

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : **English**

No.: ICC-02/05

Date: **10 March 2008**

**THE APPEALS CHAMBER**

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

**Registrar:** Mr Bruno Cathala

**SITUATION IN DARFUR, SUDAN**

**Public Document**

**Request of the Legal Representatives of Victims a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/071 to Participate in the Interlocutory Appeals of the Office of the Prosecutor and Office of Public Counsel for the Defence**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Essa Faal, Senior Trial Lawyer  
Mr Fabricio Guarglia, Senior Appeals Counsel

**The Office of Public Counsel for the Defence**

Mr Xavier-Jean Keïta, Principal Counsel

**Legal Representatives**

Ms Wanda M. Akin  
Mr Raymond M. Brown

## I. Background

1. On 6 December 2007, the Single Judge of Pre-Trial Chamber I issued the "Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07"<sup>1</sup>, granting the status of victims in the situation of Darfur, Sudan, to applicants a/0011/06, a/0012/06, a/0013/06, a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07, a/0037/07 and a/0038/07.
2. On 13 December 2007, the OPCD filed the "Request for leave to appeal the "Decision on the Requests of the OPCD on the Production of Relevant supporting Documentation Pursuant to Regulation 86(2) (e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor"<sup>2</sup>.
3. On 17 December 2007, the Prosecution filed the "Prosecution's Response to OPCD's Request for leave to appeal the "Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor"<sup>3</sup>.
4. On 17 December 2007, the Legal Representatives filed the "Response of the Legal Representatives of Victims to the Prosecution's Application and the OPCD's

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<sup>1</sup> See the "Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07" (Pre-Trial Chamber I), No. ICC-02/05-III-Corr, 6 December 2007. See also the "Corrigendum to decision on the Applications for participation in the proceedings of applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07, and a/0035/07 to a/0038/07", No. ICC-02/05-III-Corr, 14 December 2007.

<sup>2</sup> See the "Request for leave to appeal the "Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor", No. ICC-02/05-112, 13 December 2007.

<sup>3</sup> See the "Prosecution's Response to OPCD's Request for leave to appeal the "Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2)(e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor", No. ICC-02/05-115, 17 December 2007.

Request for Leave to Appeal the "Decision on the Applications for Participation in the proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07"<sup>4</sup>.

5. On 23 January 2008, the Single Judge of Pre-Trial Chamber I issued the "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"<sup>5</sup>, granting the OPCD leave to appeal the Single Judge's decision dated 3 December 2007 on the 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 not, how applications for participation at the investigation stage of a situation and the pre-trial stage of a case must be dealt with."

6. On 4 February 2008, the OPCD filed the "OPCD appeal brief on 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"<sup>6</sup>.

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<sup>4</sup> See the "Response of the Legal Representatives of Victims to the Prosecution's Application and the OPCD's Request for Leave to Appeal the "Decision on the Applications for Participation in the proceedings of Applicants a/0011/06 to a/0015, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07"<sup>4</sup>, No. ICC-02/05-116, 17 December 2007.

<sup>5</sup> See the "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" (Pre-Trial Chamber I), No. ICC-02/05-118, 23 January 2008.

<sup>6</sup> See the "OPCD appeal brief on 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", No. ICC-02/05-119, 4 February 2008.

7. On 15 February 2008, the Legal Representatives filed the "Request of the Legal Representatives for Clarifications on Victims' Participation in the Interlocutory Appeal filed by the OTP under article 81(2) (d) of the Rome Statute"<sup>7</sup>.
8. On 18 February 2008, the OTP filed the "Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings"<sup>8</sup>.
9. On 18 February 2008, the Defence filed the "OPCD Appeal Brief on the "Decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07"<sup>9</sup>.
10. On 28 February 2008, the Appeals Chamber filed the "Decision of the Appeals chamber on the OPCV's request for clarification and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor"<sup>10</sup>.
11. On 29 February 2008, the Appeals Chamber filed the "Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor"<sup>11</sup>.

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<sup>7</sup> See the "Request of the Legal Representatives for Clarifications on Victims' Participation in the Interlocutory Appeal filed by the OPCD under article 81(2)(d) of the Rome Statute", No. ICC-02/05-122, 13 February 2008.

<sup>8</sup> See the "Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings", No. ICC-02-05-125, 18 February 2008.

