

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-03/09  
Date: 12 December 2013

**TRIAL CHAMBER IV**

**Before:** Judge Joyce Aluoch, Presiding Judge  
Judge Silvia Fernández de Gurmendi  
Judge Chile Eboe-Osuji

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF  
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN***

**Public**

**Decision on 19 applications to participate in the proceedings**

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda

**Counsel for the Defence**  
Mr Karim A.A. Khan

**Legal Representatives of Victims**  
Ms Hélène Cissé  
Mr Jens Dieckmann

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**  
Ms Paolina Massidda

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

**States' Representatives**

*Amicus Curiae*

## **REGISTRY**

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### **Registrar**

Mr Herman von Hebel

**Victims and Witnesses Unit**  
Mr Patrick Craig

**Detention Section**

**Victims Participation and Reparations  
Section**  
Ms Fiona McKay

**Others**

Trial Chamber IV (“Chamber”)<sup>1</sup> of the International Criminal Court (“Court”) in the case of the *Prosecutor v. Abdallah Banda Abakaer Nourain* (“Banda case”), pursuant to Article 68(1) and (3) of the Rome Statute (“Statute”), Rules 85 and 89 of the Rules of Procedure and Evidence (“Rules”), and Regulation 86 of the Regulations of the Court (“Regulations”), issues the following Decision on 19 applications to participate in the proceedings.

## **I. Background and Submissions**

1. By decision of 29 October 2010, Pre-Trial Chamber I authorised 89 victims to participate in the proceedings in the present case.<sup>2</sup>
2. On 16 September 2011, the Registry transmitted to the Chamber six applications (‘Six Applications’) to participate in the proceedings<sup>3</sup> and a report thereon.<sup>4</sup>
3. On 17 October 2011, the Chamber issued its “Decision on the Registry Report on six applications to participate in the proceedings”, in which it decided, *inter alia*, the scope of redactions to be applied to victims’ applications before transmission to the parties, and subsequently ordered the Registry to transmit to the Office of the Prosecutor (“prosecution”) and to the defence for Abdallah Banda Abakaer

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<sup>1</sup> The term “Chamber” refers to Trial Chamber IV both in its current composition and its composition before 16 March 2012. On that day, by decision of the Presidency, Judge Chile Eboe-Osuji replaced Judge Fatoumata Dembele Diarra as a judge in Trial Chamber IV; Decision replacing a judge in Trial Chamber IV, ICC-02/05-03/09-308.

<sup>2</sup> Decision on Victims’ Participation at the Hearing on the Confirmation of the Charges, 29 October 2010, ICC-02/05-03/09-89.

<sup>3</sup> Transmission to the Trial Chamber of applications for participation in the proceedings, 16 September 2011, ICC-02/05-03/09-216, with confidential and *ex parte* annexes 1 to 6.

<sup>4</sup> Report on six applications to participate in the proceedings, 16 September 2011, ICC-02/05-03/09-217-Conf-Exp, with confidential and *ex parte* annexes 1 to 3.

Nourain (“defence”) a redacted version of the applications provided by Applicants a/0543/09, a/0657/09, a/0658/09, a/2868/10, a/6001/11 and a/6002/11.<sup>5</sup>

4. On 24 and 25 November 2011, the prosecution and the defence submitted their respective observations.<sup>6</sup>
5. On 21 December 2011, the Registry filed some additional information concerning applications a/6001/11 and a/6002/11.<sup>7</sup>
6. On 6 February 2012, the Victims Participation and Reparations Section (“VPRS”) filed an addendum to the transmission of applications a/0657/09 and a/2868/10.<sup>8</sup>
7. On 25 April 2012, the VPRS filed a corrigendum to the transmission of application a/0658/09.<sup>9</sup>
8. On 8 May 2012, the Registry transmitted an additional thirteen applications (“Thirteen Applications”) for participation relating to the present case,<sup>10</sup> along with an accompanying second report.<sup>11</sup>

<sup>5</sup> Decision on the Registry Report on six applications to participate in the proceedings, 17 October 2011, ICC-02/05-03/09-231. See also, Corrigendum to Decision on the Registry Report on six applications to participate in the proceedings, 28 October 2011, ICC-02/05-03/09-231-Corr.

