

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 1 October 2013

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 AND SALEH MOHAMMED JERBO
JAMUS***

Public Document

Prosecution's Request Pursuant to Regulation 35

Source: 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

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I. Introduction

1. On 25 September Trial Chamber IV (“ Chamber”) directed¹ the Prosecution to, *inter alia*, file with the Chamber no later than 7 October 2013, a table setting out:

1. the documents and other objects in the *Al Bashir* Material (other than information that no longer needs to be under seal) which contain information sought by the Defence, identifying such information by means of verbatim quotations, summaries or appropriate accompanying explanations.²
 - II. whether the Defence has received relevant documents containing the information sought and if so a) identify the documents; and b) identify the relevant information by way of verbatim quotations, summaries or appropriate accompanying explanations;³
 - III. the level of classification of each document; and
 - IV. whether protective measures shall be applied to any of these documents before effecting disclosure.

2. In light of the labor - intensive review and data-entry process that will be required to comply with the above directives, the Prosecution requests an extension of the time limit for compliance until 21 October 2013, pursuant to Regulation 35(2) of the Regulations of the Court.

¹ ICC-02/05-03/09-507.

² ICC-02/05-03/09-507, page 4.

³ ICC-02/05-03/09-507, page 4.

II. Procedural background

3. On 14 July 2008, the Office of the Prosecutor (“OTP” or “Prosecution”) filed an application for a warrant of arrest (“Application”) for Omar Hassan Ahmad AL BASHIR (“Al Bashir”).⁴ The Application was accompanied by certain evidentiary material which was contained in numerous annexes.
4. On 15 October 2008, the Pre-Trial Chamber I (“PTC I”) issued the *Decision Requesting Additional Supporting Materials in relation to the Prosecution’s Request for a Warrant of Arrest against Omar Hassan Al Bashir* (“Decision requesting Additional Material”)⁵ in which it requested the Prosecution to submit additional supporting materials in relation to a number of issues.
5. On 17 November 2008, the Prosecution filed its *Prosecution’s Submission of Further Information in Compliance with “Decision Requesting Additional Supporting Materials in relation to the Prosecution’s Request for a Warrant of Arrest against Omar Hassan Al Bashir” dated 15 October*.⁶ The submission was, *inter alia*, accompanied by an additional 101 annexes comprising of evidentiary material in support of the Application.
6. On 25 September 2013 the Trial Chamber issued its “Order to the prosecution following the Appeals Chamber’s Judgment of 28 August 2013 against Trial

⁴ ICC-02/05-157-public redacted version.

⁵ ICC-02/05-160.

⁶ ICC-02/05-161.

Chamber IV's 'Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor'" ⁷ ("Order Pursuant to the Appeal Chamber's Judgement").

III. Submissions

7. The Prosecution will require a significant amount of time to implement the above directives issued by the Chamber. Implementation will require the following:
 - creating a global chart which encompasses all of the items underlying the Application, including all of the documents
 - i. cited in the Application
 - ii. initially submitted in support of the Application.
 - iii. submitted pursuant to the Decision requesting Additional Material
 - identifying and isolating the information that no longer has to be under seal.
 - identifying and isolating the statements of victims.
 - a detailed examination of each document in order to determine whether they contain information sought by the Defence, and subsequent identification of such information by means of verbatim quotations, summaries or appropriate accompanying explanations.
 - a detailed examination of each document in order to determine whether protective measures should be applied.
 - identifying the confidentiality classification of each document.
 - identifying documents already disclosed to the Defence and


⁷ ICC-02/05-03/09-507.

- i. locating the documents containing information sought by the Defence and
 - ii. identifying the relevant information by way of verbatim quotations, summaries or appropriate accompanying explanations regarding each document.
8. The Prosecution submits that the labor - intensive nature of the review and data-entry process described above amounts to “good cause” as required in Regulation 35. The Prosecution notes in this context that the total page count of all items underlying the Application amounts to approximately 10,000 pages.⁸ The burden of reviewing this large collection of material is exacerbated by the limited personnel resources currently available to the trial team.
9. The Defence will not suffer any prejudice as a result of this change in deadline. The delay is of a minimal nature, especially in light of the stage of proceedings and the current trial date. Moreover, the Prosecution emphasizes that it is in the interests of both parties, and would be of assistance to the Chamber, that the above review is carried out in a thorough and comprehensive manner.

⁸ This figure includes all items of evidence underlying the Application - including the information that may no longer have to be under-seal and the statements of victims. While these latter two categories of evidence will not feature in the final chart that will be filed in the case record, time and effort will still have to be expended in order to identify and isolate such evidence.

IV. Conclusion

10. For the reasons set out above, the Prosecution requests the Chamber to grant an extension of the deadline until 21 October 2013.



Fatou Bensouda

Prosecutor

Dated this 1st day of October 2013

At The Hague, the Netherlands