

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 June 2012

TRIAL CHAMBER IV

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

SITUATION IN DARFUR, SUDAN

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

Public

**with confidential *ex parte* Annex A only available to the prosecution and the
VWU and confidential *ex parte* Annex B only available to the defence and the
VWU**

Public redacted Order on the scheduling of a hearing and status conferences

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

The Office of the Prosecutor

Ms Fatou Bensouda

Counsel for the Defence

Mr Karim A.A. Khan

Mr Nicholas Koumjian

Legal Representatives of Victims

Ms Hélène Cissé

Mr Jens Dieckmann

Legal Representatives of

Applicants

Unrepresented Victims

Unrepresented Applicants for

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

Deputy Registrar

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and

Reparations Section

Others

Trial Chamber IV (“Chamber”) of the International Criminal Court (“Court”) in the case of the *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (“Banda and Jerbo case”), pursuant to Rule 132(2) of the Rules of Procedure and Evidence (“Rules”), issues the following Order on the scheduling of a hearing and status conferences (“Order”).

Background and submissions

1. On 6 January 2012, the defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus (“defence”) filed its “Defence Request for a Temporary Stay of Proceedings” (“Request”).¹ In a separate filing,² the defence requested the Chamber to hold a hearing to, *inter alia*, assist the Chamber in the resolution of the novel issues raised in the Request.³
2. On 30 January 2012, the Office of the Prosecutor (“prosecution”) filed its response to the Request and defence request for a hearing,⁴ in which it argues, *inter alia*, that the issues in this case are straightforward and an oral hearing would not assist in addressing the “mixed questions of fact and law” because most facts are not in dispute.⁵ It further submits that, if an oral hearing is held, the Chamber should not allow the parties to present facts as to which the other party lacks notice.⁶

¹ Defence Request for a Temporary Stay of Proceedings, 6 January 2012, ICC-02/05-03/09-274, together with public Annexes A, B, D, E, I, M and O, confidential Annexes C, J, L and N, and confidential and *ex parte* annexes F, G, H and K available only to the Defence.

² Defence Request for an Oral Hearing, 18 January 2012, ICC-02/05-03/09-280.

³ ICC-02/05-03/09-280, *e.g.* paragraphs 2, 7, 9 and 12.

⁴ Prosecution’s Response to the “Defence Request for a Temporary Stay of Proceedings” and to the “Defence Request for an Oral Hearing”, 30 January 2012, ICC-02/05-03/09-286-Conf. A public redacted version was filed on 1 February 2012, Public Redacted Version of “Prosecution’s Response to the ‘Defence Request for a Temporary Stay of Proceedings’ and to the ‘Defence Request for an Oral Hearing’”, ICC-02/05-03/09-286-Red.

⁵ ICC-02/05-03/09-286-Red, paragraph 42.

⁶ ICC-02/05-03/09-286-Red, paragraph 43.

3. On the same day, the common legal representatives of victims filed their observations,⁷ *inter alia*, opposing the holding of a hearing.⁸
4. In view of the questions of fact and law arising from the Request, the Chamber informed the parties and participants on 25 May 2012,⁹ *inter alia*, of its intention to hold a hearing and a status conference on 11 and 12 July 2012 (“July hearing and status conference”) and specified that an agenda would be circulated in due course by way of order. [REDACTED].
5. [REDACTED].¹⁰
6. On 8 June 2012, the defence requested the Chamber to postpone the July hearing and status conference and to convene an urgent *ex parte* hearing (“urgent status conference”) [REDACTED] (“Urgent Application”).¹¹
7. The prosecution responded to this Urgent Application on 12 June 2012 [REDACTED].¹² It also submitted that [REDACTED] whether they should be postponed this should only be decided once the scheduling order issuing the agenda for the July hearing and status conference is issued [REDACTED].¹³
8. In accordance with the Chamber’s direction on 12 June 2012,¹⁴ the defence filed a reply on 14 June 2012,¹⁵ submitting that it would be able to attend an urgent status

⁷ *Observations en réponse aux requêtes d’arrêt temporaire des procédures et une audition orale*, 30 January 2012, ICC-02/05-03/09-285.

⁸ ICC-02/05-03/09-285, paragraph 87.

⁹ Email communication from a Legal Officer of the Trial Division to the parties, participants and the Registry on 25 May 2012, at 14.53.

¹⁰ Email communication from the defence on 1 June 2012 at 11.58.

¹¹ Defence Request for Postponement of Scheduled Hearing and Status Conference and Urgent *Ex Parte* Hearing, 8 June 2012, ICC-02/05-03/09-345-Conf, paragraph 4.

¹² Prosecution’s Response to “Defence Request for Postponement of Scheduled Hearing and Status Conference and Urgent *Ex Parte* Hearing”, 12 June 2012, ICC-02/05-03/09-346-Conf-Exp, paragraph 3.

¹³ ICC-02/05-03/09-346-Conf-Exp, paragraphs 3 and 7.

¹⁴ Email communication from a Legal Officer of the Trial Division to the parties, participants and the Registry on 12 June 2012, at 18.27.

