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THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public

**Prosecution's Response to OPCD Appeal against the 24 December 2007
Decision on the Victims' Applications for Participation in the Proceedings**

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Introduction

1. The Prosecution hereby responds to the document entitled "OPCD Appeal Brief on 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* »", filed on 18 February 2008.
2. The first issue certified for this appeal concerns the manner in which applications by victims to participate in the investigation of the situation are to be addressed and victim participation is to be realised under Article 68(3). The second issue concerns applications by victims who claim to have suffered "moral harm", and whether specific requirements (namely the identity of the primary victim and their relationship to the applicant) must be proved.
3. The Prosecution, having appealed the same Decision on an issue similar to the first issue referred to in the OPCD Appeal Brief, does not oppose the appeal in relation to grounds arising from the first issue. However, the Prosecution opposes the OPCD's appeal on the second issue, as the OPCD Appeal Brief does not identify any ground of appeal in relation to the Decision which would warrant the intervention by the Appeals Chamber.

Procedural History

4. The Prosecution recalls and refers to the procedural history set out in its Response to the OPCD's Appeal, filed on 15 February 2008,¹ and in the Prosecution's Appeal, filed on 18 February 2008.²
5. On 17 July 2007, the Single Judge authorised the Prosecution and the OPCD to file observations on applications by victims to participate in the situation.³
6. On 24 December 2007, the Single Judge issued the decision on the application for participation in the proceedings ("Decision").⁴

¹ ICC-01/04-452 OA4, Prosecution's Response to OPCD's Appeal Brief on the Decision on Requests for the Prosecution of Supporting Documentation under Regulation 86(2)(e) and Disclosure of Potentially Exculpatory Material, 15 February 2008, paras. 1-8 ("Prosecution Response to the First OPCD Appeal").

² ICC-01/04-454 OA6, Prosecution's Document in Support of Appeal against the 24 December 2007, 18 February 2008, paras. 1-5 ("Prosecution Appeal Brief").

³ ICC-01/04-358.

7. Both the Prosecution and the OPCD sought leave to appeal the Decision.⁵
8. On 6 February 2008 the Single Judge issued a consolidated decision on the Prosecution and the OPCD Motions for Leave to Appeal (“Decision Granting Leave”),⁶ in which the Single Judge granted the Prosecution and the OPCD requests in relation to the first issue raised by the Prosecution and the first and fifth issues raised by the OPCD.⁷
9. On 18 February 2008, both the Prosecution and the OPCD filed their respective Appeal Briefs on the Decision (“Prosecution Appeal Brief”);⁸ (“OPCD Appeal Brief”).⁹
10. The Prosecution hereby files its response to the OPCD Appeal pursuant to Regulation 65(5).

The Issues on Appeal, Scope of Prosecution Response to the OPCD Appeal, and Existence of Overlapping Appeals

11. Out of the five issues for which the OPCD sought leave to appeal, leave was granted for two issues, namely:¹⁰
 - “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

⁴ ICC-01/04-423, *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/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 à a/0241/06 à a/0250/06*, 24 December 2007. On 31 January 2008, the Single Judge issued a corrigendum to this decision (ICC-01/04-423-Corr).

⁵ ICC-01/04-428, *Prosecution’s Application for Leave to Appeal the Single Judge’s 24 December 2007 “Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo”* 7 January 2008, (“Prosecution Motion for Leave to Appeal”); ICC-01/04-429, *Request for leave to appeal 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/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 à a/0241/06 à a/0250/06’*”, 7 January 2008, (“OPCD Motion for Leave to Appeal”).

⁶ ICC-01/04-444, *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*, 6 February 2008.

⁷ *Decision Granting Leave*, p. 15.

⁸ See footnote 2, above.

⁹ ICC-01/04-455 OA5, *OPCD Appeal Brief on 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/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 à a/0241/06 à a/0250/06”*, 18 February 2008.

¹⁰ *Decision Granting Leave*, pp. 6, 7 and 15.

proceedings on the personal interests of the applicants, and an assessment as to the propriety of their participation” and

- “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”.

12. The Prosecution will respond to OPCD’s arguments on appeal relating to each issue separately.

13. The Prosecution was also granted leave to appeal against the Decision in respect of a similar issue relating to the assessment of victims applications for participation in the proceedings and the criteria to be applied.¹¹ In addition, the OPCD has previously been granted leave to appeal the manner of assessing victims’ applications, which led to the grant of a “procedural status of victim” (“the First OPCD Appeal”).¹²

14. As the Prosecution has already contended,¹³ the respective issues for which leave to appeal was granted are similar in scope and intrinsically linked.¹⁴ Furthermore, two of the appeals are against the same Decision. Therefore, the Prosecution maintains its request that the Appeals Chamber consider treating the First OPCD Appeal, the Prosecution appeal and the current appeal jointly, and entering a consolidated and comprehensive judgement, as this would assist all parties and participants by providing clarity and certainty regarding how the different elements of the system are intended to operate together.

