

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 10 December 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 on Applications a/0011/06 to a/0013/06, a/0015/06 and a/0443/09 to
a/0450/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case**

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 Victims

Legal Representatives of Applicants

Ms Wanda M. Akin

Mr Raymond M. Brown

Mr Nicholas 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

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

I, **Judge Sanji Mmasenono Monageng**, acting as Single Judge on behalf of Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) with respect to applications for authorisation to participate as victims in the proceedings relating to the case of *The Prosecutor v. Omar Hassan Ahmad Al-Bashir* (“the Omar Al-Bashir Case”);¹

NOTING the “Prosecution’s Application under Article 58” (“the Prosecution’s Application”) filed by the Prosecution on 14 July 2008;²

NOTING the “Decision on the Prosecutor’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir” (“the Decision on the Prosecutor’s Application”) issued by the Chamber on 4 March 2009;³

NOTING the “Prosecution’s Application for Leave to Appeal the ‘Decision on the Prosecutor’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir’” filed by the Prosecution on 10 March 2009;⁴

NOTING the “Decision on the Prosecution’s Application for Leave to Appeal the ‘Decision on the Prosecution’s Application for Warrant of Arrest against Omar Hassan Ahmad Al-Bashir’” issued by the Chamber on 24 June 2009, whereby the Chamber granted the leave requested by the Prosecution;⁵

NOTING the “Report on applications to participate in the proceedings” filed by the Victims Participation and Reparation Section (“the VPRS”) on 14 August 2009,

¹ ICC-02/05-01/09-31.

² ICC-02/05-151-US-Exp and ICC-02/05-151-US-Exp-Anxsl-89; Corrigendum ICC-02/05-151-US-Exp-Corr and Corrigendum ICC-02/05-151-US-Exp-Corr-Anxsl & 2. Public redacted version of the Prosecution Application, ICC 02/05-157-AnxA.

³ ICC-02/05-01/09-3.

⁴ ICC-02/05-01/09-12.

⁵ ICC-02/05-01/09-21.

together with annexes 2 to 5, wherein the requests for participation in the proceedings of applicants a/0011/06, a/0012/06, a/0013/06 and a/0015/06 were submitted;⁶

NOTING the “Decision Ordering the Parties to submit their Observations on the Applications for Victims’ Participation in the Proceedings”⁷ issued by the Single Judge on 27 August 2009;

NOTING the “Observations de la Défense sur les demandes de participation en qualité de victims des demandeurs a/0011/06, a/0012/06, a/0013/06 et a/0015/06”⁸ (“the Defence Observations”) filed by the *ad hoc* counsel for the Defence for Omar Hassan Ahmad Al Bashir on 28 September 2009, wherein it raises some objections to the applications;

NOTING the “Prosecution’s Observations on 4 Applications for Victims’ Participation in the Proceedings”⁹ filed by the Prosecution on 29 September 2009, wherein it submits that all applicants *prima facie* fulfil the necessary requirements for victim participation under article 68 (3) of the *Rome Statute* (“the Statute”) and of rule 85(a) of the *Rules of Procedure and Evidence* (“the Rules”);

NOTING the “Report on applications a/0443/09 to a/0450/09 to participate in the proceedings”¹⁰ (“the Report”), together with annexes 2 to 9, filed by the VPRS on 04 November 2009, wherein applicants a/0443/09 to a/0450/09 request to participate in all stages of the proceedings;

⁶ ICC-02/05-01/09-30-Conf-Exp and ICC-02/05-01/09-30-Conf-Exp-Anx2-5.

⁷ ICC-02/05-02/09-68.

⁸ ICC-02/05-01/09-45.

⁹ ICC-02/05-01/09-46.

¹⁰ ICC-02/05-01/09-49-Conf-Exp and ICC-02/05-01/09-49-Conf-Exp-Anxs 2-9.

