

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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 "Defence Response to ICC-02/05-03/09-764-Conf",
filed on 24 March 2026**

Source: Defence Team for Abdallah Banda Abakaer Nourain

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

D07

☒ 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

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REGISTRY

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M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for General Abdallah Banda Abakaer Nourain ('Defence') hereby responds to "*Requête des Représentants Légaux Communs aux fins d'accéder aux éléments de preuve confidentiels cites par le Bureau du Procereur 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)*" ('LRV Application').¹ As the Defence makes these discreets observations about the LRV Application submitted by the Legal Representative for Victims ('LRV'), it notes that because of the short time frame to respond, and the advance notice it must give to get an interpreter for speaking with General Abdallah Banda Abakaer Nourain ('Client' or 'General Banda'), these observations are without input from the Client.
2. The Defence asserts that no justifiable reason has been advanced by the LRV as to why these witness interviews/statements and the External Expert report are necessary to determine its proposed standard for the withdrawal of the charges. It also lacks sufficient details and explanation as to why the LRV never asked about training on the new systems or her failure to notify Trial Chamber IV ('Chamber') earlier of problems with the Registry and access to said systems.
3. Should the Chamber order the disclosure of the abovementioned documents, the Defence requests that it receives the same disclosure.
4. Finally, the Defence suggests that the Chamber remind the LRV of her professional duty to raise issues like this at an earlier stage. She filed the LRV Application on day 97 of a 104-day deadline. This is unacceptable and should not be repeated.

II. CONFIDENTIALITYT

5. Pursuant to Regulation 23 *bis*(2) of the Reglations of the Court, the Defence files this response as CONFIDENTIAL as it relates to filings of the same classification. The Defence shall not file a public redacted version until such time that it is requested by the Chamber.

¹ Trial Chamber IV, *Requête des Représentants Légaux Communs aux fins d'accéder aux éléments de preuve confidentiels cites par le Bureau du Procereur 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.

III. PROCEDURAL SUMMARY

6. Between 5 October 2023 to 13 November 2025, the Office of the Prosecutor ('Prosecution') and Chamber exchanged a series of pleadings, requests, decisions and one status conference related to the Prosecution requests to withdraw the charges against General Banda.²
7. On 3 October 2025, the Defence requested to convert its Client's arrest warrant into a summons to appear.³ At the time of this filing, the Defence was unaware of the proceedings taking place listed in paragraph 6 above.
8. On 6 November 2025, the Chamber ordered a status conference to be held on 18 November 2025.⁴
9. On 14 November 2025, the Chamber rescheduled the status conference for 8 December 2025.⁵ The Chamber also ordered the reclassification and confidential redacted versions of a myriad of filings and one transcript.⁶

² Trial Chamber IV, *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; Trial Chamber IV, *Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain*, ICC-02/05-03/09-728-Conf; Trial Chamber IV, *Update*, ICC-02/05-03/09-729-Conf; Trial Chamber IV, *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; Trial Chamber IV, *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; Trial Chamber IV, *Order Scheduling a status conference*, ICC-02/05-03/09-732-Conf; Trial Chamber IV, *Confidential redacted version of "Prosecution's outline of briefing to the Trial Chamber"*, ICC-02/05-03/09-733-Conf-Exp, 2 February 2024, ICC-02/05-03/09-733-Conf-Red; ICC-02/05-03/09-T-028-CONF-RED; Trial Chamber IV, *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; Trial Chamber IV, *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-Anx; Trial Chamber IV, *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; Trial Chamber IV, *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; Trial Chamber IV, *Update on investigative steps*, ICC-02/05-03/09-741-Conf; Trial Chamber IV, *Confidential Redacted version of "Additional update on investigative steps"*, ICC-02/05-03/09-744-Conf-Exp, filed on 16 October 2025, ICC-02/05-03/09-744-Conf-Red; and Trial Chamber IV, *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.

³ Trial Chamber IV, *Defence Request for the Conversion of the Arrest Warrant against General Banda into a Summons to Appear*, ICC-02/05-03/09-742-Conf.

