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No.: ICC-02/05-01/09

Date: 24 February 2010

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng, Judge
Judge Cuno Tarfusser, Judge

SITUATION IN DARFUR, THE SUDAN

IN THE CASE OF

THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR

Public Document

Prosecution's Request For an *ex parte* Hearing

Source: Office of the Prosecutor

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I. Background

1. On 14 July 2008, the Prosecution filed its Application¹ under article 58 of the Rome Statute, requesting the issuance of a warrant for the arrest of President **Omar Hassan Ahmad AL BASHIR** for his alleged criminal responsibility in the commission of genocide, crimes against humanity, and war crimes in Darfur, the Sudan ("Prosecution's Application").
2. On 4 March 2009, the Pre-Trial Chamber I ("Chamber") rendered its Decision on the Prosecution's Application² in which it decided to issue an arrest warrant in respect of those charges relating to crimes against humanity and war crimes,³ but declined to do so in respect of the genocide charges.⁴ In paragraph 207 of the afore-mentioned decision, the Majority considered that, "if as a result of ongoing Prosecution's investigations into the crimes committed by Omar Al Bashir, additional evidence on the existence of a GoS's genocidal intent is gathered, the Majority's conclusion in the present decision would not prevent the Prosecution from requesting, pursuant to Article 58(6) of the Statute, an amendment to the arrest warrant for Omar Al Bashir so as to include the crime of genocide".
3. On 13 March 2009, the Prosecution filed an application seeking leave to appeal the Chamber's decision,⁵ which the Chamber granted on 24 June 2009.⁶

¹ ICC-02/05-151-US-Exp; "Corrigendum to Prosecution's Application under Article 58 filed on 14 July 2008", ICC-02/05-151-US-Exp-Corr. A public redacted version was filed on 12 September 2009 under the number ICC-02/05-157-AnxA.

² ICC-02/05-01/09-2-Conf. A public redacted version was filed under the number ICC-02/05-01/09-3. References in this filing are to the public redacted version.

³ *Ibid* at page 92.

⁴ *Ibid* at para. 206.

⁵ ICC-02/05-01/09-12.

4. On 6 July 2009, the Prosecutor filed its Document in Support of Appeal before the Appeals Chamber.⁷
5. On 3 February 2010, the Appeals Chamber rendered its judgment on the Prosecution's appeal,⁸ in which it concluded, *inter alia*, that "the Pre-Trial Chamber applied an erroneous standard of proof when evaluating the evidence submitted by the Prosecutor and, consequently, rejected his application for a warrant of arrest in respect of the crime of genocide. Therefore, the decision by the Pre-Trial Chamber not to issue a warrant of arrest in respect of that crime was materially affected by an error of law".⁹ The Appeals Chamber accordingly decided that "the matter is remanded to the Pre-Trial Chamber for a new decision, using the correct standard of proof".¹⁰

II. Request For a Hearing

6. Following the Appeal Chamber's decision to remand the issue of genocide back to the Pre-Trial Chamber for a new decision, the Prosecution intends to file additional information. Such a possibility was also addressed in paragraph 207 of the decision of the Majority referred to in paragraph 2 above. The Prosecution considers that a hearing would provide it with an opportunity to seek the Chamber's guidance on the most efficient and appropriate means to proceed.

⁶ The Chamber granted the Prosecution leave to appeal in respect of one issue, to wit: "*Whether the correct standard of proof in the context of Article 58 requires that the only reasonable conclusion to be drawn from the evidence is the existence of reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court*": *ibid* at p. 10.

⁷ ICC-02/05-01/09-25.

⁸ ICC-02/05-01/09-73: "Judgment on the appeal of the Prosecutor against the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir"".

⁹ *Ibid.*, para. 41.

¹⁰ *Ibid* at para. 42.

III. Relief Sought

7. Accordingly, the Prosecution respectfully requests that an *ex parte* hearing, to be held in closed session, be convened before the Pre-Trial Chamber as soon as convenient.



Luis Moreno-Ocampo
Prosecutor

Dated this 24th day of February 2010
At The Hague, the Netherlands