Cour
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Court

Original: **English** No.**: ICC-02/05-01/07**
Date: **30 July 2021**

PRE-TRIAL CHAMBER II

Before: **Judge Rosario Salvatore Aitala, Presiding Judge**
Judge Kesia-Mbe Mindua
Judge Tomoko Akane

SITUATION IN DARFUR, SUDAN
IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN
("ALI KUSHAYB")

Public
Public redacted version of "Report on applications to participate in the proceedings a/0443/09 to a/0448/09", 26 February 2010, ICC-02/05-01/07-47-Conf-Exp

Source: **Victims Participation and Reparations Section**

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

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A. Background and content of this report

1. This report is submitted pursuant the Registry's obligations under Rule 89(1) of the Rules of Procedure and Evidence; and under Regulation 86(5) of the Regulations of the Court which require the Registrar to present applications to participate in proceedings to the Chamber, together with a report thereon.

2. This report covers six applications: a/0443/09 to a/0448/09. All are made by Darfurians of the Fur tribe [REDACTED].

3. All six applications dealt with in this report were received as part of a group of eight applications (also including a/0449/09 and a/0450/09) which was received by the Registry on 6 August 2009. On 4 November 2009 all eight applications were filed with Pre-Trial Chamber I in the record of the case of *The Prosecutor v Omar Al Bashir*.[1] All eight were accepted by the Chamber as participating victims in the latter case.[2]

4. The Registry has now reviewed the eight applications for any connection to the case of *The Prosecutor v Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb")*. The Registry considers that six of the applications (a/0443/09 to a/0438/09) appear to be related to charges contained in the *Warrant of Arrest for Ahmad Harun*[3] and/or the *Warrant of Arrest for Ali Kushayb*.[4]

5. This report provides an overview of the six applications filed, while the following documents are provided as annexes:
   - **Annex 1**: Reports under regulation 86.5 on an applicant-by-applicant basis, for each of the six applications a/0443/09 to a/0448/09. These reports

[1] ICC-02/05-01/09-49-Conf-Exp.
[2] ICC-02/05-01-62
[3] ICC-02/05-01/07-2.
[4] ICC-02/05-01/07-3-Corr.

comprise an overview along with boxes summarising matters contained in the actual applications and drawing attention to specific relevant issues in accordance with the instructions of the Chamber.

- **Annexes 2 to 7**: The six applications for participation, a/0443/09 to a/0448/09, together with supporting documentation provided by the applicants or their legal representatives.

B. Explanation of information contained in the application-by-application reports

6. As this is the first time that applications have been filed in the record of this case, an explanation of the Registry's reporting system is provided, as follows.

a. Information contained in the boxes under the heading "Information concerning the applicant"

7. This part includes basic personal information regarding the applicant:[5] the name, date of birth, sex, age at the time of applying, place of residence, ethnic group and type of applicant (whether the applicant is a natural person or an organisation or institution). This information is extracted from information provided under Part A of the standard application form.

8. The last box, headed "Status of the applicant" is used when another person acts on behalf of the applicant. It indicates whether the applicant is a child, disabled or deceased, or otherwise that there is a person acting on behalf of the applicant. Where the applicant is acting on his or her own behalf, no information is included in the box even where the applicant is under 18 years of age.

[5] In the reports, the "applicant" is the person whose details are provided in Part A of the standard application form, even if another person has presented the application on his or her behalf.

9. Information concerning any proof of identity that has been provided by the applicant is indicated on the second page, in the box entitled "Documents attached to the application". Where no proof is provided, or any comments relating to such documents and their conformity with the Chamber's requirements,[6] are indicated in the box entitled "Comments".

b. Information contained in the boxes under the heading "Person acting on behalf of the applicant"

10. This part includes basic information about a person acting on behalf of the applicant, if applicable: the name, place of residence and link with the applicant. The information in this part is extracted from information provided under Part B of the standard application form.

