

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

Registrar: Mr Bruno Cathala

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

Public Document

**Prosecution's Report Pursuant to Pre-Trial Chamber III's 30 November 2006
Decision Requesting Information on the Status of the Preliminary Examination of
the Situation in the Central African Republic**

The Office of the Prosecutor
Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Other Participants
The Government of the
Central African Republic

Introduction

1. The Office of the Prosecutor (hereinafter "OTP") files this report pursuant to Pre-Trial Chamber's III request for information on the status of the preliminary examination of the situation in the Central African Republic (hereinafter, "CAR"). The Rome Statute, in Article 53 (1), grants to the Prosecutor the prerogative to determine when to initiate an investigation. The Pre-Trial Chamber's supervisory role, under Article 53 (3), only applies to the review of a decision under Article 53 (1) and (2) by the Prosecutor not to proceed with an investigation or a prosecution. The OTP submits that to date no decision under Article 53 (1) has been made, and that accordingly there is no exercise of prosecutorial discretion susceptible to judicial review by the Chamber. The OTP is nonetheless including in this submission a description of the current status of the preliminary examination of the CAR situation.

Procedural background

2. On 22 December 2004, the OTP received a referral from the Government of the Central African Republic.
3. On 19 January 2005, the Presidency issued a "Decision assigning the situation in the Central African Republic to Pre-Trial Chamber III".¹
4. On 4 February 2005, the Judges of Pre-Trial Chamber III elected Judge Sylvia Steiner as Presiding Judge.²
5. On 27 September 2006, the Registry filed a request made to the Chamber by the Government of the Central African Republic including, *inter alia*, a request that

¹ ICC-01/05-1.

² "Election of the Presiding Judge of Pre-Trial Chamber III", ICC-01/05-2. The Judges of Pre-Trial Chamber III again elected Judge Sylvia Steiner as Presiding Judge on 28 March 2006 - "Election of the Presiding Judge of Pre-Trial Chamber III", ICC-01/05-4.

the Prosecutor provide information on the alleged failure to decide, within a reasonable time, whether or not to initiate an investigation.³

6. On 30 November 2006, the Chamber issued its “Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the Central African Republic”,⁴ in which it requested the Prosecutor “to provide the Chamber and the Government of the Central African Republic, no later than 15 December 2006, with a report containing information on the current status of the preliminary examination of the CAR situation, including an estimate of when the preliminary examination of the CAR situation will be concluded and when a decision pursuant to article 53 (1) of the Statute will be taken.”

The Chamber’s request

7. The OTP firstly submits that the preliminary examination by the Prosecutor of available information in respect of a situation under Article 53 (1) must be performed in a comprehensive and thorough manner. The Prosecutor must make an informed and well-reasoned decision on whether the requirements of Article 53 (1) have been satisfied. Consequently it must be for him to determine the breadth and scope of this preliminary assessment.
8. Further, the breadth and scope of an examination under Article 53 (1) is *situation-specific*: it depends on the particular features of each situation, including, *inter alia*, the availability of information, the nature and scale of the crimes, and the existence of national responses in respect of alleged crimes. Accordingly, comparison with other situations previously dealt with by the OTP is not helpful for the purposes of assessing the required length of the analysis phase of a new situation. In this regard, the OTP submits that it has set out publicly the

³ “Transmission par le Greffier d'une Requête aux Fins de Saisine de la Chambre Préliminaire de la Cour Pénale Internationale et Annexes Jointes”, ICC-01/05-5-Conf.

⁴ ICC-01/05-6 (the “30 November 2006 Decision”).

procedures it will follow in the analysis phase in the Annex to its Policy Paper, which has been public since 21 April 2004. These procedures are reiterated in the public decisions in relation to Venezuela and Iraq in connection with the decisions not to open investigations into those situations.⁵ The Iraq and Venezuela decisions show that each situation is unique. The time taken to verify the seriousness of the information, assess admissibility and address interests of justice issues depends on the particular circumstances in each situation and in particular on the capability of those able to provide information.

9. The CAR situation presents challenges entirely different to those that have been encountered in any previous situation for a number of reasons: first, because of the national proceedings that have been initiated and must be properly assessed; second because of the very gradual manner in which important information which has had a material impact on the gravity assessment of the situation has been received; and third because of the deteriorating security situation in northern areas of the CAR rendering access to information increasingly difficult. Further, every time that additional information is received, an assessment must be carried out as to its reliability and credibility in the context of the thresholds established in Article 15 and Article 53 (1). Due to the limited resources and particular procedures and requirements of some of the parties who have provided information, this process of verification has sometimes been slow. Throughout the entire examination process conducted thus far, the OTP has followed the same general principles that have been established in the Annex to the Policy Paper and have been applied in every situation to date.

