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No.: **ICC-02/05-03/09**

Date: **7 June 2013**

**TRIAL CHAMBER IV**

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

**SITUATION IN DARFUR, THE SUDAN**

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

**Public Document**

**Prosecution's Observations on 13 Victims' Applications for  
Participation in the Proceedings**

**Source:** Office of the Prosecutor

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

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## I. Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and Trial Chamber IV’s (“Chamber”) instructions,<sup>1</sup> the Prosecution submits its observations on sixteen applications to participate in the trial proceedings in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*.
2. The Prosecution observes that although the Registry transmitted thirteen applications to the parties in its transmission filing of 23 May 2013,<sup>2</sup> three of them (in annexes 1, 6 and 7 to the Registry’s transmission filing) in fact contained two applications, bringing the total number of applications to sixteen.
3. All of the applicants seek recognition as a consequence of their relationship with person(s) who died at the MGS Haskanita as a result of the alleged crimes. Unfortunately, the extensive redactions applied to the applications of Applicants a/0742/09, a/0743/09, a/0748/09, a/0749/09<sup>3</sup>, a/0745/09, a/0746/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, a/0755/09 and a/0660/09<sup>4</sup> render it difficult to assess with certainty whether they meet all of the requirements for participation. As far as can be gathered from the non-redacted portions of their applications, these applicants largely appear to meet the requirements for participation.
4. As for Applicants a/6000/11, a/0744/09 and a/0747/09, these applicants should be requested to provide further clarification and/or submit further information and documents to establish a causal link between the harm they allegedly

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<sup>1</sup> Email from Legal Officer of Trial Chamber IV sent on 15/05/2013 at 16:47 instructing the parties to file their observations within two weeks’ of the date of the VPRS transmission.

<sup>2</sup> ICC-02/05-03/09-330.

<sup>3</sup> The Applicants a/0742/09, a/0743/09, a/0748/09 and a/0749/09 do not apply on their behalf.

<sup>4</sup> Applicant a/0660/09 submitted an application on behalf of his brother who has been killed during attack on 29 September 2007. However, as part of the same application, he also submitted an individual victim application to which a victim number has not been assigned.

suffered and the crimes allegedly committed at the MGS Haskanita on 29 September 2007.

## II. Background

5. On 7 May 2012 the Registry filed with the Chamber sixteen applications to participate in the proceedings.<sup>5</sup>
6. On 23 May 2013, the Registry transmitted redacted versions of the sixteen applications to the parties.<sup>6</sup>

## III. Observations on the Applications

7. The Prosecution reincorporates its previous observations concerning the legal criteria for victims' participation in the proceedings.<sup>7</sup>

*Applicants a/0742/09, a/0743/09, a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09 and a/0753/09*

8. The extensive redactions applied to the identity documents such as the "birth certificate" and "identity card of the person acting on behalf of the applicant" (a/0742/09), "passport of the applicant" (a/0743/09), and "identity card of the applicant" (a/0745/09, a/0746/09, a/0748/09, a/0749/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09) render it difficult to assess whether the applicants have indeed provided sufficient proof of identity. However, these applicants also provided supplementary information explaining familial relationships within their cultural settings. Applicant a/0750/09 also provides additional explanation of her relationship with the deceased person whom she claims is

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<sup>5</sup>ICC-02/05-03/09-330. As related earlier, there are actually sixteen applications in thirteen annexes since Annexes 1, 6 and 7 to the Registry's transmission filing each contain two applications.

<sup>6</sup> ICC-02/05-03/09-478. The filing was notified to the parties on the 24 May 2013.

<sup>7</sup> ICC-02/05-03/09-64; ICC-02/05-03/09-69 and ICC-02/05-03/09-260.

her cousin. Notwithstanding the redactions, therefore, all of this information appears to prove sufficiently these applicants' relationships with the deceased persons.

9. In respect of this batch of applications, the VPRS's "Supplementary Information" form indicates that death certificates have been appended to the applications. Again, the redactions that have been applied to the names of the deceased persons throughout render it difficult (i) to establish their identities and (ii) to verify whether these identities correspond to those of persons allegedly killed during the attack on the MGS Haskanita on 29 September 2007. The Prosecution observes, however, that the redacted death certificates appended to these applications appear to have been issued by the African Union Mission in the Sudan ("AMIS"), and therefore to confirm that the deceased persons were indeed amongst the deceased AMIS personnel.
10. An assessment of the non-redacted portions of the applications and their supplementary information also confirms that these applicants appear otherwise to meet the requirements for participation. The Chamber will be able to determine whether the applicants have indeed provided adequate proof of their identities and their relationships with the deceased persons, or whether additional documents or information are required.

