

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/04

Date: 8 February 2008

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Application from the Legal Representatives of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 and a/0071/06 for Leave to Participate in the Appeal filed by the OPCD on 13 December 2007 and Authorised by Pre-Trial Chamber I on 23 January 2008

Counsel for the Victims

Emmanuel DAOUD
Patrick BAUDOUIN

1. Noting the *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6*¹ of 17 January 2006, in which Pre-Trial Chamber I granted victim status in the situation in the Democratic Republic of the Congo (DRC) to applicants VPRS 1 to VPRS 6;

2. Noting the *Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06*² of 24 December 2007, by which the Single Judge granted victim status in the situation in the DRC to applicant a/0071/06.

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 2007³ ("the Decision of 7 December 2007"), by which the Single Judge denied 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;⁴

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

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

[W]hether 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 ICC-01/04-101-tENG.

² ICC-01/04-423.

³ ICC-01/04-417.

⁴ ICC-01/04-419.

⁵ ICC-01/04-421.

admissibility of the victims' applications for participation in appeals proceedings brought before the said Chamber should be recalled.

a) The need for an application to be filed

According to article 68(3) of the Statute:

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

The Appeals Chamber stated that the requirement under article 68(3) that victim participation shall be permitted "*at stages of the proceedings determined to be appropriate [by the Court]*" mandates the Appeals Chamber to determine whether the participation of victims is appropriate in a particular interlocutory appeal.⁸

The Appeals Chamber therefore decided that, in order to participate in a particular interlocutory appeal, the Victims must file an application seeking leave to participate with the Appeals Chamber,⁹ which shall then determine whether their interests are affected by the interlocutory appeal and whether it is appropriate for them to participate at that stage of the proceedings.¹⁰

b) The content of the application

The Chamber stated that:

[A]n application should include a statement from the victims in relation to whether and how their personal interests are affected by the particular interlocutory appeal, as well as why it is "appropriate" for the Appeals Chamber to permit their views and concerns to be presented. Furthermore, while it is for the Appeals Chamber 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", any submissions from victims on these important rights would necessarily be considered by the Appeals Chamber in making its determination.¹¹

On the other hand, where the Pre-Trial Chamber has granted victim status to the Victims, the application for participation in an interlocutory appeal need not specify whether or not the participant is "a victim" within the meaning of rule 85 of the *Rules of Procedure and Evidence* in the absence of any appeal relating to that matter.¹²

⁸ ICC-01/04-01/06-824, paras. 40 and 43.

⁹ ICC-01/04-01/06-824, para. 38.

¹⁰ ICC-01/04-01/06-824, para. 45.

¹¹ ICC-01/04-01/06-824, para. 44.

¹² ICC-01/04-01/06-824, para. 45.

The Appeals Chamber limits itself to determining whether their interests are affected by the interlocutory appeal and whether their participation at that stage of the proceedings is appropriate.

14. This point having been made, let us now turn to how the application for participation in the appeal lodged by VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6 and a/0071/06 fulfils the requirements recalled by the Appeals Chamber in its abovementioned decision of 13 February 2007.

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I. The personal interests of Victims VPRS 1 to 6 and a/0071/06 are affected by the particular interlocutory appeal and the Victims' participation is appropriate

15. As Pre-Trial Chamber I recalled in its *Decision on Request for leave to appeal the "Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor"* dated 23 January 2008,¹³

[T]he personal interests of victims are affected at the investigation stage of a situation and the pre-trial stage of a case; that these are appropriate stages of the proceedings for victims' participation; and that accordingly, victims have a procedural status in proceedings concerning the investigation of a situation and the pre-trial stage of a case.

16. In the instant case, the appeal lodged by the OPCD pertains to a determination as to:

- 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
- if so,
 - whether rule 89 of the Rules and regulation 86 of the Regulations of the Court provide for a specific process for granting procedural status to victims and not for determining the contents of the rights which are attached to this status;
 - what procedure is applicable to the participation process? or
- if not, how should applications for participation in the situation stage and in the pre-trial stage of the case be dealt with?

¹³ ICC-01/04-438.

17. The questions asked by the OPCD are matters of principle which go beyond the victims' personal interests which were the subject of Pre-Trial Chamber I's decision of 23 January 2008.

18. The Legal Representatives of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPPRS 5, VPRS 6 and a/0071/06 are of the view that these questions directly affect the personal interests of the victims they are representing insofar as the Appeals Chamber's response will have an impact on their status and the rights conferred upon them at the situation stage and at the pre-trial stage of the case.

19. In view of the nature of the issues raised by the appeals proceedings, which pertains to the Victims' inherent essential rights, the Appeals Chamber can only observe that the personal interests of Victims VPRS 1-6 and a/0071/06 are directly affected and that their participation is entirely appropriate at this stage in the proceedings.

II. The participation of the Victims in the interlocutory appeal is not prejudicial to the rights of the accused and a fair and impartial trial

20. The second criterion imposed by the Court's jurisprudence, and by the Appeals Chamber in particular in its judgment of 13 February 2007, is to ensure that victim participation in the particular interlocutory appeal will not be prejudicial to the rights of the accused and a fair and impartial trial.

21. The Legal Representatives of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPPRS 5, VPRS 6 and a/0071/06 observe that the OPCD fails to show how participation of the victims in the ongoing proceedings would be inconsistent with the rights of the accused in such a way as to significantly affect the progress of the trial.

22. On the contrary, in its decision ICC-02/05 of 3 December 2007¹⁴ relating to the situation in Darfur, Pre-Trial Chamber I already had the opportunity to rule on the issue, stating that:

Under rule 86(2) of the Regulations of the Court:

"in situation and case proceedings before the Pre-Trial Chamber [...] the fact that one or several natural or legal persons may be entitled to the procedural status of victim is not, per se, prejudicial to the Defence"

23. The Appeals Chamber held that:

[o]nce an application to participate [in the Appeals Proceedings] has been received, the Prosecutor and the Defence will thereafter be entitled to reply to [it] within a time limit to

¹⁴ *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.*

be set by the Appeals Chamber, in line with the provisions of rule 89(1) of the Rules of Procedure and Evidence.¹⁵

24. In the instant case, the participation of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPPRS 5, VPRS 6 and a/0071/06 in the particular interlocutory appeals proceedings is neither prejudicial to nor inconsistent with the rights of the accused insofar as it has no effect on the Defence's procedural rights. Indeed, the Prosecution and Defence have the opportunity to respond to any presentation of the victims' views and concerns. Accordingly, the participation of the victims in the particular interlocutory appeals proceedings does not violate the principle of fairness of the proceedings.

25. The opportunity for the victims to present observations, which will then be the subject of an *inter partes* hearing, moreover, on a matter the resolution of which directly calls into question their personal interests, on the contrary, constitutes only the proper expression of the rules governing a fair trial provided in the Statute of the Court.

26. Accordingly, the Legal Representatives of the Victims request the Appeals Chamber to grant leave to VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPPRS 5, VPRS 6 and a/0071/06 to participate in the appeals proceedings at issue.

[signed]

Emmanuel DAOUD

[signed]

Patrick BAUDOUIN

Dated this 8 February 2008

At Paris

¹⁵ ICC-01/04-01/06-821, para. 47