

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05
Date: 10 March 2009

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

SITUATION IN DARFUR, SUDAN

Public Redacted Version

Decision on the Prosecution's Requests of 5 and 6 March 2009

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

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Mr Essa Faal, Senior Trial Lawyer

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

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court” respectively);

NOTING the “Prosecutor’s Application under Article 58”¹ (“the Prosecution Application”) filed *confidential* and *ex parte* by the Prosecution on 20 November 2008, whereby it requested the Chamber to issue warrants of arrest or alternatively summonses to appear for [REDACTED];

NOTING the “Provision of Information Pursuant to Article 58”² filed by the Prosecution on 2 December 2008, in which the Prosecution provided the Chamber with further information in relation to the Prosecution Application;

NOTING the “Decision Requesting Additional Information and Supporting Materials”³ issued by the Chamber on 9 December 2008, whereby it requested the Prosecution to submit additional information and supporting materials in relation to specific questions of the Chamber;⁴

NOTING the notifications to the Chamber pursuant to article 58,⁵ filed by the Prosecution on 22 and 24 December 2008, in which the Prosecution requested the authorisation of the Pre-Trial Chamber to disclose [REDACTED] the names of the [REDACTED] individuals named in the Prosecution Application in order to enable them to appear before the Court at an appropriate time;

NOTING the “Decision on the “Notification to the Chamber Pursuant to Article 58””⁶ issued by Judge Anita Ušacka, acting as Single Judge of Pre-Trial Chamber I, on 24 December 2009, in which she denied the Prosecution’s requests of 22 and 24 December 2008;

¹ ICC-02/05-163-Conf-Exp.

² ICC-02/05-165-Conf-Exp+Anxs1-8.

³ ICC-02/05-166.

⁴ ICC-02/05-166-Conf-Exp-Anx1.

⁵ ICC-02/05-167-Conf-Exp and ICC-02/05-168-Conf-Exp

⁶ ICC-02/05-169-Conf-Exp

NOTING the “Prosecution’s Provision of Further Information in Compliance with the “Decision Requesting Additional Information and Supporting Materials”” (“the Prosecution’s Provision of Further Information”)⁷ filed by the Prosecution on 16 January 2009, whereby it provided additional information and written answers to some of the questions posed by the Chamber and additional supporting materials;

NOTING the closed session and *ex parte* hearing with the Prosecution, the Registry and the Victims and Witnesses Unit (“the Hearing”),⁸ held on 3 February 2009, during which the Prosecution informed the Chamber [REDACTED] and undertook to keep the Chamber informed of any developments in this regard;

NOTING the “Submission of information on the Prosecution’s Application Pursuant to Article 58 and request for summonses to appear”,⁹ filed by the Prosecution on 23 February 2009, in which the Prosecution requested that:

- (i) [REDACTED];
- (ii) [REDACTED]; and
- (iii) [REDACTED].

NOTING the “Request for Expedited Decision on the Prosecution’s Application of 20 November 2008”¹⁰ (“the Prosecution Request”) filed by the Prosecution on 25 February 2009, whereby a request was made for the urgent consideration, by the Chamber, of the Prosecution Application [REDACTED];

NOTING the “Decision on Prosecution’s Request for Expedited Decision on the Prosecution’s Application of 20 November 2008”,¹¹ (“the Decision”) issued by the

⁷ ICC-02/05-172.

⁸ ICC-02/05-T-2-Conf-Exp.

⁹ ICC-02/05-194-Conf-Exp.

¹⁰ ICC-02/05-195-Conf-Exp.

¹¹ ICC-02/05-198-Conf-Exp.

Chamber on 2 March 2009, in which the Chamber declined to expedite any decision on the Prosecution Application before full and proper consideration of the Prosecution Application;

NOTING the “Prosecution’s Request for Reclassification of the Prosecution’s Application of 20 November 2008 Pursuant to Regulation 23 *bis* of the Regulations of the Court”¹² filed by the Prosecution on 2 March 2009, in which the Prosecution requests that the Chamber reclassify the Prosecution Application as public, with those sections [REDACTED] redacted;

