

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 06 August 2012

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
with Public Annexes**

**Public Redacted Version of “Defence Submission on Updates Regarding
Logistical Issues and Security Concerns” filed 6 August 2012**

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:

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**Unrepresented Applicants
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Victims**

**The Office of Public Counsel for the
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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 instruction,¹ the Defence for Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus ("Defence") respectfully submit the following update on the logistical and security issues pertaining to Mr. Banda and Mr. Jerbo.²

II. Procedural Background

2. On 15 June 2012, the Trial Chamber issued the "Order on the scheduling of a hearing and status conference" ("Order"), which included a preliminary agenda for the 11 and 12 July 2012 hearing and status conference, and instructed the parties and the Registry to formally file any additional agenda items by 28 June 2012, should they have any.³
3. Additionally, the Trial Chamber ordered that a hearing and status conference be held on 19 June 2012.⁴
4. On 19 June 2012, a two-part status conference was held. The first part of the status conference was held confidentially in the presence of the Prosecution, Defence, and Registry,⁵ while the latter part of the status conference was held *ex parte*, with only the Defence and Registry present.⁶

¹ On 6 July 2012, the Trial Chamber instructed that any updates, *inter alia*, on logistical and security issues concerning Mr. Banda and Mr. Jerbo be filed in writing no later than 16.00 on 6 August 2012. See ICC-02/05-03/09-366, para. 11.

² Pursuant to Regulation 23bis(1), the present filing is submitted on a confidential basis due to discussion of the sensitive and confidential logistical and security issues pertaining to the clients [REDACTED]

The present filing is also submitted *ex parte* [REDACTED]

A confidential redacted version and public redacted version of this filing will also be filed.

³ ICC-02/05-03/09-348-Conf, para. 13.

⁴ ICC-02/05-03/09-348-Conf, para. 17.

⁵ ICC-02/05-03/09-T-15-CONF-ENG.

⁶ ICC-02/05-03/09-T-16-CONF-EXP-ENG.

5. On 28 June 2012, pursuant to the Trial Chamber's Order, the Defence requested that they be given the opportunity, at the 11 and 12 July hearing and status conference, to update the Trial Chamber on matters raised *ex parte* at the 19 June 2012 hearing and status conference.⁷
6. On 6 July 2012, the Trial Chamber issued a scheduling order instructing that any updates, *inter alia*, on logistical and security issues concerning Mr. Banda and Mr. Jerbo be filed in writing no later than 16.00 on 6 August 2012.⁸

III. Update on Logistical Issues and Security Concerns

7. [REDACTED]
[REDACTED]
8. Despite this, the logistical issues and security concerns addressed at the 19 June 2012 status conference remain current.
9. In addition to the issues and concerns that were addressed at the 19 June status conference, the Defence respectfully seek to update the Trial Chamber on the following items: (i) [REDACTED]
[REDACTED] (ii) [REDACTED]
[REDACTED]; and (iii) an update on the security situation in Darfur.

i. [REDACTED]

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷ ICC-02/05-03/09-359, para. 4.

⁸ ICC-02/05-03/09-366, para. 11.

9 [REDACTED]

11. [REDACTED]

10 [REDACTED]

ii. [REDACTED]

12. As discussed during the 19 June status conference, [REDACTED]

13. [REDACTED]

11 [REDACTED]

14. [REDACTED]

12 [REDACTED]

9
10
11
12

iii. Security Situation in Sudan and Darfur

15. As previously submitted, the security situation in Sudan and Darfur remains volatile [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³

a. Ongoing Protests and Continued Human Rights Violations

16. The Government of Sudan continues to violate the human rights of political opponents, human rights activists, and the population of border regions. Darfur, in particular, has seen an increase in violence.¹⁴ In a press release dated 2 August 2012, Amnesty International confirmed that at least eight people were killed and dozens more injured in South Darfur on 31 July 2012 during a demonstration.¹⁵ Any actions or statements deemed critical of the Government of Sudan can lead to prison, torture, or death.¹⁶

¹³ See ICC-02/05-03/09-T-15-CONF-ENG and ICC-02/05-03/09-T-16-CONF-EXP-ENG.