**The First Issue - the Appellant’s submissions regarding the methodology
for applying the criteria under Article 68(3)**

15. This issue concerns, in essence, the system for assessing and potentially granting applications by victims to participate in proceedings during the situation, including:

¹¹ Decision Granting Leave, pp. 6 and 15.

¹² ICC-01/04-438, 23 January 2008. In this Decision Granting Leave, the Single Judge noted that the first issue raised by the Prosecution and for which leave was granted (and the first issue for the OPCD) was part of the same “overarching issue” as the OPCD had previously been granted leave to appeal – Decision Granting Leave, pp. 12 and 15.

¹³ Prosecution’s Response to the First OPCD Appeal, paras. 9-12; Prosecution Appeal Brief, paras. 7-8.

¹⁴ The Single Judge shares this view. See Decision Granting Leave, p. 7: “the first issue raised by the Prosecution and the first issue raised by the OPCD are inextricably linked because both issues relate to the manner in which the Single Judge analysed the victims' personal interests and the appropriate stages of the proceedings under article 68(3) of the Statute, rule 89 of the Rules and regulation 86 of the Regulations”. See also Decision Granting Leave, p. 15: “the fifth issue raised by the OPCD is inextricably linked to the applicable standard of proof in the application process, which is one of the many aspects included in the overarching issue for which leave to appeal was granted in the 23 January 2008 Decision”.

whether a procedural status can be granted based on the findings in the Decision; whether personal interests can be assessed in a generalised manner and in the absence of specific proceedings; and whether appropriateness can be determined in relation to an entire investigation, as opposed to proceedings within that investigation. In support of its appeal on this issue, OPCD raises five primary arguments,¹⁵ each of which the Prosecution will discuss in turn below.

The criteria of “personal interests” and “appropriate” in Article 68(3) must be interpreted in an effective manner, and each criterion should be given independent legal effect (paras. 10-14)

16. OPCD submits that the requirements in Article 68(3) of “personal interests” and “appropriate” must be interpreted in an effective manner.¹⁶ OPCD further argues that the approach taken in the Decision results in victims being granted the right to participate based only on fulfilling the definition of victim under Rule 85(a); and that this is in contravention of the jurisprudence of the Appeals Chamber.¹⁷ Rather, OPCD argues that each element of Article 68(3) constitutes a distinct component of the Chamber’s assessment.¹⁸
17. The Prosecution does not oppose this ground of appeal, consistent with its position that victims may only be granted any status in proceedings including the right to participate after all the criteria in Article 68(3) and Rule 89 have been considered and satisfied on a case-by-case basis.¹⁹

The criterion of “personal interests” must be assessed in light of the particular circumstances of each applicant, in connection with the particular issues being addressed by the Chamber (paras. 15-22)

18. OPCD argues that the purpose of participation is to provide an opportunity for victims to present views and concerns on issues affecting their “judicially recognisable personal interests”; and that as not all victims’ personal interests will be affected in the same

¹⁵ OPCD Appeal Brief, para. 8.

¹⁶ OPCD Appeal Brief, para. 10.

¹⁷ OPCD Appeal Brief, para. 11-12.

¹⁸ OPCD Appeal Brief, para. 13-14.

¹⁹ See e.g. Prosecution Appeal Brief, paras. 14-18.

manner, the right to participate must be adjusted accordingly.²⁰ Personal interests may be affected differently, depending on, for example, the location of the victim and the manner in which they suffered any harm. OPCD reiterates that a victim's personal interests must be affected by the issue being directly considered by the Chamber.²¹

19. The Prosecution does not oppose this ground of appeal, to the extent that it argues that the personal interests of victims must be affected by the issues being addressed in specific proceedings before the Chamber,²² rather than a generalised interest in the ultimate outcome of an investigation or case.
20. The OPCD also queries whether victims who “did not personally suffer harm” or were not present during the commission of the crimes have an interest in clarifying the facts or identifying the perpetrator.²³ To the extent that a victim claims to have suffered “moral harm”, the Prosecution submits that their personal interests could also be affected by proceedings. However the manner in which they have suffered harm may be a factor to take into account when assessing whether and how proceedings impact on a victim's personal interests on a case-by-case basis, which further demonstrates the error of a generalised finding that every victim's interests are generally and necessarily affected.

