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

Date: 26 May 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 THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. GERMAIN KATANGA***

**Public Document**

**Submission relating to the participation of victims in the appeal against the  
“Judgment pursuant to article 74 of the Statute” against Germain Katanga**

**Source:** Legal Representative of Victims (Child Soldiers)

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

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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**Office of Public Counsel for Victims**

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**REGISTRY**

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**Registrar**

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**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Procedural background

1. In its judgment of 7 March 2014 (“the Judgment”), having modified the legal characterisation of the mode of liability applied to Germain Katanga, Trial Chamber II (“the Chamber”), by majority, found him guilty under article 25(3)(d) of one crime against humanity and four war crimes.<sup>1</sup> In its decision of 24 May 2014, the Chamber, by majority, sentenced him to a total prison term of 12 years.<sup>2</sup>
2. On 9 April 2014, the Prosecutor filed her appeal of the decision.<sup>3</sup> That same day, the Defence filed its “Defence Notice of Appeal against the decision of conviction ‘*Jugement rendu en application de l’article 74 du Statut*’ rendered by Trial Chamber II, 7th March 2014”.<sup>4</sup>
3. On 23 May 2014, the Legal Representative of the main group of victims filed a submission entitled “*Soumission relative à la participation de victimes à la procédure d’appel contre le jugement concernant G. Katanga*”.<sup>5</sup>
4. In that submission, the Legal Representative of the main group of victims sought leave to participate in the proceedings on behalf of a number of victims who had not yet been allowed to participate in the trial, and on behalf of the successors of seven victims who had died during the proceedings before the Chamber, which had authorised the resumption of legal action on behalf of the deceased. He also sought leave for arrangements to be made for allowing all the victims previously given leave to participate at the trial stage to take part in the appeal.

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<sup>1</sup> “Judgment pursuant to article 74 of the Statute”, ICC-01/04-01/07-3436-tENG.

<sup>2</sup> “Decision on Sentence pursuant to article 76 of the Statute”, ICC-01/04-01/07-3484.

<sup>3</sup> “Prosecution’s Appeal against Trial Chamber II’s ‘*Jugement rendu en application de l’article 74 du Statut*’”, ICC-01/04-01/07-3462.

<sup>4</sup> ICC-01/04-01/07-3459.

<sup>5</sup> ICC-01/04-01/07-3483-Conf.

## Purpose of the present submission

5. The Legal Representative of the former child soldiers concurs with the submissions filed by the Legal Representative of the main group of victims with regard to both the participation of the victims already authorised to participate in the trial proceedings and the arrangements for their participation. He endorses the arguments set out by the Legal Representative of the main group of victims in paragraphs 7 *et seq.* of his submission of 22 May 2014.
6. To the extent necessary, the Legal Representative wishes to emphasise that, although the victims he represents are placed in a special position by their status of former child soldiers, their interests will be materially affected by the appeal as they were by the trial proceedings. Their participation in the appeal is justified in accordance with the reasoning of the Appeals Chamber in the case of *The Prosecutor v. Mathieu Ngudjolo Chui*.<sup>6</sup>
7. Although, having excluded the crime of using children as soldiers in hostilities from its recharacterisation of the mode of liability under which he was charged, the Chamber acquitted Germain Katanga of that crime under article 25(3)(a), the personal interests of the victims will be directly affected, since the proceedings before the Appeals Chamber will address in particular the recharacterisation of the charges and the conditions under which they were recharacterised, given that these matters lie at the heart of the Defence's appeal.

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<sup>6</sup> "Decision on the participation of victims in the appeal against Trial Chamber II's '*Jugement rendu en application de l'article 74 du Statut*'", 6 March 2013, ICC-01/04-02/12-30, para. 3: "[...] Mr Mathieu Ngudjolo Chui was acquitted of all the charges brought against him and [...] the appeal proceedings against the Acquittal Decision affect victims' personal interests in the same way as during the trial. Therefore, the Appeals Chamber finds that the victims who participated in the trial and whose victim status was not revoked, may participate in the present appeal, which concerns the merits of the case and is brought under article 81(1)(a) of the Statute." The Appeals Chamber is setting out once again the terms of its decision rendered in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the participation of victims in the appeals against Trial Chamber I's conviction and sentencing decisions", 13 December 2012, ICC-01/04-01/06-2951, para. 3.

