

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-02/05  
Date: 10 November 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 Reply to Ad Hoc Counsel's "Conclusions Aux Fins D'Exception  
D'Incompétence et D'Irrecevabilité"**

**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  
**Other Participants**  
Mr Louise Arbour  
Ms Antonio Cassese

## Introduction

1. On 24 July 2006, Pre Trial Chamber I (“Chamber”) issued a decision inviting observations in Application of Rule 103 of the Rules of Procedure and Evidence (“Decision”). The Decision invited Louise Arbour, United Nations High Commissioner for Human Rights (“High Commissioner Arbour”) and Professor Antonio Cassese, Chairperson of the International Commission of Inquiry on Darfur, Sudan (“Professor Cassese”) to submit in writing their observations concerning the protection of victims and the preservation of evidence in Darfur within 45 days of the Decision. The Decision further invited the Prosecutor and Ad Hoc Counsel for the Defence (“Ad Hoc Counsel”) to provide a written response to the observations within 10 days of the notification thereof.
2. On 31 August 2006, Professor Cassese filed his observations concerning the protection of victims and the preservation of evidence in Darfur in Sudan (“Cassese Observations”). On 11 September 2006, the Prosecutor submitted his response to the observations filed by Professor Cassese (“Cassese Response”).
3. On 10 October 2006 High Commissioner Arbour filed her observations concerning the protection of victims and the preservation of evidence in Darfur in Sudan (“Arbour Observations”). On 19 October 2006, the Prosecutor filed his response to the Arbour Observations.
4. Ad Hoc Counsel filed “Conclusions Aux Fins D’Exception D’Incompétence et D’Irrecevabilité” (“Ad Hoc Counsel Response”) on 13 October 2006. This filing was received by the Office of the Prosecutor on 19 October 2006.
5. On 27 October 2006, the Prosecutor applied for leave to reply to the Ad Hoc Counsel Response. On 30 October 2006, the Chamber granted the Prosecutor leave to reply to the Ad Hoc Counsel Response.

## Prosecutor's Reply

6. The Prosecutor and Ad Hoc Counsel were invited to provide a written response to observations by Professor Cassese and High Commissioner Arbour on issues concerning the protection of victims and the preservation of evidence in Darfur, Sudan. The Chamber relied on Articles 57(3)(c) and 68(1) of the Rome Statute ("Statute") and rule 103 of the Rules of Procedure and Evidence .
7. The Ad Hoc Counsel Response does not address the subject matter which the Chamber invited Ad Hoc Counsel to address, namely the observations of Professor Cassese and High Commissioner Arbour concerning the protection of victims and the preservation of evidence in Darfur Sudan. Instead, the Ad Hoc Counsel Response challenges the admissibility of the situation in Darfur and the jurisdiction of the Court relying on Articles 1, 4, 10-13, 17-19, 57 and 98 of the Statute.
8. Ad Hoc Counsel has not complied with the Decision since he has not responded to either the Cassese Observations or the Arbour Observations. Moreover, Ad Hoc Counsel has no *locus standi* under Article 19(2) of the Statute to challenge the jurisdiction of the Court or the admissibility of the situation in Darfur at this time.
9. Article 19(2) of the Statute states:
 

Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

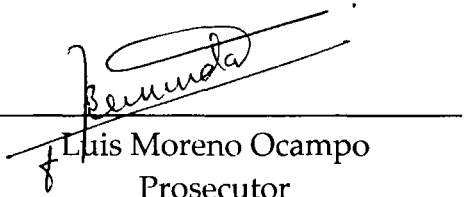
  - (a) An Accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
  - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(c) A State from which acceptance of jurisdiction is required under article 12.

10. The investigation into the situation in Darfur is ongoing. No “case” within the meaning of Article 19 of the Statute exists at this time which could give rise to a challenge under the provisions of this Article. Moreover, none of the conditions specified in Article 19(2) of the Statute would apply at this time to the investigation into the situation in Darfur being carried out by the Office of the Prosecutor.

### **Relief Requested**

11. Since the Ad Hoc Counsel Response is not in compliance with the Decision and has no legal basis under the Statute, and stressing the importance of participants in proceedings before the Chamber complying with the provisions of the Statute and its decisions, the Prosecutor respectfully requests that the Chamber issues an order disregarding the Ad Hoc Counsel Response and rejecting his application in accordance with regulation 29 of the Regulations of the Court.



Luis Moreno Ocampo  
Prosecutor

Dated this 10<sup>th</sup> of November 2006

At The Hague, The Netherlands