

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 8 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**

**Decision requesting the Defence to provide information on prospective  
witness**

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**

Mr Brahim Koné

Ms Hélène Cissé

**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

**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 the Chamber 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;<sup>1</sup>

NOTING the "Submission of Confidential List of Evidence for filing in the record of the Case" dated 1 October 2009,<sup>2</sup> whereby the Defence *inter alia* stated its intention to call "one viva voce witness to give evidence, in public session, at confirmation"<sup>3</sup>;

NOTING that no information on the subject matter and scope of the prospective questioning of such witness was included in or attached to the Defence's List of Evidence;

NOTING article 69(4) of the Statute of the Court and rule 64 of the Rules of Procedure and Evidence, entrusting the Chamber with the power to make determinations as to the relevance or admissibility of evidence;

CONSIDERING that failure by the Defence to provide information as to the proposed subject matter and scope of the prospective questioning of the witness prevents the Chamber from properly exercising its powers as to the relevance and admissibility of the evidence;

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<sup>1</sup> ICC-02/05-210.

<sup>2</sup> ICC-02/05-02/09-127.

<sup>3</sup> Paragraph 4.

**CONSIDERING** that the paramount principle of fair trial requires that both parties be in a position to properly and adequately prepare for the confirmation hearing, also with a view to preventing unknown issues to be raised at the last minute which might adversely affect the expeditiousness of the proceedings;

**CONSIDERING** that, accordingly, there is a need for the Defence to promptly provide the Chamber and the Prosecutor with information detailing the subject matter and scope of the proposed testimony;

**NOTING** further that, in its "Observations on the proposed schedule for the confirmation hearing",<sup>4</sup> the Defence notes that the one witness it will call for the Confirmation hearing "is to be cross-examined by the Defence, not examined in chief"<sup>5</sup>, without however clarifying the consequences which it attaches to such distinction;

**CONSIDERING** that, as a matter of course, a witness has to be first questioned by the party which is calling him or her to testify;

**CONSIDERING** therefore that, without prejudice to any determination which the Chamber may make as regards the relevance and admissibility of the prospective testimony, the witness at stake shall be first questioned by the Defence;

**FOR THESE REASONS, HEREBY**

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<sup>4</sup> ICC-02/05-02/09-144.

<sup>5</sup> Paragraph 4.

**ORDER**

the Defence to submit, in a confidential filing and by Friday 9 October at 16:00 hours, information detailing the subject matter and scope of the proposed testimony.

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

Dated this Thursday, 8 October 2009

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**