

**Cour
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**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

**THE PROSECUTOR V. ABDALLAH BANDA ABAKAER NOURAIN AND SALEH
MOHAMMED JERBO JAMUS**

Public Redacted version of "Report on applications for participation in proceedings from victims accepted in the case of *The Prosecutor v. Bahar Idriss Abu Garda*" (ICC-02/05-03/09-50-Conf-Exp, dated 6 July 2010)

Source: Victims Participation and Reparations Section

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

REGISTRY

Registrar

Deputy Registrar

**Victims Participation and Reparations
Section**

The Registrar of the International Criminal Court (the “Court”);

NOTING the decisions of the Single Judge for victims’ issues of 25 September 2009,¹ 8 October 2009,² and 19 March 2010³ in the case of *The Prosecutor v. Bahar Idriss Abu Garda*

NOTING the Summons to Appear for Saleh Mohammed Jerbo Jamus⁴ and the Summons to Appear for Abdallah Banda Abakaer Nourain;⁵

NOTING rule 89(1) of the Rules of Procedure and Evidence and regulation 86(5) of the Regulations of the Court;

CONSIDERING that the crimes charged by the Prosecutor in the Summons to Appear for Saleh Mohammed Jerbo Jamus⁶ and the Summons to Appear for Abdallah Banda Abakaer Nourain⁷ are the same as those contained in the Summons to Appear for Bahr Idriss Abu Garda;⁸

CONSIDERING that eighty-seven victims were accepted by the Single Judge to participate in the case of *The Prosecutor v. Bahar Idriss Abu Garda*;⁹

TRANSMITS to the Chamber the following report on eighty-seven applications for participation in the proceedings.

¹ ICC-02/05-02/09-121,

² ICC-02/05-02/09-147-Conf

³ ICC-02/05-02/09-255

⁴ ICC-02/05-03/09-2

⁵ ICC-02/05-03/09-3

⁶ ICC-02/05-03/09-2

⁷ ICC-02/05-03/09-3

⁸ ICC-02/05-02/09-2

⁹ ICC-02/05-02/09-121, ⁹ ICC-02/05-02/09-147-Conf, ICC-02/05-02/09-255

A. Background

1. This is the first report transmitting applications for participation to the Chamber in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*. It is filed before Pre-Trial Chamber I as a whole since a Single Judge for victims' issues is yet to be appointed in the case.
2. The report relates to eighty-seven applications to participate in proceedings. All are natural persons.

B. Overview of applications relating to the present case

3. Before turning to the applications covered by the present report, the Registry wishes to provide the Chamber with an overview of victim applications pertaining to the present case.
4. To date the Registry has received a total of 116 applications for participation which could be related to the attack on the African Union Mission in Sudan base at Haskanita. The status of these applications, and the steps which will be taken by the VPRS in respect of them, are as follows:
 - (i) Eighty-seven applications come from persons who were accepted as participating victims in the Abu Garda case. These are the applications which are the subject of the current report.
 - (ii) Four applications were rejected by the Single Judge in the context of the Abu Garda case but have since been supplemented by further information. These applications, along with those in category (iii) are being processed by the Registry and will soon be transmitted to the Chamber.
 - (iii) Four applications were never filed in the Abu Garda case because they have only been received by the Registry since the conclusion of proceedings in that case. These applications, along with those in category (ii) are being processed by the Registry and will soon be transmitted to the Chamber.

- (iv) Fifteen applications were rejected in a decision of the Single Judge in the context of the Abu Garda case and have not been supplemented by any further information which might correct the defects identified by the Single Judge. The Registry will repeat its requests for additional information from any of these applicants who indicate an interest in continuing with their applications, however some have already indicated to the Registry that they will not seek to present further information in support of their applications.
 - (v) Six applications were never filed by the Registry in the Abu Garda case because they were received by the Registry after the deadline for applying to participate in the confirmation of charges proceedings, were manifestly incomplete and remain unsupplemented by further information. The Registry will repeat its requests for additional information from these applicants.
5. Unless otherwise directed by the Chamber, at this time the Registry proposes to continue with its usual practice of transmitting to the Chamber only those applications which it considers to be complete according to the requirements set by the Chamber.
 6. The Registry believes that its work would be facilitated by the early establishment of a deadline for the filing of applications for participation in the confirmation of charges proceedings. The Registry would propose to file in advance of the deadline any complete applications received earlier. In this regard the Registry would be assisted by the Chamber's direction regarding whether any incomplete applications should also be filed with the Chamber at the time of such a deadline.

