



Original: English

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

Date: 23 October 2026

TRIAL CHAMBER IV

Before: Judge Kimberly Prost, Presiding Judge
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN DARFUR, SUDAN

***IN THE CASE OF THE PROSECUTOR
v. ABDALLAH BANDA ABAKAER NOURAIN***

Public

Public redacted version of “Prosecution’s Notification to the Chamber of its Intention to Lift Certain Redactions Authorized Pursuant to Rule 81(2) of the Rules of Procedure and Evidence”, ICC-02/05-03/09-82-Conf, dated 22 October 2010

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

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ 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

Oswaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. Introduction

1. The Prosecution hereby notifies the Chamber of its intention to lift redactions of identifying information of certain individuals' which were previously made pursuant to Rule 81(2) of the Rules of Procedure and Evidence ("Rules").

2. In its "First Decision on Redactions"¹ and "Second Decision on Redactions"² rendered in the case of the *Prosecutor v. Bahar Idriss Abu Garda* ("the *Abu Garda* case"), PTC I granted the Prosecution's requests for redactions to the names and other identifying information of [REDACTED] (Witness DAR-OTP-WWWW-0439) and [REDACTED] (Witness DAR-OTP-WWWW-0442) pursuant to Rule 81(2) as they were considered prospective witnesses at the time. The basis for the PTC's authorization was that the disclosure names or other identifying information of these individuals' – at that stage – could jeopardize the Prosecution's ongoing investigative activities.³ The Prosecution has now interviewed these individuals as witnesses, and they have provided a statement and transcript of interview, respectively. These were submitted to the Chamber with proposed redactions in its filing of 20 July 2010 ("20 July Filing")⁴.

3. On 8 July 2010, pursuant the PTC I's "Decision on issues relating to disclosure" of 21 June 2010,⁵ the Prosecution made its first batch of disclosure to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo. This package comprised of the material already disclosed in the *Abu Garda* case which the Prosecution also intends to rely upon in the instant case. It therefore also included material from which the names and identifying information of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442 had been redacted, pursuant to PTC I's orders in the *Abu Garda* case.

¹ ICC-02/05-02/09-51+Conf-Exp-Anx1

² ICC-02/05-02/09-85+Conf-Exp-Anx1

³ See ICC-02/05-02/09-51-Conf-Exp-Anx1, paragraphs 19-20 (granting redaction of all three individuals' names and identifying information to avoid prejudice to "further or ongoing investigations").

⁴ ICC-02/05-03/09-54-Conf-Exp

⁵ ICC-02/05-03/09-49

4. In its 20 July Filing, the Prosecution did not consider that there was any need for the names and other identifying information of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442 to be redacted in their own statements as in its assessment there are no security risks to both Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442 were such information to be disclosed to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo.⁶

5. On 29 July 2010, the Single Judge issued his First Decision on the Prosecutor's Requests for Redactions,⁷ in which he authorized redactions pursuant to the 20 July Filing. In this Decision, the Single Judge did not order any *proprio motu* redactions to the names and other identifying information of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442. Accordingly, the Prosecution now proposes to unredact the names and other identifying information of these individuals in the material already disclosed to the Defence, and to re-disclose this material to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo.

II. Request for Confidentiality

6. The Prosecution requests that this filing be received as "Confidential" because it discusses and cites filings and material that are currently confidential. The Prosecution will file a public redacted version of this filing.

III. Legal Basis for Unilaterally Removing Redactions Previously Authorized or Ordered Pursuant to Rule 81(2)

7. During the Status Conference on 13 July 2010,⁸ and in its 20 July Filing,⁹ the Prosecution indicated that it proposed, at some point, to seek to vary protective measures, pursuant to Regulation 42(3) of the Regulations of the Court. The

⁶ See footnote 6 of the 20 July Filing.

⁷ ICC-02/05-03/09-58

⁸ ICC-02/05-03/09-T-6-ENG ET WT, page 4, lines 9-10.

⁹ See footnote 6 of the 20 July Filing.

Prosecution was in fact referring to the redactions previously authorized to the names and other identifying information, pursuant to Rule 81(2).

8. The Prosecution is however mindful of the Court's jurisprudence relating to the lifting of this category of redactions, in particular, in the *Lubanga* and *Bemba* cases. In the *Lubanga* case, the Trial Chamber stated that: "[F]or all documents covered by 81(2), put otherwise documents redacted to protect ongoing investigations, if the Prosecution wish to remove a redaction which the Prosecution originally sought, then that can happen without coming to the Chamber requesting leave, but we should be notified on each and every occasion when a redaction is going to be lifted in that way, and that is simply to make sure that we are kept informed as to what the up-to-date position is."¹⁰ More recently, in the *Bemba* case, the Trial Chamber recalled the *Lubanga* Trial Chamber's position and reiterated that: "once redactions imposed under Rule 81(2) of the Rules are no longer necessary, disclosure does not need the leave of the Chamber."¹¹

III. Scope of the Present Application

9. The Prosecution proposes to unredact all references to the names and other identifying information (including photograph images) of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442. The references to Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442 are contained in the following documents already disclosed to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo:

- i. DAR-OTP-0164-1159 (statement of witness DAR-OTP-WWWW-315);
- ii. DAR-OTP-0165-0489 (first statement of witness DAR-OTP-WWWW-419);¹²

¹⁰ Transcript of hearing on 4 December 2007, ICC-01/04-01/06-T-62-ENG ET WT, page 23, lines 4-11.

