

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



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No.: ICC-02/05-01/07

Date: 20 May 2010

**PRE-TRIAL CHAMBER I**

**Before: Judge Sanji Mmasenono Monageng, Single Judge**

**SITUATION IN DARFUR, THE SUDAN**

***IN THE CASE OF THE PROSECUTOR***

***V.***

***AHMAD MUHAMMAD HARUN ("AHMAD HARUN") and ALI MUHAMMAD AL ABD-  
AL-RAHMAN ("ALI KUSHAYB")***

**Public Document**

**Prosecution's Observations on 6 Applications for  
Victims' Participation in the Proceedings**

**Source: 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**

Mr. Ahmad Assed

**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**

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

Ms. Paolina Massidda

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

**Deputy Registrar**

Ms. Silvana Arbia

Mr. Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

Ms. Maria Luisa Martinod-Jacome

**Victims Participation and Reparations  
Section**

**Other**

Ms. Fiona McKay

## 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 applications for authorization to participate as victims in *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-al-Rahman* ("Harun and Kushayb Case").<sup>1</sup>
2. On 26 April 2010, the Single Judge directed the parties to submit observations on six Applications for participation in the *Harun and Kushayb Case* by 20 May 2010<sup>2</sup> and appointed Mr. Ahmed Assed as counsel for the Defence for the proceedings concerning the applications for participation in this case.
3. On 28 April 2010, in accordance with a further order of the Single Judge on 26 April, the Registry provided the Prosecution with redacted copies of applications a/0444/09, a/0445/09 and a/0446/09 and non-redacted copies of applications a/0443/09, a/0447/09 and a/0448/09.<sup>3</sup> The Prosecution hereby submits its observations on the six victims' applications for participation.

## II. Legal criteria for victims' participation in the proceedings

4. As has been established through jurisprudence, the Court will authorize participation as a victim under Article 68 (3) of the Statute if the applicant meets the following criteria: a) the applicant qualifies as a victim pursuant to Rule 85 of the Rules of Procedure and Evidence (the "Rules"); b) the applicant's personal interests are affected by legal or factual issues raised in the proceedings at hand; c) the

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<sup>1</sup> ICC-02/05-01/07-46

<sup>2</sup> ICC-02/05-01/07-49

<sup>3</sup> ICC-02/05-01/07-51 Annexes 1-6

applicant's participation is appropriate at that particular stage of the proceedings;  
and d) the manner of participation is not prejudicial or inconsistent with the rights  
of the accused and a fair and an impartial trial.<sup>4</sup>

5. For a person to be granted the status of a victim under Rule 85: (i) the applicant must be a natural person as set forth in Rule 85(a) or an organization or institution as set forth in Rule 85(b); (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.<sup>5</sup>
6. The Appeals Chamber has recognised that material, physical and psychological harm are all forms of harm within the scope of Rule 85(a) if suffered personally by the victim."<sup>6</sup> It held that such harm may be both personal and collective in nature.<sup>7</sup> The Appeals Chamber also confirmed that in the case of natural persons, both direct and indirect victims may suffer harm, provided it is "personal to the individual".<sup>8</sup>
7. The jurisprudence has held that for the purposes of participation in the pre-trial or trial proceedings in a particular case, the harm suffered by a victim must be linked with the charges: i.e. the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to

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<sup>4</sup> See e.g. Prosecutor v. Thomas Lubanga Dyilo, Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation", ICC-01/04-01/06-1335, 16 May 2008, para. 36.

<sup>5</sup> See ICC-01/04-01/06-228-tEN, p. 7; ICC-01/04-101, para. 94; ICC-02/05-111, para. 2; See also at ICC-02/04-01/05-252, para. 12 to 14.

<sup>6</sup> ICC-01/04-01/06-1432 OA9 OA10, at para 32.

<sup>7</sup> *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. 35.

