

**Cour
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**International
Criminal
Court**

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No.: ICC-02/05
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THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public

Prosecution's Response to Legal Representative of Victim's Request to Participate in OPCD's Appeal against the 3 December 2007 Decision on Production and Disclosure of Material and in the Appeals of the Prosecution and OPCD against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings

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Introduction

These appeals against two decisions by the Single Judge concern the manner in which applications by victims to participate in the investigation of a situation are to be addressed and victim participation is to be realised during the early stages of the Court's proceedings.

The legal representative of victims has applied to present the views and concerns of two distinct groups of individuals, victims and applicants, in relation to three appeals: appeals by both the Prosecution and OPCD against the decision on victim participation in the situation, and OPCD's appeal against a predicate decision regarding access to documents and information.

The Prosecution notes that there are certain procedural irregularities in the application, which raise questions regarding its admissibility.

Should the Appeals Chamber decide to consider the substance of the application, then the Prosecution, consistent with its previous position regarding similar appeals in the *Situation in the DRC*,¹ does not oppose the participation in these appeals of those victims who the Single Judge has determined to fulfil the criteria of being a "victim" under Rule 85(a), and has granted participatory status. On the other hand, the Prosecution submits that those applicants who the Single Judge has not granted the procedural status of victim cannot be permitted to participate in this appeal, in particular as no finding has been made that they fulfil the criteria set out in Rule 85.

Procedural History

1. On 23 July 2007, the Single Judge authorised the Prosecution and OPCD to file observations on applications by victims to participate in the situation.²
2. On 21 and 24 August 2007, OPCD applied to the Single Judge to order the production of supporting information by the applicants, and the disclosure of potentially exculpatory information by the Prosecution.³ The Prosecution objected to both requests,⁴ and on 3 December 2007, the Single Judge issued a Decision rejecting both requests by OPCD.⁵

¹ *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008.

² ICC-02/05-85.

³ ICC-02/05-94-Conf; ICC-02/05-97.

⁴ ICC-02/05-99-Conf.

⁵ ICC-02/05-110.

3. OPCD sought leave to appeal that decision on access to information on 10 December 2007,⁶ which on 23 January 2008 the Single Judge granted in respect of a single, overarching issue.⁷ In respect of that appeal, OPCD filed its documents in support of appeal on 4 February 2008,⁸ and the Prosecution filed its response on 15 February 2008.⁹
4. On 6 December 2007, the Single Judge of Pre-Trial Chamber I issued the “Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07”.¹⁰
5. Both the Prosecution and OPCD sought leave to appeal the Decision,¹¹ which on 6 February 2008 the Single Judge granted in part.¹² On 18 February 2008, the Prosecution¹³ and OPCD¹⁴ filed their respective documents in support of appeal. The responses were filed on 29 February 2008.¹⁵
6. On 13 February 2008, OPCV filed a request for clarification regarding the participation of victims in OPCD’s first appeal on behalf of the legal representative of victims in the Darfur situation.¹⁶
7. On 16 February 2008, the legal representatives of victims filed a substantive response to OPCD’s First Appeal Brief,¹⁷ in which the legal representatives requested that the Appeals Chamber either reject the appeal or make an order permitting the legal representatives to apply to participation in the appeal.
8. On 29 February 2008, the Appeals Chamber issued a series of orders,¹⁸ rejecting both the request for clarification and the response,¹⁹ and specifying that any applications for participation in the various appeals were to be filed by 10 March 2008, and were to:

⁶ ICC-02/05-112.

⁷ ICC-02/05-118.

⁸ ICC-02/05-119 OA (“OPCD’s First Appeal Brief”).

⁹ ICC-02/05-123 OA.

¹⁰ ICC-02/05-111, 6 December 2007 (the “Decision”). On 14 December 2007, the Single Judge issued a “Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07” (ICC-02/05-111-Corr).

¹¹ ICC-02/05-113, 12 December 2007; ICC-02/05-114, 12 December 2007.

¹² ICC-02/05-121.

¹³ ICC-02/05-125 OA2.

¹⁴ ICC-02/05-126 OA3.

¹⁵ ICC-02/05-130 OA3; ICC-02/05-131 OA2.

¹⁶ ICC-02/05-122 OA.

