

**Previous developments summarized by the CICC on the DRC situation:
(** most recent additions or updates)**

On 19 April 2004, the referral from the DRC government of the DRC situation was publicly announced by the Prosecutor.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-10_English.pdf

On 17 June 2004, the Prosecutor informed the President formally of the referral received from the government of the DRC.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-10_English.pdf

On 5 July 2004, the Presidency assigned the DRC situation to PTC I.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-10_English.pdf

On 16 September 2004, PTC I declared that Judge Claude Jorda is the presiding Judge of Pre-Trial Chamber I.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-11_tEnglish.pdf

On 19 March 2005, Mr Lubanga was arrested and detained by the DRC authorities, together with the other leaders of Ituri-based military groups. Arrest warrant, dated 19 March 2005, issued by a DRC court, was based on charges of genocide and crimes against humanity pursuant to the DRC Military Criminal Court. (Referred to in 10 February 2006 Decision)

On 29 March 2005, another arrest warrant was issued by the DRC authorities against Mr. Lubanga, alleging crimes of murder, illegal detention and torture. (Referred to in 10 February 2006 Decision)

19 April, 2005, the Prosecutor filed a request for measures under Article 56, as “an investigation presented a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial.” The Prosecutor requested “the adoption of specific measures to

ensure the efficiency and integrity of the proceedings and to protect the rights of the trial”. The Prosecutor requested a consultation hearing with the PTC to determine appropriate measures. (This request is not available to the public, but was announced in an ICC Press Release:

http://www.icc-cpi.int/pressrelease_details&id=104&l=en.html and referred to in the Decision of 21 April and 26 April.

21 April 2005, PTC I decided to convene, without delay, close consultation with the Prosecutor as it considered that a unique investigative opportunity existed. In its decision, PTC I noted both the referral by the DRC President of 3 March 2004 and the affirmation of the Prosecutor that no information had been received from States in response to his letters of notification of 22 and 23 June 2004 to States who could exercise jurisdiction

over the concerned crimes. PTC I also noted that the Prosecutor's had only temporary access to some items submitted for forensic examination and that the items may not subsequently be available for the purposes of a trial. PTC I also considered that the alleged incidents described by the Prosecutor appeared prima facie to fall under the Court's jurisdiction. A closed hearing took place the same day.

http://www.icc-cpi.int/library/cases/ICC_01-04_19_e.pdf

26 April 2005, PTC I decided to authorize the Prosecutor to request the NFI to carry out forensic investigations with regards to the opportunity identified in the Decision of 21 April. PTC I also decided that the NFI should produce a confidential report to be provided to the Registrar, and that the NFI should reply in writing (and provided to the Registrar) to any additional questions and observations submitted by the Prosecutor or the Defence. PTC I also ordered the Registrar to incorporate any NFI document in the record of the DRC situation confidentially and to notify PTC I accordingly, and to appoint an ad-hoc Counsel to safeguard the rights of the defence in relation to that request. PTC I also ordered the Registrar to notify the Prosecutor and the ad hoc counsel that they may submit any written questions and observations concerning the NFI report within a period of fifteen days.

http://www.icc-cpi.int/library/cases/ICC-01-04-21_e.pdf

20 May 2005, the NFI corresponds with the Prosecutor, requesting additional information from the Prosecutor and seeks approval of its investigation plan. (This letter is not available to the public but is referred to in the Decision of 1 June 2005).

23 May 2005, the Registry registered a "Report to PTC I in accordance with rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court". (This Report is not made public but was referred to in the decision of 17 January 2005)

26 May 2005, Pre-Trial Chamber I received applications for participation of victims in the DRC proceedings. (This information was released on 1 June 2005:

http://www.icc-cpi.int/library/cases/20050526ordonnanceRDC_En.pdf)

27 May 2005, the Chamber issued the "Order Requesting Additional Information" concerning the request for non-disclosure of the identity of the applicants seeking to participate in the proceedings (This Decision is not made public but was referred to in the decision of 12 July 2005 and announced by the Court on 1 June:

http://www.icc-cpi.int/library/cases/20050526ordonnanceRDC_En.pdf)

On 1 June, 2005, PTC I had made a decision regarding the involvement of the Prosecutor in the forensic examinations to be informed by the NFI. In this redacted decision, the Chamber refers to its Decision of 26 April and to the 20 June correspondence from the NFI to the Prosecutor. Since it had been decided in the Decision of 26 April 2005 that the Prosecutor would not be involved in the work of the NFI, PTC I concludes that it is up to PTC I to give final approval to the Investigation Plan by the NFI. Further, the Chamber

decided to approve the investigation plan by the NFI (as examined by the Prosecutor's forensic coordinator) and to authorize the Prosecutor to provide additional information requested by the NFI. Both the investigation plan and the information to be provided to the NFI remain confidential.

http://www.icc-cpi.int/library/cases/ICC-01-04-35_En.pdf)

On 10 June 2005, the Registry registered in the record the “Answers to the questions asked in the annex to the Order of Pre-Trial Chamber I of 27 May” submitted by the legal representative. (Document not publicly available but was referred to in the decision of 17 January 2005).

On 14 June 2005, the Registry registered in the record: a letter from the President of FIDH, submitting the applications for participation of six victims; a mandate authorizing Emmanuel Daoud to represent them; the applications and the memorandum in support of the applications. (These documents are not made public but was referred to in the decision of 17 January 2005)

On 14 June 2005, PTC I issued a decision (Decision inviting certain NGO representatives to submit observations on the protection of victims and human rights organisations active in the east of the DRC (Rule 103)) convening a hearing on 8th July 2005 concerning the protection of victims in the situation. (This Decision is not available to the public, but was announced on the Court’s website:

http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&l=en.html and referred to in the January 17, 2006, Decision).

21 June 2005, FIDH filed a response to the order of PTC I of 27 May 2005. The Registrar notified that this response had been filed with the Registry after the expiry of the ten-day deadline set by the order of 27 May. (This response is not made public but was referred to in the decision of 12 July 2005 and of 17 January 2006)

23 June 2005, a party (not defined to the public) asked PTC I for an extension of the deadline set by the order of 27 May. (This response is not made public but was referred to in the decision of 12 July 2005).

24 June 2005, the FIDH filed a request to extend a deadline. (Document not public but referred to in Decision of 17 January 2005)

28 June 2005, an order by PTC I calling a hearing was registered. (Order not public but referred to in Decision of 17 January 2005)

On 7 July 2005, Mr Joseph Tshimanga gave his solemn undertaking before the Court, in accordance with Article 5 of the Draft Code of Professional Conduct for Counsel. This followed the decision by Pre-Trial Chamber I of 26 April 2005 to appoint an ad hoc counsel for defence.

http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-55_Fr.pdf

On 8 July 2005, Pre-Trial Chamber I convened a hearing concerning the protection of victims in the situation in the DRC. The hearing was held in closed session and the decisions regarding this hearing are not being made public. “At the hearing, those making observations provided redacted copies of two Annexes to the Prosecutor and the Ad Hoc Counsel for the Defence.” (This information was provided by the Court on its website (http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&l=en.html))

11 July 2005, a letter from FIDH was registered, informing PTC that the FIDH President would be unable to attend 12 July hearing. (Letter not public but referred to in Decision of 17 January 2005).

On 12 July, Pre-Trial Chamber I decided to accept the filing of a (confidential) response from a party (not defined to the public) to a request for more information made by the Chamber on 27 May 2005, although the delay had not been in accordance with Regulations 31 and 33 of the Regulations of the Court. The decision was based on the fact that the Regulations presuppose the existence of an electronic filing system that is not yet in place.

<http://www.icc-cpi.int/library/cases/ICC-01-04-62-tEnglish.pdf>

On 12 July 2005, Mr Emmanuel Daoud gave his solemn undertaking before the Court, in accordance with Article 5 of the Draft Code of Professional Conduct for Counsel). Mr Daoud is acting as legal representative for victims (according to rule 90 of the Rules of Procedure and Evidence).

http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-57_Fr.pdf

On 12 July, a confidential hearing took place with PTC I. (Referred to in Decision of 17 January 2005).

13 July 2005, solemn undertaking of Mr Daoud was registered.

http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-57_Fr.pdf

14 July 2005, the Registrar registered the PTC I’s 12 July Decision regarding the request to extend a deadline. (Registration referred to in Decision of 17 January 2005, document available on ICC website: <http://www.icc-cpi.int/library/cases/ICC-01-04-62-tEnglish.pdf>).

On 14 July 2005, PTC I issued a decision not to provide the Prosecutor with an unredacted version of “the two Annexes” (content of Annexes not public but information was provided by the Court on its website

(http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&l=en.html)

On 14 July 2005, PTC I decided to appoint Judge Steiner as single judge in the case of the DRC, during the Court’s recess (22 July 2005 through 18 August 2005).

http://www.icc-cpi.int/library/cases/ICC-01-04-60_En.pdf

On 18 July 2005, VWU observations on protection of witnesses and victims in the DRC were registered in the record. (Observations not public but referred to in Decision of 17 January 2005)

On 18 July 2005, Registry registered the reply from the VPRS to the confidential hearing of 12 July, together with a supplementary brief to the hearing by Mr. Daoud. (Documents not public but referred to in Decision of 17 January 2005.)

On 19 July 2005, Another copy of supplementary brief by FIDH to the hearing of 12 July was registered in the record. (Brief not public but referred to in Decision of 17 January 2005).

On 21 July 2005, material presented at the 12 July hearing was registered in the record. (Material not public but referred to in Decision of 17 January 2005).

On 21 July 2005, PTC took a decision on protective measures requested by (confidential) applicants (of victims for participation in the proceedings). The Chamber weighed the reasons for redacting documents to protect victims against the need for the Prosecutor and the Defence to meaningfully reply to the applications. The Chamber decided to appoint someone (name not public in the Decision) to represent and protect the interests of the Defence during the application proceedings and to provide the Prosecutor with an unredacted copy and the ad hoc Counsel with a redacted copy of the applications. The Chamber gave both the Prosecutor and the ad hoc Counsel until 15 August to respond to the Applications and ordered all organs of the Court to abstain from any direct contact with the applicants and only contact them through their legal representative.

http://www.icc-cpi.int/library/cases/ICC-01-04-73_English.pdf

28 July 2005, the NFI report was produced. (This submission is not available to the public, but is referred to in the Decisions of 5 October and of 9 November).

On 1 August 2005, the Registry appointed Mr. Tjarda Van Der Spoel as ad hoc counsel for the defence, following the decision of 26 April.

http://www.icc-cpi.int/library/cases/ICC-01-04-76_English.pdf

4 August 2005, the NFI report was filed. (This submission is not available to the public, but is referred to in the Decisions of 5 October and of 9 November).

On 5 August 2005, PTC I took a decision regarding the hearing on 8 July, dealing with the following requests by a party at the hearing (not defined to the public): the opportunity to review the written responses of the Prosecutor and the Ad hoc counsel for the Defence to the hearing and to present their views in writing before any final decision of the Chamber regarding confidentiality of “the two Annexes”. The same party had also offered to address in writing any issues raised by the Prosecutor and the Defence in their respective responses. The Chamber decided that the concerned party had had sufficient opportunity to present observations at the hearing and that the Rules do not provide

for such a written response. The Chamber stated that it cannot decide in abstracto on the question of whether local actors assisting the Court at its request are legally entitled to protective measures, but that the Prosecutor is prepared to protect local actors whenever concrete threats are linked to such assistance requested by the Prosecutor, even if such actors were not legally entitled to protective measures. The Chamber also stated that all Court organs should have a “consistent approach to the issue of protection of local actors assisting any organs of the Court at its specific request”.

<http://www.icc-cpi.int/library/cases/ICC-01-04-79English.pdf>

On 5 August 2005, PTC I decided to provide the Prosecutor (but not the ad-hoc counsel with a non-redacted version of “the two Annexes (see below, 8 July decision) (This decision was not made public but information was provided by the Court on its website

(http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&l=en.html)

On 11 August 2005, the Registry registered a response by the Ad Hoc Defence counsel to the application of 26 May. The response challenged FIDH’s standing to “file any document on behalf of the victims”. It also argued that the allegations of abduction and enslavement did not seem sufficiently sound to constitute crimes within the jurisdiction of the Court. The Response did not challenge the applicability of Article 68(3) or the possibility of victims’ participation in the investigation stage.

(Response not public but referred to in Decision of 17 January 2005).

12 August 2005, The Prosecution applied for an extension for 15 additional days of a deadline in relation to the NFI report.

(This submission is not available to the public, but is referred to in the Decision of 12 August 2005)

12 August 2005, PTC I rejected the application of the Prosecution of the same day on the basis that the reasons provided by the Prosecution did not “suffice to show good cause” in accordance with regulation 35, para. 2, of the Regulations of the Court.

http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-83_En.pdf

On 15 August 2005, The Prosecutions’ reply to the 26 May applications was registered in the record. (Reply not public but referred to in Decision of 17 January 2005).

18 August 2005, Mr Tjarda Van Der Spoel gave his solemn undertaking before the Court, in accordance with Article 5 of the Draft Code of Professional Conduct for Counsel. Mr Van Der Spoel is acting as ad hoc counsel for the defence (according to rule 90 of the Rules of Procedure and Evidence).

<http://www.icc-cpi.int/library/cases/ICC-01-04-85.pdf>

22 August 2005, The Ad Hoc Counsel for the Defence, filed a submission following the Decision of 26 April (regarding the Prosecutor’s request for measures under Article 56) in which the Counsel: made some preliminary remarks on issues of jurisdiction and

admissibility; challenged the existence of a unique investigative opportunity concerning the NFI examinations; requested the adoption of additional measures; and submitted some additional questions to the NFI regarding its report. (This submission is not available to the public, but is referred to in the Decision of 9 November).

23 August 2005, the Prosecutor filed observations on the NFI report, whereby he submitted that the observations of the Ad Hoc Counsel for the Defence exceeded “the scope of the submission as determined by the Pre-Trial Chamber’s [I] Decision”. The Prosecutor also requested translation of the Dutch portions of the NFI report. The Prosecution requested PTC I to allow its forensic expert access to certain items and to examine them. The Prosecution also submitted that some parts of the NFI report was handwritten and illegible and that the Prosecution was not able to address the NFI Report properly “in light of the particularities” of the report. (This submission is not available to the public, but is referred to in the Decisions of 5 October and 9 November).

