



Original : English

No.: ICC-02/05
Date: 20 March 2008

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public Document

**OPCD's Consolidated Response to the Legal Representatives' Application to
Participate in the Appeals of 4 February 2008 and 18 February 2008**

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1. Procedural History

1. On 4 February 2008, the Office of Public Counsel for the Defence (OPCD) filed the “Appeal Brief on 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’”.¹
2. On 13 February 2008 the Office of Public Counsel for Victims (OPCV), acting on behalf of the Legal Representatives of the alleged victims, filed the “Request of the Legal Representatives for Clarifications on Victims' Participation in the Interlocutory Appeal filed by the OPCD under article 81(2)(d) of the Rome Statute”.²
3. On 15 February 2008 the Prosecutor filed the “Response to OPCD’s Appeal Brief on 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 and Disclosure of Potentially Exculpatory Material.’”³
4. On 15 February 2008 the Legal Representatives of the alleged victims filed the “Response to the ‘OPCD appeal brief on 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’ and Alternative Request for Permission to Participate in the Appeal’”.⁴
5. On 18 February 2008 the OPCD filed the “Appeal Brief on the ‘The Decision on the Application for Participation in the Proceedings of Applicant 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’”.⁵
6. On 28 February 2008 the Appeals Chamber issued the “Decision on the OPCV’s request for clarification and 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”,⁶ in relation to the OPCD’s appeal brief of 4 February, in which it rejected both the request for clarifications by the OPCV and the response of Legal Representatives of the alleged victims, and ordered that applications for participation in the appeal were to be filed by 10 March 2008 and, further, that the

¹ ICC-02/05-119.

² ICC-02/05-122.

³ ICC-02/05-123.

⁴ ICC-02/05-124.

⁵ ICC-02/05-126.

⁶ ICC-02/05-129.

OPCD and the Prosecutor could file, by 20 March 2008, a consolidated response to all applications received.

7. On 29 February 2008 the Prosecution filed the “Response to OPCD’s Document in Support of Appeal against the 6 December 2007 Decision on the Victims’ Applications for Participation in the Proceedings”,⁷ in relation to the OPCD’s appeal brief of 18 February.
8. On 29 February 2008, the Appeals Chamber issued the “Order 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”,⁸ in relation to the OPCD’s appeal brief of 18 February, in which it ordered that applications for participation in the appeal were to be filed by 10 March 2008 and, further, that the OPCD and the Prosecutor could file, by 20 March 2008, a response to all applications received.
9. On 10 March 2008, the Legal Representatives of the alleged victims filed the “Request of Victims 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 to Participate in the Interlocutory Appeals of the Office of the Prosecutor and the Office of Public Counsel for the Defence”.⁹
10. The request was evidently received by ICC Court Management at 4.48pm on 10 March 2008. The application itself does not contain any explanation as to the reasons for the delay, nor was it preceded or succeeded by a request for an extension of the time limit. The application was notified to the parties on 11 March 2008 at 6.18pm, thereby depriving the parties of one day’s response time. The OPCD is, however, aware of the difficulties faced by external counsel and submits that the filing should not be dismissed for this reason alone. From an equality of arms perspective, the OPCD further submits that such considerations should also be applied to external defence counsel, should they be in similar circumstances in the future.
11. More significantly, however, the OPCD notes that the filing was not signed by the Legal Representatives,¹⁰ nor was a signed version filed at a later date. The Appeals Chamber has previously emphasised that in order to have legal effect, filings should be signed by a duly authorised person.¹¹ The OPCD further concurs that the existence of a signature is necessary to verify that the Legal Representatives accept legal

⁷ ICC-02/05-130.

⁸ ICC-02/05-133.

⁹ ICC-02/05-134.

¹⁰ The names of the Legal Representatives are simply typed.

¹¹ Reasons for the “Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007” issued on 16 February 2007, ICC-01/04-01/06-834, 21 February 2007, at para. 6.

responsibility for the contents of the filing, in particular, as regards their obligation to represent the interests of their clients.

12. The OPCD therefore respectfully requests the Honourable Appeals Chamber to either order the Legal Representatives to either resubmit a signed version of the filing, or dismiss the application. However, in order not to unduly delay the proceedings, the OPCD hereby files its consolidated response to the arguments set out in the unsigned version of the application to participate in both appeals.

