



Original: **English**

No.: **ICC-02/05-03/09 OA4**

Date: **18 April 2013**

**THE APPEALS CHAMBER**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Sang-Hyun Song  
Judge Erkki Kourula  
Judge Anita Ušacka  
Judge Ekaterina Trendafilova

**SITUATION IN THE DARFUR, SUDAN**

***IN THE CASE OF THE PROSECUTOR v.  
ABDALLAH BANDA ABAKAER NOURAIN &  
SALEH MOHAMMED JERBO JAMUS***

**Public**

**Prosecution's Response to the « Requête des Représentants Légaux Communs aux Fins de Participer à l'Appel Interlocutoire interjeté par la Défense contre la Décision de la Chambre de Première Instance IV du 23 Janvier 2013 Rejetant sa Demande de Divulgence des Documents en Possession du Procureur »**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

**Counsel for the Defence**

Mr Karim A.A. Khan

Mr Nicholas Koumjian

**Legal Representatives of Victims**

Ms Hélène Cissé

Mr. Jens Dieckmann

**Legal Representatives of Applicants**

**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**

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**Counsel Support Section**

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**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. The victims participating in the trial ("Victims") seek to participate<sup>1</sup> ("Victims' Request") in the Defence appeal against Trial Chamber IV's "Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor"<sup>2</sup> ("Impugned Decision"). The Prosecution does not oppose the Victims' Request.

## Submissions

2. Article 68(3) mandates a determination by the Appeals Chamber that the participation of victims is appropriate in the interlocutory appeal under consideration.<sup>3</sup> The individuals seeking to participate must demonstrate that (i) they are victims in the case or situation out of which the appeal arises;<sup>4</sup> (ii) they have a personal interest that is affected by the issues on appeal; (iii) their participation is appropriate and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.<sup>5</sup>
3. Once victims have been admitted to participate in the situation or case, they do not need to demonstrate again to the Appeals Chamber that they meet the definition of "victim" under rule 85.<sup>6</sup> In this case, the persons on whose behalf the Victims' Request is submitted have already been recognized as victims.<sup>7</sup> The Prosecution agrees that the issue in this appeal, that is the scope of Rule 77, the scope of the contested issues and the amount of information that must be disclosed to the Appellant under that Rule, affects the personal interests of the Victims. This has an impact on the legal parameters of the protected status of the

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<sup>1</sup> ICC-02/05-03/09-461.

<sup>2</sup> ICC-02/05-03/09-443.

<sup>3</sup> ICC-01/04-01/06-824 OA7, para.40; ICC-01/04-503 OA4 OA5 OA6, para.36; ICC-01/05-01/08-566 OA2, para.14.

<sup>4</sup> ICC-02/05-01/09-48 OA, para.10; ICC-01/04-01/06-1335 OA 9 OA 10, para.40.

<sup>5</sup> ICC-01/05-01/08-1597OA7, para.7; ICC-01/04-01/06-1335OA9 OA10, paras.35, 36; ICC-01/04-503 OA4 OA5 OA6, paras.35,90; ICC-01/04-01/06-1453 OA13, para.7; ICC-01/04-01/06-1452 OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324 OA2, para.8; ICC-01/05-01/08-566 OA2, para.8. See also ICC-01/04-01/06-824 OA7, paras.2, 44, 46; ICC-01/04-01/06-925 OA8, para.23.

<sup>6</sup> ICC-01/04-01/06-824 OA7, paras.44, 45; ICC-01/04-503 OA4 OA5 OA6, para.92.

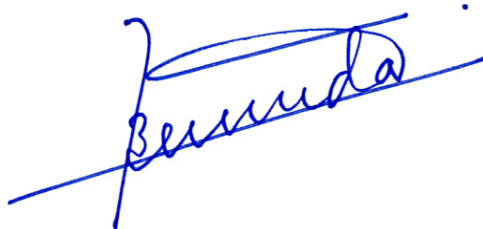
<sup>7</sup> ICC-02/05-03/09-89; ICC-02/05-03/09-231, para.15.

Victims<sup>8</sup> and the expeditious conduct of the proceedings.<sup>9</sup> It is therefore appropriate for the Victims to be allowed to present their views in this appeal.

4. The Victims should be permitted to make submissions “specifically relevant to the issues arising in the appeal and to the extent that their personal interests are affected by the proceedings.”<sup>10</sup> The Prosecution and the Appellant must have an opportunity to respond.<sup>11</sup> Under these circumstances, the participation of the Victims in this appeal would not be prejudicial to or inconsistent with the rights of the accused persons and a fair and impartial trial.

### Conclusion

5. For the reasons set out above, the Prosecution does not oppose the Victims’ Request




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Fatou Bensouda, Prosecutor

Dated this 18<sup>th</sup> day of April 2013

At The Hague, The Netherlands

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<sup>8</sup> See Victims’ Request paras. 20-28

<sup>9</sup> See Victims’ Request paras.29-47.

<sup>10</sup> ICC-01/04-503 OA4 OA5 OA6, para.101; ICC-01/04-01/06-1335 OA9 OA10, para.50; ICC-01/05-01/08-1597 OA7, para.12. See also ICC-01/04-01/06-824 OA7, para.55.

<sup>11</sup> The Appeals Chamber has previously recognised that if victims are permitted to participate, “the Prosecutor and the Defence shall be allowed to reply to any filing of the victims, in accordance with the provisions of rule 91(2) of the Rules of Procedure and of Evidence”, ICC-01/04-01/06-824OA7, para.49. See also ICC-01/05-01/08-1597OA7, para.12.