¹⁷ ICC-02/05-124 OA. The document was dated 15 February 2008, however was not received by the Registry until 02h58 on 16 February 2008, and was thus registered and notified on 18 February 2008.

¹⁸ ICC-02/05-129 OA; ICC-02/05-132 OA2; ICC-02/05-133 OA3 (“Appeals Chamber’s Orders”).

¹⁹ ICC-02/05-129 OA.

“include 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.”

The orders further granted the Prosecution and OPCD until 20 March 2008 to respond to any applications, “which may include submissions with regard to the right of victims to participate in this appeal, and the modalities for such participation.”

9. On 11 March 2008, the Prosecution was notified of an application by the legal representatives to participate in all three appeals.²⁰
10. The Prosecution hereby files its consolidated response pursuant to the Appeals Chamber’s Order.

The Admissibility of the Application to Participate

11. The Prosecution notes that the Application to Participate was filed slightly after the deadline set by the Appeals Chamber’s Orders.²¹
12. Of greater concern, the Prosecution further notes that the Application to Participate does not appear to be signed by the legal representatives.²² The Appeals Chamber has previously rejected an unsigned document as inadmissible.²³
13. Nonetheless, in the event that the Appeals Chamber decides to consider the merits of the Application to Participate, or permits the legal representatives to confirm the provenance of the Application or file a signed copy of the same document, the Prosecution will briefly set out its position on the substantive issues raised.²⁴

²⁰ ICC-02/05-134 OA2 OA3 (“Application to Participate”).

²¹ According to the notification email sent by the Registry, the Application to Participate was received at 16h48 on 10 March 2008. The document does not contain any request for extension of the time limit.

²² In contrast to the original request for clarification (ICC-02/05-122 OA), there is no indication that the Application to Participate was intended to be submitted by OPCV on behalf of the legal representatives.

²³ *Prosecutor v Lubanga*, ICC-01/04-01/06-834 OA8, 21 February 2007, noting that “the document is not signed in the space allotted for the signature of counsel, which ordinarily signifies the person who prepared the document” (para. 3) and that “The document filed does not bear the insignia of counsel. It is not signed by counsel and, as the Appeals Chamber is informed in the body of the document, it does not emanate from him nor does it have his approval. For that reason, the document must be rejected” (para. 6).

In that case, the Prosecution notes that the document in question clearly stated that it was not reviewed by counsel (*Prosecutor v Lubanga*, ICC-01/04-01/06-816 OA8, 9 February 2007, footnote 8). The Prosecution submits that while in the current case the names of the legal representatives are typed on the last page of the Application to Participate, without a signature there is no way of authenticating the origin or approval of the document.

²⁴ The Prosecution refers to its more detailed submissions on these issues: *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008.

The Existence of Overlapping Appeals

14. The Prosecution and OPCD have both appealed the same Decision on very similar issues.²⁵ In addition, OPCD has appealed a predicate decision, regarding access to documents and information, in respect of an issue which is of similar scope and intrinsically linked with the present appeal.²⁶ On that basis, the Prosecution requested that the Appeals Chamber consider dealing with the appeals jointly.²⁷
15. The Application to Participate, being a single application to participate in all three appeals, reflects the overlapping and intrinsically linked nature of the various appeals. Given that the legal representatives have filed a single application, the Prosecution is filing a single, consolidated response.²⁸ In light of the interlinked nature of the appeals, the Prosecution requests that the Appeals Chamber deals with the Application to Participate in respect of each of the appeals jointly; and further submits that should the legal representatives be granted the right to participate, then it may be in the interests of the efficient and expeditious resolution of the appeal for the legal representative to submit a single, consolidated presentation of views and concerns which could be considered in relation to each of the appeals.

Nature of Victim Participation in Interlocutory Appeals

16. As confirmed by the Appeals Chamber's Orders and previously argued by the Prosecution,²⁹ victims must apply to participate in interlocutory appeals under Article 82(1)(d), demonstrating: (a) how their personal interests are affected by the particular appeal; (b) that their participation is appropriate at this stage of the proceedings; and (c) that the presentation of their views and concerns is not prejudicial to or inconsistent with the rights of the defence or a fair trial.³⁰ These showings, combined with the Pre-Trial (or

²⁵ ICC-02/05-125 OA2, 18 February 2008; ICC-02/05-126 OA3, 18 February 2008.

