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**International
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Date: **1 August 2011**

TRIAL CHAMBER IV

Before: Judge Joyce Alouch, Presiding Judge
Judge Fatouma Dembele Diarra
Judge Silvia Fernández de Gurmendi

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR v. ABDALLAH BANDA ABAKAER

NOURAIN AND SALEH MOHAMMED JERBO JAMUS

PUBLIC DOCUMENT

**Public Redacted Version of “Prosecution’s Provision of Further and Revised
Information on Four Witnesses’ Statements”, filed on 20 July 2011**

Source: 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. Introduction

On 15 June 2011, the Prosecution filed a request for non-disclosure of unredacted statements of four witnesses - DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306, and DAR-OTP-WWWW-0312 – whose statements have previously been summarized and provided in that form to the Defence. In the alternative, the Prosecution requested authority to maintain the redactions that it had previously sought pursuant to Rule 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”) to the same witnesses’ statements. In the filing, the Prosecution indicated that in order to further assist the Chamber in its determination of the request, it would provide further analytical information as to whether the statements of the four witnesses formerly on the Prosecution’s witness list contain potentially exonerating evidence or information material to the preparation of the Defence.¹

As set out previously and reiterated below, the Prosecution believes whatever potentially exonerating evidence or information that would be material to the preparation of the Defence is contained within the statements, that evidence and information has already been disclosed in summaries previously provided. The additional disclosure of identities or other information, which would be disclosed in unredacted statements, could potentially endanger the witnesses themselves and is, in this circumstance, unnecessary. If the Chamber were to conclude that the statements must be disclosed without redactions, the Prosecution requests additional

¹ ICC-02/05-03/09-181-Conf-Exp, p. 4, footnote no. 8.

time before disclosure to [REDACTED] assess the risks to them from disclosure and need for the provision of protective measures.

II. Background

1. On 9 May 2011, the Prosecution filed an update on issues concerning the protection of nine witnesses it intended to rely upon at the trial Messrs of Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus ("the Accused Persons"), [REDACTED].² On the same day, the Victims and Witnesses' Unit ("VWU") filed a report on the security situation of six Prosecution witnesses, including [REDACTED].³
2. On 6 June 2011, the Prosecution filed an application seeking redactions to the statements of, among others, witnesses DAR-OTPWWWW-0304, DAR-OTP-WWW-0305, DAR-OTP-WWW-0306, and DAR-OTPWWWW-0312.⁴ That application has not been decided.
3. On 13 June 2011, the Prosecution filed a revised list of the witnesses that it intends to rely upon at trial which no longer included witnesses DAR-OTP-WWW-0304, DAR-OTP-WWW-0305, DAR-OTP-WWW-0306 and DAR-OTP-WWW-0312.⁵
4. [REDACTED] ⁶
5. On 15 July 2011, the Prosecution filed a request for non-disclosure of the statements of DAR-OTP-WWW-0304, DAR-OTP-WWW-0305, DAR-OTP-

² [REDACTED]

³ [REDACTED]

⁴ [REDACTED]

⁵ [REDACTED]

⁶ [REDACTED]

WWW-0306, and DAR-OTP-WWWW-0312 or, in the alternative, to maintain the redactions that it had previously sought pursuant to Rule 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”) to the same witnesses’ statements. In the filing, the Prosecution indicated that it would provide further analytical information as to whether the statements of the four witnesses formerly on the Prosecution’s witness list contain potentially exonerating evidence or information material to the preparation of the Defence.

6. The Prosecution, [REDACTED], had to re-analyze 939 pages of evidence to assess whether they are potentially exculpatory and what information contained therein would be material to the preparation of the Defence in light of the proposed Rule 69 agreement of facts.⁷ In so doing, the Prosecution also bore in mind that the Prosecution does not intend to call the four witnesses at trial, given the proposed agreed facts [REDACTED].
7. [REDACTED]⁸ [REDACTED]⁹

III. Information on the review of statements as potentially exonerating evidence or information that is material to the preparation of the Defence.

8. In the present submission, the Prosecution informs the Chamber that upon further and more careful analysis of their statements, DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306, and DAR-OTP-WWWW-0312 provide some information of a potentially exonerating nature, and additional information that, broadly construed, might be material to the preparation of the defence.

⁷ [REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]

9. The statements of the four witnesses have not been disclosed; rather, the Prosecution was authorized to disclose a summary of their statements. The summaries already include the information in the statements that might be potentially exonerating or material to the preparation of the defence. The Prosecution is willing to revise those summaries, should any potentially exonerating evidence or information material to the preparation of the defence not be sufficiently reflected in their current versions, subject to the continued anonymity of the witnesses concerned.

