

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 June 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

**Order requesting observations from the legal representatives on the agreement
as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence**

Order 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

Legal Representatives of Victims

Mr Brahim Koné
Ms Hélène Cissé
Mr Akin Akinbote
Mr Frank Adaka
Sir Geoffrey Nice & 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

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

1. On 19 April 2011, Trial Chamber IV (“Chamber”) instructed the parties to provide an update on the status of the discussions on a possible agreement as to evidence.¹
2. On 16 May 2011, the defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus (“defence”) and the Office of the Prosecutor (“prosecution”) in a joint filing (“Joint Submission”) addressed the contested issues in the trial of the accused persons and submitted an agreement as to evidence (“Agreement”) pursuant to Rule 69 of the Rules of Procedure and Evidence (“Rules”).²
3. In response to an inquiry by the Chamber³ on 23 May 2011, the prosecution and the defence indicated that the annex with the Agreement could be notified to the legal representatives as is, with the limitation that it should not be notified to any victims for as long as they remain anonymous.⁴
4. Upon further instructions from the Chamber,⁵ the prosecution and the defence submitted joint observations in which they clarified that anonymous victims should not receive the annex containing the Agreement for the purposes of obtaining their observations as the extent of participation would violate the fundamental principle

¹ Transcript of hearing on 19 April 2011, ICC-02/05-03/09-T-10-ENG CT WT, page 17, lines 6 – 10.

² Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Person, 16 May 2011, ICC-02/05-03/09-148; Agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence between the Defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus And the Office of the Prosecutor, ICC-02/05-03/09-148-Conf-AnxA.

³ Email communication from the Chamber to the prosecution and the defence through the Legal Adviser to the Trial Division of 19 May 2011.

⁴ Email communication from the prosecution and the defence to the Chamber through the Legal Adviser to the Trial Division of 23 May 2011.

⁵ Email communication from the Chamber to the parties through a Legal Officer to the Trial Division on 25 May 2011.

prohibiting anonymous accusations.⁶ At the same time, the parties noted that this restriction should have only a minimal impact on the present proceedings as the majority of the victims are unlikely to have concerns about their identities being provided to the defence.⁷

5. The Chamber takes note of the arguments put forth on the participatory rights of anonymous victims and their potential impact on the rights of the accused. Furthermore, the Chamber recalls that the observations by victims will inform its decision, in accordance with Rule 69 of the Rules, thereby having a significant impact on the conduct of the proceedings.
6. For the above reasons, the Chamber will consider only those observations submitted on behalf of non-anonymous victims. To this effect, it instructs the legal representatives of participating victims to consult with their clients to determine whether they agree to the disclosure of their identities to the public at large or, at least, to the parties and participants in the trial proceedings. The Chamber reminds counsel of the obligation enshrined in Article 7(3) of the Code of Professional Conduct for Counsel to comply with the Court's rulings on conduct and procedure.
7. To facilitate discussions between the legal representatives and their clients regarding the Agreement, and to make the Agreement available to the public, the Chamber instructs the prosecution and the defence to file a redacted version of the Agreement by 16.00 on **29 June 2011**. The redaction proposals, together with justifications, are to be submitted to the Chamber by email 48 hours in advance for approval.

⁶ Joint Observations by the Office of the Prosecutor and the Defence regarding access by Participants to Confidential Annexure "A" of the "Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons", 26 May 2011, ICC-02/05-03/09-151, paragraph 7.

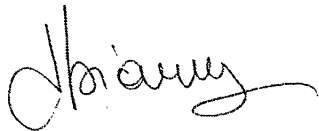
⁷ ICC-02/05-03/09-151, paragraph 10.

8. The legal representatives of victims, on behalf of non-anonymous victims only, are requested to file their observations on the Joint Submissions and the Agreement by 16.00 on **8 August 2011**, together with the detailed outcome of the consultations on disclosure of the victims' identities as discussed above in paragraph 5.

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 22 June 2011

At The Hague, The Netherlands