<sup>6</sup> Prosecution’s Observations on 6 Victims’ Applications for Participation in the Proceedings, 24 November 2011, ICC-02/05-03/09-260; Defence Observations on the Six Redacted Applications for Participation in the Proceedings, 25 November 2011, ICC-02/05-03/09-262-Conf.

<sup>7</sup> Addenda to the transmission to the Trial Chamber and to the parties and the legal representatives of the applicants of applications a/6001/11 and a/6002/11 for participation in the proceedings (ICC-02/05-03/09-216 and ICC-02/05-03/09-244), 21 December 2011, ICC-02/05-03/09-270, with two annexes confidential and *ex parte*, ICC-02/05-03/09-270-Conf-Exp-Anx1, ICC-02/05-03/09-270-Conf-Exp-Anx2, and one confidential annex ICC-02/05-03/09-270-Conf-Anx3.

<sup>8</sup> Addenda to the transmission to the Trial Chamber and to the parties and legal representatives of the applicants of applications a/0657/09 and a/2868/10 for participation in the proceedings (ICC-02/05-03/09-216 and ICC-02/05-03/09-244), 6 February 2012 (notified on 7 February 2012), ICC-02/05-03/09-290, with confidential and *ex parte* annexes 1 and 2, ICC-02/05-03/09-290-Conf-Exp-Anx1 and ICC-02/05-03/09-290-Conf-Exp-Anx2; see also redacted versions, ICC-02/05-03/09-290-Conf-Anx1-Red and ICC-02/05-03/09-290-Conf-Anx2-Red.

<sup>9</sup> Corrigendum to Annex 3: Transmission to the Defence and to The Office of the Prosecutor of six redacted applications for participation in the proceedings, 25 April 2012, ICC-02/05-03/09-216-Conf-Anx3-Red-Corr, with Annex.

<sup>10</sup> Second transmission to the Trial Chamber of applications for participation in the proceedings, ICC-02/05-03/09-330, with six confidential annexes.

9. On 25 May 2012, the Chamber confirmed the Registrar's choice to appoint Ms Cissé and Mr Dieckmann as common legal representatives of victims in the present case.<sup>12</sup>
10. On 30 May 2013, the defence requested a lift of certain redactions from application a/6000/11 and an extension of time for the submission of observations on the Thirteen Applications ('Request').<sup>13</sup>
11. On 7 June 2013, the Chamber rejected<sup>14</sup> the Request, and on the same day, the prosecution<sup>15</sup> and the defence<sup>16</sup> filed their observations on the Thirteen Applications.
12. The prosecution submits in relation to Applicants a/0742/09, a/0743/09, a/0748/09, a/0749/09, a/0745/09, a/0746/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, a/0755/09 and a/0660/09, that it cannot determine whether they meet all the requirements for participation given the redactions that have been applied to their applications. The prosecution therefore leaves it to the Chamber to make a determination.<sup>17</sup> The same submission is made as regards Applicants a/0543/09, a/0657/09, a/0658/09 and a/2868/10.<sup>18</sup> The prosecution also submits that Applicant a/6000/11 provides insufficient information and/or documents to establish a causal link between the harm that the Applicant allegedly suffered and the crimes

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<sup>11</sup> Second report to the Trial Chamber on applications to participate in the proceedings, ICC-02/05-03/09-331, with one public annex ICC-02/05-03/09-331-Anx1 and 4 confidential *ex parte* annexes ICC-02/05-03/09-331-Conf-Exp-Anx2-5.

<sup>12</sup> Decision on common legal representation, 25 May 2012, ICC-02/05-03/09-337.

<sup>13</sup> Defence Application for the 1) lifting of certain redactions to the application of Victim Applicant a/6000/11 and 2) extension of the time limit for the submission of Observations on the 13 victim applications transmitted by the Registry to the parties on 23 May 2013, 30 May 2013, ICC-02/05-03/09-481-Conf.

