

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-RoR221-01/10**

Date: **24 February 2010**

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Fatoumata Dembele Diarra, First Vice-President
Judge Hans-Peter Kaul, Second Vice-President

Public Document

**Registrar's Observations pursuant to regulation 24bis of the Regulations of the
Court in respect of documents ICC-RoR221-01/10-1 and ICC-RoR221-01/10-2**

Source: The Registrar

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Counsel for the Defence

Mr Liriss Nkwebe
Mr Aimé Kilolo Musamba
Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr David Hooper
Mr Andreas O'Shea
Mr Jean-Pierre Kilenda Kalengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**
Aprodec asbl

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Daniel Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr Marc Dubuisson, Director of the
Division of Court Services

THE REGISTRAR of the International Criminal Court ("the Court")

NOTING the "*Requête en annulation de la décision du refus de visite opposée par le Greffier le 5 janvier 2010 et contestation du comportement et [de] l'aptitude du Greffier à exercer les fonctions prévues à l'Article 43(1)*"¹ ("the Application") and the "Supplementary Note in Support of the "*Requête en annulation de la décision du refus de visite opposé par le greffier le 5 janvier 2010 et contestation du comportement et [de] l'aptitude du greffier à exercer les fonctions prévues à l'Article 43(1)*"² ("the Supplementary Note") filed by the organisation Aprodec asbl ("the Applicant");

NOTING article 43 of the Rome Statute;

NOTING regulation 24*bis* of the Regulations of the Court;

NOTING regulations 180 and 221 of the Regulations of the Registry;

RESPECTFULLY SUBMITS the following observations to the Presidency:

Legal basis for these observations

1. Under the terms of regulation 24*bis*(1) of the Regulations of the Court, the Registrar, when necessary for the proper discharge of his or her functions, in so far as they relate to any proceedings, may make oral or written submissions to a Chamber. Pursuant to regulation 24*bis*(4) of the Regulations of the Court, this regulation shall apply *mutatis mutandis* to proceedings before the Presidency.
2. These observations are based on regulation 24*bis* of the Regulations of the Court in that:
 - (i) they relate to the proceedings brought before the Presidency by the Application and the Supplementary Note; and
 - (ii) the Registrar considers that the fact that applications involving a "[TRANSLATION] challenge to the ability of the Registrar to exercise the functions provided for by article 43(1) of the Rome Statute"³ and a call to "suspend from all of their duties at the Court - as a precautionary measure - the Registrar, Ms Silvana Arbia, together with the Director of the Division of Court Services, Mr Marc Dubuisson [and], if appropriate, once these proceedings have been concluded, to lift all privileges, immunities and facilities afforded to Ms Silvana Arbia and Mr Marc Dubuisson under the

¹ ICC-RoR221-01/10-1.

² ICC-RoR221-01/10-2-tENG.

³ ICC-RoR221-01/10-1, paras 37-47.

terms of Article 30 of the Headquarters Agreement [...]”⁴ have been publicly formulated is liable to affect the proper discharge of her functions.

3. The Registrar wishes to make it clear that these observations in no way constitute a response to the substance either of the Application or of the Supplementary Note. Pursuant to regulation 221(2) of the Regulations of the Registry the Registrar shall, “[a]t the request of the Presidency”, make available any information obtained in the course of previous investigations of the complaint. To date the Presidency has not submitted any request of this nature to the Registrar, who has thus not been required to respond on the substance of the matter. The Registrar accordingly reserves the right, if the Presidency should consider it necessary, and so requests her on the basis of regulation 221(2) of the Regulations of the Registry, to provide any relevant information on the substance of the Application and the Supplementary Note.

Damage to the image of the Court and the work of the Registry

4. The Registrar notes that the filing on 24 January 2010 of a public application challenging her ability to exercise her functions under article 43(1) of the Rome Statute is liable seriously to damage the image of the Court. The Registrar further notes that such damage was recently aggravated by the filing on 22 February 2010 of the Supplementary Note, calling for her to be suspended from her duties, along with the Director of the Division of Court Services.
5. These two documents, which challenge the ability and call for the suspension of the “principal administrative officer of the Court” as referred to in article 43(2) of the Rome Statute, as well as of one of the Registry’s senior officials, are also liable seriously to compromise the ability of the Registry as a whole to carry out its work. Inasmuch as the Application and the Supplementary Note involve a request to visit detainees of Congolese nationality, these documents are also liable to affect the conduct of the Registry’s mission in the field in the Democratic Republic of the Congo (DRC). The Registrar recalls that the Registry’s mission in the DRC includes in particular the protection of victims and witnesses, provision of assistance to victims, public information and its dissemination and the operation of the field offices, which provide support and assistance to the legal teams of Prosecution, Defence and victims.
6. Both documents further pose a direct attack on the dignity and competence of the Registrar, which are protected by article 43(3) of the Rome Statute, and of one of the Registry’s senior officials.
7. The Registrar regrets that this public Application was filed, and that it was followed by the Supplementary Note, which aggravates the damage caused to

⁴ ICC-RoR221-01/10-2-tENG, para. 9.

the image of the Court as a whole and to the work of the Registry in particular.

8. The Registrar observes that the Application has no legal basis, since, pursuant to regulation 180(4), only a detained person whose visits have been denied may appeal the decision. The interests of the Court dictate that applications of this kind should be rejected *in limine* and cannot succeed. If such applications from persons outside the Court were to be allowed, it is to be feared that an uncontrollable number of requests for visits to detained persons might be lodged in future by all manner of organisations or associations claiming to defend human rights, and subsequently publicly submitted to the Presidency, thus further tainting the image of the Court and placing an unnecessary extra burden on the role of the Presidency.

Conclusion

9. On the strength of these observations, the Registrar respectfully draws the attention of the Presidency to the need for an expeditious ruling on the Application and Supplementary Note thereto, if necessary by asking the Registrar to provide relevant information on the substance of the matter in accordance with regulation 221(2) of the Regulations of the Registry.

[signed]

Silvana Arbia
Registrar

Dated this 24 February 2010

At The Hague, The Netherlands