

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 06 November 2009

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR v.
OMAR HASSAN AHMAD AL BASHIR ("Omar Al-Bashir")**

Public Document

**Decision Ordering the Parties to Submit their Observations on Applications
a/0443/09 to a/0450/09 for Participation as Victims 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
Ms Fatou Bensouda
Mr Essa Faal

Counsel for the Defence

Ms Michelyne C. Saint-Laurent

Legal Representatives of the Victims

Legal Representatives of the Applicants

Mr Nick Kaufman

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

Ms Silvana Arbia

Deputy Registrar

Mr Didier Daniel Pereira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

I, Judge Sanji Mmasenono Monageng, Judge of Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”);

NOTING the “Decision on the Designation of a Single Judge on Victims’ Issues”, issued on 19 August 2009, whereby Judge Sanji Monageng was designated Single Judge responsible for all issues related to victims’ applications to be authorized to participate as victims in the proceedings related to the Situation in Darfur, Sudan, including the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (the “Omar Al-Bashir Case”);¹

NOTING the “Decision Ordering the Parties to submit their Observations on the Applications for Victims’ Participation in the Proceedings”,² wherein the Single Judge appointed Ms Michelyne C. Saint-Laurent as Counsel for the Defence, entrusted with representing and protecting the interests of the Defence within the context and for the purposes of the proceedings on four applications: a/0011/06, a/0012/06, a/0013/06 and a/0015/06 for participation in the Omar Al Bashir Case;

NOTING the “Decision on the Applications by Victims a/0443/09 to a/0450/09 to Participate in the Appeal against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir” and on the Request for an extension of Time” issued by the Appeals Chambers on 23 October 2009, wherein the Registry was instructed to file the eight applications together with the Report before Pre-Trial Chamber I;³

NOTING the “Report on applications a/0443/09 to a/0450/09 to participate in the proceedings” (“the Report”), together with annexes 2 to 9, filed by the Victims

¹ ICC-02/05-01/09-31.

² ICC-02/05-01/09-38.

³ ICC-02/05-01/09-48.

Participation and Reparation Section ("the VPRS") on 4 November 2009, wherein the requests for participation in all stages of the proceedings of applicants a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 and a/0450/09 were submitted (collectively, "the 8 Applications");⁴

NOTING articles 57(3) and 68(3) of the *Rome Statute* ("the Statute"), rules 86 and 89 of the *Rules of Procedure and Evidence* ("the Rules") and regulations 24(1), 33, 34(a) and (b), 76(1) and 86 of the *Regulations of the Court* ("the Regulations");

CONSIDERING 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 Omar Al-Bashir Case, to give the opportunity to the Prosecution and the Defence to submit their observations on the merits of the applications;

CONSIDERING further 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, in accordance with article 68(3) of the Statute;

CONSIDERING therefore that, the Single Judge deems it in the interest of justice to extend Ms Michelyne C. Saint-Laurent mandate as Counsel for the Defence within the context and for the purposes of the proceedings, in accordance with regulation 76(1) of the Regulations, entrusted with the responsibility for all issues related to the

⁴ ICC-02/05-01/09-49-Conf-Exp and ICC-02/05-01/09-49-Conf-Exp-Anxs 2-9.

8 Applications, including, in particular, the right to receive a copy of these applications and to submit observations thereon;

CONSIDERING that articles 68(1) and 57(3)(c) of the Statute empowers the Court to take appropriate measures to protect *inter alia* the safety, privacy, physical and psychological well-being of the victims in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;

CONSIDERING that rule 86 of the Rules establishes a general principle according to which the Pre-Trial Chamber, in making any direction or order, and other organs of the Court, in performing their functions under the Statute or the Rules, must take into account the needs of all victims and witnesses in accordance with article 68 of the Statute;

CONSIDERING that, in light of the nature, purpose and circumstances of the current proceedings, redaction of the applications remains the most appropriate measure of protection and does not amount to an unnecessary restriction of the rights of the Defence;

CONSIDERING that, in relation to Applicants a/0444/09 and a/0445/09, the Single Judge is of the view that, in light of security concerns that they have raised and their requests, these applications must be transmitted to the Prosecution, in redacted form; therefore, the Single Judge considers it appropriate that the Registry transmit a redacted copy of these applications to the Prosecution after having redacted any information that could lead to identification of these Applicants;

CONSIDERING that, in relation to Applicants a/0446/09 and a/0449/09, the Single Judge is of the view that, in light of the security concerns raised by the Applicants and their related requests, these applications shall be transmitted to the Prosecution having redacted only the information relating to the contact details of these Applicants;

CONSIDERING that Applicants a/0443/09, a/0447/09, a/0448/09 and a/0450/09 have not made any request in relation to the disclosure of their identities *vis a vis* the Prosecution, the Single Judge considers that unredacted copies of these applications shall be transmitted to the Prosecution;

CONSIDERING that the transmission of unredacted copies of applications to the Prosecution may give rise to the possibility of subsequent and inadvertent disclosure of information to the Defence due to lack of awareness of the nature and extent of the redactions applied to the applications transmitted to the Defence, therefore, the Prosecution shall also receive a copy of the redacted version of these applications;

CONSIDERING that, there is no requirement to disclose to the Defence the identities of the Applicants in advance of a decision on the merits of the applications being issued, since, once authorization for participation is granted, the victims are entitled to decide whether to remain anonymous or to disclose their identities to the Defence;

FOR THESE REASONS:

DECIDE to appoint Ms Michelyne C. Saint-Laurent as ad hoc Counsel for the Defence, entrusted with representing and protecting the interests of the Defence within the context and for the purposes of the proceedings on the 8 Applications for participation in the Omar Al-Bashir Case;

ORDER the Registry, no later than Friday 13 November 2009 by 16h00, to provide in accordance with this decision:

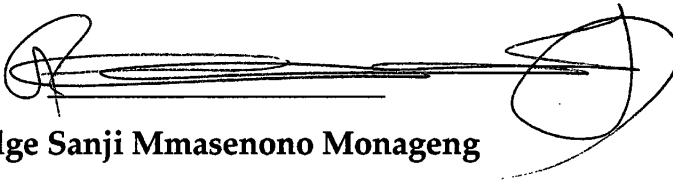
- (i) the Prosecution with redacted copies of applications a/0444/09 and a/0445/09, in which names, addresses and other sensitive information which could lead to identification of the Applicants are redacted;
- (ii) the Prosecution with redacted copies of applications a/0446/09 and a/0449/09, in which only addresses and contact details are redacted;
- (iii) the Prosecution with non-redacted copies of applications a/0443/09, a/0447/09, a/0448/09 and a/0450/09; and,
- (iv) the Counsel for the Defence with copies of the 8 Applications, in which names, addresses and other sensitive information which could lead to identification of the Applicants are redacted;

ORDER the Registry to notify the Prosecution of the redacted versions transmitted to the Defence of the 8 Applications;

GRANT the Prosecution and the Counsel for the Defence until Friday 04 December 2009 at 16h00, to submit their observations on the 8 Applications for participation.

ORDER all participants in the proceedings to only refer to the Applicants by the numbers assigned to them by the Registry;

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this Friday, 06 November 2009

At The Hague, The Netherlands