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Date: 7 April 2008

THE APPEALS CHAMBER

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Document

**Prosecution's Response to Applications by Victims to Participate in the
Appeals by the Prosecution and Defence against Trial Chamber I's
18 January 2008 Decision on Victims' Participation**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

The appeals by the Prosecution and the Defence against the Trial Chamber's Decision, in which the victims wish to present their views and concerns, deal with the manner in which applications by victims to participate are to be addressed, and the scope and modalities of victim participation during the trial phase.

In relation to those victims who have been admitted to participate in this case, the Prosecution does not oppose them submitting their views and concerns in relation to this appeal, insofar as it affects their personal interests. However, consistent with its previous submissions, the Prosecution submits that applicants who have not been granted any participatory rights or the procedural status in this case 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.

In addition, given that the date has been set for the commencement of the trial in this case, the Prosecution submits that if any victims are permitted to present their views and concerns, they should be required to do so (and the parties should be permitted to respond) on an expedited basis.

Procedural background

1. On 29 and 30 October 2007, the Trial Chamber held a status conference which included discussion of the "role of victims in the proceedings leading up to, and during, the trial" and "common legal representation and the criteria for granting victims participating status".¹
2. In preparation for the status conference, the legal representatives of victims filed a joint written submission on these issues on 28 September 2007;² the Defence

¹ ICC-01/04-01/06-947, 5 September 2007; ICC-01/04-01/06-977, 9 October 2007; ICC-01/04-01/06-985, 17 October 2007.

² ICC-01/04-01/06-964, 28 September 2007. The legal representative of victims a/0001/06 to a/0003/06 filed a separate submission addressing the two additional issues added to the agenda of the October 29-30 Status Conference - ICC-01/04-01/06-992, 19 October 2007.

submission was filed on 18 October 2007;³ and the Prosecution submission on 19 October 2007.⁴

3. During the status conference, the Chamber granted leave to the OPCV to file written submissions on the issues discussed,⁵ which the OPCV filed on 9 November 2007.⁶
4. On 18 January 2008, the Trial Chamber rendered its "Decision on victims' participation".⁷
5. On 28 January 2008, the Prosecution and Defence sought leave to appeal the Decision.⁸
6. On 26 February 2008, the Trial Chamber granted the applications for leave to appeal in part, certifying for appeal three of the issues for which leave to appeal had been sought.⁹
7. On 10 March 2008, the Prosecution¹⁰ and the Defence¹¹ filed their documents in support of appeal. The Prosecution filed its response on 19 March 2008.¹²
8. On 12 March 2008, the legal representative of victims a/0001/06, a/0002/06 and a/0003/06 applied to participate in the appeals by the Prosecution and Defence against the Decision.¹³
9. On 18 March 2008, the Office of Public Counsel for Victims ("OPCV") filed an application to participate in the appeals on behalf of unspecified "applicants".¹⁴

³ ICC-01/04-01/06-991, 18 October 2007.

⁴ ICC-01/04-01/06-993-Conf. This document was erroneously filed confidentially and was re-filed publicly on 23 October 2007, ICC-01/04-01/06-996 and ICC-01/04-01/06-996-Anx.

⁵ ICC-01/04-01/06-T-58-ENG, 30 October 2007, p. 14.

⁶ ICC 01/04-01/06-1020, 9 November 2007.

⁷ ICC-01/04-01/06-1119, 18 January 2008 ("the Decision").

⁸ ICC-01/04-01/06-1135 and ICC-01/04-01/06-1136, 28 January 2008.

⁹ ICC-01/04-01/06-1191 ("Decision Granting Leave"). The Defence was granted leave to appeal (1) whether the notion of victim necessarily implies the existence of personal and direct harm ("the first issue"). In addition, both the Prosecution and the Defence were granted leave to appeal the issues of (2) whether the harm alleged by a victim and the concept of "personal interests" under Article 68 of the Statute must be linked with the charges against the accused ("the second issue"); and (3) whether victims participating at trial may lead evidence pertaining to the guilt or innocence of the accused and challenge the admissibility or relevance of evidence ("the third issue").

¹⁰ ICC-01/04-01/06-1219 OA9 (hereinafter "Prosecution Appeal Brief").

¹¹ ICC-01/04-01/06-1220 OA10.

