

**Cour
Pénale
Internationale**

**International
Criminal
Court**

No.: ICC-01/04

Date: 30 January 2006

Original: English

PRE-TRIAL CHAMBER I

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Prosecution's Application for Leave to Reply to "Observations du représentant légal de VPRS 1 à 6 suite à la requête du Procureur sollicitant l'autorisation d'interjeter appel de la décision de la chambre préliminaire I sur les demandes de participation à la procédure de VPRS 1 à 6"

The Office of the Prosecutor

Ms Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer
Mr Fabricio Guariglia, Senior Appeals Counsel

Counsel for the Applicants

Mr Emmanuel Daoud

***Ad Hoc* Counsel for Defense**

Mr Joseph Tshimanga

Background

1. The Applicants filed Applications for Participation in the Proceedings No. 01/04-1/dp to 01/04-6/dp and a Memorandum in Support of Applications No. 01/04-1/dp to 01/04-6/dp *ex parte* on 26 May 2005. Pursuant to the Decision on Protective Measures Requested by Applicants 01/04-1/dp to 01/04-6/dp, delivered by the Chamber on 21 July 2005, the Prosecution filed a reply on 15 August 2005 (“the Reply”).
2. On 17 January 2006, the Pre-Trial Chamber rendered its “Décision sur les Demandes de Participation à la Procédure de VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 et VPRS 6” (“the Decision”). The Decision rejected the arguments offered by the Prosecution and granted the applications. On 23 January 2006, the Prosecution filed an Application for Leave to Appeal Pre-Trial Chamber I’s Decision on the Applications to Participate as Victims in the Proceedings from VPRS1, VPRS2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 (“the Application”), seeking leave to appeal the Decision under Article 82(1)(d) of the Rome Statute and Rule 155 of the Rules of Procedure and Evidence.
3. On 27 January 2006, Counsel for VPRS 1-6, filed “Observations du représentant légal de VPRS 1 à 6 suite à la requête du Procureur sollicitant l’autorisation d’interjeter appel de la décision de la chambre préliminaire I sur les demandes de participation à la procédure de VPRS 1 à 6” (“the Observations”). In these Observations, Counsel for VPRS 1-6 is asking the Pre-Trial Chamber to reject the Prosecution’s Application for Leave to appeal.

Discussion

4. The Prosecution is seeking leave to reply to the Observations pursuant to Regulation 24(5) of the Regulations of the Court. The Prosecution, acknowledging that filing a reply is considered only in exceptional circumstances, submits that the preconditions of such exceptional circumstances are met: The matter at stake is of significant importance for the Court in determining the scope of the participation of victims, going beyond the

limits of the present case. The Prosecution is of the view that an opportunity to address certain issues raised in the Observations could only benefit all participants and clarify what seems to be a misinterpretation of the Prosecution's submissions.¹

5. The issues which the Prosecution intends to address in its reply concern, *inter alia*, the arguments put forward in the Observations regarding the - allegedly - premature and hypothetical nature of the Prosecution's submissions² and in relation to the interrelation between the Court's resources, the principle of efficiency and the rights of victims.³
6. Considering the number of important issues capable of affecting the fairness and expeditiousness of not only these proceedings, but also provide extremely valuable guidance for any future proceedings, the Prosecution submits that the Pre-Trial Chamber should have the added advantage of being informed of all relevant arguments and avoid the consequences of misunderstandings and misinterpretations. On the basis of these considerations, the Prosecution respectfully submits that the Pre-Trial Chamber ought to give the Prosecution the opportunity to answer certain arguments raised in the Observations and clarify allegations related to such important matters.

Request

7. For the foregoing reasons, the Prosecution respectfully requests the Chamber to:

- (i) Consider this application for leave to reply to have been properly filed within the time-limits set forth in Regulation 65(3);⁴

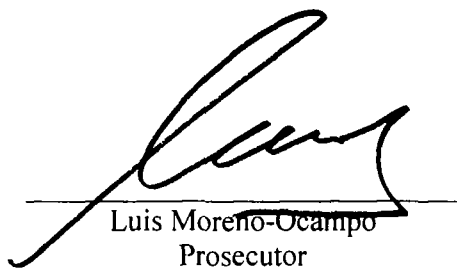
¹ In balancing the advantages and disadvantages of an immediate decision of the Pre-Trial Chamber on the Application and receiving further submissions of the Prosecution, the Prosecution submits that the likely advantages of making a decision having had the chance to consider all possible observations outweighs the speediness of a decision.

² See paragraphs 5, 6 and 17 of the Observations.

³ See paragraphs 21, 23, 25, 26 and 27 of the Observations.

⁴ The Prosecution notes that neither Regulation 24(5) nor Regulation 34 appear to cover a time limit for the submission of an application seeking leave to reply. The Prosecution applies Regulation 65(3) in an analogous way.

(ii) To grant leave to reply to the Observations.



Luis Moreno-Ocampo
Prosecutor

Dated this 30th day of January, 2006

At The Hague, The Netherlands