



Original: **English**

No.: **ICC-02/05-01/09**

Date: **27 August 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**

**Legal Representative's Request to Expedite the Consideration of Applications for  
Victim Status**

**Source:** Legal Representative of Victim Applicants a/0443/09, a/0444/09,  
a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 & a/0450/09

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**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

Mr Nicholas Kaufman

**Unrepresented Victims**

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

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Pereira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Others**

## Background

1. On 4 March 2009, Pre-Trial Chamber I declined to issue a warrant for the arrest of Omar Hassan Ahmad al-Bashir ("Omar al-Bashir") for the crime of genocide with the majority ruling that the Prosecution had failed to provide reasonable grounds to substantiate the existence of genocidal intent ("the Decision").<sup>1</sup>
2. On 13 March 2009, the Prosecution filed an application for leave to appeal the Decision of 4 March 2009 ("the Appeal").<sup>2</sup>
3. On 6 July 2009, the Prosecution filed its document in support of the Appeal.<sup>3</sup>
4. On 6 August 2009, applications for participation in the case ("Applications") were submitted to the Victims Participation and Reparation Section on behalf of applicants a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 & a/0450/09 ("the Applicants").
5. On 19 August 2009, His Honor Judge Sanji Mmasenono Monageng was designated the Single Judge responsible for all victims' applications in the case against Omar al-Bashir.<sup>4</sup>
6. On 20 August 2009, the Legal Representative of the Applicants (hereinafter "the Legal Representative") met with Applicant a/0443/09 and Applicant a/0445/09 and took supplementary information from them which, it is alleged, provides *prima facie* evidence of genocidal intent attributable to Omar al-Bashir.

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<sup>1</sup> ICC-02/05-01/09-3 at para. 206.

<sup>2</sup> ICC-02/05-01/09-12.

<sup>3</sup> ICC-02/05-01/09-25.

<sup>4</sup> ICC-02/05-01/09-31.

7. On 26 August 2009, simultaneously with the filing of this document, the Legal Representative submitted an application to Appeals Chamber for an extension of the time limit prescribed in the Regulations of Court for filing a request for leave to participate in the Appeal.

#### Submission

8. The 8 Applicants are all currently resident in the State of Israel where their interests are protected and promoted by a non-governmental organization called the "Bnai Darfur Organization in Israel". The process of identifying suitable victim applicants for the case against Omar al-Bashir was initiated in April 2009 with interviews and the preparation of the Applications being conducted by students of the law faculty at Tel Aviv University. After the information was taken from the Applicants in Tel Aviv, the Applications were reviewed for legal consistency and thereafter sent by registered post to the Netherlands for further review by the Legal Representative and subsequent submission by hand to the Victims Participation and Reparation Section ("VPRS"). Inevitably, the Applications were only finalized and submitted in hard copy format to VPRS after the expiry of all relevant time limits for the filing of a response in the present proceedings.<sup>5</sup>

9. The Legal Representative notes that once applications for victim status are submitted to VPRS, the Applicants exercise no control over the time taken to propose redactions to the Applications and subsequently forward them to the Single Judge of the Pre-Trial Chamber. Nor do the Applicants exercise any control over the time taken by the same Single Judge to render a decision on the grant or denial of victim status.

10. The Legal Representative stresses his belief that each and every one of the Applicants meets all the criteria for participation in the case against Omar al-Bashir. Six of the Applicants have, in particular, demonstrated a direct causal nexus between

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<sup>5</sup> *c.f.*; Regulations 65(3) and 65(5) of the Regulations of the Court.

the injury that they have suffered and the specific charges leveled at Omar al-Bashir's hierarchical inferiors – Ahmad Muhammad Haroun ("Ahmad Haroun") and Ali Muhammad Ali Abd-al-Rahman ("Ali Kushayb").

11. The Applicants – all of whom belong to the Fur ethnic group - are of the firm conviction that Omar al-Bashir committed the crimes with which he has been charged with the specific intent of ensuring their partial or total destruction. One of the Applicants<sup>6</sup> relates how members of the Janjaweed militia would kill not just men of fighting age but also babies snatched from their mothers' arms. Moreover, two of the Applicants<sup>7</sup> are first-hand witnesses to incriminating admissions made by Ali Kushayb and Ahmad Haroun to the effect that the Fur should be wiped out. Accordingly, the Applicants have a vested interest in the issues at stake in the Appeal and wish to make submissions in the context thereof.

12. The interests of justice, it is respectfully submitted, mandate the intervention of the Applicants even at this late stage of the proceedings. The Prosecutor has admitted that the evidence on which he relies in support of his assertion of genocidal intent is circumstantial in nature.<sup>8</sup> As mentioned above, two of the Applicants, in addition to suffering personal harm, also provide direct *prima facie* evidence of genocidal intent attributable to Omar al-Bashir. Given the importance, therefore, of this evidence and in light of the fact that the Applicants have no power to petition the Pre-Trial Chamber I *proprio motu* pursuant to Article 58(6) of the Statute, the Appeals Chamber is the only forum presently available to them to voice their concerns.

13. It is respectfully submitted that the prejudice to the Applicants - who will otherwise lose the opportunity to present their views on the issue of genocidal intent - will far outweigh any inconvenience caused to the Prosecution or *ad hoc* Defence counsel who the Single Judge may require to comment on the Applications on an

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<sup>6</sup> a/0445/09.

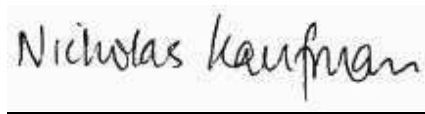
<sup>7</sup> a/0443/09 and a/0445/09.

<sup>8</sup> ICC-02/05-01/09-3 at para. 147.

expedited basis. No prejudice will be caused to the Defence which is not a party to these proceedings.

Relief Sought

14. In light of the aforementioned submissions, the Legal Representative respectfully requests the Single Judge to expedite his consideration of the Applications in order to allow those Applicants accorded victim status to participate in the Appeal.

A handwritten signature in black ink, reading "Nicholas Kaufman", is centered on the page. The signature is written in a cursive, slightly slanted style. Below the signature, there is a solid black horizontal line.

Nicholas Kaufman

Legal Representative of Victim Applicants a/0443/09, a/0444/09,  
a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 & a/0450/09

Done this 26<sup>th</sup> Day of August 2009,  
Jerusalem, Israel.