

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

**No.: ICC-02/05
Date: 31 May 2007**

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single judge

Registrar: Mr Bruno Cathala

**SITUATION
DARFUR, SUDAN**

**Public Document
URGENT**

**Request on behalf of applicants
a/0011/06, a/0012/06, a/0013/06, a/0014/06, a/0015/06**

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Andrew Cayley, Senior Trial Lawyer

Legal Representatives of the Applicants
Ms Wanda M. Akin
Mr Raymond M. Brown

**Office of Public Counsel for the
Defence**
Mr Xavier-Jean Keïta

Office of Public Counsel for Victims
Ms Paolina Massidda

I. Background of Proceedings

1. On 10 May 2007, the Pre-Trial Chamber I issued a decision designating Judge Akua Kuenyehia as Single Judge for the Situation in Darfur, Sudan.¹

2. On 23 May 2007, the Single Judge issued the "Decision authorising the filing of observations on applications for participation in the proceedings a/001/06 to a/0015/06"² ("the Decision"), ordering the transmission of the applications for participation to the Office of the Prosecutor (the "OTP") and to the Office of Public Counsel for the Defence (the "OPCD") for the purposes of rule 89(1) of the Rules of Procedure and Evidence (the "Rules"). The Single Judge requested both participants to submit their observations within 15 days from the notification of the applications.³

3. Since the Decision does not contain any order for protective measures for the applicants, except for the order concerning contacts with the applicants,⁴ the Legal Representatives respectfully submit the following observations.

II. Observations on the protection and safety of the applicants

4. The Legal Representatives note that until now, the Court has always granted anonymity to the applicants. The reason for granting such protective measure has always been to avoid putting the applicants at risk.

¹ See the "Decision on the Designation of a Single Judge" (PTC I), No. ICC-02/05-73, 10 May 2007

² See the "Decision authorising the filing of observations on applications for participation in the proceedings a/001/06 to a/0015/06" (PTC I), No. ICC-02/05-74, 23 May 2007

³ *Ibid.*, p. 3.

⁴ *Ibid.*, p. 4.

5. In particular, in the Democratic Republic of Congo (the "DRC") situation and in the *Lubanga* case, applicants were granted anonymity. Moreover, for the purposes of rule 89(1) of the Rules, the applications were provided to the OTP in unredacted format and to the Defence in redacted format.⁵ In the Uganda situation and in the *Kony and others* case, the redacted copy of the applications was provided to both the OTP and the Defence.⁶

6. The Legal Representatives note that the applicants a/0011/06 to a/0015/06 requested in their applications their identity not to be disclosed to the Defence⁷; while applicant a/0014/06 also requested his/her identity not to be disclosed to the OTP.

7. The reason identified by the applicants in their application for requesting their identity not to be disclosed is the fact that part of their family still reside in Darfur (Sudan) or in internally displaced people's camps.

⁵ See the "Decision on Protective Measures Requested by Applicants 01/04-1/dp to 01/04-6/dp" (PTC I, Public redacted version), No. ICC-01/04-73, 21 July 2005; the "Decision Appointing Ad Hoc Counsel and Establishing a Deadline for the Prosecution and the Ad Hoc Counsel to Submit Observations on the Applications of Applicants a/0001/06 to a/0003/06" (PTC I), No. ICC-01/04-147, 18 May 2005; the "Décision autorisant Procureur et la Défense à déposer des observations au sujet du statut de victime des Demandeurs VPRS 1 à VPRS 6 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo" (PTC I), No. ICC-01/04-01/06-60, 28 March 2006. See also the "Decision authorising the Prosecutor and the Defence to file observations on the applications of applicants a/0004/06 to a/0009/06, a/0016/06 to a/0046/06 and a/0047/06 to a/0052/06 in the case of the Prosecutor v. Thomas Lubanga Dyilo" (PTC I), No. ICC-01/04-01/06-270, 4 August 2006; the "Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06 et a/0071/06" (PTC I), No. ICC-01/04-228, 22 September 2006; the "Decision authorising the filing of observations on applications for participation in the proceedings a/0072/06 to a/0080/06 and a/0105/06" (PTC I), No. ICC-01/04-01/06-463, 22 September 2006; the "Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0080/06 et a/0105/06" (PTC I), No. ICC-01/04-241, 29 September 2006 and the "Decision authorising the filing of observations on applications for participation in the proceedings a/0072/06 to a/0080/06 and a/0105/06" (PTC I), No. ICC-01/04-01/06-494, 29 September 2006.

⁶ See the "Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06" (PTC II), No. ICC-02/04-01/05-134, 1st February 2007.

⁷ See part of their respective standard application forms.

8. The Legal Representatives acknowledge that the situation of the applicants a/0011/06 to a/0015/06 is different than the one of all other applicants already authorised to participate in the DRC situation or in the *Lubanga* case, since they are not living in the country where the investigation is ongoing, nor in an internally displaced people's camp in a neighbouring country also affected by a conflict.*

9. However, this does not mean that their safety and security is not at risk. In this respect, the Legal Representatives consider that some factors may have an impact on the security of the applicants and may justify the anonymity measure to be granted to the applicants.

10. Such factors include a grave concern for family and friends remaining in Darfur and those in refugee camps in Chad. In fact, it should be noted that in the process of preparing these observations, legal representatives have been advised that applicant a/0014/06 is currently in Chad. The Government of Sudan has indicated that anyone found assisting the ICC would face serious retribution, and possible beheading as a likely penalty. Additionally, these applicants have family members who were specifically targeted by the Sudanese government for their protests against the government's activities in Darfur (See application of a/0011/06). Additionally, the Darfur "naming" practices and tradition makes it relatively easy for a knowledgeable person to determine the identity and perhaps the location of family members from an applicant's name.

* In this regard, regulation 99 of the Regulations of the Registry identifies "the level of security in the area where the victim lives" as a criteria to be taken into account in assessing the risk for the safety and security of the victim concerned.

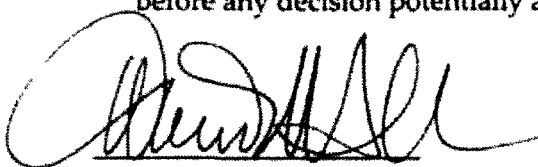
11. The Legal Representatives further note that the Decision does not contain any instructions in relation to the fact that the names of the applicants shall not be referred to in the submissions by the OTP and the OPCD.

12. The Legal Representatives consider that such measure is the minimum protective measure the Court should grant to the applicants to protect their safety, physical and psychological well-being, dignity and privacy in accordance with article 68 of the Rome Statute.

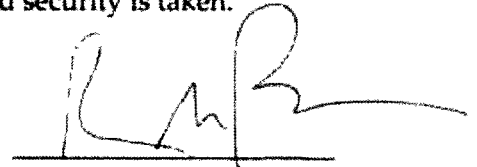
13. For the foregoing reasons, the Legal Representatives respectfully requests the Single Judge

(a) to order the OTP and the OPCD to respect the confidentiality of the applications and therefore to refer to the applicants, in their respective submissions, only with the numbers given by the Victims Participation and Reparations Section to the applications; and

(b) to be heard on matters related to the protection and safety of the applicants before any decision potentially affecting their safety and security is taken.



Wanda M. Akin



Raymond M. Brown

Done in English.

Dated this 31st day of May 2007

At The Hague and Newark

The Netherlands and United States of America