

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 15 August 2011

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata 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 request to retain temporary redactions to the identity of a
Prosecution’s witness and to delay the disclosure of the identities of two former
Prosecution’s witnesses”, filed on 29 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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Introduction

1. [REDACTED]¹.

2. ²[REDACTED].

3. In view of the recent concerns expressed by these witnesses about their identities being divulged to the Defence, the Prosecution requests that the temporary redactions to the statements of all of these witnesses be maintained until [REDACTED] their subjective concerns, if any, are addressed including by additional protective measures should the circumstances dictate so.

I. Background

4. On 6 June 2011, the Prosecution sought the Trial Chamber's approval to apply redactions to the interview records of nine Prosecution witnesses pursuant Rule 81(2) and (4) of the Rules of Procedure and Evidence ("Rules").³ Among those nine witnesses whose identities the Prosecution sought to withhold from the Defence until such time when suitable protective measures were fully implemented, were W-0307, W-0441, and W-0466.

5. On 13 June 2011, the Prosecution filed a revised list of the witnesses it intended to call to testify at trial.⁴

6. ⁵[REDACTED].

¹[REDACTED].

²[REDACTED].

³[REDACTED].

⁴[REDACTED].

7. [REDACTED]⁶. [REDACTED].⁷

8. At the status conference on 12 July 2011⁸, the Prosecution informed the Chamber that it no longer intends to rely on witnesses W-0441 and W-0466, among others, at the trial of the Accused persons, should the trial proceed on the basis of the agreed facts.⁹ The Prosecution is now assessing the content of the interview records of W-0441 and W-0466 in order to determine whether they contain potentially exculpatory evidence and/or information material to the preparation of the defence, which would warrant disclosure to the Defence pursuant to Article 67(2) of the Rome Statute ("Statute") or Rule 77.

9. On 12 July 2011, the Prosecution disclosed the interview transcripts of witness W-0307 in temporary redacted form, [REDACTED]. This witness remains on the Prosecution's list of witnesses intended to be called to testify at trial.

10. During the same status conference, the Prosecution requested permission to raise a matter of a confidential nature but given the public nature of the hearing it could not specify the subject of its request. The Chamber instructed the Prosecution to file written submissions instead. The present filing is made pursuant to such order.¹⁰

11. [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ ICC-02/05-03/09-T-12-ENG ET, p. 6, lines 2 -4.

¹⁰ ICC-02/05-03/09-T-12-ENG ET, p. 29, lines 10 -25, and p. 30, lines 1 -2.

II. Submissions

12. [REDACTED].¹¹

13. [REDACTED], the Prosecution is currently evaluating whether W-0441's and W-0466's statements must be disclosed, notwithstanding that they are removed from the Prosecution list of incriminatory witnesses. W-0307's interview records were disclosed in redacted form on 12 July 2011.

14. [REDACTED].

15. [REDACTED].

16. [REDACTED].

17. WWW-0307 falls within this category of individuals. In the past he has expressed scepticism about the effectiveness [REDACTED] protective measures to counter-balance the risk associated with the disclosure of his identity. [REDACTED].

18. [REDACTED]. Thereafter, should the witness remain concerned, he will be able then to express those additional security concerns to the competent services of the Court, which will assess whether additional protective measures are required.¹²

19. For the foregoing reasons, the Prosecution seeks the approval of the Chamber to maintain the current set of redactions applied to the identity and the interview records of W-0307 and delay the lifting of his anonymity until after

¹¹ [REDACTED].

¹² [REDACTED].

[REDACTED] is concluded. The Prosecution submits that the Defence is not prejudiced by this further delay as it is already in possession of the redacted transcripts of the witness's interview.

20. With regards to former prosecution witnesses W-0441 and W-0466, [REDACTED]. Since these two witnesses have been removed from the Prosecution's original list of trial witnesses, the Prosecution is currently reviewing their evidence with a view to determine whether disclosure is warranted.

21. Subject to its final determination, the Prosecution wishes to inform the Chamber of its intention to afford W-0441 and W-0466 the same [REDACTED] to W-0307. The Prosecution's initiative is prompted by the fact that similarly to W-307, both W-0441 and W-0466 have expressed reluctance to [REDACTED] their identities be disclosed. [REDACTED]. To that end the Prosecution has made provisional arrangements to meet the two witnesses [REDACTED] during the second week of August.

22. [REDACTED]¹³.

III. Request for Confidentiality

23. The Prosecution submits that the classification of this filing as *Confidential-Ex Parte – Prosecution and VWU Only* is necessary¹⁴. First, [REDACTED]¹⁵. In addition, the filing provides information about a Prosecution trial witness as well other witnesses whose identities have not yet been disclosed to the Defence, and addresses specific security-related matters of a confidential nature.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ ICC-02/05-03/09-T-12-ENG ET WT, page 29, lines 20 – 25, and page 30, lines 1 -2.

IV. Relief Sought

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

- (i) To authorise the temporary retention of the Rule 81(2) and (4) redactions to W-0307's identity in his statement, and delay disclosure of his identity until [REDACTED];
- (ii) To authorise the temporary non-disclosure of W-0441's and W-0446's identities, statements, and material until after the Prosecution has concluded its review of their evidence pursuant to Article 67(2) and Rule 77 and [REDACTED].



.....

Luis Moreno-Ocampo

Prosecutor

Dated this 15th day of August 2011

At The Hague, The Netherlands