

Annex 1

Confidential ex parte, Registry only

**Explanation of the contents of the individual assessment reports
(annexe 2)**

**Explanation of the contents of the individual initial rule 85 assessment reports
under regulation 86(5) of the Regulations of the Court**

1. The applicant-by-applicant reports included in the accompanying Annex 2 aim to provide Trial Chamber IV ("the Chamber") with the Registry's initial assessment of each applicant's compliance with rule 85, together with a summary of the application.
2. Each individual report sets out, on the top of its first page:
 - the Registry reference number of the application to which the report relates;
 - the ICC proceedings number in respect of which the application is filed;
 - whether the applicant seeks reparations, participation in the proceedings, or both.
3. The following sections of the report seek to achieve three objectives:
 - Sections 1 to 3 of the report provide a summary overview for the Chamber of the application's compliance with each of the basic criteria which must be fulfilled in order for an applicant to meet the requirements of rule 85. These requirements have been grouped into the following categories:
 - (1) Formal requirements (both relating to the victim and the person acting on behalf, where relevant)
 - (2) Requirements relating to the alleged crime;
 - (3) Requirements relating to the harm suffered.
 - Section 4 of the report provides a narrative summary of the application;
 - Section 5 of the report sets out the result of the Registry's initial rule 85 assessment as well as any accompanying explanation or comment.
4. The approach taken in each of these sections of the report is explained below.

1. Formal requirements

5. Each report contains two sections relating to the formal requirements of the application. The first (on the top left) relates to the applicant him/herself. The second (on the top right) relates to the person acting on behalf of the applicant, where applicable.

Formal requirements relating to the applicant

6. Under the heading "Identity of the individual", three items are addressed:
 - (1) Whether the applicant has provided sufficient proof of identity;
 - (2) Whether the personal details provided are consistent;
 - (3) Whether the application has been signed by the applicant;
7. Regarding the question of internal inconsistencies in applications, the Registry has sought to follow the two Decisions on applications to participate in the case *The Prosecutor v. Bahar Idriss Abu Garda* (the "Abu Garda Case"), wherein the Single Judge indicated that the assessment of the applicants' statements should be made on the basis of their intrinsic coherence.¹ On this basis, the Registry has assessed as complete those applications which contain only minor inconsistencies which appear to merely be a mistake made by the applicant or the person assisting in the completion of the application form, or where the reasons for an inconsistency are explained by the applicant. All inconsistencies are, however, recorded in the "Comments" section of the report.
8. Where an inconsistency appears to raise doubts about the facts alleged or the identity of the applicant, the Registry has indicated that according to its initial assessment the status of the application is unclear. In such instances the

¹ ICC-02/05-02/09-121, para. 14; ICC-02/05-02/09-147-Conf para. 18.

nature of the inconsistency is specified in the "Comments" section of the report.

9. In assessing the sufficiency of identity documents provided, the Registry has referred to the Decision on Victims' Participation at the Hearing on the Confirmation of the Charges in *The Prosecutor v. Abdallah Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (hereinafter "the *Banda and Jerbo* case"), in which Pre-Trial Chamber I listed the acceptable forms of identification.²
10. The field "Signature is provided" indicates "YES" where the applicant has provided a signature or thumb print on the document, at the very least, on the last page of the application.³
11. The last field in the first section indicates whether the applicant is applying on his/her own behalf, or whether another person is acting on his/her behalf.

Formal requirements relating to the person acting on behalf of the applicant

12. This section of the report has only been completed where a person acts on behalf of the applicant.
13. In this section, the same approach has been taken regarding identity documents, inconsistencies and signatures, as set out above in relation to the applicant.
14. An additional requirement dealt with in this part is whether there appears to be sufficient authority for the person to act on behalf of the applicant. This field will specify the type of authority provided, namely one of the following:

² ICC-02/05-03/09-89, para. 3.

³ See: ICC-02/05-02/09-121, para. 7.

- Consent (signature of the victim and of the person acting on behalf with the consent of the victim); or
- Proof of kinship/guardianship (where the victim is a juvenile, deceased or disabled)

If the authority provided to the person acting on behalf of the victim appears to be insufficient or is not clearly established, a comment explaining the reason for this is included in the section headed "Comments".

15. In assessing the sufficiency of the authority provided, whether concerning children, disabled victims or victims who have given their consent to have a person act on their behalf, the Registry has followed the approach set out by the Single Judge in the *Abu Garda* case.⁴

2. Requirements relating to the alleged crime

16. This section of the report is used to indicate whether or not the acts described by the applicant appear to constitute crimes within the scope of the present case, as defined by the Pre-Trial Chamber's Corrigendum of the "Decision on the Confirmation of Charges" (the "Confirmation of Charges Decision").⁵ Three issues are dealt with:

17. The first relates to the type of crime or crimes. The report indicates which of the crimes confirmed by the Chamber in the Confirmation of Charges Decision could be constituted by the acts described in the application.⁶ The Registry emphasizes that in identifying these crimes, it looks solely at the alleged acts, and does not make any assessment as to the presence of the

⁴ ICC-02/05-02/09-121, para. 7. See also: ICC-01/04-374, para. 12; ICC-01/04-01/07-579, para. 44; ICC-01/05-01/08-320, para. 81.

