



Original: **French**

No.: **ICC-01/04**
Date: **28 February 2008**

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Request of the OPCV Acting as Legal Representative of the Applicants in the Situation in the Democratic Republic of the Congo for Participation in the Interlocutory Appeals Filed by the Prosecution and the OPCD against the Decision of 24 December 2007

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I. BACKGROUND

1. On 22 and 29 September 2006 and 24 May and 17 July 2007, the Pre-Trial Chamber and the Single Judge, respectively, authorised the Prosecution, Ad Hoc Counsel for the Defence and the Office of Public Counsel for the Defence (“the OPCD”) to file observations on the applications for participation in the proceedings.¹

2. On 28 November 2006, Ad Hoc Counsel for the Defence filed his observations on the applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the investigation in the Democratic Republic of the Congo (“the DRC”).²

3. On 30 November 2006, the Prosecution filed its observations on the applications for participation a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06, a/0072/06 to a/0080/06 and a/0105/06 in the record of the investigation into the situation in the DRC.³

4. On 25 June 2007, the Prosecution filed its observations on the applications for participation a/0106/06 to a/0110/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06 and a/0224/06 to a/0250/06 in the record of the investigation into the situation in the DRC.⁴ On the same day, the OPCD filed its observations on the said applications for participation in the proceedings.⁵

5. On 17 August 2007, Pre-Trial Chamber I issued the *Decision on the Requests of the*

¹ See *Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06 et a/0071/06*, ICC-01/04-228, 22 September 2006 and *Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0080/06 et a/0105/06*, ICC-01/04-241, 29 September 2006. See also *Decision authorising the filing of observations on applications for participation in the proceedings*, ICC-01/04-329-tENG, 23 May 2007 and *Decision authorising the filing of observations on applications for participation in the proceedings*, ICC-01/04-358-tENG, 17 July 2007.

² See “*Observations du Conseil ad hoc de la Défense sur les demandes de participation à la procédure 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 dans le cadre de l'enquête en République démocratique du Congo*”, ICC-01/04-314-Conf and ICC-01/04-314-Conf-Anx1-2, 28 November 2006.

³ See “*Prosecution's Observations on the Applications for Participation of Applicants a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06, a/0072/06 to a/0080/06 and a/0105/06*”, ICC-01/04-315, 30 November 2006.

⁴ See “*Prosecution's Reply under Rule 89(1) to the Applications for Participation of Applicants a/0106/06 to a/0110/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06 and a/0224/06 to a/0250/06*”, ICC-01/04-346, 25 June 2007.

⁵ See “*Observation[s] du Bureau du conseil public pour la Défense sur les demandes de participation à la procédure en qualité de Victimes*”, ICC-01/04-347-Conf, 25 June 2007.

Legal Representative of Applicants on application process for victims' participation and legal representation,⁶ pursuant to which, on 24 August and 13 September 2007, the Registrar appointed the Principal Counsel of the Office of Public Counsel for Victims (“the OPCV” or “the Office”) as Legal Representative for all applicants who had no representation. Those letters were registered in the record of the situation on 31 August and 27 September 2007, respectively.⁷

6. On 24 December 2007, the Single Judge of Pre-Trial Chamber I issued the decision entitled *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/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 à a/0241/06 à a/0250/06*,⁸ by which she decided not to rule at this juncture on the applications for participation of, *inter alia*, a/0004/06 to a/0006/06, a/0019/06, a/0020/06, a/0027/06, a/0035/06, a/0036/06, a/0039/06, a/0043/06, a/0047/06 to a/0052/06, a/0073/06 to a/0080/06, a/0110/06, a/0144/06, a/0153/06 to a/0157/06, a/0159/06, a/0160/06, a/0203/06, a/0220/06, a/0222/06 and a/0240/06.

7. On 4 January 2008, the OPCV submitted a request for leave to appeal the Decision of 24 December 2007.⁹

8. On 7 January 2008, the Prosecution and the OPCD submitted requests for leave to

⁶ See *Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation* (Pre-Trial Chamber I), ICC-01/04-374, 17 August 2007.

