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No. ICC-02/05-03/09

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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 redacted version

**Decision on the Prosecution's request for reconsideration and the Defence's
request to convert the warrant of arrest into a summons to appear**

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(2) and 67 of the Rome Statute (the ‘Statute’) and Rule 132(2) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s request for reconsideration and the Defence’s request to convert the warrant of arrest into a summons to appear’.

I. Procedural history

1. On 7 March 2011, Pre-Trial Chamber I confirmed charges against Mr Banda (the ‘Confirmation Decision’).¹
2. On 11 September 2014, the Chamber, seized with an application from the Prosecution for an order requiring a confirmation from Mr Banda that he would appear for his trial,² issued a warrant of arrest considering that a summons to appear was no longer sufficient to ensure his voluntary appearance at trial (the ‘Arrest Warrant’).³
3. On 5 October 2023, the Prosecution filed a request to withdraw the charges against Mr Banda.⁴ On 13 October 2023, the Chamber rejected the Prosecution’s request (the ‘Initial Decision’).⁵
4. On 28 November 2023, the Chamber scheduled a status conference for the Prosecution to provide the Chamber with, *inter alia*, ‘a detailed briefing as to the basis for [the Prosecution’s] request to withdraw the charges’.⁶

¹ Corrigendum of the “Decision on the Confirmation of Charges”, ICC-02/05-03/09-121-Conf-Corr (a public redacted version was filed on 8 March 2011, ICC-02/05-03/09-121-Corr-Red). On 17 March 2011, the Registry transmitted the full record of the proceedings to Trial Chamber IV, including the Confirmation Decision and underseal annexes 1-3. See Transmission to Trial Chamber IV of the Full Record of the Proceedings, including the Decision Confirming the Charges, ICC-02/05-03/09-125.

² Prosecution application for an order requiring an undertaking from the Accused that he will appear for trial on 18 November 2014, 9 September 2014, ICC-02/05-03/09-603-Conf (a public redacted version was filed on 23 September 2014, ICC-02/05-03/09-603-Red).

³ Warrant of arrest for Abdallah Banda Abakaer Nourain, ICC-02/05-03/09-606. On 19 December 2014, the Chamber granted leave to appeal its decision to issue an Arrest Warrant, and on 3 March 2015, the Appeals Chamber confirmed the Chamber’s decision. See Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain against Trial Chamber IV’s issuance of a warrant of arrest, ICC-02/05-03/09-632-Conf (a public redacted version was filed on 3 March 2021, ICC-02/05-03/09-632-Red).

⁴ 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.

⁵ Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain, ICC-02/05-03/09-728-Conf. On 28 November 2023, the Chamber by Majority rejected the Prosecution’s request for leave to appeal. See 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; Dissenting Opinion Judge Alapini Gansou, ICC-02/05-03/09-731-Conf-Exp-Anx.

⁶ Order scheduling a status conference, ICC-02/05-03/09-732-Conf, para. 2.

5. On 2 February 2024, the Prosecution filed written submissions in preparation for the status conference scheduled by the Chamber.⁷
6. On 7 February 2024, the Chamber held an *ex parte* status conference.⁸
7. On 6 March 2024, the Chamber confirmed, by majority, its Initial Decision (the ‘Reconsideration Decision’).⁹
8. On 3 October 2025, the Defence filed a request to convert the Arrest Warrant against Mr Banda to a summons to appear (the ‘Defence’s Conversion Request’).¹⁰
9. On 12 November 2025, the Prosecution filed a request seeking reconsideration of the Reconsideration Decision (the ‘Reconsideration Request’).¹¹
10. On 8 December 2025, after receiving relevant submissions, the Chamber held a status conference with the Prosecution, the Defence, the Registry and the Legal Representative of Victims (the ‘LRV’).¹²
11. On 25 March 2026, the Chamber granted the LRV’s request to access material cited in support of the Reconsideration Request, and extended the deadlines for the parties and participants to file their submissions and responses related to the Reconsideration Request and the Defence’s Conversion Request.¹³

⁷ Prosecution’s outline of briefing to the Trial Chamber (with two confidential *ex parte* annexes), ICC-02/05-03/09-733-Conf-Exp (a confidential redacted version was filed 18 November 2025, ICC-02/05-03/09-733-Conf-Red).

