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International Criminal Court

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No.: **ICC-02/05-03/09**
Date: **29 October 2010**

PRE-TRIAL CHAMBER I

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

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR V. ABDALLAH BANDA ABAKAER NOURAIN AND SALEH MOHAMMED JERBO JAMUS

Public

Decision on Victims' Participation at the Hearing on the Confirmation of the Charges

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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, Prosecutor
Mr Essa Faal, Senior Trial Lawyer

Counsel for the Defence
Mr Karim Khan

Legal Representatives of Victims

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Ms Hélène Cissé
Mr Akin Akinbote
Colonel Frank Adaka
Sir Geoffrey Nice
Mr Rodney Dixon

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

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REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

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Pre-Trial Chamber I ("Chamber") of the International Criminal Court ("Court"),

NOTING the "Report on applications for participation in the proceedings from victims accepted in the case of *the Prosecutor v. Bahar Idriss Abu Garda*" ("the Abu Garda Case"),[1] filed by the Victims Participation and Reparation Section ("VPRS") on 6 July 2010 together with 87 applications;

NOTING the "Decision Setting a Time Limit for the Parties' Replies to 87 Applications for Victims' Participation in the Proceedings and a Deadline for the Filing of Applications for Participation"[2], issued on 27 July 2010, whereby the Single Judge, *inter alia,* ordered the VPRS to file no later than Wednesday 20 October 2010 any complete victims' applications for participation in the proceedings relating to the confirmation of the charges in the case of *The Prosecutor v. Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus* ("Case");

NOTING the "Joint Defence Reply to the 87 Applications for Victims' Participation in the Proceedings"[3] and the "Prosecution's Observations on Victims' Applications for Participation in the Proceedings"[4], both filed on 13 August 2010;

NOTING the "Report on eight applications to participate in the proceedings", filed by the VPRS on 12 August 2010 together with 8 applications;[5]

NOTING the "Joint Defence Reply to the 8 Applications for Victims' Participation in the Proceedings"[6] and the "Prosecution's Observations on 8

[1] ICC-02/05-03/09-50-Conf-Exp.
[2] ICC-02/05-03/09-56.
[3] ICC-02/05-03/09-63.
[4] ICC-02/05-03/09-64.
[5] ICC-02/05-03/09-60-Conf-Exp.

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Victims' Applications for Participation in the Proceedings"[7], both filed on 10 September 2010;

NOTING the "Document Containing the Charges Submitted Pursuant to Article 61(3) of the Statute" ("DCC"), filed by the Prosecutor on 19 October 2010;[8]

NOTING article 68(3) of the Statute of the Court ("Statute"); rules 85, 89 and 90, 91, 92 of the Rules of Procedure and Evidence ("Rules"); regulation 86 of the Regulations of the Court ("Regulations");

HEREBY RENDERS THIS DECISION

I. Whether the applicants meet the requirements of rule 85 of the Rules

1. The Chamber is seized of two groups of victims' applications for participation at the pre-trial stage of the Case: (i) a group of 87 applications for participation submitted by victims accepted in the Abu Garda case; and (ii) a group of 8 applications submitted by applicants who were not recognized as victims in the Abu Garda Case because their applications were either rejected or not submitted in that case. Among the latter group, one application has been submitted pursuant to rule 85(b) of the Rules.

2. With respect to the applications submitted under rule 85(a) of the Rules, the Chamber recalls that this provision, as interpreted by the different

[6] ICC-02/05-03/09-70-Conf.
[7] ICC-02/05-03/09-69.
[8] ICC-02/05-03/09-79-Conf.

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Chambers of the Court, establishes that an applicant is to be granted the status of victim of a case when (i) his or her identity as a natural person appears duly established; (ii) the applicant has suffered harm; (iii) the events described in the application for participation constitute the crime(s) within the jurisdiction of the Court with which the suspect is charged; and (iv) the harm suffered by the applicant appears to have arisen "as a result" of the crime(s) charged.

