

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 October 2009

**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**

**Public Redacted Version of "Decision on the 52 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  
Mr Andrew J. Burrow

**Legal Representatives of Victims**

Mr Brahim Koné  
Ms Hélène Cissé

**Legal Representatives of Applicants**

Mr Akin Akinbote  
Colonel Frank Adaka  
Ms Hélène Cissé  
Sir Geoffrey Nice QC  
Rodney Dixon

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

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’ issues in the case of *The Prosecutor v. Bahar Idriss Abu Garda* (the “*Abu Garda Case*”);<sup>1</sup>

**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;<sup>2</sup>

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

**NOTING** the “Decision on the Designation of a Single Judge on Victims’ Issues and on the Deadline for the Filing of Applications for Participation” issued on 19 August 2009 (“The 19 August 2009 Decision”) 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 of charges in the Abu Garda Case;<sup>4</sup>

**NOTING** the “Document Containing the Charges submitted pursuant to article 61(3) of the Statute”<sup>5</sup> (“the Prosecution’s Charging Document”) filed by the Prosecution on 10 September 2009;

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<sup>1</sup> ICC-02/05-02/09-55.

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

<sup>3</sup> ICC-02/05-02/09-T-2-ENG.

<sup>4</sup> ICC-02/05-02/05-55, p. 6.

<sup>5</sup> ICC-02/05-02/09-91-Conf and ICC-02/05-02/09-91-Conf-Anx1-Anx2.

**NOTING** the "Decision on the Prosecutor's request for extension of time-limit",<sup>6</sup> 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 "Second report on applications to participate in the proceedings" filed by the Registry on 11 September 2009,<sup>7</sup> in which it submits, as annexes, 52 applications for participation in the pre-trial phase of the Case ("the Applications");

**NOTING** the "Report on applications a/0581/09 to a/0586/09 and request for extension of deadline in order to file supplementary information received"<sup>8</sup> filed by the Registry on 15 September 2009;

**NOTING** the "Decision Ordering the Parties to Submit their Observations on the 52 Applications for Victims' Participation in the Proceedings"<sup>9</sup> issued by the Single Judge on 16 September 2009 wherein she (i) ordered the parties to file their observations on the Applications by 30 September 2009 and (ii) granted the extension of time limit requested in relation to applications a/0581/09 to a/0586/09;

**NOTING** the "Filing of translations and supplementary information in respect of applications to participate in proceedings a/0581/09 to a/0586/09 and a/0536/09"<sup>10</sup> filed by the Registry on 16 September 2009;

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<sup>6</sup> ICC-02/05-02/09-98.

<sup>7</sup> ICC-02/05-02/09-97-Conf-Exp, Anx3-Anx54.

<sup>8</sup> ICC-02/05-02/09-104-Conf-Exp.

<sup>9</sup> ICC-02/05-02/09-106.

<sup>10</sup> ICC-02/05-02/09-105-Conf-Exp and Anx1-Anx8.

**NOTING** the “Prosecution’s Submission of Public Redacted Version of Document Containing the Charges and List of Evidence”,<sup>11</sup> filed by the Prosecution on 25 September 2009;

**NOTING** the “Decision on the 34 Applicants for Participation at the Pre-Trial Stage of the Case”<sup>12</sup> (“the Decision on the 34 Applicants”), issued by the Single Judge on 25 September 2009;

**NOTING** the “Defence’s Observations on 52 Applications for Victim Participation in the Proceedings”<sup>13</sup>, (the “Defence Observations”) filed by the Defence for Bahar Idriss Abu Garda on 30 September 2009, wherein the Defence submitted the following observations: (i) that it had no objections to the granting of authorisation to participate as victims in the pre-trial stage of the Abu Garda Case to the applicants who were either personnel of the African Union Mission in Sudan (“AMIS”) or family members of AMIS personnel; (ii) that the application of [REDACTED] should be carefully reviewed to ascertain whether it meets the requirements under Rule 85(b); and, (iii) that the applications of villagers from the village of Haskanita should be rejected because the incidents alleged therein do not relate to the offences alleged in the Prosecution’s Charging Document;

**NOTING** the “Prosecution’s Observations on 52 Applications for Victims’ Participation in the Proceedings”<sup>14</sup> filed by the Prosecution on 30 September 2009 wherein it submitted that all of the applicants should be granted authorisation to participate as victims;

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<sup>11</sup> ICC-02/05-02/09-118 and ICC-02/05-02/09-91-Anx1-Red.

<sup>12</sup> ICC-02/05-02/09-121.

<sup>13</sup> ICC-02/05-02/09-124.

<sup>14</sup> ICC-02/05-02/09-125-Conf.

NOTING the “Decision Distributing the Proposed Schedule for the Confirmation Hearing”<sup>15</sup> (the “Proposed Schedule”) issued by the Presiding Judge on 2 October 2009;

NOTING the “Decision on victims' modalities of participation at the Pre-Trial Stage of the Case” (the “Decision on the Modalities of Participation”) issued by the Chamber on 6 October 2009;<sup>16</sup>

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”);

### HEREBY RENDER THIS DECISION

1. On 11 September 2009, the Single Judge was seized of 52 applications for participation in the pre-trial stage of the proceedings in the Abu Garda Case.<sup>17</sup>
2. At the outset, the Single Judge recalls the main principles to be adhered to when considering requests for authorisation to participate as victims in the pre-trial stage of the proceedings as extensively set out in the case law of this Chamber and, particularly, in the Decision on the 34 Applicants.<sup>18</sup> In this respect, the Single Judge considers that a person shall be granted the right to participate in proceedings if (i) he/she has submitted a complete application to participate, (ii) he/she falls under the definition of victim within the meaning of rule 85 of the Rules, and (iii) his/her personal interests are affected by the proceedings at hand as prescribed in article

<sup>15</sup> ICC-02/05-02/09-129 and its annex.

<sup>16</sup> ICC-02/05-02/09-136.

