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PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN DARFUR, THE SUDAN
IN THE CASE OF THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR

Public Document

**Prosecution's Observations on 4 Applications for
Victims' Participation in the Proceedings**

Source: The Office of the Prosecutor

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

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**Victims Participation and Reparations
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Other

I. Background

1. On 19 August 2009, Pre-Trial Chamber I appointed Judge Sanji Mmasenono Monageng as Single Judge “responsible for all issues related to victims’ applications to be authorized to participate as victims in the proceedings relating to the Al Bashir case”.¹
2. On 1 September 2009, the Single Judge rendered a decision ordering the parties to submit their observations on the 4 applications for participation by 29 September 2009.² In her Decision, the Single Judge further appointed Ms Michelyne C. St-Laurent as counsel for the Defence “within the context and for the purposes of the proceedings on the applications”³ and ordered the Registry, *inter alia*, to provide the Prosecution with non-redacted copies of the 4 applications for participation.⁴
3. On 8 September 2009, the Registry notified the Prosecution with non-redacted copies of 4 applications for participation in the proceedings numbered a/0011/06, a/0012/06, a/0013/06 and a/0015/06.⁵
4. The Prosecution hereby submits its observations on the 4 applications for participation in the proceedings as victims.

II. Legal criteria for victims participation in the Case

5. The Prosecution recalls that the Appeals Chamber has set the criteria for participation of victims at trial as follows:

“Participation of victims at trial will first and foremost, take place through the procedure of rule 89 (1) of the Rules. By way of written applications, applicants will have to demonstrate, firstly, that they are victims within the meaning of rule 85 of the Rules. Secondly, pursuant to article 68 (3) of the Statute, victims will first have to demonstrate that their personal interests are affected by the trial in order to be permitted to present their views and concerns at stages of the proceedings determined to be appropriate by the

¹ ICC-02/05-01/09-31.

² ICC-02/05-01/09-38.

³ ICC-02/05-01/09-38, at page 4.

⁴ ICC-02/05-01/09-38, at page 6.

⁵ ICC-02/05-01/09-41 and + Conf-Exp-Anxs A to D.

Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”⁶

These criteria have been applied also for participation at the pre-trial proceedings.⁷

6. Pursuant to Rule 85 (a) of the Rules of Procedure and Evidence (the “Rules”), “victims” mean natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court. For an individual to be granted victim status: (i) the victim must be a natural person; (ii) he or she must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) a causal link between the crime and the harm must exist.⁸
7. Applicants to a case must further demonstrate a link between the harm they suffered and the crimes charged.⁹ As confirmed by the Appeals Chamber “only victims of the crimes charged may participate in the trial”.¹⁰
8. The Appeals Chamber defined “harm” to include “[m]aterial, physical and psychological harm are all forms of harm that fall within the rule if they are suffered personally by the victim. Harm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims.”¹¹ The Chamber further decided that “whether or not a person has suffered harm as the result of a crime within the jurisdiction of the

⁶ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 62.

⁷ See, for example, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, ICC-01/04-01/07-474, 13 May 2008.

⁸ See ICC-01/04-01/06-228-tEN, p. 7; ICC-01/04-101, para. 94; ICC-02/05-111, para. 2.

PTC II interpreted the criteria to be met under Rule 85 as: “(i) whether the identity of the applicant as a natural person appears duly established; (ii) whether the events described by each applicant constitute a crime within the jurisdiction of the Court; (iii) whether the applicant claims to have suffered harm; and (iv) most crucially, whether such harm appears to have arisen ‘as a result’ of the event constituting a crime within the jurisdiction of the Court.”, ICC-02/04-01/05-252, para. 12. PTCII further determined that harm would be held to have occurred “as a result of” the alleged incident when “the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”, ICC-02/04-01/05-252, para. 14.

⁹ See, ICC-01/04-01/06-1432 OA9 OA10, at para. 62 to 65; ICC-01/04-01/06-228-tEN, p. 9; ICC-01/04-01/06-172-tEN, pp. 6-8; ICC-01/04-01/06-601-tEN, pp.8-9.

¹⁰ ICC-01/04-01/06-1432 OA9 OA10, para. 62.

¹¹ ICC-01/04-01/06-1432 OA9 OA10, at para 32.

