



Original: **English**

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

Date: 9 October 2009

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN DARFUR, THE SUDAN

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

Public Document

URGENT

Request in respect of Information relevant to Victim Participation on the basis of the Decision on 52 Applications for Participation at the Pre-Trial Stage of the Case

Source: Victim Applicants, represented by Sir Geoffrey Nice QC and Rodney Dixon

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

The Office of the Prosecutor

Luis Moreno-Ocampo

Counsel for the Defence

Karim A.A. Khan

Andrew J. Burrow

Legal Representatives of Victims

Legal Representatives of Applicants

Sir Geoffrey Nice QC

Rodney Dixon

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

[2 names maximum]

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

[2 names maximum]

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Notification of information and request to Single Judge

1. The Decision on 52 Applications for Participation at the Pre-Trial Stage of the Case, dated 8 October 2009, denied the Victim Applicants a/0581/09 - a/0586/09 the right to participate in the confirmation of charges hearing commencing on 19 October 2009.
2. The Single Judge found that certain elements were lacking in the information provided by the Victim Applicants that justified their exclusion as participants at this stage in the proceedings. Establishment of harm by the Applicants was not in doubt; rather, the Single Judge held that “the alleged harm cannot be said to be *resulting from* the alleged incident with which the suspect is charged” since the spatial and temporal circumstances of the harm and the incident charged “do not seem overlap or to be compatible” (para. 141). The temporal circumstance was identified as “29 September 2007” and the spatial as “the MGS Haskanita” (para. 141).
3. The Single Judge stated that the reason for this conclusion is that “none of the applicants refers to crimes that would have allegedly been committed at the MGS Haskanita as charged by the Prosecution ... nor do they claim to have suffered harm as a result of the crimes which were allegedly committed during the attack on MGS Haskanita on 29 September 2007” (para. 140).
4. In their summary statements the Victim Applicants do not *specifically* refer to the *specific* crimes charged by the Prosecution, with the *specific* date of 29 September 2007 associating the harm suffered *specifically* with the allegations of the killing of AMIS peacekeepers (and attempts to kill), intentional attacks directed against the personnel and property of the peacekeeping mission, and the pillaging of this property. The statements also do not *specifically* state in terms that they fled in fear and were victimised as a result of these particular crimes as alleged by the Prosecution in the Document Containing the Charges.
5. It had always been the understanding of Counsel representing them that the harm suffered by these Applicants was all directly consequent on the alleged crimes of the 29 September 2007 at MGS Haskanita. If the present statements manifest any

shortcomings in preparation that may result from the difficulties inherent in investigations being conducted in distant territory under the direction of Counsel in Europe whose instructions have always focussed on the need NOT to put details into the mouths witnesses (thus perhaps leading to their statements lacking the date specific detail provided in all the other statements of those who have been found to qualify as victims).

6. Upon notifying the Victim Applicants of the reasoning of the Decision, Counsel have been instructed that it is precisely because of these specific crimes allegedly committed in MGS Haskanita on 29 September 2007 (as set out in the Prosecutor's Document Containing the Charges) that they suffered the harm they have alleged.
7. In order to be compliant with the standard identified by the Single Judge further statements confirming and elaborating this point are being obtained from the Victim Applicants that will be submitted in accordance with the Regulations through the Victims Participation and Reparations Section (VPRS) by Monday 12 October 2009.
8. The Victim Applicants' applications were, perhaps inevitably, in summary form only. Specific dates (see above), details of the attack on MGS Haskanita, and the specific crimes alleged by the Prosecutor have not been elaborated upon. The information, not rehearsed in any way by the investigators who took the statements, was not provided by the Victim Applicants with the specific requirements of Rule 89(1) and the case law of the ICC in mind. Nor was it provided with detailed knowledge of the specific crimes alleged by the Prosecutor in his Document Containing the Charges. As indicated in the covering letter to the Applications of 11 September 2009 Counsel for the Applicants had not had an opportunity to meet with the Victim Applicants face to face to question them and had to rely on investigators who, as above, had been carefully instructed NOT to "lead" details from the Applicants.
9. Although, despite best efforts, it had not been possible for Counsel to travel to Sudan and Darfur to supervise the taking of these Applications, arrangements are being made for Counsel to meet with the Victim Applicants as soon as possible within the next week.

10. The Victim Applicants respectfully urge the Single Judge to consider such further information as may be available by Monday next week in combination with the statements already provided and to find that the gaps in evidence she found will have been filled (and of course if in any case further inquiries reveal that any particular Applicant does not meet the Courts required standard then that application will be withdrawn).

11. The Applicants respectfully invite the learned Single Judge to reflect in her decision that:

1. The statements – whether or not supplemented – do refer to the attack that is the subject of the charge. There was no other attack within close temporal or spatial proximity and the clear understanding of the Applicants was that they were addressing the attack charged in this case.
2. The real difficulties of communicating detailed court procedures and requirements to people such as these Applicants in “the field” justify their being allowed an opportunity to clarify their position, now that the standard required by the Single Judge has been identified.
3. There is a week before the relevant hearings are scheduled to start and it would be undesirable to exclude those *from within Darfur itself* who may indeed be qualifying victims (under the Statute and Rules) on what may turn out to be technicalities.
4. No prejudice has been suffered by any of the parties to the proceedings in that the Applicants have already been notified to the parties and the Applicants, if granted leave to appear, could still fit in to, and participate in, the existing schedule of hearings.
5. The Prosecution did not object to the Applicants being participants and accepted that they qualified so to do.
6. They are the only Darfurians seeking to be allowed the right to appear as victims at the ICC, so far as is known to them. They were directly affected by the attack. Without in any way belittling the suffering of those whose

applications were favoured by the Single Judge, these Applicants might argue that they have a particularly strong right to be allowed the right of appearance. To deny them the right to appear when others – whose ability to give details of dates and details different (in so far as they were) may have reflected different approaches by investigators – would seem harsh and potentially unfair. Their proximity by harm suffered to the crimes is greater, it seems, than that of any of the other victims dealt with in this Decision.

7. The Applicant's request to the Single Judge is underscored by their concern that *their* suffering on the day of the attack has been overlooked by the ICC which may otherwise be seen through these charges as focusing on members of the "international community" who have suffered rather than indigenous Darfurians.



For Sir Geoffrey Nice QC
Rodney Dixon
Counsel on behalf of the Victim Applicants

Dated this 9th day of October 2009
London, United Kingdom