

**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 IDRIS 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

REGISTRY

Registrar & Deputy 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 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;¹

NOTING the “Decision requesting the Prosecutor to submit observations on reclassification”,² 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;³

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 23bis 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 23bis(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;

¹ ICC-02/05-210.

² ICC-02/05-02/09-126.

³ 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

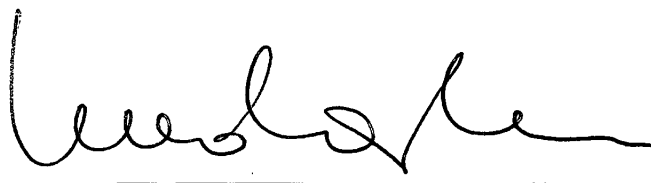
the Registrar to reclassify as “confidential *ex parte* Prosecutor only” the documents ICC-02/05-02/09-3-US-Exp-Anx, ICC-02/05-02/09-33-US-Exp and ICC-02/05-02/09-34-US-Exp;

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;

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



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Friday, 9 October 2009

At The Hague, The Netherlands