

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-02/05  
Date: 2 February 2007

**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**

**Decision on the *Ad hoc* Counsel for Defence Request of 18 December 2006**

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

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

**PRE-TRIAL CHAMBER I** (“the Chamber”) at 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<sup>1</sup>;

**NOTING** the “Decision of the Registrar Appointing Mr Hadi Shalluf as *ad hoc* Counsel for the Defence” filed by the Registrar on 28 August 2006<sup>2</sup>;

**NOTING** the “Observations on issues concerning the protection of victims and the preservation of evidence in the proceedings on Darfur pending before the ICC” filed by Professor Antonio Cassese and registered in the Darfur situation record on 1 September 2006<sup>3</sup>;

**NOTING** the “*Prestations de serment par Maître Hadi Shalluf*” filed by the Registrar on 8 September 2006<sup>4</sup>;

**NOTING** the “Request for Extension of Time” of Mr Hadi Shalluf, filed on 14 September 2006<sup>5</sup> in which *ad hoc* Counsel for the Defence requested more time to

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<sup>1</sup> ICC-02/05-10.

<sup>2</sup> ICC-02/05-12.

<sup>3</sup> ICC-02/05-14.

<sup>4</sup> ICC-02/05-15.

familiarise himself with the situation file and thus enable him to adequately respond to the observations of Professor Antonio Cassese and Louise Arbour, United Nations High Commissioner for Human Rights ;

**NOTING** the “Decision on the Request for an Extension of Time” issued by the Chamber on the 22 September 2006 granting an extension of 21 days to the *ad hoc* Counsel for the Defence subsequent to the receipt of notification of the observations of Louise Arbour, United Nations High Commissioner for Human Rights <sup>6</sup>;

**NOTING** the “Observations of the United Nations High Commissioner for Human Rights invited in Application of Rule 103 of the Rules of Procedure and Evidence” filed by Louise Arbour on the 10 October 2006;<sup>7</sup>

**NOTING** the respective responses of the Prosecutor and the *ad hoc* Counsel for the Defence to the aforesaid observations of Professor Antonio Cassese and Louise Arbour, United Nations High Commissioner for Human Rights,<sup>8</sup>

**NOTING** the “Requête sollicitant la présence et la participation du conseil ad hoc pour la défense dans la procédure qui sera entamée par le Bureau du Procureur sur le territoire soudanais” filed on the 20 December 2006 in which the *ad hoc* Counsel for the Defence submits that in the Fourth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution

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<sup>5</sup> ICC-02/05-17.

<sup>6</sup> ICC-02/05-18.

<sup>7</sup> ICC-02/05-19.

<sup>8</sup> See ICC-02/05-16, “Prosecutor’s Response to Casses’s Observation on Issues Concerning the Protection of Victims and the Preservation of Evidence in the Proceedings on Darfur Pending before the ICC”; ICC-02/05-21, “Prosecutor’s Response to Arbour’s observations of the United Nations High Commissioner for Human Rights invited in Application of Rule 103 of the Rules of Procedure and Evidence”; ICC-02/05-20, *ad hoc* Counsel for Defence’s “CONCLUSIONS AUX FINS D’EXCEPTION D’INCOMPETENCE ET D’IRRECEVIABILITE”.

1593(2005), the Prosecutor stated his intentions of seeking the co-operation of the Government of Sudan to facilitate a visit by a team from his Office to the Sudan in January 2007 to meet 14 individuals that had been arrested for violations of international humanitarian law and human rights abuses;

**NOTING** that, on the above basis, the *ad hoc* Counsel for the Defence requests, *inter alia*: (1) that the Chamber permits him to attend any proceedings provided for in the Rome Statute, the Regulations of the Court and the Rules of Procedure and Evidence, related to the situation in Darfur which are carried out at the seat of the Court, outside it, as well as abroad; (2) that the Chamber orders the Office of the Prosecutor to inform him about any envisaged proceedings and invite him to attend and participate in any proceedings pursuant to the provisions of the Rome Statute and the Rules of Evidence and Procedure (“the *ad hoc* Counsel for the Defence Request”);<sup>9</sup>

**NOTING** the Prosecutor’s response to the *ad hoc* Counsel for the Defence First Request filed on the 22 December 2006 whereby he urges the Chamber to reject the *ad hoc* Counsel for the Defence’s Request and to deny the relief requested (“the Prosecutor’s Response”);

**NOTING** the “Demande pour répliquer a la réponse du Bureau du Procureur concernant la requête déposée par la défense sollicitant ‘la présence et la participation du conseil ad hoc pour la défense dans la procédure qui sera entamée par le Bureau du Procureur sur le territoire soudanais’” filed by the *ad hoc* Counsel

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<sup>9</sup> ICC-02/05-41.

for the Defence on the 27 December 2006<sup>10</sup>, asking the Chamber for leave to reply to the Prosecution's Response ("the *ad hoc* Counsel for the Defence Request to Reply");

**NOTING** articles 54, 55 and 56 of the Rome Statute ("the Statute"), regulations 111, 112, 113, 115 and 103 of the Rules of Procedure and Evidence ("the Rules"), and regulations 24 and 34 of the Regulations of the Court;

**CONSIDERING** that the *ad hoc* Counsel for the Defence, as per the order of the Chamber, was appointed by the Registrar, 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 that, 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 ;

**CONSIDERING**, notwithstanding that the *ad hoc* Counsel for the Defence Request is based on articles 54, 55 and 56 of the Statute and rules 111, 112, 113, 115, of the Rules; and that these provisions do not, in any way, apply to his mandate as spelt out in the "Decision of the Registrar Appointing Mr Hadi Shalluf as *ad hoc* Counsel for the Defence" filed by the Registrar on 28 August 2006<sup>11</sup>;

**CONSIDERING** therefore that the *ad hoc* Counsel for the Defence request falls out the parameters of his legally assigned responsibilities;

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<sup>10</sup> ICC-02/05-44

<sup>11</sup> ICC-02/05-12

**CONSIDERING** that the Chamber is not convinced that a further reply to the Prosecution's Response is necessary;

**FOR THESE REASONS**

**DECIDES** to reject the *ad hoc* Counsel for the Defence Request and the *ad hoc* Counsel for the Defence Request to reply.

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

  
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**Judge Claude Jorda**  
**Presiding Judge**

  
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**Judge Akua Kuenyehia**

  
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**Judge Sylvia Steiner**

Dated this Friday 2 February 2007

At The Hague

The Netherlands