

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 February 2012

TRIAL CHAMBER IV

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

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

Public Document

**Prosecution's Request for Leave to Respond to the "Application of
The Association of Defence Counsel Practicing Before the
International Criminal Tribunal for the Former Yugoslavia
To File an *Amicus Curiae* Brief on
The Defence Request for a Temporary Stay of Proceedings"**

Sources: 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

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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

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Association of Defence Counsel
Practicing Before the
International Criminal Tribunal for the
Former Yugoslavia

1. On 20 February 2012 the Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia (“ADC-ITY”) requested¹ (“ADC-ITY Request”) the Trial Chamber to grant leave to file an *amicus curiae* brief pursuant to Rule 103(1) of the Rules of Procedure and Evidence regarding the “exceptional circumstances raised in the Defence Request for a Temporary Stay of Proceedings”.² The ADC-ITY simultaneously submitted its substantive *amicus curiae* brief, appended as Annex A to the ADC-ITY Request.
2. The ADC-ITY stated that the *amicus curiae* brief will discuss: (a) the fundamental importance of an independent pre-trial investigation by the Defence to (i) provide a basis to test the credibility and/or reliability of Prosecution evidence; (ii) to develop affirmative defences on behalf of the Accused, and (ii) to assist in the truth seeking function of the Trial Chamber; and (b) the need for remedial measures when the Defence is unable to independently investigate the Defence case, including the reasonableness of staying the proceedings.³
3. Unless the Trial Chamber is minded to reject the ADC-ITY Request, the Prosecution hereby requests leave to respond to ADC-ITY Request.⁴ If the Prosecution is granted leave to respond, it will address whether the intervention of the *amicus curiae* would be helpful and relevant.



Luis Moreno – Ocampo, Prosecutor

Dated this 22nd Day of February 2012

At The Hague, The Netherlands

¹ ICC-02/05-03/09-298.

² ICC-02/05-03/09-298, para.2; The Defence Application for Temporary Stay is ICC-02/05-03/09-274.

³ *Id.*, para 11.

⁴ The Appeals Chamber has established that leave must be obtained in order to respond to an application made pursuant to rule 103 (1). *See* ICC-02/05-01/09-51, para.8.