



Original: **French**

No.: **ICC-02/05**
Date: **29 April 2009**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, SUDAN

Public Document

Registrar's Submissions pursuant to Regulation 24 *bis* of the Regulations of the Court in Response to the Document entitled "Clarification for the Record of Annex 4 to the Application under Rule 103"

Source: The Registrar

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Mr Essa Faal

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Sir Geoffrey Nice

Mr Rodney Dixon

The Registrar of the International Criminal Court (“the Court”);

NOTING the document entitled “Application on behalf of Citizens’ Organisations of the Sudan in relation to the Prosecutor’s Applications for Arrest Warrants of 14 July 2008 and 20 November 2008”, filed by the Sudan Workers Trade Unions Federation and the Sudan International Defence Group (“the Applicants”) on 11 January 2009;¹

NOTING the “Supplement to the Application and Annexes to the Application on behalf of Citizens Organisations of the Sudan in relation to the Prosecutor’s Applications for Arrest Warrants of 14 July 2008 and 20 November 2008”, filed by the Applicants on 3 February 2009;²

NOTING the *Decision on Application under Rule 103* (“the Decision”), issued by Pre-Trial Chamber I (“the Chamber”) on 4 February 2009;³

NOTING the “Application for Leave to Appeal Against Decision on Application under Rule 103”, submitted by the Applicants on 11 February 2009;⁴

NOTING the “Report on documents submitted after the issuance of the ‘Decision on Application under rule 103’”, submitted to the Chamber by the Registry on 17 February 2009;⁵

NOTING the *Decision on the Application for Leave to Appeal the Decision on Application under Rule 103* issued by the Chamber on 19 February 2009;⁶

NOTING the request for “Clarification for the Record of Annex 4 to the Application under Rule 103” filed by the Applicants on 24 April 2009;⁷

¹ ICC-02/05-170.

² ICC-02/05-182.

³ ICC-02/05-185.

⁴ ICC-02/05-187.

⁵ ICC-02/05-191.

⁶ ICC-02/05-192.

NOTING regulation 24 *bis* of the *Regulations of the Court*;

CONSIDERING that the said regulation authorises the Registry, when necessary for the proper discharge of its functions, to make oral or written submissions to a Chamber with notification to the participants;

CONSIDERING that the allegations made by the Applicants call for a theoretical response from the Registry;

Respectfully **SUBMITS** to the Chamber the following points in response to the arguments made by the Applicants in their application for clarification:

1. The Registry must first of all stress that it cannot be held responsible for the fact that the petitions that were supposed to be attached to the main document and its annexes – which arrived at the Registry on 3 and 4 February 2009⁸ – did not reach the Registry until 9 February 2009. On the contrary, the onus was on the author of the document to ensure that it was complete before submitting it to the Registry.
2. The fact that staff members of the Registry showed courtesy in informing the Applicants that the boxes containing the originals of the petitions could be delivered to the seat of the Court during the day of 9 February 2009 can in no way be interpreted as an assurance that the said documents would be registered in the record of the situation, especially if a legal ground impeded such registration.
3. In this instance, the Registry noted that, between the date of the Applicants filing their main document and its annexes and the time when the petitions reached the Registry, a judicial decision had been issued, preventing the registration of the said petitions in the record. In that decision, the Chamber denied the application for

⁷ ICC-02/05-220.

⁸ The Registry nevertheless points out that the document in question could not be notified until 5 February 2009, due to difficulties encountered by the Registry in obtaining explanations from the Applicants as to inconsistencies affecting the presentation and numbering of the annexes.

participation as *amicus curiae* filed by the Applicants, who, as a result, no longer had any standing in the proceedings.

4. It was this judicial ground alone which prompted the Registry to refuse to register the documents in the record of the case; it cannot be said that this refusal was on account of the volume of documents received. In actual fact, the Registry has at its disposal a range of means to register any document, regardless of its size.

5. Furthermore, the Registry would like to note that it kept the Chamber informed of all measures taken by means of a report registered in the record of the situation. This report indicated, *inter alia*, that the boxes of petitions had been returned to the senders along with a letter informing them that the Registry would not register any further documents related to their application under rule 103 of the *Rules of Procedure and Evidence*. Since the report did not give rise to any response or instruction to the contrary from the Chamber, the Registry ended its communication with the Applicants, since they no longer had standing as participants in the case.

6. Furthermore, the Registry draws the Chamber's attention to the fact that late acceptance by the Court of the petitions at issue would have equated to authorising organisations which do not, or no longer, have standing as participants in a situation or a case to file a petition before a judicial body, which is not meant to be a political platform. In the alternative, the Registry considers that the filing of this type of documents, which, by their very nature, fall within the mandate of political or legislative bodies, cannot be considered to come under the jurisdiction of an international criminal court. From a judicial administration viewpoint, the Registry further submits that it has no authority to verify and certify the authenticity of such documents (in particular, concerning the number or the authenticity of the signatures provided).

7. Lastly, the Registry stresses that submitting their petitions after their application had been denied would enable the Applicants to circumvent the

decisions of the Chamber, on the one hand, rejecting their application pursuant to rule 103 and, on the other hand, dismissing their application for leave to appeal that decision. The Applicants would thus be given an opportunity to continue to participate in the proceedings before the Court in a roundabout way. In this respect, the Registry notes that the decision to dismiss the Applicants' application for leave to appeal was made despite the Chamber being informed of the Applicants' wish to register the impugned petitions in the record and without the Chamber then having considered it necessary that it take notice of those petitions or that they be registered in the record.

[signed]

Marc Dubuisson, Director of the Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 29 April 2009

At The Hague, The Netherlands