

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 June 2012

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
AND SALEH MOHAMMED JERBO JAMUS**

Public document

**Public redacted version of Decision on the prosecution's application for
redactions**

ICC-02/05-03/09-206-Conf-Exp

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Legal Representatives of Victims

Counsel for the Defence

Mr Karim A. A. Khan

Mr. Nicholas Koumjian

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IV (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* issues the following Decision on the prosecution’s application for redactions ICC-02/05-03/09-206-Conf-Exp.

I Background and submissions

1. On 2 September 2011, the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s Application for Redactions Pursuant to Rule 81(4) of the Rules of Procedure and Evidence” (“Application”).¹
2. The prosecution submits that following an *inter partes* request for the disclosure of, *inter alia*, the death certificates [REDACTED] killed at MGS Haskanita as a result of the 29 September 2007 attack, the prosecution identified four documents it intended to disclose.²
3. In its Application, the prosecution seeks the Chamber’s authorisation to redact certain information contained in the documents.³ In particular, it requests leave to redact information relating to the name, position, title and signature [REDACTED].⁴ The prosecution submits that the redactions are necessary to protect the safety, security and, where appropriate, [REDACTED]. It is contended that there are no less intrusive alternative measures available that could be taken to avoid the risks faced by this person. The prosecution further submits that “in light of the nature of

¹ Prosecution’s Application for Redactions Pursuant to Rule 81(4) of the Rules of Procedure and Evidence , 2 September 2011 (notified on 5 September 2011), ICC-02/05-03/09-206-Conf-Exp.

² ICC-02/05-03/09-206-Conf-Exp, paragraphs 1 and 2.

³ ICC-02/05-03/09-206-Conf-Exp, paragraph 3 and 4.

⁴ ICC-02/05-03/09-206-Conf-Exp, paragraph 5.

most of the redactions sought, the requested redactions are not prejudicial to, or inconsistent with the rights of the Accused Persons.”⁵

4. The prosecution also informs the Chamber that it disclosed the death certificates in their redacted form on 30 August 2011, pending the Chamber’s ruling on the present Application and that three out of four death certificates have been disclosed as incriminatory documents⁶ and one death certificate⁷ has been disclosed as “material to the preparation of the defence” pursuant to Rule 77 of the Rules of Procedure and Evidence (“Rules”).⁸
5. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered Articles 54(1)(a), 54(3)(f), 64(3)(c) and 68(1) of the Rome Statute (“Statute”), Rules 76(1) and (4), 77 and 81(4) of the Rules.

II Analysis and conclusion

6. At the outset, the Chamber considers that the presumption is that disclosable material will be served in full.⁹ The Rome Statute framework nevertheless establishes a procedure for requests seeking authorisation to redact certain information provided that redactions are individually justified, under the various provisions of this framework.¹⁰ For the purpose of the present Decision, the Chamber has applied the general principles, as outlined below, on redactions.
7. Although the decisions of the Appeals Chamber on restrictions on disclosure have been issued in the context of proceedings before the Pre-Trial Chamber – and

⁵ ICC-02/05-03/09-206-Conf-Exp, paragraph 11.

⁶ DAR-OTP-0169-1239; DAR-OTP-0169-1240 and DAR-OTP-0169-1241.

⁷ DAR-OTP-0165-0480.

⁸ ICC-02/05-03/09-206-Conf-Exp, paragraph 3 and email of the prosecution Case Manager to the Legal Officer of the Chamber on 13 December 2011, at 10.04.

⁹ See for example, Trial Chamber III, Redacted Decision on the Prosecution's Requests to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents, 20 July 2011, ICC-01/05-01/08-813-Red, paragraph 61.

¹⁰ See Articles 64(6)(c) and (e), 68(1), 69(5) and 72 of the Statute and Rule 81 of the Rules.

therefore they are not strictly binding on the Chamber – the principles that have been identified are of high relevance to trial proceedings.¹¹ The Chamber recalls the criteria in respect of non-disclosure of identifying information of victims, witnesses, their family members and other persons at risk on account of the activities of the Court, which comprise: (i) the danger caused by disclosure of their identity and whether non-disclosure could reduce that danger; (ii) the "necessity" of non-disclosure in the sense that less intrusive protective measure are not available; and (iii) proportionality of non-disclosure in view of the prejudice caused thereby to the rights of the accused and a fair and impartial trial. The danger must involve an objectively justifiable risk to the safety of the person concerned and must arise from disclosing the particular information to the defence, as opposed to the information to the public at large.

8. The Chamber is seized of the prosecution's Application for redactions under Rule 81(4) of the Rules. Under this rule, the non-disclosure of information is also accepted with regard to the identity of persons at risk on account of the activities of the Court.¹² The prosecution seeks redactions to identifying information (name, signature, title and position) [REDACTED]. The Chamber is of the view that, due to the volatile security situation in Darfur in particular, and in the Republic of the

¹¹ Pre-Trial Chamber I, "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence, 19 May 2006 (notified on 30 May 2006), ICC-01/04-01/06-108-Corr; Appeals Chamber, "Judgement on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence'", 13 October 2006, ICC-01/04-01/06-568; Appeals Chamber, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81', 14 December 2006, ICC-01/04-01/06-773 OA 5, paragraph 33; Appeals Chamber, "Judgement on the appeal of Mr Thomas Lubanga Dyilo against the decision of Per-Trial Chamber I entitled 'Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81'", 14 December 2006, ICC-01/04-01/06-774; Appeals Chamber, "Judgement on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", 13 May 2008, ICC-01/04-01/07-475; Appeals Chamber, "Judgement on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber 1 entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", 13 May 2008, ICC-01/04-01/07-476.

¹² ICC-01/04-01/07-475, paragraph 1.

Sudan ("Sudan") in general, [REDACTED] that have been disclosed in the case, is to be considered as a person at risk on the account of the activities of the Court.

9. In compliance with its duty under Article 68(1) of the Statute, the Chamber considers that revealing the identity [REDACTED], regardless of whether he currently works in Sudan or not, would expose him to an unjustified risk. Furthermore, the Chamber finds that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to ensure his protection. Finally, the Chamber is of the view that such a limited redaction will not prejudice the defence as the documents disclosed as of 30 August 2011 remain legible, comprehensive and useful for the preparation of the defence.

10. **FOR THE ABOVE REASONS**, the Chamber

GRANTS the Application.

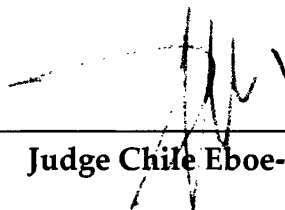
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Silvia Fernandez de Gurmendi



Judge Chile Eboe-Osuji

Dated this 18 June 2012

At The Hague, The Netherlands