

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 August 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
AND SALEH MOHAMMED JERBO JAMUS***

Public

Report on the organization of common legal representation

Source: Registry

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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Ms Fatou Bensouda

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Legal Representatives of the Victims

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Ms Hélène Cissé

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

Counsel Support Section

Mr Esteban Peralta Losilla

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

The Registrar of the International Criminal Court ("the Court");

NOTING Pre-Trial Chamber I's Corrigendum of the "Decision on the Confirmation of Charges¹ and the Presidency's Decision constituting Trial Chamber IV and referring to it the case of *The Prosecutor v. Abdallah Abakaer Nourain and Saleh Mohammed Jerbo Jamus* ;²

NOTING the Registry's Report recommending a decision concerning the common legal representation of victims participating in the case;³

NOTING the Requête Conjointe de Me Hélène CISSE et Me Brahim KONE représentants légaux des victimes en réponse au rapport du Greffe recommandant une décision concernant la représentation légale commune des victimes participant à l'affaire 02/05-03/09;⁴

NOTING the Joint 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/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 in Response to the Registrar's Report Recommending a Decision on Common Legal Representation of Victims Participating in the Case;⁵

NOTING the Order of Trial Chamber IV (the "Chamber") instructing the Registry to start consultations on the organisation of common legal representation;⁶

¹ ICC-02/05-03/09-121-Conf-Corr.

² ICC-02/05-03/09-124.

³ ICC-02/05-03/09-134.

⁴ ICC-02/05-03/09-135.

⁵ ICC-02/05-03/09-136.

⁶ ICC-02/05-03/09-138.

NOTING the Registry's Report on the implementation of the Chamber's Order instructing the Registry to start consultations on the organisation of common legal representation (the "Registry's Report");⁷

NOTING the extension of time to 8 August 2011 and 15 August 2011 granted by the Chamber in an email of 22 June 2011⁸ and confirmed during the status conference held on 12 July 2011;⁹

NOTING the Chamber's instructions given by email on 4 July 2011, where it approved the approach proposed in paragraphs 26 to 29 of the Registry's Report and requested that the Registry inform the legal representatives of victims of the extension of deadline granted on 22 June 2011;¹⁰

NOTING the Submission on behalf of Victims a/552/09, 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 in response to the Interim Report of the Registrar regarding the issue of Common Legal Representation of Victims Participating in the Case;¹¹

NOTING the Joint Observations of Victims' Legal Representatives on Common Legal Representation (the "Joint Observations");¹²

NOTING rules 16(1)(b) and 90 of the Rules of Procedure and Evidence; regulations 23bis, 35, 79, 80 and 86(8) of the Regulations of the Court; and regulations 112 and 113 of the Regulations of the Registry;

⁷ ICC-02/05-03/09-164-Conf-Exp and ICC-02/05-03/09-164-Red.

⁸ Email from Legal Officer, Trial Chamber IV to Associate Legal Officer, Division of Court Services, 22 June 2011.

⁹ ICC-02/05-03/09-T-12-ENG, p26.

¹⁰ Email from Legal Officer, Trial Chamber IV to Associate Legal Officer, Division of Court Services, 4 July 2011.

¹¹ ICC-02/05-03/09-177.

¹² ICC-02/05-03/09-182.

CONSIDERING that for the reasons explained in the present report, the Registry takes the view that the victims have been unable to chose a common legal representative;

CONSIDERING therefore, that the Registry will submit a further report to the Chamber containing its proposal on common legal representation;

CONSIDERING that for the reasons explained below the Registry requires ten additional days in order to finalise its proposal on common legal representation;

CONSIDERING that the Annex to the present report is classified as confidential *ex parte* only available to the Registry because it includes details of the process currently underway to identify an appropriate common legal representative which, if revealed to persons involved in that process, might influence its outcome;

TRANSMITS the following report on the organization of common legal representation and request for extension of time.

1 Background

1. The present report is submitted in response to the Chamber's order, made by email on 22 June 2011, which granted an extension of time to the Registry for the organisation of common legal representation. The order stated:

Pursuant to Regulation 35(2) of the Regulations of the Court, the Chamber grants the Registry's request for extension of time-limit.