<sup>14</sup> Decision on the defence's request to lift redactions to victim application a/6000/11, ICC-02/05-03/09-484-Conf.

<sup>15</sup> Prosecution's Observations on 13 Victims' Applications for Participation in the Proceedings, 7 June 2013, ICC-02/05-03/09-482.

<sup>16</sup> Defence Observations on the 13 Redacted Applications to Participate in the Proceedings, 7 June 2013, ICC-02/05-03/09-483-Conf.

<sup>17</sup> ICC-02/05-03/09-482, paragraph 22.

<sup>18</sup> ICC-02/05-03/09-260, paragraphs 2, 9 to 21, 25.

allegedly committed at the MGS Haskanita on 29 September 2007.<sup>19</sup> The prosecution makes the same submission as regards to Applicants a/6001/11 and a/6002/11, but specifically adds that the redactions applied render it impossible to establish proof of identities.<sup>20</sup>

13. In its observations, the defence does not challenge that the applicants who made the Six Applications may qualify as 'victims' and *prima facie* meet the requirements of Rule 85(a) of the Rules.<sup>21</sup> However, the defence raises concerns regarding the nature and extent of the redactions applied, as well as inconsistencies in and incompleteness of the applications which impact on its assessment of the applications.<sup>22</sup> As regards the Thirteen Applications, the defence reiterates the same concerns.<sup>23</sup> In these circumstances, the defence requests that a decision by the Chamber on the applications be deferred until further information is available. Furthermore, the defence reserves its right to make further observations on the applications, if necessary, in the event redactions are lifted later on in the proceedings.<sup>24</sup> Should the Chamber authorise the applicants to participate in the proceedings, the defence will proceed to request the disclosure of their identities if it considers the applications to qualify as information material to the preparation of the defence's case.<sup>25</sup>

14. In its reports accompanying the transmission of applications, the Registry informs the Chamber that nine<sup>26</sup> of the Thirteen Applications, and one<sup>27</sup> of the Six

<sup>19</sup> ICC-02/05-03/09-482, paragraphs 19-21.

<sup>20</sup> ICC-02-02/05-03-260, paragraphs 3, 22-24, 26.

<sup>21</sup> ICC-02/05-03/09-262-Conf, paragraph 8.

<sup>22</sup> ICC-02/05-03/09-262-Conf, paragraphs 1 and 2.

<sup>23</sup> ICC-02/05-03/09-483-Conf, paragraph 29.

<sup>24</sup> ICC-02/05-03/09-262-Conf, paragraphs 2, 8 to 21; ICC-02/05-03/09-483-Conf, paragraph 31.

<sup>25</sup> ICC-02/05-03/09-262-Conf, paragraph 22; ICC-02/05-03/09-483-Conf, paragraph 32.

<sup>26</sup> a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09 and a/0755/09.

<sup>27</sup> a/0543/09.

Applications, were previously rejected by Pre-Trial Chamber I in the case of *The Prosecutor v. Bahar Idriss Abu Garda* ('*Abu Garda case*').<sup>28</sup>

## II. Analysis

15. The Chamber recalls that Pre-Trial Chamber I decided to authorise 89 victims to participate during the pre-trial phase and rejected a number of applications for participation deemed to be incomplete. In the decision of 17 October 2011, the Chamber took the view that it need not rule again on the participation of victims already authorised to participate. However, with regard to applications rejected by the Pre-Trial Chamber, including those rejected on the grounds that they were incomplete, the Chamber asked the VPRS to verify whether they would merit reassessment in light of newly obtained information.<sup>29</sup>

### A. Issue of the extent of redactions applied to the application forms

16. Both parties submitted that the application forms have been heavily redacted to such an extent that it is difficult to determine whether the Applicants meet all the requirements for participation. The defence claims that in some instances the redactions appear not to be in conformity with the guidelines adopted by the Chamber in its decision of 17 October 2011 and to be excessive and inconsistent.<sup>30</sup>

17. The Chamber refers to its previous decision of 17 October 2011, in which it set out the reasons for providing redacted versions of the victims' applications to the parties and indicated the categories of information that the VPRS may redact in

<sup>28</sup> ICC-02/05-03/09-331, paragraph 2; ICC-02/05-03/09-217-Conf-Exp-Anx2, page 3.