The “personal interests” of the applicants are not affected in a “general manner” by the judicial proceedings which occur during the investigative stage (paras. 23-30)

21. OPCD submits that the power of judges to grant participation is limited by the powers the judges themselves may exercise, and that Chambers may only adjudicate based on the charges brought by the Prosecutor, and not on extraneous allegations raised by victims.²⁴ Thus OPCD submits that victims do not have an independent fact-finding role, or a mechanism to themselves mount *de facto* prosecutions.²⁵

²⁰ OPCD Appeal Brief, para. 15-17.

²¹ OPCD Appeal Brief, para. 20-22.

²² See e.g. Prosecution Appeal Brief, paras. 32-35; see also paras. 17-18, 22-23, 30.

²³ OPCD Appeal Brief, para. 19.

²⁴ OPCD Appeal Brief, para. 24-26, 30.

²⁵ OPCD Appeal Brief, para. 26-28, 30.

22. The Prosecution does not oppose this ground, consistent with its position that victims may only express their views and concerns on particular proceedings before the Chamber which affect their personal interests.²⁶

The criterion of “appropriate” requires the Chamber to consider the particular circumstances of the proceedings in question, and the applicants in question (paras. 31-35)

23. OPCD submits that the investigation is not a single indivisible “stage” of the proceedings, but rather constitutes several distinct proceedings which impact on the interest of participants differently.²⁷ Thus, OPCD argues that the Pre-Trial Chamber must ensure that each proceeding affects the personal interests of victims, in a similar manner to the Appeals Chamber’s practice.²⁸ OPCD further argues that the Chamber must avoid a situation where the defence is faced by two prosecutors, as the views and concerns expressed by victims cannot fall within the domain of the Prosecutor.²⁹

24. The Prosecution does not oppose this ground. The Prosecution recalls that the stage of proceedings in which the participation of victims may, or may not, be appropriate refers to a point within those proceedings;³⁰ and that the Appeals Chamber has previously

²⁶ See e.g. Prosecution Appeal Brief, paras. 32-35; see also paras. 17-18, 22-23, 30. The Prosecution has independently sought leave to appeal the issue of whether victims may present evidence relating to the guilt or innocence of the accused in separate proceedings – see *Prosecutor v Lubanga*, ICC-01/04-01/06-1136, 28 January 2008 (the second issue). The Trial Chamber recently granted leave to appeal this issue (*Prosecutor v Lubanga*, ICC-01/04-01/06-1191, 27 February 2008), and the Prosecution will thus provide full submissions on the scope of the “views and concerns” of victims and their ability to present evidence in that separate appellate proceeding.

The Appeals Chamber, as noted by OPCD, has previously stated that:

“whether the personal interests of victims are affected ... will require careful consideration on a case-by-case basis” and that “an assessment will need to be made in each case as to whether the interests asserted by victims, do not, in fact, fall outside their personal interests and belong instead to the role assigned to the Prosecutor.”

Further, Judge Pikis has clarified that:

“participation [is] limited to the voicing of their views and concerns. Victims are not made parties to the proceedings nor can they proffer or advance anything other than their ‘views and concerns’”,

and that victims may not express views and concerns

“in relation to the proof of the case or the advancement of the defence. The burden of proof of the guilt of the accused lies squarely with the Prosecutor ... It is not the victims' domain either to reinforce the prosecution or dispute the defence.”

²⁷ OPCD Appeal Brief, para. 32.

²⁸ OPCD Appeal Brief, para. 33-35.

²⁹ OPCD Appeal Brief, para. 35.

³⁰ See further Prosecution Appeal Brief, paras. 38, 42-45. This interpretation of “stage of the proceedings” is supported by the Appeals Chamber’s jurisprudence, which in turn builds on the language of the Statute: contrast Article 74(1) and Regulations 55(2) and 77(4) (each of which refer to “stage” as a particular point within an investigation or trial) with Article 39(4) and Regulation 12 (referring to pre-trial or trial “phase”).

considered even an interlocutory appeal to have different stages, which may affect the personal interests of victims differently.³¹

The unique features of the situation phase militate against the general propriety of participation under article 68(3) (paras. 36-46)

