

## **ANNEX I**



**CONFIDENTIAL**

Aprodec asbl

[REDACTED]

Reference: 2010/PRES/344-8  
Date: 1 December 2010

The Presidency of the International Criminal Court (“Court”) hereby determines the complaint of the *Association pour la Promotion de la démocratie et du développement de la République Démocratique du Congo, association sans but lucratif* (“Aprodec asbl”) against the Registrar of the Court for alleged misconduct (“Complaint”).

**Factual background**

On 5 January 2010, the Registrar refused the applications from Aprodec asbl to visit the four Congolese persons in the custody of the Court, explaining her reasons for such refusal on 12 January 2010 (“Impugned Decision”).<sup>1</sup> On 27 January 2010, Aprodec asbl sought judicial review of the Impugned Decision and also challenged the conduct of the Registrar and her ability to perform her functions (“Application”).<sup>2</sup>

On 23 March 2010, the Presidency decided that the request for judicial review was inadmissible (“Presidency Decision”), noting that the right to complain against the refusal of a visit is vested solely in a detained person.<sup>3</sup> The Presidency also indicated that it understood the Application to be for removal from office of the Registrar, pursuant to article 46 of the Rome Statute (hereinafter all references to articles are to those of the Rome Statute) and rule 24 of the Rules of Procedure and Evidence (hereinafter all references to rules are to those of the Rules of Procedure

<sup>1</sup> ICC-RoR221-01/10-1-Conf-Exp-Anx6.

<sup>2</sup> Corrigendum to the “Requête en Annulation de la Décision du Refus de Visite opposé par le Greffier le 5 janvier 2010. Et, Contestation du Comportement et l’Aptitude du Greffier à exercer les Fonction prévues à l’Article 43(1)”, ICC-RoR221-01/10-1-Corr-Conf-tENG.

<sup>3</sup> Decision on the admissibility of Aprodec’s “Requête en Annulation de la Décision du Refus de Visite opposé par le Greffier le 5 janvier 2010. Et, Contestation du Comportement et l’Aptitude du Greffier à exercer les Fonction prévues à l’Article 43(1)”, ICC-RoR221-01/10-5-Conf, paragraph 18.

and Evidence), or, alternatively, for disciplinary measures pursuant to article 47 and rule 25, and the Presidency ordered Aprodec asbl to indicate, by 16 April 2010, whether it wished to proceed with its Complaint in view of the finding that the request for judicial review was inadmissible.<sup>4</sup> If so, the Presidency would thereafter examine the submissions made from paragraph 37 onwards of the Application.

Aprodec asbl subsequently confirmed its desire to proceed with its Complaint, also submitting additional arguments.<sup>5</sup> Thereafter, the Presidency, pursuant to rule 26(2) and regulation 120 of the Regulations of the Court, appointed three judges of the Court to assist it in determining whether the Complaint was manifestly unfounded.

### **Preliminary matters**

The Presidency has noted that Aprodec asbl did not comply with the time limit set in the Presidency Decision. Further, Aprodec asbl has introduced arguments additional to those contained in the Application.

In relation to time limits, Aprodec asbl's confirmation of its desire to proceed ("Confirmation")<sup>6</sup> was filed approximately six hours after the expiration of the applicable time limit. A corrigendum to this document ("Corrigendum")<sup>7</sup> was filed approximately three days after the expiration of this deadline. The Presidency has considered regulation 35(2) of the Regulations of the Court which provides that "[a]fter the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the limit for reasons outside his or her control". The Presidency notes that Aprodec asbl only received two documents which indicated that one of the detained persons intended to challenge the Impugned Decision on 16 April 2010 (ICC-RoR221-02/10-1 and ICC-RoR221-02/10-1-Conf-Anx), the day the applicable time limit was to lapse.<sup>8</sup> Noting that the

<sup>4</sup> Presidency Decision, paragraph 21.

<sup>5</sup> Confirmation de la Requête en contestation du comportement du Greffier ainsi que son aptitude à exercer les fonctions qui lui sont attribuées par l'article 43-1 du Statut de Rome, ICC-RoR221-01/10-7-Conf, 16 April 2010; Corrigendum Confirmation de la Requête en contestation du comportement du Greffier ainsi que son aptitude à exercer les fonctions qui lui sont attribuées par l'article 43-1 du Statut de Rome, ICC-RoR221-01/10-7-Conf-Corr, 19 April 2010; Note supplémentaire à l'appui du document intitulé : «Confirmation de la Requête en contestation du comportement du Greffier ainsi que son aptitude à exercer les fonctions qui lui sont attribuées par l'article 43-1 du Statut de Rome», ICC-RoR221-01/10-8-Conf, 27 April 2010.

<sup>6</sup> Confirmation de la Requête en contestation du comportement du Greffier ainsi que son aptitude à exercer les fonctions qui lui sont attribuées par l'article 43-1 du Statut de Rome, ICC-RoR221-01/10-7-Conf, 16 April 2010.

<sup>7</sup> Corrigendum Confirmation de la Requête en contestation du comportement du Greffier ainsi que son aptitude à exercer les fonctions qui lui sont attribuées par l'article 43-1 du Statut de Rome, ICC-RoR221-01/10-7-Conf-Corr, 19 April 2010.

