

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 April 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 Document

**Report recommending a decision concerning the common legal representation of
victims participating in the case**

Source: Registry

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Mr Karim A.A. Khan

Mr Andrew J. Burrow

Legal Representatives of the Victims

Mr Brahim Koné

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 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;

NOTING Pre-Trial Chamber I’s 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

CONSIDERING that 89 victims were approved by Pre-Trial Chamber I to participate in pre-trial proceedings in the present case;

CONSIDERING that further applications for participation in proceedings have been received by the Registry;

CONSIDERING that five teams of lawyers are currently representing victims in the present case;

TRANSMITS the following report recommending that the Chamber issues a decision concerning common legal representation in the case.

¹ ICC-02/05-03/09-121-Conf-Corr;

² ICC-02/05-03/09-124.

Introduction

1. This report is presented pursuant to the Registry's mandate under rule 16(1)(b) of the Rules of Procedure and Evidence according to which the Registry is responsible for assisting victims in the organization of their legal representation.
2. The purpose of this report is to:
 - (i) inform the Chamber of the history and current status of victims' legal representation in the present case; and to
 - (ii) propose to the Chamber that the process of organizing common legal representation be initiated.

Background

3. During pre-trial proceedings, 89 victims were admitted by Pre-Trial Chamber I to participate in the present case.³ The Registry notes that, subject to the powers of the Chamber to modify the previous rulings of Pre-Trial Chamber I, the decisions accepting these 89 victims as participants continue to apply throughout proceedings in the present case.⁴
4. The Registry has additionally received a small number of further applications for participation in proceedings. It expects that further applications will be received before the commencement of trial.
5. Of the 89 victims accepted to participate in pre-trial proceedings in the present case, 87 had previously been accepted to participate in the case of *The Prosecutor v Bahar Idriss Abu Garda* ("the *Abu Garda* case").⁵ The Registry notes that, during pre-trial proceedings in the present case, those 87 victims have maintained the same legal representatives who acted for them in the course of the *Abu Garda* case.

³ ICC-02/05-03/09-89.

⁴ Regulation 86(8), Regulations of the Court; Rule 91(1) Rules of Procedure and Evidence.

⁵ ICC-02/05-02/09-121; ICC-02/05-02/09-147-Red; ICC-02/05-02/09-255.

Current status of victims' legal representation

6. Five legal teams are currently representing victims in the present case. The numbers of participating victims represented by each team are shown in the following table:

Legal representative	Participating victims
Mr Brahim Koné	24
Ms Hélène Cissé	21
Col. Frank Adaka	21
Mr Akin Akinbote	21
Sir Geoffrey Nice and Mr Rodney Dixon	2

7. Regarding the five legal teams the Registry notes the following:

- Three of the five teams (Mr Brahim Koné, Ms Hélène Cissé and Mr Akin Akinbote) are financed by the Registry's legal aid scheme. A fourth, Colonel Frank Adaka, will receive financial assistance from the Registry on an exceptional basis in order to participate in the status conference scheduled for 19 April 2011;
- Four of the five teams were appointed by each of their clients. Ms Cisse was appointed by 14 of her 21 clients. In respect of the other 7 clients Ms Cisse was appointed by Pre-Trial Chamber I, after the Registry informed the Chamber that although those victims had selected a lawyer informally, they had not yet provided powers of attorney and nor had the lawyer in question submitted a complete application for the purpose of being included on the list of counsel maintained by the Registry.⁶ Powers of attorney from the victims have since been received, however to date the lawyer in question has still not completed his application for the Registry's list of counsel.

⁶ ICC-02/05-03/09-89, paragraph 56; Ms Cissé was also appointed by Pre-Trial Chamber I to represent the same 7 victims in the *Abu Garda* case: ICC-02/05-02/09-255, paragraph 33.

Proposal for the immediate arrangement common legal representation

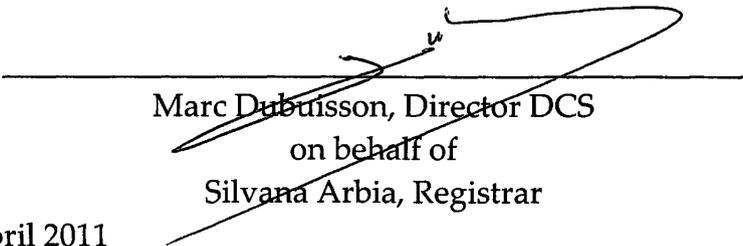
8. The Registry notes that in the three cases to proceed to trial to date before the Court, Trial Chambers I, II and III have sought to implement common legal representation ahead of trial in order to ensure efficient but meaningful participation of victims during trial proceedings. In light of the experience in those three cases, and the circumstances of the present case (in which the participating victims and potential applicants reside in various African countries), the Registry believes it is likely that the effective arrangement of common legal representation can be expected to take substantial time. Therefore, in order to ensure that common legal representation for participating victims can be organized well in advance of the start of the trial, the Registry proposes that the Chamber initiate this process at the earliest opportunity through the issuance of a request pursuant to rule 90(2) and rule 90(3).
9. In addition, the Registry would like to inform the Chamber that within the standard legal aid regime, only 2 legal teams should receive legal aid in the present case. Taking into consideration the proper management of the case, the Registry also submits that no more than 2 legal teams could be assigned to represent the total number of the witnesses in the present case.
10. The Registry notes that under rule 90, victims themselves should have the first opportunity to agree on an arrangement for common legal representation, albeit with the assistance of the Registry. The jurisprudence of the Court also reflects the importance of respecting victims' views regarding legal representation to the extent possible.⁷ The Registry therefore considers that in the present case, it will be important to consult with at least those victims already participating in the proceedings, to seek their input on questions of their appropriate grouping(s) and future legal representation. In order to ensure that victims feel free to speak freely and frankly the Registry would propose to meet with these victims in the absence of their current legal representative to discuss this question. However the

⁷ ICC-01/04-01/06-1119, paragraph 126; ICC-01/05-01/08-322, paragraph 9; ICC-01/05-01/08-1005, paragraph 14.

Registry believes that it will be greatly facilitated in this process by the active cooperation and assistance of the counsel already acting in the case, and by their facilitation of meetings with their clients. Given the important role of various national militaries and other state authorities in facilitating contact with victims of the present case, the Registry also believes that its work in the arrangement of common legal representation would be greatly facilitate by assistance and cooperation by these state authorities.

11. The Registry therefore requests that the Chamber:

- (i) issue the necessary requests under sub-rules 90(2) and (3) for victims to arrange common legal representation with the assistance of the Registry, or in the alternative for the Registry to prepare a proposal on common legal representation if the victims are unable to do so;
- (ii) request the Registry to consult with the victims already participating in the case, including through meetings with those applicants held in the absence of their legal representatives;
- (iii) request the legal representatives already representing victim participants in the present case to provide all assistance to the Registry in consulting with the victims for the purpose of arranging common legal representation; and
- (iv) request the cooperation of the States Parties, pursuant to Part IX of the Statute, in any ways necessary for the Registry's implementation of the latter orders.



Marc Dubuisson, Director DCS
on behalf of
Silvana Arbia, Registrar

Dated this 15 April 2011

At The Hague, The Netherlands