29 September 2005, correspondence of the NFI (of 20 September) was filed. The NFI responded to “most of” the Prosecutor’s observations of 23 August and expressed that it awaited further guidance from PTC I. It informed that its report had been made available to the Registry in English, and that only some forms which the investigators used to ensure the quality of the research, were in Dutch. (This submission is not available to the public, but this information is included in the Decisions of 5 October and 9 November).

5 October 2005, the PTC decided to hold closed consultations (on 11 October), based on the observations of the Prosecutor of 23 August 2005 and the correspondence of the NFI of 20 September, as well as the fact that parts of the NFI report were in Dutch and handwritten. The agenda for the closed consultations included the request for involvement of the Prosecution’s Forensic Expert (and the interest of the defence), a confidential request by the Prosecution, and the schedule for the completion of the activities of the NFI.

A redacted version of the Decision is available to the public.

http://www.icc-cpi.int/library/cases/ICC-01-04-90_English.pdf

11 October 2005, closed consultations took place. The Ad hoc counsel for the Defence raised questions regarding jurisdiction and admissibility and PTC I requested the Prosecution to submit, within three weeks, comments on these questions. (This consultation was not available to the public, but this information is included in the Decision of 9 November).

31 October 2005, the Prosecution’s Response on issues of jurisdiction and admissibility, as requested during the close consultations, was filed. (This submission is not available to the public, but this information is included in the Decision of 9 November).

4 November 2005, Completion of internal translation into English of the sections of the NFI Report that were in provided in Dutch (see Decision

of 9 November), as requested by PTC I.

On 9 November 2005, PTC I issued a redacted version of a decision regarding the report of the NFI. Here, PTC I rejected the submission by the Ad Hoc Counsel for the Defence of 22 August and 11 October (see below). When rejecting this, PTC I considered: the fact that an Ad Hoc Defence Counsel (without an accused) has no procedural standing to challenge jurisdiction or admissibility (under Article 19(2) of the Statute); that a unique investigative opportunity had indeed arisen due to the Prosecutor's only temporary access to some items submitted for forensic examination; and that, prior to 4 November, the Prosecutor had been unable to fully address the NFI Report due to the fact that some parts of the NFI report were provided only in Dutch (while the Ad Hoc Counsel for the Defence reads Dutch). PTC I also recalled that the Prosecution had 15 days to further address the English translation of the NFI as of 4 November. It also ordered the Prosecution to notify PTC I of its intention to proceed with certain examination and accordingly informed the NFI that the Chamber would instruct it as to when and how to produce its final report, once the 15-days deadline has expired (http://www.icc-cpi.int/library/cases/ICC-01-04-93_English.pdf)

On 10 November 2005, PTC I filed a decision ordering the Prosecution to inform the Chamber if it still requests to "proceed with further comparative examinations" and informing the NFI that the Chamber (upon expiry of the Prosecutor's fifteen-day deadline) will instruct the NFI regarding timing and content of its final report. (This decision is not available to the public, but this information is included in the Decision of 28 November).

On 21 November 2005, the Prosecution filed additional questions and observations on the NFI Report and maintained its request to proceed with certain (not defined to the public) further comparative examination while its request for certain (not defined to the public) forensic examination remains.

(This submission is not available to the public, but this information is included in the Decision of 28 November).

On 28 November 2005, PTC I issued a redacted version of a decision regarding the report of the NFI (filed on 4 August 2005). The PTC ordered the NFI to proceed with further certain (not defined to the public) comparative examination and to produce a final report (in English and French) within sixty days, including: answers to the questions posed by the Prosecution (on 23 August and 21 November) and by the Ad hoc Counsel (on 22 August); and conclusions of the further certain (not defined to the public) comparative examination.

See redacted version of the Decision on the ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-96_En.pdf

2006

9 January 2006, the Prosecutor filed a memorandum to the Presidency seeking “administrative relief” to prevent any future challenges by any party to the “appearance of impartiality of the judges of the Pre-Trial Division” (referring to Article 41(2), which addresses issues of impartiality and disqualification of judges). The memorandum itself was not made public, but the OTP stated in the document that it would be appropriate for the judges to request a copy thereof from the Presidency to be informed about the content of the request and the relief sought.

(This is referred to in the 10 January Notice, but the memorandum is not available to the public).

10 January 2006, PTC I issued a notice of the OTP request of 9 January 2006 to the Presidency. An identical notice was issued for the situation of the Uganda by PTC II. See the ICC’s website:

http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-75_En.pdf

On 12 January 2006, the OTP applied for the issuing of an arrest warrant against Mr. Lubanga and the authorization to make and transmit the cooperation request for arrest and surrender to the relevant State authorities. The Prosecution requested the arrest warrant to be issued under seal, as well as to keep the application sealed and that any proceedings conducted in connection with the application be held *ex parte* and in closed session to prevent the accused from fleeing or to be put at risk. (Application not available to the public but referred to in, among other, the Decision of 10 February 2006).

On 17 January 2006, PTC I took a decision, allowing six victims (referred to as VPRS 1 to 6) to participate in the investigation stage of the DRC situation, by presenting views and concerns, filing documents and requesting the Chamber to order specific measures (the applicants would not be given access to confidential documents). The judges based this on their conclusion that the applicants’ interests were indeed affected in the investigation stage, and that this stage amounts to ‘proceedings’ in which victims would have the right to participate (under Article 68(3)).

PTC I considered OTP’s Reply (reg. on 15 August 2005) which challenged the participation of victims at the investigation stage based on the arguments that the investigation stage does not amount to ‘proceedings’ (making a distinction between ‘investigations’ and ‘proceedings’) and that such participation in this early stage is inappropriate. The OTP also submitted that the applicants had failed to show that their personal interests were affected at this stage. According to the Decision, the Prosecutor had not challenged the status of the applicants as victims.

The issues addressed by the PTC I in this decision were: whether, in the

light of Article 68(3), proceedings exist during the investigation stage (assessing terminology and context of the relevant provisions of the Statute and the Rules in English and French, as well as the object and purpose of the Statute's victims participation regime); the conditions under which Article 68(3) is to be applied at this stage of a situation (assessing the appropriateness of the participation per se and the criterion of 'personal interest'); and, the way in which victims may participate (addressing the scope and sequence of a 'situation' vis-à-vis a 'case' in relation to the definition of victims). Regarding the latter, the PTC I noted that no DRC case has been initiated through the issuance of an arrest warrant, thus it is still looking at the DRC situation as a whole. However, once the DRC situation has developed into cases, the Chamber would automatically (without a need for victims to reapply) re-consider the applicants' status in relation to the incidents amounting to the specific cases. The Chamber noted the positive obligation for the Court to enable victims' concrete and effective participation by allowing them to present their views and concerns and to examine them. The Chamber linked the right to participate in this stage with the need to identify the persons allegedly responsible and the effect that the investigations can have on future orders for reparation.

PTC I also decided that with regards to specific proceedings, the Chamber will decide whether the applicants may participate, depending on: how a proceeding is initiated; the level of confidentiality; and the personal interests of the victims. The applicants would also be able to request specific proceedings, to be ruled upon by PTC I on a case-by-case basis.

When considering whether the applicants amount to 'victims' for the purposes of participation in the proceedings, the Chamber applied Rule 85 by answering four questions (natural persons? harm suffered? do the alleged crimes fall within the ICC jurisdiction (based on referral/initiation of investigation and jurisdiction *rationae temporis* and *loci*)? causal link between crimes and harm suffered by the Applicant?). Regarding the last question, the Chamber assessed whether "there are grounds to believe that the harm suffered is the result of the commission of crimes falling within the jurisdiction of the Court", without having to determine the precise nature of the casual link and the identity of the person responsible. PTC I referred to 'grounds to believe' as a 'low threshold', with the expectation of becoming more restrictive after an arrest warrant has been issued.

PTC I stressed that it is for the victims to provide the relevant information needed for the Chamber to assess whether there are grounds to believe that the criteria of Rule 85 have been met. It was noted that

the application forms used where not standard forms produced by the ICC, but FIDH forms submitted by the FIDH with the consent of the applicants. Nevertheless, they did contain the required information.

In considering each respective application and the harm suffered, including emotional harm and economic loss, the Chamber referred to international principles and guidelines, as well as jurisprudence from regional courts of human rights. The Chamber noted, with regards to each respective application, that there would be grounds to believe that the crimes described in the applications would fall within the jurisdiction of the Court, pursuant to Articles 6-8, and in particular Articles 7 and 8.

See the ICC Website: (currently only in French:

http://www.icc-cpi.int/library/cases/ICC-01-04-101_French.pdf)

On 20 January 2006, PTC I granted the Prosecution receipt of its 13 January 2006 Application, agreed to maintain the Application under seal and agreed to conduct closed sessions in connection with the Application. PTC I invited the Prosecution to provide: further information and material concerning ongoing proceedings and indications of possible release in the near future in the DRC regarding Mr Lubanga; a copy of the DRC arrest warrants against Mr Lubanga; certain full statements, supporting materials and information about security situation; information about a certain video; supporting materials regarding alleged practice regarding child soldiers; materials regarding objectives and involvement of the UPC and the FPLC; organizational charts of the UPC and FPLC; level of organisation of other armed groups; information about the authority of Mr Lubanga; and certain other statements in the Application. PTC I also convened a hearing with the Prosecutor for 2 February 2006 and that the agenda will be sent to the Prosecutor.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-27_English.pdf

On 23 January, 2006, the Prosecutor applied for leave to appeal the 17 January Decision, submitting that the Decision involved an issue that affects the fair and expeditious conduct of the proceedings and that an immediate resolution by the Appeals Chamber would materially advance the proceedings. The Prosecutor challenged the appropriateness of PTC I to conclude that there are 'grounds to believe' that crimes within the jurisdiction of the Court have occurred, without any application by the OTP for an arrest warrant or request for confirmation of charges. The Prosecutor noted the importance of ensuring that participation is implemented in a manner which does not expose victims to risks and that participation should not result in a modification of the nature and scope of the functions of the organs of the Court. Further, the

Prosecutor submitted that the Decision contains elements capable of compromising basic principles of the Statute and the Court's duty to exercise jurisdiction effectively and impartially.

While the Application focused on the reasons why the specific requirements for interlocutory appeal are met, the Prosecution submitted that some of the issues that the appeal would cover are mentioned in the application.

The Prosecutor submitted that the Decision will affect the fair conduct of the proceedings and that it goes to the core of the Court's functions, including having far-reaching consequences for the Court's investigative activities. The Prosecutor bases this on the argument that (by allowing external factors, incl. materials collected outside the framework of the Prosecution's investigation without fully testing the reliability thereof, by creating imbalance between victims and any future accused persons, and by prejudging the existence of crimes) the victims' participation as set out in the Decision significantly affects: the fairness, impartiality and integrity of the proceedings, including the fairness of the proceedings vis-à-vis future accused persons (as the cases have not been formed, the accused are not able to react to victims' interventions through counsel); the independence, objectivity and impartiality of the Prosecution; and the privacy and security of victims and witnesses. The Prosecutor also expressed concerns about the lack of adequate guidelines and limitations, and that this precedent could open the door to improperly motivated requests for participation and abuse of the process.

The Prosecution also submitted that the fair conduct of the proceedings is affected by the Chamber's use of the 'grounds to believe' test in the 17 January Decision as it attributes to the Chamber inquiry functions (without being equipped with the necessary tools and resources) not provided to it in the Statute, and as the Chamber is expecting to make findings of fact as to the existence of crimes based on this test, possibly prejudging later determinations of crimes.

The Prosecutor submitted that the Decision will significantly affect the expeditious (timely and efficient) conduct of the proceedings. It was submitted that the Decision creates a serious burden for all organs of the Court since the class of 'situation victims' as defined in the 17 January 2006 Decision could result in hundreds of thousands individuals having the right to participate in the investigations stage. The OTP argued that the Decision would impact on proceedings since: responding to victims' interventions would divert OTP's resources from investigations; the foreseen evidence management activities would add a heavy burden on the Chamber; and the Registrar would be burdened with additional and broadened functions pertaining to notice, legal

assistance, representation and support in the investigation stage.

The Prosecutor submitted that immediate resolution by the Appeals Chamber will materially advance the proceedings across the situation and avoid substantial delay to any ongoing proceedings: to avoid later nullification of pre-trial proceedings held under the Decision; to foster judicial economy by avoiding unnecessary implementation of the onerous terms of the Decision; and to provide the required certainty allowing all organs to plan in an organized manner. The Prosecutor submitted that the Decision affects proceedings of an entire situation and should not be addressed in an appeal in a particular case. The OTP also submitted that the Decision impacts other, present and future, proceedings before this and other Pre-Trial Chambers.

See the ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-103_English.pdf

On 25 January 2006, the OTP responded to the invitation of 20 January 2006 to submit additional materials, attaching copies of the DRC file on Lubunga's detention, the DRC arrest warrants against him (of 19 and 29 March 2005) and certain other documents and re-emphasizing the urgency of the 13 January application. The Prosecutor referred to: the unstable political situation in the DRC and the impact on the situation of Mr Lubunga and other prisoners, as well as on the ability of DRC authorities to execute arrest warrants of the Court; the status of investigations of the 'Ndoki incident', accusations of irregular arrests of Mr Lubunga and leaders of other military groups, and information about possible imminent release thereof. The Prosecutor also provided that Mr Lubunga denied all allegations in the context of the DRC investigations into the 'Ndoki incident' and that the OTP focuses on different alleged crimes. The OTP also reemphasised the admissibility of the case and that the inability expressed in the initial referral still stands, reflected in the DRC proceedings against Mr Lubunga.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-39-AnxC_English.pdf

On 27 January 2006, the Legal Representative of victims VPRS 1 – 6 submitted its observations to the 23 January application by the Prosecutor, requesting the Chamber to reject the application on the ground that it did not fall within the scope of the provision providing for leave to an interlocutory appeal (as it did not involve an issue that significantly affects the fair and expeditious conduct and which, by being addressed by the Appeals Chamber, may materially advance the proceedings). The Observations points out: the overly general nature of the OTP's reply; the attempt of the Prosecutor to restrict victims' rights in a general and abstract manner (in advance of certain decisions being taken) rather than in this particular case; the fact that the dangers evoked by the Prosecutor are not significant in the present state of the proceedings; and that the Prosecutor failed to take many provisions on victims participation into account.

