

Policy Paper on Victims' Participation

Executive summary

The Office of the Prosecutor ("Office") believes that victims bring a unique and necessary perspective to the activities of the ICC and contribute to fair and efficient trials. Under the Rome Statute, victims are actors of international justice rather than its passive subjects. Their participation is a statutory right, not a privilege bestowed on a case by case basis. As such, the Office considers that procedures for implementation of their rights must be defined in a clear and consistent manner. This paper is a contribution to such clarity and consistency.

The Office supports as a policy victims' participation when all statutory requirements are met. Bureaucratic or resource-related arguments (*i.e.* numbers of victims) require practical solutions: they do not constitute an obstacle to participation *per se*.

The role of victims under the Statute takes on various forms starting with submission of information on crimes pursuant to article 15 and making representations on their interests. The Office promotes direct interaction with victims and victims' associations at all stage of its activities and on an ongoing basis from the preliminary examination, investigation, pre-trial, trial to reparation stages. Information can be sent to: ICC Office of the Prosecutor, Communications, Post Office Box 19519, 2500 CM The Hague, The Netherlands; by email to otp.informationdesk@icc-cpi.int, or by fax to +31 70 515 8555.

For the purpose of participation in proceedings under article 68(3), the Office supports applications where the relevant criteria are met. This includes qualification for the status of victim within the meaning of rule 85; a demonstration that the applicant's personal interests are affected by the proceedings at hand; that their participation is appropriate at that particular stage; and that the manner of such participation would not be not prejudicial to or inconsistent with the rights of the accused and a fair trial. The Office, moreover, supports a broad definition of victims that includes persons who are both the direct and the indirect victims of crimes.

At the pre-trial and trial proceedings in a particular case the harm alleged by the applicant must be linked with the charges alleged. At the reparation stage, however, the Office supports applications by a broader range of individuals and entities than those who are linked to the charges for which the accused is ultimately convicted.

In terms of the modalities of participation under article 68(3), while an assessment will need to be made on a case by case basis, the Office considers that the overall modalities should be consolidated to the largest extent possible in order to ensure certainty and consistency for victims themselves.

I. Introduction

This policy paper of the Office of the Prosecutor focuses on the legal aspects of victims' participation in proceedings under article 68(3) of the Rome Statute and sets out the Office's policy in this regard. The paper is based on the Statute, the Rules of Procedures and Evidence, the Regulations of the Court, the Regulations of the Office of the Prosecutor, the ICC Strategy in Relation to Victims, and the Office's prosecutorial strategy and policy documents. It draws on the lessons learned during the first years of the Office's activities as well as consultations with external experts and representatives of States and civil society on a draft first circulated in 2009. This is an internal policy document of the Office of the Prosecutor. As such, it does not give rise to legal rights and is subject to revision based on experience and in light of legal determinations by the Chambers of the Court.

There are different forms of victims' participation under the Rome Statute. The ICC Strategy, a Court-wide document which addresses victims-related issues in a broad context, notes that victims' participation can range "from petitioning the Court or volunteering information to applying for participant's status."¹ The Strategy also notes that: "By providing victims with an opportunity to articulate their views and concerns, enabling them to be part of the justice process and by ensuring that consideration is given to their suffering, it is hoped that they will have confidence in the justice process and view it as relevant to their day to day existence rather than as remote, technical and irrelevant. It is also hoped that their participation will contribute to the justice process of the Court"²

The Office concurs that victims bring a unique and necessary perspective to the ICC activities and contribute to fair and efficient trials. There is no jury in the international criminal justice system and therefore victims are the only popular participant in proceedings. The provisions of the Statute in relation to victims' participation embody a trend at the international level and in the practice of domestic jurisdictions from different legal systems of the world.

¹ *Report of the Court on the strategy in relation to victims* ("ICC Strategy in Relation to Victims"), [ICC-ASP/8/45](#), 10 November 2009, para. 46.

² *Ibid*, para. 44.

II. The framework

The normative framework

Relevant provisions from the Statute and the Rules of Procedure and Evidence are listed in Annex 1.

The Court wide strategy in relation to victims

This policy paper relates to Objective 4 of the ICC Strategy which is: "To ensure that victims are able to fully exercise their right to participate in ICC proceedings, in a manner that is sensitive to their rights and interests and consistent with the rights of the Defence and the need to ensure a fair trial".

To achieve this goal, a key factor is the recognition that participation is a statutory right, not a privilege bestowed upon victims on a case by case basis.³ As has been stated by Judge René Blattman "victims' participation is not a concession of the Bench, but rather a right accorded to victims by the Statute".⁴ The ICC Strategy stresses in this context that "[w]hile implementation might vary according to the specific circumstances, as provided in the Statute and the Rules, it is crucial to build upon the experience of the last four years of activities of the Court in this regard and address issues of relevance to victims' participation in a clear, consistent and certain manner".⁵

This policy paper contributes to the implementation of this objective by ensuring a clear and consistent approach of the Prosecution in its activities, legal submissions and positions on victims' participation under article 68(3).

The Prosecutorial Strategy

The third principle of the Prosecutorial Strategy is to systematically address the interests of victims in the work of the Office, seeking their views at an early stage, before an investigation is launched, and continuing to assess their interests on an on-going basis.⁶

³ICC Strategy in Relation to Victims, para. 45. This is supported by the wording of article 68(3), which provides "[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..." (emphasis added), suggesting a presumption towards the participation of victims once the relevant criteria are met. *See also* Prosecution's Document in Support of Appeal against Trial Chamber I's 18 January 2008 Decision on Victims' Participation, [ICC-01/04-01/06-1219](#), 10 March 2008, introduction.

⁴ *Prosecutor v. Thomas Lubanga Dyilo*, Separate and Dissenting Opinion of Judge René Blattman to Decision on victim's participation, [ICC-01/04-01/06-1119](#), 18 January 2008, para. 13.

⁵ ICC Strategy in Relation to Victims, para. 45.

⁶ The Prosecutorial Strategy is based on four fundamental principles: (i) positive complementarity; (ii) focused investigations and prosecutions; (iii) addressing the interests of victims; and (iv) maximizing the impact of the Office's work. OTP, [Prosecutorial Strategy 2009-2012](#), 1 February 2010, The Hague, para .22.

As the organ conducting investigations and prosecutions, the Office interacts with victims to address, to the extent possible, the full range of criminality.

As such, this policy paper is also a contribution to one of the Office's five objectives, namely "to continually improve the quality of prosecutions".⁷ The Office aims at improving legal submissions on substantive and procedural issues arising in cases and at promoting the development of jurisprudence.⁸ The dissemination of the Office's policy papers, moreover, forms part of efforts to enhance predictability and consistency.⁹

The Regulations of the Office of the Prosecutor (OTP Regulations)

Respect for and support of victims' right to participate in proceedings is embedded within the existing regulatory framework of the Office, including its Regulations.¹⁰

OTP regulation 16 provides that "The Office shall, in coordination with the Victims Participation and Reparations Section (VPRS) of the Registry, as appropriate, seek and receive the views of the victims at all stages in order to be mindful of and take into account their interests".

Pursuant to OTP regulation 37, OTP staff, who are usually the first staff of the Court in the field, are to inform victims they enter into contact with of the procedures for participation and access to reparations under the Statute, and of the existence and role of the VPRS.¹¹

The OTP Regulations also address the Office's interaction with the legal representatives of victims. OTP regulation 52 provides that: "The Office shall constructively engage with the legal representatives of victims in order to promote the efficient conduct of proceedings."

