

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/05
Date: 27 December 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public

Prosecution's Response to « Demande pour répliquer à la réponse du Bureau du Procureur concernant la requête déposée par la défense sollicitant "la présence et la participation du conseil ad hoc pour la défense dans la procédure qui sera entamée par le Bureau du Procureur sur le territoire soudanais" »

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Andrew Cayley, Senior Trial Lawyer

**Counsel *ad hoc* for the
Defence**
Mr Hadi Shalluf

Background

1. On 20 December 2006, Counsel *ad hoc* for the Defence ("Counsel *ad hoc*") filed the "Requête sollicitant la présence et la participation du conseil ad hoc pour la défense dans la procédure qui sera entamée par le Bureau du Procureur sur le territoire soudanais ("Application").¹
2. In the Application, Counsel *ad hoc* noted that the Prosecutor had mentioned in his Report to the Security Council of the United Nations on 14 December 2006 that he had sought the cooperation of the Government of Sudan in order to facilitate that a team from the Office of the Prosecutor could travel to the Sudan in January 2007 to encounter 14 individuals in custody, suspected of violations of international humanitarian law.²
3. In the Application Counsel *ad hoc* relies on Article 56 of the Statute for the purposes of claiming the competence of the Pre-Trial Chamber for the Application. Counsel *ad hoc* argues that considering that any encounter between the Office of the Prosecutor and any individuals in custody in the situation in Darfur requires the presence of the Defence, Counsel *ad hoc* requests that the Pre-Trial Chamber authorise him to attend any proceedings, provided for in the Rome Statute, the Regulations of the Court and the Rules of Procedure and Evidence, related to the situation in Darfur which are carried out at the seat of the Court, outside it, as well as abroad.

¹ ICC-02/05-41.

² ICC-02/05-40 and ICC-02/05-40 Anx A.

4. Counsel *ad hoc* also requests that the Pre-Trial Chamber order that the Office of the Prosecutor inform him about any envisaged proceedings and invite him to attend and participate in any proceedings pursuant to Articles 54 and 55 of the Rome Statute and rules 111, 112, 113 and 115 of the Rules of Procedure and Evidence.³

5. On 21 December 2006, the Prosecution filed the « Prosecutor's response to "Requête sollicitant la présence et la participation du conseil ad hoc pour la défense dans la procédure qui sera entamée par le Bureau du Procureur sur le territoire soudanais" ».⁴ (Prosecution's 21 December 2006 Submission). In the Prosecution's 21 December 2006 Submission, the Prosecution requested that the Pre-Trial Chamber reject the Application and deny the relief requested because the "Decision Inviting Observations in Application of Rule 103 of the Rules of Procedure and Evidence"⁵ (Decision) expressly limited the role of Counsel *ad hoc* to the "issues concerning the protection of victims and the preservation of evidence in Darfur, Sudan."

6. On 26 December 2006, Counsel *ad hoc* filed the « Demande pour répliquer à la réponse du Bureau du Procureur concernant la requête déposée par la défense sollicitant "la présence et la participation du conseil ad hoc pour la défense dans la procédure qui sera entamée par le Bureau du Procureur sur le territoire soudanais" »⁶ (Defence 26 December 2006 Submission). In the Defence 26 December 2006 Submission, Counsel *ad hoc* requests leave to reply to the Prosecution's 21 December 2006 Submission.

³ ICC-02/05-41, pp. 2 and 3.

⁴ ICC-02-05-42.

⁵ ICC-02-05-10.

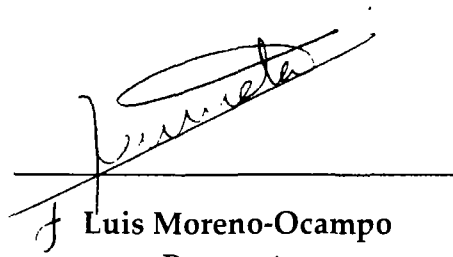
⁶ ICC-02/05-44.

Discussion

7. The Prosecution notes that Counsel *ad hoc* in the Defence 26 December 2006 Submission has already elaborated, at least partially, on the substance of a possible reply. Accordingly, the Prosecution expresses its concern in respect of such an approach, which is not in line with the procedure as regulated in Regulation 24.
8. The Prosecution is of the view that Regulation 24(5) does not provide for a right of Counsel *ad hoc* to reply to the Prosecution's 21 December 2006 Submission. Regulation 24(5) provides for a reply in exceptional circumstances only; exceptional circumstances in the Prosecution's submission only exist when the question that is to be decided by the Pre-Trial Chamber is either complex in factual and/or legal terms or when the response contains aspects that go beyond the scope of the initial filing.
9. In the Prosecution's opinion, none of these pre-conditions are met:
 - (i) The question to be decided upon by the Pre-Trial Chamber is determined by the interpretation of the Decision. In respect of the portion on the appointment of Counsel *ad hoc*, the Decision is neither factually nor legally complex.
 - (ii) The Prosecution's 21 December 2006 Submission is comprised of three pages; the Prosecution's sole and in its view obvious argument is outlined in two paragraphs only. It does not encompass any aspect that goes beyond the scope of the initial filing.

Request

10. Accordingly, the Prosecution requests the Pre-Trial Chamber to deny the Defence 26 December 2006 Submission.



Luis Moreno-Ocampo
Prosecutor

Dated this 27th day of December 2006
At The Hague, The Netherlands