

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 28 October 2013

TRIAL CHAMBER IV

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

SITUATION IN DARFUR, SUDAN

***IN THE CASE OF THE PROSECUTOR v. ABDALLAH BANDA ABAKAER
NOURAIN***

**Public Redacted Version
With Confidential *Ex Parte* Prosecution Only Annexes “A to “E”
of
“Prosecution’s Application for Redactions
Pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and
Evidence” filed on 21 October 2013**

Source: 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

Ms Fatou Bensouda, Prosecutor
Mr James Stewart, Deputy Prosecutor
Mr Adebawale Omofade, Trial Lawyer

Counsel for the Defence

Mr Karim A.A. Khan QC
Mr Nicholas Koumjian

Legal Representatives of Victims Legal Representatives of Applicants

Ms Helène Cissé
Mr Jens Dieckmann

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
ection**

**Court Interpretation and Translation
Section**

I. Introduction

1. The Office of the Prosecutor (“OTP” or “Prosecution”) seeks authorization to apply redactions to the statements of witnesses DAR-OTP-P-0467 and DAR-OTP-P-0471 (P-467 and P-471) pursuant to Rule 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”).

II. Procedural History

2. On 6 March 2013 Trial Chamber IV (“Chamber”) issued its *“Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings”*¹ and instructed the Prosecution to disclose its trial evidence pursuant to Rule 76 of the Rules, together with its final list of witnesses and evidence, as well as all Article 67(2) and Rule 77 material no later than 16.00 on 2 May 2013.
3. On 2 May 2013 the Prosecution complied with the Chamber’s orders and disclosed, *inter alia*, the statements of witnesses P-467 and P-471.² The Prosecution disclosed the abovementioned content in accordance with the provisions contained in the *“Protocol on the handling of confidential information and contact between a party and witnesses of the opposing party.”*³
4. On 27 September 2013, the Prosecution in its Response to the *“Defence request for termination of Proceedings”* stated that it disclosed the statements of P-467

¹ ICC-02/05-03/09-455.

²The materials relating to witnesses P-467 and P-471 were disclosed via Rule 77 package 12 on 2 May 2013. Three annexes relating to witness P-471 that were inadvertently omitted from Rule 77 package 12, were subsequently disclosed to the Defence on 31 July 2013 through Rule 77 package 15.

³ ICC-02/05-03/09-451-Anx.

and P-471 to the Defence with minimal redactions applied to the names of witnesses' family members and OTP staff⁴ and that it would file a retroactive application for redactions to the Chamber reflecting these minor redactions.⁵ On 15 October 2013 the Chamber instructed the Prosecution to file no later than 21 October 2013 a request justifying the redactions already applied to statements of Witnesses P-467 and P-471.⁶ Accordingly the Prosecution now seeks retroactive authorization for redactions to certain information contained in these two witness statements and certain related annexes.

III. Prosecution's Request for Redactions Pursuant to Rule 81(2)

5. The Prosecution seeks redactions to the names and signatures of the OTP Investigators in the statements of Witnesses P-467 and P-471 and in the eCourt metadata fields "Source Identity / Chain of Custody".
6. The Prosecution proposes these 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 analyse 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 not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."⁷

⁴ ICC-02/05-03/09-506-Red, para.16.

⁵ ICC-02/05-03/09-506-Red, footnote 20.

⁶ Email from Legal Officer of Trial Chamber IV sent on 15 October 2013 at 15:10hrs.

⁷ *Prosecutor v. Katanga*, Judgment on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476 OA2, 13 May 2008, para. 59.⁸ ICC-02/05-03/09-265-Red. See, for example, para.36.

7. The Prosecution submits that the disclosure of the names and identities of the Prosecution and Court staff that may be required to go back to the field in regions facing on-going conflicts to meet with witnesses and collect further evidence, at this stage of the proceedings, may render them easily traceable. This would result in an increased risk to them and to the Prosecution's on-going investigations. Such redactions have been authorized previously by this Chamber.⁸ This Chamber has also held that such redactions do not affect the Defence's ability to use the relevant disclosed documents.⁹

IV. Prosecution's Request for Redactions Pursuant 81(4)

8. The Prosecution seeks redactions to the place of residence of one of the witness P-0467, the name of the spouse of the witness P-0471 and the names of the parents of both witnesses.
9. The Prosecution proposes these redactions since at this stage, the disclosure of the above information would pose an objectively justifiable risk to the safety and security of the relevant persons. The spouses and parents of these witnesses are not in any way connected to the activities of the Court. Their names as well as the place of residence of the witness are irrelevant to the contested issues in this case.
10. There are no less intrusive alternative measures that can be taken to avoid the risks mentioned in the confidential 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

⁸ ICC-02/05-03/09-265-Red. See, for example, para.36.

⁹ ICC-02/05-03/09-265-Red, Para.36.

redactions are not prejudicial to, or inconsistent with, the right of the Accused Person. Redactions to the place of residence of witnesses and to the names of family members have been authorized previously by this Chamber.¹⁰

V. Description of Annexes

11. The Prosecution submits to the Trial Chamber the documents for which redactions are being sought, together with an accompanying chart setting out both the specific information sought to be redacted and the justification for the redactions sought:

Annex “A”: The relevant justification chart for the redactions sought.

Annex “B”: Statement of P-467, [REDACTED];¹¹

Annex “C”: Statement of P-471, [REDACTED];¹²

Annex “D”: - Statement of P-471, [REDACTED];¹³

Annex “E”: annexes related to witness P-471.¹⁴

12. The Prosecution has color-coded the proposed redactions in Annexes B, C, D and E above using the color blue to represent proposed redactions pursuant to Rule 81(2) and red to represent proposed redactions pursuant to Rule 81(4).

¹⁰ Regarding the names of family members of witnesses, see ICC-02/05-03/09-265-Red, para.43. Regarding the place of residence of witnesses, see ICC-02/05-03/09-363, para.20.

¹¹ Trial Rule 77 package 12.

¹² Trial Rule 77 package 12.

¹³ Trial Rule 77 package 12.

¹⁴[REDACTED].

VI. Request for Confidentiality

13. The Prosecution submits this request and its annexes as “Confidential, *Ex Parte*, available to the Prosecution Only” pursuant to Regulation 23 *bis* because they relate to material that is currently classified as confidential and *ex parte* and depict sensitive information relating to its witnesses. A public redacted version of this Application will be filed as soon as practicable.

VII. Relief Sought

14. For the reasons set forth above, the Prosecution requests the Chamber to authorise the redactions proposed to the document submitted with this Application, as well as the relevant meta-data, where applicable.



Fatou Bensouda
Prosecutor

Dated this 28th day of October 2013
At The Hague, The Netherlands