⁷ See “Registration of a Letter from the Legal Representative Withdrawing his Request for Anonymity and of Other Documents Relating to the Legal Representation of the Applicants for the Purposes of Participation”, ICC-01/04-380-tENG, 31 August 2007. See also “Registration of appointment of the OPCV and amendment to appointment”, ICC-01/04-401-Conf, 27 September 2007.

⁸ See *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/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 à a/0241/06 à a/0250/06* (Pre-Trial Chamber I), ICC-01/04-423, 24 December 2007. See also the Corrigendum to that decision, Pre-Trial Chamber I, ICC-01/04-423-Corr, 31 January 2008.

⁹ See “*Demande du BCPV aux fins d'autorisation d'interjeter appel à l'encontre de la Décision rendue le 24 décembre 2007 relative aux demandeurs a/0047/06 à a/0052/06*”, ICC-01/04-426, 4 January 2008.

appeal the Decision of 24 December 2007.¹⁰

9. On 11 January 2008, the OPCV responded to the requests for leave to appeal the Decision of 24 December 2007 filed by the Prosecution and the OPCD.¹¹

10. On 6 February 2008, the Single Judge issued her decision on the Prosecution, OPCD and OPCV requests for leave to appeal,¹² by which she rejected the OPCV's request and granted the Prosecution leave to appeal in relation to whether "*a procedural status of victim*" can be guaranteed independently of an assessment of the requirements of article 68(3) of the *Rome Statute* and rule 89 of the *Rules of Procedure and Evidence*, without determining whether and how the personal interests of the victims would be affected at the investigation stage of the situation in the Democratic Republic of the Congo and without taking into consideration the jurisprudence of the Appeals Chamber.¹³ She also granted leave to appeal the Decision of 24 December 2007 to the OPCD in relation to whether victims have a general right to participate or whether victim participation is conditioned upon an assessment of their personal interests and the appropriateness of their participation, as well as in relation to whether, in order to establish moral harm on the basis of harm suffered by another person, it was necessary to adduce proof concerning the identity of that other person and the applicant's relationship with that person.¹⁴

11. On 18 February 2008, the Prosecution and the OPCD filed their documents in support

¹⁰ See "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'", ICC-01/04-428 and ICC-01/04-428-Anx1, 7 January 2008 and the "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'" (Pre-Trial Chamber I), ICC-01/04-429, 7 January 2008.

¹¹ See "Réponse du BCPV aux demandes d'autorisation d'interjeter appel de la décision du 24 décembre 2007 déposées par le Bureau du Procureur et le Bureau du conseil public pour la Défense", ICC-01/04-435, 11 January 2008.

¹² See *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* (Pre-Trial Chamber I), ICC-01/04-444, 6 February 2008.

¹³ *Ibid.*, p. 15.

¹⁴ *Ibid.*

of the appeal against the Decision of 24 December 2007.¹⁵

II. CLARIFICATION OF AND BASIS FOR THE REQUEST

1. Clarification

12. The Office notes that the circumstances of a/0047/06 to a/0052/06, the review of whose applications was also suspended,¹⁶ differ from that of the other applicants, insofar as Pre-Trial Chamber I considered “*that by their statements, Applicants a/0047/06, a/0048/06, a/0049/06, a/0050/06, a/0051/06 and a/0052/06 have provided sufficient evidence to satisfy the Court that there are reasonable grounds to believe that they suffered emotional and physical harm due to their enlistment in the Union des Patriotes Congolais (“UPC”) militia; that, in addition, the applicants have provided sufficient evidence to satisfy the Chamber that there are reasonable grounds to believe that they suffered harm as a result of the crimes set forth in the warrant of arrest issued against Thomas Lubanga Dyilo*”.¹⁷ The Chamber nevertheless held that “*granting Applicants a/0047/06 to a/0052/06 the status of victims with standing to participate would be inappropriate at this particular stage in the proceedings [the confirmation hearing]*.”¹⁸

13. With regard to a/0047/06 to a/0052/06, the Office recalls the arguments advanced in paragraph 11 of the “Request of the OPCV Acting as Legal Representative of the Victims Authorised to Participate in the Proceedings in the Situation in the Democratic Republic of the Congo for Participation in the Interlocutory Appeals Filed by the Prosecution and the OPCD against the Decision of 24 December 2007”.¹⁹ In the alternative, the Office requests

¹⁵ See “Prosecution’s Document in Support of Appeal against the 24 December 2007 Decision on the Victims’ Applications for Participation in the Proceedings”, ICC-01/04-454, 18 February 2008 and “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’”, ICC-01/04-455, 18 February 2008.