<sup>8</sup> ICC-RoR221-01/10-7-Conf-Exp-AnxA-Corr-tENG.

deadlines set in the Presidency Decision were intended to enable Aprodec asbl to know whether any such challenge would be forthcoming prior to making its decision as to whether to proceed with the Complaint, the Presidency is satisfied that the failure to comply with the time limit for the Confirmation was outside the control of Aprodec asbl. Thus, the Confirmation is admissible. Further, although the Presidency Decision only contemplates the assessment of any complaint on the basis of the arguments formulated in the Application, in view of the importance of proceedings related to misconduct, the Presidency will not exclude further arguments to those contained in the Application.

Noting that the Corrigendum is very similar to the Confirmation, the Presidency considers that it makes no material difference whether it relies on the Confirmation or the Corrigendum, thus it is not necessary to determine the admissibility of the latter.

In relation to the Supplementary Note,<sup>9</sup> which was filed 11 days after the expiration of the deadline set in the Presidency Decision without any explanation, the Presidency regards it as inadmissible.

#### **Submission of Aprodec asbl**

By the Application, Aprodec asbl submits that the Registrar has committed misconduct in the following ways:

- Through her errors of law in the underlying request for judicial review;<sup>10</sup>
- By erroneously relying on a decision of Pre-Trial Chamber II;<sup>11</sup>
- By taking the Impugned Decision in an arbitrary manner;<sup>12</sup>
- By denying Aprodec asbl the right to intervene as *amicus curiae*;<sup>13</sup>
- By discriminating against non-governmental organisations, apart from the International Committee for the Red Cross, by denying such organisations permission to visit persons in the Court's detention centre;<sup>14</sup>
- By violating the human rights of Aprodec asbl and the detained persons;<sup>15</sup>
- By failing to demonstrate the applicability of regulation 180(1) of the Regulations of the Registry in the present case;<sup>16</sup>

---

<sup>9</sup> Note supplémentaire à l'appui du document intitulé : «Confirmation de la Requête en contestation du comportement du Greffier ainsi que son aptitude à exercer les fonctions qui lui sont attribuées par l'article 43-I du Statut de Rome», ICC-RoR221-01/10-8-Conf, 27 April 2010.

<sup>10</sup> Application, paragraph 37.

<sup>11</sup> Application, paragraphs 38-39.

<sup>12</sup> Application, paragraph 39.

<sup>13</sup> Application, paragraph 40.

<sup>14</sup> Application, paragraph 41.

<sup>15</sup> Application, paragraph 42.

- By imposing restrictions on visits by Aprocdec asbl, even though no order had been made by a Chamber pursuant to regulation 101 of the Regulations of the Court;<sup>17</sup> and
- By failing to request further information from Aprocdec asbl.<sup>18</sup>

By the Confirmation, Aprocdec asbl further argues that the Registrar has committed misconduct by:

- Stating in an interview that “the Bemba trial is not political”;<sup>19</sup> and
- Failing to notify Aprocdec asbl of a decision of Trial Chamber III.<sup>20</sup>

### **Applicable provisions**

Article 46(1)(a) of the Rome Statute provides, in relevant part, that the Registrar shall be removed from office if a decision to this effect is made in accordance with the applicable provisions, in cases where he or she is found to have committed serious misconduct or a serious breach of his or her duties under this Statute. Article 46(3) provides that a decision as to removal from office of the Registrar shall be made by an absolute majority of the judges.

Article 47 of the Rome Statute provides that a Registrar who has committed misconduct of a less serious nature than that set out in article 46(1) “shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence”.

Rules 24 and 25 respectively define “serious misconduct and serious breach of duty” and “misconduct of a less serious nature”.

Pursuant to rule 26(2), the role of the Presidency is to “set aside anonymous and manifestly unfounded complaints and transmit the other complaints to the competent organs”.

### **Decision**

After thorough examination, the Presidency has determined that the allegations in the Complaint do not disclose any serious misconduct and serious breach of duty, nor any misconduct of a less serious nature.

---

<sup>16</sup> Application, paragraph 44.

<sup>17</sup> Application, paragraph 44.

<sup>18</sup> Application, paragraph 45.

<sup>19</sup> Confirmation, paragraph 12.

<sup>20</sup> Confirmation, paragraph 13.

The allegations in the Application, as described above, are essentially errors of law which the Registrar is alleged to have made in the course of performing her duties pursuant to regulations 179 and 180 of the Regulations of the Registry and, as such, they are properly the subject of an application for judicial review by a detained person rather than a complaint of misconduct. This was also the recommendation of the three assisting judges who noted that "Aprodec, in effect, wrongly equates what it considers to be errors of law in the Impugned Decision to misconduct under rules 24 and 25 of the Rules of Procedure and Evidence". Even if such allegations were proven, this would only demonstrate that the Impugned Decision of the Registrar was unsound.

In relation to the other arguments in the Confirmation, in these circumstances, such ordinary errors in the notification of documents cannot come close to satisfying the standard of misconduct set out in rule 24 or 25. Further, although Aprodec asbl has not provided the original and complete material related to the Registrar's magazine interview, the Registrar's comment that "... the Bemba trial is not political..." appears to reflect the fundamental notion that the Court provides for a legal, rather than a political, process.

Accordingly, pursuant to rule 26(2) of the Rules of Procedure and Evidence, the Presidency finds the Complaint to be manifestly unfounded (as did the assisting judges) and it is hereby set aside.

The Presidency notes that its decision in respect of this Complaint is final and is not subject to appeal.

The Presidency further notes that, pursuant to rule 26(1), the Complaint, including this decision, shall remain confidential unless the Presidency indicates otherwise.

Yours sincerely,

Judge Sang-Hyun Song  
President

CC: The Registrar of the Court