

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: **ICC-02/05-02/09**  
Date: **23 February 2010**

**PRE-TRIAL CHAMBER I**

**Before: Judge Sanji Mmasenono Monageng, Single Judge**

**SITUATION IN DARFUR, THE SUDAN**

***IN THE CASE OF THE PROSECUTOR***

***V.***

***BAHAR IDRIS ABU GARDA***

**Public Document**

**Prosecution's Observations on 20 Applications for  
Victims' Participation in the Proceedings**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

**Counsel for the Defence**

Mr. Karim A.A. Khan

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

Mr Brahima Koné

Ms Hélène Cissé

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

**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**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Daniel Preira

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## I. Background

1. On 19 August 2009, Pre-Trial Chamber I appointed Judge Sanji Mmasenono Monageng as Single Judge “responsible for all issues related to victims’ applications to be authorized to participate as victims in the proceedings relating to the Abu Garda case”.<sup>1</sup>
2. On 29 January 2010, the Single Judge ordered the Registry to provide to the Prosecution by Tuesday 2 February 2010: (i) non-redacted copies of Applications a/0655/09 and a/0656/09 and (ii) non-redacted copies of Applications a/0736/09 to a/0747/09, a/0750/09 to a/0755/09 including the relevant Supplementary Information. The Single Judge also set a time limit for the parties to reply by 23 February 2010.<sup>2</sup>
3. On 2 February 2010, the Registry provided the Prosecution with non-redacted copies of the 20 Applications for participation in the proceedings including the relevant Supplementary Information as specified above.<sup>3</sup>
4. The Prosecution hereby submits its observations on the 20 applications for participation in the proceedings as victims.

## II. Legal criteria for victims participation in the proceedings

5. Pursuant to Rule 85 (a) of the Rules of Procedure and Evidence (the “Rules”), “victims” mean natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court. For an individual to be granted victim status: (i) the victim must be a natural person; (ii) he or she must have suffered harm; (iii) the crime from which the harm resulted must fall within

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<sup>1</sup> ICC-02/05-02/09-55.

<sup>2</sup> ICC-02/05-02/09-240

<sup>3</sup> ICC-02/05-02/09-242 Annexes 1 to 20.

the jurisdiction of the Court; and (iv) a causal link between the crime and the harm must exist.<sup>4</sup>

6. Applicants to a case must further demonstrate a link between the harm they suffered and the crimes charged.<sup>5</sup> As confirmed by the Appeals Chamber “only victims of the crimes charged may participate in the trial”.<sup>6</sup>
7. The Appeals Chamber defined “harm” to include “[m]aterial, physical and psychological harm (...) if (...) suffered personally by the victim. Harm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims.”<sup>7</sup> The Chamber further decided that “whether or not a person has suffered harm as the result of a crime within the jurisdiction of the Court and is therefore a victim before the Court would have to be determined in light of the particular circumstances.”<sup>8</sup> Furthermore the Appeals Chamber clarified that the harm suffered “can attach to both direct and indirect victims” so long as it is “personal to the individual”, which requires a close personal relationship.<sup>9</sup>
8. The charges brought forward against the suspect are spelled out in the “Document Containing the Charges submitted pursuant to Article 61(3) of the Statute”.<sup>10</sup>

<sup>4</sup> See ICC-01/04-01/06-228-tEN, p. 7; ICC-01/04-101, para. 94; ICC-02/05-111, para. 2; See also PTC II at ICC-02/04-01/05-252, para. 12 to 14.

<sup>5</sup> See, ICC-01/04-01/06-1432 OA9 OA10, at para. 62 to 65; ICC-01/04-01/06-228-tEN, p. 9; ICC-01/04-01/06-172-tEN, pp. 6-8; ICC-01/04-01/06-601-tEN, pp.8-9.

<sup>6</sup> ICC-01/04-01/06-1432 OA9 OA10, para. 62.

<sup>7</sup> ICC-01/04-01/06-1432 OA9 OA10, at para 32.

<sup>8</sup> Ibid.

<sup>9</sup> See ICC-01/04-01/06-1432 OA9 OA10, at para 32 in which the Appeals Chamber provides the following example for a close personal relationship, “such as the relationship between a child soldier and the parents of that child. The recruitment of a child soldier may result in personal suffering of both the child concerned and the parents of that child.”

