

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 May 2011

TRIAL CHAMBER IV

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

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

**Public Document
with Confidential Annexure "A"**

**Joint Submission by the
Office of the Prosecutor and the Defence Regarding the Contested Issues at the
Trial of the Accused Persons**

Sources: Office of the Prosecutor
Defence Team of Abdallah Banda Abakaer Nourain
Defence Team of Saleh Mohammed Jerbo Jamus

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

The Office of the Prosecutor

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Mr. Karim A. A. Khan QC

Legal Representatives of the Victims

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. Background

1. On 27 August 2009, Pre-Trial Chamber I (“PTC I”) issued summonses to appear for Mr. Abdallah Banda Abakaer Nourain and Mr. Saleh Mohammed Jerbo Jamus (jointly “the Accused persons”).¹ The Accused persons voluntarily submitted to the authority of the Court and made their initial appearance on 17 June 2010.
2. On 19 October 2010, the Office of the Prosecutor (“OTP”) and Defence Counsel for the Accused persons (jointly “the Parties”) informed PTC I in a joint filing that the “Defence does not contest any of the material facts alleged in the DCC for the purposes of confirmation, and that the Pre-Trial Chamber may therefore consider such alleged facts to be proven for the purposes of the confirmation of charges, in accordance with Rule 69 of the Rules”.² After a confirmation hearing on 8 December 2010, on 7 March 2011 PTC I confirmed the charges against the Accused persons and committed the case for trial.³ An initial Status Conference took place before Trial Chamber IV (“the Chamber”) on 19 April 2011, during which the Chamber ordered “the Prosecution and the Defence to provide it in a joint filing with an update on the status of the discussions on a possible agreement, if at all, as to facts [...] -- by 4 o’clock on 16 May”⁴.

II. Agreements Reached by the OTP and the Defence on the Category of Issues in Dispute for the Purposes of the Upcoming Trial

3. The Parties inform the Chamber that they have reached an agreement that the Accused persons will contest only the specific issues listed below at their trial:
 - i. Whether the attack on the MGS Haskanita on 29 September 2007 was unlawful;
 - ii. If the attack is deemed unlawful, whether the Accused persons were aware of the factual circumstances that established the unlawful nature of the attack; and
 - iii. Whether AMIS was a peacekeeping mission in accordance with the Charter of the United Nations.

¹ ICC-02/05-03/09-1; ICC-02/05-03/09-2 and ICC-02/05-03/09-3.

² ICC-02/05-03/09-80, para. 5.

³ On 16 March 2011, the Presidency issued its “Decision constituting Trial Chamber IV and referring to it the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*” constituting Trial Chamber IV, and referred to it the case and transmitted the full record of the proceedings before Pre-Trial Chamber I to Trial Chamber: ICC-02/05-03/09-124.

⁴ ICC-02/05-03/09-T-10-ENG CT, p.7, lines 6-9.

4. In accordance with Article 66(2) and (3) of the Statute, the Prosecution will be required to establish these issues beyond reasonable doubt and the Defence further give notice that these issues are fully contested. Notwithstanding this, the parties have reached certain agreements as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence. These agreements narrow, to a very significant extent, the issues in dispute between the parties and will facilitate the fair and expeditious conduct of proceedings as required by Article 64(2) of the Rome Statute. The Rule 69 agreement as to evidence is attached to this filing as “Confidential Annexure A”.⁵
5. If the Chamber determines that AMIS was a peacekeeping mission established in accordance with the Charter of the United Nations, that the attack itself was unlawful and that the Accused persons were aware of the factual circumstances that established the unlawful nature of the attack, the Accused persons will plead guilty to the charges preferred against them without prejudice to their right to appeal the Chamber’s decision on the issues detailed in paragraph 3 pursuant to Article 81 of the Statute.
6. Finally, the Parties agree that, apart from the issues identified in paragraph 3, the Parties shall not submit additional evidence or make additional submissions regarding the guilt or innocence of the Accused persons unless the Chamber, within its discretion, deems it necessary to have such additional evidence and/or submissions on the issues before it.
7. Article 64(3)(a) of the Statute requires the Chamber to “[c]onfer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings”. Regulation 54(h) of the Regulations of the Court also empowers the Chamber, after conferring with the Parties, to issue the necessary orders “in the interests of justice for the purposes of the proceedings on ... [t]he issues the participants propose to raise during trial”.

⁵ The contents of Annexure “A” constitute evidence akin to the witness-related evidence the Prosecution classified as “confidential” for the purposes of the confirmation hearing, and contain information currently classified by the Parties as confidential. Accordingly, the Parties have classified Annexure “A” as “confidential” and therefore only available to the Prosecution and Defence at this stage of the proceedings.

8. The agreement reached by the Parties will significantly shorten the trial proceedings by focusing the trial only on those issues that are contested between the Parties. This will promote an efficient and cost effective trial whilst preserving the rights of victims to participate in the proceedings and protecting the rights of the Accused persons to a fair and expeditious trial.
9. Accordingly, the Parties invite the Chamber, after conferring with the Parties, to adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the upcoming trial proceedings only on the limited issues identified in paragraph 3 of this joint filing.
10. The Parties are willing to provide any further clarification on the issues raised in this joint filing at a future status conference or through written submissions.

Respectfully Submitted,



Luis Moreno-Ocampo
Prosecutor



Mr. Karim A. A. Khan QC
Counsel for Abdallah Banda Abakaer Nourain
and
Saleh Mohammed Jerbo Jamus

Dated this 16th Day of May 2011
At The Hague, The Netherlands

Dated this 16th Day of May 2011
At Nairobi, Kenya