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**International
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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 8 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:

The Office of the Prosecutor

Counsel for the Defence
Ms Michelyne C. St-Laurent

Legal Representatives of Victims

Legal Representatives of Applicants
Mr Nick Kaufman

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims
Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Ms Silvana Arbia & Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

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 6 November 2009, the Single Judge rendered the *Decision Ordering the Parties to Submit their Observations on Applications a/0443/09 to a/0450/09 for Participation as Victims in the Proceedings* by 4 December 2009.² In her Decision, the Single Judge ordered the Registry, *inter alia*, to provide the Prosecution with (i) 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) redacted copies of applications a/0446/09 and a/0449/09, in which only addresses and contact details are redacted; (iii) non-redacted copies of applications a/0443/09, a/0447/09, a/0448/09 and a/0450/09.³
3. On 13 November 2009, the Registry notified the Prosecution with (i) 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) copies of applications a/0446/09 and a/0449/09, in which only addresses and contact details of the applicants are redacted; and (iii) non-redacted copies of applications a/0443/09, a/0447/09, a/0448/09 and a/0450/09.⁴
4. The Prosecution hereby submits its observations on the eight applications for participation in the proceedings as victims.

II. Legal criteria for victims participation in the proceedings

¹ ICC-02/05-01/09-31.

² ICC-02/05-01/09-50.

³ ICC-02/05-01/09-50, at page 7.

⁴ ICC-02/05-01/09-53.

5. The Prosecution recalls that the Appeals Chamber 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 Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”⁵

These criteria have been applied also for participation at the pre-trial proceedings.⁶

6. Pursuant to Rule 85 (a) of the Rules of Procedure and Evidence (the “Rules”), “victims” means 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.⁷

⁵ *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.

⁶ 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.

⁷ 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. PTC II further determined that harm occurs “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.

7. Applicants must further demonstrate a link between the harm they suffered and the crimes charged.⁸ As confirmed by the Appeals Chamber, “only victims of the crimes charged may participate in the trial”.⁹
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.”¹⁰ The Chamber further decided that “whether or not a person has suffered harm as the result of a crime within the jurisdiction of the Court and is therefore a victim before the Court would have to be determined in light of the particular circumstances.”¹¹ Furthermore, the 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.¹² Trial Chamber I in the *Lubanga* case, guided by this judgment, stated that “[i]ndirect victims must establish that, as a result of their relationship with the direct victim,¹³ 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.”¹⁴
9. The charges brought forward against the suspect are spelled out in the “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”.¹⁵

⁸ 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.

⁹ ICC-01/04-01/06-1432 OA9 OA10, para. 62.

¹⁰ ICC-01/04-01/06-1432 OA9 OA10, at para 32.

¹¹ Ibid.

¹² See ICC-01/04-01/06-1432 OA9 OA10, at para 32 in which the Appeals Chamber provides the following example of 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.”

¹³ The Trial Chamber defined direct victims to be children under the age of 15 who 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).

¹⁴ ICC-01/04-01/06-1813, at para 49.

¹⁵ ICC-02/05-01/09-1.

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.¹⁶
11. In addition, the criteria for completeness established by Pre-Trial Chamber I in its 17 August 2007 Decision serve as further guidance in assessing completeness of the applications.¹⁷

IV. The Prosecution's Observations

12. 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.¹⁸
13. Further, these applicants all claim to have suffered direct harm in accordance with Rule 85(a).¹⁹ The harm suffered is in the form of either physical or mental harm and/or loss or damage of property and resulted from a crime for which the suspect, Al Bashir, is charged and committed within the relevant time-frame (April 2003 to 14 July 2008) of the charges.²⁰ The Prosecution therefore submits

¹⁶ 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.

¹⁷ ICC-01/04-374, para 12; see also ICC-02/05-111-Corr, at para 26 to 28;

¹⁸ Applicant a/0443/09 submitted a passport, a temporary resident identity card and an UNHCR asylum seeker registration card; applicant a/0444/09 submitted a passport; applicant a/0445/09 submitted a passport; applicant a/0446/09 submitted a passport; applicant a/0447/09 submitted a passport and an UNHCR asylum seeker registration card; applicant 0448/09 submitted a passport and a letter from the UNHCR confirming that he applied for asylum; applicant 0499/09 submitted an UNHCR asylum seeker registration card and a letter from the UNHCR confirming that he applied for asylum; applicant a/0450/09 submitted a passport, an UNHCR asylum seeker registration card and a letter from the UNHCR confirming that he applied for asylum.

¹⁹ See the Appeals Chamber jurisprudence cited *supra*.

²⁰ Applicant a/0443/09 alleges that in June 2003, the Sudanese armed forces attacked his village, Mukjar Kadeem. The attackers killed four of his brothers and burned alive three young girls and three elderly women. When the same forces attacked the village again, the applicant fled to Mukjar town where he was imprisoned. While in detention, he was beaten and tortured. Applicant a/0444/09 claims that in January and February 2004 Militia/Janjaweed attacked his village situated near Mukjar town. The attackers randomly killed some villagers, looted the cattle and crops, and burned all the houses. The applicant alleges that soldiers beat and severely injured him. He also lost his house and life stocks. Applicant a/0445/09 claims that in August 2003, Sudanese armed forces and Militia/Janjaweed attacked the village of Bindisi near Mukjar town. While in Mukjar town, the

that the applicants *prima facie* meet the necessary requirements for victim participation under Article 68 (3).

V. Conclusion

14. For the reasons outlined above, the Prosecution is satisfied that applicants a/0443/09 to a/0450/09 meet the criteria to participate as victims in the current proceedings in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, pursuant to Article 68(3).



Luis Moreno-Ocampo

Prosecutor

Dated this 1st December 2009

At The Hague, The Netherlands

applicant claims to have seen inmates being tortured and dying due to overcrowding of detention cells. He also states that in September 2003, five villages west of Mukjar town were bombed for three days. During these events, the applicant claims to have lost his home and life stocks. He also claims to have suffered mental harm. Applicant a/0446/09 alleges that his village, Bindisi, was attacked by Militia/Janjaweed on 15 August 2003. The attackers killed many villagers, raped young girls and took away the villagers' food, life stocks and personal belongings. The same attackers repeatedly returned to the village, took away the harvested crops and burned farms and houses. As a result, villagers were left to starve and some of the applicant's family members starved to death. Following the attack by the Militia/Janjaweed on Mukjar town on 19 October 2003, Applicant a/0447/09 was imprisoned and tortured by the Militia/Janjaweed. As a result of the torture, the applicant claims to have suffered physical injuries and continues to suffer from psychological pain. He also claims to have lost life stocks. Following the attack by the Militia/Janjaweed on the village of Bindisi on 15 August 2003, Applicant a/0448/09 fled to Mukjar town where he was imprisoned and tortured by the Militia/Janjaweed and government forces. The applicant's father was imprisoned and starved to death. The applicant also alleges that his house (in which there was shop) was burned. The attackers took away his family's life stocks and personal belongings. Applicant a/0449/09 claims the loss of his family's house and his grandfather's animals as a result of an attack by the Sudanese armed forces and Militia/Janjaweed on his village, Sullo, on 29 March 2004. The day before the attack, the Militia/Janjaweed killed his uncle. Applicant a/0450/09 claims to have been shot in his leg and arm during a Militia/Janjaweed on his village, Amakasara, at the end of 2004. While fleeing the village, three attackers beat him with sticks by which he was inflicted an open wound in his skull. The wound still causes him pain. He also claims to have lost life stocks.