Regarding the effect on the fair and expeditious conduct of the proceedings or the outcome of the trial, the Observations submitted that presentation of victims' views and

concerns could not violate the principle of fairness or affect the balance of criminal trials and that:the Prosecutor did not provide specific facts; that a fair and impartial trial is conditional on victims participation and that the relevant Chamber sets the conditions therefore; that the Chamber did appoint ad hoc counsel for the defence, notified and duly informed the counsel and the Prosecution who were able to respond; and that the Chamber assessed and addressed any adverse impact on the investigations by distinguishing between the situation stage and the case stage and by denying the victims access to confidential documents. Further, it was submitted that, since the interest of victims is different from the Prosecution and the defence, and since no accused have been identified, there is no contradiction between this participation and the right of the defence.

It was also submitted that while the Statute provides for participation in all stages of the proceedings, the Statute, the Rules of Procedure and Evidence and the Chamber's criteria define a system to prevent the Court from being submerged, together with the responsibility of the Chamber to organise the participation of victims. The Observations also submitted that; the Prosecutor has failed to demonstrate how the Decision would lead to endangering victims' security and protection, while it also stated that the protection system adopted by the Chamber on 21 July 2005 has been effective.

Regarding whether a decision by the Appeals Chamber would materially advance the proceedings and the submission by the Prosecutor that intervention by the Appeals Chamber would provide certainty for all organs, the Legal Representative states that the scope of victims' rights is clear from the Decision.

See the ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-105_tEnglish.pdf

On 27 January 2006, the OTP submitted, in response to the invitation of 20 January 2006, that the invitation does not impose any procedural obligation to submit further materials and that there is no legal basis for the provision of 'supporting materials'. However, the Prosecution provided information about the whereabouts and security issues regarding victims and witnesses in relations to the issuing of an arrest warrant for Mr Lubanga and that the OTP together with the VWU has taken substantive measures, including a close net of permanent security checks, an Immediate Response System, Standard Operating Procedures, to ensure their protection, paying particular attention to children. The submission also included information about certain video cassettes, information about the UPC and the FPLC.

(Submission not available to the public but referred to in the Decision of 10 February 2006).

On 30 January 2006, the Prosecution applied for leave to reply to the 27 January Observations, submitting that exceptional circumstances apply considering the significant issues at stake, capable of affecting proceeding beyond the limits of the present case.

See the ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-107_English.pdf

On 31 January 2006, PTC I informed the OTP about the agenda for the 2 February hearing. (Agenda was not available to the public but information about this was made public on 22 March 2006).

On 1 February 2006, the Pre-Trial Chamber granted the Prosecutor leave to reply to the 27 January Observations, amongst other considering that this was a new issue to this stage.

See the ICC Website:

<http://www.icc-cpi.int/library/cases/ICC-01-04-110-tEnglish.pdf>

On 1 February 2006, the 'NFI Additional Report' (from 30 January 2006) was filed by the Registry. (Report not public, but referred to in Decision of 8 February 2006).

On 2 February 2006, a closed hearing was held with the Prosecution dealing with the 13 January 2006 Application. The Prosecution responded to questions from the Chamber regarding, jurisdiction and admissibility (in particular about the existence of any DRC investigations into the subject crimes and the gravity and scale of the subject crimes); the past and current role of Mr Lubanga; the scope of ongoing OTP investigations in the DRC situation; the international or non-international character of the armed conflict in Ituri; the prosecution's request to disclose the existence of an arrest warrant to certain entities; the request of authorization for the prosecution to make and transmit a request for arrest and surrender; information about Mr. Lubanga's assets and properties; and witness protection.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-48_English.pdf

On 6 February 2006, PTC I issued the Prosecutor's Reply to the 27 January Observations submitting that this exchange between the Prosecution and the Victims Representative (for VPRS 1 – 6) further confirms the need for the Appeals Chamber to review the 17 January Decision, due to the different views on fundamental provisions of the Rome Statute, and that the Observations of 27 January failed to counter the Prosecution's arguments of 23 January.

The Prosecutor submitted that the observations misconstrue the legal test for interlocutory appeal, misrepresent the Prosecutions position and misstate the terms of the 17 January Decision, in addition to addressing the merits of the appeal not relevant for the decision of granting leave for appeal.

Regarding the Observations' reference to OTP's general and abstract terms and hypothetical risks prematurely addressed, the Prosecution submitted that its submissions flow naturally from the broad scope and far-reaching nature of the Decision in relation to fair and expeditious

conduct of the proceedings and that the relevant provision refers to how a decision ‘affects’ proceedings, i.e. future consequences. The Prosecution also notes that its arguments regarding rights of the defence, as well as regarding prejudgment arising from the test in the 17 January Decisions flow directly from the Decision, and that the issue of victims participation is current, and concerns effects with immediate impact on the fairness and expeditiousness of the proceedings.

Regarding fair and expeditious conduct of proceedings the Prosecution submitted that the Observations of 27 January did not effectively contradict the OTP’s submissions but rather addressed the correctness of the 17 January decision and the merits of a future appeal, while the issue at hand is whether the conditions for an interlocutory appeal are met. With regards to three areas, the Prosecutor briefly addressed the 27 January Observations: victims’ access to confidential information (the terms of the Decision were misstated since access to sensitive information in some circumstances is indeed envisioned in the Decision); ability to appeal interlocutory decisions prior to the trial stage (equality of arms is one element of fairness and the analogy with the ad-hoc tribunals is, here, false due to the structural differences in dealing with proceedings flowing from an investigation); the potential large number of victims seeking participation (based on ‘common sense’, a Decision enabling ‘situation victims’ to participate throughout the entire investigation will lead to a larger number than if it were limited to ‘case victims’ participating in specific cases); consequences of the Decision for the Court’s ability to protect persons (the additional burden on the VWU’s can be enormous and the Observations confirm the Prosecution’s argument on this point that the number of persons to be protected increases exponentially); relevance of the outcome of the trial (the Observations misinterpreted the Decision of PTC II regarding the cumulative nature of Article 82(1)(d)).

Regarding whether intervention by Appeals Chamber would materially advance the proceedings, the Prosecution argues that the Decision leaves a number of parameters in the discretion of the Pre-Trial Chamber. Further, that discussion and guidance from the Appeals Chamber would indeed advance the proceedings by providing certainty, and if not addressed now, may be challenged in final appeals.

See the ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-111_English.pdf

On 8 February 2006, PTC I granted the Prosecution and the Ad Hoc Counsel for the defence 15 days to present their final observations on the NFI Additional Report (filed on 1 February 2006). In taking this decision, PTC I considered the fact that the proceedings related to the NFI’s examination were confidential and that they had no impact on the

personal interests of participants VPRS 1 – 6.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-112_English.pdf

On 10 February 2006, PTC I decided to initiate the case against Mr Lubanga and to issue an arrest warrant (in a separate, until otherwise provided, sealed document) for Mr Lubanga's alleged responsibility for the following war crimes: enlistment and conscription of children under the age of fifteen and for using them to participate actively in hostilities.

The preliminary observations of PTC I addressed the "reasonable grounds to believe" standard and that this would often, but not only, be reached on the basis of the specific evidence and information provided in the OTP's application. PTC I concluded that the Chamber does not need to agree with the Prosecutor's legal characterization of the relevant conduct to issue the arrest warrant; and it concluded that an initial determination of jurisdiction and admissibility of the case is a prerequisite for the arrest warrant, without prejudice to subsequent determinations on jurisdiction or admissibility.

Regarding jurisdiction, using the three conditions set out in the 17 January decision, PTC I concluded that there are reasonable grounds to believe that the alleged crimes fall under article 8 of the statute, and that the conditions of temporary and territorial jurisdiction were met.

Regarding admissibility, the Chamber used a two-tiered test. One, relating to national efforts concerning the case at hand (considering that no national proceedings encompassing the accused and the conduct concerned are taking place and that the Government has declared itself unable to undertake the necessary investigations and prosecutions of the alleged crimes in this situation); Two, the gravity threshold (considering: the systematic/large scale nature of conduct and the social alarm caused in the international community; the position/senior leadership of the accused; and the responsibility of the accused).

PTC I concluded that there were reasonable grounds to believe that continuous war crimes, within the jurisdiction of the Court had been committed (and that the conflict in Ituri was either of a non-international or an international character), that Mr Lubanga has incurred criminal liability for such crimes and exercised de facto authority according to the modes of liability in the Statute and that the arrest appeared to be necessary.

It was also decided that PTC I should prepare a cooperation request seeking arrest and surrender and that the Registrar should transmit such request to the DRC authorities and that, prior to the transmittal of this cooperation request, the Registrar could (if necessary) inform certain DRC authorities and others involved of the existence of the arrest warrant.

Further, that the Chamber should prepare cooperation requests for all States Parties regarding tracing and seizure of Mr Lubanga's property and assets to be transmitted once the arrest warrant is unsealed. PTC I also requested the OTP to transmit to the Chamber

and the Registrar, in accordance with confidentiality obligations, information about risks to victims or witnesses in connection with transmission of these cooperation requests.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_tEnglish.pdf

See also ICC website (in Annex):

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr_English.pdf

On 15 February, 2006, the Prosecutor submitted information to facilitate the transmission and execution of the Request for cooperation seeking arrest and surrender of Mr. Lubanga. In this submission, the Prosecution submitted that the system of making and transmitting requests for cooperation seeking arrest and surrender completely excludes the OTP from the process of transmission and that this poses grave difficulties for the successful execution of future requests. In response to the invitation to provide information that would facilitate this process, the Prosecution informed the Chamber of its preparatory work, some conducted jointly with the Registry, including provision and explanation of standard operating procedures, facilitation of contacts with third states for the purpose of transportation of suspects to The Hague. With regards to potential risks to victims and witnesses associated with the transmission of the requests, the Prosecution informs that it has assessed the situation in the relevant areas and that it, together with the VWU, has set up a witness protection programme which is functioning satisfactorily. The Prosecution also reiterated its concerns about the security situation of Mr Lubanga in the prison in Kinshasa and that the DRC may not be able to protect Mr Lubanga once the existence of the arrest warrant against him is known.

See ICC website: <http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-69-AnxA.pdf>

On 16 February 2006. PTC I filed the Prosecution's final observation on the NFI Report of 1 February 2006, requesting clarifications from the NFI. (Observations not available to the public but referred to in the Decision of 8 March 2006).

On 20 February 2006. PTC I filed the final submission of the Ad Hoc Defence Counsel on the NFI Report of 1 February 2006, requesting some clarifications on the Report. (Submission not available to the public but referred to in the Decision of 8 March 2006).

On 24 February 2006, PTC I took a decision addressing the treatment of documents in the case against Mr Lubanga.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr_English.pdf

On 24 February 2006, the confidential cooperation request to the DRC authorities for the arrest and surrender of Mr Lubanga was filed.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-9_French.pdf

On 24 February 2006, Judge Steiner was designated single judge of PTC I from 25 February to 9 March 2006.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-117_French.pdf

On 3 March 2006, President Kabila sent a letter to the Prosecutor in which he stated the readiness of the Congolese authorities to cooperate with the investigations.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-32-AnxA1_French.pdf

On 6 March 2006, PTC I rectified typographical errors in the 24 February 2006 Decision.

See ICC website

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-21_English.pdf

On 8 March 2006, PTC I ordered the Registrar to notify the NFI of certain documents and ordered the NFI to answer within 15 days to certain requests for clarification, seeking to finalise the proceedings relating to the NFI's examination.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-122_En.pdf

On 9 March 2006, PTC I issued a confidential request to the DRC to identify, freeze and confiscate Mr. Lubanga's assets within its territory.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-22_French.pdf

On 9 March 2006, the prosecution submitted formatted and redacted versions of certain documents in response to the 24 February 2006 Decision.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-39-AnxD_English.pdf

On 9 March 2006, the Registrar requested an extension of his mandate in relation to the execution of the arrest warrant against Mr. Lubanga. The Chamber decided to give the Prosecution until 10 March at 2 m to submit observations on this request.

(Request and decision not available to the public but referred to in the Summary of 26 April 2006, http://www.icc-cpi.int/library/cases/Publishing_on_26042006_1.pdf)

On 10 March, the Prosecution requested the immediate unsealing of the arrest warrant upon a leak to the public or once the aircraft carrying Mr Lubanga has left the airspace of the DRC. The Prosecution referred to certain meetings with the Registry regarding the arrest and transportation of Mr Lubanga and the lifting of the UN travel ban as well as to the tentative time table for the arrest and surrender. It also referred to the cooperation difficulties caused due to leak, public discussion and misinformation about the unsealed arrest warrants in the situation of Uganda, and the fact that the various steps by various actors to undertake the arrest and surrender of Mr Lubanga increase the risk of a leak to the public. The Prosecution also submitted that the close net of measures as currently implemented with the VWU can control an added risk for victims and witness upon unsealing of the arrest warrant.

See ICC website:

<http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-69-AnxB.pdf>

On 10 March 2006, the Prosecution responded to the request by the Registrar on 9 March and the Chamber decided not to grant the Registrar's request.

(Request and decision not available to the public but referred to in the Summary of 26 April 2006, http://www.icc-cpi.int/library/cases/Publishing_on_26042006_1.pdf)

On 14 March 2006, the Registrar notified the DRC authorities of the 10 February Decision. (Notification not available to the public but referred to in the ICC Press Release of 17 March 2006)

<http://www.icc-cpi.int/press/pressreleases/132.html> and in the Decision of 17 March 2006).

On 14 March 2006, the Presidency issued a decision regarding the constitution of the Pre-Trial Chambers noting the election of six judges of 26 January 2006 and deciding that PTC I continues to consist of Judge Claude Jorda, Judge Akua Kuenyehia and Judge Sylvia Steiner (PTC II: Judge Mauro Politi, Judge Fatoumata Dembele Diarra and Judge Ekatarina Trendafilova; PTC III: Judge Hans Peter Kaul, Judge Sylvia Steiner and Judge Ekatarina Trendafilova).

See the ICC's website:

<http://www.icc-cpi.int/library/organs/presidency/ICC-CPI-01-06.pdf>

On 14 March 2006, Judge Steiner was designated single judge of PTC I from 15 – 22 March 2006.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-123_French.pdf

On 15 March 2006, PTC I requested the Prosecution to identify formatting of certain documents and to file a redacted version of certain documents under seal and ordered the Registrar to reclassify certain documents (Lubanga case).

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-34_English.pdf

On 15 March 2006, the Chief Custody Officer requested the Registrar authorization to place a detained person in an observation cell.