¹² ICC-01/04-01/06-1233 OA10.

¹³ ICC-01/04-01/06-1222 OA9 OA10.

¹⁴ ICC-01/04-01/06-1228 OA9 OA10.

10. On 20 March 2008, the Appeals Chamber issued an order on the filing of applications for participation in the appeals,¹⁵ which specified that any applications for participation were to be filed by 31 March 2008, and were to:

“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 order further granted the Prosecution and OPCD until 7 April 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.”

11. On 21 March 2008, the legal representatives of applicants a/0009/06, a/0106/06, a/0107/06, a/0108/06 and a/0109/06 filed an application to participate in the appeals.¹⁶

12. The Prosecution hereby files its consolidated response to the applications to participate in the appeals, pursuant to the Appeals Chamber’s Order.

Nature of Victim Participation in Interlocutory Appeals

13. As confirmed by the Appeals Chamber’s Order and previously argued by the Prosecution,¹⁷ 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.¹⁸ These

¹⁵ ICC-01/04-01/06-1239 OA9 OA10 (“Appeals Chamber’s Order”).

¹⁶ ICC-01/04-01/06-1241 OA9-OA10. The cover page of this application refers only to four of the applicants, however the substance of the application (paras. 1 and 5) refer to all five.

¹⁷ *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, see in particular paras. 13-14. See also *Situation in the DRC*, ICC-01/04-488 OA5 OA6, 20 March 2008; *Situation in Darfur*, ICC-02/05-135 OA OA2 OA3, 20 March 2008.

¹⁸ *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*, ICC-01/04-01/06-925 OA8, 13 June 2007, paras. 21-28.

showings, combined with the Pre-Trial (or Trial) Chamber's finding that a person has the status of a victim under Rule 85¹⁹ in relation to the relevant proceedings, form the basis for any participation in an interlocutory appeal arising out of those proceedings.

14. 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";²⁰ 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)."²¹

Response to the Application to Participate

15. The Prosecution submits that certain aspects of these appeals may affect the personal interests of the victims. The third issue certified for appeal, relating to whether victims may lead or challenge the admissibility and relevance of evidence pertaining to guilt or innocence,²² affects the interests of victims as it directly impacts on the rights which they may seek to exercise at trial. In addition, the second issue certified for appeal, relating to the necessary link between the charges and the harm suffered or personal interests of the victims,²³ has implications for the system of assessing applications established by the Trial Chamber. As noted by the Prosecution in its Appeal Brief, the approach taken in the Decision which requires a second "discrete written application" for any intervention may have "detrimental consequences for the proper exercise of

¹⁹ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 45.

²⁰ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55.

²¹ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 49.

²² Decision Granting Leave, para. 54(c).

²³ Decision Granting Leave, para. 54(b).

participatory rights by victims.”²⁴ Thus certain aspects of this second issue may also affect the personal interests of victims.²⁵

16. The Prosecution submits that the participation of victims in the appeals, if their views and concerns are submitted promptly, may be appropriate. However the Prosecution notes that the trial in this case is scheduled to commence on 23 June 2008,²⁶ and that this appeal must be finalised prior to the commencement of that trial.²⁷ While some delay to proceedings will not necessarily render the participation of victims in an appeal inappropriate,²⁸ the Prosecution submits that in other circumstances substantial delays may render participation inappropriate, especially if the applications for participation are not filed promptly.²⁹ Where an issue requires expeditious determination, and in particular where other proceedings will be impeded if the participation of victims delays the resolution of the appeal, then the Appeals Chamber may properly conclude that those factors render such participation inappropriate.

17. The Prosecution finally submits that the participation of such victims in this appeal, through the modalities of participation proposed below, is not inconsistent with the rights of the defence or a fair and impartial trial. The Prosecution thus does not oppose the participation in this appeal of those victims who have been granted the right to participate in this case.

²⁴ Prosecution Appeal Brief, para. 25.

²⁵ The Prosecution notes that the legal representatives do not provide any arguments in support of the impact of the first issue, relating to whether the notion of victim necessarily implies the existence of personal and direct harm (Decision Granting Leave, para. 54(a)), on the personal interests of the victims. However the Prosecution notes that, for example, victims a/0001/06, a/0002/06 and a/0003/06 were, *inter alia*, found to have endured emotional suffering as a result of crimes committed against other persons, namely their children – see *Prosecution v Lubanga*, ICC-01/04-01/06-228-tEN, 28 July 2006.

