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**International
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PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public

**Decision on the Applications for Participation in the Proceedings of Applicants
a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07**

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I, Akua Kuenyehia, judge at the International Criminal Court (“the Court”),

NOTING the applications for participation in proceedings a/0011/06,¹ a/0012/06,² a/0013/06,³ a/0014/06⁴ and a/0015/06⁵ (collectively referred to as “the Applications”), filed on 27 June 2006 in the record of the investigation into the Situation in Darfur, Sudan, in which the Applicants request to be granted the right to participate as victims in the proceedings at the investigation stage in the situation in Darfur, Sudan;

NOTING the report presented to Pre-Trial Chamber I (“the Chamber”) by the Victims Participation and Reparations Section (“the VPRS”) on Applications a/0011/06 to a/0015/06, filed on 06 December 2006;⁶

NOTING the decision of 23 May 2007,⁷ issued by the Single Judge authorizing the Prosecution and the Office of Public Counsel for the Defence (“the OPCD”) to file their observations on the Applications, within 15 days of notification;

NOTING the “Prosecution’s Reply under Rule 89(1) to the Application for Participation of Applicants a/0011/06, a/0012/06, a/0013/06, a/0014/06 and a/0015/06 in the Situation in Darfur, Sudan”⁸ (“the Prosecution Observations of 8 June 2007”) on 8 June 2007, in which the Prosecution states, *inter alia*, that (i) article 68(3) of the *Rome Statute* (“the Statute”) does not grant victims the right to participate at the situation stage; (ii) in any event, with respect to the likely increase in applications for participation in the Situation in Darfur, Sudan, the Chamber should grant the right to participate only to applicants who qualify to participate in the case; (iii) reviewing applications from victims at the Situation stage could potentially place a great

¹ ICC-02/05-4-Conf-Exp.

² ICC-02/05-5-Conf-Exp.

³ ICC-02/05-6-Conf-Exp.

⁴ ICC-02/05-7-Conf-Exp.

⁵ ICC-02/05-8-Conf-Exp.

⁶ ICC-02/05-38-Conf-Exp.

⁷ ICC-02/05-74.

⁸ ICC-02/05-81.

burden on the Court's limited resources; and, accordingly, requests that the Chamber reject the Applications in their entirety;

NOTING the "Observations on Applications a/0011/06 to a/0015/06"⁹ ("the OPCD Observations of 8 June 2007"), filed on 8 June 2007, in which the OPCD states, *inter alia*, that (i) the Chamber should not grant the right to participate to the Applicants who currently reside in the United States; (ii) the Applicants should be required to declare whether they are simultaneously pursuing a remedy before another entity or court; (iii) the participation of the victims at this stage of the proceedings would prejudice the rights of the Defence; and (iv) the Applicants have not provided the Chamber with sufficient information to satisfy the requirement that there is a nexus between the harm suffered and the crimes within the jurisdiction of the Court; and, accordingly, requests that the Chamber:

- i) reject *in limine litis* the Applicants' requests for participation;
- ii) suspend the Applicants' eligibility as victims until certain issues particular to the Situation in Darfur, Sudan are addressed; or
- iii) reject the Applications on the ground that the Applicants have not met the factual and legal criteria to participate as victims at this stage of the proceedings;

NOTING the applications for participation in the proceedings a/0021/07,¹⁰ a/0023/07,¹¹ a/0024/07,¹² a/0025/07,¹³ a/0026/07,¹⁴ a/0027/07,¹⁵ a/0028/07,¹⁶ a/0029/07,¹⁷ a/0030/07,¹⁸ a/0031/07,¹⁹ a/0032/07,²⁰ a/0033/07,²¹ a/0035/07,²² a/0036/07,²³ a/0037/07,²⁴

⁹ ICC-02/05-80-Conf.

¹⁰ ICC-02/05-84-Conf-Exp-Anx3.

¹¹ ICC-02/05-84-Conf-Exp-Anx4.

¹² ICC-02/05-84-Conf-Exp-Anx5.

¹³ ICC-02/05-84-Conf-Exp-Anx6.