⁸ Transcript of hearing, 7 February 2014, ICC-02/05-03/09-T-028-CONF-EXP-ENG (a confidential redacted version of the transcript was filed on 20 November 2025).

⁹ 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.

¹⁰ 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 (a confidential redacted version was filed on 25 November 2025, ICC-02/05-03/09-742-Conf-Red).

¹¹ 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.

¹² Transcript of hearing, 8 December 2025, 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 rescheduling the status conference, 14 November 2025, ICC-02/05-03/09-754-Conf; Order on the re-classification and redaction of prior submissions, decisions and transcripts, 14 November 2025, ICC-02/05-03/09-753-Conf. On 21 November 2025, the Chamber clarified that the reclassification decision also applied to the Prosecution’s filing 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). *See further* Order on matters arising from the status conference of 8 December 2025, 12 December 2025, ICC-02/05-03/09-758-Conf.

¹³ *See* Decision on the Legal Representative of Victims’ request for access to material referenced in the Prosecution’s requests to withdraw charges, ICC-02/05-03/09-767-Conf; Decision on the Prosecution’s request for an extension of time to provide access to witnesses statements, 2 April 2026, ICC-02/05-03/09-769-Conf. *See also* 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), 18 March 2026, ICC-02/05-03/09-764-Conf (notified on 19 March 2026).

12. On 1 May 2026, the LRV made submissions on the Reconsideration Request (the ‘LRV’s submissions on Reconsideration’)¹⁴ and the Defence’s Conversion Request (the ‘LRV’s submissions on Conversion’).¹⁵

13. On 8 May 2026, the Defence and the Prosecution filed their responses to the LRV submissions (the ‘Prosecution’s Consolidated Response’ and the ‘Defence’s Response’).¹⁶

II. Analysis and submissions

A. Submissions from the parties and participants

14. In support of its Reconsideration Request, the Prosecution submits that there are new developments in the evidence reinforcing its assessment of the case against Mr Banda and submits that ‘it is unable to prove, *inter alia*, Mr Banda’s *mens rea* to the requisite standard’.¹⁷ According to the Prosecution, two witnesses it recently interviewed, P-1840 and P-0308, have been unable to provide relevant information regarding the planning, execution and attack on MGS Haskanita, as well as Mr Banda’s knowledge of the illegal nature of the attack.¹⁸ The Prosecution argues that these new facts ‘alter the strength of the evidence in the case’,¹⁹ warranting a reconsideration by the Chamber of its prior decisions not to authorise the withdrawal of the charges. The Prosecution also argues that due to ‘significant degradation of existing evidence and exhaustion of available investigative avenues, the case against Mr Banda is not viable’.²⁰ The Prosecution further submits that a reconsideration of the Chamber’s previous decisions is necessary to prevent an injustice which would ‘clearly arise if Mr Banda were made to appear before the Court in

¹⁴ Observations des Représentants Légaux des Victimes sur la Requête du Procureur ICC-02/05-03/09-752-Conf en Reconsidération de la ‘Décision (2ème Décision) sur sa demande aux fins de retrait des charges contre Abdallah Banda Abakaer Nourain’, ICC-02/05-03/09-773-Conf.

¹⁵ Submissions of the Legal Representatives for Victims on ‘Defence’s Request for the Conversion of the Arrest Warrant into a Summons to Appear’ 1 May 2026, ICC-02/05-03/09-772-Conf (notified on 3 October 2025).

¹⁶ Prosecution’s consolidated response to “Observations des Représentants Légaux des Victimes sur la Requête du Procureur ICC-02/05-03/09-752-Conf en Reconsidération de la ‘Décision (2ème Décision) sur sa demande aux fins de retrait des charges contre Abdallah Banda Abakaer Nourain’” and “Submissions of the Legal Representatives for Victims on ‘Defence’s Request for the Conversion of the Arrest Warrant into a Summons to Appear’ filed on 3 October 2025”, ICC-02/05-03/09-776-Conf; Defence Submissions on the Prosecution’s Request to Withdraw the Charges against General Abdallah Banda Abaker Nourain, ICC-02/05-03/09-775-Conf; Defence Response to the Legal Representative for Victims’ Observations on the Conversion of the Arrest Warrant into a Summons to Appear, ICC-02/05-03/09-774-Conf.

