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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

Public Document

Participation of the Legal Representative of Victim a/0105/06 in the Appeal by the Office of Public Counsel for the Defence (OPCD) against the Decision by Pre-Trial Chamber I of 7 December 2007 and in the Appeals by the Prosecutor and the OPCD against the Decision by Pre-Trial Chamber I of 24 December 2007

Source: Legal Representative of Victim a/0105/06

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

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Other

1. Having regard to the Decision of 7 December 2007 rendered by the Single Judge of Pre-Trial Chamber I rejecting the OPCD request for the disclosure of documents under article 86(2)(e) of the *Regulations of the Court*.
2. Having regard to the OPCD request of 13 December 2007 for leave to appeal that Decision.
3. Having regard to the Decision of 24 December 2007 rendered by the Single Judge of Pre-Trial Chamber I concerning the applications for participation by victims a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06, a/0105/06 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, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06, a/0239/06, a/0241/06 to a/0250/06;
4. Having regard to the OPCD request of 7 January 2008 for leave to appeal that Decision;
5. Having regard to the Prosecutor's request of 7 January 2008 for leave to appeal that Decision.
6. Having regard to the Decision of 30 June 2008 rendered by the Appeals Chamber, granting victim a/105/06 leave to participate in the Prosecution and OPCD appeals against the two Decisions of 7 and 24 December 2007¹, and instructing victim a/105/06 to present submissions by 8 July 2008.
7. Considering that the OPCD grounds of appeal against the Decision of 7 December 2007 are presented in the form of two questions, namely:
 - Is the application process a separate procedure which is unrelated to the modalities of participation in the criminal proceedings before the Court, and thus not *per se* prejudicial to the Defence?

¹ Decision on victim participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 7 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 24 December 2007.

- Is the Chamber obliged only to disclose copies of the victims' applications for participation to the Prosecutor and the Defence without having to also disclose all relevant information extrinsic to the applications themselves?
8. Considering that the Prosecutor's grounds of appeal against the Decision of 24 December 2007 are presented in the form of two questions, namely:
- Can a procedural status of victim be granted independent of any finding by the Chamber that the requirements of Article 68(3) of the Rules have been satisfied, in the absence of a definition of the concept of personal interests and without following the steps required by the Appeals Chamber's jurisprudence?
 - Does the impugned decision lack sufficient legal and factual reasoning?
9. Considering that the grounds of the OPCD appeal against the Decision of 24 December 2007 consist of two parts, namely:
- The Single Judge has not determined whether or how the victims' personal interests were affected by the specific proceedings in the situation phase;
 - Is it possible to grant the victim a general right to participate at the investigation stage?
10. Considering that victim a/0105/06 contends that, although they are expressed somewhat differently, the Prosecution and OPCD appeals both dispute the Single Judge's analysis of the victims' interests and of the appropriate stages in the proceedings under article 68(3) of the Statute, regulation 89 of the Rules and article 86 of the *Rules of Procedure and Evidence*.

I - GENERAL CONSIDERATIONS AS TO THE ISSUES UNDER APPEAL

Can article 68(3) be interpreted as conferring a procedural status on victims at the investigation stage of a situation and at the pre-trial stage of a case? If so, do regulation 89 of the *Regulations of the Court* and rule 86 of the *Rules of Procedure and Evidence* allow an application process, the sole objective of which is to grant the procedural status of victim, and in that case, is the process distinct and

separate from an assessment of the procedural rights associated with such a status? And what are the procedural characteristics of the application process?

Can a procedural status of victim be granted independently of the victims having obtained the right to participate under article 68(3) and rule 89, and does this permit a definition of personal interests in accordance with the jurisprudence of the Appeals Chamber?