C. Content of the present report

7. The Registry notes that in three decisions, made on 25 September 2009,¹⁰ 8 October 2009¹¹ and 19 March 2010,¹² the Chamber recognised victims status for a

¹⁰ ICC-02/05-02/09-121

total of eighty-seven persons and granted them the right to participate in pre-trial proceedings in the case of *The Prosecutor v. Bahar Idriss Abu Garda* ("the Abu Garda case").

8. The victims in question are: a/0170/09 to a/0192/09, a/0434/09 to a/0436/09, a/0456/09 to a/0463/09, a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0580/09, a/0655/09, a/0656/09, a/0736/09 to a/0741/09 and a/0754/09.
9. The Registry notes that the charges contained in the Summons to Appear for Saleh Mohammed Jerbo Jamus¹³ and the Summons to Appear for Abdallah Banda Abakaer Nourain¹⁴ are the same as those contained in the Summons to Appear for Bahr Idriss Abu Garda.¹⁵ The Registry has reviewed again the eighty-seven applications covered by this report and confirms that, in the view of the Registry, they are all linked to the charges in the present case.
10. The Registry also notes that the applications made by these victims are not limited to a particular case or stage of proceedings, but that they indicate a request to participate in all proceedings connected to the events which cause the victims harm, namely the attack on the African Union base at Haskanita.
11. In accordance with the reporting system already used with this Chamber for applications to participate in proceedings, this report provides an overview of the eighty-seven applications transmitted, while the following documents are provided as annexes:
 - **Annex 1:** Reports under regulation 86.5 of the Regulations of the Court on an application-by-application basis, comprising an overview of each of the eighty-seven applications along with boxes summarising matters contained in

¹¹ ICC-02/05-02/09-147

¹² ICC-02/05-02/09-255

¹³ ICC-02/05-03/09-2

¹⁴ ICC-02/05-03/09-3

¹⁵ ICC-02/05-02/09-2

the actual applications and drawing attention to specific relevant issues in accordance with the instructions of the Chamber.

- **Annexes 2 to 88:** The eighty-seven applications for participation, together with supporting documentation provided by the victims or their legal representatives.

D. Explanation of information contained in the application-by-application reports

12. As this is the first occasion on which a report under regulation 86(5) has been filed in the record of the present case, the Registry considers it appropriate to explain the information included in the application-by-application reports which comprise Annex 1.

a. Information contained in the boxes under the heading “Information concerning the applicant”

13. This part includes basic personal information regarding the applicant:¹⁶ the name, date of birth, sex, age at the time of applying, place of residence, ethnic group and type of applicant (whether the applicant is a natural person or an organisation or institution). This information is extracted from information provided under Part A of the standard application form.

14. The last box, headed “Status of the applicant” is used when another person acts on behalf of the applicant. It indicates whether the applicant is a child, disabled or deceased, or otherwise that there is a person acting on behalf of the applicant. Where the applicant is acting on his or her own behalf, no information is included in the box even where the applicant is under 18 years of age.

15. Information concerning any proof of identity that has been provided by the applicant is indicated on the second page, in the box entitled “Documents attached to the application”. Where no proof of identity is provided, or where the

¹⁶ In the reports, the “applicant” is the person whose details are provided in Part A of the standard application form, even if another person has presented the application on his or her behalf.

VPRS makes comments relating to such documents or their conformity with the Chamber's requirements, this has been indicated in the box entitled "Comments".

b. Information contained in the boxes under the heading "Person acting on behalf of the applicant"

16. This part includes basic information about a person acting on behalf of the applicant, if applicable: the name, place of residence and link with the applicant. The information in this part is extracted from information provided under Part B of the standard application form.

