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TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

**Public Redacted Version of “Prosecution’s Provision of Information on
Cooperation Issues” filed on 19 November 2012**

Sources: 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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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I. Introduction

1. The Prosecution has continued with its efforts to obtain materials from certain organisations that may be relevant to the present case. Additionally, and although not required to do so by the Rome Statute ("Statute"), the Prosecution in this case has undertaken to obtain some information from external actors in order to assist the Defence. The Prosecution informed the Chamber of these efforts [REDACTED]¹ [REDACTED].² In this filing, the Prosecution provides a further update on its efforts.

II. Background and Prosecution's Submissions

2. [REDACTED] the Prosecution informed the Chamber that it continues to seek the cooperation of the United Nations ("UN"), [REDACTED]³. The Prosecution hereby updates the Chamber on the current status of three cooperation requests which remain ongoing.

Cooperation with the United Nations and [REDACTED]

(i) [REDACTED] report [REDACTED]

3. The OTP has continued its efforts to seek the assistance of [REDACTED] and [REDACTED] in identifying and transmitting any [REDACTED] reports made in relation, or of relevance, to the attack on MGS Haskanita on 29 September 2007. As is mentioned in the Prosecution's Update, the OTP made an initial request to [REDACTED]. The [REDACTED] responded by requesting that the OTP direct its request to [REDACTED].

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

4. [REDACTED] the OTP sent a further request to [REDACTED] on learning of the possible existence of [REDACTED] reports [REDACTED] to the attack on the MGS Haskanita on 29 September 2007.⁴ The Prosecution sought confirmation as to the existence of these reports and, if so, for their disclosure. In its response dated [REDACTED] confirmed that it has identified a report from [REDACTED] which may be relevant. As the Chamber is aware, the transmission of the report has been delayed [REDACTED].⁵
5. Since the last status conference the OTP has been able to pursue direct contact [REDACTED]. [REDACTED] the OTP was informed by [REDACTED] approved the disclosure of the report and that a draft letter responding to the [REDACTED] request for the report to be disclosed had been prepared for signature. As soon as the report is received, the OTP will examine it and, if it is disclosable, will disclose it to the Defence.
6. In the context of its consultations with [REDACTED] on the above-mentioned [REDACTED] report, the OTP took the opportunity to stress the need for swift execution also of other pending requests for the disclosure of [REDACTED] documents [REDACTED].

(ii) Information and documents underlying [REDACTED] report

7. As the Chamber is aware, [REDACTED] the OTP made a further request to [REDACTED] for access to certain materials [REDACTED].⁶ In its response [REDACTED] noted that the documents collected by [REDACTED] which

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

may be of relevance did not originate from [REDACTED] but belong either to [REDACTED] or to [REDACTED]. Accordingly, the UN proposed that [REDACTED] would seek the permission of [REDACTED] units and would direct a similar request to [REDACTED] in relation to documents originating from [REDACTED] or which were produced [REDACTED].⁷

8. On 1 October 2012, the UN responded to the letter sent [REDACTED] by the OTP.⁸ The UN informed the Prosecution that it had identified two potentially relevant reports originating from [REDACTED] and two documents originating from various [REDACTED]. The letter notes that the originators of the two [REDACTED] documents did not consent to disclosure of them to the ICC due to their confidential nature. As regards the two reports originating from [REDACTED] repeatedly followed up with [REDACTED], but received no response from [REDACTED]. The UN therefore advises the Prosecution to contact [REDACTED] directly concerning the two reports.
9. The OTP has since followed-up with the OLA on the matter, and the OLA has agreed to renew its request to the relevant information providers identified in their response to enable transmission by the relevant [REDACTED] of the documents concerned. The OLA has also agreed to explore, to the extent necessary, whether disclosure could be facilitated by consideration and/or the proposal of relevant protective measures.

Cooperation with the [REDACTED]

⁷ [REDACTED].

⁸ [REDACTED].

10. As the Chamber is aware, as early as 2008, the Prosecution made a number of requests for the assistance of [REDACTED] regarding access to information and documents that may be relevant to the attack on MGS Haskanita on 29 September 2007.
11. [REDACTED] the OTP made a further assistance request to [REDACTED] for disclosure of all [REDACTED] reports that relate to the attack on MGS Haskanita. Specifically, the Prosecution requested the [REDACTED] to confirm the alleged existence and disclosure of the following [REDACTED] reports:
 - i). [REDACTED]
 - ii). [REDACTED]⁹
12. [REDACTED] transmitted to the Prosecution on behalf of [REDACTED] a copy of the [REDACTED] Report by [REDACTED]¹⁰ The Prosecution disclosed it to the Defence [REDACTED].¹¹
13. [REDACTED] the Prosecutor wrote back to [REDACTED] seeking further clarification as to the possible existence of possibly relevant [REDACTED]. Accordingly, the Prosecutor requested [REDACTED] to liaise with [REDACTED] who may be in a position to shed more light on the issue and to locate relevant [REDACTED]. The Prosecution will immediately update the Chamber on any further developments in this regard.

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

III. Request for receipt of filing as Confidential *Ex Parte*

14. The Prosecution submits that the classification of the present filing and its annexes as “Confidential – *Ex Parte* – Prosecution Only” is necessary as they relate to confidential communications with information providers as well as the identity of those providers. The Prosecution will file a Public Redacted Version of this filing.



Fatou Bensouda
Prosecutor

Dated this 30th day of August 2013

At The Hague, The Netherlands