2. Legal submissions

13. In applying the criteria established by Article 68(3), the Appeals Chamber held that “applications shall 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.”¹² This requirement was previously applied by the Appeals Chamber in relation to the interlocutory appeal concerning Thomas Lubanga Dyilo’s application for release.¹³ The criteria are to be applied cumulatively, as is apparent from Article 68(3) and the judgement of the Appeals Chamber.
14. The first part of this response will address the respective issues of (i) personal interests; (ii) appropriateness and (iii) prejudice to the Defence. The second part will refer to the modalities of participation, should leave to participate be granted. The OPCD would also like to respectfully request the Appeals Chamber to consider the OPCD’s recognition that the personal interests of certain alleged victims might be affected for the purposes of these specific interlocutory appeals, to be without prejudice to the merits of the OPCD’s submissions concerning whether the personal interests of alleged victims are affected by proceedings during the situation phase.

¹² Decision of the Appeals chamber on the OPCV’s request for clarification and 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, 28 February 2008, ICC-02/05-129,

¹³ The Prosecutor v Thomas Lubanga Dyilo, ‘Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled *Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo*,’ ICC-01/04-01/06-824, 13 February 2007, at para. 44.

2.1 Personal Interests

15. In addressing the alleged victims' personal interests, the OPCD notes that the procedure established by the Appeals Chamber requires that "an application should include a statement from the victims in relation to whether and how their personal interests are affected by the particular interlocutory appeal"¹⁴ and that, specifically, the alleged victims are required to make "explicit link[s] between their submissions and the specific issues raised on appeal".¹⁵
16. Relevant personal interests that have been previously recognised by the Appeals Chamber include such tangible issues as the potential for continuation of crimes, or further hostility¹⁶ as well as "when their [the alleged victims'] protection is in issue and in relation to proceedings for reparations".¹⁷
17. The OPCD also endorses the views of Judge Pikis who, in a separate opinion, offers further examples of relevant personal interests such as "the elicitation of evidence revealing the injury inflicted upon victims by the crime"¹⁸ (this being the subject matter of the relevant proceedings) and "[victims'] protection and support in the proceedings"¹⁹ and opines that "participating victims' views and concerns are referable to the cause that legitimizes their participation, the cause that distinguishes them from other victims, namely their personal interests to the extent they are affected by the proceedings",²⁰ thereby emphasising the particularity of each alleged victim's personal interests and the need for those interests to be tied inimitably to the relevant proceedings.
18. The OPCD therefore submits that the concept of personal interests should continue to be interpreted so as to follow this established trend of tangible and particularised interests.

¹⁴ The Prosecutor v Thomas Lubanga Dyilo, Appeals Chamber Judgement of 13 February 2007, ICC-01/04-01/06-824, at para. 44.

¹⁵ At para. 71.

¹⁶ The Prosecutor v. Thomas Lubanga Dyilo: 'Observations of victims a/0001/06, a/0002/06 and a/0003/06 in respect of the application for release filed by the Defence', ICC-01/04-01/06-530-tEN, 9 October 2006, at paragraphs 11-15; confirmed by Appeals Chamber decision of 13 February 2007, ICC-01/04-01/06-824, at paragraph 54.

¹⁷ The Prosecutor v Thomas Lubanga Dyilo, "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007," ICC-01/04-01/06-925, 13 June 2007, at para. 28.

¹⁸ Separate Opinion of Judge Pikis, Appeals Chamber Judgement of 13 June 2007, ICC-01/04-01/06-925 at paragraph 14.

¹⁹ Paragraph 16.

²⁰ Paragraph 16.

