



Original: English

No.: ICC-01/04  
Date: 17 August 2007

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**Public**

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

**The Office of the Prosecutor**  
Mr Luis Moreno Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Ade Omofade, Trial Lawyer

**Legal Representative of the Applicants**

**The Office of Public Counsel for  
Victims**  
Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**  
Mr Xavier-Jean Keïta

## Table of contents

<b>I. Introduction.....</b>	<b>6</b>
<b>II. Incomplete Applications .....</b>	<b>7</b>
<b>III.Redactions .....</b>	<b>11</b>
<b>a. Redacting confidential information about the applicants .....</b>	<b>12</b>
<b>b. Redacting confidential information about the intermediaries.....</b>	<b>15</b>
<b>IV.Notification of the Report .....</b>	<b>17</b>
<b>V. Legal Representation.....</b>	<b>18</b>
<b>a. Application Stage .....</b>	<b>18</b>
<b>b. Request for confidentiality by the Legal Representative.....</b>	<b>20</b>
<b>c. Missing Powers of Attorney.....</b>	<b>21</b>
<b>VI.Time Limit for the Filing of the Applications and the Report .....</b>	<b>22</b>

**PRE-TRIAL CHAMBER I** (“the Chamber”) of the International Criminal Court (“the Court”);

**NOTING** the *“Decision authorising the filing of observations on applications for participation in the proceedings”*, rendered by Judge Sylvia Steiner, Single Judge, on 17 July 2007, by which she, *inter alia*, ordered the Registrar to provide, at the earliest opportunity, the Prosecution and the Office of Public Counsel for the Defence (“OPCD”) with a copy of the applications for participation (“the Applications”) and the Report submitted to the Chamber by the Registry pursuant to regulations 86(5) and (6) of the *Regulations of the Court* (“the Report”);<sup>1</sup>

**NOTING** the *“Demande du Greffe relative à la Décision de la Chambre préliminaire I en date du 18 juillet 2007”* requesting the Single Judge to either reconsider her decision to transmit the Report, or, in the alternative, to order the Registry to transmit a redacted version of the Report to the Prosecution and the OPCD;<sup>2</sup>

**NOTING** the decision rendered on 19 July 2007 by which the Single Judge ordered the Registry to temporarily suspend the transmission of the Report on applications for victims participation, until otherwise decided by the Single Judge;<sup>3</sup>

**NOTING** the *“Demande du représentant legal des victimes [EXPURGÉ]”*<sup>4</sup> (“the Request”), filed on 23 July 2007, by which the Legal Representative requests the Chamber to:

---

<sup>1</sup> ICC-01/04-358-tENG.

<sup>2</sup> ICC-01/04-359-Conf-Exp.

<sup>3</sup> ICC-01/04-360-Conf.

<sup>4</sup> ICC-01/04-361.

- i) order the OPCD to return all unredacted copies of victims' applications as well as any documents which may contain the names of the applicants, and order the Registry to provide the OPCD with redacted copies instead;
- ii) ensure that all future applications for victim participation are redacted prior to transmission;
- iii) order that the Report of the Registry not be transmitted to the Prosecution and the OPCD, or in the alternative, that only a redacted copy thereof be transmitted, in order not to endanger the safety of the applicants and their legal representative;
- iv) transmit a copy of the Report to the Legal Representative of the victims;
- v) ensure that the identity of the Legal Representative is kept confidential and/or redacted in public documents;
- vi) allow him to be heard on any matter related to the protection and safety of the applicants before any decision potentially affecting their safety and security is taken.

NOTING the "Response to '*Demande du représentant légal des victimes [EXPURGÉ]*'",<sup>5</sup> filed by the OPCD on 26 July 2007 ("the OPCD Response"), by which the OPCD submits that the requests of the Legal Representative have no legal or factual basis; that the Legal Representative is essentially requesting that the Chamber reconsider its previous decision to send unredacted Applications, a request that has no legal basis; reiterates that the OPCD is bound by the code of confidentiality; that there is no conflict of interest in being privy to confidential information as such; that the requested measures impact the fairness and reliability of the proceedings; and therefore requests the Chamber to, *inter alia*, suspend the deadline for filing observations and to dismiss the request of the Legal Representative in its entirety;

---

<sup>5</sup> ICC-01/04-363-Conf.