3. With respect to the requirement that the identity of the applicant as a natural person be sufficiently established, the Chamber recalls the decision of the Single Judge in the Abu Garda case allowing, in light of the previous jurisprudence of the Court, the submission of any of the following documents in order to prove identity, kinship, guardianship or legal guardianship:

> (i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;
>
> (ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;
>
> (iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or
>
> (iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses.[9]

4. At this stage of proceedings, the scope of the present Case is delineated by the charges presented by the Prosecutor in the DCC, wherein it is alleged that on 29 September 2007, the suspects Abdallah Banda Abakaer Nourain

[9] ICC-02/05-01/09-121, para. 8.

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and Saleh Mohammed Jerbo Jamus, jointly and with rebel forces under their command and control, committed the war crimes of violence to life through acts of murder (and attempted murder), of intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a peacekeeping mission and of pillaging at the Military Group Site Haskanita ("MGS Haskanita"), in Haskanita village, Um Kadada Locality, in North Darfur, the Sudan.

5. Pursuant to rule 89(4) of the Rules, where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision. The Chamber will, therefore, provide only the essential information on each applicant in this decision.

A. The 87 Applications[10]

6. With respect to the 87 applications, the Single Judge for victims' issues in the Abu Garda case, seized of the same victims' applications for participation, found that each application met the four requirements provided for by rule 85(a) of the Rules.[11]

7. The Chamber is satisfied, also for the purposes of the Case, that the applicants' identities have been duly established and that the applicants suffered harm within the meaning of rule 85(a) of the Rules.

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[10]This group (collectively referred as "the 87 Applications") is composed of the applications for participation submitted by the following applicants: a/0170/09 to a/0192/09, a/0434/09 to a/0436/09, a/0456/09 to a/0463/09, a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0580/09, a/0655/09, a/0656/09, a/0736/09 to a/0741/09 and a/0754/09.

[11] ICC-02/05-02/09-121 and ICC-02/05-02/09-147-Red; ICC-02/05-02/09-255.

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8. Moreover, the subject-matter of the present Case is the same of that of the Abu Garda Case, since they both relate to the same event (*i.e.* the alleged attack on the MGS Haskanita on 29 September 2007) and the crimes contained in the Document Containing the Charges against Abdallah Banda and Saleh Mohammed Jerbo are the same as those with which Bahar Idriss Abu Garda was charged.

9. Accordingly, it is not necessary that an assessment be conducted as to whether the events described by the applicants constitute one of the crimes with which the suspects are charged as well as to whether there is a sufficient causal link between such events and the alleged harm, since the very same assessment in respect to the same applicants was already conducted in the Abu Garda case.

10. Accordingly, the Chamber is satisfied that the 87 applicants fulfil the criteria set out in rule 85(a) of the Rules and shall be granted the status of victims of the Case.

B. The 8 Applications

11. As noted above, among the 8 applications submitted by applicants not previously recognized as victims in the Abu Garda Case, seven are presented by natural persons pursuant to rule 85(a) of the Rules and out of which three were previously rejected by the Single Judge of the Abu Garda Case, and one is presented pursuant to rule 85(b) of the Rules, which was rejected as incomplete in the Abu Garda case and in respect of which further information has been submitted (application a/0536/09).

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1. The applications submitted pursuant to rule 85(a) of the Rules

12. The seven applications submitted by natural persons fall within two groups: (i) three applications made by residents of Haskanita which were previously filed and subsequently rejected by the Single Judge of the Abu Garda case since they did not demonstrate the causal link between the harm allegedly suffered and the crimes charged[12] and in respect of which additional information has been provided by the applicants (applications a/0582/09, a/0584/09 and a/0585/09); and (ii) four new applications submitted by residents of Haskanita who claim that they worked in the MGS Haskanita at the time of the attack (applications a/1646/10 to a/1649/10).

13. At the outset, the Chamber notes that some of the seven applicants claim, to differing extents, to have suffered harm due to the African Union ("AU") absence from the Haskanita area.[13] In particular, these applicants allege that, since the AU Mission in Sudan ("AMIS") left the MGS Haskanita as a result of the attack perpetrated by the rebels on the camp, they had to leave the village of Haskanita and/or lost their employment at the base.

14. As highlighted by the Defence, the information provided to the Chamber does not support the conclusion that the attack on the MGS Haskanita directly led to the absence of the AU in Haskanita.

15. In any event, even if it could be established that the attack on the MGS Haskanita somehow contributed to the harm allegedly suffered by the applicants, such harm would be too remote from the alleged crimes to meet the requirement of having occurred "as a result" of those crimes, within the meaning of rule 85(a) of the Rules.

