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PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR V. BAHAR IDRIS ABU GARDA

Public Document

Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case

Decision 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
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Legal Representatives of Victims

Legal Representatives of Applicants

Mr Brahim Koné
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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

I, Judge Sanji Mmasenono Monageng, acting as Single Judge on behalf of Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) with respect to victims’ applications for participation in the case of *The Prosecutor v. Bahar Idriss Abu Garda* (the “Abu Garda Case”);¹

NOTING the “Decision on the Prosecutor’s Application under article 58” issued by the Chamber on 7 May 2009, wherein it was decided to issue a summons to appear for Bahar Idriss Abu Garda;²

NOTING the hearing of first appearance of Mr Bahar Idriss Abu Garda held on 18 May 2009, wherein the commencement of the confirmation hearing was scheduled for Monday 12 October 2009;³

NOTING the “Decision on the Designation of a Single Judge on Victims’ Issues and on the Deadline for the Filling of Applications for Participation” issued on 19 August 2009 wherein the Chamber ordered the Victims Participation and Reparations Section to submit, no later than Friday 11 September 2009, its report together with the victims’ applications to be authorised to participate as victims in the proceedings relating to the confirmation hearing in the Abu Garda Case;⁴

NOTING the “Decision Ordering the Parties to Submit their Observations on the Applications for Victims’ Participation in the Proceedings”⁵ issued by the Single Judge on 27 August 2009;

¹ ICC-02/05-02/09-55.

² ICC-02/05-02/09-1-Conf and ICC-02/05-02/09-15-AnxA.

³ ICC-02/05-02/09-T-2-ENG.

⁴ ICC-02/05-02/09-55, p. 6.

⁵ ICC-02/05-02/09-68.

NOTING the “Document Containing the Charges submitted pursuant to article 61(3) of the Statute”⁶ (“the Prosecution’s Charging Document”) filed by the Prosecution on 10 September 2009;

NOTING the “Defence Observations on the Applications for Victims’ Participation in the Proceedings”⁷, filed by the Defence for Bahar Idriss Abu Garda on 11 September 2009, wherein the Defence informed the Single Judge that, at this stage, it has no specific observations on the victims’ application for participation;

NOTING the “Decision on the Prosecutor’s request for extension of time-limit”⁸, issued by the Single Judge Cuno Tarfusser on 11 September 2009, wherein the commencement of the confirmation hearing was postponed until Monday, 19 October 2009;

NOTING the “Prosecution’s Observations on 34 Applications for Victim Participation in the Proceedings”⁹ filed by the Prosecution on 14 September 2009 and wherein he submitted that all applicants fulfil the requirement of rule 85(a) of the Rules of Evidence and Procedure;

NOTING the “Prosecution’s submission of Public Redacted Version of Document Containing the Charges and List of Evidence”¹⁰, filed on 25 September 2009 by the Prosecution;

NOTING articles 57(3)(c), 61 and 68 of the *Rome Statute* (“the Statute”), rules 86 to 89, 91, 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”) and regulations 81(4) and 86 of the *Regulations of the Court* (“the Regulations”);

⁶ ICC-02/05-02/09-91-Conf and ICC-02/05-02/09-91-Conf-Anx1-Anx2.

⁷ ICC-02/05-02/09-96.

⁸ ICC-02/05-02/09-98.

⁹ ICC-02/05-02/09-100.

¹⁰ ICC-02/05-02/09-118 and ICC-02/05-02/09-91-Anx1-Red

HEREBY RENDER THIS DECISION

1. The Single Judge has been seized with a request of authorization to participate in the pre-trial stage of the proceedings in the Abu Garda Case from 34 applicants.¹¹
2. First and foremost, the Single Judge recalls that a person shall be granted the right to participate in proceedings if (i) he/she qualifies as a victim under the definition of this term provided by rule 85 of the Rules, (ii) his/her personal interests are affected by the proceedings at hand as prescribed in article 68(3) of the Statute, and (iii) he/she has submitted a complete application to participate.
3. As already stated by the Chamber, the personal interest of the victims flows from (i) the desire to have a declaration of truth by a competent body (right to truth); (ii) their wish to have those who victimized them identified and prosecuted (right to justice) and (iii) the right to reparation.¹²
4. Thus, consistent with the case law of the Chamber, the Single Judge considers that the personal interests of victims are affected by the outcome of the pre-trial stage of the case insofar as this is an essential stage of the proceedings which aims to determine whether there is sufficient evidence providing substantial grounds to believe that the suspect is responsible for the crimes with which he has been charged by the Prosecution.¹³ Therefore, the victims have a personal interest in the pre-trial Chamber's decision to either (i) confirm the charges against those responsible for perpetrating the crimes which caused them to suffer harm; or (ii) decline to confirm the charges for those not responsible for such crimes, so that the search for those who are criminally liable can continue.

