

**Cour
Pénale
Internationale**
**International
Criminal
Court**

No.: ICC-01/04

Date: 14 March 2005

Original: English

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

Decision on the Prosecutor's Application for Leave to Appeal

The Office of the Prosecutor

Mr. Luis Moreno Ocampo

Mrs. Fatou Bensouda

Mr. Ekkehard Withopf

Mr. Fabricio Guariglia

PRE-TRIAL CHAMBER I of the International Criminal Court (the “Court”);

NOTING the “Decision to Convene a Status Conference” (the “First Decision”), issued by Pre-Trial Chamber I on 17 February 2005;

NOTING the “Prosecutor’s Position on Pre-Trial Chamber I’s 17 February 2005 Decision to Convene a Status Conference” (the “Prosecutor’s Position”), filed on 8 March 2005, in which the Prosecutor expressed the view that he should have been entitled to make submissions and to be heard on the issue of whether the Chamber has the authority to convene a status conference;

NOTING the “Decision on the Prosecutor’s Position on Pre-Trial Chamber I’s 17 February 2005 Decision to Convene a Status Conference” (the “Challenged Decision”), issued by Pre-Trial Chamber I on 9 March 2005;

NOTING the “Prosecutor’s Application for Leave to Appeal” (the “Prosecutor’s Application”), filed on 11 March 2005, in which the Prosecutor moves before Pre-Trial Chamber I for leave to appeal against the Challenged Decision concerning the issue “whether Pre-Trial Chamber I properly denied the Prosecution an opportunity to be heard before determining to proceed with a status conference during the investigation and to be attended by the Prosecution and Chamber only”¹;

NOTING article 82 paragraph (1) (d) of the Rome Statute of the Court (the “Statute”) and rule 155 of the Rules of Procedure and Evidence (the “Rules”);

¹ Prosecutor’s Application, para. 1.

CONSIDERING that according to article 82 of the Statute and in order to be granted leave to appeal by Pre-Trial Chamber I, the Prosecutor must demonstrate that the Challenged Decision involves an issue (1) that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and (2) for which, in the opinion of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING that the Challenged Decision declined to consider the submissions made in the Prosecutor's Position on the ground that the Prosecutor had not availed himself, within the time-limit contained in rule 155 of the Rules, of the procedural mechanism provided for in the statutory provisions of the Court to raise his concerns regarding the procedural and substantial grounds of the First Decision;

CONSIDERING that, apart from the issue relating to the confidentiality of certain documents arising from the Prosecutor's Position, the only issue dealt with in the Challenged Decision is that of the Prosecutor's choice not to use, within the time-limits provided for in the Rules, the statutory procedural remedy in order to raise his concerns regarding the First Decision;

CONSIDERING that in the Prosecutor's Application, the Prosecutor indeed concedes that he "did not wish to appeal"² the First Decision and that "he did not do so"³;

CONSIDERING that, in these circumstances, the Prosecutor has not shown that the Challenged Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

² *Ibid.*, para. 14.

³ *Ibid.*

CONSIDERING therefore that the first criterion set out in article 82 paragraph (1) (d) of the Statute has not been met and that it is not necessary for Pre-Trial Chamber I to consider further whether the Prosecution's Application raises a question whose immediate resolution by the Appeals Chamber may materially advance the proceedings.

FOR THESE REASONS,

REJECTS the Prosecutor's Application.

Done in both English and French, the English version being authoritative.



Judge Claude Jorda
Presiding Judge



Judge Akua Kuenyehia



Judge Sylvia Steiner

Dated this Monday, 14 March 2005.

At The Hague,

The Netherlands.