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No.: ICC-01-04
Date: 12 June 2007

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single judge

Registrar: Mr Bruno Cathala

SITUATION OF THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

**Response to 'Demande du représentant légal des victimes a/0231/06 à a/0233/06 et
a/0242/06 à a/0250/06, ICC-01/04-330'**

The Office of the Prosecutor

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Counsel for Applicants

Office of Public Counsel for Defence

Mr. Xavier-Jean Keïta

1. Introduction:

1. On 24 May 2007, the Honourable Single Judge issued a 'Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure',¹ in which the Single Judge ordered the Registry to transmit the applications to participate as victims to the Office of Public Counsel for the Defence (OPCD), and granted the OPCD the right to file respond to these application by 25 June 2007.
2. On 5 June 2007, the legal representatives of the applicants filed a request that the Single Judge:
 - i. order the OPCD and the Prosecution to respect the confidentiality of the filings and to refer to the applicants solely by the pseudonyms designated by the Victim Participation and Reparation Section; and
 - ii. provide the legal representatives with the opportunity of being heard in relation to any matters concerning their protection and security, before rendering a decision on such matters.²
3. The OPCD hereby files its response.

2. Observations of the OPCD

4. The OPCD would firstly like to observe that it is bound by the same obligations of confidentiality which apply to other staff members of the International Criminal Court, such as the Prosecution. In addition, it is also obliged to comply with the strict requirements set out in the Code of Professional Conduct for Counsel.
5. In this regard, the OPCD respectfully submits that the legal representatives have not adduced any arguments or evidence which would suggest that the OPCD would not be in a position to fully comply with the confidentiality obligations set out in these instruments, in the same manner as other organs of the Court, such as the Prosecution. As such, the OPCD respectfully submits that the protective measures imposed by the Court should not discriminate between the obligations of the Prosecution, and those of the OPCD.
6. In terms of the concrete measures requested, the OPCD undertakes to refer to the applicants only by their pseudonyms in all OPCD filings and correspondence (both public and confidential).

¹ ICC-01/04-329

² Demande du représentant légal des victimes a/0231/06 à a/0233/06 et a/0242/06 à a/0250/06, ICC-01/04-330

7. In view of the short deadlines, and the need to exercise the utmost caution with respect to the details set out in the applications, the OPCD is willing to initially file its observations on a confidential basis.
8. Nonetheless, the OPCD submits that in the interests of transparency and the right to public proceedings, only information which could endanger the security and protection of the applicants should be kept from the public domain. In this regard, the OPCD submits that the confidentiality concerns of the applicants could be addressed by the following procedure, which the OPCD has devised with the kind assistance of the ICC Victims and Witnesses Unit (VWU). VWU is considering a scheme of assistance, which could include providing the OPCD with training, a model redacted motion, and guidelines for redactions before the ICC. After filing (with the Chamber's permission) a confidential version of its observations, the OPCD could prepare a public, redacted version based on these guidelines, and subsequently submit the draft redacted version to VWU to review. Alternatively, the OPCD could prepare a draft, redacted version, and file it on a confidential basis before the Chamber to approve the redactions.
9. Finally, the OPCD observes that in its filing of 11 June 2007,³ the Prosecution referred to a request from the legal representatives of applicants that their names be redacted from public filings.
10. As it appears that the request was filed on an ex parte basis, the OPCD cannot comment on the underlying reasons supporting the request, which thus deprives the OPCD of the right to be effectively heard on a matter which impacts on the tasks of the OPCD. The OPCD further submits that in light of the fact that the names of the legal representatives have been provided to the OPCD, there is no justification for filing such a request on an ex parte basis.⁴
11. Nonetheless, as a general principle, the OPCD respectfully submits that the names of counsel who appear before the Court should be a matter of public record for the following reasons. Firstly, counsel who appear before the ICC have strict ethical obligations both as regards their conduct before the ICC, and as regards their conduct at a national level. The fact that they have been assigned as counsel is therefore a matter of interest for domestic bar associations, domestic police authorities, and counsel's clients (who have a right to be advised of potential conflicts of interests both

³ Prosecution's Observations on the "Demande du représentant légal des victimes a/0107/06 à a/0109/06, a/0128/06 à a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06 à a/0214/06, a/0220/06 à a/0222/06, a/0224/06 à a/0230/06 et a/0234/06 à a/0241/" ICC-01/04-335

⁴ It has also put the OPCD in the regrettable position of not knowing whose names it should be omitting from the cover-page of the present filing.

in relation to the substance of the representation, and in relation to whether the modalities of representation would hinder counsel from having sufficient time and availability to provide adequate representation).

12. Secondly, in order to prevent persons from falsely purporting to be a staff member or counsel before the ICC, there should be some means by which third parties and national authorities can request the Court to confirm whether that person does in fact have the quality of counsel or staff member.
13. The OPCD is therefore concerned that the redaction of the legal representative's names could create a dangerous precedent, which would interfere with the proper administration of justice.

3. Relief Sought:

14. In light of the aforementioned submissions, the OPCD respectfully requests the Honourable Single Judge to:
 - i. allow the OPCD to file a confidential version of its observations;
 - ii. permit the OPCD to subsequently file a public redacted version which has either been vetted by VWU or by the Chamber;
 - iii. order the legal representatives to re-file their request for protective measures on a confidential (as opposed to ex parte) basis; and
 - iv. permit the OPCD to file supplementary observations on the arguments provided by the legal representatives for the redaction of their names.



Xavier-Jean Keïta
Principal Counsel of the OPCD

Dated this 12th day of June, 2007

At The Hague