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[12] ICC-02/05-02/09-147-Conf 08/10/2009, para. 141.
[13] a/0584/09, a/1646/10, a/1647/10; a/1648/10, a/1649/10.

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The three applications submitted by natural persons previously rejected in the Abu Garda Case (a/0582/09, a/0584/09 and a/0585/09)

16. With regard to the three applications previously rejected, the Single Judge in the Abu Garda Case was satisfied that the documents they had provided sufficiently supported a finding that they were natural persons and that their identities had been duly established. The Chamber takes note of this finding and, accordingly, considers the first requirement of rule 85(a) of the Rules to be fulfilled also for the purposes of the present Case.

17. The Chamber shall firstly assess whether the additional information provided by the applicants, together with the original statements submitted in the Abu Garda Case, remedies the deficiency identified by the Single Judge in that case, *i.e.* that the applicants failed to demonstrate a causal link between the alleged harm and the crimes charged.

18. The Chamber is of the view that the additional information submitted by the three applicants does not provide sufficient evidence to establish that the harm allegedly suffered by the applicants is sufficiently linked to the crimes charged against the suspects.

19. Applicant a/0582/09 was a resident of Haskanita village at the time of the attack on AMIS on 29 September 2007. The applicant claims that on the day of the attack he went to see the rebels in order to retrieve livestock allegedly stolen by the rebels on a previous occasion. He further contends that he was taken by the rebels to see their commander but as they approached the AU base he saw cars and heard gunfire, at which point he became frightened, got out of the car and went to the village of Haskanita. Subsequently, the rebels

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came to the village and began looting. The applicant claims that as a result of these events he became scared and left the town, thus suffering psychological and material harm.

20. Applicant a/0585/09 was an inhabitant of Haskanita at the time of the attack. He states that on 29 September 2007 at around 5 pm he went to the AU camp to receive some medicine and that, after he left the camp, he heard the sound of guns. The applicant and his family ran away, along with many other villagers. He returned later to release his cattle, and he saw the rebels breaking into shops and pillaging. He was terrified and left the village. The applicant claims that, as a result of the attacks in September 2007, he had to flee his home with his family and lost all his possessions, thus suffering material and psychological harm.

21. With respect to the applications submitted by applicants a/0582/09 and a/0585/09, the Chamber is of the view that the deficiency identified by the Single Judge in the Abu Garda Case, in relation to the link between the crimes with which the suspects are charged and the harm allegedly suffered by the applicants, persists, since neither applicant refers to the crimes allegedly committed at the MGS Haskanita as having been the cause of the harm suffered. The Chamber is, therefore, not satisfied that the harm claimed by the applicants was caused by the attack on the compound itself (and the crimes allegedly committed during such attack) as opposed to the attack allegedly perpetrated on the village of Haskanita. Moreover, in both cases, the applicants contend that that they abandoned the village of Haskanita only after the rebels arrived in the town and began pillaging. It seems, therefore, that they left the area of Haskanita in response to the attack allegedly perpetrated by the rebels on the village of Haskanita and not as a result of the attack on the MGS Haskanita.

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22. For these reasons, the Chamber is of the view that the applicants cannot be considered to be victims of the Case since the events as a result of which they allegedly suffered harm are not the incidents which form the basis of the crimes with which the suspects are charged. Accordingly their applications are rejected.

23. Applicant a/0584/09 was an inhabitant of Haskanita at the time of the attack on the AMIS camp. The applicant claims that he saw the rebels move towards the AU camp and heard the sound of heavy fighting and that, after having seen that the rebels had left the camp, he went to the AU camp and saw dead AU soldiers and the damage that had been done to the camp. The applicant further contends that he saw that rebels were looting shops in the village and that they had burned the market of Haskanita. The day after the attack he saw that the area had been burned. This made him scared for himself and his family and, as a result, he was forced to leave Haskanita, thus suffering material and psychological harm.