¹⁶ See Corrigendum to the Decision of 24 December 2007, *supra*, footnote 8, para. 144 and p. 58.

¹⁷ See *Decision on applications for participation in proceedings a/0004/06 to a/0009/06, a/0016/06, a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of The Prosecutor v. Thomas Lubanga Dyilo* (Pre-Trial Chamber I), ICC-01/04-01/06-601-tENG, 20 October 2006, p. 10.

¹⁸ *Ibid.*, p. 11.

¹⁹ See “Request of the OPCV Acting as Legal Representative of the Victims Authorised to Participate in the Proceedings in the Situation in the Democratic Republic of the Congo for Participation in the Interlocutory

that the Appeals Chamber consider the application of a/0047/06 to a/0052/06 for participation in the said interlocutory appeals in the context of this request.

2. The basis for the request

14. On 13 February 2008, the Appeals Chamber issued the *Decision of the Appeals Chamber on the OPCV's request for clarification and the legal representative's request for extension of time and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the response thereto by the OPCD and the Prosecutor*²⁰ ("the Decision of 13 February 2008"), by which it ordered the filing of the applications for participation in the interlocutory appeal taken by the OPCD on the basis of article 82(1)(d) of the *Rome Statute*.²¹

15. In its Decision of 13 February 2008, the Appeals Chamber indicated that applications for participation in the interlocutory appeal had to include a statement specifying how the personal interests of the victims were affected by the said appeal, explaining why the presentation of their views and concerns would be appropriate at this stage and showing that such participation would not be inconsistent with or prejudicial to the rights of the Defence.²²

16. The Office notes that the Decision of 13 February 2008 is consistent with previous decisions of the Appeals Chamber, since the same conditions were required on 13 February 2007 in respect of victim participation in an interlocutory appeal taken under article 82(1)(b) of the *Rome Statute*.²³

17. The Office submits that the Appeals Chamber's Decision of 13 February 2008 does

Appeals Filed by the Prosecution and the OPCD against the Decision of 24 December 2007", 28 February 2008, para. 11, p. 4.

²⁰ See *Decision of the Appeals Chamber on the OPCV's request for clarification and the legal representative's request for extension of time and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the response thereto by the OPCD and the Prosecutor* (Appeals Chamber), ICC-01/04-450, 13 February 2008 ("the Decision of 13 February 2008"). See also "Request from the OPCV Acting as Legal Representative for Clarifications on Victim Participation in the Interlocutory Appeal filed by the OPCD under article 81(2) of the Rome Statute", ICC-01/04-442-tENG, 6 February 2008.

²¹ See *Decision of the Appeals Chamber on the OPCV's request for clarification and the legal representative's request for extension of time and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the response thereto by the OPCD and the Prosecutor*, *ibid.*, p. 3.

²² *Ibid.*

²³ See *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"* (Appeals Chamber), ICC-01/04-01/06-824, 13 February 2007.

not specify from whom the applications for participation in the interlocutory appeal may originate. It therefore seems that the decision pertains not only to those victims already authorised to participate in the situation in the Democratic Republic of the Congo, but also covers those applicants seeking victim status in the said situation. Accordingly, the Principal Counsel of the Office, the Legal Representative of the applicants in the situation in the Democratic Republic of the Congo a/0004/06 to a/0006/06, a/0019/06, a/0020/06, a/0027/06, a/0035/06, a/0036/06, a/0039/06, a/0043/06, a/0047/06 to a/0052/06, a/0073/06 to a/0080/06, a/0110/06, a/0144/06, a/0153/06 to a/0157/06, a/0159/06, a/0160/06, a/0203/06, a/0220/06, a/0222/06 and a/0240/06, respectfully submits to the Appeals Chamber a request for the said applicants to participate in the appeals of 18 February 2008 against the Decision of 24 December 2007.

