

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-02/09
Date: 16 September 2009

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN DARFUR, SUDAN

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

Public Document

**Decision Ordering the Parties to Submit their Observations on the 52
Applications for Victims' Participation in the Proceedings**

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

Legal Representatives of the Victims

Legal Representatives of the 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 & Deputy Registrar

Ms Silvana Arbia & Mr Didier Daniel
Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

I, Judge Sanji Mmasenono Monageng, Single Judge responsible for all issues related to victims' applications to be authorized to participate as victims in the proceedings related to the case of *The Prosecutor v. Bahar Idriss Abu Garda* (the "Abu Garda Case")¹ at the Pre-Trial Chamber I (the "Chamber") of the International Criminal Court (the "Court");

NOTING the "Second report on applications to participate in the proceedings" filed by the Registry on 11 September 2009,² in which it submits, as annexes, 52 applications for participation in the pre-trial phase of the Case ("the Applications");³

NOTING the "Report on applications a/0581/09 to a/0586/09 and request for extension of deadline in order to file supplementary information received" ("the Supplementary information") filed by the Registry on 15 September 2009;⁴

NOTING the "Filing of translations and supplementary information in respect of applications to participate in proceedings a/0581/09 to a/0586/09 and a/0536/09" ("the Translations") filed by the Registry on 16 September 2009;⁵

NOTING the "Decision on the Designation of a Single Judge on Victims' Issues and on the Deadline for the Filing of Applications for Participation", in which the Chamber *inter alia* decided that victims' applications for participation in the proceedings shall be filed no later than 11 September 2009;⁶

¹ ICC-02/05-02/09-55, p. 4.

² ICC-02/05-02/09-97-Conf-Exp.

³ ICC-02/05-02/09-97-Conf-Exp, Anx3-Anx54.

⁴ ICC-02/05-02/09-104-Conf-Exp.

⁵ ICC-02/05-02/09-105-Conf-Exp and Anx1-Anx8.

⁶ ICC-02/05-02/09-55, p. 6.

NOTING the “Decision on the Prosecutor’s request for extension of time-limit”, issued by the Single Judge Cuno Tarfusser on 11 September 2009,⁷ in which the date set for the commencement of the confirmation hearing was postponed until Monday, 19 October 2009;

NOTING article 68(3) of the Statute, rules 89 to 93 of the *Rules of Procedure and Evidence* (“the Rules”) and regulations 34, 35(2) and 86 of the *Regulations of the Court* (“the Regulations”);

CONSIDERING that the Single Judge received the 52 applications for participation in the proceedings on Friday 11 September 2009;

CONSIDERING however that in relation to six applications for participation, she was informed, of (i) the difficulties encountered by the legal representatives of the applicants in securing the signatures of their clients as well as proof of their identity due to the fact that they reside in Sudan and (ii) the commitment of the legal representatives to secure this information no later than 15 September 2009 which they did;

CONSIDERING the abovementioned, the Single Judge is of the view that the Registry was unable to file the complete six applications for participation within the time limit set by the Chamber for reasons outside its control;

⁷ ICC-02/05-02/09-98.

CONSIDERING furthermore that under rule 89(1) of the Rules, the Prosecution and the Defence are entitled to make observations concerning the Applications within a time limit set by the Chamber, and that the Single Judge deems it necessary, in order to be in a position to make a decision as to whether the applicants should be granted the status of victims in the Abu Garda case, to give the opportunity to the Prosecution and the Defence to submit their observations on the merits of the applications;

CONSIDERING that it is necessary to set a time-limit for receipt of the parties' observations in view of the fact that the confirmation hearing is due to commence on Monday, 19 October 2009;⁸

CONSIDERING the importance of the right of the individuals granted the status of victim, if any, to effectively participate in the proceedings leading to the confirmation hearing and the need to ensure that the participation of those who have been granted authorisation to present their views and concerns as victims during the pre-trial phase, must be in a manner which is not prejudicial to or inconsistent with the rights of the defence and a fair and impartial trial;

CONSIDERING that, in accordance with the precedents of this Chamber, the identities of the Applicants can be disclosed to the Prosecution, since the Prosecution is an organ of the Court, which is also charged with protecting victims and witnesses;

CONSIDERING further that the Prosecution is the organ that, pursuant to regulation 86 of the Regulations, can be requested to provide the Registry with further information about the Applications or the applicants;

⁸ ICC-02/05-02/09-98, p. 5.

CONSIDERING that, on the other hand, before a decision on the merits is issued, there is no need to disclose to the Defence the identities of the applicants, since, once authorization for participation is granted, the victims are entitled to decide whether to remain anonymous or disclose their identities to the Defence;

FOR THESE REASONS:

GRANT the Registry request for extension of the time-limit for the submission of additional information related to the 52 Applications for participation in the proceedings, until 16 September 2009;

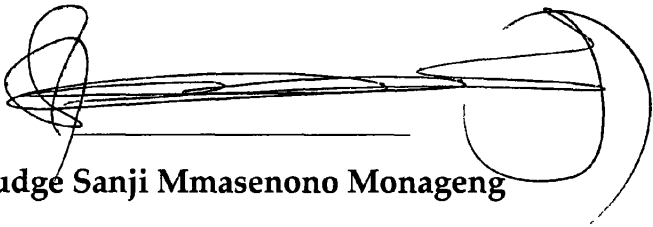
ORDER the Registry, by Thursday 17 September 2009 at 16h00, to provide:

- (i) the Prosecution with non-redacted copies of the 52 Applications, the Supplementary information and the Translations; and,
- (ii) the Defence of Bahar Idriss Abu Garda with copies of the 52 Applications, the Supplementary information and the Translations, in which names, addresses and other sensitive information which could lead to the applicants' identification are redacted;

GRANT the parties, no later than 30 September 2009, 16h00, to file their observations on the Applications for Participation.

RECALL that additional applications, at this stage of the proceedings, will not be accepted.

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this Wednesday 16 September 2009

At The Hague, The Netherlands