

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER IV

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

SITUATION IN DARFUR, THE SUDAN

IN THE CASE OF THE PROSECUTOR

V.

ABDALLAH BANDA ABAKAER NOURAIN

Public Redacted Version
with Confidential *ex parte* Prosecution only Annexes “A”, “B” and “C”
of
“Prosecution’s Submission of Information
pursuant to the Trial Chamber’s order of 25 September 2013” filed on 21 October 2013

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. On 25 September Trial Chamber IV (“Chamber”) directed¹ the Prosecution to, *inter alia*, file with the Chamber no later than 7 October 2013, a table setting out:

- I. the documents and other objects in the *Al Bashir* Material² (other than documents for which reclassification will be sought³) which contain information sought by the Defence, identifying such information by means of verbatim quotations, summaries or appropriate accompanying explanations;
- II. whether the Defence has received relevant documents containing the information sought and if so a) identify the documents; and b) identify the relevant information by way of verbatim quotations, summaries or appropriate accompanying explanations;
- III. the level of classification of each document; and
- IV. whether protective measures shall be applied to any of these documents before effecting disclosure.⁴

2. The Prosecution hereby submits the information requested above.

3. The Prosecution reiterates that the information requested by the Defence is not relevant to the three contested issues in this case and is not disclosable pursuant to Article 67(2) or Rule 77.

¹ ICC-02/05-03/09-507.

² As defined in ICC-02/05-03/09-507, footnote 2.

³ See ICC-02/05-03/09-507, para. 2(a).

⁴ ICC-02/05-03/09-507, para. 2(b).

II. Submission as Confidential, *ex parte*

4. The Prosecution submits this filing and its annexes as “Confidential, *Ex Parte*, available to the Prosecution Only” pursuant to Regulation 23*bis* because they relate to material that is currently classified as confidential and *ex parte* and depict sensitive information relating to witnesses. A public redacted version will be filed as soon as possible.

III. Procedural background

5. On 14 July 2008, the Office of the Prosecutor (“OTP” or “Prosecution”) filed an application for a warrant of arrest (“Application”) for Omar Hassan Ahmad AL BASHIR (“Al Bashir”).⁵ The Application was accompanied by certain evidentiary material which was contained in numerous annexes.
6. On 15 October 2008, the Pre-Trial Chamber I (“PTC I”) issued the *Decision Requesting Additional Supporting Materials in relation to the Prosecution’s Request for a Warrant of Arrest against Omar Hassan Al Bashir* (“Decision requesting Additional Material”)⁶ in which it requested the Prosecution to submit additional supporting materials in relation to a number of issues.
7. On 17 November 2008, the Prosecution filed its *Prosecution’s Submission of Further Information in Compliance with “Decision Requesting Additional Supporting Materials in relation to the Prosecution’s Request for a Warrant of Arrest against Omar Hassan Al*

⁵ ICC-02/05-157.

⁶ ICC-02/05-160.

Bashir" dated 15 October.⁷ The submission was, *inter alia*, accompanied by an additional 101 annexes comprising of evidentiary material in support of the Application.

8. On 25 September 2013 the Trial Chamber issued its "*Order to the prosecution following the Appeals Chamber's Judgment of 28 August 2013 against Trial Chamber IV's 'Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor'*"⁸ ("Order").
9. In light of the labor- intensive review and data-entry processes required to comply with the Chamber's directives, the Prosecution requested an extension of the time limit for compliance until 21 October 2013, pursuant to Regulation 35(2) of the Regulations of the Court.⁹ The Chamber granted the requested extension.¹⁰

IV. Submissions

10. In order to implement the Order of the Chamber, the Prosecution has prepared two tables, attached to this filing as Confidential *Ex Parte*, Annexes A and B.

Description of Annex A

11. The table in Annex A sets out the documents and other objects in the *Al Bashir* Material¹¹ (other than information that can be re-classified¹² or has already been

⁷ ICC-02/05-161.

⁸ ICC-02/05-03/09-507.

