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The Hague, 20 October 2006

To **The Presidency of the International Criminal Court**

## **Complaint against ICC Prosecutor Luis Moreno-Ocampo concerning serious misconduct**

1. This complaint, submitted to the Presidency of the ICC under Regulation 119.1 of the Regulations of the Court and Rule 23 of the Rules of Procedure and Evidence, alleges that Prosecutor Luis Moreno-Ocampo on 28 March 2005 committed serious misconduct, either in the course of his official duties, which is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court<sup>1</sup>; or of a grave nature outside the course of his official duties that causes or is likely to cause serious harm to the standing of the Court<sup>2</sup>, by committing the crime of rape, or sexual assault, or sexual coercion, or sexual abuse against [NAME], a citizen of South Africa, and that for this reason he should be removed from Office by the Assembly of States Parties. The crime was committed in a guest suite of Lord Charles Hotel in the town Somerset West in the Western Cape Province of South Africa in the afternoon of 28 March 2005. [NAME], a leading reporter with the [NAME] newspaper [NAME], had traveled to Cape Town for a pre-agreed interview with Moreno-Ocampo on this day.

2. The following narrative will describe the events of 28 March 2005 and the crime committed by Moreno-Ocampo. As evidence and other information in support of the allegation the following documents and audio files are annexed to the complaint:

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<sup>1</sup> Rome Statute, Article 46.1(a); ICC Rules of Procedure and Evidence, Rule 24.1(a)

<sup>2</sup> Rome Statute, Article 46.1(a); ICC Rules of Procedure and Evidence, Rule 24.1(b)

- Recording of conversation between Christian Palme and Yves Sorokobi on 30 November 2005
- Annex 1: Transcript of conversation between Christian Palme and Yves Sorokobi on 30 November 2005 ("Sorokobi transcript")
- Recording of conversation between Yves Sorokobi and [NAME] on 30 March 2005 (fragmented) and between Christian Palme and Yves Sorokobi on 30 November 2005
- Annex 2: Transcript of conversation between Yves Sorokobi and [NAME] on 30 March 2005 (fragmented) and between Christian Palme and Yves Sorokobi on 30 November 2005 ("[NAME] transcript")
- Annex 3: E-mail exchange between Christian Palme and Yves Sorokobi on 29 March 2005 ("Sorokobi e-mail")
- Annex 4: Page 1 of calendar item from the Outlook agenda of Chief Prosecutor Luis Moreno-Ocampo on 28 March 2005 ("Calendar item 1")
- Annex 5: Page 2 of calendar item from the Outlook agenda of Chief Prosecutor Luis Moreno-Ocampo on 28 March 2005 ("Calendar item 2")
- Annex 6: Page 1 of conference program "Traditional Justice & Human Security Conference, Cape Town 28 March – 1 April 2005" ("Conference program 1")
- Annex 7: Page 2 of conference program "Traditional Justice & Human Security Conference, Cape Town 28 March – 1 April 2005" ("Conference program 2")
- Annex 8: Personal diary of Christian Palme from 29 March 2005 (in Swedish)
- Annex 9: Translation into English of the personal diary of Christian Palme from 29 March 2005 ("Diary 29 March")
- Annex 10: Personal diary of Christian Palme from 30 November 2005 (in Swedish)
- Annex 11: Translation into English of the personal diary of Christian Palme from 30 November 2005 ("Diary 30 November")
- Annex 12: Maps showing the locations of the town of Somerset West and of the Lord Charles Hotel ("Maps")

3. The complaint, the audio files as well as all annexes are included on the CD that is attached to the complaint. The documents in Annexes 4, 5, 6 and 7 have been obtained from the Outlook agenda of Moreno-Ocampo to which I have approved and legitimate access.

4. While the evidence submitted may not be sufficient for a conclusive decision by the Assembly of States Parties that Moreno-Ocampo has committed serious misconduct and should be removed from Office, they are likely to be sufficiently conclusive for the Presidency to reach

a decision that the complaint is not “manifestly unfounded”.<sup>3</sup> A full investigation conducted by the Bureau of the ASP will be able to verify that Moreno-Ocampo on 28 March 2005 removed the car keys of [NAME], thereby forcing her to come to his guest suite at the hotel, where he by refusing to return the keys coerced her into having sexual intercourse, as well as the veracity of other evidence included, and of other information in this complaint.

5. With the submission of this complaint the Presidency has an obligation to notify the person against whom the complaint has been directed.<sup>4</sup> This will create a risk that Moreno-Ocampo or persons operating on his behalf will take steps to contact, influence, threaten or retaliate against me, Yves Sorokobi or [NAME]. It is therefore recommended that the Presidency in notifying Moreno-Ocampo makes it absolutely and unequivocally clear to him that any attempt to contact, influence, threaten or retaliate against any of these three persons, either personally or through persons acting on his behalf, would be unacceptable obstruction of justice and could lead to new complaints being raised against him.

6. It should be noted that neither Yves Sorokobi nor [NAME] have assisted me in writing this complaint and that they are not aware of the complaint. Yves Sorokobi, now an associate spokesperson of the UN Secretariat in New York, fears that his personal career would be damaged by a complaint against Moreno-Ocampo. [NAME] is apparently under the erroneous belief that because Moreno-Ocampo did not use physical force he did not commit rape or sexual assault.<sup>5</sup> She is apparently unaware of the “universal trend” towards “regarding lack of consent as the essential element of rape and sexual abuse”<sup>6</sup> and that “force is not an element of rape”.<sup>7</sup>

7. Before turning to the narrative I wish to add a personal note concerning my motives for submitting this complaint.

8. The ICC is one of the most important institutions to have been created by the international community. However, neither the institution nor its elected principals can be above the law and the highest norms governing relations between individuals in society.

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<sup>3</sup> Regulations of the Court, Regulation 121.1

<sup>4</sup> Regulations of the Court, Regulation 119.1

<sup>5</sup> Annex 2: Transcript of conversation between Yves Sorokobi and [NAME] on 30 March 2005 (fragmented) and between Christian Palme and Yves Sorokobi on 30 November 2005 (“[NAME] transcript”), page 5, line 2-4.

<sup>6</sup> European Court of Human Rights: Final Judgment in the case of M.C. v. Bulgaria, 4 December 2003 (“M.C. v. Bulgaria”), para. 163.

<sup>7</sup> Ibid.

Since I first received information on 29 March 2005 regarding the actions of Moreno-Ocampo I have known that at some point I would be obliged to submit a complaint against him. I wish to emphasize that my action in submitting this complaint is based on professional and ethical motives and is in no way influenced by personal feelings. I find it deplorable that the Prosecutor of the International Criminal Court, one of the highest legal officials in the world, performs acts such as those of 28 March 2005, when he forced or coerced a woman into sexual intercourse, in a manner that would most likely have merited a prison term in most highly developed countries of the world. I am not willing to live with the knowledge of this crime being unreported and the perpetrator being able to continue working in high office. In this context it should be noted that a potential attempt to excuse Moreno-Ocampo by pointing to a variation in legal standards and traditions in diverse parts of the world is not acceptable and does not condone the actions of Moreno-Ocampo on 28 March 2005. It must obviously be expected of the Prosecutor of the ICC that he in his personal conduct lives up to the highest legal standards in the world today.

9. There are four reasons why I have waited until now to submit a complaint. The first reason is that it was only with the two meetings with Yves Sorokobi on 30 November 2005 and on hearing the recording of Sorokobi's conversation with [NAME] on 30 March 2005 that I became aware of the full extent of the incident on 28 March 2005. The second reason is that I have been expecting Yves Sorokobi to provide me with a copy of the original audio file of the recorded conversation with [NAME] on 30 March 2005. Sorokobi has repeatedly pledged to provide me with a copy, but has not fulfilled this commitment. Sorokobi is personally unwilling to submit a complaint against Moreno-Ocampo and believes that such action could be detrimental to his own career. Only recently have I become absolutely convinced that Sorokobi will not provide me with a copy of the original audio file. Thirdly, I have not been fully aware until very recently of the significance of lack of consent in defining rape or sexual assault. The fourth reason is that I have only very recently been given expert guidance on how to use professional audio editing programs to enhance the sound quality of digital recordings, in the past month making central parts of the audio recordings made on 30 November 2005 audible. I wish to underscore that by submitting this complaint I am not acting illoyally to the ICC. On the contrary, I am taking this action in order to protect and preserve the ICC from a person who, I believe, has committed a serious crime, and "given the extraordinarily high rate of recidivism among rapists"<sup>8</sup> may well have committed

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<sup>8</sup> Alice Vachss, 'All Rape Is Real Rape', The New York Times, 11 August 1993. Vachss is a former chief of the Special Victims bureau of the Queens District Attorney's office and author of the book *Sex Crimes* -

similar acts in the past or plan to commit similar acts in the future.  
**This complaint is an act of loyalty to the ICC which should be rewarded, not sanctioned.**

10. Finally a note regarding confidentiality. The ICC Rules of Procedure and Evidence of the Court states that complaints “shall remain confidential”.<sup>9</sup> I want to make it absolutely clear that currently, as a staff member of the Court, I will unconditionally respect the confidentiality of the complaint. I have not confided and will not, as a staff member of the ICC, confide with any individual, state or organization regarding this complaint or regarding the evidence and information provided therein. At this time, as a loyal staff member of the ICC, I will make every effort to prevent this information from reaching the public arena, where it could seriously damage the standing and reputation of the Court.

