

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-01/04  
Date: 11 September 2007

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single judge**

**Registrar: Mr Bruno Cathala**

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

**Public Document**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo, Prosecutor  
Mrs Fatou Bensouda, Deputy Prosecutor  
Mr Ekkehard Withopf, Senior Trial  
Lawyer

**Legal Representatives of the Applicants**

Ms Carine Bapita Buyangandu  
Mr Sylvestre Bismwa  
Mr Michael Verhaeghe  
Mr Joseph Keta

**Office of Public Counsel for the  
Defence**

Mr Xavier-Jean Keïta, Principal Counsel

**Office of Public Counsel for Victims**

Mrs Paolina Massidda, Principal Counsel

I, Judge Sylvia Steiner, judge at the International Criminal Court (the “Court”);

**NOTING** the decisions authorising the Prosecution and the former *ad hoc* Counsel for the defence to submit observations on applications a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and 0105/06 to participate as victims in the proceedings rendered by the Chamber on 22 and 29 September 2006;<sup>1</sup>

**NOTING** the decision authorising the Prosecution and the Office of Public Counsel for the defence (“OPCD”) to file observations on applications a/0106/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06 to participate as victims in the proceedings, rendered by the Single Judge on 23 May 2007;<sup>2</sup>

**NOTING** the observations on applications a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06, filed in the record of the investigation in the Situation in the Democratic Republic of the Congo (“the DRC”) by the *ad hoc* Counsel for the defence on 28 November 2006,<sup>3</sup> and by the Prosecution on 30 November 2006;<sup>4</sup>

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<sup>1</sup> ICC-01/04-228 and ICC-01/04-241.

<sup>2</sup> ICC-01/04-329-tEN.

<sup>3</sup> ICC-01/04-314-Conf.

<sup>4</sup> ICC-01/04-315, ICC-01/04-315-Conf-Exp-Anx.

**NOTING** the observations on applications a/0106/06 to a/0110/06, a/0128/06 to a/0162/06, 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 filed in the record of the investigation in the Situation in the DRC by the Prosecution<sup>5</sup> and by the OPCD<sup>6</sup> on 25 June 2007;

**NOTING** the “*Order concerning the transmission of further information on victims’ application*” rendered by the Single Judge on 24 August 2007 (“the Order”)<sup>7</sup>, by which the Single Judge: (i) ordered the Victims Participation and Reparations Section (“VPRS”) to extract from the reports submitted to the Chamber pursuant to Regulation 86(4) of the Regulations of the Court (“the Regulations”) the further information related to a number of applications, and to transmit them to the OPCD and Prosecution together with a copy of the applications concerned; and (ii) gave the OPCD and the Prosecution ten days from the notification of the further information to submit observations on these applications;

**NOTING** the “*Request for access to previous filings, and an extension of page limit and time limit*” submitted by the OPCD on 29 August 2007 (“the Request”), by which the OPCD requests *inter alia* to have access to all filings concerning the applications referred to in the Order and to be granted an extension of time and page limit for the submission of its observations;<sup>8</sup>

**NOTING** the “*Enregistrement d’un courrier du représentant légal retirant sa demande d’anonymat et d’autres documents relatifs à la représentation légale de*

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<sup>5</sup> ICC-01/04-345-Conf.

<sup>6</sup> ICC-01/04-347-Conf.

<sup>7</sup> ICC-01/04-376.

<sup>8</sup> ICC-01/04-379.

*demandeurs aux fins de participation*<sup>9</sup> submitted by the Registry on 30 August 2007, by which the Registry filed in the record of the investigation in the Situation in the DRC three documents as confidential and *ex parte* only available to Mr Joseph Keta, legal representative of applicants in the proceedings, and to the Office of Public Counsel for Victims (“OPCV”);

**NOTING** the “*Order on the request by the OPCD for access to previous filings and for extension of page and time limit*”<sup>10</sup> rendered by the Single Judge on 31 August 2007, by which the Single Judge: (i) ordered the OPCD to clarify its Request, in particular in relation to the alleged number of applications on which the OPCD is submitting observations and for which it requested an extension of time and page limit; (ii) invited the Prosecution to submit its observations on the Request; and (iii) suspended the time limit given to the Prosecution and OPCD for the filing of observations pursuant to the Order of 24 August 2007, until otherwise decided;

**NOTING** the filing by VPRS on 3 September 2007<sup>11</sup>, by which VPRS transmitted to the Prosecution and OPCD the further information related to the applications referred to in the Order of 24 August 2007 and informed them that (i) no further information has been received in relation to applicants a/0027/06 and a/0144/06; and that (ii) VPRS received further information in regards to applicants a/0188/06 and a/0222/06 and therefore transmitted this further information to the Prosecution and OPCD;

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<sup>9</sup> ICC-01/04-380.

