

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-02/09  
Date: 16 September 2009

**PRE-TRIAL CHAMBER I**

**Before: Judge Sanji Mmasenono Monageng, Single Judge**

**SITUATION IN DARFUR, SUDAN**

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

**Public Document**

**Decision Ordering the Parties to Submit their Observations on the 52  
Applications for Victims' Participation in the Proceedings**

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**

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**Registrar & Deputy Registrar**  
Ms Silvana Arbia & Mr Didier Daniel  
Preira

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**  
Ms Fiona McKay

**Other**

**I, Judge Sanji Mmasenono Monageng**, Single Judge responsible for all issues related to victims' applications to be authorized to participate as victims in the proceedings related to the case of *The Prosecutor v. Bahar Idriss Abu Garda* (the "Abu Garda Case")<sup>1</sup> at the Pre-Trial Chamber I (the "Chamber") of the International Criminal Court (the "Court");

**NOTING** the "Second report on applications to participate in the proceedings" filed by the Registry on 11 September 2009,<sup>2</sup> in which it submits, as annexes, 52 applications for participation in the pre-trial phase of the Case ("the Applications");<sup>3</sup>

**NOTING** the "Report on applications a/0581/09 to a/0586/09 and request for extension of deadline in order to file supplementary information received" ("the Supplementary information") filed by the Registry on 15 September 2009;<sup>4</sup>

**NOTING** the "Filing of translations and supplementary information in respect of applications to participate in proceedings a/0581/09 to a/0586/09 and a/0536/09" ("the Translations") filed by the Registry on 16 September 2009;<sup>5</sup>

**NOTING** the "Decision on the Designation of a Single Judge on Victims' Issues and on the Deadline for the Filing of Applications for Participation", in which the Chamber *inter alia* decided that victims' applications for participation in the proceedings shall be filed no later than 11 September 2009;<sup>6</sup>

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<sup>1</sup> ICC-02/05-02/09-55, p. 4.

<sup>2</sup> ICC-02/05-02/09-97-Conf-Exp.

<sup>3</sup> ICC-02/05-02/09-97-Conf-Exp, Anx3-Anx54.

<sup>4</sup> ICC-02/05-02/09-104-Conf-Exp.

<sup>5</sup> ICC-02/05-02/09-105-Conf-Exp and Anx1-Anx8.

<sup>6</sup> ICC-02/05-02/09-55, p. 6.

**NOTING** the “Decision on the Prosecutor’s request for extension of time-limit”, issued by the Single Judge Cuno Tarfusser on 11 September 2009,<sup>7</sup> in which the date set for the commencement of the confirmation hearing was postponed until Monday, 19 October 2009;

**NOTING** article 68(3) of the Statute, rules 89 to 93 of the *Rules of Procedure and Evidence* (“the Rules”) and regulations 34, 35(2) and 86 of the *Regulations of the Court* (“the Regulations”);

**CONSIDERING** that the Single Judge received the 52 applications for participation in the proceedings on Friday 11 September 2009;

**CONSIDERING** however that in relation to six applications for participation, she was informed, of (i) the difficulties encountered by the legal representatives of the applicants in securing the signatures of their clients as well as proof of their identity due to the fact that they reside in Sudan and (ii) the commitment of the legal representatives to secure this information no later than 15 September 2009 which they did;

**CONSIDERING** the abovementioned, the Single Judge is of the view that the Registry was unable to file the complete six applications for participation within the time limit set by the Chamber for reasons outside its control;

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<sup>7</sup> ICC-02/05-02/09-98.

**CONSIDERING** furthermore that under rule 89(1) of the Rules, the Prosecution and the Defence are entitled to make observations concerning the Applications within a time limit set by the Chamber, and that the Single Judge deems it necessary, in order to be in a position to make a decision as to whether the applicants should be granted the status of victims in the Abu Garda case, to give the opportunity to the Prosecution and the Defence to submit their observations on the merits of the applications;

**CONSIDERING** that it is necessary to set a time-limit for receipt of the parties' observations in view of the fact that the confirmation hearing is due to commence on Monday, 19 October 2009;<sup>8</sup>

**CONSIDERING** the importance of the right of the individuals granted the status of victim, if any, to effectively participate in the proceedings leading to the confirmation hearing and the need to ensure that the participation of those who have been granted authorisation to present their views and concerns as victims during the pre-trial phase, must be in a manner which is not prejudicial to or inconsistent with the rights of the defence and a fair and impartial trial;

**CONSIDERING** that, in accordance with the precedents of this Chamber, the identities of the Applicants can be disclosed to the Prosecution, since the Prosecution is an organ of the Court, which is also charged with protecting victims and witnesses;

**CONSIDERING** further that the Prosecution is the organ that, pursuant to regulation 86 of the Regulations, can be requested to provide the Registry with further information about the Applications or the applicants;

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<sup>8</sup> ICC-02/05-02/09-98, p. 5.

**CONSIDERING** that, on the other hand, before a decision on the merits is issued, there is no need to disclose to the Defence the identities of the applicants, since, once authorization for participation is granted, the victims are entitled to decide whether to remain anonymous or disclose their identities to the Defence;

**FOR THESE REASONS:**

**GRANT** the Registry request for extension of the time-limit for the submission of additional information related to the 52 Applications for participation in the proceedings, until 16 September 2009;


**ORDER** the Registry, by Thursday 17 September 2009 at 16h00, to provide:

- (i) the Prosecution with non-redacted copies of the 52 Applications, the Supplementary information and the Translations; and,
- (ii) the Defence of Bahar Idriss Abu Garda with copies of the 52 Applications, the Supplementary information and the Translations, in which names, addresses and other sensitive information which could lead to the applicants' identification are redacted;

**GRANT** the parties, no later than 30 September 2009, 16h00, to file their observations on the Applications for Participation.

**RECALL** that additional applications, at this stage of the proceedings, will not be accepted.

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



**Judge Sanji Mmasenono Monageng**  
**Single Judge**

Dated this Wednesday 16 September 2009

At The Hague, The Netherlands