

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09
Date: 5 September 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

**Order to the prosecution to finalise its review pursuant to Article 67(2) and Rule
77 concerning Witnesses 441, 466 and Witnesses 314 and 433**

Decision 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

Counsel for the Defence

Mr Karim A.A. Khan

Mr Nicholas Koumjian

Legal Representatives of Victims

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Mr Frank Adaka

Sir Geoffrey Nice & Mr Rodney Dixon

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IV (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (“Banda and Jerbo case”), issues its Order to the prosecution to finalise its review pursuant to Article 67(2) and Rule 77 concerning Witnesses 441, 466 and Witnesses 314 and 433.

1. On 6 June 2011, the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s Application for Redactions Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence”.¹ In its application, the prosecution sought redactions for, *inter alia*, witnesses DAR-OTP-WWWW-0441 (“Witness 441”), DAR-OTP-WWWW-0466 (“Witness 466”) and witnesses DAR-OTP-WWWW-0314 (“Witness 314”) and DAR-OTP-WWWW-0433 (“Witness 433”).²
2. On 12 July 2011, during a status conference, the prosecution indicated that it was no longer relying on witnesses 441, 466, 314 and 433 at trial, should the trial proceed on the basis of the agreed facts.³
3. On 5 August 2011, the prosecution filed the “Prosecution’s Updated List of Witnesses”, which did not include witnesses 441, 466, 314 and 433.⁴
4. On 15 August 2011, the prosecution indicated that it was assessing the

¹ Prosecution’s Application for Redactions Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence, 6 June 2011, ICC-02/05-03/09-159-Conf-Exp, Public Redacted Version of Prosecution’s Application for Redactions Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence filed on 6 June 2011, 24 June 2011, ICC-02/05-03/09-159-Red.

² *Ibid.*

³ ICC-02/05-03/09-T-12-ENG ET, page 6, lines 1-4.

⁴ Prosecution’s Updated List of Witnesses, 5 August 2011, ICC-02/05-03/09-189.

content of the interview records of witnesses 441 and 466 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 of the Rules of Procedure and Evidence ("Rules").⁵ To date, the Chamber has not been informed of the outcome of the review of the material concerning these two witnesses.

5. The Chamber further notes that, up until now, the prosecution has not indicated whether it is reviewing the material relating to witnesses 314 and 433 to determine whether they contain exculpatory material or whether it is material to the preparation of the defence pursuant to Article 67(2) of the Statute and Rule 77 of the Rules.

6. The Chamber therefore orders the prosecution:

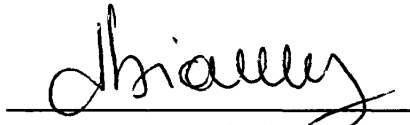
- (i) to finalise its review of the material relating to witnesses 441 and 466;
- (ii) to review the material relating to witnesses 314 and 433;
- (iii) to inform the Chamber no later than 16.00 on 9 September 2011 whether in the prosecution opinion, the material relating to the four above witnesses contains Article 67(2) and/or Rule 77 material and;
- (iv) accordingly, to highlight, in different colours, the relevant sections of the transcripts and/or statements of

⁵ 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 witnesses, 29 July 2011, ICC-02/05-03/09-185-Conf-Exp, paras. 8, 24.

the four witnesses (and in the additional documents, if relevant) that the prosecution considers to be potentially exculpatory or material to the preparation of the defence.



Judge Joyce Aluoch



Judge Fatoumata Dembele Diarra



Judge Fernández de Gurmendi

Dated this 5 September 2011

At The Hague, The Netherlands