

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **31 August 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 Document

**Public Redacted Version of "Prosecution's Update on Cooperation Issues",
filed on 27 August 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. Hélène Cissé
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

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. [REDACTED]¹ [REDACTED],² [REDACTED] the Prosecution hereby updates the Chamber on its continuous efforts to obtain these documents.

II. Background and Prosecution's Submissions

2. [REDACTED]. The Prosecution hereby updates the Chamber on the current status of [REDACTED] cooperation requests which remain ongoing.

Cooperation with [REDACTED]

(i) [REDACTED] report [REDACTED]

3. The OTP has continued its efforts to seek the assistance of [REDACTED] in identifying and transmitting any [REDACTED] reports made in relation, or of relevance, to the attack on MGS Haskanita on 29 September 2007. As the Chamber is aware, the OTP made an initial request for the same to [REDACTED]. [REDACTED] responded by requesting that the OTP direct its request to [REDACTED].
4. [REDACTED] the OTP sent a further request to [REDACTED] on learning of the possible existence of [REDACTED] reports [REDACTED] the attack on the MGS Haskanita on 29 September 2007. [REDACTED].³ The Prosecution sought confirmation as to the existence of these reports and, if so, for their disclosure. In its response [REDACTED] confirmed that it has

¹ [REDACTED].

² [REDACTED].

³ The Prosecution's letter addressed to [REDACTED] is appended as Confidential *Ex Parte* and Prosecution only Annex "A1".

identified a report [REDACTED] which appears to be relevant. As the Chamber is aware, the transmission of the report has been delayed [REDACTED].⁴ As of the date of [REDACTED]. [REDACTED] the OTP sought to follow-up on the matter with [REDACTED]. Further to a renewed request by the OTP to [REDACTED] by email [REDACTED], a second Code Cable was sent to [REDACTED] requesting a written response [REDACTED]. [REDACTED] communicated [REDACTED] that it had received no response as of that date from [REDACTED]. [REDACTED] further noted that although it will continue to follow up and request a formal written response from [REDACTED], that it may also be worth noting that the majority of the information contained in the Report is included in the Report of the Secretary General on Darfur of 28 July 2006 (S/2006/591).⁵

5. With respect to [REDACTED], the Prosecution notes that during the intervening period, some of the key interlocutors and decision-makers in [REDACTED] have left office [REDACTED]. [REDACTED]. Nonetheless, since the last status conference the OTP has been able to pursue direct contact with persons in [REDACTED] regarding the same report, who confirm that [REDACTED] had recommended disclosure of the report, and the disclosure request is now with [REDACTED] for their concurrence. [REDACTED] stressed that it would follow up urgently on the matter, [REDACTED].
6. The OTP is maintaining regular contacts with [REDACTED] and will update the Chamber as soon as it receives further information. The OTP will also seek high level contacts in September with [REDACTED], both in

⁴ The [REDACTED]'s letter addressed to the OTP is appended as Confidential *Ex Parte* and Prosecution only Annex "A2".

⁵ This report is publicly available and the Prosecution will disclose it to the Defence forthwith.

relation to this request as well as any other relevant reports that may be identified. As soon as approval is obtained [REDACTED] and the report is transmitted, the OTP will examine it and, if it is disclosable, will disclose it to the Defence.

(ii) Information and documents [REDACTED] report

7. [REDACTED] the OTP made a further request to [REDACTED], for access to certain materials [REDACTED]. The stated purpose of the request was to identify materials of potentially exculpatory nature or information that would be material to the preparation of the defence.⁶ On 26 April 2012, [REDACTED] responded. [REDACTED] noted that the documents [REDACTED] which appear to be of relevance did not originate from [REDACTED] but belong either to [REDACTED] or to [REDACTED]. Accordingly, [REDACTED] proposed that [REDACTED] would seek the permission of [REDACTED] in relation to documents originating from [REDACTED] or which were produced [REDACTED].⁷
8. [REDACTED] communicated by email that [REDACTED] was able to identify a number of documents that originated from various offices and in light of the fact that these were shared with [REDACTED] under conditions of confidentiality, it was necessary to approach [REDACTED] in order to request their consent before disclosure could be made.
9. Specifically, [REDACTED] wrote to [REDACTED] regarding [REDACTED] reports [REDACTED] that related to the circumstances

⁶ The Prosecution's letter addressed to [REDACTED] is appended as Confidential *Ex Parte* and Prosecution only Annex "A3".