²⁶ ICC-01/04-01/06-T-78-CONF-ENG, 12 March 2008, pp. 4-5, 79.

²⁷ See further para. 31, below.

²⁸ *Prosecutor v Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, Separate Opinion of Judge Song, para. 27 (referring to such delays not necessarily being inconsistent with the rights of the Defence; but also recognising that extensive delays in some circumstances could render participation inappropriate, at para. 23).

²⁹ The Prosecution recalls that the Appeals Chamber has previously ruled that “An application to participate should in principle be made as soon as possible after the appeal is filed” (*Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 46), and that the late submission of applications to participate could in itself lead to a denial of the application (*Ibid*, para. 53). The Prosecution has previously set out more detailed 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.

18. In contrast to the application to participate by victims who have been recognised as such in this case, the Prosecution opposes the participation in the appeal of applicants who have not yet been granted participant status in the case. 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).
19. The Prosecution will respond to the specific applications of the legal representatives below.

Application by legal representative of victims a/0001/06, a/0002/06 and a/0003/06

20. The legal representative submits that the personal interests of the victims are primarily affected by the third issue, regarding submission of evidence.³⁰ The legal representative goes on to argue that the arguments developed by the Prosecution and Defence in their Appeal Briefs regarding the other issues could also have consequences for the rights of victims, and thus affect their personal interests too.³¹ The Prosecution, as stated above, does not dispute the impact on the personal interests by the third issue, and certain aspects of the second issue.
21. The legal representative submitted this application on the evening of 11 March 2008, less than two days after the parties submitted their Appeals Briefs. In light of the prompt application, the Prosecution submits that the participation of these victims at an early stage in this appeal is appropriate. The Prosecution also submits that their participation, in accordance with the modalities proposed below, is not inconsistent with the rights of the defence and the fairness of the proceedings.

³⁰ ICC-01/04-01/06-1222 OA9 OA10, 12 March 2008, para. 1.

³¹ ICC-01/04-01/06-1222 OA9 OA10, 12 March 2008, para. 2.

Application by the Office of Public Counsel for Victims

22. At the outset, the Prosecution notes that OPCV has not identified in its application the “applicants” on behalf of whom it is applying to participate in this appeal. In contrast, in its analogous applications to participate in appeals on behalf of applicants, OPCV clearly identified the individuals on behalf of whom the application was made.³² The Prosecution submits that, in addition to its opposition to the participation of applicants who have not been recognised as victims in the relevant case or situation, it would be inappropriate to allow participation of an undefined and unidentified class of individuals. Any application to participate in any proceedings, including interlocutory appeals, must identify the persons on behalf of whom the application is made at the very least by reference to the number assigned to the applicants by VPRS.³³
23. The Prosecution submits that the nature of the participation under Article 68(3) – the presentation of the victims’ “views and concerns” – reflects the personal nature of the submission, and underscores the need for the victims to be specified. In this regard, the Prosecution notes that it is the victims’ views and concerns regarding those matters which affect their personal interests which are to be submitted and not, contrary to the submission of OPCV, a “response to the documents in support of the appeals”³⁴ from a legal representative.
24. In response to the application by OPCV to present the views and concerns of applicants in this appeal, consistent with its prior positions,³⁵ the Prosecution opposes the application, for the reasons outlined in para. 18 above.

³² See e.g. *Situation in the DRC*, ICC-01/04-467-tENG OA4, 21 February 2008, para. 11; *Situation in the DRC*, ICC-01/04-477-tENG OA5, 28 February 2008, para. 17; *Situation in the DRC*, ICC-01/04-478-tENG OA5, 28 February 2008, para. 17.

³³ See e.g. *Situation in the DRC*, ICC-01/04-358-tENG 23 July 2007; *Situation in the DRC*, ICC-01/04-374, 17 August 2007, para. 27 and p. 24 (dispositif).

³⁴ ICC-01/04-01/06-1228 OA9 OA10, 18 March 2008, p. 11.

