

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 6 March 2008

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge René Blattmann

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

**Public**

**Decision on the role of the Office of Public Counsel for Victims and its  
request for access to documents**

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**Legal Representatives of Victims  
a/0001/06 to a/0003/06 and a/0105/06**

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**Office of Public Counsel for Victims**

Ms Paolina Massidda

Trial Chamber I ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, following Status Conferences on 4 December 2007 and 9 January 2008, delivers the following decision on the role of the Office of Public Counsel for Victims and its access to documents:

**I) Procedural Background**

1. On 18 October 2007 the Office of Public Counsel for Victims filed a "Request of the OPCV to access documents in the case 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" ("request")<sup>1</sup> which requested the Chamber:

a) to grant the Principal Counsel full access to the index of the case record and consequently to order the Registry to notify the Principal Counsel of a copy of the said index;

b) to reserve the Principal Counsel the right to submit proposals regarding the disclosure of documents and/or materials after she has had the opportunity to examine the index of the record of the case, if she considers it necessary for the fulfilment of her mandate on behalf of the applicants;

c) to order the Registry to notify the documents listed in paragraph 10 [prosecution's submissions on victim applicants represented by the Office] of this request to the Principal Counsel, in the portions related to the applicants represented by her; and

d) to order the Registry to notify the unredacted version of the decision confirming the charges and the annex attached thereon to the Principal Counsel. In the alternative, to order the Registry to notify the Principal Counsel of the unredacted version of the decision confirming the charges and the annex thereon information not related to the applicants represented by her.<sup>2</sup>

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<sup>1</sup> ICC-01/04-01/06-987.

<sup>2</sup> *Ibid.*, pages 5-6.

2. The defence filed a response to the request on 24 October 2007<sup>3</sup> and the Office of the Prosecutor ("prosecution") on 8 November 2007.<sup>4</sup> Additional submissions were made during the Status Conference on 4 December 2007.<sup>5</sup>
3. During the Status Conference on 4 December 2007,<sup>6</sup> the Trial Chamber indicated that a decision on requests for access to documents depended to a large extent on the role envisaged for the Office of Public Counsel for Victims during the trial.
4. On 13 December 2007, the Trial Chamber issued an "Order setting out the schedule for submissions and hearing on further subjects which require determination prior to trial," inviting submissions on the role of the Office of Public Counsel for Victims, namely the "[r]ole of the Office of Public Counsel for victims in its capacity as legal representative of victim applicants and as an independent body established to 'provide support and assistance to the legal representatives for victims and to victims'".<sup>7</sup>
5. On 6 January 2008, the legal representative of victim a/0105/06 filed her submissions,<sup>8</sup> followed on 7 January 2008 by the legal representatives for

<sup>3</sup> Réponse de la Défense à la "Request of the OPCV to access documents in the case 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-01/04-01/06-1003.

<sup>4</sup> Prosecution's response to the "Request of the OPCV to access documents in the case 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-01/04-01/06-1017.

<sup>5</sup> Transcript of hearing on 4 December, 2007, ICC-01/04-01/06-T-62-ENG, pages 11-16.

<sup>6</sup> ICC-01/04-01/06-T-62-ENG, page 12, lines 2-9

<sup>7</sup> ICC-01/04-01/06-1083, paragraph 1A. See also OPCV's request to submit observations or otherwise be heard on point E of the Order of 14 November 2007 and on the issue of the dual status of witnesses/victims, 21 November 2007, ICC-01/04-01/06-1038; Order on Office of Public Counsel for Victims' request filed on 21 November 2007, 27 November 2007, ICC-01/04-01/06-1046; Prosecution's Response to Trial Chamber's Order of 27 November 2007 regarding participation of OPCV, 30 November 2007, ICC-01/04-01/06-1050.