¹⁷ Reconsideration Request, paras 8, 12.

¹⁸ Reconsideration Request, paras 9-12; Prosecution’s Consolidated Response, para. 6.

¹⁹ Prosecution’s Consolidated Response, para. 7.

²⁰ Reconsideration Request, para. 13.

circumstances where the Prosecution is already aware that it will be unable to prove its case against him'.²¹

15. The LRV argues that the evidence presented by the Prosecution has been submitted 18 years after the MGS Haskanita attack and 12 years after the confirmation of charges, thereby affecting the principle of efficiency of the proceedings.²² Furthermore, the LRV submits that the evidence does not address new facts but is rather supplementary of evidence, and therefore does not alter the Confirmation Decision or the Reconsideration Decision.²³ The LRV further submits that the notion of 'prevention of an injustice', as relied upon by the Prosecution, is not consistent with how the concept has been applied by the Court and other international criminal jurisdictions.²⁴ Accordingly, the LRV requests the Chamber to reject the Reconsideration Request.²⁵
16. The Defence, in response, submits that it identifies no error in the Prosecution's reasoning.²⁶ The Defence further asserts that the LRV submissions 'offer little value to the determination of the Chamber'²⁷ and do not undermine the Reconsideration Request. Accordingly, the Defence requests the Chamber to grant the Reconsideration Request.²⁸
17. In support of the Defence's Conversion Request, the Defence submits that there has been a significant change in circumstances warranting the conversion of the Arrest Warrant to a summons to appear. In particular, the Defence argues that: (i) the Government of Sudan is willing to ensure Mr Banda's appearance before the Court and trial, (ii) Mr Banda [REDACTED] thereby ensuring that the alleged crimes are not to be repeated, and (iii) there is no risk that Mr Banda would intimidate witnesses.²⁹ In its response, the Prosecution does not oppose the Defence request, provided that the Government of Sudan places the relevant assurances on the record.³⁰ The LRV submits that the Defence request should be dismissed, *inter alia*, on the grounds that: (i) there are still reasonable grounds to believe that the Accused has committed a crime within the jurisdiction of the Court, (ii) the

²¹ Prosecution's Consolidated Response, para. 8. *See also* Reconsideration Request, paras 14-15.

²² LRV's submissions on Reconsideration, para. 31.

²³ LRV's submissions on Reconsideration, para. 32.

²⁴ LRV's submissions on Reconsideration, paras 33, 37.

²⁵ LRV's submissions on Reconsideration, paras 17, 86.

²⁶ Defence's Response, paras 16-27.

²⁷ Defence's Response, para. 27.

²⁸ Defence's Response, paras 1, 28.

²⁹ Defence's Conversion Request, paras 22, 24, 26.

³⁰ Prosecution's response to "Defence Request for the Conversion of the Arrest Warrant Against General Banda into a Summons to Appear", 3 October 2025, ICC-02/05-03/09-742-Conf-Exp, para. 5 (a confidential redacted version was filed on 25 November 2025).

arrest of the Accused still appears necessary to ensure appearance of the Accused at trial,
(iii)

18. [REDACTED], and (iv) the Accused ‘never expressed unconditional willingness to surrender’.³¹ Alternatively, the LRV requests the Chamber to suspend its decision on the Defence’s Conversion Request until it decides on the Reconsideration Request.³²