¹¹ Applicants a/0170/09, a/0171/09, a/0172/09, a/0173/09, a/0174/09, a/0175/09, a/0176/09, a/0177/09, a/0178/09, a/0179/09, a/0180/09, a/0181/09, a/0182/09, a/0183/09, a/0184/09, a/0185/09, a/0186/09, a/0187/09, a/0188/09, a/0189/09, a/0190/09, a/0191/09, a/0192/09, a/0434/09, a/0435/09, a/0436/09, a/0456/09, a/0457/09, a/0458/09, a/0459/09, a/0460/09, a/0461/09, a/0462/09 and a/0463/09

¹² ICC-01/04-01/07-474, paras 31-44.

¹³ ICC-02/05-110, ICC-01/04-417. See also ICC-01/04-01/06-462-tEN, p. 5

5. Furthermore, the Single Judge also notes that the language of article 68 of the Statute gives the Chamber discretion in the determination of the modalities of participation of victims. In doing so, the Chamber must nevertheless strike a balance between the rights of the victims and the rights of the person charged by ensuring that the modalities of participation of victims are not prejudicial to the rights of the person charged and antagonistic to a fair and impartial trial.

6. The present decision will essentially aim at assessing whether the applicants qualify as victims under the meaning of rule 85 of the Rules, and whether they fulfil the requirements to be authorized to participate in the pre-trial stage of the proceedings. The Single Judge will subsequently issue a separate decision in respect of the determination of the modalities of their participation.

I. Completeness of the applications for participation

7. Pursuant to rule 89(1) of the Rules, applicants seeking participation in the proceedings must submit a written application to the Registrar who shall then transmit the application to the relevant Chamber. Furthermore, pursuant to regulation 86(5) of the Regulations, the aforementioned applications are transmitted together with a report thereon. In this respect, the Single Judge underlines that she will only be in a position to properly assess fully completed applications¹⁴, containing the information required under regulation 86(2) of the Regulations. In compliance with the case law of the Chamber, an application is considered complete if it contains the following information:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;

¹⁴ ICC-01/04-374, para 6.

- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.¹⁵

8. As regards proof of identity, the Single Judge recalls the need for the presentation of proper identification documents for all victims who apply to participate in the proceedings.¹⁶ However, the Single Judge is cognisant of the fact that victims apply to the Court from different countries or regions of the world, and is aware that, due to the security, political, and social situations that prevail in some of these countries and regions and the personal circumstances of the applicants themselves, certain difficulties in obtaining the required proof of identity, kinship, guardianship and legal guardianship may arise. The Single Judge reiterates, in particular, that "in regions which are or have been ravaged by conflict, not all civil status records may be available, and if available, may be difficult or too expensive to obtain."¹⁷ For these reasons and with due regard to the practice followed by the different Chambers of the Court, the Single Judge considers that a flexible approach shall be taken. Accordingly, the Single Judge allows the submission of any of the following documents in order to prove identity, kinship, guardianship or legal guardianship:

- (i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;
- (ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;
- (iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or
- (iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf,

¹⁵ ICC-01/04-374, para. 12. See also ICC-01/04-01/07-579, para. 44.

¹⁶ ICC-01/04-374, para. 13. See also ICC-01/04-01/07-579, para. 45.

¹⁷ ICC-01/04-374, para. 14. See also ICC-01/04-01/07-579, para. 45; Pre-Trial Chamber III, ICC-01/05-01/08-320, para. 34.

providing that there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses.¹⁸

9. The Single Judge further notes that the majority of applications refer to an alleged emotional harm suffered as a result of the death of a family member. In this respect and before examining the merits of each of the applications, the Single Judge deems it necessary to underline the fact that when assessing whether an applicant has suffered emotional harm as a result of the loss of a family member, the Court requires proof of the identity of the family member and of his or her relationship with the applicant. In other words, the Single Judge shall be satisfied that the family member existed and that he or she had the requisite relationship with the applicant.¹⁹ According to the Appeals Chamber, “[w]hat evidence (be it documentary or otherwise) may be sufficient cannot be determined in the abstract, but must be assessed on a case-by-case basis and taking into account all relevant circumstances, including the context in which the Court operates.”²⁰ The Single Judge will, therefore, assess the documents appended to the applications for participation on a case by case basis.