Is it possible to grant victims a general right to participate, or is victim participation conditioned upon a prior determination concerning the impact of specific proceedings on the applicants' personal interests, and an assessment as to the propriety of their participation.²

11. The Rome Statute grants the victims of crimes within the Court's jurisdiction specific rights, including, pursuant to article 68(3), the right to submit observations and to put forward and make their views and concerns heard "[w]here [their] personal interests are affected".
12. A review of the numerous texts governing victim participation in proceedings pending before the Court reveals that victim participation is not limited in time.
13. In particular, article 68(3) of the Rome Statute states that "[w]here 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 incompatible with the rights of the accused and a fair and just trial." No distinction is made between the different stages in the Court's proceedings; the investigation stage in a situation is therefore included.
14. The Legal Representative notes that article 15(3) of the Rome Statute and rules 50(1)(3) and 107(5) of the *Rules of Procedure and Evidence* support this interpretation, since specific rights are available to victims at the investigation stage. For example, article 15 of the Rome Statute states that "[v]ictims may make representations to the Pre-Trial Chamber" when the Prosecutor concludes that

² See Single Judge's Decision of 6 February 2008 on the Prosecution and OPCD applications for leave to appeal the Decision of 6 December 2007 on victim participation.

there is a reasonable basis to initiate an investigation and submits an application for leave to investigate to the PTC. From this it may be concluded that victims have rights even before an investigation has been authorized by the Pre-Trial Chamber. Similarly, there is no justification for a narrow construction of article 68(3), since this would contradict the other provisions of this same text. A similar conclusion may be drawn from rule 92(2) of the *Rules of Procedure and Evidence* and regulation 86(6) of the *Regulations of the Court* which, in the context of participation in proceedings, expressly refers to “victims of the situation”.

15. Under article 68(3) of the Rome Statute, victims may only participate in proceedings where “their personal interests are ... affected”. This criterion is generally met at the investigation stage, since the victims have a personal interest in providing information to the Court. This may contribute to the establishment of the facts and to the identification of those responsible for them. This fundamental interest of victims forms the basis of the well-established right of victims of grave human rights violations to the truth and to justice.
16. This position is also supported by the broad definition of victims in rule 85 of the *Rules of Procedure and Evidence*, which does not specify any restriction on participation, but simply links the term “victim” to the commission of a crime within the Court’s jurisdiction.
17. Several human rights reports also advocate a broad approach to the right of victims to participate. Generally, the right of victims to participate in criminal proceedings is considered to be independent of a determination of the alleged perpetrators’ criminal responsibility. This is illustrated by the concept of victim in international instruments,³ which state that a “person may be considered a victim ... regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted”.

• ³ Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law, adopted by the United Nations General Assembly, Resolution 60/147 of 16 December 2005.

• Declaration of basic principles of justice for victims of crime and abuse of power, adopted by the United Nations General Assembly, Resolution 40/34 of 29 November 1985, at point A.2.

18. Furthermore, the European Court of Human Rights has recognized the right of victims of offences and their relatives to be involved in the proceedings, including at the investigation stage.⁴ The Inter-American Court of Human Rights has taken the same approach.⁵
19. The Legal Representative of victim a/105/06 observes that victim participation at the investigation stage does not endanger the proceedings by delaying their normal course, any more than it affects the right of a suspect to a fair trial. Thus, under article 56(1)(b) of the Rome Statute, it is the Pre-Trial Chamber which is responsible for “ensur[ing] the efficiency and integrity of the proceedings and, in particular, [. . .] protect[ing] the rights of the defence”. The Chamber must define the scope and modalities of victim participation and in so doing must ensure that such participation is not prejudicial to or incompatible with a suspect’s right to a fair and impartial trial.
20. Lastly, the Legal Representative of victim a/105/06 observes that, with respect to the criteria determining victims’ personal interests, there is no inconsistency between Pre-Trial Chamber I’s jurisprudence and that of the Appeals Chamber.

First, there is no explicit statement in any Appeals Chamber judgment which contradicts Pre-Trial Chamber I’s decisions on the issue.⁶ Secondly, on the contrary, it appears that some Appeals Chamber arguments support Pre-Trial Chamber I’s decision. The Appeals Chamber appears to accept the existence of a procedural status of victim deriving from rule 85 of the *Rules of Procedure and Evidence*, as distinct from the assessment of the criteria set out in article 68 of the

⁴ ECHR, *Kilic v. Turkey*, Application No. 22492/93, 28 March 2000, paras. 91-93; *Kaya v. Turkey*, Application No. 22729/93, 19 February 1998, paras. 106-107.

⁵ IACHR, *Blake v. Guatemala*, Judgement, Series C no. 36, 24 January 1998.

