



Original : English

No.: ICC-01/04  
Date: 18 February 2008

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**Public Document**

Decision on the "Demande du BPCV d'accéder au document confidentiel déposé par le Conseil des Fonds d'affectation spéciale au profit des victimes le 7 février 2008"

**The Office of the Prosecutor**  
Mr Luis Moreno Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor

**Office of Public Counsel for Defence**  
Mr Xavier-Jean Keïta, Principal Counsel

**Legal Representatives for the Victims**  
Mr Emmanuel Daoud  
Mr Luc Walley  
Mr Frank Mulenda  
Ms Carine Bapita Buyangandu  
Mr Michel Shebele  
Mr Patrick Baudoin  
Mr Michael Verhaeghe  
Mr Sylvestre Bisimwa  
Mr Joseph Keta

**Office of Public Counsel for Victims**  
Ms Paolina Massidda, Principal Counsel

**PRE-TRIAL CHAMBER I** of the International Criminal Court (“the Chamber” and “the Court”, respectively);

**NOTING** the “Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund for Victims with Confidential Annex”<sup>1</sup> (“the Notification”) filed on 24 January 2008 in the record of the Situation of the Democratic Republic of Congo by the Board of Directors (“the Board”) of the Trust Fund for Victims (“the Trust Fund”);

**NOTING** the “Decision on the time limit for the filing of observations on the Notification by the Board of Directors of the Trust Fund for Victims”<sup>2</sup> issued by the Chamber on 5 February 2008 (“the Decision of 5 February 2008”);

**NOTING** the “Additional information on the Notification by the Board of Directors of the Trust Fund for Victims and annex”<sup>3</sup> (“the Additional Information”) filed by the Board as confidential, and notified to the Prosecution and the Office of Public Counsel for the Defence (“the OPCD”);

**NOTING** the “Demande du BPCV d’accéder au document confidentiel déposé par le Conseil des Fonds d’affectation spéciale au profit des victimes le 7 février 2008”<sup>4</sup> (“the Request of the OPCV”) filed on 13 February 2008 in which the Office of Public Counsel for Victims (“the OPCV”) requests that the Chamber grant it access to the Additional Information which was filed as confidential by the Board;

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<sup>1</sup> ICC-01/04-439.

<sup>2</sup> ICC-01/04-441

<sup>3</sup> ICC-01/04-445-Conf + Conf-Anx

<sup>4</sup> ICC-01/04-449

**NOTING** articles 68 and 79 of the Rome Statute (“the Statute”), rule 98 of the Rules of Procedure and Evidence (“the Rules”), regulations 23bis(3), 28 and 34 of the Regulations of the Court (“the Regulations”), and regulation 50 of the Regulations of the Trust Fund (“the Regulations of the Trust Fund”);

**CONSIDERING** that the Chamber has previously stated that “to avoid that a victim who will benefit from the specified activities of the Trust Fund would be identified and considered as having contact with the Court through the Trust Fund”<sup>5</sup> and ‘to avoid letting the beneficiaries be identified because of the physical and/or psychosocial rehabilitation and/or material support’<sup>6</sup> the Additional Information filed by the Board on 7 February 2008 should remain confidential, and available to the Prosecution and the OPCD only;<sup>7</sup>

**CONSIDERING** that the Chamber also previously stated that, “according to the Chamber’s previous jurisprudence<sup>8</sup>, unless otherwise expressly provided by the Chamber, those who have been granted the procedural status of victim in the Situation only have been given access to public documents”;<sup>9</sup>

**CONSIDERING** that the Chamber ordered notification of the confidential annex to the legal representatives of the victims other than the OPCV because: (i) the OPCV had already been notified of this annex by the Trust Fund acting on its own motion; (ii) the confidential annex to the Notification only provided general information as to the activities or projects of the Board;<sup>10</sup> and, (iii) the legal representatives of those who have been granted procedural status of victim in the DRC situation, including

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<sup>5</sup> ICC-01/04-439, para. 44.

<sup>6</sup> ICC-01/04-439, para. 46.

<sup>7</sup> ICC-01/04-441 p. 3.

<sup>8</sup> ICC-01/04-101.

<sup>9</sup> ICC-01/04-441 p. 3.

<sup>10</sup> ICC-01/04-439-Conf-Anx.

the OPCV, should all have access to the same documents in respect of this particular proceeding;<sup>11</sup>

**CONSIDERING** nevertheless, that the Chamber decided that, based on the reasoning set forth in its Decision of 5 February 2008, the legal representatives of victims, including the OPCV, would not be granted access to the confidential Additional Information filed by the Board, and that therefore, in the view of the Chamber, the present Request of the OPCV to be granted access to the confidential Additional Information is essentially a request for reconsideration of the Chamber's Decision of 5 February 2008;

**CONSIDERING** that the Chamber has previously reiterated "[...] that, in principle, the statutory framework set out by the Statute and the Rules do not provide for a motion for reconsideration as a procedural remedy against any decision taken by the Pre-Trial Chamber or the single judge";<sup>12</sup>

**CONSIDERING** that, in the view of the Chamber, the OPCV has not provided any convincing reasons in its motion to depart from this jurisprudence;

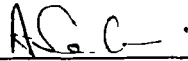
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<sup>11</sup> ICC-01/04-441 p. 3

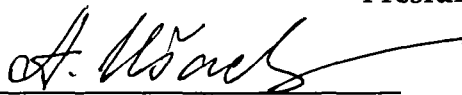
<sup>12</sup> ICC-01/04-01/04-01/06-166 and ICC-01/04-01/06-123

**FOR THESE REASONS****REJECTS** the Request of the OPCV.

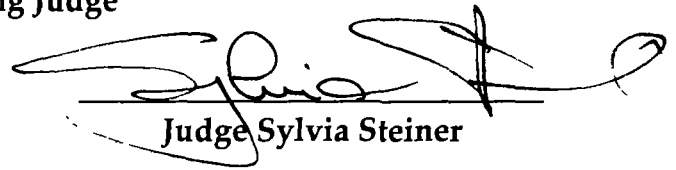
Done in both English and French, the English version being authoritative.



**Judge Akua Kuenyehia**  
**Presiding Judge**



**Judge Anita Ušacka**



**Judge Sylvia Steiner**

Dated this Monday 18 February 2008

At The Hague, The Netherlands