

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 April 2011

TRIAL CHAMBER IV

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

SITUATION IN DARFUR, SUDAN

IN THE CASE OF PROSECUTOR

v.

***ABDALLAH BANDA ABAKAER NOURAIN
&
SALEH MOHAMMED JERBO JAMUS***

Public Document

**Submissions on behalf of Victims a/1646/10 and a/1647/10 for Status Conference
scheduled for 19 April 2011**

Source: Victims represented by Sir Geoffrey Nice QC and Rodney Dixon

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Luis Moreno-Ocampo

Fatou Bensouda

Counsel for the Defence

Karim A. A. Khan QC

Andrew J. Burrow

Legal Representatives of Victims

Brahima Kone

Helene Cisse

Akin Akinbote

Frank Adaka

Sir Geoffrey Nice QC &

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

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

A. Introduction

1. Pursuant to the Trial Chamber's order of 4 April 2011 for written submissions to be filed in respect of issues to be addressed at the Status Conference on 19 April 2011, the Legal Representatives for Victims a/1646/10 and a/1647/10 hereby provide observations to assist the Chamber and the parties on the following three issues that are listed or referred to in the agenda for the Status Conference:

(i) Information about new victim applications,

(ii) Disclosure by the Prosecution, and,

(iii) Preparation for trial and trial date.

B. Information about new victim applications

2. Applications for three new victims have been submitted to the VPRS. The necessary identity documents for these applicants are still to be submitted and it is expected that this will be completed by the time of the Status Conference. Each of these victim applicants have provided a power of attorney for the Legal Representatives presently acting on behalf of a/1646/10 and a/1647/10, which have been filed with the VPRS. The new victim applicants all presently reside in Haskanita. Two of them were present in the AMIS base on 29 September 2007 when it was attacked. As their applications attest they have been traumatised and have suffered harm as a result of being attacked along with the AMIS soldiers in the camp on 29 September 2007. The husband of the third applicant was in the camp at the time of the attack. She has been traumatised and suffered harm as a result of the attack on her husband, who is himself not in a fit state at this stage to apply to the Court to be recognised as a victim. It is submitted that this victim applicant is in a similar position to those non-Sudanese victim participants (who have been recognised by the Court) who have suffered harm as a result of family members being attacked in the AMIS camp on 29 September 2007.
3. As with the two victims already recognised as participants in the present case, all three new victim applicants have been assisted in the preparation of their applications by the

Sudan International Defence Group (SIDG). This work has been supported and funded by the Sudan Workers Trade Unions Federation (SWTUF). The three new victim applicants are content for their representation to be funded by SWTUF, as is confirmed in their powers of attorney that have been filed with the VPRS.

4. The Legal Representatives acting on behalf of these victim applicants have met in person in Sudan with the three applicants. Their instructions have been taken about their applications and about their views and concerns in relation to the way in which their personal interests were affected by the attack that is the subject of the charges in this case, that these applicants would wish to raise before the Court, if recognised. The Legal Representatives have explained to them the scope and limits of victim participation under the Statute, Rules and present jurisprudence of the ICC. As set out below, further meetings will be arranged in Sudan between the Legal Representatives and the victim applicants as necessary. As far as it is known, these new applicants together with the two victims that have already been recognised by the Court are the only victims in this case from Sudan and still residing in Darfur who were in the AMIS camp on the day of the attack.
5. Once the necessary identification documents have been submitted to the VPRS, it is requested that these new applications are considered so that the victims can participate in the present proceedings as soon as practicable should their applications be accepted.

C. Disclosure by the Prosecution

6. The Trial Chamber is still to determine the modalities for disclosure to victim participants in the present case for the trial. The Legal Representatives request that they be permitted to file submissions before the Trial Chamber on the modalities to be adopted for this trial taking into account the existing jurisprudence of the ICC, before any final decision is rendered by the Trial Chamber should the Trial Chamber deem this appropriate and of assistance to it. Different Trial Chambers have ordered various modalities in respect of disclosure and participation, which have permitted victims to have access to filings, both public and confidential (except if *ex parte*)¹, and all public

¹ *Prosecutor v Germain Katanga*, Decision on the Modalities of Victim Participation at Trial, ICC-01/04-01/07-1788 tENG, 22 January 2010, para. 121. Also see, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, ICC-01/05-01/08-807, 19 July 2010, para. 47.

evidence relied upon by the Prosecutor, as well as to confidential evidence relevant to the interests, views and concerns of victims.² Victim representatives have also been entitled to participate in non-public hearings.³ The victims would request that it be taken into account that in the present case in which a single attack is alleged which caused harm and suffering to the victims, that their personal interests will be affected by the evidence about the attack and the alleged perpetrators.

7. Following an order from the Trial Chamber on the modalities, the victims can through this procedure seek to obtain access to and review of the Prosecutor's evidence. A relevant consideration for the timing of such disclosure is that the Legal Representatives will require sufficient time to take instructions from the victims about the evidence and the manner in which their personal interests are affected. This will most effectively be achieved by consulting the victims in Sudan and by going to Haskanita with them to visit the scene of the attack. Any photographs and recordings taken on this visit which may be of assistance to the victims in their participation may also be of benefit to the Chamber and the parties.
8. It is noted that a confidential hearing is scheduled to take place after the Status Conference on 19 April 2011 in the absence of the Legal Representatives of the victims, and it is thus presumed that the issues to be addressed at this hearing do not affect the interests of the victims. It may be appropriate once modalities for disclosure to the victims and for victim participation have been ordered that the record of this hearing is disclosed to the victims.

D. Trial preparation and trial date

9. The Legal Representatives are, of course, in the hands of the Trial Chamber and the parties as to when the trial can be effective. The only matter that the victims wish to raise and to have taken into consideration is, as noted above, the need to have a sufficient opportunity after disclosure to consult with the victims in Sudan before the trial on the basis of the evidence in the case that affects their interests. This will

² See for example, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, ICC-01/05-01/08-807, 19 July 2010, para. 41-49. Also see, *Prosecutor v Thomas Lubanga Dyilo*, Decision on Victim's Participation, ICC-01/04-01/06-1119, 18 January 2008, paras. 105-107, 111 and 138 and in the same case, ICC-01/04-01/06-1368, 2 June 2008.

³ *Prosecutor v Thomas Lubanga Dyilo*, Decision on the defence application to exclude certain representatives of victims from the Chamber during the non-public evidence of various defence witnesses, ICC-01/04-01/06-2340, 11 March 2010, para. 38.

include a visit to Haskanita so that the victims can provide their instructions on the evidence disclosed in relation to the scene of the attack. This may be of assistance to the victims' participation in the trial and may thus be of benefit to the Trial Chamber and the parties in evaluating the evidence at trial.



For Sir Geoffrey Nice QC
Rodney Dixon
Legal Representatives of the Victims

Dated this 14th day of April 2011
London, United Kingdom