Court and is therefore a victim before the Court would have to be determined in light of the particular circumstances.”¹² Furthermore the Appeals Chamber clarified that the harm suffered “can attach to both direct and indirect victims” so long as it is “personal to the individual”, which requires a close personal relationship.¹³ Trial Chamber I in the Lubanga case, guided by this judgement, stated that “[i]ndirect victims must establish that, as a result of their relationship with the direct victim,¹⁴ the loss, injury, or damage suffered by the latter gives rise to harm to them. It follows that the harm suffered by indirect victims must arise out of the harm suffered by direct victims, brought about by the commission of the crimes charged.”¹⁵

9. The charges brought forward against the suspect are spelled out in the “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”.¹⁶

III. Completeness of the applications

10. Applicants must provide adequate proof of identity to prove their status as a natural person. This requirement has been put in place by all Chambers as a minimum safeguard to guaranteeing the accuracy of the applications.¹⁷
11. In addition, the criteria for completeness have been established by Pre-Trial Chamber I in its 17 August 2007 Decision, which serves as further guidance in assessing completeness of the applications.¹⁸
12. Furthermore, the Appeals Chamber has recently determined that applicants who are applying on the basis for having suffered emotional harm as the result of the

¹² Ibid.

¹³ See ICC-01/04-01/06-1432 OA9 OA10, at para 32 in which the Appeals Chamber provides the following example for a close personal relationship, “such as the relationship between a child soldier and the parents of that child. The recruitment of a child soldier may result in personal suffering of both the child concerned and the parents of that child.”

¹⁴ The Trial Chamber defined direct victims to be children under the age of 15 that were conscripted or enlisted into the ranks of the UPC or used to participate actively in hostilities (see ICC-01/04-01/06-1813, at para 48).

¹⁵ ICC-01/04-01/06-1813, at para 49.

¹⁶ ICC-02/05-01/09-1.

¹⁷ PTC I, ICC-01/04-374; PTC II, ICC-02/04-01/05-252, paras 16 to 21 and TC I, ICC-01/04-01/06-1119, para 87.

¹⁸ ICC-01/04-374, para 12; see also ICC-02/05-111-Corr, at para 26 to 28;

loss of a family member must present “proof of the identity of the family member and of his or her relationship with the applicant. The Chamber must be satisfied that the family member existed and that he or she had the requisite relationship with the applicant.”¹⁹ The Appeals Chamber further held that as for the evidence required “to establish the elements of rule 85 (a) of the Rules of Procedure and Evidence in this context cannot be determined in the abstract, but must be assessed on a case-by-case basis taking into account all relevant circumstances.”²⁰

IV. The Prosecution’s Observations

13. The Prosecution submits that all applicants *prima facie* meet the necessary requirements for victim participation. These applicants are natural persons pursuant to Rule 85 (a) and have submitted sufficient proof to establish their identities.²¹
14. Further, these applicants all claim to have suffered direct harm (in the form of either physical or mental harm and/or loss or damage of property) as a result of a crime for which the suspect, Al Bashir, is charged and within the relevant time-frame (April 2003 to 14 July 2008) of the charges.²² The Prosecution therefore submits that the applicants *prima facie* meet the necessary requirements for victim participation under Article 68 (3).

¹⁹ Judgment of the Appeals Chamber ICC-02/04-01/05-371, 23 February 2009, paras 1 and 2.

²⁰ Ibid.

²¹ Applicant a/0011/06 submitted a passport and identity card; applicant a/0012/06 submitted a passport, a birth certificate, an identity card and a high school diploma; applicant a/0013/06 submitted an Interim Drivers Licence, an employment authorization card as well as a Temporary protected Status form; applicant a/0015/06 submitted a drivers licence.

²² Applicant a/0011/06 claims that his family’s crops and livestock were plundered or destroyed by the Janjaweed and the Sudanese military in an attack against his village in Darfur in June 2004. The applicant also alleges to have been detained and tortured after participating in a demonstration against the government in December 2004, also in Darfur; Applicant a/0012/06 alleges to have been detained and tortured by the Sudanese security forces from the end of April to the end of June 2003 in an unknown location in Darfur. His brother was killed in an aerial attack by GoS Anatonovs in August 2003 against his older brother’s villages situated in Darfur; applicant a/0013/06 claims to have been captured by Sudanese soldiers, imprisoned and tortured for a period of 46 days from mid March 2003 onwards. In September of the same year and also in Darfur, his village was attacked by the Janjaweed as a result of which he fled with his family to Chad leaving all their belongings behind. His wife had been pregnant at the time of their escape and miscarried as a result of them having to flee; applicant a/0015/06 claims that his house and crops were burnt during an attack against his village by the Janjaweed in September 2003. His village is situated in Darfur.

V. Conclusion

15. For the reasons outlined above, the Prosecution is satisfied that applicants a/0011/06, a/0012/06, a/0013/06 and a/0015/06 meet the criteria to be recognized as victims in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*.



Luis Moreno-Ocampo

Prosecutor

Dated this 29th September 2009

At The Hague, The Netherlands