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Date: 24 June 2011

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernández de Gurmendi

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 Notification to the Chamber of its
Intention to Lift Certain Redactions Authorised Pursuant to Rule 81(2) and
Request for Lifting Certain Redactions Authorised Pursuant to Rule 81(4)
filed on 6 June 2011**

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

1. At the status conference on 19 April 2011, the Trial Chamber IV (“TC IV”) ordered the Prosecution to notify the Chamber if it intended to lift redactions which were previously made pursuant to Rule 81(2) of the Rules of Procedure and Evidence (“Rules”) and to request the lifting of redactions which were previously made pursuant to Rule 81(4).¹

2. The Prosecution hereby notifies the Chamber of its intention to lift redactions of identifying information of certain individuals (pursuant to Rule 81(2)) and requests the lifting of other redactions which were previously made pursuant to Rule 81(4).

II. Prosecution’s Submissions

3. Between 8 July 2010 and 22 October 2010, the Prosecution disclosed nine batches of evidence to the Defence teams of Messrs Abdallah Banda and Saleh Jerbo. These packages included material already disclosed in the case of the *Prosecutor v. Bahar Idriss Abu Garda* (“the *Abu Garda* case”) and therefore also contained material from which the names and identifying information of some OTP staff members [REDACTED], as well as of [REDACTED], had been redacted pursuant to prior orders of Pre-Trial Chamber I (“PTC I”) in that case.

Redactions authorised under Rule 81(4)

4. In its “First Decision on Redactions”² rendered in the *Abu Garda* case, PTC I granted the Prosecution’s request to redact certain documents [REDACTED]

¹ ICC-02/05-03/09-T-10-ENG, pp. 28-29.

² ICC-01/05-02/09-51-Conf-Exp-Anx1.

containing references to the name and other identifying information of [REDACTED] pursuant to Rule 81(4) [REDACTED]. PTC I authorised this category of redactions on the basis that disclosure of the name or other identifying information of this individual at that stage could pose additional unnecessary risks to the security of this person on account of the activities of the Court.³

5. [REDACTED].

6. The Prosecution therefore requests the Trial Chamber to authorise the lifting of all redactions to references to the name and other identifying information of [REDACTED]. These references are contained in the following witness statements, which were already been disclosed to the Defence teams of Messrs. Abdallah Banda and Saleh Jerbo at the Pre-Trial stage:

a. Witness [REDACTED]

b. Witness [REDACTED]

Redactions authorised under Rule 81(2)

7. In two separate decisions rendered in the *Abu Garda* case,⁴ PTC I authorised the Prosecution to redact the names and other identifying information of OTP staff members [REDACTED], [REDACTED] and [REDACTED] pursuant to Rule 81(2) on the basis that disclosing their identities at that time would have resulted in increased risk to them and to ongoing investigations. However, [REDACTED] and appeared publicly in proceedings before the Court. As for [REDACTED] and [REDACTED], both have also attended public proceedings before the Court and their identities are

³ ICC-01/05-02/09-51-Conf-Exp-Anx1, pp. 12-13.

⁴ "First Decision on Redactions": ICC-02/05-02/09-51+Conf-Exp-Anx 1 and "Second Decision on Redactions": ICC-02/05-02/09-85+Conf-Exp-Anx 1.

therefore publicly known. Accordingly, these redactions are no longer justified.

8. Thus, the Prosecution notifies the Trial Chamber of its intention to lift the redactions of all references to the names and other identifying information OTP staff members [REDACTED]. These references are contained in the following witness statements which were already disclosed to the Defence teams of Messrs. Abdallah Banda and Saleh Jerbo at the Pre-Trial stage:

- a. Witness DAR-OTP-WWWW-0315 (first statement: DAR-OTP-0164-1159)
- b. Witness DAR-OTP-WWWW-0315 (second statement: DAR-OTP-0174-0334)
- c. Witness DAR-OTP-WWWW-0326 (DAR-OTP-0166-0021)
- d. Witness DAR-OTP-WWWW-0416 (DAR-OTP-0165-0381)
- e. Witness DAR-OTP-WWWW-0417 (DAR-OTP-0165-0424)
- f. Witness DAR-OTP-WWWW-0419 (first statement: DAR-OTP-0165-0489)
- g. Witness DAR-OTP-WWWW-0420 (DAR-OTP-0165-0521)
- h. Witness DAR-OTP-WWWW-0421 (DAR-OTP-0165-0544)

9. For ease of reference, the Prosecution has attached as Annex A to this filing, a chart identifying both the redactions that it intends to lift unilaterally (see paragraph 6, above) and those that it seeks authorisation of the Trial Chamber to lift (see paragraph 8, above).

III. Request for Confidentiality

10. The Prosecution requests that this filing and the annex be received as “Confidential, *Ex Parte*, available to the Prosecutor and the Victims and

Witnesses Unit Only” because it discusses filings and information relating [REDACTED] which are currently so classified. The Prosecution will file a public redacted version of this filing.

IV. Legal Basis for Unilaterally Lifting Redactions Previously Authorized or Ordered Pursuant to Rule 81(2)

11. The Prosecution is mindful of the Court’s jurisprudence relating to the lifting of this category of redactions, in particular in the *Lubanga* and *Bemba* cases. In the *Lubanga* case, the Trial Chamber stated that: “[F]or all documents covered by [Rule] 81(2), [...] documents redacted to protect ongoing investigations, if the Prosecution wish to remove a redaction which the Prosecution originally sought, then that can happen without coming to the Chamber requesting leave, but we should be notified on each and every occasion when a redaction is going to be lifted in that way, and that is simply to make sure that we are kept informed as to what the up-to-date position is.”⁵ More recently, in the *Bemba* case, the Trial Chamber recalled the *Lubanga* Trial Chamber’s position and reiterated that: “once redactions imposed under Rule 81(2) of the Rules are no longer necessary, disclosure does not need the leave of the Chamber.”⁶

V. Relief Requested

12. In view of the foregoing, the Prosecution hereby notifies the Trial Chamber of its intention to:

- a. lift the redactions of all references to the identity of the OTP staff members [REDACTED] previously authorized or ordered pursuant to

⁵ Transcript of hearing on 4 December 2007, ICC-01/04-01/06-T-62-ENG ET WT, page 23, lines 4-11.

⁶ ICC-01/05-01/08-813-Conf, paragraph 76.

Rule 81(2) in the material already disclosed to the Defence teams of Messrs. Abdallah Banda and Saleh Jerbo; and

b. in the absence of any order from the Trial Chamber to the contrary, to re-disclose the said identified material to the Defence teams of Messrs. Abdallah Banda and Saleh Jerbo in its unredacted form;

13. Further, the Prosecution requests that the Trial Chamber authorise the lifting of redactions to the identity and identifying information of [REDACTED] which was previously authorised or ordered pursuant to Rule 81(4).



Luis Moreno - Ocampo

Dated this 24th Day of June 2011

At The Hague, The Netherlands