⁷ Objective 1 of the Prosecutorial Strategy is to "continually improve the quality of prosecutions, completing at a minimum three trials (*The Prosecutor v. Thomas Lubanga Dyilo, v. Germain Katanga & Mathieu Ngudjolo Chui, and v. Jean-Pierre Bemba*), starting at least one new trial and efficiently litigating in appellate proceedings."

⁸ Prosecutorial Strategy 2009-2012, para. 26.

⁹ *Ibid.*, para. 28.

¹⁰ Regulations of the Office of the Prosecutor, [ICC-BD/05-01-09](#), 23 April 2009.

¹¹ Under regulation 37, the Office also informs victims that it forwards their personal data to the VPRS, subject to the need to protect their safety, well-being and privacy, as well as the integrity of investigations.

III. General Policy

The Office considers that victims' participation in proceedings before the Court is an essential feature of the Rome system and an important contribution to international justice. Article 68(3) provides, *inter alia*: "Where 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 inconsistent with, the rights of the accused and a fair and impartial trial."

As a matter of law and policy, the Prosecution supports the participation of victims in proceedings in accordance with the Court's legal framework. On this basis, bureaucratic or resource-related arguments, such as the high number of victims, the costs involved or any other organisational problems require practical solutions: they are never a basis to oppose participation *per se* once the legal requirements for participation are met.

As stated by the Prosecution in submissions on victims' participation, the Statute "empowers victims as an actor in the international criminal justice system, with a right to express their views and concerns independently in proceedings where their personal interests are affected. The framework established in the Rome Statute regarding victim participation represents a key innovative feature of this Court and is, in the Prosecution's view, a milestone in international criminal justice. It is part of a consistent pattern of evolution of international law, including but not limited to international criminal law, which recognizes victims as actors and not only passive subjects of the law, and grants them specific rights. It is a main feature of the Statute and the Rules, which seek to define with as much precision as possible the nature of those rights (right to protection, right to participate, expressing views and concerns at all stages of the proceedings where their personal interests are affected) and the procedures to implement them."¹²

¹² *Situation in Darfur, Sudan*, Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings, [ICC-02/05-125](#) 18 February, 2008 (introduction); See also introductions in *Situation in Uganda*, Prosecution's Application for Leave to Appeal 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, [ICC-02/04-103](#) 20 August 2007; *Prosecutor v. Thomas Lubanga Dyilo*, Prosecution's Document in Support of Appeal against Trial Chamber I's 18 January, 2008 Decision on Victim Participation, [ICC-01/04-01/06-1219](#), 10 March 2008.

IV. Requirements, timing and modalities of victims' participation

The role of victims under the Statute and the modalities of their participation can take numerous forms. At the earliest stages within a situation, the Statute and Rules enable victims to pass information on crimes to the Prosecutor and to make representations to the Prosecutor and the Court bearing on their interests, for example in relation to the initiation of an investigation on a *proprio motu* basis.¹³ In addition, there are a number of provisions that are distinguished from victim participation under article 68(3) of the Statute.¹⁴ Chamber have held that the category "victims having communicated with the Court", which appears in a number of the provisions of the Rules, relates to a separate and additional group of victims besides those who have been allowed to participate in the proceedings.¹⁵ The focus of the present policy paper is on the participation of victims pursuant to article 68(3) of the Statute.

For the purpose of participation under article 68 (3), consistent with established jurisprudence,¹⁶ the Office will support an application for victims to participate in proceedings of the Statute when:

- (a) The applicant qualifies as a victim under rule 85;
- (b) The applicant's personal interests are affected by legal or factual issues raised in the proceedings at hand;
- (c) The applicant's participation is appropriate at that particular stage of the proceedings;
- (d) The manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

¹³ *Situation in the Republic of Kenya*, Order to the Victims Participation and Reparation Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, [ICC-01/09-4](#), 10 December 2009, para. 7.

¹⁴ *Situation in Democratic Republic of the Congo*, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, [ICC-01/04-556](#), 19 December 2008, paras 45-50.

¹⁵ *Situation in Uganda*, 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, [ICC-02/04-101](#), 10 August 2007. See e.g. rule 59 (1)(b) on provision of information regarding any question or challenge having arisen under article 19 to "the victims who have already communicated with the Court in relation to that case or their legal representatives"; rule 92 (2) on notification of the Prosecutor's decision not to initiate an investigation or not to prosecute pursuant to article 53 to "those who have communicated with the Court in respect of the situation or case in question"; rule 92(3) on notification of the Court's decision to hold a hearing to confirm the charges pursuant to article 61 to "those who have communicated with the Court in respect of the case in question"; rule 119 (3) on the Pre-Trial Chamber's duty to seek the views of "victims that have communicated with the Court" in the relevant case prior to imposing or amending any conditions restricting the liberty of an arrested person.

¹⁶ See e.g. *Prosecutor v. Thomas Lubanga Dyilo*, Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation", [ICC-01/04-01/06-1335](#), 16 May 2008, para. 36.

(a) Victim status

Rule 85 establishes the parameters within which victims are defined for a variety of purposes under the Statute, including determinations on protective measures, participation in the proceedings, and reparations.¹⁷

For a person to be granted the status of a victim under rule 85, Chambers of the Court have established that:

- (a) The applicant must be a natural person as set forth in rule 85(a) or an organization or institution as set forth in rule 85(b)¹⁸;
- (b) The applicant must have suffered harm;
- (c) The crime from which the harm resulted must fall within the jurisdiction of the Court; and
- (d) There must be a causal link between a crime and the harm.¹⁹

Legal persons

In relation to rule 85(b), the Office supports participation by legal persons meeting the criteria and having sufficient authority to represent the organization or institution concerned. Trial Chamber I in the *Lubanga* case ruled, for example, that the principal of a school from which children were recruited by Lubanga's militia, and who himself qualified as a victim under rule 85(a), also had sufficient authority to act on behalf of the school under rule 85(b). Accordingly, it held that he could participate both on his own behalf and on behalf of his school.²⁰ In the *Bemba* case, by contrast, in relation to an application by a priest on behalf of his church which was allegedly pillaged by Bemba's militia Pre-Trial Chamber III held that the applicant had provided insufficient information concerning the church and the priest standing to act on its behalf.²¹

¹⁷ As Appeals Chamber has observed, rule 85 is a "general provision relating victims, applicable to various stages of proceedings"; *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, paras. 57-58.

¹⁸ According to rule 85(b), victims may include "organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes".

¹⁹ See e.g. *Prosecutor v. Jean-Pierre Bemba Gombo*, Fourth Decision on Victims' Participation, [ICC-01/05-01/08-320](#), 12 December 2008, para. 30. See also *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-121](#), 25 September 2009, para. 11; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, para. 65; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, *Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure*, [ICC-01/04-01/07-1491-Red](#), 23 September 2009, para. 57.

²⁰ *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the applications by victims to participate in the proceedings, [ICC-01/04-01/06-1556](#), 15 December 2008, paras. 110-111.

²¹ *Prosecutor v. Jean-Pierre Bemba Gombo*, Fourth Decision on Victims' Participation, [ICC-01/05-01/08-320](#), 12 December 2008, para. 54-56. The new application to participate in the trial proceedings is pending decision

Links with the charges

The jurisprudence has held that for the purposes of participation in the pre-trial or trial proceedings in a particular case, the harm alleged by a victim must be linked with the charges: i.e. the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to appear or the document containing the charges.²² For participation during the situation stage of proceedings when no specific offences will have yet been defined, the Office considers that the general condition set out in Rule 85 will apply, namely that the harm suffered by a victim must be linked to a crime which is of relevance to the situation before the Court.

