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**International
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Court**

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Date: 25 August 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *vs.* THOMAS LUBANGA DYILO**

Public

**Prosecution's Response to "Observations concernant les modalités de la
participation des Victimes"**

The Office of the Prosecutor

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Background

1. On 9 May 2006, the Applications for Participation in the Proceedings Nos. a/0001/06, a/0002/06 and a/0003/06 ("Applications for Participation") were filed confidentially and *ex parte* and subsequently registered, on 11 May 2006, in the record of the case of *The Prosecutor v. Thomas Lubanga Dyilo*. Applicants a/0001/06, a/0002/06 and a/0003/06 ("Applicants") sought to be authorized to participate as Victims in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.¹
2. On 18 May 2006, the Pre-Trial Chamber issued its "Decision Establishing a Deadline for the Prosecution and the Defence to submit Observations on the Applications of Applicants a/0001/06 to a/0003/06", whereby it ordered the Registrar to provide the Prosecution with un-redacted copies of the Applications for Participation, and established a deadline for both parties to submit observations. The un-redacted copies of the Applications for participation were notified to the Prosecution on 22 May 2006.
3. On 6 June 2006, the Prosecution filed the "Prosecution's Observations on the Applications for Participation of Applicants a/0001/06 to a/0003/06", which dealt with the Applications for Participation in the case of *The Prosecutor vs Thomas Lubanga Dyilo*.² In these observations, the Prosecution submitted that, in respect of most aspects of their respective Applications, the Applicants met

¹ Demande de participation à la procédure : a/0001/06, ICC-01/04-01/06-98-Conf-Exp, at page 6; Demande de participation à la procédure : a/0002/06, ICC-01/04-01/06-99-Conf-Exp, at page 6; Demande de participation à la procédure : a/0001/06, ICC-01/04-01/06-100-Conf-Exp, at page 6. The Applications also sought to participate as Victims in the proceedings of the situation in the Democratic Republic of the Congo (DRC).

² In a separate filing on the same day, the Prosecution made its observations on the Applications for Participation insofar as they concerned the Applicants' participation in the situation in the DRC. See Prosecution's Observations on the Applications of Applicants a/0001/06 to a/0003/06, ICC-01/04-151.

the criteria to be qualified as “Victims” in terms of Rule 85 of the Rules of Procedure and Evidence.³ The Prosecution also observed that, in its view, the Applicants had satisfied the requirement that they establish a relevant and close link between the harm they suffered and the charges against Thomas Lubanga Dyilo. Additionally, in respect of two of the Applicants, the Prosecution submitted that, in its view, the Applicants had provided sufficient information to show that their personal interests were directly linked to the proceedings against Thomas Lubanga Dyilo.

4. On 24 July 2006, the Pre-Trial Chamber issued its “Decision on the Applications for Participation in the Proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the Prosecutor v. Thomas Lubanga Dyilo and of the investigation in the Democratic Republic of the Congo” (“Decision”), granting the Applicants the status of Victims in the stage of the case of *The Prosecutor v. Thomas Lubanga Dyilo* “in view of the harm linked to the crimes as described in the arrest warrant issued against Thomas Lubanga Dyilo”.⁴ In its Decision, the Pre-Trial Chamber invited the Legal Representatives of Applicants a/0001/06, a/0002/06 and a/0003/06 (“Victims”) to submit to the Chamber observations regarding arrangements for their participation in the Confirmation Hearing in the case involving Thomas Lubanga Dyilo.

5. On 8 August 2006, the Legal Representatives of the Victims filed their “Observations concernant les modalités de la participation des Victims” (“Observations”) and informed the Pre-Trial Chamber about their views on

³ Prosecution’s Observations on the Applications for Participation of Applicants a/0001/06 to a/0003/06, at paras. 14 and 15, 17 and 18, and 20 and 21.

