

**Cour
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**International
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Court**



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Date: **12 November 2025**

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***

**Confidential, *EX PARTE*,
Only available to the Prosecution**

**With Confidential, Ex Parte Annexes 1 to 6
Only available to the Prosecution**

**Urgent Prosecution request for the re-classification and redaction of prior
submissions, decisions and transcripts**

Source: Office of the Prosecutor

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I. INTRODUCTION

1. On 6 November 2025, Trial Chamber IV (the “Chamber”) ordered the appearance of the Prosecution, the Registry, and the Defence for Mr Abdallah Banda Abakaer Nourain (“Mr Banda”) at a status conference on 18 November 2025.¹

2. In order to effectively participate at the upcoming status conference, and consistent with the rights of the accused under article 67(2) of the Rome Statute, the Prosecution respectfully requests the re-classification of several filings and decisions associated with its request to withdraw the charges against Mr Banda as confidential, available only to the Prosecution, Defence and Registry,² and the filing of confidential redacted versions of other filings and oral submissions related to this matter, available only to the Prosecution, Defence and Registry (“Request”).³

¹ Order scheduling a status conference, [ICC-02/05-03/09-749-Conf-Exp](#) (“Order”).

² Order directing the Registry and the Prosecution to provide updates, [ICC-02/05-03/09-723-Exp](#); Prosecution’s request under Regulation 35 for an extension of time to file a written update, [ICC-02/05-03/09-724-Conf-Exp](#); Decision on the Prosecution’s request under Regulation 35 for an extension of time to file a written update, [ICC-02/05-03/09-725-Conf-Exp](#); Prosecution request to withdraw the charges against Abdallah Banda Abakaer Nourain and Response to Order directing the Registry and the Prosecution to provide updates, [ICC-02/05-03/09-727-Conf-Exp](#) (“Withdrawal Request”); Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain, [ICC-02/05-03/09-728-Conf-Exp](#); Update, [ICC-02/05-03/09-729-Conf-Exp](#); Prosecution’s application for leave to appeal the “Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain”, [ICC-02/05-03/09-730-Conf-Exp](#) (“First ALA Request”); Decision on the Prosecution’s application for leave to appeal the ‘Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain’, [ICC-02/05-03/09-731-Conf-Exp](#) (“First ALA Decision”); Dissenting Opinion of Judge Alapini Gansou, [ICC-02/05-03/09-731-Conf-Exp-Anx](#); Order scheduling a status conference, [ICC-02/05-03/09-732-Conf-Exp](#); Reconsideration of the Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain, [ICC-02/05-03/09-734-Conf-Exp](#); Dissenting Opinion of Judge Alapini Gansou, [ICC-02/05-03/09-734-Conf-Exp-Anx](#); Prosecution’s application for leave to appeal the “Reconsideration of the Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain”, [ICC-02/05-03/09-735-Conf-Exp](#) (“Second ALA Request”); Decision on the Prosecution’s application for leave to appeal the ‘Reconsideration of the Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain’, [ICC-02/05-03/09-737-Conf-Exp](#) (“Second ALA Decision”); Order instructing the Prosecution and the Registry to provide updates, [ICC-02/05-03/09-738-Conf-Exp](#); Update on investigative steps, [ICC-02/05-03/09-741-Conf-Exp](#).

³ Prosecution’s outline of briefing to the Trial Chamber, [ICC-02/05-03/09-733-Conf-Exp](#) (“Written Submissions”); Annex A to the Prosecution’s outline of the briefing to the Trial Chamber, [ICC-02/05-03/09-733-Conf-Exp-AnxA](#) (“Written Submissions Annex A”); Annex B to the Prosecution’s outline of briefing to the Trial Chamber, [ICC-02/05-03/09-733-Conf-Exp-AnxB](#) (“Written Submissions Annex B”); [ICC-02/05-03/09-T-028-CONF-EXP-ENG](#) (“Hearing Transcript”); Prosecution’s response to “Order instructing the Prosecution and the Registry to provide updates”, [ICC-02/05-03/09-739-Conf-Exp](#); Additional update on investigative steps, [ICC-02/05-03/09-744-Conf-Exp](#).

3. The Prosecution further requests that the Chamber authorise this Request on an urgent basis to facilitate substantive discussion among the parties and participants during the status conference on 18 November 2025.

II. CLASSIFICATION

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this Request is classified as confidential *ex parte*, available only to the Prosecution, as it refers to filings which bear the same classification. This Request is filed as urgent due to the impending status conference on 18 November 2025. Should the Chamber grant the present Request, this filing can be re-classified as confidential, available only to the Prosecution, Defence and Registry, to ensure that the Defence and the Registry will have access to its contents prior to the status conference.

III. SUBMISSIONS

5. The Prosecution's submissions on the sufficiency of the evidence in this case, the related decisions of the Chamber and subsequent updates provided by the Prosecution are not accessible to the Defence and/or Registry due to their *ex parte* classification.⁴ This material will be relevant to the Prosecution's oral submissions on several issues to be addressed at the forthcoming hearing.