19. In the context of the appeals of 4 and 18 February 2008, the OPCD is of the view that the following (non-exhaustive) list of issues could conceivably impact on the personal interests of the alleged victims:

- whether generic presumptions concerning the personal interests of alleged victims during the situation phase facilitate or frustrate the right of alleged victims to express their personal views and concerns in relation to particular proceedings;
- whether, before subjecting the applicants to the scrutiny of the application process, the Chamber should first identify viable proceedings during the situation phase in which they could potentially participate;
- whether there are concrete, as opposed to potential or hypothetical proceedings during the situation phase which directly impact on the personal interests of these particular alleged victims;
- the advantages and/or disadvantages – from the perspective of the alleged victim – of being requested to identify the impact of specific proceedings on their personal interests, for example, in terms of the expenditure of their time and resources that such a requirement might entail, or in terms of whether such a requirement would ensure that their right to have their views and concerns considered would be implemented in an effective and meaningful manner;
- the impact, on the alleged victims, of confining the scope of participation under article 68(3) to persons who have suffered harm as a result of alleged crimes, which are being actively investigated or prosecuted by the Prosecutor;
- whether it is possible to make an informed choice to participate in proceedings during the situation phase, if the applicants are not in a position to assess the consequences as regards their ability to testify as a witness for either the prosecution or the defence in a specific case;
- whether the impact of a proceeding on the personal interests of alleged victims will differ depending on the type of harm they suffered (for example, moral harm as opposed to direct physical harm), and whether they were physically present when the alleged offence occurred.
- whether an automatic system of notification of court proceedings – which is not contingent on being formally granted the procedural ‘status of victim’ – would assist the alleged victim to choose when and how to submit a request for participation in a specific proceedings;

- the impact of being requested by the Chamber to either supplement their applications forms with additional supporting documentation, or to provide an explanation as to why they are not in a position to do so;²¹ and
- whether issuing a decision on the basis of *ex parte* information concerning the applicants, which has not been transmitted to either the applicants themselves or the parties, impacts on the right of the applicant to be heard, and to be treated with respect and dignity.²²

20. In terms of the actual submissions of the Legal Representatives, the OPCD observes that notwithstanding the fact that the Legal Representatives have been expressly requested by the Appeals Chamber to provide a statement from the victims as to whether and how their personal interests are affected by the particular interlocutory appeal, the Legal Representatives reiterate the findings of Pre-Trial Chamber I and II that “the personal interests of victims are affected in general at the investigation stage”,²³ and opine that since the “personal interests of victims are affected in general in any proceedings relating to a situation [...] the personal interests of the victims are also concerned in any interlocutory appeal”.²⁴

21. These blanket assertions do not assist the parties to constructively facilitate the right of affected persons to participate, nor are they consistent with the previous findings of the Appeals Chamber on this subject.

22. The Legal Representatives do however provide greater specificity in their submission that “the OPCD claims that decisions made during the preliminary stage of a case fall outside the jurisdiction of the Single Judge”.²⁵

23. Whilst the OPCD did not actually argue this precise point, these submissions appear to relate to the issue as to whether, once an investigation is initiated in a situation, the Pre-Trial Chamber has the competence to render factual determinations outside of the scope of a decision issuing an arrest warrant or summons, or a decision confirming charges, and the impact that this issue has for competence of the Chamber to render a determination that a person has the status of victim during the situation phase. The

²¹ Appeal Brief at paragraph 65.

²² Appeal Brief at paragraph 64.

²³ Citing ‘Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6’ ICC-01/04-101-tEN-Corr, 17 January 2006, and ‘Decision on legal representation, appointment of counsel for the Defence, protective measures, and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, to a/0104/06 and 1/0111/06 to a/0127/06’ ICC-02/04-112, 1 February 2007.

²⁴ Request of the Legal Representatives at paragraph 16.

²⁵ Request of the Legal Representatives at paragraph 21.

OPCD agrees that the personal interests of applicants who have been granted the status of victim during the situation phase would be directly impacted by this issue, which derives from the first appeal.

24. In addition, the Legal Representatives advocate for the participation of persons linked to applications, with respect to which the Honourable Single Judge reserved her decision on the basis that for persons acting on behalf of alleged victims, it is necessary to adduce documentation concerning the consent of the alleged victim, the proof of identity of the alleged victim, and the proof of identity of the person acting on their behalf.²⁶ The Single Judge therefore did not accept these applications since this documentation either had not been provided, or could not be provided as regards deceased or disappeared persons.
25. This particular aspect of the decision was not contested by either the OPCD or the OTP in the three appeals, for which leave to appeal was granted.
26. The OPCD finds the submissions of the Representative to be untenable, as these applicants do not presently possess personal interests capable of being affected by this aspect of the appeal; the applicants' status will remain unchanged by the appeals irrespective as to whether the appeals are granted or denied and, consequently, their personal interests will remain wholly unaffected.
27. In this regard, the OPCD submits that the right to participate is linked to the protection of 'judicial recognised interests'.²⁷ In light of the fact that the applicants do not presently possess any judicially recognised rights in the proceedings, there is no underlying justification for their participation.
28. In any case, the OPCD observes that apart from a/0014/06 and a/0021/07, the persons who submitted the suspended applications were also granted the right to participate in the situation proceedings in their own name.²⁸ As such, if the Appeals Chamber grants these persons the right to submit views and concerns in relation to the issues which directly impact on their personal interests, it is unnecessary for the Appeals

