

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05
Date: 18 September 2007

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public Document

**Decision on the Request for Review Pursuant to Regulation 135(2) of the
Regulations of the Registry Submitted by the Former Ad hoc Counsel for the
Defence on 27 July 2007**

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Adebawale Omofade, Trial Lawyer

Former 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*”,¹ rendered by the Chamber on 24 July 2006, 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*”,² filed by the Registrar on 25 August 2006;

NOTING the “*Decision on the Ad hoc Counsel for the Defence Request of 18 December 2006*”,³ rendered by the Chamber on 2 February 2007, whereby the Chamber (i) rejected the request to permit the *Ad hoc* Counsel to participate in, and be informed of, any proceedings undertaken by the Prosecution concerning the situation in Darfur, Sudan; (ii) specified that the mandate of the *Ad hoc* Counsel was restricted to proceedings pursuant to rule 103 of the Rules; (iii) determined that the *Ad hoc* Counsel’s mandate did not automatically extend to other proceedings at the pre-trial stage set out in the *Rome Statute* and the Rules; and (iv) found that the former *Ad hoc* Counsel’s request fell outside the parameters of his legally assigned responsibilities;

¹ ICC-02/05-10.

² ICC-02/05-12.

³ ICC-02/05-47.

NOTING the letter dated 13 February 2007,⁴ from the Head of the Division of Victims and Counsel to the *Ad hoc* Counsel, by which Mr Hadi Shalluf was informed that no payment would be made for the periods of 1 to 31 December 2006 and 1 to 31 January 2007 on the ground that he had been acting beyond the scope of his mandate;

NOTING the "*Request for Review of the Registry's decision of 13 February 2007*",⁵ filed on 27 February 2007, whereby the former *Ad hoc* Counsel requested the Chamber, *inter alia*, to order the Registrar to pay his fees for the work done in December 2006 and 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*",⁶ filed by the Registrar on 6 March 2007;

NOTING the letter dated 14 March 2007⁷ from Mr Hadi Shalluf to the Head of the Division of Victims and Counsel requesting information on the payment of his fees for September and October 2006;

NOTING the "*Decision on the Request for review of the Registry's decision of 13 February 2007*",⁸ rendered by the Chamber on 15 March 2007, whereby the Chamber noted that the *Ad hoc* Counsel had acted beyond the scope of his mandate and rejected his request for review of the Registrar's decision of 13 February 2007;

⁴ ICC-02/05-60-Anx 3.

⁵ ICC-02/05-57.

⁶ ICC-02/05-60.

⁷ ICC-02/05-89-Anx1.

⁸ ICC-02/05-66.

NOTING the letter dated 20 June 2007⁹ from Mr Hadi Shalluf to the Registrar, by which the former *Ad hoc* Counsel sought clarification from the Registrar regarding the decision of the Registry on the payment of his fees for November 2006 and February and March 2007;

NOTING the Registrar's reply to Mr Hadi Shalluf dated 26 June 2007,¹⁰ by which the Registrar informed the former *Ad hoc* Counsel that a decision regarding the non-payment of his fees for November had already been taken, as evidenced by 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*",¹¹ and that exceptionally, a legal aid commissioner would be appointed pursuant to regulation 136 of the *Regulations of the Registry* ("the RoR") to provide advice on the payment of the *Ad hoc* Counsel's fees for February, March and April 2007;

NOTING the "*Recours conformément à la norme 135, paragraphe 2, du Règlement du Greffe et en application de la norme 83 du Règlement de la Cour, à l'encontre de la décision du Greffier du 26/06/2007, refusant le paiement des honoraires du mois de novembre 2006*" ("the Request for Review"),⁵ filed on 27 July 2007, whereby the former *Ad hoc* Counsel requested the Chamber to review the decision of the Registry on the payment of his fees for the month of November 2006 and to order the Registrar to pay the fees for that month;

NOTING the observations of the Registry pursuant to rule 20(1)(d) of the Rules on the Request for Review ("the Registrar's Observations"),⁶ filed on 7 August 2007,

⁹ ICC-02/05-86-Anx1.