<sup>17</sup> Applicants a/0535/09, a/0536/09, a/0537/09, a/0538/09, a/0539/09, a/0540/09, a/0541/09, a/0542/09, a/0543/09, a/0544/09, a/0545/09, a/0546/09, a/0547/09, a/0548/09, a/0549/09, a/0550/09, a/0551/09, a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0557/09, a/0558/09, a/0559/09, a/0559/09, a/0560/09, a/0560/09, a/0561/09, a/0562/09, a/0563/09, a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/0568/09, a/0569/09, a/0570/09, a/0571/09, a/0572/09, a/0573/09, a/0574/09, a/0575/09, a/0576/09, a/0577/09, a/0578/09, a/0579/09, a/0580/09, a/0581/09, a/0582/09, a/0583/09, a/0584/09, a/0585/09 and a/0586/09.

<sup>18</sup> ICC-02/05-02/09-121, paras 7-14.

68(3) of the Statute. As already stated, the Single Judge is of the view that the personal interests of victims are affected by the outcome of the pre-trial stage of the case.<sup>19</sup>

3. The present decision will essentially aim at assessing whether the applicants fall within the definition of victims under the meaning of rule 85 of the Rules, and whether they fulfill the requirements to be authorized to participate in the pre-trial stage of the proceedings. The modalities of participation of those who will be granted the status of victim in the present decision will be those that have been elaborated in the Decision on the Modalities of Participation.

## **I. Completeness of the applications for participation**

### **A. Applicable Law**

4. 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 reiterates that she will be in a position to properly assess only fully completed applications containing the information required under regulation 86(2) of the Regulations. 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;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;

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<sup>19</sup> ICC-02/05-02/09-121, paras 3 and 4. See also ICC-01/04-01/07-474, paras 31-44, ICC-01/04-01/06-462-tEN, p.5 and ICC-02/08-110.

- (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; and
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.

5. 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 and for the reasons stated in the Decision on the 34 Applicants will accept the documents listed therein in order to prove identities.

6. The majority of the applications refer to alleged emotional harm and economic loss 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 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. 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." Therefore, the documents appended to the applications for participation will be assessed by the Single Judge on a case by case basis.

7. The majority of the applications considered in the present decision are signed or have a thumbprint. Moreover, they specify the name of the applicant along with proof of his or her identity, the place and date of the alleged crime(s) as well as a description of the alleged harm suffered. Nevertheless, some of the applications remain incomplete for the reasons explained in the following subsections.

1) Proof of *locus standi* to act on behalf of an applicant



8. Application a/0536/09 is made, pursuant to rule 85(b) of the Rules, on behalf of [REDACTED].

9. In light of the precedents of the Chamber,<sup>20</sup> the Single Judge recalls that when acting on behalf of an organization or an institution within the meaning of rule 85(b) of the Rules, the person must demonstrate that he or she has *locus standi* to do so.

10. In relation to application a/0536/09, the Single Judge notes that she did not receive such proof within the time frame set out in the 19 August 2009 Decision to submit *complete* application forms. The Single Judge notes that the person acting on behalf of applicant a/0536/09 has submitted supplementary information, which was filed on 15 September 2009,<sup>21</sup> thus after the expiration of the aforementioned deadline. However, the legal representative of applicant a/0536/09 has not requested any extension of time limit in order to submit the above-mentioned supplementary information. Therefore, the Single Judge will not take this supplementary information into consideration.

11. As a result, the Single Judge considers that application a/0536/09 was not complete before the expiration of the deadline set out in the 19 August 2009 Decision and will, therefore, not be taken into consideration in the present decision.

1) Proof of relationship between the Applicant and the deceased person

12. Application a/0543/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established. The

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<sup>20</sup> ICC-01/04-423-Corr-tENG, paras 137-141; ICC-01/04-01/07-579, paras 130-135.

<sup>21</sup> ICC-02/05-02/09-104-Conf-Exp.

Applicant claims emotional harm and economic loss as a result of his brother being killed during the Haskanita attack.

13. The Single Judge recalls that when alleging harm as a result of the death of a family member, the applicant must demonstrate that the family member existed and that he or she had the requisite relationship with the deceased person.

14. Applicant a/0543/09 has furnished proof of his "brother's" death and as such has demonstrated that his family member existed. The Single Judge also observes that the Victims Participation and Reparations Section (the "VPRS") has appended information to the application form confirming that (i) the relationship between the Applicant and the deceased is that which would be described in Western terms as cousins (the Applicant being the son of the deceased's mother's sister) but which is described in the Applicant's community as brothers and (ii) that the widow of the deceased had identified the Applicant as her deceased husband's brother. Despite the aforementioned information, and having reviewed the application form, the Single Judge is not convinced that the requisite relationship between the Applicant and the deceased person has been satisfactorily established, since the information appended to the application form has been filled in by the VPRS and is not signed by the widow or by the Applicant.

15. As a result, the Single Judge considers that application a/0543/09 is not complete and will, therefore, not be assessed for the purposes of the confirmation hearing in the Abu Garda Case.

## **II. Individual Assessment of Applications for Participation**

16. 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.

17. 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 (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.<sup>22</sup>

18. 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*. Thus, the analysis of the applications “will not consist in assessing the credibility of the [applicants'] statement[s] or engaging in a process of corroboration *stricto sensus*,” but the Single Judge 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 her.<sup>23</sup>

19. The Single Judge notes that the 50 complete applications can be divided into three groups as follows:

(a) Applications a/0537/09 to a/0542/09, a/0544/09 to a/0567/09, a/0579/09 and a/0580/09, all from family members of deceased or missing members of AMIS personnel who were based at the Military Group Site (the “MGS”) Haskanita;

(b) Applications a/0568/09 to a/0578/09, from members of AMIS based at the MGS Haskanita, and application a/0535/09, from the wife of one of those personnel; and

(c) Applications a/0581/09 to a/0586/09, made by members of the community in Haskanita.

a. Applications a/0537/09 to a/567/09, a/0579/09 and a/0580/09

- Application a/0537/09

<sup>22</sup> ICC-02/05-02/09-121, para.11.

<sup>23</sup> ICC-02/05-02/09-121, para.14.

20. Application a/0537/09 is submitted by a man, who supported his application with proof of his identity, thereby fulfilling the requirements set out in the Decision on the 34 Applicants. 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 his brother was assigned to the AMIS mission in Haskanita and was killed during an attack on 29 September 2007. He claims that his brother was the breadwinner of the family and, as such, was responsible for caring for his aged parents and the two younger children of the family, as well as his school fees. The Applicant alleges that all of his brother's personal effects were lost.