¹⁴ ICC-02/05-84-Conf-Exp-Anx7.

¹⁵ ICC-02/05-84-Conf-Exp-Anx8.

¹⁶ ICC-02/05-84-Conf-Exp-Anx9.

¹⁷ ICC-02/05-84-Conf-Exp-Anx10.

¹⁸ ICC-02/05-84-Conf-Exp-Anx11.

¹⁹ ICC-02/05-84-Conf-Exp-Anx12.

²⁰ ICC-02/05-84-Conf-Exp-Anx13.

²¹ ICC-02/05-84-Conf-Exp-Anx14.

a/0038/07,²⁵ (also collectively referred to as “the Applications”) filed on 10 July 2007 in the record of the investigation into the Situation in Darfur, Sudan, in which the Applicants request to be granted the right to participate as victims in the proceedings at the investigation stage in the Situation in Darfur, Sudan;

NOTING the report presented to the Chamber by the VPRS on Applications a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07 filed on 10 July 2007;²⁶

NOTING the “Prosecution’s Observations under Rule 89(1) to the Applications for Participation of a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07 in the Situation in Darfur, Sudan”²⁷ dated 20 September 2007 (“the Prosecution Observations of 20 September 2007”) in which the Prosecution observes, *inter alia*, that (i) all of the Applicants appear to be “natural persons” within the meaning of rule 85(a) of the *Rules of Procedure and Evidence* (“the Rules”); (ii) all indicate that they have suffered harm as a result of crimes committed in Darfur; (iii) Applicants a/0027/07, a/0028/07, a/0032/07, a/0033/07, and a/0035/07 purported to lodge applications on behalf of juvenile victims, but failed to provide any proof of kinship or guardianship; and (iv) Applicants a/0030/07, a/0031/07 and a/0032/07 failed to provide any proof of consent or evidence on the situation of the alleged victim under the same provision; and, accordingly, requests that the Single Judge reject the applications because the Applicants have not shown how their personal interests are affected by the investigation;

NOTING the “Observations on applications a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07”²⁸, filed by the OPCD and dated 24 September 2007 (“the OPCD Observations of 24 September 2007”) in which the OPCD observes, *inter alia*,

²² ICC-02/05-84-Conf-Exp-Anx15.

²³ ICC-02/05-84-Conf-Exp-Anx16.

²⁴ ICC-02/05-84-Conf-Exp-Anx17.

²⁵ ICC-02/05-84-Conf-Exp-Anx18.

²⁶ ICC-02/05-84-Conf-Exp.

²⁷ ICC-02/05-101-Conf.

²⁸ IC-02/05-103-Conf.

that (i) the Chamber should not grant the right to participate at the situation stage; (ii) some of the applicants lack standing to file an application; (iii) the lack of standardised translations and the lack of information about interpreters' credentials have impacted on the reliability and accuracy of the applicants' allegations; (iv) the applications fail to fulfil the criteria to be recognised as victims before the Court; (v) the applicants have not demonstrated that they suffered harm; and, accordingly, requests that the Chamber deny the applications on these grounds;

CONSIDERING articles 11, 12, 13, 21(2), 57(3)(c), 61 and 68 of the Statute, rules 16, 85, 87, 89, 90, 91 and 92 of the Rules and regulation 86 of the *Regulations of the Court* ("the Regulations");

I. Introduction

1. In the "Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5, and VPRS6" of 17 January 2006²⁹ ("the Decision on Victims' Participation"), the Chamber established the core principles and requirements for victim participation at the situation stage.

2. According to the Decision on Victims' Participation, the Chamber established that rule 85(a) of the Rules requires that (a) the victim must be a natural person; (b) he or she must have suffered harm; (c) the crime from which the harm ensued must be within the jurisdiction of the Court; and (d) there must be a causal link between the crime and the harm suffered.

