



Original: **English**

No.: ICC-02/05-03/09  
Date: 3 September 2010

**PRE-TRIAL CHAMBER I**

**Before: Judge Cuno Tarfusser, Single Judge**

**SITUATION IN THE DARFUR, SUDAN**

***IN THE CASE THE PROSECUTOR v. ABDALLAH BANDA ABAKAER  
NOURAIN AND SALEH MOHAMMED JERBO JAMUS***

**Public Document**

**With confidential *ex parte* annexes available to the Prosecution and Victims and  
Witnesses Unit only**

**Prosecution's application for redactions  
pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence and for  
authorization of discrete redactions to the meta-data fields foreseen by  
the E-court Protocol**

**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**

**Counsel for the Defence**

Karim A. A. Khan

**Legal Representatives of Victims**

**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

**Defence Support Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. During the two Status Conferences that took place before the Single Judge on 13 July 2010 and 26 August 2010, the Prosecution undertook to disclose four Statements of Limited Use Agreements (“the agreements”) following requests made by the Defence teams for such disclosure.<sup>1</sup>
2. Further to this undertaking and in compliance with the Pre-Trial Chamber I’s (“the Chamber”) “Decision on issues relating to disclosure” of 29 June 2010<sup>2</sup> (“the Decision on Disclosure”), the Prosecution respectfully submits this application for redactions of certain information contained in the agreements (“the Application”), pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”).
3. Pursuant to Rule 81(2) of the Rules and Articles 54(3)(f) and 64 of the Rome Statute, the Prosecution also seeks authorisation to redact the names of OTP investigators and other Court staff appearing in the chain of custody meta-data fields of the four agreements to be disclosed as foreseen by the E-court Protocol<sup>3</sup>.

## Request for Confidentiality

4. The Prosecution requests that the annexes to this request be received as “Confidential, *Ex Parte*, available to the Prosecutor and the Victims and Witnesses Unit Only” because they relate to material that is currently confidential and *Ex Parte*, and depict information relating to the identities of protected witnesses.

## Prosecution’s Request

---

<sup>1</sup> ICC-02/05-03/09-T-7-ENG ET WT 26-08-2010, at page 9; *See also* ICC-02/05-03/09-T-6-ENG ET WT 13-07-2010, at pages 8-9.

<sup>2</sup> ICC-02/05-03/09-49 at para. 5.

<sup>3</sup> ICC-02/05-03/09-49-Anx1.

**(a) Redaction of identities and identifying information of concerned protected witnesses:**

5. The Prosecutions request relates to the agreements made with four witnesses whose evidence the Prosecution relied on and disclosed to the Defence in the *Prosecutor v Abu Garda* case. In the *Prosecutor v Abu Garda* case this Chamber in its Decision of 31 August 2009, authorized the non-disclosure of the identities of these four witnesses concerned.<sup>4</sup>
6. Also, in its Decision on Disclosure, the Chamber recalled regulation 42 of the Regulations of the Court (“Regulations”), and noted that “protective measures ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court.”<sup>5</sup> The Chamber further noted that “when the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber [...]”<sup>6</sup>
7. In the same decision, the Chamber decided that disclosure for the purpose of the confirmation hearing in the *Prosecutor v Banda and Jerbo* case shall be governed by the same system established in the *Abu Garda* case.<sup>7</sup>
8. The Prosecution’s present request for redactions is premised on the protection measures previously ordered by the Chamber in relation to the identities of four witnesses herewith concerned. A deviation from that redaction regime would therefore constitute a violation of the Chamber’s orders mentioned above.

**The Scope of Redactions Sought and Witnesses’ Security Status**

9. The scope of the redactions sought relates to (i) the names or other identifying information of OTP investigators and other court staff, pursuant to Rule 81(2) of the Rules; and (ii) the identity of the four insider witnesses herewith concerned, pursuant to Rule 81(4) of the Rules.

---

<sup>4</sup> ICC-02/05-02/09-74, page 9.

<sup>5</sup> ICC-02/05-03/09-49, para 11.

<sup>6</sup> ICC-02/05-03/09-49, para 11.

<sup>7</sup> ICC-02/05-03/09-49, page 9.

10. At present, there is no change in the circumstances warranting a variation of the Chamber's decisions in this regard. The Prosecution will continue to monitor the security situation of each witness and promptly inform the Chamber of any change in their security status.

### **Organisation of Materials being Submitted**

11. The Prosecution herewith submits to the Pre-Trial Chamber the four agreements to which redactions are being sought.
12. The Prosecution has colour-coded each proposed redaction as follows:
- (i) Blue represents proposed redactions pursuant to Rule 81(2) of the Rules that relate to further or ongoing investigations; and
  - (ii) Red represents proposed redactions pursuant to Rule 81(4) of the Rules and Article 54(3)(f) of the Statute, to protect the safety of witnesses.

### **(b) Redaction of names of OTP investigators and other Court staff from the meta-data fields of discloseable materials**

13. The Prosecution also applies for redactions to the names of OTP investigators and other Court staff from the chain of custody field in the meta-data of the agreements to be disclosed to the Defence Teams.
14. In the First Decision on Redactions in the *Prosecutor v Abu Garda* case, Single Judge Steiner authorized the redactions of the names and signatures of OTP investigators and interpreters.<sup>8</sup> Subsequently, in its Decision on the "Prosecution's request for authorization of discrete redactions to the meta-data fields foreseen by the E-court Protocol" of 31 August 2009, Single Judge Steiner authorized the redactions of the names and signatures of OTP investigators identified in the Prosecutor's request.<sup>9</sup>

---

<sup>8</sup> ICC-02/05-02/09-58, para 15.

<sup>9</sup> ICC-02/05-02/09-76, page 4.

15. In light of the aforementioned Chamber's decision that the disclosure in the *Prosecutor v Banda and Jerbo* case shall be governed by the same system established in the *Abu Garda* case,<sup>10</sup> the Prosecution's request for redactions in this category is premised on the same protection measures relating to further or ongoing investigations previously ordered by the Chamber in relation to the four witnesses herewith concerned.

### Relief Sought

16. For the reasons set forth above, the Prosecution respectfully requests that the Single Judge authorise:

- (i) the redactions proposed in the Agreements on Statements of Limited Use contained in the Confidential, *Ex Parte* annexes accompanying this Application; and
- (ii) the redactions to the names of OTP investigators and other Court staff appearing in the chain of custody meta-data field foreseen by the E-court Protocol.



.....  
Luis Moreno-Ocampo  
Prosecutor

Dated this 3<sup>rd</sup> day of September 2010

At The Hague, The Netherlands

---

<sup>10</sup> ICC-02/05-03/09-49, page 9.