

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/05
Date: 15 February 2007

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR

***vs. JOSEPH KONY, VINCENT OTTI, RASKA LUKWIYA, OKOT
ODHIAMBO and DOMINIC ONGWEN***

Public Document

Prosecution's further submissions supplementing its "Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP", dated 6 February 2007, and request for extension of time

The Office of the Prosecutor

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Preliminary Statement

The Office of the Prosecutor (“OTP”) respectfully presents further submissions to the Single Judge, supplementing its prior “Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP”, dated 6 February 2007 (“6 February Application”). The submissions are based on the OTP’s preliminary reading of the victims’ applications for participation in the proceedings, as provided, in redacted form, by the Registry to the OTP on 13 February 2007.¹ Additionally, the Prosecutor requests an extension of time to reply to the victims’ applications under Rule 89 (1).²

I. Further Submissions of the Prosecution after Examining the Redacted Versions of the Victims’ Applications to Participate in the Proceedings

a. The Redactions Prevent the Prosecution From Providing an Informed Reply to the Victims’ Applications under Rule 89 (1).

1. The OTP respectfully informs the Single Judge that, after a preliminary reading and analysis of the redacted versions of the victims’ applications to participate in these proceedings, as provided by the Registry, it is not in a position to make an informed assessment on whether the harm allegedly suffered by the 49 applicants relates, or not, to the crimes underlying the arrest warrants against Joseph KONY, Vincent OTTI,

¹ The present document should be read jointly with the “6 February Application.” The OTP also is yet intending to submit its reply to the applications under Rule 89 (1) of the Statute.

² In “Decision on Legal Representation, Appointment of Counsel for the Defence, Protective Measures and Time-limit for Submission of Observations on 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,” ICC-02/04-01/05-134, 1 February 2007 (“1 February 2007 Decision”), the deadline was set at 26 February 2007.

Raska LUKWIYA, Okot ODHIAMBO and Dominic ONGWEN. (In one case, the OTP cannot even determine whether the harm relates to a crime within the temporal jurisdiction of the Court). Lack of access to the full versions of the applications precludes the OTP from presenting to the Single Judge a meaningful reply under Rule 89 (1) pertaining to the applications.

2. Previous decisions from the Pre-Trial Chamber I, both in the DRC situation and in the case of *The Prosecutor vs. Thomas Lubanga Dyilo*, interpreted Rule 85 (a) and presented the key legal tests for determining when an applicant should be accepted as a victim participating in a situation or in a case. To participate as a victim in the situation, there must be grounds to believe that the applicant suffered harm which is causally linked to a crime within the jurisdiction of the Court, and within the temporal and territorial limits of the situation.³ The “examination criterion” is “more restrictive” after a warrant of arrest is issued, however, and participation in the case is sought.⁴ To participate in the case, there must be reasonable grounds to believe that there is a causal link between the harm suffered by the applicant and the crimes that form the basis of the charges in a specific case.⁵

³ See “Decision on the Applications for the Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6,” ICC-01/04-101-tEN-Corr, dated 17 January 2006, para. 100, in the context of the DRC situation.

⁴ *Ibid.*, at para. 98.

⁵ “Décision sur les demandes de participation à la procédure présentées par les Demandeurs VPRS1 à VPRS6 dans l'affaire *le Procureur c. Thomas Lubanga Dyilo*, ” ICC-01/04-01/06-172, dated 29 June 2006, pp. 7 and 8 ; “Décision sur les demandes de participation à la procédure 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

3. The fact that the OTP has been denied access to information regarding the identity of all the applicants makes it impossible for the OTP to assess whether any relation or causal link exists between the applicants and the crimes charged in the present case. It prevents the OTP from correlating the applications and the applicants' names with the information already in its possession regarding the identities of victims of the criminal events that comprise the present case.

4. Furthermore, the un-redacted portions of the applications describe the victim and the harm in such a broad way that it is not possible to discern whether the harm relates to incidents or crimes that are part of this case.⁶ In the description of the alleged crimes justifying the applications, information such as the date, location and LRA commanders involved in such events has been redacted (excepting the commanders against whom arrest warrants were issued). There is only reference to the year in which the event took place and to the fact that the event happened somewhere in Uganda. Because the LRA used similar *modus operandi* and inflicted similar types of harm in many places in Northern Uganda, this information is not of sufficient specificity to enable the OTP to assess whether the harm is causally related to the incidents or crimes identified in the warrants of arrest. Redacting the information regarding LRA

dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo," ICC-01/04-01/06-601, dated 20 Octobre 2006, pp. 8 and 9. Both decisions establish that applicants who were not harmed by the crimes referenced in the warrant – i.e., were not children enlisted, conscripted or used in active hostilities – were excluded from participating in the case.

⁶ In one instance, it is not even possible to tell whether the application relates to incidents or crimes that are occurred after 1 July 2002 and are therefore within the Court's jurisdiction.

commanders deprives the OTP of other information which might, if available, permit the OTP to connect the harm to incidents or crimes included in the warrants of arrest.