3. The Chamber stated that "to fall within the Court's jurisdiction, a crime must meet the following conditions: it must be one of the crimes mentioned in article 5 of the Statute, that is to say, the crime of genocide, crimes against humanity and war crimes; and the crime must have been committed within the time period laid down

²⁹ ICC-01/04-100-Conf-Exp-tEN-Corr.

in article 11 of the Statute; and the crime must meet one of the two alternative conditions described in article 12 of the Statute.”³⁰

4. The Chamber has also stated that “it is not necessary to determine in any great detail at this stage the precise nature of the causal link”,³¹ and that “the determination of a single instance of harm is sufficient”.³² In addition, the Appeals Chamber has indicated that in making a decision, the Pre-Trial Chamber need not individually recite each and every factor that was before it, but “it must identify which facts it found to be relevant in coming to its conclusion”.³³

5. The Single Judge recalls that the applicants are only required to demonstrate that the elements established by rule 85 of the Rules are met *prima facie* and that its analysis of the applications “will not consist in assessing the credibility of the [applicants’] statement[s] or engaging in a process of corroboration *stricto sensu*” but “will therefore assess each statement by applicant victims first and foremost on the merits of its intrinsic coherence, as well as on the basis of information otherwise available to the Chamber.”³⁴

6. In respect of the question of whether the Chamber has jurisdiction over the Situation in Darfur, Sudan, the Single Judge notes that the Situation in Darfur, Sudan was referred to the Prosecutor of the Court by the United Nations Security Council on 31 March 2005.³⁵ On 1 June 2005, the Prosecutor initiated an investigation into the Situation in Darfur, Sudan.³⁶ Therefore, pursuant to article 13(b) of the Statute, the Court may exercise its jurisdiction over crimes committed in Darfur, Sudan.

³⁰ ICC-01/04-100-Conf-Exp-Corr, para. 85.

³¹ ICC-01/04-100-Conf-Exp-Corr, para. 94.

³² ICC-01/04-100-Conf-Exp-Corr, para. 82.

³³ ICC-01/04-01/06-773, para. 20.

³⁴ ICC-02/05-110, para. 8.

³⁵ S/RES/1593(2005)

³⁶ ICC-02/05-2.

II. Preliminary remarks

7. The Single Judge notes that the observations filed by the OPCD and the Prosecution raise a number of substantive issues in respect of the process for assessing applications for victim status in relation to the investigation of a situation.

8. The Single Judge also notes that although all of the Applicants have requested to participate in all stages of proceedings,³⁷ she will, at this stage, only examine whether the Applicants fulfil the criteria to be granted the procedural status of victims at the investigation stage of the Situation in Darfur, Sudan, without assessing whether they may also be granted the procedural status of victims in the case of *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*.³⁸

9. Furthermore, under rule 89(4) of the Rules, the Single Judge is required to ensure that the proceedings are conducted expeditiously and that in doing so, the Single Judge may consider applications in such a manner as to ensure the effectiveness of the proceedings. The Single Judge will therefore provide only the essential information on each applicant in this decision.

A. Prosecution observations

10. In its observations of 20 September 2007, the Prosecution argues that the Chamber should reject the applications because the Applicants have not shown how their personal interests are affected by the investigation.

11. First, the Single Judge recalls the Chamber's Decision on Victims' Participation in which it indicated that "the personal interests of victims are affected in general at the investigation stage, since the participation of victims at this stage can serve to

³⁷ ICC-02/05-38-Conf-Exp, p. 7; ICC-02/05-84-Conf-Exp, pp. 14-15.

³⁸ ICC-02/05-01/07-01.

clarify the facts, to punish the perpetrators of crimes and to request reparations for the harm suffered".³⁹

12. The Single Judge also notes that the Appeals Chamber has indicated that in order for a victim to participate in a particular proceeding, he or she "should include a statement [...] in relation to whether and how their personal interests are affected [...] as well as why it is "appropriate" [...] to permit their views and concerns to be presented".⁴⁰ The Appeals Chamber further indicated that "any determination by the Appeals Chamber of whether the personal interests of victims are affected in relation to a particular appeal will require careful consideration on a case-by-case basis"; and that "even when the personal interests of victims are affected [in relation to proceedings] within the meaning of article 68(3) of the Statute, the Court is still required, by the express terms of that article, to determine that it is appropriate for their views and concerns to be presented at that stage of the proceedings and to ensure that any participation occurs in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial".⁴¹

