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

Date: 14 July 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

Public

**Public redacted version of "Prosecution response to the LRVs' request for access",
23 March 2026, ICC-02/05-03/09-765-Conf**

Source: Office of the Prosecutor

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Introduction

1. On 18 March 2026, the Common Legal Representatives of Victims (“LRVs”) filed a request for access to the following materials cited by the Prosecution in connection with its request to withdraw the charges against Mr Banda (“Request”):¹ (i) the statements of six witnesses cited by the Prosecution (“Witness Statements”);² and (ii) the November 2023 report of the external adviser engaged by the Office of the Prosecutor on the strength of the evidence (“External Adviser Report”).³
2. The Prosecution does not, in principle, object to the disclosure of the Witness Statements, subject to being given seven working days to assess the current security circumstances of the relevant witnesses and apply redactions to their statements.
3. The Prosecution respectfully requests the Chamber to reject the Request insofar as it relates to the disclosure of the External Adviser Report. This Report did not inform the Prosecution’s own internal review of the evidence, and in any event is not disclosable under rule 81(1) of the Rules of Procedure and Evidence since it is an internal work product. The LRVs are not prejudiced by the non-disclosure of the External Adviser Report, and have access to all material considerations underpinning the Prosecution’s request to withdraw the charges.

Confidentiality

4. Pursuant to regulation 23bis(2) of the Regulations of the Court, this response is classified as confidential as it responds and refers to filings which bear the same classification.

Submissions

A. Witness Statements

5. The Prosecution notes as a preliminary matter that the aspects of the Witness Statements that are relevant to the potential termination of proceedings are already reflected on the record and are accessible to the LRVs.⁴ As such, the LRVs are in a position to make

¹ ICC-02/05-03/09-764-Conf, citing materials referenced in ICC-02/05-03/09-727-Conf (“Charges Withdrawal Request”) and ICC-02/05-03/09-752-Conf (“Reconsideration Request”).

² Namely, P-0441, P-0477, P-1840, P-0308, P-0521 and P-0512.

³ Request, paras. 12, 34-35, 41.

⁴ See Charges Withdrawal Request, paras. 15, 17, 19; ICC-02/05-03/09-733-Conf-Red (“Prosecution’s Outline of Briefing”), paras. 16, 21, 26, 34(i), 34(vi), 34(vii), 37-38, 42-51; T-028-Conf-Red-Eng, p. 10:10-13:24, 19:14-19, 20:21-21:1, 21:21-22:12, 29:17-22, 30:20-31:11; ICC-02/05-03/09-744-Conf-Red (“Additional Update on Investigative Steps”), paras. 3-14; Reconsideration Request, paras. 9-11.

submissions on the Prosecution's request to withdraw the charges even without disclosure of the Witness Statements.

6. Notwithstanding, the Prosecution is in a position to prepare the Witness Statements for disclosure. However it can only do so subject to taking the necessary protective measures, as outlined below, because several of the witnesses concerned are, at present, potentially at risk in case of disclosure of their identities.

7. In light of the prevailing security environment and the profiles of the witnesses, a thorough and individualised assessment of their security status is required prior to any disclosure. This assessment is essential to ensure that no action taken in the course of disclosure would compromise the safety or well-being of the witnesses or related individuals.

8. Disclosure will also require, as a pre-requisite, the careful application of redactions, including the redaction of identifying information and any other details that could reasonably lead to the identification or location of the witnesses.

9. Should the Chamber be inclined to order disclosure, the Prosecution therefore requests that the Chamber take note of these constraints and allow the Prosecution seven working days to complete the requisite security assessments, consultations, and redaction processes, so as to ensure that disclosure is effected in a manner consistent with the Prosecution's duty of care to witnesses under the applicable protective framework.

B. External Adviser Report

10. The LRVs' request for access to the External Adviser Report should be rejected. At the outset, it is based on a misunderstanding of the purpose for which the report was obtained. As the Prosecution noted in its request to withdraw the charges, it was only *after* the Prosecution had conducted its own considered deliberation and review of the state of the evidence and concluded that the case was no longer viable that it engaged an external adviser, [REDACTED], to independently review the case.⁵ This was out of an abundance of caution, to confirm the soundness of the Prosecution's conclusion. The External Adviser Report was thus obtained after the Prosecution's internal review process had already been concluded, and did not inform any part of that internal review. [REDACTED]'s conclusion that there was a low probability of convicting Mr Banda reinforced the Prosecution's own conclusion in this regard.⁶ However, it was neither fundamental to, nor determinative of the Prosecution's

⁵ Charges Withdrawal Request, para. 21.

⁶ Charges Withdrawal Request, para. 21. *See also* T-028-Conf-Red-Eng, p. 8:9-16.

decision to request the withdrawal of the charges. Indeed, the Trial Chamber itself considered the external adviser's report to be immaterial to its determination of the Prosecution's withdrawal request.⁷

11. In any event, the External Adviser Report is not disclosable to the LRVs or Defence as it constitutes internal work product of the Prosecution relevant to the development and pursuance of its case theory and strategy. Pursuant to rule 81(1) of the Rules of Procedure and Evidence, "[r]eports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure". This includes material concerning the development of Prosecution's legal theories and case strategies.⁸ The External Adviser Report falls squarely within the rule 81(1) exception, as the Prosecution obtained the Report for the purpose of confirming its assessment of the strength of its case theory, and its strategic decision to request the withdrawal of the charges.

12. The non-disclosure of the External Adviser Report does not prejudice the LRVs. The Prosecution has disclosed the underlying reasoning behind its decision to seek withdrawal of the charges for Mr Banda, including assessments of the reliability and credibility of its witnesses, in the submissions made by the Prosecution in the context of seeking the termination of proceedings, as well as in its oral submissions before the Chamber.⁹ In other words, all material considerations underpinning the decision are on the record and available to the LRVs to enable them to make meaningful submissions on the Prosecution's request to withdraw the charges.

Conclusion and relief sought

13. For the reasons set out above, the Prosecution does not object to disclosing the Witness Statements with redactions to witness identities, subject to being given seven working days for disclosure. The Prosecution respectfully requests the Chamber to reject the Request insofar as it relates to access to the External Adviser Report.

⁷ ICC-02/05-03/09-728-Conf ("Charges Withdrawal Decision"), para. 13.

⁸ See e.g. ICC-01/04-01/06-2206-Red ("*Lubanga* Protective Measures Variation Decision") , para. 19.

⁹ See Charges Withdrawal Request, paras. 14-20; Prosecution's Outline of Briefing, paras. 10-57; T-028-Conf-Red-Eng; Additional Update on Investigative Steps, paras. 3-15; Reconsideration Request, paras. 8-13.



Nazhat Shameem Khan
Deputy Prosecutor

Dated this 14th day of July 2026
At The Hague, The Netherlands