

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 August 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 Photograph
Annexed to Witness DAR-OTP-P-0484’s Statement and
Application for Variation of Protective Measures Pursuant to
Regulation 42 of the Regulations of the Court”, filed on 16 August 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

[REDACTED], the Office of the Prosecutor (“Prosecution” or “OTP”) herein provides further information on the security risks faced by the third parties who appear in the photograph annexed to the statement of witness P-0484¹ along with an application to lift the temporary redactions applied to [REDACTED] the third parties for the reason set forth below.

Further, the Prosecution requests the Chamber to authorise the lifting of the redactions previously authorised by Pre-Trial Chamber I (“PTC I” or “PTC”), in both *Abu Garda* and the current case, pursuant to Rule 81(4) of the Rules of Procedure and Evidence (“Rules”) of [REDACTED], in the statements of witnesses P-0315, P-0326, P-0416, P-0419, P-0446, and P-0447, [REDACTED].

II. Procedural history and 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-0326, P-0416, P-0419, P-0446 and P-0447, pursuant to Rule 81(4) of the Rules. These redactions were requested to [REDACTED].²

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), including of [REDACTED] in the statements of witnesses P-0416 (1st Statement)³ and P-0419 (1st Statement).⁴ In the same decision, PTC I also authorised the redaction of [REDACTED] in the statement of witness P-0326,⁵ and redactions to [REDACTED].⁶

¹ The Prosecution has omitted the prefix “DAR-OTP-” when it refers to all of the witnesses, and referred to them by their numbers only.

² ICC-02/05-02/09-44-Conf [REDACTED], ICC-02/05-02/09-66-Conf [REDACTED]; ICC-02/05-02/09-73-Conf [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

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 [REDACTED] and of [REDACTED] in the statements of witnesses P-0315 (1st Statement),⁷ P-0419 (2nd Statement),⁸ P-0446 (1st Statement)⁹ and P-0447.¹⁰ In this decision, PTC I also granted Prosecution’s request to authorise redaction of [REDACTED] in the statement of witness P-0446,¹¹ as well as [REDACTED]¹² and [REDACTED] in the same statement.¹³

4. [REDACTED],¹⁴ [REDACTED],¹⁵ [REDACTED],¹⁶ [REDACTED],¹⁷ [REDACTED]. [REDACTED].¹⁸

5. On 29 June 2010, the Chamber affirmed the redactions authorised in the *Abu Garda* case.¹⁹ Those redactions were accordingly applied when the Prosecution disclosed the statements of witnesses P-0315, P-0326, P-0416, P-0419, P-0446, and P-0447 to the Defence in this case.²⁰

6. On 29 July 2010, PTC I rendered its “*First Decision on the Prosecutor’s Requests for Redactions*” in the current case, in which it, *inter alia*, authorised redaction of [REDACTED] in the statement of witness P-0439, including of [REDACTED] annexed to this witness’s statement.²¹

⁷ ICC-02/05-02/09-85, [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 ICC-02/05-02/09-85, [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ ICC-02/05-03/09-49, paras 11-12.

²⁰ 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, 22 May and 18 July 2012, with certain redactions lifted.

²¹ ICC-02/05-03/09-58, [REDACTED]. [REDACTED].

7. Between 25 and 27 July 2011, the OTP interviewed witness P-0484. During the interview he was shown certain photographs obtained previously from other witnesses (witnesses P-0315 and P-0446) that were subsequently annexed to this witness's statement. This included photograph [REDACTED] attached (as ANNEX 4) to the witness statement [REDACTED].²²

8. On 12 August 2011, the Prosecution submitted his statement, along with the three other newly obtained statements of witnesses P-0485, P-0486 and P-0487, to the Chamber requesting redactions, pursuant to Rule 81(4) of the Rules, of information [REDACTED] in the statements and related material ("Redaction Application of 12 August 2011").²³ Redactions sought concerned, *inter alia*, [REDACTED] in witness P-0484's statement.²⁴ Pending the Chamber's consideration of the Redaction Application of 12 August 2011, the four witness statements were disclosed to the Defence with temporary redactions applied to the relevant information.²⁵

9. On 4 June 2012, 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].²⁶ The Prosecution noted that the advanced stage of the proceedings and the changed circumstances warranted the Prosecution to re-assess the need for maintaining redactions ordered or authorised previously under different circumstances.²⁷

10. On 19 June 2012, the Prosecution filed Application for Variation of Protective Measures Pursuant to Regulation 42 of the Regulations of the Court, in which it sought the lifting of redactions of [REDACTED] in the statements of witnesses P-0315, P-0355, P-0416, P-0419, P-0446, and P-0447, [REDACTED] ("19 June 2012 Application").²⁸

²² DAR-OTP-0181-0132.

