

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 8 November 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 vs. THOMAS LUBANGA DYILO**

Public

Prosecution's response to the "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

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Legal Representatives of Victims

a/0001/06 to a/0003/06 and a/0105/06
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for Victims**

Ms Paolina Massidda

Background

1. On 18 October 2007, the OPCV submitted a request to access documents in the case record related to certain applicants (OPCV Request to access documents in the case record).¹ In particular, OPCV requested (i) full access to the index of the case record, (ii) the right to submit further requests for notification of documents once given full access to the index of the case record, (iii) notification of three documents listed in paragraph 10 of the OPCV Request to access documents in the case record,² and (iv) notification of the confidential version of the Decision Confirming the Charges in full or in redacted form, if deemed necessary by the Chamber, by expurgating the information not related to the applicants represented by OPCV.
2. On 24 October 2007, the Defence filed its Response to the OPCV Request to access documents in the case record, asking the Chamber to reject the request as Rule 131 (2) grants access to the case record only to victims participating in the proceedings or their legal representatives.

Prosecution's submissions

3. By decision of the Pre-Trial Chamber rendered on 20 August 2007, the OPCV was appointed "to provide support and assistance to the unrepresented applicants" in the situation and the Registry was ordered to "transfer to the OPCV all information regarding unrepresented applicants simultaneously with the

¹ "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", public, 18 October 2007, ICC-01/04-01/06-987.

² 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.

notification of the Applications to other participants” in accordance with Regulation 116 of the Regulations of the Registry.³ The Prosecution notes that the application by OPCV in the case appears to proceed on the basis that the order of the Pre-Trial Chamber extends to applications for participation made in the case as well.

4. It is the position of the Prosecution that access to confidential portions of the record by applicants who seek to become victim participants in a case should be granted only in highly exceptional situations, once an applicant has established a compelling case that the specific material sought directly affects his or her interests. In the instant application, the Prosecution submits that the OPCV has not established such a case, save for OPCV’s specific request for the three documents described in paragraph 10 of its filing. On this specific request, the Prosecution supports OPCV’s request that it be notified of the three documents outlined in paragraph 10 of their submission, namely the Prosecution’s observations in respect of applications of victims OPCV has been ordered to represent.⁴ Such a remedy would be appropriate in the circumstances as it would place OPCV in the position in which it would have been in had it been appointed as Legal Representative for the applicants at an earlier stage of the case.
5. The Prosecution submits there is no legal basis to grant OPCV access to the index of the case. At this stage OPCV represents applicants under Rule 89(1). There is no authority in the Statute or subordinate instruments that permits applicants for participation to have access to any portion of the case record, including the index.

³ “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation” Public. 20 August 2007, ICC-01/04-374, at paras 43 and 44.

⁴ See footnote 2.

It is submitted that OPCV is not entitled to any supplementary access rights that would not otherwise be granted to any other Rule 89(1) applicant.

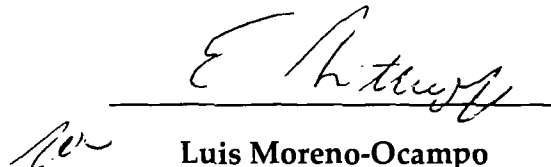
6. Similarly, the Prosecution submits that OPCV's request to receive an un-redacted or excerpted version of the Decision Confirming the Charges lacks a legal basis and is not required for the purposes of re-submitting the specific applications. The Prosecution reiterates its submission that the OPCV ought not to be granted any additional access that would not otherwise be granted to any other Rule 89(1) applicant. Additionally, it is submitted that applications for participation in the case ought to stand on their own merits and that the confidential Decision Confirming the Charges is not needed for an applicant to establish corroboration of his or her application. Indeed, it is submitted that corroboration of the victim's application, which is the rationale applied by OPCV to justify access to the Decision Confirming the Charges, does not appear to be a legal requirement under the jurisprudence, Rule 85(a) or Rule 89(1).⁵
7. Finally, the Prosecution submits that further requests by the OPCV to receive additional specific documents may be dealt with on a case by case basis and separate from the issue whether OPCV shall be granted access to the index of the case. The Prosecution is prepared to assist the OPCV in identifying documents filed by the Prosecution which are directly related to the mandate of OPCV as legal representative of applicants, such as replies under Rule 89 (1).⁶

⁵ "Decision on the Requests of the Legal Representatives of Applicants on application process for victims' participation and legal representation". 17 August 2007. Public. ICC-01/04-374 at paras. 4-15; "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06." 10 August 2007. Public Redacted Version. ICC-02/04-101at paras.11-21

⁶ The Prosecution, in this regard, is prepared to assist OPCV by directing them to public documents filed by the Prosecution that are similar in nature the documents described in footnote 2. Additionally, the Prosecution would endeavour to bring any confidential documents filed by the Prosecution similar to those described in footnote 2 also to the attention of the OPCV.

Conclusion

8. For the reasons outlined above, the Prosecution requests the Chamber (i) to deny OPCV's request to be granted access to the index of the case record, (ii) to decide further requests for access to documents by the OPCV on a case by case basis, (iii) to order the Registry to notify the three documents explicitly listed by the OPCV, and (iv) to reject OPCV's request for notification of the confidential version of the Decision Confirming the Charges in full or in redacted form.



Luis Moreno-Ocampo
Prosecutor

Dated this 8th day of November 2007
At The Hague, The Netherlands