

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/05-03/09
Date: 25 March 2026**

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

**Decision on the Legal Representative of Victims' request for access to material
referenced in the Prosecution's requests to withdraw charges**

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

- ☒ **The Office of the Prosecutor**
- ☒ **Counsel for the Defence**
- ☒ **Legal Representatives of the Victims**
- ☐ **Legal Representatives of the Applicants**
- ☐ **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

-
- Registrar**
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**
- ☐ **Victims and Witnesses Unit**

☐ **Detention Section**
- ☐ **Victims Participation and Reparations
Section**

☐ **Other**

TRIAL CHAMBER IV (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*, pursuant to Articles 64 and 68 of the Rome Statute (the ‘Statute’) and Rule 93 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Legal Representative of Victims’ request for access to material referenced in the Prosecution’s requests to withdraw charges’.

1. On 6 March 2024, the Chamber, by Majority, confirmed its initial decision (the ‘Initial Decision’)¹ and declined the Prosecution’s request² to withdraw the charges against Mr Banda (the ‘Prosecution’s Withdrawal Request’ and the ‘Reconsideration Decision’, respectively).³
2. On 3 October 2025, the Defence filed a request to convert the arrest warrant issued on 11 September 2014 against Mr Banda to a summons to appear (the ‘Defence’s Conversion Request’).⁴
3. On 6 November 2025, the Chamber scheduled an *ex parte* status conference, Prosecution, Defence and Registry only.⁵
4. On 12 November 2025, the Prosecution filed a request seeking reconsideration of the Reconsideration Decision (the ‘Prosecution’s Reconsideration Request’).⁶
5. On 14 November 2025, in light of the reclassification of several filings on the record as confidential,⁷ the Chamber decided to postpone the status conference to 8 December 2025

¹ Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain, 13 October 2023, ICC-02/05-03/09-728-Conf.

² Prosecution request to withdraw the charges against Abdallah Banda Abakaer Nourain and Response to Order directing the Registry and the Prosecution to provide updates, 5 October 2023, ICC-02/05-03/09-727-Conf.

³ 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.

⁴ 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 (confidential redacted version, ICC-02/05-03/09-742-Conf-Red, notified on 25 November 2025).

⁵ Order scheduling a status conference, ICC-02/05-03/09-749-Conf.

⁶ Urgent Prosecution request for reconsideration of the “Reconsideration of the Decision on the Prosecution’s Request to withdraw the charges against Abdallah Banda Abakaer Nourain”, ICC-02/05-03/09-752-Conf.

⁷ See Order on the re-classification and redaction of prior submissions, decisions and transcripts, 14 November 2025, ICC-02/05-03/09-753-Conf. See also Urgent Prosecution request for the re-classification and redaction of prior submissions, decisions and transcripts, 12 November 2025, ICC-02/05-03/09-751-Conf. On 21 November 2025, the Chamber clarified that the reclassification decision also applied to the Prosecution’s file ICC-02/05-03/09-752-Conf-Exp (see email decision of 21 November 2025, at 15:54). On 24 November 2025, the Chamber ordered the further reclassification as confidential of several filings and ordered the parties to file confidential redacted versions of other filings (see email decision of 24 November 2025, at 16:54).

to ensure that the Legal Representative of Victims (the 'LRV') had adequate time to prepare and to meaningfully participate in the proceedings.⁸

6. On 8 December 2025, the Chamber held a status conference with the Prosecution, the Defence, the Registry and the LRV, and received relevant submissions on the agenda items it had set, including on the timing and modalities to respond to the Prosecution's Reconsideration Request.⁹
7. On 12 December 2025, the Chamber issued an order on matters arising from the status conference of 8 December 2025 (the 'Order'). The Chamber (i) urged the Registry to ensure that adequate resources are appropriately augmented and made available to the LRV to facilitate its effective compliance with its Order; (ii) authorised the LRV to share information with her clients under specific conditions; (iii) ordered the LRV to file her submissions on the Defence's Request for Conversion and the Prosecution's Reconsideration Request (the 'LRV submissions') by 26 March 2026; and (iv) ordered the parties to file their replies to the LRV submissions by 2 April 2026.¹⁰
8. On 18 March 2026, the LRV requested access to material cited in support of the Prosecution's Withdrawal Request and Reconsideration Request, namely (i) the statements of several witnesses (the 'Witnesses Statements') and (ii) a report produced by an external adviser (the 'Report'), submitting that such material would allow them to meaningfully and transparently respond to the Prosecution's requests. They further requested a two-week extension of time, as of disclosure of the material sought, for the filing of the LRV submissions (the 'LRV Request').¹¹
9. On 23 March 2026,¹² the Prosecution filed a response to the LRV Request, in which it (i) did not object to the disclosure of the Witnesses Statements, subject to being given seven working days to assess the current security circumstances of the relevant witnesses and apply redactions to their statements; and (ii) opposed disclosure of the Report, as it did not

⁸ Order rescheduling the status conference, ICC-02/05-03/09-754-Conf.

