



Original : English

No.: ICC-01/04

Date: 27 July 2007

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Redacted Version

**Prosecution's Observations on the "Demande du représentant légal des victimes
[EXPURGÉ]"**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

**The Office of Public Counsel for
the Defence**

Mr Xavier-Jean Keïta

**Legal Representative for the Applicants
a/0163/06 to a/0187/06
[EXPURGÉ]**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Background

1. On 27 June 2007, the Pre-Trial Chamber appointed Judge Akua Kuenyehia as Single Judge of the Pre-Trial Chamber responsible for the Situation in the Democratic Republic of the Congo (the “DRC”) and any related case from 23 July 2007 to 10 August 2007.¹
2. On 17 July 2007, the then Single Judge rendered the “*Décision autorisant le dépôt d’observations sur les demandes de participation à la procédure*”,² inviting the Prosecution and The Office of Public Counsel for the Defence (“OPCD”) to submit their observations on the applications a/0163/06 to a/0187/06 (the “Applications”) to participate as victims in the proceedings before the Pre-Trial Chamber at the investigation stage of the situation in the DRC within 30 days of notification of the Applications and the report submitted to the Pre-Trial Chamber by the Registry (“Report”).
3. [REDACTED]
4. On 19 July 2007, the then Single Judge ordered the Registry to temporarily suspend the transmission of the “Report”.³
5. On 20 July 2007, Applications a/0163/06 to a/0187/06⁴ were transmitted to the Prosecution in unredacted form.

¹ “*Décision portant désignation d’un juge unique*”, public, 27 June 2007, ICC-01/04-353.

² “*Décision autorisant le dépôt d’observations sur les demandes de participation à la procédure*”, public, 17 July 2007, ICC-01/04-358.

³ “Decision suspending the transmission of the “*Rapport à la Chambre préliminaire I sur les demandes de participation a/0163/06 à a/0187/06*”, confidential URGENT, 19 July 2007, ICC-01/04-360-Conf.

⁴ ICC-01/04-356-Conf-Exp-Anx2 to Anx26.

6. On 20 July 2007, in an urgent request,⁵ the Legal Representative of the Applicants ("Legal Representative") requested the Single Judge (a) to order OPCD to return all non-redacted copies of victims application's received, and to order the Registrar to provide OPCD with redacted copies instead ("Request a"); (b) to assure that all future applications for victim participation be redacted ("Request b"); (c) to order the Registrar not to transmit the Report to the Prosecution and OPCD, or to transmit only a redacted version of the Report to the Prosecution and OPCD ("Request c"); (d) to transmit a copy of the Report to the Legal Representative ("Request d"); (e) to ensure that the identity of the Legal Representative remains confidential and redacted in public documents ("Request e"); and (f) to be heard on matters related to the protection and safety of the applicants before any decision is taken potentially affecting their safety and security ("Request f").

Observations

Request a

7. The Prosecution submits that the OPCD is bound by the same confidentiality provisions applicable to all staff members of the International Criminal Court,⁶ and in addition it is also bound by the Code of Professional Conduct for Counsel ("CPCC")⁷. The latter in its Article 8⁸ stipulates that a Counsel may not disclose confidential information, unless "disclosure is provided for by a particular provision of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court or this Code or where such disclosure is ordered by the Court. In particular, Counsel shall not reveal the

⁵ "Demande du représentant légal des victimes [EXPURGÉ]", public redacted, 20 July 2007, ICC-01/04-361.

⁶ See Regulation 144 (3) of the Regulations of the Registry.

⁷ See Regulation 144 (2) of the Regulations of the Registry.

⁸ See the Code of Professional Conduct for Counsel, ICC-ASP/4/Res.1, at http://www.icc-cpi.int/library/about/officialjournal/ICC-ASP-4-32-Res.1_English.pdf, Article 8.

identity of protected victims and witnesses, or any confidential information that may reveal their identity and whereabouts, unless he or she has been authorized to do so by an order of the Court.”⁹ Given these strict confidentiality obligations,¹⁰ the Legal Representative has failed to show that adherence to these obligations is not sufficient; in particular has the Legal Representative failed to prove the existence of a concrete security threat that would justify withholding the identity of the Applicants.

Request b

8. The Prosecution submits that the Legal Representative’s request that all future applications for victim participation be redacted contradicts the practice of the Pre-Trial Chamber and is neither viable nor warranted. It has been the consistent practice of this Pre-Trial Chamber and the Single Judge, in both the situation and the case, to order the transmission of applications for victims’ participation to the Prosecution in unredacted form.¹¹

⁹ See Article 8 (4) CPCC.

¹⁰ The Legal Representative has used the term “strict confidentiality obligation” in his/her filing “Demande du représentant légal des victimes [EXPURGÉ]”, public redacted, 20 July 2007, ICC-01/04-361, para 15; This term has also been used by OPCD in its “Response to ‘Demande du représentant légal des victimes a/0231/06 à a/0233/06 et a/0242/06 à a/0250/06’”, public, 12 June 2007, ICC-01/04-336.