6. However, the Prosecution will be unable to refer to this material since it is currently classified as *ex parte* and therefore not accessible to the Defence. The Prosecution respectfully observes that the present classification would render it impossible to make comprehensive and meaningful submissions before the Chamber. Likewise, the Defence will also be impeded in making effective submissions, since it is currently unaware of several key matters that are of relevance to topics that will be discussed at the status conference.

⁴ See above fns. 2-3.

7. In this respect, the Prosecution submits that the original reasons given by the Chamber for keeping the submissions related to the sufficiency of its evidence *ex parte*⁵ are now superseded by the pending Defence application for conversion of the arrest warrant into a summons to appear⁶ as well as the potentially imminent prospect of Mr Banda's appearance before the Court. Specifically, while the Chamber previously determined that the documents should remain *ex parte* so as not to hamper efforts to arrest Mr Banda,⁷ who had absconded following his initial appearance,⁸ the Chamber's concerns should now be allayed by Mr Banda's commitment to appear pursuant to a summons, which may take place imminently.

8. In addition to the above, the potentially imminent appearance of Mr Banda in this Court only amplifies the reasons for granting the Defence access to the *ex parte* filings. The Prosecution's prior submissions before the Chamber regarding the sufficiency of the evidence in its case are relevant to the Defence within the meaning of article 67(2) of the Statute.⁹ These submissions¹⁰ contain information that is potentially exculpatory in nature,¹¹ including investigation reports on alleged security

⁵ [First ALA Decision](#), para. 6 ("The Chamber is unpersuaded by the Prosecution's submission that reclassification should be ordered as 'Mr Banda may have a vested interest to participate in the litigation', particularly given that Mr Banda remains a fugitive from justice such that fair trial rights are not immediately implicated. At the same time the reclassification requests, if granted, would hamper the efforts to facilitate the arrest of Mr Banda. The Chamber therefore finds that the current *ex parte* classification of the Request, the Impugned Decision and the Application is necessary in the specific circumstances of this case. *Should Mr Banda's appearance be secured, the matter can be reconsidered.*") (emphasis added) (citations omitted); [Second ALA Decision](#), para. 7 ("The Chamber is not persuaded by the Prosecution's submission that reclassification is warranted because Mr Banda's fair trial rights are immediately implicated, particularly considering that, as held in a previous decision, Mr Banda remains a fugitive from justice. Relatedly, the Chamber considers that acceding to the Prosecution's request would hinder the execution of the outstanding arrest warrant. Given these circumstances, the current *ex parte* classification of the aforementioned filings remains necessary.") (citations omitted).

⁶ Defence Request for the Conversion of the Arrest Warrant against General Banda into a Summons to Appear, [ICC-02/05-03/09-742-Conf-Exp](#).

⁷ [First ALA Decision](#), para. 6; [Second ALA Decision](#), para. 7.

⁸ [ICC-02/05-03/09-T-004-ENG](#).

⁹ *Prosecutor v. Ntaganda*, Judgment on the Appeal of Mr Bosco Ntaganda against the "Decision on Defence requests seeking disclosure orders and a declaration of Prosecution obligation to record contacts with witnesses", [ICC-01/04-02/06-1330 OA3](#), para. 23 ("Article 67(2) of the Statute requires disclosure of evidence which the Prosecutor believes meets the criteria set out therein. Similarly, rule 77 of the Rules leaves to the Prosecutor the assessment of whether objects are 'material to the preparation of the defence' and their inspection should thus be permitted.").

¹⁰ See above fns. 2-3.

¹¹ *Prosecutor v. Yekatom & Ngaissona*, Decision on the Yekatom Defence Motion for Disclosure of Exculpatory Material, [ICC-01/14-01/18-296](#), para. 12 (citing *Prosecutor v. Lubanga*, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and application to stay the prosecution of the accused, together with certain other issues raised in the Status Conference on 10 June 2008, [ICC-01/04-01/06-1401](#), paras. 77-81, 92) ("At the outset, the Chamber underscores that the disclosure of exculpatory evidence in the possession of the Prosecutor is a fundamental aspect of a suspect's right to a fair trial.").

incidents¹² and the Prosecution's assessments regarding the credibility¹³ and availability¹⁴ of witnesses on whom the case against Mr Banda depends. The disclosure of this information to the Defence in advance of the status conference would ensure that the Defence is able to make informed submissions on the topics for discussion. Moreover, the disclosure of this material is fundamental to the fair conduct of proceedings.¹⁵

9. In light of the above submissions, the Prosecution respectfully requests the reclassification of the following records of the case against Mr Banda as confidential, available only to the Prosecution, Defence and Registry:

- a. Order directing the Registry and the Prosecution to provide updates, ICC-02/05-03/09-723-Exp;
- b. Prosecution's request under Regulation 35 for an extension of time to file a written update, ICC-02/05-03/09-724-Conf-Exp;
- c. Decision on the Prosecution's request under Regulation 35 for an extension of time to file a written update, ICC-02/05-03/09-725-Conf-Exp;
- d. Prosecution request to withdraw the charges against Abdallah Banda Abakaer Nourain and Response to Order directing the Registry and the Prosecution to provide updates, ICC-02/05-03/09-727-Conf-Exp;
- e. Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain, ICC-02/05-03/09-728-Conf-Exp;

¹² [Written Submissions Annex A](#) (DAR-OTP-0201-0199); [Written Submissions Annex B](#) (DAR-OTP-00001088).

