

**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 Document

Prosecution's Response to the *"Requête des représentants légaux communs sollicitant l'accès à une version confidentielle non expurgée de la soumission du Procureur ICC-02/05-03/09-576"*

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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Introduction

1. The Prosecution hereby responds to the *“Requête des représentants légaux communs sollicitant l'accès à une version confidentielle non expurgée de la soumission du Procureur ICC-02/05-03/09-576”*¹ (“Request”) submitted by the Common Legal Representatives (“CLRs”). In the Request, the CLRs request an un-redacted or less redacted version of Prosecution submission ICC-02/05-03/09-576-Conf.² Currently, the Prosecution cannot comply with the Request without disclosing to the CLRs information redacted in the public version of Trial Chamber IV’s Decision vacating the trial date (“Decision”)³ or kept confidential (and unavailable to the CLRs) in the transcript of a confidential hearing held on 7 April 2014 (“Transcript”).⁴ The Prosecution is ready to comply with the Request upon an eventual re-classification (or issuance of lesser redacted versions) of the Decision and Transcript.

Submissions

2. As set out below, the redactions in the version of Prosecution submission ICC-02/05-03/09-576-Conf notified to the CLRs are based on the approach taken by the Chamber regarding disclosure of information to the CLRs.

¹ ICC-02/05-03/09-585.

² ICC-02/05-03/09-585, para. 63.

³ ICC-02/05-03/09-564-Conf.

⁴ ICC-02/05-03/09-T-25-CONF-EXP-ENG.

3. On 7 April 2014, the Chamber held a confidential status conference (“Confidential Status Conference”) on trial preparation.⁵ When convening this status conference, the Chamber held that “[g]iven the nature of the topics to be discussed and the fact that some information on the preparation of the trial is currently treated as confidential, the status conference will [...] be held confidentially.”⁶ The Chamber did not instruct the CLRs to participate in the Confidential Status Conference. The CLRs later submitted a request to participate in that hearing.⁷ The Chamber denied the request to participate and stated that the CLRs would receive a redacted version of the transcript in due course.⁸

4. On 16 April 2014, the Chamber issued the Decision,⁹ in which the Chamber requested detailed submissions from the Registry and the Prosecution, including submissions on a list of identified issues. The confidential version of the Decision was not made available to the CLRs. On the same day, the Chamber issued a public redacted version of the Decision. In the public redacted version the Chamber redacted the issues listed for briefing by the Prosecution and the Registry.¹⁰

5. On 6 May 2014, the Prosecution submitted confidentially the “Prosecution submissions pursuant to Trial Chamber’s ‘Decision vacating the trial date of 5 May

⁵ Order scheduling a status conference, 4 April 2014, ICC-02/05-03/09-551 (with confidential annex), ICC-02/05-03/09-551-Conf-Anx and transcript of public hearing on 7 April 2014, ICC-02/05-03/09-T-24 and transcript of confidential hearing on 7 April 2014, ICC-02/05-03/09-T-25-CONF-EXP-ENG.

⁶ ICC-02/05-03/09-551, para.8.

⁷ ICC-02/05-03/09-552.

⁸ ICC-02/05-03/09-T-24-ENG ET WT, page 20, lines 12-15.

⁹ ICC-02/05-03/09-564-Conf.

¹⁰ See ICC-02/05-03/09-564-Red, para.12.

2014''' ("ICC-02/05-03/09-576-Conf").¹¹ On 12 May 2014 the Prosecution submitted the public redacted version of the same filing,¹² in which, following the approach taken by the Chamber, the Prosecution redacted all references to the issues identified in the Decision for briefing by the Prosecution and the Registry. Similarly, information relating to issues discussed at the Confidential Status Conference was also redacted.

6. As is evident from paragraphs 2-5 above, the Prosecution cannot disclose an un-redacted or less redacted version of ICC-02/05-03/09-576-Conf to the CLRs without disclosing information that the Chamber redacted in the Decision or kept confidential (and unavailable to the CLRs) in the Transcript.¹³ However, the Prosecution is ready to comply with the Request upon an eventual re-classification (or issuance of lesser redacted versions) of the Decision and Transcript.



Fatou Bensouda

Prosecutor

Dated this 19th day of June 2014

At The Hague, The Netherlands

¹¹ ICC-02/05-03/09-576-Conf.

¹² ICC-02/05-03/09-576-Red.

¹³ See in this context regulation 23*bis*.