**NOTING** the “Prosecution’s Observations on the ‘*Demande du représentant légal des victimes [EXPURGÉ]*’”<sup>6</sup> (“the Prosecution Response”), filed on 27 July 2007, in which the Prosecution states, on the one hand, that it does not oppose the request of the Legal Representative regarding the transmission of a copy of the Report to the Legal Representative, that it does not oppose the request that the Legal Representative’s identity remain confidential at this stage of the proceedings and that it does not oppose the request of the Legal Representative 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 safety and security, and, on the other hand, it opposes the withholding of the applicants’ identities and the transmission of the Applications for victim participation to the Prosecution in redacted form, and emphasises the importance of receiving the Report as it contains clarifications on essential data;

**NOTING** the “Registry’s advice pursuant to regulation 86(5) of the Regulations of the Court on the appointment of a legal representative in the situation in the Democratic Republic of the Congo”,<sup>7</sup> (“the Registry’s advice”) filed by the Registry on 27 July 2007, in which the Registry recommends that the legal representative for most of the applicants of the NGO referred to in the Registry’s advice, except for applicants a/0107/06 to a/0109/06, as well as for those whose applications had not yet been submitted to the Chamber, be recognised as their legal representative even though powers of attorney mandating him have not been filed/submitted; or, in the alternative, to appoint the Office of Public Counsel for Victims (“the OPCV”) to represent the general interest of the applicants;

**NOTING** the “*Enregistrement d’un courrier intitulé ‘Mandat de la représentation légale et demande de soutien financier’*”,<sup>8</sup> filed by the Registry on 9 August 2007;

---

<sup>6</sup> ICC-01/04-367-Conf.

<sup>7</sup> ICC-01/04-365-Conf-Exp-tENG.

<sup>8</sup> ICC-01/04-372-Conf-Exp.

NOTING article 68(3) of the Rome Statute (“the Statute”), rules 16, 89, 90 and 92 of the *Rules of Procedure and Evidence* (“the Rules”), regulations 80 and 86 of the *Regulations of the Court* (“the Regulations”) and regulations 108, 109, 112, 113, 114, 115 and 116 of the *Regulations of the Registry* (“the RoR”);

## I. Introduction

1. The Chamber considers that the Requests of the Legal Representative and the OPCD raise a number of substantive issues concerning the process by which applications for victim status in a situation are assessed by the Chamber. The responses by the Prosecution and the OPCD as well as the Registry’s Advice filed on 27 July 2007 also raise substantive issues concerning the roles of Office of the Prosecutor, the OPCD and of the OPCV in the application process. In considering these issues, the Chamber recognises that it must not only address the Requests, but also must clarify the application process as a whole.

2. Article 68(3) of the Statute states that where the personal interests of the victims are affected, the Chamber shall allow their views and concerns to be presented and considered at stages of the proceedings it determines to be appropriate.<sup>9</sup> As the Chamber indicated in its decision of 17 January 2006,<sup>10</sup> it may afford persons who have been granted victim status the right to present their views and concerns regarding the investigation into a situation and to submit material to the Chamber in order to participate in the situation phase. In this respect, this order pertains to the procedure for the application process at the situation stage of the proceedings, before the commencement of a case.

3. It may be noted that, throughout this decision, the Chamber distinguishes between the OPCD which, pursuant to regulation 77 of the Regulations, protects the

---

<sup>9</sup> See also, ICC-02/04-101.

<sup>10</sup> ICC-01/04-101-tEN para 55.

rights of the defence during the initial stages of an investigation and counsel for the defence who assist a suspect/accused directly. Thus, any reference to the defence in this decision refers to counsel for the defence who assists a suspect or the accused directly during the initiation of the case. The Chamber notes that, under regulation 144(2) of the RoR, the OPCD is bound by the *Code of Professional Conduct for counsel* adopted pursuant to rule 8 of the Rules and is an organ of the Court. The rationale behind this difference will be addressed in section III, Redactions.