(Request not available to the public but referred to in the Registrar's Decision of 17 March 2006)

On 16 March 2006, PTC I ordered the Registrar to classify (under seal) and re-incorporate certain documents into the record of the Lubanga case.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-35_English.pdf

On 16 March 2006, a Decision to convene a closed meeting on 17 March with the Registrar (including representatives from the Court Management Section) and the

Prosecutor to deal with the Prosecution's request regarding the unsealing of the arrest warrant of Mr Lubanga and issues related to the current classification of documents in the Lubanga case and in the DRC situation.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-36_English.pdf

On 17 March 2006, PTC I unsealed the arrest warrant of 10 February 2006.

This was upon the request of the Prosecution to unseal the arrest warrant immediately after (and not before) the aircraft carrying Mr Lubanga has left the DRC. PTC I considered that arrest and surrender had been executed by the DRC authorities and that Mr Lubanga was under the custody of Court officials.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-37_English.pdf

On 17 March 2006, a meeting was held with the Registrar and the Prosecutor to deal, inter alia, with the Prosecution's request regarding the unsealing of the arrest warrant for Mr Lubanga. (Meeting not available to the public but referred to in the Decision of 17 March 2006).

On 17 March 2006, PTC I ordered the scheduling of the first appearance of Mr Lubanga to be held in a public hearing on Monday 20 March 2006.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-38_English.pdf

On 17 March 2006, the Registrar ordered that the cell of Mr. Lubanga be monitored by video for a period of 8 days upon admission to the Detention Centre. It also directed the relevant officers to ensure, upon admission, the assessment of Mr. Lubanga's health and to ensure that he is located in a cell without any means of inflicting self-harm - to be reviewed in 8 days from the date of Mr. Lubanga's admission.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-52_English.pdf

On 17 March 2006, the OTP issued a Press Release about the issuing of the arrest warrant against Mr. Lubanga (founder and president of the Union des patriots congolais – the UPC – and commander-in-chief of its military wing – the FPLC) informing that the OTP had submitted an application for the issuance of an arrest warrant on 12 January 2006 alleging involvement in the commission of war crimes (conscripting and enlisting children under the age of fifteen and using them to participate actively in the hostilities). The Press Release informs that this warrant is one in a series and that the OTP is currently investigating various crimes by a number of armed groups in the Ituri region, and that ongoing investigations will lead to other warrants being sought. The OTP stated that its independent investigations take place in conjunction with activities seeking to prevent and put an end to the commission of crimes in the region. It also states that the investigations have identified several groups responsible for the violence and that the FPLC emerged as one of the militias which had committed the worst crimes. The OTP

states that Mr Lubanga exercised de-facto authority and controlled, among other things, the commission of the alleged crimes listed in the arrest warrant.

<http://www.icc-cpi.int/press/pressreleases/133.html>

On 17 March 2006, the ICC issued a Press Release, informing about the first arrest of the ICC; that Mr Lubanga had appeared before the competent judicial authority in Kinshasa; that Congolese authorities and MONUC had cooperated with the Court; and that the French Government provided a military aircraft to transfer Mr Lubanga to The Hague.

See ICC website: <http://www.icc-cpi.int/press/pressreleases/132.html>

On 17 March 2006, the Prosecution submitted certain redacted documents and identified documents and annexes that had been formatted, in response to the 15 March request by the Chamber.

<http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-69-AnxF.pdf>

On 20 March 2006, Mr Jean Flamme was appointed counsel for Mr Lubanga.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-40_French.pdf

On 20 March 2006, Mr Jean Flamme gave his solemn undertaking before the Court, in accordance with Articles 5 and 22.3 of the Code of Professional Conduct for Counsel, to serve as counsel for Mr Lubanga.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-41_French.pdf

On 20 March 2006, Mr Lubanga appeared for his first appearance before the PTC I in the first public hearing of the Court. PTC I verified the identity of Mr Lubanga and concluded itself that Mr Lubanga had been informed of the alleged crimes and of his rights. The duty counsel of Mr Lubanga informed PTC I of the intention to request the extension of the deadline to appeal the 10 February Decision and to request access to all documents from the Prosecutor relating to the charges. The date for the confirmation of charges hearing was set for 27 June 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-T-3_English.pdf

On 20 March 2006, Mr Lubanga's Counsel requested an extension to the five-day time limit for the appeal of PTC I Decision on the Prosecutor's 10 February 2006 application; and to provide the accused and his counsel with access to the Prosecutor's entire case-file against the accused, detailing a number of particular filings.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-45_French.pdf

On 20 March 2006, PTC I decided to unseal certain documents in the record of the Lubanga case, and to keep certain documents under seal. The following documents were unsealed, and subsequently made public on the ICC website on 28 March 2006: a chart of the UPC Executive Political Structure (Sep – Dec 2002); a chart of the UPC Executive Political Structure (Dec 2002 – March 2003); an organizational chart of the FPLC (Sep 2002 – Dec 2003); a time line of 'key events and military engagements' of various DRC groups (Jul 2002 – Dec 2003); a decision of 2 December 2005 by the DRC

authorities to detain Mr Lubanga; the cooperation agreement between the DRC and the OTP; a map of FPLC training camps and sites of hostilities; an annex to the map listing distances to the camps and sites from Bunia; a map of the DRC and the Ituri District; photos of Mr. Lubanga; the 3 March letter from President Kabila to the Prosecutor; a BBC article about Uganda rebels; the decision by the Presidency to assign the situation of the DRC to PTCl.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-42_English.pdf

On 20 March 2006, PTC I took a decision requesting the Prosecution to provide the Chamber with a list of non-public documents filed by the OTP in the DRC situation and suggestions on how they should be treated.

http://www.icc-cpi.int/library/cases/ICC-01-04-130_English.pdf

On 20 March 2006, PTC I issued an order authorizing photographs at the first public hearing on 20 March.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-44_English.pdf

On 22 March 2006, PTC I decided to unseal, reclassify and/or file as a public redacted version certain documents in the record of the Lubanga case.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-46_English.pdf

On 22 March 2006, PTC I issued a redacted decision concerning the 2 February 2006 hearing. The Decision outlines the issues that were to be discussed in the hearing relating to the Prosecution's application for the arrest warrant for Mr Lubanga, including; issues relating to jurisdiction and admissibility; the scope of ongoing investigations in the DRC situation; the international or non-international character of the armed conflict in Ituri; the prosecution's request to disclose the existence of an arrest warrant to certain entities; the request of authorization for the prosecution to make and transmit a request for arrest and surrender; and information about Mr. Lubanga's assets and properties.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-47_English.pdf

On 22 March 2006, PTC I issued a redacted version of the transcripts of the closed hearing of 2 February 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-48_English.pdf

On 22 March 2006, PTC I decided that it was not competent to deal with the application of 20 March 2006 by Mr. Lubanga's Counsel for an extension of a time limit and that the Appeals Chamber is the competent instance to decide whether the Defence can challenge any matter concerning jurisdiction and admissibility dealt with in the 10 February decision, including the issue of the extension of the five-day time limit. The PTC I also granted the Prosecution two days to present its observations on the Counsel's application for access to all documents relating to the arrest warrant.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-50_English.pdf

On 22 March 2006, PTC I issued a decision designating Judge Sylvia Steiner as single judge in the case against Mr Thomas Lubanga Dyilo responsible for exercising the functions of the Chamber in that case, allowing the Chamber to work in a more appropriate and efficient manner.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-51_French.pdf

On 23 March 2006, the Registrar decided to classify its Decision of 17 March 2006 as a public document.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-52_English.pdf

On 23 March 2006, PTC I gave the Prosecution and Mr Lubanga's Counsel until 6 April to present observations regarding the most appropriate system of disclosure of evidence, both incriminatory and exculpatory, to be used at the confirmation hearing. Until a decision is reached on the referred system, PTC I established an interim system.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-54_English.pdf

On 23 March 2006, Mr Lubanga's Counsel sent a letter regarding disclosure of certain evidence or material. (letter not publicly available, but referred to in 27 March 2006 Decision)

On 23 March 2006, the Netherlands Forensic Institute (NFI) requested a time extension for the production of its report – until 22 April 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-132_English.pdf

On 24 March 2006, the Prosecution responded to the 20 March 2006 request of Mr Lubanga's Counsel by requesting PTC I to deny the Defence access to the Prosecution's entire case file and that, depending on the stage of the proceedings, Mr. Lubanga is or will be entitled to receive disclosure materials. Regarding the access to the specific filings, the Prosecution submitted that those documents form part of the Court's file against Mr. Lubanga and are accessible to the Defence in its redacted version, since the reasons requiring formatting and redactions (protection of victims and witnesses) continue to apply.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-55_French.pdf

On 24 March 2006, Mr Lubanga's Counsel appealed the PTC I Decision of 10 February 2006, stating that the conditions for admissibility of the Lubanga case had not been met and hence requested the Appeal Chamber to declare the case inadmissible. The Defence reserved its right to elaborate on the grounds for the request in a separate filing.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-57-Corr_tEnglish.pdf

On 27 March 2006, PTC I requested further observations from the Prosecution and Mr. Lubanga's Counsel on the system of disclosure and decided that the interim system of disclosure of 23 March shall be followed to enable the prosecution to start disclosing any evidence or material it is prepared to disclose pending a decision on a system. PTC I also instructed the Registrar to organise the index of the record of the Lubanga case according to evidence procedures and requested Mr.

Lubanga's Counsel to file with the Registry a copy of the 23 March 2006 letter and any other request he might make regarding disclosure of evidence while the interim system of disclosure is applicable.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-58_English.pdf

On 27 March 2006, the Appeal Chamber decided on Judge Pillay as the Presiding Judge in the appeal of Mr Lubanga against the 10 February 2006 Decision by PTC I.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-59_English.pdf

On 28 March 2006, PTC I authorized the Prosecutor and the Defence to submit observations (before 7 April) regarding the status of VPRS 1 to 6 in the Lubanga case.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-60_French.pdf

On 28 March 2006, Mr. Lubanga submitted a request to the Registry for the provision legal aid in order to cover the costs of his legal representation. (Request not made public, but referred to in the 31 March 2006 Registry's Decision).

On 30 March 2006, the Prosecution attached as "Under Seal-Ex Parte-Prosecution Only" the list of non-public documents in the record of the DRC situation and detailed the few documents which content justifies reclassification. The Prosecution defined four different levels of confidentiality. The Prosecution further submitted that Mr. Lubanga has access only to the formatted/redacted versions of filings directly linked to his proceedings that already form part of the case-file against him.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-134_English.pdf

On 31 March 2006, PTC I issued a request to all the States Parties to the Rome Statute to identify, localize, freeze and confiscate Mr. Lubanga's assets within their respective territories. PTC I also requested to be informed of the name and address of any curator appointed pursuant to Congolese national law.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-62_French.pdf

On 31 March 2006, the Registry decided to provisionally consider that Mr. Lubanga does not poses sufficient means to pay for an adequate representation and accordingly that the Court will provisionally cover the expenses of his Counsel pending a better assessment of his financial situation. The Registry also requested Mr. Lubanga to submit the name of his Counsel of choice from the list.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-63_French.pdf

On 31 March 2006, PTC I decided to deny the request of the Prosecutor, filed on 23 January 2006, for leave to appeal the 17 January 2006 decision regarding the participation of VPRS 1 to 6 in the proceedings. In its decision, PTC I analyzed the 19 August 2005 Decision of PTC II regarding the restrictive character of interlocutory

appeal. PTC I considered that the Prosecution did not give enough elements to support that its 17 January 2006 decision would significantly affect the fair conduct of the proceedings. It rejected the Prosecutor's argument that its decision could prejudice the impartiality and integrity of the investigation (based on lack evidence of such impact, that the participation would only enhance the impartiality of the investigation by access to additional evidence, that victims would not have access to confidential documents, that participation is limited based on a case-by-case assessment). Regarding exposure to victims and witnesses the Chamber raised the lack of evidence to support this document and the Chamber's responsibility to ensure protection and privacy where necessary. Regarding imbalance between accused and victims, lack of evidence for argument and the appointment of an *ad hoc* Counsel was raised by the Chamber. The Chamber also addressed the Prosecutor's submission regarding prejudgment by justifying its 'grounds to believe' test to establish the applicants' status as victims and the preliminary 'grounds to believe' test regarding jurisdiction.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-135_tEnglish.pdf

On 3 April 2006, the Prosecutor filed observations regarding the disclosure of potentially exonerating evidence: the Prosecution is not obliged to disclose at this stage of the proceedings potentially exculpatory evidence, although it might take a different approach in future cases; the Statute and the Rules provides for disclosure to the Defence first and for communication to the PTC afterwards; it is the decision of the Defence to make potentially exculpatory evidence public. Regarding disclosure of potentially exonerating evidence, the Prosecution informed that: it had disclosed certain documents to the Lubanga's Counsel; that it is filing these documents in the record; and that it has provided the Counsel with a first list detailing a number of documents and informed him that the Prosecution fundamentally disagrees with the interim system of disclosure and that it will not provide for inspection until the Court has finally decided on the meaning of inspection. It also states that the Counsel has not responded to this and that it will expand on this on 6 April.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-64_English.pdf

On 5 April 2006, PTC I authorized the Netherlands Forensic Institute (NFI) a time extension for the production of its report until 22 April 2006.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-137_English.pdf

On 5 April 2006, Judge Steiner was designated single judge of PTC I from 18 April to 21 May 2006.

