

ANNEX 4



Temple Garden Chambers
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12 July 2011

Dear Ms. McKay,

We write in response to the Registry's Report on Common Representation of 21 June 2011.

Rodney Dixon contacted Ms. Megan Hirst on 24 June 2011 to discover what further information was required from us in light of this Report.

Our response to the Report itself is as follows:

1. Our priority, of course, is that the victims we represent are well represented during the trial and that they are able to contribute to the proceedings, through questions by, or arguments of, counsel - or otherwise - in ways that serve their interests as well as the wider interests of the court. They are, as you are aware, the only victims so far recognised who live in Darfur.
2. Two things follow from this. First that if representation by other counsel could *genuinely* achieve these objectives then there might be no need for separate representation of Sudan-resident victims by us (subject to their own views and to the weight properly attached to such views). Second that we, as counsel, should be prepared to do what we can personally to assist the court in achieving consolidated / joint representation to the extent desirable. (We have yesterday received the email 'Information for Counsel' on this topic and will respond separately to it although our willingness to assist as common legal representative has been expressed previously.)
3. We have already set out our position on why representation of the two victims we presently represent should be kept separate and that such separate representation would add little if anything to the time taken by victims in the trial and that there could be several real benefits for

the court in our continued representation of these victims. There is no need to repeat those arguments here.

4. We note that the Report considers that in respect of our two Darfuri victims "... more information is required in order to determine whether there is indeed a sufficient justification for the separate representation of this group" (para. 19). It is not specified in the Report what further information is required and what steps will be undertaken to obtain this information. If you let us know what information *we* can provide so that this question can be determined we will respond promptly.
5. We note that the report also indicates that the Registry has "concerns regarding some of the current legal representatives of victims". The report does not particularise these concerns. We would be much assisted by knowing if any of these concerns is about us so that we have a fair opportunity to respond to them before any decision is taken on legal representation. (See Registry's Report on Common Representation, 21 June 2011, para. 22).
6. When Rodney Dixon spoke to Megan Hirst on 24 June, she raised two matters which did require further clarification: first, the cost of a video-link to Khartoum to consult with the victims and, second, access to Sudan by legal representatives other than ourselves (taking into account that SIDG functions as an intermediary)
7. We are making inquiries into the cost of a video-link and will provide further information by the end of this week. On a previous occasion Geoffrey Nice used a video-link from a hotel in Khartoum to communicate with London on an unrelated matter and found it to be of a very high quality, very effective and without any problems.
8. As to access to Sudan, the Registry's previous position has been that it will not be able to provide or facilitate *any* persons from the ICC going to Sudan. As we have made clear before we cannot speak for, or provide definitive information as to, access to Sudan for other lawyers. We accept, of course, that SWTUF is close to the Government of Sudan but that does not mean that it has the ability to grant VISAS etc. or that it can arrange or guarantee entry to Sudan for other lawyers. It would, of course, do whatever it could to assist other lawyers to gain access to Sudan if there were an order for joint representation by another lawyer or lawyers of the Sudan-resident victims but it is in no position to offer guarantees.
9. In respect of potential conflict of interest listed in paragraph 23 of the Registry's Report, we respectfully remind the Pre-Trial Chamber through you that nothing has changed since 8 December 2010 when the Chamber was "of the view that no concrete evidence has been brought to [the Court's] attention that could substantiate the existence either of an abuse of the Court process or of a conflict of interest." (See Confirmation of Charges Hearing, 8 December 2010, pg. 4, ln. 12-15).
10. Further, we would challenge any suggestion that *might* be made by counsel for any other victims suggesting that we, the legal representatives of victims a/1646/10 and a/1647/10, should not act as common legal representatives for all the victims *because* of some *potential conflict of interest*. There is no basis for asserting the existence of any such conflict. Appearing

under Rule 103, or as *amicus curiae*, but not on behalf of any party, as we have done in the case of the *Prosecutor v. Al Bashir*, has no significance for the present case against Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus and thus causes no conflict of interest.

11. Eager as we are to provide assistance to the court and to answer any outstanding questions, we remain focused on ensuring that the interests of the Sudanese victims are fully protected and that the victims are represented in the proceedings in order to communicate the harm and suffering that they endured during the attack at issue. We respectfully remind you that victims a/1646/10 and a/1647/10 could give evidence that could be *very* relevant to whether the attack at issue was lawful, the very issue that may be central to the Trial Chamber's work in due course.
12. As the legal representatives of victims a/1646/10 and a/1647/10, we reiterate that we are free to answer any questions that will help with organising a common legal representative(s) for the victims. Further, in light of the Trial Chamber's Order of 21 April 2011 to begin organisation of a common legal representation, we wish to make clear and reiterate that we are prepared to act as, or to organise or to back-up in any useful way any common legal representative for all the victims.

Kind regards,



Sir Geoffrey Nice QC

Rodney Dixon

Legal Representatives of the Victims

Ms. Fiona McKay

VPRS

ICC

The Hague