

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **27 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
URGENT**

**Prosecution's Response to the Observations of the Legal Representative of the
main group of Victims filed on 26 June 2014**

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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Legal Representatives of Victims

Mr. Fidel Nsita Luvengika
Mr. Jean-Louis Gilissen

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
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**Victims Participation and Reparations Other
Section**

Ms. Fiona McKay

Introduction

1. The Office of the Prosecutor (OTP or the Office) expresses deep surprise and disappointment at the submissions made by Mr. Fidel Nsita Luvengika, the legal representative of a group of victims in the *Katanga* case¹ concerning the OTP's discontinuance of its appeal against the Trial Judgement,² and in particular with respect to certain comments made in the Prosecutor's public statement dated 25 June 2014 on this matter.³

2. By this filing, the OTP wishes to clarify the record and to firmly object to the unfounded assertion that the Prosecutor acted improperly in her Statement when conveying her understanding about the views of the victims.⁴ The Prosecutor's and the Office's conduct in this matter, when placed in the right context and properly understood, only highlights the importance the Office attaches to the interests of victims.

Statement of facts

3. On 24 June 2014, the day before the parties were to file their Notices of Discontinuance,⁵ representatives from the OTP spoke to the legal representatives of both groups of victims—Mr. Luvengika for one group of victims and Mr. Gilissen for the child soldier group of victims—to inform them that both the Defence and the Prosecution had decided to file discontinuances of their appeals, and that the Notices of Discontinuance would be filed the next day—the day when the time-limit to file the notices of appeal against sentence elapsed. This information was conveyed to the legal representatives at the earliest opportunity after the Prosecution had received

¹ ICC-01/04-01/07-3499 ("LR Observations").

² See ICC-01/04-01/07-3498 ("Notice of Discontinuance of the Prosecution's Appeal").

³ Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on Germain Katanga's Notice of the Discontinuation of his Appeal against his Judgment of Conviction, 25 June 2014 ("Statement"). http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-25-06-2014.aspx.

⁴ See LR Observations, para.4.

⁵ Notice of Discontinuance of the Prosecution's Appeal; see also ICC-01/04-01/07-3497 ("Defence Notice of Discontinuance of Appeal") and ICC-01/04-01/07-3497-AnxA ("*Notification du retrait par Germain Katanga*").

from Mr Germain Katanga's counsel the signed Notice of Discontinuance and the Declaration of Germain Katanga included in the Annex.⁶

4. The representatives of the OTP first telephoned Mr. Luvengika to inform him of the proposed discontinuances to be filed the next day. This included reading to him the entirety of the Annex. At no point during the conversation did Mr. Luvengika raise *any* concerns or objections with the discontinuance. He acknowledged what he was being informed about. The OTP further informed him that should he have any questions, he should not hesitate to contact the Office. Mr. Luvengika did not subsequently contact the Office prior to the filing of the LR Observations. During the course of the telephone conversation with the OTP, Mr. Luvengika, in fact, expressed his appreciation for having been informed by the Office prior to the Notices being filed.

5. The representatives of the OTP then contacted Mr. Gilissen via telephone to inform him about the proposed discontinuances, including by reading to him the entirety of the Annex. He expressed his satisfaction that having a final outcome was a welcome development and good for the case.

6. On 25 June 2014, the Prosecution was notified of the filing of the Defence Notice of Discontinuance of Appeal and the accompanying Annex. At that stage, having received no further word from the legal representatives of the victims, the Prosecution filed the Notice of Discontinuance of the Prosecution's Appeal.

Concluding submissions

7. As the sequence of events described above demonstrates, the OTP at all times acted in a fully transparent and professional manner with the legal representatives of the victims. In particular, the Office informed them of the proposed discontinuances at the earliest opportunity that it could do so, and in advance of the actual filing of the Notices. The OTP also considers that the information contained in the Statement

⁶ See Defence Notice of Discontinuance of Appeal and *Notification du retrait par Germain Katanga*.

conveyed the Prosecutor's and the Office's good faith and accurate understanding of the position of the legal representatives of the victims, including that of Mr. Luvengika, based on the conversations the Office had had with them the day prior to the filing of the Notices.

8. The decision to discontinue the Prosecution appeal took into account all of the relevant factors, including sensitivity to the interests of victims in the present case. The Prosecutor took the decision in conformity with her statutory obligations and in the responsible exercise of her prosecutorial discretion.



Fatou Bensouda
Prosecutor

Dated this 27th day of June 2014

At The Hague, The Netherlands