25. OPCD finally submits that there is no permanent procedural status of victim during the investigation, that such a status would create a fundamental imbalance in the proceedings, and that the presentation of views and concerns must be triggered by an action of a party or the Chamber.³² OPCD also raises concerns about Pre-Trial Chambers entering factual findings relating to victim statuses in the absence of a properly resourced and instructed defence,³³ and argues that granting procedural status in the manner that the Decision did is not in the interests of judicial economy.³⁴
26. While not opposing this ground of appeal, the Prosecution does not agree with all of the Appellant's arguments or share the Appellant's positions in their entirety.
27. The Prosecution concurs that, as a general matter, no judicial inquiry into crimes other than those pleaded by the Prosecution should be undertaken by Chambers of the Court. However, the Prosecution notes that the Statute itself requires the Court to make determinations of whether someone qualifies as a victim at the situation level at least for the purposes of any intervention within the context of Articles 15 (*proprio motu* powers of the Prosecutor) or 53(2) (decision not to investigate), potentially before the Prosecution has led any specific evidence before any Chamber and while the defence is in a similar position to the present proceedings.³⁵
28. The Prosecution does not agree with the OPCD's position on the implications of a victim having applied for participation on disclosure obligations and the future credibility of that individual if they are subsequently called to testify as a witness³⁶. It notes however that

³¹ *Prosecutor v Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, paras. 26-27. See further Prosecution Appeal Brief, paras. 16-17, 34, 43.

³² OPCD Appeal Brief, para. 37-39.

³³ OPCD Appeal Brief, 40-43.

³⁴ OPCD Appeal Brief, 44.

³⁵ See further Prosecution's Response to the First OPCD Appeal, paras. 24-25; *Situation in the DRC*, ICC-01/04-103, 23 January 2006, paras. 23-28; *Situation in Uganda*, ICC-02/04-85, 28 February 2007, paras. 34-37.

³⁶ OPCD Appeal Brief, 44.

such issues may arise again in future proceedings, emphasising the importance of clear guidance on victim participation from the Appeals Chamber.

**The Second Issue – the Appellant’s submissions regarding the level of proof
required to establish standing for moral harm**

29. The Prosecution opposes the OPCD’s appeal on the second issue, as the OPCD Appeal Brief fails to adequately identify any error in the Decision which would warrant intervention by the Appeals Chamber.

Background to the second issue

30. In its motion for leave to appeal, the OPCD argued that the Single Judge permitted an applicant to submit a claim based on the moral harm suffered as a result of the events which had befallen another person. The OPCD contended that the Single Judge did so without requiring proof of identity of the other person or the relationship between the applicant and the other person.³⁷

31. In its response to the OPCD Motion for Leave to Appeal, the Prosecution pointed out that the OPCD slightly mischaracterised the findings of the Single Judge with respect to applications a/0130/06 and a/0131/06. Applications a/0130/06 and a/0131/06 were both submitted by a third person: a father acting on behalf of two children who are alleged to be his deceased sons.³⁸ While application a/0130/06 included some proof of identity of the child and the fact that the person submitting the application was the child’s father, application a/0131/06 did not include any such proof. As a result, the Single Judge considered application a/0131/06 to be incomplete.³⁹ However, the Decision eventually granted both applications a/0130/06 and a/0131/06 granting the father victim status based on the moral harm suffered as a consequence of the death of his two children.⁴⁰

32. The Prosecution pointed out that there was some tension between different sections of the Decision with respect to the relevant issue raised by the OPCD. It submitted that in deciding on the request to grant leave to appeal, the Single Judge had the opportunity to clarify whether or not her conclusions regarding the moral harm of the father were limited to the death of the child referred to in application a/0130/06, in relation to whom proof of

³⁷ OPCD Motion for Leave to Appeal, para. 17.

³⁸ ICC-01/04-434, 11 January 2008, paras. 17-20.

³⁹ See Decision, para. 32.

⁴⁰ Decision, para. 116 and dispositivs, p. 58, first paragraph.

identity and relationship had been provided. The Prosecution submitted that if the Single Judge's granting of victim status to the father was based in part on the moral suffering caused by the death of the unidentified child referred to in application a/0130/06, then the issue for which leave had been sought arose from the Decision and satisfied all the requirements of Article 82(1)(d).⁴¹

33. In the Decision Granting Leave, the Single Judge did not provide any explicit clarification,⁴² but granted leave for the issue of "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".⁴³

Lack of specificity of the OPCD Appeal Brief

34. Regulation 64(2) requires that a document in support of appeal set out the grounds of appeal⁴⁴ and contain the legal and/or factual reasons in support of each ground.⁴⁵ As stated by Judge Pikis, these reasons must be defined by reference to the decision under review.⁴⁶ The Appeals Chamber has further held that "[t]he nature of an interlocutory appeal is corrective and limited to the specific ground of appeal raised".⁴⁷
35. The Prosecution submits that the OPCD Appeal Brief does not set out any error in the Decision warranting the intervention by the Appeals Chamber. Rather it advances a number of arguments pertaining to the elements and the level of proof required to establish standing for moral harm.⁴⁸ None of these arguments are linked to the factual or legal conclusions included in the Decision. To the contrary, the OPCD argues in general terms how the system of victim participation based on moral harm should work. It is OPCD's burden as an appealing party to demonstrate that the Single Judge had erred in her determination of the

⁴¹ ICC-01/04-434, 11 January 2008, paras. 17-20.