⁷ The [REDACTED]'s letter addressed to the Prosecution is appended as Confidential *Ex Parte* and Prosecution only Annex "A4".

surrounding the attack on MGS Haskanita. To date, [REDACTED] has not received a response from [REDACTED], but continues to follow up. [REDACTED] also wrote to [REDACTED] for permission to disclose a report of [REDACTED] that was compiled by [REDACTED]. [REDACTED] understands that [REDACTED] had referred to matter to [REDACTED] and that it was awaiting a response from the latter. Finally, [REDACTED] had identified [REDACTED] further documents that originate from [REDACTED]: a [REDACTED] report on Haskanita (for which a request was also sent to [REDACTED]) and a report on [REDACTED]. [REDACTED] had yet to provide a formal response to [REDACTED], but [REDACTED] understands that [REDACTED].

10. In sum, although the Prosecution is yet to obtain copies of the relevant requested documents underlying [REDACTED] report, some progress has been made to the extent that, in the light of its inquiries, it has been able to identify the existence of a number of reports that may be potentially relevant. The Prosecution recalls that these requests relate to documents that the OTP has not had sight of or access to, but for which it is awaiting the granting of access or transmission. The OTP will follow-up with [REDACTED] in the light of the new information received above.

Cooperation with [REDACTED]

11. [REDACTED] the Prosecution made a number of requests for the assistance of [REDACTED] regarding access to information and documents relevant to the attack on MGS Haskanita on 29 September 2007.

12. [REDACTED] the OTP made a further assistance request to [REDACTED], for disclosure of all [REDACTED] reports that relate to the attack on MGS Haskanita. Specifically, the Prosecution requested [REDACTED] to confirm the alleged existence and disclosure of the following [REDACTED] reports:

i). [REDACTED].

ii). [REDACTED] Report [REDACTED].⁸

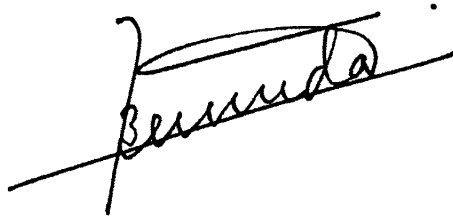
13. The Prosecution stressed the urgency of the matter and that the deadline for the Prosecution's update to the Chamber is [REDACTED]. The OTP has followed up directly with [REDACTED], who committed to pursuing the matter with haste. A formal response from [REDACTED] is expected on 28 August 2012, upon receipt of which the Prosecution will immediately update the Chamber.⁹

⁸ [REDACTED].

⁹ On 4 June 2012, the Prosecution informed the Chamber that it was following up with certain third parties a number of items for which disclosure pursuant to Article 67(2) and/or Rule 77 is still outstanding, following a request by the Defence dated 19 July 2011 (see ICC-02/05-03/09-343, para. 9). These items include [REDACTED]. [REDACTED] on 14 June 2012 a request for cooperation was sent [REDACTED].

III. Request for receipt of filing as Confidential *Ex Parte*

14. The Prosecution submits that the classification of the present filing and its annexes as "Confidential – *Ex Parte* – Prosecution Only" is necessary as they relate to confidential communications with information providers as well as the identity of those providers. The Prosecution will file a Public Redacted Version of this filing.

A handwritten signature in black ink, appearing to read 'Bensouda', is written over a horizontal line.

Fatou Bensouda
Prosecutor

Dated this 31st August 2012
At The Hague, The Netherlands