## II. Incomplete Applications

4. The Chamber has previously stated that rule 85(a) of the Rules sets out four criteria which must be satisfied for victim status to be granted, regardless of the stage in the proceedings in which the applicants wish to participate, namely, that the victim must be a natural person, that he or she must have suffered harm, that the crime which resulted in harm must be within the jurisdiction of the Court, and that there must be a causal link between the crime and the harm.<sup>11</sup>

5. Furthermore, to be within the jurisdiction of the Court, a crime must meet the following conditions: it must be included in the crimes enumerated in article 5 of the Statute, namely, the crime of genocide, crimes against humanity and war crimes; it must satisfy the requirements of article 11 of the Statute and, finally, it must meet one of the two conditions set out in article 12 of the Statute.<sup>12</sup>

6. In carrying out such an assessment, the Chamber must receive from the applicants all of the necessary information referred to in the standard forms pursuant to regulation 86(2) of the Regulations. The Chamber will then be in a position to thoroughly assess the applications once they are complete.

---

<sup>11</sup> ICC-01/04-101-tEN para. 79; see also ICC-02/04-100-Conf, para. 12.

<sup>12</sup> ICC01/04-101-tEN, paras. 83-93.

7. The Chamber notes that, pursuant to rule 89(2) of the Rules and regulation 86(7) of the Regulations, it may request additional information from the applicants before deciding on the application, if the relevant and necessary information was not provided in the first place.

8. The Chamber has also previously noted that the Registrar is “under the obligation pursuant to rule 89(1) of the Rules and regulation 86(5) of the Regulations, to present all applications he receives to the Chamber, whether or not they are complete, since the Chamber alone has the power to reject or accept applications made under article 68(3) of the Statute and rule 89 of the Rules”.<sup>13</sup>

9. However, pursuant to rule 89(4) of the Rules, “the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision”. Where there are a number of applications, by requesting that only complete applications are transmitted, the Chamber would be able to deal more efficiently with applications submitted with all relevant information and documentation.

10. With respect to incomplete applications, pursuant to regulation 86(7) of the Regulations, the Registry would automatically request the missing relevant information from the applicants. Only after receiving the requested information may the Registry submit to the Chamber the additional information attached to each application together with the Report.

11. Regarding the applications which remain incomplete after requests for additional information have been made, the Registry shall, within a reasonable period of time following the request for additional information, present the incomplete applications to the Chamber together with a report thereon.

---

<sup>13</sup> ICC-02/05-82-Conf-Exp-tEN, pages 3-4.



12. The Chamber considers that an application is complete if it contains the following information:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the Applicant on the document, at the very least, on the last page of the application.

13. As mentioned above, proof of identity, kinship, guardianship and legal guardianship must be submitted with the application pursuant to regulation 86(2)(e) of the Regulations. The Chamber recognises the need for proper identification documents of all victims who apply to participate in the early stage of the Court proceedings. However, the Chamber is aware that, in regions which are or have been ravaged by conflict, not all civil status records may be available, and if available, may be difficult or too expensive to obtain.

14. The Chamber recalls the decision of the Single Judge of Pre-Trial Chamber II issued on 10 August 2007, in which the Single Judge similarly noted that in areas of recent conflict where communication and travel may be difficult "it would be inappropriate to expect applicants to be able to provide proof of identity of the same type as would be required of individuals living in areas not experiencing the same types of difficulties."<sup>14</sup>

15. In this respect, the Chamber will, at the investigation stage of the situation, allow the submission of any of the following documents:

- (i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;
- (ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;
- (iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or
- (iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and the application. The

---

<sup>14</sup> ICC-02/04-101 para. 16.

statement should be accompanied by proof of identity of the two witnesses.

### III. Redactions

16. The Chamber takes note of the requests by the Legal Representative that the Applications should be redacted before they are transmitted to the OPCD in order to protect the safety and security of the applicants. The Legal Representative provides a number of practical reasons why the information in the Applications should be redacted. One reason is that the applicants have indicated in their Applications that they do not wish their identities to be disclosed to the "Defence".<sup>15</sup>

17. In addition, the Legal Representative indicates that because of the security situation in the field, the applicants may be at risk.<sup>16</sup> The Legal Representative further explains that, since the mandate of the Victims and Witnesses Unit is to assist victims and witnesses, the applicants who are not yet recognized as victims are without protection.<sup>17</sup> The Legal Representative recalls that for the purposes of the confirmation of the charges in the *Lubanga* case, the Court allowed the victims' identities to be kept confidential from the person charged.<sup>18</sup>

18. According to the OPCD, there is no legal or factual basis for the Legal Representative's request to redact the Applications.<sup>19</sup> It argues, firstly, that since the Chamber has already ordered that the Applications should be transmitted, the request of the Representative amounts to asking the Chamber to reconsider its decision, a request for which, the OPCD argues, there is no legal basis in the Statute.

