

ANNEX D



Original: English

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

Date: 14 October 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 Redacted Version of

**Prosecution's Application for Redactions to Statements of Witnesses
DAR-OTP-WWWW-0416, DAR-OTP-WWWW-0418, DAR-OTP-WWWW-0419 and
DAR-OTP-WWWW-0421 Pursuant to Rules 81(2) and 81(4) filed on 10 July 2009**

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

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
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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor ("the Prosecution" or "the OTP") respectfully submits this Application (" the Application") pursuant to Rule 81(2) and 81(4) of the Rules of Procedure and Evidence ("the Rules"), and to its undertaking given to the Pre-Trial Chamber I during the Status Conference held on 9 June 2009.

II. REQUEST

2. The Prosecution hereby requests for:

(a) an Order granting the redaction and non-disclosure of information from statements of witnesses in the possession of the Prosecutor, disclosure of which may prejudice further and/or ongoing investigations, pursuant to Rule 81(2) of the Rules; and

(b) an Order granting the redaction and non-disclosure of the identities and other identifying information of persons at risk on account of activities of the Court from the Defence of Bahar Idris Abu Garda prior to the commencement of the trial, pursuant to Rule 81(4) of the Rules.

3. The Prosecution submits this request and its annexes "Under seal, *Ex Parte*, Only available to the Prosecutor and the Victims and Witnesses Unit", since they relate to material that is currently under seal and *ex parte* and depicts information for which redactions are sought. Communication of such information would defeat the purpose for which the redactions are requested.

III. ORGANIZATION OF THE MATERIALS

4. The Prosecution herewith submits to the Pre-Trial Chamber I proposed redactions of the following witness statements and their related annexes (where applicable):

- i.* DAR-OTP-WWWW-0416 [TEXT REDACTED] [DAR-OTP-0165-0381](Annex A)
- ii.* DAR-OTP-WWWW-0418 [TEXT REDACTED] [DAR-OTP-0165-0471](Annex B)
- iii.* DAR-OTP-WWWW-0419 [TEXT REDACTED] [DAR-OTP-0165-0489](Annex C)
- iv.* DAR-OTP-WWWW-0421 [TEXT REDACTED] [DAR-OTP-0165-0544](Annex D)

5. In order to assist the Pre-Trial Chamber I in the review the proposed redactions, the Prosecution additionally attaches to each statement a Table containing: (i) individual proposed redactions by page number; and (ii) the corresponding rule justifying the proposed redaction.

6. The Prosecution has also colour coded each proposed redactions as follows:

- (i) Blue: represents proposed redactions pursuant to Rule 81(2) that relate exclusively to the further and/or ongoing investigation; and
- (ii) Red: represents proposed redactions pursuant to Rule 81(4), to ensure the confidentiality of information, in accordance with Articles 54 (innocent third parties), 72 and 93, and, in accordance with Article 68, to protect the safety of witnesses and victims and members of their families.

IV. JUSTIFICATION FOR REQUESTED REDACTIONS

(a) Proposed redactions Pursuant to Rule 81(2) of the Rules- Ongoing Investigations

7. The Prosecution's investigations into the allegations of crimes committed during the attack carried out on the African Union Military Group Site Haskanita on 29 September 2009 are still ongoing. These investigations have two main aspects: (i) one which concerns Bahar Idris Abu Garda against whom a Summons to Appear has been issued on 7 May 2009 and (ii) one which concerns two other individuals against whom there is no decision yet pursuant to Article 58 of the Statute.

8. Pursuant to Rule 81(2), the Prosecution seeks authorization to redact: (a) information relating to the identities of Investigators and Translators who conducted the relevant interviews; (b) information relating to the location of interviews; (c) information that may potentially identify the other suspects against whom the Pre-Trial Chamber is yet to issue its decision pursuant to Article 58; and (d) information that may identify other persons who are not witnesses and are not directly relevant to the issues before the Court (innocent third parties).
9. The Prosecution asserts that disclosure to the Defence¹ of information relevant to further and/or ongoing investigations as described in para. 8 may prejudice these investigations.
10. As the investigations are still ongoing, these same OTP staff members may be required to go back to the field to meet with witnesses and collect further evidence. Disclosure of their identities to the Defence could prejudice the investigations. Additionally, disclosure of such information at this stage poses objectively identifiable risks to the safety and security of the OTP staff members.
- 11 Given the security situation in Darfur, the Prosecution is only able to conduct interviews with witnesses and potential witnesses in a limited number of locations. Disclosing these locations could negatively impact on the ability of the Prosecution to meet potential witnesses and conduct such interviews in these locations. It would additionally disclose movements of OTP staff members and witnesses alike, which also may have security implications. Moreover, the risk to witnesses or potential witnesses triggered by disclosing

¹ For the purposes of this submission, the Prosecution defines the Defence of Bahar Idris Abu Garda as including any and all individuals that are participating in his Defence. For this reason, disclosure of information to the Defence of Bahar Idris Abu Garda is essentially disclosure to Bahar Idris Abu Garda himself, and should be treated in the same manner.

information regarding interview locations may potentially provide clues as to the identities of some of these witnesses and may also discourage witnesses and potential witnesses from cooperating with the OTP and testifying at trial.

12. With regards to innocent third parties who are not witnesses and have nothing to do with the case against the suspect in this case, disclosure of their identities may unnecessarily open them to unjustifiable risks.
13. In addition, the case of the two other suspects against whom the Pre-Trial Chamber is yet to issue a decision pursuant to Article 58 is under seal. Disclosure of information which potentially identifies these two individuals will contravene the classification level of such information.

(b) Proposed redactions Pursuant to Rule 81(4) of the Rules-Protection of the Safety of Witnesses and Victims and Members of their Families

14. The redactions sought herein pertain to statements given by former AU personnel and family members of some peacekeepers killed during the attack on Haskanita. [TEXT REDACTED]
15. [TEXT REDACTED].
16. [TEXT REDACTED].
17. The Prosecution is of the view that there is no less intrusive alternative measure that can be taken to avoid the risks mentioned. The redactions proposed remain the best available measure to eliminate, or at least reduce the risks. Additionally, the requested redactions are not prejudicial to or inconsistent with the rights of the person summonsed to appear and a fair and impartial trial.

18. The jurisprudence of the Appeals Chamber supports the use of redactions authorized pursuant to Rules 81(2) and 81(4) as a means to reduce risks²
19. The redactions sought are merely temporary. At the appropriate time (either as stipulated in the Rules or once the circumstances change-whichever comes earlier), the Prosecution will make the necessary requests to the Pre-Trial Chamber for authorization to lift the relevant redactions and carry out full disclosure to the Defence.

V. REQUEST

20. For the reasons set forth above, the Prosecution respectfully requests Pre-Trial Chamber I to authorize the proposed redactions in the witness statements as submitted in this Application and accompanying Annexes.



Luis Moreno-Ocampo

Prosecutor

Dated this 14th day of October 2009
At The Hague, The Netherlands

² ICC-01/04-01/07 *Prosecutor v. Katanga*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”.