NOTING 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”¹¹ issued by the Single Judge on 06 November 2009;

NOTING the “Prosecution’s Observations on 8 Applications for Victims’ Participation in the Proceedings”¹² filed by the Prosecution on 2 December 2009, wherein it submits that all applicants *prima facie* meet the necessary requirements for participation as victims in the current proceedings in the Omar Al-Bashir Case;

NOTING the “Request for a Decision on Victim Participation”¹³ filed by the legal Representative for Applicants a/0443/09 to a/0450/09 on 10 December 2009;

NOTING articles 57(3)(c), 61 and 68 of the Statute, rules 86 to 89 and 91 of the Rules and regulations 81(4) and 86 of the *Regulations of the Court* (“the Regulations”);

HEREBY RENDER THIS DECISION

1. The Single Judge is seized with requests from 12 Applicants¹⁴ for authorisation to participate in the proceedings in the Omar Al-Bashir Case.
2. The Single Judge notes that the main principles to be adhered to when considering requests for authorisation to participate as victims in the proceedings have been extensively set out in the case law of this Chamber.¹⁵ Nevertheless, the Single Judge considers it necessary to recall the main principles governing victims’ participation in the proceedings before this Chamber.

¹¹ ICC-02/05-01/09-50.

¹² ICC-02/05-01/09-58.

¹³ ICC-02/05-01/09-59.

¹⁴ Applicants’ a/0011/06, a/0012/06, a/0013/06, a/0015/06, 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.

¹⁵ ICC-01/04-374; ICC-01/04-01/07-474; ICC-02/05-02/09-121.

3. In order to be granted the right to participate in proceedings the person shall (i) qualify as a victim within the definition of this term provided by rule 85 of the Rules, (ii) his/her personal interests shall be affected by the proceedings at hand as prescribed in article 68(3) of the Statute, and (iii) he/she shall submit a complete application to participate in the proceedings.

4. The Single Judge recalls what has already been stated by this Chamber in its "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case" issued in the case of *The Prosecutor v Bahar Idriss Abu Garda*, that "the personal interest of the victims flows from (i) the desire to have a declaration of truth by a competent body (right to truth); (ii) their wish to have those who victimised them identified and prosecuted (right to justice) and (iii) the right to reparation".¹⁶

5. The Single Judge is aware that the outcome of any proceedings before the Court may have an effect on the personal interests of victims. The pre-trial stage of a case is an essential stage of the proceedings insofar as it aims to "determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged"¹⁷ by the Prosecution. Since victims have a personal interest in the outcome of both the pre-trial stage and the Chamber's decision to either (i) confirm the charges against those responsible for perpetrating the crimes which caused them to suffer harm; or (ii) decline to confirm the charges for those not responsible for such crimes; should the Chamber decline to confirm the charges against the suspect, the search for those who are criminally liable may nonetheless continue.

6. Furthermore, the Single Judge points out that despite the limited scope and purpose of the pre-trial stage of the proceedings, by virtue of article 68(3) of the Statute victims are not mere spectators, they may convey "their views and concerns". Nevertheless, there is a need to consider a balance between the rights of the victims and the rights of the person charged by ensuring that the modalities of

¹⁶ ICC-02/05-02/09-121, para. 3. See also ICC-01/04-01/07-474, paras 31-44.

¹⁷ Article 61(3) of the Statute.

participation of victims are not prejudicial to the rights of the person charged and opposed to a fair and impartial trial.¹⁸

7. This decision will assess whether the applicants qualify as victims within the meaning of rule 85 of the Rules, and whether they fulfil the requirements to be authorised to participate in the pre-trial stage of the proceedings.

I. Principles governing the examination of applications for participation

A. Completeness of the applications for participation

8. The Single Judge recalls the following directions given by this Chamber in previous cases and most recently in the case of *The Prosecutor v Bahar Idriss Abu Garda*, regarding completeness of the applications for participation:

“Pursuant to rule 89(1) of the Rules, applicants seeking participation in the proceedings must submit a written application to the Registrar who shall then transmit the application to the relevant Chamber. Furthermore, pursuant to regulation 86(5) of the Regulations, the aforementioned applications are transmitted together with a report thereon. In this respect, the Single Judge underlines that she will only be in a position to properly assess fully completed applications, containing the information required under regulation 86(2) of the Regulations. In compliance with the case law of the Chamber, an application is considered complete if it contains the following information:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.”¹⁹

¹⁸ ICC-02/05-110; ICC-01/04-417. See also ICC-01/04-01/06-462-tEN, p. 5. See also ICC-02/05-02/09-121.

¹⁹ ICC-01/04-374, para. 12. See also ICC-01/04-01/07-579, para. 44. See also ICC-02/05-02/09-121, para. 7.