See ICC website:

http://www.icc-cpi.int/library/cases/ICC-01-04-138_French.pdf

On 6 April 2006, the Prosecutor submitted confidential observations on disclosure with regards to the Lubanga case, in respond to the 23 March Decision. In a redacted version of the observations, the Prosecutor submitted that the 'interim system of disclosure' does not entirely reflect the law governing disclosure and expressed concerns in respect of the

effectiveness and practicability thereof. Regarding disclosure of potentially exculpatory evidence: the Prosecutor is not obliged to disclose at this stage all materials, but only the evidence relevant to the current charges in the arrest warrant, and then first and directly to the Defence. The Prosecutor also submitted that that ‘inspection of materials’ (between parties) is a separate process from disclosure and filing into the records. The Prosecutor raised two main reasons for restricted disclosure in the Lubanga case (prejudice of further or ongoing investigations and victims and witness protection) and submitted that any Prosecution filings at this stage of the proceedings should be filed confidentially. It was also submitted that disclosure via the Registry, and not directly to the Defence, would include risks and that the distinction between incriminatory and potentially exculpatory evidence would lead to practical problems.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-67_English.pdf
http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-67_English.pdf

On 6 April 2006, Mr Lubanga’s Counsel submitted observations on the disclosure system in response to the 23 March Decision. The Defence submitted that the ‘interim system of disclosure’ could encumber and delay the process since it places the Registrar as an intermediary for a communication system that should be done directly between the Parties. The Defence also requested all materials collected by competent authorities (including the file concerning the Mr. Lubanga Case and the entirety of the file regarding the DRC Situation), referring to the principle of ‘equality of arms’ and that it is important to verify if the file has not been artificially isolated from the larger context. The Defence also requested that the security measures taken in protection of victims and witnesses be lifted within a reasonable time before the Confirmation of Charges Hearing in order to enable the accused to examine the validity of the totality of the evidence and study the non redacted versions of the filings.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-68_French.pdf

On 6 April 2006, the Prosecutor submitted certain redacted documents, in response to the 20 and 22 March Decisions of PTC I regarding unsealing and reclassifying certain documents.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-69_English.pdf

On 7 April 2006, Mr. Lubanga’s Duty Counsel submitted observations concerning the status of applying victims (VPRS 1 – 6) in the Lubanga Case. The Defence requested the rejection of the applicants’ status as victims in this case and hence deny its participation, based on: the fact that the applicants never requested participation in the Lubanga case specifically; and that such intent can not be presumed from the request to participate as victims of the DRC Situation; in their application, the applicants have not demonstrated any specific interest in the Mr. Lubanga case or any crime allegedly committed by the UPC; and the applicants have made no reference in their application to crimes related to the charges against Mr. Lubanga in the Arrest Warrant.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-72_French.pdf

On 7 April 2006, the Prosecutor submitted confidential observations concerning the status of applying victims (VPRS 1 – 6) with regards to the Lubanga case. A redacted

version of the observations included the Prosecutor's request to deny the applicants participation in this case on the basis that none of the applicants have established relevant link between the alleged crimes forming the basis of the prosecution against Lubanga and the harm suffered by the applicants. The Prosecutor submitted that their participation would not be relevant to the current proceedings, but that they may not be precluded qualification as victims at a later stage should the case be extended to include the alleged crimes causing the harm suffered by them or if they could provide evidence that they suffered losses caused by the crimes currently forming basis of the prosecution.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-73_English.pdf

<http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-73-AnxA.pdf>

On 7 April 2006, PTC I decided to convene a hearing on disclosure, including restrictions and redactions of statements, with the Prosecution and the Defence on 24 April 2006. The Decision also ordered the attendance of the Registrar (or representative), the Court Management Section, Office of Public Counsel for the Defence and the VWU.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-74_English.pdf

On 10 April 2006, Mr Lubanga's Counsel requested the Court's admission of the Defence's appeal of 24 March and extension of time limit for filing a brief in support of this appeal to at least 21 days from the day of full and unredacted disclosure of the record. Further, that the Prosecutor must disclose his or her evidence from the moment the accused was arrested, and since this has not yet happened, it is unable to provide the grounds for its appeal.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-75_tEnglish.pdf

On 13 April 2006, the Prosecution and the Defence jointly requested PTC I to provide them with an agenda for the hearing on 14 April 2006 with a specific set of question and noted their common concerns regarding the interim system of disclosure.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-76_English.pdf

On 13 April 2006, the Head of the Division of Victims and Counsel informed Mr. Jean Flamme that Mr. Lubanga chose him as his Defence Counsel before the ICC. It was established that, in accordance with the Registrar's 31 March decision, the costs of his representation will be provisionally covered by the ICC in compliance with the Legal Aid programme. Mr. Flamme was reminded that the Defence Support Section will assist him on the practical matters pertaining to the performance of his duties.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-77_French.pdf

On 19 April, the Chamber requested the Prosecutor to propose how to redact the French version of the transcripts of the 17 March closed hearing, for the purpose of making it available to the Defence.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-78_English.pdf

On 19 April, the Chamber asked the Prosecutor to reply (by April 25 2006) to the Lubanga Defence's request for unrestricted access to entire record of the DRC situation.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-79_English.pdf

On 19 April 2006 the Chamber reclassified two documents as public.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-80_English.pdf

**On 19 April 2006, the Prosecutor filed a confidential “Submission of Potentially Exculpatory Material”. (not publicly available but referred to in 22 May Decision)

On 19 April 2006, PTC I published, in response to the joint request of 13 April 2006, the agenda for the hearing on 24 April 2006 regarding the disclosure of documents, and decided that the Registry should be prepared to address the hearing.

See ICC Website:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-82_English.pdf

On 21 April 2006, PTC I decided to reclassify certain documents in the DRC situation and instructed the Prosecution and other participating parties to follow the levels of confidentiality provided for in the Regulations of the Court (public, confidential or under seal).

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-140_English.pdf

On 21 April 2006, the Prosecutor filed 14 documents containing incriminating evidence and 10 documents containing potentially exculpatory evidence that had been disclosed to the Lubanga Defence. The lists of documents were attached, but confidential.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-87_English.pdf

On 24 April 2006, the Prosecutor applied for extraordinary review of the 31 March Decision of the PTC I. The Prosecution herewith: submitted that PTC I wrongly denied the appellate review of a matter which qualified for such review and denied the Appeal Chamber the review function it necessarily must possess; requested the Appeal Chamber to overturn the 31 March Decision, to order the PTC I to grant such leave, or to instruct PTC I to render a new determination.

The Prosecution stated that this extraordinary application was submitted since: these decisions by PTC I could severely limit the scope of the Appeals Chamber’s review function; that a decision on the scope of the Appeals Chamber should be rendered by the Appeals Chamber itself; and that the relevant standard for appeal was fully satisfied.

The Prosecutor based this on the following: the Chamber’s failure to observe the balance among all relevant interests at stake as enshrined in the Statute, including the serious potential consequences for fairness and efficiency; the adopted approach to victims participation is inconsistent with the terms of the Statute and broader than most national practice; PTC I expanded its authority beyond the terms of the Court’s basic documents, transformed significant aspects of pre-trial procedure and altered compromises reached at Rome; the decision to deny leave to appeal could nullify the procedural vehicle of Article

82(1)(d) and eliminate the Appeal Chamber's authority; and PTC I has given itself expansive regulatory functions as a means of precluding appellate review, leading to a situation where the highest judicial body retains no ability to review matters relating to fairness and efficiency (of a constitutional nature).

Regarding admissibility, the Prosecution recognized the lack of specific remedy for this kind of review and that this is a lacuna in the Statute which may be filled by the Appeals Chamber through resort to general principles of law derived from national laws of legal systems of the world. In its application, the Prosecution: elaborates on the scope and requirements of Article 21(1) (c) of the Statute; refers to jurisprudence of other international courts/tribunals; and compares with different legal systems. It concludes that it is an identifiable general principle of law that where a lower court has the authority to determine whether a matter should be brought before an appellate court, the latter also has the authority to examine whether the decision whether (or not) to move before the higher court was based on a correct interpretation of the lower court's authority.

The Prosecution submitted that balance must be struck between the risk of delays and the risk of allowing errors to be identified and remedied at an early stage and that PTC I made errors in interpretation and application of Article 82(1)(d). The Prosecution submits that this would lead to the Chamber having insulated itself from review by and scrutiny from the Appeals Chamber, even where decisions potentially affect the fairness and expeditiousness of the proceedings and where a final appeal would be too late to remedy this. It is submitted that the restricted right of interlocutory appeals is not to deny a party the ability to appeal but to regulate at what stage an appeal should be dealt to avoid delays, by ensuring that where errors are better dealt with as part of final appeal they are reserved for this stage. It is also submitted that by waiting with an appeal to the final stage, where an interlocutory appeal could promote efficiency during the investigative phase, delays could be created.

Regarding interpretation of the substantive elements of Article 82(1)(d), the Prosecution states that the Chamber's interpretation of fairness is too narrow and formalistic, and the Prosecution suggests that a leave for an interlocutory appeal should be granted where a decision affects either the fairness or expeditiousness of the proceedings. Further, the Prosecution submits that the Chamber's interpretation of how to determine that the fairness is affected sets too high a bar for applicants and that the Chamber should be able to grant leave to appeal without prejudice to the correctness of their decision, avoiding the Chamber's evaluation of its own decision or a burden on the applicant to provide 'concrete evidence' of the effect of the issue in question.

The Prosecutor also submitted that PTC had performed erroneously by, *inter alia*, deciding on the merits of the appeal, imposed requirements of actual evidence while failing to consider, or dismissed in cursory fashion, issues raised by the Prosecution,

On 24 April 2006, a hearing was suspended after the Prosecution had raised objections regarding certain agenda items being addressed in closed session. (Hearing not public but

referred to in summary of 26 April 2006: http://www.icc-cpi.int/library/cases/Publishing_on_26042006_1.pdf)

On 25 April 2006, the Prosecutor submitted a redacted version of the French transcripts of the 17 March meeting, as requested by PTC I on 19 April.
See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-84_English.pdf

On 26 April 2006, a hearing was reconvened (from 24 April) in closed session to adjust the agenda and to reconvene the meeting on 2 May *in camera*. The single judge reminded the Prosecution and the Defence that they had until 2 May to present their final observations on the matters before them. (Hearing not public but referred to in summary of 26 April 2006: http://www.icc-cpi.int/library/cases/Publishing_on_26042006_1.pdf)

On 26 April 2006, PTC I issued a summary of a decision convening an *in camera* meeting with the Prosecution on 2 May 2006.
http://www.icc-cpi.int/library/cases/Publishing_on_26042006_2.pdf

On 26 April 2006, PTC I issued a summary of Decisions on the Registrar's request for extension of his mandate in relation to the execution of the arrest warrant against Mr. Lubanga.
http://www.icc-cpi.int/library/cases/Publishing_on_26042006_1.pdf

**On 26 April 2006, the Prosecutor responded to the requests of the Defence: to have access to the Prosecution's case and situation file against Lubanga; and to have unrestricted access to entire Court record of the DRC situation. The Prosecution reiterated that regarding the Prosecution's case and situation file, neither Mr. Lubanga, nor his Defence, have a right to access to materials that go beyond the Prosecution's disclosure obligations. The Prosecution submitted that the Defence has access to the Court's Lubanga case file only, that substantial portions of the DRC situation file are publicly available and that the DRC situation file is not containing elements that are relevant to the Defence of Mr. Lubanga. Regarding the request to 'lift' redactions for the Defence, the Prosecution submitted that this should be rejected unless the Defence could identify particular facts justifying this and show that the underlying reasons for the redaction do no longer exist.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-86_English.pdf

On 26 April 2006, the Registrar submitted materials (the Statutes of the UPC) in the record that were presented at the closed hearing of 2 February 2006.
http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-19_tEnglish.pdf

On 27 April 2006, the Appeals Chamber decided that Judge Pikis will preside over the 24 April 2006 application of the Prosecutor for an Extraordinary Review.
http://www.icc-cpi.int/library/cases/ICC-01-04-142_English.pdf

On 1 May 2006, the Prosecution responded to the Brief of the Lubanga Defence of 10 April (in support of its Appeal of 27 March), questioning whether this Appeal should

been brought at all at this stage since Mr. Lubanga will be entitled to challenge jurisdiction and admissibility in due course. The Prosecution requested the Appeals Chamber to reject the request for an extension of time and the request to declare the Lubanga case inadmissible; and suggested that the Appeals Chamber re-direct the Defence to PTC I and to the available remedies available to litigate the admissibility of the case. With regards to time-limits, the Prosecution underlined the difference between notification, which triggers the relevant-limits, and access to the record which does not justify a right retroactive participation in already closed procedures. The Prosecution also submitted that at the timing of filing the Brief, the Defence had the documents based on which PTC I made its decision to issue the arrest warrant and that the possibilities of the Defence were not affected by the redactions. It was also submitted that the Defence should have developed arguments in this Brief demonstrating any error made by the Chamber to be corrected by the Appeal. The Prosecution also addressed the Brief in terms of admissibility, emphasising that no domestic proceedings have been initiated against Mr Lubanga regarding the crimes covered in the ICC arrest warrant and that the domestic custodial proceedings prior to the issuance of the arrest warrant is not a matter before this Court.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-89_English.pdf

On 1 May 2006, The Legal Representative for VPRS 1 to 6 filed a request to PTC I for an extension of the time limit to respond to the observations presented by the Prosecutor and the Defence with regards to the status of victims of VPRS 1 to 6 in the specific case against Mr Lubanga. According to the Legal Representative, the lack of security in DRC and the risk it represents to its inhabitants makes it impossible to collect the pertinent information to respond to both the Prosecutor and the Defence observations within the established time limit.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-90_French.pdf

On 2 May 2006, the Defence in the Lubanga case submitted observations relating to the system of disclosure in view of the upcoming Confirmation Hearing, in particular on the following issues: meaning of “within a reasonable time before the hearing” (raising the right to a public hearing, to be informed promptly and to have adequate time and facilitation to prepare from the first appearance in court) and “be informed” (about nature, cause and content, in original and in a language fully understood by the accused with full access). The Defence submitted: that the Prosecutor is obliged to disclose all materials which might be exculpatory in the broadest sense possible to ensure full equality and that the disclosure needs to be immediate and in its totality, both in the concerned situation and case. It is also argued that protective measures are to avoid publicity and should not be applied against the Defence itself, and that the Defence cannot challenge redacted evidence. The Defence submits that inspection is a way of disclosure and involves that a party actively discloses by providing copies to the other party. What has been disclosed should be communicated immediately to the PTC to enable the Chamber to judge about relevance and contents.

Regarding the Defence’s obligation to disclose, it was submitted that the obligation does not relate to ‘work-products’ or anything covered by legal professional privilege, witness

statements. Referring to the duty of the Prosecutor to prove his case and the lack of a duty of the accused to prove his defence, there is no obligation of the Defence to provide disclosure in advance and that the Defence should be able bring evidence up to the moment of the Confirmation Hearing itself. Regarding obligations to disclose intents to raise an alibi or a ground for excluding criminal responsibility the Defence concludes that no time-frame has been set.

