

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

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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 Application for Variation of Protective Measures Pursuant to Regulation 42 of the Regulations of the Court by Lifting Certain Redactions Authorised Pursuant to Rule 81(4) of the Rules of Procedure and Evidence", filed on 19 June 2012

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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I. Introduction

The Office of the Prosecutor (“Prosecution” or “OTP”) respectfully submits its application requesting Trial Chamber IV (“Trial Chamber” or “Chamber”) to authorise the lifting of certain redactions previously granted by Pre-Trial Chamber I (“PTC I”) in *Prosecutor v. Bahar Idriss Abu Garda* (“*Abu Garda*”). The said redactions relate to [REDACTED], and were authorised by PTC I pursuant to Rule 81(4) of the Rules of Procedure and Evidence (“Rules”). The redactions are in the statements of OTP trial witnesses P-0315, P-0355, P-0416, P-0419 and P-0446, and witness P-0447 on whom the Prosecution does not intend to rely at trial.¹

II. Background

1. On 10 and 25 August 2009, the Prosecution submitted applications to PTC I in *Abu Garda*, seeking the redaction, *inter alia*, of [REDACTED] in the statements of witnesses P-0315, P-0355, P-0416, P-0419, P-0446 and P-0447,² pursuant to Rule 81(4) of the Rules. These redactions were requested to [REDACTED].³ In seeking the redactions, the Prosecution noted [REDACTED].⁴

2. On 14 August 2009, PTC I in *Abu Garda* rendered its “*First Decision on the Prosecution’s Requests for Redactions*” authorising redactions pursuant to Rule 81(4),

¹ See ICC-02/05-03/09-131, paras 9, 13; see also ICC-02/05-03/09-162, paras 7-9 and ICC-02/05-03/09-162-Conf-AnxC.

² The Prosecution has omitted the prefix “DAR-OTP-” when it refers to all of the witnesses, and referred to them by their numbers only.

³ ICC-02/05-02/09-44-Conf [REDACTED], ICC-02/05-02/09-66-Conf [REDACTED]; ICC-02/05-02/09-73-Conf [REDACTED].

⁴ [REDACTED].

including of [REDACTED] in the statements of witnesses P-0355 (1st Statement),⁵ P-0416 (1st Statement)⁶ and P-0419 (1st Statement).⁷

3. On 7 September 2009, PTC I in *Abu Garda* rendered its “*Second Decision on the Prosecution’s Requests for Redactions*” authorising further redactions of the [REDACTED], and of [REDACTED] mentioned in the statements of witnesses P-0315 (1st Statement),⁸ P-0446 (1st Statement)⁹ and P-0447.¹⁰

4. [REDACTED]. [REDACTED]¹¹ or [REDACTED].¹² [REDACTED].¹³ [REDACTED] witness P-0446’s statement¹⁴ [REDACTED].¹⁵

5. In authorising these redactions, the Single Judge in *Abu Garda* observed that disclosing the identities of these individuals could place them at unnecessary risk on account of the activities of the Court. [REDACTED]. [REDACTED]¹⁶ [REDACTED].¹⁷

6. On 29 June 2010, in a Decision on issues relating to disclosure, PTC I in *Prosecutor v. Banda and Jerbo* (“*Banda and Jerbo*”) affirmed that, by virtue of Regulation 42 of the Regulations of the Court, the redactions authorised in *Abu Garda* continued to have full force in relation to the instant case.¹⁸ Consequently, when the Prosecution disclosed the statements of witnesses P-0315, P-0355, P-0416,

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ ICC-02/05-02/09-85, [REDACTED].

⁹ ICC-02/05-02/09-85, [REDACTED].

¹⁰ ICC-02/05-02/09-85, [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED]

¹⁷ [REDACTED].

¹⁸ ICC-02/05-03/09-49, paras 11-12.

