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No.: ICC-02/05-03/09
Date: 11 January 2012

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernández de Gurmendi

SITUATION IN DARFUR, THE 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 Application for Redactions
Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence,
filed on 29 December 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. The Office of the Prosecutor (“Prosecution”) respectfully submits its application (“the Application”) for redactions to the statement of witness DAR-OTP-WWWW-0442 (“W-0042” or “witness”) pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”). The witness, whom the Prosecution intends to call to testify at trial¹, was re-interviewed pursuant to Article 55(2) of the Rome Statute (“Statute”) between [REDACTED] 2011.

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

2. The Prosecution’s request relates to the transcript² of the re-interview of W-0442, which took place between [REDACTED] 2011.

3. The transcript of the first interview of W-0442 was redacted pursuant to a decision of the Pre-Trial Chamber I (“PTC I”) of 29 July 2010³ and subsequently disclosed to the Defence on 6 August 2010. The Prosecution hereby seeks the Chamber’s approval of redactions to the transcript of the witness’s re-interview along the same lines as those already granted by the PTC I.

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

(i) Rule 81(2) Redactions Sought

4. The Prosecution seeks redactions to protect information related to its ongoing investigations pursuant to Rule 81(2). The Appeals Chamber has held that the same general factors used to analyze proposals for non-disclosure pursuant to Rule 81(4) apply *mutatis mutandis* to proposals pursuant to Rule 81(2), namely: “*a thorough consideration of the danger that the disclosure of the information may cause; the necessity of the non-disclosure, including whether it is the least intrusive measure necessary to avoid prejudice to the investigations of the Prosecutor; and the fact that any measures taken shall*

¹ ICC-02/05-03/09-189-AnxA.

² This transcript consists of 9 parts (Transcript Reference: DAR-OTP-0181-0309 through 0365, DAR-OTP-0181-0407; DAR-OTP-0181-0449 through 0469; DAR-OTP-0181-0489; DAR-OTP-0181-0509).

³ ICC-02/05-03/09-58, p.9, [REDACTED].

not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”⁴

5. More specifically, by this application, the Prosecution seeks to redact, *inter alia*:

- (a) names or other identifying information of the OTP investigator, as well as the OTP and Registry interpreters, given their role during investigations;
- (b) location(s) at which the Prosecution conducted its interviews with the witness (the specific address and the description provided).

(ii) Rule 81(4) Redactions Sought

6. The non-disclosure of information for the protection of persons at risk is permissible pursuant to Rule 81(4) and applies to witnesses, members of witnesses’ families and others at risk on account of the activities of the Court.⁵ The aim is to protect the security of individuals at risk.⁶ Any such non-disclosure should be authorized on the facts of an individual case and will require a careful assessment by the Chamber on a case-by-case basis, balancing the various interests at stake.⁷

7. In this category, the Prosecution seeks redactions to the names and identifying information of “innocent third parties” that appear in the transcript of the re-interview. This includes information relating to:

- (a) The names of the [REDACTED];
- (b) References to the place of origin of certain individuals who appear to have interacted with the witness.

III. Organization of the Materials being Submitted

⁴ *Prosecutor v. Katanga*, Judgment on Katanga’s Appeal against the First Redaction Decision, ICC-01/04-01/07-476 OA2, 13 May 2008, para. 59.

⁵ *Prosecutor v. Lubanga*, Judgment on Appeal against First Redaction Decision, ICC-01/04-01/06-773 OA 5, 14 December 2006, para. 21.

⁶ *Prosecutor v. Katanga*, Judgment on Prosecution’s Appeal against the First Redaction Decision, ICC-01/04-01/07-475 OA, 13 May 2008, para 56.

⁷ *Ibid.*, para. 66.

8. The Prosecution herewith submits to the Trial Chamber the following material:

- i. The transcript of W-0442's re-interview appended as **Annex A** to the present filing.
To further assist the Chamber in its examination of the present application, the Prosecution has colour-coded each proposed redaction in blue to signify redactions pursuant to Rule 81(2) relating exclusively to further and/or ongoing investigation, and in red for Rule 81(4), Articles 54(3)(f), and 68(1) redactions aiming to protect the safety of witnesses and victims, members of their families and other persons at risk on account of activities of the Court.
- ii. A chart setting out the specific information sought to be redacted in the transcripts of W-0442's re-interview and the justification for it. It is appended as **Annex B** to the present filing.

IV. Necessity for Redactions and Impact on Rights of the Accused

9. The Prosecution submits that the redactions being sought through the present application 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 described in the confidential *ex parte* 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.

V. Request for Confidentiality

10. The Prosecution submits this request and its Annexes as "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* and depict information relating to the identities of "innocent third parties". A public redacted version of this application or a public note will be filed as soon as practicable.

Relief sought

11. For the reasons set forth above, the Prosecution respectfully requests the Trial Chamber to authorise the redactions proposed to the information contained in the transcript of the re-interview of W-0442.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is centered on the page.

Luis Moreno -Ocampo
Prosecutor

Dated this 11th day of January 2012

At The Hague, The Netherlands