



Original: **English**

No.: ICC-02/05-02/09
Date: **30 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

**Defence's Observations on 52 Applications for Victim Participation in the
Proceedings**

Source: Defence

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

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**Unrepresented Applicants
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I. Background

1. On 19 August 2009, Pre-Trial Chamber I appointed Judge Sanji Mmasenono Monagenge as Single Judge with responsibility for all matters concerning “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 issued a decision inviting the parties to submit their observations on 34 applications for victims’ participation in the proceedings.²
3. On 11 September 2009, the Defence submitted its observations on the 34 applications for victims’ participation in the proceedings, raising no objections to the applications in question.³ The Defence notes that all 34 applications were filed by either former AMIS personnel at MGS Haskanita, or family members of deceased AMIS personnel.⁴
4. On 25 September 2009, the Single Judge issued a “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, holding that the 34 applicants “fulfil the criteria as set out in rule 85(a) of the Rules and should, therefore, be recognized as victims for the purpose of their participation at the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*.”⁵
5. On 16 September 2009, the Single Judge issued a decision inviting the parties to submit, by 30 September 2009 at 16h00, their observations on an additional 52 applications for victims’ participation in the proceedings.⁶
6. On 17 September 2009, the Registry transmitted to the Defence 52 redacted applications for participation.⁷
7. The Defence hereby submits its observations on the 52 victims’ applications for participation in the proceedings.

II. Determination of “Victim” status to participate in the Case

¹ ICC-02/05-02/09-55

² ICC-02/05-02/09-68

³ ICC-02/05-02/09-96

⁴ ICC-02/05-02/09-121, para. 15

⁵ ICC-02/05-02/09-121, para. 101

⁶ ICC-02/05-02/09-106

⁷ ICC-02/05-02/09-109

8. According to Rule 85(a) of the Rule of Procedure and Evidence (the “Rules”), the term “victims” is reserved for “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.” In order for an individual to qualify for victim status: “(i) the applicant must be a natural person; (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.”⁸
9. In addition, under Rule 85(b) of the Rules, “[v]ictims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.”
10. As regards the third requirement for an individual to qualify as a victim—harm resulting from the commission of a crime within the jurisdiction of the Court—the Single Judge noted

that not every incident alleged by an applicant, which falls within the meaning of articles 5 to 8 of the Statute fulfills this requirement. In this regard, the Single Judge emphasizes the importance of establishing a link between the alleged incident and the present case.⁹

11. Further, the Single Judge made clear that, at this stage of the proceedings, an incident alleged by an applicant “must relate to the offences alleged”, which are presently “delineated by the Prosecution’s Charging Document.”¹⁰ The Single Judge cited to the Appeals Chamber’s explanation that: “[Whilst the ordinary meaning of rule 85, does not per se limit the notion of victims to the victims of the crimes charged, the effect of article 68(3) of the Statute is that the participation of

⁸ Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, para. 11, citing ICC-02/05-121, p. 8; ICC-01/04-101, para. 79; ICC-01/04-01/06-601, p. 9; ICC-01/04-01/07-579, para. 65.

⁹ Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, para. 12, citing ICC-02/05-121, p. 8; ICC-01/04-101, para. 94; ICC-01/04-01/06-601, p. 9; ICC-01/04-01/07-579, para. 65; ICC-02/04-101, para. 11; ICC-01/05-01/08-320; ICC-01/04-01/06-1432, para. 58

¹⁰ Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, para. 12. The Defence notes that the Prosecution likewise concurs that “[t]he charges brought forward against the suspect are spelled out in the ‘Document Containing the Charges submitted pursuant to Article 61(3) of the Statute.’” ICC-02/05-02/09-100, para. 9

victims in the trial proceedings pursuant to the procedure set out in rule 89(1) of the Rules, is limited to those victims who are *linked to the charges*.”¹¹

III. Defence Observations

12. The Defence submits that the applicants can be divided into four groups based on the type of harm suffered: (i) AMIS peacekeeping personnel present during the attack on MGS Haskanita¹²; (ii) family members of AMIS peacekeeping personnel killed or injured during the attack on the MGS¹³; (iii) villagers from the village of Haskanita who allege looting or destruction of their property, detention, or physical or mental harm perpetrated by “rebels”¹⁴; and (iv) an organization whose property was present at MGS Haskanita during the attack on the MGS, and which alleges loss or damage to its medical equipment, communication equipment, “sundry clothing and stores.”¹⁵
13. The Defence has no objections to the *prima facie* qualification of the first and second groups of applicants as victims for the purposes of the Pre-Trial Stage of the Case.
14. The Defence respectfully requests that the Chamber reject the applications of the third group of applicants because these applications fail to allege an incident “relate[d] to the offences alleged”, the parameters of which are “delineated by the Prosecution’s Charging Document.”¹⁶ The Defence notes that 5 of the 6 applicants in the third group of applicants allege at least some harm stemming from an alleged attack on and looting of the *village* of Haskanita that allegedly took place in September 2007.¹⁷ The *only allegations* set out in the Prosecution’s Charging Document concern an alleged attack on and alleged pillaging of *Military Group*

¹¹ Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, para. 12, quoting Appeals Chamber Judgment, 11 July 2008, ICC-01/04-01/06-1432, para. 58.

