

**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 Submissions on the Prosecution’s Request to Withdraw the Charges against General Abdallah Banda Abakaer Nourain”,
filed on 8 May 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 submits observations on the Prosecution's multiple requests to withdraw the charges against General Banda Abdallah Abakaer Nourain ('General Banda' or 'Client'). The Defence agrees with the Office of the Prosecutor ('Prosecution') and that Trial Chamber IV ('Chamber') should grant the Prosecution's request, regardless of the manner in which it is done.
2. The Defence also requests that once the proceedings are terminated, the Chamber vacate the arrest warrant against General Banda.

II. CONFIDENTIALITY

3. Pursuant to Regulation 23 *bis*(2) of the Regulations 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.

III. PROCEDURAL SUMMARY

4. On 3 October 2025, the Defence requested to convert its Client's arrest warrant into a summons to appear.¹
5. On 16 October 2025, the Prosecution responded to the Defence Request, stating that it "*does not object to the Request, subject to the relevant assurances being placed on the record by the Government of Sudan.*"²
6. On 23 October 2025, the Defence requested the Chamber to seek submissions from the Government of the Republic of the Sudan ('GoS').³

¹ 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 ('Defence Request').

² Trial Chamber IV, *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, ICC-02/05-03/09-742-Conf, paras 1 and 7.

³ Trial Chamber IV, *Defence Request for Observations from the Government of the Republic of the Sudan on Defence Request* ICC-02/05-03/09-742-CONF-EXP, ICC-02/05-03/09-745-Conf.

7. On 24 October 2025, the Chamber invited the GoS to submit observations on the Defence Request on or before 10 November 2025.⁴
8. On 4 November 2025, the Registry transmitted the observations of the GoS.⁵ [REDACTED].⁶
9. On 6 November 2025, the Chamber ordered a status conference to be held on 18 November 2025.⁷
10. On 14 November 2025, the Chamber rescheduled the status conference for 8 December 2025.⁸ The Chamber also ordered the reclassification and confidential redacted versions of a myriad of filings and one transcript.⁹ Almost all of the reclassified documents related to prior Prosecution requests to withdraw the charges against General Banda.
11. On 8 December 2025, the Chamber held the status conference.¹⁰
12. On 12 December 2025, the Chamber granted the Legal Representative for Victims ('LRV') until 26 March 2026 to submit her responses to the Defence Request and the Prosecution's request to withdraw the charges against General Banda.¹¹ The Chamber gave the Prosecution and Defence until 2 April 2026 to file responses.¹²
13. On 19 March 2026, the LRV filed an application requesting that the Prosecution be ordered to disclose its External Expert's report,¹³ disclose the witness interviews/statements used in support of the Prosecution's request to withdraw the charges against General Banda¹⁴ and a two-week extension to file its observations from the date of the disclosure of the requested material.¹⁵

⁴ Trial Chamber IV, *Order inviting the competent authorities of the Republic of Sudan to provide observations*, ICC-02/05-03/09-746-Conf, para. 4(a).

⁵ Trial Chamber IV, *Transmission of Observations from the Republic of Sudan pursuant to Order ICC-02/05-03/09-746-Conf-Exp*, ICC-02/05-03/09-747 with confidential *ex parte* Annexes I and II.

⁶ *Ibid*, Confidential Annex II.

⁷ Trial Chamber IV, *Order scheduling a status conference*, ICC-02/05-03/09-749-Conf.

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

⁹ Trial Chamber IV, *Order on the re-classification and redaction of prior submissions, decisions and transcripts*, ICC-02/05-03/09-753-Conf.

¹⁰ ICC-02/05-03/09-T-029-CONF-ENG and ICC-02/05-03/09-T-030-CONF-ENG.

¹¹ Trial Chamber IV, *Order on matters arising from the status conference of 8 December 2025*, ICC-02/05-03/09-758-Conf, para. 6.

¹² *Ibid*.

¹³ Trial Chamber IV, *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, para. 41.

¹⁴ *Ibid*, para. 41.

¹⁵ *Ibid*, para. 42.

14. On 2 April 2026, the Chamber adjusted the deadline for the LRV filings to 1 May 2026 and the Prosecution and Defence responses to 8 May 2026.¹⁶
15. On 1 May 2026, the LRV filed her submissions on the Prosecution's request to withdraw the charges against General Banda.¹⁷

IV. SUBMISSIONS

A. The Defence accepts and endorses the Prosecution's prior submissions as to the legality and necessity of withdrawing the charges against General Banda.

