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

Date: **19 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 Application for Redactions Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence and Request for the Lifting of Certain Redactions Authorised Pursuant to Rule 81(4)”, filed on 12 August 2011

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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Introduction

The Office of the Prosecutor (“Prosecution”) respectfully submits its application for redactions to the statements of four witnesses (“the Application”) pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”). The Prosecution also requests the Chamber to lift redactions to the name and other identifying information of one witness previously authorised pursuant to Rule 81(4) of the Rules.

I. Background

1. Between 20 and 30 July 2011, the Prosecution interviewed four witnesses: (a) [REDACTED] (Witness DAR-OTP-WWWW-0484); (b) [REDACTED] (Witness DAR-OTP-WWWW-0485); (c) [REDACTED] (Witness DAR-OTP-WWWW-0486); and (d) [REDACTED] (Witness DAR-OTP-WWWW-0487).

2. On 5 August 2011, the Prosecution filed an Updated List of Witnesses adding the three of these newly interviewed witnesses to the list.¹ In the filing the Prosecution also informed the Chamber that it did not intend to rely on the statement of Witness DAR-OTP-WWWW-0484 at the trial.²

II. Prosecution’s Request for Redactions Pursuant to Rules 81(2) and 81(4)

(A) Prosecution’s Request

3. The Prosecution’s request relates to statements (and related material) of four witnesses interviewed recently by the Prosecution. Although the Prosecution does not intend to rely on the statement of Witness **DAR-OTP-WWWW-0484**, his statement is also submitted as part of the current application for redactions.

¹ ICC-02/05-03/09-189-AnxA.

² ICC-02/05-03/09-189, paras 4, 6.

i. Scope of Redactions Sought, and the Legal and Factual Basis.

4. The scope of the redactions sought relates, *inter alia*, to:

i. Information specifically affecting ongoing or further investigations, pursuant to Rule 81(2) of the Rules. In this category, the Prosecution seeks redactions to the name or other identifying information of the OTP investigator³, given his role in the investigations;

and

ii. Information specifically relating to personal security, dignity and privacy of witnesses or other persons who may be at risk on account of the activities of the Court, pursuant to Articles 54(3)(f) and 68(1) of the Statute and Rule 81(4) of the Rules. In this category, the Prosecution seeks redactions to the following information:

(a) names and other identifying information of family members and other information of a personal nature pertaining to the OTP witnesses, including the locations of their residence and their family members;

(b) names and identifying information, including the images, of other persons who might be put at risk on account of the activities of the Court (“innocent third parties”). This includes information relating to (a) a former OTP investigator; (b) [REDACTED]; (c) [REDACTED].

5. It is the Prosecution’s responsibility to take appropriate measures to ensure effective investigations, and in doing so, take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.⁴ Against this background, the Prosecution has assessed the general and

³Conversely however, where OTP Trial Lawyers have participated in interviews, the Prosecution has not sought redactions to their names as their identities are already in the public domain and known to the Accused Persons.

⁴ Articles 54(1)(b) of the Statute read in conjunction with Article 68(1) of the Statute.

particular security situation of each of the witnesses whose statements are attached and has concluded that the risks they face can be mitigated and managed should their identities be disclosed to the Accused Persons at this stage. The Prosecution will continue to monitor the security situation of each witness and promptly inform the Chamber of any change in their security status.

(B) Organization of the Materials being Submitted

6. The Prosecution herewith submits to the Trial Chamber the following witness statements (and annexes thereto) for which redactions are being sought, together with accompanying charts setting out both the specific information sought to be redacted and the justification for the redaction sought:

a The First Category of Statements

7. This category of annexes comprises of the statements and related material of witnesses that the Prosecution intends to call to testify at trial:

- i. **Annex A:** The justification chart and witness statement (DAR-OTP-0181-0177) of **Witness DAR-OTP-WWWW-0485**;
- ii. **Annex B:** The justification chart, witness statement (DAR-OTP-0181-0204) of **Witness DAR-OTP-WWWW-0486**, together with the following annexes provided by the witness: **Annex "1"** (DAR-OTP-0181-0234), **Annex "2"** (DAR-OTP-0181-0236) and **Annex "3"** (DAR-OTP-0181-0238), and other supporting material.
- iii. **Annex C:** The justification chart and witness statement (DAR-OTP-0181-0158) of **Witness DAR-OTP-WWWW-0487**.

b The Second Category of Statements

8. This category comprises of the one witness statement which the Prosecution does not intend to rely on, but which may still be disclosable to the Defence pursuant to Article 67(2) or Rule 77:

- i. **Annex D:** The justification chart and witness statement (DAR-OTP-0181-0108) of **Witness DAR-OTP-WWWW-0484**, together with **Annexes "1" to "7"** (range DAR-OTP-0181-0129 through 0135) also provided by this witness.