22. The Applicant has appended the necessary documents to prove: (i) his own identity (ii) his relationship with his brother, and (iii) the death of his brother.

23. The Single Judge is of the view that Applicant a/0537/09 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 brother was killed and his brother's belongings were lost.

- *Application a/0538/09*

24. Application a/0538/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. There are inconsistencies in the spelling of the name of the Applicant on the supporting documentation provided; however these inconsistencies are limited to one letter of the Applicant's name. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

25. The Applicant states that she is unsure of the exact details of how her husband's death occurred. She was not informed about the Haskanita attack at the

time and has never been properly informed about the circumstances surrounding the death of her husband. She declares, however, that she was requested to travel for his burial. The Applicant claims to have suffered emotional harm due to the loss of her husband, which trauma has manifested itself in physical pains in her joints and eyes. She further claims that her husband was the sole breadwinner of the family and that she is thus concerned that she is now unable to provide for herself and her family. She is particularly worried about her children's education. She also claims that she has lost social status because she is a widow.

26. The Applicant has appended the necessary documents to prove: (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/0538/09 has provided sufficient evidence establishing *prima facie* that she suffered *inter alia* 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.

- *Application a/0539/09, Application a/0540/09, Application a/0541/09 and Application a/0542/09*

28. Applications a/0539/09, a/0540/09, a/0541/09 and a/0542/09 are submitted by a woman,<sup>24</sup> acting on behalf of her minor children. The Single Judge notes that the applications are supported by proof of the minors' identities. Accordingly, the Single Judge is satisfied that the Applicants are natural persons and that their identities have been duly established. In relation to the identity of the person acting on behalf of the Applicants, the Single Judge notes that there are inconsistencies in the spelling of her name on the supporting documentation provided. However, these inconsistencies are limited to one letter of her name. Accordingly, the Single Judge is also satisfied that the identity of the person acting on their behalf has been established, as well as the link between this person and her minor children.

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<sup>24</sup> Applicant a/0538/09.

29. It is submitted on behalf of the Applicants that their father died in Sudan on 29 September 2007, but, that they had no information about what had happened to him until his body was returned. It is claimed that the minor Applicants have been traumatised by the death of their father. In addition to their emotional pain, it is claimed that they have suffered as a result of losing the financial support of their father, which has left them unable to complete their schooling.

30. The Applicants have appended the necessary documents to prove: (i) their own identities (ii) their relationship with their father, and (iii) the death of their father.

31. The Single Judge is of the view that Applicants a/0539/09, a/0540/09, a/0541/09 and a/0542/09 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.

- *Application a/0544/09*

32. Application a/0544/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

33. The Applicant claims that she was informed about the death of her husband by her brother-in-law. She was pregnant at the time. The Applicant claims that no-one explained to her how her husband had died. The Applicant asserts that since learning of her husband's death she has not been eating properly, has suffered from depression and experiences recurring pains in her body. She alleges that she has lost social status as a result of becoming a widow and that she has suffered financial loss

in terms of support and income from her husband. She is further worried about how she will educate her two children.

34. The Applicant has appended the necessary documents to prove: (i) her own identity (ii) her relationship with her husband, and (iii) the death of her husband.

35. The Single Judge is of the view that Applicant a/0544/09 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.

- *Application a/0545/09 and Application a/0546/09*

36. Applications a/0545/09 and a/0546/09 are submitted by a woman,<sup>25</sup> acting on behalf of her minor children. The Single Judge notes that the applications are supported by proof of the minors' identities. Accordingly, the Single Judge is satisfied that the 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 between this person and her minor children.

37. Applicant a/0545/09 is a child, who was unborn at the time of her father's death. It is submitted on her behalf that her mother, who was pregnant with her at the time, collapsed and had to be hospitalised on learning of her husband's death. It is also claimed that the news of the death of Applicant a/0545/09's father affected her birth and that she has had medical treatment for resultant problems. It is further alleged that the baby has suffered a loss of income and support as a result of the death of her father.

38. In relation to Applicant a/0546/09, although he has no information about the circumstances of his father's death, it is submitted on his behalf that he saw his

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<sup>25</sup> Applicant a/0544/09

father's corpse while accompanying his mother at the burial. It is alleged that he has suffered emotional trauma resulting from the death of his father. It is further claimed that the child has lost income and support from his father, resulting in his school fees not being paid and the child not always having enough to eat.

39. The Applicants have appended the necessary documents to prove: (i) their own identities (ii) their relationship with their father, and (iii) the death of their father.

40. The Single Judge is of the view that Applicants a/0545/09 and a/0546/09 have provided sufficient evidence establishing *prima facie* that they *inter alia* 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.

- *Application a/0548/09*

41. Application a/0548/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Although there are inconsistencies in the spelling of her name and age on the supporting documentation provided, the Single Judge is of the view that in light of her assessment on the merits of the application's intrinsic coherence, she is convinced that the Applicant is a natural person and that her identity has been established.

42. The Applicant claims that she was not informed of the attack on the MGS Haskanita at the time, but, that she heard rumours. She asserts that only later was she told that her husband was missing in action. The Applicant claims that she developed an ulcer and lost a lot of weight due to the extreme anxiety and emotional anguish that she suffered. She also claims to suffer from intrusive thoughts and that she has noticed a severe change in her behaviour towards her children in terms of



being easily provoked by them. She alleges that the loss of her husband's income has left her under pressure as she is responsible for their two children, two of her husband's brothers and her husband's paralyzed father. She also claims that she has lost social status as she is not sure whether or not she is a widow.

43. The Applicant has not only appended the necessary documents to prove her identity but has also furnished proof of her relationship with her husband and the fact that her husband "was declared missing in action during the Haskanita attack."<sup>26</sup>

44. The Single Judge is of the view that Applicant a/0548/09 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, as a result of which her husband went missing.

