

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04
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PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

**Prosecution's Response to OPCV's Application for Leave to Appeal the
Single Judge's Decision of 24 December 2007**

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Background

1. On 17 August 2007, Pre-Trial Chamber I ordered the Registrar to appoint the Office of Public Counsel for Victims ("the OPCV") as the legal representative of any applicant, who had no legal representation, so as to provide the applicants with support and assistance until such time as they would be granted victim status and would choose a legal representative, or until one would be appointed by the Court.¹ In accordance with the 17 August 2007 decision, on 24 August and 13 September 2007, the Registrar designated the OPCV as the legal representative for unrepresented applicants.²
2. On 24 December 2007, the Single Judge rendered a decision on a series of applications by victims to participate in the investigation stage of the situation in the Democratic Republic of the Congo (the "Decision").³ The Decision granted a number of applicants the procedural status of "*victimes autorisées à participer à la procédure au stade de l'enquête sur la situation en RDC*",⁴ In the Decision the Single Judge further found that applications a/0047/06 to a/0052/06, among others, were pending before Trial Chamber I seized with the case *The Prosecutor v. Thomas Lubanga Dyilo*, and consequently decided not to examine these applications as the Trial Chamber has not yet ruled on the matter.⁵

¹ "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", ICC-01/04-374, 20 August 2007, p. 24.

² Letters of the Registrar VPRS/A/037/fm, 24 August 2007; VPRS/A/044/fm-ig, 13 September 2007.

³ *Situation in the Democratic Republic of the Congo*, ICC-01/04-423, Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 à a/0241/06 à a/0250/06, 24 December 2007.

⁴ Decision, para. 4 and p. 58 (dispositifs)..

⁵ Decision, para. 142. See also p. 57 (dispositifs).

3. On 4 January 2008, the OPCV filed an Application for Leave to Appeal the Decision in relation to the applications a/0047/06 to a/0052/06 pursuant to Article 82(1)(d).⁶
4. The Prosecution hereby responds to the OPCV's Application for Leave to Appeal, pursuant to Regulation 65(3).

Prosecution's submissions

5. The Prosecution submits that the OPCV does not have standing to bring the Application for Leave to Appeal pursuant to Article 82(1)(d).
6. As the Prosecution has previously observed,⁷ the Statute expressly limits the right to seek leave to appeal to the parties,⁸ and does not extend it to other participants including victim participants.⁹ Legal representatives of victims enjoy full rights to lodge appeals only in relation to orders for reparations entered under Article 75.¹⁰ It follows that the legal representatives of victim applicants do not have any right at all to seek leave to appeal under Article 82(1)(d), as an applicant

⁶ Demande de BCPV aux fins d'autorisation d'interjeter appel à l'encontre de la Décision rendue le 24 décembre 2007 relative aux demandeurs a/0047/06 à a/0052/06, ICC-01/04-426, 4 January 2008 ("Application").

⁷ *Prosecutor v Lubanga*, ICC-01/04-01/06-736, 29 November 2006, see in particular para. 12. *Situation in the Democratic Republic of the Congo*, ICC-01/04-422, 20 December 2007, see in particular para. 7.

⁸ 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.

⁹ 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 Henzlin, "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 against an interim decision under Article 82, unless such decisions affect their civil rights as envisaged by Article 82(4)/Article 75."

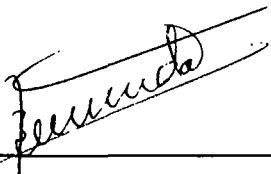
¹⁰ Article 82(4).

for victim status (or their representative) cannot be afforded greater rights than a victim who has been granted participant status.¹¹

7. In a decision of 10 December 2007, the Single Judge explicitly ruled that applicants are not entitled "to request leave to appeal the decision of the Chamber on the merits of their application".¹² If the applicants are not entitled to appeal a decision on the merits of an application, by necessary implication, they are also not entitled to appeal a procedural decision leading up to the decision by that Chamber or another Chamber on the merits of an application. Therefore the OPCV does not have standing to seek leave to appeal the Decision pursuant to Article 82(1)(d).

Conclusion

8. 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 10th day of January 2008
 At The Hague, The Netherlands

¹¹ In dismissing a request by the OPCV to access documents in the situation record related to certain applicants, 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 (*Situation in the Democratic Republic of the Congo*, ICC-01/04-418, 10 December 2007, para. 6).

¹² *Situation in the Democratic Republic of the Congo*, ICC-01/04-418, 10 December 2007, para. 16.