The Office has adopted a policy of focused investigations and prosecutions. This means it will investigate and prosecute those who bear the greatest responsibility for the most serious crimes, based on the evidence that emerges during the course of an investigation. A limited number of incidents will be selected in order to allow the Office to carry out short investigations; to limit the number of persons put at risk by reason of their interaction with the Office; and to propose expeditious trials while aiming to represent the entire range of victimization.²³ As a result, there may be victims who suffered harm as a result of crimes other than those included in the charges selected for prosecution and who thus may not be able to qualify for article 68 (3) participation in a case. Accordingly, the Office seeks to address the interests of victims more broadly in a number of ways.

First, consistent with article 53(1)(c) and the Prosecutorial Strategy, the Office welcomes direct interaction with victims and victims associations starting at the earliest stages of its work in order to take their interests into account when it defines the focus of its investigative activity. Information on crimes sent under article 15 as well as other forms

by Trial Chamber II. See *The Prosecutor v. Bemba*, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, [ICC-01/05-01/08-699](#), 22 February 2010.

²² *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, para. 2; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, paras. 66-67; *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-121](#), 25 September 2009, paras. 12-13. The Appeals Chamber also confirmed that any modification of the legal characterisation of the facts by the Trial Chamber pursuant to regulation 55 of the Regulations of the Court must be limited to the facts and circumstances described in the charges and any amendments thereto; *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled 'Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court', [ICC-01/04-01/06-2205](#), 8 December 2009.

²³ [Prosecutorial Strategy 2009-2012](#), paras. 18-20.

of interaction aimed at promoting the interests of victims, such as town hall meetings with victims groups, have contributed to the definition of incidents and charges brought forward by the Prosecution. Information about alleged crimes can be submitted to the Office at International Criminal Court Office of the Prosecutor, Communications, Post Office Box 19519, 2500 CM The Hague, The Netherlands; or can be sent it email to: otp.informationdesk@icc-cpi.int, or by facsimile to: +31 70 515 8555. The Office believes there is scope for further development of such interaction during early stages of its work within a given situation, and is refining its best practices to better enable victims to submit information concerning alleged crimes and make representations to the Office.

Second, the Office consistently seeks to address the interests of a wider community of victims through its submissions on the gravity of the crimes, including in terms of their impact.²⁴ At the same time, the Office also considers gravity in terms of factors that are relevant for the purpose of future sentencing.²⁵ The Office appreciates that legal representatives of participating victims have consistently included in their presentations before the Court a personal and social perspective of the impact of the crimes on the affected victims and their communities. They add a distinct perspective to the analysis of the crimes.

Third, for the reparations stage, the Office favours a wider approach to allow participation of victims and representations from or on behalf of victims and other interested persons who suffered harm as a result of crimes other than those included in the charges selected for prosecution. Any other approach would be overly restrictive and unfair, since the Prosecution must *necessarily* limit the incidents selected in its investigation and prosecution. Accordingly, the Office will support reparations applications, as appropriate, by a broader range of individuals and entities than those who are linked to the charges for which the accused is ultimately convicted. Modalities will need to be further developed consistent with the generally broad scheme of reparations envisioned in the Statute.²⁶

²⁴ See Regulation 29(2), Regulations of the Office of the Prosecutor.

²⁵ Rule 145, ICC RPE.

²⁶ Article 75 of the Statute provides that the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. The Court may also grant collective reparation awards to victims or to grant reparation awards to an intergovernmental, international or national organization through the Trust Fund for Victims; Article 75, ICC Statute; rules 97-98, ICC RPE. In addition, article 75(3) provides that before making a reparation order, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States. It may hold a separate hearing for this purpose; rule 91(4). See *generally* rules 94-98. Finally, the Trust Fund for Victims may directly make use of its resources for the benefit of victims more generally, thus allowing a wide range of individuals to benefit from such awards.

Harm

The Appeals Chamber has recognised that material, physical, and psychological harm are all forms of harm within the scope of Rule 85(a) if they are suffered personally by the victim.²⁷ It held that such harm may be both personal and collective in nature.²⁸

The Appeals Chamber also confirmed that in the case of natural persons, both direct and indirect victims may suffer harm, provided the harm suffered is personal to the individual.²⁹ In contrast, the Appeals Chamber noted that rule 85 (b) limits the definition of organizational or institutional victims to those that have sustained “direct harm to any of their property”.³⁰

Regarding “indirect victims”, Trial Chamber I in *Lubanga* held that they must establish that the harm suffered arises out of the loss, injury, or damage suffered by direct victims, as a result of the commission of the crimes charged.³¹ The Chamber ruled that the category of “indirect victims” entitled to participate in the proceedings, in addition those with a close personal relationship to a direct victim, may include the harm suffered by persons who intervened to prevent a crime alleged against the accused.³² By contrast, it excluded from the category of “indirect victims” those who suffered harm as a result of the conduct of the direct victims (in *Lubanga*, victims of crimes committed by child

²⁷ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, para.1. The Appeals Chamber has also held that an applicant who suffered emotional harm as the result of the loss of a family member requires proof of the identity of the family member and their relationship with the applicant; *Prosecutor v. Joseph Kony et al.*, Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II, [ICC-02/04-179](#), 23 February 2009, paras. 1, 36 and 38. The same criteria have been applied for trial proceedings; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, *Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure*, [ICC-01/04-01/07-1491-Red](#), 23 September 2009, para. 37.

²⁸ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, para. 35.

²⁹ *Ibid.*, paras.1, 32. Pre-Trial Chamber I in the *Katanga* case also found that in order to be granted victim status, the applicant must show that he or she suffered harm either (i) as a result of the crimes which were committed during the joint FRPI/FNI attack on the village of Bogoro or (ii) in intervening to assist direct victims in the case at hand, or to prevent their victimisation as a result of the commission of the said crimes. See *Prosecutor v. Germain Katanga et al.*, Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08, [ICC-01/04-01/07-357](#), 02 April 2008, p.8; *Prosecutor v. Germain Katanga et al.*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, para. 66.

³⁰ *Ibid.*, para. 30.

³¹ *Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of “Decision on ‘indirect victims’”, [ICC-01/04-01/06-1813](#), 8 April 2009, para. 49.

³² *Ibid.*, paras. 50-51.

soldiers) since “it is only victims ‘of the crimes charged’ who may participate in the trial proceedings pursuant to Article 68(3)”.³³

The Office concurs that “victims” under rule 85(a) can be persons who were not the direct targets of a crime, but who suffered indirect harm as a result of the commission of a crime.³⁴ The Office supports a broad characterization of “indirect victims”. In *Lubanga*, the Office expressed its views that those who have suffered harm as a result of crimes committed by child soldiers, i.e. as a consequence of the crimes charged, are also entitled to participate.³⁵ In *Abu Garda*, concerning the attack on the AMIS base in Haskanita, the Prosecution supported participation of several inhabitants of the Haskanita village who had established a sufficient causal link between the alleged harm suffered and the crimes charged.³⁶ The Pre-Trial Chambers disagreed.³⁷ The Office will further explore the concept of “indirect victims” in future litigation proceedings.

