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

Date: 23 March 2010

PRE-TRIAL CHAMBER I

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

SITUATION IN DARFUR, THE SUDAN

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

Public Document

**Defence Application for Exclusion of Legal Representative of Victims'
"ÉLÉMENTS DE RÉPONSE ET OBSERVATIONS SUR LA REQUÊTE DE
L'ACCUSATION DEMANDANT L'AUTORISATION DE FAIRE APPEL"**

Source: Defence

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

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Unrepresented Victims

**Unrepresented Applicants
(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

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. On 8 February 2010, Pre-Trial Chamber I rendered its “Decision on the Confirmation of Charges”¹. On 15 March 2010, the Prosecution applied for leave to appeal the Confirmation Decision² under Rule 155 of the Rules of Procedure and Evidence. On 19 March 2010, the Defence filed its “Response to the ‘Prosecution’s Application for Leave to Appeal the ‘Decision on the Confirmation of Charges’ ”³.
2. On 23 March 2010, the Legal Representative of Victims a/0434/09, a/0435/09, a/0456/09 through a/0462/09, a/0579/09 and a/0580/09 purported to file under Article 68(3) of the Rome Statute the “ELÉMENTS DE RÉPONSE ET OBSERVATIONS SUR LA REQUÊTE DE L’ACCUSATION DEMANDANT L’AUTORISATION DE FAIRE APPEL”⁴ (“Response”).

II. Application for exclusion

3. Regulation 65(3) of the Regulations of the Court provides that “[p]articipants may file a response within three days of notification” of an application filed under Rule 155. The Response was filed after the expiration of the time limit. No application for an extension of time limit was made as provided for in Regulation 35 of the Regulations. Accordingly, the Response is filed out of time and in contravention of Regulation 65(3).
4. The Defence has not yet had an opportunity to consider the merits of the arguments advanced in the Response as it was filed in French. Nonetheless, for the above stated reasons, the Defence respectfully requests that the Chamber exclude, disregard, or otherwise declare inadmissible the Response for having been filed after the expiration of the time limit set out by Regulation 65(3).

¹ Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda* (“*Abu Garda*”), Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243.

² *Abu Garda*, Prosecution’s Application for Leave to Appeal the ‘Decision on the Confirmation of Charges’, 15 March 2010, ICC-02/05-02/09-252-Conf.

³ *Abu Garda*, 19 March 2010, ICC-02/05-02/09-256-Conf.

⁴ *Abu Garda*, 23 March 2010, ICC-02/05-02/09-257-Conf.

Respectfully Submitted,



Mr. Karim A. A. Khan

Defence Counsel for Bahar Idriss Abu Garda

Dated this 23rd Day of March 2010

At The Hague, The Netherlands