



Original : English

No.: ICC-01/04

Date: 10 March 2008

THE APPEALS CHAMBER

Before: Judge Navi Pillay, Presiding Judge
Judge Georgios M. Pikis
Judge Philippe Kirsch
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Application of the Legal Representative of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 for Leave to Participate in the Appeal filed by the OPCD and the Prosecution against the 24 December 2007 Decision

The Office of the Prosecutor
Louis Moreno Ocampo
Fatou Bensouda

Counsel for the Victims
Joseph Keta

**Office of Public Counsel for the
Defence** Jean Xavier Keita

Office of Public Counsel for Victims
Paolina Massidda

1. Noting the “*Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06*” dated 24 December 2007¹, as corrected by the Corrigendum of 31 January 2008, whereby the Single Judge of Pre-Trial Chamber I granted victim status in the Situation in the Democratic Republic of Congo to, *inter alia*, a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 (hereinafter “the Victims”);

2. Noting OPCD’s « *Request for Leave to appeal the “Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06*” » dated 7 January 2008, (hereinafter “OPCD’s request for leave to appeal”);²

3. Noting the « *Prosecution’s Application for Leave to Appeal the Single Judge’s 24 December 2007 “Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo”* », filed by the Prosecution on 7 January 2008 (hereinafter “Prosecution’s request for leave to appeal”);³

¹ ICC-01/04-423

² ICC-01/04-429

³ ICC-01/04-428

4. Noting the decision of Pre-Trial Chamber I ("the Chamber") of the International Criminal Court ("the Court") dated 6 February 2008 "*Decision on the Prosecution, OPCD and OPCV Requests for Leave to Appeal the Decision on the Applications for Participation of Victims in the Proceedings in the Situation*"⁴ ("the Decision of 6 February 2008") which granted the OPCD's request of 7 January 2008 on the following points:

- (i) whether it is possible to grant victims a general right to participate, or whether victim participation is conditioned upon a determination concerning the impact of specific proceedings on the personal interests of the applicants, and an assessment as to the propriety of their participation;
- (ii) whether, in order to establish moral harm on the basis of harm suffered by a second person, it is necessary to adduce some level of proof concerning the identity of the second person and the applicant's relationship with this person;

and the Prosecution's request of 7 January 2008 on the following points:

- (i) whether a "procedural status of victim", within the terms of the Decision, can be granted independent of any finding by the Chamber that the requirements of article 68(3) and rule 89 are satisfied, and without addressing and providing for a definition of the personal interests, or following the steps required by the Appeals Chamber's jurisprudence;

⁴ ICC-01/04-444

5. Noting the “OPCD Appeal Brief on the « *Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République Démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06*”, filed by the Office of Public Counsel for the Defense on 18 February 2008;⁵

6. Noting the “*Prosecution’s Document in Support of Appeal against the 24 December 2007 Decision on the Victims’ Applications for Participation in the Proceedings*” filed by the Prosecution on 18 February 2008;⁶

7. Noting the judgment issued by the Appeals Chamber on 13 February 2007 on the appeal of Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber 1 entitled “*Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo*”⁷, which sets out the conditions for participation of victims in interlocutory appeals under article 82(1)(b) of the *Rome Statute*;

8. Noting the “*Demande des représentants légaux de VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6 et a/0071/06 aux fins d’autorisation de participer à l’appel interjeté par l’OPCD et le Procureur le janvier 2008 et autorisé par la Chambre préliminaire I le 6 février 2008*”⁸ dated 28 February 2008;

9. Noting the “*Requête du BCPV en tant que représentant légal des victimes autorisées à participer à la procédure dans le cadre de la situation en République démocratique du Congo*”

⁵ ICC-01/04-455

⁶ ICC-01/04-454

⁷ ICC-01/04-06-824

⁸ ICC-01/04-474

aux fins de participation aux appels interlocutoires déposés par l'Accusation et le BCPD à l'encontre de la décision du 24 décembre 2007"⁹ dated 28 February 2008;

10. Noting the "*Requête du BCPV en tant que représentant légal des demandeurs dans le cadre de la situation en République démocratique du Congo aux fins de participation aux appels interlocutoires déposés par l'Accusation et le BCPD à l'encontre de la décision du 24 décembre 2007*"¹⁰ dated 28 February 2008;

11. Noting the "*Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor*"¹¹ rendered by the Appeals Chamber on 29 February 2008 in which the Chamber ordered that applications for participation in the OPCD's and Prosecution's appeals may be filed by 10 March 2008 including "*a statement in relation to whether and how the personal interests of the victims concerned are affected by this appeal, indicating why it is appropriate for the Appeals Chamber to permit their views and concerns to be presented at this stage of the proceedings and why the presentation of such views and concerns would not be prejudicial to or inconsistent with the rights of the Defence;*"

12. Noting articles 68 and 82(1)(e) of the Rome Statute ("the Statute"), rules 89 and 155 of the Rules of Procedure and Evidence, and regulations 24, 65 and 86 of the Regulations of the Court;

13. The Legal Representative of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 hereby requests that the Appeals Chamber grant them leave to participate in the applications for leave to appeal

⁹ ICC-01/04-475

¹⁰ ICC-01/04-477

¹¹ ICC-01/04-480 and ICC-01/04-481

lodged by the OPCD and the Prosecution on 7 January 2008 and authorised by Pre-Trial Chamber I on 6 February 2008.

