

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Anita Ušacka, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

**Prosecution's Observations on 28 Applications for Victim Participation at the
Investigation Stage of the Situation in the DRC**

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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I. Background

1. On 11 April 2008, the Pre-Trial Chamber issued the "Decision Designating a Single Judge Responsible for Issues Related to Victims' Applications for Participation at the Investigation Stage of the Situation in the DRC" in which the Pre-Trial Chamber appointed Judge Anita Ušacka as single judge responsible for carrying out all functions of the Pre-Trial Chamber in connection with issues related to victims' applications for participation at the investigation stage of the Situation in the DRC, until decided otherwise by the Chamber.¹

2. On 17 August 2007, the Pre-Trial Chamber rendered its "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation",² in which it ordered the Registry *inter alia* (i) to present the Chamber only with complete applications and (ii) within a reasonable time, to present those applications to the Chamber which are still incomplete even after requests for additional information have been made under regulation 86(4) of the Regulations of the Court. Furthermore the Pre-Trial Chamber ordered the Registry in cases where an applicant has no legal representation "to automatically appoint the OPCV as his or her legal representative (...) until such time as the applicant has been granted victim status" and "to automatically transfer to the OPCV all information regarding unrepresented applicants simultaneously with the notification of the Applications to other participants".³ Finally, the Pre-Trial Chamber granted the Prosecution and OPCD thirty days to file their observations upon notification of un-redacted applications by the Registry.

3. On 12 May 2008, twenty-eight applications for victim participation in the situation in the Democratic Republic of the Congo (the "DRC") were notified

¹ ICC-01/04-493-tENG.

² ICC-01/04-374.

³ ICC-01/04-374, page 24 (emphasis added).

to the parties by the Registry via e-mail, indicating that the notification constituted the “Implementation of Decision ICC-01/04-374”.

4. The Prosecution hereby submits its observations on the twenty-eight applications for victim participation at the investigation stage of the situation in the DRC by way of public filing, accompanied by a confidential annex containing summaries of the applications.
5. On 24 December 2007, Single Judge Steiner decided on a number of victim applications for participation at the investigation stage of the situation in the DRC.⁴
6. On 4 January 2008, the OPCV filed its application seeking leave to appeal the 24 December 2007 Decision.⁵ On 7 January 2008, the Prosecution⁶ and OPCD⁷ sought leave to appeal the Decision.
7. On 6 February 2008, Single Judge Steiner rendered her “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”⁸ granting leave to appeal on three issues⁹:

⁴ “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” (hereinafter referred to as “24 December 2007 Decision”), ICC-01/04-423; a corrigendum to this decision was filed on 31 January 2008, see ICC-01/04-423-Corr-tENG.

⁵ ICC-01/04-426.

⁶ ICC-01/04-428.

⁷ ICC-01/04-429.

⁸ ICC-01/04-444.

⁹ Furthermore the Single Judge in her “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’”, of 23 January 2008, granted the OPCD's Request for leave to appeal in relation to following issue: “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 (i) 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 (ii) if

- (i) Whether a "procedural status of victim", within the terms of the Decision, can be granted independent of any finding by the Chamber that the requirements of article 68(3) and rule 89 are satisfied, and without addressing and providing for a definition of the personal interests, or following the steps required by the Appeals Chamber's jurisprudence;
- (ii) Whether it is possible to grant victims a general right to participate, or whether victim participation is conditioned upon a determination concerning the impact of specific proceedings on the personal interests of the applicants, and an assessment as to the propriety of their participation ;
- (iii) Whether, in order to establish moral harm on the basis of harm suffered by a second person, it is necessary to adduce some level of proof concerning the identity of the second person and the applicant's relationship with this person.¹⁰

II. Legal qualification of "Victim" and criteria for determining "Victim" status to participate in the Situation

8. To determine whether an applicant may participate in the proceedings pursuant to Rule 89(2) of the Rules of Procedure and Evidence ("Rules"), the Pre-Trial Chamber must first decide if he/she qualifies as a "victim" as defined in Rule 85.
9. Pursuant to Rule 85 (a) of the Rules, "'victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court".
10. The Pre-Trial Chamber has held that, for an individual to be granted victim status four criteria must be satisfied: (a) the victim must be a natural person; (b) he or she must have suffered harm; (c) the crime from which the harm

not, how applications for participation at the investigation stage of a situation and the pre-trial stage of a case must be dealt with" (ICC-01/04-438, page 8).