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*Ten Years on the Front Lines Prosecuting Rapists and Confronting their collaborators.*

<sup>9</sup> ICC Rules of Procedure and Evidence, Rule 26.1

## **A. Technical note and circumstances regarding the audio files**

11. Two audio files, with the file names "Sorokobi conversation.wav" and "[NAME] conversation.wav" are included on a CD with the complaint. These are copies of the original files, as saved on my digital recording device at 12.57 and 13.44 respectively on 30 November 2005 and then transferred to my computer. Only the file names have been modified to the descriptive "Sorokobi conversation" and "[NAME] conversation". The circumstances surrounding the making of these recordings are as follows:

12. On 30 March 2005 Yves Sorokobi made a telephone call to [NAME] in South Africa, using his office phone, set to speaker phone mode. He recorded the conversation, using a small digital recording device placed in front of the loudspeaker telephone. In the course of the investigation the ICC ICT Section will be able to confirm through ICC telephone records that Sorokobi made a call from his office phone (extension 8560) to a mobile phone in South Africa on 30 March 2005, as well as the length of the call (just over 20 minutes).

13. On 30 November 2005 I invited Yves Sorokobi to my office and initiated a conversation regarding the events of 28 March 2005. Unnoticed by Sorokobi I switched on my digital pocket recording device which was accidentally lying on my desk. I then proceeded to discuss the events of 28, 29 and 30 March 2005 with him. When the conversation was over, after just under 15 minutes, Sorokobi left the room and I switched off the recording device.

14. A short time later Sorokobi returned bringing his own recording device to my office. He then proceeded to play back the recording of his conversation with [NAME] on 30 March 2005, allowing me to hold his recording device, in order for me to hear better from the small built-in loudspeaker. In the meantime I again started my own recording device and while listening I held Sorokobi's recorder close to the microphone of my own device.<sup>10</sup>

15. The ensuing "secondary" recording on my recording device of Sorokobi's conversation with [NAME] is technically defective and only small fragments are audible (even the original recording, made from a speaker phone, was of low technical quality). Most of the audible lines are from Sorokobi, but occasional lines by [NAME] can be clearly understood, for instance when she states that Moreno-Ocampo took

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<sup>10</sup> Annex 11: Translation into English of the personal diary of Christian Palme from 30 November 2005 ("Diary 30 November"), para. 2.

her car keys<sup>11</sup> or when she says that she had to agree to sexual intercourse to be allowed to leave Moreno-Ocampo's suite with her keys<sup>12</sup>. It is also clearly audible through most of the conversation that [NAME] is crying uncontrollably<sup>13</sup> and appears to be severely traumatized<sup>14</sup>.

16. It should be noted that while it is possible to listen to the recordings with a standard audio program (Windows media player) the sound quality is substantially enhanced by using a professional audio editing program and applying noise reduction techniques.

17. After the playback of the [NAME] conversation on 30 November a second conversation seamlessly and without interruption followed between me and Sorokobi and was recorded to my recording device. This conversation is also fully (with the exception of minor inaudible parts) transcribed as part of Annex 2.

18. In this context I also wish to make it clear that I have never before in my professional life made secret recordings of meetings with colleagues or supervisors and I have no plans to use this unconventional method of collecting information in the future. I recorded these two specific meetings with Yves Sorokobi on 30 November 2005 with the only object of collecting evidence concerning the criminal incident on 28 March 2005. By making these recordings I may have formally breached ICC staff rules, but in my view this minor offence should be excused in the context of the extraordinary necessity of collecting evidence and proof of the very serious and criminal incident on 28 March 2005. The recordings were not technically advanced; on both occasions I simply reached out and switched on the recording device that was accidentally lying on my desk, visible to both me and Sorokobi. If attempts are made to subject me to disciplinary measures because I made these recordings, I would consider that to be an unacceptable act of retaliation.

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<sup>11</sup> [NAME] transcript, page 2, line 20.

<sup>12</sup> Ibid, page 4, line 3.

<sup>13</sup> Ibid, page 3, line 5; Diary 30 November.

<sup>14</sup> [NAME] transcript, page 3, line 17-20; page 4, line 15-19.

## **B. Chronological narrative of events**

### **28 March 2005**

19. Luis Moreno-Ocampo arrives in Cape Town at 09.00 with Malaysia Airlines flight MH202<sup>15</sup>, directly from Buenos Aires where he has been on leave with his family. He is due to take part in a conference titled “Transitional Justice & Human Security”.<sup>16</sup> The conference lasts from 28 March to 1 April, but Moreno-Ocampo is only due to speak on the second day, 29 March.<sup>17</sup>

20. Moreno-Ocampo travels by ground transport from the airport to the conference venue, Lord Charles Hotel in the Cape Town residential suburb of Somerset West.<sup>18</sup> He has been booked into a guest suite at the hotel by the conference organizers.<sup>19</sup> Somerset West is located 50 kilometers and a 30 minute drive from the center of Cape Town, in the north-eastern corner of False Bay. Lord Charles Hotel is located on the outskirts of Somerset West, near the N2 motorway.<sup>20</sup>

21. Moreno-Ocampo meets for an interview at the hotel with the reporter [NAME] of the [NAME] newspaper [NAME]. [NAME] has traveled to Cape Town specifically for the interview with Moreno-Ocampo. The interview is included in a calendar item in Moreno-Ocampo’s Outlook agenda<sup>21</sup> and has been agreed in advance through Yves Sorokobi, the spokesperson of the ICC Office of the Prosecutor.<sup>22</sup> [NAME] drives to the hotel by car.<sup>23</sup> At the conclusion of the interview [NAME] mentions that she intends to go to the beach. Moreno-Ocampo insists on accompanying her. [NAME] steps out to call Yves Sorokobi<sup>24</sup>, who is a personal acquaintance. Sorokobi is on leave in New York.

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<sup>15</sup> Annex 4: Page 1 of calendar item from the Outlook agenda of Chief Prosecutor Luis Moreno-Ocampo (“Calendar item 1”).

<sup>16</sup> Annex 6: Page 1 of conference program “Traditional Justice & Human Security Conference” (“Conference program 1”).

<sup>17</sup> Annex 7: Page 2 of conference program “Traditional Justice & Human Security Conference” (“Conference program 2”).

<sup>18</sup> Conference program 1; Annex 5: Page 2 of calendar item from the Outlook agenda of Chief Prosecutor Luis Moreno-Ocampo (“Calendar item 2”).

<sup>19</sup> Ibid.

<sup>20</sup> Annex 12: Maps showing the locations of the town of Somerset West and the Lord Charles Hotel (“Maps”).

<sup>21</sup> Calendar item 1.

<sup>22</sup> Annex 1: Transcript of conversation between Christian Palme and Yves Sorokobi on 30 November 2005 (“Sorokobi transcript”), page 3, line 13-15.

<sup>23</sup> Ibid, page 7, line 22.

<sup>24</sup> Ibid, page 3, line 16-18; [NAME] transcript, page 3, line 1-2. (Sorokobi says [NAME] called “in the morning”, most likely meaning “in the morning according to US EST, or Eastern Standard Time”, which is in the afternoon in South Africa. US EST is 7 hours behind South African standard time.)



[NAME] calls Sorokobi to say that she “has a problem” because Moreno-Ocampo “doesn’t want to leave”<sup>25</sup>. She is “seriously upset”<sup>26</sup> and says Moreno-Ocampo “makes me nervous because I think he has ulterior motives”<sup>27</sup>. In the course of the investigation the ICC ICT Section will be able to confirm through ICC mobile phone records that Yves Sorokobi received a call in New York on his mobile phone (phone number 06-46166006) from a mobile phone in South Africa in the afternoon (in the morning according to US EST, Eastern Standard Time) of 28 March.

22. After being to the beach Moreno-Ocampo and [NAME] return to Lord Charles Hotel, driving in [NAME]’s car.<sup>28</sup> Moreno-Ocampo invites [NAME] for a drink in the bar. She leaves her car keys on the table.<sup>29</sup> Moreno-Ocampo proposes that [NAME] accompany him to his hotel room, but she declines and says she does not want any “personal involvement”.<sup>30</sup> Moreno-Ocampo then takes [NAME]’s car keys from the table and proceeds to go to his hotel suite.<sup>31</sup> Without car keys [NAME] is unable to leave the hotel, which is located on the outskirts of Somerset West, a suburban residential area, 50 kilometers south-east of the center of Cape Town.<sup>32</sup>

23. [NAME] follows Moreno-Ocampo to his hotel suite in order to get her keys back.<sup>33</sup> He refuses to return the keys unless she consents to have sexual intercourse with him.<sup>34</sup> In order to have her car keys returned to her, [NAME] consents to have sexual intercourse with Moreno-Ocampo.<sup>35</sup> Moreno-Ocampo and [NAME] have sexual intercourse.<sup>36</sup>

24. [NAME] leaves the hotel suite and immediately<sup>37</sup> calls Sorokobi.<sup>38</sup> In the course of the investigation the ICC ICT Section will be able to

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<sup>25</sup> Sorokobi transcript, page 3, line 16-20.

<sup>26</sup> Ibid, page 3, line 9.

<sup>27</sup> Ibid, page 4, line 6-7.

<sup>28</sup> Ibid, page 4, line 5.

<sup>29</sup> Ibid, page 6, line 23-24.

<sup>30</sup> Ibid, page 7, line 4-6.

<sup>31</sup> Ibid, page 6, line 21; [NAME] transcript, page 2, line 18-19; line 20; page 3, line 12; line 21; page 5, line 6; line 14-15; page 7, line 5-7

<sup>32</sup> Maps.

<sup>33</sup> Sorokobi transcript, page 7, line 14-16; page 8, line 5-6

<sup>34</sup> Ibid, page 5, line 20-21; page 10, line 9-10; [NAME] transcript, page 4, line 3; line 4-5; line 10-11; page 7, line 10-12; page 8, line 4-5; line 9-10

<sup>35</sup> Sorokobi transcript, page 5, line 20-21; page 10, line 9-10; [NAME] transcript, page 4, line 3; line 4-5; line 10-13; page 8, line 9-10; Annex 9: Translation into English of the personal diary of Christian Palme from 29 March 2005 (“Diary 29 March”).

<sup>36</sup> Sorokobi transcript, page 5, line 20-21; page 9, line 5-7;

<sup>37</sup> Ibid, page 10, line 13-14.