11. Information concerning any proof of identity or proof of the link with the applicant is indicated on the second page, in the box entitled "Documents attached to the application". Where no proof is provided, or any comments relating to such documents, are indicated in the box entitled "Comments".

c. Information contained in the boxes under the heading "Description of the harm alleged"

12. This part includes information regarding the events and harm alleged. Most of this information is extracted from that provided under Parts D and E of the standard application form. Two of the boxes do not comprise information extracted from the application forms, and further explanations are provided below as to the information provided in these boxes.

<u>"Type of crime"</u>

13. This box contains an indicative list of acts constituting crimes within the jurisdiction of the Court, that the harm alleged by the applicant might possibly

[6] As set out in ICC-02/05-111.

constitute. The Registry would like to stress that in providing such a list, it looks solely at the alleged act itself, and does not make any assessment at all as to the presence of the contextual or mental elements of the crime such as would be necessary to determine whether the acts constitute genocide, a crime against humanity or a war crime. Nor is the list of acts provided for each applicant intended to be an exhaustive list of those that might arise out of the set of facts alleged. However where applications are submitted in relation to a case, efforts are made to include those acts which appear to be linked to the crimes contained in the arrest warrant or summons.

"Type of harm"

14. In this box the types of harm that are alleged by the applicants have been categorised as follows:
    - Physical injury
    - Mental pain or anguish
    - Loss of or damage to property
    - Substantial impairment of fundamental rights

15. The latter category, "substantial impairment of fundamental rights", has been recognized as a type of harm within the meaning of Rule 85 by Trial Chamber I,[7] however the scope of this term has not yet been elucidated by jurisprudence from the Chambers. The Registry has therefore reviewed the meaning given to this concept by various regional and international courts and instruments. This research indicated that many of the rights included in the major human rights instruments might be considered to constitute fundamental rights. In the other cases and situations before the Court, Registry has indicated a "substantial impairment of fundamental rights" where alleged crimes that

[7] ICC-01/04-01/06-1119, para.92. The Trial Chamber was guided by Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147, 16 December 2005.

appear to have interfered with children's rights to education and a family life or with the fundamental rights to liberty and security of the person, or the associated right of persons deprived of their liberty to be treated humanely. Where these rights appear to have been substantially impaired the Registry has included substantial impairment of fundamental rights as a possible form of harm. The Registry provides this information in order to explain the basis on which this type of harm has been included in the possible types of harm suffered by each applicant.

d. Information contained in the boxes under the heading "Formal elements"

16. This part includes information relating to the signatures and other formalities relating to the application, and any attempts made by the Registry to seek further information or documentation and the results of such efforts, as well as any documents accompanying the application. Since this does not comprise information extracted from the application forms, the Registry would like to provide further explanations as to the information provided in each box.

<u>"Is the application complete ?", "Signatures or identification mark ?" and "Comments"</u>

17. According to regulation 86.4 of the Regulations of the Court:

"The Registrar may request further information from victims or those presenting an application in accordance with rule 89, sub-rule 3, in order to ensure that such application contains, to the extent possible, the information referred to in sub-regulation 2, before submission to a Chamber. The Registrar may also seek additional information from States, the Prosecutor and intergovernmental or non-governmental organisations."

18. Further, Regulation 86 sub-regulation 2 sets out what information should be contained in application. This has been further clarified by Single Judge

Kuenyehia in her decision of 6 December 2007[8] and by a number of decisions of the Chamber in respect of applications filed in the situation in the Democratic Republic of Congo and the cases relating thereto.[9]

19. Upon receiving an application, the Registry reviews the application in order to ascertain whether the application is complete according to these criteria. If any information or documentation is missing, the Registry sends a request to the legal representative, if there is one. Where there is no legal representative, the Registry communicates the request directly to the person or organisation that presented the application. In most instances, for security reasons and because of their relationship of trust with the applicant, this is done with the assistance of an intermediary organisation that had assisted the applicant in filling in the application and presenting it to the Court.

