

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-01/09  
Date: 17 December 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. OMAR HASSAN AHMAD AL-BASHIR***

**Public Document with confidential annexes**

**Information to the Chamber regarding the notification of documents to  
Ms. Michelyne C. Saint-Laurent, Counsel for the Defence**

**Source:** Registry

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

**The Office of the Prosecutor**

Mr. Luis Moreno Ocampo

Mr. Essa Faal

**Counsel for the Defence**

Ms. Michelyne C. St-Laurent

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

Mr. Nick Kaufman

Ms Wanda M. Akin

Mr Raymond M Brown

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms. Paolina Massida

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms. Silvana Arbia

**Deputy Registrar**

Mr. Didier Preira

**Defence Support Section**

Mr. Esteban Peralta-Losilla

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Ms. Charlotte Dahuron-Jacoby

Mr. Ian Blacker

**The Registrar of the International Criminal Court (the “Court”);**

**NOTING** Pre-Trial Chamber I’s (the “Chamber”) “Decision Ordering the Parties to submit their Observations on the Applications for Victims’ Participation in the Proceedings” dated 1 September 2009<sup>1</sup>;

**NOTING** the “Decision Ordering the Parties to Submit their Observations on Applications a/0443/09 to a/0450/09 for Participation as Victims in the Proceedings” (the “Decision”)<sup>2</sup> issued on 6 November 2009 granting “the Prosecution and the Counsel for the Defence until Friday 4 December 2009 at 16h00 to submit their observations on the 8 applications for participation”;

**NOTING** the “Transmission to the Defence of redacted copies of 8 applications for participation in the proceedings” (the “Applications”) and its confidential *ex parte to the Defence* annexes filed by the Registry on 13 November 2009<sup>3</sup>;

**NOTING** the “Transmission to the Defence of a redacted copy of a translation of a document submitted with application a/0443/09 for participation in the proceedings”<sup>4</sup> filed by the Registry on 20 November 2009;

**NOTING** the “Prosecution’s Observations on 8 Applications for Victims’ Participation in the Proceedings” (the “Prosecution’s observations”)<sup>5</sup> submitted by the Office of the Prosecutor on 1<sup>st</sup> December 2009;

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<sup>1</sup> ICC-02/05-01/09-38

<sup>2</sup> ICC-02/05-01/09-50

<sup>3</sup> ICC-02/05-01/09-52

<sup>4</sup> ICC-02/05-01/09-55

<sup>5</sup> ICC-02/05-02/09-58

NOTING the “Request for a Decision on Victim Participation” (the “Request”)<sup>6</sup> filed on 10 December 2009 by the legal representatives for the eight Victim Applicants;

NOTING the “Requête en prorogation de délai” submitted by Ms. Michelyne C. Saint-Laurent on 14 December 2009<sup>7</sup> (“Counsel for the Defence”);

NOTING the “Réponse à la requête de Mr. Nicholas Kaufman datée du 10 décembre 2009 » submitted by Ms. Saint-Laurent on 14 December 2009<sup>8</sup> ;

NOTING Regulation 24 *bis* of the Regulations of the Court;

CONSIDERING that in its Decision dated 1 September 2009, the Chamber appointed Ms. Michelyne St Laurent as “*ad hoc* counsel for the defence”, entrusted with representing and protecting the general interests of the defence within the context and for the purposes of the proceedings on the applications of applicants a/0011/06, a/0012/06, a/0013/06 and a/0015/06;

CONSIDERING that in its Decision dated 6 November 2009, the Chamber appointed Ms. Michelyne St Laurent as “as *ad hoc* Counsel for the Defence, entrusted with representing and protecting the interests of the Defence within the context and for the purposes of the proceedings” on the applications of applicants a/0443/09 to a/0450/09;

CONSIDERING that in her two filings dated 14 December 2009, the Counsel for the Defence indicates that she has not been notified of several documents<sup>9</sup> relating to her

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<sup>6</sup> ICC-02/05-01/09-59

<sup>7</sup> ICC-02/05-01/09-60

<sup>8</sup> ICC-02/05-01/09-61

second appointment due to the Registry not using her private e-mail address for the purpose of notification;

**CONSIDERING** that all annexes to this filing contain communications between namely designated staff members of the Registry and are as such filed as confidential annexes;

