

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09
Date: 7 September 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

Order to the prosecution and the Registry on translation issues

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

Mr Nicholas Koumjian

Legal Representatives of Victims

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

Sir Geoffrey Nice &

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

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

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 43(1), 64(2), 64(3)(c), 67(1)(a), (c) and (f) of the Rome Statute, Rule 76(3) and 84 of the Rules of Procedure and Evidence (“Rules”), issues the following Order to the prosecution and the Registry on translation issues.

1. On 14 April 2011,¹ the Registry filed with the Chamber an update, *inter alia*, on language issues stating that, given technical difficulties with regard to the identification, recruitment and training of Zaghawa interpreters, no fully trained Zaghawa interpreters were available at this stage and that six months would be the minimum period required for training any interpreters into this non-written language.
2. The same day, the Office of the Prosecutor (“prosecution”) described numerous practical implications arising from the obligation to disclose to the accused the statements of all prosecution witnesses in a language which they fully understand and speak, as follows:²
 - i. Zaghawa is not a written language;
 - ii. The Zaghawa vocabulary is limited to no more than 5,000 words, rendering it difficult to translate certain words and concepts from languages of the Court such as English, French and Arabic into Zaghawa;
 - iii. Consequently, the relevant material would first have to be transliterated and then read on to audio tapes in Zaghawa;
 - iv. Other practical difficulties may also arise in translating annotations that are contained in certain witness related materials such as maps and sketches on to audio tape.

¹ “Report of the Registrar in response to the questions in the agenda of the status conference scheduled for 19 April 2011, filed on 14 April 2011, ICC-02/05-03/09-129, paragraphs 6 and 7.

² Prosecution’s Response to the Trial Chamber’s Request for Written Submissions on Issues to be Addressed During the Status Conference on 19 April 2011, 14 April 2011, ICC-02/05-03/09-131, paragraph 10.

v. The current page-count of material that needs to be disclosed pursuant to Rule 76 is approximately 3700 pages. This includes the full witness statements, as well as the Document Containing the Charges and the updated List of Evidence. Discussions with the Language Services Unit of the Office of the Prosecutor indicate that this process will take approximately 30 months if three translators were to work on the material on a full-time basis.

3. On 19 April 2011, the Chamber held a status conference during which the parties, participants and the Registry made additional submissions regarding interpretation issues and translation of disclosed evidence into Zaghawa, the language of the accused.³ The prosecution again drew attention to practical problems arising out of its obligation to disclose translated documents.⁴
4. On 24 May 2011, the Registry filed a report seeking the Chamber's guidance in relation to the languages to be used during the proceedings.⁵ On 27 June 2011, the Registry reiterated its request for guidance by way of email, in particular as to whether the training programme for Zaghawa interpretation should be initiated.⁶
5. On 1 July 2011, the Chamber issued its "Order to the Registry to commence training of Zaghawa interpreters",⁷ in which it emphasised that practical preparations for the provision of interpretation of the proceedings for the benefit of the accused

³ Transcript of hearing on 19 April 2011, ICC-02/05-03/09-T-10-ENG CT-19-04-2011, page 22 line1 to page 25 line 24.

⁴ ICC-02/05-03/09-T-10-ENG CT WT, page 18, line 9 – page 19, line 21.

⁵ Report of the Registrar pursuant to regulation 24*bis* of the Regulations of the Court concerning on [sic] the issue of languages to be used in the proceedings, 24 May 2011, ICC-02/05-03/09-150.

⁶ Email communication from the Registry to the Chamber through the Legal Advisor to the Trial Division on 27 June 2011.

⁷ Order to the Registry to commence training of Zaghawa interpreters, 1st July 2011, ICC-02/05-03/09-172, paragraph 5.

needed to be undertaken immediately, given the need to set a date for the commencement of the trial within a reasonable time.