18. Lastly, the Office notes that the appeals taken by the Prosecution, on the one hand, and the OPCD, on the other, appear to give rise to two separate proceedings.²⁴ However, like the Prosecution, one cannot but observe that the issues raised in the said appeals are intrinsically related and could have similar legal implications.²⁵ Accordingly, in this request, the Office will cover the relevant aspects relating to the two above-mentioned appeals.

II. SUBMISSIONS IN FAVOUR OF PARTICIPATION IN THE APPEAL OF 18 FEBRUARY 2008

19. Pursuant to previous decisions of the Appeals Chamber in this respect, the Office responds successively to the following questions: (1) how are the personal interests of the victims affected by that appeal? (2) why is the presentation of their views and concerns appropriate at this stage? and (3) why is such participation not inconsistent with or prejudicial to the rights of the Defence?

²⁴ In this respect, see *Decision on the Presiding Judge of the Appeals Chamber in the appeal of the Prosecutor pursuant to the decision of Pre-Trial Chamber I of 6 February 2008* (Pre-Trial Chamber I), ICC-01-04-464, 21 February 2008 and *Decision on the Presiding Judge of the Appeals Chamber in the appeal of the Office of Public Counsel for the Defence pursuant to the decision of Pre-Trial Chamber I of 6 February 2008* (Pre-Trial Chamber I), ICC-01-04-465, 21 February 2008.

²⁵ See “Prosecution's Document in Support of Appeal against the 24 December 2007 Decision on the Victims' Applications for Participation in the Proceedings”, *supra*, footnote 15, para. 7, p. 5.

1. The personal interests of the victims are affected by the appeals of 18 February 2008

20. The Office submits that the issues on which leave to appeal has been granted (the “Issues under Appeal”) affect the personal interests of the applicants whose status is pending before Pre-Trial Chamber I. Indeed, the Appeals Chamber’s decision in the instant case could have an impact on how applications for participation will be dealt with.

21. Indeed, article 68(3) of the *Rome Statute* explicitly grants victims of crimes within the jurisdiction of the Court the right to submit observations and to present their views and concerns when their personal interests are affected. Hence, it does not differentiate between applicants and victims authorised to participate in proceedings before the Court, and thus covers these two categories of persons when their personal interests are affected. This interpretation is supported by the broad definition of the term “victim” as contained in rule 85 of the *Rules of Procedure and Evidence*. Indeed, this definition does not contain any restriction on participation and only associates the term “victim” with the commission of a crime within the jurisdiction of the Court.

22. The appeals of 18 February 2008 taken by the Prosecution and the OPCD relate in general to the interpretation of article 68(3) of the *Rome Statute*, together with that of rule 89 of the *Rules of Procedure and Evidence*. The Office submits that, since these provisions directly concern the victims, they should therefore be able to express their views and concerns on the matter.

23. Moreover, the Office submits that the applicants’ interest in participating in the said interlocutory appeals is obvious to the extent that the applications made by the Prosecution and the OPCD clearly seek to restrict, if not deny, the victims’ right to participate at the investigation stage in a situation by proposing a regime which is different from that set forth in article 68(3) of the *Rome Statute*, and which does not involve granting the applicants the procedural status of victim. Thus, if the Appeals Chamber were to allow the Prosecution’s and OPCD’s appeals, the applicants would, as a result, be deprived of all the procedural rights flowing from the status which could be granted to them. In particular, the applicants will no longer be able to present their views and concerns, nor to initiate certain proceedings before the Pre-Trial Chamber in the event that their personal interests were to be affected, for

example, in relation to protection.²⁶

24. This is particularly true, given that their applications for participation have already been partially reviewed and that they were not rejected by the Single Judge; instead, their review was simply *suspended*.