¹⁰ ICC-01/04-444. These appeals remain pending before the Appeals Chamber. The Prosecution notes that many of the issues relating to victim participation in this situation which are currently pending before the Appeals Chamber are directly linked to those which arise in the consideration of the present applications

resulted must fall within the jurisdiction of the Court; and (d) a causal link between the crime and the harm must exist.¹¹

11. Article 68(3) of the Statute provides that the Chamber shall permit participation of an individual (as defined by Rule 85) where the personal interests of the individual are affected. The Prosecution submits that Article 68(3) of the Statute and Rule 85, viewed together, establish two cumulative requirements for an individual to participate in the proceedings as a victim: first, the applicant must fulfil the criteria set out in Rule 85; and the Chamber must also be satisfied that the personal interests of the victim are directly affected by the proceedings in which he or she is applying to participate.¹²

12. Furthermore, to assist those working with victim applications, the Pre-Trial Chamber, in its 17 August 2007 Decision, established criteria that need to be fulfilled in order to guarantee completeness of the applications::

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.¹³

13. The Pre-Trial Chamber has required presentation of proper identification documents (to prove identity, kinship, guardianship or legal guardianship)

¹¹ See ICC-01/04-101, para. 94.

¹² ICC-01/04-101, para. 62.

¹³ ICC-01/04-374, para 12

for all victims who apply to participate in the early stage of Court proceedings.¹⁴

(i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;

(ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;

(iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or

(iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses.¹⁵

III. Factual analysis of the applications

Natural Persons

14. The Prosecution submits that all but one of the twenty-eight applicants appear to be natural persons within the meaning of Rule 85 (a). Application a/0206/06 has been filed on behalf of a deceased person and therefore does not meet the requirements of Rule 85 (a).

Incomplete Applications

15. The Prosecution submits that applications a/0210/06 and a/0213/06 are incomplete, because they lack adequate proof of identity. In both cases no identification document has been attached to their applications.

16. A proof of kinship or legal guardianship is also missing for application a/0200/06, which is an application filed by a mother on behalf of her son. In

¹⁴ ICC-01/04-374, para 13

¹⁵ ICC-01/04-374, para 15

addition, this application is lacking any form of proof of identity. However, application a/0201/06, which was also filed by the mother, does contain a copy of her election card. Nevertheless for application a/0200/06 to be considered complete, additional information proving kin-ship (e.g. a birth certificate) should be provided.

17. Finally, application a/0219/06 has been filed by one adult on behalf of another. However, the necessary consent (as required on pages 8 and 16 of the standard application form) has not been given by the person on behalf of whom the application has been submitted. For this reason application a/0219/06 cannot be considered complete.

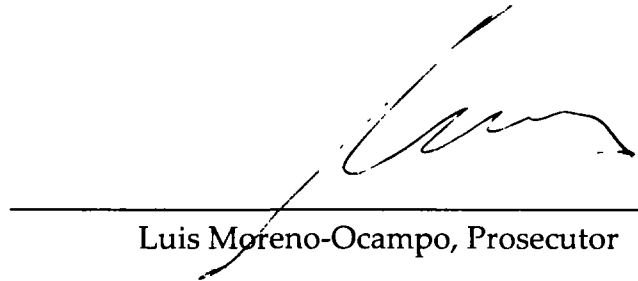
Complete Applications

18. The Prosecution submits that the remaining twenty-three applications appear to be complete. Since the applicants claim to have suffered direct harm from crimes committed in the territory of the DRC after July 2002, the Prosecution submits that the following applicants *prima facie* meet all necessary requirements for the definition of victim in Rule 85(a) in connection with the situation: a/0189/06, a/0190/06, a/0191/06, a/0192/06, a/0193/06, a/0194/06, a/0195/06, a/0196/06, a/0197/06, a/0198/06, a/0202/06, a/0204/06, a/0205/06, a/0207/06, a/0208/06, a/0211/06, a/0212/06, a/0215/06, a/0216/06, a/0217/06, a/0218/06, a/0219/06 and a/0223/06.

IV. Conclusion

19. The Prosecution requests the Pre-Trial Chamber to dismiss application a/0206/06, since the application was filed on behalf of a deceased relative, without further information that the person submitting the application is also invoking harm he or she personally suffered.

20. The Prosecution submits that applicants a/0200/06, a/0210/06, a/0213/06 and a/0219/06 should be requested to provide the necessary documentation before their applications can be considered complete.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of June 2008
At The Hague, The Netherlands