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No.: ICC-01/04
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THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Request of the Legal Representative of Victim a/0105/06 for authorisation to participate in the appeal filed by the OPCD on 13/12/2007 and authorised by the Pre-Trial Chamber on 23/1/2008

The Office of the Prosecutor
Mr Luis Moreno
Ms Fatou Bensouda

Counsel for the Victims
Ms Carine Bapita Buyangandu

**Office of Public Counsel for the
Defence**
Xavier Jean Keita
Office of Public Counsel for Victims
Paolina Massida

REQUEST OF THE LEGAL REPRESENTATIVE OF VICTIM A/0105/06 FOR AUTHORISATION TO PARTICIPATE IN THE APPEAL FILED BY THE OPCD ON 13 DECEMBER 2007 AND AUTHORISED BY PRE-TRIAL CHAMBER I ON 23 JANUARY 2008.

1. Noting the decision on the application for participation of Victim a/0105/06 of 20 October 2006, in which the Pre-Trial Chamber accorded a/0105/06 the status of victim in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.

2. Noting the decision on the applications for participation in the proceedings filed as part of the investigation in the Democratic Republic of the Congo by 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 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209//06, a/0214/06, a/0220/06 to a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 to a/0241/06 to a/0071/06 granting the status of victim in the situation in the DRC.

3. Noting the *Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor* dated 7 December 2007 ("the Decision of 7 December 2007"), by which the Single Judge rejected the requests of the OPCD dated 28 August 2007 and 31 August 2007;

4. Noting the "Request for leave to appeal the 'Decision on the requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor'" ("the OPCD's request"), filed by the OPCD on 13 December 2007;

5. Noting the Prosecution's response to 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 ("the Prosecution's response"), filed by the Prosecutor on 17 December 2007;

6. Noting the decision of Pre-Trial Chamber I of the International Criminal Court ("the Court") dated 23 January 2008 granting the OPCD's request of 13 December 2007 on the following points:

whether article 68(3) of the Statute can be interpreted as providing for a 'procedural status of victim' at the investigation stage of a situation and the pre-trial stage of a case; and

1. if so, whether rule 89 of the Rules and regulation 86 of the Regulations provide for an application process which only aims to grant the procedural status of victim and is thus distinct and separate from the determination of the procedural rights attached to such status; and what are the specific procedural features of the application process? or

2. if not, how applications for participation at the investigation stage of a situation and the pre-trial stage of a case must be dealt with.

7. Noting the observations of the OPCD of 4 February 2008 on the *Decision on the request 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.*

8. Noting the Decision of the Appeals Chamber dated 12 December 2006;

9. Noting the ruling of the Appeals Chamber dated 13 February 2007 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*", which set out the conditions for participation of victims in interlocutory appellate proceedings pursuant to article 82(1)(b) of the *Rome Statute*.

10. The Legal Representative of Victim a/0105/06 seeks authorisation from the Appeals Chamber to participate in the interlocutory appeal raised by the OPCD on 13 December 2007 which was authorised by the Pre-Trial Chamber on 23 January 2008.

11. Pursuant to articles 68 and 82(1)(e) of the *Rome Statute*, regulations 24, 65 and 86 of the *Regulations of the Court* and rules 89 and 155 of the *Rules of Procedure and Evidence*;

12. The Legal Representative of a/0105/06 is of the opinion that a/0105/06 satisfies the criteria and conditions resulting from the Court's ruling of 13 February 2007 for being granted authorisation to participate in the appeal.

I. PERSONAL INTERESTS OF a/0105/06 AFFECTED BY THE INTERLOCUTORY APPEAL

13. The personal interests of a/0105/06 are affected by this appeal and his or her participation at this stage does not prejudice the rights of the Defence or the requirements of a fair and impartial trial.

14. In accordance with article 68(3) of the Statute and the Court's ruling of 13 February 2007, Victim a/0105/06 is submitting this application for

authorisation to participate in an interlocutory appeal in order that the Appeals Chamber review the application and set the conditions for participation at this stage of the proceedings.

15. The personal interests of a/0105/06 are directly affected by the issues raised by the OPCD, which essentially concern the rights and privileges accorded to victims. The participation of a/0105/06 is indeed appropriate at this stage and may be of great benefit to the proceedings.

Each of the victims has specificities which vary from one to the other according to circumstances.

II. Participation of a/0105/06 does not prejudice the rights of the Defence

The participation of a/0105/06 at this stage of the proceedings does not prejudice the rights of the Defence or the requirements of a fair trial.

By presenting views and observations, the Defence and the Prosecution will have an opportunity to respond to this and may benefit from adversarial proceedings.

They will thereby have an opportunity to demonstrate how the views and observations of a/0105/06 do not comply with the law on the issues raised by the OPCD.

Still, the advantage of having a/0105/06 participate at this stage would be to discover which of his or her personal interests are affected by these issues and perhaps understand how his or her interests are different from those of the

other victims. Differences in views and observations in adversarial proceedings can only be advantageous to us all.

Accordingly, the Legal Representative of a/0105/06 very respectfully requests the Appeals Chamber to authorise that person to participate in these appellate proceedings.

Ms Carine Bapita Buyangandu

_____ [signed] _____

Dated this 11 February 2008

At The Hague