

ANNEX 5



temple garden
chambers

1 Harcourt Buildings Temple London EC4Y 9DA
T 020 7583 1315 F 020 7353 3969 DX 382 London Chancery Lane
E clerks@tgchambers.com www.tgchambers.com

8 August 2011

Dear Mr. Dubuisson

We write in response to your letter of 4 August 2011.

Effectiveness of our representation

You mention that you are assessing the effectiveness of our representation to date. We trust that you will be reviewing our filings, correspondence, and oral submissions before the Court. All have been focussed on the personal interests of the victims, they have been concise and raised issues that could assist the Court in conducting the proceedings. You may regard it as significant for the ICC that we have facilitated the involvement of Darfuri citizens who still reside in Sudan in proceedings before the ICC.

We have from the outset of our representation on behalf of Sudanese victims had regular meetings with Fiona McKay, Head of the VPRS, and Megan Hirst, Legal Officer in the VPRS, since mid-2009, and kept in regular contact with them to update them on all of our work and discuss this work each step of the way. No problems or concerns have ever been raised about our representation by either Ms. McKay or Ms. Hirst in all of our dealings. The issues you raise in your letter have all been previously discussed and addressed with them. No doubt you will consult with them about our work and the constructive and positive relationship with the VPRS and the Court.

As you will be aware, we were able through the VPRS successfully to arrange a training session at the ICC in April 2011 for members of SIDG who work as intermediaries with victims in Sudan, including female members who focus on rape victims. This was a first for any organisation from Sudan to visit the ICC and participate in ICC training.

Potential conflict of interest raised by the parties

You state that you “remain concerned by the questions raised by the parties in the pre-trial phase of the present case regarding the existence of a possible conflict of interest between SIDG and SWTUF on the one hand and your clients on the other”. Critically, and as you are of course aware, the Pre-Trial Chamber has ruled on the very concerns raised by the parties to which you refer. If there had been any problem with our representation of the victims, the Chamber would not have permitted our continued representation or found as it did at the hearing on 8 December 2010 on the basis of the information presented by the Prosecution and the Defence that “the Chamber is of the view that no concrete evidence has been brought to its attention that could substantiate the existence either of an abuse of the Court process or of a conflict of interest between the interests of the victims and the interests of the two Sudanese organisations. The same applies to the assertion that the continuation of the relevant legal representation would run contrary to Article 6 of the Code of Professional Conduct for Counsel and therefore leading the Chamber to draw a reasonable inference that the counsel’s independence is compromised by external pressure.”

The Chamber noted that “with respect to the potential conflict of interest, Article 16(1) of such Code of Professional Conduct for Counsel states that ... ‘Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client’s interests before counsel’s own interests or those of any other person, organisation or State’ ... Therefore, the primary responsibility for addressing and resolving any potential conflict of interest rests with counsel, in accordance with his or her professional obligations as prescribed in the Code of Professional Conduct for Counsel.” Further, to state the obvious both Counsel signing below have great experience in various jurisdictions, but especially in The Hague. Sir Geoffrey Nice QC is also the (part time) Vice Chair of the Bar Standards Board, the very body that regulates the Bar of England and Wales and - as the Chair is a *lay* member of the Board - is the senior member of the Bar of England and Wales charged by the State and the profession with regulating ethical conduct of barristers. There is no conflict of interest in our continued representation of the victims. We are entirely confident that we can fulfil our professional obligations to the victims although we have yet to see any articulated concern that could require us to be making this form of assertion.

.

Funding

As explained from the very outset of our representation of the victims, our legal fees are paid by SWTUF. SIDG does not provide any funding to us. SIDG is funded by SWTUF for its work before the ICC. SWTUF is a large national trade union federation which is funded by its affiliates and its membership. This information was made known to the victims when they were first met and, as you have noted, they are entirely content for their representation to be funded by SWTUF. There is no basis at all to suggest that this arrangement is in any way improper or inappropriate. All of this information was provided to and discussed with Ms Mckay and Ms Hirst from the outset, and no concerns or problems have ever been raised with us.

Mr. Ansari

It is not immediately clear what is the purpose of your question about Mr. Ansari. As you know, he has been appointed as our case manager and assistant by the Registry on the basis that there were no concerns about him receiving confidential information. We, as Counsel, are responsible for Mr. Ansari and have no concerns at all about him having access to confidential information.

Mr. Ansari has had many meetings with Ms McKay and Ms Hirst. He was instrumental in organising the training in April 2011 at the ICC. If there is some implication that he may be “a Government person”, his CV makes plain that he has never been in government. He has in fact previously stood against President Al Bashir in elections. SIDG has been critical of the Sudanese Government in the press and on its website. There is no basis at all to claim (as the Prosecution and the Defence have done without any supporting evidence) that SIDG’s work is somehow a “front” for the Government of Sudan.

Contact and relationship with victims

We have met and consulted with the two victims on two separate occasions: (i) meetings with them in Darfur on *28 February-1 March 2010*, and (ii) meetings with them in Khartoum, *13-15 March 2011*. On these occasions we met with each of the victims several times, we took their detailed instructions, explained the procedures of the ICC to them, discussed protective measures and arranged to keep them updated on the proceedings. We have also kept in regular week to week contact with them through Mr. Ansari, who has visited them on numerous occasions and is in constant contact with them. This regular contact has permitted us to keep the victims informed of developments before the Court and to get their further instructions and information as required. A visit by Counsel is planned to Haskanita with the victims in September 2011 to take their further instructions on-site and to photograph and record the scene of the alleged attack.

Availability for trial

We are available and committed to represent the victims at trial. As we have previously indicated in meetings with Ms. McKay and Ms. Hirst, we will be available full-time in court for all hearings involving issues that directly affect the interests of the victims we represent. We will have available another counsel to be present throughout the proceedings to assist us and who can attend any other hearings (unless attendance is waived by the Trial Chamber) that have no bearing on the victims we represent. In the event that we were appointed as the common legal representative/s for all victims in the case, at least one of us would be available full-time to attend all hearings.

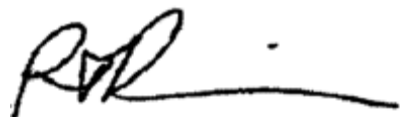
Other matters

We do wish to raise that the 3 new victim applications in the present case that we submitted in May 2011 have still not been transmitted to the Trial Chamber by the Registry. We would ask

that they be notified to the Trial Chamber as soon as possible and before the matter of common representation is resolved.

Please do not hesitate to contact us if you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'R. Dixon', with a long horizontal line extending to the right.

Sir Geoffrey Nice QC and Rodney Dixon