B. Proof of Identity

9. Regarding proof of identity, the Single Judge is of the view that, in principle, the identity of an applicant should be confirmed by proper identification documents when applying to participate in the proceedings.²⁰ However, note is taken by the Single Judge of the fact that victims apply to the Court from different countries or regions of the world, and due to personal circumstances of the applicants and/or adverse security, political, and social situations that may prevail in some of the countries and regions, difficulties in obtaining the required proof of identity, kinship, guardianship and legal guardianship may arise. The Single Judge further recalls, in particular, that “in regions which are or have been ravaged by conflict, not all civil status records may be available, and if available, may be difficult or too expensive to obtain.”²¹ For the above reasons and taking into account the approach adopted by the different Chambers of the Court, the Single Judge finds that a flexible approach shall again be taken with respect to such applications, by allowing the submission of any of the following documents to prove identity, kinship, guardianship or legal guardianship:

- (i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;
- (ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;
- (iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or
- (iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses.²²

²⁰ ICC-01/04-374, para. 13. See also ICC-01/04-01/07-579, para. 45.

²¹ ICC-01/04-374, para. 14. See also ICC-01/04-01/07-579, para. 45; Pre-Trial Chamber III, ICC-01/05-01/08-320, para. 34.

²² ICC-01/04-374, para. 15. See also ICC-01/04-01/07-579, para. 46. Pre-Trial Chamber III, ICC-01/05-01/08-320, paras 36-37. See also ICC-02/05-02/09-121, para. 8.

II. Concerns raised by the *ad hoc* Defence Counsel in relation to applications a/0011/06 to a/0013/06

10. The Single Judge takes note of the preliminary observations raised by the Defence in the Defence Observations,²³ wherein the Defence argued that in accordance with rule 91(1) of the Rules, the Chamber may modify its ruling, taken pursuant to rule 89 of the Rules and the existing case law, and authorize the Defence to make additional observations on new information related to victims' applications for participation. In this regard, the Defence argued that for reasons of expeditiousness and fairness of the proceedings as well as to enable the submission of new observations without prejudice to the rights of the Defence, the Defence needs to have access to non-redacted versions of the applications and to the Registry report.

11. As to the merits of the applications, the Defence contends that Applicants refer to attacks that occurred outside the time frame and/or outside the region referred to in the Warrant of Arrest for Omar Al-Bashir. The Defence further submits that Applicant a/0015/06 attached a non suitable document as proof of identity.

A. Redaction of confidential information about the applicants in the applications

12. With respect to the issue of redaction of confidential information from the applications, the Single Judge reiterates the Chamber's previous findings setting out the principles pertaining to and the reasons justifying the transmission of redacted applications to the Defence.²⁴ The Single Judge recalls that the issue of redacting confidential information from the applications before transmitting them to the Prosecution and/or to the Defence necessitates the balancing of competing

²³ ICC-02/05-01/09-45, para. 23.

²⁴ ICC-01/04-374, paras 20-21. See also Pre-Trial Chamber III, ICC-01/05-01/08-320.

obligations: (i) the obligation under article 57(3)(c) and 68(1) of the Statute to protect *inter alia* the safety, privacy, physical and psychological well-being of victims and witnesses and rule 86 of the Rules to take into account the needs of victims and witnesses; (ii) the general obligation to ensure fairness of the proceedings; and (iii) the requirement under rule 89(1) of the Rules to transmit copies of the applications to the Prosecution and to the Defence, who shall be entitled to reply.

13. The Single Judge further notes that, although redactions of identifying information from the applications to be provided to the *ad hoc* counsel for the Defence were ordered, such redactions did not exceed that which was strictly necessary and were not prejudicial to or inconsistent with the rights of the person charged, or in any way antagonistic to a fair and impartial trial, in accordance with article 68(3) of the Statute.

14. The Single Judge reiterates that, in previous decisions of this Chamber,²⁵ specific measures to ensure the confidentiality of the identity of the applicants were taken. Measures such as (i) maintaining the confidential status of the applicants' identity, (ii) referring to the applicants only by the number assigned to them by the Registry, and (iii) contacting those to whom the status of victim has been granted through their legal representative only.

15. For these reasons and in light of this Chamber's jurisprudence, the Single Judge restates that, at this stage of the proceedings, only applications from which confidential information that could lead to the identification of the applicant is expunged, shall continue to be provided to the Defence.