II. Assessment of Applications for Participation

1. Applicable law

10. Rule 85(a) of the Rules defines the term “victims” as follows:

‘Victims’ means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.

11. Thus, the Single must ascertain that the following four criteria are satisfied: (i) the applicant must be a natural person; (ii) the applicant must have suffered harm;

¹⁸ ICC-01/04-374, para. 15. See also ICC-01/04-01/07-579, para. 46 Pre-Trial Chamber III, ICC-01/05-01/08-320, paras 36-37.

¹⁹ Appeals Chamber Judgment, 23 February 2009, ICC-02/04-01/05-371, para. 36.

²⁰ Appeals Chamber Judgment, 23 February 2009, ICC-02/04-01/05-371, para. 38.

(iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.²¹

12. In relation to the third requirement, the Single Judge recalls that not every incident alleged by an applicant, which falls within the meaning of articles 5 to 8 of the Statute fulfils this requirement. In this regard, the Single Judge emphasises the importance of establishing a link between the alleged incident and the present case.²² Thus, the alleged incident must relate to the offences alleged in the warrant of arrest or summons to appear, or, at a later stage in the proceedings, the document containing the charges, in the case in which the application is made. At this stage of the proceedings, the scope of the present case is delineated by the Prosecution's Charging Document in which it is alleged that, on 29 September 2007, Mr Bahar Idriss Abu Garda, jointly and with JEM forces under his control and SLA-Unit forces, committed the war crimes of violence to life through acts of murder²³ (and attempted murder)²⁴, of intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a peacekeeping mission²⁵ and of pillaging²⁶ at the Military Group Site Haskanita (the "MGS Haskanita"), in Haskanita village, Um Kada Locality, in North Darfur, the Sudan.²⁷

13. In relation to the fourth requirement, the Single Judge recalls that, consistent with the case law of the Chamber, the applicant and, as the case may be, the immediate family or the dependants of the direct applicant, must show that they suffered harm²⁸ (i) as a result of the crimes which were allegedly committed during

²¹ ICC-02/05-121, p. 8; ICC-01/04-101, para. 79; ICC-01/04-01/06-601, p. 9; ICC-01/04-01/07-579, para. 65.

²² ICC-02/05-121, p. 8; ICC-01/04-101, para. 94; ICC-01/04-01/06-601, p. 9; ICC-01/04-01/07-579, para. 65. See also Pre-Trial Chamber II, ICC-02/04-101, para. 11; Pre-Trial Chamber III, ICC-01/05-01/08-320; Appeals Chamber Judgment, 11 July 2008, ICC-01/04-01/06-1432, para. 58: "[W]hilst the ordinary meaning of rule 85, does not per se limit the notion of victims to the victims of the crimes charged, the effect of article 68(3) of the Statute is *that* the participation of victims in the trial proceedings pursuant to the procedure set out in rule 89(1) of the Rules, is limited to those victims who are linked to the charges."

²³ As defined in Article 8(2)(c)(i) of the Statute.

²⁴ As defined in Articles 8(2)(c)(i) and 25(3)(f) of the Statute.

²⁵ As defined in Article 8(2) (e) (iii) of the Statute.

²⁶ As defined in Article 8(2)(e)(v) of the Statute

²⁷ ICC-02/05-02/09-91-Conf.

²⁸ Appeals Chamber Judgment, 11 July 2008, ICC-01/04-01/06-1432, para. 31: "[t]he word 'harm' in its ordinary meaning denotes hurt, injury and damage. It carries the same meaning in legal texts, denoting injury, loss, or damage and is the meaning of 'harm' in rule 85(a) of the Rules."

the attack on the MGS Haskanita on 29 September 2007, as charged in the Prosecution's Document Containing the Charges; or (ii) in intervening to assist direct victims in the case at hand, or to prevent their victimisation as a result of the alleged commission of the said crimes.²⁹ The Single Judge also takes note of the approach followed by Pre-Trial Chambers II and III in finding that

“(...) the alleged harm will be held as “resulting from” the alleged incident when the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”³⁰

14. The Single Judge 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*³¹ and that, therefore, the Single Judge's analysis of the applications “will not consist in assessing the credibility of the [applicants'] statement[s] or engaging in a process of corroboration *stricto sensu*”,³² but will assess the applicants' statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available to the Single Judge.³³ Furthermore, pursuant to rule 89(4) of the Rules, where there are a number of applications, the Single Judge may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision. The Single Judge will, therefore, provide only the essential information on each applicant in this decision.

