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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 of

**Decision on the Defence's request on legal aid pursuant to Regulation 83(4) of
the Regulations of the Court**

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 of the International Criminal Court, in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*, having regard to Articles 64(2) and 67(1) of the Rome Statute (the ‘Statute’), Regulation 83(4) of the Regulations of the Court (the ‘Regulations’) and Regulation 135 of the Regulations of the Registry, issues the following ‘Decision on the Defence’s request on legal aid pursuant to Regulation 83(4) of the Regulations of the Court’.

I. Procedural Background

1. On 12 December 2023, the Assembly of State Parties adopted a new ‘Legal Aid Policy of the International Criminal Court’ (‘LAP’), with entry into force on 1 January 2024.¹
2. On 3 October 2025, the Defence filed a request seeking the conversion of the arrest warrant issued on 11 September 2014 against Mr Banda to a summons to appear.²
3. On 6 November 2025, the Chamber issued an *ex parte* ‘Order scheduling a status conference’, setting out a preliminary agenda and inviting the parties to suggest any additional items by 10 November 2025.³
4. On 12 November 2025, the Prosecution filed: (i) a request for the re-classification and redaction of prior submissions, decisions and transcripts (‘Reclassification Request’)⁴ and, (ii) a request seeking the reconsideration of the ‘Reconsideration of the Decision on the Prosecution’s Request to withdraw the charges against Abdallah Banda Abakaer Nourain.’⁵
5. On 14 November 2025, the Chamber, pursuant to Regulation 23*bis* of the Regulations, issued an ‘Order on the re-classification and redaction of prior submissions, decisions and transcripts’.⁶ The Chamber also decided to postpone the status conference to ensure that the Legal Representative for Victims (‘LRV’) has adequate time to prepare and to meaningfully participate in the proceedings. Accordingly, the Chamber rescheduled the status conference on 8 December 2025 at 9:30 am.

¹ Legal Aid Policy of the International Criminal Court (‘LAP’), 22 November 2023, ICC-ASP/22/9.

² 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.

³ Order scheduling a status conference, 6 November 2025, ICC-02/05-03/09-749-Conf-Exp.

⁴ Prosecution request for the re-classification and redaction of prior submissions, decisions and transcripts, 12 November 2025, ICC-02/05-03/09-751-Conf-Exp.

⁵ Prosecution request for reconsideration of the “Reconsideration of the Decision on the Prosecution’s Request to withdraw the charges against Abdallah Banda Abakaer Nourain”, 12 November 2025, ICC-02/05-03/09-752-Conf-Exp.

⁶ Order on the re-classification and redaction of prior submissions, decisions and transcripts, ICC-02/05-03/09-753-Conf. On 21 November 2025, the Chamber, via an email decision, clarified that the reclassification also applied to the Prosecution’s file 752. The Chamber also ordered the reclassification as confidential of several filings (746, 747, 749) and order the parties to file redacted versions of filings 742, 743, 745, 750, 751. (See email decision of 24 November 2025, 4:54pm).

6. On 8 December 2025, the Chamber held a status conference.⁷
7. On 29 December 2025, pursuant to various requests from the Defence to obtain full remuneration for a complete team for the trial stage,⁸ the Registrar issued the ‘Registrar Decision on Request for Review of a Decision on Funding’ (the ‘Impugned Decision’) where he rejected, pursuant to Regulation 135(1) of the Regulations of the Registry, the Defence’s Request for Review since ‘there was no clear error in [the] CCS’s decision’.⁹
8. As a result, on 15 January 2026, the Defence filed the ‘Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court’¹⁰ (‘Defence Request to Review’) seeking review of the Impugned Decision. The Defence further requested an order instructing the Registry to allocate proper and sufficient funding to the Defence for: (i) its operations from 1 November 2025 until the status conference on 8 December 2025 based on the LAP, or (ii) hourly remuneration from 1 November 2025 until the Chamber renders its decisions on the topics discussed during the status conference’.¹¹ In addition, the Defence confirmed that they possess a copy of Mr Banda’s passport and, that they will submit it ‘once the Chamber render[s] its decisions on the Defence’s and Prosecution’s motions’.¹²
9. On 20 January 2026, pursuant to the Defence’s ‘Further Request for Funding’ requesting full funding for Counsel, Co-Counsel and the Case Manager ‘from 10 December 2025 until such time that the issues discussed at the 8 December 2025 Status conference are resolved’,¹³ [REDACTED]. [REDACTED].¹⁴

