

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original English

No.: ICC-02/05-02/09
Date 20 August 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

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

Public Document

**Registry Observations on the Observations of the Parties on the Revised Version
of the E-Court Protocol**

Source: Registrar

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Mr Essa Faal

Counsel for the Defence

Mr Karim A A Khan

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Ms Charlotte Dahuron-Jakoby

THE REGISTRAR of the International Criminal Court (the “Court”),

NOTING the “*Decision scheduling a hearing on issues relating to disclosure between the parties*” issued by the Single Judge on 30 May 2009,¹

NOTING the “*Second Decision on issues relating to Disclosure*”, issued by the Pre-Trial Chamber I (the “Chamber”) on 15 July 2009 (“the Decision of 15 July 2009”),²

NOTING the “*Submission in the record of the case by the Registrar of a revised version of the E-Court Protocol used by Pre-Trial Chamber I in the Lubanga and the Katanga and Ngudjolo cases*”, submitted by the Registry on 23 July 2009 (“the Submission of the Registrar of 23 July 2009”),³

NOTING the “*Submission by the Registrar of a revised version of the E-Court Protocol of Trial Chamber I*” and its annex 1 submitted by the Registry in the Katanga and Ngudjolo case on 27 March 2009,⁴

NOTING the “*Decision Inviting the Parties to Submit their Observations on the E-Court Protocol Submitted by the Registrar*”, issued by the Single Judge on 30 July 2009 (“the Decision of 30 July 2009”),⁵

NOTING the “*Defence Observations on the Revised Version of the E-Court Protocol Submitted by the Registry*”, submitted by the Defence on 17 August 2009,⁶

¹ ICC-02/05-02/09-18

² ICC-02/05-02/09-35

³ ICC-02/05-02/09-38

⁴ ICC-01/04-01/07-1003

⁵ ICC-02/05-02/09-40

⁶ ICC-02/05-02/09-52

NOTING the *“Prosecution’s Observations on the Revised Version of the E-Court Protocol as Submitted by the Registrar”*, submitted by the Office of the Prosecutor on 17 August 2009,⁷

NOTING regulations 24bis and 26(3) of the Regulations of the Court,

CONSIDERING that the Decision of 30 July 2009 invites *“the parties to submit, by no later than 17 August 2009, their observations on the revised version of the E-Court Protocol submitted by the Registrar”*,⁸

CONSIDERING that on 17 August 2009, both the Defence and the Office of the Prosecutor submitted their observations on the revised version of the E-Court Protocol,

CONSIDERING that *“the Defence accepts all of the technical improvements inserted into the revised version of the E-Court Protocol by the Registrar and proposes an additional technical improvement regarding updates to the five “OTP ONLY” metadata fields”*⁹,

CONSIDERING that on the other hand, *“the Prosecution objects to both (i) the insertion of subjective meta-data fields which are not contained in the E-Court Protocol as used in the Lubanga and Katanga cases and (ii) to the inclusion of a technical change not discussed with the Office of the Prosecutor’s Knowledge Base Unit”*,¹⁰

⁷ ICC-02/05-02/09-53

⁸ ICC-02/05-02/09-40, p 5

⁹ ICC-02/05-02/09-52, p 3

¹⁰ ICC-02/05-02/09-53, p 4

CONSIDERING the abovementioned observations, the Registry realizes that its *interpretation of the Decision of 15 July 2009 was different to the one intended by the Chamber*

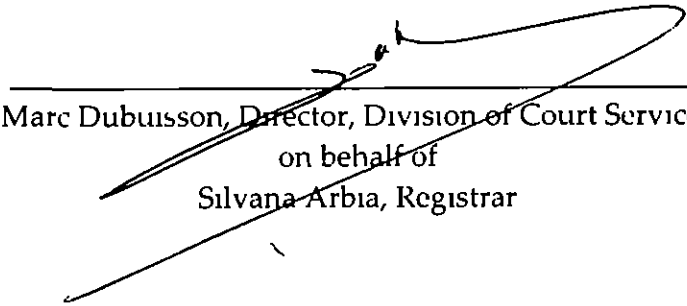
RESPECTFULLY SUBMITS the following observations

- Taking into account the two E-Court Protocols used in the Lubanga and Katanga and Ngudjolo case and the need to achieve a generic E-Court Protocol that can be used throughout different cases and phases, the Registry submits that the E-Court Protocol should be limited to the objective metadata fields ,
- The Registry is also of the view that for the purpose of implementing a generic E-Court Protocol, the parties and participants could, at a later stage and as a matter of principle for future cases, explore the proposed five "OTP ONLY" fields which are of a subjective nature as well as the two additional fields requested by the Defence in its submission of 17 August 2009,
- The Registry believes that any alteration provided to a piece of evidence would result in new evidence. The latter would be registered under a different number. Therefore, the Registry recommends that the paragraph 23 related "specific measures for corrigenda"¹¹ should be removed,
- The Registry remains at the disposal of the Chamber, the parties and participants for further discussions with the aim of standardizing the information and services provided by the Registry (such as ensuring consistency between the security classifications assigned to evidence by the

¹¹ ICC-02/05-02/09-38-Anx1, p 5

Office of the Prosecutor and those assigned by the Registry, ensuring that the participant codes that represent Defence and Victim participants are maintained as unique and ensuring that the Registry is as transparent as possible on the services it provides to the parties and participants),

RESPECTFULLY SUBMITS, in Annex hereto attached, a revised version of the E-Court Protocol submitted by the Registry in the "Trial phase" of the Katanga and Ngudjolo case



Marc Dubuisson, Director, Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 20 August 2009

At The Hague, The Netherlands