B. Determinations on the Reconsideration Request

i. Standard for reconsideration

19. Although the Statute does not provide for reconsideration of judicial decisions, the case law at the Court has established that a chamber has the power to reconsider its decisions upon request of the parties or *proprio motu*, particularly in light of Articles 64(2) and 67 of the Statute.³³ Trial chambers have determined that reconsideration is exceptional and should only take place if a clear error of reasoning has been demonstrated, or if it is necessary to do so to prevent an injustice,³⁴ or if the decision is ‘manifestly unsound’.³⁵ Chambers have also determined that new facts and arguments arising since the decision was rendered may be relevant to this assessment.³⁶

ii. The Reconsideration Request

20. At the outset, the Chamber recalls its findings in the Reconsideration Decision, whereby it concluded, by majority, that the Prosecution had not demonstrated changes in the evidence justifying the withdrawal of the charges.³⁷ In the present case, rather than submitting that the Reconsideration Decision contains a clear error of reasoning or is otherwise manifestly unsound, the Prosecution submits that reconsideration is necessary to prevent an injustice in light of (i) alleged new developments in the evidence arising since the issuance of the

³¹ LRV’s Submissions on the Conversion paras 57, 59, 61.

³² LRV’s Submissions on the Conversion para.67.

³³ See Reconsideration Decision, paras 6-7, n. 7-9, and the jurisprudence cited therein. See also Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Public redacted version of Decision on Defence request for reconsideration of “Decision on Defence submissions on cooperation with Sudan”, 29 March 2022, ICC-02/05-01/20-650-Red, para. 10.

³⁴ See footnote 33 above.

³⁵ See, for example, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements, 11 May 2018, ICC-02/04-01/15-1259, para. 12; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on the Prosecution’s request for reconsideration or, in the alternative, leave to appeal, 18 March 2015, ICC-01/04-02/06-519, para. 12; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request to reconsider the ‘Order on numbering of evidence’ of 12 May 2010, 30 March 2011, ICC-01/04-01/06-2705, para. 18.

³⁶ See footnote 33 above.

³⁷ Reconsideration Decision, para. 37.

Reconsideration Decision, (ii) the alleged degradation of existing evidence and exhaustion of available investigative avenues, and (iii) the circumstances that would arise if Mr Banda were made to appear in Court (where the Prosecution is already aware that it will be unable to prove its case against him).

21. The Chamber does not accept the Prosecution's arguments as to why reconsideration is needed to prevent an injustice. The Chamber already determined that on the basis of the submissions made regarding *existing evidence*, the Prosecution had not demonstrated changes or degradation justifying the withdrawal of the charges.³⁸ The fact that other evidence sought, in the opinion of the Prosecution, does not provide additional support to its case, is of no relevance to the question of injustice.
22. The Chamber further notes the Prosecution's submissions concerning the 'degradation of existing evidence', the 'exhaustion of available investigative avenues', and its inability to obtain reliable evidence capable of remedying the deficiencies identified in the case against Mr Banda.³⁹ These submissions disregard the previous findings of the Chamber,⁴⁰ and simply constitute a reiteration of the arguments already presented by the Prosecution which were rejected.⁴¹
23. Specifically, while the Prosecution has asserted its view of the case and prospects of conviction at this stage, it has failed to demonstrate how the evidence, which met the statutory test for the case against Mr Banda to proceed to trial, has deteriorated to such an extent that a trial is no longer merited. The Chamber recalls that the parties have made an agreement on a number of facts in this case.⁴² Furthermore, it reiterates that any assessment of the credibility of witnesses regarding facts that remain in dispute, and the reliability of their evidence to the standard of beyond reasonable doubt, is for the Chamber to conduct

³⁸ Reconsideration Decision, paras 8, 29, 34, 37.

³⁹ Reconsideration Request, paras 9-11, 13.

⁴⁰ Reconsideration Decision, paras 8, 29-40.

⁴¹ *See for example* Prosecution's outline of briefing to the Trial Chamber, 2 February 2024, ICC-02/05-03/09-733-Conf-Exp, paras 21-40, 52.