⁷ T-129, Status Conference on 8 December 2025, ICC-02/05-03/09-T-029-CONF-ENG. The Chamber instructed the parties and participants to request the addition of any new items to the agenda by 24 November 2025. The Defence filed two requests to add additional items to the agenda of the status conference, including issues related to the remuneration of the Defence’s legal work. On 2 December 2025, the Chamber rejected the Defence’s requests to include remuneration of legal work issues as items on the agenda. The Chamber considered that the matters raised related to legal aid should be pursued first through the ordinary procedures before the Registry, in accordance with Regulation 83(1) of the Regulations.

⁸ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, Annex A, B.

⁹ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, Annex E. *See also*, Annex C [REDACTED].

¹⁰ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp.

¹¹ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, paras 1, 59.

¹² Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, para. 45.

¹³ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, Annex B.

¹⁴ Addendum to the “Registry’s Observations on the “Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court” (ICC-02/05-03/09-759-Conf-Exp) and Request for Guidance”, 22 January 2026, ICC-02/05-03/09-762-Conf-Exp, Annex A.

10. On 22 January 2026, the Registry filed its observations in response to the Defence's Request pursuant to Regulation 83(4).¹⁵
11. On 23 January 2026, the Defence sought leave to reply to the Registry's Observations (the 'Leave to Reply Request').¹⁶

II. Analysis and submissions

A. Defence's Request for Leave to Reply

12. As a preliminary matter, the Chamber considers that no replies are necessary to rule on the Defence's Request to Review as the Chamber is sufficiently informed to decide on the basis of the existing submissions. Accordingly, the Leave to Reply Request is dismissed.

B. Review of the Impugned Decision

13. The Chamber is satisfied that the Impugned Decision constitutes a decision on the scope of legal assistance paid by the Court. The Chamber emphasises that its review is limited to the Impugned Decision issued by the Registrar. Further, and although the Chamber notes that the Defence Request to Review was filed two days after the time limit set by Regulation 135 of the Regulations of the Registry, given the nature of the issues presented, it will exceptionally consider the present Defence's Request to Review pursuant to Regulation 83(4) of the Regulations and Regulation 132(2) of the Regulations of the Registry.
14. The Chamber recalls that under Regulation 83(1) of the Regulations, the Registrar enjoys a relatively broad margin of discretion, given that he is vested with primary responsibility for the administration of the legal aid scheme.¹⁷ The Chamber also recalls that it is not the judiciary's role to determine whether it would have reached the same conclusion as the

¹⁵ On 16 January 2026, the Chamber via email, ordered the Registry to file observations to the Defence's request no later than Thursday, 22 January 2026, at 1:00 p.m. See, Registry's Observations on the "Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court" (ICC-02/05-03/09-759-Conf-Exp) and Request for Guidance, 22 January 2026, ICC-02/05-03/09-760-Conf-Exp. Additionally, on 23 January 2026, pursuant to TC IV email instruction on 16 January 2026, the Registry submitted an addendum providing the CCS Decision on "Further Request for Funding" submitted by the Defence on 23 December 2025. See, ICC-02/05-03/09-762-Conf-Exp.

¹⁶ Defence Request to Reply ICC-02/05-03/09-760-Conf-Exp, 23 January 2026, ICC-02/05-03/09-761-Conf-Exp.

¹⁷ LAP, ICC-ASP/22/9, paras 101-103. See also, Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Moham Ed Ag Mahmoud*, Decision on the Defence's urgent request for judicial review of the Registrar's decision on funding during the reduced activity phase, 5 June 2023, ICC-01/12-01/18-2516 08-06-2023, para.16.