24. The Chamber notes that also with respect to this application, the information provided by the applicant indicates that he left the village as a consequence of the attack on the village of Haskanita, the result of which the applicant saw only the morning after the said attack. Furthermore, the applicant claims that he had to leave Haskanita as it was not safe to remain in the area after the AU peacekeepers had left. With respect to this allegation the Chamber refers to paragraphs 13 to 15 of the present decision, wherein it is clarified that the harm suffered because of the displacement does not qualify as harm allegedly resulting from the charges as required by rule 85(a) of the Rules for the purposes of recognizing the applicants as victims of the Case.

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25. Accordingly the application for participation submitted by applicant a/0584/09 is rejected.

The four new applications submitted by natural persons (a/1646/10 to a/1649/10)

26. With respect to the four new applications, the Chamber is satisfied that the applicants have appended the necessary documents to prove their identity and that they are natural persons in accordance with the requirements set out above.

27. Applicant a/1646/10 is a natural person who submits that he worked in the MGS Haskanita and was present in the camp when it was attacked by the rebels. He claims that (i) during the attack he was shot at by the rebels and witnessed soldiers being killed or injured; (ii) he was kidnapped by the rebels, kept for three days after the attack and threatened; (iii) after the attack, due to the fact that the AU left the area, he lost his job; and (iv) he and his family were displaced since it was no longer safe to remain in the area without the AU presence and, therefore, he lost his home and possessions. As a result of these events, the applicant claims that he suffered economic loss, psychological harm and physical harm.

28. Applicant a/1647/10 submits that he worked at the MGS Haskanita and that he was in the camp when it was attacked on 29 September 2007. He alleges that (i) during the attack he witnessed AU soldiers being killed and was afraid that he himself would also be killed; (ii) during the attack the rebels took his bag containing personal belongings which was in the camp; (iii) his house and belongings in the Haskanita village were burned and, therefore, he lost everything he had; (iv) as a result of the attack, he lost his

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job; and (v) after the attack he left the village since he and his family did not feel safe there any longer living without the AU presence.

29. With respect to applicants a/1646/10 and a/1647/10, the Chamber is of the view that only the alleged psychological harm suffered by the applicants qualifies as harm resulting from the charges against the suspect, since both applicants were traumatised as a result of the attack, during which their own lives were threatened and they witnessed AU soldiers being killed and injured.

30. Therefore, in view of its finding that the applicants suffered psychological harm as a result of the crimes allegedly committed on the MGS Haskanita on 29 September 2007 and with which the suspects are charged, the Chamber is satisfied that applicants a/1647/10 and a/1648/10 can be recognized as victims of the Case. Accordingly, their applications for participation in the proceedings are granted.

31. Applicant a/1648/10 was an employee in AU base at Haskanita. On 29 September 2007, he worked until 4 pm and then left the camp and, thus, he was not in the MGS at the time of the attack. The applicant claims that (i) he heard the attack from the village and learned that AMIS personnel had been killed or injured; (ii) his house in the village and its contents were burned and he also lost his herd of goats; (iii) due to the absence of the AU in Haskanita, he suffered "in many ways" in terms of deprivation of services and safety previously provided by AMIS; (iv) when the AU left the area of Haskanita he lost his job. As a result of these events, the applicant claims to have suffered psychological and material harm.

32. As for the harm allegedly suffered by the applicant as a result of the absence of the AU in the area of Haskanita (*i.e.* the loss of services and safety

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as well as of his job) the Chamber recalls paragraphs 13 to 15 of the present decision, wherein it is stated that such harm is considered to be too remote to ground an application for participation.

33. With respect to the material harm alleged by the applicant, specifically the burning of his house and its contents, the Chamber notes that the applicant alleges that his house was located in the Haskanita village. In this respect, the Chamber recalls that the suspects are charged with crimes committed *during* the attack on the MGS Haskanita only and not with criminal acts allegedly committed *in* the village of Haskanita.

34. Lastly, the applicant claims that he suffered harm as a result of having "heard the attack", of knowing that "AU soldiers had been killed and injured in their camp" and of fearing an attack in the village. Since the applicant did not see the attack, but only heard gunfire from the direction of the camp, the Chamber is of the view that the applicant's experience of the attack is too remote to satisfactorily establish that he suffered psychological harm as a result of it.

35. Therefore, the Chamber considers that the applicant cannot be considered as a victim of the Case and accordingly his application for participation is rejected.

