

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 October 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

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

Public Document

Decision on the Defence's and Prosecution's Requests of 12 October 2009

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

Mr Andrew J. Burrow

Legal Representatives of Victims

Mr Brahima Koné

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court” respectively),

NOTING the “Decision on the E-court Protocol” of 21 August 2009;¹

NOTING the “Decision Distributing the Proposed Schedule for the Confirmation Hearing” of 2 October 2009 (“the 2 October 2009 Decision”), whereby the Presiding Judge, *inter alia*, ordered “the parties to file by Friday 9 October 2009 a table containing the current level of confidentiality of each and every piece of evidence they intend to present at the confirmation hearing”;²

NOTING the “Defence’s Submission of its table containing the current level of confidentiality of the evidence it intends to present at the confirmation hearing” of 9 October 2009;³

NOTING the “Defence’s Request for leave to file a revised table containing the current level of confidentiality of the evidence it intends to present at the confirmation hearing” (“the Defence’s Request”), whereby the Defence seeks leave to submit a revised table containing the current level of confidentiality of the evidence it intends to present at the confirmation hearing, annexed to its

¹ ICC-02/05-02/09-61.

² ICC-02/05-02/09-129 and Anx1.

³ ICC-02/05-02/09-150 and Anx.

request, in which the item of evidence identified by ERN "DAR-D05-0002-0007" is reclassified from Confidential to Public;⁴

NOTING regulation 23*bis* (3) of the Regulations of the Court ("the Regulations");

NOTING the "Prosecution's Notification of compliance with the E-court Protocol and Application for an Order to CMS to remove 17 Duplicated documents from the Case Record" of 12 October 2009 ("the Prosecution's Request");⁵

NOTING the consultation with the Registry through email on 12 October 2009;

CONSIDERING that, with respect to the Defence's Request, in accordance with regulation 23*bis* (3) of the Regulations, "whosoever instigated the reclassification, be it the Registrar or a participant, shall apply to the Chamber to reclassify the document", and that therefore the Defence should have applied to the Chamber for the reclassification of document "DAR-D05-0002-0007" from Confidential to Public;

CONSIDERING that, with respect to the Prosecution's Request, the Registry suggested to "keep the duplicates with their existing ERN numbers, not EVD them, and indicate as a note/metadata that they are indeed duplicates to XXX

⁴ ICC-02/05-02/09-156 and Anx.

⁵ ICC-02/05-02/09-159.

item, including the EVD number of the correct version” as the most appropriate solution to keep the integrity of the record of the case;

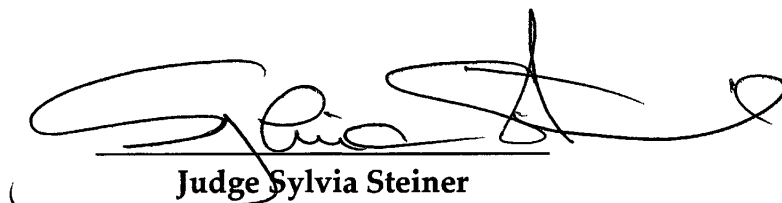
FOR THESE REASONS,

RECLASSIFIES document “DAR-D05-0002-0007” as Public;

ORDERS the Registry

- (i) to keep the 17 duplicated documents with their existing ERN numbers, without assigning them an EVD number;
- (ii) to indicate as a note/metadata to which item they are duplicate and the EVD number of the correct version;

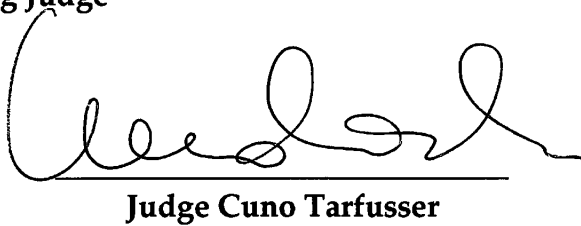
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner
Presiding Judge



Judge Sanji Mmasenono Monageng



Judge Cuno Tarfusser

Dated this Friday 16 October 2009

At The Hague, the Netherlands