<sup>38</sup> Ibid, page 5, line 5 (Sorokobi says [NAME] made her first call “in the morning”, most likely meaning “in the morning according to US EST”, which is in the afternoon in South Africa.); Diary 29 March.

confirm through ICC mobile phone records that Yves Sorokobi received a second call in New York on his mobile phone (phone number 06-46166006) from a mobile phone in South Africa in the late afternoon or evening (in the afternoon according to US EST) of 28 March.

25. [NAME] is “really upset” during the second conversation with Sorokobi and is crying “real hard”, like “a woman in distress”.<sup>39</sup> She says “something horrible happened”<sup>40</sup> and that Moreno-Ocampo “forced her to have sex with him” by taking her keys away and forcing her to come to his hotel suite.<sup>41</sup> She describes what has taken place since the first call to Sorokobi.<sup>42</sup>

## **29 March 2005**

26. At 11.13 CET (Central European Time) I send an e-mail message from my ICC e-mail account to Sorokobi, informing him that Moreno-Ocampo is returning to The Hague from South Africa on Wednesday afternoon (30 March 2005).<sup>43</sup>

27. At 15.35 CET (9.35 US EST) I receive a reply e-mail from Sorokobi, where he states, inter alia, that “I hear some disturbing (LMO behavior) stuff from [NAME], the [NAME] reporter who interviewed him yesterday”.<sup>44</sup> Immediately after reading the message I make a call to Sorokobi from my office telephone. In the course of the investigation the ICC ICT Section will be able to confirm through ICC telephone records that I made a call from my office telephone (extension 8487) between 15.35 and 17.13 on 29 March 2005 to Sorokobi’s mobile phone (06-46166006) in New York.

28. Sorokobi informs me that he has had a telephone conversation with [NAME] who has told him that after the interview Moreno-Ocampo had forced her to having sexual intercourse, after removing her keys and forcing her to come to his hotel suite. He says [NAME] was crying uncontrollably during the conversation. He is however unwilling to provide further detail.<sup>45</sup> After concluding the conversation with

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<sup>39</sup> Sorokobi transcript, page 5, line 5-12; Diary 30 November.

<sup>40</sup> Ibid, page 5, line 16.

<sup>41</sup> Ibid, page 5, line 20-21; page 8, line 24; page 9, line 3-4.

<sup>42</sup> Para 22-23 in this document.

<sup>43</sup> Annex 3: E-mail exchange between Christian Palme and Yves Sorokobi on 29 March 2005 (“Sorokobi e-mail”).

<sup>44</sup> Ibid.

<sup>45</sup> Diary 29 March. (Note: I have been a habitual diary writer since before I was a teenager, more than 40 years back. My diaries are private and personal. I have no intention of ever using the information in them for any publicity purposes.)

Sorokobi I make handwritten notes, later to be included in my personal diary.<sup>46</sup>

29. At 17.13 I send an e-mail to Sorokobi, writing that “this is very disturbing news” and advising him to “write down everything on this as soon as possible, while your memory of the details is fresh”.<sup>47</sup> These three e-mail messages remain in the ICC e-mail system (in my Outlook program they have been moved to a folder named “Issues”) and in the course of the investigation the ICC ICT Section will be able to confirm their veracity. At home in the evening of 29 March I write a diary note in my private computer with the information given to me by Sorokobi, based on my handwritten notes.<sup>48</sup> The original diary sheet as well as a translation into English are included as annex 7 and 8 with this complaint.

### **30 March 2005**

30. Sorokobi leaves New York on 29 March and flies back to The Hague.<sup>49</sup> On 30 March he is back at work in the ICC building, where he proceeds to call [NAME], using his office phone, set to speaker phone mode. In order to record the conversation he places a small digital recording device in front of the loudspeaker telephone.<sup>50</sup> In the course of the investigation the ICC ICT Section will be able to confirm through ICC telephone records that Sorokobi made a call from his office phone (extension 8560) to a mobile phone in South Africa on 30 March 2005, as well as the length of the call (just over 20 minutes).

31. The call lasts for just over 20 minutes. Through most of the conversation [NAME] is crying, sometimes uncontrollably.<sup>51</sup> She gives an impression of being deeply personally hurt, violated and traumatized.<sup>52</sup> Sorokobi urges her several times to seek professional counseling and help.<sup>53</sup> The conversation centers around the consequences of the incident on 28 March. [NAME] confirms that Moreno-Ocampo took her keys<sup>54</sup> and that she consented to sexual intercourse only in order to be able to leave Moreno-Ocampo’s hotel suite<sup>55</sup>. Sorokobi asks if Moreno-Ocampo raped her and she replies

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<sup>46</sup> Ibid.

<sup>47</sup> Sorokobi e-mail.

<sup>48</sup> Diary 29 March.

<sup>49</sup> Sorokobi transcript, page 9, line 21-22.

<sup>50</sup> Ibid, page 8, line 19-20.

<sup>51</sup> [NAME] transcript, page 2, line 13-14; page 2, line 5.

<sup>52</sup> Ibid, page 3, line 17-19; page 4, line 15-19; Diary 30 November.

<sup>53</sup> [NAME] transcript, page 3, line 17; line 20; page 4, line 18-19.

<sup>54</sup> Ibid, page 2, line 20.

<sup>55</sup> Ibid, page 4, line 3; Diary 30 November.

that it was not rape because he did not use "force".<sup>56</sup> During the conversation Sorokobi on several occasions repeats that Moreno-Ocampo took her keys,<sup>57</sup> an assertion to which [NAME] does not object. Without [NAME] objecting Sorokobi says that what she describes is "a situation in which he in one way or the other forced himself on you".<sup>58</sup>

32. In the months following 28 to 30 March I make several attempts to engage Sorokobi in conversation about the incident on 28 March, in order to receive more information. Sorokobi declines this on all occasions, with various pretexts. Only on 30 November 2005 does he agree to provide me with information regarding the incident on 28 March 2005.

### **30 November 2005**

33. On 30 November 2005 I invite Sorokobi to my office where I initiate a conversation concerning the incident on 28 March 2005. During the conversation Sorokobi gives a detailed description of his three conversations with [NAME] on 28 and 30 March 2005, including information such as: [NAME] calling Sorokobi and being worried because Moreno-Ocampo insists on coming with her to the beach<sup>59</sup>; [NAME] calling Sorokobi a second time immediately after the attack<sup>60</sup>; that during the second call she was very upset and crying "like a woman in distress"<sup>61</sup>; that she said Moreno-Ocampo had taken her keys to force her to come to his hotel suite<sup>62</sup>; that she said she was forced or coerced to have sexual intercourse with Moreno-Ocampo to have her keys returned<sup>63</sup>; and that Sorokobi had a third telephone conversation with [NAME] on 30 March, where the information in the second call was confirmed and recorded to a digital recording device<sup>64</sup>. As stated in para. 13-14 above I record this conversation with Sorokobi, using my own digital recording device which is accidentally lying in open view on my desk. When Sorokobi returns a few minutes later to playback the recording of the conversation with [NAME] on 30 March I also record the playback, again using my own digital recording

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<sup>56</sup> [NAME] transcript, page 7, line 26 to page 8, line 1-3.

<sup>57</sup> Ibid, page 2, line 19; page 3, line 11-12; line 13-14; line 21-22.

<sup>58</sup> Ibid, page 4, line 6-7.

<sup>59</sup> Sorokobi transcript, page 3, line 16-20, line 25; page 5, line 4-7, line 9-11. [NAME] transcript, page 3, line 1-2

<sup>60</sup> Sorokobi transcript, page 5, line 5-6; page 10, line 13-14

<sup>61</sup> Ibid, page 5, line 6; line 12

<sup>62</sup> Ibid, page 6, line 21; [NAME] transcript, page 2, line 18-19; line 20; page 3, line 11-12; page 7, line 5-7; page 8, line 3-5

<sup>63</sup> Sorokobi transcript, page 8, line 5-6; [NAME] transcript, page 4, line 1-2; ; line 3; line 6-7; line 10-11; page 7, line 10-12; page 8, line 3-6; line 9-10

<sup>64</sup> Sorokobi transcript, page 8, line 14-20; page 9, line 6-7; page 10, line 1-2

device. After the playback a second conversation between me and Sorokobi follows seamlessly and without interruption. The first conversation with Sorokobi is transcribed in Annex 1 of this complaint ("Sorokobi transcript"). The audible fragments of the playback of Sorokobi's conversation with [NAME], as well as the ensuing second conversation between me and Sorokobi are transcribed in Annex 2 ("[NAME] transcript").

34. After Sorokobi has left my office the second time on 30 November I proceed to make handwritten notes for my personal diary. At home in the evening of 30 November I write a diary note in my private computer with the information given to me by Sorokobi about the incident, based on my handwritten notes.<sup>65</sup> The original diary sheet as well as a translation into English are included as annex 10 and 11 with this complaint.

35. The information provided by Sorokobi on 29 March and 30 November, and the information on the recorded conversation between Sorokobi and [NAME] on 30 March provide an unambiguous picture of a case of rape, or sexual assault, or sexual coercion, or sexual abuse, perpetrated by Luis Moreno-Ocampo against [NAME], as narrated above in para. 21-23.

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<sup>65</sup> Diary 30 November.

