



## ICC Victims' Rights Legal Update May-June 2010

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### DRC situation

#### **Developments in the ongoing Lubanga Trial**

#### **Intermediaries' identities to be disclosed to the Defence on a case-by-case basis:**

[Background] On 19 March 2010 the Prosecution proposed a strategy to provide the Chamber with necessary information without exposing intermediaries' identities or endangering the Office of the Prosecutor's (OTP) activities.<sup>1</sup> This was opposed by the Defence.<sup>2</sup>

On 31 May 2010, Trial Chamber I (TCI) ruled against the Prosecution's strategy as follows:<sup>3</sup>

<sup>1</sup> Prosecution Proposed Procedure for Dealing with Intermediaries, 19 March 2010, ICC-01/04-01/06-2362, <http://www.icc-cpi.int/iccdocs/doc796154.pdf>

<sup>2</sup> Réponse de la Défense à la "Prosecution's proposal procedure for dealing with intermediaries", 24 March 2010, ICC-01/04-01/06-2375, <http://www.icc-cpi.int/iccdocs/doc850008.pdf>

- Although ex parte hearings are permitted under the Rules, to exclude the Defence would be unfair to the accused;
- The disclosure threshold to the Defence would be whether there were grounds to suspect that intermediaries had been in contact with witnesses who had given incriminating evidence;
- The Chamber would deal with each intermediary on a case-by-case basis, and in the event of disclosure would ensure protective measures for intermediaries and their families.

Consequently, the Chamber required that two intermediaries against whom allegations of abuse of process had been made be called to testify order to investigate allegations; it also required that an appropriate representative from OTP testify on the way intermediaries were used. Finally, a schedule setting out information on the professional backgrounds of intermediaries and known contact networks between intermediaries and witnesses, including dates of meetings between them, was to be provided.<sup>4</sup>

The Prosecution made a private application to appeal the decision, on the grounds that the threshold test would affect the fairness and expeditiousness of proceedings. This was denied.<sup>5</sup> On 18 June 2010, the Prosecution confirmed it had provided information to Defence relating to the intermediaries accused of abuse of process and had identified three OTP representatives who would be able to testify.<sup>6</sup>

### **12 new reparations forms notified to the Defence**

In accordance with Rule 94(2) and pursuant to Trial Chamber I's decision of 8 January 2010, in which the Chamber ordered that new applications for reparations should be automatically communicated to the Defence following redaction,<sup>7</sup> the Registry transmitted twelve new applications for reparations to the Defence on 11 June 2010.<sup>8</sup> The defence has now received 24 applications for reparations.

### **15 new victims apply for participation**

On 29 June 2010, the Registry transmitted 15 new victim applications for participation to the parties following an oral decision from TC1.<sup>9</sup>

### **Victims request review into Prosecution's decision not to investigate Bemba's crimes in DRC**

[Background] During the course of CAR proceedings, Mr Bemba's crimes in the DRC were revealed and he was charged with three counts of war crimes and two counts of crimes against humanity as military commander of the MLC which committed atrocities in Ituri, DRC. Although the CAR Prosecution relied on this evidence, OTP has made no accusation against him regarding his involvement in DRC.

On 28 June 2010, two alleged victims in Ituri sought to present their views and concerns regarding OTP's decision not to investigate Bemba's crimes in Ituri.<sup>10</sup> They submitted that the fact that Bemba is being investigated in the context of CAR cannot justify the Prosecutor's refusal to proceed regarding the crimes he committed in Ituri and that terminating investigations would seriously affect the victims' rights to justice and reparation. They claimed that under the Statute and international human rights law, the Chamber has a positive power and duty to examine the Prosecutor's decision not to prosecute. They therefore requested the Pre Trial Chamber to review the decision, and for the Prosecution to remedy its failings.