⁶ *Judgment on the appeal of Mr Thomas Lubanga Dyilo against the Decision of Pre-Trial Chamber 1 entitled "Décision sur la demande de mise en liberté provisoire de T. L. Dyilo"* (Appeals Chamber), No. ICC-01/04-01/06-824 (OA7), 13 February 2007.

Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the directions and Decision of the Appeals Chamber of 2 February 2007 (Appeals Chamber), No. ICC-01/04-01/06-925 (OA8), 13 June 2007.

Rome Statute, from which it may thus be concluded that there are two independent procedures associated with these two provisions.

Indeed , in its jurisprudence the Appeals Chamber has clearly stated that, “in circumstances in which particular victims have already been granted leave to participate in the proceedings before the PTC, their new application need not be a repeat of the original ... The question to be addressed is whether their personal interests are affected by the interlocutory appeal or whether it is appropriate for them to participate at that stage of the proceedings”.⁷ In its most recent decision, the Appeals Chamber likewise decided that, “in circumstances in which victims have already been granted leave to appeal to the Chamber, it will not revisit their victim status but will proceed to the next stage, which consists of verifying whether their interests are affected by the interlocutory appeal”.⁸

Moreover, the fact that the Appeals Chamber allows victim participation in appeals related to the investigation stage without questioning their participation at that stage further supports their right to participate at that particular stage (investigation in a situation). Lastly, the Appeals Chamber’s existing jurisprudence does not address the interpretation of rule 85 of the *Rules of Procedure and Evidence* and article 68 of the Rome Statute, yet it is precisely that interpretation which is presently under appeal. Therefore, given that the Appeals Chamber has never had to examine such issues, it would be difficult, if not impossible, to find the slightest statement to the contrary in its jurisprudence.

21. To conclude, the Legal Representative submits that article 68 of the Rome Statute and rule 89 provide for the existence of a procedural status of victim, allowing the latter to participate at all stages including that of an investigation in a situation, and, lastly, that two separate procedures exist: one for the assessment of the

⁷ Judgment of 13 February 2007, para. 45.

⁸ Decision of 18 June 2008 already referred to.

criteria under rule 85 of the *Rules of Procedure and Evidence* and another for the assessment of the criteria under article 68.

22. Accordingly, the Legal Representative would make the following observation:

(ii) otherwise, how are applications for participation at the investigation stage in a situation and at the pre-trial stage of a case to be dealt with?

23. The Legal Representative submits that the mechanism proposed by the OPCD does not respect victims' rights as guaranteed by the applicable provisions of the Rome Statute and therefore violates the principle of a fair trial, thus undermining the judicial procedures specifically established by the drafters of the Rome Statute and the Rules.

24. First, the Legal Representative recalls that the procedure relating to victims' applications for participation must ensure their **right** to participate at the investigation stage of a situation and cannot merely be viewed as a **possibility**. In truth, the right of victims to participate, which is recognized by the parties and the various Chambers as being one of the Court's key features, may be considered an acquired right and therefore cannot as such be subject to the slightest uncertainty.

25. Moreover, the Legal Representative suggests that, even if victims in general, in the widest sense of the term, enjoy their rights even prior to an assessment of the criteria under articles ..., an applicant will nevertheless be **granted** victim status by a **competent Chamber**. OPCD's proposed mechanism is therefore not viable.

26. Lastly, the Legal Representative further emphasizes that, apart from the fact that it totally contradicts the letter of the Rome Statute, in which it has no basis, the OPCD's suggested mechanism, providing *inter alia* for the disclosure of applications to the Prosecutor, would result in improper and unfair proceedings, which would ultimately depend on the Prosecutor's power of assessment and deprive the Chamber of its judicial powers as set out in the applicable Court documents.

27. Accordingly, the Legal Representative is of the opinion that, in regard to victims' applications for participation, no procedure other than that prescribed by article 68(3) of the Rome Statute, taken together with regulation 86 of the *Regulations of the Court*, can be considered as satisfying the requirements of fairness.

II – SPECIFIC OBSERVATIONS ON THE PROSECUTION AND OPCD APPEALS AGAINST PRE-TRIAL CHAMBER I'S DECISION OF 24/12/2007

A- OBSERVATIONS ON THE PROSECUTOR'S DOCUMENT IN SUPPORT OF HIS APPEAL

28. The observations contained in the Prosecutor's document in support of his appeal relate to the Single Judge's interpretation of article 68(3) of the Rome Statute and rule 89 of the *Rules of Procedure and Evidence*.

