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No.: ICC-01/04

Date: 21 November 2008

PRE-TRIAL CHAMBER I

Before: Judge Anita Ušacka, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

**Prosecution's Response to the Request of Legal Representative of applicants
a/0221/06, a/0224/06, a/0225/06, a/0226/06, a/0229/06, a/0230/06, a/0236/06,
a/0237/06, a/0238/06, a/0239/06 and a/0240/06, entitled "Requête en notification
de la version non expurgée de la 'Public Redacted Version of the OPCD
Observations on 28 victims applications' et en droit de réponse auxdites
Observations"**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Ms Carine Bapita Buyagandu
Mr Emmanuel Daoud
Mr Sylvestre Bisimwa Ntakobajira
Mr Michael Verhaeghe

Legal Representatives of Applicants

Mr Joseph Keta
Mr Jean Chrysostome Mulamba Nsokoloni

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda, Principal Counsel

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

Mr Xavier-Jean Keïta, Principal Counsel

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 20 August 2008, the Registry notified the Prosecution and the Office of Public Counsel for the Defence (OPCD) with updated applications¹ that had been the subject of a prior decision of the Pre-Trial Chamber, in accordance with a procedure established by the Pre-Trial Chamber during an *ex-parte* hearing with the Registry of 21 July 2008.²
2. On 22 September 2008, the Prosecution filed a public version of its observations on the applications for victim participation³ and the OPCD filed a confidential version of its "OPCD Observations".⁴
3. On 15 October 2008, OPCD filed a "Public Redacted Version of OPCD Observations on 28 victim applications" (OPCD Public Observations).⁵
4. On 30 October 2008, Legal Representative Joseph KETA⁶ filed the "Requête en notification de la version non expurgée de la 'Public Redacted Version of the OPCD Observations on 28 victims applications' et en droit de réponse auxdites Observations"⁷, requesting *inter alia* (i) leave to respond to OPCD's allegations concerning a potential conflict of interest and (ii) to obtain a partly un-redacted version of the OPCD Public Observations for the purpose of responding to the allegations of the existence of a potential conflict of interest.

¹ ICC-01/04-533-Conf + Anxs 1-28- "Renouvellement des demandes de participation (...) ". The notification concerned applications a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0049/06, a/0050/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, a/0221/06, a/0224/06, a/0225/06, a/0226/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06".

² ICC-01/04-526-Conf-Exp.

³ Prosecution's Observations on the Re-submission of Applications a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0049/06, a/0050/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, a/0221/06, a/0224/06, a/0225/06, a/0226/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06 for Victim Participation at the Investigation Phase of the Situation in the DRC, ICC-01/04-539.

⁴ ICC-01/04-540-Conf.

⁵ ICC-01/04-542.

⁶ Representing applicants a/0221/06, a/0224/06, a/0225/06, a/0226/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06.

⁷ ICC-01/04-544.

The Prosecution's submissions

5. The Prosecution underscores that the scope of its submissions is limited to the Legal Representatives requests (i) to respond to OPCD's allegations concerning a potential conflict of interest and (ii) to obtain for that purpose a partly un-redacted version of the OPCD Public Observations. It does not touch upon any other issue put forward by the Legal Representative.⁸
6. The Prosecution supports the Legal Representative's request seeking leave to respond to allegations of "the existence of a potential conflict of interest". The Prosecution submits that since OPCD invokes a potential conflict of interest in respect of Legal Representative KETA⁹ citing articles 12, 16 and 26 of the Code of Professional Conduct for Counsel¹⁰, the Legal Representative should be put in a position allowing him to adequately respond to these allegations.
7. The Prosecution notes that, pursuant to Rule 90(4) of the Rules of Procedure and Evidence, the Chamber has the obligation to take all reasonable steps to ensure that any conflict of interest is avoided in the selection of a common legal representative. This provision may *mutatis mutandis* be applied to the current situation, where a conflict of interest of a legal representative of victim applicants is alleged.¹¹ The Prosecution further submits that the nature of the allegations presented by OPCD warrants full disclosure of these allegations to the Legal Representative in order for the allegations to be properly investigated. Therefore, the Prosecution does not object the Legal

⁸ The Prosecution will not address the Legal Representative's additional request to respond to the observations on the applicants he represents, since as stated by the Legal Representative himself (ICC-01/04-544, at para 12), the jurisprudence and law is clear on this matter (ICC-01/04-164 and Regulation 24 of the Regulations of the Court respectively) in that it does not foresee such a right.

⁹ See in paragraphs 11 to 13 of the OPCD Public Observations.

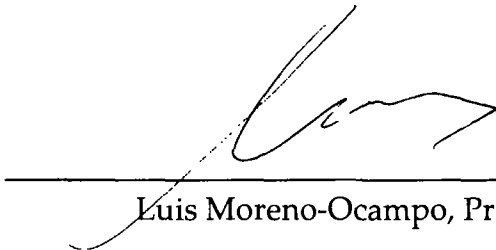
¹⁰ See http://www.icc-cpi.int/library/about/officialjournal/ICC-ASP-4-32-Res.1_English.pdf.

¹¹ See ICC-01/04-374, paragraph 46. The Prosecution notes that Rule 90(4) is among those rules which have been interpreted by the Court as referring to persons who have already been accorded the right to participate in the proceedings, but which has nonetheless been invoked by Pre-Trial Chamber I in previous decisions as being relevant to the Chamber's consideration of the rights to be accorded to the Legal Representatives of persons who have not yet been accorded the right to participate as victims. ICC-01/04-374, paragraphs 40, 42 and 46.

Representative's request to obtain a partly un-redacted version of the OPCD Public Observations, insofar as the information to be un-redacted is relevant to OPCD's allegations of "the existence of a potential conflict of interest".

Conclusion

8. The Prosecution supports the Legal Representatives requests (i) seeking leave to respond to OPCD's allegations concerning a potential conflict of interest and (ii) to obtain a partly un-redacted version of the OPCD Public Observations for the purpose of responding to the allegations of the existence of a potential conflict of interest.



Luis Moreno-Ocampo, Prosecutor

Dated this 21st day of November 2008
At The Hague, The Netherlands