

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06

Date: 18 October 2007

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Document

**Request of the OPCV to access documents in the case record related to applicants
a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06,
a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to a/0041/06,
a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06**

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial
Lawyer
Legal representatives for the Victims
Mr Luc Walley and Mr Frank Mulenda
Ms Carine Bapita Buyangandu

Counsel for Thomas Lubanga Dyilo
Ms Catherine Mabilille
Mr Jean-Marie Biju-Duval

Office of Public Counsel for Victims
Ms Paolina Massidda

I. PROCEDURAL HISTORY

1. On 6 March 2007, the Presidency issued the “Decision constituting Trial Chamber I and referring to it the case of The Prosecutor v Thomas Lubanga Dyilo”.¹

2. On 5 June 2007, the Presidency issued the “Decision transmitting the pre-trial record of proceedings in the case of The Prosecutor v Thomas Lubanga Dyilo to Trial Chamber I”.²

3. On 17 August 2007, the Pre-Trial Chamber I issued the “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation”.³ The said decision directed the Registrar to automatically appoint the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as legal representative for unrepresented applicants in the situation in the Democratic Republic of the Congo.⁴

4. Pursuant to this decision, on 24 August 2007 and on 13 September 2007, the Registrar appointed the Principal Counsel of the OPCV as legal representative for the applicants who do not have a legal representative.⁵ The letters were respectively filed in the situation record on 31 August 2007 and on 27 September 2007.⁶

¹ See the “Decision constituting Trial Chamber I and referring to it the case of The Prosecutor v Thomas Lubanga Dyilo” (Presidency), No. ICC-01-04-01-06-842, 6 March 2007.

² See the “Decision transmitting the pre-trial record of proceedings in the case of The Prosecutor v Thomas Lubanga Dyilo to Trial Chamber I” (Presidency), No. ICC-01/04-01/06-920, 5 June 2007.

³ See the “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation” (Pre-Trial Chamber I), No. ICC-01/04-374, 17 August 2007.

⁴ *Ibid.*, p. 24.

⁵ See the letters of the Registrar, VPRS/A/037/fm, 24 August 2007 and VPRS/A/044/fm-ig, 13 September 2007.

⁶ See the “*Enregistrement d’un courrier du représentant légal retournant sa demande d’anonymat et d’autres documents relatifs à la représentation légale de demandeurs aux fins de participation*”, No. ICC-01/04-380,

II. ACCESS TO DOCUMENTS IN THE CASE RECORD

5. The Office notes that, following the decision by the Presidency issued on 5 June 2007,⁷ the entire record of the case has been transmitted to the Trial Chamber which is therefore competent for any request to access documents contained in the said record.

6. The Office respectfully submits that in order to fulfill its mandate and to be able to adequately protect the rights and interests of the applicants, it is necessary that access to certain documents be granted to the Principal Counsel.

7. Due to the fact that the Office has had, to date, no access to the index of the case record, the OPCV is not in the position to identify all documents which may be of interest for the fulfillment of its mandate on behalf of the applicants who have all requested to participate in the trial phase. Moreover, the Office submits that it may be relevant for the Office to have access to certain confidential and/or under seal documents and/or materials relating to the warrants of arrest and/or to the security and protection of the applicants.

8. Therefore, the Office respectfully requests the Trial Chamber to grant the Principal Counsel access to the full index of the record of the case and to reserve her the right to submit proposals regarding the disclosure of documents and/or materials after she has had the opportunity to examine the index of the record of the case, if

31 August 2007. See also the "Registration of appointment of the OPCV and amendment to appointment", No ICC-01/04-401-Conf, 27 September 2007

⁷ See *supra* note 2.

she considers it necessary for the fulfilment of her mandate on behalf of the applicants.

9. Despite the fact that the full index of the case record is not available to the Principal Counsel, the Office – through the reading of public documents – has been able to identify some documents which are important for the fulfilment of its mandate as legal representative.

10. Therefore, the Principal Counsel respectfully requests the Trial Chamber to be notified of the following documents, in the portions dealing with applicants a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06, a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to a/0041/06, a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06:⁸

- Document No. ICC-01/04-01/06-342-Conf-Exp dated 22 August 2006 concerning Prosecution's submissions under rule 89-1 related to victims a/0004/06 to a/0009/06 and a/0016/06 to a/0046/06;
- Document No. ICC-01/04-01/06-354-Conf-Exp dated 25 August 2006 concerning Prosecution's observations under rule 89-1 related to victims a/0047/06 to a/0052/06;
- Document No. ICC-01/04-01/06-584-Conf-Exp dated 18 October 2006 concerning Prosecution's observations under rule 89-1 related to victims a/0072/06 to a/0080/06 and a/0105/06.

⁸ In this sense, see the "Decision on the request by the OPCD for access to previous filings" (Pre-Trial Chamber I), No. ICC-01/04-389, 11 September 2007.

11. The Office notes that in the practice of the Pre-Trial Chambers I and II the submissions under rule 89-1 of the Rules have always been notified to the legal representatives of the applicants.

12. Finally, the Office submits that in order to be able to assess the requests for participation of the applicants in the context of the case against Mr Thomas Lubanga Dyilo, and particularly in relation to the existence of a causal link between the harm suffered and the crime(s) under the jurisdiction of the Court, the Principal Counsel needs to access the confidential version of the Decision on the confirmation of the charges dated 29 January 2007, together with the confidential version of the annex attached thereon. Such access will allow the Principal Counsel to identify and to evaluate corroboration of the events described by the applicants in their requests for participation at the trial stage. This evaluation is essential in order to provide applicants with legal advice on their applications.

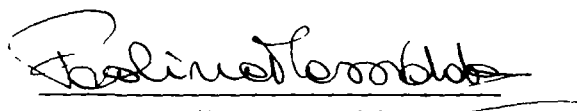
13. In the alternative, the Principal Counsel requests to be notified of the portions of the said decision dealing with the applicants she is representing.

FOR THE FOREGOING REASONS

The Principal Counsel respectfully requests the Trial Chamber:

- a) to grant the Principal Counsel full access to the index of the case record and consequently to order the Registry to notify the Principal Counsel of a copy of the said index;

- b) to reserve the Principal Counsel the right to submit proposals regarding the disclosure of documents and/or materials after she has had the opportunity to examine the index of the record of the case, if she considers it necessary for the fulfilment of her mandate on behalf of the applicants;
- c) to order the Registry to notify the documents listed in paragraph 10 of this request to the Principal Counsel, in the portions related to the applicants represented by her; and
- d) to order the Registry to notify the unredacted version of the decision confirming the charges and the annex attached thereon to the Principal Counsel. In the alternative, to order the Registry to notify the Principal Counsel of the unredacted version of the decision confirming the charges and the annex thereon duly expurgated of information not related to the applicants represented by her.


Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Dated this 18th day of October 2007

At The Hague

The Netherlands