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No.: ICC-01/04

Date: 8 November 2007

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**Public**

**Prosecution's response to the "Request of the OPCV to access documents in the situation 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 of Victims**

Mr Emmanuel Daoud  
Mr Franck Mulenda  
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**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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Mr Xavier-Jean Keïta

**Legal Representatives of applicants**

Ms Carine Bapita Buyangandu  
Mr Patrick Baudoin  
Mr Sylvestre Bisimwa  
Mr Joseph Keta  
Mr Michel Shebele  
Mr Michael Verhaeghe

## Background

1. On 18 October 2007, the OPCV submitted a request to access documents in the situation record related to certain applicants (OPCV Request to access documents in the situation record).<sup>1</sup> In particular, OPCV requested (i) full access to the index of the situation record, (ii) the right to submit further requests for notification of documents once given full access to the index of the situation record, (iii) notification of two documents listed in paragraph 7<sup>2</sup> of the OPCV Request to access documents in the situation record.

## Prosecution's submissions

2. 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 notification of the Applications to other participants" in accordance with Regulation 116 of the Regulations of the Registry.<sup>3</sup>
3. It is the position of the Prosecution that access to confidential portions of the record by Legal Representatives should be granted in highly exceptional

<sup>1</sup> "Request of the OPCV to access documents in the situation 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-01/04-407.

<sup>2</sup> ICC-01/04-314 Conf dated 28 November 2006 concerning ad hoc Defence Counsel submissions under rule 89-1 related to victims a/0004/06 to a/0009/06; a/0016/06 to a/0063/06 a/0071/06 to a/0080/06 and a/0105/06; ICC-01/04-01/06-315 Annex- Conf-Exp dated 30 November 2006 concerning Prosecution's observations under rule 89-1 related to victims a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 a/0071/06, a/0072/06 to a/0080/06 and a/0105/06.

<sup>3</sup> "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.

situations and only after an applicant has established a compelling case that the material in question directly affects his or her interests. In the instant application, the Prosecution submits that OPCV, acting as legal representatives for applicants for participation in the situation, has not established such a case, save for OPCV's specific request for the two documents described in paragraph 7 of its filing. On this specific request, the Prosecution supports OPCV's request that it be notified of the two documents requested in paragraph 7 of their submission, namely the former *ad hoc* Defence Counsel's submissions and the Prosecution's observations in respect of applications of victims OPCV has been ordered to represent.<sup>4</sup>

4. The Prosecution submits there is no legal justification to grant access to the index of the situation. At this stage OPCV represents applicants under Rule 89(1). There is no legal authority in the Rome Statute or subordinate instruments that permits applicants for participation having access to any portion of the situation record, including the index. It is submitted that OPCV is not entitled to any supplementary access rights that would otherwise not be granted to any other Rule 89(1) applicant.
5. 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 of whether OPCV shall be granted access to the index of the situation. The Prosecution is in a position to assist the OPCV in identifying documents filed by the Prosecution and directly related to the mandate of OPCV as legal representative of certain applicants, such as replies under Rule 89 (1).<sup>5</sup>

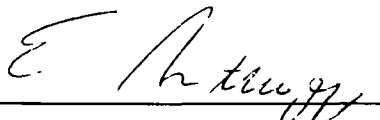
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<sup>4</sup> See footnote 2.

<sup>5</sup> 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

## Conclusion

6. For the reasons outlined above, the Prosecution requests the Pre-Trial Chamber (i) to deny the OPCV's request to be granted access to the index of the situation record, (ii) to decide further requests for access to documents by the OPCV on a case by case basis and (iii) to order the Registry to notify the two documents explicitly listed by the OPCV.

  
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 **Luis Moreno-Ocampo**  
**Prosecutor**

Dated this 8<sup>th</sup> day of November 2007  
At The Hague, The Netherlands

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endeavour to bring any confidential documents filed by the Prosecution similar to those described in footnote 2 also to the attention of the OPCV.