

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04

Date: 20 December 2007

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public

**Prosecution's Response to OPCV's Application for Leave to Appeal
the Single Judge's 10 December 2007 Order**

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Background

1. On 18 October 2007, the OPCV submitted a request to access documents in the situation record related to certain applicants.¹
2. The Prosecution responded to OPCV's request on 8 November 2007.²
3. On 10 December 2007, the Single Judge issued the "Decision on the Requests of the OPCV", rejecting the requests.³
4. On 17 December 2007, the OPCV filed an Application for Leave to Appeal the Decision pursuant to Article 82(1)(d).⁴
5. The Prosecution hereby responds to the OPCV's Application for Leave to Appeal, pursuant to Regulation 65(3).

Prosecution's submissions

6. The Prosecution submits that the OPCV does not have standing to bring the Application for Leave to Appeal pursuant to Article 82(1)(d).
7. As the Prosecution has previously observed,⁵ the Statute expressly limits the right to seek leave to appeal to the parties,⁶ and does not extend it to other participants including victim participants.⁷ Legal representatives of victims enjoy full rights

¹ "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", ICC-01/04-407, 18 October 2007 ("the Request")

² ICC-01/04-413.

³ ICC-01/04-418 ("the Decision").

⁴ ICC-01/04-420.

⁵ *Prosecutor v Lubanga*, ICC-01/04-01/06-736, 29 November 2006, see in particular para. 12.

⁶ Article 82 states that "[e]ither party" may appeal one of the decisions contained therein, and Rule 155 refers to "[w]hen a party wishes to appeal a decision" (emphasis added). Consistent with limiting the right to initiate appeals to the parties, Article 81 limits appeals against acquittals, convictions or against sentence to the Prosecutor and the convicted person. More specifically, an applicant is not able to seek leave to appeal the decision of a chamber on their application for participation (Decision, para. 16). In the instant matter, the Request and Decision in question were incidental to the applications for participation. If an applicant is unable to appeal the ultimate decision, they can hardly appeal a procedural decision incidental thereto.

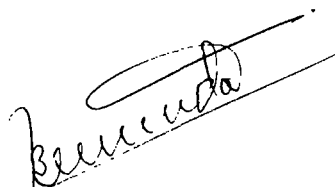
⁷ On the distinction between "parties" and "participants", see *Prosecutor v Lubanga*, ICC-01/04-01/06-996-AnxI, 23 October 2007. See also Jorda and de Hemptinne, "The Status and the Role of the Victim" in Cassese et al (eds), *The Rome Statue of the International Criminal Court: A Commentary, Vol. II*, p. 1406: the victim "has no right of appeal and cannot, on that basis, present his arguments against the accused to the Appeals Chamber". See also Roth and Henzelin, "The Appeal Procedure of the ICC", in Cassese et al (*op. cit.*), p. 1551 : "Victims, civil parties and third parties affected by a decision cannot normally be considered as parties, in the strictest sense of the word, to an appeal

to lodge appeals only in relation to orders for reparations entered under Article 75 of the Statute.⁸

8. In dismissing the OPCV's Request in respect of item (i), the Single Judge noted that the OPCV was requesting on behalf of applicants access which has not even been granted to persons who have the procedural status of victim.⁹ The Prosecution submits that an applicant for victim status (or their representative) cannot be afforded greater rights than a victim who has been granted participant status. Therefore the Prosecution submits that the OPCV does not have standing to seek leave to appeal the Decision pursuant to Article 82(1)(d).

Conclusion

9. For the reasons outlined above, the Prosecution requests the Single Judge to deny the OPCV's Application for Leave to Appeal.



Luis Moreno-Ocampo
Prosecutor

Dated this 20th day of December 2007
At The Hague, The Netherlands

against an interim decision under Article 82, unless such decisions affect their civil rights as envisaged by Article 82(4)/Article 75."

⁸ Article 82(4).

⁹ Decision, para. 6.