14. The Legal Representative is of the view that Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 satisfy the requirements resulting from the jurisprudence of the Court to obtain leave to participate in the interlocutory appeal.

15. For the reasons set out by the Office of Public Counsel for Victims in its application for leave to participate in the interlocutory appeal: *“les appels interjetés par l’Accusation d’une part, et l’OPCD d’autre part, semblent donner lieu à des procédures distinctes. Cependant force est de constater, à l’instar de l’Accusation, que les questions soulevées dans lesdits appels sont intrinsèquement liées et pourraient avoir des conséquences juridiques similaires”*, the Legal Representative of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 respectfully notes that this application for leave to participate in the interlocutory appeal will cover issues relating to both appeals.

A. The personal interests of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 are affected by the particular interlocutory appeal and their participation in the interlocutory appeal is appropriate

16. It is respectfully submitted that the personal interests of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06,

a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 who have been authorised to participate in the situation pursuant to the decision of the single judge dated 24 December 2007, as corrected by the Corrigendum of 31 January 2008 are directly affected by the appealable issue as defined in the decision of 23 January 2008 pursuant to Article 68(3) of the *Rome Statute*.

17. As Pre-Trial Chamber I recalled in its Decision on Request for leave to appeal the *“Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor”* dated 23 January 2008,¹² *“[t]he personal interests of victims are affected at the investigation stage of a situation and the pre-trial stage of a case; that these are appropriate stages of the proceedings for victims’ participation; and that accordingly, victims have a procedural status in proceedings concerning the investigation of a situation and the pre-trial stage of a case.”*

18. The appeal proceedings will have a direct impact on the said Victims, given that the determination of the appealable issues, mentioned above, will impact upon their procedural status and rights in the situation and in the pre-trial stage of a case and consequently will influence their ability to present their views and concerns in accordance with Article 68(3) of the Rome Statute. Therefore, considering that this interlocutory appeal may affect and question the rights attached to the victims’ status, victims should be undoubtedly authorised to submit their observations and assert their rights at this particular stage of the proceedings.

19. In addition, the appeal deals with the 24 December 2007 decision which granted the said victims (a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06,

¹² ICC-01/04-438.

a/0150/06, a/0188/06, a/0199/06, a/0228/06) the status of participating victims in the proceedings in the situation in DRC.

20. Thus, for the reasons set out above and in view of the nature of the issues raised by the appeals proceedings which pertains to victims' inherent essential rights, it is respectfully submitted that the Appeals Chamber can only observe that the personal interests of the Victims are directly affected and that their participation is entirely appropriate at this stage of the proceedings.

B. The participation of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 in the interlocutory appeal is not prejudicial to the rights of the accused and a fair and impartial trial

21. It is submitted that the participation of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06, in the applications for leave to appeal filed by the OPCD and the Prosecution on 7 January 2008 and authorised by Pre-Trial Chamber 1 on 6 February 2008 is not prejudicial to the rights of the accused and a fair and impartial trial.

22. In considering whether the participation of victims would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial, it is submitted that the Chamber should be mindful that the views and concerns of the Victims relating to this interlocutory appeal do not relate to questions pertaining to the guilt or innocence of any suspect or accused person or to the credibility of Prosecution witnesses. Any possibility of prejudice is entirely context and case specific, based upon the particular charges and evidence tendered. Provided that

submissions do not expressly or impliedly point to the particular guilt of an accused in respect of actual charges, it is difficult to see how any prejudice might arise. As indicated by Pre-Trial Chamber I on 3 December 2007 in relation to the Darfur situation, « *in situation and case proceedings before the Pre-Trial Chamber (...), the fact that one or several natural or legal persons may be entitled to the procedural status of victim is not, per se, prejudicial to the Defense* »¹³.

23. In addition, according to the “*Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor*”¹⁴ of 29 February 2008, the Office of Public Counsel for the Defense and the Prosecutor may file a consolidated response to all applications for participation, “*which may include submissions with regard to the right of victims to participate in this appeal, and the modalities for such participation*”. Similarly, the regulation 24.1. of the Regulations of the Court set that “[t]he Prosecutor and the Defence may file a response to any document filed by any participant in the case (...)”. Thus, the Office of Public Counsel for the Defense and the Prosecution are enabled to respond to all the views and concerns presented by the victims and consequently, it is submitted that the Victims’ participation in this interlocutory appeal does not infringe the fairness of the proceedings, not is it prejudicial to the rights of the accused.

24. Indeed, the views and concerns that the Legal Representative wishes to be presented will, on the contrary, ensure that the principle of contradictor is satisfied, facilitating the presentation of contradicting views to ensure a considered ruling on the issues under examination.

¹³ ICC-02/05

¹⁴ ICC-01/04-480 and ICC-01/04-481

25. Accordingly, the Legal Representative respectfully requests the Appeals Chamber to grant leave to Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 to participate in the interlocutory appeal at issue.

Me Joseph KETA



Dated this 10 March 2008

At London, UK / Tours, France