Accordingly, the Chamber instructs the Registry to finalise consultations and inform the Chamber of the common legal representative or representatives chosen by the victims by 16:00 on 8 August 2011;

OR ALTERNATIVELY, if the victims are unable to choose a common legal representative or representatives, to submit to the Chamber a proposal on the organisation of common legal representation by 16:00 on 15 August 2011.¹³

2 Inability of victims to appoint a common legal representative

2. The Registry has been unable to meet directly with the victims participating in the present case in order to assist them to choose a common legal representative.
3. It is recognised that in many cases victims will not be able to agree on common legal representation without the assistance of the Registry, not least because of the enormous practical challenges involved in a large and geographically dispersed group of persons forming such an agreement. Despite the relatively small number of participating victims such difficulties nonetheless pertain in the present case, especially given that the victims reside in a number of different countries and some are even believed to be on active military duty. The Registry notes that its ability to overcome such practical challenges in order to assist victims to make their own choice of common legal representative is highly dependent on

¹³ Email from Legal Officer, Trial Chamber IV to Associate Legal Officer, Division of Court Services, 22 June 2011.

resources and time, both of which were regrettably limited in the present instance.

4. For these reasons the Registry considers that the victims in the present case have been unable to choose a common legal representative or representatives, and that therefore the Registry will make a proposal for common legal representation in accordance with rule 90(3) and the orders of the Chamber.
5. The Registry has reviewed the proposal for legal representation set out in the Joint Observations submitted by four of the five current victims' legal teams on 18 July 2011.¹⁴ However it notes that this proposal emanates not from the victims themselves but from the current legal representatives of the victims. It therefore does not constitute an agreement by victims as to their common legal representation. Moreover, the document does not detail the views expressed by the victims themselves or the circumstances in which they might have been provided to the lawyers. The Registry considers that while existing counsel may provide information which is relevant and useful to the Registry in carrying out its mandate under rule 90, their views and proposals cannot be treated an agreement among the victims themselves.

3 Finalisation of a Registry proposal

6. Despite the circumstances recognized above it is emphasized, as stated previously in the Registry Report,¹⁵ that most of the victim participants have previously expressed their views to the Registry regarding preferences for legal representation. Such views have been taken into account by the Registry in considering the question of victim groupings and in determining the priority to be accorded to criteria for the selection of common legal representative(s).

¹⁴ ICC-02/05-03/09-182.

¹⁵ ICC-02/05-03/09-164-Red, paragraph 13.

7. In accordance with the proposal made to the Chamber in its Registry Report, paragraphs 26 to 29, the Registry has now:
- (1) established criteria to be used in identifying a common legal representative or representatives; and
 - (2) sought and received expressions of interest from lawyers on the Registry's list of counsel who wish to be considered as common legal representative;
8. Further steps are now being taken to identify the most appropriate counsel, according to the identified criteria. In this regard the Registry notes that only one of the current legal representatives responded expressly to the Registry's notice sent on 11 July 2011 inviting expressions of interest. However since all five of the current legal teams have expressed in some form an interest in being part of a team for the purpose of common legal representation, the Registry sees no reason to exclude them from its considerations. Rather, as indicated in the Registry Report,¹⁶ it has begun taking steps to review the work undertaken by them to date in order to assess them against the identified criteria.

4 Request for an extension of time

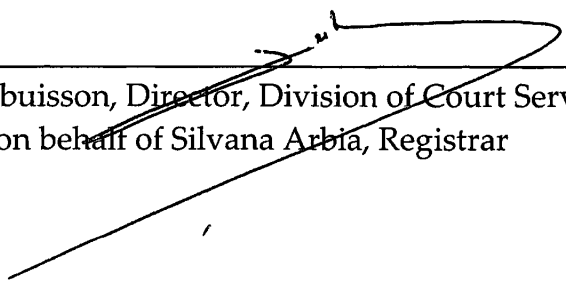
9. The Registry has sought to develop the present process taking into account the arrangement of common legal representation conducted almost simultaneously and recently completed in the case of *The Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*.¹⁷ The steps taken in this process will be explained together with the Registry's proposal on common legal representation, however it is noted at this point that the process used is designed to ensure an open and transparent process and to promote the best quality representation of victims before the Court. The Registry considers that it has made significant

¹⁶ *Ibid*, paragraph 22.

¹⁷ ICC-01/09-01/11-243.

progress in this complex process and notes that the selection process is now nearing completion.

10. Despite this progress, the Registry will require a short period of additional time in order to finalize its proposal for a common legal representative. Without such extra time it will not be possible for the Registry to conclude the processes which are underway and which are necessary to enable it to provide the Chamber with an adequate proposal for an effective common legal representation in the case.
11. In order to reassure the Chamber that the requested extension is imperative in the circumstances, a detailed description of the steps taken since the Chamber's email of 22 June 2011 approving the Registry's proposed course of action, as well as the steps remaining to be taken, along with a corresponding schedule, are provided as an Annex to the present report.
12. The Registry therefore respectfully requests that the Chamber extend the deadline for the submission of the Registry's proposal from 15 to 25 August 2011.



Marc Dubuisson, Director, Division of Court Services
on behalf of Silvana Arbia, Registrar

Dated this 5 August 2011

At The Hague, The Netherlands