



Original: English

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

Date: 30 May 2011

TRIAL CHAMBER IV

Before:

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

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

Public Document

Update on the status of discussions on the joint instruction of an expert witness

**Sources: Defence Team of Abdallah Banda Abakaer Nourain
 Defence Team of Saleh Mohammed Jerbo Jamus**

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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Ms. Fatou Bensouda
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Mr. Ibrahim Yillah

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Pursuant to the Trial Chamber's oral order of 19 April 2011, the Defence of Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus ("Defence") hereby update the Chamber on their discussions with the Prosecution regarding the possible appointment of a joint expert.

II. Background

2. On 19 April 2011, Trial Chamber IV convened a status conference with the parties in the above case. Amongst the orders issued on that occasion, the Trial Chamber ordered the Defence and Prosecution to: update it by 16 May as to the status of any discussions on a possible agreement on facts,¹ and by 30 May, "to provide it in a joint filing, if possible, with an update on the status of the discussions on the issue of experts [...]"²
3. With respect to the matter of experts, the Chamber's order occurred against the background of the parties having informed the Chamber that there had not yet been any discussions on the issue of an expert witness.³ The Prosecution had, however, indicated that it was in the process of identifying an expert⁴ and anticipated that an expert report would be ready by the end of July.⁵
4. On 16 May 2011, the parties filed a Joint Submission⁶ in which the parties "inform[ed] the Chamber that they have reached an agreement that the Accused persons will contest only" certain specified issues,⁷ submitted an

¹ ICC-02/05-03/09-T-10-ENG CT WT, p. 7, lines 6-10. On

² ICC-02/05-03/09-T-10-ENG CT WT, p. 33, lines 6-13.

³ 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, para. 22; Defence submissions in response to the questions contained in the Trial Chamber's agenda for the 19 April 2011 status conference, 14 April 2011, ICC-02/05-03/09-133, para. 9 (hereinafter "Defence submissions on status conference agenda").

⁴ ICC-02/05-03/09-T-10-ENG CT WT, p. 11, lines 8-10.

⁵ ICC-02/05-03/09-131, at para. 7.

⁶ Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons, ICC-02/05-03/09-148.

⁷ *Ibid.*, para. 3.

agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence, and noted that the “agreement reached by the Parties will significantly shorten the trial proceedings”.⁸

III. Defence update on the status of discussions concerning a joint expert

5. On 18 May 2011, the Defence contacted the Prosecution by email, requesting the Prosecution to provide them with the identity of the proposed expert witness and the area of expertise. In addition, the Defence noted that in order to consider a joint instruction the Defence would require full disclosure of all Prosecution contact with the potential expert, including any letter of mandate provided. By way of a reply on 20 May, while informing the Defence that it had identified a particular individual for instruction as an expert, the Prosecution declined to provide the identity of the individual or the expertise “at this time”. In an email update today to the Defence the Prosecution reiterated their position.
6. The Defence consider it a matter of significant regret that the Prosecution have felt unable or been otherwise unwilling to furnish the Defence with the identity or at least the expertise of the proposed expert.
7. As previously intimated,⁹ while the Defence continues to consider this issue, no decision to call a Defence expert witness has been taken.
8. The Defence is prepared to discuss this issue with the Prosecution at any convenient time.

⁸ *Ibid.*, para. 8.

⁹ Defence submissions on status conference agenda, ICC-02/05-03/09-133, para. 9.

Respectfully submitted,



Mr. Karim A. A. Khan QC
Lead Counsel for Abdallah Banda Abakaer Nourain
and Saleh Mohammed Jerbo Jamus

Dated this 30th Day of May 2011

At Nairobi, Kenya