

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 January 2013

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, 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

Public Redacted Version of the "Submission of the Registrar pursuant to 24 *bis* of the Regulation of the Court concerning the possible date for the commencement of the Trial" (ICC-02/05-03/09-434-Conf-Exp) filed on 20 December 2012

Source: Registrar

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. Adebowale Omofade

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

Silvana Arbia

Counsel Support Section

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the “*Defence Request for Temporary Stay of Proceedings*” dated 6 January 2012;¹

NOTING the confidential status conference with both parties² and an urgent *ex parte* status conference with the Defence and the Registry³ convened on 19 June 2012;

NOTING the “*Decision on the defence request for a temporary stay of proceedings*” issued by Trial Chamber IV on 26 October 2012;⁴

NOTING the “*Soumission des représentants légaux communs proposant une date pour le début du procès*” dated 19 November 2012;⁵

NOTING the “*Prosecution’s Submissions on the Possible Date for Commencement of the Trial*” dated 19 November 2012;⁶

NOTING the “*Defence Submissions on the Possible Date for the Commencement of the Trial*” dated 19 November 2012 (the “Defence Submission”);⁷

NOTING the “*Order scheduling a status conference*” dated 14 December 2012;⁸

¹ ICC-02/05-03/09-274.

² ICC-02/05-03/09-T-15-CONF-ENG ET.

³ ICC-02/05-03/09-T-16-CONF-EXP-ENG ET.

⁴ ICC-02/05-03/09-410.

⁵ ICC-02/05-03/09-418.

⁶ ICC-02/05-03/09-421-Conf.

⁷ ICC-02/05-03/09-422-Conf-Exp.

⁸ ICC-02/05-03/09-429.

NOTING articles 58(7), 63, 67, 68, 87 and 93 of the Rome Statute; rules 176 and 185 of the Rules of the Procedure and Evidence; regulations 24 *bis*, 40 of the Regulations of the Court, and 92 and 96 of the Regulations of the Registry;

CONSIDERING that, the Chamber rejected the Defence request for temporary stay of proceedings and invites the parties and the participants to file written submissions on the possible date for the commencement of the trial by 19 November 2012;⁹

CONSIDERING that, upon a request of the Defence to discuss the logistics regarding [REDACTED] a meeting took place on 13 November 2012 between the Registry and the Defence where the [REDACTED] before the Court was also discussed (the "Defence - Registry Meeting");

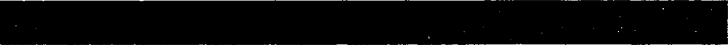
CONSIDERING that the parties and participants have filed their written submissions on the possible date for the commencement of the trial on 19 November 2012;

CONSIDERING the information provided by the Defence during the meeting on 13 November 2012 and detailed in the submissions of both parties, the Registrar considers it necessary for the proper discharge of her functions pursuant to regulation 24 *bis* of the Regulations of the Court to provide the Chamber with its observations in relation to the matters which will have an impact on the commencement of the trial for the Chamber's consideration;

⁹ ICC-02/05-03/09-410, pages 71 and 72.

SUBMITS the following observations:

1. The Registry would like to respectfully draw the Chamber's attention to the following three matters which will have an impact on the commencement of the trial:

A. 

A.1 

2. 

3. 

4. 

5. 

¹ ICC-02/05-03/09-422-Conf-Exp para 42.

[REDACTED]

6.

[REDACTED]

A.2

[REDACTED]

7.

[REDACTED]

8.

[REDACTED]

[REDACTED]

A.3

[REDACTED]

9.

[REDACTED]

10.

[REDACTED]

11.

[REDACTED]

[REDACTED]

[REDACTED]

A.4

[REDACTED]

12.

[REDACTED]

13.

[REDACTED]

14.

[REDACTED]

A.5

[REDACTED]

15.