<sup>9</sup> See the OPCD "Appeal Brief on the Decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07", No. ICC-02/05-126, 18 February 2008.

<sup>10</sup> See the Appeals Chamber "Decision of the Appeals chamber on the OPCV's request for clarification and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor", No. ICC-02/05-129, 28 February 2008.

<sup>11</sup> See the Appeals Chamber "Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor", No. ICC-02/05-132, 29 February 2008.

12. On 29 February 2008, the Appeals Chamber filed the “Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor”<sup>12</sup>.

13. The Legal Representatives of the victims authorised to participate in the situation in Darfur, Sudan, hereby respectfully submit this request to participate in the OPCD and OTP appeals.

## **II. Submissions for participation in the OTP Appeal of 18 February 2008 and OPCD Appeals of 4 February 2008 and 18 February 2008**

14. Article 68(3) of the Rome Statute explicitly grants to victims of crimes falling within the jurisdiction of the court the right to submit comments and present their views and concerns when their personal interests are involved. The Article does not differentiate between applicants and participants; it allows victims to participate in Court proceedings when their personal interests are involved. Furthermore, Article 68(3) uses the plural noun “stages” to describe the aspects of the proceedings open to victims.

15. Those interpretations supporting broad participation are supported by the broad definition of the term “victim” as contained in Rule 85 Rules of Procedure and Evidence which states that a victim is a natural person who has suffered harm from a crime that falls within the jurisdiction of the court<sup>13</sup>. Victims a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/071 all meet the elements in this definition.

16. Noting the Appeals Chambers decisions of 28 and 29 February 2008, the Legal Representatives successively respond to the following questions for each respective

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<sup>12</sup> See the Appeals Chamber “Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor”, No. ICC-02/05-133, 29 February 2008.

<sup>13</sup> See Rules of Procedure and Evidence, ICC-ASP/1/3, 85.

appeal as follows: 1) how the personal interests of the victims are affected by said appeal; 2) why the presentation of their views and concerns is appropriate at this stage; and 3) why the presentation of such views and concerns is not prejudicial to or inconsistent with the rights of the Defence.

- i. *The personal interests of victims are affected by the interlocutory appeals filed by the OTP and OPCD*

16. In the 17 January 2006 Decision, "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6", the Honorable Pre-Trial Chamber held that "the personal interests of victims are affected in general at the investigation stage, since the participation of victims at this stage will help clarify the facts, punish those responsible for the crimes committed and to seek a compensation for harm suffered"<sup>14</sup>. The case law established by Pre-Trial Chamber I was re-examined and supported by Pre-Trial Chamber II in the "Decision on legal representation, appointment of counsel for the Defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/0 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06"<sup>15</sup>, dated 1 February 2007 in the Situation in Uganda. It follows that the personal interests of victims are affected in general in any proceedings relating to a situation. Thus, the personal interests of the victims are also concerned in any interlocutory appeal.

17. The Legal Representatives draw the attention of the Appeals Chamber to Rule 93 of the Rules of Procedure and Evidence, which provides that "a Chamber may seek the views of other victims, as appropriate."<sup>16</sup> The interests of the victims are affected by the interlocutory appeals of the OPCD and the OTP, which clearly aim to

<sup>14</sup> See the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6" (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January, 2006.

<sup>15</sup> See the "Decision on legal representation, appointment of counsel for the Defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/0 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06", No. ICC-02/04-112, 1 February 2007.

<sup>16</sup> See Rules of Procedure and Evidence, ICC-ASP/1/3, 93.

deny victims their right to participate in the investigation stage. Thus, if the Appeals Chamber grants the interlocutory appeals, the victims would be deprived of all procedural rights arising from their status as victims pursuant to Article 68(3) of the Rome Statute and provided by the “Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07 ” dated the 6 December 2007 Decision .<sup>17</sup>

18. In her decision dated 6 December 2007, the Single Judge reserved final judgment on eight applications and deemed them incomplete<sup>18</sup>. Honorable Akua Kuenyehia requested that the Legal Representatives provide certain material to the Pre-Trial Chamber via the Registrar so that the Single Judge could complete her evaluation of the incomplete applications.