(b) Personal interests

The Court’s jurisprudence clarifies that the “personal interests” set out in article 68(3) constitute an additional criterion to be met by victims, over and above victim status.³⁸ The Appeals Chamber has also held that while participation pursuant to Article 68(3) aims to afford victims an opportunity to voice their views and concerns on matters affecting their personal interests, such a role “does not equate them, as the case law of

³³ *Ibid.*, paras. 52. As such, the Chamber held that “indirect victims” are restricted to those whose harm is linked to the harm of the affected children when the confirmed offences were committed, not those whose harm is linked to any subsequent conduct by the children, criminal or otherwise; *ibid.*

³⁴ *Prosecutor v. Thomas Lubanga Dyilo*, Prosecution’s Response to ‘Acte d’appel de la Défense relativement à la Décision du 18 janvier 2008 de la Chambre de première instance I concernant la participation des victimes’, [ICC-01/04-01/06-1233](#), 19 March 2008, para. 10.

³⁵ *Prosecutor v. Thomas Lubanga Dyilo*, Prosecution’s observations on examples of applications for participation in the case of persons who might be considered indirect victims, [ICC-01/04-01/06-1544](#), 5 December 2008, para. 6. The Prosecution observed: “The protection afforded by the provisions of the Rome Statute relating to the recruitment and use of children under the age of 15 years extends to third parties who suffered harm as a result of crimes committed by children within the ranks of the UPC/FPLC”; *ibid.*

³⁶ *Prosecutor v. Bahar Idriss Abu Garda*, Prosecution’s Observations on 52 Applications for Victims’ Participation in the Proceedings, ICC-02/05-02/09-125-Conf, 30 September 2009, cited in [ICC-02/05-02/09-147-Red](#) see below fn 39.

³⁷ In its decision of 9 October 2009, Pre-Trial Chamber III dismissed the applications by the villagers of Haskanita on the grounds that “the alleged harm cannot be said to be resulting from the alleged incident with which the suspect is charged since the spatial (the MGS Haskanita) and temporal circumstances (29 September 2007) surrounding the appearance of the harm and the occurrence of the incident do not seem to overlap or to be compatible”; *Prosecutor v. Bahar Idriss Abu Garda*, Public Redacted Version of ‘Decision on the 52 Applications for Participation at the Pre-Trial Stage of the Case’, [ICC-02/05-02/09-147-Red](#), 9 October 2009, para. 141.

³⁸ *Situation in Democratic Republic of the Congo*, Public Redacted Version Decision on the Applications for participation in the proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS 5et VPRS 6, [ICC-01/04-101-tEN-Corr](#), 17 January 2006, para. 62.

the Appeals Chamber conclusively establishes, to parties to the proceedings before a Chamber.”

In relation to a particular proceeding, the Appeals Chamber has ruled that in examining whether personal interests of victims are affected, “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”.³⁹

Consistent with the Appeals Chamber’s decision,⁴⁰ the Office considers that “once a criminal case is brought against a person, the proper determination of personal interests for the purposes of victim participation requires a showing that the applicant's personal interests are affected in connection to the charges, which form the subject-matter of the proceedings in which he or she seeks to participate.”⁴¹

Whereas Pre-Trial Chamber I in *Katanga et al.* and *Abu Garda* considered that the personal interest of the victims flows from: (i) the desire to have a declaration of truth by a competent body (right to truth); (ii) their wish to have those who victimized them identified and prosecuted (right to justice); and (iii) the right to reparation,⁴² the Office considers that the definition of “personal interest” in the context of article 68(3) must be more specific than the general interest of any victim in the progress and outcome of the prosecution.

The Office has argued that while victims have a general “interest” in the determination of the truth in relation to the particular charges, and in seeing the guilt or innocence of a perpetrator proven in Court and that justice be meted out for the crimes, such an interest cannot form the sole or main basis for participation as it is a responsibility and function granted to the Prosecutor under the Statute to investigate the crimes and establish the truth⁴³: “Every person who qualifies as a victim has such an interest, and to allow such

³⁹ *Prosecutor v. Thomas Lubanga Dyilo*, 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, [ICC-01/04-01/06-925](#), 13 June 2007, para. 28.

⁴⁰ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, para. 1.

⁴¹ *Prosecutor v. Thomas Lubanga Dyilo*, Prosecution’s Document in Support of Appeal against Trial Chamber I’s 18 January 2008 Decision on Victim Participation, [ICC-01/04-01/06-1219](#), 10 March 2008, para. 18.

⁴² *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-121](#), 25 September 2009, para. 3; See also *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008, paras 31-44.

⁴³ *Prosecutor v. Thomas Lubanga Dyilo*, Prosecution’s Document in Support of Appeal against Trial Chamber I’s 18 January 2008 Decision on Victim Participation, [ICC-01/04-01/06-1219](#), 10 March 2008, para. 21.

an interpretation would render meaningless the legal requirement of the victims' personal interests to be affected by the proceedings in which they are participating".⁴⁴

As stated by the Prosecution in filings to the Appeals Chamber, "(t)he Statute empowers victims to participate in proceedings where their personal interests are affected. It also mandates an international Prosecutor to investigate and prosecute the crimes which affected thousands, potentially millions, of victims and which therefore are of concern to the international community as a whole. Under article 54, the Prosecutor shall establish the truth, investigating both incriminating and exonerating circumstances. The Prosecutor does not purport to represent and express all the views and concerns of victims; the Statute acknowledges this through the key innovation of granting victims a separate and independent voice. However, establishing the guilt or innocence of the accused should not be confused with the interest of the victims under Article 68. That crimes should be effectively investigated and prosecuted is the core of the Prosecutor's mandate. While it is also an overriding interest of the international community as a whole, and of the victims specifically, it is not one that should be the basis for victims' participation in specific proceedings under article 68(3)."⁴⁵

c) Participation during the various stages of the proceedings

Preliminary examination

As noted above, victims' participation includes direct interaction with the Office.⁴⁶ Pursuant to article 15 of the Statute, the Office proactively monitors and considers open source information and information sent by victims groups, NGOs and others. In this context, victims may provide information on alleged crimes directly to the Office and make representations to, and consult with, the Office on matters pertaining to their interests pursuant to articles 53(1)(c).

In the context of proceedings related to the *proprio motu* initiation of an investigation pursuant to article 15, moreover, the Prosecutor is required to give notice of the application to victims in order to allow them to make representations to the Pre-Trial Chamber.⁴⁷

⁴⁴ *Situation in Uganda*, Prosecution's Reply under Rule 89(1) to the Applications for Participation of Applicants 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 in the Uganda Situation, [ICC-02/04-85](#), 28 February 2007, para. 29. See also *Situation in Darfur, Sudan*, Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Application for Participation in the Proceedings, [ICC-02/05-125](#), 18 February 2008, paras. 20-35.

⁴⁵ *Situation in Darfur, Sudan*, Prosecution's Document in Support of Appeal against the 6 December 2007 Decision on the Victims' Applications for Participation in the Proceedings, [ICC-02/05-125](#), 18 February 2008, para. 24.

⁴⁶ ICC Strategy in Relation to Victims, para. 46.