³⁵ *Situation in the DRC*, ICC-01/04-483 OA4, 4 March 2008, paras. 20, 31-34, 37; *Situation in the DRC*, ICC-01/04-488 OA5 OA6, 20 March 2008, paras. 20, 29-32; *Situation in Darfur*, ICC-02/05-135 OA OA2 OA3, 20 March 2008, paras. 23-25.

25. The Prosecution stresses that only victims may present their views and concerns to the Court. In respect of these unidentified applicants, there appears to have been no ruling that the applicants in question fulfil the criteria of “victim” pursuant to Rule 85(a).³⁶ 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.³⁷ This is the basis for the briefing requested in the Appeals Chamber’s Order, which only requested submissions on the additional requirements of personal interests, appropriateness, and prejudice. 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.³⁸
26. The Prosecution also strongly disputes the submission that Article 68(3) allows alleged victims to present their views and concerns prior to a ruling on their application to participate.³⁹ 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

³⁶ Indeed, to the Prosecution’s knowledge it has not even been notified of any of the relevant applications to participate in the case, let alone had an opportunity to respond to those applications or the Chamber an opportunity to rule.

³⁷ *Prosecutor v Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 45.

³⁸ 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 in relation to this case. This case is before the Trial Chamber, and it is that Chamber which has 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 trial phase 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, to the Prosecution’s knowledge the information required to determine whether the applicants are victims is not before the Appeals Chamber. Further, 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 applications themselves would need to be notified to the parties, who would have to be given an opportunity to respond on whether the individuals in question were victims in the context of this case. The delays which would be caused by this process, especially in light of the scheduled date for the commencement of the trial, would render the participation of such applicants inappropriate at this stage of the proceedings.

³⁹ ICC-01/04-01/06-1228 OA9 OA10, para. 17. The Prosecution thus submits that the discussion of whether the personal interests of applicants are affected (ICC-01/04-01/06-1228 OA9 OA10, paras. 16, 18) is irrelevant.

authorised to present their views and concerns under Article 68(3).⁴⁰ An 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.⁴¹ 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.

Application by legal representatives of applicants a/0009/06 and a/0106/06 to a/0109/06

27. Applicants a/0009/06 and a/0106/06 to a/0109/06 also have not yet been recognised as victims or granted any procedural status or participatory rights in the context of this case, although as the legal representatives note they have been authorised to participate in the *Situation in the DRC*.⁴² For similar reasons to those set out above, the Prosecution opposes these applicants being permitted to present their views and concerns in this appeal.

28. Appeals under Article 82 are derived from and are part of an underlying situation or case, which is under the jurisdiction of a Pre-Trial or Trial Chamber. The Prosecution submits that only those applicants who have already been determined by the relevant Chamber to be victims in relation to the situation or case out of which the appeal arose may participate in that appeal. To do otherwise would require the Appeals Chamber to make its own findings as to

⁴⁰ 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.

⁴¹ 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)).

⁴² ICC-01/04-01/06-1241 OA9 OA10, 25 March 2008, para. 1. The legal representatives indicate that applications to participate in the case have been lodged (para. 5). The Prosecution has not been notified of the applications by a/0106/06 to a/0109/06 in the context of this case nor provided with an opportunity to respond. The Prosecution had previously been notified of application a/0009/06. The Prosecution objected to the participation of this applicant in the case of *Prosecution v Lubanga* on the basis that “there is no causal link between the facts alleged by the applicants and the crimes set forth in the warrant of arrest”; and Pre-Trial Chamber I ruled that it could not consider the application due to “the lack of an explicit indication of the intention to participate at the pre-trial stage” – see ICC-01/04-01/06-601-tEN, 20 October 2006, pp. 5, 8.

whether the applicants in question qualify as victims in the context of this case, which would be contrary to the division of responsibilities between the Chambers, as well as to the expeditiousness⁴³ and integrity⁴⁴ of the appeal.