<sup>29</sup> ICC-02/05-03/09-231-Corr, paragraphs 18 and 19, page 16.

<sup>30</sup> ICC-02/05-03/09-262-Conf, paragraph 9.

the applications for participation in order to protect the safety, physical and psychological well-being, dignity and privacy of victims.<sup>31</sup> In this regard, the Chamber concurs with the view of other chambers that, at this stage of the proceedings, several months before the date set for the commencement of trial, on the basis of a preliminary assessment, the non-disclosure of information identifying the victims and the related material to the prosecution and the defence is proportionate and necessary, and it does not materially undermine the fair-trial rights of the accused. At a later stage in the proceedings, for those granted leave to participate, and depending on the participatory rights accorded to the victims, this approach may be revisited on a case-by-case basis.<sup>32</sup>

18. The Chamber notes however that the parties, in particular, the defence, object to the extent of the redactions and their effect rather than the anonymity of the applicants. In this respect, the Chamber is satisfied that the redactions are necessary to protect the safety and well-being of the applicants, and that they were applied in compliance with its decision of 17 October 2011.

### **B. Assessment of Applications for Participation**

19. Pursuant to Rule 85(a) of the Rules, the Chamber must ascertain that the following four criteria are satisfied: (i) the applicant must be a natural person; (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted

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<sup>31</sup> ICC-02/05-03/09-231-Corr, paragraphs 31 to 37.

<sup>32</sup> See for example, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision inviting the parties' observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08, 6 May 2008, ICC-01/04-01/06-1308, paragraphs 24 to 29; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, 22 February 2010, ICC-01/05-01/08-699, paragraph 31.



must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.

20. Concerning the first requirement, the Chamber refers to its decision of 17 October 2011, in which it indicated the documents that are accepted in order to establish the identity of applicants.<sup>33</sup>

21. The Chamber recalls that the alleged incident must relate to the confirmed charges in the present case:<sup>34</sup> (i) violence to life and attempted violence to life, within the meaning of articles 8(2)(c)(i), 25(3)(a) and 25(3)(f) of the Statute; (ii) intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission, within the meaning of articles 8(2)(e)(iii) and 25(3)(a) of the Statute; and (iii) pillaging, within the meaning of articles 8(2)(e)(v) and 25(3)(a) of the Statute.<sup>35</sup>

22. The Chamber recalls that the applicants are only required to demonstrate that the four requirements established by Rule 85(a) of the Rules are met *prima facie*.<sup>36</sup>

23. Furthermore, pursuant to Rule 89(4) of the Rules, the Chamber will consider the applications in such a manner as to ensure the effectiveness of the proceedings and issues one decision with respect to all of them.

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<sup>33</sup> ICC-02/05-03/09-231-Corr, paragraph 22.

<sup>34</sup> See *The Prosecutor v. Bahar Idriss Abu Garda*, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, 25 September 2009, ICC-02/05-02/09-121, paragraph 12.

<sup>35</sup> Corrigendum of the “Decision on the Confirmation of Charges”, 7 March 2011, ICC-02/05-03/09-121-Conf-Corr, paragraph 5 and page 74.

<sup>36</sup> *Ibid.*, paragraph 14.