B. Notification of the Report to the parties

16. With respect to the issue of transmission of the Report to the parties, the Single Judge notes that neither the Statute nor its Rules and Regulations provide for the

²⁵ ICC-01/04-374; ICC-02/05-02/09-121; ICC-02/05-02/09-147.

Report to be transmitted to the Prosecution and the Defence. According to rule 89(1) of the Rules “the Registry shall provide a copy of the Application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber.” Similarly, regulation 86(6) of the Regulations provides that “the Registrar may also submit one report on a number of applications received in accordance with sub-paragraph 1 to the Chamber seized of the case or situation in order to assist that Chamber in issuing only one decision on a number of applications in accordance with rule 89, sub-rule 4”.

17. With regard to paragraphs 10 above, the Single Judge finds that there is no compelling reason to agree with the Defence and to depart from the precedent of this Chamber in the “Decision on the Requests of the Legal Representatives of Applicants on application process for victims’ participation and legal representation” in the situation of the Democratic Republic of Congo, where it stated *inter alia* that:

“The Chamber[‘s] (...) only obligation under rule 89(1) of the Rules is to order the Registry to provide the Prosecutor and the defence with copies of the Applications, such that they may make observations on the Applications within a time set by the Chamber. In other words, rule 89 of the Rules does not direct the Chamber to transmit the Report.”²⁶

“Further, regulation 86(5) of the Regulations states that “the Registrar shall present all applications described in this regulation to the Chamber together with the report thereon.” The purpose of the Report is further specified in regulation 86(6) of the Regulations, which provides that the Registry may submit one Report on a number of applications in order to assist the Chamber in issuing only one decision in accordance with rule 89(4) of the Rules.”²⁷

“The Chamber further takes note of article 21(1)(a) of the Statute, which requires the Chamber to apply, in the first place, the Statute, Elements of Crimes and Rules of Procedure and Evidence. There being no express provision in the Statute or the Rules requiring the Chamber to transmit the Report to the participants, and recognizing that the function of the Report is to assist *the Chamber* in issuing only one decision on a number of Applications, the Chamber decides that it will not order that the Report be transmitted to the participants.”²⁸

18. For these reasons, the confidentiality of the Reports is to be maintained and they shall only be transmitted to the Chamber and not to the parties or participants.

²⁶ ICC-01/04-374, para. 35.

²⁷ ICC-01/04-374, para. 36.

²⁸ ICC-01/04-374, para. 38.

C. Link between the alleged harm suffered and the crimes allegedly committed

19. The Single Judge notes that in its observations the Defence raised concerns in relation to the link between the dates of the incidents referred to by some applicants and the period during which the alleged crimes covered by the warrant of arrest²⁹ for Omar Al-Bashir were committed. The Defence further stated that the alleged incidents which caused the harm allegedly suffered did not take place in the area referred to in the warrant of arrest. The Defence stated that the Applicants refer to events which occurred in June 2004, April and June 2003, 5 August 2003, March 2003 and September 2003 and that the warrant of arrest relates to crimes which were allegedly committed in February and March 2004.³⁰ Furthermore, the Defence stated that Applicant a/0011/06 has indicated that the events alleged in his application took place near Nyala, a location that is not specifically referred to in the warrant of arrest.³¹

20. In this respect, the Single Judge recalls the Prosecution submissions in the Prosecution Application under article 58 where it stated *inter alia* that:

“In the Prosecution Application, the Prosecution requests that a warrant of arrest be issued for Omar Al-Bashir for his alleged responsibility in the commission of genocide, crimes against humanity and war crimes against the members of the Fur, Masalit and Zaghawa groups in Darfur from March 2003 to the date of filing of the Prosecution Application on 14 July 2008.”³²

21. The Single Judge also recalls the Chamber’s decision on the Prosecution’s Application,³³ where it stated *inter alia* that:

“[T]here are reasonable grounds to believe that from March 2003 to at least 14 July 2008, a protracted armed conflict not of an international character, within the meaning of article 8(2)(f) of the Statute, existed in Darfur between the GoS and several organised armed groups(...).”³⁴

²⁹ ICC-02/05-01/09-1.

³⁰ ICC-02/05-01/09-45, paras 34, 37, 39 and 42.

³¹ ICC-02/05-01/09-45, para. 36.

³² ICC-02/05-157-AnxA, para. 413. See also ICC-02/05-01/09-3, para. 22.

³³ ICC-02/05-01/09-3, paras 37-38.

