

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 June 2009

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR V. BAHAR IDRIS ABU GARDA

Public Document

Decision on issues relating to victims' applications in the Case

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Mr Essa Faal

Counsel for the Defence

Mr. Karin A.A. Khan

Legal Representatives of Victims

Legal Representatives of Applicants

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

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

I, Judge Cuno Tarfusser, Single Judge responsible for carrying out the functions of Pre-Trial Chamber I in relation to the proceedings of the situation in Darfur, Sudan and any related cases emanating therefrom, including the case of *The Prosecutor vs. Bahar Idriss Abu Garda* (the “Case”), at the International Criminal Court¹;

NOTING the “Report on applications to participate in proceedings received by the Registry” filed by the Victims Participation and Reparation Section (“VPRS”) on 4 June 2009 (the “Report”)², whereby VPRS reported that:

- (i) a number of applications for participation appearing to relate to the crimes at stake in the Case had been received (the “Applications”);
- (ii) some of the Applications might be considered incomplete and, accordingly, it would be appropriate to seek supplementary information before filing them with the Chamber;
- (iii) in light of their merits, it would be advisable for the Chamber to consider all the Applications together;
- (iv) in spite of its efforts, the Registry had not been successful in requesting supplementary information and documents from the applicants due to their current logistic situation;
- (v) the applicants had no legal representative and appeared to have limited understanding of the process in which they were engaged;
- (vi) during consultations, the Office of Public Counsel for Victims (the “OPCV” or the “Office”) had informed VPRS that they would be in a position to assist the applicants and to meet with them;
- (vii) with a view to an efficient use of the resources of the Court, it would be preferable to have the OPCV meet the applicants at this stage rather than sending representatives from the Registry first;

¹ ICC-02/05-210.

² ICC-02/05-02/09-19-Conf-Exp

NOTING that, on the basis of the above and on an exceptional basis, the Registry requested to be authorised to transmit the Applications to the OPCV, with a view to having the Office providing legal assistance to the applicants or, alternatively, to appoint the OPCV as legal representative of the applicants “until their status is determined or another legal representative is appointed”;

NOTING regulation 86 of the Regulations of the Court (the “Regulations”), entrusting the Registrar with a number of responsibilities relating to the participation of victims in the proceedings, with particular respect to the phase of the preparation and submission of the relevant applications;

NOTING, in particular, regulation 86(4) of the Regulations, specifically entrusting the Registrar with the task to request further information from those presenting an application under rule 89 of the Rules of Procedure and Evidence, in order to ensure that such application contains, to the extent possible, the relevant information before transmission to the Chamber;

CONSIDERING that, accordingly, the steps envisaged by VPRS in respect of the Applications fall squarely within the mandate of the Registry, in particular of VPRS;

NOTING regulation 81 of the Regulations, entrusting the OPCV with providing support and assistance to the legal representative for victims and to victims, including providing legal research and advice and appearing before a Chamber in respect of specific issues;

NOTING regulation 80(2) of the Regulations, providing that the Chamber may appoint counsel from the OPCV as legal representative for victims;

CONSIDERING that, as a whole, the tasks vested in the OPCV are meant to be exercised once an applicant's status as victim has been recognised by the Chamber;

CONSIDERING it necessary and appropriate to respect the difference in nature and scope of the functions respectively vested in the Registrar and in the OPCV as enshrined in the statutory instruments of the Court;

CONSIDERING that entrusting the OPCV with the task of contacting the applicants with a view to the finalisation of the Applications, albeit on an exceptional basis, would be tantamount to unduly blurring the difference between the Registry, on the one side, and the Office, on the other side;

NOTING regulation 23bis (2) and (3) of the Regulations;

CONSIDERING that, whilst the Report included sensitive information relating to applicant victims and was therefore classified as "confidential, ex parte Registry", this decision addresses issues of a legal nature and refrains from providing any information on the Applications or the applicants;

CONSIDERING that, accordingly, this decision is classified as public in accordance with the fundamental principle of the publicity of proceedings;

FOR THESE REASONS,**REJECT**

the request by VPRS to be authorised to transmit the Applications to the OPCV;

ORDER

VPRS to take all steps which might be necessary and appropriate for the Applications to be completed and transmitted to the Chamber as soon as feasible pursuant to regulation 86 (4) of the Regulations.

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



Judge Cuno Tarfusser
Single Judge

Dated this Friday, 12 June 2009

At The Hague, The Netherlands