36. Applicant a/1649/10 worked at the AU base in Haskanita and was not present during the attack on the camp. He claims that (i) during the day of the attack, he heard the sound of gunfire from the camp; (ii) after the attack he learned that AMIS soldiers were killed and that his village was destroyed; (iv) his house in the Haskanita village was burned together with his belongings; (v) he left the village because "[w]ithout the AU [he and his family] [were] not

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safe and secure"; (vi) he lost his job because of the attack on the camp. As a result, the applicant claims that he suffered material and psychological harm.

37. As established above, the Chamber is of the view that the harm allegedly caused by the absence of the AU in the area of Haskanita is of a such remote nature that it does not fulfil the requirements provided for by rule 85(a) of the Rules.

38. With respect to the alleged burning of the applicant's house the fact that the house was located in the village of Haskanita makes it clear that the alleged incident occurred in a subsequent attack on the village and accordingly does not form the basis of the crimes with which the suspects are charged.

39. As regards the psychological harm allegedly suffered, the applicant claims to have been "frightened of being shot" when he left the village and that he was traumatized when he learned that the AU soldiers had been killed. The Chamber is of the view that the fact of having heard about the attack and the death of AU soldiers (who were neither family members nor other close associates of the applicant) does not attain the level of psychological harm within the meaning and for the purposes of rule 85(a) of the Rules.

40. The Chamber considers that the applicant cannot be considered to be a victim of the Case and accordingly his application for participation is rejected.

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2.The application submitted pursuant to rule 85(b) of the Rules previously rejected in the Abu Garda Case (a/0536/09)

41. Application a/0536/09 is made pursuant to rule 85(b) of the Rules on behalf of the Nigerian Army.

42. The applicant contends that it contributed troops and equipment to the AU Mission in Sudan and that in the attack on 29 September 2007 it lost medical and communications equipment, sundry clothing and stores for soldiers as well as human lives.

43. In the Abu Garda Case, the Single Judge found that the application lacked the necessary proof to establish that the person acting on behalf of the applicant had *locus standi* to submit the application and, therefore, that the application was not complete. Accordingly, the application for participation was rejected. In the meantime the person acting on behalf of applicant a/0536/09 has submitted supplementary information in order to remedy the deficiency previously identified.

44. The Chamber notes, however, that the authority to act on behalf of applicant a/0536/09 has not been provided by the Federal Republic of Nigeria and, as a result, the issue of the applicant's *locus standi* has not been fully resolved. Nevertheless, even on the basis of an assessment of the merits of the application the Chamber considers that the application should be rejected. The reasons for this finding are elaborated below.

45. Pursuant to rule 85(b) of the Rules the criteria to be fulfilled in order for an organisation or institution to be recognized as a victim before the Court are the following:

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(i) the applicant must be an organisation or institution having property dedicated to religion, education, art or science or charitable purposes, or to their historic monuments, hospitals and other places and objects for humanitarian purposes;

(ii) the organisation or institution must have sustained direct harm to any of that property;

(iii) the crime from which the harm arises must fall within the jurisdiction of the Court, in the instant case the crimes with which the suspects are charged;

(iv) there must be a causal link between the crime and the harm.

46. The applicant claims to be a statutory body owning property dedicated to humanitarian purposes and harmed as a result of the crimes with which the suspects are charged. At the outset it must be clarified that under no circumstances may the loss of human lives qualify as a loss of property.

47. The scope of the present Case is delineated by the charges as presented by the Prosecutor in the DCC. Both the charges under Count 2 and Count 3 involve the destruction or the loss of property as a specific element of the crimes.

48. Under Count 2 the Prosecutor charges the suspects with the crime of "intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a peacekeeping mission" within the meaning of article 8(2)(e)(iii) of the Statute.

49. It is significant that article 8(2)(e)(iii) of the Statute provides for two alternatives (attack against personnel and objects "involved in a humanitarian assistance *or* peacekeeping mission") while the definition of victim under rule 85(b) of the Rules refers only to organisations having property dedicated to

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humanitarian purposes, thus excluding from its scope property involved in a peacekeeping mission. Furthermore, the wording of rule 85(b) of the Rules, in referring to "objects *for* humanitarian purposes", seems to suggest that an ancillary humanitarian use of the property in question would not be sufficient to ground an application for participation under such provision.