¹⁰ ICC-02/05-86-Anx2.

¹¹ ICC-02/05-60.

⁵ ICC-02/05-86

⁶ ICC-02/05-89. "*Observations du Greffier en application de la règle 20-1-d du Règlement de procédure et de preuve relatives au 'Recours conformément à la norme 135 paragraphe 2 du Règlement du Greffe et en*

whereby the Registrar requests the Chamber to declare inadmissible the Request for Review submitted by the former *Ad hoc* Counsel under regulation 135(2) of the RoR;

NOTING rule 103 of the Rules and regulations 135 and 136 of the RoR;

HEREBY RENDERS ITS DECISION.

1. In his Request for Review, the former *Ad hoc* Counsel apparently challenges the decision of the Registrar regarding the non-payment of his fees for November 2006 on a procedural basis rather than on the merits: Mr Hadi Shalluf alleges that the Registrar violated regulation 135(1) of the RoR by not taking a decision on the payment of his fees for November 2006 “at the earliest possible juncture”, as required by the regulation. Accordingly, the former *Ad hoc* Counsel requests the Chamber to review the decision of the Registrar of 26 June 2007 and to take a decision on the payment of his fees for November 2006.

2. In his filing dated 7 August 2007, the Registrar observes that Mr Hadi Shalluf’s current request should be considered inadmissible in its entirety by the Chamber.¹⁴ The Chamber observes that the arguments advanced are twofold. On the one hand, the Registrar notes that the request pertains to an issue which had already been settled by the Chamber in its decision of 15 March 2007, and therefore should be considered as *res judicata*.¹⁵ On the other hand, however, the Registrar observes that the Request for Review had been prematurely submitted to the Chamber since the Registrar, in the letter dated 12 July 2007, appointed a legal aid commissioner pursuant to regulation 136 of the RoR to provide advice

application de la norme 83 du Règlement de la Cour, à rencontre de la décision du Greffier du 26/06/2007, refusant le paiement des honoraires du mois de novembre 2006’ déposé le 27 juillet 2007 par Me. Hadi Shalluf.”

¹⁴ ICC-02/05-89, par. 17.

¹⁵ ICC-02/05-89, paras. 1-10.

regarding the request for payment of alleged pending fees, and that that process was still ongoing.⁷

3. With regard to the Registrar's arguments, the Chamber observes that in the letter dated 26 June 2007, the Registrar informed Mr Hadi Shalluf that, unless otherwise indicated by the *Ad hoc* Counsel, he would consider the letter received on 20 June 2007 as an implicit request to the Registrar to take a decision on the dispute concerning the payment of the fees for *February, March and April 2007*. As a result, the mandate of the legal aid commissioner appointed by the Registrar pursuant to regulation 136 of the RoR did not appear to include the dispute on the fees for the month of November 2006.
4. The Chamber further notes that Mr Hadi Shalluf was aware of the decision of the Registry to stop the payment of his fees as from 1 November 2006, as evidenced by the letter dated 14 March 2007 to the Head of the Division of Victims and Counsel in which Mr Hadi Shalluf affirms that [TRANSLATION]"I have taken due note of your decision, as set out in your response of 7 March 2007 before Pre-Trial Chamber I, to stop paying my fees as from 1 November 2006".⁸
5. The Chamber is of the view that in his letter dated 26 June 2007, the Registrar impliedly endorsed the decision taken by the Head of the Division of Victims and Counsel regarding the non-payment of the fees for the month of November 2006. Accordingly, in the view of the Chamber, the Request for Review with regard to the month of November 2006 is admissible.

⁷ ICC-02/05-89, par. 11-16.

⁸ ICC-02/05-89-Anx1.