### *Preliminary Issues*

24. The Chamber notes that it is in a position to properly assess the 19 Applications because all the information required pursuant to Regulation 86(2) of the Regulations is provided. As regards Applicants a/0657/09 and a/0658/09, there are inconsistencies as to the name and age of the applicants; however, such inconsistencies are minor and do not affect the overall reliability of the information provided.<sup>37</sup> All the applications in the present case are therefore considered complete.

a. *Applications a/0657/09, a/0658/09, a/0660/09, a/2868/10*

25. All the applicants claim to have an immediate family member who died as a participant in the peacekeeping mission which was attacked in Haskanita on 29 September 2007. Applicants a/0657/09 and a/0658/09 submit that their son was killed while serving in the mission.<sup>38</sup> Applicant a/0660/09 submits that he is the brother of a deceased peacekeeper who died as a result of the same attack.<sup>39</sup> Applicant a/2868/10 claims that her father also served and was killed in the same peacekeeping mission.<sup>40</sup> All the applicants provide official identity documentation in accordance with the Chamber's decision of 17 October 2011.<sup>41</sup> Applicants a/0657/09 and a/0658/09 provide official copies of their identity cards, Applicant a/0660/09 appends a copy of his military identity card and Applicant a/2868/10 provides a copy of her passport and student identity card. The Chamber is satisfied that the Applicants are natural persons and their identity has been duly established.

<sup>37</sup> See for example, ICC-02/05-03/09-216-Conf-Exp-Anx2, pages 7, 30, 45 and 46; ICC-02/05-03/09-290-Conf-Exp-Anx1, page 50.

<sup>38</sup> ICC-02/05-03/09-216-Conf-Exp-Anx2, ICC-02/05-03/09-216-Conf-Exp-Anx3.

<sup>39</sup> ICC-02/05-03/09-330-Conf-Exp-Anx1.

<sup>40</sup> ICC-02/05-03/09-216-Conf-Exp-Anx4 and addendum ICC-02/05-03/09-290-Conf-Exp-Anx2.

<sup>41</sup> ICC-02/05-03/09-231-Corr, paragraph 22.

26. All the applicants claim to have suffered emotional loss, in the form of mental anguish, anxiety, trauma, distress or mental pain. Some applicants also submit they have suffered financial loss as a result of the death of the immediate family member who is the deceased peacekeeper. Applicant a/0660/09 claims that she could no longer afford to study, and a/2868/10 specifies poor living conditions with hardly any ability to afford food and education.<sup>42</sup>
27. All the applicants mention the familial relationship with a named, deceased peacekeeper, and append death certificates issued by the African Union Mission in the Sudan ("AMIS"). Some applicants append official letters of condolences written by their national army. Further, Applicant a/0660/09 bears the same family name as the deceased peacekeeper and Applicants a/0657/09, a/0658/09 and a/2868/10 append a declaration of next-of-kin. The Chamber is satisfied on a *prima facie* basis that Applicants a/0657/09, a/0658/09, a/0660/09 and a/2868/10 are the immediate family of the deceased peacekeepers who died as a result of the attack on the MGS Haskanita. The Chamber is further satisfied they have provided sufficient evidence establishing, on a *prima facie* basis, emotional harm and economic loss suffered as a result of the crimes allegedly committed during the attack on the MGS Haskanita on 29 September 2007.
28. The Chamber is satisfied that Applicants a/0657/09, a/0658/09, a/0660/09, a/2868/10 meet the above-mentioned criteria. They will be authorised to participate at trial as victims in a manner that will be determined in due course.

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<sup>42</sup> ICC-02/05-03/09-330-Conf-Exp-Anx1, page 31; ICC-02/05-03/09-216-Conf-Exp-Anx4, pages 9, 11, 22, 23; ICC-02/05-03/09-290-Conf-Exp-Anx2, pages 9, 11, 22, 23, 43.

*b. Applications a/0543/09, a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, a/0755/09*

29. Applications a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09 are made by persons who are family members of a peacekeeper who died in the attack on the MGS Haskanita.<sup>43</sup> Applicant a/0755/09 submits he is a close friend of the deceased peacekeeper.<sup>44</sup> Applicant a/0543/09 is a family member of a different peacekeeper - who participated and subsequently died in the attack on MGS Haskanita.<sup>45</sup> The applicants apply on their own behalf, apart from Applicants a/0742/09 and a/0743/09, who are both under 18 years of age and are represented by their mother, and Applicant a/0748/09, who is represented by her nephew, as she is unable to act for herself because of a disability. All the applications are supported by official identity documentation in accordance with the Chamber's decision of 17 October 2011.<sup>46</sup> Applicants a/0742/09 and a/0743/09 have provided the Court with birth certificates appended to their applications, clearly stipulating proof of kinship, in addition to an appended copy of their mother's national identity card. Applicants a/0543/09, a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, and a/0755/09 provide copies of their own national identity cards. The Chamber is satisfied that Applicants a/0543/09, a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, a/0755/09 are natural persons and that their identities have been duly established.

