

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09

Date of redaction : 23 October 2026

Date of original : 11 August 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, SUDAN
THE PROSECUTOR v. ABDULLAH BANDA ABAKAER NOURAIN
and SALEH MOHAMMED JERBO JAMUS

Public Redacted version of "Report on eight applications to participate in the proceedings" (ICC-02/05-03/09-60-Conf-Exp, dated 11 August 2010)

Source: Registrar

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

REGISTRY

Registrar

Deputy Registrar

**Victims Participation and Reparations
Section**

The Registrar of the International Criminal Court (the “Court”);

NOTING the Summons to Appear for Saleh Mohammed Jerbo Jamus¹ and the Summons to Appear for Abdallah Banda Abakaer Nourain;²

NOTING rule 89(1) of the Rules of Procedure and Evidence and regulation 86(5) of the Regulations of the Court;

CONSIDERING that the charges contained in the Summons to Appear for Saleh Mohammed Jerbo Jamus³ and the Summons to Appear for Abdallah Banda Abakaer Nourain⁴ are the same as those contained in the Summons to Appear for Bahr Idriss Abu Garda;⁵

CONSIDERING that four applications were previously filed with the Chamber in the case of *The Prosecutor v. Bahar Idriss Abu Garda* but had not yet been determined at the time when the Chamber denied the Prosecutor’s Application for Leave to Appeal the “Decision on the Confirmation of Charges”;⁶

CONSIDERING that the Registry has received a further four new applications which appear to be linked to the present case;

TRANSMITS to the Chamber the following report on 8 applications for participation in the proceedings.

¹ ICC-02/05-03/09-2

² ICC-02/05-03/09-3

³ ICC-02/05-03/09-2

⁴ ICC-02/05-03/09-3

⁵ ICC-02/05-02/09-2

⁶ ICC-02/05-02/09-267

A. Background and content of this report

1. This is the second report transmitting applications for participation to the Chamber in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*.
2. The report relates to eight applications to participate in proceedings. Of these, seven are natural persons and one (a/0536/09) is an institution. It also highlights certain issues related to these applications which the Registry wishes to bring to the Chamber's attention.

B. The applications

3. Four of the applications covered by the present report (a/1646/10 to a/1649/10) are new applications. Four (a/0536/09, a/0582/09, a/0584/09 and a/0585/09) were previously submitted in the context of the case of *The Prosecutor v. Bahar Idriss Abu Garda* (the "Abu Garda case") but remained pending before the Chamber when, on 23 April 2010, the Chamber denied the Prosecutor's Application for Leave to Appeal the "Decision on the Confirmation of Charges".⁷
4. The Single Judge may find it convenient to consider the applications in groups:
 - Group A, comprising applications a/0582/09, a/0584/09 and a/0585/09, consists of three applications made by residents of Haskanita which were previously filed and subsequently rejected in the context of the Abu Garda case, and in respect of which additional information has been submitted.⁸
 - Group B, containing applications a/1646/10 to a/1649/10, consists of four new applications made by residents of Haskanita.
 - Group C comprises application a/0536/09 which is made by the Nigerian Army, and which was rejected as incomplete in the Abu Garda case, but in respect of which further information has been submitted.⁹

⁷ ICC-02/05-02/09-267

⁸ Details regarding the further information submitted are included at paragraph 11.

⁹ Details regarding the further information submitted are included at paragraphs 89.

5. In accordance with the Registry's reporting system, this report provides an overview of the eight applications transmitted, while the following documents are provided as annexes:

- **Annex 1:** a letter from the legal representatives of the applicants in Groups A and B setting out the background to those applications and the requests made by the applicants concerning disclosure.
- **Annex 2:** reports under regulation 86.5 on an applicant-by-applicant basis, comprising an overview of each of the eight applications along with boxes summarising matters contained in the actual applications and drawing attention to specific relevant issues in accordance with the instructions of the Chamber.
- **Annexes 3 to 10:** the eight applications for participation, together with supporting documentation provided by the applicants or their legal representatives.