<sup>3</sup> Redacted Decision on Intermediaries, 12 May 2010, ICC-01/04-01/06-2434-Conf-Exp (confidential version); issued publicly on 31 May 2010, ICC-01/04-01/06-2434-Red2, <http://www.icc-cpi.int/iccdocs/doc/doc881407.pdf>

<sup>4</sup> These were complied with on 7 June 2010. See "Prosecution's communication of information on intermediaries and witnesses pursuant to Trial Chamber's Order of 12 May 2010", ICC-01/04-01/06, <http://www.icc-cpi.int/iccdocs/doc/doc884157.pdf>

<sup>5</sup> Decision on the prosecution request for leave to appeal the "Decision on Intermediaries", 2 June 2010, ICC-01/04-01/06-2463, <http://www.icc-cpi.int/iccdocs/doc/doc882529.pdf>

<sup>6</sup> Prosecution's Provision of Information on the witnesses dealing with the abuse of process and intermediaries, 18 June 2010, ICC-01/04-01/06-2473-Red, <http://www.icc-cpi.int/iccdocs/doc/doc897240.pdf>

<sup>7</sup> 8 January 2010, ICC-01/04-01/06-T-224-ENG ET WT 08-01-2010, page 18, lines 9 to 15

<sup>8</sup> Third notification to the Defence of applications for reparations in accordance with Rule 94(2) of the Rules of Procedure and Evidence, 11 June 2010, ICC-01/04-01/06-2475, <http://www.icc-cpi.int/iccdocs/doc/doc889045.pdf>

<sup>9</sup> Transmission to the parties of fifteen new victims' applications for participation in accordance with Trial Chamber I's oral decision of 17 June 2010, 29 June 2010, ICC-01/04-01/06-2509, <http://www.icc-cpi.int/iccdocs/doc/doc902619.pdf>

<sup>10</sup> Demande du représentant légal de VPRS 3 et 6 aux fins de mise en cause de Monsieur Jean-Pierre Bemba en sa qualité de chef militaire au sens de l'article 28-a du Statut pour les crimes dont ses troupes sont présumées coupables en Ituri, 28 June 2010, ICC-01/04-564, <http://www.icc-cpi.int/iccdocs/doc/doc902732.pdf>

## Developments in the ongoing Katanga & Ngudjolo Trial

### Victims allowed to participate in the Appeal against the Decision on the Modalities of Victim Participation at Trial

[Background] On 19 April 2010 TCII granted the Defence leave to appeal its decision of 22 January 2010 regarding the modalities of victim participation in the Trial.<sup>11</sup>

The victims' application to participate in the Appeal having been granted,<sup>12</sup> their legal representatives opposed Defence's submissions, emphasising the distinction between the roles of victims and parties regarding the necessity to act objectively and related disclosure obligations, and requesting that the Chamber dismiss the Appeal.<sup>13</sup> The Prosecution followed suit.<sup>14</sup> A judgment on the Appeal is pending.

### Debate on the submission of additional information related to victims' participation requests

On 26 May TC II ordered the Registry to transmit additional redacted documents concerning victim (applicant) a/0390/09 to the parties and requested additional information on three other applications.<sup>15</sup>

While neither the Prosecution nor Defence for Mr Ngudjolo opposed a/0390/10's application, the Defence for Mr Katanga requested its rejection on the grounds that the submission of a signed statement from the victim in response to Chamber's request for additional information amounted to an incriminating and prejudicial statement.<sup>16</sup> Mr Hooper, acting for Mr Katanga, recalled that victims' representatives should not be allowed to call victims as witnesses on incriminating matters unless they notify the Defence before Trial commences and suggested a three-month time limit for victims to provide additional information, after which applications should be dismissed. Accordingly, he requested that the application either be dismissed or that the victim's counsel submit the information originally requested. A decision is pending.

### Defence request to review practice of closed session hearings

On 1 June 2010 the Defence of Mr Katanga requested a review of the practice of intermittent closed session hearings, which it perceives as disruptive to the understanding of the case for third parties and detrimental to the right of the Defence to a public hearing and fair trial.<sup>17</sup> The Defence of Mr Ngudjolo, sharing these concerns, added that while precise information such as names and exact addresses should be protected, more general information which could relate to more than one individual should not necessitate closed sessions.<sup>18</sup>

Whilst agreeing with the principle of a public hearing, the victims' legal representatives and the Prosecution noted that exceptions were sometimes necessary to protect victims and witnesses, and even defendants; indeed, although closed sessions on occasion extend for longer than necessary, they

