

**Cour
Pénale
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**International
Criminal
Court**

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TRIAL CHAMBER IV

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

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

Public Document

**Prosecution's Observations on 6 Victims' Applications for
Participation in the Proceedings**

Sources: Office of the Prosecutor

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

The Office of the Prosecutor

Mr. Luis Moreno – Ocampo
Ms. Fatou Bensouda
Mr. Ade Omofade

Counsel for the Defence

Mr. Karim A.A. Khan QC
Mr. Nicholas Koumjian

Legal Representatives of the Victims

Ms. Hélène Cissé
Mr. Jens Dieckmann

Legal Representatives of the Applicants

Mr. Akin Akinbote
Sir Geoffrey Nice &
Mr. Rodney Dixon

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section Others

I. Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and Trial Chamber IV’s (“Chamber”) “Corrigendum to Decision on the Registry Report on six applications to participate in the proceedings”¹ (“Decision”), the Prosecution submits its observations on six applications for participation in the trial proceedings in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (the *Banda & Jerbo* case”).

2. Four of the Applicants seek recognition as a consequence of their relationship with persons who died at MGS Haskanita as a result of the alleged crimes. The redactions applied to the applications of Applicants a/0543/09, a/0657/09, a/0658/09 and a/2868/10 render it difficult to assess whether they meet all the requirements for participation. However, from the non-redacted portions of their applications, these Applicants appear to meet the requirements for participation. Accordingly, the Prosecution leaves it to the Chamber to determine whether they provided adequate proof of relationship with the deceased persons and if not, whether to request that they provide additional documents or information.

3. As regards Applicants a/6001/11 and a/6002/11, the Prosecution submits that they should be requested to provide further clarifications and/or submit further information and documents to establish a causal link between the harm they allegedly suffered and the crimes allegedly committed at the MGS Haskanita on 29 September 2007.

II. Background

¹ ICC-02/05-03/09-231-Corr.

4. On 16 September 2011, the Registry filed with the Chamber six applications to participate in the proceedings.²

5. On the same day, the Registry filed its confidential *ex parte* "Report on six applications to participate in the proceedings", informing the Chamber that it had received five applications which appeared to be linked to the present case, as well as supplementary information on one application previously rejected by Pre-Trial Chamber I in the case *The Prosecutor v. Bahar Idriss Abu Garda* (the *Abu Garda* case), because it was considered to be incomplete.³

6. On 28 October 2011, the Chamber issued its Decision in which it, *inter alia*, ordered the Prosecution and the Defence to file their observations on the six applications within 21 days of notification of the redacted applications.⁴

7. On 3 November 2011, the Registry transmitted redacted versions of the six applications to the Prosecution.⁵

III. Analysis Of The Applications

8. The Prosecution reincorporates here its previous observations concerning the legal criteria for victims' participation in the proceedings.⁶

Applicant a/0543/09

9. Applicant a/0543/09 claims to be a brother of the deceased person and previously applied to participate in the *Abu Garda* case. However, the Single Judge in that case denied the application on the basis that she "[was] not convinced that the requisite

² ICC-02/05-03/09-216.

³ ICC-02/05-03/09-217.

⁴ ICC-02/05-03/09-231-Corr, page 17.

⁵ ICC-02/05-03/09-244.

⁶ ICC-02/05-03/09-64 and ICC-02/05-03/09-69.

relationship between the Applicant and the deceased person has been satisfactorily established, since the information appended to the application form has been filled in by the VPRS and [was] not signed by the widow or by the Applicant.”⁷

10. The Single Judge’s remarks, while not necessarily binding on this Court, are correct and should form a basis for considering the Applicant’s second attempt to participate, now in the *Banda and Jerbo* case. The Prosecution observes that throughout the application and the supplementary information appended thereto (marked in the annex as “affidavit of relationship”), references to the deceased person’s name are redacted in such a manner that it is difficult to assess whether the Applicant provided sufficient proof of relationship between himself and the deceased person.⁸ That said, from the non-redacted portions, this Applicant appears otherwise to meet the requirements for participation. The Prosecution also observes that one of the redacted supporting documents is a Death Certificate that appears to have been issued by AMIS, and therefore to confirm that that the deceased person was one of the deceased AMIS personnel.

