discrimination against Women mandating effective protection through competent national tribunals and other public institutions.⁹

5. In relation to the victims’ right to truth, I recall that “[o]nly [...] when the truth is known and access to justice is provided, can victims fully start their process to recover from and repair their harm”.¹⁰ In this respect, “[o]ne of the most negative consequences

⁴ On those rights, see for example, *The Prosecutor v. Saif Al-Islam Gaddafi*, [Separate and Concurring Opinion of Judge Luz del Carmen Ibáñez Carranza](#), 22 April 2020, ICC-01/11-01/11-695-AnxI (hereinafter: “Judge Ibáñez’s Opinion in *Gaddafi*”), para. 48; *The Prosecutor v. Lubanga Dyilo*, [Separate Opinion of Judge Luz del Carmen Ibáñez Carranza](#), 16 September 2019, ICC-01/04-01/06-3466-AnxII (hereinafter: “Judge Ibáñez’s Opinion in *Lubanga*”), paras 57, 204-208; *Situation in the Islamic Republic of Afghanistan*, [Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza to the Majority’s decision dismissing as inadmissible the victims’ appeals against the decision rejecting the authorisation of an investigation into the situation in Afghanistan](#), 6 March 2020, ICC-02/17-137-Anx-Corr (hereinafter: “Judge Ibáñez’s Opinion in *Afghanistan Situation*”), para. 32.

⁵ IACtHR, *Bayarri v. Argentina*, [Judgment of 30 October 2008 \(Preliminary Objection, Merits, Reparations and Costs\)](#), para. 117.

⁶ See e.g. [Judge Ibáñez’s Opinion in *Lubanga*](#), paras 57, 215, referring to D Shelton, “Remedies in International Human Rights Law” (Oxford University Press, 2015) (hereinafter: “Shelton”), p. 58; [Judge Ibáñez’s Opinion in *Afghanistan Situation*](#), para. 32.

⁷ [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 United Nations Treaty Series 14668, article 2(3).

⁸ [American Convention on Human Rights](#), 22 November 1969, 1144 United Nations Treaty Series 17955, article 25(1).

⁹ [Convention on the Elimination of all Forms of Discrimination Against Women](#), 18 December 1979, 1249 United Nations Treaty Series 20378, article 2(c).

¹⁰ See also [Judge Ibáñez’s Opinion in *Lubanga*](#), para. 205, referring to [United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court – Official Records, Vol II](#), 15 June-17 July 1998, UN Doc. A/CONF.183/13 (Vol. II), p. 120, para. 86. See also [Judge Ibáñez’s Opinion in *Lubanga*](#), para. 204, referring to [Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff](#), 21 August 2017, UN Doc. A/HRC/36/50, para. 20 (the UN Special Rapporteur highlighted that international human

of impunity is that it strips victims from a remedy to their harm, thereby calling into serious question their human right to access to justice and the rule of law”.¹¹

6. With regard to the right to reparations, which is expressly recognised by the Statute following the conviction of the accused person,¹² I recall that it is “a human right that belongs to the individual whose human rights were egregiously violated as a consequence of the atrocious crimes. Reparation must produce redress and remedy. [...] The ultimate goal of reparations consists of restoring human dignity and restructuring the human being both in his or her individual and social dimensions”.¹³ In this respect, I note that the first and most fundamental form of victims’ reparations is the official recognition of their status as victims of the specific crime in question. I respectfully disagree with the Prosecutor’s suggestion that the discontinuance of an appeal concerning acquittals for gender-based crimes can be offset in cases where the individuals in question may still be recognised as victims,¹⁴ because they are part of a population that, in its entirety, was the subject of the deprivation of fundamental rights and may therefore qualify as victims of other crimes, such as the crime of persecution on religious grounds. This approach, in my view, risks diluting the specificity of the harm suffered and undermining the distinct recognition that victims of gender-based crimes are entitled to under international criminal law.