⁴ Trial Chamber IV, *Order scheduling a status conference*, ICC-02/05-03/09-749-Conf.

⁵ Trial Chamber IV, *Order rescheduling the status conference*, ICC-02/05-03/09-754-Conf.

⁶ Trial Chamber IV, *Order on the re-classification and redaction of prior submissions, decisions and transcripts*, ICC-02/05-03/09-753-Conf.

10. On 24 November 2025, the Defence requested to include in the discussions of the status conference about the modalities for its response to the Prosecution's request to withdraw the charges against its Client.⁷
11. On 2 December 2025, the Chamber included in the status conference agenda time for the parties and participants to discuss about responding to the Prosecution's request to withdraw the charges against General Banda.⁸
12. On 8 December 2025, the Chamber held the status conference.⁹
13. On 12 December 2025, the Chamber granted the Legal Representative for Victims until 26 March 2026 to submit her responses to the Defence's 3 October 2025 request and the Prosecution's request to withdraw the charges against General Banda.¹⁰ The Chamber gave the Prosecution and Defence until 2 April 2026 to file responses.
14. On 19 March 2026, the LRV filed the LRV Application, requesting that the Prosecution be ordered to disclose its External Expert's report,¹¹ disclose the witness interviews/statements used in support of the Prosecution's request to withdraw the charges against General Banda¹² and a two-week extension to file its observations from the date of the disclosure of the requested material.¹³
15. On 19 March 2026, the Chamber adjusted the deadline for any possible responses to 24 March 2026 at 16:00 CET.¹⁴

IV. SUBMISSIONS

A. Initial Observations

16. The Defence finds it alarming that the LRV claims that she and her co-counsel were (or still are) unable to access the JWP and Nuix discovery systems while in [REDACTED]

⁷ Trial Chamber IV, *Defence Request for Additional Items for the Status Conference on 8 December 2025*, ICC-02/05-03/09-755-Conf, para. 13(b).

⁸ Trial Chamber IV, *Order adding items to the agenda for the status conference*, ICC-02/05-03/09-757-Conf, para. 10(e)(i).

⁹ ICC-02/05-03/09-T-029-CONF-ENG and ICC-02/05-03/09-T-030-CONF-ENG.

¹⁰ Trial Chamber IV, *Order on matters arising from the status conference of 8 December 2025*, ICC-02/05-03/09-758-Conf, para. 6.

¹¹ LRV Application, para. 41.

¹² LRV Application, para. 41.

¹³ LRV Application, para. 42.

¹⁴ Email from Trial Chamber IV to Parties and Participants, *Responses to request ICC-02/05-03/09-764-Conf*, received on 19 March 2026 at 14:00 CET.

██████████¹⁵ The Defence's co-counsel was the ICCBA Board Member and Defence Working Group member for the Judicial Workflow Project, and confirms that these platforms can be used remotely with privately owned laptops through the ██████████

██████████¹⁶ In fact, the Defence's co-counsel is filing this response on behalf of Counsel through the ██████████

B. The LRV Fails to Explain in Detail the Reasons for the Extreme Delay for the LRV Application

17. The LRV obtained access to the External Party Network ('EPN') in November 2025.¹⁷ As of this time, the LRV was able to access her email.
18. On 12 December 2025, the Chamber issued a decision related to the 8 December 2025 status conference, granting the LRV until 26 March 2026 to file observations on the Prosecution's request to withdraw the charges against General Banda.¹⁸
19. The LRV Application fails to explain what the LRV was doing between the Chamber's decision on 12 December 2025 and the beginning of March 2026. She offers no explanation why she did not press Counsel Support Section ('CSS') earlier for access to the JWP system or the Nuix discovery system, or if she did continuously press CSS for access to these systems and it was not granted by the Registry. Quite frankly, that time frame is essentially blank.
20. Furthermore, the LRV does not adequately explain why she did not seek the Chamber's help gaining access to these systems earlier, or merely requesting copies of the pleadings from the Chamber or the Parties. When the Defence noticed that certain material was not reclassified, it immediately questioned the Prosecution about this and sent an email to the Chamber requesting its reclassification.¹⁹ The LRV has shown no similar type of due diligence.
21. The Defence, having decades of experience at international and internationalised tribunals, understands that granting access to these systems requires some level of

¹⁵ LRV Application, para. 15.