[REDACTED]

B. The appearance of the Defence Witnesses before the Court

16. In accordance with the Defence Submission, the overwhelming majority of potential Defence witnesses reside in Sudan, where cooperating with the Court is a criminal offence and witnesses and their families are at risk of being detained, tortured, prosecuted, or killed.¹² Subject to the assessment of the security needs of each witness, security arrangements may be required by a number of these witnesses, including permanent relocation (ICCPP). Therefore, the Registry provides hereinafter the timeline for the relocation of witnesses (no more than 15). Relocation of the witnesses will follow the following procedure:

B.1 Interview with the witnesses and the assessment

17. After the referrals, the Victims and Witnesses Unit (the "VWU") will organise interviews with the witnesses referred to the VWU in order to assess their needs for security arrangements, including permanent relocation (ICCPP). The Registry confirms that the VWU requires, for each set of five witnesses, at least two months to arrange for and to carry out the required in-person assessment of these witnesses (in total six months for 15 witnesses).

18. However, since the VWU cannot operate in Sudan, these witnesses will be required to meet with the VWU Protection Officers at a location outside Sudan. Once assessed by the VWU that one or more of these witnesses may be in danger if returning to Sudan after the interview, the VWU would arrange for such witness temporary relocation. To this end, the Registry will need to identify a suitable State for this purpose and to reach an agreement with such State for the relocation. This process may take minimum four months. The best case scenario would be that this State becomes the State where the witness will be permanently relocated and thus no addition time will be required for further permanent relocation.

¹² ICC-02/05-03/09-422-Conf-Exp, para. 33.

B.2 Identification of a State for relocation and reaching an agreement with such State

19. After interviewing the witness, and if also assessed by the VWU that permanent relocation (ICCPP) is the only security arrangement which can address his/her security need, the VWU will identify a suitable State for this purpose and reach an agreement with such State for the relocation. This process may take minimum six months. During this period, if assessed by the VWU that this witness can return to Sudan awaiting final decision on his/her permanent relocation, he or she will be advised to do so.

B.3 Implementation of the relocation

20. Once the agreement with the State identified is secured, the relocation of the witness may take two to three weeks if no major obstacles occur.

B.4 The referral of witnesses

21. [REDACTED]
[REDACTED]
[REDACTED] The Defence is also concerned that if the resolution of the security and/or logistical issues relating to the Defence witnesses is delayed until the start of the Defence case, this could significantly delay the start of the Defence's presentation of evidence.¹⁴

22. The Registry understands that the Defence will endeavour to refer possible witnesses to the VWU as soon as they have provisionally selected them to testify based on the information presently available and the last referral will be made to the VWU only in April 2014¹⁵. Pursuant to the time line detailed above, the relocation of the last witnesses (no more than five) may take another eight to ten months if no major obstacles occur.

¹³ ICC-02/05-03/09-422-Conf-Exp, para. 38.

¹⁴ ICC-02/05-03/09-422-Conf-Exp, para. 40.

¹⁵ ICC-02/05-03/09-422-Conf-Exp, para. 37.

23. The Registry however would like to emphasise that the relocation of the witnesses who are not scheduled to testify at the beginning of the Defence case can take place after the trial commences. Therefore, unless the VWU security assessment indicates otherwise, the Registry does not consider that the trial should start only when all Defence witnesses are relocated and thus available for appearing before the Court.

24. The Registry would also like to stress that the timeline detailed above is provided based on past experience of the Registry when relocating the witnesses in other cases when every step is taken as scheduled. Therefore, this timeline should be considered as the best case scenario. [REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

[REDACTED] The time required for securing the cooperation of the competent authorities may vary from country to country. Therefore, it is crucial for the Registry to be informed of any security concerns that the witnesses may have for assessing to which country the witnesses may travel. For the witnesses who are not in possession of proper documentations for travel, the Registry will also explore solutions to facilitate their appearing before the Court.