13. It is the view of the Single Judge that in accordance with article 68(3) of the Statute and the jurisprudence of the Court, the assessment of the personal interests of the victims in specific proceedings taking place during the investigation of a situation and the pre-trial stage of a case is only to be conducted for the determination of the specific set of procedural rights attached to the procedural status of victim. In determining the modalities of participation, the Chamber must ensure that they are not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁴²

14. Hence, as the Single Judge has already stated in the Decision on the OPCD's Requests "(a) the stage of investigation of a situation and the pre-trial stage of a case

³⁹ ICC-01/04-100-Conf-Exp-tEN-Corr, para. 63.

⁴⁰ ICC-01/04-01/06-925 OA6, para. 23.

⁴¹ ICC-01/04-01/06-925 OA6, para. 28.

⁴² ICC-02/05-110, para. 2.

are appropriate stages of the proceedings for victim participation as provided for in article 68 (3) of the Statute; and (b) that, therefore, there is a procedural status of victim in relation to situation and case proceedings before the Pre-Trial Chamber.”⁴³ Moreover, the Single Judge has also ruled that “(a) article 68(3) of the Statute grants discretion to the Chamber to determine the modalities of participation which are attached to such procedural status; and (b) that the Chamber must exercise its discretion to delineate the modalities of participation “in a manner which is not prejudicial to or inconsistent with the rights of the accused.”⁴⁴

B. OPCD observations

15. In its observations of 8 June 2007, the OPCD submits that the “particular circumstances”⁴⁵ of these Applicants “militates against their participation”⁴⁶ because the OPCD is prejudiced from (a) acquiring information about the Applicants which could be exculpatory for an Accused and used at a later stage of the proceedings and (b) acquiring additional information to allow the OPCD to assess the credibility of the Applications.

16. Moreover, the OPCD submits in its observations of 8 June 2007 that the participation of victims at this stage of the proceedings prejudices the rights of the Defence and requests that the Prosecution be required to disclose any information which is potentially exculpatory or of material relevance to its ability to respond to the Applications.⁴⁷

17. The OPCD further submits in its observations of 8 June 2007 that prior to a determination by the Chamber about whether to grant victim status to the

⁴³ ICC-02/05-110, para.2. See also ICC-01/04-100-Conf-Exp-tEN-Corr, paras. 55 to 64; ICC-01/04-01/06-162-Conf-Exp-tEN and ICC-01/04-170-Conf-Exp-tEN.

⁴⁴ ICC-02/05-110, para.2. See also ICC-01/04-100-Conf-Exp-tEN-Corr, ICC-01/04-01/06-162-Conf-Exp-tEN and ICC-01/04-170-Conf-Exp-tEN.

⁴⁵ ICC-02/05-80-Conf, paras. 5 and 86; the United States implemented domestic legislation (the American Serviceman Protection Act) which, *inter alia*, prohibits agencies or entities within the United States from cooperating with the ICC in response to a request for cooperation.

⁴⁶ ICC-02/05-80-Conf, para. 5.

⁴⁷ ICC-02/05-80-Conf, para. 86.

Applicants, the latter should first declare that they are not simultaneously pursuing a remedy before another entity or court.⁴⁸

18. In its observations of 24 September 2007, the OPCD also contends that the Applicants should be required to file applications which have used standardised translations and qualified interpreters only.⁴⁹

19. The Single Judge notes that the requests submitted by the OPCD raise a number of issues that have already been decided upon by the Single Judge in the Darfur Decision on the OPCD's Requests.⁵⁰

20. Firstly, the Single Judge recalls that "the limited object and purpose of the application process explains why (a) regulation 86(2)(e) of the Regulations only requires that the applicants use standard forms and that their applications contain the enumerated items, including any relevant supporting documentation, "to the extent possible"; and (b) that the Chamber's "only obligation under rule 89(1) of the Rules is to order the Registry to provide the Prosecution and the Defence with copies of the applications, such that they may make observations on the Applications within a time limit set by the Chamber."⁵¹ The Single Judge has further stated that "rule 89 of the Rules does not require the Chamber to provide, or to order the applicants to provide, to the Prosecution or the Defence, for the purpose of submitting their observations, information extrinsic to the applications themselves".⁵² The Single Judge also recalls that this is "without prejudice to the Chamber's power, pursuant to regulation 86(7) of the Regulations, to request, whenever necessary, additional information from applicants before deciding on an application"⁵³ and that in the

⁴⁸ ICC-02/05-80-Conf, para.86.