19. Indeed the interlocutory appeals may also affect the personal interests of victims whose applications have been subject to a partial evaluation and deemed incomplete by the Single Judge. The OPCD argues that applications filed on behalf of a victim who is either a minor or unable to file in their own behalf should not hold the same weight or impact as applications filed by the victims themselves. The eight applications deemed incomplete by the Single Judge were filed by victims on behalf of minors and relatives who remained in Darfur after the applicant fled and sought refuge outside of Sudan. Any decision respecting the OPCD’s interpretation of the application process may greatly diminish the rights of victims who are in the process of providing additional information and who have yet to have this additional information--their entire application-- reviewed by the Single Judge.

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<sup>17</sup> See “Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07” No. ICC-02/05-111-Corr, 14 December 2007.

<sup>18</sup> The Single Judge denied procedural status to two applications because the applications were filed on behalf of deceased persons. The Single Judge indicated that applications cannot be filed on behalf of the deceased.

20. Further, the "subject matter of the appeal" as formulated by the Single Judge in her Decision of 23 January 2008, is much broader than the subject matter contained in the OPCD's leave to appeal filed on 13 December 2007. The OPCD limited its interrogation to evaluating the requests to participate at the investigation stage, and determining modalities of participation during different stages of the proceedings. The Single Judge's formulation further calls into question the rights of victims by developing and extending the question to include the existence of the procedural status of victim at the investigation stage of a situation *and* at the preliminary stage of a case. Moreover, the Single Judge permitted comment on the existence of distinct objectives between the application and procedural rights attached to the status of victim.

21. The Legal Representatives also note that the OPCD claims that decisions made during the preliminary stage of a case fall outside the jurisdiction of the Single Judge. Accordingly, the decision of the Appeals Chamber respecting the OPCD's claim may result in the denial of procedural rights provided to victims by the Single Judge in her 6 December 2007 decision, which was made in the preliminary stage.

ii. *The Personal Interests of Victims are Affected by the appeals of the OTP and OPCD*

22. Given the subject matter in each appeal, any decision on the merits will directly affect victims' status as well as their procedural rights in the Situation in Darfur. The Legal Representatives recall that, according to the previous jurisprudence of the court, the stage of the investigation in a situation is appropriate for the participation of victims as provided for in article 68(3) of the Rome Statute.<sup>19</sup>

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<sup>19</sup> See the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6" (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January, 2006; the "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06", No. ICC-02/04-101, 10 August 2008; and the "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", No. ICC-01/04-374, 17 August 2007.



It follows therefore that the participation of victims in an interlocutory appeal that aims to contradict a decision taken at the investigation stage must also be considered as appropriate.

23. Finally, the participation of victims' in the interlocutory appeals is appropriate in so far that it meets the requirements of the victims' right to be heard as enshrined in article 68-3 of the Rome Statute. Indeed, the analysis of all the articles and rules governing the participation of victims in proceedings before the court clearly demonstrates that their participation is permissible at all stages of the proceedings.

*a. Victims interests as it pertains to the OPCD appeal of 4 February 2008*

24. The Defence argues that victims' participation at the investigation stage is tantamount to acting as another prosecutor, which is not needed or provided for by the Rome Statute. To the contrary, victims are a necessary and integral part of the situation phase. An examination of the preparatory works for the drafting of the Rome Statute and of the Rules of Procedure and Evidence<sup>20</sup> lead to the same conclusion reached by the Single Judge<sup>21</sup> in the Situation in the Democratic Republic of Congo in the 17 January 2006 Decision that victims have rights to participate in all phases of the proceedings, including the investigation, trial and appeal stages.

25. This approach was adopted on several occasions and shared by several delegations during the discussion of the then Part 5 of the Rules on Investigation and Prosecution.<sup>22</sup> The Working Group dealing with the issue decided that a

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<sup>20</sup> See UN Doc. PCNICC/1999/DP.2, 1<sup>st</sup> February 1999, p. 7. §

<sup>21</sup> The same reasons lead Pre-Trial Chamber I to allow VPRS1 and VPRS 6 and a/0001/06 to a/0003/06 to participate to the investigation stage. See the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6" (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January, 2006. See also the "Decision on the Applications for Participation in the Proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the Prosecutor v. Thomas Lubanga Dyilo and of the investigation in the Democratic Republic of the Congo", No. ICC-01/04-177-tEN, 31 July 2006.