7. The protection of the above-mentioned rights are particularly relevant in proceedings such as these, since the Court was established to investigate, prosecute and eventually punish the perpetrators of the most serious crimes of concern to the international community as a whole, and to bring justice to victims for the atrocities

rights law and humanitarian law both impose obligations to (i) investigate, prosecute and punish those accused of serious rights violations, (ii) reveal to victims and society at large all known facts and circumstances of past abuses, (iii) provide victims with restitution, compensation and rehabilitation, and (iv) ensure repetition of such violations is prevented - listing treaties which establish these rights, including the ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Torture, Genocide Convention, International Convention on the Suppression and Punishment of the Crime of Apartheid, Convention on the Rights of the Child, and Racial Discrimination Convention).

¹¹ See also [Judge Ibáñez’s Opinion in Lubanga](#), para. 207, referring to Shelton, p. 61; see also para. 208, referring to IACtHR, *Paniagua-Morales v. Guatemala*, [Judgment \(Merits\)](#), 8 March 1998, para. 173. With regard to the incompatibility of amnesties or similar measures with respect to certain crimes with international law, see [Judge Ibáñez’s Opinion in Gaddafi](#), see in particular paras 43-144; see also, para. 34, referring to IACtHR, *Barrios Altos v. Perú*, [Judgment \(Merits\)](#), 14 March 2001, Series C no. 75, para. 41.

¹² Article 75 of the Statute.

¹³ [Judge Ibáñez’s Opinion in Lubanga](#), pp. 3-4.

¹⁴ See [Prosecutor’s Response](#), para. 4.

they suffered.¹⁵ Crimes falling within the jurisdiction of the Court always amount to grave human rights violations.¹⁶ The Statute establishes a framework to prosecute individuals responsible for such violations while ensuring victims' access to justice and reparations. Judicial protection must be available at all stages of the proceedings, including appellate proceedings.

8. Since, in the statutory framework, only the Prosecutor has the prerogative to investigate and prosecute crimes, any failure to act or to utilise the legal tools provided for by procedural law to advance the process may harm the rights of the victims, whose protection is his or her duty to safeguard. It is important to remember that the Rome Statute, as stated in its Preamble, affirms that the most serious crimes must not go unpunished in order to contribute to the prevention of crimes. As recalled above, under the statutory framework, victims do not have the right to appeal a decision. Nor do they have the right to compel the Prosecutor to continue an appeal in circumstances where the Prosecutor has decided to withdraw such an appeal.¹⁷ Discontinuance of an appeal may therefore result in the victims being deprived of effective judicial protection, of their right to access to justice, their right to truth and, in case of conviction, their right to seek reparations.

9. Rule 152 of the Rules, in its current formulation, fails to adequately reflect these fundamental human rights considerations. While article 21(3) of the Statute mandates that the interpretation and application of the Statute must be consistent with internationally recognised human rights, and while today's decision – as well as the proceedings leading up to it – sought to ensure, accordingly, at least a basic level of consultation with victims, I believe that the legal framework of the Court still falls short of providing full judicial protection to the victims in this type of situations. This is particularly relevant in relation to certain categories of cases and crimes, where ensuring victims' access to effective legal remedies is essential to uphold their rights.

10. Indeed, the discontinuance of an appeal is a procedural prerogative of the parties. The exercise of a procedural prerogative cannot, under any circumstances, result in the

¹⁵ See also [Judge Ibáñez's Opinion in Lubanga](#), p. 5.

¹⁶ See [Judge Ibáñez's Opinion in Lubanga](#), p. 4; [Judge Ibáñez's Opinion in Gaddafi](#), para. 141.

