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No.: ICC-01/04-01/07
Date: 11 January 2013

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. GERMAIN KATANGA

Public

Prosecution response to the "Demande conjointe des représentants légaux à pouvoir participer à la procédure relative à l'appel de la Défense contre la décision de la Chambre de première instance II n° 3319 (mise en oeuvre de la Norme 55 du Règlement de la Cour)"

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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**Victims Participation and Reparations
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Introduction

1. The victims participating in the trial against Mr Germain Katanga ("Victims") seek to participate ("Victims' Request") in the appeal against Trial Chamber II's "Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons" of 21 November 2012 ("Impugned Decision"). The Prosecution does not oppose the Victims' Request.

Procedural Background

2. On 21 November 2012, Trial Chamber II issued the Impugned Decision.¹ On 21 December 2012, the Defence team for Mr Katanga ("Defence") filed an application for leave to appeal the Impugned Decision ("Defence Application"),² raising the following issue: "Is the Chamber's decision to give notice, informing the parties and participants that the legal characterisation of the facts relating to Germain Katanga's mode of participation is likely to be changed, lawful and appropriate in the circumstances of the case?"³
3. On 28 December 2012 Trial Chamber II granted the Defence Application.⁴ On 3 January 2013 the Legal Representatives of the Victims filed the Victims' Request.⁵ Consequently the Appeals Chamber invited the parties to respond to the Victims' Request.⁶

Submissions

4. Article 68(3) "mandates a specific determination by the Appeals Chamber that the participation of victims is appropriate in the particular interlocutory appeal under consideration".⁷ The individuals seeking to participate must demonstrate that (i) they are victims in the case or situation out of which the appeal arises; (ii) they

¹ ICC-01/04-01/07-3319.

² ICC-01/04-01/07-3323.

³ Defence Application, para.14.

⁴ ICC-01/04-01/07-3327.

⁵ ICC-01/04-01/07-3329.

⁶ ICC-01/04-01/07-3333.

⁷ ICC-01/04-01/06-824 OA7, para.40; ICC-01/04-503 OA4 OA5 OA6, para.36; ICC-01/05-01/08-566 OA2, para.14.

have a personal interest that is affected by the issues on appeal; (iii) their participation is appropriate; and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁸

(a) The applicants meet the requirements for victims to participate in the appeal

5. Once victims have been admitted to participate in the situation or case, they do not need to demonstrate again to the Appeals Chamber that they meet the definition of “victim” under rule 85.⁹ In this case, the Trial Chamber recognizes as victims the persons on whose behalf the Victims’ Request is submitted.¹⁰
6. The Prosecution agrees that the issue in this appeal affects the personal interests of the victims. As noted in the Victims’ Request, the decision of the Appeals Chamber in this interlocutory appeal may have an impact on the mode of liability that will form the basis of the case against Mr Katanga and hence potentially affect the nature of the final judgment.¹¹ This may in turn have an impact on whether the Victims can seek reparations in this case.¹²
7. The Prosecution further considers it appropriate for the Victims to be allowed to present their views and concerns on the issue in this appeal.

(b) The modalities of participation

8. The Prosecution submits that the Victims should be permitted to present their views and concerns regarding the issue under appeal in writing, through their Legal Representative. Such views and concerns “must be specifically relevant to the issues arising in the appeal and to the extent that their personal interests are

⁸ ICC-01/05-01/08-1597 OA7, para.7; ICC-01/04-01/06-1335OA9 OA10, paras.35, 36; ICC-01/04-503 OA4 OA5 OA6, paras.35,90; ICC-01/04-01/06-1453 OA13, para.7; ICC-01/04-01/06-1452 OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324 OA2, para.8; ICC-01/05-01/08-566 OA2, para.8. See also ICC-01/04-01/06-824 OA7, paras.2,44,46; ICC-01/04-01/06-925 OA8, para.23.

⁹ ICC-01/04-01/06-824 OA7, paras.44, 45; ICC-01/04-503 OA4 OA5 OA6, para.92.

¹⁰ See ICC-01/04-01/07-3329, footnote 9.

¹¹ Victim’s request paras 14-15.

¹² See in this context ICC-01/04-01/10-509, para 10.

affected by the proceedings.”¹³ The Prosecution and the Defence must have an opportunity to respond to the views and concerns presented by victims in this appeal.¹⁴ Under these circumstances, the participation of the victims in this appeal would not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

Conclusion

9. For the reasons set out above, the Prosecution does not oppose the Victims’ Request.



Fatou Bensouda, Prosecutor

Dated this 11th day of January 2013

At The Hague, The Netherlands

¹³ ICC-01/04-503 OA4 OA5 OA6, para.101; ICC-01/04-01/06-1335 OA9 OA10, para.50; ICC-01/05-01/08-1597 OA7, para.12. See also ICC-01/04-01/06-824OA7, para.55: “Observations to be received by the victims [are] limited and [must be] specifically relevant to the issues arising in the appeal rather than more generally”.

¹⁴ The Appeals Chamber has previously recognised that if victims are permitted to participate, “the Prosecutor and the Defence shall be allowed to reply to any filing of the victims, in accordance with the provisions of rule 91(2) of the Rules of Procedure and of Evidence”, ICC-01/04-01/06-824OA7, para.49. See also ICC-01/05-01/08-1597OA7, para.12.