## C. Rape and consent

36. The incident on 28 March 2005, when Luis Moreno-Ocampo had sexual intercourse with [NAME] in a guest suite in Lord Charles Hotel in Somerset West, South Africa, was rape, or sexual assault, or sexual coercion, or sexual abuse, because consent to sexual intercourse was not given freely or as a result of a free agreement with [NAME], but only under duress or as a result of coercion perpetrated by Moreno-Ocampo when he removed [NAME]'s car keys and refused to return them unless she agreed to sexual intercourse. [NAME], in her recorded conversation with Yves Sorokobi on 30 March 2005, claims that the incident was not rape, because Moreno-Ocampo did not use force against her.<sup>66</sup> This is not a correct assertion by [NAME], who apparently neither understands that "force is not an element of rape"<sup>67</sup> nor the role of lack of consent in defining rape. The fact that [NAME] herself denies that the incident was rape is irrelevant; rape is not a subjective state in the mind of the victim, but a crime with an objective legal definition, where lack of consent is the "essential element" in most states, or according to "a universal trend".<sup>68</sup> It is also highly possible, judging from her emotional state, that [NAME] was still suffering from Rape Trauma Syndrome, RTS, at the time of the telephone conversation with Sorokobi on 30 March (RTS is the emotional response of a rape victim to the extreme stress experienced during the sexual assault). Denial is a common element of RTS, as noted by many experts on rape and gender crime.<sup>69</sup>

37. The European Court of Human Rights, in its judgment in the case of *M.C. v. Bulgaria* (4 December 2003) observes that, "historically, proof of physical force and physical resistance was required under domestic law and practice in rape cases in a number of countries. The last decades, however, have seen a clear and steady trend in Europe and some other parts of the world towards abandoning formalistic definitions and narrow interpretations of the law in this area."<sup>70</sup> The Court continues to observe that "a requirement that the victim must resist physically is no longer present in the statutes of European countries."<sup>71</sup> The Court notes that in common-law countries, in Europe and elsewhere (including the USA), "reference to physical force has been removed from the legislation and/or case-law"<sup>72</sup>. The Court also notes that "In most European countries influenced by the continental

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<sup>66</sup> [NAME] transcript, page 7, line 7-10.

<sup>67</sup> *M.C. v. Bulgaria*, *Ibid*, para 163.

<sup>68</sup> *Ibid*, para 163.

<sup>69</sup> Rape Victim Advocates: <http://www.rapevictimadvocates.org/trauma.html>.

<sup>70</sup> *M.C. v. Bulgaria*, para. 156.

<sup>71</sup> *Ibid*, para 157.

<sup>72</sup> *Ibid*, para 158.

legal tradition, the definition of rape contains references to the use of violence or threats of violence by the perpetrator. It is significant, however, that in case-law and legal theory lack of consent, not force, is seen as the constituent element of the offence of rape<sup>73</sup>.

38. The Court notes that international criminal law also recognises that “force is not an element of rape”.<sup>74</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) has found, in the judgment in the Foca case, that in international criminal law, any sexual penetration without the victim's consent constitutes rape and that consent must be **“given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances”**<sup>75</sup>.

39. The ICTY appeals judgment in the Foca case has also determined that “there are factors ‘other than force’ which would render an act of sexual penetration *non-consensual or non-voluntary* on the part of the victim. A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force<sup>76</sup>.”

40. This, according to the European Court for Human Rights, “reflects a universal trend towards regarding lack of consent as the essential element of rape and sexual abuse.”<sup>77</sup>

41. Consent in sexual relationships is an issue that has also been intensively discussed in the context of university campus culture in the US and Canada. A high prevalence of “date rape” or “acquaintance rape”<sup>78</sup> in the campus environment has prompted most colleges and universities to adopt policies and guidelines on rape and sexual assault. The independent consultant Alan D. Berkowitz, Ph. D, who advises colleges and universities on health and social justice issues, has written a paper titled “Guidelines for Consent in Intimate Relationships”<sup>79</sup> which is regularly referred to by colleges and universities in the US and Canada.

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<sup>73</sup> Ibid, para 159.

<sup>74</sup> Ibid, para 163.

<sup>75</sup> Prosecutor v. Kunarac, Kovac, Vukovic, Case NO. IT-96-23&23/1, Judgment (Feb. 22, 2001), para. 460 (emphasis added).

<sup>76</sup> Prosecutor v. Kunarac, Kovac, Vukovic, Case NO. IT-96-23&23/1, Judgment (June 12, 2002), Para.129.

<sup>77</sup> M.C. v. Bulgaria, para 163.

<sup>78</sup> Turnaround, Inc, a NGO in Baltimore, USA, which helps individuals and families affected by domestic violence and sexual abuse, defines “acquaintance rape” as “Any unwanted sexual contact or attention achieved by force, threats, bribes, manipulation, pressure, tricks, or violence by someone with which the victim is acquainted”. See: [www.turnaroundinc.org/pages/facts/glossary.html](http://www.turnaroundinc.org/pages/facts/glossary.html).

<sup>79</sup> See [www.fp.ucalgary.ca/sexualharassment/Guidelines\\_for\\_Consent\\_In\\_Intimate\\_Relationships.htm](http://www.fp.ucalgary.ca/sexualharassment/Guidelines_for_Consent_In_Intimate_Relationships.htm).

42. Berkowitz defines consent as present if four conditions are met. These conditions are not absolutes, but the greater the degree to which they are present, the greater the chance that both parties are consenting.<sup>80</sup> The conditions set up by Berkowitz can be used as guidelines for achieving mutual, uncoerced consent in sexual relationships, but they can also be used as a test on a situation that has taken place in the past, to understand whether or not consent was given freely and under a free agreement.

43. The four conditions set up by Berkowitz are the following: 1. Both participants are fully conscious; 2. Both participants are equally free to act; 3. Both parties have clearly communicated their willingness/permission; and 4. Both parties are positive and sincere in their desires.<sup>81</sup>

44. In the case of the incident in Moreno-Ocampo's guest suite in Lord Charles Hotel in Somerset West in South Africa on 28 March 2005 only the first of these conditions, that both participants are fully conscious, was met. The second condition, that both participants are equally free to act, was not met, because [NAME] succumbed to Moreno-Ocampo's request for sexual intercourse, only in order for her to have her car keys returned and to be able to leave the suite and the hotel. The third condition, that both parties have clearly communicated their willingness/permission, was not met, since [NAME] had already declined Moreno-Ocampo's earlier proposals to have sexual intercourse. The consent that she finally gave was not given freely, but only in a context of coercion and threat of not having her car keys returned. The fourth condition, that both parties are positive and sincere in their desires, was not met, since [NAME] had been consistently negative and only agreed to sexual intercourse with Moreno-Ocampo in order to have her car keys returned and to regain her freedom to leave the hotel.

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.



## D. Rape in South Africa

45. It is significant that the incident in Moreno-Ocampo's guest suite in Lord Charles Hotel in Somerset West on 28 March 2005 took place in South Africa, a state where there are widespread problems with the manner in which the justice system deals with rape allegations. Representative community-based surveys have found that in the 17-48 age group there are 2070 incidents of rape or attempted rape per 100,000 women per year in South Africa. However, only 240 such incidents per 100,000 women per year, or just one case out of nine, are reported to the police.<sup>82</sup> According to the South African NGO People Against Woman Abuse (POWA) a woman is raped in South Africa every 26 seconds and more than 40 percent of the perpetrators are known to the victim. According to POWA only 7 percent of reported rape cases in South Africa lead to a conviction.<sup>83</sup>

46. As the case of the alleged rape committed by the former South African Deputy President Jacob Zuma has recently shown, a woman in South Africa who reports a rape committed by a well-known personality risks running a gauntlet through public media, with secondary victimization as a result. According to the South African women's NGO "The One in Nine Campaign", the complainant in the Zuma case, a 31-year-old woman, has had to "endure hate speech, defamation of character, and media speculation"<sup>84</sup>. During the trial she was "subjected to a relentless line of questioning by the defence for a record four consecutive days"<sup>85</sup> and because her private sexual history was deemed admissible by the judge this "allowed the defence to embark on a line of questioning" which was "invasive and transgressed her privacy and dignity"<sup>86</sup>.

47. Under these prevailing circumstances it would be a very big step for any woman in South Africa to report a rape or sexual assault where the perpetrator did not use outright physical force or violence. It is more likely that the victim would stay away from a defective legal system and, to protect herself emotionally, go into a state of denial, commonly reported as an element of Rape Trauma Syndrome, RTS. [NAME]'s personal denial that the incident in Moreno-Ocampo's guest

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<sup>82</sup> Jewkes R, Abrahams N: The epidemiology of rape and sexual coercion in South Africa: an overview. *Social Science & Medicine* 2002; 55, page 153-166.

<sup>83</sup> POWA Statistics: [www.powa.co.za/Display.asp?ID=2](http://www.powa.co.za/Display.asp?ID=2).

<sup>84</sup> One in Nine Campaign Media Release: Judgment in State vs. Zuma Rape Case, 8 May 2006 ([www.oneinnine.org.za/press/viewnews.asp](http://www.oneinnine.org.za/press/viewnews.asp)).

<sup>85</sup> One in Nine Campaign Media Release: Systematic campaign inside and outside the court to discredit and humiliate Khwezi, 11 March 2006 ([www.oneinnine.org.za/press/viewnews.asp](http://www.oneinnine.org.za/press/viewnews.asp)).

<sup>86</sup> Ibid.

suite at Lord Charles Hotel in Somerset West on 28 March 2005 was rape should also be viewed in this context.

Signed on 20 October 2006:

Christian Palme

**Annex 1: Transcript of conversation between Christian Palme and Yves Sorokobi on 30 November 2005.**

**Christian Palme (CP):** I was looking back into my old e-mail, by the way, and I came down to that e-mail on the 29<sup>th</sup> of March when you wrote me about [NAME]. Remember?

**Yves Sorokobi (YS):** Ooh, I put that in an e-mail?

**CP:** You wrote an e-mail to me, remember? From New York. You said she had called you and the boss had, you mentioned that the boss had done something very bad, you had just found out, remember?