C. Preparation for Zaghawa Interpretation

26. As explained in the Prosecution and Registry's joint monthly reports on translation and interpretation issues,¹⁶ for a trial to be supported with

¹⁶ The First report (ICC-02/05-03/09-236), the Second Report (ICC-02/05-03/09-257), the Third Report (ICC-02/05-03/09-267), the Fourth Report (ICC-02/05-03/09-282), the Fifth Report (ICC-02/05-03/09-299),

provision of interpretation from and into Zaghawa, the staffing strength must be four interpreters.

27. At present the Registry has trained only two paraprofessional interpreters which represents half a booth. In the absence of trial date, they were released in May 2012, having successfully passed the training and accreditation. The Registry has one other candidate, partly trained, who would require short training. However he would only be available to start being trained in the spring of 2014 and thus he can not be considered if the trial is to start before mid 2014.
28. In order to form a booth of Zaghawa interpreters, the Registry would need to train an additional pair of paraprofessional interpreters which would require at least another six to eight months of training. The services of the previous two successful trainees would have to be secured by giving them contracts six months before the trial.
29. An additional language assistant for Zaghawa is also required. Ideally, a Zaghawa language expert should be identified and his/her services be secured. However this has not been possible in the past two years despite serious and dedicated efforts.
30. Other languages such as Fur would have to be considered once the Registry is informed that such languages are spoken by the witnesses. For example, the provision of interpretation between Fur and Arabic as well as between Arabic and Fur would have to take place in consecutive fashion instead of simultaneous one. Such practice could therefore extend the time for the testimony of any witness speaking Fur by 30%.
31. In conclusion, to be ready for the trial, the Registry needs 1) to train two other paraprofessionals; 2) to bring back the two successful trainees and retain them

Sixth Report (ICC-02/05-03/09-311), the Seventh Report (ICC-02/05-03/09-324), the Eighth Report (ICC-02/05-03/09-335) and the Ninth Report (ICC-02/05-03/09-352).

at the Court; and 3) to recruit one language assistant in Zaghawa. As stated in the Prosecution and Registry's joint monthly reports, the main challenge is to identify suitable candidates, who will pass the security vetting, among an extremely limited pool of candidates. Therefore, the Registry estimates that it would only be able to provide simultaneous Zaghawa interpretation by September 2013 if the trial date is set as soon as possible so necessary funds will be released in time and the Registry is thereby enabled to take immediate actions for the abovementioned arrangements.

Conclusion

32.

[REDACTED]

33. Given these criteria, it is extremely difficult for the Registry to provide a time line [REDACTED]

[REDACTED]

34.

[REDACTED]

[REDACTED]

[REDACTED] The Registry will update the Chamber in a timely fashion when any significant progress is made.

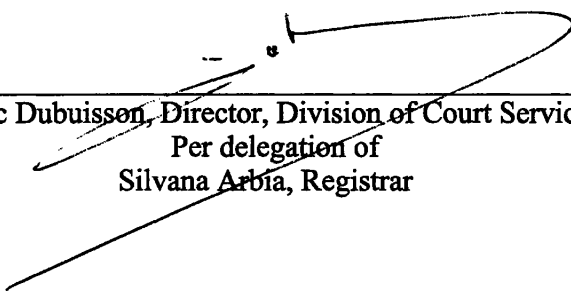
SUBMITS the present submission confidential, *ex parte* only available to the Registry and the Defence to be in line with the classification of the original version of the Defence Submission as the Registry has referred to certain confidential information that is contained in the original version of the Defence Submission. The annex is filed

ex parte Registry only as it contains [REDACTED]

[REDACTED] The Registry stands ready to prepare a public redacted version should the Chamber consider it necessary. It is to be noted that the reclassification of the level of confidentiality of the annex would require [REDACTED]

ANNEXES:

RESPECTFULLY SUBMITTED.



Marc Dubuisson, Director, Division of Court Services
Per delegation of
Silvana Arbia, Registrar

Dated this 25 January 2013
At The Hague, the Netherlands