

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04
Date: 18 May 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

Decision Appointing *Ad Hoc* Counsel and Establishing a Deadline for the Prosecution and the *Ad Hoc* Counsel to Submit Observations on the Applications of Applicants a/0001/06 to a/0003/06

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Mrs Fatou Bensouda
Mr Ekkehard Withopf

***Ad hoc* Counsel for the Defence**
Mr Joseph Tshimanga

Counsel for the Applicants a/0001/06 to a/0003/06
Mr Luc Walley
Mr Franck Mulenda

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

NOTING the “Application for Participation in the Proceedings No. a/0001/06”¹, the “Application for Participation in the Proceedings No. a/0002/06”², and the “Application for Participation in the Proceedings No. a/0003/06”³, all filed confidential, *ex parte* on 9 May 2006 (the “Applications”), whereby the Applicants request (i) to be recognised the status of victims as participants in the situation in the Democratic Republic of the Congo (the “DRC”); (ii) that their identity should not be communicated to the Defence; and (iii) that the Applicants be contacted only through their legal representatives;

NOTING the decision of Pre-Trial Chamber I of 5 April 2006 designating Judge Sylvia Steiner as single judge of the situation in the DRC⁴;

NOTING articles 57 (3) (c) and 68 (1) of the Rome Statute (the “Statute”), rules 86 and 89 of the Rules of Procedure and Evidence (the “Rules”) and regulations 76 and 86 of the Regulations of the Court (the “Regulations”);

CONSIDERING that according to rule 89 (1) of the Rules, the Prosecution 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 with a copy of any application for participation;

¹ ICC-01/04-01/06-98-Conf-Exp.

² ICC-01/04-01/06-99-Conf-Exp.

³ ICC-01/04-01/06-100-Conf-Exp.

⁴ ICC-01/04-138.

CONSIDERING that the format in which the copy of any application for participation is to be transmitted to the Prosecution and the Defence is subject to the provisions of the Statute, in particular to article 68 (1) of the Statute which 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 (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 Prosecution 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;

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 general interests of the Defence during the application process provided for in rule 89 of the Rules, to appoint under regulation 76 (1) of the Regulations an *ad hoc* counsel for the Defence;

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 in which any information that could lead to their identification has been expunged;

CONSIDERING that in order not to be exposed to further risks, the Applicants should not be directly contacted by any organ of the Court, but only through their legal representatives;

FOR THESE REASONS

DECIDE to appoint Mr Joseph Tshimanga as *ad hoc* counsel to represent and protect the general interests of the Defence during the application process provided for in rule 89 of the Rules in relation to the Applications;


ORDER the Registrar, as soon as practicable, to provide:

- (i) The Prosecution 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;

GIVE the Prosecution and the *ad hoc* counsel for the Defence 15 days from the notification of the Applications to reply to the Applications;

ORDER all organs of the Court to abstain from any direct contact with the Applicants, and only to contact them through their legal representatives Mr Luc Walley and Mr Franck Mulenda, when necessary.

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



Judge Sylvia Steiner
Single Judge

Dated this Thursday 18 May 2006

At The Hague

The Netherlands