¹¹ See in the DRC Situation, “Decision on Protective Measures Requested by Applicants 01/04-1/dp to 01/04-6/dp”, public redacted version, 21 July 2005, ICC-01/04-73; “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”, public, 29 septembre 2006, ICC-01/04-241; “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”, public, 18 May 2006, ICC-01/04-147; “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”, public, 22 September 2006, ICC-01/04-228; “Décision autorisant le dépôt d’observations sur les demandes de participation à la procédure”, public, 23 May 2007, ICC-01/04-329; “Décision autorisant le dépôt d’observations sur les demandes de participation à la procédure”, public, 17 July 2007, ICC-01/04-358 ;

See in the *Lubanga* case, “Decision Establishing a Deadline for the Prosecution and the Defence to submit Observations on the Applications of Applicants a/0001/06 to a/0003/06”, public, 18 May 2006, ICC-01/04-01/06-107; “Décision autorisant le Procureur et la Défense à déposer des observations sur les demandes des requérants a/0004/06 à a/0009/06, a/0016/06 à a/0046/06 et a/0047/06 à a/0052/06 dans le cadre de l’affaire le Procureur c. Thomas Lubanga Dyilo”, public, 4 August 2006, ICC-01/04-01/06-270; “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”, public, 22 September 2006 ICC-01/04-01/06-463; “Décision autorisant le

9. The Prosecution reiterates that the Pre-Trial Chamber in its 21 July 2005 decision observed that “the scope of redactions cannot exceed what is strictly necessary in light of the applicant’s security situation (...)”¹². It then made the following findings:

(i) “that according to rule 5, paragraph 1(b) and rule 6, paragraphs 1 and 2 of the Rules, the Prosecutor, Deputy Prosecutor and all staff members of the Office of the Prosecutor are bound by principle of confidentiality; that to date the Pre-Trial Chamber has no indication of any breach of such confidentiality obligations; and that according to article 68, paragraph 1 of the Statute, the Prosecutor is also under an obligation to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses;”¹³

(ii) “further that the Prosecutor is already aware of the situation of many victims, ... , and that there are no indications that the transmission of unredacted copies of the Applications to the Prosecutor will increase the security risks that they currently face.”¹⁴

10. Against this background, the Prosecution submits that its experience shows that it would be impossible to assess, on the basis of redacted versions of the applications, whether an application fulfils the requirements for participation as victim in the situation or case and

dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0080/06 et a/0105/06”, public, 29 September 2006, ICC-01/04-01/06-494; “Décision sur la demande d'autorisation d'appel de la Défense relative à la transmission des Demandes de participation des victimes”, public, 6 November 2006, ICC-01/04-01/06-672.

¹² “Decision on Protective Measures Requested by Applicants 01/04-1/dp to 01/04-6/dp”, public redacted version, 21 July 2005, ICC-01/04-73, p.4.

¹³ *Ibid.*, p.5.

¹⁴ *Ibid.*

thus to submit an informed Reply under Rule 89 (1).¹⁵ In particular, it would be impossible to show that a causal link existed between the harm suffered by the applicants and crimes falling within the jurisdiction of the Court. The denial of access to the identity of applicants would further prevent the Prosecution from adequately fulfilling its protection duties to witnesses and victims as defined in article 68, paragraph 1 of the Statute.¹⁶ Finally, by not knowing the identity of the applicants and not being able to assess if any of them is also a witness for the Prosecution, the Prosecution cannot inform the Chambers and be heard on the implications of their potential status as victims on their pre-existing role as witnesses.¹⁷

Request c

11. Based on the experience the Prosecution made with Registry's reports that have been submitted in the context of earlier applications,¹⁸ the Prosecution is of the view that the additional information provided in such reports regularly contains clarifications on essential data [REDACTED]. Such additional information proves of utmost importance for the proper analysis of applications for participation.

Request d

12. The Prosecution does not oppose the request. In light of the professional relationship between the Legal Representative and the applicants represented by him/her and the privileges inherent to representation as well as the duties stemming there from, the

¹⁵ The Prosecution makes reference to the "Prosecution's further submissions supplementing its "Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP", dated 6 February 2007, and request for extension of time", public, 15 February 2007, ICC-02/04-01/05-208.

¹⁶ *Ibid*, para 6.

¹⁷ *Ibid*, para 8.

¹⁸ [REDACTED].

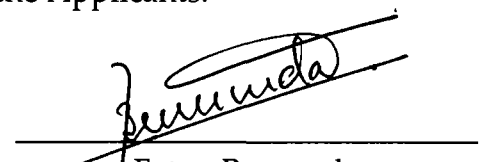
Prosecution sees no reason not to transmit a copy of the Report to the Legal Representative.

Request e

13. The Prosecution reiterates its position that it does not oppose the request of the Legal Representative for his or her name to remain confidential and redacted in all public filings at this stage of the proceeding.¹⁹ It is also understood that the identity of the Legal Representative remain confidential in all public documents related to further applicants to be represented by him or her during this stage of the proceedings.

Request f

14. Lastly, the Prosecution repeats its earlier submission that it does not oppose the request of the Legal Representative to be heard on matters related to the protection and safety of the applicants prior to any decision being taken that could potentially affect the safety and security of the Applicants.²⁰


Fatou Bensouda
Deputy Prosecutor (Prosecutions)

Dated this 27th July 2007
At The Hague, The Netherlands

¹⁹ This has already been submitted by the Prosecution in a filing addressing security concerns of the Legal Representative in the "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/0241/06' ", public, 11 June 2007, ICC-01/04-335.

²⁰ See *Ibid.* The Legal Representative's request, however, shall be limited to decisions directly related to and going to the core of the security of the applicants and shall by no means be interpreted in a way to grant to the Legal Representative the right to be heard in preliminary matters of a general nature, such as the transmission of applications to the Prosecution and the OPCD. The Single Judge already decided this issue in the "Décision relative aux questions de confidentialité et à la requête aux fins d'augmentation du nombre de pages autorisé", public redacted version, 19 June 2007, ICC-01/04-342, where she held that the Pre-Trial Chamber would examine requests of applicant's Legal Representatives to be heard on issues pertaining to protection and security on a case-by-case basis.