The Defence also objected to the Prosecutor's request to have an 'ex parte hearing' to discuss protective measures since this would be contrary to the right of the accused to be present at his trial. Further, it was asked that any communication to the Defence should also be made to the accused in prison.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-92_English.pdf

On 2 May 2006, the Prosecutor submitted final observations regarding disclosure requesting PTC I to abandon the interim system and to adopt another system providing: direct disclosure between Parties; clear distinction between disclosure of incriminatory and potentially exculpatory evidence; and by refraining from creating a "dossier" system. The Prosecution submitted that the interim system is extra-statutory and violates a number of principles of law. The Prosecution expressed that it envisages serious consequences regarding scope and selection of information it would disclose to the PTC should this system become the final system of disclosure. Further, that the system hampers effective disclosure, which had already been demonstrated by the delays of documents reaching the Defence through the Registry.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-91_English.pdf

**On 2 May, a closed hearing was held to regarding disclosure and applications made by the OTP to the Chamber expressing that disclosure may prejudice further or ongoing investigations. (not publicly available but referred to in 19 May 2006 Decision)

**On 8 May 2006, the Defence filed a motion regarding the ex parte hearing of 2 May, requesting PTC I to, among other: order the Prosecution to file redacted versions of 19 and 24 April applications; order that redacted transcripts of the hearing are provided to the Defence; to reject the application of the Prosecution not to disclose identification of witnesses just prior to trial; and order all future motions on non-disclosure and protective measures/hearings be filed/held inter partes (motion not publicly available but referred to in 22 May Decision).

**On 8 May 2006, the Prosecution filed a confidential supplemental brief in respect of the 19 April filing. (not publicly available but referred to in the 22 May Decision.)

**On 8 May 2006, the Prosecution filed a confidential supplemental brief in respect of the 21 April filing. (not publicly available but referred to in the 22 May Decision.)

On 9 May 2006, in response to the request of 1 May 2006, PTC I authorised the Legal Representative of VPRS 1 to 6 to present its observations with regards to the participation

of VPRS 1 to 6 in the case against Thomas Lubanga within the extended delay of three weeks from the date of this decision.

See ICC Website: http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-96_French.pdf

On 9 May 2006, PTC I dealt with the transcripts of the *In Camera* meeting of 17 March and instructed the Registrar to proceed with the redactions of the French version, to classify them as confidential and to notify Mr Lubanga.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-97_English.pdf

**On 9 May 2006, three new applicants (a/0001/06 to a/0003/06) filed confidential applications for participation as victims in the situation of DRC. (applications not publicly available but referred to in 18 May Decision)

**On 9 May 2006, three new applicants (a/0001/06 to a/0003/06) filed confidential applications for participation as victims in the Lubanga case. (applications not publicly available but referred to in 18 May Decision)

**On 9 May 2006, the Prosecution filed in the Lubanga case 47 documents containing incriminating documents. The set of document had been disclosed to Lubanga's Counsel on 8 May 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-111_English.pdf

**On 9 May 2006, PTC I gave the legal representatives of victims VPRS 1 to VPRS 6 a 3 week deadline to present their observations as to the participation of the said victims in the Lubanga case. PTC I took this decision based on its previous decision to take into consideration VPRS 1 to VPRS 6's application to be granted victims status regarding every case deriving from the DRC investigation. The PTC recalls that the Lubanga case derives from the DRC investigation.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-96_French.pdf

On 12 May 2006, the Prosecution informed PTC I that it will not be in a position to disclose to the Defence the identities of certain witnesses on which the Prosecutor intends to rely at the confirmation hearing prior to the implementation of protective measures on Friday 28 July 2006. (Submission not publicly available but referred to in 24 May Decision).

On 15 May 2006, PTC I rejected the Defence request for full access to the entire file of the DRC investigation and decided the following: that the disclosure prior to hearing of materials to be used at the hearing (and other potentially exculpatory material) is to be shared directly between the Prosecution and the Defence; that the Prosecution shall inform the PTC about the evidence on which it intends to rely on at the confirmation hearing as soon as practicable by filing copies in the record of the Lubanga Case; that the Prosecution shall file a disclosure note signed also by the Defence including a list of items disclosed; that the Prosecution must disclose to the Defence all names and statements of witnesses it will rely on at the confirmation hearing (unless otherwise authorized); that inspection shall proceed as agreed by the parties and that the the parties,

upon request, shall provide to the other party electronic copies of materials subject to inspection and file an inspection report (including list of inspected items); that the Registry shall enable the Defence use of the necessary Court software and provide Mr. Lubanga with access to a computer in the Detention Unit; that filings of evidence before the confirmation hearing shall be confidential. PTC I also set a detailed timetable for disclosure in relation to the confirmation hearing, including status conferences on 24 May, 5 June and 16 June. The Chamber Considered (among other) that: disclosure before and during the confirmation hearing are governed by different provisions; disclosure will be conducted through two distinct procedures (“disclosure stricto sensu” and “inspection”); the scope of the confirmation hearing is limited to determining whether sufficient evidence exists to establish substantial grounds to believe that a person has committed the crimes charged. The Chamber also provided an annex explaining the considerations behind this ‘final system of disclosure’ (including internationally recognized human rights, fair trial standards, contextual interpretation of relevant provisions, effectiveness, protection of victims and witnesses, preservation of evidence, procedural rights of participating victims).

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-102_English.pdf

On 17 May 2006, PTC I rejected the Defence’s request to have access to the entire file of the situation in DRC, considering that: the Defence has access to the index of the record; he must identify the specific documents on the record and provide reasons for requesting access to them (but failed to do so).

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-103_English.pdf

On 17 May 2006, the Prosecutor submitted a supplemental filing containing the final proposed redactions of the closed meeting of 17 March 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-104_English.pdf

On 17 May 2006, the PTC I issued a decision correcting the ex parte annex containing the redactions of the in camera meeting of 17 March 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-106_English.pdf

On 18 May 2006, the PTC I appointed Mr. Joseph Tshimanga as ad hoc Counsel to represent and protect the general interests of the Defence during the application process for a/0001/06 to a/0003/06. The Chamber also ordered the Registrar to provide the Prosecution with an unredacted copy of the applications and the ad hoc counsel for the Defence with a redacted version protecting the applicants’ identities. The Prosecution and the ad hoc counsel were given 15 days to reply. The Chamber ordered all organs of the Court to abstain from any direct contact with the applicants, and only contact the legal representatives of the victims.

http://www.icc-cpi.int/library/cases/ICC-01-04-147_English.pdf

On 18 May 2006, the PTCI ordered that the Counsel for the Defence be provided with a redacted copy of the three applications of (a/0001/06 to a/0003/06) for participation in the Lubanga case. The Chamber ordered all organs of the Court to abstain from any direct

contact with the applicants, and only contact the legal representatives of the victims.
http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-107_English.pdf

On 19 May 2006, PTC I took a decision regarding general principles governing disclosure by the Prosecutor where such disclosure may prejudice further or ongoing investigations. All such applications shall be filed between the parties, with a detailed annex (possibly ex parte). PTC I considered the right of the accused to be present at all proceedings and the exceptions to this (due to protection of victims and witnesses and for matters of national security information). Proceedings in the absence of the Defence shall be permitted only when Prosecutor shows importance, necessity, proportionality (of prejudice to the Defence versus benefits derived). Ex parte proceedings could mean either that a party is aware of proceedings but not participating, or is even unaware. The Chamber concluded that the excluded party: must be informed of an application by the other party of restricted disclosure in terms of proceedings; be allowed to respond to the application; and be provided with any decision (maybe redacted) taken by the Chamber in ex parte proceedings. However, the documents filed and the transcripts remain ex parte. It was also considered that some type of publicity of all decisions and orders (also confidential/under seal) of the Chamber should be provided (either by providing the document or a general announcement of their existence). If based upon good cause, such publicity/notice can be postponed. Further: non-disclosure of identity of witnesses to be relied upon at the confirmation hearing can only be authorized exceptionally; redaction of potentially exculpatory excerpts from statements of witnesses upon which the Prosecution relies at the hearing can not be authorized; investigations in the case must be brought to an end by the time of the confirmation hearing, subject to exceptional circumstances; any redactions in the charging documents shall be temporary and the amended charging document must be provided to the Defence 15 days prior to the confirmation hearing.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-108_English.pdf

On 22 May 2006, the PTC I (referring to its Decisions of 15, 19 and (earlier on) 22 May regarding disclosure) rejected the Defence's requests (filed on 8 May) for the Prosecution to file redacted versions of its (confidential) filing of 19 April 2006 and its application for non-disclosure of 24 April 2006. The Chamber also rejected the Defence's request to be provided with a redacted transcript of the ex parte hearing convened on 2 May 2006 as well as the other requests in the 8 May Motion.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-119_English.pdf

On 22 May 2006, PTC I decided that the Prosecution should proceed according to the 19 May General Principles regarding non-disclosure of identity of witness and ordered to the Prosecution to inform the Chamber by 7 June of a certain outcome referred to in the 19 April filing.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-118_English.pdf

On 22 May 2006, PTC I issued typographical and other formal corrections to the Decision of 19 May 2006.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-115_English.pdf

On 22 May 2006, the Prosecution requested the re-scheduling of the confirmation hearing once certain protective measures are fully implemented. (Request not publicly available but referred to in 24 May Decision)

On 22 May 2006 the Prosecution filed a motion for reconsideration of a few aspects of the 15 May Decision on Disclosure, submitting that the Chamber has the jurisdiction to reconsider its own interlocutory decisions and orders. The Prosecution notes that this is not explicitly provided for in the Statute, the Prosecution bases its request on a general principle of international law and the inherent power of the Court. To establish this principle, the Prosecution undertakes a comparative law study, a survey of different international and national jurisprudence proving the existence of this principle. The Prosecution then requests that several points of the said ruling be reviewed by the PTCI; that translation of witness statements is for the Registry; that the OTP should store the originals of witness statements (not the Registry); and issues regarding the Draft Protocol on the Presentation of Evidence and identification of information.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-120_English.pdf

Annex 1:

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-120-Anx1_English.pdf

On 23 May 2006 Mr. Lubanga's Counsel requested Mr. Lubanga's release, based on a long argumentation submitting that Mr. Lubanga's detention in DRC was arbitrary and therefore illegal under Congolese law. Based on international and national precedents, the Defence argues that, because the previous detention was illegal and the Prosecutor was aware of it, Mr. Lubanga's detention in The Hague violates the Rome Statute and that therefore Mr. Lubanga should be released.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-121_French.pdf

On 23 May 2006 the Prosecutor requested the PTCI to allow him a page extension for his application (for reconsideration or appeal of the 19 May Decision) to be filed the next day.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-122_English.pdf

On 23 May 2006 the PTCI rejected the Prosecutions motion for reconsideration filed on 22 May 2006. The PTCI adduces that such motion is not provided for in the Rome Statute or in the Rules of Procedure and Evidence and refers to the PTC II Decision of 28 October 2005.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-123_English.pdf

On 23 May 2006, the PTCI accepted the Prosecution's submission of the same day to extend the page limit for his application to be filed the next day.

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-124_English.pdf

On 24 May 2006, a closed status conference was held.

On 24 May 2006, the Prosecutor submitted a motion for reconsideration and/or a leave to the appeal in the Lubanga case regarding issues of disclosure, in particular to determine the Chamber's intention regarding strict enforcement of the general principles identified in the 19 May Decision. The Prosecution requested a confirmation that the general principles provide preliminary guidance and reconsideration of the principles. If the principles will be reconsidered or just providing preliminary guidance, the OTP needs not to seek appeal. If they amount to already enforceable legal standards, then the OTP submits that they can have serious consequences for fairness and efficiency of the proceedings and that the OTP is therefore entitled to seek leave to appeal. The Prosecution specifies five aspects:

- how and how far the decision establishes 'general principles' in advance of any controversy, and thereby pre-deciding conflicts not yet arisen, amounting to abstract and hypothetical interpretation or advisory opinions;
- the problematic adoption of a strong presumption that the names and statements of a witness upon which the OTP intends to rely at the confirmation hearing must be disclosed;
- the apparent and erroneous ruling that the investigations must end when the confirmation hearing starts, risking to impair trial efficiency and reward initially uncooperative governments;
- the unduly narrow ruling that Rule 81(2) on non-disclosure cannot be used after the time of confirmation will impair the OTP's ability to continue to investigate and carry serious practical consequences for cooperation and investigations;
- and that the ruling that an ex parte filing can never be made without giving contemporaneous notice of the existence of the filing to the other party is not grounded in the Statute or the Rules and erroneously forecloses that in rare instances such an application would be confidential.

The Prosecutor argued that if these general principles are to constitute binding rules, the Chamber has exceeded its powers and engaged in quasi-legislative functions. Further, that the rulings in this decision would significantly affect fairness and expeditiousness of the proceedings and that immediate resolution by the Appeals Chamber will materially advance the proceedings

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-125_English.pdf

On 24 May 2006, noting, among other, the Prosecution's submission of 12 May, PTC I decided to postpone the confirmation hearing in the Lubanga case until 28 September 2006 and outlined the timetable regarding disclosure, including status conferences (23 June, 14 July, 17 August, 4 September and 19 September).

http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-126_English.pdf

On 6 June 2006 the Prosecution submitted observations regarding a/0001/06 to a/0003/06's applications to participate in the DRC situation. Stating that before an arrest warrant is issued, the victims right to participate in the proceedings is limited to cases where the Prosecution decides not to open an investigation or not to prosecute. In the DRC situation, the investigation is ongoing, therefore, the victims' participation is limited to cases. The Prosecution bases his argument on the fact that the victims' "judicially recognizable personal interest" must relate to specific matters. The mere fact that a

person is the victims of a crime under the jurisdiction of the Court does not satisfy the test of the “judicially recognizable personal interest”. Moreover, the Prosecution finds that the victims’ participation during the investigation is not appropriate as it could jeopardize the integrity and objectivity of the investigations and the investigations need to be kept confidential to avoid putting the victims, witnesses and evidence at risk. Based on the above arguments, the Prosecutor requests that the decision on the victims’ applications be suspended until the Appeals Chamber decides on the Prosecutor’s extraordinary review motion or, in the alternative, that the applications be rejected.

http://www.icc-cpi.int/library/cases/ICC-01-04-151_English.pdf

Prosecution’s observations on the applications for participation of applicants a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06, a/0072/06 to a/0080/06 and a/0105/06

On 30 November 2006, the Prosecution filed its observations with respect to 65 applications for victims' participation. The Prosecution requested that PTC I deny the applications during the investigative phase due to their belief that participation may jeopardize the integrity and objectivity of the investigations; impact the Prosecutor’s investigative functions; threaten the confidentiality of information; undermine the Prosecutor’s defined investigative strategies; and lead to the presumption that participation will continue in later stages of the proceedings. In the alternative, the Prosecution submitted that participation should be allowed except for four applications with insufficient information to determine whether the harm allegedly suffered fell within the Court’s jurisdiction.

