

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

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

Date: 30 July 2009

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single judge**

**SITUATION IN DARFUR, SUDAN**

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

**Public Document**

**Decision Ordering the Prosecutor to Submit a Report on Witnesses' Security Risk  
Assessment**

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 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**

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**Registrar**

Ms. Silvana Arbia

**Deputy Registrar**

**Victims and Witnesses Unit**

Ms. Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**I, Sylvia Steiner**, judge at the International Criminal Court ("the Court");

**NOTING** the "Decision on the Temporary Replacement of the Single Judge for the period of 22 July to 17 August 2009", whereby Judge Sylvia Steiner was designated Single Judge for the situation in Darfur, Sudan and any case emanating therefrom, including the case of the Prosecutor v. Bahar Idriss Abu Garda, for the period of 22 July to 17 August 2009;<sup>1</sup>

**NOTING** the "Prosecutions Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0416, DAR-OTP-WWWW-0418, DAR-OTP-WWWW-0419 and DAR-OTP-WWWW-0421 Pursuant to Rules 81(2) and 81(4)" of 10 July 2009;<sup>2</sup> the "Prosecutions Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0307, and DAR-OTP-WWWW-0314 Pursuant to Rules 81(2) and 81(4)" of 15 July 2009;<sup>3</sup> and the "Prosecutions Application for Redactions to Statements of Witnesses DAR-OTP-WWWW-0326, DAR-OTP-WWWW-0355, DAR-OTP-WWWW-0417 and DAR-OTP-WWWW-0420 Pursuant to Rules 81(2) and 81(4)" of 17 July 2009<sup>4</sup> (collectively, the "Prosecution's Requests for Redactions");

**NOTING** that, in the Prosecution's Requests for Redactions, the Prosecution requests the Single Judge, *inter alia*, to issue an order granting redaction of information including identities and other identifying information of witnesses on whom it intends to rely at the confirmation hearing, pursuant to rule 81(4) of the Rules of Procedure and Evidence (the "Rules");

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<sup>1</sup> ICC-02/05-225 and ICC-02/05-02/09-37.

<sup>2</sup> ICC-02/05-02/09-33-US-Exp and ICC-02/05-02/09-33-US-Exp-AnxsA, B, C & D.

<sup>3</sup> ICC-02/05-02/09-34-US-Exp and ICC-02/05-02/09-34-US-Exp-AnxsA, B & C.

<sup>4</sup> ICC-02/05-02/09-36-US-Exp and ICC-02/05-02/09-36-US-Exp-AnxsA, B, C, D, A1 & C1.

**NOTING** articles 57(3)(c) and 68 of the Statute of the Court (the “Statute”) and rules 81, 87 and 88 of the Rules;

**NOTING** in particular that under articles 57(3)(c) and 68(1) of the Statute the Chamber must ensure the protection and respect for the privacy of victims and witnesses and take appropriate measures to protect their safety, their physical and psychological well-being and their dignity;

**NOTING** that the Chamber, in accordance with rule 81(4) of the Rules, shall, on its own motion or at the request of the Prosecution, the accused or any State, take the necessary steps to, *inter alia*, protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial;

**CONSIDERING** that, in the view of the Single Judge, procedural protective measures, including redactions and non-disclosure of identities of witnesses and victims prior to the commencement of the trial, must be preceded of and accompanied by a case-by-case assessment on the security of witnesses and his or her families;

**CONSIDERING** that, in ruling on the Prosecution’s Requests for Redactions, the Single Judge is required, according to the jurisprudence of the Appeals Chamber, to ensure that every request for redaction is justified and to apply the criteria laid down by the Appeals Chamber, in particular to assess the existence of an objectively justifiable risk to a witness’s safety arising from the disclosure of the identifying information to the Defence;

**NOTING** that, at the hearing held on 9 June 2009, the Prosecution stated that it had “already carried out a security risk assessment of all the witnesses”;<sup>5</sup>

**CONSIDERING** that the examination of the security risk assessment carried out by the Prosecution with respect to each and every witness on whom it intends to rely at the confirmation hearing is necessary with a view to enabling the Single Judge to properly rule on the Prosecution’s Requests for Redactions;

**CONSIDERING** finally that, in the view of the Single Judge, it is of the utmost importance for the Chamber that representatives of the Victims and Witnesses Unit provide their views on the Prosecution security risk assessment and propose any additional or alternative protective measures which might be necessary or appropriate in order to ensure the proper protection of a given witness;

**FOR THESE REASONS**

**ORDER**

The Prosecution to submit to the Single Judge, no later than 4 August 2009, a report on the security risk assessment carried out by the Prosecution with respect to each and every witness on whom it intends to rely for the purpose of the confirmation hearing;

**REQUEST**

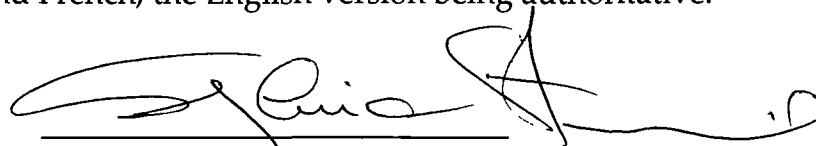
The Victims and Witnesses Unit to submit to the Single Judge, no later than 14 August 2009, its views and observations on the Prosecution’s report on the security risk assessment mentioned above, including proposals for additional or alternative

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<sup>5</sup> ICC-02/05-02/09-T4-ENG, at page 2, lines 16-17.

protective measures which might be necessary or appropriate in order to ensure the proper protection of a given witness.

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

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**Judge Sylvia Steiner**  
Single judge

Dated this Thursday, 30 July 2009

At The Hague, The Netherlands