¹² 11 applicants fall within this category.

¹³ 34 applicants fall within this category.

¹⁴ Applicants a/0581/09, a/0582/09, a/0583/09, a/0584/09, a/0585/09, and a/0586/09.

¹⁵ Applicant a/0536/09.

¹⁶ Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, para. 12.

¹⁷ Applicants a/0581/09, a/0582/09, a/0584/09, a/0585/09, and a/0586/09

Site (MGS) Haskanita.¹⁸ There are no allegations contained within the Prosecution's Charging Document alleging that Mr Bahar Idriss Abu Garda, individually or jointly with any other parties, perpetrated an attack on the village of Haskanita, the villagers of Haskanita, destroyed civilian structures within the village of Haskanita, or carried out looting of civilian property within the village of Haskanita, on 29 September 2007.

15. The Defence further notes that all 6 of the applicants in the third group of applications also allege harm stemming from alleged incidents that took place prior to or after the attack on MGS Haskanita on 29 September 2007¹⁹ — the relevant date and time period for the alleged offenses identified by the Prosecution in its Document Containing the Charges.²⁰ As such, any harm stemming from incidents that fall outside of this date and time period are highly unlikely to be *related to* the offences alleged against Mr Abu Garda, a necessary requirement for qualification as a victim.²¹
16. The Defence has significant concerns regarding the application identified in the fourth group above, and respectfully requests that the Chamber carefully review that application to ascertain whether the applicant organization *prima facie* meets the Rule 85(b) requirement, namely that the property alleged to have sustained direct harm was “dedicated to religion, education, art or science or charitable purposes.” Based on the Prosecution's Document Containing the Charges, the Defence has no knowledge of the presence of the property of an organization at MGS Haskanita on 29 September 2007 that was dedicated to any of the purposes set out in Rule 85(b) of the Rules.

¹⁸ ICC-02/05-02/09-91-Conf.

¹⁹ Applicant a/0581/09 states that the “[t]he rebels were in control of the Haskanita area for a *long period before the attack* in September 2007” during which time they allegedly demanded payments from shopkeepers; applicant a/0582/09 appears to state that *after* the attack on MGS Haskanita the applicant was imprisoned by the rebels for a number of days; applicant a/0583/09 relates an attack by rebel forces while the applicant was fleeing the village of Haskanita “*two weeks before* the attack on the African Union base in September 2007”; applicant a/0584/09 states that he was detained and tortured by persons from the “Manni faction” *in 2004*; applicant a/0585/09 states that he was “severely beaten and tortured by rebel forces” *in 2004*; and applicant a/058b/09 states that the “rebel forces had opened fire on me a *few days before* the attack in September 2007.”

²⁰ ICC-02/05-02/09-91-Conf.

²¹ See, e.g., ICC-01/04-01/06-1432, para. 58: “[W]hilst the ordinary meaning of rule 85, does not per se limit the notion of victims to the victims of the crimes charged, the effect of article 68(3) of the Statute is that the participation of victims in the trial proceedings pursuant to the procedure set out in rule 89(1) of the Rules, is limited to those victims who are *linked to the charges*.”

IV. Conclusion

17. For the reasons outlined above, the Defence has no objections to the applications of the 11 AMIS peacekeeping personnel present during the attack on MGS Haskanita, or the 34 applications of the family members of AMIS peacekeeping personnel killed or injured during the attack on the MGS. For the reasons detailed above, the Defence respectfully requests that the Single Judge reject the applications of applicants a/0581/09, a/0582/09, a/0583/09, a/0584/09, a/0585/09, and a/0586/09, and further submits that, based upon the information currently provided, applicant a/0536/09 does not satisfy the requirements that must be met in order for the application to be granted. Accordingly, the Defence submits that application a/0536/09 also be denied.



Mr. Karim A. A. Khan

Lead Counsel for Bahar Idriss Abu Garda

Dated this 30th Day of September 2009

At The Hague, The Netherlands