50. As noted above, the Prosecutor's allegation under Count 2 is that the property attacked by the suspect was dedicated to peacekeeping and not to humanitarian purposes. Accordingly the application is to be rejected as the loss of the property alleged by the applicant falls outside the scope of the Case as delineated in the charge presented by the Prosecutor under Count 2.

51. However, the application would be rejected also in the event that the property is found to have been for peacekeeping purposes – thus falling within the scope of the Case – as its loss would not fulfil the requirements of rule 85(b) of the Rules.

52. With respect to Count 3 the Prosecutor charges the suspects with the crime of having "appropriated property belonging to AMIS or its personnel" within the meaning of article 8(2)(e)(v) of the Statute. If the Chamber were to establish that the property referred to in the application indeed belonged to the applicant, the alleged harm would fall outside the scope of the Case as fixed by the charge presented under Count 3. On the contrary, should the Chamber establish that the owner of the property was AMIS as opposed to the applicant, the application would be rejected on the basis of the lack of the applicant's title to the relevant property.

53. Accordingly the Chamber does not consider it necessary to conduct an assessment as to (i) the actual purposes of the property the loss of which is alleged by the applicant and (ii) the legal ownership of such property. Any

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answer which could be given to those questions would in any case lead to the rejection of the application.

54. The application submitted by applicant a/0536/09 is therefore rejected.

C. Conclusion on the assessment of applications

55. Following the analysis provided in the present decision, the Chamber is of the view that applicants a/0170/09 to a/0192/09, a/0434/09 to a/0436/09, a/0456/09 to a/0463/09, a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0580/09, a/0655/09, a/0656/09, a/0736/09 to a/0741/09, a/0754/09, a/1646/10 and a/1647/10 fulfil all of the criteria set out in rule 85(a) of the Rules and, accordingly, shall be recognized as victims for the purposes of their participation at the confirmation hearing in the Case.

56. The Chamber notes that seven applicants recognized as victims in the present decision (a/0434/09, a/0435/09, a/0436/09, a/0569/09, a/0570/09, a/0655/09, a/0656/09) are also witnesses on whose testimony the Prosecutor intends to rely on for the purposes of the confirmation hearing in the Case. Accordingly, the Chamber is of the view that, for reasons of fairness of proceedings, the Defence shall be provided with the names of those victims who are also witnesses in the present Case.

57. The Chamber further notes that victims a/0736/09, a/0737/09, a/0738/09, a/0739/09, a/0740/09, a/0741/09 and a/0754/09 are not represented by a legal representative. In its report on the 87 applications, the Registry informed the Chamber that these victims had identified a legal representative, whose appointment was yet to be formalized through powers of attorney and

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inclusion on the list of Counsel maintained by the Registry. In the meantime, the Chamber considers that the interests of justice require that a legal representative of these applicants be appointed to enable them to participate in the proceedings. Following consultation with the Registrar and considering that Ms Hélène Cissé represented the same victims in the Abu Garda case, the Chamber, pursuant to regulation 80(1) of the Regulations, decides to appoint Ms Hélène Cissé as a legal representative of these victims to represent them until a legal representative of their own choice, who meets the necessary requirements, is appointed.

II. Participation of victims at the confirmation hearing and in the proceedings leading to it

58. With respect to victims' participation at the confirmation hearing and in the proceedings leading to it, the Chamber notes the provisions of rules 91 and 92 of the Rules.

59. According to rule 92 (5) and (6) of the Rules, victims' legal representatives shall be notified of the proceedings before the Chamber. Furthermore, rule 121(10) of the Rules further states that victims or their legal representatives may, subject to any restrictions concerning confidentiality and the protection of national security information, consult the record of all proceedings before the Pre-Trial Chamber, created and maintained by the Registry.

60. The Chamber is thus of the view that the legal representatives of the victims authorised to participate during the pre-trial stage of the present Case have, prior to and during the confirmation hearing, the right to:

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(i) have access to all public filings and public decisions contained in the record of the Case;

(ii) be notified on the same basis as the Prosecution and the Defence of all public requests, submissions, motions, responses and other procedural documents which are filed as public in the record of the Case;

(iii) be notified of all the public decisions of the Chamber in the proceedings;

(iv) have access to the transcripts of hearings held in public sessions;

(v) be notified on the same basis as the Prosecution and the Defence of all public proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision; and

(v) have access to the public evidence filed by the Prosecution and the Defence pursuant to rule 121 of the Rules and contained in the record of the Case, in the same format (unredacted versions, redacted versions or summaries, as well as electronic versions with the *data* required by the E-Court Protocol) in which it has been made available to the party which has not proposed it.

