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

Date: 01 August 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

**Public Redacted Version of
“Prosecution’s Request for Non-Disclosure of Four Witnesses statements, or in the
Alternative, to Maintain Request for Redactions Previously Sought
Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence”, filed
on 15 July 2011**

Sources: 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

Mr. Luis Moreno-Ocampo
Ms. Fatou Bensouda
Mr. Ade Omofade

Counsel for the Defence

Mr. Karim A.A. Khan QC
Mr. Nicholas Koumjian
Mr. Ibrahim Yillah

Legal Representatives of the Victims

Mr. Brahim Koné
Ms Hélène Cissé
Mr. Akin Akinbote
Mr. Frank Adaka
Sir Geoffrey Nice QC & Mr. Rodney Dixon

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims **The Office of Public Counsel for the Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section **Other**

I. Introduction

1. On 13 June 2011, the Prosecution filed a revised list of the witnesses that it intends to rely upon at the trial of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus ("the Accused Persons"). This revised list no longer included witnesses DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306 and DAR-OTP-WWWW-0312.
2. [REDACTED].¹
3. [REDACTED].

II. Background

4. On 6 June 2011, the Prosecution filed an application² seeking redactions to the statements of nine witnesses³ upon whom it intended to rely at the trial of the Accused persons⁴ ("6 June Application"). [REDACTED].⁵
5. Pursuant to a separate order from the Trial Chamber dated 30 May 2011,⁶ on 13 June 2011 the Prosecution subsequently filed, *inter alia*, a revised list of the witnesses it intends to rely on at the trial, from which it excluded four witnesses, namely: DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306 and DAR-OTP-WWWW-0312⁷.
6. [REDACTED].

III. Legal Basis

7. The Prosecution has reviewed the statements and materials relating to witnesses DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306 and DAR-OTP-WWWW-0312 to determine whether they contain material that is potentially exculpatory under Article 67(2) or material

¹ [REDACTED].

² [REDACTED].

³ Witnesses 0304, 0305, 0306, 0307, 0312, 0314, 0433, 0441, 0466.

⁴ ICC-02/05-03/09-162.

⁵ [REDACTED].

⁶ ICC-02/05-03/09-155.

⁷ ICC-02/05-03/09-162.

to the preparation of the defence under Rule 77. Having conducted this review, the Prosecution is of the view that each of these statements do contain such material to varying degrees. However, the Prosecution is of the view that the Article 67(2) and Rule 77 material contained in these statements is minimal when looked at in the context of other information that they provide in their statements.⁸ This is particularly so, were a trial to proceed solely on the basis of the agreed facts between the Parties.⁹

8. The Defence is already in possession of summarised versions of each of these four statements¹⁰, and the provision redacted versions of the statements [REDACTED], would be of no added value. Accordingly, the Prosecution does not consider that the material relating to these four witnesses warrants disclosure to the Defence and does not therefore intend to disclose these statements pursuant to Article 67(2) or Rule 77.
9. However, should the Trial Chamber determine that there is material contained in any of the four statements that should be disclosed pursuant to Article 67(2) or Rule 77, the Prosecution would seek to maintain its request for redactions to these statements and witness material as outlined in the 6 June Application.
10. To this end, and to enable the Trial Chamber to adequately consider the relevant material relating to these four witnesses, the Prosecution has re-submitted the material in Annexes "A" to "D" to the this filing as follows:
 - i. [REDACTED];
 - ii. [REDACTED];
 - iii. [REDACTED];
 - iv. [REDACTED].
11. [REDACTED].¹¹

⁸ To further assist the Chamber, the Prosecution will provide the Trial Chamber with a more detailed analysis of the Art. 67(2) and Rule 77 material that the Prosecution has identified in the highlighted portions of the statements in a separate filing, by 20 July 2011.

⁹ ICC-02/05-03/09-148 [REDACTED].

¹⁰ Disclosed to the Defence at the pre-trial stage on 8 July 2010 (Pre-Trial INCRIM package 2), [REDACTED].

¹¹ [REDACTED].

IV. Request for Confidentiality

12. The Prosecution submits this request and its annexes “Confidential, Ex Parte, available to the Prosecutor and the Victims and Witnesses Unit Only”. This is because they relate to material that is currently classified as confidential and *ex parte*. A public redacted version of this application or a public note will be filed should the Trial Chamber so require.

Request

13. For the reasons set forth above, the Prosecution respectfully requests the Trial Chamber:

- i. to authorise the non-disclosure of the statements and witness material relating to witnesses DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306 and DAR-OTP-WWWW-0312;
- ii. in the event that the Trial Chamber considers that the statements and witness material relating to witnesses DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306 and DAR-OTP-WWWW-0312 should be disclosed, to authorise the redactions sought by the Prosecution in the 6 June 2011 Application.



Luis Moreno – Ocampo
Prosecutor

Dated this 1st day of August 2011

At The Hague, The Netherlands