

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-02/09
Date: 19 October 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge

SITUATION IN DARFUR, THE SUDAN

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

Public Document

**Defence Response to the Requests of the Legal Representatives of the Victims of
16 October 2009**

Source: Defence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Mr Essa Faal

Counsel for the Defence

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Andrew J. Burrow

Legal Representatives of the Victims

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Mr Didier Daniel Pereira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. Noting Pre-Trial Chamber I's "Decision on victims' modalities of participation at the Pre-Trial Stage of the Case", in which the Pre-Trial Chamber ruled that the legal representatives of the victims in the case will "have access to the public evidence filed by the Prosecution and Defence pursuant to rule 121 of the Rules and contained in the record of the case"¹;
2. Noting the Single Judge's "Decision on the Defence's application for protective measures dated 2 October 2009"², in which the Single Judge granted the protective measures sought by the Defence for five Defence witnesses;
3. Noting the 16 October 2009 filing "1. Request in respect of Lifting Anonymity of Victims 2. Request for Access to Documents Related to Witnesses" submitted by the Legal Representative of Victims a/0535/09, a/0537/09, a/0538/09, a/0539/09, a/0540/09, a/0541/09, a/0542/09, a/0544/09, a/0545/09, a/0546/09, a/0547/09, a/0548/09, a/0549/09, a/0550/09, a/0551/09, a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0557/09, a/0558/09, a/0559/09, a/0560/09, a/0561/09 and a/0562/09, wherein the Legal Representative requested the Chamber to grant the victims access to "all documents filed in this case" (the "Legal Representative Request")³;
4. Noting the 16 October 2009 filing from the Legal Representative of victims a/0434/09 and a/0435/09, "Requête aux fins d'être autorisé à accéder aux documents classés confidentiels relatifs aux témoins cités par le Procureur et la Défense pour l'audience de confirmation des charges" (the "Legal Representative Request"), wherein the Legal Representative requested access to the statements and confidential documents related to witnesses that the Parties intend to rely upon at the Confirmation Hearing⁴;
5. Further noting the Single Judge's "Decision setting a deadline for the parties' responses to the victims' legal representatives' request for access to confidential

¹ ICC-02/05-02/09-136, para. 13(vi)

² ICC-02/05-02/09-137-Conf

³ ICC-02/05-02/09-176.

⁴ ICC-02/05-02/09-177

documents" dated 16 October 2009, in which the Single Judge granted the "Defence and the Prosecution until Monday 19 October 2009 at 16:00 to respond to the Legal Representatives' Requests";

6. The Defence hereby submits its response to both Legal Representative Requests.

II. Defence Submissions

7. The protective measures sought by the Defence⁵ and granted by the Pre-Trial Chamber⁶ for five Defence witnesses remain a necessity for each of these witnesses.
8. With the exception of the document identified by document identification number "DAR-OTP-0105-1838" and evidence number "EVD-D05-0001", all evidence for which the Defence has sought "confidential" classification⁷ either identifies on its face, or through attached metadata, the identities of the five Defence witnesses for whom protective measures have been granted.
9. Therefore, the Defence submits that granting either Legal Representative Request would undermine the protective measures granted by the Pre-Trial Chamber, and potentially put at risk the five Defence witnesses for whom the protective measures were sought.
10. As regards the document identified by document identification number "DAR-OTP-0105-1838" and evidence number "EVD-D05-0001", the Single Judge has already addressed the confidentiality of this item of evidence.⁸


⁵ ICC-02/05-02/09-131-Conf

⁶ ICC-02/05-02/09-137-Conf

⁷ ICC-02/05-02/09-150 ; ICC-02/05-02/09-156

⁸ Decision on the Prosecutor's Confidential request for measures to ensure document confidentiality of a document, ICC-02/05-02/09-132-Conf

Respectfully Submitted,



Mr. Karim A. A. Khan

Lead Counsel for Bahar Idriss Abu Garda

Dated this 19th Day of October 2009

At The Hague, The Netherlands