

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

**No.: ICC-02/05
Date: 12 September 2006**

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akia Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public Document

Request for an Extension of Time

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

Ad Hoc Counsel for the Defence
Mr. Hadi Shalluf

Other Participants
Professor Antonio Cassese
Ms. Louise Arbour

1. Introduction

1. On 24 July 2006, the Honourable Pre-Trial Chamber issued its Decision Inviting Observations in Application of Rule 103 of the Rules of Procedure and Evidence, which, in light of the most recent report of the Prosecutor to the Security Council and the duty of the Pre-Trial Chamber to take appropriate measures under articles 57(3)(c) and 68(1) of the Rome Statute to protect victims and witnesses and preserve evidence, invited Professor Antonio Cassese, Chairpersons of the International Commission of Inquiry into Darfur, Sudan, and Ms. Louise Arbour, the High Commissioner of the Office of the United Nations High Commissioner of Human Rights, to provide submissions as *amici curiae* on issues concerning the protection of victims and the preservation of evidence in Darfur, Sudan.
2. The Pre-Trial Chamber further noted that under Rule 103(2), both the Prosecution and the Defence have the right to respond to the observations of an *amicus curiae*. The Chamber therefore ordered the Registrar to appoint an *ad hoc* counsel to "represent and protect the general interests of the Defence in the Situation in Darfur, Sudan, during the proceedings pursuant to rule 103 of the Rules", and that the *ad hoc* Counsel and the Prosecution should file any response within 10 days of the notification of the observations of Professor Cassese and Ms. Arbour.
3. On 18 August 2006, the Office of the United Nations High Commissioner of Human Rights filed a request for an extension of time under Regulation 35 of the Regulations of the Court, citing prior work commitments, the complexity of the issues raised and the need therefore for in-depth consultations within the United Nations system.
4. On 28 August 2006, the Honourable Pre-Trial Chamber granted this request, and ordered that the deadline for filing the observations be extended by an additional 30 days for both Ms. Arbour and Professor Cassese. Nonetheless, on 31 August 2006, Professor Cassese filed his 'Observations on issues concerning the protection of victims and the Preservation of evidence in the proceedings on Darfur pending before the ICC'. This filing was notified by email to the participants, including *ad hoc* counsel for the Defence, on 1 September 2006.
5. In terms of the status of the appointment of *ad hoc* counsel for the Defence, although the Registrar issued the formal decision appointing Mr. Hadi Shalluf as *ad hoc* counsel on 25 August 2006, the *ad hoc* counsel for Defence accepted his official responsibilities and obligations under the ICC Code of Conduct on 8 September 2006. Following this, he was provided with access to relevant documents in the case file on

8 September 2006. The *ad hoc* counsel thus has only had a minimal opportunity to familiarise himself with the case file.

6. In accordance with regulation 35 of the Regulations of the Court, the *ad hoc* counsel for the Defence respectfully requests the Honourable Pre-trial Chamber to extend the deadline for responding to the observations of Professor Cassese.

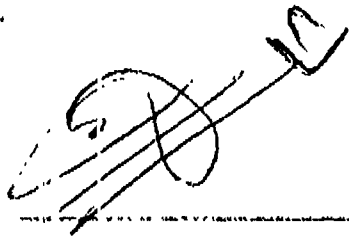
2. Submissions:

7. It is apparent that Professor Cassese and Ms. Arbour were invited to submit observations in light of their familiarity with the situation in Darfur, and the impact of this situation on victims and evidence. In addition, the Prosecution can be presumed to be intimately acquainted with both the contents of the case file, and the applicable regulatory framework pertaining to the protection of victims and the preservation of evidence at this stage of the proceedings.
8. In contrast, as noted above, the *ad hoc* Counsel for the Defence was only recently appointed and provided with access to the case file, and is endeavouring to research and evaluate the issues and any applicable jurisprudence and literature in what is an extremely short space of time.
9. The *ad hoc* counsel for the Defence would also greatly benefit from being able to assess the cogency and feasibility of the suggestions and arguments raised by Professor Cassese in light of the submissions of Ms. Arbour, as the High Commissioner of the Office of the United Nations High Commissioner of Human Rights.
10. Finally, the *ad hoc* counsel for the Defence is of the strong view that issues pertaining to the protection of victims and the preservation of evidence (including presumably, exculpatory evidence) will have a significant impact on future Defence cases. It is therefore in the interests of justice to ensure that the *ad hoc* counsel for the Defence has had an appropriate opportunity to research and raise all relevant matters pertaining to the rights of the Defence and the possibilities for fair trial, given the current situation in Darfur. In this regard, the *ad hoc* counsel for the Defence is of the position that the regular time limit for responses (21 days) is more appropriate, given his particular circumstances.
11. The *ad hoc* counsel for the Defence therefore respectfully submits that the requirement of demonstrating good cause for an extension of time is met by the above-mentioned issues.

3. Relief Sought

12. In light of the aforementioned arguments, the *ad hoc* counsel for the Defence respectfully requests the Honourable Pre-trial Chamber to

- order that the deadline for responding to the observations of Professor Cassese shall be the same as the deadline for responding to the observations of Ms. Arbour;
- grant the *ad hoc* counsel for the Defence a deadline of 21 days from the notification of the filing of Ms. Arbour's observations to file his response observations.



Hadi Shalluf
Ad hoc counsel for the Defence

Dated this 12th day of September 2006

At Paris, France