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<sup>11</sup> "Decision on the 'Defence Application for Leave to Appeal the Trial Chamber's Décision relative aux modalités de participation des victimes au stade des débats sur le fond'", ICC-01/04-01/07-2032, <http://www.icc-cpi.int/iccdocs/doc/doc860978.pdf> ; see also Legal Update 1 March – 15 May 2010, p.4 for the list of the grounds of appeal, <http://www.vrwg.org/legal%20update/Legal%20Update%20March-April%202010%20final.pdf>

<sup>12</sup> Decision on the Participation of Victims in the Appeal of Mr Katanga Against the "Decision on the Modalities of Victim Participation at Trial", 24 May 2010, ICC-01/04-01/07-2124 ( OA11), <http://www.icc-cpi.int/iccdocs/doc/doc875897.pdf> ; It is worth noting that recalling his previous position, Judge Sang-Hyun Song expressed a separate opinion stating that as victims participated in the proceedings giving rise to the Appeal, they had the right to make submissions under Regulation 65(5), and there was therefore no need for them to apply for participation in the Appeal proceedings.

<sup>13</sup> Joint Observations of the Legal Representatives of the Victims on the Defence Appeal against the *Decision on the Modalities of Victim Participation at Trial* of 22 January 2010, 28 May 2010, ICC-01/04-01/07-2142 OA11, <http://www.icc-cpi.int/iccdocs/doc/doc886104.pdf>

<sup>14</sup> Prosecution Response to the "Observations conjointes des représentants légaux des victimes sur l'appel de la Défense contre la décision du 22 janvier 2010 relative aux modalités de participations des victimes au stade des débats sur le fond ", 3 June 2010, ICC-01/04-01/07-2158, <http://www.icc-cpi.int/iccdocs/doc/doc882944.pdf>

<sup>15</sup> Décision invitant le Procureur et la Défense à présenter leurs observations sur une demande de participation de victime (règle 89-1 du Règlement de procédure et de preuve), 26 May 2010, ICC-01/04-01/07-2134, <http://www.icc-cpi.int/iccdocs/doc/doc878436.pdf>

<sup>16</sup> Defence Observations on the Complementary Documents concerning a/0390/09, 4 June 2010, ICC-01/04-01/07-2165, <http://www.icc-cpi.int/iccdocs/doc/doc883477.pdf>

<sup>17</sup> Defence Request with Regard to Private Session Hearings, 1 June 2010, ICC-01/04-01/07-2153, <http://www.icc-cpi.int/iccdocs/doc/doc881895.pdf>

<sup>18</sup> Observations de la Défense de Mathieu Ngudjolo relatives à la Requête 2153 de l'Equipe de défense de Germain Katanga, 17 June 2010, ICC-01/04-01/07-2198, <http://www.icc-cpi.int/iccdocs/doc/doc895416.pdf>

often occur at the request of the Defence.<sup>19</sup> They suggested alternative ways of dealing with the issue whilst recognising that closed sessions should ultimately be held at the Chamber's discretion.

### **Protocol on the modalities for contacting victims by another party**

[Background] On 18 December 2009 the Chamber ordered the legal representatives to submit a protocol outlining a standard procedure for parties wishing to contact participating victims.<sup>20</sup> This was submitted on 17 June 2010.<sup>21</sup>

Based on the Rules, the Code of Conduct and decisions in the Lubanga trial<sup>22</sup> and of the present Chamber,<sup>23</sup> the protocol proposes a standard procedure and highlights the represented victims' rights to explanations relating to their defence and interests, as well as legal representatives' entitlement to copies of interview-related material, and measures to deal with non-compliance.<sup>24</sup>

## **Situation in Central African Republic**

### **Developments in the ongoing Bemba Case**

#### **Victims' Legal Representatives support Prosecution's request regarding non-public material in Defence investigations**

[Background] On 1 June 2010 OTP requested that the Chamber impose restrictions on the Defence's use of non-public<sup>25</sup> information relating to witnesses during its investigations.<sup>26</sup> Indeed, in order to assess the credibility of a witness or corroborate a story, it may be necessary for investigators to disclose confidential information to third parties. The Prosecution based its request on principles established in Lubanga<sup>27</sup> and Katanga,<sup>28</sup> namely that disclosure of non-public information by the Defence must fulfil the requirements of necessity for the preparation of the case and the Court's duty to protect witnesses. However, OTP proposed more stringent procedures both prior to and in the event of disclosure.<sup>29</sup>

