

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/05

Date: 1 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 Document

**Prosecutor's response to "Requête sollicitant l'autorisation d'interjeter appel
à l'encontre de la décision rendue le 22/11/2006 sur les conclusions
aux fins de l'exception d'incompétence et d'irrecevabilité"**

The Office of the Prosecutor

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

Counsel for the Defence

Mr Hadi Shalluf

Introduction

1. On 24 July 2006, Pre-Trial Chamber I issued a “Decision Inviting Observations in Application of Rule 103 of the Rules of Procedure and Evidence”, inviting Professor Antonio Cassese and Ms Louise Arbour, United Nations High Commissioner for Human Rights, to submit observations on issues concerning the protection of victims and the preservation of evidence in Darfur (“Observations”), and inviting the Prosecutor and Ad Hoc Counsel for the Defence (“the Applicant”) to provide a written response to the observations within 10 days of the notification thereof.¹
2. On 1 September 2006, Professor Antonio Cassese submitted his observations,² and the Prosecution filed its response on 11 September 2006.³
3. On 14 September 2006, the Applicant filed a request for an extension of time to file his response to the Observations.⁴
4. On 21 September 2006, Pre-Trial Chamber I granted the Applicant an extension of 21 days after receipt of the Observations of High Commissioner Arbour in which to file his response.⁵
5. On 10 October 2006, High Commissioner Arbour submitted her observations,⁶ and the Prosecution filed its response on 19 October 2006.⁷
6. On 13 October 2006, the Applicant filed “Conclusions aux fins d’exception d’incompétence et d’irrecevabilité”.⁸ In these conclusions, the Applicant did not respond to the Observations but instead raised a challenge to the

¹ ICC-01/05-10 (“Decision Inviting Observations”).

² ICC-01/05-14.

³ ICC-01/05-16.

⁴ ICC-02/05-17.

⁵ ICC-02/05-18.

⁶ ICC-01/05-19.

⁷ ICC-01/05-21.

⁸ ICC-01/05-20.

jurisdiction of the Court and the admissibility of the situation in Darfur. The Prosecution filed its response to these conclusions on 10 November 2006.⁹

7. On 1 November 2006, the Applicant filed “Conclusions aux fins d’*in limine litis* sursis à statuer”.¹⁰ The Prosecution notes that in this filing the Applicant argued for the first time that a response to the Observations could only properly be filed by him and considered by Pre-Trial Chamber I after a ruling on the Applicant’s challenge to jurisdiction and admissibility.
8. On 2 November 2006, Pre-Trial Chamber I issued its “Decision relative aux ‘Conclusions aux fins d’*in limine litis* sursis à statuer’ déposées par le conseil ad hoc de la Défense”. In its decision Pre-Trial Chamber I rejected the request filed by the Applicant on 1 November 2006 noting *inter alia* that the Chamber has no obligation under the Rome Statute and the Regulations of the Court to adjourn the proceedings subsequent to a challenge to the jurisdiction of the Court and the admissibility of a case during an investigation into a situation; the Chamber also noted that the Applicant had not submitted any reasonable grounds justifying a new extension of the time limit set for the submission of his response to the Observations.¹¹
9. On 6 November 2006, the Applicant requested leave to appeal the decision of Pre-Trial Chamber I of 2 November 2006¹² in his “Requête sollicitant l’autorisation d’interjeter appel à l’encontre de la décision rendue le 02/11/2006 sur les conclusions *in limine litis* sursis à statuer,”¹³ and the Prosecution filed its response on 7 November 2006.¹⁴
10. On 22 November 2006, Pre-Trial Chamber I issued its “Decision relative aux conclusions aux fins d’exception d’incompétence et d’irrecevabilité”. In its decision the Chamber rejected the request filed by the Applicant on 13

⁹ ICC-02/05-29.

¹⁰ ICC-02/05-24.

¹¹ ICC-01/05-25.

¹² ICC-01/05-25.

¹³ ICC-01/05-26.

¹⁴ ICC-02/05-27.

