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

Date: 13 August 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

AND

SALEH MOHAMMED JERBO JAMUS

Public Document

Joint Defence Reply to the 87 Applications for Victims' Participation in the Proceedings

**Sources: Defence Team of Abdallah Banda Abakaer Nourain
Defence Team of Saleh Mohammed Jerbo Jamus**

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

Mr Essa Faal

Counsel for the Defence

Mr Karim A. A. Khan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Colonel Frank Adaka

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

a/0736/09, a/0737/09, a/0738/09, a/0739/09,
a/0740/09, a/0741/09, a/0754/09

**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

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

I. Background

1. On 26 July 2010, Pre-Trial Chamber I appointed Judge Cuno Tarfusser as Single Judge for Pre-Trial Chamber I responsible for carrying out all the functions of the Pre-Trial Chamber, including all the issues related to victims' applications.¹
2. On 27 July 2010, the Single Judge issued the Decision Setting a Time Limit for the Parties' Replies to 87 Applications for Victims' Participation in the Proceedings and a Deadline for the Filing of Applications for Participation, which invited the Prosecutor, as well as the Defence Team of Abdallah Banda Abakaer Nourain and the Defence Team of Saleh Mohammed Jerbo Jamus (jointly the "Defence"), to reply, by 13 August 2010, to the "eighty-seven applications in which applicants, previously authorised to participate in the case of the Prosecutor v. Bahar Idriss Abu Garda, request to be authorised to participate in proceedings"² in this case.
3. On 30 July 2010, the Victims Participation and Reparations Section transmitted the 87 redacted victims' applications to the Defence.³
4. The Defence hereby submits its reply to the 87 victims' applications for participation in the proceedings.

II. Reply of the Defence to the 87 victims' applications

5. The Defence notes the invitation of the Single Judge to refer to or rely upon the relevant submissions of the Defence Team of Bahar Idris Abu Garda ("Abu Garda Defence Team") in this reply.
6. In light of this invitation, and due to the nature of the 87 victims' applications and the similarities between this case and the Abu Garda case, the Defence hereby adopts, *mutatis mutandis*, the relevant submissions of the Abu Garda Defence Team⁴ with respect to applications submitted by: (i) AMIS personnel present

¹ Decision on the designation of a Single Judge of Pre-Trial Chamber, ICC-02/05-03/09-56.

² ICC-02/05-03/09-56.

³ Transmission to the defence of 87 redacted applications for participation in the proceedings, ICC-02/05-03/09-59.

⁴ Defence Observations on the Applications for Victims' Participation in the Proceedings, 11 September 2009, ICC-02/05-02/09-96; Defence's Observations on 52 Applications for Victim Participation in the Proceedings, 30 September 2009, ICC-02/05-02/09-124; Defence's Reply to the 20 Applications for Victims' Participation in the Proceedings, 23 February 2010, ICC-02/05-02/09-244.

during the attack on MGS Haskanita on 29 September 2007, and (ii) family members of AMIS personnel killed or injured as a result of the attack on MGS Haskanita on 29 September 2007.

7. For the sake of convenience, the Defence summarises as follows the submissions of the Abu Garda Defence Team with regard to these two categories of applications: the Defence has no objections to the *prima facie* qualification, under Rule 85(a) of the Rules of Procedure and Evidence, of the above mentioned groups of applicants as victims for the purposes of the pre-trial stage of the case.
8. The Defence notes and adopts the concerns raised by the Abu Garda Defence Team with respect to applicant a/0740/09⁵, namely that the application of a/0740/09 does not reveal whether the applicant received assistance in filling out the application, and the existence of what appear to be two sets of handwriting on the application, which may raise material concerns for the Single Judge as to the validity and reliability of the information provided.
9. The Defence further notes the Decision of the Single Judge of 18 March 2010⁶ in the Abu Garda case, in which applicant a/0740/09 was deemed to meet the criteria for victim status.
10. The Defence is therefore content to leave in the hands of the Single Judge the evaluation of application a/0740/09 without further submissions from the Defence.

⁵ Defence's Reply to the 20 Applications for Victims' Participation in the Proceedings, 23 February 2010, ICC-02/05-02/09-244, para. 12.

⁶ Decision on Applications a/0655/09, a/0656/09, a/0736/09 to a/0747/09, and a/0750/09 to a/0755/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case, ICC-02/05-02/09-255.

Respectfully Submitted,



Mr. Karim A. A. Khan

Defence Counsel for Abdallah Banda Abakaer Nourain and
Saleh Mohammed Jerbo Jamus

Dated this 13th Day of August 2010

At The Hague, The Netherlands