<sup>15</sup> ICC-01/04-362-Conf-Exp, para.7 (The Chamber notes that almost all of the applicants have requested that their identities not be transmitted to the defence; one of them has requested that his or her identity not be transmitted to both the defence and the OTP), or ICC-01/04-361, para.7.

<sup>16</sup> ICC-01/04-362-Conf-Exp, paras. 9-11.

<sup>17</sup> ICC-01/04-362-Conf-Exp, para.17 (or the public redacted version ICC-01/04-361, para.17).

<sup>18</sup> ICC-01/04-362-Conf-Exp, para.18 (or the public redacted version ICC-01/04-361, para.18).

<sup>19</sup> ICC-01/04-363, pp. 12-13.

The OPCD further asserts that the burden is on the applicants to show why the OPCD should not receive the applicants' names, not for the OPCD to show why it should.<sup>20</sup> The OPCD then notes that it is bound by strict requirements of confidentiality. In response to the Legal Representative's arguments that the OPCD having confidential information may create a conflict of interest, the OPCD states that no conflict may arise simply from having confidential information.<sup>21</sup> Without knowing the identity of the applicants, it cannot effectively challenge their applications, the authenticity of their signatures, or their particular situations.<sup>22</sup>

19. In response to these same arguments by the Legal Representative, the Prosecution states that the OPCD is bound by the same confidentiality provisions applicable to the Prosecution and should be allowed to have unredacted copies of the Applications.<sup>23</sup> The Prosecution recalls that the Chamber has previously stated that redactions should only be made where they are strictly necessary.<sup>24</sup> The Prosecution also observes that having unredacted copies of the Applications is essential, both to its ability to adequately assess whether an application fulfils the requirements for participation, and to determine whether a victim may also be a witness.<sup>25</sup>

**a. Redacting confidential information about the applicants**

20. The Chamber is aware that the issue of whether to redact the Applications before transmitting them to the Prosecution and the OPCD requires it to balance competing obligations: its obligations under article 57(3)(c) of the Statute to protect the privacy of victims and witnesses and under rule 86 of the Rules to take into account the needs of victims and witnesses in making orders, and its general obligation to ensure the fairness of the proceedings,<sup>26</sup> as well as the requirement

---

<sup>20</sup> ICC-01/04-363, para. 38.

<sup>21</sup> ICC-01/04-363, para. 29.

<sup>22</sup> ICC-01/04-363, para. 35.

<sup>23</sup> ICC-01/04-367, para. 7.

<sup>24</sup> ICC-01/04-367, para. 9.

<sup>25</sup> ICC-01/04-367, para. 10.

<sup>26</sup> This general obligation to ensure the fairness of the proceedings can be seen throughout the Statute and in particular: article 55 (rights of persons during an investigation), article 64 (functions of the Trial Chamber),

under rule 89(1) of the Rules to transmit copies of the Applications to the Prosecution and the “defence”, who shall be entitled to reply.

21. The Chamber notes that in its decision of 21 July 2005,<sup>27</sup> it ordered that redacted copies of the Applications be provided to the *ad hoc* counsel for the Defence after having expunged any information that could lead to the identification of the applicants. However, in balancing the Defence’s right to make observations on the Applications pursuant to rule 89(1) of the Rules, the Chamber also indicated that the scope of the redactions could not exceed what was strictly necessary. The Chamber also recalls that at the time the Chamber made its decision on 21 July 2005, the OPCD was not fully functional, hence the appointment of the *ad hoc* counsel for the Defence.

