



Original: English

No.: ICC-02/05-03/09
Date: 18 November 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN DARFUR, THE SUDAN

***IN THE CASE OF THE PROSECUTOR
V.***

ABDALLAH BANDA ABAKAER NOURAIN AND SALEH MOHAMMED JERBO JAMUS

**Public Document
with Confidential Annexes A and B**

Prosecution's Submission of an Amended List of Evidence

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

Mr Karim A.A. Khan

Legal Representatives of Victims

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Colonel Frank Adaka

Sir Geoffrey Nice

Mr Rodney Dixon

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Office of the Prosecutor ("Prosecution") submits herewith an Amended List of Evidence appended to this filing as "Annex A". The Prosecution also appends, for ease of review, a Schedule of Amendments which sets out all amendments made to the List of Evidence as "Annex B".
2. The amendments made are, for the most part, innocuous and are made to correct clerical and paragraph numbering errors in the original List of Evidence. The Prosecution has also added new excerpts to and deleted others from the original List. All the items added, however, were previously disclosed in a timely fashion to the Defence.

Background

3. On 22 October 2010, the Prosecution filed the List of Evidence under Rule 121(3)¹ ("Initial List of Evidence") in the case of The Prosecutor v. Abdallah Banda Abakaer Nourain & Saleh Mohammed Jerbo Jamus. The confirmation hearing of this case is scheduled to commence on 8 December 2010.²
4. Subsequent to the filing of the Initial List of Evidence, the Prosecution noticed that it contained certain inadvertent errors and omissions.

¹ ICC-02/05-03/09-84

² ICC-02/05-03/09-81

Request for Confidentiality

5. The Prosecution requests that annexes A and B appended to this filing be received as “Confidential” since they relate to *inter partes* disclosure.

Submission of the Amended List of Evidence

Nature of the Amendments

6. The amendments made to the Initial List of Evidence, comprise of *firstly* corrections to page, paragraph, and/or citation references; *secondly* deletions and/or additions of excerpts from individual pieces of the evidence upon which the Prosecution intends to rely on in support of relevant allegations at the confirmation hearing.
7. The Prosecution confirms that all the evidence and excerpts added to the Amended List of Evidence were disclosed to the Defence prior to the expiry of the relevant disclosure deadlines.

Legal basis and reasoning for submitting the Amended List of Evidence

8. The Prosecution submits the Amended List of Evidence is permissible under the rationale governing Rules 121(4) and 121(5).
9. Rule 121(3) provides that the Prosecution shall provide a list of evidence no later than 30 days prior to the confirmation hearing. Article 61(4) of the Statute, provides that before the confirmation hearing the Prosecutor may amend or withdraw any charges. Rule 121(4) of the Rules provides that when the Prosecutor intends to

amend the charges pursuant to Article 61(4), he or she shall notify the Pre-Trial Chamber and the person, no later than 15 days before the date of the hearing, of the amended charges together with a list of evidence that the Prosecutor intends to offer at the hearing. Rule 121(5) provides that where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.

10. The Prosecution notes that the above provisions do not explicitly deal with “amending” the list of evidence as such. However, they require a new list of evidence, to be filed within 15 days of the confirmation hearing, in the event that there is an amendment to the charges or new evidence is proposed to be presented. Thus, it is within the contemplation of the Rules that amendments to the list of evidence are permissible as long as it is within 15 days before the confirmation hearing.
11. The most important factor must be whether the rights of the Accused are violated by the submission of an Amended List of Evidence. In this instance, there is no cognizable prejudice to the Defence. Correction of citation/clerical errors and deletion of individual pieces of evidence or portions simplifies or clarifies the List of Evidence, thus favouring the interests of the Defence. The added items, as described above at paragraph 6, have already been disclosed to the Defence and relate to

existing, not amended, charges. Since they could be added to a List of Evidence if the Prosecution added new charges, their addition to the Initial List of Evidence without also bringing new charges is presumptively not prejudicial.

Conclusion

12. The Prosecution respectfully submits the Amended List of Evidence and requests that it supersede the Initial List of Evidence in the record of the case.



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Luis Moreno-Ocampo

Prosecutor

Dated this 18th day of November 2010

At The Hague, The Netherlands