²⁶ Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06, to a/0015/06, a/0021/07 to a/0033/07, and a/0035/07 to a/0038/07, 14 December 2007, ICC_02/05-11-Corr.

²⁷ See Haslam, "Victim Participation at the ICC", in McGoldrick, Rowe and Donnelly (eds.): *The Permanent International Criminal Court* (2004) at p. 326.

²⁸ Applications a/0028/07, a/0030/07, a/0031/07, a/0032/07, a/0033/07, a/0035/07 which were suspended, were all submitted by a/0036/07. Applicant a/0036/07 was granted the right to participate in her own name. Applications a/0025/07 and a/0027/07 were not suspended, but rejected in light of the fact that they concerned deceased persons, whom the Single Judge ruled "do not fall within the meaning of "natural persons" under rule 85(a) of the Rules" (paragraph 36 of Decision). Since this issue is not on appeal, the status of these applications will not be affected by the outcome of the appeals. In addition, the person who submitted application a/0025/07 was granted the right to participate in her own name (a/0024/07).

Chamber to render an additional determination as to whether these applications would also trigger a right to participate for the very same persons.

29. The OPCD finally observes that the Legal Representative's invocation of rule 93 is irrelevant since the Honourable Appeals Chamber has expressly limited this inquiry to the terms of article 68(3) and rule 89.²⁹
30. Subject to these reservations, due to the importance and uniqueness of the appeal, the OPCD would not in principle oppose the Appeals Chamber authorising the Legal Representatives of alleged victims, who were the subject of the Single Judge's decision of 3 and 6 December 2008 (as corrected on 12 December 2007), to submit views and concerns in relation to how their personal interests are directly affected by issues such as those set out in paragraph 19.

2.2 Appropriateness of participation

31. The OPCD observes that Article 68(3) requires a "specific determination by the Appeals Chamber that the participation of victims is appropriate in the particular interlocutory appeal under consideration".³⁰ In this regard the OPCD endorses the opinions expressed by Judge Pikis, namely that "[t]he stage at which the views and concerns of victims may be presented must be at an interval of the proceedings that would be appropriate, regard being had to the norms of a fair and impartial trial and the rights of the accused".³¹
32. The OPCD would also endorse the views of Judge Song, who attaches the notion of appropriateness to that of expediency. As such, it would not be appropriate to permit alleged victims to air their views and concerns in circumstances or modes that would substantially delay the proceedings.³²
33. In light of the fact that the current appellate proceedings represent the first occasion in which several key issues concerning article 68(3) and the application process will be

²⁹ "The Appeals Chamber of the International Criminal Court [...] issues, pursuant to the provisions of article 68(3) of the Statute and rule 89(1) of the Rules of Procedure and Evidence the following order [...]", 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, ICC-02/05-133; 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, ICC-02/05-132.

³⁰ The Prosecutor v Thomas Lubanga Dyilo, Appeals Chamber Judgement of 13 February 2007, ICC-01/04-01/06-824, at paragraph 40.

³¹ Separate Opinion of Judge Pikis, Appeals Chamber Judgement of 13 June 2007, ICC-01/04-01/06-925, at paragraph. 20. See also D. Donat-Cattin, 'Article 68 Protection of the Victims and their participation in the proceedings' in Triffterer (ed.), Commentary on the Rome Statute of the International Criminal Court at p. 886.

