

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04
Date: **23 March 2006**

THE APPEALS CHAMBER

Before: Judge Navanethem Pillay, Presiding
Judge Philippe Kirsch
Judge Georgios M. Pikis
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr. Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**Under Seal
EX PARTE, only available to the Prosecutor**

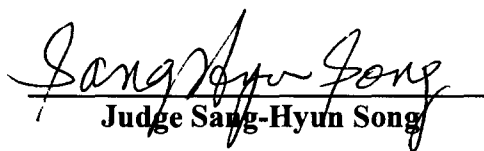
**Order on the Registrar's Request to Transfer Certain Parts of the Case Record to the
Situation Record**

Separate Opinion of Judge Song

The Office of the Prosecutor
Mr. Luis Moreno-Ocampo, Prosecutor

1. I append this separate opinion to the Appeals Chamber's "Order on the Registrar's Request to Transfer Certain Parts of the Case Record to the Situation Record" (ICC-01/04-124-US-Exp), which was issued on 16 March 2006. Although I agreed with the order, the reasons given in the order do not reflect adequately my reasons to do so. As the order had to be issued as a matter of urgency, I did not have the opportunity to append a separate opinion at the time.
2. On 9 March 2006, the Registrar requested the Appeals Chamber to transfer the decisions and documents that had been registered in the appeal which is pending before this Chamber from the case record 01/04-01/06 to the situation record 01/04. The background to the Registrar's request is explained further in paragraphs 1 to 5 of the order of the Appeals Chamber of 16 March 2006.
3. Article 64 (10) of the Statute stipulates that it is the Trial Chamber which shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar. The Statute thus establishes a division of labour between the Chamber and the Registrar: while the Chamber bears the final responsibility for the completeness and accuracy of the record, the Registrar assists the Chamber in the day-to-day maintenance and preservation of the record. It follows that the Registrar must seek authorization from the Chamber for any measure in relation to the record that goes beyond its maintenance or preservation.
4. As article 64 (10) is placed in Part 6 of the Statute, the provision, pursuant to rule 149 of the Rules of Procedure and Evidence, applies to proceedings in the Appeals Chamber *mutatis mutandis*.
5. The transfer of decisions and documents from one record to another record affects the appeals record as a whole and may have consequences, for instance, on the default access by participants to the record. Therefore, the transfer of decisions and documents goes beyond the mere maintenance and preservation of the record; the Registrar may effect the transfer only with the authorization of the Appeals Chamber.
6. As the decision of Pre-Trial Chamber I that is the object of this appeal was transferred from the case record 01/04-01/06 to the situation record 01/04, the Registrar's request to transfer as well the decisions and documents relating to the appeal of this decision should be

granted; it is a matter of the accuracy of the record that decisions and documents relating to an appeal are part of the same record as the decision which is the object of the appeal.



Judge Sang-Hyun Song

Dated this 23rd day of March 2006

At The Hague, The Netherlands