25. Furthermore, the Office recalls that, in accordance with the Court's previous decisions, "*the personal interests of victims are affected in general at the investigation stage, since the participation of victims at this stage can serve to clarify the facts, to punish the perpetrators of crimes and to request reparations for the harm suffered*".²⁷ Moreover, this is settled case law before Pre-Trial Chamber I, which has, in turn, been adopted by Pre-Trial Chamber II, which established identical principles in the situation in Uganda.²⁸ It follows that the personal interests of victims, understood in the broad sense,²⁹ are affected in general in all proceedings in connection with the investigation in a situation, including any potential interlocutory appeal, since such a proceeding would result from an issue raised in a proceeding in which the victims could be authorised to participate in the first instance.

26. Moreover, the Office emphasises that there is no doubt about the applicants' personal interest in participating in the interlocutory appeal as authorised by the Single Judge, insofar as the Prosecution itself observes that "[t]he issue of this appeal, in essence, concerns the system for assessing and potentially granting applications by victims to participate in proceedings".³⁰

²⁶ See *Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06* (Pre-Trial Chamber II), ICC-02/04-101, 10 August 2007, paras. 96-98. The Single Judge of Pre-Trial Chamber II stated in particular: "That the 'personal interests' of victims may be affected by the adoption of, or the failure to adopt, measures bearing upon their security and privacy appears hardly debatable. Accordingly, it would be consistent with article 68, paragraph 3, and therefore appropriate for victims (specifically those victims who may be affected by the measures in question) to be authorised to present their 'views and concerns' for these purposes even prior to and irrespective of their being granted victim status in a given case" (emphasis added) (footnote omitted), para. 98.

²⁷ See *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6*, ICC-01/04-101-tEN, 17 January 2006, para. 63.

²⁸ *Ibid.* See also *Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06*, *supra*, footnote 26, paras. 7-10 and 84. Finally, see *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* (Pre-Trial Chamber I), ICC-02/05-111-Corr, 14 December 2007, para. 1, p. 6.

²⁹ See *supra*, para. 21.

³⁰ See "Prosecution's Document in Support of Appeal against the 24 December 2007 Decision on the Victims' Applications for Participation in the Proceedings", *supra*, footnote 15, para. 9, p. 6.

27. Lastly, the Office draws the Appeals Chamber's attention to rule 93 of the *Rules of Procedure and Evidence*, under which it may “seek the views of other victims [on any issue]”. In light of the very broad formulation of this rule, the Office submits that the Chamber may invite any victim, within the broad meaning of this term as used in article 68(3) of the *Rome Statute*, to express his or her views on the Issues under Appeal.³¹

2. The participation of the applicants in the appeals of 18 February 2008 is appropriate

28. The Office submits that the participation of the applicants in the interlocutory appeals taken by the Prosecution and the OPCD is appropriate insofar as the outcome of this proceeding is likely to directly affect the handling of their applications for participation in the proceedings before the Court.

29. Lastly, the participation of the applicants in the interlocutory appeals taken by the Prosecution and the OPCD is appropriate insofar as it gives effect to the rights under article 68(3) of the *Rome Statute*. Indeed, a review of all of the articles and rules governing the participation of victims in proceedings before the Court, such as described above,³² clearly shows that their participation is not restricted to specific stages and hence is possible at all stages of the proceedings.³³ Moreover, the participation of the applicants in the interlocutory appeals taken by the Prosecution and the OPCD fits precisely the requirements of a fair trial, insofar as it would enable the interests of the applicants – the persons primarily affected by the outcome of this appeal – to be taken into account objectively and in depth.

30. Furthermore, the Office recalls the possibility for the Prosecutor and the Defence to file a response “to any document filed by any participant in the case” pursuant to regulation 24(1) of the *Regulations of the Court*. Hence, the appropriateness of the participation of the applicants in the said interlocutory appeals is guaranteed by the restrictions placed upon it.

³¹ *Ibid.*, para. 102.

³² See *supra*, para. 21.

³³ See proposals from France, UN Doc. PCNICC/1999/DP.2, 1 February 1999, p. 7. See also proposal from Costa Rica, UN Doc. PCNICC/1999/WGRPE/DP.3, 24 February 1999, and proposal from Colombia, UN Doc. PCNICC/1999/WGRPE/DP.37, 10 August 1999. For a review of the preparatory work, see BITTI (G.) and FRIMAN (H.), “Participation of Victims in the Proceedings”, in LEE (R.S.) (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence*, Transnational Publishers, Inc., New York, 2001, pp. 456-474.