³² Separate Opinion of Judge Song in the Prosecutor v Thomas Lubanga Dyilo, Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the "Directions and Decision of the Appeals Chamber" of 2 February 2007," ICC-01/04-01/06-925, 13 June 2007, at para. 23.

considered at the appellate level, the OPCD submits that it would be in the interests of justice to ensure that the views and concerns of alleged victims are taken into consideration as it would ensure that the Appeals Chamber has the benefit of considering the appellate issues through the lens of those directly affected by these issues.

34. Their participation could also facilitate the ability of the parties to consider, and proactively devise potential responses to any legitimate concerns proffered by the Legal Representatives on behalf of the alleged victims. This would ensure an immediate and expeditious resolution from the Appeals Chamber in relation to these concerns. In contrast, if these views and concerns were deferred for consideration to future proceedings in the situation phase, this might result in a need for future appellate intervention, and unnecessary re-litigation of these issues.
35. In terms of the submissions of the Legal Representatives, the OPCD agrees, for the reasons set out above, that it would be appropriate to obtain the views and concerns of affected participating applicants at this stage of the proceedings.
36. Nonetheless, in terms of the Legal Representatives' submissions at paragraph 28, the OPCD submits that the fact that the parties have not adopted entirely adverse positions is not in itself a basis for triggering the right to participate. The rationale of participation under article 68(3) is to permit alleged victims to present views and concerns in relation to those issues which directly impact on their personal interests - it is not to supplement or supplant the role of one of the parties to the proceedings. As such, it would be inappropriate to permit applicants to participate for the sole purpose of presenting those legal or factual arguments which the applicants believe that one of the parties could or should have made. Indeed, if the Legal Representatives' argument was accepted, the corollary would be that it would be *inappropriate* to permit participation in any proceedings in which the parties did adopt adverse positions.

2.3 Whether participation would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial

37. The OPCD notes that, pursuant to Article 68(3) and the findings of the Appeals Chamber, the Chamber seized of the proceedings has a positive obligation "to ensure that any views and concerns of victims must be presented 'in a manner which is not

prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’”.³³

38. The Appeals Chamber has previously held that this criterion could be fulfilled by virtue of the observations received by the alleged victims being “limited and ... specifically relevant to the issues arising in the appeal rather than more generally”,³⁴ and by according other parties the right to respond.³⁵
39. Judge Pikis has held that the application of this criterion includes a consideration of all aspects of Article 67 of the Statute,³⁶ the necessary exclusion of a ‘second accuser’ in line with the principle of equality of arms.³⁷ Judge Song, in a separate opinion within the same judgement, cites excessive delay as another point to take into consideration.³⁸
40. In terms of the particularities of these appellate proceedings, the OPCD observes that the Legal Representatives have raised substantive legal arguments both in their filing of 15 February 2008, and their subsequent filing of 10 March 2008.³⁹ These arguments were more relevant to the actual issues on appeal rather than the question of their right to participate in the appeals.
41. In this regard, the Appeals Chamber has, in similar cases, met the practice of addressing substance before being granted leave to do so with disapproval and has stated that such a practice may result in the Appeals Chamber rejecting both the request and the filing.⁴⁰
42. Moreover, such a practice is not compatible with Article 68(3), which establishes the need for fairness and impartiality. By addressing substantive issues on a pre-emptive basis, the Legal Representatives have sought to predetermine the scope of their participation. Such a practice is prejudicial to the OPCD, and negatively affects the expeditiousness of the proceedings, by unnecessarily convoluting the filings which the parties must consider and respond to. The OPCD therefore respectfully requests the

³³ The Prosecutor v Thomas Lubanga Dyilo, Appeals Chamber Judgement of 13 February 2007, ICC-01/04-01/06-824, para. 44.

³⁴ The Prosecutor v Thomas Lubanga Dyilo, Appeals Chamber Judgement of 13 February 2007, ICC-01/04-01/06-824, paragraph 55.

³⁵ At paragraph 55.

³⁶ Separate Opinion of Judge Pikis, Appeals Chamber Judgement, 13 June 2007, ICC-01/04-01/06-925, at paragraph 18.

³⁷ At paragraph 19.

³⁸ Separate Opinion of Judge Song in Appeals Chamber decision of 13 June 2007, ICC-01/04-01/06-925, at paragraph 27.