⁴⁹ ICC-02/05-103-Conf, para.32.

⁵⁰ ICC-02/05-110.

⁵¹ ICC-02/05-110, para. 14.

⁵² ICC-02/05-110, para. 15.

⁵³ ICC-02/05-110, para. 16.

Chamber's Decision of 17 August 2007, it outlined the information which should be provided by applicants for the Chamber to decide upon an application.⁵⁴

21. In addition, concerning the alleged prejudice that the participation of the victims at this stage of the proceedings would cause to the rights of the Defence, as pointed out by the Single Judge above, the Chamber must ensure its determination of the modalities of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁵⁵

22. Furthermore, as the Single Judge has already stated "the application process is not related to questions pertaining to the guilt or innocence of the suspect or accused person or to the credibility of Prosecution witnesses. Hence, article 67(2) of the Statute is not applicable in the context of the application process."⁵⁶ The Single Judge further recalls that "the role of Applicants in the application process can by no means be confused with that of witnesses in criminal proceedings".⁵⁷ In addition, as the Single Judge has already stated, "the Prosecution's obligation under rule 77 of the Rules is limited to permitting the Defence to inspect only those books, documents, photographs and tangible objects (a) on which the Prosecution intends to rely at the confirmation hearing or trial; (b) which are material to the preparation of the defence for the purpose of the confirmation hearing or the trial; or (c) which have been obtained from or belonged to the suspect or accused person. Hence, the Single Judge considers that this rule also is not applicable in the context of the application process".⁵⁸

23. Moreover, the Single Judge recalls that (a) "the application process is confined to the determination of whether the procedural status of victim can be granted to applicants in such ongoing proceedings;"⁵⁹ and (b) that "according to rule 89 of the

⁵⁴ ICC-01/04-374, para.12.

⁵⁵ ICC-02/05-110, para. 3.

⁵⁶ ICC-02/05-110, para. 20.

⁵⁷ ICC-02/05-110, para. 20.

⁵⁸ ICC-02/05-110, para. 21. See also ICC-01/04-01/06-102, paras. 107 to 118.

⁵⁹ ICC-02/05-110, para. 11.

Rules and regulation 86 of the Regulations, the exhaustion of domestic remedies is not a condition to be fulfilled by applicants, unlike what is provided for in article 35 of the *European Convention on Human Rights* and article 46 of the *American Convention on Human Rights*.⁶⁰ Therefore, Applicants should not be required, as the OPCD requests, to declare that they are not simultaneously pursuing a remedy before another entity or court.⁶¹

24. Concerning the OPCD's request that the Applicants should be requested to file applications using only standardised translations and qualified interpreters, the Single Judge notes that regulation 86 of the Regulations does not require that an application be filed in this manner. Furthermore, in its decision of 17 August 2007, the Chamber outlined the information that should be provided for an application to be complete and it does not encompass the use of standardised translations and qualified interpreters.⁶² The Single Judge is of the view that it is only when there are indications that there might have been a misunderstanding or a misrepresentation of applicants' statements, that further information would be requested pursuant to regulation 86(7) of the Regulations.

25. Finally, in its observations, the OPCD submits that it should be provided with an opportunity to present legal submissions on the issue of the Court's jurisdiction.⁶³ The Single Judge recalls its "*Décision relative aux conclusions aux fins d'exception d'incompétence et d'irrecevabilité*"⁶⁴ of 22 November 2006 in which it considered that, pursuant to article 19 of the Statute, challenges to the jurisdiction of the Court may be made by the accused, a State which has jurisdiction over the crime or a State whose acceptance of jurisdiction is required under article 12 of the Statute. Moreover, under article 19(3) of the Statute, observations on the jurisdiction of the Court may be submitted by those who referred the situation to the Court under article 13 of the Statute and by victims. Therefore, it is the view of the Single Judge that the OPCD

⁶⁰ ICC-02/05-110, para. 12.