C. Explanation of the application-by-application reports (Annex 2)

6. For explanations of the information contained in the eight application-by-applications reports which comprise Annex 2 to this report, the Registry refers the Chamber to Part B of the Registry's Report on applications for participation in proceedings from victims accepted in the case of *The Prosecutor v. Bahar Idriss Abu Garda*.¹⁰

D. Completeness of the applications

7. The Registry has reviewed the eight applications which are the subject of the present report and considers that they are all complete in that they appear to meet the requirements set out by the Chamber in its jurisprudence.¹¹

8. The Registry recalls the decision of Single Judge Monageng of 8 October 2009 in the Abu Garda case, in which she determined that application a/0536/09, made by the Nigerian Army, was incomplete because of the non-submission

¹⁰ ICC-02/05-03/09-50-Conf-Exp.

¹¹ ICC-01/04-374, paragraph 12.

by the applicant of proof of authority to represent the latter institution before the expiration of the 11 September 2009 deadline for applications to participate in the confirmation of charges hearing.

9. On 16 September 2009, subsequent to the expiration of that deadline, a document constituting such proof of authority was submitted. That document is included in the copy of application a/0536/09 which is annexed to the present report. The Registry therefore considers that application a/0536/09 is now complete.

E. Link to the case

10. The Registry has also reviewed the eight applications with a view to establishing whether they appear to be sufficiently linked to the present case to warrant filing them with the Chamber in the record of the case. As noted above, the charges in the present case are the same as those contained in the Summons to Appear for Bahr Idriss Abu Garda.¹² Consequently the Registry has been guided by Single Judge Monageng's decision of 8 October 2009 in the Abu Garda case by which six applications were rejected because they did not demonstrate a link to the crimes charged.¹³
11. The Registry notes that of those six applicants whose applications were rejected in the Abu Garda case on this basis:
 - Three applicants (a/0581/09, a/0583/09, a/0586/09) have not provided any further information to the Registry. For this reason these three applications are not transmitted to the Chamber with the present report. The legal representatives of these three applicants have indicated that no further information is expected to be received from these applicants.
 - Three of the applicants (a/0582/09, a/0584/09 and a/0585/09) provided further information subsequent to the 8 October decision,¹⁴ which according to their legal representatives demonstrates a link between the

¹² ICC-02/05-02/09-2

¹³ ICC-02/05-02/09-147-Conf, paragraph 141.

¹⁴ The further information was provided to the Registry by the applicants' legal representatives on 12 and 13 October 2009.

harm they suffered and the charges contained in the Summonses to Appear. These applications, group A as set out in paragraph 4 above, are transmitted to the Chamber together with the present report.

It appears to the Registry that the additional information provided by applicants a/0582/09 and a/0585/09 does not indicate how the crimes charged caused harm to them. However the legal representatives of these applicants have indicated that the applicants will not submit further information in respect of this issue. The Registry therefore considers it appropriate to file these applications in order that this question can be settled by the Chamber.

Regarding applicant a/0584/09, it appears to the Registry that the further information provided by him may be sufficient to link the harm alleged by the applicant to the crimes charged in the Summonses to Appear. This is because the applicant had explained in his original application that he suffered harm because of "the attack in September 2007" due to the fact that it was no longer safe to live in Haskanita without the AMIS presence.¹⁵ The supplementary information provided by this applicant identifies the September 2007 attack as the "attack on the African Union Camp [...] on Saturday 29/9/07". The updated application thus indicates that the applicant suffered harm because he was forced to leave Haskanita when, as a result of the attack on the AU base of 29 September 2007, the AU was no longer providing security to the area.

12. Regarding the new applications (a/1646/10 to a/1649/10), Group B as set out in paragraph 4 above, the Registry notes that all four applicants were employed in the AMIS base at Haskanita. Two allege that they were present on the base during the attack. All four applicants refer in their applications to harm suffered as a result of the attack against the base and its peacekeepers,

¹⁵ Applicant a/0584/09 stated that: "As a result of the attack in September 2007, I suffered harm and loss. I was forced to leave Haskanita. [REDACTED] It was not safe to stay there without the protection of AMIS." [Emphasis added]

including for example psychological trauma, loss of employment, and/or the loss of security and services which had previously been provided by AMIS. It therefore appears that the harm alleged in these four applications may have resulted from the specific incident in respect of which the suspects are charged.

