



Original: English

No.: ICC-02/05-03/09  
Date: 19 November 2012

**TRIAL CHAMBER IV**

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

**SITUATION IN THE DARFUR, SUDAN**

**IN THE CASE OF *THE PROSECUTOR***

*v.*

***ABDALLAH BANDA ABAKAER NOURAIN***

*&*

***SALEH MOHAMMED JERBO JAMUS***

**Public Redacted Version  
of "Prosecution's Submissions on the Possible Date for Commencement of the  
Trial" filed on 19 November 2012**

**Sources:** 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

**Counsel for the Defence**

Mr. Karim A.A. Khan QC

Mr. Nicholas Koumjian

**Legal Representatives of the Victims**

Ms Helene Cisse

Mr Jens Dieckmann

**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants  
(Participation/Reparation)****The Office of Public Counsel for  
Victims****The Office of Public Counsel for the  
Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Ms. Silvana Arbia

**Counsel Support Section****Deputy Registrar****Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section****Victims Participation and Reparations  
Section****Other**

## I. Introduction

1. The case against Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus (“the Accused Persons”) is a narrow and focused one concerning a single attack on the Military Group Site at Haskanita on 29 September 2007. Moreover, pursuant to an agreement between the parties<sup>1</sup> that has been accepted by the Chamber,<sup>2</sup> this case presents only three narrow issues.<sup>3</sup> The Defence has been fully cognisant of the issues in this case and should therefore be able to meet the Prosecution case without the need for a prolonged period of further preparation time. Accordingly, any date for the commencement of the trial must be seen in this context. Critically, the identities of all of the Prosecution trial witnesses have been disclosed to the Defence, and once the Chamber approves the Non-Disclosure Protocol, disclosure of the Article 67(2) and Rule 77 witnesses can also proceed. While the Prosecution acknowledges that a number of disclosure and logistical issues need to be resolved before the trial can commence, none of these issues preclude the Chamber from fixing a trial date. The main task remaining for the Prosecution is the disclosure of a limited amount of material in fulfilment of its obligation under Rule 76 of the Rules of Procedure and Evidence (“Rules”). It is anticipated that this will be completed by the end of March 2013.<sup>4</sup>
2. Accordingly, the Prosecution submits that the trial can commence at the end of March 2013 or shortly thereafter. This proposal, however, is subject to additional factors that may affect the timing of the trial: a pending Defence request for disclosure of additional materials that, if granted in whole or in part, will require the Prosecution to conduct additional reviews and made additional redaction requests; and the Registry’s issues concerning the retention or hiring of sufficient Zaghawa interpreters.

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<sup>1</sup> ICC-02/05-03/09-148.

<sup>2</sup> ICC-02/05-03/09-227.

<sup>3</sup> ICC-02/05-03/09-148; see also ICC-02/05-03/09-227, para. 46 and ICC-02/05-03/09-410, para. 106.

<sup>4</sup> ICC-02/05-03/09-408, para 7.

## II. Prosecution Submissions

3. On 26 October 2012, Chamber IV (“Chamber”) rendered its “Decision on the defence request for a temporary stay of proceedings” in which it directed the parties and participants to file written submissions on the possible date for the commencement of the trial by 19 November 2012.<sup>5</sup> The Prosecution hereby provides its submissions.
4. As noted above, in principle the Prosecution submits the Chamber consider setting the trial date for late March or early April 2013. However, the ability to commence the trial may depend on other factors, set out below.

### A. Prosecution Disclosure Under Rule 76

5. The Prosecution has been disclosing all of the material falling under Rule 76 to the Defence in Zaghawa - the language which the Accused Persons speak and understand - and has provided the Chamber with regular updates of its progress in translating this material.<sup>6</sup> A further update will be filed by 20 November 2012.<sup>7</sup>
6. The Rule 76 material falls into the following three categories. The first category relates to Statements and Interview transcripts of Prosecution trial witnesses. The Prosecution has already disclosed Zaghawa audio-translations of 13 of the 15 witnesses on its list of trial witnesses to the Defence.<sup>8</sup> The statements of the remaining two trial witness – witnesses P-0307 and P-0442 – were obtained in transcript form

<sup>5</sup> ICC-02/05-03/09-410 at para 160..

<sup>6</sup> ICC-02/05-03/09-211 ; ICC-02/05-03/09-T-17-ENG, page 51, lines 19 to 24.

<sup>7</sup> ICC-02/05-03/09-408, paras. 3 to 8.