- *Application a/0547/09 and Application a/0549/09*

45. Applications a/0547/09 and a/0549/09 are submitted by a woman,<sup>27</sup> acting on behalf of her minor children. The Single Judge notes that the applications are supported by proof of the minors' identities. Accordingly, the Single Judge is satisfied that the Applicants are natural persons and that their identities have been duly established. Furthermore, the Single Judge is satisfied that the identity of the person acting on their behalf has been established, as well as the link between this person and her minor children. Although there are inconsistencies in the spelling of the name of the person acting on behalf of the Applicants on the supporting documentation provided, the Single Judge is satisfied that they refer to one and the same person.

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<sup>26</sup> Application a/0548/09, p.22.

<sup>27</sup> Applicant a/0548/09.

46. It is submitted on behalf of the children that they are sad because of their father's absence and that they have frequent nightmares. It is also stated that the children suffer as a result of the loss of their father's income.

47. The Applicants have appended the necessary documents to prove: (i) their own identities (ii) their relationship with their father, and (iii) the fact that their father "was declared missing in action during the Haskanita attack".<sup>28</sup>

48. The Single Judge is of the view that Applicants a/0547/09 and a/0549/09 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, as a result of which their father went missing.

- *Application a/0550/09*

49. Application a/0550/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

50. The Applicant claims that her husband was sent to Darfur to join AMIS. She declares that he was attacked and killed on 29 September 2007 in Haskanita. She claims that she has suffered emotional pain and anguish as a result of the death of her husband as well as the loss of his assistance in bringing up their daughter. She also claims to have suffered financially as a result of losing her husband's income and she alleges that her husband's personal belongings were stolen during the attack.

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<sup>28</sup> Application a/0547/09, p.30 and Application a/0549/09, p.30.

51. The Applicant has appended the necessary documents to prove her identity and her husband's death. She has further provided sufficient information to establish her relationship with the deceased person.<sup>29</sup>

52. The Single Judge is of the view that Applicant a/0550/09 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.

- *Application a/0551/09*

53. Application a/0551/09 is submitted by a woman,<sup>30</sup> acting on behalf of her minor daughter. The Single Judge notes that the application is supported by proof of the minor's identity. Although there are inconsistencies in the spelling of the name of the minor Applicant as it appears on the supporting documentation provided, the Single Judge is satisfied that they relate to one and the same person.<sup>31</sup> Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established. Furthermore, the Single Judge is also satisfied that the identity of the person acting on her behalf has been verified, as well as the link between this person and her minor daughter.

54. It is submitted on behalf of the child that her father was sent to Darfur and that he was attacked and killed in Haskanita on 29 September 2007. It is claimed that she has suffered emotional pain and anguish as a result of her father's death. It is also stated that the child has suffered due to the loss of her father's income.

55. The Applicant has not only appended the necessary documents to prove the child's identity but has also furnished proof of her relationship with her father and the fact that he was killed.

<sup>29</sup> In particular, Application a/0550/09, pp.22-23 and Application a/0551/09 (Applicant a/0550/09's daughter), pp. 23-25 and 36.

<sup>30</sup> Applicant a/0550/09.

<sup>31</sup> Applicant a/0551/09, pp.23, 27-28, 31 and 36.

56. The Single Judge is of the view that Applicant a/0551/09 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.

- *Application a/0552/09*

57. Application a/0552/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Although there are inconsistencies in the spelling of the name of the Applicant, the Single Judge is satisfied, notably in light of the explanation given in the application,<sup>32</sup> that the Applicant is a natural person and that her identity has been duly established.

58. The Applicant claims that her husband was a soldier and was sent to Darfur. She alleges that on 29 September 2007, her husband was shot by rebels in Haskanita. She declares that he was injured and hospitalised. She states that he subsequently died as a result of the gunshot wounds sustained during the attack. She claims that she has suffered severe anguish as a result of the death of her husband. She also says that she no longer has someone in whom she can confide and that she cannot now bring up their children in the way that they had wanted. She also claims to have suffered financially as a result of losing her husband's income and she alleges that her husband's personal belongings were lost. Moreover, she declares that becoming a widow at such a young age has been the most painful experience of her life.

59. The Applicant has appended the documents necessary to prove her identity and the fact that her husband died. Furthermore, she has provided sufficient information to establish her relationship with the deceased person.<sup>33</sup> Therefore, the Single Judge is satisfied that the relationship between the Applicant and the deceased has been duly established.

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<sup>32</sup> Application a/0552/09, p. 25.

<sup>33</sup> Application a/0552/09, pp. 23-26 and 37.

60. The Single Judge is of the view that Applicant a/0552/09 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 sustained injuries, as a result of which he subsequently died.

- *Application a/0553/09, Application a/0554/09, Application a/0555/09, Application a/0556/09*

61. Applications a/0553/09, a/0554/09, a/0555/09 and a/0556/09 are submitted by a woman,<sup>34</sup> acting on behalf of her minor daughters. The Applicant has furnished proof of her identity, her daughters' identities and the relationship between her and her daughters. Although there are inconsistencies in the spelling of the name of the person acting on behalf of the minor Applicants on the supporting documentation provided, the Single Judge is satisfied, notably in light of the explanation given in the application,<sup>35</sup> that the identity of the person acting on behalf of the minors has been duly established. Accordingly, the Single Judge is satisfied that the identities of the Applicant and her daughters, on whose behalf she is acting, together with the relationships between them have been duly established.

62. The person acting on behalf of the Applicants states that their father was a soldier and was sent to Darfur. It is further alleged that on 29 September 2007, their father was shot by rebels in Haskanita, was injured and as a result, hospitalised. It is stated that he subsequently died as a result of the gunshot wounds sustained during the attack. It is claimed that the Applicants suffer emotional pain and anguish as a result of the death of their father, who they greatly miss. It is also claimed that they suffer due to the loss of the benefit of their father's income, which supported the family and paid for their education.

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<sup>34</sup> Applicant a/0552/09.

<sup>35</sup> Application a/0552/09, p. 25

63. The Applicants have appended the necessary documents to prove: (i) their own identities; (ii) their relationships with their father, and (iii) the death of their father.

64. The Single Judge is of the view that Applicants a/0553/09, a/0554/09, a/0555/09 and a/0556/09 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 sustained injuries, as a result of which he subsequently died.