P-0419, P-0446, and P-0447 to the Defence in this case, those statements retained redactions to information [REDACTED].¹⁹

7. On 12 August 2011, in line with PTC I's prior authorisation for redactions of this nature, the Prosecution requested redactions, pursuant to Rule 81(4) of the Rules, of information [REDACTED] in the newly obtained statements of witnesses P-0484²⁰ and P-0486 ("Redaction Application of 12 August 2011").²¹ Pending the Chamber's consideration of the Redaction Application of 12 August 2011, these statements were disclosed to the Defence²² with temporary redactions applied to the relevant information.²³

8. On 5 September 2011, the Defence filed its observations on the Prosecution's Redaction Application of 12 August 2011,²⁴ [REDACTED].²⁵

9. On 9 March 2012, the Defence requested the Trial Chamber to lift certain redactions applied to the statements and photographs disclosed to the Defence, and to order the Prosecution to disclose this material in unredacted form ("Defence Request of 9 March 2012").²⁶ [REDACTED].²⁷ [REDACTED].²⁸

10. On 2 April 2012, the Prosecution filed its response to the Defence Request of 9 March 2012,²⁹ in which it noted that in both *Abu Garda* and *Banda and Jerbo*, PTC I

¹⁹ Pre-Trial INCRIM package 2 [8 July 2010]; see also ICC-02/05-03/09-53, [REDACTED]. Some of the witness statements were re-disclosed subsequently on 22 October 2010, 6 and 27 September 2011, and 22 May 2012, with certain redactions lifted.

²⁰ [REDACTED].

²¹ [REDACTED]. A public redacted version was filed on 19 August 2011, ICC-02/05-03/09-198-Red.

²² These statements were disclosed on 26 August 2011 through INCRIM package 11 (for witness statement of P-0486) and Rule 77 Package 1 (for witness statement of P-0484).

²³ [REDACTED].

²⁴ ICC-02/05-03/09-207-Conf.

²⁵ [REDACTED].

²⁶ ICC-02/05-03/09-306 & ICC-02/05-03/09-306-Conf-Anx.

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ ICC-02/05-03/09-316 & ICC-02/05-03/09-316-Conf-Exp-AnxA.

had taken certain factual circumstances (both individual and general) into account in authorising the redactions pursuant to Rule 81(2) and Rule 81(4). The Prosecution also indicated that it continued to evaluate whether the concerns that had led to its request for these redactions still existed and cited various instances where it had either sought the Chamber's leave to lift redactions authorised under Rule 81(4), or had unilaterally lifted those granted under Rule 81(2), when it considered the redactions to be no longer justified.³⁰

11. With regard to the redactions [REDACTED], [REDACTED].³¹

12. [REDACTED],³² [REDACTED].³³

13. On 4 June 2012, [REDACTED], the Prosecution filed its "Prosecution's Provision of Security Related Information Regarding Third Parties in Witness DAR-OTP-P-0486's Statement" ("4 June 2012 Filing"), [REDACTED].³⁴ [REDACTED].³⁵ [REDACTED]³⁶ [REDACTED].

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

14. The Prosecution requests lifting redactions of [REDACTED] in the statements of the following witnesses: P-0315, P-0355, P-0416, P-0419, P-0446 and P-0447. For

³⁰ ICC-02/05-03/09-316, paras 7-9.

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ ICC-02/05-03/09-341-Conf-Exp.

³⁵ [REDACTED].

³⁶ [REDACTED].

ease of reference, a chart containing details of the specific redactions referred to is annexed to this filing as Confidential *ex parte* Annex "A".

15. As reaffirmed by the Trial Chamber in its "Decision on the lifting of redactions" rendered on 22 September 2011, "*leave [...] is required for the lifting of redactions previously authorised under Rule 81(4) of the Rules.*"³⁷ The Trial Chamber further noted that in order to grant leave to lift redactions of the identifying information of an individual (be it a victim, witness, or a person at risk on account of the activities of the Court), the Chamber needs to be "*satisfied that the person in question will not be exposed to an enhanced risk by virtue of the disclosure of this information.*"³⁸

16. [REDACTED],³⁹ [REDACTED].⁴⁰ [REDACTED].