³⁴ ICC-02/05-01/09-3, para. 70.

"[T]here are reasonable grounds to believe that a core component of the GoS counter-insurgency campaign (...) was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived by the GoS as being close to the SLM/A and JEM and other armed groups opposing the GoS in the ongoing armed conflict in Darfur."³⁵ and,

"The Majority finds that there are reasonable grounds to believe that soon after the April attack on the El Fasher airport a common plan to carry out a counter insurgency campaign against the SLM/A, the JEM and other armed groups opposing the GoS in Darfur(...)"³⁶

22. The Single Judge is of the view that, according to the sources submitted by the Prosecution, the crimes with which Omar Al-Bashir is being charged were committed against the Fur, Masalit and Zaghawa groups and "took place across large swathes of the territory of the Darfur region"³⁷ "from soon after the April 2003 attack on El-Fasher airport until 14 July 2008."³⁸ According to the Prosecution, the said conduct "took place in the context of an armed conflict not of an international character, on the territory of Darfur region, which had already started in March 2003 and continued through July 2008."³⁹ Therefore, the events alleged by the Applicants appear to be covered by the warrant of arrest for Omar Al-Bashir. For these reasons, the Single Judge rejects the submissions of the defence in relation to this issue.

D. Proof of identity provided by Applicant a/0015/06

23. In relation to the proof of identity attached to application a/0015/06, which is a State of New York driving licence, the Single Judge notes the Defence Observations pointing to the absence of Sudanese identification. The Defence submits that the Applicant is of Sudanese nationality and in order to obtain this driving license he

³⁵ ICC-02/05-01/09-3, paras 76, 83

³⁶ ICC-02/05-01/09-3, para. 214.

³⁷ ICC-02/05-01/09-1, p. 5.

³⁸ ICC-02/05-01/09-1, p. 6.

³⁹ ICC-02/05-01/09-3, para. 39.

must have had to produce his Sudanese or UNHCR identity documents to the American authorities.⁴⁰

24. The Single Judge observes that the State of New York driving licence appended to the application of Applicant a/0015/06 is a valid form of identification recognized and accepted in the case law of the Court. Therefore, the Single Judge considers that no further document is necessary to prove a/0015/06's identity.

III. Applicable law for the Assessment of Applications for Participation

25. The Single Judge recalls rule 85(a) of the Rules which defines "victims" as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." Accordingly, the Single Judge must ascertain that the following four criteria are fulfilled: (a) the applicant must be a natural person; (b) the applicant must have suffered harm; (c) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (d) there must be a causal link between the crime and the harm suffered.⁴¹

26. Regarding the third criterion, the Single Judge emphasises the importance of establishing a link between the alleged incident and the crimes alleged in the present case.⁴² The alleged incident must relate to the offences alleged in the warrant of arrest or summons to appear or, at a later stage in the proceedings, the document containing the charges in the case in which the application is made. At this stage of the proceedings, the scope of the present case is delineated by the Chamber's Decision on the Prosecution's Application in which the Chamber decided to issue a warrant of arrest for Omar Hassan Ahmad Al-Bashir for his alleged criminal

⁴⁰ ICC-02/05-01/09-45, para. 53-56.

⁴¹ ICC-01/04-101, para. 79; ICC-01/04-01/06-601, p. 9; ICC-01/04-01/07-579, para. 65; ICC-02/05-121, p. 8.

⁴² ICC-01/04-101, para. 94; ICC-01/04-01/06-601, p. 9; ICC-01/04-01/07-579, para. 65. ICC-02/05-02/09-121, p.8. See also Pre-Trial Chamber II, ICC-02/04-101, para. 11; Pre-Trial Chamber III, ICC-01/05-01/08-320; Appeals Chamber Judgment, 11 July 2008, ICC-01/04-01/06-1432, para. 58: "[W]hilst the ordinary meaning of rule 85, does not per se limit the notion of victims to the victims of the crimes charged, the effect of article 68(3) of the Statute is that the participation of victims in the trial proceedings pursuant to the procedure set out in rule 89(1) of the Rules, is limited to those victims who are linked to the charges."

