

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 July 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR V. BAHAR IDRIS ABU GARDA

Public Document

**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**

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

Mr. Essa Faal

Counsel for the Defence

Mr. Karim A.A. Khan

Legal Representatives of the Victims

Legal Representatives of the 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

I, Judge Sylvia Steiner, judge at the International Criminal Court (“the Court”);

NOTING the “Decision on the Temporary Replacement of the Single Judge for the period of 22 July to 17 August 2009”, whereby Judge Sylvia Steiner was designated Single Judge for the situation in Darfur, Sudan and any case emanating therefrom, including the case of the Prosecutor v. Bahar Idriss Abu Garda for the period of 22 July to 17 August 2009;¹

NOTING the “Prosecutions Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0416, DAR-OTP-WWWW-0418, DAR-OTP-WWWW-0419 and DAR-OTP-WWWW-0421 Pursuant to Rules 81(2) and 81(4)” of 10 July 2009;² the “Prosecutions Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0307, and DAR-OTP-WWWW-0314 Pursuant to Rules 81(2) and 81(4)” of 15 July 2009;³ and the “Prosecutions Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0326, DAR-OTP-WWWW-0355, DAR-OTP-WWWW-0417 and DAR-OTP-WWWW-0420 Pursuant to Rules 81(2) and 81(4)” of 17 July 2009⁴ (collectively, the “Prosecution’s Requests for Redactions”), filed *under seal, ex parte only available to the Prosecution and the Victims and Witnesses Unit*;

NOTING the principle of publicity enshrined in article 67(1) of the Statute of the Court (“the Statute”), rule 15 of the Rules of Procedure and Evidence (“the Rules”) and regulations 8 and 31 (1) of the Regulations of the Court (“the Regulations”);

¹ ICC-02/05-225 and ICC-02/05-02/09-37.

² ICC-02/05-02/09-33-US-Exp and ICC-02/05-02/09-33-US-Exp-AnxsA, B, C & D.

³ ICC-02/05-02/09-34-US-Exp and ICC-02/05-02/09-34-US-Exp-AnxsA, B & C

⁴ ICC-02/05-02/09-36-US-Exp and ICC-02/05-02/09-36-US-Exp-AnxsA, B, C, D, A1 & C1.

NOTING the precedents of Pre-Trial Chamber I, in particular the “Decision Establishing General Principles governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence” in the case of the Prosecutor v. Thomas Lubanga Dyilo;⁵

NOTING the Appeals Chamber “Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence’”,⁶ whereby the Appeals Chamber agreed with Pre-Trial Chamber I that the fact that “the other participant has to be informed of the fact that an application for ex parte proceedings has been filed and of the legal basis for the application is, in principle, unobjectionable”, although “there may be cases where this approach would be inappropriate”.⁷

CONSIDERING that the Single Judge deems it appropriate that the Prosecution files in the record of the case either a public redacted version or a public note of the Prosecution’s Requests for Redactions as well as of any future ex parte filing, where applicable; and that the filing of a public redacted version or a public note can be deemed inappropriate only in cases in which the mere notice of the existence of a request, motion or decision could preempt or undermine its subject;

⁵ ICC-01/04-01/06-108-Corr.

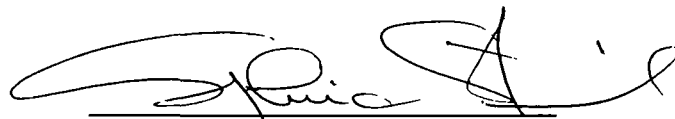
⁶ ICC-01/04-01/06-568.

⁷ ICC-01/04-01/06-568, para. 67.

FOR THESE REASONS,

ORDER the Prosecution to file in the record of the case either a public redacted version or a public note of the Prosecution's Requests for Redactions, with an ex parte annex, when necessary, and of future ex parte filings, where applicable.

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



Judge Sylvia Steiner

Single judge

Dated this Thursday 30 July 2009

At The Hague, The Netherlands