¹⁷ Pursuant to articles 81 and 82 of the Statute and rule 152 of the Rules, only the parties have the right to appeal a decision or to discontinue an appeal.

violation of a substantive right, as procedural law is intended to uphold and enforce substantive rights, not to limit them, let alone when human rights are concerned. As mentioned above, the withdrawal of an appeal by the Prosecutor, leading to a final acquittal, may severely restrict the victims' ability to uncover the truth, as it prevents a comprehensive examination and judicial review of the trial chamber's legal and factual findings. In exercising this power, the Prosecutor must therefore act judiciously, ensuring that his or her decision does not deprive victims of their right to effective legal protection and effective remedy.

11. Throughout the present appeals proceedings, the Appeals Chamber has ensured that statutory norms, including rule 152 of the Rules, be interpreted in light of article 21(3) of the Statute, which mandates that the Court apply and interpret the law in a manner consistent with internationally recognised human rights. In line with this approach, the Appeals Chamber took specific measures to ensure that victims had the opportunity to present their observations. These observations were formally filed on the record of the case.

12. I note in this respect the feeling of "betrayal" and frustration about the Prosecutor's decision to discontinue his appeal expressed by the victims,¹⁸ as well as the statements of some of them describing experiences of forced marriage, persecution, imprisonment, and/or attempted rape, the harm they suffered and continue to suffer as a result of those events.¹⁹ I also note the argument of the legal representatives of the victims (hereinafter: "LRVs") that although the Prosecutor was informed that the victims were "firmly opposed to the idea of abandoning the appeal [...] there is nothing in the Prosecutor's explanations, be it in his notice of discontinuance or his response to the LRVs' observations, to suggest that the victims' concerns were taken into account", and that there was a lack of explanation "as to how [the victims'] concerns were assessed and how they were weighed against the factors which led the Prosecutor to abandon his appeal [...]".²⁰ The Prosecutor's discontinuance of the appeal effectively precluded the possibility, particularly for victims of the sexual and gender-based crimes of which Mr Al Hassan was acquitted, to have Mr Al Hassan's acquittals litigated on

¹⁸ [Victims' Observations](#), paras 13, 17, 22.

¹⁹ [Annex B to Victims' Observations](#).

²⁰ [Victims' Reply](#), paras 12-13; see also [Victims' Observations](#), para. 22.

appeal, and to seek specific and tailored reparations, had the appeal proceedings resulted in a conviction with respect to those crimes.

13. In line with the procedural framework of the Court, the Prosecutor formally indicated that “[t]he views and concerns of the victims expressed in these discussions were heard and noted”, and, without providing any explanation or justification as to how, he stated that he “carefully considered the victims’ communicated opinions as a relevant factor in exercising his independent statutory discretionary decision to discontinue the appeal”.²¹ Moreover, in the proceedings leading up to the present decision, the Appeals Chamber took specific measures to ensure that the victims had an opportunity to present their views, which were formally filed on the record. Without these conditions, I would not have been able to agree to the discontinuance of the appeal.

14. Nonetheless, as stated above, it is urgent that the statutory framework is amended and complemented to fully embrace the victims’ rights to effective judicial protection, effective remedy, truth, and ultimately, should the appeal proceedings result in a conviction, reparations. The legal framework, in my respectful view, needs to be amended to provide a transparent mechanism to ensure, especially in cases concerning discontinuance of appeals against acquittals with respect to gender-based crimes, that the Prosecutor (i) engages meaningfully with victims prior to taking a decision on discontinuance of the appeal, explaining the reasons underlying his or her consideration and the consequences of such a possible decision, and (ii) provides, in his or her notice pursuant to rule 152 of the Rules, an explanation of how the victims’ concerns were assessed and how they were weighed against the factors which led the Prosecutor to discontinue the appeal to better reflect the spirit of the Rome Statute as expressed in its Preamble.

²¹ [Prosecutor’s Response](#), para. 2.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'L' and 'C' intertwined, with a horizontal line crossing through the middle.

**Judge Luz del Carmen Ibáñez
Carranza**

Dated this 7th day of March 2025

At The Hague, The Netherlands