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**International
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PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN DARFUR, SUDAN

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

Public Document

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

Source: Office of the Prosecutor

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

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Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and 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”¹ (“Decision”) issued by Single Judge Cuno Tarfusser, the Prosecution submits the following observations on the applications for participation in the case of *Prosecutor V. Abdallah Banda Abakaer and Saleh Mohammed Jerbo Jamus* (“the Abdallah Banda and Saleh Jerbo case”) of Applicants a/0170/09 – a/0192/09, a/0434/09 – a/0436/09, a/0456/09 – a/0463/09², applicants a/0535/09, a/0537/09– a/0542/09, a/0544/09 – a/0580/09³ as well as applicants a/0655/09, a/0656/09, a/0736/09 – a/0741/09, and a/0754/09⁴ (“the Applicants”).

2. For the reasons detailed below, the Prosecution requests the Single Judge to grant the Applicants authorization to participate as victims in the proceedings at the pre-trial stage pursuant to Article 68(3) of the Rome Statute (“Statute”).

Background

3. On 6 July 2010, the Victims Participation and Reparation Section filed the “Report on applications for participation in the proceedings from victims accepted in the case of the Prosecutor v. Bahar Idriss Abu Garda”⁵ (“ the Report”). The Report was accompanied by 87 applications in which the applicants (“The Applicants”), previously authorised to participate in the case of the *Prosecutor v. Bahar Idriss Abu Garda*⁶ (“the Abu Garda case”), requested to be authorised to participate in pre-trial proceedings in the prosecution of Mr Abdallah

¹ ICC-02/05-03/09-56

² See Office of the Prosecutor, “Prosecution’s Observations on 34 Applications for Victim Participation in the Proceedings”, 12 September 2009, ICC-02/05-02/09-100, pp. 7-8. See further Prosecutor v. Bahar Idriss Abu Garda, Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, 25 September 2009, ICC-02/05-02/09-121, p. 31

³ See Office of the Prosecutor, “Prosecution’s Observations on 52 Applications for Victim’s Participation in the Proceedings”, 30 September 2009, ICC-02/05-02/09-125-Conf, pp. 7-10, See further Prosecutor v. Bahar Idriss Abu Garda, Pre-Trial Chamber I, “Decision on the 52 Applications for Participation at the Pre-Trial Stage of the Case”, 9 October 2009, ICC-02/05-02/09-147-Red, p. 41

⁴ ICC-02/05-02/09-245, p. 9

⁵ ICC-02/05-03/09-50-Conf-Exp

⁶ Prosecutor v. Bahar Idriss Abu Garda, Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", 25 September 2009, ICC-02/05-02/09-121; "Decision on the 52 Applications for Participation at the Pre-Trial Stage of the Case", 9 October 2009, ICC-02/05-02/09-147-Red; "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", 19 March 2010, ICC-02/05-02/09-255.

Banda Abakaer and Mr. Saleh Mohammed Jerbo Jamus (“the Accused”) concerning the crimes as a result of which they allegedly suffered harm.

4. On 26 July 2010, Pre-Trial Chamber 1 (the “Pre-Trial Chamber”) designated judge Cuno Tarfusser, as Single Judge responsible for carrying out the functions of Pre-Trial Chamber I including all the issues related to victims' applications and subject to article 57 (2) (a) of the Statute, in relation to the situation in Darfur, Sudan and any case emanating therefrom.⁷
5. On 27 July 2010 the Single Judge, issued a decision granting the Prosecutor and the Counsel for the Defence until Friday 13 August 2010 to submit observations on the request for participation, in this present case, by victims who were already accepted to participate in the Abu Garda case. In the same decision, the Single Judge ordered the reclassification, as “Confidential *Ex Parte* only available to the Registry and the Prosecutor” of annexes 2 to 88 to the Report.⁸

Legal criteria for victim participation in the proceedings

6. The Prosecution considers that victims’ participation before the Court is an essential feature of the Rome Statute system and an important contribution to international justice. Under the Statute, victims are actors in the administration of international justice rather than its passive subjects. Their participation is a statutory right, not a privilege bestowed on a case-by-case basis.
7. Established jurisprudence requires that an applicant meet four requirements before the Court will authorize an applicant’s participation as a victim under Article 68(3) of the Statute:
 - (I) the applicant qualifies as a victim pursuant to Rule 85;
 - (II) the applicant’s personal interests are affected by legal or factual issues raised in the proceedings at hand;
 - (III) the applicant’s participation is appropriate in that particular stage of the proceedings; and
 - (IV) the manner of participation is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial.⁹

⁷ ICC-02/05-233

⁸ ICC-02/05-03/09-56

⁹ See, e.g., ICC-01/04-01/06-1335 [AC], paras. 48-50, ICC-02/05-02/09-147-Red, para. 2 (“A person shall be granted the right to participate in proceedings if (i) he/she has submitted a complete application to participate, (ii) he/she falls under the definition of victim within the meaning of rule 85 of the Rules, and (iii) his/her personal interests are affected by the proceedings at hand as prescribed in article 68(3).”).

8. Applicants are required to make a *prima facie* showing that these four requisites are met.¹⁰

Factual analysis of the applications

9. The Prosecution notes that in its submissions in the *Abu Garda* case, it took the position that the same 87 applicants presently under consideration *prima facie* met the criteria for participation as victims in that case pursuant to Article 68(3).¹¹
10. The Prosecution also notes the decisions of the Single Judge in the *Abu Garda* case holding that these same 87 applicants met the criteria for participation as victims pursuant to Article 68(3).¹²
11. The subject matter of the *Abu Garda* case and the present case are the same. Both cases relate to the same attack on the Military Group Site Haskanita (the "MGS Haskanita"), on 29 September 2007 by combined JEM and SLA-Unity forces, and the crimes charged in the three counts are the same. Additionally, both cases were initiated via the same Application for Warrants of Arrest.¹³
12. The Prosecution reiterates the positions it has taken in the *Abu Garda* case¹⁴ and submits that the Applicants meet all of Article 68(3)'s requirements for participation in pre-trial proceedings in the *Abdallah Banda and Saleh Jerbo* case.
13. Accordingly, victims whose applications for participation (in a particular stage in proceedings) were granted in the *Abu Garda* case should be allowed to participate as victims (in the same stage in proceedings) in this case.

¹⁰ See, e.g., ICC-02/05-01/07-58 [PTCI], para. 7; ICC-01/04-01/07-579 [PTCI], para. 67, ICC-02/05-02/09-121 [PTCI], para. 14.

¹¹ ICC-02/05-02/09-100, pp. 7-8, ICC-02/05-02/09-125-Conf, pp. 7-10, and ICC-02/05-02/09-245, p. 9

¹² ICC-02/05-02/09-121, p. 31, ICC-02/05-02/09-147-Red, p. 41, and ICC-02/05-02/09-255, p. 17.

¹³ ICC-02/05-03/09-20-Red

¹⁴ See footnote 11 above

Conclusion

14. For the foregoing reasons, the Prosecution requests the Single Judge to grant the Applicants authorization to participate as victims in the proceedings at the pre-trial stage in the *Abdallah Banda and Saleh Jerbo* case pursuant to Article 68(3).



Luis Moreno-Ocampo
Prosecutor

Dated this 13th day of August, 2010
At The Hague, The Netherlands