⁴² In relation to the fifth issue raised by the OPCD, the Single Judge only stated that it is "inextricably linked to the applicable standard of proof in the application process" (Decision Granting Leave, p. 15).

⁴³ Decision Granting Leave, pp. 7 and 14-15.

⁴⁴ In contrast to final appeals under Article 81, the Statute does not prescribe the grounds on which an interlocutory appeal under Article 82 can be made. The Appeals Chamber has held that "grounds of appeal for appeals brought under article 82(1)(d) can include those grounds that are listed at article 81(1)(a)", i.e. error of law, error of fact and procedural error (see *Prosecutor v Lubanga*, Judgement on Disclosure Restrictions pursuant to Rule 81(2) (and (4)), ICC-01/04-01/06-568 OA3, 13 October 2006, para. 19).

⁴⁵ Pursuant to Regulation 65(4), this also applies in relation to appeals that require leave of the Court under Rule 155.

⁴⁶ *Prosecutor v Lubanga*, Judgement on Disclosure Restrictions pursuant to Rule 81(2) (and (4)), ICC-01/04-01/06-568 OA3, 13 October 2006, Dissenting opinion of Judge Pikis, para. 14.

⁴⁷ *Prosecutor v. Lubanga*, Judgement on Interim Release Appeal, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 71.

⁴⁸ OPCD Appeal Brief, paras. 47-58.

relevant application, an issue that, as explained above, is far from clear. Absent such a showing, the general principles of appellate review lead to the conclusion that the Single Judge's findings should remain undisturbed.⁴⁹

36. The Prosecution further notes that many of the arguments advanced by the OPCD go beyond the scope of the issue for which leave to appeal has been granted,⁵⁰ and should be disregarded by the Appeals Chamber for that reason alone.⁵¹

37. OPCD Appeal Brief does not comply with the requirements set out by the Appeals Chamber and the Regulations. The Prosecution therefore opposes the OPCD's appeal on the second issue.⁵²

⁴⁹ The Prosecution contends that regardless of whether the error in question is a procedural error, an error of law, or an error of fact, the burden lies to the appellant to identify the alleged error and to advance some arguments in support of its contention. See Mark A Drumbl and Kenneth S Gallant, *Appeals in the ad hoc international criminal tribunals: structure, procedure, and recent cases*, Journal of Appellate Practice and Process, Vol. 3, no 2(Fall 2001), pp. 622 and 627.

⁵⁰ As discussed above, the issue on this appeal is limited to the question of whether the identity of the direct victim and their relationship must be proved; not how close that relationship must be or what level of proof should be required – see para. 29, above.

⁵¹ The arguments going beyond the scope of the issue for which leave was granted relate to the nature of the harm suffered by the second person (OPCD Appeal Brief, paras. 19, 51 and 52), the nature of the proximity between the applicant and the second person (OPCD Appeal Brief, paras. 51-53 and 56), the proximity between the applicant and the events themselves (OPCD Appeal Brief, para. 53-54), the scope of interpretation of Rule 85 in general (OPCD Appeal Brief, paras. 50-51), and the applicable degree of proof (OPCD Appeal Brief, paras. 48 and 57).

⁵² The Prosecution submits that the Appeals Chamber cannot be required to second guess the errors alleged by the appellant. Failure by an appellant to identify with precision the error and the manner in which it affects an impugned decision should result in a summary dismissal of the appeal. See for example, *Prosecutor v. Brdjanin*, IT-99-36-A, Appeal Judgement, 3 April 2007, paras. 17-31.

Relief Sought

38. For the reasons referred to above, the Prosecution respectfully requests that the Appeals Chamber

- (a) grant all five grounds of appeal in relation to the first issue;
- (b) deny the appeal in relation to the second issue;
- (c) overturn the Decision; and
- (d) direct the Pre-Trial Chamber to grant a victim-applicant participation only on the basis that their personal interest is specifically affected, in connection with identified proceedings before the Chamber, and specifying the modalities of their participation in those proceedings.



Luis Moreno-Ocampo
Prosecutor

Dated this 29th day of February 2008
At The Hague, The Netherlands