

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 September 2011

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernandez de Gurmendi

SITUATION IN DARFUR, SUDAN

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

Confidential

Ex parte, only available to the Registry

With 3 Annexes Confidential *Ex parte*, only available to the Registry

Report on six applications to participate in the proceedings

Source: Registry

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

The Registrar of the International Criminal Court ("the Court");

NOTING Pre-Trial Chamber I's Decision on the Confirmation of Charges¹ and the Presidency's Decision constituting Trial Chamber IV (hereinafter, "the Chamber") and referring to it the case of *The Prosecutor v. Abdallah Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (hereinafter "*the Banda and Jerbo case*");²

NOTING article 68(3) of the Rome Statute, rule 89(1) of the Rules of Procedure and Evidence and regulation 86(5) of the Regulations of the Court;

CONSIDERING that 89 victims were approved by Pre-Trial Chamber I to participate in pre-trial proceedings in the present case;³

CONSIDERING that the Registry has received a further 5 applications which appear to be linked to the present case, as well as supplementary information on one application⁴ previously rejected by Pre-Trial Chamber I in the case *the Prosecutor v. Bahar Idriss Abu Garda* ("*the Abu Garda Case*") as it was deemed incomplete;⁵

TRANSMITS to the Chamber the following report on 6 applications for participation in the proceedings.

¹ ICC-02/05-03/09-121-Conf-Corr.

² ICC-02/05-03/09-124.

³ ICC-02/05-03/09-89

⁴ a/0543/09

⁵ ICC-02/05-02/09-147-Conf. In its Decision on Victims' Participation at the Hearing on the Confirmation of the Charges, Pre-Trial Chamber I decided that the 87 applicants accepted in the *Abu Garda* case were granted the status of victims of the Case, on the basis that "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." ICC-02/05-03/09-89, para.8.

1 Background and content of this report

1. This is the first report transmitting applications for participation to the Chamber in the *Banda and Jerbo* case.
2. The report relates to 6 applications to participate in proceedings. All are natural persons.
3. The Registry notes that pursuant to a decision of Pre-Trial Chamber I,⁶ 89 victims were accepted to participate during the pre-trial phase of the case. The Registry would like to draw to the Chamber's attention that, in view of Regulation 86(8) of the Regulations of the Court, and unless the Chamber orders otherwise, the Registry assumes that the victims authorized to participate at the pre-trial stage of the case are authorized to participate during the trial phase of the case. The Registry remains at the Chamber's disposal, however, should the Chamber wish these applications to be filed again for its consideration.

2 Overview of applications relating to the present case

4. The 6 applications have been filed with the Chamber. The present report serves to transmit to the Chamber the reports which are required by regulation 86(5) of the Regulations of the Court.

⁶ ICC-02/05-03/09-89

5. All the applications that are the subject of this report appear to the Registry to be linked to the charges in the case, as set out in the Decision on the Confirmation of Charges.⁷
6. In accordance with the email sent by the Chamber on 6 September 2011,⁸ unless otherwise instructed the Registry is filing only applications that appear to be complete, as assessed by reference to the relevant legal texts and the previous decisions of the Pre-Trial Chamber in relation to this case.
7. This report provides an overview of the 6 applications transmitted, while the following documents are provided as annexes:
 - Annex 1: An explanation of the contents of the individual assessment reports which constitute Annex 2.
 - Annex 2: Reports under regulation 86(5), providing the Registry's initial assessment of each application (as explained in Annex 1).
 - Annex 3: Letter sent by Sir Jeffrey Nice and Mr. Rodney Dixon in relation to two individual applications.

B. Reports under rule 85

8. The Registry has, for each application covered by this report, undertaken an initial assessment of compliance with the requirements of rule 85, using a template approved by the Chamber by email sent to the Registry on 6 September 2011.⁹ The reports which constitute Annex 2 show the individual results of these

⁷ ICC-02/05-03/09-121-Corr-Red. These are, namely, violence to life under article 8(2)(c)(i) of the Statute, intentionally directing attacks against a peacekeeping mission under article 8(2)(e)(iii) of the Statute, and the charge of pillage under article 8(2)(e)(v) of the Statute.