http://www.icc-cpi.int/library/cases/ICC-01-04-315_English.pdf

Mémoire du Représentant légal de VPRS 2, 3 et 6 sur la demande du procureur de re-classifier en documents publics les documents ICC-01/04-214-Conf-Exp, en date du 01/09/2006 et ICC-01/04-230-Conf-Exp, en date du 25/09/2006

On 24 October 2006, the legal representative of victims VPRS 2, 3 and 6, aligning itself with the previous request of the Prosecutor, requested PTC I to reclassify documents from 1 and 25 September 2006 as public.

http://www.icc-cpi.int/library/cases/ICC-01-04-312_French.pdf

Request submitted pursuant to rule 103(1) of the rules of procedure and evidence for leave to participate as amicus curiae

On 10 November 2006, counsel for the Women's Initiatives for Gender Justice applied for leave to submit observations as amicus curiae in the DRC situation due to their concern at the narrow scope of crimes being investigated in the investigations, despite their belief that there is substantial and available evidence regarding sexualized violence and gender-based crimes.

http://www.icc-cpi.int/library/cases/ICC-01-04-313_English.pdf

http://www.icc-cpi.int/library/cases/ICC-01-04-313-Anx1_English.pdf

Annexes 1-2 to confidential “observations du conseil ad hoc de la défense sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l’enquête en

République Démocratique »

On 28 November 2006, the Defence filed copies of the “Code de la Familla, Loi no. 87-0101 du 1 août 1987” and “Bulletin des Arrêts de la Cour Suprême de Justice, Années 1980 à 1984”.

http://www.icc-cpi.int/library/cases/ICC-01-04-314-Anx1_French.pdf

http://www.icc-cpi.int/library/cases/ICC-01-04-314-Anx2_French.pdf

Prosecution’s response Request submitted pursuant to rule 103(1) of the rules of procedure and evidence for leave to participate as amicus curiae in the situation in the DRC

On 5 December 2006, the Prosecution asked that PTC I reject the Women's Initiatives for Gender Justice's request for leave to participate as amicus curiae in the Democratic Republic of the Congo (DRC) situation. The Prosecution submits that the application fails to meet the legal requirements under Rule 103(1), that there is neither a factual nor legal basis for granting the application, and that the PTC lacks statutory authority to grant the requested relief. Further, they submit that to allow the request would result in innumerable entities coming before the Court.

http://www.icc-cpi.int/library/cases/ICC-01-04-316_English.pdf

Décision autorisant le dépôt d’observations sur les demandes de participation à la procédure

On 23 May 2007, the Single Judge of PTC I decided that for the situation in the Democratic Republic of Congo, a copy of the Victims’ applications for participation is to be provided to the Prosecution and the Office of Public Counsel for the Defence and granted them until 25 June 2007 to submit observations thereto. Furthermore, the Judge ordered that contact with the applicants by all organs of the Court is to be made only when necessary, and solely through the legal representatives of the Victims.

http://www.icc-cpi.int/library/cases/ICC-01-04-329_French.pdf

Demande du représentant légal des victimes a/0231/06 to a/0233/06 and a/0242/06 to a/0250/06

On 4 June 2007, the Legal Representative of victims a/0231/06 to a/0233/06 and a/0242/06 to a/0250/06, urgently requested PTC I, in connection to its decision of 23 May 2007, to order the Prosecution and the OPCD to respect the confidentiality of the applications and therefore to refer to the applicants in their submissions solely with the numbers given by the VPRS to the applications and to refrain from any observations in public filings that could lead to the identification of the applicants. Furthermore, the Legal Representative requested PTC I to be heard on matters related to the protection and safety of the applicants before any decision potentially affecting their safety and security is taken.

http://www.icc-cpi.int/library/cases/ICC-01-04-330_French.pdf

Prosecution's observations on the « Demande du représentant légal des victimes a/0231/06 to a/0233/06 and a/0242/06 to a/0250/06 »

On 6 June 2007, the Prosecution filed before PTC I observations to the 4 June 2007 request of the Legal Representative of victims a/0231/06 to a/0233/06 and a/0242/06 to a/0250/06 and stated that the Prosecution consistently took all necessary measures to maintain the confidentiality of the applicants in order to protect their security. Furthermore, the Prosecution supported the request made by the Legal Representative asking to be heard on matters related to the protection and safety of the applicants prior to any decision being taken that could potentially affect their security.

http://www.icc-cpi.int/library/cases/ICC-01-04-334_English.pdf

Demande du représentant légal des victimes a/0107/06 à a/109/06, a/0128/06 à a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0203/06, a/0209/06 à a/0214/06, a/0220/06, a/0222/06, a/0224/06 à a/0230/06 et a/0234/06 à a/0241/06

On 5 June 2007, the Legal Representative of victims a/0107/06 to a/109/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0203/06, a/0209/06 to a/0214/06, a/0220/06, a/0222/06, a/0224/06 to a/0230/06 et a/0234/06 to a/0241/06 requested PTC I to order the Prosecution and the OPCD to respect the confidentiality of the applications and to refer to the applicants only by the number assigned to them by the VPRS, as well as to refrain to publicly refer to any information that could lead their identification. Furthermore, the Legal Representative requested that his/her identity be kept confidential and redacted from all public documents at this stage of the proceedings. Finally, the Legal Representative requested the Chamber to be heard on any issue regarding the protection and security of the applicants before any decision that could affect the security and protection of the applicants is taken.

http://www.icc-cpi.int/library/cases/ICC-01-04-332_French.pdf

Prosecution's observations on the “Demande du représentant légal des victimes a/0107/06 à a/0109/06, a/0128/06 à a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06 à a/0214/06, a/0220/06 à/0222/06, a/0224/06 à a/0230/06 et a/0234/06 à a/0241/06 «

On 11 June 2007, the Prosecutor filed observations, stating that the Prosecution consistently took all necessary measures, and will continue to take such measures, to maintain the confidentiality of the applicants for participation as victims, in order to protect their identity and security. Furthermore, the Prosecutor noted that it did not oppose the request of the Legal Representative that his/her name remain confidential at this stage. Additionally, the Prosecutor supports the request of the Legal Representative to be heard on matters related to the safety of the applicants before decisions are made that could affect their security.

http://www.icc-cpi.int/library/cases/ICC-01-04-335_English.pdf

Response to ‘Demande du représentant légal des victimes a/0231/06 à a/0233/06 et a/0242/06 à a/0250/06, ICC-01/04-330’

On 12 June 2007, the Principal Counsel of the OPCD filed a response stating that it was bound by the same obligations of confidentiality that apply to other organs of the ICC, and therefore protective measures imposed by the Court should not discriminate between that of the Prosecution and the OPCD. Furthermore, he added that in the interest of transparency only information that could endanger the security of applicants should be made confidential. The OPCD submitted that a ‘scheme of assistance’ devised by the VWU could be used to address confidentiality concerns of the applicants. In addition, the OPCD requested that the names of counsel appearing before the court should be a matter of public record and therefore called for the names of legal representatives not to be redacted. The OPCD thus requested that the Single Judge: allow the OPCD to file a confidential version of its observations, permit the OPCD to file a public redacted version vetted by VWU or the Chamber; order the legal representatives to re-file their request for protective measures on a confidential basis; and permit the OPCD to file supplementary observations on the arguments provided by the legal representatives for the redaction of their names.

http://www.icc-cpi.int/library/cases/ICC-01-04-336_English.pdf

Request for extension of the page limit

On 13 June 2007, the Principal Counsel of the OPCD requested permission from the Single Judge to exceed the limit of 20 pages in its response (to applications to participate as victims) to 57 pages. It cited the high amount of applications, number of pages, number of subgroups and experience from such responses in the Sudan situation, as the reasons that the already-established page limit would not be enough for an adequate response.

http://www.icc-cpi.int/library/cases/ICC-01-04-337_English.pdf

Décision relative aux questions de confidentialité et à la requête aux fins d’argumentation du nombre de pages autorisé

On 19 June 2007, the Single Judge of PTC I invited the Prosecution and the Office of Public Counsel for the Defence (OPCD) to refer to the applicants for victims’ status only by the numbers assigned to them by the Victims’ Participation and Reparation Section. Furthermore, the Single Judge established that whether or not the views of the Legal Representatives of victims on issues of protection and security of the applicants will be heard, will be decided on a case by case basis. The Single Judge partially granted OPCD request of 13 June 2007 by allowing an extension of up to 40 pages and ordered the OPCD to submit only confidential version of its observations, unless the Chamber decides otherwise. Finally, the Single Judge rejected OPCD request of 12 June 2007 to

submit observations to the Legal Representative request of 5 June 2007 to eliminate any public reference to his/her name and accordingly ordered that his/her identity be kept confidential at this stage of the proceedings.

http://www.icc-cpi.int/library/cases/ICC-01-04-342_French.pdf

Enregistrement de la procuration donnée par Me Bapita au Conseil principal au Bureau du Conseil public pour les victimes

On 21 June 2007, the Registry filed before PTC I a letter from the Legal Representative of victims a/0231/06 to a/0233/06 and a/0242/06 to a/0250/06 of 19 June 2007 authorising the Office of Public Counsel for Victims (OPCV) to, as of 20 June 2007, have access to all information concerning the applicants and requesting that all public and/or confidential documents of the DRC Situation and the Case against Mr. Lubanga of which she has been notified of, should be also notified to the OPCV..

http://www.icc-cpi.int/library/cases/ICC-01-04-343_French.pdf

http://www.icc-cpi.int/library/cases/ICC-01-04-343-Anx1_French.pdf

Decision replacing a judge in Pre-Trial Chamber I

On 22 June 2007, the Presidency decided to temporarily attach Judge Anita Usacka, who was assigned to the Trial Division, to the Pre Trial Division until further notice; and to assign Judge Usacka to Pre Trial Chamber I to replace Judge Jorda, with effect from 25 June 2007.

http://www.icc-cpi.int/library/cases/ICC-01-04-351_English.pdf

Prosecution's Reply under Rule 89(1) to the Applications for Participation of Applicants a/0106/06 to a/0110/06, a/0128/06 to a/0188/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06 and a/0224/06 to a/0250/06

On 25 June 2007, the Prosecution requested that the Single Judge deny the applications for participation in the DRC situation. The Prosecution noted that the large majority of applicants (between 16 October 2006 and 25 April 2007) in the DRC situation to participate as victims during all stages of both the 'situation' and the 'case'. The Prosecution noted as initial observations that victims' procedural rights, whilst a highly commendable development of international law and a meaningful way for victims to express their views and concerns, should be implemented in the most efficient and representational way without hindering the personal safety and well-being of victims. It was also noted that the jurisprudence of victim participation is unsettled.

In regards to the legal qualification of a 'victim' and the right to participate, the Prosecutor submitted that two stages of requirements were to be met. Firstly that the victim satisfied the criteria set out in Rule 85 and secondly, the conditions for participation in Article 68(3). Particularly, he noted that the Single Judge in determining

the application must be primarily satisfied that the ‘personal interests’ of the victim result in the victim being directly affected by the proceedings of which he or she is applying to participate. The Prosecutor, drawing on previous experiences, maintained that the applications for participation should be denied due to the lack of fulfilment of the personal interest and appropriateness requirement of Article 68(3), which particularly arose due to the breadth of the conflicts compared to the limited focus of the Court’s prosecutions. Furthermore, the Prosecutor submitted that an investigation does not form part of the ‘proceedings’ under Article 68(3) and thus this would also disallow victims being granted the right to participate in the situation.

In terms of consequences for the Proceedings, the Prosecutor looked at three issues: He emphasised that to allow the participation of any person who claims to have suffered as a result of a crime that falls within the jurisdiction of the Court, would negatively impact on the activities and limited resources of the Court and Registry which aim to effectuate victim participation. Secondly, by requesting the VWU to extend its protective efforts through an increased number of victims the Prosecutor noted that this would also negatively impact on its resources, and thus the activities of the VWU should remain focused on persons already approached. Finally, he reiterated concern for the integrity of the investigation and the need to diminish perceptions that investigations are not objective.

http://www.icc-cpi.int/library/cases/ICC-01-04-346_English.pdf

Décision portant désignation d’un juge unique

On 27 June 2007, PTC I decided to maintain its decision of 10 May 2007 which designated Judge Sylvia Steiner as single judge until otherwise decided and to appoint Judge Akua Kuenyehia as single judge of PTC I responsible for the Situation in the DRC and any related case from 23 July 2007 to 10 August 2007.

http://www.icc-cpi.int/library/cases/ICC-01-04-353_French.pdf

Décision autorisant le dépôt d’observations sur les demandes de participation à la procédure

On 17 July 2007, the Single Judge of PTC I ordered the Registrar to provide as soon as possible to the Prosecution and the Office for Public Counsel for the Defence (OPCD) with a copy of the applications to participate in the proceedings as victims a/0163/06 to a/0187/06 and of the report submitted to the Chamber by the Registrar on 3 July 2007. Furthermore, the Judge, in order to protect the confidentiality, security and safety of the applicants, ordered all of the organs of the Court not to contact the applicants directly but only through their legal representatives, the Victims Participation and Reparation Section (VPRS) for those applicants who have no legal representatives and, if necessary, through the Victims and Witnesses Unit. Also, the Judge invited the Prosecution and the OPCD to respect the confidential nature of the applications and to refer to the applicants only by the number assigned to them by the VPRS. Finally, the Single Judge decided to grant the

Prosecution and the OPCD the possibility to present, no later than 30 days from the notification of the applications and the report submitted to the Chamber by the Registrar, observations to the applications and the possibility of granting the applicants the status of victims authorised to participate in the proceedings at the investigation stage.

http://www.icc-cpi.int/library/cases/ICC-01-04-358_French.pdf

Demande du représentant légal des victimes [EXPURGÉ]

On 20 July 2007, the Legal Representative, requested the Single Judge of PTC I to demand the OPCD to disregard the non redacted copies of the applications of participation already given as well as any other information which could provide clues regarding their identity, to direct the Registry to provide the OCPD with redacted versions instead and to ensure that all the applications of participation from the victims under the representation of the Legal Representative will be redacted before transmitted. Furthermore, the Legal Representative requested the Single Judge to order that the report of the Registrar should be notified to the Prosecution and to the OPCD in a redacted way in order to not endanger the safety of either the applicants or the Legal Representative and to transmit a copy of the report to the Legal Representative. Also, the Legal Representative requested the Single Judge to ensure that his/her the identity stays confidential and/or redacted from all public documents. Finally, the Legal Representative requested to be heard by the Chamber on all issues concerning the protection and the safety of the applicants prior to the issuance of any decision that could affect their safety and protection.

