

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 October 2009

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, SUDAN

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

Public

**Decision requesting the Defence to provide information on prospective
witness**

Document 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

Mr Karim A.A. Khan

Legal Representatives of Victims

Mr Brahim Koné
Ms Hélène Cissé

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

I, Judge Cuno Tarfusser, Single Judge responsible for carrying out the functions of the Chamber in relation to the proceedings of the situation in Darfur, Sudan and any related cases emanating therefrom, including the case of *The Prosecutor v Bahar Idriss Abu Garda*, at the International Criminal Court;¹

NOTING the "Submission of Confidential List of Evidence for filing in the record of the Case" dated 1 October 2009,² whereby the Defence *inter alia* stated its intention to call "one viva voce witness to give evidence, in public session, at confirmation"³;

NOTING that no information on the subject matter and scope of the prospective questioning of such witness was included in or attached to the Defence's List of Evidence;

NOTING article 69(4) of the Statute of the Court and rule 64 of the Rules of Procedure and Evidence, entrusting the Chamber with the power to make determinations as to the relevance or admissibility of evidence;

CONSIDERING that failure by the Defence to provide information as to the proposed subject matter and scope of the prospective questioning of the witness prevents the Chamber from properly exercising its powers as to the relevance and admissibility of the evidence;

¹ ICC-02/05-210.

² ICC-02/05-02/09-127.

³ Paragraph 4.

CONSIDERING that the paramount principle of fair trial requires that both parties be in a position to properly and adequately prepare for the confirmation hearing, also with a view to preventing unknown issues to be raised at the last minute which might adversely affect the expeditiousness of the proceedings;

CONSIDERING that, accordingly, there is a need for the Defence to promptly provide the Chamber and the Prosecutor with information detailing the subject matter and scope of the proposed testimony;

NOTING further that, in its "Observations on the proposed schedule for the confirmation hearing",⁴ the Defence notes that the one witness it will call for the Confirmation hearing "is to be cross-examined by the Defence, not examined in chief"⁵, without however clarifying the consequences which it attaches to such distinction;

CONSIDERING that, as a matter of course, a witness has to be first questioned by the party which is calling him or her to testify;

CONSIDERING therefore that, without prejudice to any determination which the Chamber may make as regards the relevance and admissibility of the prospective testimony, the witness at stake shall be first questioned by the Defence;

FOR THESE REASONS, HEREBY

⁴ ICC-02/05-02/09-144.

⁵ Paragraph 4.

ORDER

the Defence to submit, in a confidential filing and by Friday 9 October at 16:00 hours, information detailing the subject matter and scope of the proposed testimony.

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

Dated this Thursday, 8 October 2009

At The Hague, The Netherlands

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge