

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 April 2010

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN DARFUR, SUDAN

***IN THE CASE OF THE PROSECUTOR V. AHMAD MUHAMMAD HARUN
("AHMAD HARUN") and ALI MUHAMMAD ALI ABD-AL-RAHMAN ("ALI
KUSHAYB")***

Public Document

**Decision Setting a Time Limit for the Parties' Replies to 6 Applications for
Victims' Participation in the Proceedings**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Mr Essa Faal, Senior Trial Lawyer

Counsel for the Defence

Mr Ahmad Assed

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Nicolas Kaufman

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**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 Sanji Mmasenono Monageng, Judge of Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”);

NOTING the “Decision on the Designation of a Single Judge on Victims’ Issues”, issued on 19 August 2009, whereby the Chamber designated me as Single Judge responsible for all issues relating to applications for authorisation to participate as victims in the proceedings in the case of *The Prosecutor v. Ahmad Muhammad Harun* (“Ahmad Harun”) and *Ali Muhammad Ali Abd-al-Rahman* (“Ali Kushayb”) (“Harun and Kushayb Case”);¹

NOTING the “Report on Applications to Participate in the Proceedings a/0443/09 to a/0448/09” filed by the Registry on 26 February 2010,² together with six applications (“Applications”) in which the Applicants request to be authorised to participate in proceedings concerning the crimes as a result of which they allegedly suffered harm;

NOTING the “Decision on Applications a/0011/06 to a/0013/06, a/0015/06 and a/0443/09 to a/0450/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case” issued on 10 December 2009 in the case of *The Prosecutor v. Omar Hassan Ahmad Al-Bashir* (“Omar Al-Bashir”),³ whereby Applicants a/0443/09 to a/0448/09, among others, were recognised as victims for the purpose of participating in the pre-trial stage of the case against Omar Al-Bashir;

NOTING articles 57(3)(c) and 68(3) of the Rome Statute (“Statute”); rules 86 and 89(1) of the Rules of Procedure and Evidence (“Rules”); as well as regulations 33, 76(1) and 86 of the Regulations of the Court (“Regulations”);

¹ ICC-02/05-01/07-46.

² ICC-02/05-01/07-47-Conf-Exp.

³ ICC-02/05-01/09-62.

CONSIDERING that pursuant to rule 89(1) of the Rules, the Prosecutor and the Defence are entitled to reply to applications for participation in the proceedings within a time limit to be set by the Chamber;

CONSIDERING that article 68(3) of the Statute requires that the manner in which victims participate in the proceedings should not be prejudicial to or inconsistent with the rights of the Suspects and a fair and impartial trial;

CONSIDERING that at present Ahmad Harun and Ali Kushayb ("Suspects") are not represented and that the interests of justice require that defence counsel should be appointed, in accordance with regulation 76(1) of the Regulations, to represent the Suspects with respect to matters relating to the Applications, including the receipt of copies of and a reply to the Applications;

CONSIDERING, following consultation with the Registrar, that it is appropriate to appoint Mr Ahmad Assed as counsel for the defence for the purposes of the proceedings concerning the Applications;

CONSIDERING that pursuant to articles 68(1) and 57(3)(c) of the Statute, the Court shall take appropriate measures to protect *inter alia* the safety, privacy, physical and psychological well-being of victims and that these measures shall not be prejudicial to or inconsistent with the rights of the suspects and a fair and impartial trial;

CONSIDERING that, in view of the nature and purpose of the present proceedings, redactions from the Applications are an appropriate measure of protection and that this

measure is not prejudicial to or inconsistent with the rights of the Suspects and a fair and impartial trial;

CONSIDERING, however, that the redactions must be limited to what is strictly necessary in light of the applicant's safety, and that they must allow the Prosecutor and the Defence to meaningfully exercise their right to reply to the application for participation;

CONSIDERING that, in the light of concerns about security expressed by Applicants a/0444/09 and a/0445/09, it is appropriate to grant the measures sought by these Applicants, that is to redact information about their identities and any other information that might lead to their identification from the copies of their Applications that are to be transmitted to the Prosecution and the Defence;

CONSIDERING that, in the light of concerns about security expressed by Applicant a/0446/09, it is appropriate to grant the measures sought by this Applicant, that is to redact information about the identity of this Applicant and any other information that might lead to this Applicant's identification from the copy of Application a/0446/09 that is to be transmitted to the Defence and to only redact the contact details of this Applicant from the copy that is to be transmitted to the Prosecution;

CONSIDERING that, in the light of concerns about security expressed by Applicants a/0443/09, a/0447/09 and a/0448/09, it is appropriate to grant the measures sought by these Applicants, that is to redact information about the identities of these Applicants and any other information that might lead to their identification from the copies of their Applications that are to be transmitted to the Defence;

CONSIDERING that as a result of the difference in the extent of redactions the Prosecution will have access to more information than the Defence, which may lead to an inadvertent disclosure of information to the Defence, and that in order to aver the risk of such disclosure the Prosecution should be provided, in addition to the Applications redacted in the manner described above, with copies of the redacted Applications transmitted to the Defence;

FOR THESE REASONS,

APPOINT Mr Ahmad Assed as *ad hoc* Counsel for the Defence of Ahmad Harun and Ali Kushayb, to represent the Suspects in relation to the proceedings concerning the Applications for participation in the Harun and Kushayb Case;

ORDER the Registry to provide, no later than on 28 April 2010:

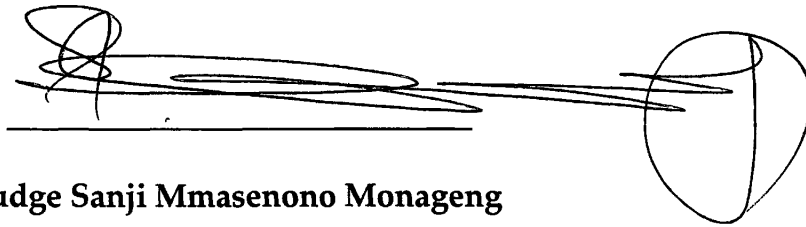
- (i) the Prosecution with copies of Applications a/0444/09 and a/0445/09 from which names, addresses and other sensitive information that could lead to identification of the Applicants are redacted;
- (ii) the Prosecution with a copy of Application a/0446/09 from which the address of the Applicant and other contact details are redacted;
- (iii) the Prosecution with non-redacted copies of applications a/0443/09, a/0447/09 and a/0448/09;
- (iv) the Counsel for the Defence with copies of all the 6 Applications from which names, addresses and other sensitive information which could lead to identification of the Applicants are redacted;

ORDER the Registry to provide the Prosecution with copies of the redacted Applications transmitted to the Defence;

GRANT the Prosecution until 20 May 2010, and the Counsel for the Defence three weeks after the receipt of the Applications, to reply to the Applications; and

ORDER all participants in the proceedings to only refer to the Applicants by the numbers assigned to them by the Registry.

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, followed by a large, stylized circular flourish.

Judge Sanji Mmasenono Monageng

Single Judge

Dated this Monday, 26 April 2010

At The Hague, The Netherlands