responsibility, under article 25(3)(a) of the Statute, for the commission of war crimes and crimes against humanity, specifically the following: (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;⁴³ (ii) pillage;⁴⁴ (iii) murder;⁴⁵ (iv) extermination;⁴⁶ (v) rape;⁴⁷ (vi) torture;⁴⁸ and (vii) forcible transfer,⁴⁹ crimes directed against members of the Fur, Masalit and Zaghawa groups, in Darfur, from March 2003 to the date of the filing of the prosecution Application on 14 July 2008.⁵⁰

27. In relation to the fourth criterion, the Single Judge recalls the Appeals Chamber's ruling⁵¹ that the applicants must show that they suffered harm (i) as a result of the crimes which were allegedly committed against the members of the Fur, Masalit and Zaghawa groups in Darfur from March 2003 to the date of the filing of the Prosecution Application on 14 July 2008;⁵² or (ii) in intervening to assist direct victims in the case at hand, or to prevent their victimisation as a result of the alleged commission of the said crimes.⁵³

28. It is important to recall, nonetheless, that applicants are only required to demonstrate that the four criteria established by rule 85(a) of the Rules are met *prima facie*⁵⁴ and therefore the examination of the applications performed by the Single Judge "will not consist in assessing the credibility of the [applicants'] statement[s] or engaging in a process of corroboration *strictu sensu*".⁵⁵ The Single Judge will assess

⁴³ As defined in article 8(2)(e)(i) of the Statute.

⁴⁴ As defined in article 8(2)(e)(v) of the Statute.

⁴⁵ As defined in article 7(1)(a) of the Statute.

⁴⁶ As defined in article 7(1)(b) of the Statute.

⁴⁷ As defined in article 7(1)(g) of the Statute.

⁴⁸ As defined in article 7(1)(f) of the Statute.

⁴⁹ As defined in article 7(1)(d) of the Statute.

⁵⁰ ICC-02/05-01/09-3, para. 38.

⁵¹ Appeals Chamber Judgment, 11 July 2008, ICC-01/04-01/06-1432, para. 31: "[t]he word 'harm' in its ordinary meaning denotes hurt, injury and damage. It carries the same meaning in legal texts, denoting injury, loss, or damage and is the meaning of 'harm' in rule 85(a) of the Rules."

⁵² ICC-02/05-157-AnxA, para. 413.

⁵³ ICC-01/04-01/06-172, pp 7 and 8. ICC-01/04-01/07-579, para. 66. ICC-02/05-02/09-121, para. 13. See also Pre-Trial Chamber decisions, wherein it stated that: "(...) the alleged harm will be held as 'resulting from' 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." Pre-Trial Chamber II, ICC-02/04-101, para. 14 and Pre-Trial Chamber III, ICC-01/05-01/08-320, para. 75.

⁵⁴ ICC-01/04-101-Corr, para. 66; ICC-01/04-417, para. 8; See also ICC-01/04-01/07-579, para. 67.

⁵⁵ ICC-01/04-101-Corr, para. 101. ICC-01/04-01/07-579, para. 67.

first and foremost, the intrinsic coherence of the applicants' statements, on the basis of the information available to the Single Judge.⁵⁶

IV. Individual Assessment of Applications for Participation

29. In light of the foregoing, the Single Judge will now assess the merits of applications a/0011/06, a/0012/06, a/0013/06, a/0015/06, 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 to determine whether or not they meet the requirements set out above. The Single Judge will only provide the essential information on each Applicant in this decision.

- Application a/0011/06

30. Application a/0011/06 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

31. The Applicant submits that he is a member of the Zaghawa tribe. He states that in June 2004, the Janjaweed Militia and the Government of Sudan ("GoS") attacked an area where the Applicant and his family owned crop and livestock farms. The Applicant alleges that all the animals were stolen and the village was burnt down. As a result of the attack people died, including his brother-in-law, his uncle and his two cousins. The Applicant further alleges that in December 2004 he was arrested, beaten and tortured for several days by the GoS forces and the Militia Janjaweed. He alleges to have seen several persons being tortured, killed and buried in mass

⁵⁶ ICC-01/04-417, para. 8. ICC-01/04-01/07-579, para. 67. See also Pre-Trial Chamber III, ICC-01/05-01/08-320, para. 31.

graves. He further explains that he is currently residing in the United States and has extreme difficulties in sending financial aid to his family that remains in Darfur.