<sup>8</sup> Conclusion du représentant légal de la victime a/0105/06 sur "Order setting out the schedule for submissions and hearing on further subjects which require determination prior to trial," ICC-01/04-01/06-1106.

victims a/0001/06 to a/0003/06,<sup>9</sup> the Office of Public Counsel for Victims,<sup>10</sup> prosecution<sup>11</sup> and the defence.<sup>12</sup>

6. Further oral submissions were made by the parties and participants at the Status Conference of 9 January 2008.<sup>13</sup>
7. The Office of Public Counsel for Victims made an oral request for access to specific material in relation to a prosecution witness who is also a victim applicant whom the Office represents during an *ex parte* hearing on 12 February 2008.<sup>14</sup> This request will be dealt with in a separate decision.

## II) Relevant Provisions

8. Rule 90 of the Rules of Procedure and Evidence (“Rules”), entitled “Legal representatives of victims”:

1. A victim shall be free to choose a legal representative.

[...]

4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.

[...]

Rule 131 of the Rules, entitled “Record of the proceedings transmitted by the Pre-Trial Chamber”:

[...]

2. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the defence, the representatives

<sup>9</sup> Conclusions des Représentants légaux des victimes a/0001/06 à a/0003/06 sur d’autres questions à déterminer avant le procès, ICC-01/04-01/06-1107.

<sup>10</sup> Submissions of the OPCV on its role in the proceedings, ICC-01/04-01/06-1108.

<sup>11</sup> Prosecution’s Submissions for the Status Conference on 9 January 2008, ICC-01/04-01/06-1109.

<sup>12</sup> Conclusions de la Défense relatives à l’ “*Order setting out the schedule for submissions and hearing on further subjects which require determination prior to trial*”, ICC-01/04-01/06-1110.

<sup>13</sup> Transcript of hearing on 9 January 2008, ICC-01/04-01/06-T-67-ENG, page 2, line 21 to page 25, line 2.

<sup>14</sup> ICC-01/04-01/06-T-74-CONF-EXP-ENG, pages 1-7. The oral request is in relation to confidential *ex parte* prosecution’s application, ICC-01/04-01/06-1157-Conf-Exp. A confidential version of this application was filed as ICC-01/04-01/06-1158-Conf.

of States when they participate in the proceedings, and the victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

Regulation 79 of the Regulations of the Court, entitled “Decision of the Chamber concerning legal representatives of victims”:

1. The decision of the Chamber to request the victims or particular groups of victims to choose a common legal representative or representatives may be made in conjunction with the decision on the application of the victim or victims to participate in the proceedings.

[...]

Regulation 80 of the Regulations of the Court, entitled “Appointment of legal representatives of victims by a Chamber”:

1. A Chamber, following consultation with the Registrar, may appoint a legal representative of victims where the interests of justice so require.

2. The Chamber may appoint counsel from the Office of Public Counsel for Victims.

Regulation 81 of the Regulations of the Court, entitled “Office of Public Counsel for Victims”:

1. The Registrar shall establish and develop an Office of Public Counsel for victims for the purpose of providing assistance as described in sub-regulation 4.

2. The Office of Public Counsel for victims shall fall within the remit of the Registry solely for administrative purposes and otherwise shall function as a wholly independent office. Counsel and assistants within the Office shall act independently.

3. The Office of Public Counsel for victims may include a counsel who meets the criteria set out in rule 22 and regulation 67. The Office shall include assistants as referred to in regulation 68.

4. The Office of Public Counsel for victims shall provide support and assistance to the legal representative for victims and to victims, including, where appropriate:

- (a) Legal research and advice; and
- (b) Appearing before a Chamber in respect of specific issues.

