

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 May 2009

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, SUDAN

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

**URGENT
Confidential**

Decision on issues relating to the publicity of proceedings in the Case

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

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 Pre-Trial Chamber I in relation to the proceedings of the situation in Darfur, Sudan (the "Situation") and any related cases emanating therefrom¹ at the International Criminal Court (the "Court");

NOTING the "Decision on the Prosecutor's Application under Article 58" ("the Decision") dated 7 May 2009,² issuing *inter alia* a summons to appear for Bahr Idriss Abu Garda;³

NOTING the "Decision scheduling a hearing on 13 May 2009" dated 11 May 2009,⁴ whereby *inter alia* the hearing originally scheduled on Thursday, 14 May 2009, at 9,30 hours, for the first appearance of Bahr Idriss Abu Garda was cancelled;

NOTING the submissions by the Defence, the Registrar, the Kingdom of the Netherlands and the Prosecutor at the hearing held in closed session on 13 May 2009 (the "Hearing"), during which a number of matters of relevance in connection with Bahr Idriss Abu Garda's appearance before the Court were discussed;

NOTING the decisions taken by the Single Judge during the Hearing, in particular the scheduling of Monday, 18 May 2009, at 9,30 for the hearing of first appearance of Bahr Idriss Abu Garda before the Court pursuant to article 60 of the Statute of the Court (the "Statute");

¹ ICC-02/05-210.

² ICC-02/05-02/09-1-US-Exp.

³ ICC-02/05-02/09-2-US.

⁴ ICC-02/05-02/09-7-Conf.

NOTING the information orally submitted by the Registrar as to the current whereabouts of Bahr Idriss Abu Garda and the travel arrangements currently being made with a view to securing his arrival at the seat of the Court;

CONSIDERING that, on the basis of such information, it is necessary to postpone the hearing of first appearance of Bahr Idriss Abu Garda to Monday 18 May 2009, at 15 hours;

NOTING that all of the filings in the record of the case of *The Prosecutor v. Bahr Idriss Abu Garda* (the "Case") are currently classified as either "under seal" or "confidential";

NOTING the confidential *ex parte* "Request for reclassification of the Prosecution's Application under Article 58, and the Decision on the Prosecution's application under Article 58" submitted by the Prosecutor on an urgent basis on 15 May 2009 (the "Prosecutor's Urgent Request"), whereby he requested (a) to be authorized to file immediately a public redacted version of its Application under article 58; and (b) "to order the Registry to file a public redacted version of the Decision on the Prosecution's Application as soon as the summoned individual boards a plane bound for the Netherlands";⁵

NOTING article 67(1) of the Statute, enshrining the principle that proceedings before the Court shall be public, as well as regulation 20(1) of the Regulations of the Court (the "Regulations"), providing that all hearings shall be held in public unless otherwise provided in the statutory texts or ordered by the Chamber;

⁵ ICC-02/05-02/09-14-Conf-Exp.

CONSIDERING, however, that the principle of publicity has to be balanced against the paramount principle of effectiveness of proceedings;

CONSIDERING that, at this stage, the effectiveness of proceedings requires first and foremost ensuring the presence of Bahr Idriss Abu Garda at the seat of the Court for the purposes of his initial appearance;

CONSIDERING that, in light of the current circumstances as regards the location of Bahr Idriss Abu Garda as presented during the hearing, Bahr Idriss Abu Garda's chances to actually make the trip to the seat of the Court might be jeopardized if proceedings in the Case were to become public before he has boarded a plane on his way to Schiphol Airport, Amsterdam, The Netherlands ("Schiphol Airport");

CONSIDERING that, accordingly, it is necessary that no publicity be given to the proceedings in the Case before the moment when Bahr Idriss Abu Garda has boarded a plane on his way to Schiphol Airport ;

CONSIDERING that, in light of the responsibilities of the Registrar in connection with Bahr Idriss Abu Garda's travel to the Netherlands, it is appropriate to entrust the Registrar with the exclusive task of determining when the condition set forth in the preceding paragraph is met;

NOTING articles 57(3)(c), 67 and 68(1) of the Statute and regulation 23bis (3) of the Regulations of the Court;

CONSIDERING that, based on the information available, the “Decision on the Prosecution’s application under Article 58”, currently classified as under seal, should be made public in redacted form, with a view *inter alia* to ensuring the protection and privacy of victims and witnesses as well as of Bahr Idriss Abu Garda himself;

FOR THESE REASONS, HEREBY

DECIDE

that the hearing of first appearance of Bahr Idriss Abu Garda will take place on Monday 18 May 2009, at 15 hours;

ORDER

the Registrar to refrain from giving any publicity to the proceedings in the Case before the moment when Bahr Idriss Abu Garda has boarded a plane on his way to Schiphol Airport;

DECIDE

that the Registrar is entrusted with the exclusive task of determining when the condition that Abu Garda has boarded a plane on his way to Schiphol Airport is met;

ORDER

the Registrar to notify the Single Judge of the moment when Bahr Idriss Abu Garda boards a plane on his way to Schiphol Airport and to liaise with the

appropriate divisions of the Court with a view to making proceedings in the Case public as of that moment;

ORDER

that, at that moment, the "Decision on the Prosecutor's Application under article 58" become public in the Public Redacted Version attached hereto as under seal Annex A;

REJECT

the Prosecutor's Urgent Request;

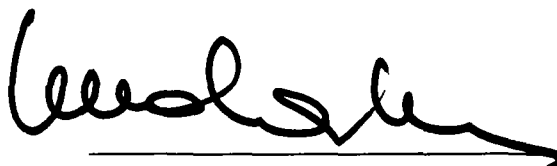
DECIDE

that further decisions as to the publicity of proceedings in the Case, including those pertaining to the extension of publicity of hearings beyond the courtroom pursuant to regulation 21(1) of the Regulations, shall be taken orally at the hearing.

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

Dated this Friday, 15 May 2009

At The Hague, The Netherlands

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke ending in a small hook.

Judge Cuno Tarfusser
Single Judge