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PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng

SITUATION IN DARFUR, THE SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. BAHAR IDRIS ABU GARDA***

Public Document

**Defence's Reply to the 20 Applications for Victims' 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
(Participation/Reparation)**

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**Victims Participation and Reparations
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Other

I. Background

1. On 19 August 2009, Pre-Trial Chamber I appointed Judge Sanji Mmasenono Monageng 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 29 January 2010, the Single Judge issued a decision inviting the parties to file their replies to the 20 Applications for Victims’ Participation in the Proceedings by 23 February 2010 at 16h00.²
3. On 2 February 2010, the Registry transmitted to the Defence the 20 Applications for Victims’ Participation in the Proceedings.³
4. On 8 February 2010, Pre-Trial Chamber I handed down its “Decision on the Confirmation of Charges”, in which it “DECLINE[D] to confirm the charges against Mr Bahar Idriss Abu Garda.”⁴
5. The Defence hereby submits its reply to the 20 Applications for Victims’ Participation in the Proceedings.

II. Observations on the 20 Victims’ Applications

6. Noting that in all decisions of Pre-Trial Chamber I related to victims’ applications for participation, the Chamber has addressed the limited issue of the authorization of such prospective victims to participate in “the proceedings relating to the Abu Garda case,”⁵ and that the Single Judge has only authorized the participation of applicants as victims for the purposes of “the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*”⁶;
7. Further noting that the 20 Applicants “request to be granted the right to participate in the proceedings in the Abu Garda Case as victims”⁷;

¹ ICC-02/05-02/09-55

² ICC-02/05-02/09-240

³ ICC-02/05-02/09-241

⁴ ICC-02/05-02/09-243-Conf, para. 97

⁵ See, e.g. ICC-02/05-02/09-55, p. 5; ICC-02/05-02/09-68, p. 3; ICC-02/05-02/09-106, p. 3

⁶ ICC-02/05-02/09-121, p. 31; ICC-02/05-02/09-147-Conf, p. 41

⁷ ICC-02/05-02/09-240, p. 3

8. Observing that in line with the holding of the Appeals Chamber, victims' participation under Article 68(3) of the Statute "can take place only within the context of judicial proceedings"⁸;
9. Further observing that no charges were confirmed by the Pre-Trial Chamber in its Decision on the Confirmation of Charges⁹ and that no applications for leave to appeal the confirmation decision are before the Pre-Trial Chamber;
10. The Defence therefore submits that all victims' applications currently pending before the Single Judge for participation in the pre-trial stage of this case are moot.

III. Alternative Observations on the 20 Victims' Applications

11. Notwithstanding the above submissions, the Defence observes that for the purposes of the pre-trial stage of the current proceedings in this case, the following applicants *prima facie* satisfy the requirements of Rule 85(a) of the Rules of Procedure regarding the definition of a "victim": a/0655/09, a/0656/09, a/0736/09, a/0737/09, a/0738/09, a/0739/09, a/0741/09, a/0742/09, a/0743/09, a/0744/09, a/0745/09, a/0746/09, a/0747/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, a/0754/09.
12. As regards applicant a/0740/09, the Defence notes that question 23 of the application inquires as to whether the applicant received assistance in filling out the application. This question has not been answered. Given the apparent differences in handwriting contained in questions 26, 30 and 32 of the application, the single judge may be left uncertain as to whether such assistance was obtained, and if so by whom. If the learned Single Judge views this as a material omission, the Defence would invite the learned judge to clarify this issue, perhaps with the assistance of the Victims and Witness Unit (VWU), before considering the merits of said application.
13. As regards applicant a/0755/09, the Defence submits that the applicant does not *prima facie* meet the Appeals Chamber's requirement that an indirect victim allege

⁸ ICC-01/04-556, para. 45

⁹ ICC-02/05-02/09-243-Conf, para. 97

a “close personal relationship”¹⁰ with the direct victim of the crimes alleged to have occurred at MGS Haskanita on 29 September 2007. Applicant a/0755/09 claims a connection to a direct victim of crimes alleged to have occurred at MGS Haskanita based on relationships of friendship, co-habitation and occasional financial assistance¹¹, not bonds like those linking parent and child, which the Appeals Chamber cited as an example of a “close personal relationship.”¹² The Defence submits that unlike close familial bonds, *unsubstantiated* claims of a relationship between an indirect and direct victim based merely on friendship, monetary assistance, or a combination of the two, cannot *prima facie* constitute the “close personal relationship” required for satisfaction of Rule 85(a).

14. The Defence therefore requests that the Single Judge deny applicant a/0755/09 status as a victim in the current proceedings for the Abu Garda case.

Respectfully Submitted,



Mr. Karim A. A. Khan

Defence Counsel for Bahar Idriss Abu Garda

Dated this 23rd Day of February 2010

At The Hague, The Netherlands

¹⁰ ICC-01/04-01/06-1432, para. 32

¹¹ ICC-02/05-02/09-241-Conf-Exp-Anx20, questions 26 and 30

¹² ICC-01/04-01/06-1432, para. 32