10. The OTP notes that under the terms of the Statute, the referring State only has a right to make a request to the Pre-Trial Chamber to review a prosecutorial

⁵ See the Annexes to the "Update on Communications Received by the Prosecutor", 10 February 2006 – available at http://www.icc-cpi.int/organs/otp/otp_com.html.

decision not to proceed with an investigation or a prosecution.⁶ The OTP's duty, pursuant to Rule 105 (1), is confined to promptly informing in writing the referring State of a decision not to initiate an investigation under Article 53 (1). As already stated in paragraph 1 of this document, the OTP stresses that to date no decision has been made under Article 53 (1), and that accordingly the duty enshrined in Rule 105, and referred to by this Chamber in its 30 November 2006 Decision,⁷ has not arisen. Finally, the OTP, while committed to reaching decisions under Article 53 (1) as expeditiously as possible, submits that no provision in the Statute or the Rules establishes a definitive time period for the purposes of the completion of the preliminary examination. The OTP submits that this was a deliberate legislative decision that provides the required flexibility to adjust the parameters of the assessment or analysis phase to the specific features of each particular situation. That choice, and the discretion that it provides, should remain undisturbed.⁸

11. Despite these considerations, and in the interests of transparency, the OTP will furnish to the Chamber certain information that the OTP considers it can responsibly share at this early stage. By doing so, the OTP is neither accepting the existence of a legal obligation to submit this type of information absent any decision under Article 53 being made, nor adopting a precedent that it may follow in future cases. It expressly reserves its position on the proper scope of the legal provisions cited by the Chamber in its 30 November 2006 Decision, the division of competences between the OTP and Pre-Trial Chambers and the rights of States who have referred situations to the Court.

⁶ Article 53 (3) (a).

⁷ See p. 3.

⁸ The Prosecution further submits that Regulation 46 (2) is a provision with very confined and tangible purposes: to determine the internal distribution of competences within the Pre-Trial Division of this Court and to clarify the scope of a Pre-Trial Chamber's competence within a situation. The Regulation obviously cannot expand the scope of a Pre-Trial Chamber's review powers beyond those contemplated in the Statute, nor, conversely, curtail a discretionary authority vested upon the Prosecutor by the same Statute.

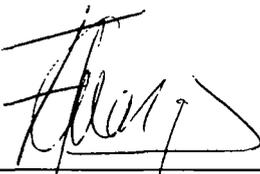
The current status of the CAR situation

12. The OTP received the CAR referral on 22 December 2004. The referral indicated that national proceedings had begun in relation to serious crimes but that a judicial decision had been taken not to continue with those proceedings and to refer them to the ICC. That decision was the subject to further appeal.
13. Prior to receiving the referral from the CAR, the OTP had received a number of communications in the form of reports from the *Fédération Internationale des Ligues des Droits de l'Homme* (FIDH) alleging crimes. The information received from FIDH represented the beginning of a process whereby the OTP received information from a variety of sources over a period of time, both before and after the receipt of the referral. The process of analysis has continued as information has been received and the OTP's decision will depend on an assessment of all relevant information.
14. On 22 December 2004, the CAR notified the OTP that it would transmit detailed information in respect of the referral within three months, explaining both the facts in relation to the crimes and the details of the relevant criminal proceedings that had taken place, or were taking place, in Bangui, the capital of the CAR. The OTP finally received detailed information from the CAR authorities in June 2005.
15. From June 2005 onwards, the Jurisdiction, Complementarity and Cooperation Division ("JCCD") of the OTP continued with its analysis on the basis of the material received which included detailed research and documentation on crimes allegedly committed in the CAR in 2002-2003, as well as the *procès-verbaux* from the judicial proceedings held in Bangui in relation to these crimes. In carrying out this analysis, the OTP addressed information received both from the CAR Government and other material received from non-governmental sources.

16. In November 2005, the OTP sent a mission of four representatives to Bangui for the purposes of further developing preliminary analysis, focussing in particular on collecting additional information on the conduct of the national proceedings prior to the referral. The mission held meetings with representatives from the CAR Government and the CAR judiciary, members of non-governmental organizations, as well as representatives from international organizations and diplomatic missions. The mission was informed, *inter alia*, that a final decision on national criminal proceedings was pending before the *Cour de Cassation* of the CAR. This decision was necessary before a determination could be made on the issue of admissibility.
17. The decision from the *Cour de Cassation* of the CAR was issued on 11 April 2006. The OTP then finalized the draft report prepared under Article 53 (1) of the Rome Statute. A first version of this report was circulated within the OTP in July 2006 for the purpose of inter-divisional consultation.
18. After July 2006, the situation in the CAR developed further and the OTP continued to receive additional information. The ongoing analysis of the situation was influenced by a number of supplementary factors, including first, allegations that new crimes had been or were being committed in northern CAR; and second, the provision to the OTP of substantial additional information relating to crimes allegedly committed in 2002-2003. The OTP emphasises that each new piece of information received, in respect of any situation, must be carefully examined and assessed. In particular, information on the developing violence in the north of the CAR has presented special difficulties because of the lack of access to this area. Consequently confirmation of reports of alleged crimes in this area has been extremely difficult to obtain.
19. Internal OTP procedures require a detailed report on situations under consideration for possible investigation (Article 53(1) report). An updated version

of the Article 53 (1) report on the CAR was circulated internally on 22 November 2006. Further action will be taken in the light of the recommendations contained therein.

20. The Chamber has requested the OTP to provide an estimate of when the preliminary examination of the CAR will be concluded and when a decision under Article 53 (1) will be taken.⁹ While there is no obligation under the Statute or the Rules to provide such an estimate or to give such a date, the OTP is committed to completing its analysis of the CAR situation as expeditiously as possible and informing the relevant parties in a timely fashion in accordance with the Rules and Regulations of the Court. As the Prosecutor has indicated in his recent statement to the Assembly of State Parties, it is hoped that a decision can be made in the near future, but a more specific estimate is not possible at this time.



Luis Moreno-Ocampo
Prosecutor

Dated this 15th day of December 2006
At The Hague, The Netherlands

⁹ 30 November 2006 Decision, p. 5.