

**Cour
Pénale
Internationale**
**International
Criminal
Court**

No.: ICC-02/04-01/05

Date: 5 December
2005

Original: English

PRE-TRIAL CHAMBER II

Before: Judge Tuiloma Neroni Slade, Presiding Judge
 Judge Fatoumata Dembele Diarra
 Judge Mauro Politi

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Public Document

Application for Pre-Trial Chamber II to Supplement the Record With A
 Description of Informal Communications Between Registry and the Chamber

The Office of the Prosecutor	
Mr. Luis Moreno Ocampo, Prosecutor Mrs. Fatou Bensouda, Deputy Prosecutor	

No.: ICC-02/04-01/05

5 December 2005

**Application for Pre-Trial Chamber II to Supplement the Record With A
Description of Informal Communications Between Registry and the Chamber**

1. The OTP respectfully requests that Pre-Trial Chamber II supplement the record with a description of: (a) the informal communications between the Registry and the Chamber in the past weeks regarding security matters, including those communications involving security and identified by the Registry to the OTP, *see infra* para. 3; and (b) any instruction provided by the Chamber to Registry on the matters just described, or relating to any other matter under adjudication.

2. The OTP respectfully furnishes the factual background for this application in the accompanying Sealed Annex, entitled "Sealed Annex To Prosecutor's Application to Supplement the Record." The factual background is being submitted under seal, but the OTP has no objection to the public disclosure of the Sealed Annex, in its entirety.

3. The OTP became aware, through the communications between the OTP and the Registry described in the Sealed Submission, that there had been informal, *ex parte* communications from the Registry to the Pre-Trial Chamber regarding the substance of matters currently being adjudicated by the Court. These communications have not been made a part of the record of these proceedings.

4. The OTP is not suggesting by this application any inappropriate motivation on Registry's part. Nonetheless that informal, *ex parte* contact has led to a sequence of events which creates a need to complete the record of these proceedings, for the reasons described below.

5. The informal, *ex parte* communication from Registry to Chambers bore upon the merits of the matters being adjudicated before the Chamber, rather than "non-judicial" matters or matters relating to the "servicing" of the Court.

See Art. 43(1). Because the Registrar's informal communication related to the merits of a matter before the Court, the communication from the Registry to the Chambers constituted "particulars of the case" which should have been recorded and publicly available, absent the entry of a sealing order. (See Rule 15 of the RPE, entitled "Records," and requiring the Registrar to maintain the database containing "all the particulars of each case" and available for public inspection, unless there is an order providing for non-disclosure.)

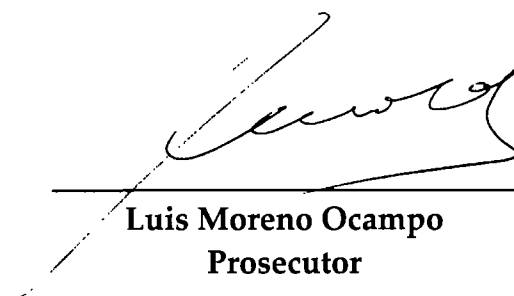
6. The maintenance of an accurate and public record serves several objectives. The Statute and the Rules envision that the Court will provide transparency about its case-related acts. See authorities cited in "Prosecutor's Update of Proposed Treatment of All Relevant Documents of the Record and Application for Entry of Reasons for Sealing into Public Record," dated 14 November 2005.¹ In addition, the record ensures the opportunity to be heard. In this circumstance, the OTP was not made aware of the Registrar's informal, *ex parte* communication until after the communication had been accomplished. If it had been notified contemporaneously, the OTP could have raised any legal objections to Registry's provision of the information. In the absence of any such objections, it could have ensured that accurate information about the document was conveyed.

7. Also critically important is the need to make and preserve a record which protects the ability of future victims' representatives and defence counsel to review a record which accurately reflects the adjudication of any matters

¹ E.g. *Axen v. Federal Republic of Germany*, No. 8273/78 [1983] ECHR 14, 8 December 1983, at para. 25 ("By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6, para 1, namely a fair trial."); *Prosecutor v. Brdanin et al.*, ICTY Trial Chamber, IT-99-36/1, Decision on Motion by Prosecution for Protective Measures, 3 July 2000 ("there is a public interest in the working of courts generally . . . not just in the hearings but in everything to do with their workings – which should only be excluded if good cause is shown to the contrary. . .)."

bearing upon their interests. While these parties are not yet present, their interests should be protected, in the manner envisioned by the Statute and Rules, in this phase of the proceedings.

8. For the foregoing reasons, the OTP respectfully requests that Pre-Trial Chamber II supplement the record with: (1) a description of the informal communications between the Registry and the Chamber in the past weeks regarding security matters, including those communications previously identified by the Registry to the Prosecutor; and (b) any instruction provided by the Chamber to Registry on the matters just described, or relating to any other matter under adjudication. If the Chamber deems any information it places in the record to be confidential, then the information may be sealed, by means of an accompanying order. If the Chamber deems that any of the legal principles stated in this application are in dispute, the OTP requests notice of the legal principle at issue, and an opportunity to submit full briefing on the matter.



Luis Moreno Ocampo
Prosecutor

Dated this 5th day of December, 2005

At The Hague, The Netherlands

List of Cited Authorities

1. *Axen v. Federal Republic of Germany*, No. 8273/78 [1983] ECHR 14, 8 December 1983
2. *Prosecutor v. Brdanin et al.*, ICTY Trial Chamber, IT-99-36/1, Decision on Motion by Prosecution for Protective Measures, 3 July 2000
<http://www.un.org/icty/brdjanin/trialc/decision-e/00703PM213035.htm>