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

Date: **13 June 2011**

TRIAL CHAMBER IV

Before:

**Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernández 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 Confidential Annexes "A" – "C"

**Prosecution's Revised List of Evidence and Revised List of Witnesses, in light of
the Agreement of Facts between the Parties**

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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Detention Section

**Victims Participation and Reparations
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Other

I. BACKGROUND

1. In a joint filing made on 16 May 2011, the defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus ("Defence") and the Office of the Prosecutor ("Prosecution") identified the contested issues in the trial of the accused persons¹ ("Joint Filing"), and submitted in a confidential annex the agreed facts between the Defence and the Prosecution ("Agreement"), pursuant to Rule 69 of the Rules of Procedure and Evidence² ("Rules").
2. On 30 May 2011, "Trial Chamber IV ("Trial Chamber") ordered the Prosecution, in the light of the Agreement, to file a revised List of Evidence³ and a revised list of witnesses⁴ by 16.00 on 13 June 2011.

II. PROSECUTION'S SUBMISSIONS

Revised List Of Evidence

3. Pursuant to the Chamber's instructions, the Prosecution hereby attaches as Confidential Annex "A" to this filing, a revised list of evidence ("revised LoE") identifying the items of evidence that the Prosecution proposes to rely on at the trial of the accused persons, in light of the Agreement.⁵

¹ Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons, 16 May 2011, ICC-02/05-03/09-148.

² Agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence between the Defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus And the Office of the Prosecutor, ICC-02/05-03/09-148-Conf-AnxA.

³ Order requesting submissions on procedures to facilitate the fair and expeditious conduct of the Proceedings following the Joint Submission of 16 May 2011, ICC-02/05-03/09-155, paragraph 4.

⁴ Order requesting submissions on procedures to facilitate the fair and expeditious conduct of the Proceedings following the Joint Submission of 16 May 2011, ICC-02/05-03/09-155, paragraph 6.

⁵ The Prosecution requests receipt of the annexes as "Confidential", as they relate to *inter partes* disclosure and list items of evidence that are currently classified as confidential.

4. The list of evidence currently in the case record was filed on 18 November 2010⁶, and the Chamber will note that this document was inextricably linked to the Document Containing the Charges (“DCC”) filed at the Pre-Trial stage of proceedings. Accordingly, it was an extensive document, with a total number of **1,141** pages. That document identified not only the items of evidence sought to be relied on, but also contained an analysis of how such items of evidence are linked to the DCC. Therefore, the Prosecution has retained this same format in the revised list of evidence attached and simply identified, in yellow highlights, those items of evidence that the Prosecution no longer intends to rely on at trial, in light of the Agreement.

5. To further assist the Trial Chamber, the Prosecution has also attached as Confidential Annex “B” to this filing, a list of *items* of evidence which it would seek to rely on at the trial, in light the Agreement. This list identifies only those items of evidence that the Prosecution would seek to rely on, in light of the Agreement. The list also incorporates columns which address the further information requested by the Trial Chamber in paragraph 4 (a) – (f) of the Decision.⁷

6. Based on the above extrapolation, the Prosecution envisages that should a trial proceed on the basis of the Agreement, the non-witness related items of evidence that it intends to rely on will now be approximately **145** documents, as opposed to the figure of approximately **242** which the Prosecution presented to the Trial Chamber in its filing of 14 April 2011⁸.

Prosecutions Revised List of Witnesses

⁶ ICC-02/05-03/09-104-Conf-AnxA.

⁷ Ibid.

⁸ ICC-02/05-03/09-131 at para. 12.

7. The Prosecution has attached as Confidential Annex “C” to this filing a revised list of the **16** Prosecution witnesses on which it intends to rely. However, the Prosecution is aiming to reduce this list even further, and anticipates that at least **4 further witnesses** will be removed from the list if the Trial Chamber confirms that the trial should proceed on the basis of the Agreement.
8. Further, the Prosecution informs the Trial Chamber that should the Trial proceed solely on the basis of the Agreement, it proposes to limit the testimony of the witnesses only to those issues that remain in contention between the Parties. From the Prosecution’s point of view, this will reduce the duration of the trial proceedings considerably.
9. As indicated in its filing of 14 April 2011⁹ and during the Status Conference on 19 April 2011¹⁰, the Prosecution’s investigation is still ongoing. These investigative activities include proposed interviews of 6 additional witnesses and the re-interview a number of witnesses. After that the Prosecution will reassess its list of witnesses.



Luis Moreno – Ocampo, Prosecutor

Dated this 13th day of June 2011

At The Hague, The Netherlands

⁹ ICC-02/05-03/09-131 at paras. 6 & 7.

¹⁰ ICC-02/05-03/09-T-10-ENG CT WT, page 7 line 11 to page 8 line 18.