2. Individual assessment

15. The Single Judge notes that the 34 applications can be divided into three groups as follows:

- (a) Applications a/0170/09 to a/0192/09 all from the family of one of the deceased AMIS personnel;

²⁹ ICC-01/04-01/06-172, pp 7 and 8. ICC-01/04-01/07-579, para. 66.

³⁰ Pre-Trial Chamber II, ICC-02/04-101, para. 14 and Pre-Trial Chamber III, ICC-01/05-01/08-320, para. 75.

³¹ ICC-01/04-101-Corr, para. 66; ICC-01/04-417, para. 8; See also ICC-01/04-01/07-579, para. 67.

³² ICC-01/04-101-Corr, para. 101 ICC-01/04-01/07-579, para. 67.

³³ ICC-01/04-417, para 8 ICC-01/04-01/07-579, para. 67. See also Pre-Trial Chamber III, ICC-01/05-01/08-320, para. 31.

(b) Applications a/0434/09, a/0457/09 to a/0463/09 all from the family of another deceased AMIS personnel; and

(c) Applications a/0435/09, a/0436/09 and a/0456/09, all three former AMIS personnel at MGS Haskanita.

a. Applications a/0170/09 to a/0192/09

- Application a/0170/09

16. Application a/0170/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

17. The Applicant alleges that he was informed of the death of his father by a military delegation. He further contends that his father died on 29 September 2007 in Darfur and that he and his family are unaware of the circumstances in which he was killed. He nevertheless underlines that according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that, upon the arrival of the body of his deceased father, he noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, he adds that he does not know whether the salary was not paid or was stolen.

18. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) his own identity; (ii) his relationship with his father, and (iii) the death of his father.

19. The Single Judge is of the view that Applicant a/0170/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on

29 September 2007, during which his father was killed and his father's personal belongings disappeared.

- *Application a/0171/09*

20. Application a/0171/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

21. The Applicant alleges that he was informed of the death of his father by a military delegation. He further contends that his father died on 29 September 2007 in Darfur and that he and his family are unaware of the circumstances in which he was killed. He nevertheless underlines that according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the arrival of the body of his deceased father, he noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, he adds that he does not know whether the salary was not paid or was stolen.

22. The Single Judge notes that the Applicant has also appended the necessary documents to prove the following: (i) his own identity; (ii) his relationship with his father, and (iii) the death of his father.

23. The Single Judge is of the view that Applicant a/0171/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which his father was killed and his father's personal belongings disappeared.

- *Application a/0172/09*

24. Application a/0172/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

25. The Applicant alleges that she was informed on the 1 October 2007 of the death of her husband by a military delegation. She further contends that her husband died on 29 September 2007 and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the arrival of the body of her deceased husband, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was not paid or was stolen.

26. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her husband, and (iii) the death of her husband.

27. The Single Judge is of the view that Applicant a/0172/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her husband was killed and his personal belongings disappeared.

- *Application a/0173/09*

28. Application a/0173/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly,

the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

29. The Applicant alleges that, on 1 October 2007, he was informed of the death of his father by a military delegation. He further contends that his father died on 29 September 2007 in Darfur while on a mission for the United Nations. He declares that he and his family are unaware of the circumstances in which he was killed. He nevertheless underlines that according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the arrival of the body of his deceased father, he noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, he adds that he does not know whether the salary was not paid or had been stolen.

30. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) his own identity; (ii) his relationship with his father, and (iii) the death of his father.

31. The Single Judge is of the view that Applicant a/0173/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which his father was killed and his personal belongings disappeared.

- *Application a/0174/09*

32. Application a/0174/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

33. The Applicant alleges that he was informed of the death of his father by a military delegation. He further contends that his father died on 29 September 2007 in Darfur and that he and his family are unaware of the circumstances in which he was killed. He nevertheless underlines that according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the arrival of the body of his deceased father, he noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, he adds that he does not know whether the salary was not paid or had been stolen.

34. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) his own identity; (ii) his relationship with his father, and (iii) the death of his father.

35. The Single Judge is of the view that Applicant a/0174/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which his father was killed and his father's personal belongings disappeared.

