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

Date: **9 May 2011**

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernandez de Gurmendi

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

**Public Document - with a Confidential *ex-parte* Prosecution and VWU only
"Annex A"**

Prosecution's Consolidated Filing, Pursuant to the Chamber's Oral Decisions dated 19 April 2011 on (i) evidence to be relied on at trial, (ii) an update on article 54(3)(e) lifting procedures and (iii) an update on issues concerning witnesses protection

Sources: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Background

1. During the Status Conference on 19 April 2011, Trial Chamber IV (“Trial Chamber”) ordered the Prosecution to file (i) further information regarding the Prosecution’s evidence to be relied on at trial,¹ (ii) an update on article 54(3)(e) lifting procedures² and (iii) an update on issues concerning witnesses protection³, all by 9 May 2011.
2. Pursuant to the Trial Chamber’s order, the Prosecution hereby submits further information on all three issues as requested.

II. Further information on the Prosecution’s evidence to be relied on at trial

3. The Trial Chamber asked the Prosecution to clarify (i) “how many of the 242 items of evidence the Prosecution refers to in paragraph 12 of its submissions are (...) in a language other than English or Arabic and (ii) how many pages do these comprise and (iii) how many of the items are audio-visual materials and (iv) if there is audio-visual material in which language is it recorded and (v) has the audio-visual material already been translated and transcribed into a working language of the Court?”⁴
4. In paragraph 12 of its “Prosecution’s Response to the Trial Chamber’s request for Written Submissions on Issues to be Addressed During the Status Conference on 19 April 2011”⁵, the Prosecution submitted that it currently intends to rely on 27 witnesses and approximately 242 non-witness related items of evidence. The Prosecution wishes to clarify that its evidence falls into two categories: (i) “witness related materials” (mainly comprising witness statements, annexes to the statements, summaries of the statements, confidential materials provided by witnesses such as photographs, medical notes and the like, and translations) and (ii) “non-witness related materials” (which are mainly open source materials). The figure the

¹ ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 8 lines 19-25 to page 9 lines 1-5 and page 10 lines 7-9.

² ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 26 line 4-13 and page 27 lines 16 -17.

³ ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 27 line 25 to page 28 line 1-4.

⁴ ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 8 lines 19-25 to page 9 lines 1-5.

⁵ ICC-02/05-03/09-131 page 7 para 12.

Prosecution gave, of 242 items, relates to this latter category, all of which are classified as public.

5. To provide the Trial Chamber with a comprehensive overview of the totality of items the Prosecution may rely on for trial, the Prosecution reverts back to the total number of items that it disclosed for the Confirmation Hearing, which is 580 items. Of these, approximately 340 were “witness related materials”, while approximately 240 were “non-witness related materials”. As the Prosecution’s investigations are still ongoing and the Prosecution has not yet finalized the selection of evidence it intends to rely on for trial, the Prosecution emphasizes that at this stage the numbers of items of evidence provided are estimates.

6. The break-down of the “non-witness related materials” is as follows:

(i) Language of items	(ii) Page count⁶	
English: 211 items	2699 pages	
Arabic: 27 items	138 pages	
French: 4 items	185 pages	
(iii) Audio-visual materials	(iv) Language	(v) Transcribed and translated
1 item	English	Not yet transcribed

7. The breakdown of the 340 “witness-related materials” is as follows:

(i) Language of items	(ii) Page count⁷	
English: 137 items	1723 pages	
Arabic: 48 items	586 pages	
French: 5 items	8 pages	
(iii) Audio-visual materials	(iv) Language	(v) Transcribed and translated
1 item	English, Arabic and French	Has been transcribed & translated
1 item	English	Not yet transcribed

⁶ It must be noted that items containing more than one language may be registered twice by Ringtail in its page count.

⁷ Ibid.

III. Prosecution's update on ongoing article 54(3)(e) lifting procedures

8. In relation to the status of the lifting procedures of article 54(3)(e) materials, the Chamber asked the Prosecution to provide "an update on the status of the new discussion with the information provider."⁸

9. The Prosecution refers to its filing of 14 April 2011⁹ in which it provided an update on activities regarding the lifting of restrictions imposed pursuant to article 54(3)(e) prior to the status conference of 19 April 2011. The Prosecution hereby informs the Chamber that, as indicated in its 14 April 2011 filing and mentioned during the status conference,¹⁰ consultations with the information provider for full disclosure of eight documents are still ongoing. In respect of two further documents mentioned during the 19 April 2011 status conference,¹¹ the Prosecution is still awaiting a response from the information provider. A formal letter requesting lifting of restrictions imposed pursuant to article 54(3)(e) has been sent to the information provider, followed by a series of reminders, the last of which was by an email and a telephone conversation, both on 5 May 2011. The Prosecution is continuing to liaise with the provider, and expects a formal response in the near future. The Prosecution will update the Chamber of any further developments in this regard.

IV. Update on issues concerning witness protection

10. The Chamber also ordered the Prosecution and the Victims and Witnesses Unit ("VWU") to provide it with written submissions on issues or challenges currently faced regarding witness protection. Specifically, the Chamber requested to be provided with security situations for each witness concerned, including the security situation assessment of the five witnesses if possible.¹²

11. The Prosecution has liaised with VWU on this issue, and the VWU will be submitting its concerns in a separate filing. However, the Prosecution provides its own response in a "Confidential - *ex-parte* VWU and Prosecution only "Annex A" to

⁸ ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 26 lines 12-13.

⁹ ICC-02/05-03/09-131, page 9 para 18.

¹⁰ ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 26 line 14 to page 27 line 17.

¹¹ ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 26 line 14 to page 27 line 17.

¹² ICC-02/05-03/09-T-10-ENG CT WT 19-04-2011, page 27 line 25 to page 28 line 1-4.

this filing. This information is so classified because it relates to the identities and locations of Prosecution witnesses, the revelation of which could place them and their families at risk.



Luis Moreno-Ocampo
Prosecutor

Dated this 9th day of May 2011

At The Hague, The Netherlands