<sup>22</sup> See UN Doc. PCNICC/1999/DP.2, 1<sup>st</sup> February 1999, p. 7.

comprehensive discussion on the participation of victims in the proceedings was necessary. Prior to this, an International Seminar on the access of Victims to the International Criminal Court was held in Paris in April 1999, where the paradigm for the discussions of the Preparatory Commission was fashioned.

**b. *Victims participation regarding the OPCD appeal of 18 February 2008***

26. In its 18 February 2008 appeal, the OPCD objected to the general manner by which the Chamber determined whether the personal interests of applicants are affected by a particular stage of the proceeding and the fact that the Chamber failed to specify the methods by which victims' participation would be conducted. The Defence submitted the following criteria by which Article 68(3) should be interpreted: 1) "personal interests" and "appropriate" in article 68(3) must be interpreted in an effective manner, and each criterion must be given independent legal effect; 2) personal interest must be assessed on a case by case basis in relation to each applicant, in connection with particular issues being addressed by the Chamber; 3) "personal interests" are not affected in a "general manner" by the judicial proceedings during the investigative stage; 4) "appropriate" requires the Chamber to consider the particular circumstances of the proceedings in question; and 5) the unique features of the situation phase militate against the general propriety of participation under article 68(3)<sup>23</sup>.

27. In light of the OPCD's interpretation of Article 68(3) and victims' participation at the investigation stage, the Legal Representatives submit that the personal interests are directly involved in the OPCD interlocutory appeal of 18 February 2008. The Victims and their Legal Representatives are uniquely qualified to bring to the Appeals Chamber's attention both legal and policy considerations which will affect

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<sup>23</sup> See the OPCD "Appeal Brief on the Decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07", No. ICC-02/05-126, 18 February 2008.

its decision. If the Appeals Chamber were to adopt the methodology advanced by the OPCD in its Appeal Briefs<sup>24</sup> it would make victim participation in any stage prior to trial a “dead letter”<sup>25</sup>.

28. Without the participation of victims and their Legal Representation, the Chamber will hear the merits of the interlocutory appeals without any adverse opinion. The briefs submitted by the Prosecutor and Defence stand for the same general principle: Article 68(3) should not be interpreted as granting victims a general right to participate in the situation phase. The title alone of the Prosecutor’s brief, “Prosecution’s Document in Support of Appeal against the 6 December 2007 Decision on the Victims’ Applications for Participation in the Proceedings”, suggests that office has no objection to merits in the OPCD brief. In its appeal brief, the OTP requested that “the Pre-Trial Chamber to only grant a victim-applicant participation on the basis that their personal interest are specifically affected, in connection with identified proceedings before the Chamber, and specifying the modalities of their participation in those proceedings”<sup>26</sup>. The Defence requests, in its appeals, that the Appeals Chamber, “reverse the methodology employed by the Honourable Single Judge in connection with article 68(3); and order that the criteria of personal interests and appropriate must be interpreted in accordance with the principle set out above”<sup>27</sup>. It is clear that both offices demand a reversal of the decision of the Single Judge in

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<sup>24</sup> See the “OPCD appeal brief on 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”, No. ICC-02/05-119, 4 February 2008; and See the OPCD “Appeal Brief on the Decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07”, No. ICC-02/05-126, 18 February 2008.

<sup>25</sup> See the OPCD “Appeal Brief on the Decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07”, No. ICC-02/05-126, 18 February 2008.

<sup>26</sup> See the “Prosecution’s Document in Support of Appeal against the 6 December 2007 Decision on the Victims’ Applications for Participation in the Proceedings”, No. ICC-02-05-125, 18 February 2008.

<sup>27</sup> See the OPCD “Appeal Brief on the Decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07”, No. ICC-02/05-126, 18 February 2008. The “criteria above” is as follows: the criteria of personal interests and appropriate in article 68(3) must be interpreted in an effective manner, and each criterion should

her 6 December 2007 decisions based on an objection to the methodology applied by Judge Kuenyehia as well as her with specific concern to the Single Judge's interpretation of Article 68(3).

29. Any decision respecting the subject matter of these appeals will determine the rights of victims at the investigation stage, the rights of victims whose applications have been partially reviewed by the Single Judge and may even impact or change the application procedure. Furthermore, if the Appeals Chamber grants the OPCD the relief that it requests in its appeal, the victims who were granted rights to participate in the Situation in Darfur will lose those rights.