¹⁴ Ahram Online, 'Major protest in Sudan's Darfur: Witness' (31 July 2012) <<http://english.ahram.org.eg/NewsContent/2/8/49167/World/Region/Major-protest-in-Sudans-Darfur-Witness.aspx>>, accessed on 3 August 2012. See **Annex A** for sources cited in this footnote.

¹⁵ Amnesty International, 'Sudan: Security forces must stop using live rounds against demonstrators' (2 August 2012) <<http://www.amnesty.org/en/for-media/press-releases/sudan-security-forces-must-stop-using-live-rounds-against-demonstrators-201>>, accessed on 3 August 2012. See also Reuters, 'Price protest leaves six dead in Sudan's Darfur' (31 July 2012) <<http://www.reuters.com/article/2012/07/31/us-sudan-protest-darfur-idUSBRE86U1FP20120731>>, accessed on 3 August 2012. See **Annex B** for sources cited in this footnote.

¹⁶ Amnesty International, 'Journalists face increasing harassment in Sudan' (3 May 2012) <<http://www.amnesty.org/en/news/journalists-face-increasing-harassment-sudan-2012-05-02>>; Reuters, 'Sudan woman shackled with baby, faces death by stoning' (2 August 2012) <<http://in.reuters.com/article/2012/08/01/sudan-stoning-idINDEE8700I820120801>>; Amnesty International, 'Detained UN worker at risk of torture in Sudan' (19 July 2011) <<http://www.amnesty.org/en/news-and-updates/detained-un-worker-risk-of-torture-sudan-2011-07-19>>; Amnesty International, 'Sudanese journalist faces prolonged imprisonment on politically motivated charges' (14 July 2011) <<http://www.amnesty.org/en/news-and-updates/sudanese-journalist-faces-prolonged-imprisonment-politically-motivated-charges-2011>>; Human Rights Watch, 'Sudan: Torture, Abuse of Demonstrators' (11 July 2012) <<http://www.hrw.org/news/2012/07/11/sudan-torture-abuse-demonstrators>>; QW Magazine, 'Sudan: Activists arrested and tortured in clampdown on protests' (13 July 2012) <<http://www.qwmagazine.com/2012/07/13/sudan-activists-arrested-and-tortured-in-clampdown-on-protests>>; all accessed on 3 August 2012. See **Annex C** for sources cited in this footnote.

17. Furthermore, recent reports by non-governmental organizations (NGOs) have shown that the Sudanese security forces continue to arbitrarily detain human rights activists as part of a wider crackdown on anti-government demonstrations. Human rights groups have reported that the Sudanese authorities have arrested over 200 people – mainly activists – during five weeks of countrywide protests against the Government of Sudan. These NGOs have also warned that the detainees are at risk of torture.¹⁷

18. [REDACTED]

19. Witness intimidation continues to be an obstacle to Mr. Banda and Mr. Jerbo receiving a fair trial. As the former Prosecutor stated in his report to the Security Council, threats and torture against witnesses have been widely documented in Sudan.¹⁸

20. Lastly, the crimes committed by the Government of Sudan against the Sudanese people continue. As the former Prosecutor stated, “the genocide is

¹⁷Sudan Tribune, ‘NGOs say Sudan continuing to arrest human rights defenders’ (21 July 2012) <<http://www.sudantribune.com/NGO-says-Sudan-continuing-to,43324>>, accessed on 3 August 2012. See **Annex D** for source cited in this footnote.