- *Application a/0184/09*

36. Application a/0184/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

37. The Applicant alleges that, on 1 October 2007, she was informed of the death of her husband by a military delegation. She further contends that her husband died on 29 September 2007 in Darfur and that she and her family are unaware of the

circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the person also asserts that upon the arrival of the body of her deceased husband, she noted that all his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was never paid or had been stolen.

38. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her husband, and (iii) the death of her husband.

39. The Single Judge is of the view that Applicant a/0184/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her husband was killed and her husband's personal belongings disappeared.

- *Application a/0187/09*

40. Application a/0187/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

41. The Applicant alleges that, on 1 October 2007, she was informed of the death of her father by a military delegation. She further contends that her father died on 29 September 2007 in Darfur and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the

arrival of the body of her deceased father, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was never paid or had been stolen. She claims to suffer emotionally as a result of the death of her father to whom she spoke on the phone just before the attack.

42. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

43. The Single Judge is of the view that Applicant a/0187/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed and her father's personal belongings disappeared.

- *Application a/0188/09*

44. Application a/0188/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

45. The Applicant alleges that she was informed of the death of her husband by a military delegation. She further contends that her husband died on 29 September 2007 in Darfur and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the arrival of the body of her deceased husband, she noted that all of his personal

belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was never paid or had been stolen. She claims to suffer emotionally and to have nightmares as a result of the death of her husband.

46. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her husband, and (iii) the death of her husband.

47. The Single Judge is of the view that Applicant a/0188/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her husband was killed and her husband's personal belongings disappeared.

- *Application a/0189/09*

48. Application a/0189/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

49. The Applicant alleges that, on 1 October 2007, she was informed of the death of her father by a military delegation. She further contends that her father died on 29 September 2007 in Darfur and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers were killed in an African Union military base. In addition, the Applicant also asserts that upon the arrival of the body of her deceased father, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether

the salary was never paid or had been stolen. She claims to sometimes have dreams and to suffer emotionally as a result of the death of her father.

50. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

51. The Single Judge is of the view that Applicant a/0189/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed and his personal belongings disappeared.

- *Application a/0190/09*

52. Application a/0190/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

53. The Applicant alleges that, on 1 October 2007, she was informed of the death of her father by a military delegation. She further contends that her father died on 29 September 2007 in Darfur and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers of the African Union were killed in Darfur. In addition, the Applicant also asserts that upon the arrival of the body of her deceased father, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was not paid or had been stolen. She claims to suffer emotionally and to have nightmares as a result of the death of her father.

54. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

55. The Single Judge is of the view that Applicant a/0190/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed and his personal belongings disappeared.

- *Application a/0191/09*

56. Application a/0191/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

57. The Applicant alleges that, on 1 October 2007, she was informed of the death of her father by a military delegation. She further contends that her father died on 29 September 2007 in Darfur and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers of the African Union were killed in Darfur. In addition, the Applicant also asserts that upon the arrival of the body of her deceased father, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was not paid or had been stolen. She claims to suffer emotionally as a result of the death of her father.

58. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

59. The Single Judge is of the view that Applicant a/0191/09 has provided sufficient evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed and his personal belongings disappeared.

- *Application a/0192/09*

60. Application a/0192/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

61. The Applicant alleges that, on 1 October 2007, she was informed by a military delegation of the death of her father who was engaged in a United Nations mission in Darfur. She further contends that her father died on 29 September 2007 in Darfur and that she and her family are unaware of the circumstances in which he was killed. She nevertheless underlines that, according to information heard on the radio and on television, ten soldiers of the African Union were killed in Darfur. In addition, the Applicant asserts that upon the arrival of the body of her deceased father, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, she adds that she does not know whether the salary was not paid or had been stolen. She claims to suffer emotionally and to have nightmares as a result of the death of her father.

62. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

63. The Single Judge is thus of the view that Applicant a/0192/09 has provided evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed and her father's personal belongings disappeared.

- Applications a/0175/09, a/0176/09, a/0177/09, a/0178/09, a/0179/09, a/0180/09, a/0181/09, a/0182/09, a/0183/09, a/0185/09 and a/0186/09

64. At the outset, the Single Judge notes that applications a/0175/09, a/0176/09, a/0177/09, a/0178/09, a/0179/09, a/0180/09, a/0181/09, a/0182/09, a/0183/09, a/0185/09 and a/0186/09 are all submitted by a person on behalf of her minor siblings³⁴. The Single Judge observes that the applications are supported by proof of the minors' identities. Accordingly, the Single Judge is satisfied that the minor Applicants are natural persons and that their identities have been duly established. Furthermore, the Single Judge is also satisfied that the identity of the person acting on their behalf has been established, as well as the link existing between this person and her minor siblings.