3. The participation of the applicants in the appeals of 18 February 2008 is not inconsistent with or prejudicial to the rights of the Defence

31. As the Office has already noted, the term “victim” must be given a broad meaning.³⁴

32. Firstly, the Office is of the opinion that the protection of the rights of the Defence is a fundamental principle, without which the integrity of criminal proceedings could not be safeguarded and justice could not be done.

33. The Office notes that the participation of victims in proceedings before the Court is not in itself liable to affect the rights of the Defence. Indeed, as Judge Blattmann emphasised:

[B]oth the rights of victims and that of the accused are amply protected under the Statute. Further, many major legal systems are able to incorporate victims’ participation into their proceedings while ensuring the rights of the accused to both a fair and expeditious proceeding.³⁵

34. In this respect, the Office also notes that the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* adopted by the United Nations General Assembly on 29 November 1985 spells out the principle of victims’ access to justice and their right to fair treatment.³⁶

35. Furthermore, the participation of the applicants in the said interlocutory appeals would be neither inconsistent with nor prejudicial to the rights of the Defence, since under regulation 24(1) of the *Regulations of the Court* the Defence may file a response to any document that would be filed by the applicants as a result.³⁷

36. Moreover, the Office submits that the participation of victims is an integral part of the concept of a fair and impartial trial, since it is expressly embodied in the Court’s texts. Furthermore, this right granted to victims is consistent with international human rights law and is recognised in many national systems. Consequently, the equilibrium within criminal trials would not be affected by the participation of victims. On the contrary, taking their interests into account constitutes one of the contributory factors in balancing these

³⁴ See *supra*, para. 21.

³⁵ See *Separate and Dissenting Opinion* of Judge René Blattmann in the *Decision on victims’ participation* (Trial Chamber I), ICC-01/04-01/06-1119, para. 26, p. 58. See also *ibid.*, footnote 127.

³⁶ See United Nations General Assembly resolution 40/34 of 29 November 1985, available at: <http://www2.ohchr.org/english/law/victims.htm>, principles 4 to 7.

³⁷ See *supra*, para. 30.

proceedings, especially because the proceedings concern a violation of the fundamental rights of the victims themselves.³⁸ Hence, the participation of the victims in this interlocutory appeal would not prejudice the interests of the Defence.³⁹

Consequently, the Office submits that the personal interests of the applicants are affected by the interlocutory appeals to which this request relates, that the presentation of their views and concerns appears appropriate at this stage, and that such participation is neither inconsistent with nor prejudicial to the rights of the Defence. Accordingly, the Principal Counsel of the Office of Public Counsel for Victims respectfully requests the Appeals Chamber to allow the OPCV's Request as the Legal Representative of the applicants in the situation in the Democratic Republic of the Congo for participation in the interlocutory appeals filed by the Prosecution and the OPCD against the Decision of 24 December 2007.

The Principal Counsel also requests the Appeals Chamber to set a time limit for the filing of the response to the documents filed in support of the appeals taken by the Prosecution and the OPCD on 18 February 2008, and to grant her leave to participate in the hearings, if any, that will be held by the Chamber to consider the said appeals.

[signed]

**Paolina Massidda,
Principal Counsel,
Office of Public Counsel for Victims**

Dated this 28 February 2008

At Genoa, Italy

³⁸ See "Response of the Legal Representatives of Victims to the Prosecution's Application and the OPCD's Request for Leave to Appeal the 'Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0027/07 to a/003/07 and a/0035/07 to a/0038/07'", ICC-02/05-116, 17 December 2007, para. 30, pp. 9-10.

³⁹ See DONAT-CATTIN (D.), "Article 68", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, Nomos Verl. Ges., Baden-Baden, 1999, pp. 876-877: "The victims' genuine wish is that the truth be established and the case solved. [...] The second [concept of due process for defendant] is fair trial, which is comprehensive of, but not limited to, the respect for all the rights of the suspect/accused; it means equitable justice for defendants, victims and international society as such, the foundation of all procedural norms of the Statute."