



Original: **English**

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

Date: **12 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

**Public redacted version of "Prosecution submissions pursuant to Trial Chamber's
"Decision vacating the trial date of 5 May 2014"", 6 May 2014, ICC-02/05-03/09-576-
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. On 16 April 2014, the Trial Chamber vacated the trial date of 5 May 2014 in its “Decision vacating the trial date of 5 May 2014” (“Decision”).¹ In the Decision, the Trial Chamber ordered the Prosecution and the Registry to provide detailed submissions, including on:
 - i) [REDACTED];
 - ii) [REDACTED]; and
 - iii) [REDACTED].²
2. The Prosecution’s position is as follows:
3. *First*, [REDACTED],³ [REDACTED], the Accused is under an obligation to appear for trial on any date ordered by the Trial Chamber. [REDACTED],⁴ and his appearance at trial is non-negotiable under his Article 58 summons. Any failure on his part to abide by the Trial Chamber’s order for the commencement of trial should lead to the immediate issuance of an arrest warrant against him.
4. *Second*, [REDACTED].
5. *Third*, the legal question of [REDACTED] is immaterial because the information available to the parties and the Chamber does not show that [REDACTED].⁵ On the contrary, the available evidence shows that [REDACTED],⁶ [REDACTED].⁷
6. [REDACTED].⁸
7. *Fourth*, the Prosecution submits that in light of its application to add trial witnesses,⁹ and the related disclosure and translation issues, a start trial date of 1 October 2014 is

¹ ICC-02/05-03/09-564-Conf.

² ICC-02/05-03/09-564-Conf, paras. 12 and 13(ii).

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ See [REDACTED].

⁷ See ICC-02/05-03/09-T-17-ENG ET, page 5, lines 18 to 20, 11 July 2012, where Defence Counsel submitted publicly: “Abdallah Banda and Saleh Jerbo, who have consistently co-operated with this Court, shown respect to this judicial institution and complied with all conditions imposed upon them”. [REDACTED].

⁸ [REDACTED].

⁹ ICC-02/05-03/09-557-Conf and Conf-Annex 1.

appropriate, fair and provides time for the Accused to prepare for the Prosecution case. [REDACTED].¹⁰

8. *Last*, as regards the second and third issue – [REDACTED] – the Prosecution submits that this is solely a matter for the Registry.

Confidentiality

9. This filing is submitted confidentially because the Decision was rendered confidentially¹¹ and matters raised in this filing pertain to [REDACTED]. A public redacted version will be filed in due course.

Submissions

A. [REDACTED]

i. Applicable law

10. The Rome Statute and the Rules of Procedure and Evidence (“Rules”) do not provide for [REDACTED]¹² [REDACTED].¹³ [REDACTED].¹⁴ [REDACTED].
11. Although the Statute is silent on the issue of [REDACTED].¹⁵

Accordingly, a proper argument can be made that [REDACTED].

ii. There is no information establishing [REDACTED]

12. However, whether [REDACTED] is immaterial at this stage because even if [REDACTED], the existing evidence does not show that [REDACTED]¹⁶

¹⁰ [REDACTED].

¹¹ ICC-02/05-03/09-564-Conf, and see Regulation 23bis (2) of the Regulations of the Court.

¹² [REDACTED].

¹³ See [REDACTED].

¹⁴ [REDACTED].¹⁵ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

[REDACTED]. It is the moving party's burden to establish [REDACTED].¹⁷
[REDACTED]¹⁸ [REDACTED]¹⁹ [REDACTED].²⁰ [REDACTED].

13. [REDACTED].²¹ [REDACTED].²² [REDACTED].²³ [REDACTED]

14. [REDACTED].²⁴ [REDACTED].

15. Further, Counsel for Mr. Banda has publicly emphasised his cooperation with, and alleged willingness to appear before, the Court. At a public status conference on 11 July 2012, Defence counsel submitted "*Abdallah Banda and Saleh Jerbo, [...] have consistently co-operated with this Court, shown respect to this judicial institution and complied with all conditions imposed upon them*".²⁵ [REDACTED],²⁶ [REDACTED].

16. [REDACTED]²⁷ [REDACTED]²⁸ [REDACTED].

17. Although the Prosecution broadly accepts the theoretical premise of the Defence's position [REDACTED] - the Defence has failed to offer any evidence to support this assertion. [REDACTED]. At the status conference on 11 July 2012, the Defence said: "*Your Honours, all of these militate, we say, in favour of the stay and demonstrate what can only be described as a lamentable and unacceptable pattern of conduct by the Government of Sudan that unfortunately is not fluid but is sadly consistent since President Bashir started his pogroms against the civilian population, which our clients have sought to stand firmly against*".²⁹

18. Counsel publicly stated in no uncertain terms that his client (Mr. Banda) was against President Bashir's activities against the civilian population. [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ See [REDACTED].

²⁰ See [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ ICC-02/05-03/09-T-17-ENG ET, page 5, lines 18 to 20.

²⁶ See [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ ICC-02/05-03/09-T-17-ENG ET, page 33, lines 19 to 23 (emphasis added).

19. [REDACTED].

B. Trial should commence in October 2014

20. The Prosecution acknowledges that in the circumstances of this case, recent disclosures and pending translations constitute a valid basis to delay the start of trial. However, they do not justify delaying the commencement of trial to March 2015, as the Defence request (“Defence Trial Date Request”).³⁰ The materials the Prosecution has disclosed in recent months are straight-forward and can be digested in short order.³¹ For example, the “[REDACTED]” [REDACTED]³² total 36 pages and are tailored to the key issues in the case.³³ The statements clarify aspects of the witnesses’ evidence and thus should save the Defence time, both in terms of investigations and in-court questioning. None of this additional material fundamentally changes the Prosecution’s case against the Accused. Similarly, the “[REDACTED]”,³⁴ which were included in materials requested by the Defence,³⁵ total approximately 44 pages. While additional disclosures are likely to be made in the coming weeks, the current disclosure and translation issues do not merit the March 2015 trial start date suggested by the Defence. The time between now and October 2014 will enable the remaining disclosure and translation issues to be resolved and will provide the Defence with adequate time to digest the newly disclosed and translated materials.

21. Furthermore, [REDACTED].³⁶

³⁰ ICC-02/05-03/09-563-Conf.

³¹ Since 1 January 2014, the Prosecution has disclosed 100 documents, totalling 394 pages, and five audio/video files.

³² [REDACTED].

³³ The two re-interview statements of P-0446 were accompanied by 42 annexes, totalling 62 pages. P-0355’s re-interview statement was disclosed together with 15 documents provided by the witness during the interview, which total 373 pages.

³⁴ [REDACTED].

³⁵ See [REDACTED].

³⁶ [REDACTED].

Conclusion and relief sought

22. In light of the foregoing, the Prosecution respectfully requests the Trial Chamber to:

- i) order that the Accused must appear for trial on any date ordered by the Trial Chamber;
- ii) find [REDACTED] that the Accused has not met his burden of showing [REDACTED]; and
- iii) set a trial start date of 1 October 2014.



Fatou Bensouda
Prosecutor

Dated this 12th day May 2014

At The Hague, The Netherlands