

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 17 December 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF THE PROSECUTOR V. OMAR HASSAN AHMAD AL-BASHIR
("OMAR AL-BASHIR")**

**Public Document
URGENT**

**Decision on the *ad hoc* Counsel for the Defence Request Regarding Victims'
Participation in the Case**

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
Ms Fatou Bensouda
Mr Essa Faal

Counsel for the Defence

Ms Michelyne C. Saint -Laurent

Legal Representatives of Victims

Legal Representatives of Applicants

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

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

Ms Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Others

I, Judge Sylvia Steiner, Presiding Judge of Pre-Trial Chamber I (“the Chamber”) of the International Criminal Court (“the Court”);¹

NOTING the “Decision Ordering the Parties to Submit their Observations on Applications a/0443/09 to a/0450/09 for Participation as Victims in the Proceedings”² issued on 6 November 2009 (“Decision of 6 November 2009”), wherein the Single Judge, *inter alia*: (1) decided to appoint Ms Michelyne C. Saint-Laurent as *ad hoc* Counsel for the Defence (“the *ad hoc* Counsel”) to represent and protect the interests of the Defence and (2) granted the Prosecution and the *ad hoc* Counsel until 4 December 2009 at 16h00 to submit their observations on the applications for participation (“the Applications”);

NOTING that the *ad hoc* Counsel did not submit her observations within the time-limit prescribed in the Decision of 6 November 2009;

NOTING the “Request for a Decision on Victim Participation”³ filed by the Legal Representative for Applicants a/0443/09 to a/0450/09 on 10 December 2009, wherein the Legal Representative, on behalf of the Applicants, requested the Single Judge to render a decision on the participation of Applicants a/0443/09 to a/0450/09 on the basis of the Prosecution’s observations alone, due to the fact that the *ad hoc* Counsel had neither filed observations within the time limit set by the Single Judge, nor requested an extension of that time limit pursuant to regulation 35 of the *Regulations of the Court* (“the Regulations”);

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

¹ ICC-02/05-01/09-17.

² ICC-02/05-01/09-50.

³ ICC-02/05-01/09-59.

the Case"⁴ issued by the Single Judge on 10 December 2009 ("Decision of 10 December 2009"), whereby the Single Judge granted the status of victims to all the Applicants, including Applicants a/0443/09 to a/0450/09;

NOTING the "Requête en prorogation de délai"⁵ filed by the *ad hoc* Counsel on 14 December 2009 ("Request"), wherein she requests an extension of the time limit for the submission of observations on Applications a/0443/09 to a/0450/09 until 20 January 2010 or another date set by the Chamber and submits that she was not served with copies of the Decision of 6 November 2009 and the Applications;

NOTING the "Réponse à la Requête de Me Nicholas Kaufman datée du 10 décembre 2009"⁶ filed by the *ad hoc* Counsel on 14 December 2009 ("Response"), wherein she requests that the proceedings regarding the Applications be stayed and that the "Request for a Decision on Victim Participation" of 10 December 2009 by the Legal Representative of the Applicants be dismissed;

NOTING the "Information to the Chamber regarding the notification of documents to Ms. Michelyne C. Saint-Laurent, Counsel for the Defence" filed by the Registry on 17 December 2009,⁷ wherein it submits that the Decision of 6 November 2009, the Applications and other related documents were mistakenly sent to a deactivated e-mail address of the *ad hoc* Counsel;

NOTING articles 67 and 68(3) of the Rome Statute, rule 89(1) of the Rules of Procedure and Evidence ("the Rules"), and regulations 31 and 35(2) of the Regulations;

⁴ ICC-02/05-01/09-62.

⁵ ICC-02/05-01/09-60.

⁶ ICC-02/05-01/09-61.

⁷ ICC-02/05-01/09-63 with Conf. Anx. 1 to 11.

CONSIDERING that the Decision of 6 November 2009 and related documents were not properly served on the *ad hoc* Counsel and that her unawareness of this Decision as well as her inability to submit observations within the time-limit set in this Decision were due to reasons beyond her control;

CONSIDERING that, due to an oversight of the Registry, the Single Judge was notified of the Request and the Response only after the filing of the Decision of 10 December 2009;

CONSIDERING that pursuant to rule 89(1) of the Rules, the defence "shall be entitled to reply [to applications for participation of victims in the proceedings] within a time limit to be set by the Chamber";


CONSIDERING that, although the decision has already been rendered on the issue of the 8 victims' participation in the proceedings, in the particular circumstances of the present case, issues relating to the procedural aspects of the applications for participation and their factual basis may still be raised by the *ad hoc* Counsel, and that, on the basis of the Defence observations, the Decision of 10 December 2009 may be reviewed by the Single Judge;

CONSIDERING that at this stage of the proceedings, the victims who have been authorised to participate only have access to public documents and thus, even if it were to be found, on the basis of observations to be submitted by the *ad hoc* Counsel, that their applications were not justified, there is, at present, no prejudice to the Defence on account of their participation;

FOR THESE REASONS, HEREBY

GRANT an extension of the time limit for the submission of observations by the *ad hoc* Counsel with respect to Applications a/0443/09 to a/0450/09 until 20 January 2010 at 16h00.

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



Judge Sylvia Steiner
Presiding Judge

Dated this Thursday, 17 December 2009

At The Hague, the Netherlands