NOTING the “Decision on Prosecution’s request for reclassification of the Prosecution’s application of 20 November 2008”,¹³ issued by the Chamber on 3 March 2009, in which the Chamber rejected the Prosecution’s request as “there has been no significant change of circumstances from the situation that existed when Judge Anita Ušacka, acting as a Single Judge, rejected the 22 and 24 December 2009 Prosecution’s requests; and that the security and well being of the individuals named in the Prosecution’s Application require that their names remain confidential until the Chamber decides on the Prosecution’s Application for summons to appear against them”;

NOTING the Prosecution’s additional clarifications on the “Request for reclassification”,¹⁴ (“the Prosecution’s First Request”) filed on 5 March 2009, in which the Prosecutor sought to clarify the Prosecution’s position as merely informing the Chamber, in the original filing, that any complications in acquiring visas would be unlikely should the Chamber issue a summons to appear;

¹² ICC-02/05-197-Conf-Exp.

¹³ ICC-02/05-200-Conf-Exp.

¹⁴ ICC-02/05-201-Conf-Exp.

NOTING the “Prosecution’s Provision of Further Information Pursuant to the “Decision Requesting Additional Information and Supporting Materials”, and Urgent Request for Expedited Consideration of the Prosecution’s Application under Article 58”¹⁵ (“the Prosecution’s Second Request”) filed by the Prosecution on 6 March 2009 whereby the Prosecution requested the Chamber to render an expedited decision on the Prosecution’s Application before 11 March 2009;

NOTING article 58 of the *Rome Statute* and regulation 23bis of the *Regulations of the Court*;

CONSIDERING that, in the Decision, the Chamber highlighted

CONSIDERING the complexity of the case, the Chamber considers, in relation to a number of aspects of the Prosecution Application for the alleged [REDACTED] rebel leaders, that a particularly detailed analysis of the materials provided in the Prosecution Application and in the Prosecution’s Provision of Further Information is required;¹⁶

CONSIDERING that, in complying with its duties, the Chamber shall not:

- (i) take into account any request for expedited proceedings based on considerations other than those found in article 58(1)(a) of the Statute, which are that the Chamber must first ensure that it is satisfied that there are reasonable grounds to believe that the alleged war crimes were committed and that the [REDACTED] alleged rebel leaders are criminally responsible for committing such crimes; and
- (ii) decide in a manner detrimental to the fundamental rights of the persons for whom warrants of arrest or summonses to appear are requested.¹⁷

CONSIDERING that, despite the issuance of the warrant of arrest for Omar Al Bashir, the situation described in the above-mentioned paragraph has not substantially changed;

CONSIDERING that, as long as the redactions made by the Prosecution in its filings of 23 and 25 February 2009 are fully in line with those redactions made by the

¹⁵ ICC-02/05-203 and ICC-02/05-203-Conf-Exp-Anx.

¹⁶ ICC-02/05-198-Conf-Exp, p. 7

¹⁷ ICC-02/05-198-Conf-Exp, p. 7.

Chamber in the Decision and the Decision on Prosecution's request for reclassification of the Prosecution's application of 20 November 2008, the Chamber sees no reason not to authorise the filing by the Prosecution of public redacted versions of such filings;

CONSIDERING nevertheless that the protection of the persons named in the Prosecution Application for warrants of arrest require that the original Prosecution's filings of 23 and 25 February 2009 remain confidential and *ex parte*;

FOR THESE REASONS

REJECTS the Prosecution's Second Request;

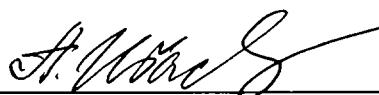
AUTHORISES the Prosecution to file public redacted versions of the Prosecution's filings of 23 and 25 February 2009 which shall be fully in line with the redactions made by the Chamber in the Decision and the Decision on Prosecution's request for reclassification of the Prosecution's application of 20 November 2008;

DECIDES that the original versions of the Prosecution's filings of 23 and 25 February 2009 shall remain confidential and *ex parte*.

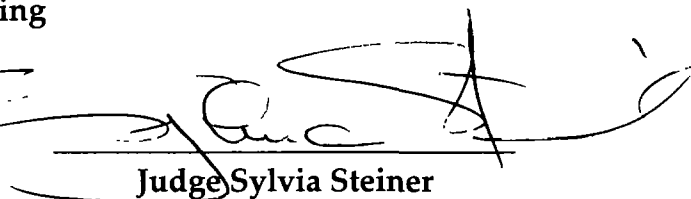
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Tuesday 10 March 2009

At The Hague,

The Netherlands