<sup>10</sup> ICC-01/04-383.

<sup>11</sup> ICC-01/04-384-Conf-Exp.

**NOTING** the *“Response to Order on request by the OPCD for access to previous filings and for extension of page and time limit”*<sup>12</sup> submitted by the OPCD on 4 September 2007, by which the OPCD: (i) recognized its mistake in counting the number of applications on which it has been invited to submit observations and therefore withdrew its request for an extension of page and time limit; (ii) maintained its request for access to all filings concerning the applications referred to in the Order of 24 August 2007; and (iii) requested the Chamber to confirm whether any additional information was provided to the Chamber with respect to applicants a/0027/06 and a/0144/06;

**NOTING** the *“Prosecution’s observations on the request by the OPCD for access to previous filings and for extension of page and time limits”*<sup>13</sup> submitted on 5 September 2007, by which the Prosecution (i) did not oppose the OPCD’s requests, to the extent that only the information related to applications a/0009/06, a/0018/06, a/0026/06 and a/0038/06 is disclosed to the OPCD, and (ii) requested to be provided with a copy of the confidential and *ex parte* annexes to the VPRS filing of 30 August 2007;

**NOTING** articles 57(3)(c) and 68 of the Statute, rule 89 of the Rules of Procedure and Evidence (“the Rules”) and regulations 77(4) and 86 of the Regulations;

**CONSIDERING** that in order to submit its observations with regard to the Applications concerning prior proceedings for which the OPCD was not appointed to act pursuant to regulation 77(4) of the Regulations, the OPCD requests to have access to any confidential filings, namely the observations on

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<sup>12</sup> ICC-01/04-386.

<sup>13</sup> ICC-01/04-387.

the applications submitted by the then-*ad hoc* Counsel for the defence or observations submitted by the Prosecution;

**CONSIDERING** that pursuant to the Order issued on 24 August 2007, the number of applications for which the OPCD has been authorised to file observations following the transmission of the further information by VPRS amounts to thirty-three, but only five of these concern prior proceedings for which observations have been previously submitted by the former *ad hoc* Counsel for the defence, namely a/0009/06, a/0018/06, a/0026/06, a/0027/06 and a/0038/06;<sup>14</sup>

**CONSIDERING** further that in relation to application a/0027/06, which was originally in the list of applications for which further information had been requested, no further information was eventually received, as clarified by the filing of VPRS on 3 September 2007, and therefore the OPCD is not requested to submit any additional observation on this application;

**CONSIDERING** that the Prosecution does not oppose the request of the OPCD to have access to the confidential *ex parte* information to the extent that it is limited and directly relates to the four applications which are subject of the Order of 24 August 2007;

**CONSIDERING** that the mandate of the OPCD is limited in its scope pursuant to the order of 24 August 2007 and is not intended to be the continuation of the mandate of the former *ad hoc* Counsel for the defence and therefore, contrary to what OPCD claims, it is not automatically “entitled to

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<sup>14</sup> ICC-01/04-314-Conf

receive any documents which were conveyed to the *ad hoc* Counsel for the defence” pursuant to the two decisions of the Chamber of September 2006 authorizing the filing of observation on applications by the then-*ad hoc* Counsel;<sup>15</sup>

**CONSIDERING** that, as observed by the Prosecution<sup>16</sup> and contrary to what the OPCD indicated in its Request<sup>17</sup>, only the Chamber can decide whether to allow parties to disclose confidential information regarding victims and witnesses; and that therefore the OPCD should abstain from directly contacting the former *ad hoc* Counsel for the defence;<sup>18</sup>

