



Original: French

N°.: ICC-02/05  
Date: 22/12/2006

**PRE-TRIAL CHAMBER I**

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

**Registrar:** Mr Bruno Cathala

**SITUATION IN DARFUR, SUDAN**

**Public document**

**Application to reply to the Prosecutor's Response to 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**

**The Office of the Prosecutor**  
Mr Luis Moreno Ocampo  
Ms Fatou Bensouda  
Mr Andrew Cayley

**Ad Hoc Counsel for the Defence**  
Mr Hadi Shalluf

**Other participants**  
Professor Antonio Cassese  
Ms Louise Arbour

**MAY IT PLEASE THE PRESIDING JUDGE AND JUDGES OF PRE-TRIAL CHAMBER I,**

**CONSIDERING** that, pursuant to the Statute, the Regulations of the Court and the Rules of Procedure and Evidence, the Ad Hoc Counsel for the Defence filed an application dated 20/12/2006 seeking leave from Pre-Trial Chamber I for the Ad Hoc Counsel for the Defence to be present and to participate in the proceedings which the Office of the Prosecutor is to undertake in Sudan,<sup>1</sup>

**CONSIDERING** that the application was filed following the Fourth Report of the Prosecutor to the United Nations Security Council pursuant to Resolution 1593,<sup>2</sup>

**CONSIDERING** that the Prosecutor reported to the United Nations Security Council that he would request the cooperation of the Government of the Sudan to facilitate a visit by a team from his Office to the Sudan in January 2007 to meet the individuals in custody;

**CONSIDERING** that the Prosecutor stated that he had already requested an update from the Government of the Sudan on national legal proceedings and that in a formal reply, the Government of Sudan had informed him that 14 individuals had been arrested for violations of international humanitarian law and human rights abuses,;

**CONSIDERING that the Ad Hoc Counsel for the Defence is of the opinion that any meeting between the Office of the Prosecutor and the individuals in custody in the Situation in Darfur must be conducted in the presence of the Defence, and that this is a requirement and obligation under the Rules of Procedure;**

---

<sup>1</sup> ICC-02/05-41

<sup>2</sup> ICC-OTP-20061215-193. The Prosecutor of the ICC is preparing to present evidence against individuals responsible for war crimes in Darfur - Fourth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1593 (2005) – See also interview granted to the BBC by the Prosecutor in Arabic on 14/12/2006 regarding the situation in Darfur.

**CONSIDERING** that in its response notified on 22/12/2006, the Office of the Prosecutor requested Pre-Trial Chamber I to reject the Defence application,<sup>3</sup>

**CONSIDERING** that the Office of the Prosecutor believes that the mission of the Ad Hoc Counsel for the Defence is limited and that his role is simply to respond to the observations of Professor Antonio Cassese, Chairperson of the International Commission of Inquiry on Darfur, and the observations of Ms Louise Arbour, United Nations High Commissioner for Human Rights,

**CONSIDERING** that the Ad Hoc Counsel for the Defence in the Situation in Darfur case is of the opinion that the decision of Pre-Trial Chamber I<sup>4</sup> clearly makes a distinction between the role of the Defence and that of the *amicus curiae* under article 103 of the Rules of Procedure and Evidence,<sup>5</sup>

**CONSIDERING** that in fact the decision rendered by Pre-Trial Chamber I on 24/07/2006 ordered the Registrar to appoint an ad hoc counsel responsible for representing and protecting the general interests of the Defence in the situation in Darfur, Sudan,

**CONSIDERING** that the role and mission of the Ad Hoc Counsel for the Defence are to represent and protect the general interests of the Defence in the situation in Darfur, Sudan, and that the obligations and duties of the Ad Hoc Counsel for the Defence are the same as those of any defence counsel, whether selected or assigned, or is duty counsel,

**CONSIDERING** that the Ad Hoc Counsel for the Defence is of the opinion that in accordance with his professional obligations and in order to safeguard and guarantee

---

<sup>3</sup> ICC-02/05-42

<sup>4</sup> ICC-02/05-10, "Decision inviting observations in application of Rule 103 of the Rules of Procedure and Evidence".

<sup>5</sup> See "The role of the Amicus Curiae before international criminal tribunals and the International Criminal Court", in *International Criminal Law Review*, August 2006, Volume 6, number 2, pp. 151-189 (Sarah Williams and Hannah Woola, Durham University)

the rights of the defence, he must represent and protect the general interests of the Defence in the Situation in Darfur, Sudan in any proceedings within the Court, or outside, or abroad.

**ACCORDINGLY**, the Ad Hoc Counsel for the Defence has the honour respectfully to request that the Presiding Judge and the Judges of Pre-Trial Chamber I grant him leave to reply to the response from the Office of the Prosecutor.

---

**Ad Hoc Counsel for the Defence**  
**Mr Hadi Shalluf**

Dated 22/11/2006

At Paris, France