**YS:** (Giggling) Yes.

**CP:** The meeting... He arrived in South Africa, in Cape Town on the 28<sup>th</sup>.

**YS:** Yes, and he met her the day after.

**CP:** No, he met her the same day.

**YS:** Oh yes, ok. Oh, yeah, yeah, she called me on the 29<sup>th</sup>.

**CP:** Yes, she called on the 29<sup>th</sup>, the day after. Or maybe...  
(Inaudible).

**YS:** (Inaudible)

**CP:** How did he... How can... She requested... You knew her and she requested that interview or...?

**YS:** Yes, she was here. (Inaudible) I don't know if you remember, but she was here.

**CP:** OK.

**YS:** I can't remember a week, month, but she came here a couple of months before they met. She came...

**CP:** And she met him at that time already?

**YS:** Yes, she interviewed him here, that's where he met her for the first time.

**CP:** Ok, so they had met once before?

**YS:** Oh yes, she at the time was to the Netherlands to write a business story...

**CP:** Ok.

**YS:** ... about a Dutch company that had possibly (inaudible) and while she was here, since the company is based in The Hague, she decided to do a story about the ICC. She called me and then I set everything up with Luis and that's how he met her.

**CP:** So they already knew each other from before?

**YS:** Exactly, but there was, it was just a professional thing.

**CP:** Yes, yes, yes.

**YS:** (Inaudible)

**CP:** And then she asked for a new interview in Cape Town? So she went down from [NAME], because she is based in [NAME]?

**YS:** She is based in [NAME] and she went to Cape Town to meet him. And her family lives in Cape Town.

**CP:** ... to meet him. I see, I see.

**YS:** So she was staying at her family's house and she went to, she was going to the beach. And he called her.

**CP:** Yeah, what... what actually happened on that... What did she tell you the first day when you, when you...?

**YS:** She said that, eh...

**CP:** She called you on your mobile?

**YS:** She called me on my mobile, yeah. She said that...

**CP:** She was already, like, agitated...?

**YS:** Oh, she was upset... She was seriously upset and, and, and she said that Luis called her.

**CP:** He called her? But they already had an appointment for an interview...

**YS:** They had an arrangement and he was supposed to call her and work out the details, you know, because we couldn't set up the logistics for him. So he got in and called her and I believe either they met the day he arrived or the next day, I can't remember. But she called me, first she called me before the incident, she called me and said: "Well, I met your Prosecutor, I interviewed him and it was all good, but now I have a problem, because he doesn't want to leave", when she said she was going to the beach.

**CP:** He says?

**YS:** No, no, she.

**CP:** She said.

**YS:** She was going to the beach and he said he wanted to come with her. And, so she was a little nervous...

**CP:** OK.

**YS:** ...because of that, so she called me.

**CP:** She, she went out to call you?

**YS:** Yeah, yeah, yeah. And told me that "look I'm trying to leave and go to the beach (inaudible) but the Prosecutor wants to come with me, so what should I do? And he makes me nervous because I think he has ulterior motives."

**CP:** She said that (inaudible).

**YS:** Yeah, yeah, she was already very nervous. She said that his behaviour was kind of too [giggle] you know, "upsetting" and she wanted me to know... she was nervous.

**CP:** "Upsetting", was she specific in any way?

**YS:** Well, I think she, what she intended to say was that she felt that it was kind of putting her under sexual pressure, so that it was... (inaudible).

**CP:** She didn't say that specifically?

**YS:** No, he wasn't clear.

**CP:** He wasn't clear.

**YS:** So they went to the beach and then I believe that...

**CP:** And she called you afterwards, after the incident?

**YS:** Yeah, that was before, when she called me to say they were going to the beach.

**CP:** Yeah, and then she called you after...

**YS:** And then, I believe, either the same day or the next morning, she called me. Ehh, it's got to be the same day...

**CP:** Either the same day or the next morning...

**YS:** No, no, the same day. She called me first in the morning and then she called me later, sometime in the afternoon. And she was really upset...

**CP:** Upset? And crying?

**YS:** Yeah.

**CP:** (Inaudible)

**YS:** Oh, yeah, yeah, yeah, crying, crying, real hard.

**CP:** (Inaudible)

**YS:** (Inaudible). Yeah, crying, like a woman in distress.

**CP:** In distress.

**YS:** Yeah, yeah.

**CP:** (Inaudible)

**YS:** And, and, she, she said, she said something horrible happened.

**CP:** Horrible happened, something horrible happened...

**YS:** She said something horrible happened and that was that. Oh, my good... And, I mean, I got to... And I said "what happened?". And she started telling me that, you know, that he forced her to have sex with him. And I was like, "forced"... (inaudible).

**CP:** He actually forced...?

**YS:** That's what she said, I said, hang on. She said that... And I said "how did that happen?", how can...

**CP:** She said that he had actually forced her...?

**YS:** Yeah, wait, wait, wait. And I said: "how did that happen?". And she said OK, she drove him to his hotel.

**CP:** Yeah.

**YS:** And, eh...

**CP:** She already gave you these details in the first phone call you had, the first call when you spoke to her on your mobile in New York?

**YS:** Yeah, each time I spoke to her on my mobile. I came back here and then I called her.

**CP:** (inaudible) then you called her again.

**YS:** (inaudible)

**CP:** (inaudible)

**YS:** I had it all, she had told me before. But I just wanted to have it on the record...

**CP:** In the first, in the first, already in the first conversation she told you all these details, that he, that they had gone to his hotel together?



**YS:** Yeah, she said that he took his keys, he took her keys.

**CP:** She drove him to his hotel...?

**YS:** Yes, and then he invited her for a last drink. And then they sat down and then I guess the keys must have been on the table.

**CP:** Ok, she didn't, he didn't take it from the car...

**YS:** No, no, I think...

**CP:** They took a drink in the bar...?

**YS:** Something like that. And, and he, he told her to come up to his room. And she says no, no, no, she doesn't want that kind of involvement...

**CP:** Yes?

**YS:** ...you know, and that she wants to leave. And then ... (inaudible)

**CP:** ... he just walked away...

**YS:** He walked up, you know, and... (inaudible)

**CP:** And then something happened?

**YS:** Yeah...

**CP:** She followed him?

**YS:** Yes, she said she wanted her keys, so... because that was the car keys and house keys, so she went up there.

**CP:** She must have rented a car then, or something, because she...

**YS:** Or she drove down...

**CP:** She drove down from [NAME] to, to, to Cape Town?

**YS:** Or her parents had one, I don't know.

**CP:** Her parents had one...

**YS:** But she had a car.

**CP:** She had a car, yeah...

**YS:** Ehhm, and, and the keys for the car and the apartment keys were on the key bangle that he took.

**CP:** Yeah, yeah, yeah.

**YS:** Ehhm, and, so he went... I mean she followed him to try to get the keys. And... apparently that's why it happened.

**CP:** And, and, and, did she already in the first conversation give you details about what happened in the room?

**YS:** No, no, because, look, she called me twice (inaudible). First she called me and she said she was going to the beach and (inaudible).

**CP:** Yeah, I mean the second call when, when, when you were in New York...

**YS:** Yeah, by the time I came back I already knew.

**CP:** You actually had three calls, first the call before the events... (inaudible)

**YS:** (inaudible)

**CP:** ... then the call after and then the call after you came back.

**YS:** ...when I called her to tape it, yeah. (inaudible) And then she said... So after, when I called her, when I called her from here, I put on the radio thing, to record it.

**CP:** Yeah, but in the first, in the sec..., second call, did she already there say that, that, give you details about what happened in, in the room?

**YS:** Oh yeah. She told me that he had forced himself on her, yeah.

**CP:** She said that, yeah...

**YS:** I already knew that, that's why I taped it. (inaudible)

**CP:** She said that he had forced himself on her?

**YS:** Yes (inaudible)

**CP:** She said they actually had sex? She said they had sex?

**YS:** It's on tape, all that is on tape, because I wanted her to repeat all that, so I taped it.

**CP:** Oh, I thought you, I thought you, I thought she said that she..., but that was before the conversation...?

**YS:** Yeah, but I wanted her to repeat what she had told me the day before.

**CP:** Ok, and then you came back, you came back to The Hague, and you called her...?

**YS:** No, there were two conversations in New York, before the beach, after the beach.

**CP:** Yeah, exactly.

**YS:** When I got back here I called her.

**CP:** Exactly.

**YS:** That was the next day.

**CP:** That was the 30<sup>th</sup>...

**YS:** Yeah, I was leaving that (inaudible), I was leaving that same day to come back.

**CP:** (inaudible) ...the 30<sup>th</sup>...

**YS:** So I called her as soon as I was back in The Hague... and wanted her to repeat what she had told me, so I could tape it.

**CP:** So what did he do when they came into the room? Did he lock the door, or something? Did he...

**YS:** No, I don't remember... I will check (inaudible) ...but I don't remember, really, all the details. But I mean, it wasn't a good situation.

**CP:** It was an obvious forced situation...

**YS:** (inaudible) And after, after I also said, "did you actually speak with him?" and she said that was the only way he would let her go. And, I mean, I've heard other women say things like that, they are under pressure, from men, sometimes they prefer that to have a peace of mind and... And then, as soon as she left, she called me, that's why I believed her.

**CP:** Yeah...

**YS:** It wasn't like... (inaudible).

**CP:** (inaudible) ...she was obviously upset when she called you...

**YS:** Yeah, very upset. I mean, I have my difficulties with ... (inaudible)

**CP:** Wow...

**YS:** Yeah, that's... (inaudible) ...maybe Luis... (inaudible)

**CP:** I mean, I'd really like to listen to it.

**YS:** Yeah, because I have..., I insisted on it because I was so worried that she was gonna file a complaint.

**CP:** Yeah, yeah.

**YS:** On the phone I kept saying: "Would you say that he raped you?" And she was, she started crying. She wouldn't use that word, but she was just crying.

**CP:** Yeah, well, I mean... It was forced, it was forced, it was forced, it was forced. In any, any respect it was forced.

**YS:** It was terrible. I have it (inaudible). I just wanted to have it on record because I was just astonished by the claim.

**CP:** (inaudible) Yeah (inaudible) it's really an astonishing claim. Yeah, it's a... I remember he had an appointment with her in his calendar, in the agenda. That's been removed.

**YS:** Right... (inaudible) ...removed?

**CP:** Yeah, it's been removed. But there is a message from, from Mark, in, in his agenda, where it says: "journalist wants to meet you, eh, when you arrive in...". Just one line. It fits, it all fits... His travel things are still in there, that he arrived in Cape Town, he came directly from Buenos Aires, he arrived in the morning on the 28<sup>th</sup>.

