

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 April 2011

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra, Judge
Judge Silvia Fernandez de Gurmendi, Judge
Choose ICC JudgeTitle
Choose ICC JudgeTitle

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

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

Public Document

TitJOINT SUBMISSIONS ON BEHALF OF VICTIMS Legal Representative of
Victims a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0551/09, and a/0557/09 to
a/0562/09 AND a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0563/09,
a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/568/09, 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 in
Response to the Registrar's Report Recommending a Decision on Common Legal
Representation of Victims Participating in the Casele

Source: [Victims Represented by Akin Akinbote and Frank Adaka

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

The Office of the Prosecutor

[Mr Luis Moren-Ocampo
Ms Fatou Bensouda]

Counsel for the Defence

[Mr Karim A. A. Khan
Mr Andrew J. Burrow]

Legal Representatives of the Victims

[Mr Brahima Kone
Ms Helen Cisse
Mr Akin Akinbote
Mr Frank Adaka
Sir Geoffrey Nice & Mr Rodney Dixon]

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Mr. Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

NOTING the Trial Chamber's (the Chamber's) Order of 30th March 2011, scheduling a Status Conference ("the Conference") for on 19 April, 2011 and the Agenda for the Conference issued by the Chamber on 12 April 2011.

NOTING the Report of the Registrar which was filed on 15 April 2011 (after the deadline of 14 April, 2011) in response to the questions in the agenda of the Conference scheduled for 19 April 2011.

CONSIDERING the Report of the Registrar filed on 15 April 2011 recommending a decision concerning the common legal representation of victims participating in the case, the Legal Representatives of Victims nos. a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0551/09, and a/0557/09 to a/0562/09 AND a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, 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 consider it imperative to file a Response to the Registrar's Report.

CONSIDERING the right of victims to file a response to any document pursuant to Regulation 24(2) and in this instance a response to the Registrars Report filed on 15 April 2011.

Introduction

This Written Submissions is necessitated by:

1. The grave issues of common legal representation (as recommended by the Registrar) and the complex nature of legal representation of victims from five countries namely, Nigeria, Senegal, Gambia, Mali and Botswana, each with different cultures and languages.
2. The need to give true, effective and equitable meaning to Rules 16(1)(b) and 90 of the Rules of Procedure and Evidence; Regulations 79, 80 and 86(8) of the Regulations of the Court; and Regulations 112 and 113 of the Regulations of the Registry in the dispensation of justice.
3. The need to protect and NOT sacrifice the legal rights and interests of victims (as guaranteed by the Rome Statute) on the altar of financial expedience and costs.

2. The joint submissions addresses the peculiarities of the circumstances of the events of 27 September 2007, resulting in the death of thirteen serving members of UNAMIS in the Haskanita military base.

A. Common Legal Representation

The factors militating against the recommendations of the Registrar are:

1. The Victims' Right to Choose Legal Representatives
2. The Distinct Interests of Victims
3. The Breach of Confidentiality Between the Legal Representatives and the Victims.
4. The Cost Effectiveness of the Registrar's Recommendations.
5. Security Implications
6. The Risk of Breach of Rules of Professional Ethics of the Nigerian Bar Association.

1. The Victim's Right to Choose Common Legal Representative

It is submitted that in considering the Registrar's recommendations, regard must be had to the provisions of Rules 90(2) which affords the victims the right to choose common legal representative(s). The Registrar, at this stage of the proceedings has not intimated the victims of the recommendations for common legal representatives. It is submitted that the victims ought first to be given the opportunity of choosing common legal representatives. It is only in the event that they are unable to choose common legal representatives that the provisions of Rule 90(3) can apply. That situation has not arisen.

It is further submitted that the request of the Registrar to discuss with the victims in the absence of the Legal Representative is in breach of the universal principle of confidentiality between Counsel and client.

It is also submitted that Rule 90 does not support the intention and the request of the Registrar to discuss with the victims in the absence of their Legal Representative. It will amount to travesty of justice to the victims should this request be granted by the Chamber.

The Registrar's Recommendations and Requests at this stage of the proceedings run contrary to Rule 90(1). The victims have not been given the opportunity to choose their legal representatives and even there is a supervening need for the victims to be represented by common legal representative(s), it is still the prerogative of the victims to make their choice of common legal representation pursuant to Rule 90(1) of the Rules of Procedure and Evidence. It is only when the victims have not exercised this prerogative that the Registry can intervene. This interpretation is more compelling in view of the several uses of the operative word "may" respectively in sub-section (2) and (3) of Rule 90, as opposed to the use of the compulsive operative word "shall" in Rule 90(1).

2. The Distinct Interests of Victims

In considering the Registrar's recommendations and requests, the Chamber is urged to have regard to Rule 90(4) which provides for the distinct interests of the victims. The distinct interests of the victims in the case consist of different cultural backgrounds, languages and geographical locations.