**RESPECTFULLY SUBMITS** the following:

1. On 2 September 2009, the Defence Support Section ("DSS"), the section responsible for providing assistance to the defence in proceedings before the Court, duly made the necessary arrangements with the Information and Communication Technologies Section ("ICTS") to ensure that Counsel for the Defence had the requisite "user account" and "TRIM" access (including "CITRIX" which allows the external participants to have a remote access to documents filed before the Court and registered in the TRIM system). The request specified that these IT services were to remain in place from the start date of the appointment of Counsel for the Defence up until 30 September 2009 (annex 1), in view of the time-limit prescribed by the Chamber in its decision dated 1 September 2009<sup>10</sup> for the submission of observations.
2. On 8 September 2009, DSS informed the relevant Associate Legal Officer ("ALO")/Courtroom officer that the e-mail address of Counsel for the Defence was her "ICCEPN" address without further specifying the expiration date set to 30 September 2009 (annex 2). On the same day, DSS equally informed Counsel for the Defence of the details of her newly created ICCEPN email address (domain name and password, *inter alia*) (annex 3). The usage of ICCEPN email addresses is a requirement in the e-court system of the Court to

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<sup>9</sup> The documents not received were: ICC-02/05-01/09-50; ICC-02/05-01/09-52; ICC-02/05-01/09-58; ICC-02/05-01/09-59.

<sup>10</sup> ICC-02/05-01/09-38

ensure and protect, *inter alia*, the confidentiality of documents filed and notified in any given record.

3. From 2 October 2009 onwards the documents filed in the case were notified to Counsel for the Defence using the said email address as per Registry protocol (see annex 4).
4. On 6 November 2009 Ms. Saint-Laurent was appointed a second time as *ad hoc* Counsel for defence. Miscommunication prevented the Registry from taking the appropriate steps at that stage to re- activate her "user account", "TRIM" access or "EPN address". In effect the Court Management Section ("CMS") was notifying documents to a deactivated e-mail address.
5. On 10 December 2009, the Registry was informed by Counsel for the Defence that she did not receive the Decision, the Applications, the Prosecution's observations nor the request of the legal representative.
6. On 11 December 2009, the ALO/Courtroom officer informed the Chamber and the DSS that the Counsel for the Defence's complained she had not been notified of the abovementioned documents (annex 5);
7. On 11 December 2009, the abovementioned documents were notified again (as TRIM links) on her private e-mail address as requested (see annex 6).
8. On 12 December 2009, CMS was informed by Counsel for the Defence that she was not able to open the TRIM links.
9. As a result, on 14 December, CMS sent the public documents to her private address in a PDF format<sup>11</sup> (see annex 7). The Counsel for the Defence informed CMS that she was not able to open the PDF upon reception.
10. On 14 December 2009 the DSS was again informed by CMS of the problems encountered by the Counsel for the Defence. DSS then made a request to ICTS on 14 December 2009 to ensure that all requisite IT services were activated (see annex 8).

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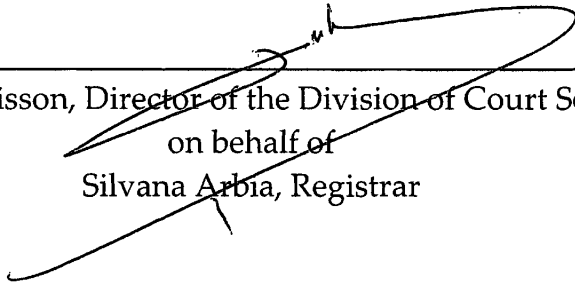
<sup>11</sup> For information security reasons CMS can not send confidential documents on private e-mail addresses.

11. By email dated 15 December 2009, 22h44, Counsel for the Defence confirmed having had access to the PDF attachments containing the public documents (see annex 9).
12. On 16 December 2009 the ICTS confirmed that all the required IT facilities were re-activated for Ms. Saint-Laurent (see annex 10). DSS informed the Counsel for the Defence that the difficulties she had raised were resolved.
13. By e-mail dated 16 December 2009, Ms. Saint-Laurent indicated to the Registry for the first time that even though she has access to the TRIM and the CITRIX system she never used them because she did not know how to use them (see annex 11) and that from the outset of her involvement in ICC proceedings she has been accustomed to receiving confidential filings when needed *via* courier services. DSS is currently liaising with IT and Counsel for the Defence to instruct the latter how to use the IT services furnished to her.

#### *Conclusion*

14. On 16 December, CMS sent to Ms. Saint-Laurent the confidential documents she should have received on her "EPN" address *via* courier services. This way of communication and notification will be used until further notice from DSS that Ms. Saint-Laurent is able to use TRIM and CITRIX to open documents.
15. In the interim, DSS will continue to ensure Counsel for the Defence becomes IT savvy and able to use all the IT facilities available to counsel before the Court.

**RESPECTFULLY PRESENTS** her apologies to the participants to the proceedings and the Chamber for the delays resulting from the above mentioned events.



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Marc Dubuisson, Director of the Division of Court Services  
on behalf of  
Silvana Arbia, Registrar

Dated this 17 December 2009

At The Hague, the Netherlands