22. Following its decision on “protective measures requested by applicants” in which the Chamber provided only expunged versions of the applications,<sup>28</sup> the Single Judge on 24 May 2007 decided to appoint the now operational OPCD to assist with the general interests of the Defence and ordered the Registry to provide unredacted copies of the applications to the OPCD. The decision of the Single Judge was based primarily on the fact that every staff member of the Registry, including the OPCD is legally bound by a confidentiality obligation.<sup>29</sup> Regulation 77(4) of the Regulations states that the tasks of the OPCD include representing and protecting the rights of the defence during the initial stages of the investigation; regulations 77(2) of the Regulations specifies that the OPCD falls within the remit of the Registry solely for administrative purposes, and otherwise functions as a wholly independent office. Under regulation 144(2) of the RoR, in discharging their responsibilities, members of the OPCD are bound by the *Code of Professional Conduct for counsel*, which obligates them to respect the confidentiality of the proceedings.

---

article 67 (rights of the accused), article 68 (rights of victims balanced against the rights of a fair trial), article 69 (evidence), articles 81 and 82 (grounds for appeal); rule 20 (responsibilities of the Registrar with respect to the Defence), rule 84 (disclosure proceedings), rule 91 (participation of the legal representatives), rule 126 (the confirmation hearing), and rule 132 (procedure during status conferences).

<sup>27</sup> ICC-01/04-73.

<sup>28</sup> ICC-01/04-329, ICC-01/04-342.

<sup>29</sup> ICC-01/04-342-tEN, page 6.

23. Furthermore, the Chamber recalls the observations of the OPCD that:

“mere access to confidential material *per se* does not create a conflict of interest; the OPCD is bound by the Code of Conduct to respect the confidentiality imposed by the Chamber and not to disclose the identities to any other defence team or accused. If an accused or defence team required access to such information, the appropriate avenue would be for them to seek relief from the Chamber, and not the OPCD. Accordingly, since other defence teams do not have a right to request such information from the OPCD, the OPCD does not incur any potential conflict of duties by virtue of the fact that it possesses the information in question.”<sup>30</sup>

24. In light of this, the OPCD submits, therefore, that “a conflict does not arise if the OPCD simply puts the applicants or the prosecution to proof by challenging the accuracy, consistency and credibility of the applicants’ assertions.”<sup>31</sup>

25. However, the Chamber notes that, pursuant to regulations 76 and 77 of the Regulations, where the interests of justice so require, it may appoint counsel from the OPCD to provide support and assistance to defence counsel and to the person entitled to legal assistance, which may include, *inter alia*, appearing before the Chamber in respect of specific issues.

26. In this regard, the Chamber considers that the OPCD should be aware that it must organise its office in such a manner that if it is called upon by the Chamber to fulfil its functions pursuant to these regulations, it would be able to ensure the confidentiality of information without creating a conflict of interest.

27. The Chamber further notes that in its previous decisions, it took specific measures to ensure the confidentiality of the identity of the applicants. For example, in each of these decisions, the Chamber ordered the participants to keep confidential the identities of the applicants, to refer to the applicants only by the number assigned

---

<sup>30</sup> ICC-01/04-363-Conf, para. 29.

<sup>31</sup> ICC-01/04-363-Conf, para. 30.

to them by the Registry, and not to contact the applicants and those to whom victim status had been granted except through their legal representatives. The Chamber also notes that should a participant fail to comply with orders of the Chamber or in case of misconduct, the presiding Judge of the Chamber has the authority to, pursuant to article 71 of the Statute and rule 171(1) of the Rules, in the case of misconduct which “consists of deliberate refusal to comply with an oral or written direction by the Court” to “order the interdiction of [counsel] from the proceedings for a period not exceeding 30 days or, if the misconduct is of a more serious nature, to impose a fine.”

28. With respect to the Legal Representative’s argument concerning the measures taken by the Chamber for the purposes of the confirmation of the charges in the *Lubanga* case, in which the Chamber decided to conceal the identities and to redact identifying features of the victims, the Chamber considers that a distinction is to be made between disclosing the Applicants’ identities to a suspect and disclosing the applicants’ identities to the OPCD. At the situation level, during the initial stages of the investigation, the OPCD’s role is restricted to safeguarding any potential rights of the defence, and does not extend to any form of direct assistance any suspect or accused.

29. Thus, in light of the Court’s jurisprudence noted above and the obligations of the OPCD, the Chamber reiterates that, at the situation stage, unredacted copies of Applications will continue to be provided to the OPCD.