²⁶ ICC-02/05-119 OA, 4 February 2008. In granting leave to appeal, the Single Judge noted that the first issue for which the Prosecution and OPCD sought leave to appeal were "inextricably linked" and were both part of the same "overarching issue" as OPCD had previously been granted leave to appeal (ICC-02/05-121, 6 February 2008, pp. 5, 10).

²⁷ ICC-02/05-125 OA2, 18 February 2008, para. 7; ICC-02/05-130 OA3, 29 February 2008, paras. 7-8; see also ICC-02/05-123 OA, 15 February 2008, para. 12.

²⁸ The Prosecution submits that this response could be jointly registered in all appeals if necessary. The Application to Participate was registered in both appeals OA2 and OA3, and similarly an application to participate in similar appeals in the *Situation in the DRC* was also registered in multiple appeals – see *Situation in the DRC*, ICC-01/04-486 OA5 OA6, 10 March 2008.

²⁹ *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, see in particular paras. 13-14.

³⁰ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, paras. 37-55 (recognizing also that the "precise application of the principles ... is likely to be guided by practice and experience"); *Prosecutor v Lubanga*,

Trial) Chamber's finding that a person has the status of a victim under Rule 85,³¹ form the basis for any participation in an appeal.

17. In relation to the manner of participation, the Prosecution recalls that the Appeals Chamber has held that "Observations to be received by the victims were therefore limited and had to be specifically relevant to the issues arising in the appeal rather than more generally";³² and that "Should the Appeals Chamber permit the victims to participate in the appeal, the Prosecutor and the Defence shall be allowed to reply to any filing of the victims, in accordance with the provisions of rule 91 (2)."³³

Response to the Application to Participate

Victims who have been granted procedural status may participate in the appeals

18. Eleven of the victims represented by the legal representatives have been granted the procedural status of victim in the situation.³⁴ In relation to those victims, the Prosecution does not oppose their participation in the appeals.
19. The Prosecution acknowledges, as has in prior filings,³⁵ that the issue in these appeals may have significant repercussions on the victims who have been granted "procedural status of victim" in the situation to date, their standing and the manner in which they are able to exercise their rights under the Statute and the Rules. The Prosecution therefore recognises that the personal interests of victims who have been admitted to participate so far are affected by the appeals.³⁶
20. However the Prosecution does not agree with each of the arguments raised in support of its application,³⁷ and in particular disputes the argument that because the Pre-Trial Chamber

ICC-01/04-01/06-925 OA8, 13 June 2007, paras. 21-28. The Prosecution further recalls that the Appeals Chamber has previously ruled that "An application to participate should in principle be made as soon as possible after appeal is filed" (*Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 46). The Prosecution has previously set out its submissions on the interpretation and implications of this principle in the context of appeals under Article 82(1)(d) at *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, para. 14.

³¹ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 45.

³² *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55.

³³ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 49.

³⁴ Victims a/0011/06, a/0012/06, a/0013/06, a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07, a/0037/07, and a/0038/07 – Decision, p. 23 (dispositif).

³⁵ *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, paras. 16-20.

³⁶ As noted by the legal representative, albeit in the context of appropriateness, "Given the subject matter in each appeal, any decision on the merits will directly affect victims' status as well as their procedural rights in the Situation in Darfur." – Application to Participate, para. 22; see also para. 31.

³⁷ The Prosecution submits that the reference to Rule 93 by the legal representative (Application to Participate, para. 17) is, in this context, irrelevant – see further *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, para. 34. The Prosecution also submits that the reference to the extension of the scope of the subject matter of the

has held that the interests of victims are affected in general by any proceedings relating to a situation, the personal interests of all victims are therefore necessarily affected by any interlocutory appeal arising out of a situation.³⁸ The Appeals Chamber has previously ruled that the mere fact that a victim participated in, and that their personal interests were affected by, proceedings before a Pre-Trial or Trial Chamber does not mean that their personal interests are necessarily affected by the issue in the appeal.³⁹ Furthermore, this argument is based on a ruling which is at the heart of the dispute in the appeals.⁴⁰

