Cour Pénale Internationale



International Criminal Court

Original: English

No.: ICC-02/05-02/09 Date: 9 October 2009

# PRE-TRIAL CHAMBER I

**Before:** 

Judge Cuno Tarfusser, Single Judge

## SITUATION IN DARFUR, SUDAN

## IN THE CASE OF THE PROSECUTOR V. BAHAR IDRISS ABU GARDA

**Public Document** 

Decision reclassifying certain documents and ordering the filing of public redacted versions

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 Mr Brahima Koné Ms Hélène Cissé Legal Representatives of the Applicants

**Unrepresented Victims** 

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims Ms Paolina Massidda The Office of Public Counsel for the Defence

**States Representatives** 

**Amicus Curiae** 

**Registrar & Deputy Registrar** Ms Silvana Arbia

Victims and Witnesses Unit

**Detention Section** 

**Defence Support Section** 

Victims Participation and Reparations Other Section

I, Judge Cuno Tarfusser, Single Judge responsible for carrying out the functions of Pre-Trial Chamber I 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;<sup>1</sup>

**NOTING** the "Decision requesting the Prosecutor to submit observations on reclassification",<sup>2</sup> filed on 1 October 2009, wherein the Single Judge (i) informed the parties and participants of his intention to conduct a *proprio motu* assessment of the level of confidentiality of the filed documents in the Case in view of the upcoming confirmation hearing and (ii) requested the Prosecutor to submit observations on the possible reclassification of a number of documents either as "confidential" or as "public";

**NOTING** the "Prosecution's Observations on Reclassification" dated 6 October 2009;<sup>3</sup>

**NOTING** articles 57(3)(c), 67(1) and 68(1) of the Statute of the Court, rules 15, 87 and 88 of the Rules of Procedure and Evidence, regulations 8 and 23*bis* of the Regulations of the Court and regulation 14 of the Regulations of the Registry;

**NOTING** the paramount principle of publicity of the proceedings as enshrined in article 67(1) of the Statute;

**NOTING** that, according to regulation 23*bis*(3) of the Regulations of the Court, where the basis for the classification of a document no longer exists, the Chamber may reclassify such a document on its own motion;

<sup>&</sup>lt;sup>1</sup> ICC-02/05-210.

<sup>&</sup>lt;sup>2</sup> ICC-02/05-02/09-126.

<sup>&</sup>lt;sup>3</sup> ICC-02/05-02/09-139-Conf.

CONSIDERING, therefore, that the Single Judge has conducted his assessment of the level of confidentiality of the documents filed into the record of the Case verifying whether the factual and legal basis for the chosen classification of a document does still exist;

**CONSIDERING** that, in instances where the reclassification of certain documents as public and/or as confidential would have an impact (i) on the protection and privacy of victims and witnesses, or (ii) on the effectiveness of further or ongoing investigations, it appears necessary to order the party from which these documents emanate to file a public redacted version of them rather than ordering such a reclassification;

**CONSIDERING** appropriate, in light of the assessment conducted by the Single Judge, to reclassify a number of documents either as "public" or as "confidential";

#### FOR THESE REASONS,

#### ORDER

The Registrar to reclassify as "public" the following documents:

- ICC-02/05-02/09-2-US;
- ICC-02/05-02/09-4-US;
- ICC-02/05-02/09-12-Conf;
- ICC-02/05-02/09-14-Conf-Exp;
- ICC-02/05-02/09-15-Conf;
- ICC-02/05-02/09-42-Conf-Exp;
- ICC02/05-02/09-49-Conf-Exp;
- ICC-02/05-02/09-75-Conf;

- ICC-02/05-02/09-82-Conf-Exp;

#### ORDER

The Registrar to reclassify as "confidential" the following documents:

- ICC-02/05-02/09-3-US-Exp
- ICC-02/05-02/09-8-US-Exp
- ICC-02/05-02/09-9-US-Exp
- ICC-02/05-02/09-11-US-Exp and its Annexes 1-6
- ICC-02/05-02/09-17-US-Exp
- ICC-02/05-02/09-21-Conf-Exp-Anx1 Anx5.38;
- ICC-02/05-02/09-22-Conf-Exp;
- ICC-02/05-02/09-22-Conf-Exp-Anx1-Anx8;
- ICC-02/05-02/09-23-Conf-Exp-Anx1;
- ICC-02/05-02/09-24-Conf-Exp and annex A, B1-B4 and B6-B24;
- ICC-02/05-02/09-26-Conf-Exp and Anx1;
- ICC-02/05-02/09-28-Conf-Exp;
- ICC-02/05-02/09-29-Conf-Exp;
- ICC-02/05-02/09-30-Conf-Exp and Anx1;
- ICC-02/05-02/09-31-Conf-Exp;
- ICC-02/05-02/09-31-Conf-Exp-Corr;
- ICC-02/05-02/09-36-US-Exp;
- ICC-02/05-02/09-44-Conf-Exp;
- ICC-02/05-02/09-48-Conf-Exp;
- ICC-02/05-02/09-66-Conf-Exp;
- ICC-02/05-02/09-73-Conf-Exp;

### ORDER

the Registrar to reclassify as "confidential *ex parte* Prosecutor only" the documents ICC-02/05-02/09-3-US-Exp-Anx, ICC-02/05-02/09-33-US-Exp and ICC-02/05-02/09-34-US-Exp;

## ORDER

The Prosecutor to file, by Wednesday 14 October 2009, a public redacted version of the following documents:

- ICC-02/05-02/09-22-Conf-Exp;
- ICC-02/05-02/09-28-Conf-Exp;
- ICC-02/05-02/09-29-Conf-Exp;
- ICC-02/05-02/09-33-US-Exp;
- ICC-02/05-02/09-34-US-Exp;
- ICC-02/05-02/09-36-US-Exp;
- ICC-02/05-02/09-44-Conf-Exp;
- ICC-02/05-02/09-48-Conf-Exp;
- ICC-02/05-02/09-59-Conf-Exp;
- ICC-02/05-02/09-66-Conf-Exp;
- ICC-02/05-02/09-70-Conf-Exp;
- ICC-02/05-02/09-73-Conf-Exp;
- ICC-02/05-02/09-86-Conf-Exp;
- ICC-02/05-02/09-93-Conf;
- ICC-02/05-02/09-94-Conf-Exp;

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

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Judge Cuno Tarfusser Single Judge

Dated this Friday, 9 October 2009

At The Hague, The Netherlands