- *Application a/0557/09*

65. Application a/0557/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

66. The Applicant claims that her husband was a soldier who was sent to Sudan and was killed on 29 September 2007 in the attack at Haskanita. She alleges that she has suffered mental pain and anguish as a result of the death of her husband. She also states that she alone must now care for their children and that, due to the loss of her husband's income, she can no longer afford to pay for their education.

67. The Applicant has appended the necessary documents to prove: (i) her own identity (ii) her relationship with her husband, and (iii) the death of her husband.

68. The Single Judge is of the view that Applicant a/0557/09 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.

- *Application a/0559/09*

69. Application a/0559/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. There appears to be an error in the date of birth supplied on the Applicant's birth certificate and a minor difference in the spelling of the Applicant's name as it appears on the application form. However, notably in light of the contents of the application form and a letter appended thereto,<sup>36</sup> the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

70. The Applicant claims that her father was a soldier who was sent to Sudan and was killed in the attack at Haskanita on 29 September 2007. She alleges that she has suffered mental pain and anguish as a result of the death of her father. She also asserts that since her father's death, the family has had no-one to take care of them, that her school fees can no longer be paid and that they sometimes go hungry because there is not enough to eat.

71. The Applicant has appended the necessary documents to prove: (i) her own identity (ii) her relationship with her father, and (iii) the death of her father.

72. The Single Judge is of the view that Applicant a/0559/09 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.

- *Application a/0558/09, Application a/0560/09, Application a/0561/09,  
Application a/0562/09*

73. Applications a/0558/09, a/0560/09, a/0561/09 and a/0562/09 are submitted by a woman,<sup>37</sup> acting on behalf of her minor children. The Single Judge notes that the application is supported by proof of the minors' identities. Although there are

<sup>36</sup> Application a/0559/09, pp.23-24 and 33-34.

<sup>37</sup> Applicant a/0557/09.

inconsistencies in the spelling of the name of Applicant a/0562/09 and in the date of birth of Applicant a/0558/09 as they appear on the supporting documentation provided, the Single Judge is satisfied, notably in light of the applications form and letters appended thereto,<sup>38</sup> that their identities have been duly established. The Single Judge also notes a minor inconsistency in the spelling of the name of Applicant a/0560/09 on the supporting documentation provided but is satisfied that this inconsistency is limited to one letter of the Applicant's name. Accordingly, the Single Judge is satisfied that the Applicants are natural persons and that their identities have been duly established. Furthermore, the Single Judge is satisfied that the identity of the person acting on their behalf has been established, as well as the link between this person and her minor children. Accordingly, the Single Judge is satisfied that the identities of the Applicants and the person acting on their behalf, together with the relationship between them have been duly established.

74. It is submitted on behalf of the Applicants that their father was a soldier who was sent to Darfur. It is alleged that he was killed in Haskanita on 29 September 2007. It is claimed that the Applicants suffer pain and anguish as a result of the loss of their father and that they also suffer as a result of the loss of his income. It is alleged that the Applicants are often hungry and that their school fees can no longer be paid.

75. The Applicants have appended the necessary documents to prove: (i) their own identities (ii) their relationship with their father, and (iii) the death of their father.

76. The Single Judge is of the view that Applicants a/0558/09, a/0560/09, a/0561/09 and a/0562/09 have provided sufficient evidence establishing *prima facie* that they have 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.

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<sup>38</sup> Application a/0562/09, pp. 32-34; Application a/0558/09, pp.23-24.



- *Application a/0563/09*

77. Application a/0563/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

78. The Applicant claims that his father was a soldier who was sent to Darfur. He declares that his father was shot during the attack on his base in Haskanita on 29 September 2007. He states that his father later died from his injuries. The Applicant alleges that he suffers emotional pain and anguish as a result of the death of his father. In addition, he alleges that he now has to support his mother and his siblings, that some of his younger brothers have had to work as hawkers in order to make ends meet. The Applicant also alleges that all of the personal belongings that his father had in Darfur were taken.

79. The Applicant has appended the necessary documents to prove his own identity and his relationship with his father. Although the Applicant does not submit proof of the death of his father, the Single Judge is satisfied that, in the case at hand, this is a matter of public record.<sup>39</sup>

80. The Single Judge is of the view that Applicant a/0563/09 has provided sufficient evidence establishing *prima facie* that he has 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 sustained injuries, as a result of which he subsequently died.

- *Application a/0564/09, a/0565/09 and a/0566/09*

81. Applications a/0564/09, a/0565/09 and a/0566/09 are submitted by a man,<sup>40</sup> acting on behalf of his minor siblings. The Single Judge notes that the applications

<sup>39</sup>UNAMID, *UMANID Honours AMIS' Fallen Peacekeepers*, UNAMID News Bulletin, May 2008, Issue 15.

<sup>40</sup> Applicant a/0563/09.

are supported by proof of the minors' identities. Accordingly, the Single Judge is satisfied that the 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 between this person and his minor siblings.

82. It is claimed that the Applicants' father was a soldier who was sent to Darfur. It is alleged that their father was shot at and injured during the attack on his base in Haskanita on 29 September 2007 and subsequently hospitalised before dying from his injuries. It is submitted that the Applicants suffer emotional pain and anguish due to their father's death. It is also alleged that some of the Applicants now have to work as hawkers to make ends meet.

83. The Applicants have appended the necessary documents to prove their own identities and their relationship with their father. Although the Applicants do not submit proof of the death of their father, the Single Judge is satisfied that, in the case at hand, this is a matter of public record.<sup>41</sup>

84. The Single Judge is of the view that Applicants a/0564/09, a/0565/09 and a/0566/09 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 sustained injuries, as a result of which he subsequently died.

- *Application a/0567/09*

85. Application a/0567/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

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<sup>41</sup> UNAMID, *UMANID Honours AMIS' Fallen Peacekeepers*, UNAMID News Bulletin, May 2008, Issue 15.

86. The Applicant claims that his father was sent to Darfur. He alleges that his father was shot during the attack on Haskanita on 29 September 2007, hospitalised and later died from his injuries. The Applicant alleges that he suffers emotional pain and anguish as a result of the death of his father. In addition, he alleges that he has not been able to take up university studies as, since his father's death, his brother has had to look after the entire family and there are not enough funds available to allow him to proceed with his education. The Applicant also alleges that all of the personal belongings that his father had in Darfur were taken.