The victims' legal representatives supported these submissions and recommended that the same guidelines be extended to participating victims and applicants.<sup>30</sup>

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<sup>19</sup> See: Observations sur la requête de la Défense de Germain Katanga concernant le recours au huis clos en la présente affaire, 21 June 2010, ICC-01/04-01/07-2207, <http://www.icc-cpi.int/iccdocs/doc/doc897439.pdf> ; Observations du représentant légal du groupe des victimes « enfants soldats » sur la requête de la défense de Germain Katanga concernant le recours au huis clos, 22 June 2010, <http://www.icc-cpi.int/iccdocs/doc/doc898189.pdf> ; and Observations du Bureau du Procureur sur le mémoire de la Défense de Germain Katanga relatif à l'usage des sessions à huis clos, 22 June 2010, ICC-01/04-01/07-2210, <http://www.icc-cpi.int/iccdocs/doc/doc898426.pdf>

<sup>20</sup> Troisième décision relative à la divulgation de l'identité des victimes aux parties, 18 décembre 2009 (mais datée du 17 décembre 2009), ICC-01/04-01/07-1731, <http://www2.icc-cpi.int/iccdocs/doc/doc795305.pdf>

<sup>21</sup> Dépôt d'un projet de Protocole relatif aux modalités de contact entre des victimes représentées et les parties, 17 June 2010, ICC-01/04-01/07-2202, <http://www.icc-cpi.int/iccdocs/doc/doc896478.pdf>

<sup>22</sup> Décision relative à certaines questions pratiques concernant les personnes qui possèdent la double qualité de témoin et de victime, 5 June 2008, ICC-01/04-01/06-1379-tFRA, <http://www.icc-cpi.int/iccdocs/doc/doc502535.PDF>

<sup>23</sup> Décision relative à un certain nombre de questions de procédure soulevées par le Greffe, 14 May 2009, ICC-01/04-01/07-1134-tFRA, <http://www.icc-cpi.int/iccdocs/doc/doc790551.pdf>

<sup>24</sup> Reflecting Decision 1731: (footnote 20).

<sup>25</sup> 'Non-public' information was any information which was classified as 'confidential', 'ex parte' or 'under seal'.

<sup>26</sup> Prosecution's request for restriction on the use of confidential material for Defence investigations, 1 May 2010, ICC-01/05-01/08-784, <http://www.icc-cpi.int/iccdocs/doc/doc878836.pdf>

<sup>27</sup> Decision on the prosecution's application for an order governing disclosure of non-public information to members of the public and an order regulating contact with witnesses, 3 June 2008, ICC-01/04-01/06-1372, <http://www.icc-cpi.int/iccdocs/doc/doc500994.PDF>

<sup>28</sup> See Instructions sur la manière d'approcher des tiers utiles aux enquêtes de la Défense, 18 December 2009, ICC-01/04-01/07-1734, paras. 11 and 15, <http://www2.icc-cpi.int/iccdocs/doc/doc795569.pdf> ; See also Décision sur le « Protocole régissant les enquêtes concernant les témoins bénéficiant de mesures de protection, 26 April 2010, ICC-01/04-01/07-2047, endorsing the Protocol set out in ICC-01/04-01/07-2007-Anx1 ("Protocol"), p. 1 second paragraph and item (a); Protocol, item (b) <http://www.icc-cpi.int/iccdocs/doc/doc863668.pdf>

<sup>29</sup> Opposed by the Defence : Réponse de la Défense à la requête de l'Accusation de restreindre l'utilisation des informations confidentielles pour les enquêtes de la Défense, ICC-01/05-01/08-789, <http://www.icc-cpi.int/iccdocs/doc/doc885003.pdf>

<sup>30</sup> Legal Representatives' Response to Prosecution's request for restriction on the use of non-public material for Defence investigations, 8 June 2010, ICC-01/05-01/08-788, <http://www.icc-cpi.int/iccdocs/doc/doc884928.pdf>