⁶¹ ICC-02/05-110, paras. 14 and 15.

⁶² ICC-01/04-374, para. 12 and ICC-02/05-110, para. 16.

⁶³ ICC-02/05-80-Conf, para.86.

⁶⁴ ICC-02/05-34.

cannot be given the opportunity to make submissions on jurisdiction and admissibility since it does not fall within any of the above categories.

III. Evaluation of individual applications for participation as victims in the proceedings

A. Incomplete applications for participation

26. The Single Judge recalls that she will be in a position to thoroughly assess the applications once they are complete⁶⁵ and that she must receive all necessary information referred to in the standard forms for participation pursuant to regulation 86(2) of the Regulations. Thus, an application is considered complete if it contains the following information:

(i) the identity of the applicant;

(ii) the date of the crime(s);

(iii) the location of the crime(s);

(iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;

(v) proof of identity;

(vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;

(vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;

(viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.⁶⁶

⁶⁵ ICC-01/04-374, para. 6.

⁶⁶ ICC-01/04-374, para. 12.

27. The Chamber has also recognised the need for proper identification documents of all victims who apply to participate in the early stage of Court proceedings.⁶⁷ However, being aware of certain difficulties in obtaining the required proof of identity, kinship, guardianship and legal guardianship, the Chamber has stated that “in regions which are or have been ravaged by conflict, not all civil status records may be available, and if available, may be difficult or too expensive to obtain.”⁶⁸

28. Accordingly, the Chamber decided to allow the submission of any of the following documents in order to prove identity, kinship, guardianship or legal guardianship:

(i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;

(ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;

(iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or

(iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and

⁶⁷ ICC-01/04-374, para. 13.

⁶⁸ ICC-01/04-374, para. 14.

the application. The statement should be accompanied by proof of identity of the two witnesses.⁶⁹

29. The Single Judge notes that most of the Applications considered in the present decision specify the name of the applicant, the place of the alleged crime(s) as well as a description of the alleged harm suffered. However, some of the Applications remain incomplete for different reasons that the Single Judge will address below.

1. Harm suffered

30. The Single Judge notes that Applicant a/0014/06 alleges emotional suffering as a result of attacks on villages and a town in Darfur, Sudan, which occurred while the Applicant was residing outside Sudan. The Chamber further observes that this person is the first applicant before the Chamber to request a decision on the procedural status of victim based solely on emotional suffering due to the death of extended family members.

31. In order for the Single Judge to decide on the application of Applicant a/0014/06, the Single Judge requests further information from the Applicant on his relationship with his extended family.

2. Date of the alleged crimes

The Single Judge notes that Applicant a/0021/07 mentions that the crimes he allegedly suffered occurred in "early July 2002". Considering that the Court's jurisdiction began on 1 July 2002 and that "early July 2002" is vague as it could also mean the end of June, the Single Judge is not in a position to consider whether the crimes fall within the temporal jurisdiction of the Court. Therefore, Application for participation a/0021/07 is considered incomplete.

⁶⁹ ICC-01/04-374, para. 15.

3. Proof of kinship or guardianship for the Applicant acting on behalf of a child

32. The Single Judge recalls that when an application is made by a person on behalf of a victim who is a child, the following documents must be attached to the application:

(i) proof of relationship or kinship; or

(ii) proof of guardianship.

33. The Single Judge notes that Applicant a/0028/07 is acting on behalf of a 15 year-old boy who she alleges is her brother. However, Applicant a/0028/07 has not provided any proof of relationship, kinship or guardianship which would allow the Single Judge to determine the relationship that allows her to act on his behalf. Therefore, application for participation a/0028/07 is considered incomplete.

