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Date: **12 September 2009**

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 34 Applications for
Victim Participation in the Proceedings**

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

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Legal Representatives of Applicants

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I. Background

1. On 19 August 2009, Pre-Trial Chamber I rendered a decision appointing 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”.¹
2. On 27 August 2009, the Single Judge rendered a decision inviting the parties to submit their observations on the applications for participation by 12 September 2009 and ordering the Registry, *inter alia* “to provide the Prosecution with non-redacted copies of the 34 Applications for Participation” by 28 August 2009.²
3. On 28 August 2009, the Registry provided the Prosecution with 34 non-redacted Applications³ for participation by filing the “Transmission to the Office of the Prosecutor of non-redacted copies of 34 victims’ applications for participation”.⁴
4. The Prosecution hereby submits its observations on the 34 applications for participation in the proceedings as victims.

II. Legal qualification of "Victim" and criteria for determining "Victim" status to participate in the Case

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

¹ Decision on the Designation of a Single Judge on Victims’ Issues and on the Deadline for the Filing of Applications for Participation: ICC-20/05-02/09-55

² Decision Ordering the Parties to Submit their Observations on the Applications for Victims’ Participation in the Proceedings, ICC-02/09-02/09-68

³ Applications a/0434/09, a/0435/09, a/0436/09, a/0456/09, a/0457/09, a/0458/09, a/0459/09, a/0460/09, a/0461/09, a/0462/09, a/0463/09, a/0192/09, a/0191/09, a/0190/09, a/0189/09, a/0188/09, a/0187/09, a/0185/09, a/0184/09, a/0183/09, a/0182/09, a/0181/09, a/0180/09, a/0179/09, a/0178/09, a/0177/09, a/0176/09, a/0175/09, a/0174/09, a/0173/09, a/0172/09, a/0171/09, a/0171/09.

⁴ ICC-02/05-02/09-69.

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 the jurisdiction of the Court; and (iv) a causal link between the crime and the harm must exist.⁵

6. Applicants to a case must further demonstrate a link between the harm they suffered and the crimes charged.⁶ As confirmed by the Appeals Chamber “only victims of the crimes charged may participate in the trial”.⁷
7. The Appeals Chamber defined “harm” to include “[m]aterial, physical and psychological harm are all forms of harm that fall within the rule if they are 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.” 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.”⁸ 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.⁹ Trial

⁵ See ICC-01/04-01/06-228-tEN, p. 7; ICC-01/04-101, paras 77 to 94; ICC-02/05-111-Corr, para. 2.

PTC II interpreted the criteria to be met under Rule 85 as: “(i) whether the identity of the applicant as a natural person appears duly established; (ii) whether the events described by each applicant constitute a crime within the jurisdiction of the Court; (iii) whether the applicant claims to have suffered harm; and (iv) most crucially, whether such harm appears to have arisen ‘as a result’ of the event constituting a crime within the jurisdiction of the Court.”, ICC-02/04-01/05-252, para. 12. PTCII further determined that harm would be held to have occurred “as a result of” the alleged incident when “the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”, ICC-02/04-01/05-252, para. 14.

⁶ See, ICC-01/04-01/06-1432 OA9 OA10, at paras 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.

⁷ ICC-01/04-01/06-1432 OA9 OA10, para. 62.

⁸ ICC-01/04-01/06-1432 OA9 OA10, at para 32.

⁹ 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.”

Chamber I in the Lubanga case, guided by this judgement, stated that “[i]ndirect victims must establish that, as a result of their relationship with the direct victim¹⁰, the loss, injury, or damage suffered by the latter gives rise to harm to them. It follows that the harm suffered by indirect victims must arise out of the harm suffered by direct victims, brought about by the commission of the crimes charged.”¹¹

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”.¹²

III. Completeness of the applications

9. Applicants must provide adequate proof of identity to prove their status as natural persons. This requirement has been put in place by all Chambers as a minimum safeguard to guaranteeing the accuracy of the applications.¹³

¹⁰ The Trial Chamber defined direct victims to be children under the age of 15 that were conscripted or enlisted into the ranks of the UPC or used to participate actively in hostilities (see ICC-01/04-01/06-1813, at para 48).