<sup>10</sup> ICC-02/05-02/09-91-Conf, at pages 33 and 34:

“On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, knowingly and in the context of and associated with an armed conflict, ABU GARDA, jointly, and with JEM forces under his control and SLAUnity forces,

9. The Appeals Chamber has also stated that for the purpose of participation in the trial proceedings pursuant to article 68 (3) of the Statute, victims will have to demonstrate that their personal interests are affected by the trial in order to be permitted to present their views and concerns at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.<sup>11</sup> These criteria have been applied also for participation in the pre-trial stage of the proceedings.<sup>12</sup>

### III. Completeness of the applications

10. Applicants must provide adequate proof of identity to prove their status as a natural person. This requirement has been put in place by all Chambers as a minimum safeguard to guaranteeing the accuracy of the applications.<sup>13</sup> The criteria for completeness have been established by Pre-Trial Chamber I in its 17 August

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(i) killed twelve (12) AMIS peacekeeping personnel and attempted to kill eight (8) AMIS peacekeeping personnel, with the knowledge that they were personnel involved in a peacekeeping mission established in accordance with the UN Charter and were taking no active part in hostilities and thus entitled to the protection given to civilians under the international law of armed conflict, thereby committing a crime in violation of Articles 8(2)(c)(i) and 25(3)(a) and 25(3)(f) of the Rome Statute;

(ii) intentionally directed attacks against AMIS peacekeeping personnel, installations, materials, units and vehicles involved in a peacekeeping mission established in accordance with the Charter of the United Nations, which were entitled to the protection given to civilians and civilian objects under the international law of armed conflict, with the knowledge of the factual circumstances that established that protection, thereby committing a crime in violation of Article 8 (2)(e)(iii) and 25(3)(a) of the Rome Statute;

(iii) appropriated property belonging to AMIS and its personnel including vehicles, refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition and money, without the consent of the owners and for their private or personal use, thereby committing a crime in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute.”

<sup>11</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 62.

<sup>12</sup> ICC-02/05-02/09-121, para. 2. See also Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, ICC-01/04-01/07-474, 13 May 2008.

<sup>13</sup> PTC I, ICC-01/04-374; PTC II, ICC-02/04-01/05-252, paras 16 to 21 and TC I, ICC-01/04-01/06-1119, para 87.

2007 Decision, which serves as further guidance in assessing completeness of the applications.<sup>14</sup>

11. In addition, the Appeals Chamber has recently determined that applicants who are applying on the basis of having suffered emotional harm as the result of the loss of a family member must present “proof of the identity of the family member and of his or her relationship with the applicant. The Chamber must be satisfied that the family member existed and that he or she had the requisite relationship with the applicant.” The Appeals Chamber did not define the type of proof that was necessary and instead held that, “what evidence may be sufficient to establish the elements of Rule 85 (a) of the Rules of Procedure and Evidence in this context cannot be determined in the abstract, but must be assessed on a case-by-case basis taking into account all relevant circumstances.”<sup>15</sup>

#### IV. The Prosecution’s Observations

12. The Prosecution submits that the 20 Applicants, namely a/0655/09 and a/0656/09 and a/0736/09 to a/0747/09 and a/0750/09 to a/0755/09, *prima facie* meet the necessary requirements for victim participation. These applicants are natural persons pursuant to Rule 85 (a) and have submitted sufficient proof to establish their identities.<sup>16</sup>
13. Further, these applicants appear to have suffered either direct or indirect harm as a result of a crime for which the suspect, Abu Garda, is charged.

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<sup>14</sup> ICC-01/04-374, para 12; see also ICC-02/05-111-Corr, at para 26 to 28;

<sup>15</sup> Judgment of the Appeals Chamber ICC-02/04-01/05-371, 23 February 2009, paras 1 and 2; The Single Judge applied these criteria in decision ICC-02/05-02/09-121, para 9.

<sup>16</sup> Applicants a/0655/09, a/0656/09 and a/0736/09 to a/0747/09 and a/0750/09 to a/0755/09 submitted identity cards and applicants a/0742/09 and a/0743/09 submitted birth certificates.

