



Original: English

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

Date: 18 July 2011

**TRAIL 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 PROSECUTOR**

*v.*

***ABDALLAH BANDA ABAKAER NOURAIN  
&  
SALEH MOHAMMED JERBO JAMUSG***

**Public**

**Joint Observations of Victims' Legal Representatives on Common Legal  
Representation**

**Source:** Victims' Legal Representatives Brahim Kone, Helene Cisse, Akin  
Akinbote, Sir Geoffrey Nice QC & Rodney Dixon

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

**The Office of the Prosecutor**

Luis Moreno-Ocampo, Prosecutor  
Fatou Bensouda, Deputy Prosecutor

**Counsel for the Defence**

Karim A. A. Khan QC

**Legal Representatives of Victims**

Brahima Kone  
Helene Cisse  
Akin Akinbote  
Sir Geoffrey Nice QC &  
Rodney Dixon

**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**

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**Registrar**

Silvana Arbia, Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

Fiona McKay

**Other**

## **A. Introduction**

1. This filing is jointly submitted by the Legal Representatives of the victims in response to the Registry's Report filed on 21 June 2011 and the Registry's notice of 8 July 2011 requesting expressions of interest from all counsel on the ICC list of counsel. The Legal Representatives wish to make certain observations on the procedure being followed by the Registry in respect of the appointment of common legal representative/s and to notify the Trial Chamber and Registry of the agreement reached by the victims as to the common legal representation they have chosen in accordance with Rule 90(1) and (2).

## **B. Background**

2. On 15 April, 2011, the Registry filed a Report recommending that a decision be taken on common legal representation of victims participating in the case. The Registry stated that two teams of legal representatives could be assigned to represent the victims in this case, and that only two teams could receive legal aid (para. 9).
3. On 19 April, 2011 Legal Representatives Akin Akinbote and Frank Adaka filed a Response to the Registry Report filed on 15 April, 2011.
4. On 19 April, 2011 Legal Representatives Helen Cisse and Brahim Kone also filed a Response to the Registry Report filed on 15 April, 2011.
5. On 21 April, 2011, the Trial Chamber IV made Orders on the organisation of common legal representation as follows:
  - The Registry to consult with the 89 participating victims with a view to appointing a common legal representative or common legal representatives representing their interests for the remainder of the proceedings in this case, in the presence of their current legal representatives.
  - The Registry to liaise and consult with the legal representatives currently representing the 89 participating victims when assisting the said victims in choosing a common legal representative.

- The current legal representatives for the 89 participating victims to fully cooperate with the Registry in this matter.
  - The Registry to finalise consultations and inform the Chamber of the common legal representative or representatives chosen by the victims by 16.00 on 23 June 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 28 June 2011.
6. On 21 June, 2011, the Registry filed a “Report on the implementation of the Chamber's Order of 21 April 2011 (ICC-02/05-03/09-138), instructing the Registry to start consultations on the organisation of common legal representation” (ICC-02/05-03/09-164-Red), requesting an extension of the time-limit.
  7. On 22 June, 2011, Trial Chamber IV extended the time-limit and ordered 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.
  8. On 8 July, 2011, the Registry by an email addressed to all Counsel on the ICC External Counsel List called for expressions of interest to represent the victims before 22 July, 2011. The Registry also attached to the email a document entitled “Information For Counsel – Common Legal Representatives in the case of The Prosecutor vs. Banda Abakaer Nourain and Saleh Mohamed Jerbo Jamus”. These documents are attached hereto as Annex 1.

### C. Observations

9. The Registry has to date failed to comply with the Orders of Trial Chamber IV, made on 21 April 2011, which directed the Registry to consult with the 89 participating victims in the presence of their Legal Representatives. None of the victims have been consulted by the Registry to date.
10. The Registry's notice of 8 July 2011 calling for expressions of interest from other counsel to be the common legal representative/s disregards the Chamber's Order which required consultation with the victims first in order that they could choose and agree on the common legal representative/s. As provided for in Rule 90, it is only if the victims cannot choose a common legal representative or representatives that the Registry may put forward its proposal for a common legal representative or representatives.
11. The current Legal Representatives of the victims will accordingly not respond to this notice of 8 July and apply to be appointed pursuant to the notice. The Legal Representatives have set out below the agreement reached by all of the victims as to the common legal representation that they have chosen in accordance with Rule 90(1) and (2) and the Trial Chamber's Order of 21 April 2011.
12. In order to ensure that the victims' rights to choose a common legal representative or representatives as provided for under Rule 90(1) and (2) are not denied, the Legal Representatives request that the Registry must be directed to consult with the victims to obtain their views and to permit them to choose and agree on common legal representative/s. It would be contrary to the Trial Chamber's Order and Rule 90 for the Registry to select a new legal representative/s pursuant to its notice of 8 July and impose such a person/s on the victims without consulting them or giving effect to their agreement as to legal representation.
13. The proper procedure under Rule 90 and pursuant to the Trial Chamber's Order is for the Registry to submit the agreement reached by the victims as to common legal representation, as set out below, to the Trial Chamber on 8 August 2011. It represents "the common legal representative or representatives chosen by the victims" as required by the Trial Chamber's Order. As the victims have agreed and chosen

common legal representatives for submission to the Trial Chamber there is no need for the Registry to submit any proposal of its own to the Trial Chamber by 15 August 2011.

**D. Agreement of the Victims for Common Legal Representation**

14. In view of the distinct interests of the victims and the views expressed by them as to what representation they require, the victims agree that three Legal Representatives be appointed for the three identifiable groups of victims:

- a. Victims represented by Helen Cisse and Brahim Kone
- b. Victims represented by Akin Akinbote and Frank Adaka
- c. Victims represented by Sir Geoffrey Nice QC and Rodney Dixon.

15. The teams would cooperate and work closely together to ensure that the interests of the victims were commonly represented, including through sharing the time allocated to victim participation in the trial (as explained further below). This composition of legal representation will ensure that the victims from different countries who speak different languages are accommodated and represented by lawyers with whom they are very familiar. The victims have appointed the current Legal Representatives and have been represented by them for a considerable length of time. The legal representation agreed by the victims will guarantee the proper and efficient representation of the distinct interests of each group of victims (as have been explained in detail to the VPRS in meetings and correspondence) and that the issues pertinent to the personal interests of each group of victims can be raised effectively during the trial through their trusted legal representatives.

16. Only two of the above teams would require legal aid funding from the ICC because the team representing the Darfuri victims in Sudan is privately funded. This arrangement would be in accordance with the Registry's report of 15 April 2011 in which it stated that no more than two teams could receive legal aid.

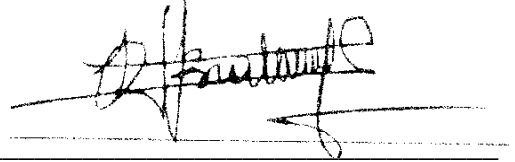
17. The time to be allotted to the victims for participation in the trial could be divided and shared between the three teams. No extra time would be required on the basis that three teams were participating in the trial as opposed to one or two teams. In other

words, the representation agreed by the victims would not unnecessarily lengthen the proceedings in any way, and the same amount of time could be allocated to victim participation as would be the case if only one or two teams were appointed.



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Helen Cisse



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Brahima Kone



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Akin Akinbote



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Sir Geoffrey Nice QC and Rodney Dixon

Dated 18<sup>th</sup> July 2011

The Hague