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No.: **ICC-02/05-02/09**
Date: **17 August 2009**

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

SITUATION IN DARFUR, THE SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. BAHAR IDRIS ABU GARDA***

Public Document

**Defence Observations on the Revised Version of the E-Court Protocol Submitted
by the Registry**

Source: The Defence

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

INTRODUCTION

1. Pursuant to the Single Judge's "Decision Inviting the Parties to submit their Observations on the E-court Protocol submitted by the Registrar",¹ the parties are invited to submit "their observations on the revised version of the E-court Protocol submitted by the Registrar in its Submission"² of 23 July 2009.³ The Defence hereby presents its observations on the revised version of the E-court Protocol. The Defence accepts *all* of the technical improvements inserted into the revised version of the E-court Protocol by the Registrar⁴ and proposes an additional technical improvement regarding updates to the five "*OTP ONLY*" metadata fields⁵ for the reasons set forthwith.

OBSERVATIONS ON TECHNICAL IMPROVEMENTS

2. The Defence accepts in the revised E-court Protocol the insertion of paragraph 23 regarding "Specific measures for corrigenda".⁶ The procedures outlined in this paragraph will assist the parties in identifying data that has been updated due to party error pursuant to paragraph 7 of the revised E-court Protocol.⁷

3. The Defence accepts in the revised E-court Protocol the insertion of the "Related Witness" field into the metadata table "potential evidence, evidence and material".⁸ This field identifies the relevant relationship between a witness and the potential evidence, evidence or material, and would be particularly useful for identifying the relationship between a specific anonymous witness and the potential evidence, evidence or material.

¹ ICC-02/05-02/09-40

² *Ibid*, Pg 5

³ ICC-02/05-02/09-38 and ICC-02/05-02/09-38-Anx1

⁴ ICC-02/05-02/09-38, Pg 6, wherein the Registrar notes that the E-court Protocol submitted in the record of the present case is "a revised version of the E-Court Protocol used by the Pre-Trial Chamber in the Lubanga case and the Katanga and Ngudjolo case, wherein the *technical improvements*" that have taken place after the Confirmation hearings in the Lubanga case and the Katanga and Ngudjolo case have been inserted.

⁵ See ICC-02/05-02/09-38-Anx1, Pgs 13-15 and 19-22. The five "*OTP ONLY*" fields are: "Charge"; "Element of Alleged Crime"; "Incident"; "Element of statement of facts"; and "Mode of participation".

⁶ ICC-02/05-02/09-38-Anx1, Pg 5

⁷ *Ibid*, Pg 2

⁸ *Ibid*, Pg 13

4. The Defence accepts in the revised E-court Protocol the insertion of the following “*OTP ONLY*” fields into the metadata table “potential evidence, evidence and material”: “Charge”; “Element of Alleged Crime”; “Incident”; “Element of statement of facts”; and “Mode of participation”.⁹ When accurately provided by the Prosecution in the manner proscribed in the revised E-court Protocol, the data in these fields would promote a more efficient judicial process by identifying the manner in which the Prosecution intends or potentially intends to utilize each item of potential evidence, evidence and material. Such data would allow the Defence to better allocate its resources in researching and addressing the potential evidence, evidence and materials presented by the Prosecution.

5. The Defence accepts in the revised E-court Protocol the insertion of the following “*OTP ONLY*” fields into the metadata table of “Witness and Victim Information”: “Charge”; “Element of Alleged Crime”; “Incident”; “Element of statement of facts”; and “Mode of participation”.¹⁰ Similar to the position outlined above in paragraph 4, when accurately provided by the Prosecution in the manner proscribed in the revised E-court Protocol, the data in these fields would promote a more efficient judicial process by identifying the manner in which the Prosecution intends or potentially intends to utilize each item of potential evidence, evidence and material emanating from a witness or victim. This data would allow the Defence to better allocate its resources in researching and addressing such potential evidence, evidence and materials.

6. The Defence accepts in the revised E-court Protocol the insertion of the “Person/Witness from whom the document emanated” field into the metadata table of “Witness and Victim Information”.¹¹ This field will allow the parties to easily and quickly identify from whom a document emanated.

⁹ *Ibid*, Pgs 13-15

¹⁰ *Ibid*, Pgs 19-22

¹¹ *Ibid*, Pg 22

ADDITIONAL PROPOSED TECHNICAL IMPROVEMENT

7. Due to the nature of the data contained within the five “*OTP ONLY*” fields¹² inserted by the Registry into the metadata tables for “potential evidence, evidence and material” and “Witness and Victim Information”, there is a significant likelihood that the Prosecution will amend all or some of these fields for a particular item of potential evidence, evidence or material after its initial submittal to the Registry for consideration by the Chamber. As is a common experience before international criminal tribunals, as the Prosecution continues to investigate a case during the pre-trial stage, it may amend or delete charges, or amend the manner in which it intends to use a particular item of potential evidence, evidence or material as it relates to an element of an alleged crime, an incident, an element of the statement of facts, or the mode of participation.

8. These deletions and amendments to the data in the five “*OTP ONLY*” fields, as multiplied by the innumerable individual items of potential evidence, evidence and materials the Prosecution intends to submit to the Chamber, presents a potentially significant strain on Defence resources in first identifying and then adjusting to such changes. The Defence respectfully submits that the imposition of two minor additional requirements on the Prosecution would greatly assist the Defence in identifying these changes. First, “[a]ny updates” to the five “*OTP ONLY*” fields “shall be accompanied with a letter outlining the Document ID(s) and the information that has been changed.”¹³ Second, changes to the five “*OTP ONLY*” fields shall be made in “tracked changes”¹⁴, which will make clear to the viewer exactly what information has been deleted, amended, or added.

CONCLUSION

9. On the grounds set forth in these observations, the Defence prays the Single Judge accept the text of the revised version of the E-court Protocol filed by the

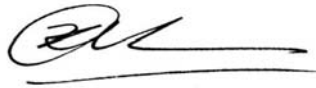
¹² As set out in paragraphs 3 and 4 of these Defence observations, the five “*OTP ONLY*” fields are: “Charge”; “Element of Alleged Crime”; “Incident”; “Element of statement of facts”; and “Mode of participation”.

¹³ See ICC-02/05-02/09-38-Anx1, para 7, which requires that any updates to data due to party error “shall be accompanied with a letter outlining the Document ID(s) and the information that has been changed.”

¹⁴ “Tracked changes” refers to an option in word processing programs that records and visually depicts all changes made to an original document.

Registrar in the record of the present case, and respectfully requests that the Single Judge order the Registrar to insert into the revised version of the E-court Protocol the requirements of an update letter and the use of “tracked changes” in line with the specifications outlined in paragraph 8 of these Defence observations.

Respectfully submitted,



Karim A. A. Khan
Defence Counsel

Dated this 17th Day of August, 2009

At The Hague, The Netherlands