

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 29 May 2012

TRIAL CHAMBER IV

Before: Judge Joyce Alouch, 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

**Public Redacted Version of "Prosecution's Provision of Updated Information on
Witnesses DAR-OTP-WWWW-0314, DAR-OTP-WWWW-0433, DAR-OTP-WWWW-
0441, and DAR-OTP-WWWW-0466", filed on 9 May 2012**

Source: Office of the Prosecutor

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

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I. Introduction

1. The Prosecution (or "OTP") hereby informs Trial Chamber IV ("Chamber") of the outcome of its efforts to locate and contact former Prosecution witnesses DAR-OTP-WWWW-0314 ("W314"), DAR-OTP-WWWW-0433 ("W433"), DAR-OTP-WWWW-0441 ("W441"), and DAR-OTP-WWWW-0466 ("W466"), and of the witness risk assessments it has conducted in liaison with the Victims and Witnesses' Unit (VWU), [REDACTED]¹.
2. The Prosecution continues to use its best efforts to contact W314 and W433, including, [REDACTED]. However, the Prosecution draws the Chamber's attention to the prevailing security situation in Darfur and the Sudan generally, and the possibility that recent political and military developments in the region may have compounded pre-existing difficulties in contacting the witnesses.² As a consequence, the Prosecution has had to rely on telephone calls [REDACTED]. As with other Prosecution witnesses [REDACTED]³, this means of communication has not proved fruitful over the past months. In the absence of alternative means of communicating with them however, the Prosecution will continue its efforts to make telephone contact with them and will inform the Chamber of any developments should communication with them be re-established.
3. As regards W441 and W466, the Prosecution, spoke to each of these witnesses on 1 May 2012 in telephone calls to them made jointly with the VWU. The purpose of the joint telephone calls was firstly, to ascertain whether the witnesses consent

¹ [REDACTED].

² [REDACTED].

³ See ICC-02/05-03/09-281-Conf-Exp, paragraph 2.

to the disclosure of their identities to the defence⁴;[REDACTED]⁵. W441 consented to the disclosure of his identity to the Defence while W466 declined.

II. Background

4. Further to the Chamber's "Decision on the prosecution's request for non-disclosure or redactions of material relating to Witnesses 304, 305, 306 and 312 of 16 December 2011"⁶, [REDACTED]⁷ [REDACTED].

5. [REDACTED]⁸.

6. [REDACTED]⁹.

Prosecution's efforts to locate the four witnesses, and their ongoing security concerns.

7. [REDACTED].¹⁰

DAR-OTP-WWWW-0441

8. The Prosecution was able to contact W441 on 1 May 2012. In the course of the ensuing telephone conversation (conducted jointly with representatives of the VWU [REDACTED]), the OTP [REDACTED] inquired whether he consented to his identity being disclosed to the defence. [REDACTED] the witness consented to the disclosure of his identity to the Defence. [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ ICC-02/05-03/09-265-Conf-Exp, paragraph 20.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

9. [REDACTED]¹¹. [REDACTED].

10. As regards an assessment of the risks, if any, associated with the disclosure of the witness's identity to the defence, the Prosecution refers to the VWU's "[U]pdated report on the situation of Witnesses DAR-OTP-WWWW-0441 and DAR-OTP-WWWW-0466" filed on 8 May 2012 ¹² ("the VWU's 8 May Report").

DAR-OTP-WWWW-0466

11. The Prosecution was also able to contact W466 on 1 May 2012. In the course of the telephone conversation with him (conducted jointly with representatives of the VWU [REDACTED]), the OTP [REDACTED] inquired whether he consented to his identity being disclosed to the defence. The witness refused consent, [REDACTED].

12. [REDACTED].

13. [REDACTED].

14. As regards to an assessment of the risks associated with disclosure of this witness's identity to the defence, the Prosecution refers to the VWU's 8 May Report.

DAR-OTP-WWWW-0314 and DAR-OTP-WWWW-0433

15. As regards W314 and W433, the Prosecution attempted repeatedly to establish contact with each of them [REDACTED]. [REDACTED]¹³, [REDACTED].

¹¹ [REDACTED].

¹² ICC-02/05-03/09-332-Conf-Exp.

¹³ [REDACTED].

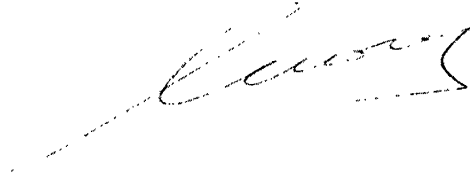
16. With respect to W314 in particular, on 1 May 2012 the OTP attempted to re-establish contact with him via [REDACTED]. On 4 April 2012, his counsel informed the OTP that his attempts to reach W314 [REDACTED] had also been unsuccessful. To date, the OTP has also received no response from W314 [REDACTED].
17. The profiles and security-related circumstances of W314 and W433 were described in detail in two previous Prosecution filings of 9 May and 9 September 2011.¹⁴ [REDACTED]. In light of the foregoing, the risk to both witnesses remains indeterminable, and it is impossible to provide them with protection if it is required.
18. The Prosecution notes that there is currently no set date for the commencement of the trial and therefore no urgency requiring immediate disclosure to the Defence. Accordingly, the Prosecution submits that their identities should remain undisclosed at the present time.
19. The Prosecution continues its efforts at contacting these witnesses and ascertaining their location, and will update the Chamber accordingly.

IV. *Ex Parte* Filing

20. The Prosecution submits this filing and its Annexes as "Confidential, Ex Parte, available to the Prosecutor and the Victims and Witnesses Unit Only" in conformity with the classification level of the Chamber's decision. Further, the information discussed herein relates to material that is currently classified as

¹⁴ICC-02/05-03/09-142-Conf-Exp-AnxA, pages 6 to 8, and ICC-02/05-03/09-212-Conf-Exp + Anxs. [REDACTED].

confidential and *ex parte*, and to witnesses whose identities have not yet been divulged to the public or the Defence and the Accused persons. The Prosecution will file a public redacted version or a public note should it be required to do so.



Luis Moreno-Ocampo
Prosecutor

Dated this 29th day of May 2012
At The Hague, The Netherlands