8. After all, the importance of having the represented victims participate in the proceedings relating to the recharacterisation of the mode of liability was recognised by both Trial Chamber II and the Appeals Chamber.
9. Although the Chamber indicated in its decision of 21 November 2012 on the implementation of regulation 55 of the Regulations of the Court and severing the charges against G. Katanga and M. Ngudjolo<sup>7</sup> (the Decision of 21 November 2012) that the crime of using child soldiers was not affected by a possible recharacterisation of the mode of liability under which Germain Katanga was charged, in its decision the Chamber invited all parties and participants to file submissions “on the proposed change, in regard to points both of law (article 25(3)(d) of the Statute) and of fact (consistency between the facts and the law).”<sup>8</sup> The Chamber accordingly included the former child soldiers in the proceedings relating to these issues. On 8 April 2013, the Legal Representative filed his submissions with the Chamber in accordance with the aforementioned decision.<sup>9</sup>
10. On 15 May 2013, the Chamber rendered a decision to transmit additional legal and factual material as well as information of legal interest on the interpretation of article 25(3)(d)(ii) of the Statute.<sup>10</sup> In the same decision, it invited the Legal Representatives, among others, to file any observations they might have. The Legal Representative submitted his observations in writing on 24 May 2013.<sup>11</sup>

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<sup>7</sup> “Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons”, ICC-01/04-01/07-3319-tENG.

<sup>8</sup> *Ibid.*, para. 55.

<sup>9</sup> “*Observations du Représentant légal des victimes enfants soldats déposées en application de la décision ICC-01/04-01/07-3319 relative à la mise en œuvre de la norme 55 du Règlement de la Cour et à la disjonction des charges*”, ICC-01/04-01/07-3366.

<sup>10</sup> “Decision transmitting additional legal and factual material (regulation 55(2) and 55(3) of the Regulations of the Court)”, 15 May 2013, ICC-01/04-01/07-3371-tENG.

<sup>11</sup> “*Observations du Représentant légal des victimes enfants soldats déposées en application de la décision ICC-01/04-01/07-3371*”, ICC-01/04-01/07-3375.

11. In the same way, the personal interests of the victims who are former child soldiers in participating in the proceedings relating to the implementation of regulation 55 and in the recharacterisation of the mode of liability were recognised by the Appeals Chamber in the context of the Defence's subsequent appeal against the Decision of 21 November 2012. Indeed, in granting the joint request by the Legal Representatives, the Appeals Chamber found, in the interlocutory appeal, that the four criteria that it intended to apply with respect to the participation of the victims in the appeals brought under article 82(1)(d) of the Statute had been fulfilled and, in particular, that their personal interests were affected within the meaning of article 68(3) of the Statute.<sup>12</sup>
12. Since the personal interests of the victims had been established by way of an interlocutory appeal, it is the Legal Representative's view that these interests have been demonstrated *a fortiori* for appellate proceedings in the same trial, under article 81 of the Statute, given that, for the most part at least, these proceedings will deal with the same issues.
13. Furthermore, the Legal Representative wishes to stress what a fundamental issue it has been thus far for the victims concerned to take part in the proceedings. During a recent meeting with them, he was again able to see that the participation of the victims in the proceedings has been a key element in their efforts to rebuild their lives. Against that backdrop, their effective participation in the legal proceedings undoubtedly presents a personal interest for them.
14. Lastly, the Legal Representative concurs with the observations of the Legal Representative of the main group of victims in that the participation of the victims he represents would not be prejudicial to the rights of the Defence. It is, of course, his intention to set out the views and concerns of his clients only

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<sup>12</sup> "Decision on the application of victims to participate in the appeal against Trial Chamber II's decision on the implementation of regulation 55 of the Regulations of the Court", 17 January 2013, ICC-01/04-01/07-3346, para. 6.

within the strict framework of the position and role that are his, and within the limits of the interests of the victims he represents, continuing to fulfil his mandate as he did during the trial proceedings.

**FOR THESE REASONS**, the Legal Representative **RESPECTFULLY PRAYS** that the Appeals Chamber grant these requests.

[signed]

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Mr Jean-Louis Gilissen  
Legal Representative of Victims (Child Soldiers)

Dated this 26 May 2014

At Seraing, Belgium