<sup>43</sup> ICC-02/05-03/09-330-Conf-Exp-Anx1-11.

<sup>44</sup> ICC-02/05-03/09-330-Conf-Exp-Anx12.

<sup>45</sup> ICC-02/05-03/09-216-Conf-Exp-Anx 1.

<sup>46</sup> ICC-02/05-03/09-231-Corr, paragraph 22.

30. All the applicants claim to have suffered emotional harm as a result of the death of a peacekeeper, and in some instances financial loss as a result of the crimes allegedly committed during the attack on the MGS Haskanita on 29 September 2007. The incident causing the harm relates to the crimes alleged in the Document Containing the Charges and confirmed by Pre-Trial Chamber I.

#### Emotional harm

31. All applicants listed in this section claim to have suffered emotional harm. The Chamber notes that all of them, but for a/0748/09 and a/0749/09, were not granted the status of “victims” in the *Abu Garda* case.<sup>47</sup> All the applicants are not immediate family<sup>48</sup> members. The kinships are as follows: a/0742/09 is a nephew, a/0743/09 is a niece, a/0745/09, a/0749/09 and a/0752/09 are paternal aunts, a/0746/09 and a/0751/09 are uncles, a/0748/09 is a sister-in-law, a/0750/09 is a cousin, a/0543/09 and a/0753/09 are second cousins. Further, as previously mentioned, Applicant a/0755/09 is the deceased peacekeeper’s ‘close friend’.

32. The Chamber recalls the previous decision of the Pre-Trial Chamber, which indicated that when “emotional harm is less apparent in the case of persons from a more distant family or from outside of the family circle, more information and/or evidence would be required to substantiate the claim that the relationship of the applicant and the deceased person was of such a nature that the death of that person caused emotional harm to the applicant and/or resulted in a loss of

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<sup>47</sup> Decision on Applications a/0655/09, 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, paragraphs 26-32. As regards a/0543/09, see Decision on the 52 Applications for Participation at the Pre-Trial Stage of the Case, 8 October 2009, ICC-02/05-02/09-147-Conf, paragraphs 14 and 15.

<sup>48</sup> For purposes of the present decision, and in accordance with the Pre-Trial Chamber’s decision ICC-02/05-02/09-255 at note 26, “immediate family” encompasses: “a person’s parents, spouse, children and siblings”.

economic support.”<sup>49</sup> It is on this basis that the Pre-Trial Chamber did not grant applications a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09 and a/0755/09.<sup>50</sup>

33. Applications a/0543/09, a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09 and a/0755/09 are all supported by a copy of the deceased peacekeeper’s death certificate issued by AMIS. In addition, all applications, but for a/0543/09, provide a declaration written by the chief of a village which discusses the nature of kinship in the applicants’ culture and the cultural ties that bind immediate, as well as non-immediate family members. Moreover, they append a joint statement giving an additional explanation of the significant and distinct roles extended family members play in that culture. Applicant a/0543/09 appends an “Affidavit of Relationship” confirming the relationship between the applicant and the deceased peacekeeper, and stipulating the close relation between cousins (akin to “brothers”) in his country’s culture.<sup>51</sup> All the applicants except a/0543/09 and a/0753/09 provide a supplementary information statement describing on an individualised basis their family relationship to the deceased peacekeeper and their personal recollections of the emotional harm suffered or the resulted loss of economic support arising from the death. Applicants a/0748/09 and a/0749/09 also append further documentation –rejected applications from the *Abu Garda* case – pursuant to the applicants’ current wishes of having the harm, respectfully, of their husband and son, taken into account as a part of their own application.