²³ [REDACTED]. A public redacted version was filed on 19 August 2011, ICC-02/05-03/09-198-Red.

²⁴ [REDACTED].

²⁵ These statements were disclosed on 26 August 2011 through INCRIM package 11 (for witness statements of P-0485, P-0486 and P-0487) and Rule 77 Package 1 (for witness statement of P-0484).

²⁶ ICC-02/05-03/09-341-Conf-Exp. [REDACTED].

²⁷ See ICC-02/05-03/09-341-Red, para. 4.

²⁸ ICC-02/05-03/09-350-Conf-Exp & ICC-02/05-03/09-350-Conf-Exp-AnxA.

11. [REDACTED],²⁹ [REDACTED].³⁰ [REDACTED],³¹ [REDACTED]³² [REDACTED].

12. On 5 July 2012, [REDACTED],³³ the Prosecution provided further information on the security risks faced by the third parties, [REDACTED], who appear in the photographs provided by witness P-0315 and whose identities the Prosecution sought to withhold from the Defence [REDACTED] (“5 July 2012 Filing”).³⁴ [REDACTED];³⁵ [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸

III. Prosecution’s Provision of Security Related Information [REDACTED] and Prosecution’s Request for the Lifting of Similar Redactions Authorised Pursuant to Rule 81(4)

13. [REDACTED], photograph DAR-OTP-0181-0132 attached to the statement of witness P-0484 as “Annex 4” [REDACTED]. [REDACTED].³⁹ [REDACTED].⁴⁰

14. [REDACTED].⁴¹ [REDACTED].⁴² [REDACTED].⁴³

15. In light of the Prosecution’s submissions regarding the security risks faced by [REDACTED] contained in the 5 July 2012 Filing and for reasons set out below, the Prosecution requests hereby the lifting of the temporary redactions applied to [REDACTED] in photograph DAR-OTP-0181-0132. [REDACTED].⁴⁴

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

16. The Prosecution further requests lifting of all redactions of [REDACTED] in the statements of the following witnesses: P-0315, P-0326, P-0416, P-0419, P-0439, P-0446, and P-0447 [REDACTED]. For ease of reference, a chart containing details of the specific redactions referred to is annexed to this filing as Confidential *ex parte* Annex “A”.

17. [REDACTED].⁴⁵

18. [REDACTED], the Prosecution has no information suggesting that [REDACTED].⁴⁶ The same applies to [REDACTED], including the one annexed to the statement of witness P-0484. [REDACTED]. [REDACTED],⁴⁷ [REDACTED].

19. [REDACTED]. The Prosecution further recalls its filing of 4 June 2012 in which it admitted, *inter alia*, that the proceedings in the present case have now advanced further, warranting the Prosecution’s reassessment of the need to maintain redactions authorised previously, under different circumstances.⁴⁸

20. Moreover, [REDACTED] in the statements of witnesses P-0315, P-0326, P-0416, P-0419, P-0439, P-0446, P-0447, P-0484, and P-0486, [REDACTED]. [REDACTED]. [REDACTED].⁴⁹ [REDACTED].⁵⁰

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

21. 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 note or public redacted version of the present application.

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

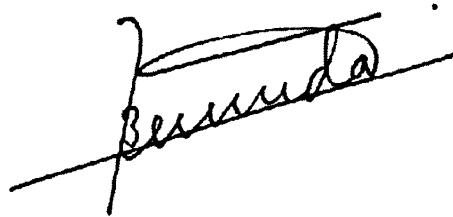
⁴⁸ See ICC-02/05-03/09-341-Red, para. 4.

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

V. Relief Sought

22. 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 both *Abu Garda* and the current case, pursuant to Rule 81(4) of [REDACTED], in the statements of witnesses P-0315, P-0326, P-0416, P-0419, P-0446, and P-0447, [REDACTED].

A handwritten signature in black ink, appearing to read 'Fatou Bensouda', is written over a horizontal line.

Fatou Bensouda
Prosecutor

Dated this 31st day of August 2012
At The Hague, The Netherlands