

ANNEX K



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 request for authorization of discrete redactions to the meta-data fields
foreseen by the E-court Protocol filed on 28 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**

States Representatives

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REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Pursuant to Rule 81 (2) of the Rules of Procedure and Evidence (Rules) and Articles 54(3)(f) and 64 of the Rome Statute, the Prosecution hereby seeks authorisation to apply discrete redactions to the names of OTP investigators appearing in the chain of custody meta-data field of disclosed evidence as foreseen by the E-court protocol.

II. Background

2. On 15 July 2009, Pre-Trial Chamber issued the "Second Decision on issues relating to Disclosure"¹ and ordered the parties "to submit to the Chamber, as soon as practicable, and no later than Friday 28 August 2009, any request for redactions under Rule 81 of the Rules."²
3. On 14 August 2009, Single Judge Steiner issued the "First Decision on the Prosecution's Requests for Redactions" (the "First Decision on Redactions"),³ in which, amongst others, redactions to the names and signatures of OTP staff were granted.⁴

III. Ex-parte Filing

4. The Prosecution submits that the classification of the present filing as *Confidential-Ex-Parte-Prosecution Only* is necessary, because the Prosecution is

¹ ICC-02/05-02/09-35.

² ICC-02/05-02/09-35, page 17.

³ ICC-02/05-02/09-51-Conf + Conf-Exp-Anx 1.

⁴ ICC-02/05-02/09-51-Conf-Exp-Anx1, at page 4, 17, 30, 38, 50 and 54.

seeking protective measures for specific persons whose identities and roles in the investigations should remain confidential and cannot be disclosed to the Defence. The Statute provides that applications pursuant to Rule 81 (2) “shall be heard on an *ex parte* basis”.

5. The Prosecution submits that the rights of the suspect are maintained to the extent that he will be made aware of the filing and its legal basis through a public redacted version or a public note, which will be filed as soon as practicable, but the suspect cannot be privy to the specifics of the information that needs to be addressed.

IV. Nature of the redactions sought

6. The Prosecution applies for redactions to the names of OTP Investigators who go to the field from the chain of custody field in the meta-data of all materials to be disclosed to the defence. Absent specific wording in the decision, the Prosecution does not wish to take for granted that authorization to redact names of OTP staff who travel to the field and whose names are contained in witness statements also extend to the meta-data fields for which redactions had not been specifically sought.⁵
7. The Prosecution submits that the OTP investigators for whose names authorization is sought for redaction from the chain of custody field of the meta-data are currently assigned to the Darfur investigations. Their work requires regular travel to the region and/or regular contact with witnesses from the region. The Prosecution submits that given the situation of ongoing armed

⁵ See Trial Chamber I in Lubanga: “Second Decision on the E-court protocol”, 13 March 2008, ICC_01/04-01/06-1223, at paras 13 to 14.

conflict in Darfur, the disclosure of the identity of investigators who regularly travel to the field could jeopardize ongoing investigations or the security of the investigators.

8. The Prosecution notes that, in the First Decision on Redactions, Single Judge Steiner found that, “at this stage of the proceedings, with investigation ongoing in regions that are facing continuing armed conflicts, it is reasonable to believe that OTP investigators in the field, if their identities were disclosed to the Defence, could be easily traced, which would result in increased risk to the OTP staff and ongoing investigations. The Single Judge also agrees that at this stage of the proceedings, the non-disclosure of the names of OTP investigators is the least intrusive protective measure available, and that it does not violate the right of the suspect to a fair trial.”⁶
9. The Prosecution further submits that redactions to the names of OTP investigators in the chain of custody field do not hinder the Defence’s ability to assess information regarding the origin of the document or information contained in the document itself. The chain of custody field, as it is currently populated by the Prosecution, contains information regarding the source of the document and the chain of persons that held custody over the document after it was received from the source. It is only this latter part of the chain of custody that could contain names of OTP investigators that the Prosecution seeks to redact. The Prosecution submits that the redactions are thus not prejudicial to or inconsistent with the rights of the suspect.

⁶ ICC-02/05-02/09-51-Conf-Exp-Anx1, at pages 4, 17, 30, 38, 50 and 54.

10. As to the contents of the redactions, the Prosecution seeks the authorization to redact in the chain of custody field of the meta-data the names of the following OTP investigators in addition to those already granted in the First Decision on Redactions:⁷ [TEXT REDACTED]

11. V. Relief sought

12. In light of the reasons outlined above, the Prosecution hereby respectfully requests the Single Judge to authorize discrete redactions to the names of OTP investigators appearing in the chain of custody meta-data field contained in the approved E-court protocol for this case.



Luis Moreno-Ocampo

Prosecutor

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

⁷ [TEXT REDACTED] see ICC-02/05-02/09-51-Conf-Exp-Anx1, at page 4, 17, 30, 38, 50 and 54.