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Original: **English**

No.: **ICC-02/05-03/09**
Date: **27 October 2026**

TRIAL CHAMBER IV

Before: **Judge Kimberly Prost, Presiding Judge**
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN DARFUR, SUDAN

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

Public

Public redacted version of "Prosecution's Application to the Chamber Arising out of the Defence Request for Disclosure", ICC-02/05-03/09-221-Conf-Exp, dated 21 September 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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☒ **Legal Representatives of the Victims**	☐ **Legal Representatives of the Applicants**
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☐ **The Office of Public Counsel for Victims**	☐ **The Office of Public Counsel for the Defence**
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I. Introduction

The Office of the Prosecutor ("OTP" or "Prosecution") respectfully submits this application pursuant to the Defence's Request for Disclosure[1] ("Defence Request"). The Defence Request makes certain specific requests for disclosure of information and documentation which the Defence considers is either exculpatory or material to the preparation of the defence case. These included [REDACTED] as well as certain reports, communications or information alleging or investigating bias in favour of the GoS, a lack of impartiality with respect to the parties to the conflict in Darfur or collusion with the GoS [REDACTED].

Having reviewed its evidence pursuant to the Defence's Request, the Prosecution has identified certain materials in its collection that ***may*** fall under the above categories of documents. However, the Prosecution does not consider these materials to be appropriate for disclosure in light of security concerns regarding certain witnesses and conditions imposed by certain information providers. In addition, all of the information in the materials that *may* be subject to disclosure has been already provided to the Defence in other forms and has minimal value to the Defence. Consequently, the Prosecution requests the Trial Chamber to order the non-disclosure to the Defence of [REDACTED] as well as ten documents obtained by the OTP under Article 54(3)(e).

II. Background

1. On 19 July 2011, the Defence in the case of the *Prosecutor v. Abdallah Banda Abakaer Nourain* and *Saleh Mohammed Jerbo Jamus* ("Banda and Jerbo case") sent a letter to the Prosecutor requesting disclosure of certain items of evidence that it deems exculpatory

[1] Letter from Defence Ref.: D-AB/2011/18; D-SJ/2011/19 dated 19th of July 2011.

and/or material to the preparation of the defence.[2] In Annex B to its Request,[3] the Defence requested and listed a number of items [REDACTED].

2. Having reviewed the documents in its possession vis-à-vis the items listed in said Annex B, the Prosecution has concluded that certain material **may** fall under the categories described in Items 13 and 21. The Prosecution considers, however, that for the reasons set out below this material should not be disclosed.

Material that may fall under Item 13 in the Defence Annex B

3. In Item 13 of its Annex B, the Defence seeks disclosure of "[REDACTED]". In the course of reviewing its evidence collection, the Prosecution identified statements [REDACTED]. Copies [REDACTED] are attached to this filing as Annexes B-1, B-2 and B-3, respectively.

4. The Prosecution hereby seeks the authorization of the Trial Chamber not to disclose these statements to the Defence for the following reasons. Firstly, disclosing the statements would reveal the identities [REDACTED] who are the subject of a pending request for non-disclosure on account of security grounds.[4] Secondly, as already described in the "Prosecution's Provision of Further and Revised Information on [REDACTED],"[5] the statements made [REDACTED] have minimal Rule 77 value. Their contents do not relate significantly to the three contested issues, and several aspects of the contents already form part of the agreed facts. Thirdly, as described in greater detail below, the Defence is already in possession of sufficient analogous information which covers the information [REDACTED].

[2] *Ibid*.
[3] Attached to this filing as Annex "A".
[4] [REDACTED].
[5] [REDACTED].

5. [REDACTED],[6] [REDACTED], which would in turn frustrate the current Prosecution's request to withhold their identities on security grounds.

6. The Prosecution did not obtain copies [REDACTED].[7]

7. Moreover, at the Pre-Trial stage the Prosecution disclosed only summaries of these witnesses' interviews with the Prosecution and excluded from the summaries all references to the fact [REDACTED].[8] [REDACTED].

8. The Prosecution submits that the Defence is not prejudiced by the non-disclosure [REDACTED] as the accounts provided by the witnesses [REDACTED] are adequately reflected in the summaries of their interviews as already disclosed to the Defence.

[REDACTED]

9. The account provided by [REDACTED] is reflected at pages 2 to 3 and 14 to 21 of the summary of his statement already disclosed to the Defence. More specifically, the information contained in the relevant passages of the summary refers to the witness' ethnic group, his education, [REDACTED].

[REDACTED]

10. The account provided by [REDACTED] is reflected at pages 1 to 3, and 4 to 5 of the summary of his statement already disclosed to the Defence. More specifically, the information contained in the relevant passages of the summary refers to the witness' ethnic group, [REDACTED].