⁸ Email from Legal Officer, Trial Chamber IV, to Associate Legal Officer, Division of Court Services.

⁹ E-mail from Legal Officer, Trial Chamber IV, to Associate Legal Officer Division of Court Services.

assessments, whether the requirements of rule 85 are demonstrated and any legal issues which are apparent, as well as summaries of the applications.

9. In relation to each application, the Registry indicates either that:

(a) The application appears to comply with the requirements of rule

85; or

(b) Unclear: the Registry is not in a position to make an assessment without further guidance from the Chamber on specific matters that are indicated.

10. As regards the second category of "unclear", the Registry would in particular draw the Chamber's attention to the explanation set out in Annex 1 concerning the analysis of internal inconsistencies, and what the Registry considers will render an application complete or incomplete.

11. The Registry also draws the Chamber's attention to the fact that, with regard to some of the applications, two application forms have been submitted, the second one having been submitted following the Registry's request for supplementary information.¹⁰ In such cases information contained in both forms has been assessed.

E. Dual status applicants

12. The Registry notes that at the pre-trial stage 7 victims fell into this category.¹¹ The Registry would like to draw to the Chamber's attention the fact that it is not aware of any updates on this information, nor would it be aware whether any of the applicants who are the subject of this report would fall into this category.

¹⁰ See: a/2868/10 and a/0657/09

¹¹ ICC-02/05-03/09-89, para. 56.

F. Legal representation

13. The Registry notes that the applicants dealt with in this report have indicated their wish to be represented either by Sir Geoffrey Nice QC and Mr. Rodney Dixon or by Mr. Akin Akinbote.
14. On 13 September 2011, in accordance with the Chamber's instructions, the Registry appointed common legal representatives to represent all the victims in the proceedings.¹² Should these applicants be accepted to participate, the Registry would appoint the common legal representatives.

G. Protection and transmission to the parties

15. The Registry notes the approach taken by Pre-Trial Chamber I, which ordered redacted versions of applications to be provided to the defence and unredacted versions to the Prosecutor.¹³ The Registry notes however that all the Trial Chambers to date have established a practice of ordering the transmission of redacted applications to both parties.¹⁴ The Registry will therefore await the Chamber's instructions in this regard.
16. The Registry further notes that all the applicants dealt with in the present report request non-disclosure in respect of the defence, and that one applicant also requested non-disclosure to the Prosecution¹⁵. The Registry notes that the redaction of identifying information constitutes the principal, if not the only,

¹² ICC-02/05-03/09-215

¹³ ICC-02/05-03/09-56.

¹⁴ 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.

¹⁵ Applicant a/0658/09.

protective measure available to the Registry, even more so with respect to applicants located on the territory of Sudan, where the Court has no access.¹⁶

17. The Registry has prepared redacted versions of all 6 applications and stands ready to transmit them to the parties in accordance with rule 89(1) of the Rules of Procedure and Evidence, should the Chamber so order. Consistent with its established guidelines, and in consultation with the Victims and Witnesses Unit where necessary, the Registry proposes 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.

H. Further filing of applications

18. The Registry further wishes to inform the Chamber that it has received a small number of other applications which are currently incomplete and for which missing documents or information have been requested and are awaited. Unless otherwise instructed by the Chamber, the Registry will continue to file any completed applications received on a regular basis.



Marc Dubuisson, Director of the Division of Court Services

as per delegation of
Silvana Arbia, Registrar

Dated this 16 September 2011
At The Hague, The Netherlands

¹⁶ The Registry further detailed its position regarding the transmission of redacted applications to both parties to the Pre-Trial Chamber in its "Report on eight applications to participate in the proceedings", ICC-02/05-03/09-60-Conf-Exp.