**CONSIDERING** that the documents filed by the VPRS as confidential *ex parte* annexes to its public filing of 30 August 2007 are: (Annex 1) a letter from a legal representative withdrawing its request for anonymity; (Annex 2) a letter from the Registry designating the OPCV as the legal representative for certain applicants who have been assisted by the non-governmental organisation; and (Annex 3) a table reiterating the status of the legal representation of applicants assisted by the non-governmental organisation; and that therefore in accordance with articles 57(3)(c) and 68 of the Statute there is no reason why such documents should not be disclosed to the Prosecution and to the OPCD;

**CONSIDERING** that VPRS received and transmitted to OTP and OPCD<sup>19</sup> further information on applications a/0188/06 and a/0222/06, which were not

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<sup>15</sup> ICC-01/04-228 and ICC-01/04-241.

<sup>16</sup> ICC-01/04-387, par. 14.

<sup>17</sup> ICC-01/04-379, par. 20-21.

<sup>18</sup> ICC-01/04-379, par. 22.

<sup>19</sup> ICC-01/04-384-Conf-Exp.

included in the Order of 24 August 2007, whereas no further information was received by VPRS with regard to application 0144/06;

**FOR THESE REASONS,**

**GRANT** access to OPCD to the filings concerning applications a/0009/06, a/0018/06, a/0026/06 and a/0038/06, namely the confidential *ex parte* annex to the observations submitted by the Prosecution on 30 November 2006 ("*ex parte* Annex"),<sup>20</sup> and to the confidential observations submitted by the former *ad hoc* Counsel for the defence on 28 November 2006,<sup>21</sup> to the extent that they only relate to the four above mentioned applications;

**ORDER** the Prosecution to file, within three days, a formatted version of its *ex parte* Annex, redacted in such a manner that only the information related to applications a/0009/06, a/0018/06, a/0026/06 and a/0038/06 are disclosed to the OPCD;

**ORDER** the Registry to provide the OPCD, within three days, with a redacted version of the confidential observations submitted by the former *ad hoc* Counsel for the defence on 28 November 2006<sup>22</sup>, in which:

- (i) Paragraphs 8 to 68 (included) shall be redacted;
- (ii) Paragraphs 70 to 85 (included) shall be redacted;
- (iii) Paragraphs 96 to 142 (included) shall be redacted;
- (iv) Paragraphs 154 to 231 (included) shall be redacted;
- (v) Paragraphs 241 to 471 (included) shall be redacted.

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<sup>20</sup> ICC-01/04-315, ICC-01/04-315-Conf-Exp-Anx.

<sup>21</sup> ICC-01/04-314-Conf.

<sup>22</sup> ICC-01/04-314-Conf.

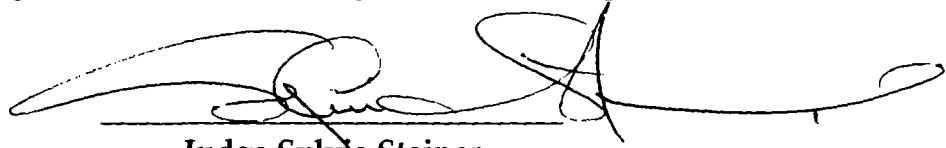


**DECIDE** to reclassify the documents ICC-01/04-380-Conf-Exp-AnxI, ICC-01/04-380-Conf-Exp-AnxII and ICC-01/04-380-Conf-Exp-AnxIII as confidential documents;

**INVITE** the OPCD and the OTP 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;

**DECIDE** that the deadline for the filing of observations by Prosecution and OPCD on the applications subject to the Order of 24 August 2007 and for which further information were received, namely a/0009/06, a/0018/06, a/0026/06, a/0038/06, a/0145/06, a/0148/06, a/0203/06, a/0214/06, a/0220/06, a/0221/06, a/0224/06, a/0227/06, a/0228/06, a/0229/06, a/0230/06, a/0231/06, a/0232/06, a/0233/06, a/0234/06, a/0235/06, a/0237/06, a/0238/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06 and a/0250/06, *plus* a/0188/06 and a/0222/06, shall be 25 September 2007.

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



**Judge Sylvia Steiner**  
**Single Judge**

Dated this Tuesday, 11 September 2007

At The Hague, The Netherlands.