

ANNEX 2

Meeting between legal representatives and ICC Registry

Banda and Jerbo Case

20 May 2011

Counsel

Brahima Koné (BK)	Counsel for 24 victims from Mali
Hélène Cissé (HC)	Counsel for 21 victims from Senegal, Gambia, Botswana
Geoffrey Nice (GN)	Co-counsel for 2 victims, 3 applicants from Darfur
Rodney Dixon (RD)	Co-counsel for 2 victims, 3 applicants from Darfur
Akin Akinbote (AA)	Counsel for 21 victims from Nigeria
[part, by phone]	

Registry

Fiona McKay (FM)	Chief, VPRS
Megan Hirst (MH)	VPRS
Isabelle Guibal	VPRS
Heloise Dumont	VPRS
Olivier Randon	VPRS
Vera Chi Wang	Division of Court Services

Apologies

Frank Adaka	Counsel for 21 victims from Nigeria
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Introductions, welcomes

FM: This meeting is intended as first exchange, for Registry to share preliminary thoughts, information re practice from other cases; and hear counsel's ideas; there will be more chances for further input from counsel.

Basic approach

Decision of TCIV of 21 April:

- Orders registry to consult and inform chamber by 23 June
- Alternatively proposal from the Registry by 28 June
- Consultation not only with lawyers but also with the accepted victims, in presence of their lawyers

Two main questions to be determined

- Groupings of the victims
- Who might represent the different groups (team structure/lead counsel)

Input on victim groupings and team structures

MH: Preliminary comments:

- Comments in Registry filing regarding two teams are not intended to pre-empt consultation process – this is only an indicator of the budgetary situation
- The Registry believes that the number of teams has to be decided taking into account the particulars of the case and the nature of the victim groups etc
- But in general the starting point would be that there are advantages in having as few groups as possible for efficiency - multiple groups would be recommended only if there is a reason for this

HC: Understood that the Registry proposing two teams.

This case is different from others because the victims come from different countries – it is important to take into account the number of countries and different cultures involved– this means that several teams are perfectly justified

Three types of victims

- Family members of one person who has been killed
- Members of security forces / police
- Local contractors from Darfur (the villagers)

MH: The Registry has not yet decided how many groups of victims it will propose.

Question to HC – have you found it problematic to represent victims from various countries?

HC: From the meetings the victims have said they want a lawyer from their own countries

FM: So would you continue or should they be represented by different people?

HC: Not necessarily – Gambia and Senegal are similar in culture. The point is to differentiate from the other countries. Could accept to have a team with various members.

GN: Our clients are in a different category from the others because:

- they are civilians;
- they are privately funded;
- they live in Sudan and we have access to them

Haven't yet taken instructions on whether they would object to having us (GN/RD) appointed for the others but could get instructions on this

Their cases are very compact – in terms of efficiency their cases won't take much time of the court so separate representation will not be a burden;

They want to be represented by us – it is unlikely that they would want to be represented by others;

FM: Re rule 90 there are two issues: One is availability of funds; a second is the efficiency of proceedings

This chamber hasn't yet said anything on this – but we don't think the chamber would necessarily make a distinction on the basis of funding – we assume that rule 90 applies equally to victims able to pay for legal representation (or who have a third party who can pay)

MH: There have been questions raised by the OTP which might be a basis for saying there is a conflict between the Darfur victims and the others – are there views on that?

GN: Re conflict – can't say until have seen the evidence of the OTP - but the fact that they are in different categories raises that as a possibility

RD: Have filed powers of attorney which reflect that the representation of the trade union/SIDG in other cases has been explained and explored with the Darfuri victims

One potential tension is that the Darfuri victims stress that they want prominence given to the fact that the local civilian community have been neglected.

And they may wish to try to broaden the factual base of the case (though not necessarily the charges) – this requires access to Darfur, as well as the relationship that has been built up with them;

There is a wider group of victims from Haskanita behind them, who haven't been accepted – but their evidence or participation might become relevant – especially now that the trial is going to be focused on the lawfulness of the attack – their evidence that the whole community was attacked might be relevant to proportionality

BK: Essential to consider efficiency of the proceedings; I was chosen after VPRS consultation with victims – so if have to take into account efficiency, I have been here from the very start of the proceedings.

