

**Cour  
Pénale  
Internationale**  
**International  
Criminal  
Court**

No.: ICC-01/04

Date: 21 July 2005

Original: English

**PRE-TRIAL CHAMBER I**

**Before:** Judge Claude Jorda, Presiding Judge  
Judge Akua Kuenyehia  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**PUBLIC REDACTED VERSION**

**DECISION ON PROTECTIVE MEASURES REQUESTED BY APPLICANTS 01/04-  
1/dp to 01/04-6/dp**

**The Office of the Prosecutor**  
Mr Luis Moreno-Ocampo  
Ms Fatou Bensouda  
Mr Ekkerhard Withopf  
Ms Lyne Decarie

**Ad Hoc Counsel for Defence**  
REDACTED

**Counsel for Applicants 01/04-1/dp to  
01/04-6/dp**  
REDACTED

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

**NOTING REDACTED**

**NOTING REDACTED;**

**NOTING REDACTED;**

**NOTING REDACTED;**

**NOTING REDACTED;**

**NOTING REDACTED;**

**NOTING REDACTED;**

**NOTING** article 57, paragraph 3 (c) and article 68, paragraph 1 of the Rome Statute (“ the Statute”, rules 5, 6, 86 and 89 of the Rules of Procedure and Evidence (“the Rules”) and regulation 76 of the Regulations of the Court (“the Regulations”);

**CONSIDERING** that according to rule 89, paragraph 1 of the Rules, the Prosecutor and the Defence are entitled to reply to any application for participation within the time limits set by the Pre-Trial Chamber; and that in order to place them in a position

to effectively exercise this right the Registrar shall provide them a copy of any application for participation;

**CONSIDERING** that the format in which the copy of any application for participation is to be transmitted to the Prosecutor and the Defence is "subject to the provisions of the Statute, in particular to article 68, paragraph 1"; and that article 68, paragraph 1 of the Statute mandates the Pre-Trial Chamber, as well as the other organs of the Court, to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of the victims without prejudicing or being inconsistent with the rights of the accused and a fair and impartial trial;

**CONSIDERING** further that, according to article 57, paragraph 3 (c) of the Statute, one of the functions of the Pre-Trial Chamber is to provide, where necessary, for the protection and privacy of the victims and witnesses; and that rule 86 of the Rules establishes as a general principle that the Pre-Trial Chamber in making any direction or order, as well as the other organs of the Court in performing their functions under the Statute and the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68 of the Statute;

**CONSIDERING**, therefore, that when the security situation of an applicant so requires, the Pre-Trial Chamber may instruct the Registrar to transmit to the Prosecutor and the Defence a redacted copy of his or her application for participation having expunged any information that could lead to his or her identification, such as the applicant's identity and the place and time in which he or she was allegedly victimised;

**CONSIDERING** however that the scope of the redactions cannot exceed what is strictly necessary in light of the applicant's security situation and must allow for a meaningful exercise by the Prosecution and the Defence of their right to reply to the application for participation;

**CONSIDERING** that, in relation to the Applications at hand, it is necessary, in order to represent and protect the interests of the Defence during the application proceedings provided for in rule 89 of the Rules, to appoint under regulation 76, paragraph 1 an *ad hoc* counsel for the Defence;

**CONSIDERING** that the Pre-Trial Chamber is satisfied that the Applicants are currently facing serious security risks in the DRC;<sup>1</sup>

**CONSIDERING** that the Pre-Trial Chamber is satisfied that the Applicants' current circumstances require that the *ad hoc* counsel for the Defence be provided with a redacted copy of the applications after having expunged any information that could lead to their identification, including the Applicants' identity and the place and time in which they have allegedly been victimized;

**CONSIDERING** that the proceedings concerning the DRC record are still at the stage of investigation of the situation; REDACTED; and that, therefore, under the current circumstances the scope of the redactions allows for a meaningful exercise by the *ad hoc* counsel for the Defence of his right to reply to the Applications and it is in no way prejudicial to, or inconsistent with, the rights of the accused and a fair and impartial trial;

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<sup>1</sup> REDACTED

**CONSIDERING** that according to rule 5, paragraph 1 (b) and rule 6, paragraphs 1 and 2 of the Rules, the Prosecutor, the Deputy Prosecutors and all staff members of the Office of the Prosecutor are bound by the principle of confidentiality; that to date the Pre-Trial Chamber has no indication of any breach of such confidentiality obligations; and that according to article 68, paragraph 1 of the Statute, the Prosecutor is also under an obligation to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses;

**CONSIDERING** further that the Prosecutor is already aware of the situation of many victims, including in particular that of the Applicants, and that there are no indications that the transmission of unredacted copies of the Applications to the Prosecutor will increase the security risks that they currently face;

**CONSIDERING REDACTED**

**FOR THESE REASONS**

**DECIDES** to appoint REDACTED as *ad hoc* counsel to represent and protect the interests of the Defence during the application proceedings provided for in rule 89 of the Rules in relation to the Applications;

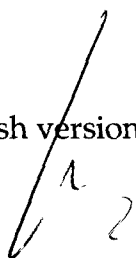
**ORDERS** the Registrar by 29 July 2005 to provide:

- (i) The Prosecutor with an unredacted copy of the Applications;
- (ii) The *ad hoc* Counsel for the Defence with a redacted copy of the Applications after having expunged any information that could reveal the identification of the Applicants, including the Applicants' identity, and the places and times of the events referred to in their statements;

**GIVES** the Prosecutor and the *ad hoc* Counsel for the Defence until the 15 August 2005 to reply to the Applications;


**ORDERS** all organs of the Court to abstain from any direct contact with the Applicants, and only to contact them through their legal representative REDACTED if strictly necessary.

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

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~~Judge Claude Jorda~~  
Presiding Judge

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Judge Akua Kuenyehia

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Judge Sylvia Steiner

Dated this Thursday, 21 July 2005

At The Hague

The Netherlands