

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 April 2012

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR v. ABDALLAH BANDA ABAKAER

NOURAIN AND SALEH MOHAMMED JERBO JAMUS

Public document

**Registry submission on the Defence Request for an Order Prohibiting the
Recruitment of the Registry Zaghawa Language Assistants by the Prosecution**

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, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Mr. Karim A.A. Khan QC
Mr. Nicholas Koumjian

Legal Representatives of Victims

Ms Hélène Cissé
Mr Jens Dieckmann

Legal Representatives of Applicants

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

Registrar

Ms. Silvana Arbia

Deputy Registrar

Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Court Interpretation and Translation
Section**

Ms Alexandra Tomić

THE REGISTRAR of the International Criminal Court (the «Court»);

NOTING the Order to the prosecution and the Registry issued by Trial Chamber IV on 7 September 2011¹ ordering the prosecution and the Registry (i) to immediately start consultations on the best manner to join their efforts with regard to Zaghawa translation and interpretation in order to facilitate the expeditious preparations of the trial, including the common usage of the current resources available to the Court, (ii) to file a joint report with the Chamber on the common plan of action envisaged no later than 16.00 on 20 September 2011; and (iii) to file regular monthly joint updates on the status of translation of witnesses' statements and on the status of training of Zaghawa interpreters starting from 20 October 2011.

NOTING the first joint report subsequently filed by the prosecution and the Registry on 20 October 2011 ("First joint Report")², the second on 21 November 2011 ("Second Joint Report")³, the third on 20 December 2011 ("Third Joint Report")⁴, the fourth on 20 January 2012 ("Fourth Joint Report")⁵, the fifth on 20 February 2012 ("Fifth Joint Report")⁶, and the sixth on 20 March ("Sixth Joint Report")⁷;

NOTING the Defence Request for an Order Prohibiting the Recruitment of the Registry Zaghawa Language Assistants by the Prosecution filed on 27 March 2012 ("the Defence Request")⁸;

¹ ICC-02/05-03/09-211.

² ICC-02/05-03/09-236.

³ ICC-02/05-03/09-257.

⁴ ICC-02/05-03/09-267.

⁵ ICC-02/05-03/09-282.

⁶ ICC-02/05-03/09-299.

⁷ ICC-02/05-03/09-311.

⁸ ICC-02/05-03/09-312.

NOTING that on 28 March 2012 the Chamber invited the Registry to file a submission on the Defence request by 3 April 2012, 16.00 hours⁹;

RESPECTFULLY SUBMITS to the Chamber the following:

1. Upon the Trial Chamber IV's Order, dated 1 July 2011¹⁰, ordering the Registry to immediately "commence the necessary training of Zaghawa interpreters", three candidates have started their training on 15 of August 2011¹¹. The training by Court Interpretation and Translation Section of the Registry (STIC) was designed to take normally between 6 and 8 months, depending on the language and the experience of trainees, was initially scheduled for 4 months and was subsequently extended for three additional months. The trainees were supposed to be ready in case the trial would start in the spring.
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2. Due to personal reasons, one candidate left the Court on 16 September 2011 but remained on the roster of STIC as a potential trainee in the future as well as a field and operational interpreter who would be set aside for off-site translations and defence assignments. Consequently he was recruited for both and he carried these assignments well, including the audio translation of the Confirmation of Charges decision. He remains available for the Registry. It is also anticipated, should his personal circumstances change, that he would return to STIC as a full time trainee and paraprofessional interpreter about two months prior to the start of the trial so that he could catch up in the training and be able to be a member of the STIC team of Zaghawa interpreters. The other two candidates continued their training as of mid-August and started working on the translation of the witness statements provided by the

⁹ Email from Legal Officer, Trial Chamber IV, to Associate Legal Officer, Courtroom Officer, Division of Court Services.

¹⁰ ICC-02/05-03/09-172.

¹¹ One trainee has informed STIC that he will leave the Court on 16 September 2011 for personal reasons.

prosecution as of 21 October 2011¹². This was necessary in order to assist the OTP so that they could carry out the disclosure. It was also a useful exercise as part of their training as they ascertained terms and expressions to be used as well as learned audio-editing for the purpose since all the translations were audio-recorded.