21. The Prosecution also recognises that the participation of victims who have been recognised as such by the Single Judge is appropriate, in light of this lack of urgency attached to the resolution of this appeal⁴¹ and the nature of the issue under appeal.⁴² However again the Prosecution does not agree with some of the reasons presented by the legal representatives, and in particular (for similar reasons to those set out above) the mere fact that a Pre-Trial Chamber has ruled that a victim's participation in the investigation of a situation is appropriate does not in itself make that victim's participation in every appeal arising out of the investigation of that situation also necessarily appropriate.⁴³ Once again, this proposition contradicts existing jurisprudence of the Appeals Chamber⁴⁴ and the Appeals Chamber's Orders,⁴⁵ and is based on another disputed aspect of the ruling which is at the heart of the appeals.⁴⁶

appeal (Application to Participate, para. 20) is also not relevant, and recalls its prior submissions regarding the scope of the Appeals and its Response (ICC-05/05-123-OA, 15 February 2008, para. 11; ICC-02/05-125 OA2, 18 February 2008, para. 8).

³⁸ Application for Participation, para. 16.

³⁹ See e.g. *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, paras. 43-44; *Prosecutor v Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, para. 29 (see more generally paras. 23-28).

⁴⁰ ICC-02/05-119 OA, 4 February 2008, paras. 24-29; ICC-02/05-125 OA2, 18 February 2008, paras. 20-35; see also ICC-02/05-123 OA, 15 February 2008, paras. 15-18. Indeed, the Prosecution submits that the contrast between the legal representatives' arguments based on this ruling (i.e. that every victim's personal interests are necessarily affected by every interlocutory appeal in the situation) and the Appeals Chamber's rulings (i.e. that victims must show how their personal interests are affected by the specific issues in this appeal – see Appeals Chamber's Orders and jurisprudence referred to in footnote 30, above) reinforces the need for appellate review of the impugned ruling.

⁴¹ For example, resolution of this issue at the situation stage has no influence on trial proceedings; nor are their proceedings pending in the situation which are awaiting the resolution of this issue to continue.

⁴² As noted by the legal representatives, in this instance "Without the participation of victims and their Legal Representation, the Chamber will hear the merits of the interlocutory appeals without any adverse opinion" – Application for Participation, para. 28.

⁴³ Application for Participation, para. 22.

⁴⁴ See jurisprudence referred to in footnote 30, above.

⁴⁵ If this argument is correct, then the requirement in the Appeals Chamber's Orders that victims include in their application a statement "indicating why it is appropriate for the Appeals Chamber to permit their views and concerns to be presented at this stage in the proceedings" would have been redundant.

⁴⁶ ICC-02/05-125 OA2, 18 February 2008, paras. 36-45; see also ICC-02/05-119 OA, 4 February 2008, paras. 30-32.

22. The Prosecution further recognises that the participation of such victims in the appeals, through those proposed modalities, is not inconsistent with the rights of the defence or a fair and impartial trial.

Applicants who have not been held to be victims or granted procedural status may not participate in the appeals

23. The Single Judge denied ten of the applications lodged by the legal representatives.⁴⁷ In relation to those applicants, who have not been granted the procedural status of victim in relation to the situation, the Prosecution opposes their participation in the appeals. The Prosecution submits that the arguments to the effect that victims who have not been granted the right to participate may still express views and concerns under Article 68(3) are circular and undermine the entire system for managing and facilitating victim participation. Furthermore, the system created by this Chamber for the efficient determination of victim participation in interlocutory appeals is predicated on an existing ruling from a Pre-Trial (or Trial) Chamber that an applicant fulfils the criteria of “victim” pursuant to Rule 85(a).
24. Only victims may present their views and concerns to the Court. The majority of applicants in question were denied the procedural status of victim in the situation their applications were incomplete,⁴⁸ and there has been no ruling that the applicants in question fulfil the criteria of “victim” pursuant to Rule 85(a). The scheme for the participation of victims in interlocutory appeals developed by the Appeals Chamber requires a prior ruling that a person is a victim in relation to the underlying proceedings.⁴⁹ This is the basis for the briefing requested in the Appeals Chamber’s Orders, which only requested submissions on the additional requirements of personal interests, appropriateness, and prejudice.⁵⁰ The applicants in question cannot be permitted to present their views and concerns, based on this application to participate in the appeal, because there has been, and can be, no finding that they are victims.⁵¹

⁴⁷ Applicants a/0014/06, a/0021/07, a/0025/07, a/0027/07, a/0028/07, a/0030/07, a/0031/07, a/0032/07, a/0033/07 and a/0035/07 – Decision, p. 23 (dispositif).