¹³ [Withdrawal Request](#), paras. 15, 17; [Written Submissions](#), paras. 16, 21-22, 34(ii), 34(vi), 34(vii), 37, 42-44, 47-51; [Hearing Transcript](#), 8:17-22, 11:8-13:5, 29:17-22.

¹⁴ [Written Submissions](#), paras. 22, 54-56; [Hearing Transcript](#), 14:14-15:4, 33:18-23, 37:21-38:1.

¹⁵ *Prosecutor v. Lubanga*, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and application to stay the prosecution of the accused, together with certain other issues raised in the Status Conference on 10 June 2008, [ICC-01/04-01/06-1401](#), para. 77 ("The Chamber has unhesitatingly concluded that the right to a fair trial – which is without a doubt a fundamental right – includes an entitlement to disclosure of exculpatory material. This is established not only by the provisions of Article 67(2) of the Statute, but also by a review of the relevant international jurisprudence, and particularly that of the European Court of Human Rights and the ICTY.") (citations omitted). See also [First ALA Request](#), paras. 5-6; [Second ALA Request](#), para. 6.

- f. Update, ICC-02/05-03/09-729-Conf-Exp;
- g. Prosecution's application for leave to appeal the "Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain", ICC-02/05-03/09-730-Conf-Exp;
- h. Decision on the Prosecution's application for leave to appeal the 'Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain', ICC-02/05-03/09-731-Conf-Exp;
- i. Dissenting Opinion of Judge Alapini Gansou, ICC-02/05-03/09-731-Conf-Exp-Anx;
- j. Order scheduling a status conference, ICC-02/05-03/09-732-Conf-Exp;
- k. Reconsideration of the Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain, ICC-02/05-03/09-734-Conf-Exp;
- l. Dissenting Opinion of Judge Alapini Gansou, ICC-02/05-03/09-734-Conf-Exp-Anx;
- m. Prosecution's application for leave to appeal the "Reconsideration of the Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain", ICC-02/05-03/09-735-Conf-Exp;
- n. Decision on the Prosecution's application for leave to appeal the 'Reconsideration of the Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain', ICC-02/05-03/09-737-Conf-Exp;
- o. Order instructing the Prosecution and the Registry to provide updates, ICC-02/05-03/09-738-Conf-Exp; and
- p. Update on investigative steps, ICC-02/05-03/09-741-Conf-Exp.

10. Additionally, certain submissions contain information regarding the Prosecution's ongoing investigations and the safety of its witnesses that would still require redaction under rule 81(2)-(4) of the Rules of Procedure and Evidence. As such, the Prosecution respectfully requests authorisation to file confidential redacted versions, available only to the Prosecution, Defence and Registry, of the following submissions as soon as practicable in advance of the status conference:

- a. Prosecution's outline of briefing to the Trial Chamber, ICC-02/05-03/09-733-Conf-Exp;¹⁶
- b. Annex A to the Prosecution's outline of the briefing to the Trial Chamber, ICC-02/05-03/09-733-Conf-Exp-AnxA;¹⁷
- c. Annex B to the Prosecution's outline of briefing to the Trial Chamber, ICC-02/05-03/09-733-Conf-Exp-AnxB;¹⁸
- d. Transcript of Hearing on 7 February 2024, ICC-02/05-03/09-T-028-CONF-EXP-ENG;¹⁹
- e. Prosecution's response to "Order instructing the Prosecution and the Registry to provide updates", ICC-02/05-03/09-739-Conf-Exp;²⁰ and
- f. Additional update on investigative steps, ICC-02/05-03/09-744-Conf-Exp.²¹

¹⁶ For proposed redactions in a confidential redacted version, see Annex 1.

¹⁷ For proposed redactions in a confidential redacted version, see Annex 2.

¹⁸ For proposed redactions in a confidential redacted version, see Annex 3.

¹⁹ For proposed redactions in a confidential redacted version, see Annex 4.

²⁰ For proposed redactions in a confidential redacted version, see Annex 5.

²¹ For proposed redactions in a confidential redacted version, see Annex 6.

IV. CONCLUSION

11. For the foregoing reasons, the Prosecution respectfully requests that the Chamber urgently authorise the re-classification as confidential, available only to the Prosecution, Defence and Registry,²² and filing of confidential redacted versions, available only to the Prosecution, Defence and Registry,²³ respectively, of the records listed above.



Nazhat Shameem Khan, Deputy Prosecutor

Dated this 12th day of November 2025

At The Hague, The Netherlands

²² See above para. 9.

²³ See above para. 10.