⁴ Decision on the Applications for Participation in the Proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the Prosecutor v. Thomas Lubanga Dyilo and of the investigation in the Democratic Republic of the Congo, ICC-01/04-01/06-205-Conf-Exp-tEN, at page 17.

the modalities of their participation in the Confirmation Hearing. In the Observations, the Legal Representatives of the Victims requested the Pre-Trial Chamber to be given access to the case file and the file of the situation in the DRC. They also informed the Pre-Trial Chamber that they wish to exercise their right to take part in the Confirmation Hearing, making oral submissions, including opening and closing statements, and written submissions in response to any filings by the Prosecution and Defence. The Legal Representatives of the Victims also requested authorization to put questions to Thomas Lubanga Dyilo during the Confirmation Hearing and to participate in the Status Conferences of 17 August 2006 and 4 and 19 September 2006.

6. On 10 August 2006, the Single Judge of the Pre-Trial Chamber ("Single Judge") issued the "Décision autorisant le Procureur et la Défense à déposer une réponse aux observations des représentants légaux des Victimes concernant les modalités de participation des Victimes a/0001/06, a/0002/06 et a/0003/06 à l'audience de confirmation des charges", whereby the Single Judge invited the Prosecution and the Defence to respond to the Observations by 25 August 2006 the latest.
7. On 11 August, the Prosecution filed the "Prosecutions' Response to 'Observations concernant les modalités de participation des victimes'", which solely addressed the issue of the participation of the Victims' Representatives in the status conferences scheduled for 17 August 2006 and 4 and 19

September 2006. The Prosecution now files its response to the other aspects of the modalities of participation requested by the Victims' Representatives.⁵

Discussion

The scope of Article 61 proceedings and the nature of victim participation

8. The Prosecution recognizes the entitlement of victim participants to intervene in the confirmation hearing, subject to proper limits and the principle that such intervention be confined to the presentation of "views and concerns" in a manner which is not prejudicial to or inconsistent with the rights of the accused and fair and impartial proceedings, within the terms of Article 68 (3). Hence, any determination on the modalities and scope of victim participation at the confirmation hearing must carefully balance the entitlement of victims to participate against the cardinal statutory principles of fair and impartial process, including fairness to all persons whose interests are affected by the proceedings, which necessarily encompasses the requirements of efficiency and expeditiousness of the proceedings.⁶

⁵ The Prosecution is filing this response before the Single Judge as the decision inviting the Prosecution to file this response and establishing the time limit was issued by the Single Judge, although the Decision granting the Applicants the status of victim and inviting their Observations on modalities of participation in the confirmation hearing was issued by the Pre-Trial Chamber. The Prosecution is also filing this document as Public, although the Victims' Representatives filed their Observations as Confidential, as the Single Judge's decision inviting this response was Public and there is no information in this response requiring a confidential filing.

⁶ The potential impact of the nature of the participation of victims on the fair, balanced and expeditious conduct of the proceedings is evident in the very wording of Article 68 (3). It has also been recognised by the Pre-Trial Chamber (see Decision on the Application for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6, 17 January 2006, ICC-01/04-100-Conf-Exp-tEN at para. 58, and also implicitly in Decision on Defence Motion for Leave to Appeal, 18 August 2006, ICC-01/04-01/06-338, pp. 8-9).

9. The Prosecution submits that the regime of victim participation in the Statute and the Rules is one of gradually escalating participation, where the degree of victim participation increases as the proceedings progress, culminating at the stage of the reparations hearing.

- This is consistent with the drafting history of the Statute, which as the Prosecution has previously submitted shows that victim participation was introduced into the Statute in the context of establishing the legal basis for compensation.⁷
- It is also consistent with the framework of participation set out in the Rules, which restrict the ability of victims' representatives to question witnesses during most proceedings but explicitly removes these restrictions for hearings limited to reparations under Article 75.⁸

The Prosecution submits that stages of the proceedings which are further removed from the context of reparations, and not directly related to the final determination of the charges brought by the Prosecution, should in general involve less direct intervention by victims' representatives in the interests of the expeditiousness of the proceedings and the interests of all participants.

10. The nature and modalities of victim participation thus depend on the stage of the proceedings:⁹ they do not define those proceedings; accordingly the existence of victim participation may not alter the essence of Article 61 proceedings. Article 61(5) makes clear that the sole function of the confirmation hearing is to oblige *the Prosecutor* to bring forward "sufficient evidence" to establish "substantial grounds to believe that the person committed the crime charged." Therefore, it is submitted that the purpose of

⁷ Prosecution's Reply on the Applications for Participation 01/04-1/dp to 01/04-6/dp, ICC-01/04-84-Conf, 15 August 2005, para. 19.