¹¹ ICC-01/04-01/06-1813, at para 49.

¹² 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,

(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.”

¹³ 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.

10. In addition, the criteria for completeness have been established by Pre-Trial Chamber I in its 17 August 2007 Decision, which serves as further guidance in assessing completeness of applications.¹⁴
11. Furthermore, 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 further held that as for the evidence required “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.”¹⁵

IV. The Prosecution’s Observations

12. The Prosecution submits that all applicants *prima facie* meet the necessary requirements for victim participation. All the applicants are natural persons pursuant to Rule 85 (a) and have submitted sufficient proof to establish their identities.¹⁶
13. Further, all applicants suffered either direct or indirect harm as a result of a crime for which the suspect, Abu Garda, is charged. According to the harm suffered, the applicants can be divided into two groups, (i) the first encompassing AMIS

¹⁴ ICC-01/04-374, para 12.

¹⁵ Judgment of the Appeals Chamber ICC-02/04-01/05-371, 23 February 2009, paras 1 and 2.

¹⁶ Applicants a/0434/09, a/0435/09, a/0436/09, a/0456/09, a/0457/09, a/0458/09, a/0462/09, a/0463/09 submitted identity documents with their applications; all other applicants provided birth certificates to establish their identity.

peacekeeping personnel present during the attack on the MGS Haskanita¹⁷ and (ii) family members of AMIS peacekeeping personnel killed during the attack.¹⁸

14. The first group of applicants were AMIS peacekeeping personnel who suffered direct harm as a result of the unlawful attack on them at the MGS Haskanita for which the suspect is charged. It is alleged that in the course of this attack, these Applicants lost personal belongings. One of the applicants was wounded during the attack¹⁹ while the others claim to suffer emotional harm as a result of witnessing the attack.²⁰
15. The second group of victims consists of the children²¹ and wives of two deceased AMIS peacekeepers. The applicants invoke emotional harm as a result of the death of their close family members. This indirect but personal harm falls within the definition of “harm suffered” and makes the family members eligible for participation status. All relevant applicants have attached a proof of relationship in the form of a district court decision establishing the applicants’ status as heirs of the deceased relative.
16. Therefore, the Prosecution submits that each of the applicants has met the criteria for qualification as a victim pursuant to Rule 85 of the Rules.

V. Conclusion

17. For the reasons outlined above, the Prosecution is satisfied that applicants:
a/0434/09, a/0435/09, a/0436/09, a/0456/09, a/0457/09, a/0458/09, a/0459/09, a/0460/09,

¹⁷ Applicants a/0435/09, a/0436/09 and a/0456/09.

¹⁸ Applications a/0434/09, a/0457/09, a/0458/09, a/0459/09, a/0460/09, a/0461/09, a/0462/09, a/0463/09, a/0192/09, a/0191/09, a/0190/09, a/0189/09, a/0188/09, a/0187/09, a/0187/09, a/0185/09, a/0184/09, a/0183/09, a/0182/09, a/0181/09, a/0180/09, a/0179/09, a/0178/09, a/0177/09, a/0176/09, a/0175/09, a/0174/09, a/0173/09, a/0172/09, a/0171/09 and a/0171/09.

¹⁹ Applicant a/0436/09.

²⁰ a/0435/09, a/0436/09, a/0456/09.

²¹ The Prosecution notes that all children that were minors at the time of application are either represented by their mother (a/0459/09, a/0460/09 and a/0461/09 are represented by their mother a/0457/09) or an older sibling (a/0192/09 represents a/0175/09 to a/0183/09 and a/0185/09).

a/0461/09, a/0462/09, a/0463/09, a/0192/09, a/0191/09, a/0190/09, a/0189/09, a/0188/09, a/0187/09, a/0187/09, a/0185/09, a/0184/09, a/0183/09, a/0182/09, a/0181/09, a/0180/09, a/0179/09, a/0178/09, a/0177/09, a/0176/09, a/0175/09, a/0174/09, a/0173/09, a/0172/09, a/0171/09, a/0171/09 have met the criteria to be recognised as victims in the case of *The Prosecutor v. Bahr Idriss Abu Garda* .



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Prosecutor

Dated this 12th day of September 2009
At The Hague, The Netherlands