### III) Submissions

#### Role of the Office of Public Counsel for Victims

##### A. The Office of Public Counsel for victims

9. The Office of Public Counsel for Victims submitted that Regulation 81(4) of the Regulations of the Court, which sets out the Office's role in supporting and assisting victims, is drafted in general terms, in order to allow for flexibility in relation to the extent of the assistance the Office may provide. In particular, the use of the word "including" in that paragraph was said to indicate clearly that the list of functions contained therein is not exhaustive.<sup>15</sup>
10. The Office submitted that in its decision of 17 August 2007, the Pre-Trial Chamber had appointed the Office as legal representative to provide support and assistance to victim applicants in the case without placing any restrictions on its mandate.<sup>16</sup> The Office drew the Chamber's attention to the 1 February 2007 and 10 August 2007 decisions of the Single Judge of Pre-Trial Chamber II, which granted the Office discretion to determine when intervention may be necessary or appropriate, in order to provide support or assistance to victim applicants.<sup>17</sup>
11. In relation to the possibility, envisaged in Regulation 81(4)(b), of the Office appearing before the Chamber in respect of specific issues, the Office submitted this can be triggered by a request from the Chamber when a general issue involving victims' rights needs to be explored independently of the particular interests of legal representatives of participating victims, and additionally the Office may request to appear when particular issues are

<sup>15</sup> ICC-01/04-01/06-1108, paragraph 14

<sup>16</sup> ICC-01/04-01/06-T-67-ENG, page 6, line 21 to page 7, line 5, referring to Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation, ICC-01/04-374.

<sup>17</sup> ICC-01/04-01/06-1108, paragraph 16, referring to Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on application 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, 1 February 2007, ICC-02/04-01/05-134 and 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, 10 August 2007, ICC-02/04-101.

relevant to the personal interests of the victims it assists or represents. The Office further submitted that the legal representatives of victims may also request it to appear before the Chamber to assist with a specific issue.<sup>18</sup>

12. The Office argued that pursuant to Rule 90(1) of the Rules, victims have the right to choose their own legal representative, and that Regulation 80 of the Regulations of the Court provides that the Chamber may appoint the Office as the legal representative of particular victims. The Office observed generally that in fulfilling its mandate, it should have equivalent rights and prerogatives as other legal representatives, and it should be bound by the same obligations.<sup>19</sup>
13. The Office requested that whenever a victim seeks assistance in obtaining legal representation, or indicates he or she wishes to be represented by the Office, the latter should be informed promptly so that an assessment of available resources can be made. The Office submitted that resource considerations, as well as possible conflicts of interest, make it desirable that there is consultation prior to a decision by the Chamber.<sup>20</sup>
14. For reasons of efficiency, the Office submitted that its members should be appointed, whenever possible, as the representatives of groups of victims, rather than of individuals. It indicated that the Office currently has the capacity to operate two teams, each of which can represent up to fifty victims.<sup>21</sup> The Office tries to avoid conflicts of interest by ensuring that the teams representing particular individuals or groups of victims are not responsible for providing advice to the legal representatives of other victims.<sup>22</sup>

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<sup>18</sup> ICC-01/04-01/06-1108, paragraphs 20-29.

<sup>19</sup> *Ibid.*, paragraphs 30-32.

<sup>20</sup> *Ibid.*, paragraphs 37-40.

<sup>21</sup> ICC-01/04-01/06-T-67-ENG, page 3, lines 2- 16.

<sup>22</sup> *Ibid.*, page 5, lines 16-22

## B. The prosecution

15. The prosecution argued that pursuant to the decision of the Pre-Trial Chamber of 10 December 2007, the Office's role as representative of specific victim-applicants is limited to instances in which "the Registry automatically request[s] additional information for [any] incomplete Applications."<sup>23</sup> However where, pursuant to Rule 93, the Trial Chamber invites the views of victim applicants, the prosecution argued it may be beneficial to have such views presented through the Office, rather than by individual victim applicants.<sup>24</sup>
16. The uncertainty caused by the apparent disagreement as to the extent of the Office's mandate as the legal representative of victim applicants was said to have the potential to cause problems over the extent of the Office's access to confidential documents.<sup>25</sup>
17. As regards the Office's role in providing "support and assistance to the legal representatives for victims and to victims," the prosecution argued that Regulation 81(4) limits this function to the two specific roles listed therein, namely legal research and advice and appearing before a Chamber in respect of specific issues.<sup>26</sup> Furthermore, it was submitted that any application to intervene by the Office should be further limited to those issues that have not been adequately addressed by the parties or participants.<sup>27</sup>

## C. The defence

18. The defence accepted that pursuant to Regulation 81(4), the Office has a general role in supporting victims and their legal representatives, and as a

<sup>23</sup> ICC-01/04-01/06-1109, paragraphs 4-5, quoting Decision on the requests of OPCV, ICC-01/04-418, paragraph 10.