10. [REDACTED]¹⁰

11. [REDACTED]¹¹

12. [REDACTED]

13. In a further attempt to fulfil its disclosure obligations, the Prosecution has reviewed the excerpted information from these witnesses. The Prosecution submits that the Article 67(2) and Rule 77 themes identified in the four witnesses' statements are replicated in all meaningful and material respects in the evidence some extent in the evidence of other [REDACTED] witnesses whose statements or summaries have been disclosed to the Defence [REDACTED] and who are available to testify at trial and will be questioned by the Defence on those themes. Similar Article 67(2) and Rule 77 information is also contained in other items of evidence already disclosed to the Defence.¹² [REDACTED].

14. Additionally, as previously indicated the Defence is in possession of summary versions of the four witnesses' statements, which include the Article 67(2) or Rule

¹⁰ [REDACTED]

¹¹ [REDACTED]

¹² The Prosecution is willing to provide a comprehensive chart of such analogous evidence.

77 information identified in their respective statements. In the event that the Trial Chamber considers that the material relating to the four witnesses should be disclosed, the Prosecution proposes to disclose in anonymous redacted form only the relevant excerpts so that the Defence has the relevant information as it was provided directly by the witness, pending a ruling by the Chamber on the most appropriate manner of provision of this information.

DAR-OTP-WWWW-0304 - *Potentially exonerating evidence/information material to the preparation of the defence*

15. [REDACTED]

16. The Prosecution's analysis of the relevant Article 67(2) and Rule 77 excerpts from the witness statement is set out in a justification chart appended to the present filing as Annex A. The Prosecution further informs the Chamber that upon more careful analysis of the witness statement, some categorizations identified by Prosecution in its 15 July application and highlighted in the witness' statement accordingly may have slightly changed. Those amendments together with their explanations are reflected in the chart (Annex A). For sake of consistency between the justification charts and the revised highlights applied to the relevant Article 67(2) and Rule 77 portions in the witness' statement, the Prosecution re-submits the latter as Annex A-1 ([REDACTED]).

DAR-OTP-WWWW-0305 - *Potentially exonerating evidence/information material to the preparation of the defence*

17. [REDACTED]

18. The Prosecution's analysis of the relevant Article 67(2) and Rule 77 excerpts from the witness statement is set out in a justification chart appended to the present filing as Annex B. The Prosecution further informs the Chamber that upon more careful analysis of the witness statement, some categorizations identified by Prosecution in its 15 July application and highlighted in the statement accordingly may have slightly changed. Those amendments together with their explanations are reflected in the chart (Annex B). For sake of consistency between the justification charts and the revised highlights applied to the relevant Article 67(2) and Rule 77 portions in the witness' statement, the Prosecution re-submits the latter as Annex B-1 ([REDACTED]).

DAR-OTP-WWWW-0306 - *Potentially exonerating evidence/information material to the preparation of the defence*

19. [REDACTED]

20. The Prosecution's analysis of the relevant Article 67(2) and Rule 77 excerpts from the witness statement is set out in a justification chart appended to the present filing as Annex C. The Prosecution further informs the Chamber that upon more careful analysis of the witness statement, some categorizations identified by Prosecution in its 15 July application and highlighted in the witness' statement accordingly may have slightly changed. Those amendments together with their explanations are reflected in the chart (Annex C). For sake of consistency between the justification charts and the revised highlights applied to the relevant Article 67(2) and Rule 77 portions in the witness' statement, the Prosecution re-submits the latter as Annex C-1 ([REDACTED]).

DAR-OTP-WWWW-0312 - *Potentially exonerating evidence/information material to the preparation of the defence*

21. [REDACTED]

22. [REDACTED]

23. The Prosecution's analysis of the relevant Article 67(2) and Rule 77 excerpts from the witness statement is set out in a justification chart appended to the present filing as Annex D. The Prosecution further informs the Chamber that upon more careful analysis of the witness statement, some categorizations indentified by Prosecution in its 15 July application and highlighted in the witness' statement accordingly may have slightly changed. Those amendments together with their explanations are reflected in the chart (Annex D). For sake of consistency between the justification charts and the revised highlights applied to the relevant Article 67(2) and Rule 77 portions in the witness' statement, the Prosecution re-submits the latter as Annex D-1 ([REDACTED]).

IV. [REDACTED]

24. [REDACTED]¹³

25. [REDACTED]

26. [REDACTED]

27. [REDACTED]

V. *Ex Parte* Filing

¹³[REDACTED]

28. 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.

Relief Sought

29. [REDACTED], the Prosecution respectfully reiterates its request to 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