

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05
Date: 31 October 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 Leave to Appeal to the Decision Issued on 23
September 2007**

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

Former *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 “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 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

¹ ICC-02/05-10.

² ICC-02/05-12.

⁹ ICC-02/05-86-Anx1.

¹⁰ ICC-02/05-86-Anx2.

¹¹ ICC-02/05-60.

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")³ 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")⁴ filed on 7 August 2007, 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 the "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"⁵ issued on 19 September 2007, whereby the Chamber rejected Mr. Shalluf's Request for Review after having found, among others, that as he acted beyond the scope of this mandate, he was in no position to request any payment of fees concerning November 2006;

³ ICC-02/05-86.

⁴ 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 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.*"

⁵ ICC-02/05-100.

NOTING the “*Demande d’autorisation d’interjeter appel à l’encontre de la décision du 18/09/2007*”⁶ filed on 24 September 2007 by the former *Ad hoc* Counsel, in which Mr. Shalluf requests leave to appeal to the decision of the Chamber of 18 September 2007; and claims that the Chamber violated the principles of contradiction, impartiality and fair trial;

NOTING article 82(1)(d) of the Rome Statute (“the Statute”), rules 13, 103 and 155 of the Rules, regulation 31(1) of the Regulations and regulation 135 of the RoR;

CONSIDERING that the former *Ad hoc* Counsel alleges that the Chamber, in its decision of 18 September 2007, (i) violated the adversarial principle by deciding on the appeal by the former *Ad Hoc* Counsel without satisfying that the adversarial principle had been respected between the parties, and (ii) breached the rules of law by not noting that the Registrar’s response of August 2007 was not disclosed and notified to the former *Ad Hoc* Counsel for the Defence in the Situation in Darfur;⁷

CONSIDERING that rule 13 of the Rules states that “the Registry shall serve as the channel of communication of the Court”; that Regulation 31(1) of the Regulations of the Court states that “subject to the Statute, Rules and Regulations or any order of a Chamber, all participants in the relevant proceedings shall be notified of any document registered by the Registry or any decision or order, unless, with regard to a document, the participant submitting the document requests otherwise”; and that these provisions in effect impose on the Registry a positive obligation to transmit and notify documents to participants;

⁶ ICC-02/05-102.

⁷ ICC-02/05-102. pp. 2 and 3 “*C’est à tort que les juges de la Chambre préliminaire 1 ont décidé et jugé le recours de l’ancien conseil ad hoc pour la défense dans la Situation Darfour sans la moindre vérification du respect du principe de contradiction entre les parties*” “*Or, par la simple lecture et vérification du dossier, les juges peuvent constater que la réponse du Greffier au cours du mois d’août 2007 n’a pas été communiquée et notifiée à l’ancien conseil ad hoc pour la défense dans la Situation Darfour, ce qui constitue un viol aux règles de droit*”

CONSIDERING that, in spite of the fact that the former *Ad hoc* Counsel was not notified of the Registrar's Observations as he should have been, the former Ad Hoc Counsel has not shown that he actually suffered any prejudice;

CONSIDERING further that nothing in the Statute, Rules and Regulations imposes an obligation on the Chamber to actively verify, *proprio motu*, communication and notification of documents to the parties to a dispute;

CONSIDERING that the former *Ad Hoc* Counsel 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 by the Chamber of an administrative decision taken by the Registrar alleging that the Chamber violated the principles of impartiality and fair trial in rendering its decision of 19 September 2007;

CONSIDERING that the Chamber, in its 27 March 2007 Decision⁸, stated 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; and 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";⁹

CONSIDERING that the Chamber further stated 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

⁸ ICC-02/05-70.

⁹ ICC-02/05-70, page 3.

question regarding the principle of equality of arms when either party is put at a disadvantage when presenting its case";¹⁰

CONSIDERING therefore that the administrative decision taken by the Registrar on 26 June 2007 regarding the payment of the fees of the former *Ad Hoc* Counsel of November 2006 and reviewed by the Chamber on 18 September 2007 could be appealable only if it would involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, for instance, if it would be notably linked to a question regarding the principle of equality of arms when either party is put at a disadvantage when presenting its case;

CONSIDERING that the mandate of the former *Ad Hoc* Counsel was confined to proceedings under Rule 103 of the Rules, that the amici curia filed their last observations on 10 October 2006 and that the former *Ad Hoc* Counsel has not filed any submission in relation to such observations;

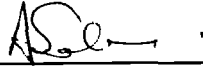
CONSIDERING that in this Request for leave to appeal, the former *Ad Hoc* Counsel did not bring any elements showing to which extent the issue of the payment of his fees of November 2006 would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial;

FOR THESE REASONS,

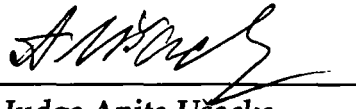
¹⁰ ICC-02/05-70, page 3.

REJECTS the request for leave to appeal.

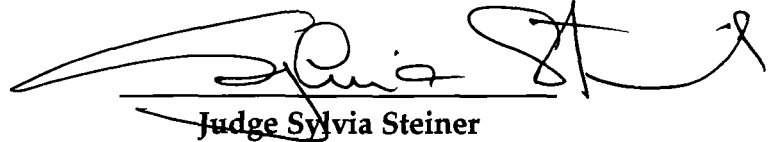
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Usacka



Judge Sylvia Steiner

Dated this Wednesday, 31 October 2007

At The Hague, The Netherlands