*c. Victims participation regarding the OTP appeal of 18 February 2008*

30. In its 18 February 2008 appeal, the OTP objected to the methodology used by the Single Judge in the 6 December 2007 Decision to determine victims' rights at the investigation stage of the proceedings. The Prosecutor requested that the Decision by the Single Judge be overturned and the Pre-Trial Chamber determine victim interest in the "stages of proceedings" and specify the modalities of victim participation<sup>28</sup>.

31. A reversal of the Single Judge's 6 December 2007 Decision will result in the victims losing all rights provided by the important decision. Therefore, the personal interests of the victims are directly affected by the OTP appeal and any decision issued by the Appeals Chamber regarding same.

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be given independent legal effect; 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; the 'personal interests' of the applicants are not affected in a 'general manner' by the judicial proceedings which occur during the investigative stage; the criterion of appropriateness requires the Chamber to consider the particular circumstances of the proceedings in question, and the applicants in question; and the unique features of the situation phase militate against the general propriety of participation under article 68(3).

<sup>28</sup> See the "Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings", No. ICC-02-05-125, 18 February 2008.

iii. *Victims Participation in the appeal of February 4, 2008 is not contrary or detrimental to the rights of the Defence.*

32. The Legal Representatives are of the opinion that the protection of the rights of the Defence is a fundamental principle, without which the integrity of the criminal proceedings before this Court can not be safeguarded and justice can not be done.

33. The Legal Representatives note that the participation of victims in the proceedings before the Court is not in itself likely to affect the rights of the Defence. Indeed, as pointed out by the Judge René Blattmann, in the “Decision Relative to the Participation of Victims”, dated 18 January 2008, “both the rights of victims and that of the accused are amply protected under the Statute. Further, many major legal systems are able to incorporate victims' participation into their proceedings while ensuring the rights of the accused to both a fair and expeditious proceeding.”<sup>29</sup>

34. In this regard, the Legal Representatives also note that the statement of basic principles of justice for victims of crimes and abuse of power adopted by the General Assembly of the United Nations, 29 November 1985, establishes the principle of access to justice for victims and a right to fair treatment.<sup>30</sup> The participation of victims in this interlocutory appeal has to do with the effective implementation of victims' rights at all stages of the proceedings, as recognized in the Rome Statute, and has no negative impact on the right of Defence.

35. Furthermore, rule 24-1 of the Rules of Procedure and Evidence<sup>31</sup> allows the Defence to respond to all documents that are submitted by applicants at any stage of the proceedings, including presentation of factual findings to the Pre-Trial Chamber. As such, the participation of victims in this interlocutory appeal is not contrary or

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<sup>29</sup> See “Decision Relative to the Participation of Victims”, No. ICC-01/04-01/06-1119-tFRA. 18 January 2008.

<sup>30</sup> See “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” (29 November 1985) A/RES/40/34

<sup>31</sup> See Rules of Procedure and Evidence, ICC-ASP/1/3, 24.

prejudicial to the rights of the Defence, nor does it hamper or preclude the Defence from participating in this or any stage of proceedings.

36. The rights of victims are a continuation of the International Law of Human Rights and are recognized in many national systems. Participation of victims at the investigation, appeals and trial stages does not negatively affect the proceedings. Consideration of their interests is a factor that contributes to the balance of these procedures, particularly as they relate to the violation of human rights of victims themselves.

### **III. Conclusion**

37. As a result, the Legal Representatives submit that the personal interests of victims a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/071 are affected by the interlocutory appeals of the Prosecutor and the Defence; that the presentation of their views and concerns appears appropriate at this stage; and that such participation is not contrary or prejudicial to the rights of the Defence.

38. The Legal Representatives respectfully request that the Appeals Court grant the request of the victims to participate in the "OPCD appeal brief on 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 4 February 2008, the "Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings" of 18 February 2008, and the "OPCD Appeal Brief on the 'The decision on the Application for Participation in the Proceedings of Applicant a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07'" of 18 February 2008.

/s/Wanda M. Akin and /s/Raymond M. Brown  
Wanda M. Akin and Raymond M. Brown  
Legal Representatives

Done in English  
Dated this 10<sup>th</sup> day of March 2008  
At Newark (U.S.A.)