⁴⁷ Article 15(3), ICC Statute; rule 50, ICC RPE. See e.g. *Situation in the Republic of Kenya*, Request for authorisation of an investigation pursuant to Article 15, [ICC-01/09-3](#), 26 November 2009, para 112. See also

Investigations

The Appeals Chamber has established that victims are not entitled to participate *generally* during the investigation of a situation, noting that: "Article 68(3) of the Statute correlates victims' participation to 'proceedings', a term denoting a judicial cause pending before a Chamber. In contrast, an investigation is not a judicial proceeding but an inquiry conducted by the Prosecutor into the commission of a crime with a view to bringing to justice those deemed responsible."⁴⁸ The Appeals Chamber emphasised: "[m]anifestly, authority for the conduct of investigations vests in the Prosecutor".⁴⁹

As the Court's jurisprudence emphasises: "[i]n the view of the Appeals Chamber, there is ample scope within the statutory scheme of the Statute for victims and anyone else with relevant information to pass it on to the Prosecutor without first being formally accorded 'a general right to participate'. For example under Article 15 (2) the Prosecutor is authorised to receive information from, *inter alia*, any 'reliable source' – including victims. He is similarly authorised under article 42 (1) to receive and consider 'any substantiated information on crimes within the jurisdiction of the Court'. Victims may thus make representations to the Prosecutor on any matter pertaining to the investigations and to their interests. They are also specifically granted the right to make representations under articles 15 (3) and 19 (3) of the Statute."⁵⁰ The Chamber went on to note, and the Office concurs, that "[i]nformation that victims can provide to the Prosecutor about the scope of his investigations cannot but be welcome as it could provide nothing other than assistance".⁵¹

The Office will continue to make every effort to ensure effective interaction through public notice of its preliminary examination and investigation activities. Consistent with the OTP Regulations, the Office will also continue to work in coordination with the VPRS.

Situation in the Republic of Kenya, Order to the Victims Participation and Reparation Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, [ICC-01/09-4](#), 10 December 2009, paras. 7-8. The Chamber observed that while victims may make representations to the Chamber pursuant to article 15(3) and rule 50(3), the purpose of representations at this stage and the limited scope of article 15 proceedings should be borne in mind

⁴⁸ *Situation in Democratic Republic of the Congo*, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, [ICC-01/04-556](#), 19 December 2008, paras. 45, 58. The Chamber further noted that victims are not necessarily precluded from participation "in any judicial proceedings, including proceedings affecting investigations, provided that their personal interests are affected by the issues arising for resolution". It did not indicate precisely in what type of proceedings victims might be entitled to participate at the investigation phase. *Ibid.*, para. 56.

⁴⁹ *Ibid.*, para 52.

⁵⁰ *Ibid.*, para 53.

⁵¹ *Ibid.*, para 54.

Pre-trial and trial stages of a case

Trial Chambers have differed on whether victims who have been granted the right to participate at the pre-trial stage are to be automatically granted such rights at the trial stage. In *Lubanga*, Trial Chamber I considered that it was required to reassess the four applications for participation accepted by the Pre-Trial Chamber.⁵² Trial Chamber II in *Katanga et al.* took the view that “in the interest of the proper administration of justice, victims authorised to participate in the proceedings at the pre-trial stage must, in principle, and subject to the considerations set forth below, automatically be authorised to participate in the proceedings at the trial stage, without the need for their applications to be registered and assessed a second time.”⁵³ In this regard, the Chamber noted that the modalities of participation would need to be reassessed taking into account the stage of the proceedings and that it may need to rule on applications for participation, in particular where the victims have been authorised to participate in the proceedings at the pre-trial stage solely on the basis of the commission of a crime corresponding to a charge not confirmed by the Pre-Trial Chamber.⁵⁴

For the Office, participation under article 68(3) during pre-trial and trial phases must be connected to the parameters of the charges.⁵⁵ Consistent with Trial Chamber II's approach, the Office considers that victims authorised to participate in the proceedings at pre-trial stage should automatically be allowed to participate in trial proceedings, except for those whose harm and personal interests are linked with a charge not confirmed by the Pre-Trial Chamber.

Appeal

With regard to interlocutory appeal, the Appeals Chamber has held: a) those who have previously been granted the right to participate in the case by a Pre-Trial Chamber or a Trial Chamber must file an application seeking leave to participate in the appeal; and b) participation may be permitted if it is shown that the victims' personal interests are affected by the issues on appeal and if the Appeals Chamber deems participation to be appropriate.⁵⁶ The Appeals Chamber further explained that in seeking to demonstrate

⁵² *Prosecutor v. Thomas Lubanga Dyilo*, Decision on victims' participation, [ICC-01/04-01/06-1119](#), 18 January 2008, para. 112; Decision on the applications by victims to participate in the proceedings, [ICC-01/04-01/06-1556](#), 15 December 2008, paras. 54 to 59.

⁵³ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chu*, Decision on the treatment of applications for participation, [ICC-01/04-01/07-933-tENG](#), 26 February 2009, para. 10.

⁵⁴ *Ibid.*, para. 11.

⁵⁵ As indicated above, the Office considers that this requirement may not be applicable to reparation proceedings.

⁵⁶ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo', [ICC-01/04-01/06-824](#), 13 February 2007, paras. 38 and 45. See also *Situation in Darfur, Sudan*, Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-

that their personal interests are affected “victims should generally ensure, *inter alia*, that express reference is made to the specific facts behind their individual applications, and the precise manner in which those facts are said to fall within the issue under consideration on appeal.”⁵⁷

Consistent with Appeals Chamber jurisprudence, the Office supports participation of victims if the application demonstrates that their personal interests are affected by the particular issues on appeal.

Reparations

As explained above, for the purpose of reparations under the Rome Statute, whether in relation to proceedings before the Court or applications to the Trust Fund for Victims, the Office support participation and representation by a broader range of individuals and entities than those who are linked to the charges for which the accused is ultimately convicted.⁵⁸

d) Modalities of victims' participation

Article 68(3) gives victims the right to present “views and concerns”. According to the Court’s jurisprudence, the modalities of such participation must be specified by a Chamber “in a manner not prejudicial to the rights of the person under investigation or the accused, and in a way non-antagonistic to a fair and impartial trial”.⁵⁹ An assessment will need to be made on a case by case basis. However, as stated above, the Office

Trial Chamber I’s Decision of 3 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 6 December 2007, [ICC-02/05-138](#), 18 June 2008, para.49; and *Situation in the Democratic Republic of the Congo*, 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, [ICC-01/04-503](#), 30 June 2008, para. 88; *Prosecutor v. Jean-Pierre Bemba Gombo*, Reasons for the ‘Decision on the Participation of Victims in the Appeal against the ‘Decision on Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’, [ICC-01/05-01/08-566](#), 20 October 2009, paras. 13-14.

⁵⁷ *Prosecutor v. Joseph Kony et al.*, Decision on the Participation of Victims in the Appeal, [ICC-02/04-01/05-324](#), 27 October 2008, para. 13; *Situation in Uganda*, Decision on the Participation of Victims in the Appeal, [ICC-02/04-164](#), 27 October 2008, para. 13; *Prosecutor v. Jean-Pierre Bemba Gombo*, Reasons for the ‘Decision on the Participation of Victims in the Appeal against the ‘Decision on Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’, [ICC-01/05-01/08-566](#), 20 October 2009, para. 15.

⁵⁸ See above section IV(a).

⁵⁹ *Situation in Darfur*, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 3 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 6 December 2007, [ICC-02/05-177](#), 2 February 2009, para. 45.

considers that overall modalities of participation of victims should be consolidated to the largest extent possible in order to ensure certainty and consistency for victims themselves.

