

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/05
Date: 15 March 2007

PRE-TRIAL CHAMBER I

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

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public Document

Decision on the Request for Review of the Registry's decision of 13 February 2007

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Andrew Cayley

Ad hoc Counsel for the Defence

Mr Hadi Shalluf

PRE-TRIAL CHAMBER I ("the Chamber") of the International Criminal Court ("the Court");

NOTING the "Decision Inviting Observations in Application of Rule 103 of the Rules of Procedure and Evidence", issued by the Chamber on 24 July 2006,¹ whereby the Chamber ordered the Registrar to appoint an *ad hoc* Counsel for the sole purpose of representing and protecting the general interests of the Defence in the Situation in Darfur, Sudan during the proceedings pursuant to rule 103 of the Rules of Procedure and Evidence ("the Rules");

NOTING the "Decision of the Registrar Appointing Mr Hadi Shalluf as *ad hoc* Counsel for the Defence", filed by the Registrar on 25 August 2006;²

NOTING the "Application requesting the presence and participation of the *ad hoc* Counsel for the Defence during the proceedings that the Office of the Prosecutor will undertake in Sudan", filed by the *ad hoc* Counsel for the Defence ("the *ad hoc* Counsel") on 18 December 2006;³

¹ ICC-02/05-10.

² ICC-02/05-12.

³ ICC-02/05-41. The *ad hoc* Counsel sought leave from the Chamber to attend all proceedings before the Court relating to the Situation in Darfur, Sudan; requested that the Prosecution be ordered to inform him of any proceedings that it intended to bring, that the Prosecution be ordered to invite him to attend and participate in all proceedings relating to articles 54 and 55 of the Rome Statute ("the Statute"), Rules 111, 112, 113 and 115 of the Rules; and that all appropriate units of the Court be ordered to facilitate and organize any mission of the Defence at the seat of the Court or outside pursuant to Rule 20 of the Rules;

NOTING the letter sent by the Head of the Division of Victims and Counsel to the *ad hoc* Counsel, dated 24 January 2007, asking him to provide the legal basis for his request for payment of fees for the period of 1 to 31 December 2006;⁴

NOTING the response of the *ad hoc* Counsel to the above request, dated 27 January 2007, in which he provided the legal basis of his request for payment of his fees arguing, *inter alia*, that since he had not received any instructions from the Chamber his mandate encompasses all duties and obligations of defence counsels in general, under articles 5 and 6 of the Code of Professional Conduct;⁵

NOTING the "Decision on the *Ad hoc* Counsel for the Defence Request of 18 December 2006", issued on 2 February 2007, in which the Chamber, *inter alia*, (i) rejects the request to permit the *ad hoc* Counsel to participate in, and be informed of, any proceedings undertaken by the Prosecution relating to the Situation in Darfur, Sudan; (ii) specifies that the mandate of the *ad hoc Counsel* is strictly restricted to proceedings pursuant to rule 103 of the Rules; (iii) determines that the *ad hoc* Counsel's mandate does not extend automatically to other proceedings at the pre-trial stage set out in the Rome Statute and the Rules; and (iv) finds that the *ad hoc* Counsel's request falls outside the parameters of his legally assigned responsibilities;⁶

NOTING the letter sent by the Head of the Division of Victims and Counsel to the *ad hoc* Counsel, dated 13 February 2007, in which, after noting the above decision, the Head of the Division of Victims and Counsel informed him that no payments would

⁴ ICC-02/05-60-Anx1.

⁵ ICC-02/05-60-Anx2.

⁶ ICC-02/05-47.

be made for the periods of 1 to 31 December 2006 and 1 to 31 January 2007, on the ground that the *ad hoc* Counsel had been acting beyond the scope of his mandate;⁷

NOTING the “Decision on the Ad hoc Counsel for the Defence’s Request for leave to Appeal the Decision of 02 February 2007”, issued on 21 February 2007, in which the Chamber states that “the Ad hoc Counsel’s mandate is restricted to particular proceedings under rule 103 of the Rules (...)”; and that therefore the Ad hoc Counsel’s reliance on articles 5 and 6 of the Code of Professional Conduct “suggests that the Ad hoc Counsel attempts to extrapolate the specificity, the limits and the scope of his mandate”;⁸

NOTING the “Request for Review of the Registry’s decision of 13 February 2007”,⁹ (“the Request for Review”), filed on 27 February 2007, in which the *ad hoc* Counsel requests the Chamber *inter alia* to (i) declare the decision of the Head of the Division of Victims and Counsel unlawful, flawed, void and unfair; (ii) declare that the work done by the *ad hoc* Counsel fell within the scope of his mandate; and (iii) - order the Registrar to pay the *ad hoc* Counsel’s fees for all the work done in December 2006, January and February 2007;

NOTING the “*Réponse du Greffier au “Recours à l’encontre de la décision du Greffe du 13 février 2007” déposé le 27 février 2007 par Me Hadi Shalluf*” (Response of the Registrar to the Request for review of the Registry Decision of 13 February 2007, filed on 27 February 2007 by Mr. Hadi Shalluf) (“the Registrar’s Response”), filed on 6 March 2007, in which the Registrar requests the Chamber to rule the Request for

⁷ICC-02/05-60-Anx 3

⁸ ICC-02/05-52, pp. 6 and 7

⁹ ICC-02/05-57

Review inadmissible for non-compliance with regulation 135(1) of the Regulations of the Registry, or, in the alternative, that it be dismissed on its merits;¹⁰

NOTING the “Application requesting the intervention and opinion of the Prosecutor in the proceedings to be undertaken by the *ad hoc* Counsel for the Defence “Request for Review of the Registry Decision of 13 February 2007”, filed by the *ad hoc* Counsel on 12 March 2007;¹¹