29. Before addressing the Prosecutor's observations, the Legal Representative wishes to underscore the "rationale" underlying these two provisions. While rule 89 of the *Rules of Procedure and Evidence* effectively provides that the Chamber "shall then [following the assessment of the criteria under rule 85] specify the procedure and the manner in which participation is considered appropriate", it does not, however, specifically require such assessment be carried out simultaneously with the assessment of the criteria laid down by rule 85 of the *Rules of Procedure and Evidence*.

This reasoning is grounded in the relevant Court texts, which specifically separate the two procedures (i.e. determination of victim status and determination of the modalities of participation), and organize the respective criteria to be met into two separate articles: 85, *Rules of Procedure and Evidence* and 68(3), Rome Statute. The consistent position of the Single Judge of Pre-Trial Chamber I, (to the effect that "an assessment of the personal interests of the victims in specific proceedings carried out during the [investigation into a situation and the pre-trial stage of a case] is only to be conducted for the determination of the specific set of procedural rights attached to the procedural status of victim"), read together with

her further finding that the application process is of a distinct and specific nature and has a limited objective, is perfectly consistent with these provisions.

30. According to the Prosecutor, the first error is that article 68(3) and rule 89(1) of the *Rules of Procedure and Evidence* “do not establish a process in which formal status in the proceedings can be granted in the absence of specified proceedings and a finding on the modalities of participation.” As explained above, the Legal Representative interprets rule 89(1) of the *Rules of Procedure and Evidence* differently from the Prosecutor. Moreover, paradoxically, the Prosecutor also supports the following interpretation, conceding that: “once this status has been determined for a given and specific set of proceedings, there is no need to re-address this status as the initial determination can be used in the subsequent proceedings; only personal interests, appropriateness and modalities of participation need to be revisited”. The Prosecutor thus considers that these assessments constitute two steps in the process.

31. The Legal Representative further submits that the assessment of the personal interests criterion cannot be carried out before or even concurrently with the assessment of the criteria set by article 85 *Rules of Procedure and Evidence*, without contravening all of the relevant Court texts providing for victim participation at various stages of the proceedings. Some of these texts allow victim participation without the need for an assessment of the criterion of article 68 or rule 85, thus emphasizing that account is generally taken of the interest of victims in participating at the investigation stage of a situation and the pre-trial stage of a case.

Accordingly, the Legal Representative asserts that the general presumption should be, as the PTC decided, that victims’ interests are generally affected at this stage in the proceedings and that the burden, if need be, of proving the contrary is on the judges or the parties. Such an approach is not only consistent with the Court’s applicable provisions on victims’ rights, but is also the only reasoning which

enables these rights to be exercised effectively and in compliance with the principle of fair and expeditious proceedings. This reasoning is in line with the general principle of criminal law, *actori incombis donatio*: the burden of proof is always on the applicant. It is further confirmed throughout Judge BLATTMANN's statement that to require two applications (one to obtain victim status and one to indicate at which specific stage of the proceedings a victim is authorised to participate) "places too large a burden on victims. It should be possible for victims to apply to participate fully in their original application. Any information needed by the Trial Chamber to determine their right to participate and the appropriate moment at which to do so should be extracted by the Chamber from the information provided in the original victim application."

32. Therefore, what the Prosecutor referred to as the "second error" arising from the impugned decision, namely that "the Single Judge misinterpreted and misapplied the requirement that the victim's personal interests must be affected", finds no resonance in the Court's applicable texts.
33. Furthermore, the Legal Representative would emphasize that Pre-Trial Chamber I "considers that, having regard to the present stage of the proceedings, i.e. that of investigation of the situation, it is reasonable to set a relatively low threshold" (in respect of the criterion of victim participation). This finding is currently under consideration in the present appeal.
34. With respect to the general appropriateness of victim participation at the investigation stage of a situation, the Legal Representative submits that these conclusions follow from the same texts cited above and are a consequence of the fact that the personal interests of victims are generally affected at this stage. Furthermore, it would appear that the Prosecutor favours a different interpretation of the expression "stages in the proceedings", which, contrary to the Single Judge's understanding, does not cover the entire proceedings (the entire investigation of the situation), but targets specific phases or activities within a stage under consideration as such.