9. To further assist the Trial Chamber in its review of the proposed redactions, the Chart attached to each statement contains: (i) each proposed redaction – referred to by page number; and (ii) the corresponding rule justifying the redaction proposed.

10. The Prosecution has also colour-coded each proposed redaction as follows:

- i. Blue represents proposed redactions pursuant to Rule 81(2) of the Rules that relate exclusively to further and/or ongoing investigation;
- ii. Red represents proposed redactions pursuant to Rule 81(4) of the Rules and Articles 54(3)(f) and 68(1) of the Statute, to protect the safety of witnesses and victims, members of their families and other persons at risk on account of activities of the Court.

(C) Justification for the Redactions Requested

11. The justification for each of the redactions sought is contained in the Chart attached to each statement.

(D) Necessity for Redactions and Impact on Rights of the Accused

12. The Prosecution submits that these redactions are necessary to protect the safety and security and, where appropriate, the privacy of the persons in respect of whom they are being sought. There are no less intrusive alternative measures that can be taken to avoid the risks mentioned in the confidential annexes appended to this Application. Additionally the Prosecution submits that at this stage of the proceedings and in light of the nature of most of the redactions sought, the requested redactions are not prejudicial to, or inconsistent with, the rights of the Accused Persons.

III. Request for the Lifting of Certain Redactions Authorised Pursuant to Rule 81(4)

13. [REDACTED].⁵ [REDACTED].⁶

14. The Prosecution has now interviewed this individual as a witness and he consents to his identity being disclosed to the Defence.⁷ The Prosecution has further assessed that there are no security risks to him if his identity were to be disclosed to the Defence. The Prosecution has not sought to redact his name or other identifying information in the instant application, [REDACTED], is no longer necessary.

15. The Prosecution therefore requests the Trial Chamber to authorise the lifting of all redactions to the name and other identifying information of the Witness DAR-OTP-WWWW-0486. Specifically, these redactions are contained in the following witness statements already disclosed to the Defence at the Pre-Trial stage:

⁵ [REDACTED].

⁶ [REDACTED].

⁷ See DAR-OTP-0181-0204 at 0232-0333, para. 172.

- (a) In the 1st Statement of **Witness DAR-OTP-WWWW-0355 at DAR-OTP-0165-0352**. Specifically in paragraph 33 (at page 0358); paragraphs 54 and 58 (at page 0361); paragraph 69 (at page 0363);⁸ paragraph 92 (at page 0366) and paragraphs 105-107 (at page 0368);
- (b) In the **Annexes to the 2nd Statement of Witness DAR-OTP-WWWW-0355 at DAR-OTP-0174-0306**, specifically Annex “A” DAR-OTP-0174-0318 at page 0320; Annex “B” DAR-OTP-0174-0321 at page 0321; Annex “D” DAR-OTP-0174-0326 at pages 0326 and 0327.⁹

IV. Request for Confidentiality

16. The Prosecution submits this request and its annexes “Confidential, Ex Parte, available to the Prosecutor and the Victims and Witnesses Unit Only” because they relate to material that is currently classified as confidential and *ex parte* and depict information relating to the identities of witnesses and their relatives. A public redacted version of this Application or a public note will be filed as soon as practicable.

Relief Sought

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

- (i) to authorise the redactions proposed to the 4 witness statements, together with their accompanying annexes, submitted with this Application, as well as the relevant meta-data, where applicable;

⁸ [REDACTED].

⁹ The statement and the corresponding annexes that are subject of the current request were disclosed to the Defence Teams of Messrs. Abdallah Banda and Saleh Jerbo on 6 August 2010, in redacted form.

(ii) to authorise the lifting of redactions previously authorised or ordered by PTC I pursuant to Rule 81(4) to the identity and identifying information of Witness DAR-OTP-WWWW-0486.



Luis Moreno – Ocampo

Prosecutor

Dated this 19th Day of August 2011

At The Hague, The Netherlands