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

Date: 24 March 2010

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

*IN THE CASE OF PROSECUTOR v.
OMAR HASSAN AHMAD AL BASHIR*

Public Document

**Victims' Application for Participation in the Proceedings arising out of the
Appeal Judgment of 3 February 2010 (ICC-02/05-01/09-73)**

Source: Legal Representative for Victims 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 Representative of Victims

Mr. Nicholas Kaufman
Ms. Wanda Akin
Mr. Raymond Brown

Legal Representatives of Applicants

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

Registrar

Ms. Silvana Arbia

Deputy Registrar

Mr. Didier Pereira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona Mckay

Others

Pre-Trial Chamber I is hereby requested to confirm the participation of victims 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 Victims”) in the anticipated proceedings to be conducted before it as a consequence of the judgment of the Appeals Chamber of 3 February 2010:¹

Relevant Procedural Background

1. On 4 March 2009, the learned Pre-Trial Chamber rendered its *Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad al-Bashir* rejecting the Prosecutor's specific application in respect of the crime of genocide.²
2. On 24 June 2009, the Pre-Trial Chamber granted the Prosecution leave to appeal the decision of 4 March 2009 (“the Appeal”).³
3. On 6 July 2009, the Prosecution filed its document in support of the Appeal.⁴
4. On 10 December 2009, the learned Single Judge of Pre-Trial Chamber I rendered a decision recognizing the Victims as being entitled to participate in the pre-trial stage of the case against Omar Hassan Ahmad al-Bashir (the Accused).⁵
5. On 4 January 2010, the Victims filed a second request for participation in the Appeal.⁶

¹ ICC-02/05-01/09-73.

² ICC-02/05-01/09-2-Conf.

³ ICC-02/05-01/09-21.

⁴ ICC-02/05-01/09-25.

⁵ ICC-02/05-01/09-62.

⁶ ICC-02/05-01/09-65.

6. On 19 January 2010, *ad hoc* Counsel appointed for the Defence filed submissions opposing the award of victim status to the Victims.⁷

7. On 28 January 2010, the Appeals Chamber granted the Victims the right to participate in the Appeal and entertained their substantive submissions.⁸

8. Additionally, on 28 January 2010, the learned Single Judge of Pre-Trial Chamber I rejected the submissions of *ad hoc* Defence Counsel opposing the award of victim status to the Victims.⁹

9. On 3 February 2010, the Appeals Chamber allowed the Appeal and remitted the matter to Pre-Trial Chamber to reconsider the charge of genocide (“the Appeal Judgment”).¹⁰

10. On 24 February 2010, the Office of the Prosecutor requested an *ex parte* hearing before Pre-Trial Chamber I in order to seek guidance on the most appropriate means of filing additional information on the issue of genocidal intent.¹¹

11. On 12 March 2010, the Legal Representatives of Victims a/0011/06, a/0012/06, a/0013/06 and a/0015/06 submitted an application to participate in and to submit observations on the “*the proceedings on remand in connection with the application for a warrant for the arrest of Omar Hassan Ahmad al-Bashir*”.¹²

⁷ ICC-02/05-01/09-69.

⁸ ICC-02/05-01/09-70.

⁹ ICC-02/05-01/09-72.

¹⁰ ICC-02/05-01/09-73.

¹¹ ICC-02/05-01/09-74.

¹² ICC-02/05-01/09-75.

Submission

12. The Legal Representative respectfully submits that the decision of the learned Single Judge of 10 December 2009¹³ affords the Legal Representative the right to make observations at any time during the pre-trial stage without the recurring need to file a discrete application upon the occurrence of an event affecting the interests of the Victims.

13. Notwithstanding the aforementioned and for the avoidance of doubt, the Legal Representative requests that he be permitted to make observations in the context of the anticipated proceedings to be conducted before Pre-Trial Chamber I as a result of the Appeal Judgment.

14. In its *Decision on the Second Application by Victims a/0443/09 to a/0450/09 to Participate in the Appeal against the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad al-Bashir"*, the Appeals Chamber recognized that the herein concerned Victims fulfilled the four cumulative criteria for participation in interlocutory appeals in so far as (i) they are victims in the case; (ii) their personal interests are affected by the issues at stake; (iii) their participation was deemed appropriate and (iv) no prejudice would be caused to the Defence.

15. The Legal Representative, furthermore, reminds the learned Pre-Trial Chamber that the Appeals Chamber entertained substantive submissions from the Victims on the issue of the correct evidentiary standard to be applied in the context of issuing an arrest warrant for genocide and made reference to them in the Appeal Judgment.

16. With respect to the Victims' personal interest in the proceedings, the Appeals Chamber stated as follows:

¹³ ICC-02/05-01/09-62.

“As the issue on appeal concerns the question of whether the Pre-Trial Chamber applied an incorrect evidentiary standard when assessing the Prosecutor’s application for an arrest warrant in respect of the crime of genocide, the Victims thus have a personal interest in expressing their views and concerns.”¹⁴

17. Accordingly, adopting the aforementioned reasoning, the Legal Representative submits that the same personal and vested interests of the Victims can be said to exist in the anticipated proceedings flowing from the Appeals judgment. The Legal Representative recalls, in particular, that Victims a/0443/09 and a/0445/09 claim to have heard incriminating admissions from Omar al-Bashir’s hierarchical inferiors – Ahmad Haroun and Ali Kushayb - from which an intention to bring about the partial or total destruction of the Fur tribe may allegedly be discerned.

18. The Victims are cognizant of the fact that the majority of Pre-Trial Chamber I previously found that there were reasonable grounds to believe that Omar al-Bashir exercised full control over all branches of the state apparatus in the Sudan, including Ali Kushayb’s Janjaweed militia, and that his orders were directly transmitted, *inter alia*, to Ahmad Haroun.¹⁵ In these circumstances, the incriminating admissions attributed to those high ranking officials in the Sudanese state apparatus - Ali Kushayb and Ahmad Haroun - merit consideration, at the very least, as a reflection of knowledge attributable to Omar al-Bashir. More pertinently, these incriminating admissions comprise evidence from which it may reasonably be inferred that the same high ranking officials were expressing the genocidal agenda conveyed to them by their hierarchical superior.

19. The manner of participation envisaged in the anticipated proceedings is either the submission of further written submissions or oral submissions delivered

¹⁴ ICC-02/05-01/09-70 at para. 10.

¹⁵ ICC-02/05-01/09-3 at para. 222 and *fn.* 247.

immediately after the *ex parte* (Prosecution only) hearing which could possibly be convened pursuant to the Prosecution request of 24 February 2010.¹⁶

20. Since the Victims participation in the Appeal proceedings, no new circumstances have arisen from which a potential prejudice to the Defence may be discerned.

21. In light of all the aforementioned, and applying the reasoning of the Appeals Chamber to the present proceedings, the Victims respectfully request that they be permitted to present further written or oral submissions relevant to the issue of genocidal intent.



Nicholas Kaufman

Legal Representative for the Victim Applicants

Done this 24th Day of March 2010,
Jerusalem, Israel

¹⁶ ICC-02/05-01/09-74.