61. The Chamber, however, considers that if a party to or a participant in the present proceedings wishes to notify a document classified as confidential to the victims' legal representatives, it may do so by including in the said document the name(s) of the legal representative(s) to be notified. The Registry shall then notify the parties and the participants accordingly.

62. In relation to those filings that are marked confidential and are not notified to the victims' legal representatives under the conditions set forth in the previous paragraph, the Chamber retains the option to decide, on a case by

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case basis and upon receipt of a specific and motivated request, whether to grant victims' legal representatives access thereto.

63. According to rule 91(2) of the Rules, the right of the legal representatives of victims to attend and participate in the proceedings shall include participation in hearings, unless, in the circumstances of the case, the Chamber is of the view that the representatives' intervention should be confined to written observations or submissions.

64. In the present case, the Chamber considers that the victims' legal representatives have the right to attend all public session hearings convened in the proceedings leading to the confirmation hearing, as well as all public sessions of the confirmation hearing.

65. In the event that the Chamber decides to hold parts of the hearings *in camera* or *ex parte*, it retains the option to decide, on a case by case basis, whether to authorise, upon request, the victims' legal representatives to attend those sessions.

66. Furthermore, the Chamber considers appropriate, within the meaning of article 68(3) of the Statute and rule 89(1), that victims' legal representatives be entitled to present their views and concerns at the confirmation hearing, by way of oral submissions, in accordance with the schedule of the hearing which will be issued in due course.

67. Considering that in establishing such schedule the Chamber will take due consideration, *inter alia*, of the "Joint Submission by the Office of the Prosecutor and the Defence as to Agreed Facts and submissions regarding modalities for the conduct of the Confirmation hearing", filed on 20 October

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2010, the Chamber finds critical that legal representatives of victims be given the opportunity to present their views in relation to those submissions;

68. Lastly, the Chamber is of the view that, in order for them to exercise the rights established in the present decision, legal representatives of victims shall be granted access to the DCC presented by the Prosecutor and currently classified as "confidential";

FOR THESE REASONS,

DECIDES

to recognise applicants a/0170/09 to a/0192/09, a/0434/09 to a/0436/09, a/0456/09 to a/0463/09, a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0580/09, a/0655/09, a/0656/09, a/0736/09 to a/0741/09, a/0754/09, a/1646/10 and a/1647/10 as victims for the purpose of participating during the pre-trial stage of the Case;

DECIDES

to reject the applications for participation submitted by applicants a/0536/09, a/0582/09, a/02584/09, a/0585/09, a/1648/10 and a/1649/10;

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ORDERS

the Registry to provide the legal representatives of victims authorized to participate in the Case with access to all public record of the Case, including public evidence disclosed by the parties;

ORDERS

the Registry to notify the victims authorized to participate in the proceedings of the "Document Containing The Charges Submitted Pursuant to Article 61(3) of the Statute" (ICC-02/05-03/09-79-Conf) and of the "Joint Submission by the Office of the Prosecutor and the Defence as to Agreed Facts and submissions regarding modalities for the conduct of the Confirmation hearing" (ICC-02/05-03/09-80);

ORDERS

the Registry to notify the victims authorized to participate in the proceedings of all public decisions and filings, effective as of the date of the present decision;

DECIDES

that the legal representatives shall file no later than 12 November 2010 any observations they wish to submit to the Chamber with respect to the "Joint Submission by the Office of the Prosecutor and the Defence as to Agreed Facts and submissions regarding modalities for the conduct of the Confirmation hearing";

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ORDERS

the Registry to provide the Defence with the names of victims a/0434/09, a/0435/09, a/0436/09, a/0569/09, a/0570/09, a/0655/09, a/0656/09.

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

Judge Cuno Tarfusser
Presiding Judge

Judge Sylvia Steiner

Judge Sanji Mmasenono Monageng

Dated this Friday, 29 October 2010

At The Hague, the Netherlands

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