6. On 12 July 2011, the Chamber held a second status conference and, with regard to interpretation issues, the Registry submitted that it had identified candidates who would be ready to start their training by 15 August 2011. The Registry further informed that training the interpreters for consecutive interpretation would take at a minimum until 14 December 2011; if the Chamber required simultaneous interpretation, the interpreters would only be available in February 2012.⁸ With respect to disclosure and the continuing translation issues as regards various documents, the Chamber instructed the prosecution and the defence to make joint submissions on a practical solution.⁹
7. On 5 August 2011, the prosecution filed an updated list of 15 witnesses to be relied on at trial.¹⁰
8. On 8 August 2011, the prosecution filed submissions on the issue of the translation of incriminatory evidence.¹¹ The prosecution reiterated the practical difficulties involved in the translation of written material into the Zaghawa language and suggested that the efficiency of the proceedings would be greatly enhanced if Rule 76 of the Rules is interpreted pragmatically and realistically.¹²
9. The same day, the defence filed separate submissions addressing the issue of translation.¹³ The defence argued that the fair trial rights of the accused, in

⁸ Transcript of hearing on 12 July 2011, ICC-02/05-03/09-T-12-ENG ET WT, page 27, lines 5 to 13.

⁹ Transcript of hearing on 12 July 2011, ICC-02/05-03/09-T-12-ENG ET WT, page 15, lines 16 to 23.

¹⁰ Prosecution's Updated List of Witnesses, 5 August 2011, ICC-02/05-03/09-189 and public annex A.

¹¹ Prosecution's Proposals on the Issue of Translation, 8 August 2011, ICC-02/05-03/09-192.

¹² ICC-02/05-03/09-192, paragraphs 3 and 4.

¹³ Defence Submission on the Translation of Incriminatory Evidence, 8 August 2011, ICC-02/05-03/09-195.

particular the right to be fully informed of the grave charges and the case which the prosecution has brought against them, cannot be compromised.¹⁴

10. On 16 August 2011, to resolve the dispute between the parties, the Chamber instructed the prosecution to immediately start translating into Zaghawa the witness statements intended to be relied upon for the purposes of the trial.¹⁵ Written reasons for this order are to be issued in the near future.

11. On 1 September 2011, the prosecution filed an update on language related issues.¹⁶ It is submitted that, despite the fact that the recruitment process of Zaghawa speakers, able to act as qualified translators, has been going on for over five years, there are still serious difficulties with regard to the identification of suitable candidates.¹⁷ Notably, the prosecution further explains that:¹⁸

Assuming that three qualified Zaghawa translators will be available – the two with whom the OTP has already contracted and at least one of the two possibly available translators – the translation of this material will require a period of approximately five working months (excluding annual leave, etc.) from the date these persons can commence.

12. The Chamber notes the technical difficulties experienced by both the prosecution and the Registry until now with regard to the identification and recruitment of qualified Zaghawa translators and interpreters. In this respect, the Chamber emphasises the importance of solving these difficulties as soon as possible, given the impact of language issues on the disclosure of evidence, the date of

¹⁴ ICC-02/05-03/09-195, paragraphs 2 and 3.

¹⁵ Order on translation of witness statements, 16 August 2011, ICC-02/05-03/09-199.

¹⁶ Prosecution's update to the trial Chamber on language related issues and further information on re-interviews of two Prosecution witnesses, 1 September 2011, ICC-02/05-03/09-205.

¹⁷ ICC-02/05-03/09-205, paragraph 4.

¹⁸ ICC-02/05-03/09-205, paragraph 5.


commencement of the trial and the fair and expeditious conduct of the trial proceedings.


13. For the foregoing reasons, the Chamber orders 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' statements¹⁹ and on the status of training of Zaghawa interpreters starting from 20 October 2011.

¹⁹ See the Prosecution Updated List of Witnesses and its public annex A.

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



Judge Joyce Aluoch
Presiding Judge

Judge Fatoumata Dembele Diarra

Judge Silvia Fernandez de Gurmendi

Dated this 7 September 2011

At The Hague, The Netherlands