16. The Defence has reviewed and studied the myriad of requests from the Prosecution submitted over these past two and a half years, and understands why the Prosecution has requested such a distinct and sweeping action. The Defence does not find any flaws within the Prosecution's logic or reasoning in its several requests to withdraw the charges against General Banda. With respect, it would be a waste of the Court's time, money, resources, and to say the least, a violation of General Banda's fundamental rights.
17. The burden of proof emplaced on the Prosecution at trial is beyond a reasonable doubt. In its review of the evidence which the Prosecutor possesses in order to discharge its prosecutorial burden and the mandate of the Presidency, the Prosecution reviewed the evidence not with the pre-trial threshold, but with the threshold that enables the Prosecution to ensure that it is able to prove the burden required at trial pursuant to the Rome Statute.
18. The Prosecution's request for the withdrawal of the charges is within the inherent powers of the Prosecution. With this request, the Prosecution is acting in the interest of justice and within its ethical obligations not to put a person on trial based on evidence which does not fulfil the elements of the charged crimes or evidence which is seriously lacking in credibility.
19. The Prosecutor re-interviewed [REDACTED] witnesses and came to the conclusion that owing to serious credibility and non-credibility issues, the evidence provided does not establish the presence of General Banda at the planning meeting for the attack or

¹⁶ Trial Chamber IV, *Decision on the Prosecution's request for an extension of time to provide access to witness statements*, ICC-02/05-03/09-769-Conf, p. 5.

¹⁷ Trial Chamber IV, *Observations des Représentants Légaux des Victimes sur la Requête du Procureur ICC-02/05-03/09-752-Conf en Reconsidération de la "Décision (2nd Décision) sur sa demande aux fins de retrait des charges contre Abdallah Banda Abakaer Nourain"*, ICC-02/05-03/09-773-Conf ('LRV Submissions').

knowledge of the content of the alleged meeting. There is no evidence to establish that General Banda knew about this development or ordered it.

20. The Rome Statute mandates the Prosecutor to investigate inculpatory and exculpatory evidence. While the Defence understands that much of this evidence was not available until 2023 and later, the Prosecution should have taken the necessary steps to disclose this new exculpatory information without haste.
21. Finally, the Chamber has the explicit power to act with powers delegated to the pre-trial chamber pursuant to Articles 61(11) and 64(6)(a) of the Rome Statute. One exception is that of Article 61(9) of the Rome Statute, which allows for the Prosecution to amend the charges. Just as the Prosecution did, the Defence finds this telling about the withdrawal of the charges before trial, but after a decision on the confirmation of charges.
22. If the Chamber still determines that it cannot withdraw the charges at this point, nothing restricts the Chamber from referring the situation back to the pre-trial chamber pursuant to an amendment of the charges under Article 61(9) of the Rome Statute. Should there be any doubt as to the strength of the case, such a determination would alleviate the concerns of the Chamber and give the Prosecution the means to present its arguments on the strength of its case to the pre-trial chamber, which can ultimately determine whether to allow the withdrawal request of the Prosecution.
23. There truly is little of substance that the Defence can add to the Prosecution's previous submissions to the Chamber. The Defence accepts and supports the Prosecution's previous arguments that its internal policy, professional responsibility and the lack of evidence can result in only one logical conclusion, the withdrawal of the charges against General Banda.

B. The LRV fails to address the applicable legal standard.

24. In its submissions, the LRV fails to address the legal standard applicable for a withdrawal of the charges against a person who is awaiting trial in a situation like General Banda. The LRV Submissions are largely a review of the evidence and points selectively to the confirmation of charges decision, particularly paragraphs in which findings were made against a party against whom charges were not confirmed or against whom there a decision was not entered. The LRV appears to confuse the evidentiary threshold at confirmation versus that at trial.

25. The LRV does not dispute the evidence which was carefully evaluated by the independent expert commissioned by the Prosecution to evaluate the evidence at the appropriate threshold required for a criminal trial at the ICC. The alleged crimes committed in these operations were the subject of investigations by the Prosecution.
26. Furthermore, the LRV fails to explain why the interest its clients supercedes the rights of the General Banda. Considering the Prosecution's two and a half year position on the prospect of securing a conviction against General Banda, General Banda has the right not to be encumbered by a needless trial. The interests of victims and witnesses does not extend to victims pressuring the Prosecution into carryout a trial when the legal elements warranting a prosecution are not present. Allowing this will compromise the independence of the Prosecutoin and the integrity of the Court.
27. The Defence asserts that the LRV Submissions offer little value to the determination of the Chamber in this legal question. In the Defence's opinion, the Prosecution has explained with proper evidence and legal reasoning why the proceedings against General Banda should be terminated. It is in the interest of justice that these proceedings be terminated and the arrest warrant against General Banda be vacated.

V. REQUESTED RELIEF

28. The Defence for General Abdallah Banda Abakaer Nourain requests Trial Chamber IV to grant the Prosecution's request to withdraw the charges against General Abdallah Banda Abakaer Nourain. The Defence sees no logical reasoning to take this case to trial when, under its own admission, the Prosecution believes it has no true chance of securing a conviction on any of the charges.
29. The Defence also requests that the arrest warrant currently emplaced against General Abdallah Banda Abakaer Nourain be vacated.

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