NOTING rule 103 of the Rules and regulation 135 of the Regulations of the Registry;

CONSIDERING that, effectively, the procedure provided for in regulation 135(1) of the Regulations of the Registry has not been followed; that the *ad hoc* Counsel should have sought a decision from the Registrar on the dispute relating to the payment of his fees; and that, therefore, the current Request for Review of the decision of the Head of the Division of Victims and Counsel should in principle be deemed inadmissible;

CONSIDERING, nevertheless, that, in his response, the Registrar states that “[t]he Registrar has delegated authority to the Head of the Division of Victims and Counsel for those matters which fall within his remit, in this instance managing the Court’s legal assistance scheme, including the payment of counsel fees”;¹² and that “in this matter the decision of 13 February 2007 was taken under the authority delegated by the Registrar – to the Head of the Division of Victims and Counsel in this case – to rule on the daily requests for the payment of counsel fees, and the decision is therefore not flawed in any way”;¹³

¹⁰ ICC-02/05-60. The Registrar states that the appeal is filed against a decision taken by the Head of the Division of Victims and Counsel, and not against a decision taken by the Registrar, under regulation 135(1) of the Regulations of the Registry.

¹¹ ICC-02/05-63.

¹² Registrar’s Response, para. 32.

¹³ Registrar’s Response, para. 33.

CONSIDERING, furthermore, that, in his response, the Registrar has expressly and impliedly endorsed the decision taken by the Head of the Division of Victims and Counsel;¹⁴ and that therefore, in the view of the Chamber, the criteria for the admissibility of the Request for Review have been met;

CONSIDERING that the Chamber, in previous decisions,¹⁵ and as mentioned above, has clearly defined the legal scope of the mandate of the *ad hoc* Counsel as being strictly limited as follows: “to represent and protect the general interests of the Defence in the Situation in Darfur, Sudan during particular proceedings, pursuant to rule 103 of the Rules, namely: inviting observations on issues concerning the protection of victims and the preservation of evidence in Darfur; and [...], accordingly, the mandate of the *ad hoc* Counsel for the Defence is strictly restricted to those proceedings and does not extend automatically to other proceedings at the pre-trial stage set out in the Statute and the Rules”;¹⁶

CONSIDERING that the Chamber unambiguously stated that under rule 103 of the Rules, both the Office of the Prosecutor and the *ad hoc* Counsel had 10 days to submit a written response to the observations of the *Amici Curiae* in the Sudan situation file;¹⁷ and that the *ad hoc* Counsel, by not submitting his response in writing, forfeited his right to respond;

CONSIDERING, however, that the *ad hoc* Counsel has continued to file an inordinate number of baseless requests and motions; that he has completely disregarded the precise and clear scope of his mandate by adopting his own

¹⁴ Registrar’s Response, paras. 18-28; para. 50.

¹⁵ ICC-02/05-10, ICC-02/05-47, ICC-02/05-52.

¹⁶ ICC-02/05-47, p. 5.

¹⁷ ICC- 02/05-10, p. 5.

interpretation of the mandate;¹⁸ and that all such requests and motions have been denied by the Chamber on the ground that the *ad hoc* Counsel has no mandate, for instance, to challenge the admissibility of the case, or to participate in the proceedings relating to the Prosecution's investigation in the Sudan situation file;

CONSIDERING that the Chamber agrees with the submission of the Registrar that the continuous filings of the *ad hoc* Counsel are frivolous and vexatious;¹⁹ that, in the view of the Chamber, such filings extrapolate the limits and scope of the *ad hoc* Counsel's specific mandate²⁰; and, as such, can be considered an abuse of procedure;

CONSIDERING, accordingly, that, given the fact that the *ad hoc* Counsel has been acting beyond the scope of his mandate, the Chamber is of the view that he is in no position to demand payment of fees for the vexatious and frivolous claims instituted before this Chamber for the said period;

CONSIDERING, furthermore, that the *ad hoc* Counsel's motion requesting the Chamber to invite the Prosecution to submit observations on the Request for Review has no legal basis;

CONSIDERING, lastly, that the Chamber is satisfied with the observations and response filed by the participants in the proceedings under rule 103 of the Rules,

FOR THESE REASONS,

REJECTS the *ad hoc* Counsel's Request for Review;

¹⁸ ICC-02/05-48-Corr, p.4 ;ICC-02/05-50,p.3.

¹⁹ ICC-02/05-60, paras. 18-22. See also *The Prosecutor v Delalić et al.*, Case No. IT-96-21 *Decision on application for leave to appeal (separate trials)*, 14 October 1996 at <http://www.un.org/icty/celebici/appeal/decision-e/61014ST3.htm>

²⁰ ICC-02/05-37, p. 5; ICC-02/05-52,p. 7

REJECTS the *ad hoc* Counsel's motion requesting that the Prosecution be invited to submit observations on the Request for Review;

ORDERS the Registry to inform all participants that the proceedings under Rule 103 of the Rules have come to a conclusion;

ORDERS the Registry to complete all administrative arrangements in order to release Mr Hadi Shalluf from his responsibilities as *ad hoc* Counsel for the Defence in the Situation in Darfur, Sudan.

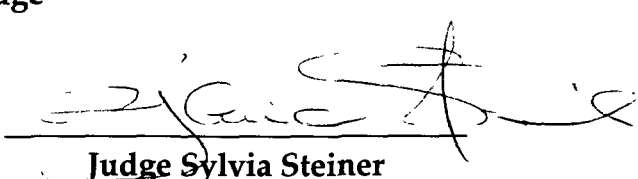
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Claude Jorda



Judge Sylvia Steiner

Dated this Thursday, 15 March 2007

At The Hague, The Netherlands