87. The Applicant has appended the necessary documents to prove his own identity and his relationship with his father. Although the Applicant does not submit proof of the death of his father, the Single Judge is satisfied that this is a matter of public record and, therefore, considers the application complete.<sup>42</sup>

88. The Single Judge is of the view that Applicant a/0567/09 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 sustained injuries, as a result of which he subsequently died.

- Applications a/0579/09 and a/0580/09

89. Applications a/0579/09 and a/0580/09 are submitted by a man<sup>43</sup> acting on behalf of his grandmother and grandfather, respectively. The Single Judge observes that the applications are supported with proof of the Applicants' identities which fulfils the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicants are natural persons and that their identities have been duly established. Furthermore, the Single Judge is also satisfied

<sup>42</sup>UNAMID, *UMANID Honours AMIS' Fallen Peacekeepers*, UNAMID News Bulletin, May 2008, Issue 15.

<sup>43</sup> Applicant a/0434/09

that the identity of the person acting on their behalf has been established, as well as the link existing between this person and the Applicants.

90. It is alleged in the applications that their son was sent on a mission to Darfur for the African Union. It is contended that, on 29 September 2007, their son was killed during the attack on Haskanita. It is further stated that the tragic death of their son devastated them because they had very close familial ties. Thus the victim's sudden passing away profoundly affected the family structure, leaving them in a disturbing chaos. In addition to the pain caused by their son's death, the Applicants also claim that their son, being the older son, financially supported the entire family, therefore, his death has left them in a precarious economic situation.

91. The Applicants have appended the necessary documents to prove: (i) their own identities; (ii) their relationship with their son, and (iii) the death of their son.

92. The Single Judge is of the view that Applicants a/0579/09 and a/0580/09 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 son was killed.

*b. Applications a/0535/09, a/0568/09 to a/0578/09*

*- Application a/0535/09*

93. Application a/0535/09 is submitted by a woman, who supported her application with proof of her identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that her identity has been duly established.

94. The Applicant alleges that her husband was deployed in Darfur in 2007. She contends that she was informed that her husband had sustained a gun shot wound and been injured in the attack on the MGS Haskanita of the 29 September 2007. In addition, she suffers as a result of sleepless nights and emotional instability.

95. The Applicant has appended documents to prove: (i) her own identity (ii) her relationship with her husband as well as (iii) the injuries suffered by her husband.

96. The Single Judge is of the view that Applicant a/0535/09 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 injured.

- *Application a/0568/09 to a/0578/09*

Application a/0568/09

97. Application a/0568/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

98. The Applicant alleges that he was at his duty post at the MGS Haskanita when the compound was attacked on 29 September 2007 by JEM (Justice and Equality Movement) and SLA (Sudan Liberation Army). The Applicant claims that fragments tore into and injured him and that he sustained notably bruising to his chest during the attack. He further claims to suffer trauma as a result of the attack and to have flashbacks which cause sleep disturbance. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably some clothes and some money.

99. The Single Judge is of the view that Applicant a/0568/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 the Applicant was injured and his personal belongings stolen.

Application a/0569/09

100. Application a/0569/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

101. The Applicant alleges that the MGS Haskanita was attacked by JEM and SLA rebels on 29 September 2007. He states that during the attack he was injured and that he suffers psychological trauma as a result of the attack. He alleges that he has sharp pains when he makes fast movements, and that he suffers from nightmares and feels sad and discouraged in his military career. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably some money.

102. The Single Judge is of the view that Applicant a/0569/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

#### Application a/0570/09

103. Application a/0570/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

104. The Applicant states that he was working in the MGS Haskanita under the auspices of the African Union. He alleges that, on 29 September 2007, the camp was attacked by the combined forces of JEM and SLA. The Applicant states that he was injured and kicked and beaten with a rifle butt. He claims that he suffered serious emotional distress as a result of seeing his colleagues being killed and was

traumatised by his own feelings of powerlessness. He states that he feels tense and aggressive and is sensitive to and shocked by loud noises. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably some money and a wrist watch.

105. The Single Judge is of the view that Applicant a/0570/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

#### Application a/0571/09

106. Application a/0571/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

107. The Applicant alleges that the MGS Haskanita was attacked on 29 September 2007 while he was there. The Applicant states that he was injured during the attack. In addition, he contends that all of his belongings were stolen or burned, notably clothing and some money.

108. The Single Judge is of the view that Applicant a/0571/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

#### Application a/0572/09

109. Application a/0572/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

110. The Applicant alleges that he was deployed in Haskanita. The Applicant states that, during the attack, he sustained injuries *inter alia* to his head and he was also shot. He claims that he suffers from mental pain and anguish, flashbacks and emotional trauma as a result of seeing his colleagues being killed. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably clothes, shoes, watch, necklaces and some money from his wallet.

111. The Single Judge is of the view that Applicant a/0572/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

#### Application a/0573/09

112. Application a/0573/09 is submitted by a man who supported his application with proof of his identity. Despite inconsistencies in the date of birth of the Applicant, the Single Judge is of the view that in light of her assessment on the merits of the application's intrinsic coherence, she is convinced that the Applicant is a natural person and his identity has been established.

113. The Applicant alleges that he was injured by a gun shot during the attack on the MGS Haskanita on 29 September 2007. He claims that he suffers from sleep disturbance, headaches and emotional trauma and sadness as a result of seeing his



colleagues being killed. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings notably clothes.

114. The Single Judge is of the view that Applicant a/0573/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

#### Application a/0574/09

115. Application a/0574/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

116. The Applicant alleges that the MGS Haskanita was attacked on 29 September 2007 by "SLA and JEM working together or SLA United". The Applicant states that he sustained gun shots injuries. He claims that he has ongoing problems in lifting weights, running and walking long distances and that he feels demoralised and depressed. He further contends that he alone has been paying for the physiotherapy and other medical expenses which he has incurred in treating his injuries. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably clothes and shoes as well as some money.

117. The Single Judge is of the view that Applicant a/0574/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

Application a/0575/09

118. Application a/0575/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

119. The Applicant alleges that he was assigned to the AMIS mission in Haskanita and was present during the attack of 29 September 2007. The Applicant states that he was shot. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably civilian clothing, shoes and some money.

