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

Date: 29 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**

Public

Public Redacted Version of “Prosecution’s Submissions Pursuant to Trial Chamber IV’s Order requesting the parties’ observations on the Common Legal Representatives and the Registry’s proposal on the severance of the case” filed on 28 May 2013

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution makes these submissions pursuant to Trial Chamber IV's Order requesting the parties' observations on the Common Legal Representatives and the Registry's proposal on the severance of the case¹ ("Order Requesting Observations"). In light of the further steps that have been suggested to confirm the reports of Mr. Jerbo's death, the Prosecution submits that it is premature to sever the case against Mr Jerbo from the case against Mr Banda.

Background

2. On 21 April 2013 the Defence filed its "Defence Notification of the Death of Mr. Saleh Mohammed Jerbo Jamus" ("Defence Notification").² 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.³ [REDACTED].⁴ The Prosecution⁵, Common Legal Representatives (CLRs)⁶ and the Registry⁷ all submitted their observations regarding the Defence Notification. The Registry and the CLRs proposed, inter alia, that the Chamber sever the case and allow the case against Mr. Banda to proceed as planned.
3. [REDACTED].^{8 9 10 11 12}
4. On 16 May 2013 the Trial Chamber issued its Order Requesting Observations.¹³ The Trial Chamber stated that in accordance with Article 64(5) of the Statute, the

¹ ICC-02/05-03/09-476.

² REDACTED.

³ REDACTED.

⁴ REDACTED.

⁵ ICC-02/05-03/09-471.

⁶ ICC-02/05-03/09-472.

⁷ ICC-02/05-03/09-473.

⁸ REDACTED.

⁹ REDACTED.

¹⁰ REDACTED.

¹¹ REDACTED.

¹² REDACTED.

¹³ ICC-02/05-03/09-476.

parties were put on notice that the Chamber may direct that there be severance of the cases.¹⁴ The Chamber also ordered the parties to file their observations on the appropriateness of the CLR's and Registry's proposal to sever the case.¹⁵ These observations are filed confidentially because they refer to confidential Defence submissions. The Prosecution will file a public redacted version of this filing.

Prosecution Submissions

5. In principle, the Prosecution has no objection to the suggestions of the CLRs and the Registry that the case against Mr Jerbo be severed from that against Mr Banda. However, the Prosecution observes that efforts are still being made to confirm the veracity of the reports of Mr Jerbo's death. [REDACTED].^{16 17}
6. [REDACTED].
7. In any event, [REDACTED]. Only after these and other reasonable steps to verify reports of Mr Jerbo's death have been exhausted should there be a severance of the case against Mr Jerbo from that against Mr Banda.
8. Finally, it is submitted that a short delay in order to verify reports of Mr Jerbo's death is unlikely to have any impact on the commencement of the trial which is not due until 5 May 2014.

¹⁴ ICC-02/05-03/09-476, Para.7.

¹⁵ ICC-02/05-03/09-476, page 7.

¹⁶ REDACTED.

¹⁷ REDACTED.

Conclusion

9. In principle, the Prosecution agrees that it is appropriate to sever the case against Mr Jerbo from the case against Mr Banda, but submits that it should be severed only after all reasonable steps to verify reports of Mr Jerbo's death have been exhausted.
10. The Prosecution requests that, [REDACTED].



Fatou Bensouda
Prosecutor

Dated this 29th day of May 2013
At The Hague, The Netherlands