⁵ ICC-02/05-03/09-121-Corr-Red

⁶ The Confirmation of Charges Decision approved the charges brought against Abdallah Banda and Saleh Jerbo under articles 8(2)(c)(i), 8(2)(e)(iii) and 8(2)(e)(v) of the Rome Statute. ICC-02/05-03/09-121-Corr-Red

contextual elements of the crime such as would be necessary to determine whether the alleged acts fall under the *chapeau* of article 8 of the Statute.

18. Where there is doubt as to whether the acts described could constitute one of the crimes in the case, it is indicated in the section headed "Comments", and, if applicable, the result of the initial rule 85 assessment is given as "UNCLEAR".
19. The second issue dealt with in this section of the report relates to the territorial location of the crime. The report here indicates whether it appears from the application that the alleged crime occurred within the territorial scope of the case, namely the Military Group Site Haskanita (the "MGS Haskanita"). Where there is doubt on this issue a comment is made in the "Comments" section of the report and, if applicable, the result of the initial rule 85 assessment is given as "UNCLEAR".
20. Thirdly, it is indicated whether or not the alleged crime is said to have occurred on the date which delimits the temporal scope of the present case: namely on 29 September 2007. Where there is doubt on this issue a comment is made in the "Comments" section of the report and, if applicable, the result of the initial rule 85 assessment is given as "UNCLEAR".
21. The Registry draws to the Chamber's attention that it has not included reference in this section of the report whether or not the alleged crime appears to be linked to one or both of the accused named in the Confirmation of Charges Decision. The Registry notes that this is not among the

requirements for a complete application, as indicated, inter alia, in the Single Judge's Decision on applications to participate in the *Abu Garda* case.⁷

3. Requirements relating to the harm suffered

22. In this section the report indicates the type(s) of harm alleged to have been suffered by the applicant. Only harm which appears to be the result of one or more of the crimes contained in the charges is included in this analysis. Harm has been categorised as follows:

- Material harm: including the loss or destruction of property, loss of income or other form of economic loss, including medical costs;
- Physical harm: physical injuries, including when brought about by psychological trauma (for instance, where stress has caused heart conditions or miscarriage);
- Psychological harm: including mental illness, emotional, moral or other form of psychological suffering.
- Other forms of harm: other harm, including, for example, the loss of educational opportunities.⁸ This field will only appear on the report where a relevant form of harm not falling under the ambit of material, physical or psychological has been identified by the Registry.

⁷ICC-02/05-02/09-121 para. 7. See also: ICC-01/04-374, para. 12; ICC-01/04-01/07-579, para. 44; ICC-01/05-01/08-320, para. 81.

⁸ In this regard Trial Chamber I in the case of *The Prosecutor v Thomas Lubanga Dyilo*, relied on the concept of "substantial impairment of fundamental rights" as set out in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: ICC-01/04-01/06-1119, paragraph 92. Concerning the approach previously taken by Pre-Trial Chamber I in the present case and the *Abu Garda* case, see for example: ICC-02/05-02/09-147-Conf, paras 24-27 in which decision the Single Judge explicitly referred to the loss of social status claimed by the applicant and did not exclude the possibility that the applicant had suffered other than emotional and economic loss forms of harm.

23. Lastly, in instances when “[t]he applicant alleges having suffered emotional harm as a result of a crime committed against a relative”, the Registry has assessed whether the application meets the requirements set out by the Appeals Chamber.⁹ It has done so in accordance with the approach taken by the Single Judge of Pre-Trial Chamber I in the *Abu Garda* case, according to which applications and the level of proof required are considered on a case-by-case basis taking into account the closeness of the familial relationship between the applicant and the deceased person.¹⁰ In case of doubt, a comment is made in the “Comments” section of the report.

4. Summary

24. In the section of the report headed “Summary” the Registry provides an overview of the application, which includes: the basic information about the applicant and the type of proof of identity provided; the relevant facts alleged by the applicant, including those which relate to the location, time and the specific alleged event reflecting the harm suffered by the victim; the Registry’s concluding remarks on the initial assessment of compliance with rule 85, including a list of the crimes under the Statute which appear to be sufficiently raised by the application.

5. VPRS Assessment

25. This part of the report indicates the Registry’s views concerning whether or not the application appears to meet the requirements of rule 85. For each application, the Registry indicates one of the following initial assessments:

⁹ ICC-02/04-179, para 36; ICC-02/04-01/05-371, para. 36.

¹⁰ ICC-02/05-02/09-121, para. 9; ICC-02/05-02/09-255, para.30.

- (a) It appears to the Registry that the application complies with the requirements of rule 85; or
- (b) Compliance with rule 85 is unclear: the Registry is not in a position to make an initial assessment without further guidance from the Chamber on specific matters which are indicated.

26. The latter category covers applications which appear to the Registry to raise legal or factual questions not already been settled by the Chamber, and which may affect whether or not the application meets all the requirements of rule 85. Where this is the case an explanation of the issue that appears to the Registry to require the Chamber's determination is set out under the heading "Comments".

27. The final field, "Comments", is used to indicate any legal or factual questions which arise in relation to the application and, where relevant, the approach which the Registry has taken in relation to those issues based on the jurisprudence of the Chambers.