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

Date: 1 July 2011

TRIAL CHAMBER IV

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

SITUATION IN DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN
&
SALEH MOHAMMED JERBO JAMUSG

Public Document

**Application for Leave to Submit Observations on Procedures to Facilitate the Fair
and Expeditious Conduct of Proceedings**

Source: Victims represented by Sir Geoffrey Nice QC and Rodney Dixon

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

The Office of the Prosecutor

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Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Request to submit observations

1. The Legal Representatives of victims a/1646/10 and a/1647/10 submit this application for leave to file observations regarding the procedures to be adopted for the fair and expeditious presentation of evidence at trial. This request is submitted pursuant to the Order of the Trial Chamber of 30 May 2011¹ in which the Trial Chamber directed that the victims “may file observations on procedures ... upon leave being granted by the Chamber” under Article 68(3).²
2. Article 68(3) of the Statute provides that “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court.”³ Article 68(3) specifies that “[s]uch views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate.”⁴
3. The procedures to be adopted during the trial for the presentation of evidence on the contested issues (in light of the agreement on factual issues reached between the Prosecution and Defence) are overarching and important matters which affect the interests of the victims. The modalities and procedures of the trial will determine the scope of the victims’ participation in this case and hence the manner in which their particular interests could be presented and considered in the proceedings. Such procedures will govern the disclosure of the evidence to the victims, the extent of their submissions to be permitted during the trial, the scope of any examination of witnesses, and the ability to call witnesses. The victims thus respectfully request that they be permitted to provide observations on the proposed modalities and procedures for the trial.
4. The Prosecution and the Defence noted in their joint submissions of 27 June 2011 that “the Parties have assumed that, consistent with the practice of this Court, the modalities for the participation of the legal representatives of victims in proceedings

¹ *Prosecutor v. Banda and Jerbo*, Order requesting submissions on procedures to facilitate the fair and expeditious conduct of the proceedings following the Joint Submission of 16 May 2011, ICC-02/05-03/09, 30 May 2011 (the “Order of 30 May 2011”).

² Order of 30 May 2011, para. 8.

³ ICC Statute, article 68(3).

⁴ ICC Statute, article 68(3).

will primarily be dealt with in a separate decision.”⁵ The Parties recognised that the procedures proposed in their joint submission do affect the personal interests of the victims in that they have suggested “some proposed specific directions to the legal representatives of participating victims ... regarding the different ways in which victims may be allowed to intervene in proceedings.”⁶ The procedures proposed specifically address procedures affecting the scope and methods by which the victims can be afforded the right to testify, examine and cross-examine witnesses, make an opening statement, and present evidence.⁷

5. The Legal Representatives of victims a/1646/10 and a/1647/10 wish to highlight in support of this request to submit observations that these victims (as well as other victims on whose behalf the Legal Representatives act and whose applications for participation in the present case are being considered) could provide evidence and submissions which the Trial Chamber may regard as relevant to the contested issues at trial. These Darfuri victims were present in the AMIS camp when it was attacked. They were attacked as civilians in the camp, and they witnessed how the attack affected their village of Haskanita. They could thus provide first-hand evidence of the nature of the attack. This is a key contested issue that the Parties have agreed should be the focus of the trial.⁸ The trial procedures for the presentation of this evidence do, therefore, directly affect the personal interests of the victims.
6. For these reasons, the victims respectfully request the Trial Chamber to grant the victims leave to submit observations on the procedures and modalities of the trial proceedings to the extent that they directly affect the interests of the victims.

⁵ *Prosecutor v. Banda and Jerbo*, Joint Submission by the Office of the Prosecutor and the Defence regarding the Procedures to be Adopted for the Presentation of Evidence, ICC-02/05-03/09, 27 June 2011, para. 3 (the “Joint Submission of 27 June 2011”).

⁶ *Prosecutor v. Banda and Jerbo*, Joint Submission by the Office of the Prosecutor and the Defence regarding the Procedures to be Adopted for the Presentation of Evidence, ICC-02/05-03/09, 27 June 2011, para. 3.

⁷ Joint Submission of 27 June 2011, paras. 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 22, 23.

⁸ See *Prosecutor v. Banda and Jerbo*, Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons, ICC-02/05-03/09, 16 May 2011, paras. 3(i), 5.



Sir Geoffrey Nice QC
Rodney Dixon
Legal Representatives of the Victims

Dated 1st July 2011
London, United Kingdom