32. The Single Judge is satisfied that Applicant a/0011/06 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict, not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0012/06

33. Application a/0012/06 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

34. The Applicant states that on April 2003 he was detained for two months by the GoS forces. The Applicant alleges to have suffered various forms of physical and verbal abuse as well as inhuman and degrading treatment until he escaped in June 2003 and returned to his hometown. He further alleges that his brother was killed by an aerial bombing by the GoS, and that he was unable to give his brother a proper burial due to the danger.

35. The Single Judge is satisfied that Applicant a/0012/06 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm as a result of the crimes allegedly committed in the course of the prolonged armed conflict, not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0013/06

36. Application a/0013/06 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

37. The Applicant submits that he is a member of the Zaghawa tribe. The Applicant states that in March 2003 he was taken away by GoS soldiers and imprisoned for 46 days. He submits that during his imprisonment he suffered various forms of physical and verbal abuse, as well as, inhuman and degrading treatment, until he escaped and returned to his hometown. He further alleges that at the end of August 2003, as a result of bombings from Antonov planes in his village his house, his uncle's house and his mother-in-law's house were destroyed and that his uncle and cousins died. Further he claims that his wife miscarried as they made their way to the IDP camp.

38. The Single Judge is satisfied that Applicant a/0013/06 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict, not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0015/06

39. The Single Judge observes that Applicant a/0015/06 supported his application with a State of New York driving licence. He stated in his application to have provided his birth certificate. However it has not been attached to this application form. Nonetheless, the Single Judge is satisfied that the proof of the Applicant's identity fulfils the requirements set out in paragraph 9 and that the Applicant is a natural person. His identity has been accordingly established.

40. The Applicant submits that he is a member of the Zaghawa tribe. The Applicant states that in September 2003, his village was completely destroyed by the Janjaweed Militia, his crops were burnt, some of the livestock were killed and the rest stolen. He further states that his cousin was shot dead and that his family was able to escape from the village, but since then it became extremely difficult to support them financially.

41. The Single Judge is satisfied that Applicant a/0015/06 has appended the necessary documents to prove his identity and has provided sufficient evidence to establish *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0443/09

42. Application a/0443/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

43. The Applicant submits that he is a member of the Fur tribe. He states that on June 2003 his village was attacked by the GoS forces and their allied Janjaweed Militia. The Applicant submits that as a result of this attack his brothers were killed in his presence and his house was burned. He submits that after the attack and despite his attempt to stay hidden from the GoS in the mountains he was captured, imprisoned, and while in captivity, was beaten and tortured. He further alleges that while in prison he saw many of the villagers being taken and killed in groups, including his uncle. He stated that he found a way to escape from prison and then ran away to Egypt. The Applicant alleges that he has injuries and scars in his hands and feet.

44. The Single Judge is satisfied that Applicant a/0443/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0444/09

45. Application a/0444/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

46. The Applicant submits that he is a Muslim member of the Fur tribe. He states that around February 2004 soldiers surrounded his and neighbouring villages took all the livestock and crops and burned all the houses. The Applicant alleges to have lost his house, two shops and his livestock. He further submits that he was beaten and as a result of that he has eyesight problems and difficulties in sleeping.

47. The Single Judge is satisfied that Applicant a/0444/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0445/09

48. Application a/0445/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

49. The Applicant submits that he is a Muslim member of the Fur tribe. He states that between August 2003 and January 2004, Mukjar and surrounding villages were attacked by the GoS forces and the Militia Janjaweed. The Applicant alleges to have lost his uncles and cousins, his house and village and his livestock. He further claims to suffer from psychological trauma and have sleeping difficulties and that he cries a lot.

50. The Single Judge is satisfied that Applicant a/0445/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0446/09

51. Application a/0446/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

52. The Applicant submits that he is a member of the Fur tribe. He states that for a period of one and half months from 15 August 2003, his village was attacked by the GoS forces and the Militia Janjaweed several times. During these attacks all food was stolen. The Applicant alleges that some children and elderly died of starvation, including 3 of his relatives. He further claims to have lost his house and all his property, and to suffer from nightmares.

53. The Single Judge is satisfied that Applicant a/0446/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the course of the

prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0447/09

54. Application a/0447/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

55. The Applicant submits that he is a member of the Fur tribe. He states that on 19 October 2003 he had to flee from his village which was being attacked by the Militia Janjaweed. The applicant explains that he had to return to the village in order to assist the elderly and children that stayed behind, but was captured, tortured and arrested for several days. The Applicant alleges to suffer from psychological trauma and to have nightmares. He claims to have lost his house, all his livestock and property.

