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

Date: 23 May 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

Prosecution application for leave to reply to Defence filing ICC-02/05-03/09-581

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

**The Office of Public Counsel for the
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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pursuant to Regulation 24(5), the Prosecution seeks leave to reply to two arguments advanced in the “Defence response to ‘Prosecution request for partial reconsideration of decision ICC-02/05-03/09-227’”:¹
 - The assertion that the impact of the alleged error in decision ICC-02/05-03/09-227 does not extend beyond “the circumstances in which AMIS personnel were killed or wounded”;² and
 - The assertion that the “the circumstances in which AMIS personnel were killed or wounded” has “no bearing on the three contested issues” and that the Prosecution is therefore “not . . . entitled to lead and rely on at trial evidence concerning the killing or injuring of AMIS personnel during the attack”.³
2. Good cause exists for a reply on these points because of the “importance and potential effect of the issues”.⁴ The Prosecution considers that the Chamber “may benefit from receiving further observations”, as detailed below.⁵ If leave to reply is granted, the Prosecution will explain:
3. *First*, that the impact of the alleged error in decision ICC-02/05-03/09-227 is unlikely to be limited to “the circumstances in which AMIS personnel were killed or wounded”, as the Defence suggests.⁶ The error has the potential to affect multiple allegations the Pre-Trial Chamber chose not to address in the confirmation decision, including, for example: (i) the Accused’s

¹ ICC-02/05-03/09-581.

² ICC-02/05-03/09-581, paras 6, 10 and 15.

³ ICC-02/05-03/09-581, paras 6 and 15.

⁴ See, e.g., ICC-01/05-01/08-294, para 3 (granting leave to reply where the movant demonstrated “good cause”); ICC-01/04-01/10-61, page 4 (granting leave to reply in light of the “importance and potential effect of the issues” on which a reply was sought).

⁵ ICC-01/09-02/11-530, para 5 (granting leave to reply where the Chamber concluded that it “may benefit from receiving further observations”).

⁶ ICC-02/05-03/09-581, paras 6, 10 and 15.

communication with Mr Abu Garda during the attack on MGS Haskanita; (ii) the collaboration of local staff with the rebels; and (iii) the rebels' desire to punish AMIS for its inability to prevent attacks by the Government of Sudan. Each of these factors goes to the unlawful nature of the attack and the Accused's knowledge that it was unlawful. If leave to reply is granted, the Prosecution will provide the Chamber with a list of the allegations that may be affected by the alleged error. This will illustrate the allegations the Chamber may be prevented from relying upon if the error is left uncorrected.

4. *Second*, the "the circumstances in which AMIS personnel were killed or wounded" bears directly on the first and second contested issues: whether the attack was unlawful and whether the Accused knew it was unlawful. If leave to reply is granted, the Prosecution will explain that the manner in which the rebels carried out the attack, including the looting, the shooting of unarmed personnel and the rebels' failure to look for Captain Bashir once inside the camp demonstrate that the attack was an unlawful plundering exercise, rather than an attempt to remove Bashir (who had already been removed by AMIS), as the Defence asserts. The Prosecution will explain that one of the ways it will prove the first and second contested issues at trial is by demonstrating that the manner in which the attack was executed is consistent with criminal intent and inconsistent with a belief that the attack was lawful. Such evidence is therefore relevant to the contested issues and may be presented at trial.⁷

Relief Requested

5. In light of the foregoing, the Prosecution respectfully requests the Chamber to: (i) grant leave to reply on the issues identified in paragraph 1; and (ii) rule

⁷ ICC-02/05-03/09-227, para 46.

that the time limit specified in Regulation 34(c) shall be extended so that the reply is to be filed within 10 days of notification of the decision to grant leave.



Fatou Bensouda
Prosecutor

Dated this 23rd day of May 2014

At The Hague, The Netherlands