13. Finally, in relation to application a/0536/09, Group C, it appears to the Registry that the harm alleged in the application is linked to the charges contained in the Summonses to Appear.

F. Protection and disclosure

14. Rule 89(1) requires that the parties receive copies of the applications transmitted to the chamber, in order that they may effectively exercise their right to reply to the applications. However the transmission of applications to the parties is subject to article 68(1) of the Statute, and the requirement that the Court take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims.
15. Under regulation 99 of the Regulations of the Registry, the Registry shall assess whether the disclosure to the Prosecutor, the defence and/or other participants of any information contained in applications for participation may jeopardize the security and safety of the victims concerned.
16. With regard to the applications not previously received by the OTP, the Registry respectfully submits the following:

ICC Case Law

17. The Registry notes the established usual¹⁶ approach of the Chamber of providing redacted applications to the defence but unredacted applications to the OTP. Thus, for example, in the Abu Garda case unredacted versions of all 106 applications for participation were provided to the OTP,¹⁷ while the

¹⁶ In one exception the Chamber ordered that some applications in a group be redacted before transmission to the prosecution, based on requests to that effect from the applicants: ICC-02/05-01/09-50; ICC-02/05-01/07-49.

¹⁷ ICC-02/05-02/09-69; ICC-02/05-02/09-108; ICC-02/05-02/09-242

defence received copies in which information which might identify the applicants or third parties had been redacted.¹⁸

18. Other Pre-Trial and Trial Chambers have established a practice of ordering the transmission of redacted applications to both parties.¹⁹

19. It thus appears that there is a consistent practice Court-wide of providing the defence with redacted copies of applications for participation at this stage, but not on the question of whether to impose the same redactions on the applications transmitted to the OTP.

Potential risks arising from disclosure to the defence

20. The risks involved in disclosing victim identities to the defence have been well recognized by the Chamber in its consistent orders for the redaction of applications before their transmission to the defence.²⁰

21. The Registry emphasizes that applications are transmitted under rule 89(1) at an early stage, before permission to participate has been granted, and for the limited purpose of providing observations on whether the requirements of article 68(3) and rule 85 are satisfied. As the Trial Chambers have noted, the question of lifting victims' anonymity and/or of providing the parties with more information from victims' applications can be left for a later stage when the scope of participation granted to accepted victim participants is considered.²¹ Such an approach protects against disclosure in respect of those persons whose applications are ultimately rejected by the Chamber, and whose ability to access protective measures through the Court is thereafter less certain.

¹⁸ ICC-02/05-02/09-71; ICC-02/05-02/09-109; ICC-02/05-02/09-241. Except in respect of dual status victims a/0655/09 and a/0656/09 whose application forms were provided in unredacted form to both the OTP and the defence: ICC-02/05-02/09-240, ICC-02/05-02/09-241, and ICC-02/05-02/09-242.

¹⁹ PTCII ICC-02/04-01/05-134; PTCIII ICC-01/05-01/08-184, paragraph 13; TCI ICC-01/04-01/06-1308, paragraph 30; TCII ICC-01/04-01/07-933, paragraph 53; TCIII ICC-01/05-01/08-699.

²⁰ ICC-02/05-74; ICC-02/05-01/07-49; ICC-02/05-01/09-38; ICC-02/05-01/09-50; ICC-02/05-01/09-85; ICC-02/05-02/09-71; ICC-02/05-02/09-109; ICC-02/05-02/09-241. Except in respect of dual status victims a/0655/09 and a/0656/09 as explained above in footnote 18.

²¹ ICC-01/04-01/06-1308, paragraphs 24 to 19; ICC-01/05-01/08-699, paragraph 31.