(i) Submission of evidence and challenges against the admissibility or relevance of evidence

Pre-trial phase jurisprudence

Pre-Trial Chamber I in *Katanga et al.* has held that “the statutory framework provided for by the Statute and the Rules for the pre-trial stage of a case leaves no room for the presentation of additional evidence by those granted the procedural status of victim”.⁶⁰

Trial phase jurisprudence

In its decision of 11 July 2008 in *Lubanga*, the Appeals Chamber underlined that “the right to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence lies primarily with the parties, namely, the Prosecutor and the Defence”. However, the Chamber held that the Statute and the Rules do not “preclude the possibility for victims to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence during the trial proceedings.”⁶¹ The Chamber nevertheless emphasized that victims are not granted an unfettered right to lead or challenge evidence: instead they are required to demonstrate why their interests are affected by the evidence or issue, upon which the Chamber will decide, on a case-by-case basis whether or not to allow such participation.⁶²

⁶⁰ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008, para. 113. The Chamber noted that according to article 61(7) of the Statute, the power of the Pre-Trial Chamber is confined to “requesting the consideration by the Prosecution of the opportunity to provide additional evidence” in contrast to article 69(3) which gives the competent Chamber “the authority to request the submission of all evidence that it considers necessary for the determination of the truth.” *Ibid.*, paras. 107-109.

⁶¹ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, para. 3. For the submission of evidence, the Chamber based its decision on the authority of the Trial Chamber to request the presentation of all evidence necessary for determining the truth pursuant to article 69(3). For the rights to challenge the admissibility or relevance of evidence, the Chamber relied on its general powers under article 69(4) to declare evidence admissible or relevant and rule 91(3) under which the Chamber may authorise, upon request, the legal representatives to question witnesses or produce documents. *Ibid.*, paras. 108-109.

⁶² *Ibid.*, para. 4. “With these safeguards in place, the grant of participatory rights to victims to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of the evidence is not inconsistent with the onus on the Prosecutor to prove the guilt of the accused nor is it inconsistent with the rights of the accused and a fair trial. [...] the Trial Chamber did not create an unfettered right for victims to lead or challenge evidence, instead victims are required to demonstrate why their

To evaluate the victims' request to tender and examine evidence, the Appeals Chamber established six criteria: "(i) a discrete application by victims to that effect; (ii) notice to the parties; (iii) demonstration of personal interests that are affected by the specific proceedings; (iv) compliance with disclosure obligations and protection orders; (v) a determination of appropriateness; and (vi) consistency with the rights of the accused and a fair trial."⁶³ On this basis, on 26 June 2009, Trial Chamber I in *Lubanga* granted three victims the right to give evidence before the start of the Defence's case.⁶⁴

Office position

As the Statute provides, the submission of evidence and the lodging of challenges against the admissibility or relevance of evidence are rights reserved for the parties to the proceedings. While the Statute enables victim participants to present their personal views and concerns, it does not grant them rights equivalent to that of parties as such. In particular, the Office considers that victims do not have the right to introduce additional evidence at the pre-trial stage. Before the Trial Chamber, other than for reparation purposes, it should be the rare exception where victims are allowed to present evidence to prove the innocence or guilt of the accused or challenge the admissibility or relevance of a piece of evidence.⁶⁵ To so qualify, victims must comply with the above set of criteria established by the Appeals Chamber. The Office reiterates that when victims are in the possession of meaningful evidence necessary to establish the truth there are numerous opportunities to contact the Prosecution directly.

The right of the parties to submit evidence or to challenge its admissibility or relevance carries a number of procedural consequences that are reflected in the Statute and Rules. This includes Prosecution and Defence disclosure obligations as well as the means to collect evidence under conditions enabling the safety and security of their personnel. There are no equivalent protection duties or disclosure obligations incumbent on victims. Allowing victims to collect or present evidence in their possession could affect

interests are affected by the evidence or issue, upon which the Chamber will decide, on a case-by-case basis whether or not to allow such participation."

⁶³ *Ibid*, paras. 4, 104.

⁶⁴ *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Request by Victims a/ 0225/06, a/0229/06 and a/0270/07 to Express their Views and Concerns in Person and to Present Evidence During the Trial, [ICC-01/04-01/06-2032-Anx](#), 26 June 2009, paras. 39, 44. Previously, Trial Chamber I in its oral decision of 2 June 2009 had ordered the Legal Representatives to contact VWU in order to discuss the security concerns of these victims and to ascertain what measures the VWU could invoke should the Chamber grant their application to participate. Transcript of hearing of 2 June 2009, [ICC-01/04-01/06-T-184-ENG](#), 2 June 2009, page 1, lines 17-25 and page 2, lines 1-9.

⁶⁵ The Statute and Rules provide additional procedural rights for victims during reparations proceedings: lifting the restrictions on the questioning of witnesses during hearings on reparations (rule 91(4)); and allowing victims to submit "relevant supporting documentation, including names and addresses of witnesses" when submitting a request for reparations (rule 94(1)(g)) in contrast to the "views and concerns" permitted in other proceedings.

their own security as well as that of persons at risk on account of the information they have collected, bearing in mind the absence of relevant duties of protection, or the means or expertise to ensure such protection.⁶⁶ It also creates uncertainties in the disclosure process.⁶⁷

(ii) Questioning of witnesses

Regarding the manner of questioning of witnesses by legal representatives pursuant to rule 91(3)⁶⁸, Trial Chamber I in *Lubanga* held that “[i]n the absence of any relevant provisions in the Rome Statute framework, the manner of questioning falls to be determined by the Chamber”⁶⁹ and concluded in relation to questioning by victims’ legal representatives that “there is a presumption in favour of a neutral form of questioning, which may be displaced in favour of a more closed form of questioning, along with the use of leading or challenging questions, depending on the issues raised and the interests affected.”⁷⁰ The Chamber held that if a representative of victims wishes to depart from a neutral type of questioning, an oral request should be made to the bench.⁷¹ Trial Chamber II in *Katanga et al.* similarly decided that a neutral style of questioning should be adopted.⁷²

Office position

Examination of witnesses by legal representatives permitted by a Chamber pursuant to rule 91(3) should be limited to issues directly relevant to the interests of the victims. Only in exceptional circumstances should such examination reach issues of guilt or innocence of the accused.⁷³ The manner of questioning should be neutral.

⁶⁶ *Prosecutor v. Thomas Lubanga Dyilo*, Prosecution’s Document in Support of Appeal against Trial Chamber I’s 18 January 2008 Decision on Victim Participation, [ICC-01/04-01/06-1219](#), 10 March 2008, para 34.

⁶⁷ *Prosecutor v. Thomas Lubanga Dyilo*, Partly Dissenting Opinion of Judge Georghios M. Pikis to the ‘Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008’, [ICC-01/04-01/06-1432_OA9_OA10](#), 11 July 2008; Partly Dissenting Opinion of Judge Philippe Kirsch to the ‘Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008’, [ICC-01/04-01/06-1432-Anx](#), 23 July 2008.

⁶⁸ Rule 91(3) provides that a legal representative may question a witness upon application to and authorization by the Chamber. The Chamber may require a written note of the questions, which, in that case, are communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations (rule 91(3)(a)).

⁶⁹ *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Manner of Questioning Witnesses by the Legal Representatives of Victims, [ICC-01/04-01/06-2127](#), 16 September 2009, para. 21.

⁷⁰ *Ibid.*, para. 29.

⁷¹ *Ibid.*, para. 30.

