

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 October 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
THE PROSECUTOR *v.* ABDALLAH BANDA ABAKAER NOURAIN
AND SALEH MOHAMMED JERBO JAMUS**

Public

Report on level of confidentiality of Registry Report

Source: Registry

Document 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 Andrew J. Burrow

Legal Representatives of the Victims

Ms Hélène Cissé

Mr Jens Dieckmann

Legal Representatives of the Applicants

Sir Geoffrey Nice QC

Mr Rodney Dixon

Mr Akin Akinbote

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

Mr Didier Pereira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

The Registrar of the International Criminal Court ("the Court");

NOTING Pre-Trial Chamber I's Decision on the Confirmation of Charges¹ and the Presidency's Decision constituting Trial Chamber IV (hereinafter, "the Chamber") and referring to it the case of *The Prosecutor v. Abdallah Abakaer Nourain and Saleh Mohammed Jerbo Janus* (hereafter "the Banda and Jerbo case");²

NOTING the Registry's Transmission to the Trial Chamber of applications for participation in the proceedings of 26 September 2011,³ and the Registry's Report on six applications to participate in the proceedings dated the same day (hereafter "the Registry's Report");⁴

NOTING the Chamber's Decision on the Registry Report on six applications to participate in the proceedings;⁵

NOTING article 68(3) of the Rome Statute, rule 89(1) of the Rules of Procedure and Evidence and regulations 23bis and 86(5) of the Regulations of the Court;

CONSIDERING that the Registry's Report comprised a report on 6 applications for participation in the proceedings which appeared to be linked to the Banda and Jerbo case prepared in accordance with regulation 86(5) of the Regulations of the Court and three annexes, all of which were filed with the status Confidential *ex parte*, only available to the Registry;

TRANSMITS to the Chamber the following report on reasons for the chosen level of confidentiality of the Registry's Report on six applications for participation in the proceedings and annex 1 to that Report:

¹ ICC-02/05-03/09-121-Conf-Corr.

² ICC-02/05-03/09-124.

³ ICC-02/05-03/09-216, with confidential and *ex parte* annexes 1 to 6

⁴ ICC-02/05-03/09-217-Conf-Exp

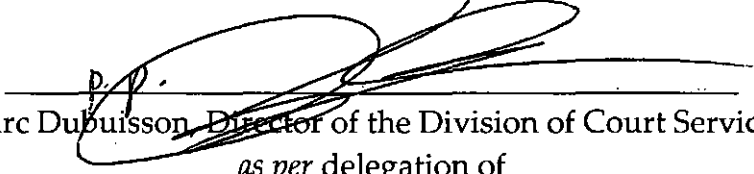
⁵ ICC-02/05-03/09-231

1. On 16 September 2011 the Registry transmitted to the Chamber 6 applications for participation in proceedings. This transmission was filed Public with annexes Confidential, *ex part* Registry only. On the same day, the Registry filed separately a report on those 6 applications as required by regulation 86(5) of the Regulations of the Court. The Report was filed Confidential *ex parte*, only available to the Registry.
2. The Registry's Report provided an overview of the 6 applications transmitted, while the following documents were provided as annexes:
 - Annex 1: An explanation of the contents of the individual rule 85 assessment reports under regulation 86(5) of the Regulations of the Court, which constitute Annex 2.
 - Annex 2: Reports under regulation 86(5), providing the Registry's initial assessment of the compliance of each application with the requirements of rule 85 of the Rules of Procedure and Evidence (as explained in Annex 1), using a template approved by the Chamber by email sent to the Registry on 6 September 2011.⁶
 - Annex 3: Letter sent by Sir Geoffrey Nice QC and Mr. Rodney Dixon, in relation to two applications submitted by them.
3. The Chamber has requested the Registry to provide the reasons for the chosen level of confidentiality specifically of the Report itself and annex 1, or to indicate whether they may be reclassified public.

⁶ E-mail from Legal Officer, Trial Chamber IV, to Associate Legal Officer Division of Court Services.

4. The classification can be explained by the wording of regulation 86(5), which provides that the Registrar shall present all applications, together with a report thereon, "*to the Chamber*". The Registry therefore adopted this classification considering that it is for the Chamber to decide whether to subsequently reclassify the report of the Registry under Regulation 86(5). The wording of regulation 86(5) can be contrasted with that of rule 89(2) of the Rules of Procedure and Evidence, which provides that the Registrar shall provide copies of the applications themselves to the parties – subject to the provisions of the Statute and in particular article 68(1). In this regard, in its Report the Registry informed the Chamber that it had prepared redacted versions of the 6 applications for participation and would be able to transmit them to the parties in accordance with rule 89(1), should the Chamber so order.
5. As regards the Registry's views as to whether the Report and annex 1 to the Report could be reclassified as public, firstly the Registry sees a clear distinction between these two documents on the one hand, and the other two annexes on the other hand. The Registry has consistently recommended to Chambers that reports on specific individual applications such as those contained in annex 2 should not be communicated to the parties, and maintains that position in this instance. The Registry would therefore respectfully request the opportunity to present observations, should the reclassification of annex 2 at any point be under consideration by the Chamber.
6. As regards the Report and annex 1, which are the subject of the Chamber's order, these do not contain information regarding specific applications and comprise explanations as to the basis on which the individual reports on applications have

been prepared in accordance with instructions from the Chamber.⁷ As such, the Registry does not object to their reclassification as Confidential or Public.



Marc Dubuisson, Director of the Division of Court Services
as per delegation of
Silvana Arbia, Registrar

Dated this 24 October 2011
At The Hague, The Netherlands

⁷ The Registry notes, however, that references are made in the Report in footnotes 1, 5 and 16, and in annex 2 footnotes 1 and 8, to Confidential filings and decisions from the pre-trial stage of the case.