17. Information concerning any proof of identity or proof of the link with the applicant is indicated on the second page, in the box entitled "Documents attached to the application". Where no such proof is provided, or where the VPRS makes comments relating to such documents or their conformity with the Chamber's requirements, this has been indicated in the box entitled "Comments".

c. Information contained in the boxes under the heading "Description of the harm alleged"

18. This part includes information regarding the events and harm alleged. Most of this information is extracted from that provided under Parts D and E of the standard application form. Two of the boxes do not comprise information extracted from the application forms, and further explanations are provided below as to the information provided in these boxes.

"Type of crime"

19. This box contains an indicative list of acts constituting crimes within the jurisdiction of the Court, that the harm alleged by the applicant might possibly constitute. The Registry would like to stress that in providing such a list, it looks solely at the alleged act itself, and does not make any assessment at all as to the presence of the contextual or mental elements of the crime such as would be necessary to determine whether the acts constitute genocide, a crime against

humanity or a war crime. Nor is the list of acts provided for each applicant intended to be an exhaustive list of those that might arise out of the set of facts alleged. However where applications are submitted in relation to a case, efforts are made to include those acts which appear to be linked to the crimes contained in the arrest warrant or summons.

"Type of harm"

20. In this box the types of harm that are alleged by the applicants have been categorised as follows:

- Physical injury
- Mental pain or anguish
- Loss of or damage to property
- Substantial impairment of fundamental rights

21. The latter category, "substantial impairment of fundamental rights", has been recognized as a type of harm within the meaning of Rule 85 by Trial Chamber I,¹⁷ however the scope of this term has not yet been elucidated by jurisprudence from the Chambers. The Registry has therefore reviewed the meaning given to this concept by various regional and international courts and instruments. This research indicated that many of the rights included in the major human rights instruments might be considered to constitute fundamental rights. In the other cases and situations before the Court, Registry has indicated a as "substantial impairment of fundamental rights" where alleged crimes that appear to have interfered with children's rights to education and a family life or with the fundamental rights to liberty and security of the person, or the associated right of persons deprived of their liberty to be treated humanely. Where these rights appear to have been substantially impaired the Registry has included substantial

¹⁷ ICC-01/04-01/06-1119, para.92. The Trial Chamber was guided by Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147, 16 December 2005.

impairment of fundamental rights as a possible form of harm. The Registry provides this information in order to explain the basis on which this type of harm has been included in the possible types of harm suffered by each applicant.

d. Information contained in the boxes under the heading “Formal elements”

22. This part includes information relating to the signatures and other formalities relating to the application, and any attempts made by the Registry to seek further information or documentation and the results of such efforts, as well as any documents accompanying the application. Since this does not comprise information extracted from the application forms, the Registry would like to provide further explanations as to the information provided in each box.

“Is the application complete?”, “Signatures or identification mark?” and “Comments”

23. According to regulation 86(4) of the Regulations of the Court, the Registrar may request further information from victims, or from those presenting an application on behalf of a victim, in order to ensure, to the extent possible, that applications are complete before their transmission to the Chamber.

24. Further, Regulation 86 sub-regulation 2 sets out what information should be contained in application. This has been further clarified by decisions of the Chamber.¹⁸

25. Upon receiving an application, the Registry reviews the application in order to ascertain whether the application is complete according to these criteria. If any information or documentation is missing, the Registry sends a request to the legal representative, if there is one. Where there is no legal representative, the Registry communicates the request directly to the person or organisation that presented the application.

¹⁸ ICC-01/04-374, paragraph 12 ; ICC-02/05-02/09-121, paragraph 7.