⁴⁸ See Application to Participate, para. 18; Decision, paras. 31 (applicant a/0014/06), 33 (applicant a/0028/07), 35 (applicants a/0030/07, a/0031/07, a/0032/07, a/0033/07 and a/0035/07), and page 16 (applicant a/0021/07). In respect of applicants a/0025/07 and a/0027/07, the Single Judge found that as they were deceased, they did not qualify as “natural persons” within the meaning of Rule 85(a) and therefore were not victims – Decision, para. 36.

⁴⁹ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 45.

⁵⁰ The Prosecution notes that the Appeals Chamber’s order requests submissions on “whether and how the personal interests of the victims concerned are affected by this appeal” (emphasis added).

⁵¹ The Prosecution submits that the Appeals Chamber is not itself in a position to make the finding of whether or not the individuals are victims. The situation is before the Pre-Trial Chamber, and it is that Chamber which has

25. The Prosecution also strongly disputes the submissions that Article 68(3) allows alleged victims to present their views and concerns prior to a ruling on their application to participate.⁵² The arguments raised are entirely circular – the participation referred to is the expression of views and concerns; thus the legal representatives are effectively arguing that victims may present their views and concerns regardless of whether or not they are authorised to present their views and concerns. Rule 89 governs the procedure by which victims may be authorised to present their views and concerns.⁵³ A formal application is required, which must be adjudicated by the Chamber, including whether the person is a victim pursuant to Rule 85. It is this process which results in a victim being authorised to present their views and concerns, and defines the parameters within which they can be presented.⁵⁴ To allow victims to present their views and concerns before that application is granted would pre-empt and defeat the very purpose of that application.

the jurisdiction to properly consider whether an individual is a victim for the purposes of participation during this phase of the proceedings. An interlocutory appeal during the investigative, pre-trial or trial phases is a stage of the proceedings with a specific and corrective mandate (*Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 71). The role for the Appeals Chamber during such an interlocutory appeal is to determine whether, and which of, the victims who have been permitted to participate in the underlying proceedings by the first-instance Chamber may participate during the interlocutory appeal (in contrast, during a final appeal which constitutes a separate phase, the Appeals Chamber may properly consider whether a person is a victim).

In addition, the information required to determine whether the applicants are victims is not (to the Prosecution's knowledge) before the Appeals Chamber. In most cases, the applicants have not been granted victim status because their applications were held to be incomplete. Even if complete applications for participation were before the Appeals Chamber, the Prosecution submits that the Appeals Chamber should not make such determinations and permit participation. The determination of victim status, in addition to the other requirements, is a fact, time and resource intensive exercise that it would cause significant and unwarranted delays to the resolution of this appeal. The participation of such applicants would not be appropriate at this stage of the proceedings: given the likely delays involved, and especially in light of the range of victims' perspectives which will already be presented by those victims who may participate.

⁵² Application to Participate, paras. 14-15. The Prosecution thus submits that the discussion of whether the personal interests of applicants are affected (Application to Participate, para. 18) is irrelevant.

⁵³ Rule 89 is the mechanism by which the presentation of views and concerns in Article 68(3) is implemented and realized – it is not separate from or superfluous to it. Rule 89 requires that "In order to present their views and concerns" the victims shall make an application under it; which the Chamber shall rule on and specify how that participation is to take place. The Rules were drafted "as an instrument for the application of the Rome Statute", and "constitute the indispensable procedural legal basis for the functioning of the Court" - Fernandez de Gurmendi, "Elaboration of the Rules of Procedure and Evidence," in Lee (ed.) *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), 235-235.

⁵⁴ i.e. specifying the proceedings and the manner in which participation is considered appropriate (Rule 89(1)), which is subject to modification (Rule 91(1)).

