

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 30 September 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR

V.

ABDALLAH BANDA ABAKER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

Confidential *ex parte* Only Available to the Prosecution

**Prosecution's Urgent Request Pursuant to Regulation 37(2) for an Extension of Page
Limit for the Document Containing the Charges**

Source: 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

Counsel for the Defence

Legal Representatives of Victims

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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to Regulation 37(2) of the Regulations of the Court ("Regulations") the Prosecution requests an extension of the page limit by 45 additional pages to 65 pages for the Document Containing the Charges ("DCC"). The requested extension is necessary to fully set forth and thereby preserve the relevant facts and circumstances.

Request for Confidentiality

2. The Prosecution requests that this filing be received as confidential as it refers to evidence that is currently being treated as confidential.

Exceptional Circumstances

3. Pursuant to Regulation 37(2), a party may apply for an extension of the page limit in exceptional circumstances. The Prosecution submits that such exceptional circumstances exist in the present case to warrant this request.
4. The attack that forms the basis for the charges in this case involves a multiplicity of groups, namely the JEM, the SLA-Unity and the SLA-Abdul Shafie faction, acting together. The groups that participated in the attack, which is the subject matter of the Charges, were themselves splinter groups that previously formed parts of other rebel movements. This necessitates in depth descriptions of the historical developments leading to the creation of the rebel groups involved in the attack, and the relationship between these multiple groups, in order for the facts and their legal characterization to be presented with sufficient clarity.
5. Therefore, the Prosecution deems it both necessary and helpful to provide a detailed description of the background to the armed conflict in Darfur, the Sudan, which has spanned several years, how the relevant rebel groups were formed, the

relevant agreements that they entered into, and how they came together to act in concert to commit the crimes charged in the DCC.

6. The issues referred to in paragraph 5 above also impact on the theory of responsibility alleged by the Prosecution. Following the Pre-Trial Chamber's issuance of summonses to Abdallah Banda Abaker Nourain ("**Banda**") and Saleh Mohammed Jerbo Jamus ("**Jerbo**"),¹ the Prosecution alleges two modes of liability -- direct perpetration (common plan) and indirect co-perpetration. The inclusion of two modes requires a detailed description of the common plan, the structures of the various organizations and actors involved and their respective roles. It is necessary that the DCC include sufficient detail on the separate modes to provide notice to the suspects of the nature of the charges against them.
7. In the *Prosecution v Abu Garda* ("the *Abu Garda* case"), the Prosecution also sought and was granted leave to file a DCC of up to 40 pages.² The DCC in that case related to one suspect - Abu Garda. The DCC in the instant case relates to two separate individuals, each alleged to have led troops in their respective groups. The Prosecution therefore requires additional pages to address the legal characterization of the facts and the individual criminal responsibility of each of the suspects.
8. The current DCC also relies upon evidence that was not relied upon in the *Abu Garda* case.
9. The Prosecution submits that the reasons set out above constitute exceptional circumstances pursuant to Regulation 37(2). Granting the request herein results in no prejudice to the Defence. On the contrary, it would enable the Defence to

¹ Summons To Appear For Abdallah Banda Abakaer Nourain ICC-02/05-03/09-3; Summons To Appear For Saleh Mohammed Jerbo Jamus, ICC-02/05-03/09-2.

² ICC-02/05-02/09-88.

prepare adequately for the Confirmation Hearing and enable a proper determination of the case.

Prosecution Request

10. For the reasons set out above, the Prosecution respectfully requests an extension of the page limit for the DCC from 20 pages to 65 pages. It will endeavour to file as succinct a DCC as possible, and thus may not use the full 65 pages.



Luis Moreno – Ocampo
Prosecutor

Dated this 30th day of September 2010

At The Hague, The Netherlands