*Applicants a/0744/09 and a/0747/09*

11. The Prosecution observes that Application a/0744/09 is appended to Application a/0748/09, while Application a/0747/09 is appended to that of a/0749/09. Both have been attached as "supplementary information", but the Prosecution will assess them as separate applications.
12. Applicant a/0744/09 claims to be an uncle of one of the deceased AMIS soldiers as well as the husband of Applicant a/0748/09. Applicant a/0747/09

claims to be a cousin of a deceased person and the son of Applicant a/0749/09. Both provide identity cards as proof of their identities. Unfortunately, the redactions applied to these documents render it difficult to assess whether they provide sufficient proof of their identities. No further information such as proof of their relationships with the deceased persons has been appended to these applications.

13. Absent this information, it is impossible to establish *prima facie* a causal link between the personal harm the applicants allegedly suffered and the crimes allegedly committed during the attack on the MGS Haskanita on 29 September 2007.

*Applicant a/0660/09*

14. Applicant a/0660/09 submits an application on behalf of his brother who was allegedly killed during the attack on the MGS Haskanita on 29 September 2007. As part of the same application, he also appends an individual victim application which has not been assigned a victim number. The Prosecution submits that these should be treated as two separate applications and a separate victim number ought to be assigned to the appended individual victim application. In this case also, the redactions applied to the death certificate which is appended to the application and the identity documents render it difficult to assess whether sufficient proof of identity and/or a relationship with the deceased persons has been provided.
15. That said, an assessment of the non-redacted portions of the application and supplementary information reveals that this applicant appears otherwise to meet the requirements for participation. The Prosecution also notes that the redacted death certificate which is appended to this application appears to have been issued by AMIS, and therefore to confirm that the deceased person was indeed one of the deceased AMIS personnel. Chamber will be able to

determine whether these applicants have indeed provided adequate proof of their relationships with the deceased persons and, if not, whether to request additional documents or information.

*Applicant a/0755/09*

16. The identity document appended to the application (“identity card of the applicant”) is redacted in a manner that renders it difficult to assess whether the applicant has provided sufficient proof of identity.
17. The applicant claims to be a long-standing friend of one of the soldiers who was killed during the attack on the MGS Haskanita. Additional information from a family member of the deceased is appended as supplementary information. The death certificate of the deceased, identity cards of the deceased soldier’s parents and the identity card of a witness are also appended to this application. However, the redactions applied to these documents also render it difficult to assess whether the applicant has provided sufficient proof of the relationship between himself and the deceased person.
18. That said, an assessment of the non-redacted portions of the application and supplementary information reveal that this Applicant appears otherwise to meet the requirements for participation. The Prosecution also notes that the redacted death certificate which is appended to the application appears to have been issued by AMIS, and therefore to confirm that the deceased person was indeed one of the deceased AMIS personnel. The Chamber will be able to determine whether the applicant has indeed provided adequate proof of relationship with the deceased persons and, if not, whether to request additional documents or information.

*Applicant a/6000/11*

19. This applicant claims that her husband worked at the AMIS camp in Haskanita immediately prior the attack on 29 October 2007. The redactions applied to the documents, which appear to conceal the name of the applicant, and the redactions to the document in Arabic appended to the application (marked as “document in Arabic”), render it impossible to establish the applicant’s identity or assess whether she has provided sufficient proof of her identity. The translated version of a document which appears to be a marriage certificate provides no information as to the identity of the applicant due to the extensive redactions applied.
20. More importantly, the applicant provides no information or document, such as a contract of employment or employee’s identity card confirming that her alleged husband was ever employed as non-AMIS personnel at the MGS Haskanita on 29 September 2007, the date of the attack. Although the applicant claims that her husband was shot during the attack, it is difficult to know whether she has provided any proof of this due to the redactions applied to the appended information.
21. The Prosecution submits that absent such information, it is impossible to establish *prima facie* a causal link between the personal harm that the applicant allegedly suffered and the crimes allegedly committed during the attack on the MGS Haskanita on 29 September 2007.

**IV. Conclusion**

22. As regards a/0742/09, a/0743/09, a/0748/09, a/0749/09<sup>8</sup>, a/0745/09, a/0746/09, a/0750/09, a/0751/09, a/0752/09, a/0753/09, a/0755/09 and a/0660/09,<sup>9</sup> the

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<sup>8</sup> The Applicants a/0742/09, a/0743/09, a/0748/09 and a/0749/09 do not apply on their behalf.

<sup>9</sup> Including the application attached to the victim application of a/0660/09 to which no number has been assigned.



redactions that have been applied to these applications render it difficult to determine whether they meet all the requirements for participation. Accordingly, the Prosecution therefore leaves it to the Chamber to make a determination as to whether these applicants have provided adequate proof of their identities and relationships with the deceased persons on whose behalf they are applying to participate in the proceedings, or whether additional documents or information needs to be provided.

23. As regards Applicants a/6000/11, a/0744/09 and a/0747/09, the Prosecution submits that they should be required to submit further information and/or documents to establish a causal link between the harm that they allegedly suffered and the crimes allegedly committed at the MGS Haskanita on 29 September 2007 before the Chamber determines whether or not they should be permitted to participate in the present proceedings.



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**Fatou Bensouda**  
Prosecutor

Dated this 7<sup>th</sup> day of June 2013

At The Hague, The Netherlands