The Legal Representative notes that this secondary argument by the Prosecutor follows the dismissal of his first argument in this regard, namely his challenge to the notion that the term “proceedings” includes the investigation stage of a situation, a proposition endorsed by Pre-Trial Chamber I and not at issue in the present appeal. The Legal Representative moreover emphasizes that the Chamber’s assessment of the appropriateness of victim participation, far from being abstract and unrelated to the specific victims concerned as the Prosecutor contends, results from a specific assessment in relation to each of the 4 criteria enumerated in article 85 of the *Rules of Procedure and Evidence* in light of an individual examination of the information in the applications for participation.

Lastly, the victims’ rights at the investigation stage of a situation are sufficiently structured and do not necessitate such an assessment for every procedural action which a victim is permitted to undertake. To this end, the Legal Representative is of the opinion that a system in which the Chamber would be obliged to assess, on a case-by-case basis, the circumstances in which victim participation would be inappropriate, would neither respect the rights of the Defence nor the victims’ personal interests. As the Chamber has ruled, the principle must therefore be that victim participation at the investigation stage of a situation is generally appropriate, and that any objection has to be raised, where necessary, in relation to specific procedural acts.

B - OBSERVATIONS ON THE OPCD DOCUMENT IN SUPPORT OF ITS APPEAL

1 – The appropriateness of victim participation at the investigation stage in a situation

35. First, the Legal Representative is of the opinion that it is for the Chambers to determine the scope of victim participation irrespective of the procedural status reached, and that the Rome Statute and the *Rules of Procedure and Evidence* did not intend to restrict such participation to the trial stage. On the contrary, the two texts provide for victim participation at the investigation stage. The OPCD

argument that victim participation is inappropriate in the “legal vacuum” of the investigation stage and “would be more appropriately deferred to case proceedings, in which the Chamber can provide appropriate direction” contradicts the applicable Court texts.

Moreover, the appropriateness of victim participation and the Chamber’s powers are matters which ultimately fall within the competence of the Chamber itself and not of the parties. Lastly, there has never been a ruling by the various Chambers that victim participation is confined to the trial stage, or that it is inappropriate at the investigation stage, for whatever reason. On the contrary, in its first decision Pre-Trial Chamber I interpreted the Court texts in such a way as to arrive at a clear and unambiguous statement which may be understood as giving victims a general right to participate at all stages of the proceedings without the fairness and justice of the proceedings being thereby endangered.⁹

36. Secondly, every criterion must be considered separately by the Chambers. Rule 85 of the *Rules of Procedure and Evidence* and article 68(3) of the Rome Statute constitute two separate procedures, which are subject to an assessment by the competent Chamber. When applicants fall within the definition of victim under rule 85, they are automatically granted the right to participate in the proceedings, without which victim status would in practice be literally meaningless. It follows that, once a person is granted victim status, he or she should be granted leave to participate in the proceedings. The manner in which that should occur does not automatically ensue from the initial assessment and must be determined separately by the Chamber, or if already provided for, by the applicable texts. The Legal Representative agrees with the OPCD that assessment of the criteria is a matter falling within the competence of the Chamber. Furthermore, the Legal Representative wholly supports the findings in the Decision of 17/01/08, which, moreover, has not been the subject of any appeal.

⁹ Pre-Trial Chamber I Decision of 17 January 2006, *supra* note 30, para. 46, p 12.

37. The OPCD maintains that participation is not vital to the victims, since the Chamber can only award reparation after a judgment, and that there is nothing to confine the right to reparation only to those victims granted the right to participate. The OPCD considers this reasoning to be incorrect. Some proceedings do have an impact on the trial proceedings *stricto sensu*. Moreover, as article 19(3) of the Rome Statute makes clear, obtaining reparation is not the sole interest of victims.

38. The Legal Representative maintains that the proceedings themselves are not indivisible; its stages each differ from one another and comprise specific procedural acts. In light of this, the Chamber will therefore be obliged in specific cases to restrict victim participation, but without having to require victims constantly to seek leave to participate in a particular procedure. To do otherwise would amount to preventing victims from exercising their right to participate.