<sup>24</sup> ICC-01/04-01/06-1109, paragraph 8.

<sup>25</sup> ICC-01/04-01/06-T-67-ENG, page 10, line 6 to page 11, line 14.

<sup>26</sup> ICC-01/04-01/06-1109, paragraph 6.

<sup>27</sup> *Ibid.*, paragraph 7.

consequence it can request the Chamber's permission to intervene on issues affecting the interests of victims in general.<sup>28</sup>

19. The defence submitted that although the Office has been given a specific role of representing victim applicants this does not undermine the principle that the Office has the right to intervene, with the Chamber's permission, only in relation questions that have an impact on victims generally.<sup>29</sup>

20. Drawing a parallel with the mandate of the Office of Public Counsel for the Defence, the defence submitted that any decision by the Pre-Trial Chamber appointing the Office of Public Counsel for Victims as the representative of victim applicants should be viewed as a temporary measure only, and the defence highlighted the potential for conflicts to emerge between the interests of victims in general and the interests of specific victims if the Office is retained as legal representative of individual victims after they are granted participation rights in the trial.<sup>30</sup>

#### **D. Legal representatives of victims**

21. The legal representatives of victims a/0001/06 to a/0003/06 submitted that pursuant to Regulation 81(4), the Office is responsible for assisting those victims, not represented by a legal representative, who have applied to participate in the proceedings.<sup>31</sup>

22. They argued that the appointment of the Office as counsel for individual victims for the duration of the trial would be contrary to Regulation 81(4) and

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<sup>28</sup> ICC-01/04-01/06-1110, paragraphs 3-4.

<sup>29</sup> *Ibid.*, paragraph 6.

<sup>30</sup> ICC-01/04-01/06-T-67-ENG, page 16, lines 7-22.

<sup>31</sup> ICC-01/04-01/06-1107, paragraph 2.

could be harmful to the Office's proper functioning, notably if conflicts emerged between victims, one of whom is represented by the Office.<sup>32</sup>

23. However, the legal representatives of victims a/0001/06 to a/0003/06 accepted the Chamber may seek the views of the Office on general questions which concern victims, and particularly those victims who are not represented.<sup>33</sup>

24. The representative of victim a/0105/06 expressed concern that the appointment of the Office as the representative of victim applicants could affect the efficiency of the Office in its work in assisting legal representatives. For this reason, it was suggested that the role of the Office as the representative of victim applicants should be limited to a six-month period. It was recognised that this would mean the relevant Chamber would need to decide the applications to participate as early as possible.<sup>34</sup> The legal representative suggested in the course of oral submission that it is inappropriate for the Office to continue to represent victims once their applications have been determined, and instead a legal representative from the list of counsel should be appointed once victim status is granted.<sup>35</sup>

### **Request of the Office of Public Counsel for Victims for access to documents**

#### **A. The Office of Public Counsel for Victims**

25. The Office of Public Counsel for Victims submitted that in order to fulfil its mandate and to be able to protect the rights and interests of victims it represents, it is necessary that access to particular documents is granted to the Office which may have an impact on their personal interests; furthermore, it was submitted that it is necessary for the Office to have access to the index of

<sup>32</sup> *Ibid.*, paragraph 4.

<sup>33</sup> *Ibid.*, paragraph 5.

<sup>34</sup> ICC-01/04-01/06-1106, paragraphs 4-5.