⁸ Contrast Rule 91(3) with Rule 91(4).

⁹ Art 68(3). See also Rule 91(3)(b), which explicitly makes "the stage of the proceedings" a factor which the Chamber must consider in determining the manner of participation.

confirmation proceedings is twofold: on the one hand, the proceedings provide for judicial scrutiny of the charges and materials brought by the Prosecution, with a view to determining whether the case brought before the Pre-Trial Chamber is sufficiently substantiated to be sent to trial;¹⁰ on the other, it provides an opportunity for the defence to oppose those charges and challenge the case brought by the Prosecution.¹¹

11. The primary goals of the confirmation hearing process are thus the full and efficient presentation of the charges by the Prosecution, and the adequate opportunity for the defence to react to such presentation, all with the purpose of assisting the Pre-Trial Chamber to reach an adequate determination under Article 61 (7). Victim participation must therefore be regulated in such a manner that preserves these objectives and does not obstruct the expeditious analysis and confirmation (or non-confirmation) of the charges.

12. The Prosecution further submits that any victim participation at the confirmation hearing must be *consistent* with and linked to the objectives and scope of that particular procedural step: assessing the adequacy of the Prosecution's evidence. Views and concerns conveyed by the victims' representatives must bear upon the charges and the sufficiency of the supporting materials for the purposes of establishing "substantial grounds", within the terms of Article 61 (5), and/or with the submissions made by the Defence in response. Crucially, the participation of victims may not be permitted in a manner which is prejudicial to the rights of the accused, including by altering the nature of the confirmation hearing by turning the

¹⁰ See Kuniji Shibahara, "Confirmation of the Charges Before Trial", in Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court* (Nomos, 1999), p. 784; Michele Marchesiello, "Proceedings Before the Pre-Trial Chambers", in Cassese et. al (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford University Press, 2002), p. 1245.

¹¹ Article 61 (6).

victims into secondary or substitute prosecutors or accusers. Victims cannot remedy a deficiency in the Prosecution's proof, or broaden the scope of the charges brought. Accordingly, any intervention by victims' representatives should take place within the parameters set by the record of the proceedings, the charges brought by the Prosecution and the nature of the procedural step enshrined in Article 61.

The modalities of participation at the hearing

13. The Victims' Representatives have requested that they participate in the confirmation hearing, specifically by being entitled to make oral interventions, in particular opening and closing statements, and by being permitted to question the accused.¹² The Victims' Representatives have also stated that they propose submitting documents in response to those filed by the Prosecution and the Defence.¹³

14. As outlined above, the confirmation hearing serves a limited purpose when compared with the trial: to determine whether the Prosecution has sufficient evidence to justify sending the case for trial. The confirmation hearing is not a determination of guilt or innocence, but a safeguard to ensure the adequacy of the Prosecution's evidence *vis-à-vis* the charges. The potential outcomes of the confirmation hearing also have far less impact on victims. While an acquittal at trial terminates the case (pending any appeal), the Pre-Trial Chamber, if not

¹² Observations, paras. 3 and 4. If the victims are seeking more than a presentation of their views and concerns through their representatives, then the Prosecution reserves its position on any more extensive participation. In particular, the Prosecution does not understand the Applicants to be seeking to introduce factual material with the aim of supplementing the evidentiary presentation of the Prosecution. In this event, in the Prosecution's view, the Applicants would be exceeding their prerogative to express "views and concerns" and there would be a serious question of the victims acting as substitute accusers.

¹³ Observations, para. 3.

satisfied by the evidence at the confirmation hearing, has the option of requesting that the Prosecutor submit further evidence or conduct further investigations.¹⁴ Also, even if the charges are not confirmed, the Prosecutor may again request the confirmation of the charges based on additional evidence.¹⁵ The need for victims to intervene directly to protect their interests is thus far lesser at this stage and more restricted modalities of participation are therefore justified.