¹⁵ Defence Reply to the Prosecution’s Response to Defence Request for Postponement of Scheduled Hearing and Status Conference and Urgent *Ex Parte* Hearing, 14 June 2012, ICC-02/05-03/09-347-Conf-Exp.

conference to discuss the issue of postponement of the July hearing and status conference.¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸

Order

9. The Chamber considers it appropriate at this stage to issue this Order confidentially and to notify the defence, prosecution and Registry only [REDACTED]. A public redacted version of the Order will be issued in due course.

Preliminary agenda for the July hearing and status conference

10. The Chamber hereby issues, on a preliminary basis, the agenda for the July hearing and status conference.
11. The following items, which are relevant to the Request for a stay of the proceedings as well as to the conduct of the proceedings as a whole shall be dealt with:

Disclosure issues (to be partially dealt with confidentially ex parte, see Annex A to the present Order)

- a. Submissions from the parties on the current security situation in Darfur and its impact on effective prosecution disclosure;
- b. Update on the status of discussion *inter partes* for the defence to be able to contact and question the witnesses who may be of assistance for its preparation of the case, namely Witnesses 304, 305, 306, 312, 439;¹⁹
- c. Status of discussion on the possibility for the defence to interview witnesses who so far declined to be interviewed by the defence, namely Witnesses 307, 314, 441, 442 and 466;²⁰

¹⁶ Defence Reply to the Prosecution's Response to Defence Request for Postponement of Scheduled Hearing and Status Conference and Urgent *Ex Parte* Hearing, ICC-02/05-03/09-347-Conf-Exp paragraph 3.

¹⁷ ICC-02/05-03/09-347-Conf-Exp, paragraph 4.

¹⁸ ICC-02/05-03/09-347-Conf-Exp, paragraph 5.

¹⁹ ICC-02/05-03/09-274, paragraph 23 and footnote 49.

²⁰ *Ibid.*

- d. Update on the status of contact between the prosecution and certain witnesses in order to disclose their identities to the defence, namely Witnesses 304, 305, 306²¹ and Witnesses 314 and 433;²²
- e. Time estimate for additional disclosure by the prosecution of Article 67(2) evidence and Rule 77 material as mentioned in paragraph 9 of document ICC-02/05-03/09-343;
- f. Time estimate for additional prosecution requests for lifting redactions as mentioned in paragraph 10 of document ICC-02/05-03/09-343;
- g. Time estimate for full translation of all statements and transcripts of the 15 prosecution witnesses;²³
- h. Submissions from the defence, if any, as to the status of translation into Zaghawa of disclosed material and the manner in which confidential Zaghawa audio files can be shared with both accused persons; and
- i. Submissions from the parties as to whether or not they intend to call experts in accordance with Regulation 44 of the Regulations of the Court (“Regulations”), and if so, on the possibility of using joint instructions;

Cooperation issues

- a. Submissions from both parties on the status of pending cooperation requests.

Communication issues

- a. Submission from the defence on the practical difficulties encountered in its communications with both accused.²⁴

12. Following the hearing and status conference, the Chamber will hold an *ex parte* status conference with the prosecution and Registry and an *ex parte* status

²¹ ICC-02/05-03/09-281-Red, paragraph 1.

²² ICC-02/05-03/09-333-Red, paragraph 1.

²³ Annex A to Prosecution’s Updated List of Witnesses, 5 August 2011, ICC-02/05-03/09-198-AnxA.

²⁴ ICC-02/05-03/09-274, paragraphs 2 and 12.

conference with the defence and Registry. The provisional agenda for these status conferences is set out in Annexes A and B appended to the present Order.

13. Should the parties and the Registry wish to add other items to the preliminary agenda, they should indicate these by way of a formal filing no later than 16.00 on 28 June 2012. The agenda items set out in this Order will be dealt with confidentially at the hearing and status conference as necessary.

[REDACTED]

14. [REDACTED]²⁵

[REDACTED].²⁶

15. [REDACTED].²⁷

16. [REDACTED]

Urgent Application

17. Having considered the Urgent Application and related filings, the Chamber has determined that it would be of assistance to hold a status conference with both parties and the Registry on 19 June 2012 starting at 9.30. The Chamber will hold a

²⁵ Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons, 16 May 2011, ICC-02/05-03/09-148 and Confidential Annex A to the Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons, 16 May 2011, ICC-02/05-03/09-148-Conf-AnxA. A public redacted version of Annex A was filed on 29 June 2011, ICC-02/05-03/09-148-Conf-AnxA-Red; see Decision on the Joint Submission regarding the contested issues and the agreed facts, 28 September 2011, ICC-02/05-03/09-227.


²⁶ ICC-02/05-03/09-148, paragraph 5.

²⁷ Summons to appear for Saleh Mohammed Jerbo Jamus, 27 August 2009, ICC-02/05-03/09-2 and Summons to appear for Abdallah Banda Abakaer Nourain, 27 August 2009, ICC-02/05-03/09-3.

separate *ex parte* status conference with the defence and Registry thereafter as necessary.

18. The defence request for a postponement of the July hearing and status conference will be decided upon in due course.

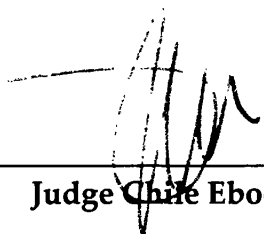
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Silvia Fernandez de Gurmendi



Judge Chie Eboe-Osuji

Dated this 26 June 2012

At The Hague, The Netherlands