Need to take into account cultural and linguistic issues – the clients only speak French;

Changing lawyers at this point might bring up psychological issues

Court has been campaigning to have the lawyers coming before it – so although we have to take into account the budget of the registry, we shouldn't discourage the counsel

If had to be common legal representation, should have been done at beginning. Now is problematic

HC and I are ready to work together as a team – she represents a feminine sensitivity

HC: How will the Registry deal with potential further victims? How can we take any other consideration than the people already legal recognized by the court – what is the legal basis?

FM: We would recommend designation in terms of current victims but in deciding on approach to the content of the recommendation we need to think ahead to further victims

HC: Question of perception re court – the victims have chosen legal representatives – what is the impact of imposing other counsel on their perception of the court? Linked to fact that victims have different countries and cultures and have chosen their lawyers and expect their different backgrounds to be taken into account. If

you just take one legal representative in the team the victims might not understand why. Gender is also important, especially in light of court's campaign re woman lawyers

MH: Need to differentiate the question of victim groupings from team structure/composition. The point has been made about needing to involve lawyers from different countries, but does this mean the victims have to be separated into different groups represented separately?

HC: Most important is that the different victims and cultures are represented – different lawyers could work together for efficiency

FM: Idea of multi-national team – could HC's point re different cultures etc are achieved this way?

HC: Should have a consortium, and no need for Registry to appoint a lead counsel, the consortium can organize itself – this would be better for the perception of the victims represented

Could have two consortiums (Darfur victims separate)

FM: Existing models – ref ASP reports re legal aid:

- Lubanga: Group of lawyers, rotating appearance in Hague at trial. Potential problems: lawyers not able to keep up with proceedings, lack of a coherent strategy; financially inefficient
- Katanga: Two groups because of conflict of interest. Counsel of larger group selected by common legal representation. He has an assistant whose role is to maintain contact with the victims, inform them, take instructions; also an assistant in Hague who assists in proceedings; and a case manager.

Registry prefers Katanga model – unlikely that we would recommend the Lubanga model again

HC: Understand concern re rotation system – but having a team doesn't need to mean rotation. Would be benefits to having a team with different competencies and cultural experiences. Need to trust the team.

GN: Trial efficiency is a priority that can't be overlooked – problem of multi-representation as shown in Cambodia as well is that victims want their chosen counsel to appear, which potentially conflicts with trial efficiency. Whatever model is chosen has to recognize that issue, eg by imposing leadership.

On our team scale of representation would be efficient – not necessary to have two people in the courtroom

FM: GN's thoughts re model of team?

GN: Our victims are so clearly separated for other reasons that I am not sure our observations would be useful – might be meddling in the affairs of others

MH: How does the question of access come up? Seems to be a suggestion that another lawyer would not be able to access the Darfuri victims – why is that? Would the intermediary (SIDG) not be willing to work with another lawyer?

GN: Don't know whether intermediary would be in a position to facilitate access to victims – could facilitate access for court staff; but don't know in relation to counsel appointed by the court; victims have expressed strong desire to be represented through SIDG and Trade Union and GN/RD as lawyers

Might not be possible for other lawyers to access Darfur – intermediary isn't in a position to influence that

FM: Could there be a single team keeping involvement of different people?

GN: It would raise a problem for HC as to national representation etc. Would need to involve high level of willingness on the part of all counsel to converge through a single counsel

RD: This case is very different from others; can't compare to Bemba / Katanga etc – need different model

GN: On idea of overall team – any lawyer would be enthused by the prospect of leading such a group – but problem is that everyone wants to represent their client and if counsel have different interests there will be difficulty in imposing a way of working on them

HC: On the question of victims refusing to work with a different lawyer; the Nigerians have emphasized that their clients will only be willing to be represented by Nigerian lawyers. Any of the victims could take this position – so it applies to all of them and is not a determinant criteria

BK: The court is evolving and there are differences in the cases – here the victims come from different countries and have different backgrounds. Reactions of the other victims will be similar to the Nigerian victims - Malian victims won't accept representation by another counsel who isn't Malian;

If can't have lawyers in every country we need teams and within teams give opportunity to the lawyers to come to the court – HC and I could share appearance – eg one of us could go to the court – could rotate in hearings and make reports, or we could attend together, sharing the budget

HC: The case is complex in international law - important that the teams are strong in terms of legal input

GN: Trial efficiency can be achieved in different ways where there are multiple teams; but difficult to impose organization of team from above – if defence teams which have organized themselves struggle with this it will be hard to impose it from outside

Consultation process

AA phoned in to the meeting

FM: Deadline is 23 June. Need to get a sense of what is necessary if are to request an extension of time, and make the request immediately

So want to discuss how to hold the consultation with the victims – can also hold detailed discussions with each lawyer re detailed practicalities

MH: Some of the issues regarding how to do the consultation? Need to strike balance between being efficient (time and money) but also making the consultation meaningful:

- Telephone or personal? Other suggestions?
- Groups or individual?
- In absence of lawyers or presence?