⁷² *Prosecutor v. Katanga et al.*, Decision on the Modalities of Victim Participation at Trial, [ICC-01/04-01/07-1788-tENG](#), 22 January 2010, para. 78.

⁷³ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Prosecution’s Observations on the Anonymity and the Modalities of Participation in the Proceedings of Applicants a/0327/07 to a/0337/07, [ICC-01/04-01/07-392](#), 14 April 2008, para. 22.

(iii) Access to records and evidence

Pre-trial phase jurisprudence

Pre-Trial Chambers have generally granted legal representatives access to the public evidence filed by the Prosecution and the Defence and contained in the record of the case.⁷⁴ In relation to those marked confidential, the Chambers have retained the option to decide, on a case by case basis and upon receipt of a specific and motivated request, whether to grant victims' legal representatives access thereto.⁷⁵

Pre-Trial Chamber II in *Katanga et al.* has held that victims have the right to access all filings and decisions contained in the record of the case regardless of whether they are classified as public or confidential, except for those classified *ex parte*.⁷⁶ Possible exceptions are where it is shown that the limitation is necessary to safeguard another competing interest such as national security, protection of victims and witnesses or the prosecution's investigations.⁷⁷

Trial phase jurisprudence

For the trial proceedings, Trial Chamber I in *Lubanga* found that "[d]ue to the fact that confidential filings within the record often contain sensitive information related to national security, protection of witnesses and victims, and the prosecution's investigations, the presumption will be that the legal representatives of victims shall

⁷⁴ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008, para. 132; *Prosecutor v. Bahar Idriss Abu Garda*, Decision on victims' modalities of participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-136](#), 6 October 2009, para. 13.

⁷⁵ *Prosecutor v. Bahar Idriss Abu Garda*, Decision on victims' modalities of participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-136](#), 6 October 2009, para. 15.

⁷⁶ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, 13 May 2008, para. 128; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, para. 146.

⁷⁷ *Prosecutor v. Germain Katanga et al.*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008, para. 147. Upon request by the Prosecution, the Chamber subsequently set limitations to the procedural rights of the victims recognised in its decision in light of risks to the safety of witnesses and/or family members. It decided that the legal representatives of non-anonymous victims shall be prohibited from transmitting to their clients' copies of any document or evidence included in the confidential part of the case record, as well as any transcript of hearings held in closed session. The Chamber also prohibited the legal representatives from discussing with their clients the information which would allow the victims to identify the specific witnesses in the confirmation hearing of the case. See *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on Limitations of Set of Procedural Rights for Non-Anonymous Victims, [ICC-01/04-01/07-537](#), 30 May 2008, pp 12-13; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, p. 48.

have access only to public filings.”⁷⁸ However, it deemed that if confidential filings are of material relevance to their personal interests, consideration shall be given to providing relevant victims with access to them, subject to other protective measures that need to remain in place.⁷⁹

Trial Chamber I also decided that participating victims may have access to material in the Prosecution's possession and public evidence listed in the Annexes to the Prosecution's "summary of presentation of evidence", upon request by their legal representatives and subject to a demonstration of relevance to their personal interests.⁸⁰ The Chamber qualified that "[i]f part of a document in this context is confidential, the document should be made available in a suitably redacted form".⁸¹

Office position

The right to access material in the Prosecution's possession "goes to the heart of the Prosecution's independence and its right to exercise control over its evidence, which is only subject to the provisions of the Statute and Rules on disclosure and inspection to the defence".⁸² It is the Office's position that victims do not have such right under the Statute.

Nonetheless, pursuant to OTP regulation 52, which provides that there shall be constructive engagement with legal representatives, the Office will provide legal representatives access to its filings and evidence including those classified as confidential where appropriate, subject to the requirements of confidentiality and of witness protection.

Should legal representatives assess that they require further access to confidential portions of the record and request Chamber's intervention, the Office will argue that legal representatives should only be granted such access "in highly exceptional situations and only after an applicant has established a compelling case that the material in question directly affects his or her interests".⁸³ Any decision must take into

⁷⁸ *Prosecutor v. Thomas Lubanga Dyilo*, Decision on victims' participation, [ICC-01/04-01/06-1119](#), 18 January 2008, para. 106.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, paras. 111 and 138.

⁸¹ *Ibid.*, para. 111.

⁸² *Prosecutor v. Thomas Lubanga Dyilo*, Application for Leave to Appeal Trial Chamber I's 18 January 2008 Decision on Victims' Participation, [ICC-01/04-01/06-1136](#), 28 January 2008, para. 18. On this issue, the application was dismissed by the Trial Chamber, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1191](#), 26 February 2008, para. 49.

⁸³ *Situation in the Democratic Republic of the Congo*, Prosecution's response to the "Request of the OPCV to access documents in the situation record related to applicants a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06, a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to

consideration the protection of confidential information, the safety and security of victims and witnesses, and the risks associated with the dissemination of information capable of endangering persons or the integrity of ongoing investigations.⁸⁴

(iv) Participation of anonymous victims

Pre-trial phase jurisprudence

Chambers have accepted anonymous participation of victims at the pre-trial stage but they limited their procedural rights in the absence of exceptional circumstances to: i) access to the public documents only; and ii) presence at the public hearings only.⁸⁵ In particular, it has been held that anonymous victims are not permitted to add any point of fact or any evidence, nor question the witnesses according to the procedure set out in rule 91(3).⁸⁶

Trial phase jurisprudence

While accepting the possibility of participation of anonymous victims at the trial stage, Trial Chamber I in *Lubanga* indicated that it will “scrutinise carefully the precise circumstances and the potential prejudice to the parties and other participants” in order to “determine whether steps that fall short of revealing the victim's identity can sufficiently mitigate the prejudice”.⁸⁷ Trial Chamber II in *Katanga et al.* did not rule out the possibility of anonymous victims participating in proceedings, but emphasised that it will not authorize victims who wish to remain anonymous to the Defence to testify as witnesses.⁸⁸

a/0041/06, a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06”, [ICC-01/04-413](#), 8 November 2007, para. 3.

⁸⁴ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Prosecution's Observations on the Anonymity and the Modalities of Participation in the Proceedings of Applicants a/0327/07 to a/0337/07, [ICC-01/04-01/07-392](#), 14 April 2008, para. 17.

⁸⁵ *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing, [ICC-01/04-01/06-462-tEN](#), 22 September 2006, p. 6.

⁸⁶ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008, paras. 182-183; *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing, [ICC-01/04-01/06-462-tEN](#), 22 September 2006, p. 8.

⁸⁷ *Prosecutor v. Thomas Lubanga Dyilo*, Decision on Victims' Participation, [ICC-01/04-01/06-1119](#), 18 January 2008, para. 131.

⁸⁸ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Modalities of Victim Participation at Trial, [ICC-01/04-01/07-1788-tENG](#), 22 January 2010, paras. 92-93.

Office position

The Office considers that anonymous victims can be permitted to participate in pre-trial and trial proceedings, subject to the imposition of strict limitations on their procedural rights in light of considerations of fairness to the accused.

(v) Personal intervention of victims at hearings

Trial Chamber I in *Lubanga* held that article 68(3) gives victims the unequivocal statutory right to present their views and concerns in person when their personal interests are affected, although the opportunity is expressly created for their legal representatives to undertake this task on their behalf. The Chamber nevertheless indicated that any intervention by victims must be conducted “in a manner which is not prejudicial to, or inconsistent with, the rights of the accused and a fair and impartial trial”, particularly where a significant number are participating.⁸⁹ Trial Chamber II in *Katanga* also stated that it will grant the legal representatives an opportunity to call victims to give evidence under oath at trial.