65. It is alleged in the applications that, on 1 October 2007, the person acting on behalf of the Applicants was informed by a military delegation of the death of their father who was engaged in a United Nations mission in Darfur. It is further contended that their father died on 29 September 2007 in Darfur and that the Applicants are unaware of the circumstances in which he was killed. It is

³⁴ Applicant a/0192/09.

nevertheless underlined that, according to information heard on the radio and on television, ten soldiers of the African Union were killed in Darfur. In addition, it is asserted that upon the arrival of the body of their deceased father, she noted that all of his personal belongings, including a laptop, had disappeared and that seven months of salary had not been received. In the latter respect, it is stated that she does not know whether the salary was not paid or had been stolen. She claims that the Applicants sometimes have dreams and suffer emotionally as a result of the death of their father.

66. The Single Judge notes that the Applicants have appended the necessary documents to prove the following: (i) their own identity; (ii) their relationship with their father, and (iii) the death of their father.

67. The Single Judge is of the view that Applicants a/0175/09, a/0176/09, a/0177/09, a/0178/09, a/0179/09, a/0180/09, a/0181/09, a/0182/09, a/0183/09, a/0185/09 and a/0186/09 have provided sufficient evidence establishing *prima facie* that they suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which their father was killed and their father's personal belongings disappeared.

b. Applications a/0434/09, a/0457/09 to a/0463/09

- Application a/0434/09

68. Application a/0434/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

69. The Applicant alleges that his father was sent by the African Union to Darfur. He contends that, on 29 September 2007, his father was killed during the attack on

Haskanita and that he and his family were informed about his death by two police officers. He further states that his father left a wife and children, as well as two elderly parents, for whose care he was responsible; thus his sudden passing away had the effect of profoundly disturbing the family structure. In addition to emotional suffering, the Applicant also claims that, as a result of his father's death he has lost his financial support.

70. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) his own identity; (ii) his relationship with his father, and (iii) the death of his father.

71. The Single Judge is of the view that Applicant a/0434/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which his father was killed.

- *Application a/0457/09*

72. Application a/0457/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

73. The Applicant alleges that her husband was sent on a mission by the African Union to Darfur. She contends that, on 29 September 2007, her husband was killed during the attack on Haskanita. She further declares that her husband was the moral and financial support of the family and that he organized and provided advice on all family issues. She claims that his passing away created chaos within the family, as well as causing psychological suffering and anguish. In addition, she states that because they have lost his financial support, it is now difficult for them to live.

74. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her husband, and (iii) the death of her husband.

75. The Single Judge is of the view that Applicant a/0457/09 has provided sufficient evidence establishing *prima facie* that she suffered economic loss and emotional harm as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her husband was killed.

- *Application a/0458/09*

76. Application a/0458/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

77. The Applicant alleges that his father was sent on a mission to Darfur by the African Union. He contends that, on 29 September 2007, his father was killed during the attack on Haskanita. He further states that his father's sudden passing away disturbed the family structure and left the family in "profound psychological chaos". He adds that his deceased father was his financial support and that since his death he has had difficulties in pursuing his studies since his mother is without resources.

78. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) his own identity; (ii) his relationship with his father, and (iii) the death of his father.

79. The Single Judge is of the view that Applicant a/0458/09 has provided sufficient evidence establishing *prima facie* that he suffered economic loss and emotional harm as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which his father was killed.

- *Application a/0462/09*

80. Application a/0462/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

81. The Applicant alleges that her father was sent on a mission to Darfur by the African Union. She contends that, on 29 September 2007, her father was killed during the attack on Haskanita. She states that her father's passing away shattered her. In addition to emotional suffering, the Applicant also claims that, as a result of her father's death she has lost her financial support.

82. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

83. The Single Judge is of the view that Applicant a/0462/09 has provided sufficient evidence establishing *prima facie* that she suffered economic loss emotional harm as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed.

