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

Date: 5 March 2010

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 Document

**Prosecution's Response to Defence Application for Variation of Time Limit Submitted
Pursuant to Decision of the Single Judge of 4 March 2010**

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

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I. Introduction

1. On 8 February 2010, Pre-Trial Chamber I issued its "Decision on the Confirmation of Charges" whereby the Chamber (i) declined to confirm the charges against Bahar Idriss Abu Garda and (ii) decided 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 of Procedure and Evidence shall start to run with effect from the date of notification of the Arabic translation of this Decision".¹

2. On 25 February 2010, the Defence filed "Defence Application for variation of time limit for filing of application for leave to appeal"² (the "Defence Application"). In this filing, the Defence requested the Chamber to vary the time limit for the filing of applications for leave to appeal, in accordance with regulation 35 of the Regulations of the Court, by lifting the suspension of the commencement of the five-day period under rule 155(1) of the Rules of Procedure and Evidence;

3. On 4 March 2010, the Single Judge Cuno Tarfusser, issued a decision requesting the Prosecution to respond to the Defence Application by Friday, 5 March 2010 at 16:00 hours.

II. Prosecution's Response

4. In accordance with Regulation 35 of the Regulations of the Court:

¹ ICC-02/05-02/09-243-Conf.

² ICC-02/05-02/09-246

“The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.....”

5. The Defence claims in its filing 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.”³ The Defence informed of its decision to waive its right to the Arabic translation and asked the PTC to lift the suspension placed on commencement of the five day period from which all appeals must be launched. The Defence predicated its request on the ground that the Arabic translation need not be an impediment to the swift resolution of the case. It also argued that Mr. Abu Garda is currently engaged in peace negotiations in Doha, Qatar and given his desire to continue his work in as normal and effective a manner as possible, the PTC should lift the suspension and order that the “time limits contemplated under Rule 155(1) {...}run, effective immediately”.⁴

6. The Prosecution shall not speculate on the reasons why the PTC decided to suspend the commencement of the time from which the five day period will commence to run. The PTC may have reasons other than those suggested by the Defence for the suspension of the time limit until an Arabic translation has been notified.

7. Notwithstanding paragraph 6 above, the Prosecution notes that the Suspect’s right to translation of documents contained in Article 67(1)(f) is such a nature that it can be waived by the Suspect.

³ ICC-02/05-02/09-246,

⁴ ICC-02/05-02/09-246, para.11, page 4

8. In view of the above, the Prosecution leaves it in the hands of the Single Judge to determine whether the reason provided by the Defence for the request in its Application meets the requirement of good cause, taking into consideration the reasons for the Chamber's decision to suspend the commencement of the five day time limit until the notification of the Arabic translation.



Luis Moreno-Ocampo
Prosecutor

Dated this 5th day of March 2010
At The Hague, The Netherlands