Office position

The Office considers that victims should ordinarily present their views and concerns before a Chamber through their legal representative. An application for personal victim participation should be made in writing and set out the particular circumstances why it is both necessary and appropriate for the person to appear in person rather than through a legal representative.

⁸⁹ *Prosecutor v. Thomas Lubanga Dyilo* Decision on the Request by Victims a/ 0225/06, a/0229/06 and a/0270/07 to Express their Views and Concerns in Person and to Present Evidence during the Trial, [ICC-01/04-01/06-2032-Anx](#), 26 June 2009, paras. 17, 24, 27. While the Chamber granted the three victims the right to give evidence, it decided that once they have completed their evidence, it will determine, if relevant, when and by whom any views and concerns are to be presented. *Ibid.*, para. 40.

Annex I

Relevant Statutory Provisions

ICC Statute

Article 15(3): "If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorisation of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence."

Article 19(3): "The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court."

Article 68(3): "Where 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 inconsistent with, the rights of the Accused."

Rules of Procedure and Evidence

Rule 85:

"For the purposes of the Statute and the Rules of Procedure and Evidence:

- (a) Victims means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes."

Rule 89:

"1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision."

Rule 91:

"2. A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof given under rules 89 and 90. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.

3. (a) When a legal representative attends and participates in accordance with this rule, and wishes to question a witness, including questioning under rules 67 and 68, an expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit set by the Chamber.

(b) The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber under article 64. The Chamber may, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative."

Annex II

Filings and decisions referred to in this policy paper

Situation in the Democratic Republic of the Congo

1. Public Redacted Version Decision on the Applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 et VPRS 6, [ICC-01/04-101-tEN-Corr](#), 17 January 2006.
2. Prosecution's response to the "Request of the OPCV to access documents in the situation record related to applicants a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06, a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to a/0041/06, a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06, [ICC-01/04-413](#), 8 November 2007.
3. 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, [ICC-01/04-503](#), 30 June 2008.
4. Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, [ICC-01/04-556](#), 19 December 2008.

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5. Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing, [ICC-01/04-01/06-462](#), 22 September 2006.
6. Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled '*Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo*', [ICC-01/04-01/06-824](#), 13 February 2007.
7. 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, [ICC-01/04-01/06-925](#), 13 June 2007.
8. Decision on Victims' Participation, [ICC-01/04-01/06-1119](#), 18 January 2008.
9. Application for Leave to Appeal Trial Chamber I's 18 January 2008 Decision on Victims' Participation, [ICC-01/04-01/06-1136](#), 28 January 2008.
10. Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1191](#), 26 February 2008.
11. Prosecution's Document in Support of Appeal against Trial Chamber I's 18 January, 2008 Decision on Victim Participation, [ICC-01/04-01/06-1219](#), 10 March 2008.
12. Prosecution's Response to '*Acte d'appel de la Défense relativement à la Décision du 18 janvier 2008 de la Chambre de première instance I concernant la participation des victimes*', [ICC-01/04-01/06-1233](#), 19 March 2008.

13. Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation", [ICC-01/04-01/06-1335](#), 16 May 2008.
14. Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008.
15. Prosecution's observations on examples of applications for participation in the case of persons who might be considered indirect victims, [ICC-01/04-01/06-1544](#). 5 December 2008.
16. Decision on the applications by victims to participate in the proceedings, [ICC-01/04-01/06-1556](#), 15 December 2008.
17. Redacted version of "Decision on 'indirect victims'", [ICC-01/04-01/06-1813](#), 8 April 2009.
18. Decision on the Request by Victims a/ 0225/06, a/0229/06 and a/0270/07 to Express their Views and Concerns in Person and to Present Evidence during the Trial, [ICC-01/04-01/06-2032-Anx](#), 26 June 2009.
19. Decision on the Manner of Questioning Witnesses by the Legal Representatives of Victims, [ICC-01/04-01/06-2127](#), 16 September 2009.
20. Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled 'Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court', [ICC-01/04-01/06-2205](#), 8 December 2009.

Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

21. Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08, [ICC-01/04-01/07-357](#), 02 April 2008.
22. Prosecution's Observations on the Anonymity and the Modalities of Participation in the Proceedings of Applicants a/0327/07 to a/0337/07, [ICC-01/04-01/07-392](#), 14 April 2008.
23. Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008.
24. Decision on Limitations of Set of Procedural Rights for Non-Anonymous Victims, [ICC-01/04-01/07-537](#), 30 May 2008.
25. Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-579](#), 10 June 2008.
26. Decision on the treatment of applications for participation, [ICC-01/04-01/07-933-tENG](#), 26 February 2009.
27. *Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure*, [ICC-01/04-01/07-1491-Red](#), 23 September 2009.
28. Decision on the Modalities of Victim Participation at Trial, [ICC-01/04-01/07-1788-tENG](#), 22 January 2010.

Situation in Uganda

29. Prosecution's Reply under Rule 89(1) to the Applications for Participation of Applicants 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 in the Uganda Situation, [ICC-02/04-85](#), 28 February 2007.
30. 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, [ICC-02/04-101](#), 10 August 2007.
31. Prosecution's Application for Leave to Appeal 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, [ICC-02/04-103](#), 20 August 2007.
32. Decision on the Participation of Victims in the Appeal, [ICC-02/04-164](#), 27 October 2008.
33. Judgment on the appeals of the Defence against the decisions entitled "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06" of Pre-Trial Chamber II, [ICC-02/04-179](#), 23 February 2009.

Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen

34. Decision on the Participation of Victims in the Appeal, [ICC-02/04-01/05-324](#), 27 October 2008.

Prosecutor v. Jean-Pierre Bemba Gombo

35. Prosecution's Observations on the Applications for Participation in the Proceedings of 24 Applicants, ICC-01/05-01/08-206-Conf, 04 November 2008.
36. Fourth Decision on Victims' Participation, [ICC-01/05-01/08-320](#), 12 December 2008.
37. Reasons for the 'Decision on the Participation of Victims in the Appeal against the 'Decision on Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'', [ICC-01/05-01/08-566](#), 20 October 2009.
38. Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, [ICC-01/05-01/08-699](#), 22 February 2010.

Situation in Darfur, Sudan

39. Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 3 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 6 December 2007, [ICC-02/05-138](#), 18 June 2008.
40. Prosecution's Document in Support of Appeal against the 12 December 2007 Decision on the Victims' Applications for Participation in the Proceedings, [ICC-02/05-125](#), 18 February 2008.
 41. Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 3 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 6 December 2007, [ICC-02/05-177](#), 2 February 2009.

Prosecutor v. Bahar Idriss Abu Garda

42. Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-121](#), 25 September 2009.
43. Prosecution's Observations on 52 Applications for Victims' Participation in the Proceedings, ICC-02/05/02/09-125-Conf, 30 September 2009.
44. Decision on victims' modalities of participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-136](#), 6 October 2009.
45. Public Redacted Version of 'Decision on the 52 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-02/05-02/09-147-Red](#), 9 October 2009.

Situation in the Republic of Kenya

46. Request for authorisation of an investigation pursuant to Article 15, [ICC-01/09-3](#), 26 November 2009.
47. Order to the Victims Participation and Reparation Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, [ICC-01/09-4](#), 10 December 2009.