15. The primary right of the victims is to be able to present “their views and concerns”.¹⁶ The Prosecution thus further submits that there is no support in the Statute or the Rules for the position that victims and/or their representatives may perform a role in confirmation proceedings similar to that of a party. Rule 122 (3), (4), (7) and (8) dealing with proceedings at the confirmation hearing in the presence of the person charged refers to arguments and observations, including final observations, by the Prosecutor and the person. The Prosecutor submits that the term “person”, consistent with Article 61 and Rule 121, *inter alia*, unequivocally refers to the person against whom charges are being sought. The exclusive nature of these provisions is underscored by the fact that Rule 122 (8) established the order in which the parties, who are entitled to submit final observations, must do so. The Prosecution therefore submits that the Victims’ Representatives are not entitled to make opening and closing submissions, as requested in the Observations.

16. The Prosecution submits that the victims should be permitted to participate in the confirmation hearing, consistent with the purpose and scope of the

¹⁴ Art 61(7)(c)(i).

¹⁵ Art 61(8).

¹⁶ Art 68(3).

confirmation hearing and the language of Article 68 (3), through the Victims' Representatives attending all open-session hearings,¹⁷ and those representatives having the right to make a submission of views and concerns relating to the confirmation hearing during the course of that hearing.¹⁸

17. The Prosecution respectfully suggests that an appropriate stage for such submissions being made is after the procedural steps enshrined in Rule 122 (1)-(7) have been exhausted, i.e. after the discussion on any preliminary objections or observations by the parties has been completed and, during the hearing on the merits, the Prosecution and counsel for the defence have presented their arguments in accordance with Article 61 (5) and (6).¹⁹ This procedure would allow Victims' Representatives to react to the initial submissions by the parties and the presentation of evidence at the hearing. Such a submission should, however, take place prior to the final observations of the Prosecution and the Defence, pursuant to Rule 122 (8). This would ensure that the order of presentation of final observations in Rule 122 (8) is respected, and would in turn allow the Prosecution and the Defence to be in a position to address the views and concerns raised by the Victims' Representatives during their final observations.

18. In relation to the request of the Victims' Representatives for permission to question Mr. Lubanga, it is respectfully submitted that questioning of witnesses during the confirmation hearing by participants other than the one calling the witness should be a very rare step, in light of the confined nature

¹⁷ The Prosecution understands the Observations only to be requesting that the Victims' Representatives attend and participate in the confirmation hearing, not the victims personally – Observations, para. 3. The Prosecution considers that the efficient conduct of the confirmation hearing requires that any participation, and submission of views and concerns, take place through the Victims' Representatives, as contemplated in Article 68 (3) and Rules 90 and 91.

¹⁸ The Prosecution notes that, under Rule 91(2), the Chamber may order that the submissions be in writing.

¹⁹ Rule 122 (7).

of the hearing. As the Statute makes clear, and the Chamber has reaffirmed,²⁰ the confirmation hearing is not a trial; hence the extensive exploration of the credibility of witnesses, specifically through the means of live questioning, is not a necessary component, as it is at trial. Furthermore, Rule 91 (3) only makes provision for a legal representative of a victim to question a *witness*. The accused may chose not to give evidence at the confirmation hearing, in which case the Victims' Representatives would not be able to question Mr. Lubanga under Rule 91(3). Even if the accused chooses to testify as a witness at the confirmation hearing, the Prosecution submits that the necessity of questioning by the victims is doubtful because the subject of the confirmation hearing is the sufficiency of the Prosecution's evidence, not the guilt or innocence of the accused.²¹

19. Alternatively, Mr Lubanga could choose to make an unsworn statement under Article 67(1)(h). In this instance, the theoretical ability of a victims' representative to put questions would depend on the specific circumstances of the statement and whether it can be equated to witness testimony.²²

20. In respect of the Victims' Representatives' statement regarding their intention to file documents in light of those deposited by the Prosecution and the

²⁰ Decision on the Final System of Disclosure and the Establishment of a Timetable, ICC-10/04-01/06-102, 15 May 2006 ("Decision on Final System of Disclosure") at paras. 55 and 56 of Annex 1

²¹ The Prosecution further notes that if and when Mr. Lubanga Dyilo decides to testify as a witness during the confirmation hearing, any initiative by the Victims representatives to put questions to him would be governed by Rule 91 (3) and would require a specific application under that provision.

²² For instance, a general introductory statement made by the person named in the arrest warrant at the beginning of the hearing may be more properly dealt with by means of a response, whereas a prolonged statement of facts by the same person may require adequate questioning by other participants.