26. For the purposes of managing the process of requesting and receiving further information or documentation, the Registry has developed a standard form which, when used, is referred to in the "documents attached to the application" box as "follow up forms". The Registry uses these forms to indicate what information or documentation is missing, what further information has been requested, and how and when any additional information or documentation is actually received. In some cases, the forms are completed and signed by Registry staff in the field when they are directly given information or documents.
27. Any information received subsequent to the original application will appear in the report, and attention is drawn to the fact that the information was received at a later date than the application if it appears relevant to highlight to the Chamber. For example, if the original application does not mention the date of the alleged crime, but a date is subsequently provided, that date will be shown in the box under "Description of the harm alleged", the fact that the information was requested and received subsequently will be recorded under "Comments", and the document recording the receipt of the further information will be listed under "Documents attached to the application".
28. The Registry has sought to make clear in the applicant-by-applicant reports whether or not the application appears to be complete and whether it has been signed, and (under "Comments") draws to the Chamber's attention the following matters:
- Missing information, and whether or not it appears to render the application incomplete in the context of the particular application;
 - The fact that further information or documentation has been requested but not received;

- The fact that further information or documentation has been requested and subsequently received and reflected in the relevant box in the report, where it is considered that this should be drawn to the attention of the Chamber;
- Any discrepancies in information received, such as between dates or other information contained in different documents received from the applicant, including between the application form itself and documents received at the same time or subsequently;
- Comments relating to signatures: however no mention is made of a failure to provide signatures or initials which are requested in the application form but which are not required under regulation 86(2) of the Regulations of the Court or another source. Examples of information that would not be highlighted include instances where a signature is not witnessed (as requested in part J of the form) or where an applicant has not signed or initialed the bottom of each page (this is requested in the form solely for the purpose of ensuring that pages of the same application are kept together when transmitted to the Court).

“Person who assisted the applicant”

29. The name of the person who has assisted the applicant to fill in the application form is included, and the organisation with which that person is affiliated, if any.

“Documents attached to the application”

30. Any supporting documentation received from the applicant is listed, including proofs of identity, as well as any follow up form recording the manner in which any further information was received.

e. Information contained in the boxes under the heading “Legal representation”

31. This part indicates whether or not the applicant has a legal representative and, if so, the name of the legal representative. The information in this part is extracted

from information provided under Part G of the standard application form and/or any power of attorney provided.

f. Information contained in the boxes under the heading “Requests made by the applicant “

32. The first section of this part indicates in what stages of the proceedings the applicant has requested to participate. The information in this part is extracted from information provided under Part C of the standard application form.

33. The second section of this part indicates whether or not the applicant is making a request for non-disclosure of their identity, or other information, to one or more party. The information in this part is extracted from information provided under Part H of the standard application form and/or any other information provided.

E. Dual status applicants

34. The Registry notes that during the confirmation of charges proceedings in the Abu Garda case, seven victims were identified as having dual status of participating victim and Prosecution witness.¹⁹ They were: a/0434/09, a/0435/09, a/0436/09, a/0569/09, a/0570/09, a/0655/09 and a/0656/09. In accordance with the Single Judge’s orders,²⁰ the identity of these victims was disclosed to the defence in the Abu Garda case.²¹

35. The Registry is not aware of whether any or all of these victims would also have dual status in the present case; that is, whether the Prosecution intends to rely on them as witnesses again. Nor is the Registry aware of whether any other of the victims covered by this report may have such a dual status.

¹⁹ ICC-02/05-02/09-121, paragraph 102; and ICC-02/05-02/09-147, paragraph 143.

²⁰ ICC-02/05-02/09-121 and ICC-02/05-02/09-147, ICC-02/05-02/09-240.

²¹ [REDACTED] ICC-02/05-02/09-241.

F. Legal representation

36. Of the eighty-seven victims covered by the present report, eighty are already represented. Their representation is as follows:

- Twenty-four victims (a/0170/09 to a/0192/09 and a/0436/09) are represented by Mr Brahima Koné;
- Fourteen victims (a/0456/09 to a/0463/09, a/0579/09, a/0580/09, a/0434/09, a/0435/09, a/0655/09 and a/0656/09) are represented by Ms Hélène Cissé.
- Twenty-one victims (a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0551/09 and a/0557/09 to a/0562/09) are represented by Mr Akin Akinbote.
- Twenty-one victims (a/0552/09 to a/0556/09 and a/0563/09 to a/0578/09) are represented by Colonel Frank Adaka.²²

37. Seven victims (a/0736/09, a/0737/09, a/0738/09, a/739/09, a/0740/09, a/0741/09 and a/0754/09) remain unrepresented before the Court. The Registry has been informed by the intermediary assisting these victims that they have identified appropriate legal representatives, and that steps are currently being taken to formalize the appointment of those lawyers through powers of attorney, and for the legal representatives to seek inclusion on the list of counsel maintained by the Registry.