⁹ Transcript of hearing, ICC-02/05-03/09-T-029-CONF-ENG. *See also* Order scheduling a status conference, 6 November 2025, ICC-02/05-03/09-749-Conf; Order adding items to the agenda for the status conference, 2 December 2025, ICC-02/05-03/09-757-Conf.

¹⁰ Order on matters arising from the status conference of 8 December 2025, ICC-02/05-03/09-758-Conf.

¹¹ Requête des Représentants Légaux Communs aux fins d'accéder aux éléments de preuve confidentiels cités par le Bureau du Procureur au soutien de ses requêtes aux fins de retrait des charges (ICC-02/05-03/09-727) et en réexamen (ICC-02/05-03/09-752), ICC-02/05-03/09-764-Conf (notified on 19 March 2026).

¹² The Chamber ordered the parties to file responses to the LRV Request by 24 March 2026 (*see* email decision of 19 March 2026, at 14:00).

inform the Prosecution's internal review of the evidence and, as an internal work product, is not disclosable under Rule 81(1) of the Rules (the 'Prosecution Response').¹³

10. On 24 March 2026, the Defence filed a response to the LRV Request, in which it sought that the Chamber (i) reject disclosure of the Report; (ii) only order the disclosure of the Witnesses Statements if it determines that they are necessary for the current legal proceedings; (iii) if the LRV Request is to be granted, order the Prosecution to disclose the relevant documents to both the LRV and the Defence; and (iv) remind the LRV of her professional duty to raise problems early and in a timely manner (the 'Defence Response').¹⁴
11. The Chamber notes that the LRV Request relates to the victims' rights and their ability to meaningfully participate in the proceedings. Moreover, the Chamber recalls the specific context in which the request is presented, notably that the Prosecution has requested to terminate the case against Mr Banda, such that the victims face the prospect that this case may not proceed further. In these circumstances, the issue for the victims is not merely one of access to material not yet presented before the Chamber, but whether there will be any opportunity to seek justice at all. In that regard, the Chamber emphasises articles 64(2) and 68(3) of the Statute, which govern, *inter alia*, the protection of victims and their right to participate in the proceedings, and article 69(3) which reflects the ultimate role of the Chamber in the determination of the truth.
12. The Chamber further recalls its Order, in which it reminded the Prosecution of its statutory obligations, in particular under article 54(1)(b) of the Statute to '[t]ake appropriate measures to ensure the effective investigation and prosecution of the crimes within the jurisdiction of the Court [...] respect[ing] the interest and personal circumstances of the victims and witnesses', and encouraged the Prosecution to further engage with the LRV with a view to meaningfully addressing their concerns.¹⁵

¹³ Prosecution response to the LRVs' request for access, ICC-02/05-03/09-765-Conf.

¹⁴ Defence Response to ICC-02/05-03/09-764-Conf, ICC-02/05-03/09-766-Conf.

¹⁵ Order, ICC-02/05-03/09-758-Conf, para. 5.

13. The Chamber also notes that the Prosecution referred to the Witnesses Statements and to the Report as part of its submissions before the Chamber regarding the withdrawal of charges.¹⁶
14. Regarding the Witnesses Statements, the Chamber observes that the Prosecution does not object to providing access to the LRV.¹⁷ While noting the Defence's submissions in that regard,¹⁸ the Chamber considers that the LRV should be granted access to ensure that they are properly informed and able to make any assessment they deem necessary to meaningfully respond to the Prosecution's Reconsideration Request, in line with the Chamber's Order. Having regard to the Prosecution's submissions and noting the scope of the sought material, the Chamber finds it appropriate to allow the Prosecution to conduct any required security assessments and apply redactions to the Witnesses Statements within six working days. Accordingly, the Chamber orders the Prosecution to provide access to the Witnesses Statements no later than Thursday, 2 April 2026, COB.
15. Regarding the disclosure of the Report, which was prepared by an 'external adviser' for the purpose of 'independently review[ing] the case' against Mr Banda,¹⁹ the Chamber finds that the same considerations apply. While the Report was obtained to 'confirm [the Prosecution's] assessment' regarding its case against Mr Banda,²⁰ the Chamber notes that the Prosecution referred to the 'benefit of [the Report]' as part of its 'considered deliberation and review of the state of the evidence now available to it', which ultimately supported its allegation that 'the evidence [did] not present a reasonable prospect of conviction'.²¹
16. In the Initial Decision, the Chamber held that the fact that the Prosecution had engaged an external advisor to review the case was 'immaterial to the Chamber's determination'.²² That finding was made by the Chamber in the context of the specific issues raised by that