Defence, the Prosecution submits that this matter is governed by the Regulations of the Court.²³

The question of anonymity

21. The Prosecution is also expected to address the issue of the scope of the protective measures available for Victim participants, and in particular the question of whether non-disclosure of identity “during the proceedings leading to the confirmation hearing and during the hearing” is an adequate and appropriate measure.²⁴ The Prosecution submits that whereas non-disclosure of identity and other identifying features might be a suitable measure while the admissibility of the applications for participation is being discussed, provided the Defence has sufficient information at its disposal enabling for a proper and meaningful response,²⁵ once victims have been admitted as participants at the confirmation stage their identity must be known by the Defence. Basic considerations of fairness *vis-à-vis* accused persons require that they are informed of the identities of individuals who have been granted the procedural status of participants and who may bring allegations prejudicial to their interests, in order to allow for a proper response by the defence.

22. This position does not detract from the possibility of adopting all necessary protective measures, including maintaining anonymity *vis-à-vis* the public,

²³ See in particular Regulation 24 (2). The Prosecution notes that it would be inappropriate for the Victim’s representatives to have a right to retrospectively “respond” to prior documents, as this would amount to reopening litigation of past issues.

²⁴ See Decision on the agenda of the hearings of 23 and 24 August 2006, ICC-01/04-01/06-346, 22 August 2006, at p. 5.

²⁵ This is an issue that must be discussed on a case-by-case basis. See Decision on Defence Motion for Leave to Appeal, ICC-01/04-01/06-338, 18 August 2006, pp. 7-9.

use of in camera hearings and other adequate forms of protection, as established in the Statute and the Rules.

The access to the case-file by victim participants

23. The Victims' Representatives have further requested access to the record of the case and of the situation, as they do not yet have electronic record of the case under Regulation 16 of the Regulations of the Registry.²⁶ This Regulation governs access to the record of proceedings, and to the evidence in those proceedings, maintained by the Registry.

24. Victims' right of access to information at this stage of the proceedings is governed by Rule 121 (10). The Statute and the Rules do not provide that the victims should have unfettered access to the entire records of the case or situation. Similarly, it is clear from the provisions of the Statute and the Rules that the Prosecution has no disclosure obligations to victims.²⁷ The Rules specifically provide for disclosure between the Prosecution and the person in respect of whom a warrant of arrest or a summons to appear has been issued.²⁸ Disclosure thus falls outside the scope of victim participation and remains primarily a matter between the parties.²⁹ The Victims therefore do not have a general entitlement to the disclosure of the supporting material or any confidential or redacted documentation in the case or situation. This is a natural consequence of victims not being a party to the proceedings, but a

²⁶ Observations, para. 2.

²⁷ See Article 61 (3) (b) of the Statute and Rules 76, 77 and 121.

²⁸ Rule 121 (2).

²⁹ See, for instance, the *Décision relative à la demande de participation des victimes a/0001/06 à a/0003/06 à la conférence de mise en état* du 24 août 2006, ICC-01/04-01/06-335, 17 August 2006.

participant with undoubtedly important, but nonetheless more limited, procedural rights.³⁰

25. Under Rule 121 (10), the Victims may consult a record of all proceedings before the Pre-Trial Chamber subject to restrictions on confidentiality and the protection of national security information.³¹ This is an autonomous entitlement, separate from any transmission of evidence taking place between the parties. The Prosecution interprets the request by the Victims' Representatives as being primarily confined to the terms of this provision.³²

26. As to the scope of the appropriate access to the case-file, Rule 121 (10) explicitly makes victims' access to the record "[s]ubject to any restrictions concerning confidentiality". The Prosecution respectfully submits that any decision on this particular issue must be mindful of the need to protect the confidentiality of information and the safety and well-being of victims and witnesses. Such a decision should also be mindful of the dangers of further dissemination of sensitive information capable of endangering persons or the integrity of ongoing investigations. The Prosecution notes that the collective nature of victim participation in the Court's process, potentially involving large numbers of individuals being represented, presents particular challenges *vis-à-vis* the Court's ability to protect information and persons and

³⁰ Victims may not, for instance, access exculpatory materials disclosed by the Prosecution to the defence under Article 67 (2), or inspection materials accessed by the parties via Rules 77 and 78, since these are processes of transmission of material that take place solely *inter partes*, and are only reflected in the record by means of the reports filed with the Chamber. See Decision on the Final System of Disclosure, pp. 5-7.