5. These factors prevent the OTP from providing an informed view in its reply pursuant to Rule 89 (1), as requested in the 1 February 2007 Decision, regarding whether any of the applicants should or not be admitted to participate as a victim in the present situation or case. The Prosecutor is, in effect, prevented from meaningfully commenting or from sharing information in its possession which might be relevant to the admissibility of these applications.

b. The Redactions Prevent the Prosecution From Adequately Fulfilling its Protection Obligations under Article 68 (1)

6. The denial of access to the identity of the applicants further prevents the OTP from adequately fulfilling its protection duties to witnesses and victims as defined in article 68, paragraph 1 of the Statute, as previously highlighted in the 6 February Application. As an example, after reviewing the redacted applications, the OTP has identified the possibility that among the applicants is an individual previously seen by the OTP, and to whom the OTP therefore already owes a duty of protection. Because the OTP does not have sufficient information to confirm if this is the case, it cannot factor the information contained in the applications into the risk and threat assessments that pertain to the individual at issue. Nor can it adjust the protective measures already in

place, or adopt new ones, if required. Finally, it cannot weigh whether the information contained in the applications would affect the OTP/VWU protection measures vis-à-vis witnesses and victims in Uganda more broadly.

7. The OTP notes that in some cases the applications appear to disclose the types of identifying information the Single Judge intended to withhold. In some instances, information has been left un-redacted although a person with knowledge of the incidents and crimes in Northern Uganda could use it to identify the incident or attack. This circumstance again leads the OTP to believe that if given an opportunity to be heard, it could provide information to the Chamber which would assist the Court as a whole in performing its protection duties.

c. The Redactions Prevent the Prosecution From Fully Assessing Whether There Are Any Witnesses for the Prosecution Amongst the Victim Applicants and the Consequent Impact on the Outcome of any Future Trial

8. Even more damaging for the OTP's interests and also for the outcome of any future trial is the fact that, by not knowing the identity of the applicants and not being able assess if any of them is also a witness for the Prosecution, the OTP cannot inform the Chambers and be heard on the implications of their potential status as victims on their pre-existing role as witnesses.

9. In the “Décision sur les demandes de participation à la procédure 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 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo”⁷, dated 20 October 2006, Pre-Trial Chamber I accepted that applicants a/0047/06 to a/0052/06 had demonstrated reasonable grounds to believe that there was a causal link between their harm suffered and the crimes charged against Thomas Lubanga Dyilo.⁸ Nevertheless, Pre-Trial Chamber I considered the OTP’s observations that accepting the applicants’ status as victims should not compromise their pre-existing status as witnesses for the Prosecution in the proceedings.⁹ The Pre-Trial Chamber ruled that accepting those applicants as victims was not appropriate at that stage of the proceedings and decided not to receive those applications; reserving that possibility to a later stage.¹⁰ In the present case, and due to the redactions of the applications, the Prosecutor is deprived of performing the same evaluation and presenting observations in this regard on the 49 applicants. This situation deprives the OTP of its right to be heard on this key issue and further can have damaging effects on any future trial proceedings.

d. The Applications Themselves Do Not Provide Justification For the Prosecution to be Furnished with Redacted Versions

⁷ ICC-01/-4-01/06-601.

⁸ *Ibid.*, p. 10.

⁹ *Ibid.*, p. 5.

¹⁰ *Ibid.*, pp. 11 and 13.

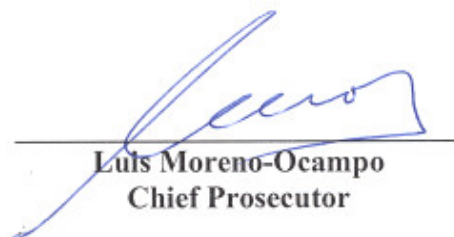
10. The OTP has verified that only five of the 49 applicants requested that the OTP not be informed of their identity and/or of other information in their applications. In all five of those cases, in addition, the request was not specific to the OTP; rather, the five applicants requested that the information be withheld from the OTP and at least one of the following: defence counsel, the public, or the State.
11. Three of these five applicants provided general security reasons to withhold their identities and/or information. However, none of these five applicants gave any specific justification as to why and how these concerns relate to the OTP. To the contrary, the main security concerns expressed in some of the 49 applications relate to the fear of retaliation either by the LRA or local communities. It is respectfully submitted that no security reasons presented by the applicants justify redactions vis-à-vis the OTP.
12. The OTP also informs the Single Judge that the review of the redacted applications confirms that the redacted information is no more confidential than information already maintained and used by the OTP on a day-to-day basis. Consequently, revealing the information contained in the applications to the OTP cannot logically be viewed to compromise the security situation of the applicants.

II. Extension of time to reply to the applications under Rule 89 (1)

13. The Prosecution respectfully requests the Single Judge to grant an extension of the deadline to present its reply to the victims' applications, previously ordered by the Single Judge to be submitted on or before 26 February 2007. Because it is unable to provide an informed reply based on the redacted versions of the applications received, the Prosecution requests the Single Judge to decide first, the OTP's application to lift all redactions, and secondly, to set an alternative date for OTP's reply to the applications under Rule 89 (1).

Conclusion

For all of the foregoing reasons, the OTP respectfully presents the above further submissions based on the reading of the redacted versions of the victims' applications. The OTP reiterates its request to the Single Judge for the lifting of all the redactions on the victims' applications for participation to be furnished to the OTP. Additionally, the OTP requests an extension of the time-limit to reply to the applications pursuant to Rule 89 (1).



Luis Moreno-Ocampo
Chief Prosecutor

Dated this 15th day of February 2007
At The Hague, The Netherlands