

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/05-03/09
Date: 24 January 2014

TRIAL CHAMBER IV

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

SITUATION IN DARFUR, THE SUDAN

IN THE CASE OF THE PROSECUTOR

V.

ABDALLAH BANDA ABAKAER NOURAIN

Public Document
with confidential *Ex Parte* only available to OTP Annex A

**Prosecution's Notification of Disclosure to the Defence of Incriminating
Evidence**

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

Ms Fatou Bensouda, Prosecutor
Mr. James Stewart, Deputy Prosecutor
Mr. Julian Nicholls, Senior Trial Lawyer

Counsel for the Defence

Mr. Karim A.A. Khan QC

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

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Court Interpretation and Translation
Section**

Introduction

1. The Office of the Prosecutor (“the Prosecution”) hereby notifies Trial Chamber IV (“the Chamber”) of the following disclosures to the Defence of Incriminating Material (“INCRIM”):

16 November 2012

2. On 16 November 2012 the Prosecution disclosed a report¹ in redacted form.²

25 January 2013

3. On 25 January 2013 the Prosecution disclosed³ the public redacted versions of four transcripts containing the testimony of witness P-0445⁴ given in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*.⁵

20 February 2013

4. On 20 February 2013 the Prosecution disclosed the audio translations into Zaghawa of the first interview transcript of Prosecution witness DAR-

¹ DAR-OTP-0185-0003.

² Trial INCRIM package 37.

³ Trial INCRIM package 38.

⁴ Witness P-0445 is witness P-0219 in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*.

⁵ ICC-02/05-03/09-T-17-ENG, page 44 lines 14-25, page 45 lines 1-8.

OTP-P-0442.⁶ On 27 February 2013 the audio translations into Zaghawa of the second interview transcript⁷ of witness P-0442 were disclosed in redacted form.⁸

19 March 2013

5. On 19 March 2013 the Prosecution disclosed the audio translation into Zaghawa of the transcript of interview of witness P-0307.⁹ On 9 April 2013 the Prosecution disclosed the audio translations into Zaghawa of in-court testimonies of witnesses P-0416, P-0445 and P-0446 given during the confirmation hearing in the case *The Prosecutor v. Abu Garda*.¹⁰

2 May 2013

6. On 2 May 2013¹¹ the Prosecution disclosed new evidence and re-disclosed certain items of evidence with the redactions lifted as follows:

a) New evidence

- The remaining 27 photographs provided by witness P-0315;
- Six victims' applications of the dual status victim-witnesses;

⁶ The audio translations of P-0442's first interview were disclosed through Trial INCRIM package 39.

⁷ Trial INCRIM package 40.

⁸ Trial INCRIM packages 39 and 40, respectively.

⁹ Trial INCRIM package 41 consists of 7 items.

¹⁰ Trial INCRIM package 42 consists of 4 items.

¹¹ On 6 March 2013 the Chamber instructed the Prosecution to disclose its trial evidence pursuant to Rule 76 of the Rules, together with its final list of witnesses and evidence, as well as all Article 67(2) and Rule 77 material, no later than 16.00 on 2 May 2013. See ICC-02/05-03/09-455.

- The transcript of a video provided by P-0315;¹²
- An open source article in Arabic together with its English translation;
- The public transcript of Mr. Abu Garda's unsworn statement (ICC-02/05-02/09-T-12-Red-Eng);¹³
- The audio translations into Zaghawa of the six victims' applications of the dual status witnesses and various annexes to witness statements.¹⁴

b) Re-disclosure of previously disclosed incriminating evidence with certain redactions lifted

The lifted redactions related to:

- The names and other identifying information of certain third parties;
- The identity of several PEXO/RULE 77 witnesses (namely P-0304, P-0305, P-0306 and P-0312);
- Witness related information (such as place of residence);
- Redactions to the name and signature of a former OTP investigator that were previously authorized pursuant to Rule 81(2).¹⁵

c) Disclosure of the complete Zaghawa audio translation of the Document Containing the Charges

¹² Original ERN of the video DAR-OTP-0164-0696.

¹³ Disclosed in Trial INCRIM package 43 that consists of 37 items.

¹⁴ Disclosed in Trial INCRIM package 45 that consists of 10 items.

¹⁵ Disclosed in Trial INCRIM package 44 that consists of 31 items.

7. On 2 May 2013, the Prosecution also disclosed the audio translation into Zaghawa of the Document Containing the Charges.

21 May, 30 May and 7 June 2013

8. On 21 May 2013 the Prosecution disclosed the remaining Zaghawa audio translations of 16 documents with the redactions lifted,¹⁶ as well as the audio translations into Zaghawa of eight additional documents (annexes and/or material related to witness statements).¹⁷
9. On 30 May 2013 the Prosecution disclosed two Zaghawa audio translations of Annexes A and C to the second statement of witness P-0355.¹⁸ On 7 June 2013 the Zaghawa audio translations of three documents were re-disclosed with certain redactions lifted.¹⁹
10. These disclosures took place after 2 May 2013 due to delays in translation and in the process of lifting of redactions in the previously disclosed audio translations.

10 December 2013

¹⁶ Trial INCRIM package 47.

¹⁷ Trial INCRIM package 46.

¹⁸ Trial INCRIM package 48 consists of two items: DAR-OTP-0186-0297 and DAR-OTP-0186-0298 -Zaghawa audio translation of DAR-OTP-0174-0318 and DAR-OTP-0174-0324.

¹⁹ DAR-OTP-0182-0223 -Zaghawa translation of DAR-OTP-0165-0489, DAR-OTP-0184-0009 -Zaghawa audio translation of DAR-OTP-0169-0808 and DAR-OTP-0184-0239- Zaghawa audio translation of DAR-OTP-0175-0002, disclosed through Trial INCRIM package 49.

11. On 10 December 2013 the Prosecution disclosed a witness statement provided by Witness P-0355 and accompanying documents provided by the same witness.²⁰ This material was collected after 2 May 2013 and disclosed to the Defence as soon as practicable, in redacted form.

12. A chart outlining the information redacted for each category authorized by the Chamber in the “[...] *Decision establishing simplified proceedings related to future applications for non-disclosure*”²¹ is appended to this filing as Annex “A”.²² The Prosecution will apply separately for authorisation of redactions to information that does not fall within the three categories identified by the above decision.

21 January 2014

13. On 21 January 2014 the Prosecution disclosed the Zaghawa audio translation of the third statement of witness P-0355 (disclosed in Trial INCRIM package 50 on 10 December 2013).²³

²⁰ Trial INCRIM package 50, consisting of 17 items. The disclosure to the Defence took place on 10 December 2013 through INCRIM package 50. Due to an error, this package has been incorrectly titled in eCourt as “Trial INCRIM package 50 06 December 2013”. The date of INCRIM package 50 in eCourt should be “10 December.”

²¹ ICC-02/05-03/09-524.

²² The Defence was provided with a chart outlining all redactions applied to the evidence.

²³ Trial INCRIM package 51 consists of 1 item – ERN DAR-OTP-0188-1051, Zaghawa audio translation of witness statement with ERN DAR-OTP-0188-0526.

Request for Confidentiality

14. The Prosecution requests that Annex A be received as “Confidential *Ex Parte* – only available to OTP” since it contains information that is redacted in the evidence disclosed to the Defence.



Fatou Bensouda
Prosecutor

Dated this 24th day of January 2014

At The Hague, The Netherlands