

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 11 May 2011

**TRIAL CHAMBER IV**

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

**SITUATION IN DARFUR, SUDAN**

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

**Public Document**

**Decision on the defence request for leave to reply**

Decision 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

**Counsel for the Defence**

Mr Karim A.A. Khan QC

**Legal Representatives of Victims**

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

Sir Geoffrey Nice QC &

Mr Rodney Dixon

**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**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

Trial Chamber IV (“Chamber”) of the International Criminal Court (“ICC”), acting pursuant to Regulations 24(5) and 34(c) of the Regulations of the Court (“Regulations”), decides the following.

1. During the status conference held on 19 April 2011,<sup>1</sup> the defence for Messrs Abdallah Banda Abakaer Nourain and Saleh Mohamed Jerbo Jamus (“defence”) seised the Chamber of an oral application raising issues about the intended re-interview of six prosecution witnesses by the Office of the Prosecutor (“prosecution”).<sup>2</sup>
2. On 21 April 2011, the Chamber instructed the prosecution to file a response to the defence oral application,<sup>3</sup> which was done on 4 May 2011 (“Response”).<sup>4</sup>
3. On 10 May 2011, the defence filed a request for leave to reply (“Request”) to the prosecution’s Response.<sup>5</sup> The defence identifies two new legal issues which it contends it should be authorised to reply to.<sup>6</sup> It is further averred that the defence should be allowed to reply regarding a matter beyond the oral application;<sup>7</sup> in the defence’s submission, the prosecution’s “incomplete analysis of it establishes good cause to permit the Defence to reply to the Prosecution’s submissions on the definition of witness proofing.”<sup>8</sup>

<sup>1</sup> Transcript of the hearing held on 19 April 2011, ICC-02/05-03/09-T-10-ENG-CT 19-04-2011.

<sup>2</sup> ICC-02/05-03/09-T-10-ENG-CT 19-04-2011, page 13, line 20 to page 17, line 6.

<sup>3</sup> Order requesting the prosecution to file a response to the defence oral application of 19 April 2011, 21 April 2011, ICC-02/05-03/09-137.

<sup>4</sup> Prosecution’s Response to the Defence’s Oral Application of 19 April 2011, 4 May 2011, ICC-02/05-03/09-140.

<sup>5</sup> Defence Application for Leave to Reply to Prosecution’s Response to the Defence’s Oral Application of 19 April 2011, 10 May 2011, ICC-02/05-03/09-144.

<sup>6</sup> *Ibid.*, paragraphs 6 and 8(a) and (b).

<sup>7</sup> *Ibid.*, paragraph 7.

<sup>8</sup> *Ibid.*, paragraph 8(c).

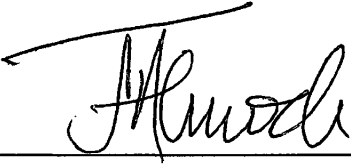
4. The defence further submits that granting leave to file a reply would be in the interests of justice, as it would allow the defence to address issues raised by the Prosecution in the Response, which were not dealt with in its oral application<sup>9</sup>.
5. The Chamber is satisfied that a reply by the defence would be of assistance to the Chamber in order to receive the submissions of the defence on the issues as identified in paragraph 8 a) and b) of the Request and a fuller exposition of the relevant jurisprudence on the issue referred to in paragraph 8 c) of the Request, namely the prosecution's definition of witness proofing.

**FOR THESE REASONS, THE CHAMBER**

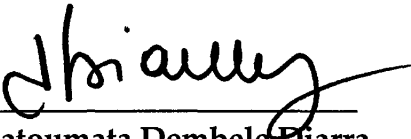
**GRANTS** the defence Request in relation to the issues identified in paragraph 8 thereof; and

**ORDERS** the defence to reply to the prosecution's Response by 16.00 on 16 May 2011.

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



Judge Joyce Aluoch  
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Silvia Fernandez de Gurmendi

Dated this 11 May 2011

At The Hague, The Netherlands