

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-02/05**

Date: **5 March 2009**

PRE-TRIAL CHAMBER I

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

SITUATION IN DARFUR, THE SUDAN

Public Redacted Version

Request for reclassification

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of Victims

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**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

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Amicus Curiae

REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Procedural Background

1. On 20 November 2008, the Office of the Prosecutor (“the Prosecution” or “the Office”) filed an Application pursuant to Article 58 of the Rome Statute (“the Application”) requesting Pre-Trial Chamber I (the “PTC”) to issue warrants of arrest or alternatively summonses to appear for the three commanders involved in the attacks against AU Peacekeepers based in Haskanita, namely [REDACTED]¹. The Application was classified “Confidential - Ex parte Prosecution Only”. On the same day, the Prosecution filed as a Public Document a summary of the Application.
2. On 2 December 2008, the Prosecution filed its “Provision of Information Pursuant to Article 58”, in which it provided the PTC with further information on [REDACTED] their willingness to cooperate with the Court.²
3. On 22 December 2008, the Prosecution requested authorization of the PTC to disclose [REDACTED] the names of the [REDACTED] individuals named in the Application in order to enable them to appear before the Court at the appropriate time.³ The Single Judge denied the Prosecution’s request on the ground, *inter alia*, that the Prosecution’s Application pursuant to Article 58 has not yet been decided.⁴
4. On 1 February 2009, [REDACTED].

¹ ICC-02/05-163-Conf-Exp .

² ICC-02/05-165-Conf-Exp + Anxs1-8.

³ ICC-02/05-167-Conf-Exp.

⁴ ICC-02/05-169-Conf-Exp.

5. [REDACTED].
6. On 23 February 2009, the Prosecution filed its "Submission of information on the Prosecution's Application Pursuant to Article 58 and request for summonses to appear"⁵ ("the 23 February Filing").
7. In the 23 February Filing, the Prosecution informed the PTC that it has sent "*a mission to [REDACTED] and eventually to conduct an interview under Article 55 of the Rome Statute*".⁶
8. On 25 February 2009, the Prosecution filed a Request for Expedited Decision on the Prosecution's Application Pursuant to Article 58"⁷ ("the 25 February Filing").
9. In the 25 February Filing, the Prosecution addressed one aspect raised by the Judges during the 3 February hearing⁸, which is the issue of visas, and explained to the Chamber that, should the Judge decide to issue a summons to appear or an arrest warrant, visa issues should not be difficult to deal with as, "*in the course of its efforts to explore securing visas for [REDACTED,] it has become clear that a decision of the Court would facilitate the successful outcome of these visa procedures*".⁹
10. On 2 March 2009, the PTC rendered its decision on the Prosecution's Request for Expedited Decision on the Prosecution's Application ("the 2

⁵ ICC-02/05-194-Conf-Exp and its accompanying annexes.

⁶ ICC-02/05-194-Conf-Exp, paragraph 15.

⁷ ICC-02/05-195.

⁸ ICC-02/05-T-4-CONF-EXP-ENG ET 03-02-2009, page 40, lines 8-23.

⁹ ICC-02/05-195-Conf-Exp, paragraph 11.

March Decision”).¹⁰ On the same day, the PTC also issued a public redacted version of the decision.¹¹ In that decision, the PTC rejected the Prosecution’s Request for Expedited Decision and stated *obiter* that “... until the Chamber issues a decision on the Prosecution Application, States have no obligation, pursuant to either the Statute or the United Nations Security Council Resolution 1593, to grant a visa to any such individual for the purpose of traveling to the Hague to appear before this Chamber”.¹²

11. In view of the above statement and the appearance of a misunderstanding of the current activities of the Office, the Prosecution submits the following.

Clarification of the Prosecution Requests and Information Provided

12. The Prosecution’s activities with regards to the [REDACTED] is limited to making arrangements to conduct an Article 55(2) interview [REDACTED]. These activities are within the mandate of the Prosecution and are being carried out pursuant to Article 54(2)(a) of the Rome Statute.
13. In this context, the Prosecution notes that States Parties to the Rome Statute have a general obligation under Articles 86 and 93 of the Statute to cooperate with the investigative activities of the Prosecution. Indeed, since the commencement of investigations in the Darfur Situation, the Prosecution has received the cooperation of a number of States resulting in the interview of more than 100 witnesses in 18 different countries.

¹⁰ ICC-02-05-198-Conf-Exp .

¹¹ ICC-02-05-199-Conf-Exp .

¹² ICC-02-05-198-Conf-Exp., page 8.

14. In addition, the Prosecution has a responsibility under the Statute to ensure the protection of its witness, including persons questioned under Article 55 (2). In this context, the Statute provides that the Prosecutor can take certain measures. [REDACTED].
15. The Prosecution notes that the 25 February Filing addressed a different issue, and requested the expedited consideration of the Prosecution Application for a summons to appear. In this context, it informed the PTC that *“a decision of the Court would facilitate the successful outcome of the visa procedures”* [REDACTED].¹³ This statement should be understood in the context in which it was made. The Prosecution merely sought to inform the PTC that once the PTC issued a summons to appear (if that were to be the PTC’s decision), there would be no complex visa issue to be dealt with.
16. The Prosecution reiterates that the statement should not be interpreted to mean that the Prosecution was making efforts to secure visas for [REDACTED] for any other purpose other than to [REDACTED] an Article 55(2) interview could be conducted.

Request for Reclassification of Prosecution filings of 23 February and 25 February 2009

17. The Prosecution notes that the PTC has issued a public redacted version of its Decision on the Prosecution Application for Expedited Decision on the Prosecution’s Application of 20 November 2008, the Prosecution is of the

¹³ ICC-02/05-195-Conf-Exp, paragraph 11.

view that in the interest of transparency and completeness of the public record the relevant filings ought to be put in the public domain. In this regard, the Prosecution:

- a. requests the PTC to, pursuant to Regulation 23 *bis* of the Regulations of the Court, reclassify the confidentiality level of the Prosecution filings of 23 February and 25 February 2009 and to allow the Prosecution to file public redacted versions of those filings; and
- b. notifies the PTC that it will simultaneously file a public redacted version of this filing.



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Luis Moreno-Ocampo

Prosecutor

Dated this 5th day of March 2009

The Hague, Netherlands