**b. Redacting confidential information about the intermediaries**

30. The Chamber takes note of the concerns of the Victims’ Participation and Reparations Section (“the VPRS”) that the Applications also contain sensitive information concerning the intermediaries, who are often staff members of NGOs

located in areas where there have been or continue to be conflicts, who assist the applicants in transmitting their Applications to the Court. According to the VPRS, in some situations even the fact that an intermediary is assisting the Court is enough for his or her safety and security to be threatened. The Chamber notes that information in the Applications which indicates how the Applications were made, who assisted the applicants in reading and understanding them, and information concerning any assistance that the applicants may have received in completing the forms, often identifies the intermediaries.

31. In this respect, while the Chamber understands that the safety of the intermediaries is an important concern, it recognises again that it must balance this concern against its general obligation to ensure the fairness of the proceedings as well as the requirement under rule 89(1) of the Rules to transmit copies of the Applications to the Prosecutor and the defence, who are entitled to reply to them. The Chamber also recognises that a distinction can be made between the Chamber's obligation to protect victims and witnesses in the proceedings under the Statute, Rules and Regulations, and a further obligation to protect staff members of non-governmental organisations who choose to act as intermediaries. In addition, the Chamber recalls its existing jurisprudence,<sup>32</sup> which stipulates that the scope of redactions should not exceed what is strictly necessary, especially in light of the obligations of the Prosecution and the OPCD to protect confidentiality as mentioned above. Thus, in balancing these issues, the Chamber considers that the rationale for redacting information concerning the intermediaries before it is transmitted to the Prosecution and the OPCD is not very persuasive at this stage.

---

<sup>32</sup> ICC-01/04-73.



#### IV. Notification of the Report

32. The Chamber takes note of the request of the Legal Representative that the Chamber suspend the transmission of the Report to the Prosecution and the OPCD or that it instruct the Registry to transmit a redacted version of the Report.<sup>33</sup>

33. In response, the OPCD argues that “if the Chamber is of the view that it is either necessary or useful for it to utilise the Report of the Registry in formulating its decision, it follows that it would also be necessary or useful to the parties to access this information.”<sup>34</sup> It adds that in the interest of expeditiousness of the proceedings, if there are inaccuracies or ambiguities which are resolved in the Report, the OPCD should not be forced to dedicate its limited time to dealing with inaccuracies or ambiguities which may already have been resolved.<sup>35</sup>

34. Also in response, the Prosecution argues that receiving the Report would benefit the Prosecution, since it has provided clarifications on essential data in the Applications.<sup>36</sup>

35. The Chamber notes that its only obligation under rule 89(1) of the Rules is to order the Registry to provide the Prosecution and defence with copies of the Applications, such that they may make observations on the Applications within a time limit set by the Chamber. In other words, rule 89 of the Rules does not direct the Chamber to transmit the Report.

36. Further, regulation 86(5) of the Regulations states that “the Registrar shall present all applications described in this regulation to the Chamber together with a report thereon.” The purpose of the Report is further specified in regulation 86(6) of the Regulations, which provides that the Registry may submit one Report on a

---

<sup>33</sup> ICC-01/04-361. .

<sup>34</sup> ICC-01/04-363-Conf para 42.

<sup>35</sup> ICC-01/04-363-Conf. para. 46.

<sup>36</sup> ICC-01/04-367-Conf. para. 11.

number of applications in order to assist the Chamber in issuing only one decision in accordance with rule 89(4) of the Rules.

37. The Chamber takes note of the observations of the OPCD and the Prosecution that previous Reports have contained information which resolves ambiguities in the Applications or contained additional information not included in the Applications. To this end, the Chamber will instruct the Registry that only complete Applications should be transmitted, subject to the Registry being unable to gather the required information. This will ensure that the Prosecution and the OPCD will receive all of the information required for them to exercise their right to make observations pursuant to rule 89(4) of the Rules.

38. The Chamber further takes note of article 21(1)(a) of the Statute, which requires the Chamber to apply, in the first place, the Statute, Elements of Crimes and Rules of Procedure and Evidence. There being no express provision in the Statute or the Rules requiring the Chamber to transmit the Report to the participants, and recognizing that the function of the Report is to assist *the Chamber* in issuing only one decision on a number of Applications, the Chamber decides that it will not order that the Report be transmitted to the participants

## V. Legal Representation

### a. Application Stage

39. In accordance with rule 16 of the Rules, the Registrar is responsible, *inter alia*, for providing “notice or notification to victims or their legal representatives; [a]ssisting them in obtaining legal advice and organizing their legal representation, and providing their legal representatives with adequate support, assistance and

information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings in accordance with rules 89 to 91; [a]ssisting them in participating in the different phases of the proceedings.”