## **Modalities of victims' participation are set and 32 additional applicants are granted victim status**

On 30 June 2010, TCIII issued a decision on the modalities of victim participation and on 86 applications to participate.<sup>31</sup> In doing so, it examined whether previous jurisprudence from TCs I and II should be applied. Findings were largely in accord with TCs I and II as regards ascertaining the status of applicants as victims, victims' right to present and challenge the admissibility of evidence and the manner in which they may be permitted to question evidence at trial. However, it also highlighted that:

- Participating victims should have access to confidential information relevant to their views and concerns and receive timely notification of public and confidential filings whenever their interests are engaged, and parties should inform the Chamber whenever filings may engage their interests;
- Parties wishing to contact dual-status victims must provide notice to the victims' legal representative (if victims have one) or provide notice through the Victims and Witnesses Unit (VWU). Dual-status victims wishing to contact parties or participants must also do so confidentially through VWU;
- Non-redacted applications of dual-status victims should be considered in the same way as witness statements and it is for the Prosecution to determine whether they should be disclosed;
- Anonymous victims should not be precluded from participation, although participation should be measured against potential prejudice to other parties/participants and the Registry should remind victims of the availability of protective measures rather than complete anonymity.

Finally, TCIII ruled that out of the 86 applications, 32 satisfied the desired criteria, including applications made on behalf of deceased victims. It rejected applications from victims of shelling and those whose houses had been destroyed by fire.<sup>32</sup> TCIII confirmed that the threshold criteria was whether there was enough *prima facie* evidence to establish that applicant victims suffered harm due to crimes committed by the accused.

## **TCIII rejects admissibility and abuse of process challenges**

[Background] On 25 February 2010, the Defence initiated proceedings to contest the admissibility of the Bemba case.<sup>33</sup> It then requested the Chamber to adjourn proceedings for abuse of process<sup>34</sup> and informed the Chamber of new procedural developments in CAR to support its challenges.<sup>35</sup>

On 24 June 2010, the Chamber delivered its decision on both admissibility and abuse of process.<sup>36</sup> As regards admissibility, it rejected the Defence's suggestions that the Prosecution had failed to discharge its disclosure obligations on the subject of complementarity and admissibility, due to lack of evidence. A potted history of the CAR proceedings showed that the case was not currently being investigated or prosecuted in CAR. The fact that CAR had referred the case to the ICC did not negate the Court's requirement to ground its jurisdiction under Article 17(1)(b). In this regard, the Chamber ruled that CAR was unable to conduct a trial due to poor judicial and financial resources and confirmed there was sufficient evidence to satisfy the gravity criteria.

As regards abuse of process, the arguments suggesting incomplete disclosure relating to Bemba's arrest were also rejected due to lack of evidence. The Defence had moreover failed to comply with the necessary procedural requirements for relying on any evidence. The Defence is seeking to appeal the decision and the anticipated trial start date on 14 July 2010 has therefore been postponed.

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<sup>31</sup> Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010, ICC-01/05-01/08-807, <http://www.icc-cpi.int/iccdocs/doc/doc903085.pdf>

<sup>32</sup> Shelling was not included in the crimes charged against the accused as not included under the heading of attempted murder. As regards the fires, there was no indication that the properties had been looted beforehand and thus could not be regarded as related to the charged crime of pillage.

<sup>33</sup> Requête en vue de contester la recevabilité de l'Affaire conformément aux articles 17 et 19 (2) (a) du Statut de Rome, 25 February 2010, ICC-01/05-01/08-704-Red3, <http://www.icc-cpi.int/iccdocs/doc/doc875699.pdf> . Public version 9 April 2010. See also : Deuxième Requête de la Défense aux fins d'informer la Chambre de Première Instance III d'un nouveau développement de procédure judiciaire intervenu en République Centrafricaine en date du 16 avril 2010, 19 avril 2010, ICC-01/05-01/08-757, <http://www.icc-cpi.int/iccdocs/doc/860732.pdf>

<sup>34</sup> Réplique de la Défense aux observations du Procureur et de Représentants légaux des victimes sur la Requête en contestation de la recevabilité de l'Affaire, 14 April 2010, ICC-01/05-01/08-752, <http://www.icc-cpi.int/iccdocs/doc/doc859498.pdf>

