

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: 6 May 2013

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN DARFUR, THE SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ABDALLAH BANDA ABAKAER NOURAIN *and* SALEH MOHAMMED JERBO
JAMUS**

Confidential

**Prosecution's Observations Regarding the Defence Notification of the Death of
Mr. Saleh Mohammed Jerbo Jamus**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

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Counsel for the Defence

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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

Mr. Herman von Hebel

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 21 April 2013 the Defence filed its "Defence Notification of the Death of Mr. Saleh Mohammed Jerbo Jamus" ("Defence Notification").¹ In the filing, the Defence notified Trial Chamber IV ("Trial Chamber") that on 20 April 2013 it was informed by a member of Mr. Jerbo's movement that Mr. Jerbo was killed during an attack in North Darfur on the afternoon of 19 April 2013 and buried the same day. The Defence also informed the Chamber of the reported killing of a Defence witness during the attack,² stating that it is seeking further confirmation of this information and will update the Chamber accordingly.³
2. On 26 April 2013 the Trial Chamber instructed the Prosecution, the Common Legal Representatives and the Registry to file observations on the Defence Notification.⁴

Confidentiality

3. The Prosecution files these observations confidentially because they are in response to the Defence Notification which was also submitted confidentially.

Prosecution Observations

4. While the Prosecution has no reason to doubt the veracity of the information relayed to the Defence and the media reports,⁵ there appears to be no further confirmation of Mr. Jerbo's death such as a death certificate,⁶ or forensic identity verification.⁷ The Prosecution observes that because the Government of the Sudan is not cooperating with the ICC,⁸ and because of the inability of ICC staff to access Darfur, such information would be difficult to obtain by either the Registry or the OTP in this case. Nonetheless, the Prosecution is

¹ ICC-02/05-03/09-466-Conf.

² ICC-02/05-03/09-466-Conf, para. 3.

³ ICC-02/05-03/09-466-Conf, para. 4.

⁴ Email from Legal Officer to Trial Chamber IV dated 26 April 2013 at 15:19.

⁵ See, for example, <http://www.bbc.co.uk/news/world-africa-22277099> - last accessed on 6 May 2013; <http://www.radiodabanga.org/node/47276> - last accessed on 6 May 2013; <http://allafrica.com/stories/201304230091.html> - last accessed on 6 May 2013.

⁶ Documents such as death certificates have been considered in prior cases when determining whether terminating an arrest warrant is justified. See ICC-01/11-01/11-28.

⁷ Forensic methods have been used in other cases to confirm the identity of a deceased suspect. See ICC-02/04-01/05-248.

⁸ See for example ICC-02/05-01/07-57.

taking steps to assess the veracity of these reports and will provide any information it obtains to the Chamber.

5. The Prosecution notes that the Defence is also seeking further confirmation of these reports,⁹ and it may well be that Mr. Jerbo's relatives or members of his movement are in possession of a death certificate or similar documentation which could be relayed to the Chamber.
6. Until there is confirmation of Mr. Jerbo's death, the Prosecution submits that the case against him should remain open. Only when there is further confirmation should the proceedings against him be terminated.



Fatou Bensouda
Prosecutor

Dated this 6th day of May 2013
At The Hague, The Netherlands

⁹ See paragraph 4 of the Defence Notification.