⁹ ICC-02/05-03/09-511

¹⁰ Email received on 4 October 2013 at 12:19 from Ms. Marie Mathiaud.

¹¹ See ICC-02/05-03/09-507, footnote 2.

disclosed¹³) which contain information sought by the Defence, identifying such information by means of verbatim quotations, summaries or appropriate accompanying explanations.

12. Open source / public items: Annex A includes, *inter alia*, 78 open-source / public items that were cited in support of the Application but not submitted to the Pre-Trial Chamber in their entirety. These items were submitted in the form of excerpts and hence cannot be “re-classified”. However, the items can be disclosed to the Defence in the *Banda* case without the need for imposing any additional protective measures. The Prosecution reiterates, however, that these items are not relevant to the three contested issues in this case and are not disclosable pursuant to Article 67(2) or Rule 77.

Description of Annex B

13. The table in Annex B sets out the documents and other material the Defence has already received, which contain the information sought by the Defence. The table identifies the documents and the relevant information by way of verbatim quotations, summaries or appropriate accompanying explanations.¹⁴

Security Issues Relevant to Witnesses and Protective Measures

¹² Regarding the re-classification of documents, see ICC-02/05-03/09-507, para. 2 (a). The Prosecution will file an application before Pre-Trial Chamber I for the re-classification of the relevant documents, and inform the Chamber of the outcome of this application.

¹³ 32 documents that fall within the scope of the *Al Bashir* Material have already been disclosed in the current case. Hence they do not fall within the scope of the Defence Request and have been excluded from the table in Annex A.

¹⁴ See ICC-02/05-03/09-507, para.2 (b) ii.

14. The Prosecution identified statements/transcripts of 38 witnesses that were cited in the Application or subsequently provided to the Chamber in support of the Application, which do not fall into the category of “victims”¹⁵ and which contain information sought by the Defence. These witnesses also feature in Annex A.

15. The Prosecution reviewed the individual risk assessments for each witness to determine whether disclosure may take place without implementation of additional protective measures. An individual assessment is provided for each witness, in Annex C.

16. The 38 witnesses are assessed in the following categories.

a. [REDACTED]¹⁶

17. [REDACTED].

b. [REDACTED]¹⁷

18. [REDACTED].

c. [REDACTED]¹⁸

19. [REDACTED].

¹⁵ The Prosecution has identified 40 such statements which are considered to fall outside the scope of the defence request. See ICC-02/05-03/09-235, footnote 3, for the Defence’s definition of “Victim”.

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

d. [REDACTED].¹⁹

20. [REDACTED].

e. [REDACTED].²⁰

21. [REDACTED].

22. The assessments for the general categories of witnesses for whom non-disclosure is recommended (categories a, b and d) are based on the following foreseeable risks:

23. [REDACTED]²¹ [REDACTED].²² [REDACTED].

24. [REDACTED]. [REDACTED].

25. [REDACTED].²³ [REDACTED].²⁴ [REDACTED].²⁵

26. [REDACTED].²⁶ [REDACTED].²⁷ [REDACTED].²⁸.

27. [REDACTED]. [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

28. [REDACTED]. [REDACTED].

29. [REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].

Individual Security Assessments of Witnesses.

30. The Prosecution provides an individual assessment for each witness in Annex C.³¹

This assessment sets out:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];

31. The Prosecution has also initiated the process of contacting all of the 38 witnesses cited in Annex A, and will update the Chamber should the Prosecution obtain any new information as a result of the renewed contact.

²⁹[REDACTED].

³⁰[REDACTED].

³¹[REDACTED].

V. Conclusion

32. The Prosecution has endeavored to comply with the Chamber's directives to the best of its abilities and is providing the requested information. The Prosecution reiterates its position that the information requested by the Defence is not relevant to the three contested issues in this case and is not disclosable pursuant to Article 67(2) or Rule 77.



Fatou Bensouda
Prosecutor

Dated this 28th day of October 2013

At The Hague, the Netherlands