

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 July 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 document

**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**

Order on the scheduling of a hearing and status conferences on 11 July 2012

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

Unrepresented Victims

Legal Representatives of Applicants

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 on 11 July 2012.

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” (“defence 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 25 May 2012, the Chamber informed the Office of the Prosecutor (“prosecution”), the defence, the common legal representatives of victims (“legal representatives”) and the Registry of, *inter alia*, its intention to hold a hearing and a status conference on 11 and 12 July 2012 (“July hearing” or “July hearing and status conferences”) and specified that an agenda would be circulated in due course by way of order.⁴
3. On 8 June 2012, the defence requested the Chamber to postpone the hearing and status conferences (“Request for Postponement”) and to convene an urgent *ex parte* status conference “to properly inform the Trial Chamber about the complicated logistical and security issues which may jeopardize the timely appearance of Mr.

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

Banda and Mr. Jerbo, as well as to obtain the Trial Chamber's further assistance and guidance".⁵

4. On 15 June 2012, the Chamber issued its "Order on the scheduling of a hearing and status conferences", together with two confidential *ex parte* annexes A and B.⁶ By this order, the Chamber, *inter alia*, decided upon a preliminary agenda ("Preliminary Agenda") for the July hearing and status conferences and requested the parties and the Registry to indicate by 28 June 2012 whether they wish to add other items to the Preliminary Agenda.⁷
5. On 19 June 2012, the Chamber held a confidential status conference with both parties ("19 June Confidential Status Conference")⁸ and an urgent confidential *ex parte* status conference with the Registry and defence to, *inter alia*, address logistical and security issues with regard to the appearance of both accused persons at the July hearing and status conferences ("19 June *ex parte* Status Conference").⁹
6. On 28 June 2012, the defence filed its observations to the Preliminary Agenda ("defence Additional Items")¹⁰ and requests adding two items, namely (i) an update on matters raised *inter partes* at the 19 June Confidential Status Conference, including logistical and security issues and (ii) an update on matters raised at the 19 June *ex parte* Status Conference. On the same day, the Registry requests the addition of one item to the Preliminary Agenda to be dealt with confidentially

⁵ 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. The legal basis for the confidential *ex parte* classification of this information does not longer exists as the same information has been made available to the public in the public Defence Submission on Additional Agenda Items for 11 and 12 July 2012 hearing and Status Conference, 28 June 2012, ICC-02/05-03/09-359, paragraph 3.

⁶ Order on the scheduling of a hearing and status conferences, 15 June 2012, ICC-02/05-03/09-348-Conf and confidential *ex parte* Annexes A and B. A public redacted version was issued on 26 June 2012, ICC-02/05-03/09-348-Red.

⁷ ICC-02/05-03/09-348-Red, paragraph 13.

⁸ Transcript of hearing on 19 June 2012, ICC-02/05-03/09-T15-CONF ENG ET.

⁹ Transcript of hearing on 19 June 2012, ICC-02/05-03/09-T16-CONF-EXP ENG ET.

¹⁰ Defence Submission on Additional Agenda Items for 11 and 12 July 2012 hearing and Status Conference, 28 June 2012, ICC-02/05-03/09-359.

(“Registry Additional Item”).¹¹ The prosecution did not file any further observations to the Preliminary Agenda.

7. On 28 June 2012, the legal representatives filed a request (Victims’ Request)¹² to, *inter alia*, attend the hearing and status conference in order to make substantive submissions on (i) how the victims’ interests would be affected by a temporary stay of proceedings,¹³ (ii) cooperation issues¹⁴ and (iii) communication issues between the defence and both accused persons.¹⁵

Orders

Attendance at the July hearing and status conference

8. Having heard the defence and Registry oral submissions at the 19 June *ex parte* Status Conference, the Chamber excuses the accused persons from appearing at the July hearing and status conferences.
9. In addition, the Chamber is of the view that the attendance of the legal representatives is warranted, as items to be dealt with at the July hearing and status conferences are relevant to the Request for a Temporary Stay of the Proceedings as well as to the conduct of the proceedings as a whole. Therefore, the victims’ interests may be affected by certain items as set out in the Preliminary Agenda.
10. In light of the legal representatives’ observations on the defence Request¹⁶ and the latest request for leave to file additional information,¹⁷ the Chamber clarifies that

¹¹ Registrar’s submission on an additional item to be added to the preliminary agenda issued in Trial Chamber IV’s “Order on the scheduling of a hearing and status conferences” dated 15 June 2012, 28 June 2012, ICC-02/05-03/09-361-Conf.

¹² *Requête des Représentants légaux Communs aux fins d’être autorisés à participer à l’Audience et à la Conférence de Mise en Etat du 11 et 12 Juillet 2012*, 28 June 2012, ICC-02/05-03/09-358.

