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

Public redacted version of “Prosecution application for an order requiring an undertaking from the Accused that he will appear for trial on 18 November 2014” filed on 9 September 2014 (ICC-02/05-03/09-603-Conf)

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 requests an order requiring the Accused to provide an unequivocal undertaking that he will appear for trial on 18 November 2014.

Confidentiality

2. This document is filed confidentially because it refers to orders and submissions designated as such.

Submissions

3. Defence counsel indicated at the 7 April 2014 status conference that [REDACTED].¹ [REDACTED],² [REDACTED],³ which suggests that any intention to appear remains [REDACTED].
4. The Chamber's 14 July 2014 decision indicates that at present, [REDACTED].⁴ It is therefore unclear whether the Accused will appear for trial on 18 November 2014 voluntarily or whether an arrest warrant will need to be issued.
5. The following factors make it appropriate to clarify this issue at this juncture.
6. *First*, clarifying the Accused's intentions will ensure that witnesses are not burdened unnecessarily.
7. The Prosecution needs to contact its witnesses in the coming weeks to schedule their testimony. Experience shows that receiving a date for testimony can increase a witness' anxiety about testifying. The risk is

¹[REDACTED].

²[REDACTED].

³[REDACTED].

⁴[REDACTED].

particularly acute for victim witnesses. Consistent with the Court's Article 68 duties, the Prosecution should not be required to inform vulnerable witnesses that they will be called to testify in a trial beginning on 18 November unless it is clear that the Accused will appear and the trial will proceed. Witnesses in this case have already been notified once to appear for trial only to be informed later that the trial was postponed.⁵ It would be unfair to the witnesses and detrimental to the Prosecution's relationship with them to cause the witnesses further anxiety by once again telling them that their presence at trial is required imminently and then for the trial date to be vacated for a second time.

8. Witness scheduling is also a significant logistical undertaking, particularly for those in difficult-to-reach locations and for [REDACTED], whose absence from duty requires considerable advance notice to arrange leave and replacements. Witnesses and their families should not have their lives disrupted and their employers should not be burdened by such matters if the Accused is not intending to appear at trial.
9. *Second*, the Accused's appearance has witness protection implications. Certain Prosecution witnesses are subject to protective measures. The issue of whether the Accused appears and the trial proceeds may have a bearing on future protection arrangements. There is urgency here – experience shows that the longer witnesses are in protection prior to their testimony, the greater the chance of witness management problems and/or interference.
10. *Third*, judicial economy favours certainty. The Court's limited budget and the Chamber's time should not be wasted if the Accused does not intend to appear.

⁵ See ICC-02/05-03/09-455 (setting the trial date for 5 May 2014) and ICC-02/05-03/09-564-Red (vacating the 5 May 2014 trial date).

11. To be clear, it will not always be necessary to obtain an undertaking that an accused on a summons will appear for trial. In this case, however, the Accused [REDACTED]. In this context, it is necessary to seek confirmation from the Accused that he will appear.

Conclusion

12. For the foregoing reasons, the Prosecution requests that the Chamber order the Accused to provide an unequivocal undertaking that he will appear for trial on the scheduled date of 18 November 2014.



Fatou Bensouda
Prosecutor

Dated this 23rd day of September 2014

At The Hague, The Netherlands