**YS:** Yeah...

**CP:** And, eh, the conference was actually due to start that day, but he was not speaking until the next day. And apparently he just skipped that day.

**YS:** Ok. I think it was probably the day it happened... (inaudible)

**CP:** (inaudible)

**YS:** It's either the first or the second day... I mean...

**CP:** It couldn't have been the second day, because (inaudible) he, he was speaking on the second day. (inaudible) The agenda for the conference is also in there. And he's speaking...

**YS:** ...on the second day.

**CP:** It was a three-day conference.

**YS:** Ok, ok. Because it's in what she said, that's not on the recording, that was much later, she said that he had tried to apologize.

**CP:** Oh, he called her?

**YS:** Yeah, he had called her...

**CP:** He called her?

**YS:** He called her before he left (inaudible).

**CP:** Before he left?

**YS:** Before he left. Because he realized what had happened was terrible. He wanted to...

**CP:** Yeah, he realized that this could, could, this had serious implications... Did he try to apologize? Did he...? When he called her, did it seem that he tried to, like, eh, tell her not to complain, or convince her not to complain?

**YS:** (inaudible) Definitely, that was that, because I remember at the time she had said that, he had, she said that he had specifically asked about me.

**CP:** He had asked about you?

**YS:** (inaudible) ...to her. Like, what is the nature of her relationship...

**CP:** Yeah, do you... good friends?

**YS:** Yeah, because he was afraid that she might tell me this, you know. So he asked her specifically. And she said "Why, I know Yves from work", I mean... (inaudible) So he left not being sure whether she would tell me that or not. And to this day I think he still wonders.

**CP:** Do you think he has been in contact with her more?

**YS:** I'd be surprised...

**CP:** She hasn't...? Have you been in touch with her more?

**YS:** Yeah, yeah, yeah, I talked to her (inaudible), I talked to her last month or maybe a month ago. Yeah (inaudible).

**CP:** (inaudible) Did she mention this again at that time?

**YS:** We haven't come back (inaudible). She won't talk about it. When I try to bring it up and she won't talk about it. I think she just (inaudible) off and tried to pretend it never happened. She won't talk about it. I tried... A month ago I ... I, that was stupid of me, but I cracked a

stupid joke, because she told me that she had met this new man and ... she was falling in love, and she was saying, she was wondering whether she should have a baby or not and things like that. And I cracked a stupid joke, saying (inaudible) something like that. (inaudible) ... apologize, you know. So I think it's something about traumatized.

**CP:** Oh, of course, of course, of course, I mean it's obviously... I'm surprised she didn't, she didn't complain, actually...

**YS:** Well, you know...

**CP:** I looked her up on the, on the Internet. She's, I mean, she's very well known.

**YS:** She's very well known...

**CP:** She had a scholarship from the U.S, from the [NAME] [NAME] [NAME].

**YS:** (inaudible)

**CP:** (inaudible)

**YS:** She was writing a book actually, about what she had been doing for the [NAME]. She's very, very well-known.

**CP:** Yes, I mean, she's obviously, she has done some very, very... (inaudible) ... reporting.

**YS:** She's very well-known.

**CP:** (inaudible) I found a picture of her on the... on the [NAME] web site.

**YS:** (inaudible)



**CP:** (inaudible)

**YS:** And she's a sportswoman.

**CP:** She looks like... (inaudible)

**YS:** I remember the day... (inaudible) here the first time. (inaudible)  
She turned to me and she said: "The court is in trouble with that man".

**CP:** She said?

**YS:** Yeah, she said "I think the court is in serious trouble, because that man is not behaving properly".

**CP:** Were you in the interview, or?

**YS:** Yeah, yeah. (inaudible)

**CP:** Ok, he was already... he was already... he was doing his standard flirt...

**YS:** You should have seen him! (inaudible) (laughter) And then she... (inaudible) "I think your court is in serious trouble..." (inaudible). And I said "why?" "Look at how he behaves", she says. So she already knew. (inaudible) She felt that he was coming with the wrong idea. And that's why she called me before.

[End of recording, end of transcript]

## **Annex 2: Transcript of conversations between Yves Sorokobi and [NAME] (fragments) on 30 March 2005 and Yves Sorokobi and Christian Palme on 30 November 2005**

### 1. Circumstances of recording

The original recording was made by Yves Sorokobi on 30 March 2005. On returning from New York on 30 March 2005 Sorokobi called [NAME] from his office telephone, set to the speaker phone mode. To record the conversation he placed a small digital pocket recording device in front of the loudspeaker telephone. In the course of the investigation ICC ITC will be able to confirm that Sorokobi made a call from his office phone (extension 8560) to a mobile phone in South Africa on 30 March 2005.

On 30 November 2005 Sorokobi brought his recording device to my office. He then proceeded to play back the conversation with [NAME], allowing me to hold the device, in order for me to hear from the small built-in loudspeaker. I had in the meantime started my own recording device and while listening I held Sorokobi's recorder close to microphone of my own recording device.

The ensuing recording on my recording device is technically flawed and only fragments are audible (even the original recording, made from a speaker phone, was not of a good technical quality). While it is possible to listen to the recording with a standard audio program (Windows media player) the sound quality is substantially enhanced by using a professional audio editing program and applying noise reduction techniques. The audio file included with this complaint is however the original file, as saved on my recording device at 13.44 hours on 30 November 2005. Only the file name has been modified to the descriptive "[NAME] conversation".

After the playback of the [NAME] conversation a second conversation seamlessly followed between me and Sorokobi.

The following is an attempt to transcribe the parts of the conversation that are audible, including the ensuing second conversation between me and Sorokobi. Occasional comments by me or Sorokobi that can be heard over the recording are also noted. Time codes have been obtained through an audio editing program.

## 2. Transcript

First part: Conversation between Yves Sorokobi and [NAME] on 30 March 2005

0:00:34.32                    **Yves Sorokobi (YS):** He took your keys...

0:00:39.80                    **YS:** The Prosecutor...

0:01:07.34                    **YS (to Christian Palme during playback on 30 November):** You can hear that she is crying...

0:01:38.70                    **YS:** So where are you sitting down now...?

0:01:50.56                    **YS:** [NAME]?

0:02:37.79                    **YS:** I know this guy...

0:03:20.01                    **YS:** I mean, he locked you in the room and he took your keys, that's pretty close to it, you know...

0:03:24.03                    **[NAME] ([NAME]):** Well, he took my keys...

0:03:41:52                    **YS:** All right, look, I don't really know what to say about this.

0:03:55.38                    **YS:** It's one more layer of, of, of  
(inaudible) complications that I really don't need.

0:05:13.58                    **YS:** From the moment you called in  
the morning and told me that he had followed you... and that you...

0:05:28.86                    (Brief inaudible exchange between YS  
and CP while listening to recording.)

0:06:17.10                    ([NAME] begins to cry uncontrollably.)

0:06:25.14                    **YS (to CP during playback):** You  
can hear she's crying...

0:06:41.22                    **YS:** ...the Prosecutor...

0:07:07.15                    **YS:** Look, the Prosecutor is my boss,  
you're my friend, and, and for me...

0:07:21.02                    **YS:** Look, you're telling me that the  
man locked you in his room and took your keys.

0:07:32.18                    **YS:** It's not the Prosecutor's  
(inaudible, possibly "capacity") to prevent you from leaving his room...

0:08:23.74                    **YS:** ...you had to do that so he would  
let you go...

0:09:12.78                    **YS:** [NAME], [NAME]...

0:09:17.10                    **YS:** [NAME], you're gonna need some  
help for this. You sound very, very hurt. This is a pretty serious  
problem. It's something that...

0:09:30.17                    **YS:** We're gonna need to find you  
help.

0:09:54.99                      **YS:** Well, you're telling me that he took your keys, so you couldn't have left. So I mean, why are you, why are you lying to yourself?

0:10:46.05                      **YS:** What bothers you so much about this?

0:10:56.40                      **YS:** You consented from what I hear, so why are you so upset? Why you're telling me that you consented to it...

0:12:21.13                      **[NAME]:** Had to do that to get out of this...

0:12:26.86                      **YS:** Yeah, that's what I'm saying, that you had to do it to let you leave.

0:12:56.05                      **YS:** Clearly what you are describing to me is a situation in which he one way or the other forced himself on you.

0:13:51.94                      **YS:** It was ok, I understand, there are women, there are other women who will react in the way you did.

0:13:59.93                      **YS:** Because you had to do that to get rid of that guy.

0:14:05.96                      **YS:** Many women would do that. It's not an unusual reaction.

0:15:05.72                      **YS:** Well, what about the keys...?

0:18:43.30                      **YS:** I mean, I've known you for a hundred years and I've never seen you (inaudible) like this. Whatever you're feeling internally upsets you. You're feeling violated. I mean

what you describe is a violation (inaudible). You're gonna need help. You're gonna need a lot of (inaudible).

0:19:53.30 **YS:** But [NAME], did the Prosecutor apologize to you in any way?

Second part: Conversation between Christian Palme and Yves Sorokobi on 30 November 2005. The conversation followed seamlessly and without interruption after the playback of the conversation with [NAME] on Sorokobi's recording device.

0:20:58.22 **Christian Palme (CP):** Wow!

**YS:** (Laughs)

**CP:** This is horrible! But she's actually denying... All through except at one point she denies that he forced her. She says she could have walked out of there.

**YS:** But even deny is a normal reaction. (inaudible)

**CP:** She's still, she's still... She says he took her keys, that's true, but she (inaudible) keeps repeating over and over again "I could have walked out of there".

**YS:** But that's for her own benefit, because when I asked her "OK, you could have walked?" she says "yes". "And how about the keys?" And she can't answer.