39. The OPCD asserts that the criterion of personal interests must be assessed in light of each applicant's particular circumstances, in connection with the particular issues being addressed by the Chamber. Under this head, it first submits that the underlying purpose of participation is not to give effect to a right of revenge (or vengeance), nor to an *actio popularis*: rather it is to ensure that applicants are provided an opportunity to present their views and concerns in relation to issues which directly impact on their "judicially recognizable personal interests".

Moreover, Judge SONG has made it clear that the victim of a crime has a particular interest in the person allegedly responsible for his or her suffering being brought to justice. This interest goes beyond the general interest that any member of society may have in seeing offenders held accountable. This interest of victims is acknowledged in the Rome Statute and the *Rules of Procedure and Evidence*. The Legal Representative emphasises the Chamber's view that "the Statute grants victims an independent voice and role in proceedings before the Court. It should be possible to exercise this independence, in particular vis-à-vis the Prosecutor of the International Criminal Court, so that victims can present

their interests. As the European Court of Human Rights has affirmed on several occasions, victims participating in criminal proceedings cannot be regarded as ‘either the opponent - or for that matter necessarily the ally - of the prosecution, their roles and objectives being clearly different.’”

40. Contrary to the OPCD position, the Legal Representative considers that nothing in the texts suggests a mechanism which allows victim participation only after specific procedural acts. Moreover, while the role of every participant is essentially a reactive one, it cannot be confined to such a definition. Thus participants may make opening and closing statements and request special or protective measures. It is for the Chamber to rule on these, and that does not constitute a potential source of delay.
41. In regard to the general argument as to the possible transformation of the proceedings into a “truth and justice commission”, the OPCD first recalls its previous submissions on the basic distinction between the role of the Prosecutor and that of victims. It has already been accepted by the Court’s jurisprudence that victim participation, particularly at the investigation stage, may help to clarify the facts, to punish the perpetrators of crimes and to obtain reparation for harm suffered. Moreover, this finding corresponds to the right of victims to participate in the fight against impunity afforded to them by article 68(3) of the Rome Statute. Furthermore, the fact that their right is an innovation in international criminal law does not justify a comparison of the Court with a truth and justice commission whenever these rights are challenged.
42. The OPCD thus challenges the right of victims to participate at the investigation stage of a situation, in the interests of judicial economy, and confuses the role of victims with that of witnesses in proceedings.

With respect to this first point, the Legal Representative reiterates that the system envisaged by the Single Judge provides safeguards both for the expeditiousness of the proceedings and for the effectiveness of all the rights guaranteed by the Rome Statute. It also avoids possible undue delays as a result of the need for

victims to submit applications for participation and to prove that they satisfy the three criteria set by article 68(3) of the Rome Statute every time they wish to participate in a specific procedural act. On the contrary, the judges' duty to evaluate these criteria where necessary, in light of the specific procedures where victim participation could be inappropriate, is thus more compatible with the various interests protected by the relevant instruments of the Court.

With respect to the OPCD's second point, the Legal Representative recalls the ruling of the first Chamber whereby: "[it] rejects the submission of the defence that victims appearing before the Court in person should be treated automatically as witnesses. Whether or not victims appearing before the Court have the status of witness will depend on whether they are called as witnesses during the proceedings."

43. Lastly, the Legal Representative recalls the wording of rule 85 of the *Rules of Procedure and Evidence*, which does not confine the concept of natural victim to persons having suffered direct harm, by contrast with those provisions specifically drafted for institutional victims. Thus, the Single Judge made it clear in her Decision of 24/12/07 that "moreover, at the investigation stage ...". Accordingly, the OPCD's argument that "[TRANSLATION] some rights or interests are not transferable in the sense that their protection is only acquired by the person who suffered directly from a specific violation" contradicts the abovementioned provisions.

For these reasons,

Grant the parties' and participants' requests pertaining to the impugned Decisions of 7 and 24 December 2007.

And justice shall be done.

Maître Carine BAPITA

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[signed]

Maître Carine BAPITA BUYANGANDU, Legal Representative,
on behalf of
[Victim a/0105/06]

Dated this 08 July 2008 at The HAGUE

At [place, country]