¹¹ ICC-01/05-01/08-813-Conf, paragraph 76.

¹² Redactions to Statement of Witness DAR-OTP-WWWW-0419, DAR-OTP-0168-0168. The Chamber did not order these redactions, nor did the Prosecution request them. Rather, the Prosecution applied these redactions *proprio motu* in conformity with the Chamber's reasoning relating to both Witnesses DAR-OTP-WWWW-0439

- iii. DAR-OTP-0168-0168 (second statement of witness DAR-OTP-WWWW-419);
- iv. DAR-OTP-0169-0808 (statement of witness DAR-OTP-WWWW-446);
- v. DAR-OTP-0169-1160 (statement of witness DAR-OTP-WWWW-447);¹³
- vi. DAR-OTP-0165-0352 (statement of witness DAR-OTP-WWWW-355);¹⁴
- vii. The following photographs provided by witness DAR-OTP-WWWW-315: DAR-OTP-0164-0995; DAR-OTP-0164-1000; DAR-OTP-0164-1009; DAR-OTP-0164-1014; DAR-OTP-0164-1087; DAR-OTP-0164-1088; DAR-OTP-0164-1089; DAR-OTP-0164-1094 and DAR-OTP-0164-1098.¹⁵

10. For ease of reference, the Prosecution has attached, as Annex 1 to the present filing, a chart that identifies the specific redactions which the Prosecution intends to unredact.

V. Notification to the Single Judge

11. In view of the foregoing, the Prosecution hereby notifies the Single Judge of its intention to:

and DAR-OTP-WWWW-0442 as stated elsewhere in the First and Second Decisions on the Prosecution's Requests for Redactions. See ICC-02/05-02/09-51-Conf-exp-Anx1, pp. 19-20 (authorizing redaction of names and identifying information of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442 under Rule 81(2) on the basis of their status as potential witnesses) compared to pp. 40-47 (discussing the first Statement of Witness DAR-OTP-WWWW-0419, but mentioning neither Witness DAR-OTP-WWWW-0439 nor Witness DAR-OTP-WWWW-0442).

¹³ ICC-02/05-02/09-85+Conf-Exp-Anx1, at pages 3-5 for DAR-OTP-0169-0808 (Statement of Witness DAR-OTP-WWWW-446); pages 20 to 22 for DAR-OTP-0169-1160 (Statement of Witness DAR-OTP-WWWW-447)

¹⁴ ICC-02/05-02/09-51+Conf-Exp-Anx1; pages 30 to 32 for DAR-OTP-0164-1159 (Statement of Witness DAR-OTP-WWWW-315) and pages 53 to 54 for DAR-OTP-0168-0168 (Statement of Witness DAR-OTP-WWWW-419).

¹⁵ Redactions to photographs DAR-OTP-0164-1000, DAR-OTP-0164-1014, DAR-OTP-0164-1087, DAR-OTP-0164-1088, DAR-OTP-0164-1089, DAR-OTP-0164-1094 and DAR-OTP-0164-1098 were authorized on page 30 of Annex 1 to the Second Decision on Redactions, ICC-02/05-02/09-85+Conf-Exp-Anx1. Redactions to photograph DAR-OTP-0164-1009 were authorized on page 3 of Annex 1 to the Second Decision on Redactions, ICC-02/05-02/09-85+Conf-Exp-Anx1. Finally, redactions to photograph DAR-OTP-0164-0995 were authorized on page 53 of ICC-02/05-02/09-85+Conf-Exp-Anx1.

- i. unredact all references to the names and identifying information (including photograph images) of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442 previously authorized or ordered pursuant to Rule 81(2) in the material already disclosed to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo;
- ii. re-disclose, in the absence of any further instructions from the Single Judge to the contrary, the said identified material to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo on 22 October 2010; and
- iii. leave unredacted in all future disclosure to the Defence teams of Mr. Abdallah Banda and Mr. Saleh Jerbo, all references to the names and other identifying information of Witnesses DAR-OTP-WWWW-0439 and DAR-OTP-WWWW-0442.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', with a large, stylized flourish on the left side.

Mame Mandiaye Niang, Acting Prosecutor

Dated this 23rd day of October 2026

At The Hague, The Netherlands