

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-01/09  
Date: 13 September 2010

**PRE-TRIAL CHAMBER I**

Before: **Judge Cuno Tarfusser, Single Judge**

**SITUATION IN DARFUR, SUDAN**

***THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR***

**Public Document**

**Decision on the "OPCD Request for authorization to submit observations concerning Guardian Article dated 15 July 2010"**

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

Ms Fatou Bensouda

**Counsel for the Defence**

**Legal Representatives of Victims**

**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**

Mr Xavier-Jean Keïta

Ms Melinda Taylor

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Others**

**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. Omar Hassan Ahmad Al Bashir*,<sup>1</sup> at the International Criminal Court;

1. **NOTING** the “OPCD Request for authorization to submit observations concerning Guardian Article dated 15 July 2010” submitted by the Office of Public Counsel for the Defence (“OPCD” or “Office”) on 3 September 2010 (“OPCD Request”), whereby the Office (i) submitted that “the issue as to whether the article published by the Prosecutor, Luis Moreno Ocampo, in the Guardian on 15 July 2010 (the Guardian article) infringe[d] the presumption of innocence or affect[ed] the fairness and impartiality of the proceedings [fell] squarely within its mandate under regulation 77(4) of the Regulations of the Court to represent and protect the rights of the defence during the initial stages of the investigation”; (ii) requested to be authorised to submit observations concerning the impact of the Guardian article on the rights of the defendant, namely the presumption of innocence and the fairness and impartiality of the proceedings, as well as any appropriate remedies; (iii) and, in the alternative, requested the Chamber “to *proprio motu* seize itself” of the issue, based on its duty to ensure the fairness and impartiality of the proceedings;

2. **NOTING** that the OPCD submits that, if granted, its observations would elaborate on how “the contents of the Guardian article directly raise[d] issues concerning the presumption of innocence, the rights of the defendant, and the fairness and impartiality of the proceedings”;

3. **NOTING**, in particular, that the Request alleges (i) that the wording of the article authored by the Prosecutor as regards the second warrant of arrest

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<sup>1</sup> ICC-02/05-233.

issued by the Chamber for Omar Al Bashir did not clarify whether the statements concerning Al Bashir's alleged responsibility for crimes committed in Darfur "derive[d] from the Chamber's decision, from evidence within its control, or [were] simply his opinions"; (ii) that the issuance of public statements proclaiming the guilt of a defendant by the Prosecutor would cast a doubt in the international community as to whether the Prosecutor is executing in good faith his duty to investigate incriminating and exonerating circumstances equally; (iii) that public statements concerning the guilt of a defendant or which mischaracterize the nature of the proceedings before the Court might deter potential witnesses; (iv) that such statements might adversely impact present and future defendants' confidence in the integrity and impartiality of both the Court and the Office of the Prosecutor; .

4. **NOTING** that the Office maintains that the issue raised in the Request falls within the scope of its mandate under regulation 77(4) of the Regulations of the Court;

5. **CONSIDERING** that, as highlighted by the Office, the behaviour which is referred to and criticised in the Request concerns the Prosecutor's decision "to utilize[...] the media to convey his legal position concerning the responsibility of the defendant";

6. **CONSIDERING** that, in its essence, the Request appears to condemn what, in the view of the Office, is an inappropriate behaviour on the part of the Prosecutor;

7. **NOTING** article 71 of the Statute of the Court and rules 170 and 171 of the Rules of Procedure and Evidence;

8. **CONSIDERING** that, in accordance with the statutory instruments of the Court, acts or behaviour may be sanctioned by the Chamber when they

amount to misconduct, more specifically within the framework of rules 170 and 171 of the Rules (respectively addressing “Disruption of proceedings” and “Refusal to comply with a direction by the Court”);

9. **CONSIDERING** that the behaviour addressed in the Request neither occurred in the context of proceedings, nor was in violation of any direction given by the Court and that, accordingly, falls outside the scope of the powers vested in the Chamber by rules 170 and 171 of the Rules;

10. **CONSIDERING** that, accordingly, the Single Judge refrains from addressing the merits of the Request;

**FOR THESE REASONS,**

**REJECT**

the OPCD Request.

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

Dated this 13 September 2010

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**