October 2006 noting *inter alia* that the Applicant had no procedural *locus standi* under Article 19(2) of the Rome Statute to challenge the jurisdiction of the Court and the admissibility of the situation in Darfur at this stage of the investigation ("the Decision").¹⁵

11. On 22 November 2006, Pre-Trial Chamber I also issued its "Decision relative à la requête sollicitant l'autorisation d'interjeter appel du conseil ad hoc pour la Défense". In its decision the Chamber rejected the request filed by the Applicant on 6 November 2006 noting *inter alia* that the Applicant in his request had brought no arguments seeking to demonstrate how any issue involved in this decision would affect the fairness of the proceedings, the expeditiousness of the proceedings, nor how immediate resolution of any such issue by the Appeals Chamber could materially advance the proceedings; the Chamber also noted that the Applicant had failed to submit within the set time limit his response to the Observations.¹⁶

12. On 27 November 2006, the Applicant requested leave to appeal the Decision in his "Requête sollicitant l'autorisation d'interjeter appel à l'encontre de la décision rendue le 22/11/2006 sur les conclusions aux fins de l'exception d'incompétence et d'irrecevabilité".¹⁷

13. The Prosecution hereby files its response to the Request for leave.

Discussion

14. Any application for leave to appeal must meet the criteria set out in Article 82(1)(d). The Applicant must demonstrate that the decision "involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings". As both Pre-Trial Chambers have

¹⁵ ICC-01/05-34 ("the Decision").

¹⁶ ICC-01/05-33.

¹⁷ ICC-01/05-35 ("the Request").

repeatedly stated: the merits of the underlying decision are not in issue in determining whether to grant leave to appeal, the only question before the Chamber is whether the decision meets the requirements of Article 82(1)(d).¹⁸

15. The Applicant, in his Request, has brought no arguments seeking to demonstrate how any issue involved in the Decision affects the fairness of the proceedings, the expeditiousness of the proceedings, the outcome of any future trial, nor how immediate resolution of any such issue by the Appeals Chamber could materially advance the proceedings. The Request is limited to a series of assertions regarding the merits of the Decision,¹⁹ many of which merely repeat submissions made to the Pre-Trial Chamber in the initial Application, and a sole assertion that the Applicant considers that the Decision could affect the fair conduct of the proceedings.²⁰

16. The Prosecution recalls that mere disagreement with a decision does not meet the requirements for granting leave to appeal.²¹ In this case, the Prosecution submits that the Applicant has manifestly failed to provide any arguments capable of demonstrating that the Decision meets the criteria for granting leave to appeal under Article 82(1)(d).

17. The Prosecution also notes and emphasises that the Applicant and the Prosecutor had originally been invited by the Chamber to respond to the Observations of Professor Cassese and High Commissioner Arbour. The Applicant decided to ignore this invitation of the Chamber and instead respond with an application challenging the admissibility of the case and

¹⁸ See e.g. PTC-II, Decision on Prosecutor's Application for Leave to Appeal in part Pre-Trial Chamber II's Decision on the Prosecutor's Application for Warrants of Arrest under Article 58, ICC-02/04-01/05-20, 19 August 2005, paras. 15, 22-23; PTC-I, Decision on the Prosecution's Application for Leave to Appeal the Chamber's Decision of 17 January 2006 on the Application for Participation in the Proceedings of VPRS1-6, ICC-01/04-135-tEN, 31 March 2006, paras. 25-26, 29-31; PTC-I, Decision on Defence Motion for Leave to Appeal, ICC-01/04-01/06-338, 18 August 2006, pp. 6-7.

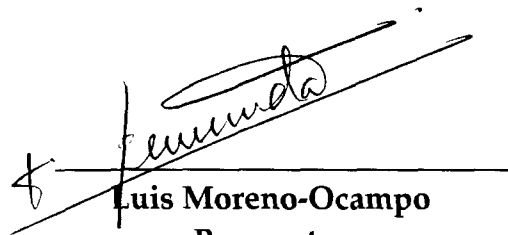
¹⁹ The Prosecution will not address any of the submissions of the Applicant relating to the merits of the Decision, and expressly reserves its position in this regard.

²⁰ Request, p. 9.

²¹ See authorities cited at footnote 4, above. See further Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, ICC-01/04-168, 13 July 2006, para. 9.

jurisdiction of the Court in the Darfur situation. It was patently obvious when this application was made that the Applicant had no *locus standi* to make such an application under the Rome Statute. Indeed that application was rejected by the Chamber on that very basis, and now the Applicant applies for leave to appeal that decision.

18. For all the reasons adumbrated above the Prosecution therefore respectfully requests that the Pre-Trial Chamber dismiss the Request.



Luis Moreno-Ocampo
Prosecutor

Dated this 1st of December 2006
At The Hague, The Netherlands