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No.: **ICC-01/04**

Date: **5 June 2007**

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**PUBLIC REDACTED DOCUMENT
URGENT**

Request of the Legal Representative of Victims a/0107/06 to a/0109/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06 to a/0214/06, a/0220/06 to a/0222/06, a/0224/06 to a/0230/06 and a/0234/06 to a/0241/06

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

The Legal Representative of the Victims

[REDACTED]

The Office of Public Counsel for

Victims

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

NOTING the “Decision on the Designation of a Single Judge”, which designated “Judge Sylvia Steiner as single judge of Pre-Trial Chamber I for the Situation in the DRC and any related case from 10 May 2007 until otherwise decided by the Chamber”;¹

NOTING the “Decision authorising the filing of observations on applications for participation in the proceedings”, dated 23 May 2007 and registered in the record of the situation on 24 May 2007 (“the Decision”),² which makes no mention of any protective measures, except for the order to all organs of the Court regarding contact with the applicants,³ and orders the transmission of the unredacted applications for participation to the Office of the Prosecutor and the Office of Public Counsel for the Defence (“the OPCD” or “the Office”) pursuant to rule 89(1) of the *Rules of Procedure and Evidence*;⁴

NOTING the letter dated 1 June 2007 containing the victims’ general power of attorney for their representation by [REDACTED];⁵

NOTING articles 57(3)(c) and 68 of the *Rome Statute*, rules 86 and 89 of the *Rules of Procedure and Evidence* and regulations 76 and 86 of the *Regulations of the Court*;

The Legal Representative of Victims a/0107/06 to a/0109/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06 to a/0214/06, a/0220/06 to a/0222/06, a/0224/06 to a/0230/06 and a/0234/06 to a/0241/06 (“the Legal Representative”) respectfully submits the following observations with regard to the protection and well-being of the applicants [REDACTED] represents.

¹ See the “Decision on the Designation of a Single Judge” (PTC I), No. ICC-01/04-328-tEN, 11 May 2007, p. 3.

² See the “Decision authorising the filing of observations on applications for participation in the proceedings” (PTC I), No. ICC-01/04-329-tEN, 23 May 2007.

³ *Ibid.*, p. 4.

⁴ *Ibid.*

⁵ See the letter bearing reference No. [REDACTED] of 1 June 2007.

1. The Legal Representative notes that, to date, the Court has always guaranteed applicants' anonymity in order not to put them at risk.
2. Furthermore, in the situation in the Democratic Republic of the Congo ("the DRC") and the *Lubanga* case, applications for participation were transmitted, pursuant to rule 89(1) of the *Rules of Procedure and Evidence*, to the Prosecutor in unredacted form and to the Defence in redacted form.⁶ In the situation in Uganda and the case of *Kony et al*, a redacted copy of the applications for participation was transmitted both to the Prosecutor and the Defence.⁷
3. The Legal Representative notes that almost all the applicants requested that their identity not be disclosed to the Defence and that only one of the applicants also indicated that he or she did not want his or her identity to be known to the Office of the Prosecutor.
4. Furthermore, the Legal Representative notes that the Decision contains no instruction to the Prosecutor and the OPCD to abstain from mentioning the applicants' names in their respective observations and from disclosing this information to a third party. The Legal Representative considers such a measure to

⁶ 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 authorising the Prosecutor and the Defence to file submissions on the status of victim of Applicants VPRS 1 to VPRS 6 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*" (PTC I), No. ICC-01/04-01/06-60-tEN, 28 March 2006 and 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 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 "Decision authorising the filing of observations on applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06" (PTC I), No. ICC-01/04-228-tEN, 22 September 2006; the "Decision authorising the filing of observations on the applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06" (PTC I), No. ICC-01/04-01/06-463-tEN, 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-01/04-241-tEN, 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-tEN, 29 September 2006.

⁷ 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, 1 February 2007.

be the minimum required for the protection of the safety, physical and psychological well-being, dignity and privacy of the applicants under article 68(1) of the *Rome Statute*.

5. The Legal Representative recalls that the applicants' circumstances are the same as those of victims VPRS 1 to 6 (01/04-1/dp to 01/04-6/dp) when the Pre-Trial Chamber found that "*the Applicants [were] [...] facing serious security risks in the DRC*".⁸ This state of affairs lasted for the whole of 2005 and 2006, as the Pre-Trial Chamber, or the Single Judge, always decided to disclose only a redacted version of the applications for participation to Counsel for the Defence;⁹ there are currently no indications to suggest that this is no longer the current state of affairs. Moreover, in February 2007 the Single Judge recalled that "[...] *the situation in the Democratic Republic of the Congo still appears volatile [...]*".¹⁰

⁸ See the "Decision on protective measures requested by applicants 01/04-1/dp to 01/04-6/dp", *supra*, footnote 6, p. 4.