- *Application a/0463/09*

84. Application a/0463/09 is submitted by a woman who supported her application with proof of her identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

85. The Applicant alleges that her father was sent on a mission to Darfur. She contends that, on 29 September 2007, her father was killed during the attack on Haskanita. She further states that her father's passing away prejudiced the entire

family; it created chaos, anguish and sadness. She declares that she wonders how her father died. In addition to the pain caused by his death, the Applicant also claims that her father, not only financially supported his children and wife, but also his elderly parents.

86. The Single Judge notes that the Applicant has appended the necessary documents to prove the following: (i) her own identity; (ii) her relationship with her father, and (iii) the death of her father.

87. The Single Judge is of the view that Applicant a/0463/09 has provided sufficient evidence establishing *prima facie* that she suffered economic loss and emotional harm as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which her father was killed.

- *Applications a/0459/09, a/0460/09 and a/0461/09*

88. The Single Judge notes that applications a/0459/09, a/0460/09 and a/0461/09 are all submitted by a mother³⁵ on behalf of her minor children. The Single Judge observes that the applications are supported with proof of the minors' identities. Accordingly, the Single Judge is satisfied that the minors are natural persons, that their identities have been duly established, as well as the identity of the person acting on their behalf, together with the link existing between her and the minors.

89. Applications a/0459/09, a/0460/09 and a/0461/09 are submitted by a mother on behalf of her minor son and daughters. It is alleged that their father was sent on a mission to Darfur by the African Union. It is contended that, on 29 September 2007, their father was killed during the attack on Haskanita. It is also stated that the sudden passing away of their father shattered them. It is further declared that they were very close to their father and that they have been anguished since his death, worried about their future and having nightmares. In addition, it is said that they

³⁵ Applicant a/0457/09

are particularly worried because their mother is without resources and their financial situation is worsening.

90. The Single Judge notes that the Applicants have appended the necessary documents to prove the following: (i) their own identity; (ii) their relationship with their father, and (iii) the death of their father.

91. The Single Judge is of the view that Applicants a/0459/09, a/0460/09 and a/0461/09 have provided sufficient evidence establishing *prima facie* that they suffered economic loss and emotional harm as a result of the crimes allegedly committed in the attack on the MGS Haskanita on 29 September 2007, during which their father was killed.

c. Applications a/0435/09, a/0436/09 and a/0456/09

- Application a/0435/09

92. Application a/0435/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

93. The Applicant alleges that, on 29 September 2007, a group of individuals speaking Arab attacked the MGS Haskanita, where he was assigned. He states that these individuals were driving vehicles and were armed. He further contends that, during the attack, they killed and pillaged. In this regard, he declares that he was slapped on the neck and forced onto his knees but was not injured. He states that when it calmed down a little bit, he fled and hid. He also claims that they stole his personal belongings, notably a radio, a cell phone as well a certain sum of money.

94. The Single Judge is of the view that Applicant a/0435/09 has provided sufficient evidence establishing *prima facie* that he suffered economic loss and emotional harm

as a result of the crimes allegedly committed on 29 September 2007 in the attack on the MGS Haskanita where he was based and during which his personal belongings disappeared.

- *Application a/0436/09*

95. Application a/0436/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

96. The Applicant alleges that, on 29 September 2007, a group of individuals speaking Arab attacked the MGS Haskanita, where he was assigned. He states that, since he was unarmed, he hid in a trench when he heard the gunshots. He declares that one of the attackers killed two soldiers who were hiding next to him and that his eye was injured by the leg of one of these soldiers as he fell. He further contends that, during the attack, they pillaged and destroyed the camp, stealing *inter alia* his personal belongings, notably a laptop, a radio, a cell phone, as well a certain sum of money.

97. The Single Judge is of the view that Applicant a/0435/09 has provided sufficient evidence establishing *prima facie* that he suffered economic loss and emotional harm as a result of the crimes allegedly committed on 29 September 2007 in the attack on the MGS Haskanita where he was based and during which his personal belongings disappeared.

- *Application a/0456/09*

98. Application a/0435/09 is submitted by a man who supported his application with proof of his identity which fulfils the requirements set out above. Accordingly,

the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

99. The Applicant declares that, on 29 September 2007, a group of individuals that he alleges to be the “*Front Uni de Resistance*” attacked Haskanita where he was assigned. He states that he hid in the trenches and witnessed the attack from there. When the attackers went into the trenches and started killing soldiers, he fled from the camp. He also claims that they pillaged and destroyed the camp and that they stole *inter alia* his personal belongings, notably a camera, clothes as well as a certain sum of money. Furthermore, he declares that he was emotionally shocked by the attack.

