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No.: ICC-02/05-02/09
Date: 25 February 2010

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, THE SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. BAHAR IDRIS ABU GARDA***

Public Document

**Defence Application for variation of time limit for filing of application for leave
to appeal**

Source: Defence

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

The Office of the Prosecutor

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. On 8 February 2010, Pre-Trial Chamber I rendered its “Decision on the Confirmation of Charges”, in which it “DECLINE[D] to confirm the charges against Mr Bahar Idriss Abu Garda.”¹
2. The Pre-Trial Chamber decided, furthermore, “that the five-day period for the parties to present an application for leave to appeal in accordance with rule 155(1) of the Rules shall start to run with effect from the date of notification of the Arabic translation of this Decision”.²
3. The Defence hereby applies for the variation of the time limit for the filing of applications for leave to appeal, in accordance with Regulation 35 of the Regulations of the Court.

II. Observations of the Defence

4. The Defence notes Mr. Abu Garda’s rights under Articles 67(1)(a) and (f) of the Rome Statute to receive communications in a language he fully understands and speaks and to be provided with such interpretation and translation services “as are necessary to meet the requirements of fairness” (Article 67(1)(f)).
5. The Defence recalls, furthermore, that the fair trial rights of the accused under the Statute extend to all phases of proceedings, including the pre-trial phase.³
6. The Defence and Mr. Abu Garda fully understand that the decision of the Pre-Trial Chamber to suspend the commencement of time limits for leave to appeal until receipt of the Arabic translation was taken in order to safeguard the rights of Mr. Abu Garda under the Statute.
7. In the three weeks that have now passed since the Confirmation Decision was rendered, the Defence has been able to make a determination as to whether it wishes to seek leave to appeal in respect of the Confirmation Decision. The client has been spoken to and the Confirmation Decision has been explained to him.

¹ ICC-02/05-02/09-243-Conf, p. 97 (“Confirmation Decision”).

² Ibid., p. 98

³ ICC-01/04-135-tEN, “Decision on the Prosecution’s Application for Leave to Appeal the Chamber’s decision of 17 January 2006 on the applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6”, 31 March 2006, para. 35.

8. Accordingly, the Defence respectfully submits that receipt of the Arabic translation need not be an impediment to the swift resolution to this case. Given the particular issues that need to be decided at this juncture (whether to seek leave to appeal or not), the Defence formally waives its right to await the Arabic translation of the Confirmation Decision before making this decision.
9. Rule 101 of the Rules of Procedure and Evidence states that in setting time limits for the conduct of proceedings, "...the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims."
10. Mr. Abu Garda is currently engaged in negotiations for a peaceful resolution of the Darfur crisis in Doha, Qatar.⁴ Given this desire to continue his work in as normal and effective a manner as possible, his voluntary surrender to the jurisdiction of the Court and his reiterated intention to do so again should that ever be required, the Defence requests that the Pre-Trial Chamber immediately lifts the suspension of the commencement of the five-day deadline for the filing of any application for leave to appeal.
11. From informal discussions between the Defence and the Registry it seems that the Arabic translation of the Confirmation Decision will not be available before the middle of March 2009. Given this, the rights expressed in Rule 101 of the Rules of Procedure and Evidence, the decision of the Defence, after consultation with Mr. Abu Garda, to waive receipt of the Arabic translation before determining the issue of leave to appeal (or responding to any leave application), the Defence respectfully requests the Pre-Trial Chamber to order the time limits contemplated in Rule 155(1) to run, effective immediately.
12. It seems that the Prosecutor has already decided to seek leave to appeal, and that this decision was taken on the day the Confirmation Decision was rendered – see Annexure A. The Defence submits that the Prosecutor will not be prejudiced in any way by the Pre-Trial Chamber varying the time limit for the submission of

⁴ See, e.g., *JEM rebels want unity with other groups before Darfur peace talks*, Sudan Tribune, 24 January 2010, available at <http://www.sudantribune.com/spip.php?article33895>; *Who are the Darfur peace negotiators at Doha actually representing?*, Radio Dabanga, 23 February 2010, available at <http://radiodabanga.org/?p=10353>

any application for leave to appeal, as he will have had nearly four weeks (or more) in which to prepare his application by the time it is due in line with the variation sought.

13. Due to the nature of the relief sought and taking into consideration the interests of the Defence, the Defence requests the Pre-Trial Chamber, in accordance with Regulation 35, to invite the Prosecution to respond to this application on an expedited basis, as the Pre-Trial Chamber deems appropriate.

III. Relief Requested

14. The Defence therefore requests Pre-Trial Chamber I:
- (i) to vary the time limit to present applications for leave to appeal the Confirmation Decision by immediately lifting the suspension of the commencement of the five-day period under Rule 155(1); and
 - (ii) to invite the Prosecution to respond to this application on such expedited basis as the Pre-Trial Chamber deems appropriate.

Respectfully Submitted,



Mr. Karim A. A. Khan
Defence Counsel for Bahar Idriss Abu Garda

Dated this 25th day of February, 2010

At The Hague, The Netherlands