

ANNEX H



Original: English

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

Date: 14 October 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 Redacted Version of

Prosecution's Application for Extension of Time and authorisation to submit summaries in lieu of transcript redactions with respect to witnesses DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0307 and DAR-OTP-WWWW-0314 filed on 11 August 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
Defence**

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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. On 15 July 2009, the PTC issued its “Second Decision on issues relating to Disclosure”¹ directing, *inter alia*, that the Prosecution submit to the Chamber, as soon as practicable and no later than Friday 28 August 2009, any request(s) for redactions under Rule 81.
2. On 15 July 2009, the Prosecution submitted its “Application for Redactions to transcripts of interviews of Witnesses DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0307, and DAR-OTP-WWWW-0314 pursuant to Rules 81(2) and 81(4)”.
3. During a status conference on 6 August 2009, the Single Judge Sylvia Steiner observed, *inter alia*, that the proposed redactions were inadequate since readers of the documents would, despite the proposed redactions, be able to determine that there are pending/parallel investigations [Text Redacted]. The Single Judge also observed that it may be very difficult to fully redact the relevant information from the submitted statements/transcripts for the purposes of concealing ongoing/parallel investigations [Text Redacted]. The Single Judge also suggested that in such circumstances the redactions may highlight the ongoing/parallel investigations instead of concealing them. Moreover, redactions that were too extensive could render that which remained unredacted meaningless.²

¹ ICC-02/05-02/09-35

² ICC-02/05-02/09-T-5-CONF-EXP-ENG ET 06-08-2009 7/35 and ICC-02/05-02/09-T-5-CONF-EXP-ENG ET 06-08-2009 8/35

4. To this end, the Single Judge requested that the Prosecution resubmit, by 4pm on 11 August 2009, proposed redactions which address the various concerns raised by the Single Judge.³

5. In compliance with the order of the Single Judge, the Prosecution filed on 10 August 2009 its “Resubmission of Prosecution’s Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0326, DAR-OTP-WWWW-0355, DAR-OTP-WWWW-0416, DAR-OTP-WWWW-0417, DAR-OTP-WWWW-0419, DAR-OTP-WWWW-0420, and DAR-OTP-WWWW-0421, Pursuant to Rules 81(2) and 81(4)”, in which the Prosecution addressed the concerns raised by the Single Judge that related to actual witness statements⁴.

6. On 10 August 2009, the Prosecution also filed its “Application for Reclassification of the Prosecution’s Application of 20 November 2008 Pursuant to Regulation 23 *bis* of the Regulations of the Court”⁵ (hereinafter “the 10 August Filing”), stating *inter alia*, that (1) circumstances [Text Redacted] have changed since it requested confidentiality on 20 November 2008; (2) while confidentiality was still required [Text Redacted], it is no longer required vis-a-vis the suspects themselves; and (3) reclassification will allow the Prosecution to disclose statements/transcripts of witness interviews to ABU GARDA without redacting the other two suspects’ names.

7. In the 10 August Filing, the Prosecution also agreed with the Single Judge’s view that making meaningful and adequate redactions to statements/transcripts of

³ ICC-02/05-02/09-T-5-CONF-EXP-ENG ET page 34 line 19

⁴ The Prosecution is not resubmitting for redaction the statement of DAR-OTP-WWWW-0420 as the witness has recently indicated to the Prosecution that she no longer agrees to use of that statement in the proceedings.

⁵ ICC-02/05-226-Conf-Exp

the relevant witnesses in the particular circumstances of this case presents difficulties.⁶ In the Prosecution's view, these difficulties are more pronounced in the case of the transcripts than in the case of the witness statements.

8. On 10 August 2007, the Single Judge denied the Prosecution's application for reclassification.⁷
9. The Prosecution submits this request "Confidential, *Ex Parte*, Only available to the Prosecutor and the Victims and Witnesses Unit", in compliance with the orders of the Single Judge of 15 July 2009⁸. A public redacted version of this Application or a public note will be filed in compliance with the order of the Single Judge contained in its decision of 30 July 2009⁹.

II. Grounds for Request

10. The Prosecution is attempting to redact statements in a way that satisfies the Chamber and protects against disclosure of information that could reveal the existence of ongoing/parallel investigations [Text Redacted]. The Prosecution believes, however, that the resulting redactions would render significant parts of the transcripts incomprehensible or meaningless.

⁶ ICC-02/05-226-Conf-Exp – URGENT at para. 13

⁷ "Decision on Prosecution's Request for Reclassification of 10 August 2009", ICC-02/05-227-Conf-Exp - URGENT

⁸ ICC-02/05-02/09-35 "Second Decision on issues relating to Disclosure" dated 15 July 2009.

⁹ ICC-02/05-02/09-39 : "Decision Ordering the Prosecution to file in the Record of the Case a Public Redacted Version or a Public Note of the Requests for Redactions and of future ex parte filings" dated 30 July 2009

11. In light of these circumstances, the Prosecution intends to submit summaries in lieu of redacted transcripts of interview for witnesses DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0307, and DAR-OTP-WWWW-0314. The summaries to be provided by the Prosecution will retain all relevant information falling under Article 67(2) of the Statute.
12. To prepare the summaries will require review of the entire transcripts of the interviews, which comprise hundreds of pages for each of the witnesses, and reduction of the contents into an accurate summary. The Prosecution anticipates that preparation of accurate and comprehensive summaries will take seven days.
13. The Prosecution files this request as “URGENT” as the deadline imposed by the Single Judge for resubmission of all amended redaction filings is 4pm on 11 August 2009 – today. As such, urgent consideration of this request has a bearing the Prosecution’s ability to comply with this deadline.

III. Request

14. In light of the matters stated above, the Prosecution hereby respectfully requests the Single Judge for authorization to rely on summaries in lieu of the transcripts, and for an extension of time to Monday 17th August 2009 to submit the summaries for witnesses DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0307 and DAR-OTP-WWWW-0314.



Luis Moreno-Ocampo

Prosecutor

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