

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 29 May 2012

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

Public Redacted Version of "Prosecution's Provision of Updated Information on Witnesses DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306, and DAR-OTP-WWWW-0312", filed on 20 January 2012

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Mr. Karim A.A. Khan QC

Mr. Nicholas Koumjian

Legal Representatives of Victims

Ms. Hélène Cissé

Mr. Jens Dieckmann

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

Defence Support Section

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Prosecution (or "OTP") hereby informs the Trial Chamber IV ("Chamber") about the outcome of its efforts to locate and contact former Prosecution witnesses DAR-OTP-WWWW-0304 ("W304"), DAR-OTP-WWWW-0305 ("W305"), DAR-OTP-WWWW-0306 ("W306"), and DAR-OTP-WWWW-0312 ("W312") and refer them to the Victims and Witnesses' Unit (VWU) for security advice as requested by the Chamber in its order of 19 December 2011¹.

2. Despite strenuous efforts, the Prosecution has been able to contact only W312. The Prosecution continues to use its best efforts to contact the other witnesses, [REDACTED]. However, the Prosecution reminds the Chamber of the prevailing security situation in Darfur. It is possible that recent political and military developments in the region may be aggravating the existing difficulties.² Whatever the cause, by necessity the Prosecution has had to rely on telephone contacts [REDACTED]. The Prosecution will inform the Chamber of any further developments when communication can be re-established.

3. As for W312, the Prosecution contacted him on 22 December 2011, on 18 and 20 January 2012. In the conversations with him on 22 December and 18 January, he consented to the disclosure of his identity to the Defence and the Accused persons. Accordingly, the Prosecution proceeded to prepare a witness referral to the VWU in compliance with the order of the Chamber. However, the

¹ ICC-02/05-03/09-265-Conf-Exp.

² [REDACTED].

Prosecution required some further details from the witness in order to complete the referral, and thus contacted the witness again on 20 January 2012. During this more recent discussion with him, he withdrew his earlier consent for his identity to be disclosed, [REDACTED]. The Prosecution sent a referral for this witness to the VWU on 20 January 2012.

II. Background

4. On 19 December 2011, the Trial Chamber IV ("Chamber") concluded that "the defence is, in principle, entitled to full disclosure of the material"³ pertaining to four former Prosecution witnesses - W304, W305, W306 and W312 - and that "the objective should be full disclosure of the relevant material at the earliest possible date"⁴. The Chamber however acknowledged that "real safety and security concerns exist for the four individuals" and authorized the Prosecution to delay the disclosure of the witnesses' identities until 20 January 2012 to allow it "to employ its best efforts to (i) locate Witnesses 304, 305, 306 and 312 and establish contact with a view to obtaining their consent to the disclosure of their identities to the defence; (ii) upon locating the said individuals, immediately refer them to the VWU for an assessment of adequate protective measures to be put in place".⁵
5. By the same decision, the Prosecution was ordered to inform the Chamber about the outcomes of its efforts by 20 January 2012 and to immediately disclose to the Defence the four witnesses' evidence in redacted form.⁶

³ *Ibid.*, paragraph 25.

⁴ *Ibid.*, paragraph 26.

⁵ *Ibid.* and paragraph 49(e).

⁶ *Ibid.*, paragraph 49(f) and (g) respectively.

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

DAR-OTP-WWWW-0312

6. The Prosecution was able to contact W312. On 22 December 2011, in a brief conversation the Prosecution was only able to establish [REDACTED]. Following this preliminary contact, the witness remained unreachable until 18 January 2012 [REDACTED]. He also consented to the disclosure of his identity to the Defence and the Accused persons. [REDACTED].
7. On 20 January 2012, the Prosecution again spoke to the witness, to collect additional details about his current circumstances [REDACTED] – information necessary for the completion of his referral to the VWU.
8. In the course of this discussion, the witness withdrew his prior consent to disclosure of his identity to the Defence and Accused. [REDACTED].
9. The Prosecution sent a referral for this witness to the VWU on 20 January 2012.

DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306

10. As regards W304, W305, and W306, the Prosecution has attempted repeatedly to establish contact with these witnesses [REDACTED] prior to and after the Chamber's decision,⁷ but to no avail. [REDACTED].⁸ [REDACTED].⁹

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

11. [REDACTED].

12. The Prosecution continues to explore other means of contacting these witnesses and ascertaining their location, and will update the Chamber accordingly. [REDACTED].

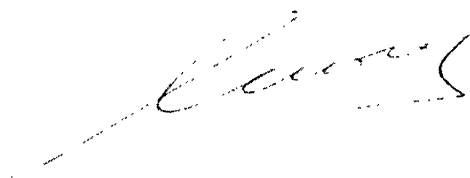
13. The profiles and security-related circumstances of Witnesses 304, W305, and W306's were described in detail in two previous Prosecution filings dated 9 May and 21 July 2011.¹⁰ In light of the inability to contact the witnesses and because their current circumstances cannot be determined, the Prosecution maintains that it continues to be impossible to assess the risk and take adequate protective measures if their identities and entire statements are disclosed at this time. Since there is currently no date set for the commencement of trial, the Prosecution submits that there is no urgency requiring immediate disclosure and, given both the unknowable risks and the impossibility of protection, their identities should remain undisclosed for the present.

IV. *Ex Parte* Filing

14. The Prosecution submits this filing "Confidential, Ex Parte, available to the Prosecutor and the Victims and Witnesses Unit Only" in conformity with the classification level of the Trial Chamber's decision. All the information contained in the present filing relate to material that is currently classified as confidential and *ex parte*, and to witnesses whose identities have not yet been divulged to the

¹⁰ ICC-02/05-03/09-142-Conf-Exp-AnxA, pages 1 to 3 respectively, and ICC-02/05-03/09-183-Conf-Exp + Anxs.

public or the Defence and the Accused persons. The Prosecution will file a public redacted version or a public note in the near future.



Luis Moreno-Ocampo
Prosecutor

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