14. The first group of applicants consists of two AMIS peacekeepers, Applicants a/0655/09 and a/0656/09, who suffered direct harm as a result of the unlawful attack on them at the MGS Haskanita, during which the applicants were wounded and lost personal belongings, including money.
15. As noted by Pre-Trial Chamber I in its decision ICC-02/05-02/09-240 at page 5, Applicants a/0655/09 and a/0656/09 were Prosecution witnesses for the purpose of the confirmation of charges hearing. The Prosecution submits that these Applicants fulfil the requirements of a victim according to Rule 85 (a) and therefore *prima facie* meet the necessary requirements for victim participation.
16. The second group of victims consists of the under-aged children<sup>17</sup>, relatives<sup>18</sup>, the bride<sup>19</sup> and a close friend<sup>20</sup> of a deceased AMIS peacekeeper. The applicants invoke emotional harm and financial loss as a result of the death of their family member and close friend. This indirect but personal harm falls within the definition of “harm suffered”, and makes the applicants, who bore a close relationship to the deceased, eligible for participation. All applications include a death certificate by AMIS to prove the death of the relative and close friend. Although those applicants claiming to be relatives of the deceased do not provide proof of next-of-kinship in their applications, they nevertheless clearly state their relation to the deceased relative in their application.<sup>21</sup> The Prosecution submits that although the Appeals

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<sup>17</sup> The Prosecution notes that children a/0742/09 and a/0743/09 are represented by their mother a/0741/09.

<sup>18</sup> Applicants a/0736/09 (father), a/0737/09 (mother), a/0738/09 (brother), a/0739/09 (brother), a/0740/09 (brother), a/0741/09 (sister), a/0742/09 (nephew), a/0743/09 (niece), a/0744/09 (uncle), a/0745/09 (aunt), a/0746/09 (uncle), a/0747/09 (cousin), a/0750/09 (cousin), a/0751/09 (uncle), a/0752/09 (aunt), a/0753/09 (uncle’s cousin).

<sup>19</sup> Applicant a/0754/09 (bride)

<sup>20</sup> Applicant a/0755/09 (friend)

<sup>21</sup> Applicants a/0736/09 to a/0747/09 and a/0750/09 to a/0755/09. The Prosecution notes that the new Standard Application Forms used by the Registry, on p.7 contain a “reminder” in relation to which documents need to be attached to the application form. According to the “reminder” a “proof of relationship to victim” is only required in cases where the victim has not consented to the application being submitted in his or her name, or is under the age of 18. The new Standard Application Form does not specifically indicate that an applicant is required to provide proof of kinship in cases where the victim is deceased.

Chamber requires family members to prove their family ties, it did not define the type of proof required. What the Appeals Chamber held was that “the Chamber must be satisfied that the family member existed and that he or she had the requisite relationship with the applicant.” The Prosecution submits that Applicants provide sufficient information in their signed applications to allow the Chamber to conclude that their deceased “family member existed and that he or she had the requisite relationship with the applicant”. Should the Chamber decide that the information provided is insufficient and the applications thus incomplete for lack of additional proof of kinship, the Prosecution suggests that VPRS be instructed to obtain additional proof of kinship from Applicants a/0736/09 to a/0747/09 and a/0750/09 to a/0755/09 before their applications are decided upon by the Chamber.

17. As mentioned above, applicant a/0755/09 does not claim to be related to the deceased peacekeeper, but instead claims to have been his close friend for the past 16 years. According to the applicant, he and the deceased peacekeeper had been such close friends that they assisted each other financially and even considered each other as “brothers”. As a result of his friend’s death, the applicant alleges to have suffered indirect harm in the form of emotional suffering and economic loss. Since the Appeals Chamber’s finding cited in paragraph 11 above does not cover victims of indirect harm that are not related to the victim of direct harm or deceased person, the Prosecution cannot assess the completeness of the application without further determination by the Chamber of which documentary evidence would be required for the applicant to prove his relation to the deceased. Therefore the Prosecution limits its observations on this application to whether the elements of Rule 85 (a) are met. The applicant, a natural person, invoked indirect harm due to the death of a peacekeeper for which the suspect, Mr. Abu Garda, is charged. Therefore the Prosecution concludes that the applicant *prima facie* meets the criteria for participation as victim.

## V. Conclusion

18. For the reasons outlined above, the Prosecution submits that these 20 Applicants, namely applicants a/0655/09 and a/0656/09, a/0736/09 to a/0747/09 and a/0750/09 to a/0755/09, *prima facie* meet the criteria for participation as victim pursuant to Article 68(3).



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Luis Moreno-Ocampo

Prosecutor

Dated this 23<sup>rd</sup> day of February 2010  
At The Hague, The Netherlands