<sup>35</sup> ICC-01/04-01/06-T-67-ENG, page 20, line 16 to page 21, line 12.

the case record to assist those who have applied to participate in the trial.<sup>36</sup> It was argued that it may, on occasion, be necessary for the Office to be provided with confidential and under seal documents, and materials relating to warrants of arrest and the security and protection of applicants.<sup>37</sup>

26. The Office observed that in proceedings before Pre-Trial Chambers I and II any submissions of the parties filed under Rule 89(1) (following written applications by victims to participate in the proceedings) have always been notified to the legal representative of the applicant.<sup>38</sup> On 4 December 2007, the Office of Public Counsel for Victims requested that this approach should continue, *inter alia*, because a decision regarding applications to participate in the Democratic Republic of Congo situation was still pending.<sup>39</sup> It was submitted that a review of the confidential version of the Decision on the Confirmation of Charges, dated 29 January 2007, was essential to enable the Office to provide the applicants with legal advice on their applications.<sup>40</sup> In oral argument, the Office submitted the Trial Chamber is competent to grant such a request given that the entire record of the case was transferred to the Chamber by the Presidency.<sup>41</sup>

## B. The prosecution

27. The prosecution submitted that access to confidential portions of the record by applicants should only be granted “in highly exceptional situations, once an applicant has established a compelling case that the specific material sought directly affects his or her interests”.<sup>42</sup> In addition, it contended there is no legal basis under the Rome Statute framework for permitting victim applicants to have access to any portion of the case record. Therefore, the prosecution argued that the Office of Public Counsel for Victims should not be granted

<sup>36</sup> ICC-01/04-01/06-987, paragraphs 6-8.

<sup>37</sup> *Ibid.*, paragraph 7.

<sup>38</sup> *Ibid.*, paragraph 11.

<sup>39</sup> ICC-01/04-01/06-T-62-ENG, page 14.

<sup>40</sup> ICC-01/04-01/06-987, paragraph 12.

<sup>41</sup> ICC-01/04-01/06-T-67-ENG page 8, line 21 to page 9, line 6.

<sup>42</sup> ICC-01/04-01/06-1017, paragraph 4.

access beyond that granted to any other representative of a victim applicant.<sup>43</sup> The prosecution opposed the request of Office of Public Counsel for Victims for access to the index of the case record and the confidential Decision on the Confirmation of Charges.<sup>44</sup> The prosecution supported, however, the request for access to the three documents identified in the Request.<sup>45</sup> However, it was submitted that further requests by the Office of Public Counsel for Victims for access to additional documents should be decided on a case-by-case basis.<sup>46</sup>

28. During the Status Conference on 9 January 2008, the prosecution maintained its opposition to access by the Office to the non-redacted index of the case record, arguing that access to confidential portions of the record should only be granted where an applicant has established a compelling case that the specific material sought directly affects his or her interests.<sup>47</sup>

### C. The defence

29. The defence submitted that Rule 131(2) of the Rules does not contemplate access to the case record by victim applicants pending a decision on victim status.<sup>48</sup> The defence noted that save for applicant a/0110/06, Pre-Trial Chamber 1 denied all the requests for participation by the applicants represented by the Office of Public Counsel for Victims on 20 October 2006. The defence submitted that access to the case record is dependent on the Trial Chamber granting a victim's application to participate in the proceedings, and that access to the case record is not necessary in order to complete the application pursuant to Regulation of the Court 86.<sup>49</sup>

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<sup>43</sup> *Ibid.*, paragraphs 5-6.

<sup>44</sup> *Ibid.*, paragraph 6.

<sup>45</sup> *Ibid.*, paragraph 4.

<sup>46</sup> *Ibid.*, paragraph 7.

<sup>47</sup> ICC-01/04-01/06-T-67-ENG, page 12, line 15 to page 13, line 15.

<sup>48</sup> ICC-01/04-01/06-1003, paragraph 2

<sup>49</sup> *Ibid.*, paragraphs 5-7.