17. Moreover, [REDACTED]⁴¹ [REDACTED]⁴² [REDACTED], [REDACTED] in the statements of witnesses P-0315, P-0355, P-0416, P-0419, P-0446, P-0447 and P-0484. [REDACTED]. Accordingly, the Prosecution assesses the risk arising from the lifting of redactions applied [REDACTED] as low.

18. [REDACTED]. However, [REDACTED], the risk [REDACTED] is also assessed as low.

³⁷ ICC-02/05-03/09-222, para. 6 citing *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-T-62-ENG ET WT, page 23, lines 12-16 and *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Redacted Decision on the Prosecution's Request to Lift, Maintain and Apply Redactions to Witness statements and Related Documents", 20 July 2010, ICC-01/05-01/08-813-Red, para. 77.

³⁸ ICC-02/05-03/09-222, para. 9 referring to ICC-01/05-01/08-813-Red, paragraph 77 for a discussion of the Chamber's responsibility to protect persons at risk on account of activities if the Court.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

19. [REDACTED].⁴³ [REDACTED] in the statements of witnesses P-0315, P-0355, P-0446 and P-0447.⁴⁴ [REDACTED].⁴⁵ Accordingly, the Prosecution assesses that disclosure of [REDACTED] of the above witness statements - [REDACTED] ⁴⁶ [REDACTED] security at risk. Accordingly, the Prosecution considers that the existing redactions relating to [REDACTED] are no longer justified, and seeks variation of the redaction orders of PTC I in *Abu Garda* in this regard.⁴⁷

20. [REDACTED] referred to [REDACTED] in the statement of P-0446, ⁴⁸ [REDACTED] by witness P-0315. ⁴⁹ [REDACTED]. Therefore, the Prosecution considers that the existing redactions relating to [REDACTED] are no longer justified, and also seeks variation of the redaction orders of PTC I in *Abu Garda* in this regard.⁵⁰

21. [REDACTED].

22. The Prosecution does not seek lifting of the redaction to the reference [REDACTED] contained in [REDACTED] the statement of Witness P-0446⁵¹ and [REDACTED]. [REDACTED]. [REDACTED],⁵² the Prosecution considers that it is preferable to retain the redaction applied to [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED]

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

Requests for Redactions Currently Pending before the Chamber

23. The Prosecution notes that in its request for certain redactions to the statement of witness P-0484 (filed on 12 August 2011), it also requested the Chamber's authorisation to redact [REDACTED].⁵³ If the instant application to vary protective measures is granted, the Prosecution's request would become moot and the Prosecution withdraws it. The Chamber will recall that a similar request for redaction has been made in relation to [REDACTED] mentioned in the statement of witness P-0486,⁵⁴ [REDACTED].⁵⁵ [REDACTED],⁵⁶ [REDACTED].

IV. Request for Receipt of the Filing and Annex "A" as Confidential – *Ex Parte*

24. The Prosecution submits that the classification of this filing and its Annex "A" as *Confidential - Ex Parte - Prosecution and VWU Only* is necessary. The filing contains the discussion of the contents of witness material, [REDACTED], that is currently classified as confidential and *ex parte*, subject to protective measures in force. The Prosecution will file a public redacted version of the present application.

V. Relief Sought

25. For the reasons set out above, the Prosecution respectfully requests the Chamber to authorise the lifting of the redactions previously authorised by PTC I in

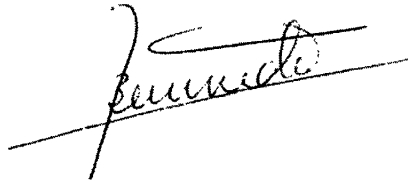
⁵³ ICC-02/05-03/09-198-Conf-Exp-AnxD, [REDACTED].

⁵⁴ ICC-02/05-03/09-198-Conf-Exp-AnxB, [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

Abu Garda pursuant to Rule 81(4) of [REDACTED] in the statements of witnesses P-0315, P-0355, P-0416, P-0419, P-0446, and P-0447, [REDACTED].



Fatou Bensouda
Prosecutor

Dated this 25th day of June 2012

At The Hague, The Netherlands