100. The Single Judge is of the view that Applicant a/0435/09 has provided sufficient evidence establishing *prima facie* that he suffered economic loss and emotional harm as a result of the crimes allegedly committed on 29 September 2007 in the attack on the MGS Haskanita where he was based and during which his personal belongings disappeared.

III. Conclusion

101. After having carefully considered each application, the Single Judge is of the view that Applicants a/0170/09, a/0171/09, a/0172/09, a/0173/09, a/0174/09, a/0175/09, a/0176/09, a/0177/09, a/0178/09, a/0179/09, a/0180/09, a/0181/09, a/0182/09, a/0183/09, a/0184/09, a/0185/09, a/0186/09, a/0187/09, a/0188/09, a/0189/09, a/0190/09, a/0191/09, a/0192/09, a/0434/09, a/0435/09, a/0436/09, a/0456/09, a/0457/09, a/0458/09, a/0459/09, a/0460/09, a/0461/09, a/0462/09 and a/0463/09 fulfil all of the criteria as set out in rule 85(a) of the Rules and should, therefore, be recognised as victims for the purpose of their participation at the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*.

102. The Single Judge notes that three of the Applicants (a/0434/09, a/0435/09 and a/0436/09) are also witnesses on whose testimony the Prosecution intends to rely for the purposes of the confirmation hearing in the present case and whose identities have already been disclosed to the Defence. In this respect, the Single Judge underlines that the Chamber has already held that “the status of victims in any given case must be granted whenever the four conditions provided for in rule 85 of the Rules are met, regardless of whether the applicant [...] is also a witness in the case.”³⁶ Nevertheless, for reasons of fairness of proceedings, the fact that some victims are also witnesses in the present case should be shared with the Defence.

FOR THESE REASONS,

DECIDE to recognise Applicants a/0170/09, a/0171/09, a/0172/09, a/0173/09, a/0174/09, a/0175/09, a/0176/09, a/0177/09, a/0178/09, a/0179/09, a/0180/09, a/0181/09, a/0182/09, a/0183/09, a/0184/09, a/0185/09, a/0186/09, a/0187/09, a/0188/09, a/0189/09, a/0190/09, a/0191/09, a/0192/09, a/0434/09, a/0435/09, a/0436/09, a/0456/09, a/0457/09, a/0458/09, a/0459/09, a/0460/09, a/0461/09, a/0462/09 and a/0463/09 as victims for the purpose of participating during the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*;

³⁶ ICC-01/04-01/07-632, para.22.

ORDER the Registry to make all the necessary arrangements and to provide the Legal Representatives of victims authorized to participate in the present case with access to all public record of the case, including public evidence disclosed by the Prosecution and the Defence;

ORDER the Registry to notify the victims authorized to participate in the proceedings of all public decisions and filings filed effective as of the date of this decision;

ORDER the Registry to provide the Defence with a non-redacted form of the applications a/0434/09, a/0435/009 and a/0436/09;

ORDER that all of those Applicants to whom authorization to participate as victims at the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda* is granted in the present decision:

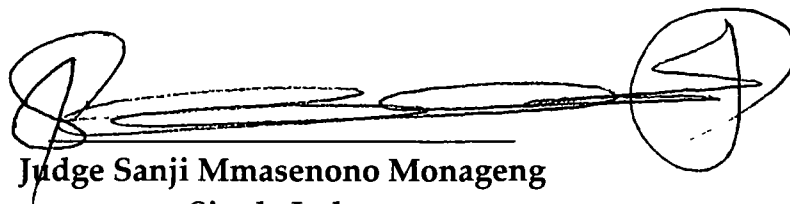
- (i) must only be referred to by the numbers assigned to them by the Registry, unless otherwise ordered by the Chamber; and
- (ii) shall only be contacted through their Legal Representatives;

ORDER the Prosecutor and the Defence to keep confidentiality of any information related to the victims and to ensure that it is not passed on to the public;

RECALL the Legal Representatives of victims of their obligation to keep confidentiality of any information related to the victims and to ensure that it is not passed on to the public;

ORDER the Office of Public Counsel for Victims to provide support and assistance to victims and, as the case may be, their legal representatives in accordance with regulation 81(4) of the Regulations.

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



Judge Sanji Mmasenono Monageng
Single Judge

Dated this 25 September 2009

At The Hague, the Netherlands