

# **ANNEX L**



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

Original: English

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 Application for Redactions to Statements of Witnesses  
DAR-OTP-WWWW-0315 and DAR-OTP-WWWW-0419 (2<sup>nd</sup> Statement),  
Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence 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**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

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. In compliance with the order of Pre-Trial Chamber I in its “Second decision on issues relating to Disclosure” 15 July 2009<sup>1</sup>, the Office of the Prosecutor (“the Prosecution” or “the OTP”) respectfully resubmits its Application for redactions (“the Application”) pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“the Rules”).

## II. NATURE OF REDACTIONS SOUGHT

2. The Prosecution hereby requests:
  - (a) an Order granting the redaction and non-disclosure of information from statements of witnesses in the possession of the Prosecutor, the disclosure of which may prejudice further and/or ongoing investigations, pursuant to Rule 81(2) of the Rules;
  - (b) an Order granting the redaction and non-disclosure of names and other identifying information of OTP staff, the disclosure of which may increase the risks to the OTP staff and/or prejudice further and/or ongoing investigations, pursuant to Rule 81(2) of the Rules;
  - (c) an Order granting the redaction and non-disclosure of the identities and other identifying information of witnesses and victims and members of their

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<sup>1</sup> ICC-02/05-02/09-35 “Second Decision on issues relating to Disclosure”, dated 15 July 2009.

families prior to the commencement of the trial, the disclosure of which may increase the risks to their safety, pursuant to Rule 81(4) of the Rules; and

(d) an Order granting the redaction and non-disclosure of the identities and other identifying information of persons at risk on account of activities of the Court, including innocent third parties, pursuant to Article 54(3)(f) of the Rome Statute (“Statute”) and Rule 81(4) of the Rules.

3. The Prosecution submits this request and its annexes "Confidential, *Ex Parte*, Only available to the Prosecutor and the Victims and Witnesses Unit" because they relate to material that is currently confidential and *Ex Parte*, and depict information relating to the identities of witnesses. A public redacted version of this Application or a public note will be filed in compliance with the order of the Single Judge in her decision of 30 July 2009<sup>2</sup>.

### III. ORGANIZATION OF THE MATERIALS

4. The Prosecution herewith submits to the Pre-Trial Chamber I proposed redactions of the following witness statements and their related annexes (where applicable):

- i. [TEXT REDACTED]- Witness DAR-OTP-WWWW-0315 (ERN: DAR-OTP-0164-1159)<sup>3</sup> (Annex “A” to this filing); and
- ii. 2<sup>nd</sup> Statement of [TEXT REDACTED]- Witness DAR-OTP-WWWW-0419 (ERN:DAR-OTP- 0168–0168) (Annex “B” to this filing”).

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<sup>2</sup> 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.

<sup>3</sup> This witness’s statement contains a number of Annexes: Annex A (referred to in para. 24 of the statement), for which no redactions are sought; and Annex B (referred to in para. 88 of the statement), for which redactions *are* being sought. The witness also provided the OTP with a copy of a video recording (DAR-OTP-0164-0696) which is attached to this filing. He also provided 455 photographs, however the Prosecution seeks to redact only 26 of them, which are attached to this filing.

5. In order to assist the Pre-Trial Chamber I in the review of the proposed redactions, the Prosecution additionally attaches to each statement a table containing: (i) individual proposed redactions by page number; and (ii) the corresponding rule justifying the proposed redaction.
  
6. The Prosecution has also colour-coded each proposed redaction as follows:
  - (i) Blue: represents proposed redactions pursuant to Rule 81(2) of the Rules that relate exclusively to further and/or ongoing investigation; and
  
  - (ii) Red: represents proposed redactions pursuant to Rule 81(4) of the Rules, to ensure the confidentiality of information, in accordance with Articles 54 (innocent third parties), 72 and 93, and, in accordance with Article 68 of the Statute, to protect the safety of witnesses and victims and members of their families.

#### **IV. JUSTIFICATION FOR REQUESTED REDACTIONS**

7. The Table attached to each statement contains detailed justification for each of the redactions sought.

#### **V. NECESSITY AND IMPACT ON RIGHTS OF THE SUSPECT**

8. The Prosecution submits that these redactions are necessary to protect the safety and security and, where appropriate, the privacy of the persons in respect of whom they are being sought. There is no less intrusive alternative measure that can be taken to

avoid the risks mentioned in the table. The redactions proposed therein remain the best available measure to eliminate, or at least reduce, the risks. Additionally, the requested redactions are not prejudicial to or inconsistent with the rights of the person summonsed to a fair and impartial trial.

9. The jurisprudence of the Appeals Chamber supports the use of redactions authorized pursuant to Rules 81(2) and 81(4) as a means to reduce risks.<sup>4</sup>
10. The redactions sought are merely temporary. At the appropriate time (either as stipulated in the Rules or once the circumstances change, whichever comes earlier), the Prosecution will ask the Pre-Trial Chamber for authorization to lift the redactions and carry out full disclosure to the Defence.

## VI. REQUEST

11. For the reasons set forth above, the Prosecution respectfully requests the Single Judge to authorize the proposed redactions in the witness statements as submitted in this Application and accompanying Annexes.
12. The Prosecution has left unredacted the names and images of [TEXT REDACTED] and [TEXT REDACTED] wherever they appear. In her decision of 17 August 2009<sup>5</sup>, the Single Judge Steiner had ordered, *proprio motu*, the redactions of the names of [TEXT REDACTED] and [TEXT REDACTED] from various parts of the statement of Witness 0355 [TEXT REDACTED], and from paragraph 113 of the statement of

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<sup>4</sup> ICC-01/04-01/07 *Prosecutor v. Katanga*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”.

<sup>5</sup> ICC-02/05/09-51-Conf-Exp-Anx1, pages 27-28.

Witness 0326 [TEXT REDACTED]. However, as stated in its filing of 25 August 2009,<sup>6</sup> the Prosecution now intends to rely on these two individuals as witnesses and to disclose their names to the Defence.



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Luis Moreno-Ocampo

Prosecutor

Dated this 14<sup>th</sup> day of October 2009  
At The Hague, The Netherlands

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<sup>6</sup> ICC-02/05-02/09-66-Conf-Exp