6. Regarding the merits of the Request for Review, the Chamber recalls that in its previous decisions⁹ it had clearly defined the scope of the mandate of the *Ad hoc* Counsel as being strictly limited “to represent[ing] and protect[ing] 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 the mandate of the *Ad hoc* Counsel did not automatically extend to other proceedings at the pre-trial stage.¹⁰

7. Moreover, the Chamber has previously noted 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* filed in the record of the situation in Darfur, Sudan,¹¹ and that by failing to submit his response in writing, the *Ad hoc* Counsel had forfeited his right to respond.¹²

8. Accordingly, in its decision of 15 March 2007, the Chamber decided that the former *Ad hoc* Counsel was “in no position to demand payment of fees for the vexatious and frivolous claims instituted before this Chamber for the said period”,¹³ rejected the former *Ad hoc* Counsel’s request, and ordered 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 relation to the proceedings under rule 103 of the Rule in the Situation in Darfur, Sudan.

⁹ ICC-02/05-10, ICC-02/05-47, ICC-02/05-52, ICC-02/05-66.

¹⁰ ICC-02/05-47, p. 5; ICC-02/05-66, p. 6.

¹¹ ICC-02/05-10, p. 5.

¹² ICC-02/05-66, p. 6.

¹³ ICC-02/05-66, p. 7.

9. The Chamber notes that the actions undertaken by Mr Hadi Shalluf during the month of November 2006¹⁴ did not pertain to his mandate and that all requests and submissions made by him had been denied by the Chamber, *inter alia*, on the ground that he had no mandate to undertake such actions.¹⁵

10. Having found that Mr Hadi Shalluf acted beyond the scope of his mandate, the Chamber is therefore of the view that he is in no position to request any payment of fees for the vexatious and frivolous claims instituted before the Chamber in November 2006.

11. Moreover, with regard to the specific procedural claim made by the former *Ad hoc* Counsel that the Registrar violated regulation 135(1) of the RoR by not taking a decision on the dispute concerning the payment of the fees for November 2006 "at the earliest possible juncture", the Chamber notes that: (i) Mr Hadi Shalluf was aware as from March 2007 of the decision of the Registry to stop the payment of his fees from 1 November 2006, as evidenced by the letter dated 14 March 2007 that he sent to the Head of the Division of Victims and Counsel; (ii) that this notwithstanding, the Registrar was never expressly seized of the dispute regarding the payment of the fees for November 2006 before 20 June 2007; and (iii) that contrary to Mr Hadi Shalluf's allegations in his letter of 26 June 2007, the Registry took a decision on the matter at the earliest possible juncture as required by regulation 135(1) of the RoR.

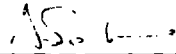
¹⁴ ICC-02/05-24, filed on 1 November 2006; ICC-02/05-26, filed on 6 November 2006; ICC-02/05-28 filed on 8 November 2006; ICC-02/05-30, filed on 14 November 2006 and ICC-02/05-35, filed on 27 November 2006.

¹⁵ See the decisions rendered by the Chamber rejecting the *Ad hoc* Counsel's requests and submissions filed in November 2006: ICC-02/05-25, ICC-02/05-33, ICC-02/05-34, and ICC-02/05-39. See also ICC-02/05-66, p. 7.

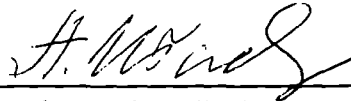
FOR THESE REASONS,

REJECTS Mr Hadi Shalluf's Request for Review.

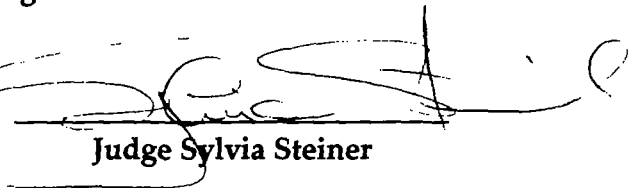
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Tuesday 18 September 2007

At The Hague, The Netherlands