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No.: ICC-01/04-01/07

Date: 17 June 2014

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

***THE PROSECUTOR
 v. GERMAIN KATANGA***

Public

Prosecution Consolidated Response to “*Soumission concernant la participation des victimes à la procédure d’appel relative au jugement rendu en application de l’article 74 du Statut à l’encontre de Germain Katanga*” of 27 May 2014 and “*Soumission relative à la participation de victimes à la procédure d’appel contre le jugement concernant G. Katanga*” of 5 June 2014

Source: Office of the Prosecutor

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

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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Detention Section

**Victims Participation and Reparations
Section Other**

Submissions

1. The legal representatives for both groups of victims have applied to participate in the appellate phase of this case. On 27 May 2014, the legal representative for the former child soldier victims ("LRCSV") applied to participate, and, on 5 June 2014, the legal representative for the main group of victims ("LRV") did so.¹ In light of the limited and generalised nature of the parties' notices of appeals, the Prosecution is of the view that both applications are premature and should only be made (and decided upon) once the parties have filed their documents in support of their appeals.

2. The LRV has asked the Appeals Chamber to continue the participation of 339 victims already admitted at trial and to establish the modalities for their participation. The LRV has also asked the Appeals Chamber to allow the participation of persons now acting on behalf of seven victims who had previously been allowed to participate at trial but who have since died, and the participation of 14 additional persons who did not participate at trial.² The LRCSV has asked the Appeals Chamber to allow the participation of the former child soldier victims in the appeal.³ Both legal representatives argue that the personal interests of the concerned victims are affected on appeal in the same manner as they were at trial, particularly in light of the appeals filed by both the Prosecution and the Defence.⁴

3. In general, the Prosecution supports victim participation in proceedings in accordance with the Court's legal framework.⁵ Their participation is an essential

¹ ICC-01/04-01/07-3483-Red3-Corr (Victims' Application). See also an earlier version of the document filed (ICC-01/04-01/07-3483-Red3) and corrigendum filed (ICC-01/04-01/07-3483-Red3-Corr-Anx); ICC-01/04-01/07-3486 (Child Soldier Victims' Application).

² Victims' Application, pp.16-17.

³ Child Soldiers Victims' Application, para.6.

⁴ Victims' Application, paras.12, 23, 48; Child Soldier Victims' Application, paras.6-7. The Defence responded to both applications on 16 June 2014 (ICC-01/04-01/07-3491).

⁵ Office of the Prosecutor, Policy Paper on Victims' Participation, April 2010 (OTP Policy Paper on Victims' Participation), p.5. <http://www.icc-cpi.int/NR/rdonlyres/9FF1EAA1-41C4-4A30-A202-174B18DA923C/281751/PolicyPaperonVictimsParticipationApril2010.pdf>.

feature of the legal regime under the Rome Statute and provides an important contribution to international justice.⁶

4. Consistent with its own policy on victim participation and Appeals Chamber case law on Article 68(3) of the Statute,⁷ the Prosecution in general supports the participation of victims in the appellate stage so long as it can be demonstrated that their personal interests are affected by the particular issues on appeal.⁸ In the present case, however, the applications are premature. At this stage, based on the limited and generalised nature of the parties' notices of appeal, it is difficult to discern the precise nature and details of both sides' appeals, and if, and how, the personal interests of the victims will be affected by the issues on appeal.⁹ As the LRV correctly recognises, the notices of appeal do not yet permit anticipation of the parties' actual arguments.¹⁰

5. Since the parties' notices of appeal do not yet permit the exact issues on this appeal to be determined, it would be more appropriate for the legal representatives to submit their applications for participation, demonstrating how the personal interests of the victims are affected, *after* the parties file their documents in support of their appeals.¹¹ This timing will also assist the parties to properly respond to the victims' requests, and for the Appeals Chamber to decide on them, including the modalities of any such participation.

⁶ See OTP Policy Paper on Victims' Participation, p.5.

⁷ See ICC-01/04-01/06-824, paras.38, 40, 45; ICC-02/05-138, para.49; ICC-01/04-503, para.88; ICC-01/05-01/08-566, paras.13-14.

⁸ OTP Policy Paper on Victims' Participation, p.16.

⁹ See for example, the Defence Notice of Appeal (ICC-01/04-01/07-3459, para.4) stating that "[t]he whole of the decision of conviction is appealed" and "[t]hat the decision of conviction on each charge be reversed" and the Prosecution Notice of Appeal (ICC-01/04-01/07-3462, para.3) stating that "the Prosecution appeals the acquittals of Germain Katanga for rape and sexual slavery as a crime against humanity and as a war crime under Articles 7(1)(g) and 8(2)(e)(vi), including legal, procedural and factual findings that led to those acquittals."

¹⁰ Victims' Application, para.18. See also ICC-02/04-01/05-324, para.13; ICC-01/05-01/08-566, para.15. See also OTP Policy Paper on Victims' Participation, p.15-16.

¹¹ See ICC-01/04-01/06-2951, paras.1, 3 (where the Appeals Chamber in *Lubanga* granted participation of victims in the appeal after the parties filed their documents in support of the appeal.) But see ICC-01/04-02/12-30, para.3 (where the Appeals Chamber in *Ngudjolo* granted victim participation in the appeal before the Prosecution filed its document in support of the appeal.)

6. Furthermore, even if the personal interests of the victims are found to be affected by the issues on this appeal, any participating victims should only present their views and concerns *after* the parties have expressed their full arguments in their appeal briefs. Only then will the victims be able to react properly and submit their views and concerns in relation to the appeal.¹²

7. The applications filed by the legal representatives of both groups of victims are premature at this stage and should be made (and decided upon) after the parties have filed their documents in support of their appeals. The Prosecution reserves its position on whether both groups of victims should be allowed to participate in the appellate phase of this case until that time.



Fatou Bensouda, Prosecutor

Dated this 17th day of June 2014

At The Hague, The Netherlands

¹² See for example, ICC-01/04-01/06-925, para.21, Sep.Op. of Judge Song. The LRV has also asked to file observations for the main group of victims, after the filing of the parties' documents in support of the appeals. See Victims' Application, para.18, p.16.