4. Victim consent

34. The Single Judge considers that the following documents must be provided with the application when it is made by a person acting with the consent of the alleged victim:

(i) express consent of the alleged victim;

(ii) proof of identity of the alleged victim; and

(iii) proof of identity of the person acting on his or her behalf.

35. The Single Judge notes that the same person has made applications on behalf of five family members, that is Applicants a/0030/07, a/0031/07, a/0032/07, a/0033/07 and a/0035/07, and has not provided the Single Judge with any proof of the alleged victims' express consent. Although the person alleged that her family members have disappeared, these alleged victims are either still alive, in which case they must give express consent, or are deceased, in which case they cannot be considered as "natural

persons” (see section entitled ‘Natural persons’ *infra*). In either case, the disappeared persons are not available to provide consent. However, family members affected by the disappearance could be considered victims under the Statute, the Rules and the Regulations, provided that they meet all the necessary criteria. Therefore, Applications for participation a/0030/07, a/0031/07, a/0032/07, a/0033/07 and a/0035/07 cannot be considered by the Single Judge.

B. Complete applications for participation

1. Natural Persons

36. At the outset, the Single Judge notes that Applicants a/0025/07 and a/0027/07 are deceased. The Single Judge points out that rule 89(3) of the Rules limits the submission of applications on behalf of others to applications made on behalf of children under the age of 18 and disabled persons. There is however no provision that permits applications to be made on behalf of deceased persons. Furthermore, rule 89(3) of the Rules allows the submission of an application on behalf of a person, provided that the person has given his or her consent. The Single Judge notes that such consent is impossible in the case of deceased persons. It is therefore the Single Judge’s view that deceased persons do not fall within the meaning of “natural persons” under rule 85(a) of the Rules.

37. The Single Judge considers that, with the exception of Applicants a/0025/07 and a/0027/07, there are grounds to believe that all other Applicants are natural persons.

2. The Applications for participation

38. The Single Judge considers that there are grounds to believe that Applicant a/0011/06 suffered harm, including economic loss as the result of, *inter alia*, an attack on his village by the military and the Janjaweed and that he suffered physical injury as a result of being beaten, deprived of food and water during his detention in a “ghost house”. Accordingly, the Single Judge is of the view that there are grounds to

believe that Applicant a/0011/06 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

39. The Single Judge considers that there are grounds to believe that Applicant a/0012/06 suffered harm, including physical suffering, *inter alia*, from his detention by the Sudanese Government in a ghost house in which the Applicant was deprived of food and water, was beaten and all of his fingernails removed; and that Applicant a/0012/06 suffered emotional suffering and economic loss as a result of his displacement as well as the displacement of his family and the killing of the Applicant's brother. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0012/06 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

40. The Single Judge considers that there are grounds to believe that Applicant a/0013/06 suffered harm, including physical suffering as a result of, *inter alia*, his detention by Sudanese soldiers during which he was beaten and subjected to other severe mistreatment, and his further detention in an isolation cell in which he was denied medical treatment and was given limited access to food; and that he suffered economic loss and emotional suffering as a result of the attack on his town that led to the destruction of his property, and the killings and displacement of his family members. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0013/06 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

41. The Single Judge considers that there are grounds to believe that Applicant a/0015/06 suffered harm, including economic loss and emotional suffering as a result of, *inter alia*, the raid on his village by the Janjaweed and the Sudanese military, which resulted in massive destruction and looting of the village, in addition to the

killing and displacement of his family members. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0015/06 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

42. The Single Judge considers that there are grounds to believe that Applicant a/0023/07 suffered harm as a result of, *inter alia*, his detention in a ghost house during which he was beaten and medical treatment withheld from him; and that Applicant a/0023/07 experienced economic loss and emotional suffering as a result of the attack on his village by the Sudanese military and the Janjaweed during which a member of his family was killed and he lost his home and property. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0023/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

43. The Single Judge considers that there are grounds to believe that Applicant a/0024/07 suffered economic loss and emotional suffering as a result of, *inter alia*, the attack on her village by the Sudanese military and the Janjaweed during which a member of her family was killed and her property stolen, and after which she and her family were displaced and subjected to an additional attack which resulted in the killing of another member of her family and the mutilation of several family members. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0024/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