G. Protection and transmission to the parties

38. In order to assist the Chamber in determining the appropriate measures to be taken in protecting the confidentiality of the applications transmitted with the present report, the Registry draws to the Chamber's attention the measures which

²² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

were taken in respect of the same applications in the context of the Abu Garda case.

Transmission to the Prosecution

39. The Registry notes that in the context of the Abu Garda case, the Prosecution has already received unredacted copies of the applications of all eighty-seven victims covered by this report.²³

Transmission to the defence

40. In the Abu Garda case, redacted copies of the applications were provided to the defence for the eighty non-dual-status victims.²⁴ As set out above, the identities of the seven dual status victims were provided to the defence in the Abu Garda case.

[REDACTED]

[REDACTED].²⁵ For [REDACTED] two victims (a/0655/09 and a/0656/09) the Single Judge required that full unredacted copies of the victims' applications forms be provided²⁶ which was done on 2 February 2010.²⁷

41. The Registry also notes that in the context of the Abu Garda proceedings, the anonymity of forty-five victims was lifted, following requests from the legal representatives of those victims²⁸ and subsequent orders of the Chamber.²⁹ The victims whose anonymity was lifted are: a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0551/09, a/0557/09 to a/0562/09, a/0170/09 to a/0192/09, and a/0436/09. [REDACTED]

²³ ICC-02/05-02/09-69, ICC-02/05-02/09-108, ICC-02/05-02/09-242.

²⁴ ICC-02/05-02/09-71, ICC-02/05-02/09-109, ICC-02/05-02/09-241.

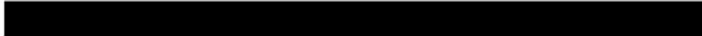
²⁵ [REDACTED]

²⁶ ICC-02/05-02/09-240.

²⁷ ICC-02/05-02/09-241.

²⁸ ICC-02/05-02/09-176, ICC-02/05-02/09-189.

²⁹ ICC-02/05-02/09-180; ICC-02/05-02/09-187; ICC-02/05-02/09-T-13-ENG (12:17-21).

 ³⁰ Unredacted application forms were not provided.

Recommendations

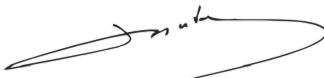
42. Should the Chamber follow the practices which were established in the Abu Garda case, and considering that the Prosecution is already in possession of unredacted copies of the eighty-seven applications, the Registry would recommend that the Prosecution again be provided with unredacted copies, this time in the record of the present case. This could most easily be achieved by an order from the Chamber for the reclassification of the annexes to the present report.
43. Regarding the defence, the Registry recommends that the general practice established by the Single Judge in the context of the Abu Garda proceedings be adopted, and that redacted copies of the eighty-seven applications therefore be transmitted to the defence. Questions relating to the disclosure of the identities of dual status victims, if arising, could be dealt with at a later time once persons having such dual status have been identified.

ANNEXES

- The reports under regulation 86(5) of the Regulations of the Court on an application-by-application basis (Annexe 1);
- The eighty-seven applications for participation, together with supporting documentation (Annexes 2 to 88).

RESPECTFULLY REQUESTS guidance on

- whether the Chamber is satisfied with the early establishment of a deadline for the filing of applications for participation in the confirmation of charges proceedings;
- should such deadline be established, whether the incomplete applications should be filed with the Chamber at that time;
- the best way to transmit the victims applications for participation received by the Registry to the parties.



Marc Dubuisson
Director, Division of Judicial Services on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 23 October 2026

At The Hague, The Netherlands