20. For the purposes of managing the process of requesting and receiving further information or documentation, the Registry has developed a standard form which, when used, is referred to in the "documents attached to the application" box as "follow up forms". The Registry uses these forms to indicate what information or documentation is missing, what further information has been requested, and how and when any additional information or documentation is actually received. In some cases, the forms are completed and signed by Registry staff in the field when they are directly given information or documents.

21. Any information received subsequent to the original application will appear in the report, and attention is drawn to the fact that the information was received at a later date than the application if it appears relevant to highlight to the Chamber. For example, if the original application does not mention the

[8] ICC-02/05-111
[9] For example ICC-01/04/-505, ICC-01/04-374.

date of the alleged crime, but a date is subsequently provided, that date will be shown in the box under "Description of the harm alleged", the fact that the information was requested and received subsequently will be recorded under "Comments", and the document recording the receipt of the further information will be listed under "Documents attached to the application".

22. At the same time, the Registry has sought to make clear in the applicant-by-applicant reports whether or not the application appears to be complete and whether it has been signed, and (under "Comments") draws to the Chamber's attention the following matters:
    - Missing information, and whether or not it renders the application incomplete in the context of the particular application;
    - The fact that further information or documentation has been requested but not received;
    - The fact that further information or documentation has been requested and subsequently received and reflected in the relevant box in the report, where it is considered that this should be drawn to the attention of the Chamber;
    - Any discrepancies in information received, such as between dates or other information contained in different documents received from the applicant, including between the application form itself and documents received at the same time or subsequently;
    - Comments relating to signatures: however no mention is made of a failure to provide signatures or initials which are requested in the application form but which are not required under regulation 86(2) or another source. Examples of information that would not be highlighted include instances where a signature is not witnessed (as requested in part J of the form) or where an applicant has not signed or initialed the bottom of each page (this is requested in the form solely for the purpose of ensuring that pages of the same application are kept together when transmitted to the Court).

"Person who assisted the applicant"

23. The name of the person who has assisted the applicant to fill in the application form is included, and the organisation with which that person is affiliated, if any.

"Documents attached to the application"

24. Any supporting documentation received from the applicant is listed, including proofs of identity, as well as any follow up form recording the manner in which any further information was received.

e. Information contained in the boxes under the heading "Legal representation"

25. This part indicates whether or not the applicant has a legal representative and, if so, the name of the legal representative. The information in this part is extracted from information provided under Part G of the standard application form and/or any power of attorney provided.

f. Information contained in the boxes under the heading "Requests made by the applicant "

26. The first section of this part indicates in what stages of the proceedings the applicant has requested to participate. The information in this part is extracted from information provided under Part C of the standard application form.

27. The second section of this part indicates whether or not the applicant is making a request for non-disclosure of their identity, or other information, to one or more party. The information in this part is extracted from information provided under Part H of the standard application form and/or any other information provided.

C. Protection

28. As explained above, the six applications which are the subject of the present report have already been filed and accepted in the case of *The Prosecutor v Omar Al Bashir*. In the context of that case, the Chamber ordered the Registry to provide :

(i) the Prosecution with redacted copies of applications a/0444/09 and /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;[10]

29. Copies of the applications, variously redacted in conformity with this order, were provided to the Prosecution and Defence.[11]

30. The Registry is not aware of any reason for providing the applications in this case in a differently redacted form than that in which they were provided to the parties in the case of *The Prosecutor v Omar Al Bashir*. Should the Chamber order the transmission of the applications to the parties in the same forms as was required by the order set out above, the Registry would be ready to transmit the applications immediately.

[10] ICC-02/05-01/09-50.
[11] ICC-02/05-01/09-52, ICC-02/05-01/09-53; ICC-02/05-01/09-55; ICC-02/05-01/09-56.

D. Legal representation

31. All six of the applicants who are the subject of this report already have legal representatives. All six are represented by Mr Nick Kaufman.

p.p. Marc Dubuisson, Director, Division of Judicial Services

on behalf of Peter Lewis, Registrar

Dated this 30 July 2021

At The Hague, The Netherlands