

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-01/04  
Date: 4 January 2008

**Before:** Judge Ekaterina Trendafilova, Duty judge

**Registrar:** Mr Bruno Cathala

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

**Public Document  
URGENT**

**Decision on the "Request for leave to contact *ad hoc* Counsel for the Defence"**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Ekkehard Withopf, Senior Trial  
Lawyer

**Legal Representatives of the Applicants**

Mr Patrick Baudouin

Mr Emmanuel Daoud

Ms Carine Bapita Buyangandu

Mr Sylvestre Bismwa

Mr Michael Verhaeghe

Mr Michael Shebele

Mr Joseph Keta

**Former *ad hoc* Counsel for the Defence**

Mr Joseph Tshimanga

**Office of Public Counsel for the  
Defence**

Mr Xavier-Jean Keïta, Principal Counsel

**Office of Public Counsel for Victims**

Ms Paolina Massida, Principal Counsel

**I, Judge Ekaterina Trendafilova**, judge at the International Criminal Court (the “Court”);

**NOTING** the designation of Judge Ekaterina Trendafilova as duty judge for the period of 19 December 2007 until 18 January 2008;

**NOTING** the Decision assigning, pursuant to regulation 46 (2) of the *Regulations of the Court* (the “Regulations”), the situation in the Democratic Republic of the Congo (the “DRC”) to Pre-Trial Chamber I, issued by the Presidency on 5 July 2004;<sup>1</sup>

**NOTING** thus that Pre-Trial Chamber I shall be responsible for any matter, request or information arising out of the Situation in the DRC which has been assigned to it;

**NOTING** the “Decision on the request by the OPCD for access to previous filings” issued by the then Single Judge of Pre-Trial Chamber I on 11 September 2007 (the “Pre-Trial Chamber I’s Decision”);<sup>2</sup>

**NOTING** the “*Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo par 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 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06,*

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

<sup>2</sup> ICC-01/04-389.

*a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06*” and the “Decision on the Starting date of the Timelimit provided for in Rule 155 of the Rules in relation to the Decision Issued on 24 December 2007” issued by the then Single Judge of Pre-Trial Chamber I on 24 December 2007 (the “Decisions of 24 December 2007”);<sup>3</sup>

**NOTING** that the Decisions of 24 December 2007 were officially notified (i) on 24 December 2007 to all participants in the proceedings, except the former *ad hoc* Counsel for the Defence, and (ii) on 2 January 2008 to the former *ad hoc* Counsel for the Defence;

**NOTING** the “Request for leave to contact *ad hoc* Counsel for the Defence”, filed before the duty judge on 3 January 2008 during normal Registry hours, in which the Office of Public Counsel for the Defence (the “OPCD”) requests “leave to communicate with the *ad hoc* Counsel for the Defence in relation to the public legal and procedural aspects of the Decision” (the “OPCD’s Request”);

**NOTING** regulation 17 (2) (b) of the Regulations according to which the duty judge shall be responsible for dealing with requests or applications provided that the following conditions are met:

(a) the request or application is submitted during normal Registry hours and the Pre-Trial Chamber or Chamber referred to in regulation 46 (3) of the Regulations is unavailable;

(b) the duty judge is satisfied that the matter is urgent; and

<sup>3</sup> ICC-01/04-423 and ICC-01/04-424.

(c) the duty judge is satisfied that it is appropriate for him or her to deal with it.

**NOTING** that Pre-Trial Chamber I is currently not available, the duty judge shall now turn to the conditions of urgency and appropriateness of the matter raised by the OPCD's Request;

**NOTING** that the OPCD filed its Request before the duty judge arguing urgency due to "the pending deadline for filing a request for leave to appeal";<sup>4</sup>

**CONSIDERING**, however, that the duty judge has to be satisfied that the matter raised in the OPCD's Request is urgent in itself;

**CONSIDERING** further that, for a matter to be deemed urgent, its subject must be of such a nature that, in order to avoid any significant prejudice to the participants in the proceedings, the relief sought can only be granted before the relevant Chamber is available;<sup>5</sup>

**CONSIDERING** in this regard that the duty judge recalls all participants that pursuant to regulation 31 of the Regulations "all participants shall provide to the Registry an electronic, facsimile or postal address for notification of documents" and that "a participant is deemed notified, informed of or to have

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<sup>4</sup> ICC-01/04-425, para. 12.

<sup>5</sup> For a similar approach, see *The Prosecutor v Momcilo Krajisnik and Biljana Plavsic*, Case No. IT-00-39 &40-AR73.2, Decision on Interlocutory Appeal, 28 February 2002.

had communicated to him or her, a document, decision or order on the day it is effectively sent from the Court by the Registry”;

**CONSIDERING** therefore that the former *ad hoc* Counsel for the Defence is deemed to have officially been notified of the Decisions of 24 December 2007 and that thus, the former *ad hoc* Counsel for the Defence is also aware of the pending deadlines and that in case of need of support and assistance, the former *ad hoc* Counsel for the Defence may approach the OPCD;

**CONSIDERING** that the duty judge is thus not satisfied that the matter raised by the OPCD’s Request is urgent in itself;

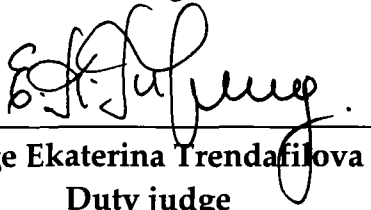
**CONSIDERING** in addition, that the duty judge finds it inappropriate to address the matter of the Request as it has been dealt with in the Pre-Trial Chamber I’s Decision which explains how the OPCD should proceed in such scenario;

**CONSIDERING** thus that the requirements provided in regulation 17 (2) (b) of the Regulations for the duty judge to be responsible for dealing with the request have not been met;

**FOR THESE REASONS**

**DECIDE** to reject the OPCD's Request for leave to contact the *ad hoc* counsel for the Defence.

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



Handwritten signature of Judge Ekaterina Trendafilova in black ink, written over a horizontal line.

**Judge Ekaterina Trendafilova**  
**Duty judge**

Dated this Friday 4 January 2008

At The Hague, The Netherlands.