**CP:** No exactly.

**YS:** You know, it's a... woman's reaction.

**CP:** Oh yeah, it's, it's enough, the fact that he took her keys, which she keeps repeating, it's enough.

**YS:** Yeah.

**CP:** It's bad enough. And the whole situation, it's... The whole situation, looked at from outside, looked at from a gender perspective...

**YS:** Yeah... I have to say it's the first time I've listened to it since I taped it and it's really upsetting.

**CP:** It's extremely upsetting! (inaudible)

**YS:** (inaudible)

**CP:** I'm feeling all, all...

**YS:** That's why I didn't want you to hear it before, because it's really upsetting.

**CP:** It's horribly upsetting, it's horrible. It's very difficult to hear... (inaudible) ...glimpses... It's almost impossible to listen to...

**YS:** But you get the picture...

**CP:** You get the picture, yeah.

**YS:** Yeah... (inaudible)

**CP:** Did you download it to your computer?

**YS:** Yeah, I'll e-mail it to you. I'll e-mail it to your private address.

**CP:** Make a copy and give it to me in New York. It's a huge file and I don't think you can e-mail it.

**YS:** Yeah, it will be hard.

**CP:** It's eighteen minutes, that would be...

**YS:** ...too long, yeah.

**CP:** As a WAV file it would be 60 megabytes, but you can burn it to a disc...

**YS:** Yeah, I can burn it to a disc...

**CP:** (inaudible)

**YS:** (inaudible)

**CP:** Just for my collection, this is just...

**YS:** (inaudible)

**CP:** Yeah, but, I mean, the main points are this: She's, first of all, one, she's extremely upset.

**YS:** Yeah...

**CP:** Her voice is shaking... No you can keep it... You might need it... Her voice is shaking, she's extremely upset, extremely worried. She admits several times that he took her car keys away and in that way forced her to come to the room. That's definitely correct. To the direct question that you put a number of times whether he forced her to sex, she denies. She says "I could have walked out of there at any time". But, in that case, without her car keys. To get her car keys back she had to have sex with him. Wow, that tape was horrible.

**YS:** It's really upsetting, isn't it? I haven't had the courage to listen to it since I taped it.

**CP:** Did you copy it down to your computer?

**YS:** Yeah, yeah, yeah... (inaudible) It's the first time I hear it...



**CP:** Wow, wow.

**YS:** (inaudible)

**CP:** It's an awful document...

**YS:** I was really upset, I couldn't bring myself to listen to it. All this time I... (inaudible)

**CP:** The main focus is on, on your relation to... I mean, that's what you're talking about, your relation to him and if you are going to talk about this, if he's going to ask about it or make comments about it. That's what worries her. And you're pushing for, for a clarification: did he force or not? And she says, says, "No he didn't force me, I could've walked out of there", or "No, I could've walked out of there". And she denies... when you, when you say, when you try to say, make her say it was rape, she says "no". But he did take her car keys and definitely, looked at from outside, he, he forced her up to his room and coerced her. At least, if not forced, at least coerced her into, into having sex with him. I mean, that's from, from an outsiders view (inaudible) coercion, coercion, if not, if not, physical, if not physical force. Psychologically...

**YS:** (inaudible) She was in a situation where that was probably what she had to do to get her freedom, or get her keys back.

**CP:** Yeah, well, she says she could have walked out of there, he didn't lock the door from inside, he didn't, like, lock up the room, but coercion, definitely.

**YS:** I mean, this kind of thing has been going on for several months (inaudible)

**CP:** (inaudible) ...seven months...

**YS:** ...and here, this man, he hasn't realized what we do to keep him out of trouble. He just goes around attacking people, stupid...

**CP:** Yeah...

**YS:** He doesn't realize that you and I have been in the business from keeping him from that kind of serious scandals.

**CP:** Yeah.

**YS:** And all he does to say thank you is to attack us.

**CP:** Oh yeah, that's what he does with everyone... This is so bad, this is so bad... Just this way of taking the car keys, forcing her to come with him to the room, this... The things he was saying to her, "we have an amazing connection" (laughs). I mean...

**YS:** That's even worse, that's even worse...

**CP:** ...because that's bad taste... (laughter) (inaudible) Nobody would fall for that...

**YS:** Yeah, because you realize that... (inaudible)

**CP:** I've never, never even, never tried to pick up a girl with a line like that (laughter). "You and I have a great connection, an amazing connection..." That's absurd. Wow.

**YS:** I mean, keep this to yourself... (inaudible)

**CP:** Yeah, yeah, yeah... Make me a disc of that. (inaudible)

**YS:** (inaudible)

**CP:** Wow, thanks. (sound of door closing)

Ends

## Annex 3: E-mail exchange between Christian Palme and Yves Sorokobi on 29 March 2005

RE: Wednesday - Message (HTML)

Type a question for

Sent: Tue 29/03/2005 17:13

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward

From: Palme, Christian  
To: Sorokobi, Yves  
Cc: Subject: RE: Wednesday

This is very disturbing news. I would advise you to write down everything on this as soon as possible, while your memory of the details is fresh. I have to admit that the guy makes me sick to my stomach.

-----Original Message-----  
From: Sorokobi, Yves  
Sent: 29 March 2005 15:35  
To: Palme, Christian  
Subject: RE: Wednesday

LMO and I spoke a few times and I sent him an sms about my missing the flight. I don't think he cares terribly. And I hear some disturbing (LMO behavior) stuff from the [REDACTED] reporter who interviewed h yesterday.

Darryl has been quite busy with lines on a possible Barfur referral. Some of the language is unduly twisted and verbose. He sent me a note saying he expected some guidance on the matter Tuesday. Meanwhile, the Presidency appears to have crafted its own lines and the President is in NY this week, hoping to hold a press briefing at the UN. Referrals are made to the Prosecutor, so clearly some coordination is required if the President ends up speaking about it on the Court's behalf.

Let me know what's new.

-----Original Message-----  
From: Palme, Christian  
Sent: Tue 3/29/2005 11:13 AM  
To: Sorokobi, Yves  
Cc:  
Subject: Wednesday

Got your SMS message. Be aware that Luis is returning from SA on Wednesday afternoon.

## Annex 4: Page 1 of calendar item from the Outlook agenda of Chief Prosecutor Luis Moreno-Ocampo on 28 March 2005

**Subject:** 20h20 MH 202 Buenos Aires/ Cape Town, arrival 09h00  
**Location:** see programme under  
**Start:** Mon 28/03/2005 09:00  
**End:** Mon 28/03/2005 09:30  
**Recurrence:** (none)

Journalist wants to meet on Monday any time convenient. Please arrange. Mark

  
Draft Agenda.doc  
(69 KB)

1  
28 March

Dear Sofia

Many thanks for this. We will arrange for the Prosecutor to be met on his arrival at the Cape Town airport and taken to the hotel. We have already booked a suite for him there (positive thinking on my part!) We will arrange for him to be taken back to the airport on the 29th in time to catch his flight at 23h45.

We will be sending out a letter, probably on 21 March, with details and information for everyone regarding dress code, weather etc. In the meantime, I am attaching a copy of the latest draft programme.

Thank you for all your efforts on our behalf.

Have a good weekend.

Warm regards

Paddy

We are SO delighted!

+27 21 683 3629 (office)

Cell phone: +27 82 492 0988

Warm regards

Paddy

-----Original Message-----

**From:** Velasco, Sofia [mailto:Sofia.Velasco@icc-cpi.int]  
**Sent:** Friday, March 11, 2005 3:27 PM  
**To:** Paddy Clark  
**Subject:** RE: Paddy's Email Address

Dear Paddy,

Just got your message; yes he is going. Am sending you the flight numbers in a minute. Can I

## Annex 5: Page 2 of calendar item from the Outlook agenda of Chief Prosecutor Luis Moreno-Ocampo on 28 March 2005

... your phone number, please?

Thanks

Sofia

-----Original Message-----

**From:** Paddy Clark [mailto:Paddy@ct.osf.org.za]

**Sent:** 08 March 2005 12:37

**To:** Velasco, Sofia

**Subject:** RE: Paddy's Email Address

Dear Sofia

This is amazingly good news, but I won't celebrate until I hear from you that he is definitely booked on a flight!

We will pay his business class airfare, plus any additional costs that he might incur, like visas etc. We will meet him at the airport on his arrival and take him to the hotel. He will be booked into the **Lord Charles Hotel** (conference venue) for as long as he is able to be with us.

For interest, Geoffrey Nice will be on KLM 597 from Amsterdam to Cape Town, departing Saturday 26 March.

I continue to cross fingers and look forward very much to hearing from you.

Kind regards

Paddy

-----Original Message-----

**From:** Velasco, Sofia [mailto:Sofia.Velasco@icc-cpi.int]

**Sent:** Tuesday, March 08, 2005 12:51 PM

**To:** Paddy Clark

**Subject:** RE: Paddy's Email Address

Paddy, the Prosecutor is trying to go himself. I'm looking into flights and will let you know as soon as I can. Do you know if ICTJ is refunding his travel costs? Sorry for asking but I have no idea about the financial side and hope I am not being rude.

Kind regards

Sofia

-----Original Message-----

**From:** Paddy Clark [mailto:Paddy@ct.osf.org.za]

**Sent:** 07 March 2005 16:17

**To:** Velasco, Sofia

**Subject:** Paddy's Email Address

Dear Sofia

This is my email address, so you can just hit "reply"!

I do understand your problem - I go through it as well when Dr Boraine is away and when he returns to the office - but we are desperate to have someone good from the ICC to address the conference beginning on 28 March.

I look forward with cross fingers to hearing from you!