Modalities of Participation

26. The Prosecution submits that the same modalities of participation are appropriate in this appeal as in the similar appeals in the *Situation in the DRC*, and refers to its submissions in that situation.⁵⁵
27. The Prosecution submits that the appropriate modality for the presentation of victims' views and concerns in this appeal is for those views and concerns to be submitted in writing.⁵⁶ The views and concerns should be limited to the specific issue arising in this appeal, to the extent that it affects the victims' personal interests.⁵⁷
28. The Prosecution submits that given the similar scope and intrinsically linked nature of the issues in the appeals,⁵⁸ then consistent with the approach taken by the legal representatives in their Application to Participate, the expeditious conduct of the proceedings may be facilitated by the victims submitting a single set of views and concerns in respect of the three appeals, rather than filing three separate sets of views and concerns.⁵⁹
29. The Prosecution further submits that a modest timeframe should be prescribed by the Appeals Chamber for the submission of these views and concerns.⁶⁰
30. The Prosecution finally submits that the Appeals Chamber should allow it and OPCD to respond to the various views and concerns of the victims.⁶¹

⁵⁵ *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, paras. 38-41.

⁵⁶ The Prosecution submits that written observations will be sufficient to convey the views and concerns of the victims in relation to this appeal. The practice of the Appeals Chamber to date has not been to hold hearings for interlocutory appeals, consistent with Rule 156(3).

⁵⁷ The Appeals Chamber has held that "Observations to be received by the victims were therefore limited and had to be specifically relevant to the issues arising in the appeal rather than more generally" - *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55. The Prosecution recalls that the purpose is to present the views and concerns of the victims relating to this issue: the filing is not a legal response to the brief filed by the Appellant; their role is to provide the Appeals Chamber with the views of the victims on the issue under appeal, not to refute particular legal arguments – see e.g. *Prosecutor v Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, Separate Opinion of Judge Pikis, paras. 15-16.

⁵⁸ See footnote 26, above. Given the similarities in the underlying issues in each of the three appeals, the impact of each on the interests of the victims (and therefore their views and concerns regarding each) are likely to be essentially the same. To require the victims to file mirror-image submissions of their views and concerns (and thus the parties to file mirror-image responses) would place a burden on their limited resources without producing any benefit for the parties, the victims, or the Chamber.

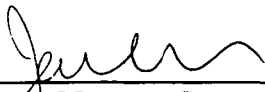
⁵⁹ If the Appeals Chamber permits the victims to present separate submissions of views and concerns, then the Prosecution submits that the period prescribed by the Appeals Chamber for the filing of a response by the parties should reflect the number of filings to which they will be responding and, depending on the number and extent of observations filed by victims, adjustments to the page limit for the responses by the Prosecution and OPCD may also be required.

⁶⁰ The legal representatives have had a substantial opportunity to consider the issues, for which leave was first granted on 23 January 2008 (ICC-02/05-118) and their impact on the victims represented. The legal representatives should thus be in a position to present those views and concerns promptly.

⁶¹ As the Appeals Chamber has previously ruled, "the Prosecutor and the Defence shall be allowed to reply to any filing of the victims, in accordance with the provisions of rule 91 (2)" - *Prosecutor v Lubanga*, ICC-01/04-01/06-

Conclusion

31. For the reasons referred to above, the Prosecution respectfully requests that the Appeals Chamber first rule on the admissibility of the Application to Participate.
32. If the Appeals Chamber considers that the Application to Participate is admissible, then the Prosecution requests that the Appeals Chamber:
- (a) grant the applications to participate in this appeal of those victims who have been granted “procedural status of victim” by the Pre-Trial Chamber;
 - (b) deny the applications to participate in this appeal of those applicants who have not yet been granted “procedural status of victim” by the Pre-Trial Chamber;
 - (c) order those victims who are permitted to participate in this appeal to file their views and concerns in writing with a defined period; and
 - (d) permit the Prosecution and OPCD to respond to the various submissions of views and concerns within a deadline prescribed by the Appeals Chamber.



 Luis Moreno-Ocampo
 Prosecutor

Dated this 20th day of March 2008
 At The Hague, The Netherlands

824 OA7, 13 February 2007, para. 49. The right of the Prosecution and OPCD to respond to any submission of views and concerns was recognized by the legal representatives in arguing that their participation is not inconsistent with the rights of the defence or a fair trial - Application to Participate, para. 35.