56. The Single Judge is satisfied that Applicant a/0447/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0448/09

57. Application a/0448/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

58. The Applicant submits that he is a member of the Fur tribe. He states that on 15 August 2003 his village was attacked and totally destroyed by the GoS and the Militia Janjaweed. The applicant alleges that they arrested his father and deprived him of food, thereby causing his death. The applicant further explains that he tried to run away to the nearest town but was captured by the GoS and the Janjaweed. While in prison many people were killed, including his uncle. The applicant alleges to have been tortured and kept with neither food nor water. The Applicant alleges to have scars in his hands, to have lost his house, and his family shop, farm and all livestock.

59. The Single Judge is satisfied that Applicant a/0448/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0449/09

60. Application a/0449/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

61. The Applicant submits that he is a member of the Fur tribe. He states that on 29 March 2004 his village was attacked and burned by the GoS and the Militia Janjaweed. The applicant alleges that his uncle was killed in this attack. The applicant further explains that he was not physically present when the village was under attack, he was in the neighbourhood carrying the animals. The applicant alleges that he heard gunshots, saw smoke and ran away from the village together with some others. The Applicant claims to suffer from psychological trauma. He further claims to have lost his family house and livestock.

62. The Single Judge is satisfied that Applicant a/0449/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

- Application a/0450/09

63. Application a/0450/09 is accompanied by proof of identity which fulfils the requirements set out above. The Single Judge is therefore satisfied that the Applicant is a natural person and that his identity has been accordingly established.

64. The Applicant submits that he is a member of the Fur tribe. He alleges that in late 2004 his village was bombarded and burned by the GoS and the Militia Janjaweed. The Applicant alleges that he was shot at and beaten, as a result of which he still suffers from an open wound in his head. He further claims to have lost all his livestock.

65. The Single Judge is satisfied that Applicant a/0450/09 has appended the necessary documents to prove his identity and nationality and has provided sufficient evidence to establish *prima facie* that he suffered physical and emotional harm and economic loss as a result of the crimes allegedly committed in the course of the prolonged armed conflict not of an international nature that allegedly took place in the Darfur region between March 2003 and 14 July 2008.

V. Conclusion

66. The Single Judge is satisfied that Applicants a/0011/06, a/0012/06, a/0013/06, a/0015/06, a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09, a/0450/09 fulfil all of the criteria set out in rule 85(a) of the Rules and should, therefore, be recognised as victims for the purpose of their participation at the pre-trial stage of the case of *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY:

DECIDES to recognise Applicants a/0011/06, a/0012/06, a/0013/06, a/0015/06, a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09, a/0450/09 as victims for the purpose of participating during the pre-trial stage of the case of *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*;

ORDERS the Registry to make all the necessary arrangements and to provide the Legal Representatives of Victims authorised to participate in the proceedings with access to all public record of the case;

ORDERS the Registry to notify the Legal Representatives of Victims authorised to participate in the proceedings of all public decisions and filings filed effective as of the date of this decision;

REMINDS the parties and participants that all those Applicants to whom authorisation to participate as victims at the pre-trial stage of the case of *The Prosecutor v. Omar Hassan Ahmad Al-Bashir* is granted in the present decision:

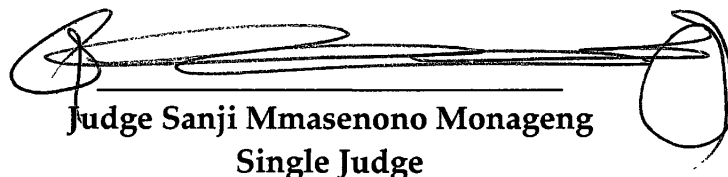
- (i) must only be referred to by the numbers assigned to them by the Registry, unless otherwise ordered by the Chamber; and
- (ii) shall only be contacted through their Legal Representatives;

ORDERS the Prosecutor and the Defence to keep any information related to the victims confidential and to ensure that it is not passed on to the public;

ORDERS the Office of Public Counsel for Victims to provide support and assistance to the victims and their Legal Representatives, in accordance with regulation 81(4) of the Regulations.

REMINDS the Legal Representatives of Victims of their obligation to keep any information related to the victims confidential and to ensure that it is not passed on to the public;

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this Thursday, 10 December 2009

At The Hague, the Netherlands