

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 June 2012

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

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 Provision of Security Related
Information Regarding Third Parties in Witness DAR-OTP-P-0486's Statement",
filed on 4 June 2012**

Sources: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Mr. Karim A.A. Khan QC

Mr. Nicholas Koumjian

Legal Representatives of the Victims

Legal Representatives of the Applicants

Ms. Helene Cisse

Mr. Jens Dieckmann

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Ms. Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Ms. Maria Luisa Martinod-Jacome

**Victims Participation and Reparations
Section Other**

Introduction

1. [REDACTED]¹ [REDACTED], the Office of the Prosecutor herein provides further information on the third parties mentioned in the statement of witness DAR-OTP-P-0486 ("P-486"), whose identity the Prosecution sought to redact from the Defence and the Accused persons in its "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)" ("Redaction Application") of 15 August 2011².

I. Submission

[REDACTED]

2. The OTP interviewed witness P-0486 between 25 and 28 July 2011 at which time he made a formal statement pursuant to Rule 111 of the Rules of Procedure and Evidence ("Rules")³. The OTP also collected certain documents from him. This witness was [REDACTED] at the time of the attack on 29 September 2007. [REDACTED] P-486 identified [REDACTED]⁴.

3. On 15 August 2011, the Prosecution sought the Chamber's authorization to redact, among others, the names and other indentifying information of [REDACTED] in advance of the disclosure of P-486's statement to the Accused. The Prosecution was guided by the "Second Decision on the Prosecutor's request for Redactions" ("Second Decision"), rendered in the case *Prosecutor vs. Bahr Idriss Abu*

¹ [REDACTED].

² ICC-02/05-03/09-198-Conf-Exp.

³ DAR-OTP-0181-0204 [REDACTED].

⁴ *Ibid.*

*Garda*⁵, and in particular by the Single Judge's extensive reasoning authorizing similar redactions to the identities of [REDACTED] mentioned the statement of another witness [REDACTED]⁶. As was the case with P-486, [REDACTED] was [REDACTED] at the time of the attack in September 2007. While the Second Decision concerned *names* of individuals different from the ones mentioned by P-486, the Prosecution considered that the names mentioned by P-486 nevertheless fell within the same *categories* [REDACTED] of individuals for whom the Single Judge had previously ordered similar redactions.

4. The Prosecution however notes that some of the factual circumstances underlying the Second Decision in 2009, which were still valid at the time of the Prosecution's Application in 2011, have now changed, and proceedings in the present case have now advanced further, warranting the Prosecution to re-assess whether there is any need to maintain redactions previously ordered or authorized under different circumstances.

5. In the course of its review of these circumstances, the Prosecution has been able to establish that [REDACTED]⁷. [REDACTED]⁸.

6. However, as regards the [REDACTED] specifically mentioned by P-486, [REDACTED]. The Prosecution notes that P-486 might have been mistaken in his identification of [REDACTED] when he was interviewed by the OTP. In fact, at the [REDACTED] there were other [REDACTED]. Information available to the Prosecution suggests that [REDACTED]⁹. For this reason, the Prosecution is wary of [REDACTED] the possible exposure of these individuals.

⁵ ICC-02/05-02/09-85 and ICC-02/05-02/09-85-Conf-Exp-AnxI.

⁶ ICC-02/05-02/09-85-Conf-Exp-AnxI, [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

7. [REDACTED].

8. [REDACTED]¹⁰ [REDACTED]. Given this, the risk arising from a lifting of redactions referencing [REDACTED] in the context of P-486's statement is assessed by the OTP as low.

9. As regards the second category of individuals at issue in the Redaction Application, i.e. [REDACTED], the Prosecution has no reason to believe that [REDACTED]. [REDACTED].

10. In the Second Decision, the Single Judge authorized redactions to [REDACTED]¹¹. This is the [REDACTED] mentioned by P-486 in his statement.¹² However, [REDACTED] who referred to [REDACTED]¹³ P-486 describes him in fairly neutral terms, only mentioning [REDACTED].

11. [REDACTED].

12. [REDACTED]¹⁴.

13. [REDACTED].

14. The Prosecution is however unable to mitigate the risk that [REDACTED]. If circumstances so merit, and in order to further mitigate such risk, the Prosecution would request that pursuant to Article 54(3)(f) and Rule 81(4), disclosure of the identity of [REDACTED] be ordered confidentially and [REDACTED] dissemination restricted to the Defence and the Accused only. Such an order would not cause

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² DAR-OTP-0181-0204 at -0220, paragraph 31

¹³ DAR-OTP-0169-0808 at -0817, paragraph 74; at -0818, paragraph 78; and at -0824, paragraph 139.

¹⁴ [REDACTED].

prejudice to the Defence and would strike a proper balance between the need to prevent innocent third parties being put at risk on account of the activities of the Court and the right afforded to the Defence to conduct its investigations.

[REDACTED]

15. [REDACTED]¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED].

The name of former OTP Investigator [REDACTED]

16. [REDACTED], the Chamber authorized redactions to the name and identifying information of OTP investigator [REDACTED] in the statements of Witnesses DAR-OTP-P-0485; DAR-OTP-P-0486 (including its annexes "A" to "C"); and DAR-OTP-P-0487.¹⁸ However the Prosecution respectfully observes that [REDACTED] the Chamber had already authorized the lifting of redactions to the name of [REDACTED] name in the transcripts of the interview of Witness DAR-OTP-P-0314¹⁹ and that [REDACTED] the Prosecution proceeded to disclose such transcripts to the Defence without redacting the name of the investigator²⁰.

17. The Prosecution hereby informs the Chamber that [REDACTED] to lift the redactions to [REDACTED] name in the interview records of, *inter alia*, Prosecution's Witnesses DAR-OTP-P-0419²¹; DAR-OTP-P-0420²²; DAR-OTP-P-445²³;

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ ICC-02/05-03/09-327.

²¹ DAR-OTP-0165-0489 and DAR-OTP-0168-0168.

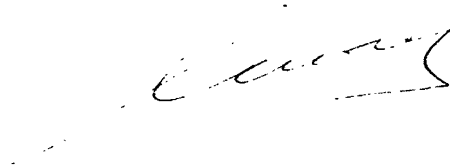
²² DAR-OTP-0165-0521.

²³ DAR-OTP-0170-0196.

DAR-OTP-P-0446²⁴; DAR-OTP-P-0307²⁵; and DAR-OTP-P-0442²⁶, and re-disclose them to the Defence.

Justification for Filing Confidential-Ex Parte

The Prosecution submits that the classification of this filing as *Confidential-Ex Parte - Prosecution and VWU Only* is necessary. The filing provides information about a Prosecution trial witness whose identity and location have not yet been disclosed to the Defence, and addresses specific security-related matters of a confidential nature.



Luis Moreno – Ocampo
Prosecutor

Dated this 8th day of June 2012
At The Hague, The Netherlands

²⁴ DAR-OTP-0176-0018.

²⁵ DAR-OTP-0158-0026

²⁶ DAR-OTP-0181-0309.