³¹ Rule 121 (10).

³² The Victims' representative cites Rule 121 (10) as part of their application - see Observations, p. 2. If the Victims' representative is actually seeking access to the entirety of the Prosecution's case-file and situation-file, then the Prosecution submits that this request should be dismissed, as was the analogous requests of the Defence - see Decision on the Final System of Disclosure, p. 5 and Annex 1 para. 15.

may, if not carefully managed, lead to inappropriate dissemination of sensitive information beyond the circle of participants to the judicial case.³³

27. These considerations, coupled with the specific and confined nature of the confirmation hearing, strongly militate in favour of a limited access to court material: victim participants should properly access the public record of proceedings of the case *The Prosecutor v. Thomas Lubanga Dyilo*, including the document containing the charges, once filed. The only evidentiary material that currently forms part of the court record is the material on which the Prosecution intends to rely at the confirmation hearing.³⁴ In relation to this material, the Prosecution recalls that the Single Judge has already decided that such filings of evidence “should be classified as confidential for the time being.”³⁵ For the reasons set out above, the Prosecution submits that the Victims should not currently have access to these confidential filings. The Prosecution notes, however, that the Single Judge has already foreshadowed possible reclassification of certain filings (including filings of evidence) being discussed at the last status conference.³⁶ The Prosecution accepts that the Victims may have access, in due course, to any evidentiary material filed with the Chamber pursuant to Rule 121 which is not of a confidential character. The Prosecution further notes that substantial portions of the evidence it intends to rely upon at the hearing are publicly available materials, and that the Prosecution is willing to identify those categories of material, with a view to enabling timely access to that material by the Victims’ Representatives.

³³ The recent unrest in the capital of Kinshasa is a reminder that the security situation remains extremely volatile and unpredictable.

³⁴ In light of the fact that there are no disclosure obligations to victims, and that the Single Judge has ruled that any other material disclosed between the parties (such as potentially exculpatory material or items material to the preparation of the defence) should not be registered in the record (see Decision on Final System of Disclosure, pp. 5-8), the Prosecution submits that there is no question of the Victims’ Representatives having access to this material, nor does the Prosecution interpret the Victims’ Representatives to be seeking access to this material which does not form part of the record.

³⁵ Decision on Final System of Disclosure, para. 48.

³⁶ Decision on Final System of Disclosure, para. 48

28. In respect of the Victims' Representatives request for access to the record of the DRC situation,³⁷ which is separate to that of the instant proceedings, the Prosecution submits that this request is unnecessary. The Victims' Representatives claim that the situation-file should be made accessible to them since the situation is "joined" to the case. However the Pre-Trial Chamber has already ensured that all documents in the DRC situation record directly related to the *Lubanga* case have been transferred into the case record.³⁸ Thus, all materials from the DRC investigation of relevance for the *Lubanga* case – the only ones to which the Victims' Representatives can claim any arguable entitlement of access – already form part of the case record, and are consequently accessible to the representatives via Rule 121 (10).³⁹



Luis Moreno Ocampo
Prosecutor

Dated this 25th day of August 2006
At The Hague, The Netherlands

³⁷ See Observations, para. 2.

³⁸ See Decision Concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents in to the Record of the Case Against Mr Thomas Lubanga Dyilo, 24 February 2006, No. ICC-01/04-01/06-8-US-Corr (made public on 17 March 2006, pursuant to the Single Judge's Decision to Unseal the Warrant of Arrest Against Mr Thomas Lubanga Dyilo and Related Documents, No. ICC-01/04-01/06-37.)

³⁹ The Prosecution notes that the Victims' Representatives already have access to all public documents in the situation file, through the ICC website. Any initiative to get access to any non-public documents in the situation file will necessarily require a case-by-case showing of a legitimate forensic purpose justifying access to the material in question. The Prosecution should be granted an opportunity to be heard before any decision is reached in relation to such access, because of possible impacts on witness and victim protection, ongoing investigations, and provider confidentiality under Art. 54(3)(e)