

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-02/05  
Date: 21 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 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  
Mrs Fatou Bensouda, Deputy Prosecutor  
Mr Andrew Cayley, Senior Trial Lawyer

**Counsel for the Defence**

Mr Hadi Shalluf

## Introduction

1. On 20 December 2006, Ad Hoc Counsel for the Defence ("Ad Hoc Counsel") filed "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").<sup>1</sup>
2. In the Application, Ad Hoc Counsel 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.<sup>2</sup>
3. In the Application Ad Hoc Defence counsel relies on Article 56 of the Statute for the purposes of claiming the competence of the Pre-Trial Chamber for the Application. Ad Hoc Counsel 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, Ad Hoc Counsel requests that Pre-Trial Chamber I 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.
4. Ad Hoc Counsel also requests that Pre-Trial Chamber I 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.<sup>3</sup>
5. The Prosecution hereby files its response to the Application.

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<sup>1</sup> ICC-02/05-41.

<sup>2</sup> ICC-02/05-40 and ICC-02/05-40 Annex A.

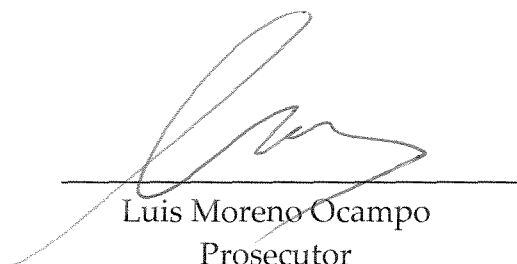
<sup>3</sup> ICC-02/05-41, pp. 2 and 3.

## Discussion

6. On 24 July 2006 Pre-Trial Chamber I issued a "Decision Inviting Observations in Application of Rule 103 of the Rule of Procedure and Evidence" ("Decision"). In the Decision, *inter alia*, Pre-Trial Chamber I appointed Ad Hoc Counsel to represent and protect the general interests of the Defence in the Situation in Darfur, Sudan *during the proceedings pursuant to rule 103 of the Rules* (emphasis added).<sup>4</sup>
7. In the Decision Pre-Trial Chamber I sought the views of the High Commissioner for Human Rights and the Chairperson of the United Nations International Commission of Inquiry, pursuant to rule 103, "on issues concerning the protection of victims and the preservation of evidence in Darfur, Sudan." Since Pre-Trial Chamber I expressly limited Ad Hoc Counsel's role in the Darfur situation to these issues alone, he has no *locus standi* in making the current Application under the Rome Statute.

## Conclusion

8. For this reason the Prosecution therefore respectfully requests that the Pre-Trial Chamber reject the Application and deny the relief requested.



Luis Moreno Ocampo  
Prosecutor

Dated this 21st of December 2006

At The Hague, The Netherlands

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<sup>4</sup> ICC-02/05-10.