Modalities of Participation

29. 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).”⁴⁵
30. 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.⁴⁶ The views and concerns should be limited to those specific issues which arise out of these appeals,⁴⁷ and which affect the personal interests of the victims. In this regard, the purpose is to provide the Appeals Chamber with the personal views and concerns of the victims relating to the issues on appeal which affect their interests: the filing is not a legal response to the brief filed by the Appellant; and the role of the victims is not to refute particular legal arguments.⁴⁸

⁴³ To make such a determination, under Rule 89(1) the Registrar would have to transmit the applications to participate to the Appeals Chamber and to both the Prosecution and the Defence. The parties would have to be given an opportunity to respond to the applications, prior to a determination being made by the Appeals Chamber on whether the individuals were victims in the context of the case. As has been noted above, this has proven to be a significantly time and resource intensive process in the past (see footnote 38, above). For example, the applications of four of the present applicants for participation in this case were, according to the legal representatives, submitted in late 2006 (ICC-01/04-01/06-1241 OA9 OA10, 25 March 2008, para. 6) but still have not been notified to the Prosecution in the context of the case.

⁴⁴ In the present appeal, one of the issues for determination by the Appeals Chamber is whether, in order to be considered as a victim in the context of a case, the harm alleged and the personal interests must be linked with the charges against the accused. If the Appeals Chamber was to rule that certain individuals, who have not suffered from harm linked to the charges against the accused, were victims in the context of this case and could therefore participate in the appeal, then it could be seen as having prejudged the merits of the appeal.

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

⁴⁶ 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).

⁴⁷ 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.

⁴⁸ See e.g. *Prosecutor v Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, Separate Opinion of Judge Pikis, paras. 15-16.

31. The Prosecution submits that in this case, the Appeals Chamber should require the submission of any views and concerns on an expedited basis, and that a short time limit should thus be prescribed. The trial in this case is scheduled to commence on 23 June 2008.⁴⁹ The determination of this appeal prior to the commencement of that trial is desirable, as the issues affect the rights of existing participants at trial. In addition, there are a substantial number of victims' applications to participate in this case, which will be affected by the outcome of this appeal and which will likely require determination prior to the commencement of trial.⁵⁰ Further, the legal representatives have had ample opportunity to consider the issues, which were certified for appeal on 26 February 2008, and their impact on the victims, and should thus be in a position to present those views and concerns promptly.
32. The Prosecution finally submits that the Appeals Chamber should allow both Prosecution and OPCD to respond to the various views and concerns of the victims. The Prosecution submits that the period prescribed by the Appeals Chamber for the filing of such a response should reflect the number of filings to which it will be responding,⁵¹ and should also take into account the interests in completing the briefing for this appeal promptly to allow resolution prior to the commencement of the trial.

⁴⁹ ICC-01/04-01/06-T-78-CONF-ENG, 12 March 2008, pp. 4-5, 79.

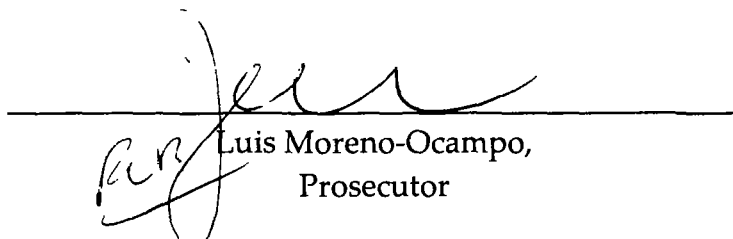
⁵⁰ A significant number of victims whose applications have been notified to the Prosecution in the *Situation in the DRC* also applied for participation in the trial phase, but these applications have not yet been notified to the Prosecution in this case in order for the Prosecution (and the Defence) to respond to the applications. OPCV also referred to the situation of victims a/0047/06 to a/0052/06, who had applied to participate in the case but in respect of whom the Pre-Trial Chamber held that participation at the stage of the confirmation hearing was not appropriate – see e.g. *Situation in the DRC*, ICC-01/04-466-tENG, 21 February 2008, para. 11.

⁵¹ 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 be required.

Relief Sought

33. For the reasons set out above, the Prosecution respectfully requests that the Appeals Chamber:

- (a) grant the application to participate in this appeal of victims a/0001/06, a/0002/06 and a/0003/06;
- (b) deny the other applications to participate in this appeal, lodged by applicants who have not been recognised as victims in the context of this case;
- (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 Defence to respond to the various submissions of views and concerns within a deadline prescribed by the Appeals Chamber.



Luis Moreno-Ocampo,
Prosecutor

Dated this 7th day of April, 2008

At The Hague, The Netherlands