ROLE OF THE VICTIMS IN THE HEARING LEADING TO THE CONFIRMATION OF CHARGES IN THE LUBANGA CASE BEFORE THE INTERNATIONAL CRIMINAL COURT

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“Mr President, Your Honors, thank you for giving us leave to address the court. We did not say this for the sake of mere politeness. Today for the first time in the history of international criminal justice victims can address their viewpoints and concerns through their counsel. In ad hoc Courts, like the Courts of Nuremberg and Tokyo, the victims were absent, or at the very most they were questioned as witnesses of the Prosecutor. Today they can express themselves.” Excerpt from the opening speech of Mr Walleyn, legal representative of victims a/0001/06, a/0002/06 and a/0003/06 before Pre-Trial Chamber I. *Situation in the Democratic Republic of the Congo, The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Transcription of 9 November 2006, Document No. ICC-01/04-01/06-T-30, pp. 75-76.

1. Introduction

On 9 November 2006, when Mr Walleyn took the floor before the Judges of Pre-Trial Chamber I (hereinafter the “Chamber I” or “PTCI”) of the International Criminal Court (hereinafter the “Court” or the “ICC”), it was truly the first time that the victims’ voices were

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heard before an international criminal court in another manner than witnesses. Since the International Military Tribunal at Nuremberg in 1945, victims waited for this moment for more than a half century. Indeed, the Rome Statute (hereinafter the “Statute”) establishing the ICC is distinct in its provisions for the participation of victims in the proceedings, unlike any other statute of international criminal courts and tribunals. First time and, finally, international criminal justice grants some standing to the victims. Indeed, at any costs, the aim of justice system must not only be to punish the criminals but also to facilitate rehabilitation of the victims. Thus, by introducing victims into the criminal procedure, the Statute offers them better access to the international criminal justice and contributes to the ultimate search for justice.

The aim of this paper is to discuss the role played by the victims during the hearing leading to the confirmation of the charges against Mr Thomas Lubanga Dyilo, pursuant to Article 61 of the ICC Statute.¹ Before going into details on the concrete role played by the victims in the confirmation of the charges against Thomas Lubanga Dyilo, we need first of all to examine the legal framework of the victims’ rights before the Court, and present the victims in the situation in the

¹ Mr Thomas Lubanga Dyilo, Congolese leader of a political and military movement, the UPC (*Union des Patriotes Congolais*), a group created in 2000 among the Hema community by Uganda then allied to Rwanda. Before setting up his own movement, Thomas Lubanga Dyilo was a Military Commander of the *Rassemblement Congolais pour la Démocratie – Mouvement de Libération* (RCD-ML), which at the time had close links to Uganda. He was arrested on 19 March 2005 and imprisoned in Makala, Kinshasa. On 10 February 2006, the ICC Pre-Trial Chamber I issued a sealed warrant of arrest against him. He is alleged to have committed war crimes (Article 8 of the Statute) in the territory of the Democratic Republic of the Congo (hereafter referred to as DRC) since July 2002. The charges against Thomas Lubanga Dyilo are: (i) enlisting children under the age of fifteen years, (ii) conscripting children under the age of fifteen years, and (iii) using children under the age of fifteen years to participate actively in hostilities. Mr Lubanga was the first person to be arrested and transferred to the ICC since the entry into force of the Statute in July 2002. The Prosecutor of the ICC initiated investigations in the DRC in 2004 after the Congolese Government had referred the situation in that country to the Court. See: Situation in the DRC, *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06 [hereinafter “Lubanga case”], Warrant of Arrest (PTCI), 10 February 2006, Document No. ICC-01/04-01/06-2.