[REDACTED]

[6] [REDACTED].
[7] [REDACTED].
[8] [REDACTED].

11. The account provided by [REDACTED] is reflected at pages 2, 4 and 6 of the summary of his statement already disclosed to the Defence. More specifically, the information contained in the relevant passages of the summary refers to the circumstances [REDACTED].

Material that may fall under Item 21 in the Defence's Annex B

12. In Item 21 of Annex B, the Defence seeks disclosure of *"Any reports, communications or information from any source alleging or investigating bias in favour of the GoS, a lack of impartiality with respect to the parties to the conflict in Darfur or collusion with the GoS on the part [REDACTED] arising from the following incidents:*

(a) [REDACTED]; and

(b) [REDACTED].

13. In the course of reviewing the material in its possession, the Prosecution identified 10 documents as potentially falling within the scope of Item 21 namely: DAR-OTP-0128-0691; DAR-OTP-0130-0579; DAR-OTP-0130-0678; DAR-OTP-0132-0049; DAR-OTP-0132-0245; DAR-OTP-0130-0718; DAR-OTP-0130-0721; DAR-OTP-0131-0485; DAR-OTP-0133-0306 and DAR-OTP-0128-4066.

14. The above documents had been obtained by the Prosecution under the conditions of Article 54(3)(e) and have already been identified and discussed in three earlier applications to the Trial Chamber.[9] To date, the source providers have declined to lift the Article 54(3)(e) restrictions imposed on those documents and to consent to their disclosure to the Defence and Accused in this case on account of security concerns. In those earlier applications the Prosecution stated that it had disclosed analogous material to the Defence which adequately addresses the information contained in the restricted documents, and provided a chart reflecting such analogous

[9] ICC-02/05-03/09-161, ICC-02/05-03/09-176-Conf-Exp and ICC-02/05-03/09-176-Conf-Exp-AnxB; and ICC-02/05-03/09-197-Conf-Exp.

material.[10] The Prosecution reiterates the submissions in its previous filings - to explore the possibility of the source providers to agree on counter-balancing measures in the event that both source providers ultimately decide not to lift the restrictions[11] - together with its requests to be authorized to rely upon analogous or alternative materials *in lieu* of disclosing the ten protected documents.

III. Request for Confidentiality

15. The Prosecution further notes that disclosure to the Defence even of the legal basis under which this instant *ex parte* application is being made could run the risk of revealing the identities of the Prosecution witnesses referred to in paragraph 3 above, or the nature of the information covered by the Article 54(3)(e).

16. For instance, the Defence is already aware that the witnesses for whom the Prosecution has sought to redact their identities pursuant to Rule 81(4) of the Rules of Procedure and Evidence ('Rules') are [REDACTED] witnesses. Therefore, if the Prosecution were to inform the Defence that Rule 81(4) is the legal basis upon which it has sought an *ex parte* application regarding item 13, the Defence would immediately conclude that the information being addressed *ex parte* with the Trial Chamber with respect to Item 13 of Annex B relates to [REDACTED] witnesses. [REDACTED].

17. Similarly, the Defence is already aware that the Prosecution has made a number of *ex parte* filings concerning Article 54(3)(e) material to this Trial Chamber, and to the Pre-Trial Chambers in this case and the *Abu Garda* case. However, the Defence is not aware that the contents of these documents may possibly relate to Item 21 of their Annex B. Therefore, if the Prosecution were to disclose that Article 54(3)(e) is the legal basis upon which it is making the instant filing, the Defence would be immediately aware that all of the prior *ex parte* filings made and Decisions rendered by the Chamber

[10] Annex ICC-02/05-03/09-176-Conf-Exp-AnxB.
[11] ICC-02/05-03/09-176-Conf-Exp, para 26.

concerning Article 54(3)(e) material relate to information that may fall under Item 21 of the Annex B.

18. The Prosecution submits this request and its annexes "Confidential, *Ex Parte*, available to the Prosecution and the Victims and Witnesses Unit Only" because they relate to material that is currently classified as confidential and *ex parte* and depict information relating to persons who might be put at risk on account of the activities of the Court. A public redacted version of this Application or a public note will be filed as soon as practicable.

IV. Request

19. The Prosecution requests the Trial Chamber to order the non-disclosure to the Defence of the following:

(i) the statements [REDACTED], contained in Annexes B-1, B-2 and B-3; and

(ii) the ten documents obtained by the Office of the Prosecutor under the provision of Article 54(3)(e).

Mame Mandiaye Niang, Acting Prosecutor

Dated this 27th day of October 2026

At The Hague, The Netherlands