3. Further training of the Zaghawa trainees must end with their contract at the end of April 2012. This ending date was determined based on the expectations as to the time required for the completion of their training. The Registry's assessment was that the trainees would be ready and operational for trial interpretation as of early May 2012 and they have been trained accordingly.
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4. As a consequence of this assessment, no funds were provided for extension of their contract beyond this date. The assumption was that, by this time, a date would be set for the commencement of trial, which would then allow access to the Contingency Fund for trial purposes. In light of the Committee of Budget and Finances' ("CBF") stated policy with respect to access to the Contingency Fund, it is unlikely that the CBF would accept a notification of access to the Contingency Fund without prior determination on the trial date.
 5. As a consequence of this situation, the Registry does not have the funds to extend the contracts of the trainees beyond 30 April 2012. The Registry further observes that their training is completed, at least to the extent that it was possible without the trial date. As long as no date is known for the commencement of trial, continuing their training would serve no purpose but the necessity not to lose the benefit of what has been done so far. If the Registry could be sure that the trainees will be available again once the date of commencement of trial is known, there would be no real issue with letting

¹² As of 17 October 2011, the trainees start working of different ways to perform the translation.

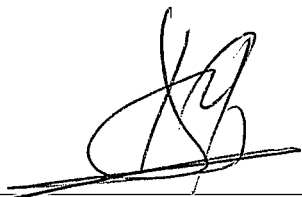
them go at this stage and calling them back two months ahead of the starting date to prepare for the trial, with the additional proviso that two additional trainees would be required to complete the team.

6. STIC has recently been informed by the Language Services Unit ("LSU") of the Office of the Prosecutor ("OTP") on 15 March 2012 of its intention to offer the two trainees contracts in order to continue the translation of the disclosure material once they have been released by the Registry.
7. OTP's proposal to recruit the trainees offers the advantage of keeping the two trainees available to the Court. An agreement could be reached with the OTP that, once the starting date for trial is known, the trainees could resume their contract with the Registry to start preparing for trial. This could be achieved, for instance, by placing the trainees on loan to the OTP.
8. The Registry observes that this solution depends on two factors though. First, the trainees' willingness to accept to work for the OTP for a period of time translating the witness statements and then to resume their work for the Registry after that. This may largely depend on the conditions of employment the OTP is offering and is for the trainees to consider. Second, the issues raised by the Defence in its Request and whether their position within the OTP would be subsequently compatible with their functions as Court interpreters for the Registry once the trial starts.
9. The crucial issue of concern on this matter is, and has been from the start, the lack of candidates with the necessary language combination and skills that would make them suitable for training. Considerable resources have already been invested in the training of the two trainees through the paraprofessional interpreter programme. Losing them at this stage would constitute a

considerable loss for the Court and would ultimately threaten the Registry's capacity of ensuring interpretation at trial. The Registry's leading concern is not to lose these rare human resources, who already cost considerable amounts of time and money. Should this happen, the Registry would have to start again from zero the selection and training of interpreters. There would be no guarantee as to the feasibility of finding new incumbents and training them without further delaying the commencement of the trial.

10. Another relevant observation that the Registry needs to make to assist the Chamber in its determination is that, should the two trainees leave the Registry – because of the termination of their contract or as a result of their recruitment by OTP- , the Registry would only be able to provide the Defence with an “off-site” field interpreter. This would mean that, each and every time the Defence had a phone call to make requiring interpretation from and into Zaghawa, it would require bringing in the “off-site” field interpreter from abroad. This solution would incur additional costs and delays. In order to avoid this situation, it would be necessary to keep one trainee under contract for the Registry to perform these tasks, but it raises once again the issue of the unavailable budget for the payment of salaries.

11. Because the CBF's requirement for a date of trial cannot be fulfilled in the present circumstances, the Registry is thus facing the predicament that it may be obliged to separate from the trainees because of the lack of funds, while knowing that not having them on board is likely to generate additional costs and, ultimately, to further delay the proceedings if the Registry is not able to have them back in time.



Didier Preira, Deputy Registrar

For Silvana Arbia, Registrar

Dated this 3 April 2012

At The Hague, The Netherlands