

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 27 April 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 Document

Joint Response by the Defence for Abdallah Banda Abakaer Nourrain and Saleh Mohammed Jerbo Jamus and the Office of the Prosecutor to the “Requête des Représentants Légaux Communs aux fins d’être autorisé à Répondre à la Réplique Conjointe du Bureau du Procureur et de la Défense à la ‘Requête aux Fins de Divulgateion aux Représentants Légaux Communs d’Eléments Confidentiels et d’Eléments Expurgés du Dossier de l’Affaire Le Procureur c/ Banda & Jerbo”

Sources: Defence Team of Abdallah Banda Abakaer Nourrain
Defence Team of Saleh Mohammed Jerbo Jamus
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

Mr. Luis Moreno-Ocampo
Ms. Fatou Bensouda
Mr. Adebawale Omofade

Counsel for the Defence

Mr. Karim A. A. Khan QC
Mr. Nicholas Koumjian

Legal Representatives of the Victims

Ms. Hélène Cissé
Mr. Jens Dieckmann

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

I. Introduction

1. The Defence for Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus and the Office of the Prosecutor ("Parties") hereby respectfully submit their response to the Common Legal Representatives' request for leave to reply to the "Joint Response by the Office of the Prosecutor and the Defence for Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus to the 'Requête aux Fins de Divulgence aux Représentants Légaux Communs d'Eléments Confidentiels et d'Eléments Expurgés du Dossier de l'Affaire Le Procureur c/ Banda & Jerbo'"¹ filed on 23 April 2012.²
2. The Request should not be granted because the Common Legal Representatives ("CLR") do not identify any new and distinct issue arising from the Joint Response by the Parties.

II. Submissions

3. The CLR assert that the Defence raise a new and distinct legal issue in the Joint Response, which warrants a reply.³ The CLR contend that the Defence would deny the CLR the right to submit requests for access to confidential material to the Trial Chamber before the beginning of trial.⁴ In support of their submissions, the CLR refer to the Defence arguments contained in paragraphs 34 and 35 of the Joint Response.

¹ ICC-02/05-03/09-320 ("Joint Response").

² ICC-02/05-03/09-325 ("Request").

³ The Court's jurisprudence provides that a Chamber may grant leave to reply when the moving party has shown "good cause". Both Pre-Trial and Trial Chambers have deemed such good cause to exist when new and distinct issues of law and fact are raised in the response. See e.g. *Prosecutor v. Bemba*, Decision on the Defence's Request for Leave to Reply on the Motion for Provisional Release dated 24 November 2008, 27 November 2008, ICC-01/05-01/08-294, para. 3: "Having considered the Application, the Single Judge is of the opinion that the Defence has shown good cause to grant leave to reply to the Prosecutor's Response." See also *Prosecutor v. Mbarushimana*, Decision on the Prosecution's request for leave to reply to the "Defence Response to Prosecution's Request for the Review of Potentially Privileged Material", ICC-01/04-01/10-61, 24 February 2011; *Prosecutor v. Katanga & Ngudjolo*, Decision on the Application of the Defence for Germain Katanga to file a reply (regulation 24 of the *Regulations of the Court*), 27 March 2009, ICC- 01/04-01/07-1004-tENG.

⁴ Request, para. 14.

4. Furthermore, the CLR submit that the Defence argue that the “Requête aux Fins de Divulgarion aux Représentants Légaux Communs d’Eléments Confidentiels et d’Eléments Expurgés du Dossier de l’Affaire Le Procureur c/ Banda & Jerbo”⁵ is inadmissible because it is premature considering that the Trial Chambers in *Lubanga*, *Katanga* and *Bemba* ruled on requests submitted by the legal representatives at a later stage of the proceedings.⁶
5. First, it is worth mentioning that the relevant submissions referred to by the CLR are joint submissions made by the Parties in the common section of the Joint Response. That being said, at no point do the Parties argue in the Joint Response that the CLR may not submit requests for access to confidential or *ex parte* material at this stage of the proceedings and that such requests would be *per se* premature.
6. Rather, in paragraphs 34 and 35 referred to by the CLR, the Parties argued that when assessing the Request for Access, relying on the modalities of victims’ participation before other Trial Chambers in *Lubanga*, *Katanga* and *Bemba* appears to be premature in the absence of any ruling by the present Trial Chamber on the modalities. Therefore, the Parties submitted that requests of such nature should be dealt with on a case-by-case basis. Subsequently, in response to the CLR request for access, the Parties proceeded, jointly and separately, to submit arguments as to the standard set out in Article 68(3)⁷ with respect to each of the twenty annexes.
7. Consequently, the Parties submit that the CLR fail to demonstrate the existence of any new and distinct legal issue in the Joint Response. Furthermore, the Parties believe that paragraphs 19 to 29 and 31 to 34 of the Request contain substantive arguments as to the need for access by the CLR,

⁵ ICC-02/05-03/09-310, (“Request for Access”).

⁶ Request, para. 30.

⁷ See Joint Response, para. 38.

rather than submissions on any new and distinct legal issue allegedly raised in the Joint Response. The Parties do not make any submissions in response to these arguments, which are irrelevant to the matter at issue, *viz* whether the CLR have shown “good cause” to be granted leave to reply.

Relief Requested

For the reasons set out above, the Parties respectfully request that the Trial Chamber deny the Request.

Respectfully Submitted,



Luis Moreno Ocampo
Prosecutor



Mr. Karim A. A. Khan QC
Lead Counsel



Mr. Nicholas Koumjian
Co-Lead Counsel

for Abdallah Banda Abakaer Nourain
and Saleh Mohammed Jerbo Jamus

Dated this 27th Day of April 2012
At The Hague, The Netherlands

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