40. Rule 90 of the Rules provides, on the one hand, for the right of victims to choose their legal representative and, on the other, for the purposes of ensuring the effectiveness of the proceedings, for the possibility of requesting the victims or a particular groups of victims, if necessary, with the assistance of the Registry, to choose a common legal representative or representatives. Pursuant to the same rule, the Chamber may request the Registrar to choose one or more common legal representatives if the victims are unable to do so, and, if necessary, provide them with assistance if they lack the necessary means to pay for the common legal representative chosen by the Court.

41. Regulation 81(4) of the Regulations states that the OPCV “shall provide support and assistance to the legal representative for victims and to victims, including, where appropriate, legal research and advice; and appearing before a Chamber in respect of specific issues”. Pursuant to regulation 80 of the Regulations, members of the OPCV may be appointed as legal representatives of victims by the Chamber.

42. The Chamber notes that the above mentioned rules and regulations refer to persons who have been accorded the procedural status of victims to participate in the investigative stage of a situation.

43. However, the Chamber observes that of the persons applying at the investigative stage of the situation, a large number of those applicants may be without legal representation prior to a decision of the Chamber on whether to grant them victim status. Moreover, considering that under regulation 86(4) of the Regulations, the Registry will automatically request additional information for all

incomplete Applications, the Chamber deems it appropriate to appoint the OPCV to provide support and assistance to the unrepresented applicants. Thus, pursuant to regulation 116 of the RoR, the Registry shall automatically transfer to the OPCV all information regarding unrepresented applicants simultaneously with the notification of the Applications to other participants.

44. The OPCV should therefore be available to provide support and assistance to applicants until such time as the procedural status of victim is granted to them and a legal representative is chosen by him or her or appointed by the Court.

**b. Request for confidentiality by the Legal Representative**

45. In his filing of 20 July 2007,<sup>37</sup> the Legal Representative of the victims requests that his identity be kept confidential, because he fears for his safety and security.

46. The Chamber notes that pursuant to rule 91 of the Rules, a legal representative is entitled to participate in the proceedings in accordance with the terms set by the Chamber. Pursuant to rule 90(4) of the Rules, the Chamber has the obligation to take all reasonable steps to ensure that any conflict of interest is avoided in the selection of a common legal representative. Furthermore, pursuant to regulation 80 of the Regulations, following consultation with the Registrar, a Chamber may appoint a legal representative for victims when required in the interests of justice.

47. Here, the Legal Representative is requesting that in each filing submitted by him and in each hearing in which he may be required to participate, the Court take measures to ensure that his identity remains confidential. This would mean public, redacted, and confidential versions of each filing, in addition to measures taken to ensure confidentiality in public hearings. In the Chamber's view, the request

---

<sup>37</sup> ICC-01/04-362-Conf-Exp.

not only affects the expeditiousness of the proceedings,<sup>38</sup> but also may create a conflict of interest in which the Legal Representative must choose, for example, between effectively representing the victims in a public hearing and keeping his identity confidential.

48. For these reasons, and pursuant to the Chamber's authority under rules 91 and 90 of the Rules, the Chamber recalls that a legal representative is entitled to participate in the proceedings in accordance with the terms set by the Chamber and considers that anonymity is incompatible with the functions to be performed by a legal representative.

**c. Missing Powers of Attorney**

49. In the "Registry's advice", the Registry indicates that for all of the applicants who do not have powers of attorney, they were assisted by the NGO for whom the Legal Representative is the chief counsel. The Registry recommends that the Chamber appoint the Legal Representative until such time as the applicants' powers of attorney are collected and filed. In the alternative, the Registry requests that the Chamber appoint the Office of Public counsel for Victims to represent the interests of the Applicants.

50. The Chamber considers that the OPCV should be available to provide support and assistance to the applicants for whom powers of attorney have not been submitted, until such time as the proper documents are received by the VPRS or that applicants are granted victim status and a legal representative is chosen or appointed by the Court.

