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No.: ICC-01/04
Date: 31 August 2007

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Urgent

Order on the request by the OPCD for access to previous filings and for extension of page and time limit

The Office of the Prosecutor

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

Legal Representatives of the Applicants

Ms Carine Bapita Buyangandu
Mr Sylvestre Bismwa
Mr Michael Verhaeghe
Legal Representative of Applicants
a/0026/06, a/0027/06, a/0038/06, a/0144/06,
a/0145/06, a/0148/06, a/0203/06, a/0214/06,
a/0220/06, a/0221/06, a/0224/06, a/0227/06
to a/0230/06, a/0234/06, a/0235/06,
a/0237/06 and a/0238/06.

**Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta, Principal Counsel

Office of Public Counsel for Victims

Mrs Paolina Massida, Principal Counsel

I, Judge Sylvia Steiner, judge at the International Criminal Court (the “Court”);

NOTING the decision authorising the Prosecution and the former *ad hoc* counsel for the defence to submit observations on applications a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06 to participate as victims in the proceedings rendered by the Chamber on 22 September 2006;¹

NOTING the decision authorising the Prosecution and the Office of Public Counsel for the defence (“the OPCD”) to file observations on applications a/0106/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06 to participate as victims in the proceedings rendered by the Single Judge on 23 May 2007;²

NOTING the observations on applications a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06, filed in the record of the investigation in the Situation in the Democratic Republic of the Congo (“the DRC”) by the *ad hoc* counsel for the defence on 28 November 2006,³ and by the Prosecution on 30 November 2006;⁴

NOTING the observations on applications a/0106/06 to a/0110/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to

¹ ICC-01/04-228.

² ICC-01/04-329-tEN.

³ ICC-01/04-314-Conf.

⁴ ICC-01/04-315, ICC-01/04-315-Conf-Exp-Anx.

a/0222/06 and a/0224/06 to a/0250/06 filed in the record of the investigation in the Situation in the DRC by the Prosecution⁵ and by the OPCD⁶ on 25 June 2007;

NOTING the *“Order concerning the transmission of further information on victims’ application”* rendered by the Single Judge on 24 August 2007 (*“the Order”*)⁷, by which the Single Judge: (i) ordered the VPRS to extract from the reports submitted to the Chamber pursuant to Regulation 86(4) of the Regulations of the Court (*“the Regulations”*) the further information related to applications a/0009/06, a/0018/06, a/0026/06, a/0027/06, a/0038/06, a/0144/06, a/0145/06, a/0148/06, a/0203/06, a/0214/06, a/0220/06, a/0221/06, a/0224/06, a/0227/06, a/0228/06, a/0229/06, a/0230/06, a/0231/06, a/0232/06, a/0233/06, a/0234/06, a/0235/06, a/0237/06, a/0238/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06 and a/0250/06; (ii) ordered the Registry to transmit the further information with a copy of the applications concerned to the OPCD and to the Prosecution within ten days from the notification of the decision; and (iii) decided to give the OPCD and the Prosecution ten days from the notification of the further information to submit observations on the applications for which further information have been sent;

NOTING the *“Request for access to previous filings, and an extension of page limit and time limit”* submitted by the OPCD on 29 August 2007 (*“the Request”*), by which the OPCD requests: (i) to have access to all filings concerning the applications referred to in the Order; (ii) that the VPRS specifies the date on which the further information have been received by the Registry; (iii) to be

⁵ ICC-01/04-345-Conf.

⁶ ICC-01/04-347-Conf.

⁷ ICC-01/04-376

granted an extension of time limit from ten to thirty days and that the deadline will start to run only after a decision on OPCD's above mentioned request for access to confidential filings has been issued and; (iv) to be granted an extension of page limit to forty pages;⁸

NOTING Rule 89 of the Rules of Procedure and Evidence ("the Rules") and regulations 77(4) and 86 of the Regulations;

CONSIDERING that in its Request the OPCD observes that sixty five of the applications concern prior proceedings for which the OPCD was not appointed to act pursuant to regulation 77(4) of the Regulations and for which the OPCD claims not to have had access to any confidential filings, namely the observations on the applications submitted by the *ad hoc* counsel for the defence or by the Prosecution; and that the OPCD also claims that the Office "will be tasked with filing observations in relation to ninety seven applications in total";⁹

CONSIDERING, however, that pursuant to the Order issued in date 24 August 2007, the number of applications for which the OPCD has been authorised to file observations following the transmission of the further information by the VPRS amounts to thirty three;¹⁰

⁸ ICC-01/04-379.

⁹ ICC-01/04-379, par. 4 and 8

¹⁰ By its decision of 17 July 2007 (ICC-01/04-358) the Chamber also authorized the OPCD to file observations on twenty five more applications filed in the record of the Situation in the DRC, among which twelve have received further information by the VPRS. However, the Single Judge assumes that these observations will be submitted in a separate filing by the OPCD and that therefore they do not have an impact on the present Request by which the OPCD is asking for an extension of time and page limit.

CONSIDERING further that the OPCD was already authorised by the Chamber pursuant to regulation 77(4) of the Regulations to submit its observations on twenty eight out of the above mentioned thirty three applications,¹¹ and that consequently the OPCD already knows the content of a large majority of these applications and therefore is not clear why an extension of time limit would be needed;

CONSIDERING that, in order to submit its observations, the OPCD apparently requests access to all confidential and *ex parte* filings concerning prior proceedings, notably the observations submitted by the Prosecution and the former *ad hoc* counsel for the defence; however only five of the sixty five applications concerning prior proceedings, and for which observations have been previously submitted by the former *ad hoc* counsel for the defence, were subject to the Order of 24 August, namely a/0009/06, a/0018/06, a/0026/06, a/0027/06 and a/0038/06;¹²

FOR THESE REASONS,

ORDER the OPCD to clarify its Request, in particular in relation to the alleged number of applications for which the OPCD claims to be tasked with submitting observations, and on the basis of which the OPCD is currently requesting an extension of time and page limit;

ORDER the VPRS to specify the date on which the further information regarding the above mentioned applications was received by the Registry;

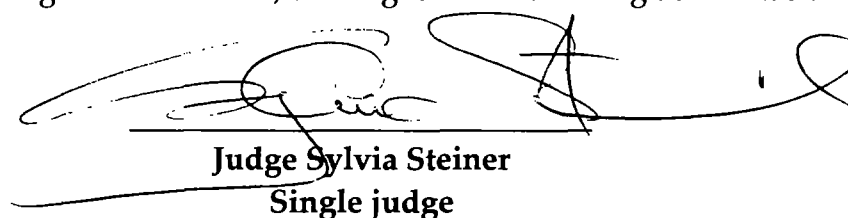
¹¹ ICC-01/04-347-Conf.

¹² ICC-01/04-314-Conf

INVITE the Prosecution to submit its observations on the Request, and in particular on the request of the OPCD to have access to confidential and *ex parte* filings submitted by the Prosecution with regard to the concerned applications, within five days;

DECIDE to suspend the time limit given to the Prosecution and to the OPCD for the filing of observations on the applications for which further information has been received and transmitted to the parties by the VPRS pursuant to the Order issued on 24 August 2007, until otherwise decided.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner
Single judge

Dated this Friday 31 August 2007

At The Hague, The Netherlands.