

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-02/05-02/09**

Date: **24 August 2009**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, THE SUDAN

IN THE CASE OF THE PROSECUTOR

V.

BAHAR IDRIS ABU GARDA

Public Document

Prosecution's Second Report on Status of the Procedures initiated under Articles 54(3)(e), 73 and 93 in relation to items identified as Potentially Exonerating and materials relevant for the Preparation of the Defence

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Karim A.A.Khan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 15 July 2009 the Pre-Trial Chamber I (“the PTC”) issued its Second Decision on issues relating to Disclosure (“the 15 July Decision”), in which it ordered the Prosecution to file by 10 August its “first report on the status of the procedures initiated under articles 54(3)(e), 73 and 93 of the Statute in relation to those items identified as of potentially exculpatory nature under article 67(2) of the Statute or which are material to the preparation of the defence pursuant to rule 77 of the Rules” and to file subsequent status reports every two weeks.¹
2. The Prosecution submits this second report to the Single Judge pursuant to the above-mentioned order.

Status of procedures initiated under Article 54(3)(e) in relation to potentially exculpatory material

3. In its report of 10 August 2009, the Prosecution indicated that after completion of its first and second review it identified ONE (1) document as containing potentially exculpatory material. The Prosecution also indicated that it was looking for identical information included in a public document before asking the information provider to lift the confidentiality restrictions imposed on this document.² This process is continuing.

¹ ICC-02/05-02/09-35 17-07-2009, at page 16.

² ICC-02/05-02/09-45, para. 4.

Status of procedures initiated under Article 54(3)(e) in relation to materials relevant for the preparation of the defence pursuant to Rule 77

4. In the same report, the Prosecution indicated that after its second review, it identified EIGHT (8) documents as potentially containing information that may be material for the preparation of the Defence, and was looking for identical information included in a public document before approaching the information provider to seek the lifting of confidentiality restrictions.³ The Office of the Prosecutor has now requested that the information provider(s) lift the confidentiality restrictions imposed on these documents.

Status of procedures initiated under Article 54(3)(e) in relation to materials in other OTP collections containing potentially exculpatory material under Article 67(2) or that may be material for the preparation of the defence pursuant to Rule 77

5. With regards to materials collected in the other situations under Article 54(3)(e) conditions, the Prosecution in its last report informed that it was in the process of reviewing these materials with a view to determining whether they contain any potentially exculpatory evidence or information material to the preparation of a relevant defence in this case.⁴ The review exercise has progressed significantly, though it is not yet complete. Thus far, the Office of the Prosecutor has not identified any document containing potentially exculpatory evidence or information material to the preparation of a relevant defence in this case.

³ ICC-02/05-02/09-45, para. 5.

⁴ ICC-02/05-02/09-45, para. 6.

Next report

6. In its next report, due on 3 September 2009, the Prosecution will provide an update of its arrangements with relevant information providers and the status of the ongoing review.



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Luis Moreno-Ocampo

Prosecutor

Dated this 24th day of August 2009

At The Hague, The Netherlands