120. The Single Judge is of the view that Applicant a/0575/09 has provided sufficient evidence establishing *prima facie* that he *inter alia* suffered physical 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 he was injured and his belongings stolen.

Application a/0576/09

121. Application a/0576/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

122. The Applicant alleges that he was in Darfur with AMIS when the MGS Haskanita was attacked on 29 September 2007. The Applicant states that he was hit with RPG fragments and sustained a gun shot wound to his chest. He claims psychological trauma as result of the attack. In addition, he contends that, during the attack, his personal belongings were lost.

123. The Single Judge is of the view that Applicant a/0576/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical

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 he was injured and his belongings lost.

Application a/0577/09

124. Application a/0577/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

125. The Applicant alleges that he was based at the MGS Haskanita when it was attacked by the combined forces of SLA, JEM and URF on 29 September 2007. The Applicant states that he was beaten with a rifle butt and sustained injuries. He claims that he now suffers pain, and has to undergo an operation. He also contends that he feels sad and depressed and that he has been psychologically traumatised as a result of seeing his colleagues being killed as well as the volume of fire during the attack. In addition, he contends that, during the attack, his personal belongings were lost, including some money.

126. The Single Judge is of the view that Applicant a/0577/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings lost.

Application a/0578/09

127. Application a/0578/09 is submitted by a man, who supported his application with proof of his identity, in accordance with the requirements set out in the

Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

128. The Applicant alleges that he was assigned to the MGS Haskanita on 2007 and that on 29 September 2007 the compound was attacked by SLA rebels. The Applicant states that he was shot during the attack. He states that he feels irritable, angry, sad and that he is emotionally traumatised. He claims to suffer serious mental anguish. In addition, he contends that the attackers pillaged the camp, stealing *inter alia* his personal belongings, notably clothes, shoes and jewelry.

129. The Single Judge is of the view that Applicant a/0578/09 has provided sufficient evidence establishing *prima facie* that he suffered emotional and physical 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 he was injured and his belongings stolen.

c. Applications a/0581/09 to a/0586/09

130. The Single Judge notes that applications a/0581/09 to a/0586/09 are all submitted by members of the community in Haskanita. They have all supported their applications with proof of their identities, in accordance with the requirements set out in the Decision on the 34 Applicants. Accordingly, the Single Judge is satisfied that the Applicants are natural persons and that their identities have been duly established.

131. Applicant a/0581/09 alleges that he was a resident of Haskanita when Haskanita village and AMIS were attacked by rebel militia in September 2007. The Applicant states that during the attack, they pillaged, stole “whatever they could” and burned and destroyed the village. He further states that he lost his entire livelihood and a certain amount of money. He claims to be traumatised by being

forced to flee his home and village and having to remain hidden in the desert without food, water or protection for days.

132. Applicant a/0582/09 alleges that the rebels attacked his village and the AMIS camp in Haskanita in September 2007. He further contends that he was arrested, beaten and his sheep stolen by the rebels. He claims physical harm and economic loss.

133. Applicant a/0583/09 alleges that he is part of the group of Haskanita villagers who fled from a rebel attack to the African Union base in September 2007. While fleeing they were intercepted by rebels who beat them and stole their money. He further contends that they had to find shelter in the desert surrounding the village, without food, water or protection. He claims physical harm and economic loss.

134. Applicant a/0584/09 was an inhabitant of the village of Haskanita who alleges that he was detained and his movements restricted by rebel forces. He further claims that he was present during an attack by the rebel forces on the village of Haskanita in September 2007, wherein the village was looted and destroyed and the market burned. The Applicant claims that as a result of this attack he was forced to flee his village and abandon his farm and crops.

135. Applicant a/0585/09 was an inhabitant of the village of Haskanita who alleges that he was imprisoned and tortured by rebel forces on 2004. The Applicant also alleges that he was present during an attack on Haskanita village in September 2007, during which his village was looted and destroyed by rebels and, as a result of which, he had to flee his home and abandon his possessions.

136. Applicant a/0586/09 was an inhabitant of the village of Haskanita who alleges that rebels opened fire on him in September 2007, shot his aunt, killed one of his relatives and stole his money. He further alleges that he was present in Haskanita during an attack on the village in September 2007, as a result of which he was forced to abandon his home and possessions.

137. The Defence requests the Single Judge to reject the six aforementioned applications for participation (a/0581/09 to a/0586/09) as they fail to allege an incident which falls within the parameters of the Prosecution's Charging Document.<sup>44</sup> The Prosecution underlines that the aforementioned applicants who alleged to have suffered harm from rebel attacks in September 2007, "either during the days/weeks preceding the attack against MGS Haskanita or in close timely connection thereto" have provided sufficient information to establish a causal link between the alleged harm suffered and the crimes with which the suspect is charged.

138. As recalled in the Decision on the 34 Applicants, 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 re-emphasises the importance of establishing a link between the alleged incident and the present case.<sup>45</sup> Accordingly:

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 murder (and attempted murder), of intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a peacekeeping mission and of pillaging *at the Military Group Site Haskanita (the "MGS Haskanita")*, in Haskanita village, Um Kada Locality, in North Darfur, the Sudan [emphasis added].

139. Furthermore, as to the determination of a causal link between the alleged crime and the harm suffered, the applicant and, as the case may be, the immediate family or the dependants of the direct victim,<sup>46</sup> must show that they suffered harm (i) as a result of the crimes which were allegedly committed during 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

<sup>44</sup> The Defence Observations, para. 14.

<sup>45</sup> ICC-02/05-02/09-121, para. 12.

<sup>46</sup> See notably Appeals Chamber Judgment, 11 July 2008, ICC-01/04-01/06-1432, para. 32.

hand, or to prevent their victimisation as a result of the alleged commission of the said crimes.