Registrar, nor is judicial review the vehicle to adjust the general policy concerning legal aid.¹⁸

15. In line with the established standard for judicial review under Regulation 83(4) of the Regulations, the Chamber must assess, *inter alia*, whether: (i) the Registrar abused his discretion; (ii) the Registrar's decision is affected by a material error of law or fact; or (iii) the Registrar's decision is manifestly unreasonable.¹⁹
16. In the present case, the Defence asserts that the Registrar's review was 'highly unreasonable' and that 'the defence deserves to be remunerated in a fair and just manner for the work performed in having its Client appear before the Chamber and [for the] work [related] to the topics discussed at the Status Conferences'.²⁰ The Defence further requests to overturn the Impugned Decision and order the Registry to pay the current defence teams members (Counsel, Co-counsel, and the Case Manager) a full remuneration based on the LAP or an hourly remuneration from 1 November 2025 'until the Chamber renders its decisions on the status conference'.²¹
17. In the Impugned Decision, the Registrar recalled that, [REDACTED]. [REDACTED].²²
18. The Registrar [REDACTED].
19. The Chamber notes that paragraphs 74-76 of the Legal Aid Policy provide that Counsel may apply for additional means 'in case of unforeseen circumstances outside the control of defence or victim's teams' and these 'are not granted automatically but have to be requested through a substantiated request for additional means to the Registrar'.²³
20. The Chamber considers that the Impugned Decision —regarding legal aid for the Defence team— is correct and reasonable. [REDACTED]. [REDACTED]. [REDACTED]. The Chamber considers the Registry is applying the LAP reasonably and thus, there is no need for the Chamber to intervene in this regard with the Registrar's decision as the Chamber discerns no error in the Impugned Decision.

C. Recent CSS Decision

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, para. 35.

²¹ Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court, 15 January 2026, ICC-02/05-03/09-759-Conf-Exp, paras 1, 35.

²² *Ibid.*, paras 16-17.

²³ LAP, ICC-ASP/22/9, paras 74-76.

21. The Chamber notes that [REDACTED].²⁴

22. Although this decision is specifically related to the Defence's team remuneration (and thus the present Request), it is not clear from the record whether the Defence has sought review of the Registrar. Accordingly, the Chamber recalls that the appropriate avenue, should the Defence disagree with this latest CSS decision, is to first seek review from the Registrar, which remains the standard and available procedure. The Chamber reiterates that the judiciary review pursuant Regulation 83(4) of the Regulations is a 'two-step process for appealing decisions on the scope of legal aid'.²⁵

D. Registry's Request for Guidance [REDACTED]

23. The Registry, in its observations to the Defence's Request to Review, also requested guidance as to whether [REDACTED] and before the deadlines for the submission of the LRV's observations and the consequent replies by the parties.²⁶

24. The Chamber recalls that during the Status Conference on 8 December 2025, one of the topics discussed was [REDACTED]. The Chamber emphasised during the Status Conference that this issue is [REDACTED].²⁷ The Chamber considers that [REDACTED]. [REDACTED].

III. Disposition

25. For these reasons, the Chamber hereby:

DISMISSES the Defence's Leave to Reply.

REJECTS the Defence's Request Pursuant to Regulation 83(4) of the Regulations of the Court.

ORDERS the [REDACTED] a clear and legible copy of Mr Banda's valid passport.

²⁴ Annex to Addendum to the "Registry's Observations on the "Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court" (ICC-02/05-03/09-759-Conf-Exp) and Request for Guidance", 22 January 2026, ICC-02/05-03/09-762-Conf-Exp, para. 19.

²⁵ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Moham Ed Ag Mahmoud*, Decision on the Defence's urgent request for judicial review of the Registrar's decision on funding during the reduced activity phase, 5 June 2023, ICC-01/12-01/18-2516 08-06-2023, para.14..

²⁶ Annex to Addendum to the "Registry's Observations on the "Defence Request Pursuant to Regulation 83(4) of the Regulations of the Court" (ICC-02/05-03/09-759-Conf-Exp) and Request for Guidance", 22 January 2026, ICC-02/05-03/09-762-Conf-Exp, paras 28-29.

²⁷ T-129, Status Conference on 8 December 2025, ICC-02/05-03/09-T-029-CONF-ENG, p. 10.

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



Judge Kimberly Prost
Presiding Judge



Judge Keebong Paek



Judge Nicolas Guillou

Dated this **17 July 2026**
At The Hague, The Netherlands