---

<sup>38</sup> This obligation can be found throughout the Statute and Rules *e.g.* for a unique investigative opportunity article 56(b) of the Statute, in the procedures for disclosure of evidence in rule 84 of the Rules, for the trial in general in article 64 of the Statute and status conferences in rule 134 of the Rules, and in the right of appeal in article 82(1)(d) of the Statute

## **VI. Time Limit for the Filing of the Applications and the Report**

51. In filing the Applications and the Report, the Registrar should simultaneously register in the record of the situation the Applications together with the Report pursuant to regulations 86(5) and (6) of the Regulations.

52. Pursuant to rule 89(1) of the Rules, the Chamber may set a time limit for the submission of observations by the Prosecution and the Defence on the Applications. Following the issuance of this decision, the Chamber hereby notifies the OPCD and the Prosecution that observations should be filed within thirty days following notification of the Applications for participation, unless otherwise decided by the Chamber.

**FOR THESE REASONS,**

**REJECTS** the Request of the Legal Representative on the following issues:

- i) that the OPCD should return all unredacted copies of victims' applications as well as any documents which may contain the names of the applicants, and that the Registry provide the OPCD with redacted copies;
- ii) that all future applications for victim participation are redacted prior to transmission;
- iii) that a copy of the Report be transmitted to the Legal Representative of the victims;

**GRANTS** the Request of the Legal Representative on not to transmit the Report to the Prosecution and the OPCD as detailed in the present decision;

**DECIDES** to allow the Legal Representative to be heard on matters related to the protection and safety of the applicants on case by case basis when appropriate;

**DECIDES** that within ten days of this decision, the Legal Representative shall disclose his identity if he wishes to remain the Legal Representative of the applicants;

**DECIDES** that, after the ten days given to the Legal Representative, if he decides to remain anonymous, the OPCV will act as legal representative of all applicants initially represented by him, until such time that they have chosen another legal representative;

**ORDERS** the Registrar to present to the Chamber, firstly, only complete Applications together with a report thereon, if necessary, after exercising his authority under regulation 86(4) of the Regulations and, secondly, within a reasonable time, to present those Applications together with a report thereon which are still incomplete even after the Registrar has exercised his authority under regulation 86(4) of the Regulations;

**ORDERS** the Registrar to notify the Report, together with the Applications, only to the Chamber;

**ORDERS** the Registrar, at the stage of the situation, to notify unredacted versions of the Applications to the Prosecution and the OPCD;

**ORDERS** the Prosecution and the OPCD to file their observations on the Applications within thirty days following the notification of the Applications, unless otherwise decided by the Chamber;

**ORDERS** the Registrar to systematically verify the applicants' statements regarding their legal representation, in particular when reference is made to a legal representative in the absence of any document signed by that person;

**ORDERS** the Registrar, when an applicant has no legal representation or in the absence of any document signed by that person, to automatically appoint the OPCV as his or her legal representative to provide support and assistance to the applicant until such time as the applicant has been granted victim status and a legal representative is chosen by him or her or appointed by the Court;

**ORDERS** the Registrar to automatically transfer to the OPCV all information regarding unrepresented applicants simultaneously with the notification of the Applications to other participants;

**ORDERS** the Prosecution, the OPCD, the OPCV, and any Legal Representative of the victims to respect the confidentiality of the Applications and to only refer to the applicants by the numbers assigned to them by VPRS;

**ORDERS** the Prosecution and the OPCD to abstain from any direct contact with the applicants or the intermediaries and, if necessary, to contact applicants only through their legal representatives;



**ORDERS** the Registrar to notify this decision to current and future counsel at the investigative stage of the situation in the Democratic Republic of the Congo.

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

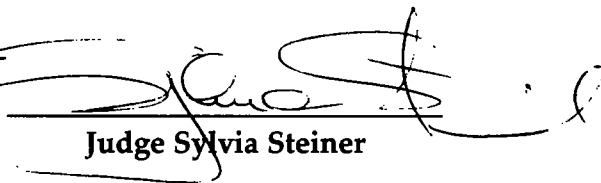


**Judge Akua Kuenyehia**

**Presiding Judge**



**Judge Anita Ušacka**



**Judge Sylvia Steiner**

Dated this Friday 17 August 2007

At The Hague, The Netherlands