³⁹ See for example, paragraph 15 concerning the allegedly ‘broad’ definition of victim under rule 85, paragraphs 24 and 25 concerning the preparatory works relating to the participation of alleged victims during the situation phase

⁴⁰ The Prosecutor v Thomas Lubanga Dyilo, Appeals Chamber Judgement of 13 February 2007, ICC-01/04-01/06-824, at paragraph 68: ‘The Appeals Chamber disapproves of a practice of the filing of a substantive reply prior to leave being granted by the Appeals Chamber, which in and of itself may also give rise to the rejection of an application for leave’; the finding was in relation to a filing by the Prosecution.

Honourable Appeals Chamber to disregard the submissions concerning substantive issues on appeal.

43. Finally, the OPCD submits that the participation of alleged victims, who have yet to be granted permission to participate in the proceeding, could impact on the fairness and impartiality of the process, in that it may leave the appellate process open to persons with a tenuous link, if any at all, to the proceedings.
44. The integrity of the proceedings would be particularly impacted upon by the participation of persons acting on behalf of alleged victims, who have either yet to adduce proof or are unable to adduce proof that the alleged victim consent to them so acting,⁴¹ or persons who alleged suffered harm as the result of offences which do not fall within the jurisdiction of the ICC.⁴²

3. Modalities of participation

45. With respect to the Legal Representatives' submission that the alleged victims and their legal representatives "are uniquely qualified to bring to the Appeals Chamber's attention both legal and policy considerations which will affect its decision", the OPCD respectfully observes that the right to participate is purely personal in nature. As such, the alleged victims and their representatives should neither be required nor entitled to assume the burden of protecting the abstract legal or policy interests of 'victims' as a general category.
46. The OPCD thus submits that the primary focus of their participation should be on facilitating the presentation of the personal views and concerns of each alleged victim. In this way, the decision of the Appeals Chamber will be founded on a consideration of the real, as opposed to abstract or hypothetical, views and concerns of the persons most affected by these issues.
47. In setting the time-limit for the alleged victims' filings, the OPCD respectfully requests the Honourable Appeals Chamber to take into account the need for an expeditious resolution of these important issues, and the length of time that the Legal

⁴¹ The OPCD submits in this regard it is necessary to verify the existence of such consent in order to ensure that there is a proper agreement that the person acting on the alleged victim's behalf will transmit the alleged victim's views and concerns regarding their personal interests to the Court. As such, verification of the alleged victims' consent constitutes an integral judicial mechanism for ensuring that the criteria for participation under article 68(3) has been met.

⁴² Applications a/0021/07 and a/0027/07 relate to an attack which allegedly occurred in early July 2002. The Honourable Single Judge found that the phrase 'early July 2002' "is vague as it could also mean end of June" (para 31). The Single Judge therefore held she was "not in a position to consider whether the crimes fall within the temporal jurisdiction of the Court" (para. 31).

Representatives have had thus far to brief their clients, and to consult with them regarding their views and concerns as related to the issues set out in the appellate briefs.

48. At the same time, in order to ensure procedural equality between the participants, the OPCD requests the Appeals Chamber, when crafting an adequate and appropriate response deadline for the parties, to take into consideration the fact that the Legal Representatives have had a significant amount of time to research and prepare the submissions to which the parties must respond.

4. Relief Sought.

49. As stated above, the OPCD is not, in general terms, opposed to the participation of alleged victims in the present interlocutory appeals. Nonetheless, the OPCD submits that alleged victims should only be permitted to participate provided that they satisfy the guidelines delineated above, in accordance with the Rome Statute and the decisions of the Appeals Chamber.

50. The OPCD therefore respectfully requests the Honourable Appeals Chamber

- to reject the applications for participation of alleged victims, which were either suspended or rejected by the Honourable Single Judge in the decision of 6 December 2007 (as corrected on 12 December 2007); and
- to admit the participation of the alleged victims whose personal interests are directly (as opposed to hypothetically or indirectly) affected by the issues set out in the OPCD and OTP Appeals of 4 and 18 February 2008 insofar as they fulfil the criteria outlined by the OPCD, and in accordance with the modalities of participation proposed by the OPCD.



Mr Xavier-Jean Keïta
Principal Counsel of OPCD

Dated this Thursday, the 20th of March 2008

At The Hague, The Netherlands