<sup>35</sup> Requête de la Défense aux fins d'informer la Chambre de Première Instance III de nouveaux développements de procédure judiciaire intervenus en République Centrafricaine, 13 April 2010, ICC-01/05-01/08-751, <http://www.icc-cpi.int/iccdocs/doc/doc858983.pdf>

<sup>36</sup> Decision on the Admissibility and Abuse of Process Challenges, 24 June 2010, ICC-01/05-01/08-802, <http://www.icc-cpi.int/iccdocs/doc/doc899684.pdf>



## Situation in Darfur, Sudan

### Developments in the ongoing Harun and Kushayb Case

#### **Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan**

[Background] Pre-Trial Chamber I sought to serve warrants of arrest against Ahmad Harun and Ali Kurshayb on the Republic of Sudan through its embassy in the Netherlands. The warrants were refused as instructed by the Sudanese government.<sup>37</sup> Further attempts by the Registry were similarly refused. Consequently, on 25 May 2010 the Chamber recalled that although Sudan is not a State Party to the Statute it is a member of the UN, and as such, has an obligation to co-operate with the Court emanating from the UN Security Council.<sup>38</sup> Having failed to comply with its co-operation obligations, the Chamber ordered the Registry to transmit its decision to the Security Council for it to take appropriate action.<sup>39</sup>

#### **Six victims to participate in both the Bashir and the Harun/Kushayb pre-trial proceedings**

[Background] On 10 December 2009, six applicants obtained leave to participate as victims in the pre-trial stage of the Bashir case.<sup>40</sup> They then also requested to be recognised as victims in the Harun and Kushayb proceedings.<sup>41</sup> Both Prosecution and Defence agreed that the applicants *prima facie* met the criteria for participation, although Defence requested that their status as victims should be provisional until the suspects obtained counsel of their choice.<sup>42</sup>

On 17 June 2010 the Single Judge authorised the applicants to participate in the pre-trial proceedings of the Kushayb and Harun cases.<sup>43</sup> She granted the applicants victim status and participatory rights for the pre-trial stage only, without limiting their right to participation in the future.

### Developments in the Al Bashir Case

#### **Application to participate as *amici curiae* in genocide charges application**

[Background] On 4 March 2009, Pre-Trial Chamber I (PTCI) issued a decision refusing to include genocide as one of the charges against Mr Al Bashir,<sup>44</sup> which was appealed by the Prosecution. The Sudan Workers Trade Unions Federation (SWTUF) and the Sudan International Defence Group (SIDG) were granted leave to participate as *amici curiae* in the Appeal which directed PTC1 to decide anew on the charge of genocide applying the correct standard of proof.<sup>45</sup>

Although they had previously been denied leave to participate as *amici curiae* by PTC1,<sup>46</sup> they applied again on 15 June 2010 requesting leave to file observations on the legal requirements of genocide and their application to materials relied on by the Prosecution.<sup>47</sup> They also requested permission to add materials to the court file, in particular a report commissioned from Professor William Schabas on the genocide issue, and to make oral submissions on these matters. A decision is awaited.

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<sup>37</sup> ICC-02/05-01/07-2 (warrant of arrest issued for Ahmad Harun), <http://www.icc-cpi.int/iccdocs/doc/doc279813.PDF> ; ICC-02/05-01/07-3 (warrant of arrest issued for Ali Kushayb), 27 April 2010, <http://www.icc-cpi.int/iccdocs/doc/doc279858.PDF> - Memorandum of Service on 3 May 2010, ICC-02/05-01/07-5-Conf

<sup>38</sup> Under Security Resolution 1593 (2005)

<sup>39</sup> Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan, 25 May 2010, ICC-02/05-01/07-57, <http://www.icc-cpi.int/iccdocs/doc/doc868180.pdf>

<sup>40</sup> Decision on Applications a/0011/06 to a/0013/06, a/0015/06 and a/0443/09 to a/0450/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case, 15 December 2009, ICC-02/05-01/09-62, <http://www.icc-cpi.int/iccdocs/doc/doc793087.pdf>

<sup>41</sup> ICC-02/05-01/07-47-Conf-Exp

<sup>42</sup> See Prosecutions observations on applicants' petitions for victim status of 20 May 2010, ICC-02/05-01/07-55, <http://www.icc-cpi.int/iccdocs/doc/doc875094.pdf> ; and Defence observations of 24 May 2010, ICC-02/05-01/07-56, <http://www.icc-cpi.int/iccdocs/doc/doc877724.pdf>