The Registrar's recommendations and requests do not take the distinct interests of the Victims into consideration. The majority of the Nigerian victims are not sufficiently literate in English, come from different cultural backgrounds, speak different languages and are spread in several villages across the country. There is therefore no homogeneity of language, culture and geographical locations of the victims. The same problems of cultural background, languages and geographical locations are likely to apply to the other victims from Senegal, Gambia, Mali and Botswana. We are accordingly urging the court to take this into consideration in coming to a decision and decline the Registrar's requests on the ground that there are no distinct interests of all the victims.

3. The Breach of Confidentiality

The victims have, over the period of close to four years since the Haskanita attack, been subjected to the untold trauma of losing their loved ones and breadwinners. Some of the members of the Nigerian Armed Forces among the victims lost their limbs and other body parts. It took some of efforts in building confidence and hope that the International Criminal Court will dispense justice without the fear of any impediment, including costs.

The confidence the victims have in their Counsel is predicated not only the appointment of Counsel by the Court but their right to a Counsel of their Choice pursuant to Rule 90(1) of the Rules of Procedure and Evidence. There are reasonable grounds to be apprehensive that the unilateral appointment of a Counsel other than their chosen Legal Representatives may erode this confidence.

4. The Cost Effectiveness of the Registrar's Recommendations.

Unlike the situation arising from Democratic Republic of Congo necessitating the Court decisions in Lubanga and Bemba's case, the victims are scattered in different five different countries namely, Nigeria, Senegal, Gambia, Mali and Botswana. If only two Legal Representatives are appointed by the Court as recommended by the Registrar, it means the Counsel will have to traverse these countries to interview and interact the victims afresh and will from time to time also travel to communicate with them.

Since the majority of the Nigerian victims are not literate in English, interpreters from different Nigerian Languages will also be sought and paid for. Unlike what may result if the Registrar's Requests are granted, the Nigerian Counsel are in a position to communicate with them either in their respective languages or in "pidgin" English which is a lingua franca. This predicament also applies in the other countries.

It is submitted that the cost is minimised when Counsel is in situ. It is further submitted that the Registrar's proposal is not cost effective and should not be granted in the overall interest of justice.

5. Security Implications

The Nigerian military victims are serving officers and men of the Nigerian Army and are therefore subjected to Military Rules and Regulations. The majority of the civilian victims presently reside in Army Barracks in various formations in Nigeria. The extent of Victims' cooperation with Counsel depends largely on the willingness of victims to abide with or break these Rules and Regulations. If the military authorities consider interaction with Legal Representatives other than their present respective legal Representatives, unfettered access may not readily be granted by the Military Authorities the victims may be subjected to sanctions under the military rules and regulation. The Barracks are considered as a place of National Security in Nigeria and is therefore not easily accessible to Legal Representatives other than their present Legal Representatives. The Chamber is therefore urged to take the security implications into consideration in coming to a decision.

6. The Risk of Breach of Rules of Professional Ethics of the Nigerian Bar Association.

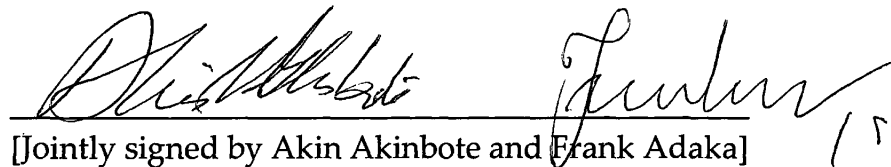
The Rules of Professional Ethics forbid Legal Representative to encourage or allow Legal Representatives other than victim's choice of Counsel to have access to the victims. In the event of a breach of this Rule, the Counsel stands the chance of disciplinary action which may lead to suspension of practice or outright disbarment.

Conclusion

The chamber is further urged to hold that the above submissions are consistent with Article 68 of the Statute and are not inconsistent with Regulations 79, 80 and 86(8) of the Regulations of the Court and Regulations 112 and 113 of the Regulations of the Registry.

The chamber is in consequence of the above urged to turn down the recommendations of the Registrar and refuse the requests sought in its entirety for the reasons given above

In the event that the Chamber is unwilling to turn down the recommendations and refuse the requests of the Registrar either in its entirety or in part, the Legal Representatives of the Nigerian victims are willing to agree to work together and rotate legal representation of the Nigeria victims in court.


[Jointly signed by Akin Akinbote and Frank Adaka]
on behalf of

[Victims a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0551/09, and a/0557/09 to a/0562/09 AND a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0563/09, a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/568/09, 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.

Dated this 19th Day of April

At The Hague, The Netherlands

At [place, country]