140. The crimes alleged by the six applicants follow from alleged attacks on the Haskanita village which either occurred in 2004<sup>47</sup> or in the course of September 2007.<sup>48</sup> The Single Judge notes that the applicants allege that the attack on the MGS Haskanita *inter alia* resulted in them having to flee from their homes in Haskanita village out of fear. Nevertheless, none of the applicants refers to crimes that would have allegedly been committed at the MGS Haskanita as charged by the Prosecution in his Document Containing the Charges nor do they claim to have suffered harm as a result of the crimes which were allegedly committed during the attack on the MGS Haskanita on 29 September 2007 or in intervening to assist direct victims, or to prevent their victimisation as a result of the alleged commission of the said crimes. Furthermore, the Prosecution is charging the suspect with the following, which are not reflected in the applications:

- (i) the killing of 12 AMIS peacekeeping personnel and the attempt to kill eight AMIS peacekeeping personnel under article 8(2)(c)(i) (Count 1);<sup>49</sup>
- (ii) intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission under article 8(2)(e)(iii) (Count 2);<sup>50</sup> and
- (iii) pillaging of property belonging to AMIS and its personnel under article 8(2)(e)(v) (Count 3).<sup>51</sup>

141. Therefore, the Single Judge considers that the alleged harm cannot be said to be *resulting from* the alleged incident with which the suspect is charged since the spatial (the MGS Haskanita) and temporal circumstances (29 September 2007)

<sup>47</sup> Applicant a/0585/09.

<sup>48</sup> Applicants a/0581/09 to a/0586/09.

<sup>49</sup> ICC-02/05-02/09-91-Conf, p.33.

<sup>50</sup> ICC-02/05-02/09-91-Conf, p.34.

<sup>51</sup> ICC-02/05-02/09-91-Conf, p.34.

surrounding the appearance of the harm and the occurrence of the incident do not seem to overlap or to be compatible.

### III. Conclusion

142. After having carefully considered each application, the Single Judge is of the view that Applicants a/0535/09, a/0537/09, a/0538/09, a/0539/09, a/0540/09, a/0541/09, a/0542/09, a/0544/09, a/0545/09, a/0546/09, a/0547/09, a/0548/09, a/0549/09, a/0550/09, a/0551/09, a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0557/09, a/0558/09, a/0559/09, a/0560/09, a/0561/09, a/0562/09, a/0563/09, a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/0568/09, a/0569/09, a/0570/09, a/0571/09, a/0572/09, a/0573/09, a/0574/09, a/0575/09, a/0576/09, a/0577/09, a/0578/09, a/0579/09 and a/0580/09 fulfil the requisite criteria as contained in rule 85(a) of the Rules and should, therefore, be recognised as victims for the purpose of their participation in the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*.

143. The Single Judge notes that two of the Applicants (a/0569/09 and a/0570/09) 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.”<sup>52</sup> Nevertheless, for reasons of fairness of proceedings, the identity of those victims who are also witnesses in the present case should be shared with the Defence.

144. The Single Judge is of the view that Applicants a/0581/09 to a/0586/09 do not fulfil all of the criteria as set out in rule 85(a) of the Rules and, therefore, should not be recognised as victims for the purpose of participation at the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*.

<sup>52</sup> ICC-01/04-01/07-632, para.22.



**FOR THESE REASONS,**

**DECIDE** that Applications a/0536/09 and a/0543/09 are incomplete and will not be considered for the purpose of the confirmation hearing in the present case;

**DENY** authorisation to participate in the proceedings as victims to Applicants a/0581/09 to a/0586/09;

**DECIDE** to recognise Applicants a/0535/09, a/0537/09, a/0538/09, a/0539/09, a/0540/09, a/0541/09, a/0542/09, a/0544/09, a/0545/09, a/0546/09, a/0547/09, a/0548/09, a/0549/09, a/0550/09, a/0551/09, a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0557/09, a/0558/09, a/0559/09, a/0560/09, a/0561/09, a/0562/09, a/0563/09, a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/0568/09, a/0569/09, a/0570/09, a/0571/09, a/0572/09, a/0573/09, a/0574/09, a/0575/09, a/0576/09, a/0577/09, a/0578/09, a/0579/09 and a/0580/09 as victims for the purpose of participating during the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda*;

**DECIDE** that the modalities of participation of victims a/0535/09, a/0537/09, a/0538/09, a/0539/09, a/0540/09, a/0541/09, a/0542/09, a/0544/09, a/0545/09, a/0546/09, a/0547/09, a/0548/09, a/0549/09, a/0550/09, a/0551/09, a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0557/09, a/0558/09, a/0559/09, a/0560/09, a/0561/09, a/0562/09, a/0563/09, a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/0568/09, a/0569/09, a/0570/09, a/0571/09, a/0572/09, a/0573/09, a/0574/09, a/0575/09, a/0576/09, a/0577/09, a/0578/09, a/0579/09 and a/0580/09 are those enumerated in the Decision on the Modalities of Participation;

**ORDER** the Registry to notify as soon as possible the Decision on the Modalities of Participation to the Legal Representatives of the victims recognised in the present decision;

**ORDER** the Registry to notify the victims' Legal Representatives of the Proposed Schedule as soon as possible;

**GRANT** the Legal Representatives until Monday 12 October 2009 at 14h00 to submit their observations, if any, on the Proposed Schedule;

**ORDER** the Registry to provide the Defence with the names of victims a/0569/09 and a/0570/09;

**ORDER** that all of those applicants to whom the status of victim at the pre-trial stage of the case of *The Prosecutor v. Bahar Idriss Abu Garda* is granted in the present decision:

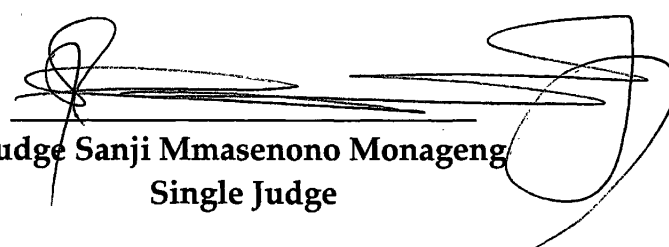
- (i) must only be referred to by the numbers assigned to them by the Registry, unless otherwise ordered by the Chamber; and
- (ii) shall only be contacted through their Legal Representatives;

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

**ORDER** the Legal Representatives of victims to maintain the confidentiality of any information related to the victims and to ensure that it is not passed on to the public; and

**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 Friday 9 October 2009

At The Hague, the Netherlands