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No: ICC-01/04
Date: 19 February 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

Decision on the "Demande des représentants légaux de VPRS1, VPRS2, VPRS3, VPRS4, VPRS5, VPRS6 et a/0071/06 aux fins d'accéder au document confidentiel déposé par le Conseil de direction du 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

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

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”¹ (“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”² 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”³ (“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 des représentants légaux de VPRS1, VPRS2, VPRS3, VPRS4, VPRS5, VPRS6 et a/0071/06 aux fins d'accéder au document confidentiel déposé par le Conseil de direction du Fonds d'affectation spéciale au profit des victimes le 7 février 2008”⁴ (“the Request of the Legal Representatives”) filed on 18 February 2008 in which the Legal Representatives of Victims (“the Legal Representatives”) request that the Chamber grant them access to the Additional Information which was filed as confidential by the Board;

¹ ICC-01/04-439.

² ICC-01/04-441

³ ICC-01/04-445-Conf + Conf-Anx

⁴ ICC-01/04-453

NOTING articles 68 and 79 of the Rome Statute (“the Statute”), rule 98 of the Rules of Procedure and Evidence (“the Rules”), regulations 23*bis*(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 reasoned 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”⁵ and ‘to avoid letting the beneficiaries be identified because of the physical and/or psychosocial rehabilitation and/or material support’⁶ the Additional Information filed by the Board on 7 February 2008 should remain confidential, and available to the Prosecution and the OPCD only;⁷

CONSIDERING that the Chamber also previously stated that, “according to the Chamber’s previous jurisprudence⁸, 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”;⁹

CONSIDERING that the Chamber ordered notification of the confidential annex to the legal representatives of the victims because: (i) the OPCV which also presently acts as counsel for those who have been granted procedural status of victim in the DRC situation had been notified of the confidential annex by the Trust Fund acting on its own motion, but the other legal representatives had not; (ii) the confidential annex to the Notification provided general information as to the activities or projects

⁵ ICC-01/04-439, para. 44.

⁶ ICC-01/04-439, para. 46.

⁷ ICC-01/04-441 p. 3.

⁸ ICC-01/04-101.

⁹ ICC-01/04-441 p. 3.

of the Board;¹⁰ and, (iii) the legal representatives of those who have been granted procedural status of victim in the DRC situation should all have access to the same documents in respect of this particular proceeding;¹¹

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 should not be notified of the confidential Additional Information filed by the Board, and that therefore, in the view of the Single Judge, the present Request of the Legal Representatives 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";¹²

CONSIDERING that the Chamber rejected a similar request from OPCV on 18 February 2008;¹³

CONSIDERING that, in the view of the Single Judge, the Legal Representatives have not provided any convincing reasons in their motion to depart from this jurisprudence;

¹⁰ ICC-01/04-439-Conf-Anx.

¹¹ ICC-01/04-441 p. 3


¹² ICC-01/04-01/04-01/06-166 and ICC-01/04-01/06-123

¹³ ICC-01/04-456.

FOR THESE REASONS

REJECT the Request of the Legal Representatives.

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



Judge Sylvia Steiner
Single Judge

Dated this Tuesday 19 February 2008

At The Hague

The Netherlands