<sup>8</sup> 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."

appear or the document containing the charges.<sup>9</sup> The charges brought forward against the suspects are spelled out in the "Warrant of Arrest for Ahmad Harun and Warrant of Arrest for Ali Kushayb".<sup>10</sup>

### III. Completeness of the applications

8. Applicants must provide adequate proof of identity to prove their status as a natural person. All Chambers impose this requirement as a minimum safeguard to guaranteeing the accuracy of the applications.<sup>11</sup>
9. In addition, Pre-Trial Chamber I established criteria for completeness in its 17 August 2007 Decision, which serves as further guidance in assessing victim applications.<sup>12</sup>

### IV. The Prosecution's Observations

10. The Prosecution supports the participation of victims in proceedings before the Court, when the legal requirements are met. In this case, the Prosecution submits that all applicants *prima facie* meet the necessary requirements for victims' participation.

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<sup>9</sup> *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims's Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, para. 2; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, paras. 66-67; *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, [ICC-02/05-02/09-121](#), 25 September 2009, paras. 12-13.

<sup>10</sup> ICC-02/05-01/07-2 and ICC-02/05-01/07-3

<sup>11</sup> 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.

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

11. These applicants are natural persons pursuant to Rule 85(a) and have provided sufficient proof to establish their identities.<sup>13</sup> Further, all applicants claim to have personally suffered harm in accordance with Rule 85(a).<sup>14</sup> As to all applicants, the harm allegedly suffered is physical or mental harm and/or loss or damage of property, it resulted from a crime for which the suspects, *Ahmad Harun and Ali Kushayb*, are charged, and it occurred within the relevant time-frame (April 2003 to 27 February 2007). The Prosecution therefore submits that the applicants *prima facie* meet the requirements for victims' participation under Article 68(3).
12. In respect of Applicant a/0444/09 the Prosecution notes that the order of facts presented by this applicant is unclear. While the applicant speaks of a first attack occurring in February 2004, he then states that the attackers returned in January of the same year. Though the Registry may wish to seek clarification, this seeming mistake is not sufficient to call the application itself into question, and the facts mentioned by Applicant a/0444/09 fall within the timeline of the case against *Ahmad Harun and Ali Kushayb*. Therefore, this applicant also *prima facie* meets the necessary requirements for victims' participation under Article 68(3).

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<sup>13</sup>All Applicants amongst other documentation submitted passports.

<sup>14</sup> Applicant a/0443/09 alleges that in June 2003, the Sudanese armed forces killed his brothers and detained and tortured him. Applicant a/0444/09 claims that in January and February 2004 Militia/Janjaweed attacked his village. The applicant alleges that soldiers beat and severely injured him. He also lost his house and live stocks. Applicant a/0445/09 claims that in August 2003, he witnessed inmates being tortured and dying due to overcrowding of detention cells. Due to the bombing of his village, the applicant claims to have lost relatives, his home and live stocks. Furthermore he also claims to have suffered mental harm. Applicant a/0446/09 alleges that some of his family members starved to death as a result of repeated Militia/Janjaweed attacks during which livestock and crops were burnt. Following the attack by the Militia/Janjaweed on Mukjar town in October 2003, Applicant a/0447/09 was imprisoned and tortured. The applicant claims to have suffered physical injuries and continues to suffer from psychological pain. He also claims to have lost live stock. Applicant a/0448/09 alleges to have been imprisoned and tortured by the Militia/Janjaweed and government forces. The applicant's father was allegedly imprisoned and starved to death. The applicant also alleges that his house was burned. According to the applicant, the attackers took away his family's live stock and personal belongings.

## V. Conclusion

13. For the reasons outlined above, the Prosecution submits that applicants a/0443/09 to a/0448/09, *prima facie* meet the criteria for participation as victims pursuant to Article 68(3).



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Luis Moreno-Ocampo

Prosecutor

Dated this 20<sup>th</sup> Day of May 2010  
At The Hague, The Netherlands