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TRIAL CHAMBER IV

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

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

Public Document

**Prosecution Response to the “Requête des Représentants Légaux Communs
demandant à la Chambre de Fixer les Modalités de Participation des Victimes
dans la Procédure”**

Sources: Office of the Prosecutor

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

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I. Introduction

1. The Common Legal Representatives of victims (“CLR”), in their “Requête des Représentants Légaux Communs demandant à la Chambre de Fixer les Modalités de Participation des Victimes dans la Procédure” (“Request”) filed on 7 November 2012,¹ ask the Chamber to establish the modalities for victim participation between now and the start of trial, as well as during trial. The Prosecution submits that there is no demonstrated need to establish modalities now and that it is premature to establish modalities for the trial itself. Accordingly, the CLR’s Request should be denied.

II. Background and Prosecution’s Submissions

2. In their Request, the CLR seek as relief only that the Chamber establish the modalities of victims’ participation during the interim phase of the proceedings between the confirmation of charges and the start of the trial. At the same time, they advance arguments in support of also now establishing the modalities for trial itself.² Accordingly, the Prosecution will address both issues.
3. The CLR contend that they are unable to submit views and concerns of victims on a number of core issues due to the lack of clarity on the modalities of their participation. In particular, the CLR request access to confidential information in the case record, with the exception of *ex parte* documents, and the right to take part actively in status conferences, including ones in closed session. They emphasise that active participation by victims is required for the determination of the truth, including the possibility to present evidence and challenge the admissibility or relevance of evidence at trial.
4. With respect to the period of time between now and the start of trial, there is no demonstrated need to establish modalities of victim participation. The process has worked well to date and the victims have been permitted to participate and/or

¹ ICC-02/05-03/09-414.

² ICC-02/05-03/09-414, at paras 10, 32 and 47.

present their views whenever their interests have been potentially affected.³ The CLR's present no reasons why suddenly, nearly two years after the confirmation hearing, modalities need be established.

5. With respect to the request to establish modalities for the trial itself, the request is premature. The Prosecution observes that on 26 October 2012, the Chamber rendered its "Decision on the Defence request for a temporary stay of proceedings",⁴ rejecting the "Defence Request for a Temporary Stay of Proceedings"⁵ and ordering the parties and participants to file written submissions on the possible date for the commencement of the trial by 19 November 2012.⁶ In compliance with the Chamber's order, the Prosecution filed in its written submissions noting that the trial could commence at the end of March 2013 or shortly thereafter.⁷ The Defence claimed in their submissions that the trial cannot commence before 6 October 2014.⁸ While the CLR's suggest a commencement date of April 2013,⁹ the Chamber has not yet decided on a start date for the trial.¹⁰

6. At this stage of the proceedings, when no trial date has yet been set, it would be premature to determine the modalities for victim participation at trial. There are likely issues yet to be decided that could affect the Chamber's decision on the role of the victims during trial. For example, the Prosecution notes that the Chamber has yet to decide on the "Joint Submissions by the Office of the Prosecutor and the Defence regarding the procedures to be adopted for the presentation of evidence".¹¹ In the Prosecution's view, the Chamber ought to first determine the procedures for the presentation of evidence. It makes more sense to wait until these matters are decided before defining with precision the role that the CLR's will play during the trial.

³ For instance, the CLR's were invited to attend the hearing and status conference held on 11-12 July 2012 (decision No. ICC-02/05-03/09-366); as participants, they were also invited to propose a date for the commencement of the trial (ICC-02/05-03/09-410 at para. 160 and ICC-02/05-03/09-418).

⁴ ICC-02/05-03/09-410.

⁵ ICC-02/05-03/09-274.

⁶ ICC-02/05-03/09-410, para. 160.

⁷ ICC-02/05-03/09-421-Red, at para 2.

⁸ ICC-02/05-03/09-422-Red2, at para 1.

⁹ ICC-02/05-03/09-418, at para 11.

¹⁰ ICC-02/05-03/09-410, at para 160.

¹¹ ICC-02/05-03/09-166.

7. Nor is there any reason to require that the Chamber decide modalities now, before there is a trial date. Nothing in the Statute, the Rules of Procedure and Evidence or the jurisprudence of the Court requires a decision on the modalities of such participation to be made before setting a date for the commencement of the trial. In fact, none of the other trial chambers have exercised their discretion to determine the modalities of victim participation at trial this far in advance of the start of trial. In the *Bemba* case, the trial had been intended to start on 14 July 2010,¹² and the decision on modalities of victim participation was issued only on 19 July 2010.¹³ Similarly, in the *Katanga* case, the trial had already started¹⁴ before a decision on modalities of victim participation was rendered.¹⁵ In the *Lubanga* case also, the decision on modalities of victim participation was made on 18 January 2008,¹⁶ at a time when the trial was set to commence on 31 March 2008.¹⁷

III. Relief Sought

8. The Prosecution requests that the Trial Chamber reject the CLR's Request at this time.



Fatou Bensouda
Prosecutor

Dated this 29th November 2012
At The Hague, The Netherlands

¹² ICC-01/05-01/08-803.

¹³ ICC-01/05-01/08-807.

¹⁴ ICC-01/04-01/07-1788.

¹⁵ ICC-01/04-01/07-1788.

¹⁶ ICC-01/04-01/06-1119.

¹⁷ ICC-01/04-01/06-1019.