



# Representing Victims before the ICC

## An Opinion of Counsel

# A New Jurisprudence

- Article 68 (3) of the Rome Statute,

*“Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.”*

# A Matter of Interpretation

- There has only been one case in which this has been considered by the Court thus far.
- The decisions that have been made were made by the Pre-Trial Chamber and these decisions are not binding on the Trial Chamber.

# The '*Lubanga*' Modalities – Victim

“under rule 85(a) of the Rules the following four criteria must be satisfied for victim status to be granted, regardless of the stage of the proceedings in which the applicants wish to participate:

2. the victim must be a natural person;
3. the victim must have suffered harm;
4. the crime from which the harm resulted must fall within the jurisdiction of the Court;
5. and there must be a causal link between the crime and the harm.”

# *'Lubanga Modalities'* - Participation

Other than in exceptional circumstances:

2. Victims representatives only to have access to public documents.
3. Will only attend those parts of hearings which are in public.
4. May make opening and closing statements.
5. May request leave to intervene during public sessions in which the Chamber will rule case by case and in accordance with its decision of 22 September 2006.
6. Will not be able to add any point of fact or any evidence nor question witnesses.

# Why Victim Participation?

- The agenda of the Victim focuses upon the Victim – his interests and concerns.
- These may overlap those of the prosecution and even the defence but they are always distinct and may conflict with them.
- The Victim is not a second prosecutor and has no burden of proof.

# Conclusion

- "It is simply a matter of great importance that this court allows victims to be heard and to be given the respect which was stripped from them at the time that they suffered as they did."