<sup>43</sup> Decision on 6 Applications for Victims' Participation in the Proceedings, 17 June 2010, ICC-02/05-01/07-58, <http://www.icc-cpi.int/iccdocs/doc/doc896039.pdf>

<sup>44</sup> Pre-Trial Chamber's "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 4 March 2009, ICC-02/05-01/09-3, <http://www.icc-cpi.int/iccdocs/doc/doc639096.pdf>

<sup>45</sup> Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply, 18 September 2009, ICC-02/05-01/09-43, <http://www.icc-cpi.int/iccdocs/doc/doc745165.pdf>

<sup>46</sup> Decision on Application under Rule 103, ICC-02/05-185, 4 February 2009, <http://www.icc-cpi.int/iccdocs/doc/doc627395.pdf>

<sup>47</sup> Application under Rule 103 to Participate in the Proceedings before the Pre Trial Chamber concerning the Prosecutor's Application to Add Genocide Charges, ICC-02/05-01/09-88, <http://www.icc-cpi.int/iccdocs/doc/doc894586.pdf>

## Prosecution opposes eight applications for victim participation

On 18 June 2010, the Prosecution opposed eight victim applications for participation as well as legal representation of the applicants by Messrs Geoffrey Nice and Rodney Dixon.<sup>48</sup> It argued that none of the applicants had suffered harm as a result of the alleged crimes and that the intermediary assisting the applicants is the Citizens Organisation for the Sudan, which comprises two organisations currently applying to participate as *amici curiae* disputing the charges, which could lead to a conflict of interest. Ad hoc counsel for the Defence noted that the victims' applications seemed to suggest that crimes were committed by rebel groups rather than state bodies and therefore Mr Al Bashir was not the instigator.<sup>49</sup> On 22 June 2010 the applicants requested permission to submit additional information regarding the alleged conflict of interest and the requirement that applicants identify the suspect as responsible for their harm.<sup>50</sup> They maintained that the crimes and particulars described matched those in the charges and applicants should not have to identify Al Bashir as perpetrator in order to be allowed to participate.

## Commencement of the Banda and Jerbo Case

### Banda and Jerbo appear before the Court

On 15 June 2010, the Chamber confirmed that there were reasonable grounds to believe that Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus were responsible for crimes under Article 25(3)(a) of the Statute and issued summonses for them to appear.<sup>51</sup> Both appeared before the Court on 23 June 2010. The confirmation of charges hearing was set for 22 November 2010.

Crimes were allegedly committed in the context of an attack carried out on 29 September 2007 against the African Union Mission in Sudan (AMIS) by splinter forces of the Justice and Equality Movement (JEM) under the command of Banda and Abu Garda jointly with splinter forces of the Sudanese Liberation Movement/Army (SLM/A) led by Jerbo. Accordingly, the Chamber decided that there were reasonable grounds to believe that they were both responsible for violence to life in the form of murder whether committed or attempted; intentionally directing attacks against personnel, installations, materials, units and vehicles involved in peace-keeping operations, and pillaging.

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<sup>48</sup>Prosecution's Observations on 8 Applications for Victims' Participation in the Proceedings, 18 June 2010, ICC-02/05-01/09-90, <http://www.icc-cpi.int/iccdocs/doc/doc896999.pdf>

<sup>49</sup> Observations de la Défense sur la demande de participation en qualité de victimes des demandeurs a/0774/10 à a/0781/10, 18 June 2010, ICC-02/05-01/09-89, <http://www.icc-cpi.int/iccdocs/doc/doc896409.pdf>

<sup>50</sup>Request to file additional information before the Single Judge in light of the Prosecution's Observations on Applications for Victim Participation, 22 June 2010, ICC-02/05-01/09-91, <http://www.icc-cpi.int/iccdocs/doc/doc898567.pdf>

<sup>51</sup>Issued confidentially on 27 August 2009, see Second Decision on the Prosecutor's Application under Article 58, ICC-02/05-03/09-43, <http://www.icc-cpi.int/iccdocs/doc/doc733651.pdf>