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

Date: 10 March 2010

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. BAHAR IDRIS ABU GARDA***

URGENT

Public

**Prosecution's Application for extension of page limit for the
Prosecution's Application for Leave to Appeal the
"Decision on the Confirmation of Charges"**

Source: Office of the Prosecutor

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

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Procedural Background

1. On 8 February 2010, the Chamber issued the Confirmation Decision¹, in which it declined to confirm the charges against Bahar Idriss Abu Garda.² In the Confirmation Decision, the Chamber 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 shall start to run with effect from the date of notification of the Arabic translation of this Decision.”³
2. On 25 February 2010, the Defence filed its Application for variation of the time limit for filing of application for leave to appeal, in which it (i) waived its right to await the Arabic translation before deciding whether to seek leave to appeal, and (ii) requested the Chamber to lift the suspension of the commencement of the five-day period under rule 155(1) of the Rules of Procedure and Evidence.⁴
3. On 5 March 2010, the Prosecution filed its response to said application, taking no position on the matter.⁵
4. On 8 March 2010, the Single Judge issued the Decision on the Defence application, in which it lifted the suspension of the commencement of the five-day deadline for filing applications for leave to appeal the Confirmation Decision.⁶ It decided that that the five-day period for the parties to present applications for leave to appeal would start to run with effect from the date of notification of said Decision.⁷

Application for Extension of the Page Limit

5. Regulation 37 (1) sets the page limit for the document in support of the appeal at 20 pages. The Prosecution respectfully requests, pursuant to Regulation 37(2), that this Chamber extend the page limit set forth in Regulation 37(1) for the

¹ ICC-02/05-02/09-243-Red (“Confirmation Decision”).

² Confirmation Decision, para. 236.

³ Confirmation Decision, p. 98.

⁴ ICC-02/05-02/09-246.

⁵ ICC-02/05-02/09-248.

⁶ ICC-02/05-02/09-249, p. 4.

⁷ ICC-02/05-02/09-249, p. 5.

application seeking leave to appeal the Confirmation Decision with an additional 10 pages.

6. The Prosecution makes this request for the following reasons:

- (a) The Prosecution will apply for leave to appeal several discrete issues, each of which deals with complex legal questions regarding the correct manner for a Chamber to analyze evidence at the confirmation stage. These issues have the potential to impact not only this but future confirmation proceedings. Because of the complexity and importance of these issues⁸, the Prosecution seeks to ensure thorough explanation and clarity in its application, without having to omit or diminish any arguments because of page constraints.⁹
- (b) The issues for which the Prosecution seeks leave to appeal are also novel in that they have not been previously argued by a party nor articulated by a Chamber.¹⁰ Complete presentation of whether these issues satisfy the criteria for leave to appeal requires explanation of a number of complex factual matters. As such, the Prosecution seeks to ensure that it can fully present its arguments.
- (c) The Confirmation Decision itself, excluding the Separate Opinion of Judge Tarfusser, consists of 98 pages. To properly present the law and facts

⁸ ICC-01/05-01/08-615, 26 November 2009, para. 7 (finding that exceptional circumstances justifying extension of a page limit exist where “submissions will deal with complex and broad issues, involving a number of different areas of law, some of which are substantial in nature”). The complexity and importance of the issues has also been considered a basis for exceptional circumstances and an extension of the page limit in both the ICTY and the ICTR, especially where the grant of an extension would not prejudice any other party. See, e.g. *Milosevic v Prosecutor*, IT-02-54-AR73.7, Order Granting Leave to Exceed the Page Limit for Interlocutory Appeal against the Trial Chamber's Decision on Assignment of Defence Counsel, 28 September 2004; *Nikolic v Prosecutor*, IT-02-60/1-A, Decision on Prosecution's Motion for Extension of Pages, 20 October 2004; *Prosecutor v Bagosora et al.*, ICTR-98-41-AR93, Decision on Prosecutor's Requests for Authorization to Exceed the Page Limit and for Setting of a Time Limit for Filing of a Response by the Defence, 3 November 2003.

⁹ ICC-02/05-02/09-225, 12 November 2009, p. 4 (finding that exceptional circumstances justified extension of a page limit where the “extension appears necessary in order to allow the Prosecutor to make meaningful submissions”).

¹⁰ Albeit in a slightly different context, the SCSL has recognized that “‘Exceptional circumstances’ may exist depending upon the particular facts and circumstances, where, for instance the question ... is one of general principle to be decided for the first time, ... or is one that raises serious issues of fundamental legal importance to the Special Court for Sierra Leone, in particular, or international criminal law, in general, or some novel and substantial aspect of international criminal law for which no guidance can be derived from national criminal law systems.” *Prosecutor v Sesay. Kallan and Gbao*, SCSL-2004-15-T, Decision on Defence Application for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005 at para 26; *Prosecutor v Sesay. Kallan and Gbao*, SCSL-2004-15-T, Decision on Application for Leave to Appeal the Ruling on Sesay - Motion Seeking Disclosure of the Relationship between Governmental Agencies of the USA and the Office of the Prosecutor, 15 June 2005 at para 16.

contained therein and related to the Prosecution's issues, the Prosecution seeks extension of the page limit.¹¹

- (d) The Decision which the Prosecution seeks to appeal is very significant for this case because it effectively terminates proceedings unless and until the Prosecution presents additional evidence. Given the potential impact that an application for leave to appeal can have on the case, the Prosecution seeks to ensure that it can fully and clearly present such application.
7. The Prosecution urgently requests consideration of this matter because the Prosecution learned on 8 March that its application for leave to appeal is due on 15 March, and seeks to prepare the application knowing its page constraints.

Relief Sought

8. For the reasons advanced herein, the Prosecution requests that the Trial Chamber grant a 10-page extension of the page limit for the filing of the Application for Leave to Appeal the "Decision on the Confirmation of Charges"¹², pursuant to Regulation 37(2) of the Regulations of the Court.



Luis Moreno-Ocampo,
Prosecutor

Dated this 10th day of March 2010

At The Hague, The Netherlands

¹¹ See, e.g. ICC-01/05-01/08-693, 11 February 2010, paras. 1 and 6 (finding in part that "the necessity of outlining in some detail the errors in content and form" of a document was a factor contributing to a finding of exceptional circumstances justifying extension of a page limit).

¹² This would amount to a document of 30 pages, excluding the two cover pages.