<sup>8</sup> Zaghawa translation of statement of witness P-0439 disclosed on 6 September 2012 through INCRIM package 33 (ERN of translation at DAR-OTP-0184-0239); translation of statement of witness P-0486 disclosed on 22 August 2012 through INCRIM package 31 (ERN of translation at DAR-OTP-0184-0198); translation of statement of witness P-0485 disclosed on 17 August 2012 through INCRIM package 30 (ERN of translation at DAR-OTP-0184-0194); translation of statement of witness P-0487 disclosed on 9 August 2012 through INCRIM package 29 (ERN of translation at DAR-OTP-0184-0192); translation of second statement of witness P-0315 disclosed on 30 July 2012 through INCRIM package 28 (ERN of translation at DAR-OTP-0184-0190); translation of statement of witnesses P-0446, P-0420 and P-0315 disclosed on 27 July 2012 through INCRIM package 27 (ERN of translations at DAR-OTP-0184-0184, DAR-OTP-0184-0186 and DAR-OTP-0184-0188 respectively); translation of 2 statements of witness P-0355 disclosed on 15 June 2012 through INCRIM package 24 (ERN of translations at DAR-OTP-0184-0121 and DAR-OTP-0184-0122); translation of statement of witness P-0445 disclosed on 22 May 2012 through INCRIM package 22 (ERN of translation at DAR-OTP-0184-0113); translation of statement of witness P-0326 disclosed on 16 May 2012 through INCRIM package 21 (ERN of translation at DAR-OTP-0184-0094); translation of statement of witness P-0446 disclosed on 20 April 2012 through INCRIM package 20 (ERN of translation at DAR-OTP-0184-0009); translation of statement of witness P-0417 disclosed on 29 March 2012 through INCRIM package 19 (ERN of translation at DAR-OTP-0182-0226); translation of 2 statements of witnesses P-0416 and P-0419 disclosed on 20 March 2012 through INCRIM package 18 (ERN of translation at DAR-OTP-0182-0220; DAR-OTP-0182-0221; DAR-OTP-0182-0223 and DAR-OTP-0182-0224 respectively).

and are more voluminous. Nonetheless, the Prosecution expects to have completed the audio-translation of P-0442's statement by mid-January 2013, and Witness P-0307's statement by mid-February 2013.

7. The second category of Rule 76 material relates to annexes to witness statements such as sketches, photographs, x-rays, medical reports and video transcripts. As the Prosecution informed the Chamber in its filing of 22 October 2012,<sup>9</sup> it intends to translate these items simultaneously with the two remaining witness statements and these should also be completed by the end of March 2013.
8. The third category relates to the prior testimonies of three of the Prosecution trial witnesses (P-0416, P-0446 and P-0445) who also testified at the pre-trial proceedings in the *Abu Garda* case.<sup>10</sup> One of them (P-0445) also testified at the trial stage in the *Bemba* case. The Prosecution also expects to have completed the translation of these prior testimonies into Zaghawa by the end of March 2013.
9. Six of the Prosecution trial witnesses (P-0420, P-0419, P-0446, P-0416, P-0417 and P-0486) have also been granted victim status in this case, requiring the disclosure of portions of their Victim Application forms to the Defence pursuant to Rule 76.<sup>11</sup> The Prosecution also expects to have completed translation of the relevant parts of their application forms by the end of March 2013.
10. [REDACTED].<sup>12</sup>
11. In sum, as it informed the Chamber during the last Status Conference,<sup>13</sup> the Prosecution expects to have completed the audio-translation and disclosure of all of the Rule 76 material by the end of March 2013.

## **B. Other Factors That May Be Relevant To The Fixing Of A Trial Date**

<sup>9</sup> ICC-02/05-03/09-408, para. 7; See also ICC-02/05-03/09-T-17-ENG, pages 43-44.

<sup>10</sup> P-0446: ICC-02/05-02/09-T-15-Red-ENG (DAR-OTP-0180-0070) and ICC-02/05-02/09-T-16-Red-ENG (DAR-OTP-0180-0148), P-0416: ICC-02/05-02/09-T-14-Red-ENG (DAR-OTP-0180-0002); P-0445: ICC-02/05-02/09-T-17-Red-ENG (DAR-OTP-0180-0200).

<sup>11</sup> ICC-02/05-03/09-T-17-ENG, page 45, lines 6-8.

<sup>12</sup> [REDACTED]

<sup>13</sup> ICC-02/05-03/09-T-17-ENG, page 45, lines 17-20.