22. For these reasons the Registry maintains its usual recommendations for protective measures in the form of redactions applied to applications transmitted to the defence.

Potential risks of disclosure to the OTP

23. In relation to the question of disclosure to the OTP, the Registry notes the Chamber's practice of providing unredacted applications.
24. Recent experience in trial proceedings has demonstrated that unredacted applications in the possession of the OTP may become subject to its disclosure obligations concerning exculpatory material, prior witness statements or items which are material for the preparation of the Defence.²²
25. During pre-trial proceedings in the *Abu Garda case* that consequence was avoided when the Chamber held that victim applications do not constitute evidence and are not subject to the OTP's disclosure obligations.²³ However Trial Chambers I and III have adopted a different view,²⁴ and experience in the case of *The Prosecutor v Thomas Lubanga Dyilo* (the "*Lubanga case*") demonstrates how this may lead to the eventual disclosure of unredacted applications provided to the OTP during pre-trial proceedings.²⁵
26. To date, parties' requests regarding prosecution disclosure of unredacted victims' applications (in the *Lubanga case*,²⁶ and the *Abu Garda case*²⁷) have related only to the applications of dual status victims. However requests based on article 67(2) or rule 77 could be made in relation to other applications for participation, including those which have been rejected by the Chamber. A request which is not restricted to dual status victim applications has already been foreshadowed in the present proceedings.²⁸

²² Under article 67(2) of the Rome Statute and rules 76(1) and 77 of the Rules of Procedure and Evidence.

²³ ICC-02/05-02/09-T-13-ENG, pages 13 to 14.

²⁴ ICC-01/04-01/06-1637; ICC-01/05-01/08-807, paragraph 59.

²⁵ ICC-01/04-01/06-1637.

²⁶ ICC-01/04-01/06-1393.

²⁷ ICC-02/05-02/09-174.

²⁸ ICC-02/05-03/09-T-6-ENG, page 9.

27. Therefore, it is possible that unredacted applications provided to the OTP may subsequently be disclosed to the defence.
28. In considering responses to this risk, the Registry regards the factors mentioned above in paragraph 21, which relate to the sufficiency of redacted applications given the early and limited nature of rule 89(1) proceedings, as being equally relevant in relation to the transmission of applications to the OTP. The Registry also takes into account that considering the number of applicants and the scarcity of resources available for their protection, the redaction of identifying information constitutes the principal, if not the only, protective measure available to the Registry, even more so with respect to applicants [REDACTED], where the Court has no access.

Applicants' requests for disclosure or non-disclosure

29. The Registry notes that all eight applicants dealt with in the present report make request for non-disclosure in respect of the defence. None of the eight applicants make such requests in respect of the OTP. However as explained above in paragraphs 24 to 27, disclosing information to the OTP might lead to disclosure to the defence.
30. In any event the Registry considers that applications provided to the parties under rule 89(1) should be redacted even when applicants have consented to the disclosure of identifying information. This is because VPRS' experience of working with victims, intermediaries and legal representatives, has shown that applicants often do not fully understand the process of disclosure and its consequences. Applicants usually have little or no experience of judicial proceedings and often do not understand why or how information is provided to the prosecution or the defence. In view of these challenges, the VPRS routinely provides training to persons who assist victims to apply for participation, including on the conduct of ICC proceedings and the process by which victims' applications are determined. However such training is by necessity broad and basic in its nature and the VPRS has observed from its

experience that intermediaries and victims can hardly be expected to understand the full intricacies of legal proceedings before the ICC.

31. Regulation 99 of the Regulations of the Registry requires recommendations about disclosure to be based not only on requests for non-disclosure made by applicants but also on other factors.