⁴² *See* Agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence between the Defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus And the Office of the Prosecutor, ICC-02/05-03/09-148-Conf-AnxA; Decision on the Joint Submission regarding the contested issues and the agreed facts, 28 September 2011, ICC-02/05-03/09-227. *See also* Prosecution's outline of briefing to the Trial Chamber, 2 February 2024, ICC-02/05-03/09-733-Conf-Exp, para. 14 (referring to the three contested issues, namely Issue 1: whether the attack on the MGS Haskanita on 29 September 2007 was unlawful; Issue 2: if the attack is deemed unlawful, whether the Accused was aware of the factual circumstances that established the unlawful nature of the attack; and Issue 3: whether AMIS was a peacekeeping mission in accordance with the Charter of the United Nations).

at trial.⁴³ Thus, the Chamber finds that these arguments, which were already considered and decided upon, do not provide any support for reconsideration (*de novo*) to avoid an injustice.

24. Finally, the Chamber is unable to understand how, as argued by the Prosecution, having Mr Banda attend his trial, whether pursuant to a warrant of arrest or summons to appear, would constitute an injustice. The Chamber recalls that the charges against Mr Banda were confirmed in March 2011 but the trial did not commence because the Accused failed to appear. Despite the issuance of a warrant of arrest against him in September 2014, for the intervening twelve years Mr Banda has been a fugitive from justice.
25. The Chamber considers that requiring Mr Banda to appear before the Court for the determination of his criminal responsibility in a trial, regardless of whether the eventual outcome is a conviction or an acquittal, cannot be regarded, in and of itself, as an injustice. For these reasons, the Chamber rejects the Prosecution's submissions for reconsideration in the interests of justice.
26. However, the Chamber is compelled by its overarching obligations to consider whether, in the current situation, it would be appropriate to commence a trial, either through appearance by a summons or through an arrest warrant. Specifically, the Chamber notes that the Prosecution refuses to proceed to trial, despite the fact that the charges against the Accused were confirmed and that the Chamber rejected the Prosecution's request for withdrawal for the detailed reasons set out above, and notwithstanding the opposing views of the victims.
27. The Statute creates a hybrid legal system which is not reflective of any particular legal tradition and in which a trial chamber is accorded extensive powers to design and advance the trial. At the same time, the system is dependent on the parties to the proceedings – the Prosecution in particular – carrying out the responsibilities accorded to them under the

⁴³ Reconsideration Decision, para 32, referring to Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions, 31 March 2021 (notified on 1 April 2021), ICC-02/11-01/15-1400, paras 117, 316; Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges', 30 May 2012, ICC-01/04-01/10-514, para. 48; Appeals Chamber, *The Prosecutor v. Jean - Pierre Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled 'Decision on the admission into evidence of materials contained in the prosecution's list of evidence', 3 May 2011, ICC-01/05-01/08-1386, para. 37.

Statute and the Rules. In this context, proceeding to trial in this particular case, with a Prosecutor who refuses to present the case despite evidentiary and legal obligations to do so, would be in contravention of the Chamber's ultimate obligation to ensure a fair and efficient trial.

28. While the Chamber could request the submission of evidence for the determination of the truth and call its own witnesses or order the production or submission of evidence,⁴⁴ to do so as the main protagonist, without the participation of the Prosecution, would create an unacceptable unbalance in the system which would be fundamentally unfair to the Accused. Equally, while victims may participate in the trial proceedings under the statutory framework, including by calling evidence, the responsibilities of the Prosecution cannot be assigned to them.
29. In sum, to proceed with trial proceedings in these exceptional circumstances would deprive the Accused of a fair trial and not serve the interests of justice. Therefore, deploring the Prosecution's continued opposition to carrying out its burden, the Chamber must reconsider its prior decisions, to avert an injustice, and authorise the Prosecution to withdraw the charges against Mr Banda, in light of its responsibility to ensure that trial proceedings are fair and expeditious pursuant to Article 64(2) and 64(3)(a) of the Statute. Such determination is however without prejudice to any case that could be brought against him for the same or similar facts at a later date.⁴⁵
30. For the purpose of the publicity of the proceedings, the Chamber nonetheless considers that this decision, and most importantly the impending Prosecution's notice of withdrawal of the charges, must be made public, together with the main decisions and submissions that have led to this point in the proceedings. Accordingly, the Chamber sets out below the procedural steps to be implemented following the present decision:
 - a. First, the parties, participants and the Registry shall consult among themselves and file public redacted versions or otherwise request public reclassification of

⁴⁴ Articles 64(6) and 69(3) of the Statute.

