

**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, THE SUDAN

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

**URGENT
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**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

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

1. On 20 November 2008, the Office of the Prosecutor ("the Prosecution" or "the Office") filed an Application under Article 58 of the Rome Statute, requesting that Pre-Trial Chamber I ("PTC") issue Warrants of Arrest or, alternatively, Summonses to Appear for the three individuals named therein ("the Application").¹ The Application was classified as "Confidential-Ex parte Prosecution Only".
2. On 7 May 2009, the PTC rendered its decision on the Application², and on the same date issued a Summons for BAHR IDRIS ABU GARDA ("ABU GARDA") to appear before the Court on 14 May 2009.³ Both the decision and the Summons were issued under seal.
3. On 13 May 2009 the Single Judge issued a decision in which it ordered the Registrar (i) to "reclassify the Decision on the Prosecutor's Application under Article 58 as "under seal" ex parte Prosecutor" (ii) upon Abu Garda's arrival at the seat of the Court, to provide him with a copy of the redacted version of the Decision, classified as "under seal" and the Prosecution's "Redacted and Confidential Version of the Prosecutor's Application under Article 58" filed in the record of the case on 12 May 2009 .
4. The Prosecution notes that the current classification of the Prosecution's Application (Confidential, ex parte Prosecution only) and the Decision on the Prosecution's Application ("under seal") makes it impossible to publicly acknowledge the Prosecution's Application, the issuance of the Summons to Appear against Abu Garda and his planned appearance before the Court.
5. This would affect the public nature of Abu Garda's appearance pursuant to the Summons, a significant judicial proceeding.

¹ ICC-02/05-163-Conf-Exp

² ICC-02/05-02/09-1-US

³ ICC-02/05-02/09-2-US

6. For the above reasons, the Prosecution believes that it is important to reclassify the Prosecution's Application and the Decision on the Prosecution's Application as public documents. As Abu Garda is likely to arrive in the Netherlands only shortly before the initial appearance on 18 May, the Prosecution believes that the reclassification should be made before his arrival in the Netherlands.
7. The Prosecution notes according to Regulation 20 of the Regulations of the Court, all hearings shall be held in public, unless otherwise provided by the Statute, Rules, Regulations or ordered by the Chamber. The Prosecution also notes the importance of holding public hearings of proceedings before the Court. Without a reclassification of the materials upon which Abu Garda will be proceeded against, the intent to hold a public hearing of Abu Garda's initial appearance will be thwarted.
8. In that regard, the Prosecution respectfully requests the Chamber:
 - (a) to authorize it to file immediately a public redacted version of its Application under Article 58 ;
 - (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.



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Luis Moreno-Ocampo
Prosecutor

Dated this 15 May 2009
The Hague, Netherlands