#### IV) Analysis and Conclusions

##### **Role of the Office of Public Counsel for Victims**

30. The relevant provisions of the Rome Statute framework envisage that the Office of Public Counsel for Victims may fulfil a wide variety of functions during the trial stage. Rule 90(1) of the Rules establishes the right for victims to choose a legal representative. The Chamber, under Regulation 80 of the Regulations of the Court, has the power to appoint a legal representative, *inter alia*, from the Office, and Regulation 81(4) requires the Office to provide support and assistance to victims and to their legal representatives by providing legal research and advice and appearing before the Chamber. It is to be stressed that in critical respects it is for the Chamber – and not the Office – to determine the precise nature of the role of the Office in a particular case. Although victims have a right (“are free”) to choose a legal representative, it is for the Chamber to determine whether or not that representative should come from the Office (Regulation 80(2)). As indicated by the use of the word “may” in this provision, a decision of a Chamber pursuant to Regulation 80(2) is discretionary.

31. The Chamber is of the view that it is necessary that the power to determine the role of the Office of Public Counsel for Victims is vested in the Chamber, in particular because of the latter’s responsibility to manage the proceedings and to ensure the fair and expeditious conduct of the trial. Significant problems could emerge if the Chamber is not able to prevent conflicts of interest or other events that may result in a damaging diminution of the Office’s core role, which is to provide support and assistance to the legal representatives of victims and to the victims in accordance with Regulation 81(4) of the Regulations of the Court. One important example of potential conflicts of interest are those that may emerge between victims represented by the Office,

on the one hand, and those to whom the Office should be providing support and assistance, on the other. It is necessary to stress, however, that decisions on the role of the Office of necessity will be case-specific: although the range of options is extensive, a bespoke role should be established in each case.

32. This is the first trial to come before the International Criminal Court and the Chamber, the parties and the participants are engaged in the detailed and complex process of establishing the proper modalities of participation by victims. In line with the submissions of the victims' legal representatives, in the opinion of the Trial Chamber, during this early stage in the Court's existence it is critical that the Office concentrates its limited resources on the core functions given to it under the Rome Statute framework which, as set out above, is to provide support and assistance to the legal representatives of victims and to victims who have applied to participate (rather than representing individual victims).

33. This decision is not to deter the Office from appearing before the Chamber in respect of specific issues (at the request of victims, their representatives or the Chamber) or from representing individual victims during any reasonable initial period prior to the appointment of independent counsel.

34. The Trial Chamber notes the Decision of Pre-Trial Chamber I of 17 August 2007 in the Situation in the Democratic Republic of the Congo which ordered the Registrar to appoint automatically the Office of Public Counsel for Victims as the legal representative for victim applicants who were without a legal representative.<sup>50</sup> The reason for this decision was that the applicants may need to receive support and assistance from the Office when the Registry requests additional information on the applications pursuant to Regulation 86(4).<sup>51</sup> Pre-

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<sup>50</sup> ICC-01/04-374, paragraph 43 and page 24.

<sup>51</sup> *Ibid*, paragraph 43.

Trial Chamber I ordered that the applicants were to be represented by the Office of Public Counsel for Victims “until such time as the applicant has been granted victim status and a legal representative is chosen by him or her or appointed by the Court”.<sup>52</sup> The Trial Chamber agrees with this general approach. As regards those victim applicants currently represented by the Office of Public Counsel for Victims, the Office shall continue to represent them until the Chamber issues a decision on their application to participate. Thereafter, the Registrar shall arrange for a legal representative to act for them, unless there are specific reasons, which are to be set out in a filing addressed to the Chamber and the Registry only, as to why this course may be detrimental to individual participating victims.

35. The Office is not of itself a party or a participant in a case. Therefore the opportunity for the Office to appear before the Chamber in respect of specific issues can be initiated by:

- the Chamber (this will usually relate to issues of general importance and applicability);
- a victim or his or her representative, who has asked for its support and assistance;
- the Office, if it is representing one or more victims; or
- the Office, following an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability).

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<sup>52</sup> *Ibid.*, paragraph 44 and page 24.

