



Original: **English**

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

Date: **9 February 2012**

TRIAL CHAMBER IV

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

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

**Public Document
with Public Annex A & Confidential Annex B**

Defence Application to File Supplementary Material

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
Mr. Adebowale Omofade

Counsel for the Defence

Mr. Karim A. A. Khan QC
Mr. Nicholas Koumjian

Legal Representatives of the Victims

Ms. Hélène Cissé
Mr Jens Dieckmann

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. On 6 January 2012, the Defence for Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus ("Defence") submitted the Request for a Temporary Stay of Proceedings¹ ("Request"). Since 6 January 2012, the Defence have received supplementary material relevant to the Request which the Defence hereby seek leave to submit as part of the Request.
2. At Annexure O to the Request, the Defence appended a letter from Hon. Richard J. Goldstone. Since filing the Request, the Defence have received several letters and a statement from leading scholars and practitioners in the field of international criminal law concerning the Defence application.² In view of the differing perspectives and vantage points from which these individuals offer their observations, and on a basis similar to that envisaged in Rule 103 of the Rules of Procedure and Evidence, the Defence believe the observations of such individuals will be of assistance to the Trial Chamber in determining the Request.
3. In paragraph 17 and corresponding footnote 35 of the Request, the Defence noted that it had requested relevant contemporaneous documents from, *inter alia*, OCHA but, as at the date of filing, had received no substantive response to this request. On 2 February 2012, the Defence received via the Registry a response from OCHA.³ In the response, the UN Under-Secretary-General for Legal Affairs explains that OCHA cannot provide the requested information.
4. The Defence note that the letters and statement do not raise any new facts or arguments. As such, they are not prejudicial to the Prosecution.

¹ ICC-02/05-03/09-274.

² For reference and to aid the Chamber in its determination of this application, the letters and statement are provided in public Annex A hereto. A short biography of each author and their *curriculum vitae* are also provided to assist the Chamber. Personal details have been redacted from the letters, statement and *curriculum vitae* to protect the individuals' privacy.

³ For reference and to assist the Chamber in its determination of this application, the response is provided in confidential Annex B hereto. The response is provided confidentially in order to respect any confidentiality or security concerns which OCHA may have regarding this correspondence.

5. Pursuant to Regulation 28 of the Regulations of the Court,⁴ the Defence request leave to submit the letters and statement provided in public Annex A and confidential Annex B as supplementary material relevant to the Request.

Respectfully Submitted,



Mr. Karim A. A. Khan QC
Lead Counsel

for Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus



Mr. Nicholas Koumjian
Co-Lead Counsel

Dated this 9th Day of February 2012
At The Hague, The Netherlands

Dated this 9th Day of February 2012
At Los Angeles, United States

⁴ See ICC-01/04-01/07-522 OA3, para. 16. See also the recent decision of Pre-Trial Chamber I in which it was observed that “the Appeals Chamber found that ‘a Chamber may act pursuant to regulation 28 of the Regulations upon request or upon its own motion’ and that supplementary material may be submitted pursuant to regulation 28 of the Regulations when it may be of assistance to the Chamber in deciding on the issue *sub judice*” (ICC-01/04-01/10-455, pp. 3-4).