⁹ See *inter alia* 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", *supra*, footnote 6, p. 4; 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*", *supra*, footnote 6, p. 5; the "Decision authorising the filing of observations on applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06", *supra*, footnote 6, pp. 5–6; the "Decision authorising the filing of observations on applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06", *supra*, footnote 6, p. 5; 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" *supra*, footnote 6, p. 4 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" *supra*, footnote 6, p. 4.

⁹ 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, 1 February 2007.

¹⁰ See the "Review of the "Decision on the Application for the Interim Release of Thomas Lubanga Dyilo", No. ICC-01/04-01/06-826, 14 February 2007, p.6. See also the resolutions of the United Nations Security Council reiterating its "grave concern" at the presence of armed groups and militias in the eastern part of the Democratic Republic of the Congo, particularly in Ituri: resolution 1756 of 15 May 2007 and resolution 1698 of 31 July 2006. See also the report on MONUC by the Secretary-General of the United Nations dated 19 March 2007 which indicates that the security situation remains unstable, particularly in Ituri. Similarly, the press release published on the MONUC website on 12 March 2007 states that "[TRANSLATION] The vast majority of identified perpetrators of serious violations committed on children, in particular in recruiting and using children in armed forces and groups, as well as sexual violence, remain [...] unpunished. Worse still, some of those tried for, and convicted of, some of the most serious crimes are at large on the territory of the DRC."

6. Recent events only confirm this fact. Following a decision by the Congolese judiciary, two hundred and fifty-two detainees at the *Centre pénitentiaire et de rééducation de Kinshasa*, including thirty dangerous militia members who operated in Ituri, were granted conditional release on 14 May 2007.¹¹ MONUC is awaiting an official document from the Ministry of Justice to repatriate them to Ituri. At the same time, young people from Bunia, particularly those who have been demobilised, are being recruited or re-recruited by militias. It is highly probable that they will be joined by the freed militia members arriving from Kinshasa. In parallel to this situation, unidentified armed men continue to spread insecurity in Ituri. Some sources speak of the presence of former militia commanders, dangerous wanted people, allegedly active in the field.

7. The Legal Representative also points out that [REDACTED] own safety is at risk due to [REDACTED] representing the victims, and recalls that at the time of [REDACTED] inclusion in the list of counsel at the International Criminal Court, the misinformation campaign about the role of counsel before the Court resulted in mixed reactions. Moreover, if [REDACTED] link to [REDACTED] clients were to be made public at this early stage, during which the victims are only applicants, contact with [REDACTED] clients would become dangerous. In this context, the Legal Representative recalls that in the “Decision on protective measures requested by applicants 01/04-1/dp to 01/04-6/dp”,¹² the name of the Legal Representative concerned was redacted.

8. Furthermore, the Legal Representative respectfully points out that the decision of the Single Judge means that the OPCD will have access to the information contained in the applications for participation – applications which in

¹¹ See article (in French only) “252 détenus du CPRK bénéficient de la libération conditionnelle” [255 CPRK detainees granted conditional release], 15 May 2007, <http://www.groupeavenir.net/spip.php?article11288>.

¹² See the “Decision on protective measures requested by applicants 01/04-1/dp to 01/04-6/dp”, *supra*, footnote 6.

all probability may have been disclosed in redacted form to a counsel for the Defence, given the settled jurisprudence of Pre-Trial Chamber I on this matter.¹³ Thus, the Office may find itself unable to exercise some of its functions under regulation 77 of the *Regulations of the Court* due to the existence of potential conflicts of interest, regardless of its full respect for the duty of confidentiality under rule 6(1) of the *Rules of Procedure and Evidence*.

9. Accordingly, the Legal Representative respectfully requests the Single Judge:

- (a) to order the Prosecutor and the OPCD to respect the confidentiality of the applications for participation and, consequently, to refer to the applicants only by the number assigned to them by the Victims' Participation and Reparations Section, and to abstain from stating information which might lead to the identification of the applicants in the event that the observations are registered as public documents;
- (b) to ensure that the identity of the Legal Representative is kept confidential and redacted from public documents at this early stage, during which the victims are only applicants;
- (c) to allow the Legal Representative to be heard by the Pre-Trial Chamber on any issue relating to the applicants' protection and safety prior to the issuance of any decision which may affect their safety and protection.

¹³ See *supra*, paragraph 2.

[signed]
[REDACTED]
Legal Representative of the Victims

Dated this 5 June 2007

At [REDACTED], [REDACTED]