¹⁶ The website for this is: <https://remote2.icc-cpi.int/logon/LogonPoint/tmindex.html>.

¹⁷ LRV Application, para. 16

¹⁸ Trial Chamber IV, *Order on matters arising from the status conference of 8 December 2025*, ICC-02/05-03/09-758-Conf, para. 6.

¹⁹ See Email from Defence to Trial Chamber IV, Prosecution and LRV, *Defence Request for Reclassification of Filing 752-Conf-Exp*, sent on 20 November 2025 at 18:34 CET.

bureaucracy and/or administrative dealings, but not three months worth of it. It is obvious to the Defence that some level of professional responsibility failure has come into play here. Whether that failure lies with the Registry or the LRV, or a mixture of both, is ultimately up to the Chamber to decide. But the Defence does not believe in the slightest that the LRV should have waited until seven days before the filing deadline to file the LRV Application. She should have sought help from the Chamber earlier than now.

C. The LRV Fails to Substantiate why the Request Documents are Necessary for her to Determine the Proper Legal Standard for the Chamber to use when Considering to Allow the Withdrawal of the Charges

22. The LRV does not adequately substantiate why the witness interviews/statements and the External Expert report are necessary for her to aid the Chamber to determine the proper legal standard to apply when determining whether the charges can be withdraw by the Prosecution at this stage of the proceedings. What the witness interviews/statements and External Expert report say is immaterial to the current legal question.
23. The LRV explains why access to the material is necessary for trial, but not for current legal question presented by the Prosecution and under consideration by the Chamber. Everything in the LRV Application explains why she has the right for these documents if the case proceeded to trial, but not at this juncture of the proceedings.
24. Moreover, pursuant to Rule 81(1) of the Rules of Procedure and Evidence, the External Expert report is work-product and not required disclosure under the Rome Statute or Rules of Procedure and Evidence. This External Expert report must be distinguished from a targeted expert report. This report is not an evaluation of a single piece of evidence, or even a few pieces of evidence. This External Expert report was created as a review of the entire case file to determine the continued viability of the case.²⁰ If anything in the Prosecution's possession can be considered work-product, and not subject to disclosure, this is it.
25. As to the witness interviews/statements, the Defence agrees that if this case proceeds to trial, these statements are required disclosure. But for the current state of the proceedings, the Chamber must question why the LRV needs these documents for her response. The Chamber made its determination without the statements of all these witnesses, and one must ask why does the LRV need them. With all due respect, it appears more like a tactic

^{20 20} Trial Chamber IV, *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, para. 21.

to get more time to write their observations on the Prosecution's request to withdraw the charges against General Banda.

26. This is ultimately a decision for the Chamber, but the Defence respectfully asserts that the Chamber deny the disclosure of the External Expert report as it is work-product of the Prosecution and not subject to disclosure.

D. Request for any Documents Received by the LRV

27. While the Defence does not think the documents are necessary for the LRV to complete the tasks assigned by the Chamber, the Defence asserts that if anything is disclosed to the LRV, it must be disclosed to the Defence. If these proceedings are to be fair, our Client and his Defence must receive equal access to potential evidence.

V. REQUESTED RELIEF

28. The Defence for General Abdallah Banda Abakaer Nourain requests Trial Chamber IV to:
 - (a) Reject the LRV request for an order to the Prosecution to disclose the External Expert report as it is work-product under Rule 81(1) of the Rules of Procedure and Evidence;
 - (b) Determine whether the related witness statements/interviews are necessary for the current legal proceedings and only order the disclosure if they are necessary;
 - (c) Order the Prosecution to disclose the documents, if so ordered, to both the LRV and Defence; and
 - (d) Remind the LRV of her professional duty to raise such problems early and in a timely manner.
29. The Defence remains silent as to any additional time Trial Chamber IV gives the LRV.

Respectfully submitted,



Chief Charles Achaleke Taku
On behalf of General Abdallah Banda Abakaer Nourain

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