

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: [REDACTED]

Date: [REDACTED]

THE APPEALS CHAMBER

Before: Judge [REDACTED]
Judge [REDACTED]
Judge [REDACTED]
Judge [REDACTED]
Judge [REDACTED]

SITUATION IN [REDACTED]

**IN THE CASE OF
THE PROSECUTOR v. [REDACTED]**

Public redacted document

Request for Clarification and Additional Information

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

Ms. Fatou Bensouda, Prosecutor

Mr. James Stewart

Ms. Helen Brady

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Ms. Paolina Massidda

The Office of Public Counsel for the Defence

Mr. Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

I. INTRODUCTION

1. On [REDACTED], Principal Counsel of the Office of Public Counsel for the Defence (OPCD) received an e-mail from the Registry conveying an appellate filing of the Office of the Prosecutor (OTP) and stating, *inter alia*:

The Appeals Chamber has instructed the Registry:

- to transmit to the OPCD and the OPCV by [REDACTED] the above attached “Redacted version of the Prosecution’s appeal against the “Decision on a request for clarification by [REDACTED] concerning a cooperation request by the Court”, [REDACTED]”;
- to request that the OPCD and OPCV file submissions representing the general interests of the defence and victims respectively on the issues arising in the document;
- to inform that the OPCD and OPCV are to make their submissions to the Registrar, who is to transmit them, upon receipt, to the Appeals Chamber by 4pm on [REDACTED].

Please note that the Registry cannot convey any information relating to the situation and/or case.

2. The OPCD hereby requests certain clarification and additional information to assist in providing such submissions to the Appeals Chamber.

II. REQUEST FOR CLARIFICATION AND ADDITIONAL INFORMATION

3. While mindful of the obligations of confidentiality that the Registry must abide by, the OPCD respectfully requests clarification and additional information from the Appeals Chamber to proceed in making the requested submissions. Specifically, the OPCD seeks:

- a. The precise provision by which OPCD is being requested to make these submissions – either by Regulation of the Court 77(4)(a), 77(4)(b), 77(4)(c), or 77(4)(d) or pursuant to Rule 103(1) as an *amicus curiae*.

- b. Confirmation that such OPCD submissions are for a case at the situation stage or otherwise where there is no Counsel assigned to represent the suspect(s)/accused(s).
4. The OPCD requests these limited clarifications to abide by ethical obligations and ensure that no conflict of interest could arise, the latter being an assessment required both by Regulation 77(4) of the Regulations of the Court [assistance “[w]hen a conflict of interest does not arise,”] and Article 16(1) of the Code of Professional Conduct for Counsel¹ [“Counsel shall exercise all care to ensure that no conflict of interest arises”].
5. In addition, the OPCD asks for disclosure of the actual Decision of the Single Judge (the “Impugned Decision”) and any related filings, excepting necessary redactions. While the OPCD understands the issue certified for appeal to be *“[w]hether assets subject to a Chamber’s order and request for cooperation under articles 57(3)(e) and 93(1)(k) of the Statute must be derived from or otherwise linked to alleged crimes within the jurisdiction of the Court”*,² the actual reasoning of the Impugned Decision is necessary to appreciate the current discussion on the state of the law of this subject at the ICC. This is particularly true given the Prosecution’s notation that it must rely on confidential legal authorities as *“it is inherent in the subject matter of article 57(3)(e) that many relevant authorities are classified as confidential, obscuring the consistency of past practice”*.³ Further, the Impugned Decision is discussed by the Prosecution in, *inter alia*, paragraphs,

¹ The OPCD Staff are bound by the ICC Code of Professional Conduct (CoPC) for Counsel via Regulation of the Registry 144 as well as, for certain Staff who are licensed attorneys, to the bounds of domestic codes of professional conduct. [While ICC CoPC Article 4 states the primacy of the ICC Code of Conduct in times of inconsistencies, CoPC Article 30 recognises that other disciplinary regimes may apply to Counsel.]

² *Prosecution v. [REDACTED]*, Redacted version of the Prosecution’s appeal against the “Decision on a request for clarification by [REDACTED] concerning a cooperation request by the Court”, [REDACTED], [REDACTED], [REDACTED], fn. 6.

³ *Ibid.*, fn. 5.

3, 7, 8, 10 and, in particular, in their assertion that “[t]he Decision does not explain how articles 57(3)(e) and 93(1)(k) of the Statute may be interpreted to require a criminal nexus”. While not challenging the integrity of this assertion by the Prosecution, the OPCD’s own submissions on this subject would be served by having the actual decision to understand this interpretation of the Prosecution.

6. Finally, as the OPCD has access to confidential filings in certain cases, the Impugned Decision is the least of which could direct to the current state of jurisprudence relied upon by the Single Judge that is now under review by the Appeals Chamber. For this, the OPCD notes that it may already have access to filings available to the Prosecution and Chambers in these discussions, as redacted from the footnotes (especially footnotes 9 and 10) and requests a lesser-redacted version which allows information on the case law cited.

III. RELIEF REQUESTED

For the foregoing, the OPCD respectfully requests that the Appeals Chamber to:

- Provide the specific provision by which OPCD is being requested to make these submissions – either Regulation of the Court 77(4)(a), 77(4)(b), 77(4)(c), or 77(4)(d) or pursuant to Rule 103(1) as an *amicus curiae*;
- Confirm that such OPCD submissions are for the situation stage or for a case where there is no Counsel assigned to represent the suspect(s)/accused(s);
- Disclose to the OPCD the Impugned Decision, excepting necessary redactions; and,

- Disclose to the OPCD a lesser-redacted version providing with, to the degree permissible, the case law relied upon by the Prosecution.



Xavier-Jean Keïta
Principal Counsel of the OPCD

Dated this, [REDACTED]
At The Hague, The Netherlands