Kind regards

Paddy

**Annex 6: Page 1 of conference program "Traditional Justice & Human Security Conference, Cape Town 28 March – 1 April 2005"**

**TRANSITIONAL JUSTICE & HUMAN SECURITY  
CONFERENCE  
CAPE TOWN  
28 March – 1 April 2005**

Lord Charles Hotel  
cnr Pauré and Stellenbosch Roads  
Somerset West 7130  
South Africa  
Tel +27 21 855 1040  
Fax +27 21 855 1107  
[www.nh-hotels.co.za](http://www.nh-hotels.co.za)

**PROGRAMME**

**Monday 28 March**

- 09h30      **Official Opening**
- Ambassador Shigeie
- Keynote Addresses:**
- Moderator:    Dr Frene Ginwala, Former Speaker of South African House of Assembly
- Mrs Sadako Ogata, Former UN High Commissioner for Refugees; President of Japanese International Cooperation Agency
  - Dr Juan E Mendez, President of International Center for Transitional Justice, UN Special Advisor on Prevention of Genocide
  - Adv George Bizos, renowned human rights lawyer
- 11h30      Tea/Coffee
- 12h00      **Defining Transitional Justice**
- Moderator:    Dr Pumla Gobodo-Madikizela, Professor of Psychology, University of Cape Town
- Dr Alex Boraine, Chairperson of ICTJ
- 13h00      Lunch

## **Annex 7: Page 2 of conference program "Traditional Justice & Human Security Conference, Cape Town 28 March – 1 April 2005"**

- 14h30      **Accountability: State Responsibility**
- Moderator:    Dr Andre du Toit, Professor of Political Studies,  
University of Cape Town
- Geoffrey Nice, Principal Trial Attorney, Office of the Prosecutor, ICTY
- 16h00      Tea/Coffee
- 16h30      **Retributive Justice or Restorative Justice:  
Complementary or Contradictory?**
- Moderator:    Prof Francis Wilson, SA Labour & Development Research  
Unit, UCT
- Rev Bongani Finca, former Commissioner on South African TRC
  - Ms Sofia Macher, Former Commissioner, Truth and Reconciliation Commission in Peru; head of foremost Democracy Institute in Lima
  - Justice Dennis Davis, Cape Town High Court
- 18h00      Close
- 20h00      **Opening Dinner**

### **Tuesday 29 March**

- 09h30      **The International Criminal Court: The Principle of Complementarity**
- Moderator:    Adv Dumisa Ntsebeza, former head of Investigative Unit  
at South Africa's Truth and Reconciliation Commission (tbc)
- Mr Luis Moreno-Ocampo, Chief Prosecutor, International Criminal Court (tbc)
- 11h00      Tea/Coffee

## Dagbok ICC

Datum: 29 mars 2005

Tema: Darfur; Är Luis en våldtäktsman?

Personer: Luis, Yves, [NAME]; Darryl

Planering för väntad hänskjutning om Darfur. Alla tecken tyder på att säkerhetsrådet röstar i morgon eller i övermorgon och att det blir en övertygande majoritet för hänskjutning till ICC (med nedlagd röst från USA). Både Darryl och jag har arbetat med pressrelease och Q&A, som vanligt utan stöd från Luis. Vi är i det närmaste färdiga med en Q&A (Darryl har gjort mest, som vanligt), men Luis vägrar att godkänna den ens för delgivning inom OTP. Han tycks försöka låtsas som om ingenting händer och han förstår inte att när beslutet kommer blir vi överringda med frågor från medier och organisationer. Darryl är fruktansvärt frustrerad och skrev en rolig kommentar i dag om att det väl blir som vanligt i OTP: "No coordination, last minute reactivity". En bra sammanfattning av Luis managementmetoder.

Det andra som har hänt är betydligt allvarligare och gör mig ganska orolig. På eftermiddan fick jag ett mejl från Yves i New York. Han skrev att han hade fått "disturbing news" från [NAME], journalisten som skulle intervjuas i Kapstaden i går. Jag ringde omedelbart till Yves, som berättade att [NAME] hade ringt honom efter mötet med det sensationella påståendet att Luis hade tvingat henne till sex. Enligt Yves, som var ovillig att ge mig detaljer, skulle Luis ha tagit hennes bilnycklar för att tvinga henne att följa honom till hans hotellrum, och där tilltvingat sig sex, som villkor för att återlämna nycklarna. Yves sa att [NAME] grät hysteriskt under samtalet. Historien är så absurd att jag nästan har svårt att tro att den är sann, men med Luis tycks ingenting vara riktigt omöjligt. Är det möjligt att han inte bara är en usel chef, men också en våldtäktsman???



## **Annex 9: Translation into English of the personal diary of Christian Palme from 29 March 2005**

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### **Diary ICC**

Date: 29 March 2005

Theme: Darfur: Is Luis a rapist?

Persons: Luis, Yves, [NAME]; Darryl

Planning for an expected referral on Darfur. All signs indicate that the Security Council will vote tomorrow or the day after and that there will be a convincing majority for a referral to the ICC (with the US abstaining). Both I and Darryl have been working on the press release and the Q&A, as usual without any support from Luis. We are almost done with the Q&A, but Luis refuses to approve it even for circulation within the OTP. It seems he is trying to pretend as if nothing is going on and he doesn't understand that when the decision comes we will have numerous calls with questions from media and NGOs. Darryl is terribly frustrated and wrote a funny comment today that it will be as usual in the OTP: "No coordination, last minute reactivity". A good summary of Luis's management methods.

The second thing to happen is more serious and made me rather worried. In the afternoon I received an e-mail from Yves in New York. He wrote that he had received "disturbing news" from [NAME], the journalist who was to interview Luis in Cape Town yesterday. I immediately called Yves, who told me that [NAME] had called him after the meeting with the sensational claim that Luis had forced her to sex. According to Yves, who was unwilling to give me details, Luis had taken her car keys in order to force her to come to his room, and there he had forced himself to sex, in order to return the keys. Yves said [NAME] cried hysterically during the conversation. The story is so absurd that I almost find it difficult to believe that it is true, but with Luis nothing seems to be quite impossible. Is it possible that he is not just a wretched manager, but also a rapist???

## Dagbok ICC

Datum: 30 november 2005

Tema: Yves ger detaljer om våldtäkten i Kapstaden; ASP; Uganda

Personer: Yves, Luis, [NAME]; Otti

Dagens stora nyhet är att Yves äntligen har gått med på att tala om händelsen i mars när Luis (eventuellt) våldtog journalisten [NAME] i Kapstaden. På eftermiddagen bad jag Yves komma till mitt rum. Utan att han märkte det slog jag på mitt fickminne. Jag konfronterade Yves med e-brevet från 29 mars och till min förvåning började han berätta om vad som hänt den 28 mars. Han hade haft tre samtal med [NAME] mellan 28 och 30 mars. I det andra och tredje samtalet gav hon detaljer om våldtäkten, som inträffade på Luis hotell i Kapstaden. Hon hade varit mycket upprörd och gråt, "like a woman in distress", under samtalen. En kort stund senare återkom Yves till mitt rum och medförde sitt eget fickminne, med det samtal som han hade haft med [NAME] den 30 mars. Igen slog jag på mitt eget fickminne och försökte hålla Yves fickminne nära mitt eget under uppspelningen. Vad jag fick lyssna till var något av det mest upprörande jag har hört i hela mitt liv. [NAME] storgrät och gav på alla sätt intryck av att vara djupt traumatiserad. Samtidigt fönekade hon, trots flera provocerande frågor från Yves, att Luis skulle ha använt våld mot henne. "I could have walked out of there", upprepade hon flera gånger. Hon bekräftade dock att Luis hade tagit hennes nycklar, att det endast var därför som hon hade följt honom till rummet och att hon hade gått med på sex för att kunna komma därifrån. Är detta våldtäkt och vad spelar det för roll att hon inte hade givit samtycke? Måste kvinnan göra våldsamt motstånd för att det ska kallas våldtäkt? Jag hoppas att Yves verkligen ger mig en kopia av inspelningen.

ASP-arbetet dominerar för övrigt allt. Luis tal har äntligen gått till ASP-sekretariatet för distribution. Vårt radiomeddelande har nått norra Uganda och kommer förhoppningsvis att börja spelas av Radio Mega redan i morgon. Det går rykten om att Vincent Otti erbjuder nya fredssamtal. LRA är smarta och tvcks veta att det är ASP-säsong i Haaq!

## **Annex 11: Translation into English of the personal diary of Christian Palme from 30 November 2005**

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### **Diary ICC**

Date: 30 November 2005

Theme: Yves giving details of rape in Cape Town; ASP; Uganda

Persons: Yves, Luis, [NAME]; Otti

The big news of today is that Yves finally has agreed to talk about the incident in March when Luis (possibly) raped the journalist [NAME] in Cape Town. In the afternoon I asked Yves to come to my office. Without him noticing I started my pocket memory. I confronted Yves with the e-mail of 29 March and to my surprise he now started telling me about what had taken place on 28 March. He had had three conversations with [NAME] between 28 and 30 March. In the second and third conversations she gave him details of the rape, which was committed in Luis's hotel in Cape Town. She had been very agitated and had cried, "like a woman in distress", during the conversations. A short while later Yves returned to my room, bringing his own pocket memory, with the conversation he had had with [NAME] on 30 March. I again started my own pocket memory and tried to hold the pocket memory of Yves close to my own device during the recording. What I was allowed to listen to was something of the worst I have heard in my life. [NAME] cried uncontrollably and in every way gave the impression of being deeply traumatized. At the same time she denied, despite several provocative questions from Yves, that Luis had used force against her. "I could have walked out of there", she repeated several times. However she confirmed that Luis had taken her keys, that it was only because of this that she had followed him to the room and that she agreed to sex to be able to escape. Is this rape and what does it mean that she had not consented? Must the woman resist violently in order that it can be called rape? I really hope Yves will give me a copy of the recording.

ASP work otherwise dominates everything. Luis's statement has finally been sent to the ASP secretariat for dissemination. Our radio message has reached Northern Uganda and will hopefully begin to be broadcast by Radio Mega already tomorrow. There are rumours of Vincent Otti offering new peace talks. The LRA are smart and seem to know that there is ASP season in The Hague.

## Annex 12: Maps showing the locations of the town of Somerset West and of Lord Charles Hotel