11. Therefore the Prosecution leaves it to the Chamber to make a determination as to whether the Applicant has now provided adequate proof of relationship with the deceased person, or whether additional documents or information are required.

Applicant a/0657/09

12. This Applicant appears to have applied previously to participate in the *Abu Garda* case, but to have presented an incomplete application. In the new standard

⁷ ICC-02/05-03/09-147-Red, paragraph 14.

⁸ In its Decision of 28 October 2011, the Chamber concurred with the reasoning of other Chambers that “the scope of [...] redactions cannot exceed what is strictly necessary in light of the applicant’s security situation and must allow for a meaningful exercise by the prosecution and the defence of their right to reply to the application for participation”.(ICC-02/05-03/09-231-Corr, paragraph 35) See also, among other authorities, ICC-01/04-01/06-1308, paragraph 27; ICC-01/04-01/07-933-tENG, paragraphs 52; ICC-01/05-01/08-699, paragraph 26.

application form provided by Applicant a/0657/09, she now appears to clarify the date of birth which was cited in her first standard application form. However, the documents appended to this new standard application form (marked in annexes as “statutory declaration of age referring to the applicant”, “document confirming the state of origin of the applicant” and “identity card of the applicant”), are redacted in such a manner that renders it difficult to assess whether the Applicant has now provided sufficient proof of her identity.

13. Furthermore, the references to the deceased person’s name throughout both the standard application forms and the supplementary information appended to the first standard application form (marked in the annex as “declaration as to next of kin form”) are redacted in such a manner that it is difficult to assess whether the Applicant provided sufficient proof of relationship between herself and the deceased person.

14. This notwithstanding, from the non-redacted portions of the application and supplementary information, this Applicant appears otherwise to meet the requirements for participation. The Prosecution also observes that one of the redacted supporting documents is a Death Certificate that appears to have been issued by AMIS, and therefore to confirm that that the deceased person was one of the deceased AMIS personnel. Therefore, the Prosecution leaves it to the Chamber to make a determination as to whether the Applicant has now provided adequate proof of identity and relationship with the deceased person, or whether additional documents or information are required.

Applicant a/0658/09

15. This Applicant appears to have applied previously to participate in the *Abu Garda* case, but to have presented an incomplete application. The VPRS’s

“Supplementary information” form dated 13 December 2010 indicates that the Applicant clarified his correct name in a separate supplementary information form, dated 20 November 2010. However, the latter form, as well as the documents appended to the application as supplementary information (marked in annexes as “statutory declaration of age referring to the applicant” and “document confirming the state of origin of the applicant”), are redacted in such a manner that renders it difficult to assess whether the Applicant provided sufficient proof of identity.

16. The VPRS’s “Supplementary information” form dated 13 December 2010 also indicates that the relevant documents attached thereto clarify the Applicant’s relationship with the deceased person. However, this supplementary information (marked in the annex as “declaration as to next of kin form”), as well as references to the name of the deceased person, are redacted throughout the application in such a manner that it is difficult to assess whether the Applicant provided sufficient proof of relationship between himself and the deceased person.

17. Furthermore, the “Supplementary information” indicates that the Applicant also filled in and submitted a new standard application form in which he provided additional information. However, no such form was appended to the application transmitted to the Prosecution. The Prosecution therefore suggests that the VPRS be invited to also transmit this new standard application form to the Prosecution.

