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No.: ICC-02/05-02/09
Date: 12 October 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

With Public Annexes 3 and 6 and Confidential Annexes 1,2,4,5 and 7

**REQUEST BY THE OFFICE OF PUBLIC COUNSEL FOR THE DEFENCE TO
HAVE ACCESS TO REAL TIME TRANSCRIPTS OF HEARINGS THROUGH
ITRASCEND IN THE ABU GARDA CASE**

Source: Office of Public Counsel for the Defence

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

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Legal Representatives of the Applicants

Unrepresented Victims

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. On 3 September 2009, the Office of Public Counsel for the Defence (“OPCD”) exchanged emails with the Courtroom Officer of the Court Management Section (“CMS”) in order to obtain access by OPCD to real time transcripts in the *Abu Garda* case.¹
2. On 24 September 2009, the Courtroom Officer informed OPCD by email that Pre-Trial Chamber I did not grant access to OPCD to the real time transcripts.² The officer also stated that in case OPCD deemed it necessary to have such access, Pre-Trial Chamber I invited OPCD to submit a formal request.³
3. OPCD has subsequently been informed by the *Abu Garda* Defence that it wishes to be assisted by OPCD during hearings. OPCD further notes that on 12 October 2009, the *Abu Garda* Defence filed an application requesting that OPCD be granted real time access to transcripts in the *Abu Garda* hearings through iTranscend.⁴
4. The OPCD therefore respectfully requests that Pre-Trial Chamber I grant access to the OPCD to real time transcripts of hearings in the *Abu Garda* case through iTranscend.

II. MANDATE AND JUSTIFICATION

5. Under Regulation 77(5) of the Regulations of the Court, the OPCD is required to “provide support and assistance to defence counsel and to the person entitled to legal assistance, including, where appropriate legal research and advice [...]”.
6. Access to real time transcripts of hearings through iTranscend has previously been granted to OPCD in the *Lubanga* case by the Trial Chamber,⁵ and in the *Katanga and Ngudjolo* case by the Pre-Trial and Trial Chamber.⁶

¹ See Annex 1.

² See Annex 2.

³ See Annex 2.

⁴ The Pros. v. Abu Garda, *Application requesting the granting of access to the Office of Public Counsel for the Defence to real time transcripts of hearings*, ICC-02/05-02/09-157, 12 October 2009.

⁵ See Annex 6 and 7.

⁶ See Annex 3, 4 and 5.

7. In the *Lubanga* case, the Trial Chamber instructed the parties to provide a list of the names of 20 persons who would have access to real time transcripts. The Defence Team in that case placed three designated members of the OPCD on the list.⁷
8. In the *Katanga and Ngudjolo* case, the honourable Single Judge Sylvia Steiner “order[ed] the Registrar to give OPCD access to the real time transcript of public hearings held before Pre-Trial Chamber I if any Defence Team requests the assistance of the OPCD for the purpose of such hearings” for the following reasons:
 - “granting the OPCD access to the real time transcript of those public hearings held before Pre-Trial Chamber I, not only expedites the course of the proceedings, but also permits any Defence team, if it so wishes, to benefit at public hearing from the legal assistance and support of the OPCD as provided for under regulation 77(5) of the Regulations;”
 - “further [...] granting the OPCD access to the real time transcript of public hearings before the Pre-Trial Chamber will place the OPCD in a position to adequately fulfil its mandate to provide legal support and assistance at public hearings without being present in the Courtroom”.⁸
9. In May 2009, the OPCD received an e-mail communication from the Chamber’s Legal Advisor in which the OPCD was invited to submit names of its members who would be authorized to have access to real time transcripts through iTranscend. According to this e-mail, the Trial Chamber considered that OPCD must be able to continue to support the Defence Counsel, also during the closed sessions.⁹ Accordingly, the OPCD submitted a list of the three names of persons who were already granted access in the *Lubanga* case (i.e. Melinda Taylor, Counsel; Claire Fourçans, Associate Counsel; and Vedrana Residovic, Case Manager).
10. The OPCD submits that by following the ongoing hearings in real time through iTranscend, it will be able to provide immediate advice and assistance to the *Abu Garda* Defence on issues raised during the pre-trial and trial proceedings which require a speedy resolution. Without access to real time transcripts, the OPCD would not be able to provide assistance to the Defence in an efficient manner.

⁷ See Annex 6 and 7.

⁸ ICC-01/04-01/07-429, Decision on the Defence Request regarding Access to Real Time Transcript of Public Hearings 21 April 2008, pp. 4-5.

⁹ See Annex 4.

11. First, although the OPCD would normally receive access to public transcripts of hearings following release by CMS, the release of such public transcripts is often delayed due to the need to make corrections and redactions. Judging by the experience with the *Lubanga* trial, the release of the public version of the transcripts can often be delayed between a few days to up to several months. Without access to the transcript it makes it much more difficult for OPCD to ascertain exactly what issues have been raised, and what assistance needs to be provided.
12. Second, OPCD is not located in the Arc and, as such, the Defence could not meet with OPCD during the court break to alert OPCD of any procedural or substantive legal issues which require assistance.
13. Third, without access to the real time transcripts, OPCD could only follow the proceedings by assigning one of its members to sit and observe the proceedings from the public gallery. This would place a drain on OPCD's limited resources, which could have an impact on its ability to provide assistance to the other defence teams before the ICC. Also, OPCD member would not be able to provide immediate assistance as they would have no access to computer facilities. However, by permitting access to the real time transcripts, OPCD's members would be able to follow proceedings from their office premises in Haagse Veste, enabling them to receive requests for assistance from the Defence and to communicate assistance efficiently and effectively.
14. The Annexes 1,2,4,5 and 7 to this Request are filed confidentially as they contain confidential internal correspondence.

FOR THE FOREGOING REASONS,

15. The OPCD respectfully requests Pre-Trial Chamber I to grant access to OPCD to hearing transcripts in real time through iTranscend. The Office further requests that the same list of persons who were granted access to the transcripts in the *Lubanga* case and in the *Katanga and Ngudjolo* case be granted access to the transcripts of the hearings in the *Abu Garda* case, i.e. Melinda Taylor, Counsel; Claire Fourçans, Associate Counsel; and Vedrana Residovic, Case Manager, with the temporary

addition of Nicholas Robson, Counsel, who is replacing Melinda Taylor during her maternity leave.



Xavier-Jean Keïta, Principal Counsel
Office of Public Counsel for the Defence

Dated this 12 October 2009

At The Hague, The Netherlands