

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 3 February 2012

**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 Update on its Consultations  
Concerning the Article 54(3)(e) Documents and Application for Protective  
Measures to Allow Disclosure of Summaries of Eight Documents", filed on  
16 January 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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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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Ms. Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. Pursuant to the Chamber's Decision No.259 on 23 November 2011 ("the Decision")<sup>1</sup>, the Prosecution hereby updates the Chamber and informs it that, upon further consultation with the source providers, it has "secure[d] the agreement of the providers for a more comprehensive disclosure" for eight of the 10 Article 54(3)(e) of the Rome Statute (Statute) documents outstanding. In a letter dated 13 January 2012 (attached as *Ex parte* Annex "A"), the United Nations Office for Legal Affairs confirms that [REDACTED] ("the First Provider") now consents to the disclosure of the narrative summaries of Rule 77 portions (see attached as *Ex parte* Annex "B"), subject to the condition that certain protective measures are imposed related to the use of the eight documents in court.<sup>2</sup>
  
2. Accordingly, the Prosecution hereby requests the Trial Chamber to authorise the protective measures specified by the United Nations (see Conditions (i) to (vii) in Confidential *Ex parte* Annex "A"). Once authorised, the Prosecution can proceed with a "more comprehensive disclosure"<sup>3</sup> by disclosing the narrative summaries. As regards the remaining two documents, [REDACTED] ("the Second Provider"), the Prosecution continues to consult with this provider and the OLA, and a formal response is expected imminently.<sup>4</sup> From its consultations with the United Nations, the Prosecution understands that the response from the Second Provider will reiterate that it is unable to agree to the disclosure of the two documents in any form. Accordingly, the Prosecution continues to rely on the previously submitted analogous evidence as an appropriate counter-balancing measure. The Prosecution will inform the Chamber as

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<sup>1</sup> ICC-02/05-03/09-259.

<sup>2</sup> [REDACTED].

<sup>3</sup> Paragraph 18 of Decision # 259.

<sup>4</sup> [REDACTED].

soon as the formal response from the Second Provider is received, which it expects within the next 24 hours.

3. In light of the above, the Prosecution has taken diligent steps to discharge its disclosure obligations under the Statute and in accordance with the Chamber's Decision. Since the Chamber possesses the originals of all outstanding Article 54(3)(e) documents, it can safeguard the rights of the Accused Persons as the trial progresses. Accordingly, the disclosure of the summaries of the relevant excerpts of the eight documents from the Second Provider, together with the previously submitted analogous documents for all 10 documents, means that appropriate counter-balancing measures have been taken to ensure that the rights of accused are protected and that the trial is fair.

## II. BACKGROUND AND PROSECUTION'S SUBMISSIONS

4. In its Decision, the Chamber instructed the Prosecution to seek the information providers' consent to disclose the Article 54(3)(e) documents to the Defence, advising them of the above ruling of the Chamber. The Chamber also instructed the Prosecution to provide an update as regards the outcome of this consultation by 16 January 2012.
5. In addition to the Prosecution's continuous efforts to lift the restrictions and to disclose to the Defence the Article 54(3)(e) documents,<sup>5</sup> following the Decision, the Prosecution took immediate steps to implement the Chamber's instructions, and in particular, as noted in paragraph 18 of the

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<sup>5</sup> See e.g. ICC-02/05-03/09-T-5-ENG, page 9 line 8 to page 10 line 5; ICC-02/05-03/09-83; ICC-02/05-03/09-142; ICC-02/05-03/09-T-10-ENG ET WT, pp. 26-27.

Decision, “to secure the agreement of the providers for a more comprehensive disclosure”.