18. Notwithstanding the above, from the non-redacted portions of the application and supplementary information, this Applicant appears otherwise to meet the requirements for participation. The Prosecution also observes that one of the redacted supporting documents is a Death Certificate that appears to have been issued by AMIS, and therefore to confirm that that the deceased person was one of the deceased AMIS personnel. Therefore, the Prosecution leaves it to the Chamber

to make a determination as to whether the Applicant has now provided adequate proof of identity and relationship with the deceased person, or whether additional documents or information are required.

Applicant a/2868/10

19. This Applicant appears to have applied previously to participate in this case, but to have presented an incomplete application. The identity document appended to the application as supplementary information (marked in annex as “passport of the applicant”) is redacted in such a manner that it is difficult to assess whether the Applicant provided sufficient proof of identity.

20. The redactions to the supplementary information appended to the first application (marked in annexes as “passport of the deceased applicant”, “sworn affidavit on declaration of age”, “letter of condolence”, “next of kin letter”, “sworn affidavit of next of kin”, “declaration as to next of kin”) similarly render it difficult to assess whether the Applicant provided sufficient proof of relationship between herself and the deceased person. The VPRS’s “Supplementary information” form, dated 14 September 2011, indicates that the unredacted versions of the documents listed above, the copy of the deceased’s passport and death certificate, are appended to application a/0557/09.⁹ However, the redactions applied to the name of the deceased person throughout the present application render it difficult to establish his identity and verify whether it corresponds to that of the deceased person whose documents are appended to application a/0557/09.

21. That said, from the non-redacted portions of the application and supplementary information, this Applicant appears otherwise to meet the requirements for participation. The Prosecution also observes that one of the redacted supporting

⁹ Pre-Trial Chamber I recognised Applicant a/0557/09 (widow of an AMIS soldier who was killed during the attack at MGS Haskanita on 29 September 2007) as a victim for the purpose of participating in the pre-trial stage of the *Banda and Jerbo* case. (ICC-02/05-03/09-89)

documents is a Death Certificate that appears to have been issued by AMIS, and therefore to confirm that that the deceased person was one of the deceased AMIS personnel. Therefore, the Prosecution leaves it to the Chamber to make a determination as to whether the Applicant has now provided adequate proof of identity and adequate proof of relationship with the deceased person, or whether additional documents or information are required.

Applicants a/6001/11 and a/6002/11

22. Both Applicants claim to have been present at MGS Haskanita when the attack occurred. The redactions applied to the documents, which appear to contain the names of the Applicants, as well as to the national identity cards appended to the applications (marked in annexes as "identity card of the applicant"), render it impossible to establish their identities or assess whether they provided sufficient proof of their identities.

23. More importantly, the Applicants provided no information or document, such as an employment contract or employee's identity card, confirming that they were indeed employed as non-AMIS personnel at the MGS Haskanita on 29 September 2007, or at any point in time.

24. The Prosecution submits that absent such information, it is impossible to establish *prima facie* the causal link between the personal harm they allegedly suffered and the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007. The Prosecution submits that prior to any decision on these two applications, the Applicants should be required to provide further information regarding their involvement in the events at the MGS Haskanita on 29 September 2007.

IV. Conclusion

25. The Prosecution observes that the redactions applied to the applications of Applicants a/0543/09, a/0657/09, a/0658/09 and a/2868/10 render it difficult to determine whether they meet all the requirements for participation. The Prosecution therefore leaves it to the Chamber to make a determination as to whether these Applicants provided adequate proof of their identities and their relationships with the deceased persons on whose behalf they are applying to participate in the proceedings, or whether to request additional documents or information.

26. As regards Applicants a/6001/11 and a/6002/11, the Prosecution submits that before the Chamber determines whether they can participate in the present proceedings, they should be required to submit further information and/or documents to establish the causal link between the harm they allegedly suffered and the crimes allegedly committed at the MGS Haskanita on 29 September 2007.



Luis Moreno – Ocampo

Prosecutor

Dated this 24th day of November 2011

At The Hague, The Netherlands