44. The Single Judge considers that there are grounds to believe that Applicant a/0026/07 suffered economic loss and emotional suffering as a result of, *inter alia*, the attack on and the burning of her village by Sudanese soldiers and the Janjaweed, during which her family members were killed and that during the attack she was beaten so severely that it caused the loss of her unborn child. Accordingly, the Single

Judge is of the view that there are grounds to believe that Applicant a/0026/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

45. The Single Judge considers that there are grounds to believe that Applicant a/0029/07 suffered economic loss and emotional suffering as a result of, *inter alia*, the attack on and burning of his village by the Janjaweed which resulted in the killing of his father and the Applicant's displacement. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0029/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

46. The Single Judge considers that there are grounds to believe that Applicant a/0036/07 suffered economic loss as a result of, *inter alia*, the attacks on and burning of her village by the Janjaweed, which resulted in the destruction of her personal property and her displacement as well as the displacement of members of her family. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0036/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

47. The Single Judge considers that there are grounds to believe that Applicant a/0037/07 suffered economic loss and emotional suffering as a result of, *inter alia*, the attacks on his village by the Janjaweed and Sudanese military during which members of his family were killed, and which resulted in the destruction of his property and his displacement as well as the displacement of members of his family. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0037/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

48. The Single Judge considers that there are grounds to believe that Applicant a/0038/07 suffered economic loss and emotional suffering as a result of, *inter alia*, the

attacks on and burning of his village by the Janjaweed, which resulted in the destruction of his property and the killing of a member of his family, and that he suffered harm as a result of his arbitrary detention during which he was beaten. Accordingly, the Single Judge is of the view that there are grounds to believe that Applicant a/0038/07 suffered harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute.

49. The Single Judge considers that there are grounds to believe that Applicants a/0011/06, a/0012/06, a/0013/06, a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07, a/0037/07, and a/0038/07 have alleged at least one instance of harm which occurred within Darfur, Sudan after 1 July 2002.

50. The Single Judge considers that there are grounds to believe that Applicants a/0011/06, a/0012/06, a/0013/06, and a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07, a/0037/07, and a/0038/07 suffered physical or emotional suffering or economic loss pursuant to rule 85 of the Rules.

FOR THESE REASONS,

REJECT the OPCD's requests set forth in its observations on the Applications for participation of the victims in the proceedings;

REJECT the requests of the Prosecution set forth in its observations on the Applications for participation of the victims in the proceedings;

GRANT the procedural status of victim to Applicants a/0011/06, a/0012/06, a/0013/06, and a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07, a/0037/07, and a/0038/07 in the *Situation in Darfur, Sudan* allowing them to participate in the proceedings at the investigation stage of the Situation of Darfur, Sudan;

DENY the procedural status of victim to Applicants a/0014/06, a/0021/07, a/0028/07, a/0030/07, a/0031/07, a/0032/07, a/0033/07 and a/0035/07 in the *Situation in Darfur, Sudan*;

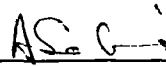
ORDER the Registry to contact those Applicants or their legal representatives, whose applications are incomplete in order for them to provide the missing information and the necessary documents;

DECIDE that, for the time being, Applicants a/0011/06, a/0012/06, a/0013/06, a/0015/06, a/0023/07, a/0024/07, a/0026/07, a/0029/07, a/0036/07, a/0037/07, and a/0038/07 or their legal representatives shall not be given access to any non-public documents contained in the record of the Situation in Darfur, Sudan;

ORDER that the Applicants who have been granted the procedural status of victims in the Situation in Darfur, Sudan pursuant to this decision may only be contacted through their legal representatives and may only be referred to by the numbers assigned to them by the Registry, until otherwise ordered by the Chamber;

ORDER the Registrar to notify the legal representatives of all Applicants of the present decision;

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



Judge Akua Kuenyehia
Single Judge

Dated this Thursday 6 December 2007

At The Hague, the Netherlands