**Request of the Office of Public Counsel for Victims for access to documents***Request to be notified of specific prosecution's submissions*

36. The three specific documents which the Office of Public Counsel for Victims seeks access to are submissions made by the prosecution under Rule 89(1) of the Rules, following written applications by victims to participate in the proceedings. These submissions set out the prosecution's views on the merits of the applications made by the victim applicants represented by the Office of Public Counsel for Victims. The prosecution agrees that access should be granted.
37. The Trial Chamber considers that the Office of Public Counsel for Victims in its capacity as legal representative of particular victim applicants should be granted the same access as that granted to any other legal representative of a victim applicant.
38. The Chamber therefore grants the request in this respect and directs that the relevant portions of the documents are to be used solely for the benefit of the victim applicant who is referred to in the relevant portion and who:
- 1) has already submitted an application for participation in which they indicate they wish to participate in the trial proceedings; or
  - 2) is in the process of preparing applications to participate in the trial proceedings before Trial Chamber I.
39. The Trial Chamber orders the Registry to disclose such parts of the three documents that are relevant to the applications, as identified in paragraph 41(2) below.

*Request to access the case record's index and for a non-redacted version of the Decision Confirming the Charges.*

40. The right of the Office of Public Counsel for Victims to gain access to the index of the case record (and other documents that are not publicly available) depends on its role in the case. If the Office is representing individual victims who have been allowed to participate in the case, it will have the same rights as any other legal representative discharging that function for the particular victims concerned. In the present circumstances, as the Office of Public Counsel for Victims is not representing victims who have been allowed to participate in the proceedings, access to the index of the case and to a non-redacted version of the Decision Confirming the Charges is refused. The Chamber notes however that the Office of Public Counsel for Victims has access to the public version of the index pursuant to the mandate given to it by the legal representative of victim a/0105/06 (and only in that capacity).<sup>53</sup>

**V) Orders of the Chamber**

41. For the reasons set out above, the Trial Chamber orders that:

- 1) The Office of Public Counsel for Victims shall continue to represent the victim applicants it currently represents until the Chamber issues a decision on their application to participate. Thereafter, the Registrar shall arrange for a legal representative to act for them, unless there are specific reasons, which are to be set out in a filing addressed to the Chamber and the Registry only within 7 days of the decision, as to why this course may be detrimental to individual participating victims.

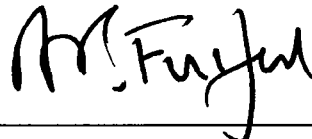
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<sup>53</sup> See Decision on Victims' Participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 138(a) and Enregistrement de la procuration donnée par Me Bapita au Conseil principal au Bureau du Conseil Public pour les victimes, 21 June 2007, ICC-01/04-01/06-929.

2) The Registry shall disclose to the Office of Public Counsel for Victims the relevant parts of the documents listed below, subject to the conditions set out in paragraph 38:

- Prosecution's observations on the applications for participation of applicants a/0004/06 to a/0009/06 and a/0016/06 to a/0046/06 (ICC-01/04-01/06-342-Conf-Exp): paragraphs 1-12 (background and general remarks), 13 (a/0004/06), 14 (a/0005/06), 15 (a/0006/06), 16 (a/0007/06), 17 (a/0008/06), 23 (a/0019/06), 24 (a/0020/06), 26 (a/0022/06), 27 (a/0023/06), 28 (a/0024/06), 30 (a/0026/06), 31 (a/0027/06), 33 (a/0029/06), 34 (a/0030/06), 37 (a/0033/06), 39 (a/0035/06), 40 (a/0036/06), 43 (a/0039/06), 44 (a/0040/06), 45 (a/0041/06), 47 (a/0043/06), 50 (a/0046/06), 51-53 (conclusions);
- Prosecution's observations on the applications for participation of applicants a/00047/06 to a/0052/06 (ICC-01/04-01/06-354-Conf-Exp): the entire document;
- Prosecution's observations on the applications for participation of applicants a/0072/06 to a/0080/06 and a/00105/06 (ICC-01/04-01/06-584-Conf-Exp): the entire document with the exception of paragraphs 35-37 which relate to an applicant not represented by the Office of Public Counsel for Victims.

Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 6 March 2008

At The Hague, The Netherlands