12. The Prosecution notes that a number of other factors in this case that may also have a bearing on the fixing of a trial date. There are still a number of individuals<sup>14</sup> whose statements arguably contain information that falls under Article 67(2) of the Rome Statute and/or Rule 77 of the Rules, but whose identities have not yet been disclosed to the Defence due to security issues. In this regard, the Chamber is already seized of filings from the Prosecution, Defence and the Victims and Witnesses Unit<sup>15</sup> on proposals for a Protocol on the handling of information and contacts by a party with witnesses of the other party for investigation purposes. The Chamber's approval of the Protocol will also allow for the Prosecution's prompt disclosure of these persons' identities to the Defence.<sup>16</sup>
13. An additional factor that may affect the commencement of trial is the outstanding Defence Request for Disclosure of Documents in the Possession of the Office of the Prosecutor of 20 October 2011 ("the Defence Request").<sup>17</sup> The Prosecution opposed the Defence Request.<sup>18</sup> Should the Chamber ultimately order the disclosure of any or all of the material cited in the Defence Request, this could affect the commencement date of the trial. As the Prosecution has already observed, the documents that the Defence requests exceed 5000 pages and contain highly sensitive information that, prior to disclosure, would require substantial redactions and/or protective measures.<sup>19</sup> Thus, a disclosure order will require the Prosecution to review the relevant material, make the necessary applications for protective measures and await the Chamber's decision prior to disclosure.
14. The Prosecution also notes the observations of the Registry in the Fifth Joint Prosecution and Registry's Monthly Report on Translation and Interpretation Issues filed on 20 February 2012.<sup>20</sup> In that report, the Registry observed that it does not plan to extend contracts for its two Zaghawa trainees in the paraprofessional programme beyond April 2012 because there was no development regarding a date for trial and for budgetary reasons. It indicated that if a trial date were set within a year and funds are made available, the two trainees would be invited to return for a two-month

<sup>14</sup> In particular, witnesses P-0304, P-0305, P-0306, P-0312, P-0314, P-0433, P-0441, and P-0466.

<sup>15</sup> ICC-02/05-03/09-389-Red and ICC-02/05-03/09-389-AnxA.

<sup>16</sup> ICC-02/05-03/09-410, at para 120.

<sup>17</sup> ICC-02/05-03/09-235.

<sup>18</sup> ICC-02/05-03/09-251.

<sup>19</sup> ICC-02/05-03/09-251, paras. 1 and 2.

<sup>20</sup> ICC-02/05-03/09-299, para 1.

preparation for trial. The Registry indicated that it would let the two trainees go unless it received instructions from the Chamber to do otherwise.<sup>21</sup> In the same report, the Registry also indicated that in order to have a team of four interpreters at the trial, two further interpreters would need to be recruited and trained for a minimum of four months, provided they already had the necessary skills.<sup>22</sup> It did not propose to carry out any further recruitment activities until it is instructed by the Chamber to do so.<sup>23</sup> The Registry is better placed to provide the Chamber with an update on the current position regarding the availability of Zaghawa interpreters during the trial, but this too could impact on the commencement of the trial.

### **C. Other Logistical Issues**

15. The Prosecution also notes that when the Chamber scheduled the hearing and status conferences in July 2012,<sup>24</sup> [REDACTED].<sup>25</sup> [REDACTED].

### **D. Attendance of the Accused Persons at the Status Conference**

16. The Chamber has indicated that it proposes to convene a status conference at which it will fix a date for trial, pursuant to Rule 132(1).<sup>26</sup> [REDACTED].<sup>27</sup> [REDACTED].<sup>28</sup>

17. The Chamber, however, ultimately excused them from attending.<sup>29</sup> The Prosecution proposes that Accused Persons be required to attend the next status conference - at which the Chamber proposes to fix the trial date - and that at that conference the Chamber [REDACTED], which will materially advance the eventual trial proceedings.<sup>30</sup>

<sup>21</sup> ICC-02/05-03/09-299, at para. 1.

<sup>22</sup> *Ibid* at para. 2.

<sup>23</sup> ICC-02/05-03/09-299, at para. 2.

<sup>24</sup> [REDACTED].

<sup>25</sup> [REDACTED].

<sup>26</sup> ICC-02/05-03/09-410, at para. 160.

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].

<sup>29</sup> ICC-02/05-03/09-366, at para 8.

<sup>30</sup> [REDACTED].

### III. Request for receipt of filing as “Confidential”

18. The Prosecution has classified the present filing as “Confidential” because it refers to information contained in filings with the same classification and in discussions that transpired during a closed session hearing. The Prosecution will simultaneously file a Public Redacted Version of this filing.



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Fatou Bensouda  
Prosecutor

Dated this 19<sup>th</sup> November 2012  
At The Hague, The Netherlands