



Original: English

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

Date: 29 March 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, THE SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. BAHAR IDRIS ABU GARDA***

**Public Document
URGENT**

Defence Withdrawal of the "Defence Application for Exclusion of Legal Representative of Victims" 'ELÉMENTS DE RÉPONSE ET OBSERVATIONS SUR LA REQUÊTE DE L'ACCUSATION DEMANDANT L'AUTORISATION DE FAIRE APPEL'"

Source: Defence

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

Mr Essa Faal

Counsel for the Defence

Mr Karim A. A. Khan

Mr Andrew J. Burrow

Legal Representatives of the Victims

Mr Brahima Koné

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. On 8 February 2010, Pre-Trial Chamber I rendered its “Decision on the Confirmation of Charges”¹. On 15 March 2010, the Prosecution applied for leave to appeal the Confirmation Decision² under Rule 155 of the Rules of Procedure and Evidence. On 19 March 2010, the Defence filed its “Response to the ‘Prosecution's Application for Leave to Appeal the ‘Decision on the Confirmation of Charges’ ”³.
2. On 23 March 2010, the Registry notified the participants of the Legal Representative of Victims a/0434/09, a/0435/09, a/0456/09 through a/0462/09, a/0579/09 and a/0580/09 (“Legal Representative of Victims”) filing of the “ELÉMENTS DE RÉPONSE ET OBSERVATIONS SUR LA REQUÊTE DE L’ACCUSATION DEMANDANT L’AUTORISATION DE FAIRE APPEL”⁴ (“Response”), dated 18 March 2010.
3. On 23 March 2010, the Defence filed the “Defence Application for Exclusion of Legal Representative of Victims’ ‘ELÉMENTS DE RÉPONSE ET OBSERVATIONS SUR LA REQUÊTE DE L’ACCUSATION DEMANDANT L’AUTORISATION DE FAIRE APPEL’ ”⁵ (“Application for Exclusion”).
4. On 24 March 2010, the Single Judge issued the “Decision requesting clarification on submission of Response by Legal Representative of Victims.”⁶
5. On 26 March 2010 at 9:54 hours, the Legal Representative of Victims filed the “Rapport sur les circonstances d'envoi du document de réponse du Représentant Légal des victimes à la demande d'autorisation du Procureur pour être autorisé à faire appel”⁷, in which the Legal Representative of Victims stated that the Response was filed prior to the deadline established by Regulation 65(3) of the Regulations of the Court. On 25 March 2010 at 15:15 hours, the Registrar filed the

¹ Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda* (“*Abu Garda*”), Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243.

² *Abu Garda*, Prosecution's Application for Leave to Appeal the 'Decision on the Confirmation of Charges', 15 March 2010, ICC-02/05-02/09-252-Conf.

³ *Abu Garda*, 19 March 2010, ICC-02/05-02/09-256-Conf.

⁴ *Abu Garda*, 28 March 2010, ICC-02/05-02/09-257-Conf.

⁵ *Abu Garda*, 23 March 2010, ICC-02/05-02/09-258.

⁶ *Abu Garda*, 24 March 2010, ICC-02/05-02/09-259.

⁷ *Abu Garda*, 25 March 2010, ICC-02/05-02/09-260.

“Registry report on the circumstances surrounding the submission of the ‘Eléments de réponse et observations sur la requête de l'accusation demandant l'autorisation de faire appel’ by Me Cissé”⁸ (“Report”), in which the Registrar noted that “it appears that CMS [Court Management Services] did not receive”⁹ any email containing a filing from the Legal Representative of Victims on 19 March 2010.

Withdrawal of application for exclusion

6. Notwithstanding the Report of the Registrar, the Defence accepts the Legal Representative of Victims’ representations that the filing was sent to CMS on 19 March 2010, and accordingly wishes to inform the Single Judge that the Defence no longer objects to the Response being considered by the Chamber.
7. Whilst being fully cognizant that the matter is completely within discretion of the Single Judge, the Defence considered it prudent to submit this filing in the event it provides some assistance to the Single Judge.

Respectfully Submitted,



Mr. Karim A. A. Khan
Defence Counsel for Bahar Idriss Abu Garda

Dated this 29th Day of March 2010

At The Hague, The Netherlands

⁸ *Abu Garda*, 26 March 2010, ICC-02/05-02/09-261.

⁹ *Ibid.*, p. 4.