

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/05-03/09**
Date: **10 October 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 Confidential Annex**

**Defence Request for Redactions to be Applied to Transcript ICC-02/05-03/09-T-20-
CONF-EXP-ENG of 12 July 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:

The Office of the Prosecutor

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Ms. Hélène Cissé
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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

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Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

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**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Pursuant to the Trial Chamber's instruction of 5 October 2012,¹ the Defence for Mr. Abdallah Banda Abakaer Nourain and Mr. Saleh Mohammed Jerbo Jamus ("Defence") hereby respectfully submit their request for redactions to be applied to transcript ICC-02/05-03/09-T-20-CONF-EXP-ENG ("Transcript T-20" or "Transcript").² A confidential version of the Transcript with the requested redactions applied is provided in the confidential annex attached to this filing.

II. Background

2. On 12 July 2012, between 2.04 pm and 3.19 pm, the Trial Chamber held a confidential status conference which was conducted *ex parte* with the Defence and the Victims and Witnesses Unit only.³
3. On 5 October 2012, the Trial Chamber instructed the Defence to propose redactions to Transcript T-20 so that it might be referred to in the proceedings and to file a confidential redacted version of the Transcript to be available to the Defence, Prosecution and Registry no later than 16h00 on 10 October 2012.⁴

III. Submissions

4. The redactions proposed by the Defence in the Transcript annexed hereto are made solely to protect against the revelation of the direction and focus of the Defence investigation and potential lines of trial strategy. There is nothing in the Rome Statute ("Statute") or in the Rules of Procedure and Evidence which

¹ Email from the Legal Officer of Trial Chamber IV titled "Redacted Versions of Transcripts ICC-02/05-03/09-T-18-Conf-Exp to ICC-02/05-03/09-T-20-Conf-Exp", dated 5 October 2012 and sent at 16.21 hours ("5 October 2012 Email").

² The annex hereto is filed as "confidential" per the instructions of the Trial Chamber. See 5 October 2012 Email, para. 3.

³ The transcript of this status conference is ICC-02/05-03/09-T-20-Conf-Exp.

⁴ See 5 October 2012 Email.

require the Defence to disclose such information prior to the commencement of trial.⁵ Moreover, the Defence submit that to do so would breach the fair trial right of Mr. Banda and Mr. Jerbo to remain silent.⁶

5. Indeed, as was expressed by Defence counsel repeatedly during the *ex parte* status conference, many of the submissions were made with such candour specifically because the hearing was being conducted on an *ex parte* basis.⁷

Relief Requested

For the reasons set out above, the Defence respectfully request that the Trial Chamber apply redactions to Transcript T-20 in accordance with the confidential annex to the present filing.

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 10th Day of October 2012

At Nairobi, Kenya

Dated this 10th Day of October 2012

At The Hague, The Netherlands

⁵ Of relevance is the Appeals Chamber's statement in the *Lubanga* case that there is no "requirement [in Article 67(2) and Rule 77] [...] that an accused provide advance revelation of his or her defences in order to receive full prosecution disclosure" (see ICC-01/04-01/06-1433, para. 50). The Defence submit that same principle and approach must apply in the present situation.

⁶ This right is enshrined in Article 67(1)(g) of the Statute.

⁷ See, e.g., Transcript T-20, p. 5, line 6; p. 10, line 8.