¹⁸International Criminal Court, Office of the Prosecutor, ‘Fifteenth Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005), para. 24, <<http://www.icc-cpi.int/NR/rdonlyres/D1794227-4B8B-4316-AF04-23DAEB110743/0/FifteenthReportToTheUNSConDarfurEng.pdf>>, accessed on 3 August 2012. See **Annex E** for source cited in this footnote.

ongoing”¹⁹ and “[t]here is no information to believe that such crimes against humanity and genocide against the displaced populations have stopped.”²⁰

[REDACTED]

21. [REDACTED]

b. [REDACTED]

22. [REDACTED]

23. [REDACTED]

c. Relations with Neighbouring States

24. The ability of opponents of the Sudanese government to travel outside the country continues to be problematic due to improved relations between the

¹⁹ AlertNet, ‘Cut off aid to states helping Sudan’s Bashir – ICC prosecutor’ (4 June 2012) <<http://www.trust.org/alertnet/news/cut-off-aid-to-states-helping-sudans-bashir-icc-prosecutor/>>, accessed on 03 August 2012. See **Annex F** for sources cited in this footnote.

²⁰ See ‘Fifteenth Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005), para. 40, <<http://www.icc-cpi.int/NR/rdonlyres/D1794227-4B8B-4316-AF04-23DAEB110743/0/FifteenthReportToTheUNSConDarfurEng.pdf>>, accessed on 3 August 2012. See **Annex E** for sources cited in this footnote.

²¹ UN News Centre, ‘Sustainable peace for Darfur in sight, but long way to go, says UN-African envoy’ (24 July 2012) <<http://www.un.org/apps/news/story.asp?NewsID=42545&Cr=darfur&Cr1=>>, accessed on 3 August 2012; See also Sudan Tribune, ‘Sudan and LJM reschedule implementation of Darfur peace deal’ (19 July 2012) <<http://www.sudantribune.com/Sudan-and-LJM-reschedule,43305>>, accessed on 3 August 2012. See **Annex G** for sources cited in this footnote.

Sudanese government and neighbouring states.²² Travel by members of the revolutionary movements entail significant and increasing risks due to the activities of joint military forces operating in Chad, Sudan, and the Central African Republic,²³ and active combat on the border with South Sudan.²⁴

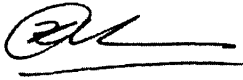
25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²²Radio Dabanga, 'Sudanese detainees declared innocent remain in Egyptian prisons' (24 July 2012) <<http://www.radiodabanga.org/node/33672>>, accessed on 3 August 2012; Hana News Online, 'CHAD, SUDAN AGREE NOT TO SUPPORT REBELS' (27 July 2012) <<http://www.hananews.org/WholeArticle.asp?artId=6273>>, accessed on 3 August 2012; See **Annex H** for sources cited in this footnote.

²³Chadian and Sudanese joint forces remain active and have recently arrested civilians in West Darfur. See All Africa, 'Sudan: Joint Sudanese and Chadian Forces Accused of Arresting Three Civilians' (2 August 2012) <<http://allafrica.com/stories/201208030081.html>>, accessed on 3 August 2012; See also Sudan Radio, 'Sudan and Central African Republic Hold Talks in Khartoum' (3 March 2012) <<http://www.sudanradio.info/english/modules/news/article.php?storyid=3794>>, accessed on 3 August 2012. Sudan's relations with Chad and Libya have improved, as has security along its border with these countries. See Security Council Report, 'Sudan/ Darfur' (July 2012) <http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.8191997/k.546E/July_2012brSudanDarfur.htm> ; accessed on 3 August 2012. See **Annex I** for sources cited in this footnote.

²⁴Radio Dabanga, 'SRF clashes with government forces and militia in South Kordofan and North Kordofan' (23 July), <<http://www.radiodabanga.org/node/33630>>, accessed on 3 August 2012. See **Annex J** for sources cited in this footnote.

Respectfully Submitted,



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Lead Counsel

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Mr. Nicholas Koumjian

Co-Lead Counsel

Dated this 06 Day of August 2012

At Nairobi, Kenya

Dated this 06 Day of August 2012

At The Hague, The Netherlands