<sup>49</sup> ICC-02/05-02/09-255, paragraph 30.

<sup>50</sup> ICC-02/05-02/09-255, paragraph 27. As regards application a/0543/09: the application was rejected by the Pre-Trial Chamber as that chamber was not convinced that the requisite relationship between the Applicant and the deceased person had been satisfactorily established (ICC-02/05-02/09-147-Conf, paragraphs 14 and 15). This shortcoming has been remedied in the present application by provision of relevant documents signed by the applicant.

<sup>51</sup> ICC-02/05-03/09-216-Conf-Exp-Anx1, page 30.

34. The Chamber has considered the documentation describing the emotional harm that the applicants experienced personally, and the individualised explanation and examples of how the emotional harm resulted by virtue of the relationship with the deceased peacekeepers. The Chamber is satisfied on a *prima facie* basis that Applicants a/0742/09, a/0743/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09 and a/0752/09 have experienced emotional harm as a result of the death of the peacekeeper. The Chamber is not satisfied that Applicants a/0543/09, a/0745/09 and a/0753/09 have provided adequate information which describes on an individualised basis personal recollections of the emotional harm suffered by virtue of the relationship to, and subsequent death of, the peacekeeper in question.
35. In relation to Applicant a/0755/09, the Chamber is of the view that the information he provided does not support a personal relationship with the deceased person such that it can be assimilated to a close family relationship. It has not been established that the emotional harm he alleges to have suffered is sufficient for the purposes of his participation at trial.

#### Economic harm

36. As indicated earlier, in addition to claiming to have suffered emotional harm, Applicants a/0751/09 and a/0755/09 also assert that they experienced economic harm as a result of the death of the deceased peacekeeper in the attack on MGS Haskanita on 29 September 2007. Applicant a/0751/09 claims economic loss because the deceased peacekeeper was a “generous” nephew and supported the applicant when he “needed it”.<sup>52</sup> Applicant a/0755/09 claims economic loss because the peacekeeper and himself could financially depend on one another if either of them “needed anything [in their] life”.<sup>53</sup> The Chamber is of the view that

<sup>52</sup> ICC-02/05-03/09-330-Conf-Exp-Anx 9, page 12.

<sup>53</sup> ICC-02/05-03/09-330-Conf-Exp-Anx 12, page 12.

for purposes of satisfying Rule 85(a) of the Rules, the information provided in the applications is insufficient to establish that the financial support received by the applicants was such that the death of the peacekeeper could be understood to have reasonably resulted in economic loss; the information is insufficient to establish a serious undertaking of financial support by the deceased peacekeeper.

### Conclusion

37. The Chamber is satisfied that Applicants a/0742/09, a/0743/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09 and a/0752/09 meet the above-mentioned criteria. They will be authorised to participate at trial as victims in a manner that will be determined in due course.

#### *c. Applications a/6001/11, a/6002/11*

38. Applicants a/6001/11 and a/6002/11 submit they worked at the AMIS camp in Haskanita and were present when the camp was attacked on 29 September 2007.<sup>54</sup> Both applicants provide copies of their national identity cards. The Chamber is satisfied that both applicants are natural persons and that their identities have been duly established.

39. Applicant a/6001/11 alleges emotional harm resulting from his experience of the attack; he claims to have been “traumatised” and “shaken” as a result of the threats committed towards him at gun-point by the attackers.<sup>55</sup> Applicant a/6002/11 claims that he has suffered from mental pain, anguish and material

<sup>54</sup> ICC-02/05-03/09-216-Conf-Exp-Anx5 ; ICC-02/05-03/09-270-Conf-Exp-Anx1; ICC-02/05-03/09-216-Conf-Exp-Anx6; ICC-02/05-03/09-270-Conf-Exp-Anx2.

<sup>55</sup> ICC-02/05-03/09-216-Conf-Exp-Anx5, pages 1 and 2; ICC-02/05-03/09-270-Conf-Exp-Anx1, page 1.



damages.<sup>56</sup> The applicants appear to have been threatened to death while also having witnessed AU soldiers being killed or injured.