Current disclosure status of the eight applications

32. In the context of the Abu Garda case the applications included in Group A and C in the present report (a/0536/09, a/0582/09, a/0584/09 and a/0585/09) were transmitted to the OTP in unredacted form,²⁹ pursuant to an order of Single Judge Monageng.³⁰ While these four applications have not been received by the defence in the context of the present case, the suspects' counsel has previously received redacted versions of the four applications in his capacity as counsel to Bahar Idriss Abu Garda.³¹
33. However since that transmission to the parties in the Abu Garda case, additional information has been added to each of the three applications in Group A (a/0582/09, a/0584/09 and a/0585/09). That additional information, which has not been transmitted to the parties, is included in the versions of the applications which are annexed to the present report.
34. The Applications which comprise group B have not previously been transmitted to the Chamber or the parties in any proceedings.

Recommendations regarding the eight applications

35. For the reasons explained above, the Registry considers that risks to the security of the applicants, their families or other persons may arise should identifying information contained in the eight applications be disclosed to the defence and to the OTP.
36. However the Registry also recognizes that the OTP has already received, in unredacted form, all or part of four of the applications covered by this report.

²⁹ ICC-02/05-02/09-108.

³⁰ ICC-02/05-02/09-106.

³¹ ICC-02/05-02/09-109

37. The Registry therefore recommends that redacted versions of all eight applications should be provided to the defence, and that:

- those documents already transmitted unredacted to the OTP should again be transmitted in unredacted form; while
- other documents should be transmitted to the OTP in redacted form.

38. Consistent with its established guidelines, the Registry would propose to redact any information which could be used to identify the applicant, his or her family or third persons such as intermediaries and community members referred to in the application.

G. Legal representation

39. All eight of the applicants who are the subject of this report already have chosen legal representatives.

40. The applicants in Groups A and B (a/0582/09, a/0584/09, a/0585/09 and a/1646/10 to a/1649/10) are represented by Sir Geoffrey Nice and Mr Rodney Dixon. These lawyers do not represent any other applicants in the present case. Both are on the list of counsel which is maintained by the Registry.

41. Applicant a/0536/09, the Nigerian Army, is represented by Colonel Frank Adaka, [REDACTED]

[REDACTED] Colonel Adaka is on the list of counsel which is maintained by the Registry. The Registry notes that Colonel Adaka also represents twenty-one individual victim applicants in the present case, [REDACTED]

[REDACTED]

H. Possible dual status of applicants

42. The Registry is not aware of whether any of the applicants who are the subject of this report might also be potential witnesses. Nevertheless considering the unique situation of dual status victims, the Registry submits that should any

³² [REDACTED]

of the victims approved to participate in the present case be found to have the dual status of victim and witness, particular arrangements may be made for their legal representation. Specifically, the Registry notes in light of practice up to date that the representation of dual status victims requires more experience, a greater degree of security for confidential information, and a higher level of interaction with other relevant sections of the Court, than the representation of other victims.

43. For these reasons, if and when dual status victims are identified, the Registry would recommend that an extensive review be undertaken of all relevant issues regarding the legal representation of victims in the present case.

I. Potential conflicts of interest

44. The Registry recalls that in the context of the Abu Garda case, it drew to the Chamber's attention its concerns [REDACTED].³³ The Registry maintains some concerns in relation to this matter, which it considers appropriate to draw to the Chamber's attention.

45. [REDACTED]

46. [REDACTED]

³³ [REDACTED]

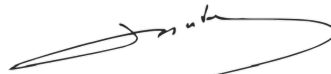
³⁴ [REDACTED]

[REDACTED] Pursuant to Rule 90(4), where a number of victims share a legal representative, steps should be taken to ensure that conflicts of interest among the victims are avoided.³⁵ [REDACTED]

47. [REDACTED]

[REDACTED]³⁶

48. The Registry is not presently in a position to confirm the truthfulness of the latter report and/or investigate into the relevant facts, nor to confirm or reject the existence of a conflict of interest [REDACTED]. Should the Single Judge require it the Registry is ready to collect further information in relation to these matters and would keep the Chamber informed of its findings.



Marc Dubuisson
Director, Division of Judicial Services on behalf
of Osvaldo Zavala Giler, Registrar

Dated this 23 October 2026

At The Hague, The Netherlands

³⁵Article 16, Code of Professional Conduct for counsel

³⁶ [REDACTED]