¹⁶ See Prosecution's Withdrawal Request, ICC-02/05-03/09-727-Conf; Transcript of hearing, 7 February 2024, ICC-02/05-03/09-T-028-CONF-Red-ENG; Additional update on investigative steps, 16 October 2025, ICC-02/05-03/09-744-Conf-Exp (confidential redacted version, ICC-02/05-03/09-744-Conf-Red, filed on 18 November 2025); Prosecution's Reconsideration Request, ICC-02/05-03/09-752-Conf.

¹⁷ Prosecution Response, ICC-02/05-03/09-765-Conf, para. 13.

¹⁸ Defence Response, ICC-02/05-03/09-766-Conf, paras 2, 22-26.

¹⁹ Prosecution's Withdrawal Request, ICC-02/05-03/09-727-Conf, para. 21; Transcript of hearing, 7 February 2024, ICC-02/05-03/09-T-028-CONF-Red-ENG, p. 8, lines 9-12.

²⁰ Prosecution's Withdrawal Request, ICC-02/05-03/09-727-Conf, para. 21; Prosecution Response, ICC-02/05-03/09-765-Conf, para. 10.

²¹ Prosecution's Withdrawal Request, ICC-02/05-03/09-727-Conf, para. 22. See also Transcript of hearing, 7 February 2024, ICC-02/05-03/09-T-028-CONF-Red-ENG, p. 8, lines 9-16.

²² Initial Decision, ICC-02/05-03/09-728-Conf, para. 13.

particular application. In the distinct context of this application, considering that the Report was used as part of the Prosecution's original submissions on withdrawal, the Chamber finds that the LRV should be allowed access to carry out their own evaluation of the relevance of the material for the purposes of ensuring their meaningful participation and the making of well-informed observations with respect to the renewed application for withdrawal. The Chamber is further not persuaded by the parties' submissions that the Report is an internal working document and that this consideration impacts its present assessment. As noted, the Prosecution referenced this document in a filing before the Chamber describing it as a report prepared by an independent expert which confirmed their conclusion as to the insufficiency of the evidence, justifying the withdrawal of the charges. In these circumstances, this Report cannot now be re-categorised as an internal working document which is not accessible.

17. The Chamber also finds it appropriate to allow the Prosecution to apply any redactions to the Report within six working days. The Chamber thus orders the Prosecution to provide access to the Report no later than Thursday, 2 April 2026, COB.
18. Finally, the Chamber finds it appropriate for the Prosecution to provide access to the Witnesses Statements and the Report to all parties and participants, and therefore grants the Defence's request in that regard.²³ It further reminds the LRV to comply with the conditions for disclosing information to their clients as set out in the Chamber's Order.²⁴ The Chamber also takes note of the Defence's submissions concerning the timing of the LRV Request,²⁵ and reminds the LRV of the importance of submitting applications in a timely manner, as well as informing the Chamber of any difficulties encountered in accessing relevant material. These considerations should be duly taken into account in any future filings.
19. In light of the foregoing, the Chamber considers it necessary to adjust the dates for the parties and participants to file their submissions and replies. The Chamber therefore extends the deadline for the LRV submissions to Friday, 17 April 2026, COB and for the Prosecution and Defence to file any responses thereto to Friday, 24 April 2026, COB.

²³ Defence Response, ICC-02/05-03/09-766-Conf, paras 3, 27-28.

²⁴ Order, ICC-02/05-03/09-758-Conf, para. 4.

²⁵ Defence Response, ICC-02/05-03/09-766-Conf, paras 4, 17-21, 28.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the LRV Request;

GRANTS the Defence’s request regarding equal access to the Witnesses Statements and the Report;

ORDERS the Prosecution to provide access to the Witnesses Statements and the Report to the parties and participants, after completing any required security assessments and applying the necessary redactions, no later than Thursday, 2 April 2026, COB.

EXTENDS the deadline for the LRV to file their submissions to Friday, 17 April 2026, COB and for the Prosecution and Defence to file any responses thereto to Friday, 24 April 2026, COB.

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



Judge Kimberly Prost
Presiding Judge



Judge Keebong Paek



Judge Nicolas Guillou

Dated this **25 March 2026**
At The Hague, The Netherlands