40. Both applicants also claim they suffered material harm as a result of the attack on 29 December 2007. Applicant a/6001/11 submits that he lost his savings, clothes and other possessions which he had at the camp.<sup>57</sup> Applicant a/6002/11 submits he lost all his clothes and money which were in the camp.<sup>58</sup>

41. The Chamber is satisfied that the applicants established, on a *prima facie* basis, that they suffered psychological harm as a result of the crimes alleged against the accused in the present case. With respect to the material harm alleged by the applicants, the Chamber recalls that the accused is charged with the appropriation of property belonging to AMIS and its peacekeeping personnel. The applicants were not peacekeeping personnel and they lost their own property at the camp. Such economic harm cannot be considered relevant, at this stage of the proceedings, for the applicants to be granted the status of participating victims.

42. The Chamber concludes that Applicants a/6001/11 and a/6002/11 meet the above-mentioned criteria and will be authorised to participate at trial as victims, on the basis set out in the preceding paragraph and in a manner that will be determined in due course.

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<sup>56</sup> ICC-02/05-03/09-216-Conf-Exp-Anx6, pages 1 and 2; ICC-02/05-03/09-270-Conf-Exp-Anx2, pages 1 and 2.

<sup>57</sup> ICC-02/05-03/09-216-Conf-Exp-Anx5, page 2.

<sup>58</sup> ICC-02/05-03/09-216-Conf-Exp-Anx6, page 2.

*d. Application a/6000/11*

43. Applicant a/6000/11 submits that her husband was working at the AMIS camp in Haskanita for an external company when the attack occurred on 29 September 2007.<sup>59</sup> The applicant provides her identity card and her marriage certificate. The Chamber is satisfied that Applicant a/6000/11 is a natural person and her identity has been duly established.
44. Applicant a/6000/11 submits that she suffered emotional harm in the form of distress resulting from the traumatic experience of her husband, who witnessed the attack on the AMIS camp at Haskanita, on 29 September 2007, and was shot. She also claims material suffering because her husband has been unable to work since the event.<sup>60</sup> The marriage certificate provided by the applicant substantiates the relationship to her husband.
45. The Chamber recalls that the alleged harm must result from the charges confirmed by the Pre-Trial Chamber. The applicant was not herself present at the MGS Haskanita at the relevant time, nor is the alleged injury to her husband a direct result of any of the crimes charged. Her alleged emotional loss and material harm falls outside the scope of the charged crimes. Therefore, the Chamber considers that the applicant's experience of the attack is too remote to satisfactorily establish that she suffered psychological harm as a result of it and is therefore not satisfied, on a *prima facie* basis, that the applicant should be granted the status of "victim" pursuant to Rule 85 of the Rules. Therefore, Applicant a/6000/11 shall not be authorised to participate at trial in this case.

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<sup>59</sup> ICC-02/05-03/09-330-Conf-Exp-Anx13.

<sup>60</sup> ICC-02/05-03/09-330-Conf-Exp-Anx13, page 2.

**FOR THESE REASONS, THE CHAMBER**

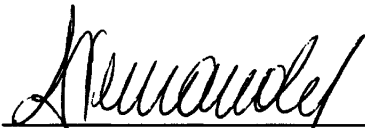
**REJECTS** applications a/0543/09, a/0745/09, a/0753/09, a/0755/09 and a/6000/11; and

**GRANTS** the applications of victims a/0657/09, a/0658/09, a/0660/09, a/6001/11, a/6002/11, a/0742/09, a/0743/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09 and a/2868/10 to participate in the proceedings.

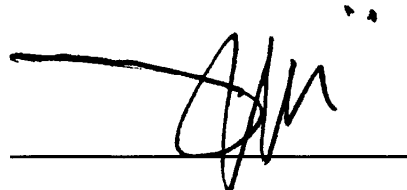
Done in both English and French, the English version being authoritative.



**Judge Joyce Aluoch**



**Judge Fernández de Gurmendi**



**Judge Chile Eboe-Osuji**

Dated this 12 December 2013

At The Hague, The Netherlands