6. On 23 November 2011, immediately after the Decision was issued, the Prosecution sent an electronic message to the United Nations Office for Legal Affairs (“the OLA”) informing it of the Decision and attaching a copy thereto. On 28 November 2011, the Prosecution formally transmitted the Decision by letter to the OLA and requested it to reconsider its position in relation to the disclosure of the Article 54(3)(e) documents to the Defence.
7. On 13 January 2012, the OLA agreed to the disclosure of specific narrative summaries for eight documents originating from the First Provider. The OLA’s response is appended as ‘Confidential *Ex Parte* and Prosecution only Annex “A” to this filing; its narrative summaries provided by the OLA are appended as Confidential *Ex Parte* Prosecution only Annex “A” to this filing, and capture the Rule 77 content of the documents.
8. As the OLA letter sets out, the disclosure of the narrative summaries is subject to the following conditions:
  - i. The summaries may be disclosed only to the two accused in the case of *Prosecutor v Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamu*, and to the legal teams conducting their defence;
  - ii. the OTP does not disclose [REDACTED] to any person or body other than the Chambers in the case;
  - iii. the two accused and the legal teams conducting the defence are prohibited, subject to what is said below, from disclosing the summaries to any third person or body;
  - iv. should the accused wish to enter the summaries into evidence, they may only be submitted in evidence and disclosed and their contents

discussed in closed session (*in camera*), attendance at which shall be restricted to the prosecution, the defence and the legal representatives of the victims;

- v. unredacted transcripts and recordings of these closed sessions be restricted to the Chambers and their staff in the case of *Prosecutor v Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, to the members of the OTP working in the case, the two accused and the legal teams conducting their defence, and the legal representatives of victims in the case;
- vi. the legal representatives of the victims in the case must not disclose the summaries, their contents or such parts of the transcripts or recordings to the victims;
- vii. the OTP must seek and obtain an Order from Trial Chamber IV giving effect to these conditions.

9. The Prosecution submits that the narrative summaries fully provide the essential Rule 77 information and will satisfy the interests and rights of the Defence. In order that it may disclose these narrative summaries to the Accused, the Prosecution requests the Chamber to authorise the protective measures set out in the Letter attached as Confidential *Ex Parte* Annex "A".

10. In respect of two remaining Article 54(3)(e) documents obtained from the Second Provider, the Prosecution informs the Chamber consultations are ongoing and once the formal response is received the Prosecution will update the Chamber forthwith. As mentioned above, the Prosecution understands, however, that the response from the Second Provider will reiterate that it is unable to agree to the disclosure of the two documents in any form. Accordingly, the Prosecution continues to rely on the previously submitted analogous evidence (see Confidential *Ex Parte* Annex "B") as an appropriate counter-balancing measure for these two documents.

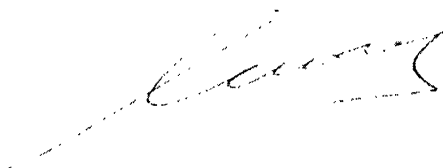
11. In light of the above, the Prosecution submits that in accordance with the Chamber's Decision, it has taken steps with the information providers in order to resolve the outstanding disclosure issues related to the limited number of Article 54(3)(e) documents in the case. For the eight documents from the First Provider, in addition to the analogous evidence previously submitted by the Prosecution, the Prosecution has been able to secure the consent of the provider to enable the disclosure of narrative summaries of those documents.
12. The fact that the Chamber possesses all ten documents in unredacted form enables the Chamber to effectively monitor and safeguard the rights of the accused persons as the trial progresses. Accordingly, the Prosecution submits that there are no impediments to the trial progressing fairly.

**III. Request for receipt of filing as Confidential *Ex Parte***

13. The Prosecution submits that the classification of the present filing and its annexes as "Confidential – *Ex Parte* – Prosecution Only" is necessary as they relate to confidential information obtained pursuant to Article 54(3)(e), as well as the identity of the information providers. The Prosecution is also filing a Public Redacted Version of this filing.

#### **IV. Conclusion**

14. For the foregoing reasons, the Prosecution requests that the Chamber provide the protective measures requested by the First Provider as a condition for permitting disclosure of the summaries and that it then authorise disclosure of the summaries as prepared.



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Luis Moreno – Ocampo  
Prosecutor

Dated this 3<sup>rd</sup> Day of February 2012

At The Hague, The Netherlands