



Original: **English**

No.: **ICC-02/05**
Date: **4 July 2008**

THE APPEALS CHAMBER

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

SITUATION IN DARFUR, SUDAN

Public Document

Request for Extension of Time and Reasons for Confidentiality

Source: Office of Public Counsel for the Defence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Legal Representatives of Victims

Ms Wanda M. Akin

Mr Raymond M. Brown

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Procedural History

1. On 18 June 2008, the Honourable Appeals Chamber issued the ‘Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 3 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 6 December 2007,’¹ in which the Appeals Chamber granted the Legal Representatives authorisation to submit observations in relation to the appeals filed by the Office of Public Counsel for the Defence (OPCD) and Prosecution, and further granted the OPCD and the Prosecution the right to file a response by 3 July 2008.
2. On 3 July 2008, the OPCD filed its observations after the deadline of 4pm for the receipt of court filings. The OPCD filed both a confidential and a public redacted version of these observations.
3. Pursuant to regulation 35(2) of the Regulations of the Court, the OPCD hereby respectfully requests an extension of the deadline to accommodate the additional time period outside the 4pm filing deadline. In addition, in accordance with regulation 23 *bis* of the Regulations of the Court, the OPCD further informs the Honourable Appeals Chamber for the reasons for filing the ‘OPCD’s Response to the 24 June 2008 Consolidated Statement of Views and Concerns of the Legal Representatives of the Participating Victims (a/0011/06 to a/0013/06, a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07 to a/0038/07)’ (‘the Observations’) on a confidential basis, *ex parte* the Legal Representatives of the alleged victims.

2. Reasons in support of request for extension of the deadline

4. As noted in the official notification email distributed by Court Management, the confidential version of the OPCD’s Observations was received at 4.03pm on the 3 July 2008. The OPCD had sent an earlier version, which was received at 4.01pm,

¹ ICC-02/05-138.

however this version was corrupted and could not be opened by Court Management.

5. The OPCD recognises that both versions were sent after the official deadline. The delay in doing so was occasioned by the fact that the OPCD had experienced technical difficulties in converting the motion template into pdf format, in the sense that several saved pdf versions for some reason failed to appear at the location in which they were saved. It was therefore not possible to find any of the pdf versions in order to attach one to an email to Court Management. The OPCD was also aware that Court Management has recently indicated that it will only accept pdf versions of court filings. The OPCD eventually ascertained that the problems had arisen from the particular motion template which it was using, and was subsequently able to create a non-corrupted pdf version, which was then sent at 4.03pm.

3. Reasons concerning the confidentiality of the OPCD observations

6. Footnote 17 of the OPCD's Observations refers to the residence of certain applicants, and for that reason, warrants confidentiality.
7. This information is also known to the Legal Representatives, and the OPCD thus has absolutely no objection to the confidential version being transmitted to the Legal Representatives. However, under Regulation 32(3) of the Regulations of the Court, the Legal Representatives would be subsequently obliged to notify any court filing they receive (including the confidential version) to all the alleged victims, whom they represent in the present proceedings. The OPCD was not certain in this regard as to whether the alleged victims in question had or would consent to this information being provided to other alleged victims.
8. The OPCD is aware that this issue has been considered by other Chambers,² but was unaware of any judicial direction as to how to proceed in such circumstances.
9. Accordingly, after discussions with Court Management, the OPCD adopted the current approach so as not to inadvertently create a conflict for the Legal

² Decision on the Requests of the OPCV, 10 December 2007, ICC-01/04-418 at para. 13.

Representatives as regards regulation 32(3) or potentially prejudice the security of any of the alleged victims.

4. Relief Sought

10. For the reasons set out above, the OPCD respectfully requests the Honourable Appeals Chamber to take note of the reasons for confidentiality, and to accept the ‘OPCD’s Response to the 24 June 2008 Consolidated Statement of Views and Concerns of the Legal Representatives of the Participating Victims (a/0011/06 to a/0013/06, a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07 to a/0038/07’.



Xavier-Jean Keïta
Principal Counsel of OPCD

Dated this Friday, 4 July 2008

At The Hague, The Netherlands