

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05
Date: 27 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 Leave to Appeal to the Decision Issued on 15 March
2007**

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Andrew Cayley, Senior Trial Lawyer

Ad hoc Counsel for the Defence
Mr Hadi Shalluf

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

NOTING the “Recours à l’encontre de la Décision du Greffe du 13 février 2007”¹ (“the Request for Review”) filed on 27 February 2007, in which Mr. Hadi Shalluf (“the Applicant”) solicited the Chamber to, *inter alia*, i) declare unlawful, flawed, void and unfair the decision of the Head of the Division of Victims and Counsel; ii) declare that the Applicant carried out work according to the scope of his mandate; and iii) order the Registrar to pay the Applicant for work done during the months of December 2006, January and February 2007;

NOTING the “Decision on the Request for Review of the Registry's Decision of 13 February 2007”² (“the Decision”) issued on 15 March 2007, whereby the Chamber *inter alia* i) considers that the Applicant was acting outside his mandate with regard to the motions filed between the months of December 2006, January and February 2007; and ii) orders the Registry to make “all administrative arrangements in order to release the Applicant from his responsibilities as *ad hoc* Counsel for the Defence in the Situation in Darfur, Sudan”, given that the relevant proceedings under rule 103 of the Rules of Procedure and Evidence (“the Rules”) which he has been assigned for have come to a conclusion;

NOTING the “Demande d'autorisation d'interjeter appel à l'encontre de la décision du 15/03/2007”³ (“the Request for leave to appeal”) filed by the Applicant on 19 March 2007, in which he requests the Chamber to grant leave to appeal against the above mentioned decision by submitting mainly that i) the Chamber has erred in law by mixing civil and criminal issues; ii) the Chamber rendered a decision on rule

¹ ICC-02/05-57

² ICC-02/05-66

³ ICC-02/05-68

103 of the Rules when examining a request of a civil nature; and iii) the Chamber has breached the principle of impartiality, neutrality and right to a fair trial;

NOTING article 82 (1) (d) of the Rome Statute ("the Statute"), rules 103 and 155 of the Rules and regulation 135 of the Regulations of the Registry;

CONSIDERING that, the Applicant has requested leave to appeal under article 82 (1) (d) of the Statute and rule 135 of the Regulations of the Registry regarding a review of the Chamber of an administrative decision taken by the Registrar;

CONSIDERING that "the object of paragraph (d) of article 82 (1) of the Statute is to pre-empt the repercussion of erroneous decisions on the fairness of the proceedings or the outcome of the trial"⁴; that, accordingly, "[a]rticle 82 (1) (d) of the Statute confers a right of appeal against interlocutory or intermediate decisions of the Pre-Trial or Trial Chamber"⁵; and hence that, article 82(1)(d) of the Statute was intended "to limit interlocutory appeals to a few, strictly defined exceptions"⁶;

CONSIDERING that an administrative decision taken by the Registrar and reviewed by the Chamber could be appealable only if it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, for instance, when it is notably linked to a question regarding the principle of equality of arms when either party is put at a disadvantage when presenting its case⁷;

⁴ ICC-01/04-168, para. 19

⁵ ICC-01/04-168, para. 36

⁶ ICC-02/04-01/05-20 –US-Exp. Unsealed according to the Decision ICC-02/04-01/05-52, issued on 13 October 2005. See in particular para. 19

⁷ TPIY, The Prosecutor v. Milan Milutinovic, Dragoljub Odjanic, Nikola Sainovic, Decision on interlocutory appeal on motion for additional funds, 13 November 2003, IT-99-37-AR73.2, para. 24.

CONSIDERING that in the Request for leave to appeal, the Applicant did not bring any elements showing to which extent the issue raised would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING further that the proceedings under Rule 103 of the Rules had come to an end after the *amici curiae* and the participants filed their observations regarding the preservation of evidence and the protection of victims and witnesses in Darfur, Sudan;

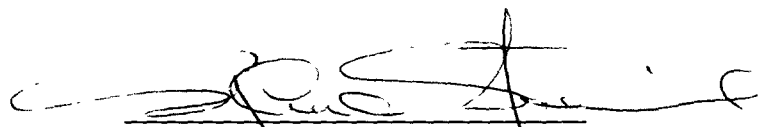
FOR THESE REASONS,

DISMISSES the request for leave to appeal.

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



Judge Akua Kuenyehia
Presiding Judge


Judge Claude Jorda
Judge Sylvia Steiner

Dated this Tuesday, 27 March 2007

At The Hague,

The Netherlands