Both the identity of the Legal Representative and the victims under his/her representation have been redacted in the document.

http://www.icc-cpi.int/library/cases/ICC-01-04-361_French.pdf

Decision suspending the time limit for the submission of observations on applications for participation in the proceedings

On 31 July 2007, the Single Judge of PTC I decided to temporarily suspend the deadline for the filing of observations by the Prosecution and the Office of Public Counsel for the Defence on the applications for participation and victim status in the proceedings given the Single Judge's decision of 19 July 2007 to temporarily suspend the transmission of the Report of the Registry on the requests of participation.

http://www.icc-cpi.int/library/cases/ICC-01-04-368_English.pdf

Decision on the Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence

On 17 August 2007, PTC I decided to reject the request submitted on 10 November 2006 by the NGO “Women’s Initiatives for Gender Justice”. The submission of Women’s Initiatives presented two points for which it requested the Chamber to grant leave to submit observations as *amicus curiae*. The first issue concerned the role of the Pre-Trial Chamber in supervising prosecutorial discretion when the Prosecutor decides not to prosecute a particular person or not to prosecute a person for particular crimes; the second issue was related to the criteria for determining victim status. The Chamber deemed both issues as not appropriate for observations at the present stage of the proceedings. Regarding the first issue the Chamber stated that investigations are still ongoing and that the Prosecutor had not yet taken any decision not to investigate or prosecute. On second issue, the Chamber argued that the Women’s Initiatives is not acting as legal representative of victims admitted to participate in the proceedings at the investigation stage of the Situation in the DRC.

http://www.icc-cpi.int/library/cases/ICC-01-04-373_English.pdf

Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation

On 17 August 2007, PTC I rendered a decision of principle clarifying the process by which applications for victim status in a situation are assessed by the Chamber. The decision set out, for instance, when to consider an application as complete, what to recognize as proof of identity and how to process incomplete applications. On redactions, PTC I confirmed that, at the situation stage, un-redacted copies of applications shall continue to be provided to the Office of Public Counsel for the Defence (OPCD). Since the scope of redaction should not exceed what is strictly necessary, the redaction of confidential information concerning intermediaries assisting the Court with victims’ applications was not granted. Furthermore, PTC I decided that the Registry’s report on applications should not be transmitted to the participants, as the report’s function is to assist the chamber in issuing a decision. Also, it was stated that the Office of Public Counsel for Victims should provide support and assistance to un-represented applicants until such a time as the applicant has been granted victim status and a legal representative has been chosen. In addition, PTC I ruled that anonymity of the legal representative of victims is incompatible with his functions and affects the expeditiousness of the proceedings. Finally, the Prosecution and the OPCD were notified that observations should be filed within 30 days following notification of the applications for participation.

http://www.icc-cpi.int/library/cases/ICC-01-04-374_English.pdf

Decision on the time limit to submit observations on applications a/0163/06 to a/0187/06 for participation as victims

On 22 August 2007, the Single Judge decided to re-establish the time limit originally suspended by the Single Judge’s Decision of 31 July 2007 and thereby granted the Prosecution and OPCD 30 days to submit observations on applications a/0163/06 to a/0187/06 and further decided that the time limit for the filing of these observations

would commence from the notification of the information ordered below. The Single Judge ordered the Registry to transmit to the Prosecution and OPCD, in 5 days, all further information received concerning applications a/0163/06; a/0165/06; a/0166/06; a/0170/06; a/0176/06; a/0177/06; a/0179/06; a/0181/06; a/0182/06; a/0183/06; a/0186/06 and a/0187/06.

http://www.icc-cpi.int/library/cases/ICC-01-04-375_English.pdf

Order concerning the transmission of further information on victims' applications

On 24 August 2007, the Single Judge of PTC I ordered the Victims Participation and Reparation Section to extract from relevant reports on victims' applications all further information related to 33 specific applications and to transmit them to the OPCD and the Prosecution within ten days. The Single Judge further decided to give the Prosecution and OPCD ten days to submit observations on the 33 applications.

http://www.icc-cpi.int/library/cases/ICC-01-04-376_English.pdf

Request for Single Judge to order the Prosecutor to disclose exculpatory materials

On 28 August 2007, with regards to the applications to be recognised as victims filed on 17 July 2007, the OPCD requested PTC I to order the Prosecution to search for and disclose to the OPCD any exculpatory material or information which would suggest that the intensity of hostilities in the villages did not meet the requisite threshold for an armed conflict; that the mentioned villages may have been inhabited by persons affiliated with armed groups; that the persons mentioned in the applications may have had links to armed groups or may have committed criminal acts; or any other information which may impact on the credibility of the applicants. In the alternative the OPCD requested PTC I to dismiss the applications to participate in the situation phase in light of the prejudice to the rights of the Defence and the principle of equality of arms.

http://www.icc-cpi.int/library/cases/ICC-01-04-378_English.pdf

Request for access to previous filings and an extension of the page limit and time limit

On 29 August 2007, OPCD requested PTC I to grant access to all filings concerning the applications on which the VPRS will submit further information following the Chamber's decision of 24 August 2007. In this regard, the OPCD pointed out its representative function in continuance of the mandate of the former ad hoc Counsel for the Defence. Given the need to entirely review those applications, the OPCD requested an extension of the deadline to submit observations on the applications from ten to thirty days which should not begin to run once the Chamber has decided on OPCD's aforementioned request for access to confidential and ex parte filings. Finally, OPCD also requested an extension of the page limit to forty pages.

http://www.icc-cpi.int/library/cases/ICC-01-04-379_English.pdf

Enregistrement d'un courrier du représentant légal retirant sa demande d'anonymat et d'autres documents relatifs à la représentation légale de demandeurs aux fins de participation

On 30 August 2007, the Registry filed in the records of the Situation in the DRC three documents concerning a number of applications to participate as victims which were assisted by a certain NGO. The registered documents include: a letter from Mr. Keta, legal representative of victims a/0128/06 to a/0187/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06 to a/0214/06, a/0220/06 to a/0222/06, a/0224/06 to a/0230/06 and a/0234/06 to a/0241/06, withdrawing his request for anonymity filed on 5 June 2007; a letter from the Registry designating the OPCV as legal representative of certain applicants without legal representation; and an up to date list summarising of the status of the legal representation of the applicants.

http://www.icc-cpi.int/library/cases/ICC-01-04-380_French.pdf

Request for the Single Judge to order the production of relevant supporting documentation pursuant to Regulation 86(2)(e)

On 31 August 2007, with regards to the applications to be filed on 17 July 2007, the OPCD requested from the PTC I the disclosure of any information regarding the applicants' possible pre-existing medical conditions, their possible criminal background, any possible familiar/marital relationship with other applicants and any proceedings or complaints filed before other human rights mechanisms. Furthermore, in considering the obligation of the interpreters and witnesses to maintain impartial, the OPCD requested access to information concerning any possible relationship between them and any applicant, whether they have submitted any application to participate as victims before the ICC, and what kind of qualifications they have achieved prior to their employment with the Court.

http://www.icc-cpi.int/library/cases/ICC-01-04-382_English.pdf

Order on the request by the OPCD for access to previous filings and for extension of page limit and time limit

On 31 August 2007, PTC I ordered the OPCD to clarify its 29 August 2007 request in particular with regards to the number of applications to which the OPCD deemed itself authorised to file observations. Furthermore; the Chamber ordered the VPRS to specify the date on which the Registry received further information regarding the applications. PTC I also invited the Prosecution to submit within five days its observations on the request, in particular concerning the access sought by the OPCD to confidential and ex parte filings submitted by the Prosecution. Finally, the Chamber suspended the time limit for the Prosecution and the OPCD for the filing of observations on the applications until otherwise decided.

http://www.icc-cpi.int/library/cases/ICC-01-04-383_English.pdf

Response to order on the request by the OPCD for access to previous filings and for extension of page and time limit

On 4 September 2007, the OPCD requested the Single Judge of PTC I to order the Registry to transmit any court filings pertaining to the victims' applications subject of PTC I's order of 24 August 2007. OPCD further requested to suspend the deadline for filing observations pending a judicial determination as to the OPCD's request for access to court filings. OPCD finally requested confirmation as to whether any additional information was provided to the Chamber with respect to applications a/0027/06 and a/0144/06.

http://www.icc-cpi.int/library/cases/ICC-01-04-386_English.pdf

Prosecution's observations on the request by the OPCD for access to previous filings and for extension of page and time limits

On 5 September 2007, the Prosecution submitted observations on the OPCD request of 29 August 2007 for access to previous filings and for extension of page and time limits. In the view of the Prosecution, the OPCD request for access to prosecution filings could only be accommodated with respect to the four applications a/0009/06, a/0018/06, a/0026/06 and a/0038/06. The Prosecution did not oppose to the remaining OPCD requests contained in the 29 August request. Furthermore, the Prosecution requested PTC I to be provided with a copy of confidential annexes filed by VPRS on 31 August 2007 to the Legal Representative and the OPCV only.

http://www.icc-cpi.int/library/cases/ICC-01-04-387_English.pdf

Decision on the request by the OPCD for access to previous filings

On 11 September 2007, the Single Judge of PTC I granted the OPCD access to certain confidential filings concerning applications a/0009/06, a/0018/06, a/0026/06 and a/0038/06.

Furthermore, the Single Judge ordered the Prosecution to file, within 3 days, a formatted redacted version of its *ex parte* Annex so that only information regarding application a/0009/06, a/0018/06, a/0026/06 and a/0038/06 is disclosed to the OPCD. The Single Judge also ordered the Registry to provide the OPCD, within 3 days, with a redacted version of the confidential observations submitted by the former *ad hoc* Counsel for the Defence on 28 November 2006. Certain documents were reclassified as confidential documents.

Moreover, the OPCD and the Prosecution were invited to submit their observations on applications a/0188/06 and a/0222/06 for which VPRS received and transmitted further information on 3 September 2007. Finally, the Judge gave the OPCD and the

Prosecution until 25 September 2007 to submit observations to the applications in accordance with PTC I order of 24 August 2007.

http://www.icc-cpi.int/library/cases/ICC-01-04-389_English.pdf

Request for Clarification

On 12 September 2007, the OPCD requested the Single Judge to clarify the scope of some statements in its 11 September 2007 decision. In particular, regarding the scope of the OPCD mandate and the correlation between the respective mandates of the *ad hoc* counsel for the Defence and the OPCD. Furthermore, the OPCD sought clarification on the Judge's ruling establishing that only the Chamber can decide whether to allow parties to disclose confidential information regarding victims and witnesses and that the OPCD should abstain from directly contacting *ad hoc* counsel for the Defence. Finally, the OPCD refuted the allegations made by the Prosecution and argued that there has not been any form of communication with the *ad hoc* Counsel regarding the Chamber's order of 24 August 2007 and submitted that the Prosecution should desist from making accusations in public filings as they could impact on the integrity of proceedings.

http://www.icc-cpi.int/library/cases/ICC-01-04-390_English.pdf

Prosecution's submission of a formatted and redacted version of its confidential *ex parte* Annex ICC-01/04-315-Conf-Exp-Anx to the OPCD pursuant to the order of the Single Judge in the "Decision on the request by the OPCD for access to previous filings"

On 13 September 2007, pursuant to PTC I decision of 11 September 2007, the Prosecution submitted to the OPCD a formatted and redacted version of its confidential *ex parte* annex ICC-01/04-315-Conf-Exp-Anx

http://www.icc-cpi.int/library/cases/ICC-01-04-391_English.pdf

Demande de BCPV d'accéder à certains documents concernant les demandeurs a/0026/06, a/0145/06, a/0203/06 ET a/0220/06

On 14 September 2007, in relation to PTC I decision of 24 August 2007, the OPCV requested the Chamber to be notified with documents concerning further information on the applications to participate of victims a/0026/06, a/0145/06, a/0203/06 and a/0220/06 as submitted by the Registry on 3 September 2007. Furthermore the part concerning victim a/0026/06 of the submission made by the Prosecution on 13 September 2007 should also be notified.

http://www.icc-cpi.int/library/cases/ICC-01-04-392_French.pdf

Order on the request by the OPCV for access to certain documents regarding applications a/0026/06, a/0145/06, a/0203/06 and a/0220/06

On 17 September 2007, the Single Judge of PTC 1 ordered the Registry to notify OPCV by 19 September 2007 on the further information regarding applications a/0026/06, a/0145/06, a/0203/06 and a/0220/06 which was submitted by VPRS on 3 September 2007. PTC 1 further ordered the Registry to notify OPCV of parts of a document containing observations of the Prosecution on applicant a/0026/06.

http://www.icc-cpi.int/library/cases/ICC-01-04-395_English.pdf

Decision on the Requests of the Legal Representative for Victims VPRS 1 to VPRS 6 regarding “Prosecutor’s Information on further Investigation”

On 26 September 2007, PTC I rejected the requests made by the legal representatives of the victims VPRS 1 to VPRS 6 to review the Prosecutor’s decision of 28 June 2006 to temporarily suspend the investigation in the situation in the DRC. The Chamber considered that the Prosecutor’s decision is temporary due to the security conditions in the DRC and is not equivalent to a tacit decision not to prosecute. PTC I also deemed it not necessary to provide for the preservation of evidence considering that there is no indication that the Prosecution has not taken the necessary measures to ensure it.

http://www.icc-cpi.int/library/cases/ICC-01-04-399_English.pdf

CICC’S POLICY ON THE REFERRAL AND PROSECUTION OF SITUATIONS BEFORE THE ICC:

The Coalition for the ICC is not an organ of the Court. The CICC is an independent NGO movement dedicated to the establishment of the International Criminal Court as a fair, effective, and independent international organization. The Coalition will continue to provide the most up-to-date information about the ICC and to help coordinate global action to effectively implement the Rome Statute of the ICC. The Coalition will also endeavor to respond to basic queries and to raise awareness about the ICC’s trigger mechanisms and procedures, as they develop. The Coalition as a whole, and its secretariat, do not endorse or promote specific investigations or prosecutions or take a position on situations before the ICC. However, individual CICC members may endorse referrals, provide legal and other support on investigations, or develop partnerships with local and other organizations in the course of their efforts.

Communications to the ICC can be sent to:

ICC
P.O. Box 19519
2500 CM The Hague
The Netherlands

