

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 April 2011

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernández de Gurmendi

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN
AND SALEH MOHAMMED JERBO JAMUS***

Public Document

URGENT

**Order instructing the Registry to start consultations on the organisation of
common legal representation**

Order 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 QC

Mr Andrew J. Burrow

Legal Representatives of Victims

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

Sir Geoffrey Nice QC &

Mr Rodney Dixon

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

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Trial Chamber IV (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, in accordance with Articles 64(2) and 68(3) of the Rome Statute (“Statute”), Rules 16(1)(b) and 90 of the Rules of Procedure and Evidence (“Rules”) and Regulation 79 of the Regulations of the Court (“Regulations”), issues the following Order.

1. On 15 April 2011, the Registry filed its “Report recommending a decision concerning the common legal representation of victims participating in the case”¹ (“Report”) in which it requested the Chamber to:

- (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

¹ “Report recommending a decision concerning the common legal representation of victims participating in the case”, 15 April 2011, ICC-02/05-03/09-134.

(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."²

2. On 19 April 2011, the legal representatives Ms Cissé and Mr Koné acting on behalf of 45 of the victims authorised to participate in the proceedings, replied to the Report,³ asking to be appointed as common legal representatives of the victims they represent as well as other victims, if need be.⁴ Ms Cissé furthermore advanced oral submissions in relation to the Registry's recommendations during the status conference held on 19 April 2011.⁵
3. On the same day, Mr. Adaka and Mr. Akinbote, representing 42 victims authorised to participate in the proceedings, filed their observations in response to the Report.⁶ Messrs Adaka and Akinbote submitted substantive arguments in favour of their request to the Chamber to "turn down the recommendations of the Registrar and refuse the requests sought in its entirety".⁷

A. Chamber's Requests under Sub-Rules 90(2) and (3) of the Rules

4. Noting Article 64(2) and 68(3) of the Statute, Rules 16(1)(b) and 90 of the Rules and Regulations 79 and 80 of the Regulations, and in view of the fact that the 89 victims participating in the present case are currently represented by five teams

² ICC-02/05-03/09-134, paragraph 11.

³ "Requête Conjointe de Me Hélène CISSE et Me Brahim KONE représentants légaux des victimes en réponse au rapport du Greffe recommandant une décision concernant la représentation légale commune des victimes participant à l'affaire 02/05-03/09", 19 April 2011, ICC-02/05-03/09-135.

⁴ ICC-02/05-03/09-135, paragraph 6.

⁵ ICC-02/05-03/09-T-10-ENG ET WT 19-04-2011, page 39, lines 10 to 21.

⁶ "JOINT SUBMISSIONS ON BEHALF OF VICTIMS Legal Representatives of Victims a/0535/09, a/0537/09 to a/0542/09, a/0544/09 to a/0551/09, and a/0557/09 to a/0562/09 AND a/0552/09, a/0553/09, a/0554/09, a/0555/09, a/0556/09, a/0563/09, a/0564/09, a/0565/09, a/0566/09, a/0567/09, a/0568/09, a/0569/09, a/0570/09, a/0571/09, a/0572/09, a/0573/09, a/0574/09, a/0575/09, a/0576/09, a/0577/09, a/0578/09 in Response to the Registrar's Report Recommending a Decision on Common Legal Representation of Victims Participating in the Case"(sic), 19 April 2011, ICC-02/05-03/09-136.

⁷ ICC-02/05-03/09-136, page 9. In the alternative, Messrs Adaka and Akinbote expressed their willingness to agree to work together and to rotate the legal representation of the Nigerian victims, ICC-02/05-03/09-136, page 9.

of legal representatives, the Chamber considers the timely organisation of common representation of victims necessary in order to safeguard the expeditiousness of the proceedings and the effectiveness of victim participation in the case.

5. In accordance with Rule 90(2) of the Rules, the Chamber therefore requests the victims, with the assistance of the Registry, to choose their common legal representative to act on their behalf throughout the proceedings in this case.
6. Should the victims be unable to make such a choice by 23 June 2011, the Chamber, pursuant to Rule 90(3) of the Rules, instructs the Registry to submit to the Chamber a proposal on the common legal representation of victims by 28 June 2011.

B. Consultations with the victims in the absence of their Legal Representatives

7. The Chamber is mindful of the particular circumstances of the case, such as the different geographical, cultural, ethnic, and linguistic backgrounds of the participating victims, as well as of its obligation, pursuant to Rule 90(4) of the Rules, to take all reasonable steps to ensure that the distinct interests of the victims are represented and any conflict of interest is avoided. It is further aware of the relationship of trust thus far established between the victims and their current legal representatives. Hence, consultations between the Registry and the victims, within the meaning of Rule 90(2) of the Rules, shall be conducted in the presence of the legal representatives currently representing the victims in the case.

C. Assistance from the current legal representatives to the Registry

8. Consultations with victims regarding their future representation in the case shall, as set out above, take place in the presence of those legal representatives the victims have so far appointed. Accordingly, the Chamber instructs the legal representatives

to fully cooperate with the Registry in its consultations with the victims, bearing in mind their obligations under the Code of Professional Conduct for counsel.⁸

D. Cooperation requests pursuant to Part IX of the Statute

9. The Chamber considers that there is currently no information before it that suggests the Registry is faced with obstacles that fall within the ambit of Part IX of the Statute. Furthermore, the Chamber is of the view that its instructions to the legal representatives of victims representing those participating in the proceedings to cooperate with the Registry sufficiently addresses the Registry's concerns. Nevertheless, should difficulties arise, which cannot be resolved without the intervention of the Chamber, the Registry shall seize the Chamber of any such request in a distinct application.

FOR THESE REASONS, THE CHAMBER

ORDERS 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;

ORDERS 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;

ORDERS the current legal representatives for the 89 participating victims to fully cooperate with the Registry in this matter;

⁸ See for example Article 7(3) and Article 15(1) of the Code of Professional Conduct for counsel.

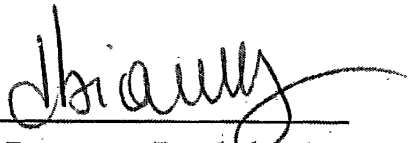
ORDERS the Registry to finalise consultations and inform the Chamber of the common legal representative or representatives chosen by the victims by 16:00 on 23 June 2011;

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.

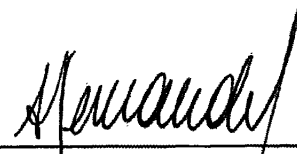
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch



Judge Fatoumata Dembele Diarra



Judge Fernández de Gurmendi

Dated this 21 April 2011

At The Hague, The Netherlands