AA: For Nigeria need more than 10 days if you are going to bring them together – so if we only have one month we will need an extension

On the issue of legal representation – my email has made my point

Consulting by phone is impossible – not all of the victims speak good enough English

GN: Telephone is practically impossible – need interpretation and to understand someone's state of mind via interpretation over phone is unrealistic. Can use videolink in Khartoum – the facilities are available at a cost

AA: In Nigeria this is not possible to use videolink for the people in the villages [FM – they would clearly have to travel somewhere]

HC: My clients are in three different countries; speak different languages and some are dual status

Mali Senegal and Gambia are in same zone – within one hour they could be together

Personal consultation in the field is necessary – the victims have to understand

The presence of the legal representatives is important because otherwise the victims won't understand what is happening

MH: Idea wouldn't be to exclude the lawyers, but to organize meetings together with them. Question is whether lawyers insist on their right recognized by the chamber to be present during the discussion?

HC: They are adults and should be able to express their free view to the court so if the Registry wants to talk to them separately it can. I don't want my clients to feel that I would interfere with their free choice, which is the basic rule. I trust them and I trust the Registry.

GN: The appeal of the partitioned meeting (part with and part without lawyers) imports a notion of distrust of counsel and the part of the meeting where counsel isn't present would introduce distrust

BK: We are unanimous in thinking that we must meet the clients in the field – and this is even more important because the victims need to understand the meaning of the meeting – so the victims don't get the impression that the lawyer representing them so far was failing his duties

I do not oppose that victims be heard without their lawyers, but preferably that everybody will meet together with the victim and the lawyer

HC: The Registry should trust the lawyers

- MH: This is not intended as an indication that the lawyers aren't trusted – it reflect a wish to be able to report to the Chamber that the views expressed were given as freely and genuinely as possible (eg to be able to give weight to positive views expressed by the victims re their current lawyers)
- HC: But what if the Registry unduly influences the victims towards efficiency and budgetary considerations? Victims could not respond to that if their lawyers aren't there.
- GN: What if the victims subsequently report to us that the Registry was pressuring them in our absence? This is something that can result in further litigation
- MH: What about the idea of an independent person or representative (eg bar association rep) there to represent interest of the lawyers?
- GN: This makes it too complicated – it is something that will open litigation
- FM: Questions of timing? Would it be appropriate if we request a one month extension?
- AA: Should be possible by the end of July but need to be informed early
- BK: Could do the Mali consultation from 20 June. Would need three days maximum
- HC: Senegalese victims –meet the family separate from the police officer (2 days total)
Gambia one day only required; Botswana
From mid-July busy with other work, but 20 June until 10 July would be possible, or after end of July
- FM: We also need to bear in mind official authorizations which might be needed
- HC: There is no need for authorizations from the military etc in Gambia and Senegal (other than sufficient notification that the victims can be absent from their office)
I also would like to be informed one or two weeks in advance.
- GN: Videolink probably only option and would just need to liaise with RD/GN re timing [note – after the meeting RD/GN raised possibility that another option would be to do the consultation outside Darfur – possibly in Cairo]
- HC: If no extension, need to inform lawyers as soon as possible so can work around other commitments

Criteria

Circulated initial document on general criteria

- FM: We would welcome input from the counsel
- MH: This document reflects generally relevant criteria – it is not specific to the Banda and Jerbo case but drawn on experience in DRC/CAR
Will tailor based on input from victims/LRS - especially on the question of what the priority should be as between the different criteria
- AA: Question to GN: what is their legal aid status?
- GN: Not requesting legal aid. However Registry's view is that this doesn't remove them from the process

Further written input

- FM: Would like to agree on a timeframe in which written input can be provided by the lawyers – these will likely be annexed to our report to the Chamber
Suggestion of 1 week for providing written inputs

Deadline of 30 May agreed by all

- RD: A last point re translation into Zaghawa – May have information that the accused understands Arabic sufficiently. May file something on that which could assist the court re translation and would affect timetabling