⁴⁵ See for example Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the withdrawal of charges against Mr Kenyatta, 13 March 2015, ICC-01/09-02/11-1005, para. 9. See also Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on Prosecution's application for a further adjournment, 3 December 2014, ICC-01/09-02/11-981, para. 56.

their underlying submissions to the relevant decisions and the relevant transcripts by 13 July 2026.⁴⁶

- b. Second, the Chamber will hold a public status conference on 21 July 2026 at 14:30. During that hearing, the Prosecution shall give public notice of their withdrawal of the charges, providing therein the reasons for their decision. The Defence and the LRV may also make oral observations. The presence of the Accused is not required, but he may attend remotely should he wish to do so.
- c. Third, the Prosecution shall file on that same date a public notice of their withdrawal of the charges.
- d. Lastly, upon receiving such a notice on the withdrawal of the charges, and having determined it meets the required criteria, the Chamber will decide whether to formally terminate the proceedings against Mr Banda, without prejudice to any case that could be brought against him for the same or similar facts at a later date.⁴⁷

C. Defence's Conversion Request

31. Upon notification of the Prosecution's notice of their withdrawal of the charges, and the resulting termination of the proceedings by the Chamber, the Arrest Warrant will no longer

⁴⁶ The present decision, including the filings reference herein, and the following: Order directing the Registry and the Prosecution to provide updates, 15 September 2023, ICC-02/05-03/09-723-Conf; Decision on the Prosecution's request under Regulation 35 for an extension of time to file a written update, 22 September 2023, ICC-02/05-03/09-725-Conf; Initial Decision; 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', 28 November 2023, ICC-02/05-03/09-731-Conf; Order scheduling a status conference, 28 November 2023, ICC-02/05-03/09-732-Conf; Reconsideration Decision; 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', 23 April 2024, ICC-02/05-03/09-737-Conf; Order instructing the Prosecution and the Registry to provide updates, 16 September 2024, ICC-02/05-03/09-738-Conf; Order inviting the competent authorities of the Republic of Sudan to provide observations, 24 October 2025, ICC-02/05-03/09-746-Conf; Order scheduling a status conference, 6 November 2025, ICC-02/05-03/09-749-Conf; Order on the re-classification and redaction of prior submissions, decisions and transcripts, 14 November 2025, ICC-02/05-03/09-753-Conf; Order rescheduling the Status Conference, 14 November 2025, ICC-02/05-03/09-754-Conf; Order adding items to the agenda for the status conference, 2 December 2025, ICC-02/05-03/09-757-Conf; Order on matters arising from the status conference of 8 December 2025, 12 December 2025, ICC-02/05-03/09-758-Conf; Decision on the Legal Representative of Victims' request for access to material referenced in the Prosecution's requests to withdraw charges, 25 March 2026, ICC-02/05-03/09-767-Conf; Decision on the Prosecution's request for an extension of time to provide access to witnesses statements, 2 April 2026, ICC-02/05-03/09-769-Conf; Transcript of hearing, 7 February 2024, ICC-02/05-03/09-T-028-CONF-EXP-ENG; Transcript of hearing, 8 December 2025, ICC-02/05-03/09-T-029-CONF-ENG; Transcript of hearing, 8 December 2025, ICC-02/05-03/09-T-029-CONF-ENG.

⁴⁷ See Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the withdrawal of charges against Mr Kenyatta, 13 March 2015, ICC-01/09-02/11-1005.

be in effect. Accordingly, a determination from the Chamber on the Defence's Conversion Request is no longer required.

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES the Prosecution to withdraw the charges against Mr Banda;

ORDERS the parties, participants and the Registry to follow the instructions in paragraph 29 above; and

SCHEDULES a status conference to be held on 21 July 2026 at 14:30.

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



Judge Kimberly Prost
Presiding Judge



Judge Keebong Paek



Judge Nicolas Guillou

Dated this 15 July 2026
At The Hague, The Netherlands