¹³ ICC-02/05-03/09-358, paragraph 5.

¹⁴ ICC-02/05-03/09-358, paragraphs 4(a) and 11.

¹⁵ ICC-02/05-03/09-358, paragraphs 4(b) and 11.

¹⁶ *Observations en réponse aux requêtes d’arrêt temporaire des procédures et une audition orale*, 30 January 2012, ICC-02/05-03/09-285.

the legal representatives are not expected during the hearing to repeat their written submissions on the defence Request. In addition, following the 19 June status conferences, the Chamber is also of the view that further submissions from the legal representative on the issues of communication between the defence and both accused persons are unnecessary. Therefore, the Chamber authorises the legal representatives to attend the July hearing and to make oral observations on cooperation issues.

Defence and Registry requests for additional items

11. The defence proposed to update the Chamber, *inter alia*, on logistical and security issues concerning both accused persons. However, since the latter will not attend the July hearing and status conferences, the Chamber considers it more appropriate at this stage that any updates be filed in writing no later than 16.00 on 6 August 2012.
12. As to the Registry Additional Item, the Chamber notes that although this item was included in a confidential filing, the reason for this level of classification no longer exists as the accused persons have been excused from the July hearing and status conferences. Furthermore, the proposed item is not *per se* of a confidential nature. The Chamber therefore, pursuant to Article 64(7) of the Rome Statute and Regulation 23bis(3) of the Regulations of the Court, orders the Registry to reclassify document ICC-02/05-03/09-361-Conf as public.
13. On the merit of the Registry's submission, the Registry states that it would be very useful to be informed of whether the Chamber intends to attach conditions to the

¹⁷ Requête des Représentants Légaux Communs aux fins d'être autorisés à soumettre des éléments supplémentaires déterminants en support à leurs observations en réponse aux requêtes d'arrêt temporaire des procédures et une audition orale (ICC-02/05-03/09-30 Janvier 2012), 29 June 2012, ICC-02/05-03/09-362 and 7 related annexes.

appearance of both accused during the trial proceedings. The Chamber acknowledges that this information needs to be provided to the Registry in due time in order for it to start consultations with the Host State. However, pending its final determination on the defence Request, the Chamber is of the view that this item does not need to be included at the agenda of the July hearing and status conferences.

Agenda for the July hearing and status conferences

14. The Chamber hereby issues the agenda for the July hearing and status conferences starting on 11 July 2012 at 9h30 in courtroom I.
15. The following items, which are relevant to the defence request for a temporary stay of the proceedings as well as to the conduct of the proceedings as a whole shall be dealt with publicly:

I. The Hearing

Defence Request

An update of relevant factual developments or additional legal arguments related to the defence request for a temporary stay of proceedings, if any.¹⁸

II. Status Conferences

Disclosure issues

- a) Submissions from the parties on the current security situation in Darfur and its impact on effective prosecution disclosure;

¹⁸ ICC-02/05-03/09-274; Defence Request for an Oral Hearing, 18 January 2012, ICC-02/05-03/09-280; 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; Observations en réponse aux requêtes d'arrêt temporaire des procédures et une audition orale, 30 January 2012, ICC-02/05-03/09-285 and Defence Reply to the "Prosecution's Response to the 'Defence Request for a Temporary Stay of Proceedings' and to the 'Defence Request for an Oral Hearing' ", filed on 30 January 2012, 21 February 2012, ICC-02/05-03/09-300.

- 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
- d) 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;
- e) Time estimate for additional prosecution requests for lifting redactions as mentioned in paragraph 10 of document ICC-02/05-03/09-343;
- f) Time estimate for full translation of all statements and transcripts of the 15 prosecution witnesses;²¹
- g) 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
- h) 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) Update from both parties on the status of pending cooperation requests; and
- b) Submissions by the legal representatives.

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

²⁰ *Ibid.*

²¹ Annex A to Prosecution’s Updated List of Witnesses, 5 August 2011, ICC-02/05-03/09-198-AnxA.

16. Following the hearing and status conferences, the Chamber will hold an *ex parte* status conference with the prosecution and Registry on 11 July 2012 at 11h30 in courtroom I and an *ex parte* status conference with the defence and Registry 11 July 2012 at 14h30 in courtroom I. The agenda for these status conferences is set out in Annexes A and B appended to the present order.

Defence Request for Postponement

17. Finally, for the foregoing reasons, the Chamber rejects the defence Request for Postponement.

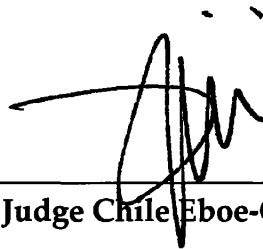
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Silvia Fernandez de Gurmendi



Judge Chile Eboe-Osuji

Dated this 6 July 2012

At The Hague, The Netherlands